

House of Assembly—No 81

As laid on the table and read a first time, 9 February 2011

South Australia

Terrorism (Surface Transport Security) Bill 2011

A BILL FOR

An Act to require certain surface transport operators to implement counter terrorism plans;
and for other purposes.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Terrorism (Surface Transport Security) Act 2011*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

5 3—Interpretation

In this Act—

contravention includes failure to comply;

operator of a security identified surface transport operation means the person declared by the Minister under this Act to be the operator of the transport operation;

10 *security identified surface transport operation* means a place, activity or system, associated with or relating to, the movement of people or goods by road, rail or water identified by the Minister under this Act as a security identified surface transport operation;

15 *terrorist act* has the same meaning as in Part 5.3 of the Criminal Code of the Commonwealth.

4—Civil remedies not affected

The provisions of this Act do not limit or derogate from any civil right or remedy and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.

5—Notice relating to security identified surface transport operation

- (1) The Minister may, by notice in writing to a person declared by the notice to be the operator of a security identified surface transport operation—
- 5 (a) identify a specified place, activity or system associated with, or relating to, the movement of people or goods by road, rail or water as a security identified surface transport operation; and
- (b) declare a specified person to be the operator of the security identified surface transport operation; and
- 10 (c) specify the period within which the operator must prepare a counter terrorism plan in accordance with this Act.
- (2) The Minister may identify a place, activity or system associated with, or relating to, the movement of people or goods by road, rail or water as a security identified surface transport operation if the Minister is of the opinion that the operation has a significant risk of being the target of a terrorist act taking into account—
- 15 (a) information made available to the Minister by a security intelligence or law enforcement organisation, or other agency of the Crown of the State or Commonwealth, about the likelihood of terrorist acts against the operation; and
- (b) the number of passengers using the operation; and
- 20 (c) the nature of the goods carried by the operation; and
- (d) the geographical location of the operation; and
- (e) the iconic status of the operation; and
- (f) the size of the operation; and
- (g) any other factor considered relevant by the Minister.
- 25 (3) The Minister will not declare a maritime industry participant required to prepare a maritime security plan under the *Maritime Transport and Offshore Facilities Security Act 2003* of the Commonwealth to be the operator of a security identified surface transport operation.
- (4) Before the Minister gives a notice to a person under subsection (1), the Minister must—
- 30 (a) inform the person in writing of the details of the proposed notice; and
- (b) allow the person at least 14 days within which to make submissions to the Minister about the proposed notice.
- (5) The Minister may, by subsequent notice in writing to the operator of a security identified surface transport operation, vary or revoke a notice under subsection (1).
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6—Counter terrorism plan

- (1) The operator of a security identified surface transport operation must prepare a counter terrorism plan for the transport operation in accordance with this section.
- Maximum penalty: \$50 000.

- (2) The operator of a security identified surface transport operation must not, without reasonable excuse, fail to implement a counter terrorism plan prepared under this section in accordance with its terms.

Maximum penalty: \$50 000.

- 5 (3) A counter terrorism plan must be prepared within the period specified under section 5(1)(c).

- (4) A counter terrorism plan must have the following objectives:

- 10 (a) the prevention of a terrorist act;
(b) the mitigation of the effects of a terrorist act;
(c) the recovery of the transport operation from a terrorist act;
(d) the continuity of the transport operation in the event of a terrorist act;
(e) the coordination of counter terrorism measures between operators of security identified surface transport operations and other relevant operations.

- (5) A counter terrorism plan must—

- 15 (a) contain an assessment of the vulnerability of the transport operation to a terrorist act; and
(b) set out arrangements for assessing the likelihood of a terrorist act affecting the transport operation being committed, including details of—
20 (i) the intervals at which, and the circumstances in which, the assessment is to be reviewed; and
(ii) the procedures to be followed to ascertain relevant information made available by the Commonwealth and the State; and
(c) set out a series of measures to be taken according to the assessed likelihood of a terrorist act affecting the transport operation being committed, and designed to minimise the risk of such a terrorist act being committed and to minimise the effect of such a terrorist act on the transport operation, including measures designed—
25 (i) to prevent unauthorised access to services, goods and facilities; and
(ii) to facilitate the recognition and reporting of suspicious incidents; and
30 (iii) to facilitate orderly evacuation of persons in appropriate circumstances; and
(d) set out measures to be taken in the event of a terrorist act, including measures designed to facilitate—
35 (i) an immediate and effective response to the terrorist act (including appropriate communication with the police, other emergency services and the public and appropriate coordination with the emergency procedures of other bodies); and
(ii) recovery of the transport operation from the terrorist act; and
(iii) the continued safe operation of the transport operation; and

- (e) set out a scheme for the preparation and conduct of training exercises to test, from time to time, the operation of the counter terrorism plan; and
- (f) set out a scheme for the provision of information and training to staff and others about the arrangements and measures set out in the plan; and
- 5 (g) specify the persons or classes of persons responsible for taking action under the plan; and
- (h) set out a scheme for the review and updating of the plan; and
- (i) comply with any other requirements of the regulations.
- 10 (6) The regulations may impose standards to be met in respect of any of the matters required to be contained or set out in a counter terrorism plan, including standards—
 - (a) requiring the assessment of the likelihood of a terrorist act affecting the transport operation being committed to be made against a specified scale and to take into account specified factors; and
 - 15 (b) requiring the training exercises to be prepared and conducted at specified intervals (which may vary according to the assessed likelihood of a terrorist act affecting the transport operation being committed or any other factor); and
 - (c) requiring the plan to be reviewed and updated at specified intervals or following specified events.
- 20 (7) The operator of a security identified surface transport operation may amend or substitute the counter terrorism plan at any time.
- (8) If a rail transport operator within the meaning of the *Rail Safety Act 2007* is declared to be the operator of a security identified surface transport operation, the operator's counter terrorism plan will be taken to be incorporated in the operator's security management plan under that Act and to satisfy the requirement under that Act for the security management plan to incorporate measures to protect people from terrorism.
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Note—

The *Rail Safety Act 2007* requires a rail transport operator to have a security management plan. Amongst other matters, a security management plan is to incorporate measures to protect people from terrorism. It is intended that while this aspect of a security management plan may form the basis for a counter terrorism plan under this Act, a counter terrorism plan is to be more detailed and more extensive than that aspect of a security management plan required under the *Rail Safety Act 2007*.

7—Provision of information relating to counter terrorism plan

- The operator of a security identified surface transport operation must, at the request of a person authorised by the Minister, provide the person with—
- 35 (a) a copy of the counter terrorism plan for the transport operation, or any amendment of the plan; and
 - (b) information in writing about the implementation or review of the counter terrorism plan for the transport operation.
- 40 Maximum penalty: \$10 000.

8—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

5 Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—
\$10 000 or imprisonment for 2 years;
- (b) in any other case—\$5 000.

9—Compliance notice

- 10 (1) If the Minister is satisfied that the operator of a security identified surface transport operation is contravening this Act, the Minister may give the operator notice in writing specifying the action that the Minister considers should be taken in order to ensure compliance with this Act.
- 15 (2) Failure to comply with the notice within the period allowed by the notice is not of itself an offence but the notice, and any evidence of the failure to take the action specified in the notice, is admissible in any proceedings against the person for an offence against this Act relating to the alleged contravention in respect of which the notice was given.
- 20 (3) Proceedings for an offence against this Act constituted by the contravention or alleged contravention to which the notice relates may not be commenced if the person has complied with the notice.

10—Confidentiality

- 25 (1) A person engaged or formerly engaged in the administration of this Act must not disclose information obtained (whether by that person or otherwise) in the course of official duties except—
 - (a) as required or authorised by or under this Act or any other Act or law; or
 - (b) with the consent of the operator of the security identified surface transport operation to which the information relates; or
 - (c) in connection with the administration of this Act; or
 - 30 (d) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

Maximum penalty: \$10 000.

- 35 (2) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
 - (a) the person to whom the information was disclosed; or
 - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

11—Freedom of Information Act

Information obtained under this Act is not liable to disclosure under the *Freedom of Information Act 1991*.

12—Service

- 5 (1) A notice or other document required to be given to a person for the purposes of this Act may—
- (a) be given to the person personally; or
 - (b) be posted in an envelope addressed to the person at the person's last known residential or (in the case of a corporation) registered address; or
 - 10 (c) be left for the person at the person's last known residential or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
 - (d) be transmitted by fax or email to a fax number or email address (in which case the notice or document will be taken to have been given or served at the
 - 15 time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required to be given or sent to a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

13—Evidentiary provision

In proceedings for an offence against this Act, an allegation in a complaint that—

- (a) a specified place, activity or system is, or was at a specified time, a security identified surface transport operation; or
- 25 (b) a specified person is, or was at a specified time, the operator of a security identified surface transport operation; or
- (c) a specified person is, or was at a specified time, a person authorised by the Minister under section 7,

will be accepted as proved in the absence of proof to the contrary.

14—Regulations

- 30 (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Regulations under this Act may—
- (a) be of general application or limited application; or
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; or
 - 35 (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister; or
 - (d) refer to or incorporate, wholly or partially and with or without modification, a specified code or standard as in force at a specified time or as in force from
 - 40 time to time.

(3) If a code or standard is referred to or incorporated in the regulations—

(a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office prescribed by regulation; and

5 (b) evidence of the contents of the code or standard may be given in legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.