




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 13 November 2018

JUSTICE LEGISLATION (LINKS TO TERRORIST ACTIVITY) AMENDMENT BILL

Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (12.04 pm): I present a bill for an act to amend the Bail Act 1980, the Corrective Services Act 2006, the Penalties and Sentences Act 1992 and the Youth Justice Act 1992 for particular purposes. I table the bill and explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018 [1851](#).

Tabled paper: Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018, explanatory notes [1852](#).

I am pleased to introduce the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018. Terrorist attacks in Australia and abroad and the threat of terrorism and associated violent and extremist ideology have seen terrorism take prominence as a global security concern. Violent acts of terror pose a direct and ongoing threat to Australians and communities around the world. The use of threats and violence by terrorists to advance ideological, religious or political causes has no place in Queensland or Australia. It strikes at the core of our democratic values, which provide freedom to all citizens to express their differences by legitimate and nonviolent means. We know that the most effective defence against terrorism is preventing radicalisation and the progression to violent extremism.

In pursuit of this goal I commend the efforts and work of the Queensland Police Service, Queensland's Anti-Discrimination Commission and other government agencies and community based organisations; however, there have been a number of recent violent incidents in Australia motivated by extreme views. Members may recall the tragedies of the Brighton siege in 2017 and the Martin Place siege in 2014. Events such as these are powerful reminders that we can never be complacent in our response to terrorism in Queensland and across Australia.

The bill will implement the agreement of the Council of Australian Governments to ensure that there will be a presumption that neither bail nor parole will be granted to those persons who have demonstrated support for, or have links to, terrorist activity—underpinned by nationally consistent principles to ensure there is a presumption against bail and parole in agreed circumstances across Australia. These reforms recognise that the evolving threat posed by terrorism is not constrained by our state borders and that a national response is required.

Before I move on to the substance of the bill, I would like to take this opportunity to thank our stakeholders for the time and resources they generously continue to provide during consultation on our legislative reforms. I acknowledge that stakeholders have raised concerns that the reforms in the bill represent a departure from legal principles and will infringe on rights and liberties without sufficient justification. As a government, the safety and security of the community is our priority; however, the actions we take to protect the community must be carefully balanced against the impacts of these actions on human rights and civil liberties.

While the threat of terrorism is to be taken seriously, Queensland does remain a safe place to live and work. In passing laws we are mindful to support this safe environment and to ensure that our response is not disproportionate to the threat faced. The measures in the bill, while extraordinary, recognise that there should be a higher bar for the release of individuals who pose a higher risk to the safety of the community, whether that release be through bail or parole. The passing of these amendments is an essential component to ensure the safety of Queenslanders and, through the provision of nationally consistent laws, the safety of all Australians. Let me now briefly outline the bill's significant amendments.

The amendments in the bill are anchored to a definition of 'terrorism offence'. This definition captures a broad range of terrorism and terrorism related offences under Commonwealth legislation as well as three offences under interstate laws. The bill also provides for the inclusion of terrorism related offences under Commonwealth, state or territory legislation by prescription under regulation to ensure our laws can rapidly respond to the continually evolving threat of terrorism. Other terms such as 'terrorist organisation' and 'terrorist act' are defined a nationally consistent way.

The bill amends the Bail Act 1980 and the Youth Justice Act 1992 to reverse the statutory presumption in favour of bail for an adult or release for a child who has previously been convicted of a terrorism offence or who is currently or has previously been subject to a Commonwealth control order. This will apply regardless of the offence a person is alleged to have committed. Authority to grant bail in these circumstances will be limited to a court to ensure stringent and consistent consideration of applications under these reforms. The court will need to be satisfied that exceptional circumstances exist to justify granting bail.

This amendment inserts a new, higher threshold test of exceptional circumstances into the Bail Act for the first time. What amounts to exceptional circumstances will be determined by the court on a case-by-case basis considering all of the relevant circumstances. Currently under the Bail Act, in circumstances where the statutory presumption in favour of bail is reversed a defendant must show cause why their detention in custody is not justified. The bill will reverse the presumption in favour of release for children under the Youth Justice Act in corresponding circumstances to adults for the first time. These reforms, both the insertion of a new threshold test and in particular the reversal of the presumption in favour of release for children, may be considered extraordinary; however, the provisions in the bill are carefully limited to apply only to those offenders with demonstrated and proven links to terrorist activity and appropriately recognise the direct risk such links pose to the community.

Importantly, all existing procedural safeguards and appeal and review mechanisms are retained for applications the subject of the reforms in this bill. Let me be very clear: while the extraordinary measures proposed in this bill are appropriate for use in responding to the unique risk posed by people with links to terrorist activity, this should not and is not intended to be viewed as a change in the approach to bail laws in Queensland more broadly. The bill recognises that, while not sufficient to justify a reversal of the presumption in favour of bail, broader links to terrorism and links to those who advocate support for terrorism are relevant matters when assessing whether someone poses an unacceptable risk if released on bail generally.

The bill amends the Bail Act and Youth Justice Act to insert new terrorism related circumstances in the lists of matters to be considered by a court or police officer when determining bail. This requires consideration of any promotion of terrorism by the person or any association the person has had with a terrorist organisation or another person who has promoted terrorism. A person has promoted terrorism if they have carried out an activity to support the carrying out of a terrorist act, made a statement in support of the carrying out of a terrorist act, or carried out an activity or made a statement to advocate the carrying out of a terrorist act or support the carrying out of a terrorist act.

The bill makes it clear that, when considering promotion of terrorism, any reference to a terrorist act includes a terrorist act that has not happened and is not limited to a specific terrorist act. The concept of promoting terrorism is used consistently through all legislation amended by the bill and requires more than accidental support for terrorist acts to be shown. Rather, activity or statements that are directed towards or for the purpose of supporting or advocating support for terrorist acts are required.

In recognising the vulnerability and lack of autonomy of children, amendments to the Youth Justice Act clarify that only associations that are for the purpose of supporting a person or terrorist organisation in carrying out a terrorist act or promoting terrorism are relevant matters for consideration. Accidental or incidental associations, family relationships, religious or legal interactions that are not for the purpose of supporting a terrorist act or promoting terrorism will not be considered relevant.

The amendments made by the bill related to bail ensure that a bail application by a person with demonstrated links to terrorist activity receives greater scrutiny and ensures that those people who pose an unacceptable risk to our community are not granted bail.

The bill amends the Corrective Services Act 2006 to create a presumption against parole for prisoners who fall into one of two categories. In these circumstances, prisoners may be granted parole only if the Parole Board Queensland is satisfied that exceptional circumstances exist. The first category comprises prisoners with direct links to terrorism. This includes prisoners who have been convicted of a terrorism offence, who are subject to a control order under the Commonwealth Criminal Code or who have promoted terrorism. The second category applies where the Commissioner of Police provides a report to the Parole Board identifying that there is a reasonable likelihood that a prisoner may carry out a terrorist act. This provision only applies to prisoners who have been previously charged with a terrorism offence, who have previously been the subject of a control order or who the Parole Board is satisfied have associated with a terrorist organisation or a person who has promoted terrorism.

The two-category approach in the bill incorporates a level of flexibility to respond to terrorist risk. This approach ensures that the presumption against parole is sufficiently wide to capture all prisoners with direct links to a terrorist activity while excluding those with links that may be tenuous by coupling identifying criteria with a report identifying the likelihood of terrorist acts being carried out.

To support these reforms the bill allows the Parole Board to request that the Commissioner of Police provide a report in relation to specified links to terrorism as well as the likelihood of a prisoner carrying out a terrorist act. However, the Commissioner of Police can refuse to provide information to the Parole Board in certain circumstances. These circumstances include if the information is not in the Police Commissioner's possession, if it was accessed through an arrangement with another law enforcement, intelligence or border protection agency and the arrangement prevents disclosure, or if it is information protected from disclosure in court proceedings under the Police Powers and Responsibilities Act 2000 and the Police Commissioner is satisfied that withholding the information will not adversely affect public safety.

The bill provides that any application for parole by a prisoner who has links to terrorist activity must be considered by the Parole Board sitting as five members. Further, the bill provides additional powers to ensure that a prisoner's parole order can be suspended or cancelled if the Parole Board becomes aware that the prisoner poses a risk of carrying out a terrorist act.

The bill also amends section 160B of the Penalties and Sentences Act 1992 to allow a court the discretion to fix a parole eligibility date for any offender who has been previously convicted of a terrorism offence, who is the subject of a control order or who has carried out actions or made statements directed at supporting or advocating support for the carrying out of a terrorist act rather than a date an adult offender is to be released on parole.

Unlike some other Australian jurisdictions, in Queensland there is no equivalent of adult parole for children. Instead, the Youth Justice Act provides for the release of children from detention to supervised release orders, with the time of release determined at sentence. As a default, release occurs after 70 per cent of the sentence has been served; however, the sentencing court may order release at any point between 50 and 70 per cent if it considers that there are special circumstances. To implement the COAG commitment, the bill amends the Youth Justice Act to remove the discretion of a sentencing court to order a release date any earlier than after serving 70 per cent of a period of detention. This will apply to a child who has previously been found guilty of a terrorism offence, who is the subject of a control order or when the sentencing court is satisfied that the child has promoted terrorism, regardless of the offence before the court. The bill also requires conditions that are reasonably necessary to reduce the risk of a child carrying out a terrorist act or promoting terrorism to be imposed on the supervised release order of any child who has been previously found guilty of a terrorism offence, who is the subject of a control order or who has promoted terrorism.

The Queensland government recognises the need for counterterrorism legislation to be effective and agile while remaining proportionate and measured. This bill seeks to balance the rights of all Queenslanders while acknowledging that the unique nature and gravity of terrorism threats at times demand extraordinary measures. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (12.16 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Legal Affairs and Community Safety Committee

Madam DEPUTY SPEAKER (Ms Pugh): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.