Speech By

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MEMBER FOR MAIWAR

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JUSTICE LEGISLATION (LINKS TO TERRORIST ACTIVITY) AMENDMENT BILL

Mr BERKMAN (Maiwar—Grn) (4.21 pm): I rise to speak on the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018. Terrorist crimes have a devastating impact on victims, their loved ones and our society, and we have seen these tragic consequences in incidents over decades and most recently in the aftermath of the Christchurch massacre. I take the opportunity to extend my deepest sympathies to all New Zealanders, the Muslim community everywhere and everyone touched by this tragedy.

It is crucial that our criminal justice system is strong enough to prevent and deal with these crimes effectively. The effects of the bill before the House cannot be framed as a simplistic balance between the loss of individual liberties and presumed improvements in community safety. It is just not that simple. We must also consider the potential negative consequences of this kind of legislation that strips people of liberties in specific circumstances. What unintended consequences might this bill have in terms of the marginalisation and radicalisation of Queenslanders, especially children, who would otherwise be on the path to deradicalisation and reintegration?

In simple terms, this bill could well make Queenslanders less safe. The Greens cannot support it. We need to deal with terrorist crimes by reviewing and strengthening our existing legal system, not by creating a separate stream of laws that trash centuries of legal precedent. As legal experts from the University of Queensland submitted—

This bill does not fill a gap in Queensland's national security legislation. Queensland and the Commonwealth together have an extensive array of national security legislation including control orders, continuing detention orders and supervised or conditional release.

We have a robust criminal justice system, strengthened by centuries of legal precedents, which carefully balances rights to individual liberty with the need to protect the community. Bail, parole and avoiding retrospective laws are key features of our criminal justice system, and the reversal of the presumption of bail and parole is hugely significant.

This bill does several things, some of which are unnecessary, unfair and potentially dangerous. Firstly, it reverses the presumption in favour of bail for any adult or child who has previously been convicted of a terrorism offence or who is, or has been, subject to a control order under the Commonwealth Criminal Code. In those circumstances the accused person must satisfy a court that there are exceptional circumstances. Reversing the presumption of bail for children has never happened in Queensland before. Secondly, the bill reverses the presumption in favour of parole or early release for persons who have been convicted of a terrorism offence or who are the subject of a Commonwealth control order as well as those who have promoted terrorism and in some other circumstances where the Police Commissioner suspects a person is likely to commit a terrorist offence. In those circumstances, parole can only be granted in exceptional circumstances.

The bill makes similar changes to the regime for children by removing the discretion for a court to allow release from youth prisons before 70 per cent of their sentence is complete, no matter what offence they were imprisoned for. That change applies when a child has been previously convicted of

a terrorism offence, has been subject to a Commonwealth control order or has promoted terrorism. The above changes apply to people accused of, or serving time for, any offence at all, not just terrorism offences. Terrorism, while dreadful, is a crime and should be dealt with in accordance with traditional legal principles. I have particularly grave concerns about the application of these changes to children and to a person who is or has been the subject of a Commonwealth control order.

Before I go on I would like to set the record straight on what the submitters to this bill actually said. I believe it has been said in this debate that the majority of submitters supported the bill. This is simply not the case. Out of five submitters, the Parole Board did not state their support but noted that particular logistical time frames were workable. Experts from the UQ Law School, the Bar Association, the Law Society and the Youth Advocacy Centre all opposed the bill in its current form. No submitter expressed support for the bill to pass as it stands, a fact which I am not sure any speaker in this debate has so far acknowledged, frankly.

The Attorney-General noted yesterday that 'this bill will reverse the presumption for bail for children under the Youth Justice Act for the first time'. This breaches the government's own Charter of Youth Justice Principles set out in the Youth Justice Act itself, not to mention the Convention on the Rights of the Child, to which Australia is a party under international law. The charter says that a child should only be detained in custody as a last resort. How can this be reconciled with a presumption against bail?

Our criminal justice system should always strive for and presume the possibility of rehabilitation, and this is particularly the case for children. There are far more meaningful ways to address the root causes of terrorism among young people. Submitters have very real concerns that heavy-handed treatment will undermine rehabilitation and risk re-radicalisation. For example, a child convicted of any offence can be denied early release from prison by a court on the basis of promoting terrorism. As the Youth Advocacy Centre noted, young people using social media are very vulnerable to accusations of supporting terrorism. That is based on their experience working with young people who have been charged with creating child exploitation material for sending a photo of themselves to another child. YAC noted—

Clearly, if there is a concern that children are involved in terrorism related activity, then action should be taken to address that, but it should focus on information and education for the child ... and an assessment of why and how the child is being so influenced … Children (and adults for that matter) will be released from secure custody at some point: we would argue that the community is likely to be safer if we take this broader approach of addressing the issue rather than relying on locking them up for limited periods.

Control orders have existed in Commonwealth terrorism legislation since 2005 and can be issued with no criminal charge and no finding of criminal guilt. Indeed, they have been used in circumstances where a person is ultimately acquitted of terrorism offences or not even charged. Control orders are issued by the Federal Court on various grounds on the comparatively low civil standard of proof—that is, on the balance of probabilities rather than beyond reasonable doubt. Control orders can be issued if the court finds it would substantially assist in preventing a terrorist attack, that the person has engaged in training with a terrorist organisation or has been convicted of a terrorism offence anywhere in the world.

This bill would abrogate the rights of people currently or previously subject to a control order, even where they have never been charged with any offence, terrorist or otherwise. Under the regime set out in the bill, a judge will have limited discretion to take into account their current circumstances, the offences they are currently charged with and risk factors, as they normally would under present bail rules and conditions. There is a real risk that this will unjustly affect the subjects of control orders in years to come. As the Bar Association so eloquently put it—

… a full blown hearing over whether a person charged with urinating in public when drunk should receive bail because they were the subject of a control order 20 years ago seems unjust.

In another example, even more concerningly, this bill would apply to a person who has never been charged with a terrorism offence but who was mistakenly suspected in the past and was subjected to a control order. If that person were later suspected, rightly or wrongly, of an unrelated offence, let us say a drug offence, it would be almost impossible for them to obtain bail and, if convicted, to get parole. In communities, particularly Muslim communities, where marginalisation, overpolicing, poverty and the impacts of endless wars have driven a few people towards hateful radicalisation, we must show that the promise of civil liberties and freedom applies equally to all.

This bill runs the real risk of making Queenslanders less safe. As the Bar Association noted—

A person who has been sentenced and whose rehabilitation is progressing well could easily regard a justice system that ignores that progress when considering bail on a later offence unrelated to terrorism as a basis for reengaging with radical ideology as a result of perceived injustice.

Parole is a key plank of our system of rehabilitation, and as the Bar Association put it—

> To disincentivise participation in rehabilitative programs in custody is likely to result in the release of prisoners who are not rehabilitated—and not motivated to rehabilitate—at the conclusion of their sentences.

Doctors Ananian-Welsh and Cherney of the University of Queensland suggested that to make the bill more proportionate—

> It should be limited to people facing charges for a serious national security offence in the case of bail, or serving a sentence for a serious terrorism offence, in the case of parole. It should only apply to adults, as its application to children contravenes our international obligations. It should have a sunset clause of five years, with review of its operation at that time.

That last proposal is especially significant since national security laws are incredibly difficult to roll back—a fact that makes the shocking lack of scrutiny of this bill all the more concerning.

In conclusion, the opposition of the QLS and the Bar Association and almost every other submitter speaks volumes about the changes proposed in this bill, and it will be remiss of this parliament to overlook their concerns to blindly implement a rushed and ill-considered COAG agreement. It is difficult, in light of the submissions made opposing this bill, to take at face value the Attorney-General's assurances that the bill strikes the right balance. This bill's overreach must be checked if it is to enhance our national security laws. The bill in its current form should be opposed.