




Speech By
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MEMBER FOR TOOHEY

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JUSTICE LEGISLATION (LINKS TO TERRORIST ACTIVITY) AMENDMENT BILL

 **Mr RUSSO** (Toohey—ALP) (11.35 am): The Legal Affairs and Community Safety Committee reported to the House on 7 March 2019 on the Justice Legislation (Links to Terrorist Activity) Amendment Bill. In my contribution to the debate on the bill I will initially set out the objectives of the bill which are as follows: this piece of legislation arises out of the Council of Australian Government's agreement made on 9 June 2017 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. I will refer to this as the COAG commitment.

Investigative agencies at both state and Commonwealth levels advise us that the terrorist level remains elevated. The cross-border nature of the threat of terrorism requires a national response to keep all Australians safe. The bill is about having national consistency to support the interoperability and cooperation in national efforts to prevent terrorist attacks. As set out in the report on 15 October 2017, COAG further agreed that the implementation of the COAG commitment will be underpinned by agreed principles recognising the ongoing importance of national consistency in counterterrorism legislation and responses more broadly. The COAG commitment recognises the unique risks posed by a person with demonstrated links to terrorism. The amendments in the bill are significant departures from existing provisions and must be viewed as extraordinary measures to combat this unique risk to the community.

I take this opportunity before going any further in the debate on this bill to advise that the bulk of the information I am putting before the House comes from report No. 30 of the Legal Affairs and Community Safety Committee of the 56th Parliament and, in turn, is derived from the explanatory notes to the bill, the Department of Justice and Attorney-General briefing paper and submissions made by the numerous stakeholders.

I will now deal briefly with how we arrived at this position. The Australia-New Zealand Counter-Terrorism Committee subsequently developed the abovementioned nationally consistent principles in consultation with each Australian jurisdiction. These principles are that the presumption against bail and parole should apply to categories of persons who have demonstrated support for, or links to, terrorist activity; high-level thresholds should be required to overcome the presumption against bail and parole; the implementation of the presumption against bail and parole should draw on and support the effectiveness of the joint counterterrorism team model; and, lastly, implementing the presumption against bail and parole should appropriately protect sensitive information.

Under the first principle there was an agreement that, at a minimum, the presumption against bail and parole should apply to those people who have been convicted of a terrorism offence or who are subject of a control order. In addition, it was agreed that a further minimum standard should apply to those seeking parole with the presumption against parole applying to people who had made statements or carried out activities supporting or advocating support for terrorist acts.

I will now deal briefly with the government's consultation on the bill. The explanatory notes canvassed that consultation had been undertaken. A letter broadly outlining the proposed contents of the bill and inviting comment was provided to the key stakeholders including heads of jurisdiction, the Parole Board Queensland, the Bar Association of Queensland, Queensland Law Society, Aboriginal and Torres Strait Islander Legal Service, Queensland Council for Civil Liberties, Legal Aid Queensland, the Director of Public Prosecutions and the Children's Court Committee, including judicial officers and government agencies as well as non-government agencies, the Youth Advocacy Centre, community legal centres and Sisters Inside.

Stakeholders were invited to comment on the contents of the bill, and the feedback advised from the department was that the stakeholders responded generally, recognising the responsibility of government to minimise the risk to the community posed by terrorism but considered such laws must be balanced against the preservation of fundamental principles of law and infringe on the rights and liberties only to the extent that is necessary. It was also noted that stakeholders considered the bill's significant departure from legal principles and infringement on individual rights and liberties unjustified. The department further provided responses to the consultation largely focused on matters of policy; however, the bill takes account of specific feedback provided that is consistent with this policy.

I will now briefly speak on the background to the bill. Counterterrorism is a national issue and is governed by a combination of Commonwealth, state and territory laws and two intergovernmental agreements. All states have referred the power to make laws relating to terrorism acts to the Commonwealth. These laws are contained in part 5.3 of the Commonwealth Criminal Code and include terrorism offences, largely focused on preparatory action consistent with the priority of protecting public safety by disrupting terrorist activities before a terrorist act can occur; preventative detention orders allowing detention without charge for up to 48 hours to prevent an imminent terrorist act or to preserve evidence; continuing detention orders allowing post-sentence detention for high-risk terrorist offenders; and control orders, civil court orders imposing obligations or restrictions on a person in certain circumstances that are necessary to protect the public from a terrorist act or to prevent support or facilitation of a terrorist act or hostile activity in a foreign country.

Amendments to the Youth Justice Act require conditions to be imposed on supervised release of a child who has been found guilty of a terrorism offence, or who is the subject of a control order, or who has promoted terrorism. The conditions must be reasonably necessary to reduce the risks of the child carrying out a terrorist act or promoting terrorism. The Bar Association of Queensland expressed a concern about the effective erosion of the presumption of innocence, commenting—

A grant of bail is a component of a civilised society's criminal justice system which arises out of an understanding of the importance of presumption of innocence and common law principles governing personal liberty. The Association is concerned that the proposed amendments do not strike the appropriate balance between protecting victims and upholding the presumption of innocence for individuals who have previously been charged with potentially unrelated prior offences. The presumption that bail will be granted in the absence of an unacceptable risk is based upon an understanding of the importance of the presumption of innocence, its denial represents a fundamental undermining of that presumption.

In response to these concerns, the department advised—

The concerns raised are noted. The amendments are considered justified to ensure the safety of Queensland's community and address the risks recognised by First Ministers at the Council of Australian Governments (COAG). The provisions are only justified in these extraordinary circumstances and are not intended to create a new norm.

There is also a concern expressed about the presumption against bail. In response to that, the department again indicated that the amendments are underpinned by agreed nationally consistent principles for the implementation of the COAG agreement. In closing, I wish to thank the secretariat, the other members of my committee and all submitters who attended the hearing. I commend the bill to the House.