Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 27 March 2019

JUSTICE LEGISLATION (LINKS TO TERRORIST ACTIVITY) AMENDMENT BILL

Second Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (6.33 pm): I move—

That the bill be now read a second time.

On 13 November 2018 the Palaszczuk government introduced the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018. The bill creates new presumptions against bail and parole for persons with links to terrorism. The parliament referred the bill to the Legal Affairs and Community Safety Committee for consideration and requested that the committee report on the bill. The committee tabled its report on 7 March 2019 and made just one recommendation—that the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018 be passed.

I thank the committee for its consideration of the bill and for its careful consideration of the public submissions received. I would like to thank all those who made submissions to the committee, many of whom also provided earlier feedback during consultation on the legislative reforms contained in the bill. I again acknowledge that stakeholders have raised concerns that the higher thresholds introduced by bail and parole under the bill represent departures from legal principles and could be viewed as an erosion of the general protections that the criminal justice system affords to defendants and prisoners.

The threat posed by terrorism to the safety of our community remains ever present. Nowhere is immune. All Australian governments have a duty to work together and take appropriate action to respond to this threat in the interests of community safety. Sometimes this means taking extraordinary measures that may impact adversely on the rights and liberties that underpin our free and democratic society. Ultimately what is important is ensuring that an appropriate balance is struck between the right of all citizens to go about their daily activities free from acts of violent terror and the rights of individuals who come before our criminal justice system to be dealt with fairly.

This balancing exercise is complex, but I can assure the House that the amendments contained in this bill strike the right balance. This bill reflects important lessons learned from previous terrorist incidents in Australia. It proceeds on the basis that the ultimate goal in our fight against terrorism is to prevent terrorist acts from occurring. In recent years Australian authorities have successfully disrupted a number of planned attacks. We cannot be complacent, though. The risk to community safety posed by people with demonstrated and substantive links to terrorism must be capable of being acted upon. The nature of the terrorist threat we are faced with today shows us that motivated individuals can act quickly to carry out attacks with limited preparation but with devastating consequences to the community.

The bill's amendments act to ensure that the opportunity to address the terrorist risk posed by certain persons at crucial junctures in their interactions with the criminal justice system is not lost. The bill does this by requiring courts and the Queensland Parole Board to directly consider the risk posed by persons with terrorism links regardless of the nature of the offending to which their considerations primarily relate.

The bill also aligns with agreed national principles developed to ensure the application of the presumptions against bail and parole across Australia in agreed circumstances. Nationally consistent approaches are fundamentally important to the effectiveness of our efforts to combat terrorism, not least in the legislative arena. As I referred to in my speech introducing this bill, the bill's amendments implement the agreement of the Council of Australian Governments to ensure that there will be a presumption against bail or parole for persons who have demonstrated support for or who have links to terrorist activity.

I now turn to the Legal Affairs and Community Safety Committee report on the bill. Once again, I thank the committee for its comprehensive consideration of the bill and welcome its overarching findings that the bill's provisions are warranted on the basis of overriding considerations of public safety. I would like to draw the attention of the House to one small point in the committee's report that requires clarification.

The Legal Affairs and Community Safety Committee noted that amendments to section 13 of the Bail Act provide that only a court may grant bail to a person who has previously been convicted of a terrorism offence or who is, or has been, the subject of a Commonwealth control order. The amendments clarify that for the purpose of such grants of bail a court does not include a justice or justices. The committee goes on to state that this would preclude a magistrate or Magistrates Court from granting bail to a person in these circumstances. I acknowledge the comment of the committee. However, I want to be very clear in my advice to the House that this is not the intent of the amendment.

The exclusion of a justice or justices from the meaning of court within the new section 13(2) should be read alongside the definition of 'justice' in the Acts Interpretation Act 1954 which means a justice of the peace. The amendment is not intended to restrict bail applications to the higher courts. While I applaud the hard work and dedication of Queensland's justices of the peace, the intent of this amendment is to confirm that only a court constituted by a judicial officer, that being any court including a Magistrates Court, may grant bail in these circumstances.

I will now further outline the bill's significant amendments. Before I begin I would note that both Minister Ryan and Minister Farmer are also intending to speak to this bill given its amendments to the Corrective Services Act 2006 and the Youth Justice Act 1992. I will provide a broad outline of the bill's amendments to these acts. However, I take this opportunity to note that my ministerial colleagues the Hon. Mark Ryan, Minister for Police and Minister for Corrective Services, and the Hon. Di Farmer, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence, will provide the House with additional information with respect to amendments in this bill which relate to their portfolio legislation and responsibilities. I thank my ministerial colleagues and their departments for their cooperation throughout the development of this legislation.

The bill amends the Bail Act and the Youth Justice Act to reverse the presumption in favour of bail for an adult or child who has previously been convicted of a terrorism offence or who is or who has previously been subject of a Commonwealth control order. These presumptions apply regardless of the offence the person is alleged to have committed.

For bail to be granted for offenders falling into these categories, the court must be satisfied that exceptional circumstances exist to justify granting bail. Such offenders have been found to pose a serious risk to community safety in accordance with high legal thresholds. It is therefore appropriate that such persons not be granted bail unless they can establish to the satisfaction of the court that exceptional circumstances exist to justify their release on bail. As I mentioned earlier, only a court—and this includes a Magistrates, District or Supreme Court—will be able to grant bail in these circumstances.

The bill specifically provides that the court may have regard to any relevant matter when considering whether exceptional circumstances exist. The bill makes it clear that, in addition to being satisfied that exceptional circumstances exist, the existing general considerations relating to a decision to grant bail continue to apply. This means a court cannot grant bail to a person who is otherwise an unacceptable bail risk because, for example, they would fail to appear in court, would commit an offence or endanger the safety or welfare of a person or should be in custody for their own protection even if exceptional circumstances exist.

Importantly, as I indicated in my speech introducing the bill and wish to reinforce here today, the bill retains all existing procedural safeguards and appeal and review mechanisms available in relation to both bail and parole applications.

The bill will reverse the presumption for bail for children under the Youth Justice Act for the first time. The bill introduces additional factors that a bail decision-maker must consider when determining bail for any defendant, not just those subject to the new presumption against bail. These amendments

add to the existing non-limiting list of specified considerations in both the Bail Act and the Youth Justice Act to signal the importance of having regard to the risk of links to terrorist activity for the purpose of assessing whether a defendant currently poses an unacceptable risk if released on bail.

The amendments require a bail decision-maker to consider any promotion by the defendant of terrorism or any association the defendant has or has had with a terrorist organisation or a person who has promoted terrorism when considering whether a defendant is an unacceptable risk for release to bail. 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. As I mentioned on introducing the bill, the concept of promoting terrorism is adopted consistently in amendments to all four acts amended. It is imperative that the court should be required to consider these additional factors when determining the issue of unacceptable risk. The bill does not change the overriding requirement that all matters considered by the court in assessing unacceptable risk must be relevant. This will ensure that any inadvertent links to terrorism are not captured by the new provisions.

Amendments to the Youth Justice Act clarify that only associations of the child 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. This explicitly recognises the vulnerability and lack of autonomy of children in their associations.

The bill amends the Corrective Services Act to create a presumption against parole for prisoners who fall into one of two categories. The first category includes prisoners who have been convicted of a terrorism offence, who are subject of a control order or who the Parole Board Queensland are satisfied have promoted terrorism. The second category includes prisoners who have been charged but not convicted of 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. This second category only applies where the Commissioner of Police has provided a report to the Parole Board identifying that there is a reasonable likelihood that a prisoner may carry out a terrorist act. In all of these circumstances, the bill provides that parole may only be granted if the Parole Board Queensland is satisfied that exceptional circumstances exist.

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. The Commissioner of Police can refuse to provide information to the Parole Board in certain circumstances. These exceptions to the requirement that the Commissioner of Police provide information ensure that sensitive information can be appropriately protected while also ensuring that the Parole Board can access relevant information about a prisoner’s links to terrorism.

Additional powers are provided to the Parole Board to support the amendments in the bill. These include powers to suspend or cancel a prisoner’s parole order if the Parole Board becomes aware that the prisoner poses a risk of carrying out a terrorist act.

The bill also contains amendments to the Penalties and Sentences Act 1992 to apply the presumption against parole to Queensland’s system of court ordered parole. Under the Penalties and Sentences Act, a sentencing court is required to set a court ordered release date for persons sentenced for offences where the maximum penalty is three years or less and the offence is not a serious violent or sexual offence. The bill’s amendments introduce a discretion for the sentencing court to decline to order a parole release date and instead enable the court to order a parole eligibility date for offenders who have been convicted of a terrorism offence or who are the subject of a Commonwealth control order. The discretion also applies where the court is satisfied that the offender has carried out activities, or made statements, in various circumstances relating to terrorist acts.

The bill’s provisions balance the practical advantages of court ordered parole against the need to ensure the protection of the community from persons with links to terrorism. Importantly, the bill also provides additional powers to the Parole Board to suspend or cancel parole if the board becomes aware that a prisoner on parole poses a terrorist risk.

The bill also accommodates the fact that there is no system of parole for children in Queensland. Queensland’s Youth Justice Act provides for a system of supervised release of children into the community after they have completed a detention order. Children sentenced to detention must serve 70 per cent of the period of detention in a youth detention centre. They then spend the remaining time

in the community under a supervised release order. A sentencing court has discretion to reduce the period to be served in actual custody from 70 per cent to a minimum of 50 per cent of the total period of detention ordered, if special circumstances exist.

In balancing the benefits to be derived from the child serving part of a detention order under supervised released in the community against the need to protect the community from an identified terrorist risk posed by the child, the bill removes the ability of the court to reduce the prescribed period of 70 per cent for certain offenders with terrorism links. Child offenders who have previously been found guilty of a terrorism offence, who are the subject of a control order or who the sentencing court is satisfied have promoted terrorism and who are sentenced to a detention order will be required to serve 70 per cent of the period of detention in custody.

Importantly, the bill's amendments retain the ultimate discretion of the sentencing court in relation to the range of sentencing options available to it, including the appropriate length of any detention order it is minded to impose. Following the release of a child from detention, a supervised release order must be made in relation to the child. The bill ensures that any residual terrorism risk posed by the child offender upon release is managed via appropriate conditions designed to reduce the risk of the child carrying out a terrorist act or promoting terrorism.

Finally, I want to close by reaffirming this government's commitment to doing whatever it can to keep Queenslanders safe from the enduring threat posed by those who wish to do us harm and attack our very way of life. These new bail and parole laws form a discrete yet very important part of the comprehensive work this government and its core agencies are continually undertaking in order to confront the threat of terrorism in Queensland and across Australia. I commend the bill to the House.