

ANNEXURE F

PRESUMPTION AGAINST BAIL AND PAROLE - COMMONWEALTH TERRORISM OFFENCE COMPARISON TABLE

The following presents a comparison of how each Australian jurisdiction has defined the Commonwealth terrorism offences for their presumptions against bail and parole applying to persons with links to terrorism.

It includes a comparison of the offences defined within the Bail Amendment (Persons Linked to Terrorism) Act 2019 (WA), and the Sentencing Legislation Amendment (Persons with Links to Terrorism) Bill 2021 which provides extensive coverage of the Commonwealth terrorism offences.

In relation to the Bail Amendment (Persons Linked to Terrorism) Act 2019 (WA), and the Sentencing Legislation Amendment (Persons with Links to Terrorism) Bill 2021, the following Commonwealth offences have been expressly excluded.

- Section 104.22 (treatment of photographs and impressions of fingerprints). This offence has been excluded as it relates to the procedures of law enforcement.
- Section 104.27 (offence for contravening a control order) and section 104.27A (offence relating to tracking devices). These offences are excluded because the Western Australia regime will already apply to a person who was subject to a control order in the 10 years prior. It is not necessary to capture the offences of contravening these orders, which may be objectively trivial.
- Section 105.41 (disclosure offences) and section 105.45 (offences of contravening safeguards). The offences relate to disclosure and contravention of Preventative Detention Orders (PDO), and have been excluded as the Western Australia regime is not to apply to persons subject to those orders. This is because PDOs are used for investigative purposes (i.e. interviewing witnesses etc.) and may apply to persons who are not directly associated / involved with terrorism. It is not intended to extend the scheme to contraventions of those orders.

LEGISLATION AND OFFENCE DESCRIPTION	NSW	SA	VIC	TAS	QLD	CTH	WA (Bail)	WA (Parole)
Commonwealth <i>Criminal Code Act 1995</i>, Subdivision A of Division 72								
72.3 International terrorism activities using explosives	✓	✓	✓	✓	✓	✓	✓	✓
Commonwealth <i>Criminal Code Act 1995</i>, Part 5.3 (Terrorism)								
101.1 Terrorist acts	✓	✓	✓	✓	✓	✓	✓	✓
101.2 Providing or receiving training connected with terrorist acts	✓	✓	✓	✓	✓	✓	✓	✓
101.4 Possessing things connected with terrorist acts	✓	✓	✓	✓	✓	✓	✓	✓
101.5 Collecting or making documents likely to	✓	✓	✓	✓	✓	✓	✓	✓

LEGISLATION AND OFFENCE DESCRIPTION	NSW	SA	VIC	TAS	QLD	CTH	WA (Bail)	WA (Parole)
facilitate terrorist acts								
101.6 Other acts done in preparation for, or planning, terrorist acts	✓	✓	✓	✓	✓	✓	✓	✓
102.2 Directing the activities of a terrorist organisation	✓	✓	✓	✓	✓	✓	✓	✓
102.3 Membership of a terrorist organisation	✓	✓	✓	✓	✓	✓	✓	✓
102.4 Recruiting for a terrorist organisation	✓	✓	✓	✓	✓	✓	✓	✓
102.5 Training involving a terrorist organisation	✓	✓	✓	✓	✓	✓	✓	✓
102.6 Getting funds to, from or for a terrorist organisation	✓	✓	✓	✓	✓	✓	✓	✓
102.7 Providing support to a terrorist organisation	✓	✓	✓	✓	✓	✓	✓	✓
102.8 Associating with terrorist organisations (3 yrs imp.)	✓		✓	✓	✓		✓	✓
103.1 Financing terrorism	✓	✓	✓	✓	✓	✓	✓	✓
103.2 Financing a terrorist	✓	✓	✓	✓	✓	✓	✓	✓
104.22 Treatment of photographs and impressions of fingerprints (2 yrs imp.)	✓		✓	✓	✓	✓		
104.27 Offence for contravening a control order (5 yrs imp.)	✓		✓	✓	✓	✓		
104.27A Offence relating to tracking devices (5 yrs imp.)	✓		✓	✓	✓	✓		
105.41 Disclosure offences (PDO – 5 yrs imp.)	✓		✓	✓	✓	✓		
105.45 Offences of contravening safeguards (PDO – 2 yrs imp.)	✓		✓	✓	✓	✓		
Commonwealth Criminal Code Act 1995, Part 5.5 (Foreign Incursion and Recruitment)								
119.1 Incursions into foreign countries with the intention of engaging in hostile activities	✓	✓	✓	✓	✓	✓	✓	✓
119.2 Entering, or remaining in, declared areas	✓	✓	✓	✓	✓	✓	✓	✓

LEGISLATION AND OFFENCE DESCRIPTION	NSW	SA	VIC	TAS	QLD	CTH	WA (Bail)	WA (Parole)
119.4 Preparations for incursions into foreign countries for purpose of engaging in hostile activities	✓	✓	✓	✓	✓	✓	✓	✓
119.5 Allowing use of buildings, vessels and aircraft to commit offences	✓	✓	✓	✓	✓	✓	✓	✓
119.6 Recruiting persons to join organisations engaged in hostile activities against foreign governments	✓	✓	✓	✓	✓	✓	✓	✓
119.7 Recruiting persons to serve in or with an armed force in a foreign country	✓	✓ Excludes ss(2) and (3)	✓	✓	✓	✓	✓	✓
Commonwealth Criminal Code Act 1995, Subdivision B of Division 80						✓		
80.1 Treason	✓				✓	✓	✓	✓
80.1AA Treason—assisting enemy to engage in armed conflict	✓				✓	✓	✓	✓
80.1AC Treachery	✓				✓	✓	✓	✓
Commonwealth Crimes (Foreign Incursions and Recruitment) Act 1978								
(ALL Offences)		✓ Excludes para 9(1)(b) or (c)	✓	✓	✓		✓	✓
Commonwealth Crimes (Internationally Protected Persons) Act 1976								
s. 8							✓	✓
Commonwealth Charter of the United Nations Act 1945, Part 4 to the extent that it relates to the Charter of the United Nations (Sanctions--Al-Qaida) Regulations 2008								
20 Offence—dealing with freezable assets (10 yrs or fine, fine if body corporate)	✓			✓	✓	✓	✓	✓
21 Offence—giving an asset to a proscribed person or entity (10 yrs or fine, fine if body corporate)	✓			✓	✓	✓	✓	✓
Commonwealth Charter of the United Nations Act 1945, Part								

LEGISLATION AND OFFENCE DESCRIPTION	NSW	SA	VIC	TAS	QLD	CTH	WA (Bail)	WA (Parole)
5								
27 Offence—Contravening a UN sanction enforcement law (fine penalty)	✓			✓	✓	✓	✓	✓
28 Offence—False or misleading information given in connection with a UN sanction enforcement law (10 yrs or fine. Only fine if body corporate)	✓			✓	✓	✓	✓	✓