

**SENTENCING LEGISLATION AMENDMENT (PERSONS LINKED TO TERRORISM) BILL 2021**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

*Second Reading*

**HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary)** [10.06 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce to the house the Sentencing Legislation Amendment (Persons Linked to Terrorism) Bill 2021, which amends the Sentence Administration Act 2003, the Young Offenders Act 1994, the Criminal Procedure Act 2004 and the Freedom of Information Act 1992.

On 9 June 2017, the Council of Australian Governments, otherwise known as COAG, agreed to adopt a presumption against the granting of bail and early release orders—for example, parole—to persons who have demonstrated support for, or have links to, terrorist activity. The impetus for these changes was the increased incidents of terrorist-related violence perpetrated by persons with known links to terrorism who were on bail or parole when committing terrorist acts on Australian soil. These incidents included the terrorist attack in Brighton, Victoria, on 5 June 2017 perpetrated by an offender who was on parole at the time of the attack while serving a sentence for home invasion offences. This was preceded by the December 2014 siege at the Lindt Café in Martin Place, Sydney, by an offender who was on bail facing charges of sexual assault and accessory to murder.

The threat of terrorism is ever-present. In February this year, Australian Federal Police provided a submission to the federal Parliamentary Joint Committee on Intelligence and Security’s inquiry into extremist movements and radicalism in Australia, which reinforced the need for ongoing vigilance. Statistics show that since Australia’s national threat level was raised to “probable” in 2014, 138 people have been charged as a result of 66 counterterrorism-related operations around Australia. Additionally, authorities have responded to nine domestic terrorist attacks, and there have been 21 major counterterrorism disruption operations in relation to potential or imminent attack planning within Australia.

At a 5 October 2017 special meeting on counterterrorism, COAG agreed that the decision to adopt a presumption against the granting of bail and early release orders should be underpinned by a nationally consistent approach. To do this, COAG tasked the Australia–New Zealand Counter-Terrorism Committee to consult with each Australian jurisdiction to develop principles to guide the implementation of these presumptions. The first principle is that the presumptions against bail and early release orders should apply to categories of persons who have demonstrated support for, or links to, terrorist activity. The second principle is that a high legal threshold should be required to overcome the presumptions against bail and early release orders. The third principle is that the implementation of the presumption against bail and early release orders should draw on and support the effectiveness of the counterterrorism team model. The fourth principle is that implementing a presumption against early release orders should appropriately act to protect sensitive information. These principles acknowledge that all jurisdictions have well-established and accepted practices and procedures in relation to early release orders and bail.

Western Australia has taken a two-stage approach to implementing the COAG agreement. The first stage was implemented by the Bail Amendment (Persons Linked to Terrorism) Act 2019, which received royal assent on 5 July 2019 and became operational on 1 January 2020. The bill before the house represents the second stage and accords with the principles agreed to by COAG.

The amendments to the Sentence Administration Act 2003 and the Young Offenders Act 1994, as proposed by this bill, will provide that persons with links to terrorism are subject to a presumption against an early release order. The bill ensures that terrorism-related risks are appropriately assessed before a person with links to terrorism is granted the privilege of an early release from prison or detention. These reforms are aimed at minimising the terrorism-related risk to the Western Australian community. For the purposes of the bill, a person falls under the definition of a person who has links to terrorism if a person is subject to certain terrorism-related charges, orders or convictions as defined in the bill. When the person has made statements or carried out activities that support, or advocate support for, terrorist acts, the person must be subject to a Commissioner of Police report to fall under the definition. A Commissioner of Police report is introduced in this bill to support decision-making by the chairperson of the Prisoners Review Board of Western Australia, or the Supervised Release Review Board, whichever the case may be.

The bill will create a presumption against early release orders by mandating that exceptional reasons must be shown before a person with links to terrorism is granted an early release order. This is known as the exceptional reasons test. To guide the exceptional reasons test, the bill will introduce special considerations that require an assessment of particular matters, such as the degree of risk posed to the community should the offender be released, and the nature and seriousness of the current links to terrorism and terrorism-related activities. The bill will enable the immediate cancellation of an early release order in the event of a prisoner or young offender becoming subject to defined terrorism-related charges, orders or convictions and in other specified circumstances.

A Commissioner of Police report may be provided for consideration by the board for any prisoner or young offender, including for persons with links to terrorism. This report could include information that has been shared between Australian intelligence and law enforcement agencies. New confidentiality protections have been included in the bill to protect terrorist intelligence information that may be contained within the Commissioner of Police report. For example, to ensure the protection of terrorist intelligence information, the bill requires that the board will be constituted by the chairperson alone when determining whether to grant an early release order for a person with links to terrorism and when considering a Commissioner of Police report that contains terrorist intelligence information. This will reduce the number of people who have access to terrorist intelligence information and protect against disclosure of such information that may impact current or ongoing national security investigations. The bill will also introduce strict protections to limit the disclosure of terrorist intelligence information in any legal proceeding relating to or requiring the disclosure of information contained within a Commissioner of Police report that the court is satisfied is terrorist intelligence information. Amendments to the Criminal Procedure Act 2004 will ensure that prosecutors do not overlook these protections. Further protections will also be provided by the bill's amendments to the Freedom of Information Act 1992, which will exempt Commissioner of Police reports from disclosure. Reporting requirements to inform the public and Parliament about the number of terrorism offenders released on early release orders are additionally subject to provisions that will ensure that protected and sensitive information, which includes terrorist intelligence information, is not inappropriately disclosed.

All other Australian jurisdictions have legislated to give effect to the 2017 COAG agreement. Each has taken a different approach to reform, having regard to their legislative frameworks. This bill will implement the second stage of the COAG agreement to tackle the terrorism risk when considering early release for a person with links to terrorism. It will ensure that, like in other states, Western Australia strengthens the nationally consistent approach to address and prevent the evolving terrorist risk.

COAG agreed that there should be a nationally consistent approach to the presumption against the granting of early release orders, but not through a legislative model of an applied law, nor through the adoption of model legislation. The legislation is instead based on the set of principles that were developed by the Australia–New Zealand Counter-Terrorism Committee. There is no impact on the sovereignty of the WA Parliament.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper [823](#).]

Debate adjourned, pursuant to standing orders.

*House adjourned at 10.14 pm*

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