

Sentencing Legislation Amendment (Persons Linked to Terrorism) Bill 2021

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Bill 2021**

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Western Australia

LEGISLATIVE ASSEMBLY

**Sentencing Legislation Amendment (Persons
Linked to Terrorism) Bill 2021**

A Bill for

An Act to amend —

- **the *Sentence Administration Act 2003*; and**
- **the *Young Offenders Act 1994*; and**
- **the *Criminal Procedure Act 2004*; and**
- **the *Freedom of Information Act 1992*.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2021*.

4

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the Royal Assent;

8

9

(b) the rest of the Act — on a day fixed by proclamation.

1 **Part 2 — Sentence Administration Act 2003 amended**

2 **3. Act amended**

3 This Part amends the *Sentence Administration Act 2003*.

4 **4. Section 4 amended**

5 (1) In section 4(2) insert in alphabetical order:

6

7 *category 1 prisoner* means —

8 (a) a prisoner who —

9 (i) has been charged with, or convicted of,
10 a terrorism offence; or

11 (ii) is subject to an interim control order or
12 a confirmed control order;

13 or

14 (b) a prisoner who has been subject to an interim
15 control order or a confirmed control order at
16 any time during —

17 (i) the period of the prisoner's sentence
18 (the *current sentence*); or

19 (ii) the period of 10 years ending on the day
20 on which the prisoner's current sentence
21 begins or is taken to have begun;

22 or

23 (c) a prisoner for whom an interim control order is
24 being sought under the Commonwealth
25 Criminal Code section 104.3;

26 *category 2 prisoner* means a prisoner who has been
27 charged with, or convicted of, an offence against the
28 Commonwealth Criminal Code section 80.2C(1);

29 *chairperson* means the person appointed under
30 section 103(1)(a);

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- 1 ***Commissioner of Police report*** means a written report
2 referred to in section 66H(1) or (4);
- 3 ***Commonwealth Criminal Code*** means the Criminal
4 Code set out in the Schedule to the *Criminal Code*
5 *Act 1995* (Commonwealth);
- 6 ***confirmed control order*** has the meaning given in the
7 Commonwealth Criminal Code section 100.1(1);
- 8 ***interim control order*** has the meaning given in the
9 Commonwealth Criminal Code section 100.1(1);
- 10 ***prisoner with links to terrorism*** means —
- 11 (a) a category 1 prisoner; or
- 12 (b) a category 2 prisoner who is subject to a
13 Commissioner of Police report; or
- 14 (c) a prisoner who —
- 15 (i) is subject to a Commissioner of Police
16 report; and
- 17 (ii) the Board as constituted by the
18 chairperson alone is satisfied, having
19 regard to the report, has made
20 statements or carried out activities that
21 support, or advocate support for,
22 terrorist acts;
- 23 ***terrorism offence*** means —
- 24 (a) an offence against the Commonwealth Criminal
25 Code Division 72 Subdivision A; or
- 26 (b) an offence against the Commonwealth Criminal
27 Code Division 80 Subdivision B; or
- 28 (c) an offence against the Commonwealth Criminal
29 Code Part 5.3, other than an offence against
30 section 104.22, 104.27, 104.27A, 105.41 or
31 105.45; or
- 32 (d) an offence against the Commonwealth Criminal
33 Code Part 5.5; or

- 1 (e) an offence against the following provisions of
2 the *Charter of the United Nations Act 1945*
3 (Commonwealth) —
4 (i) Part 4;
5 (ii) Part 5, to the extent that it relates to the
6 *Charter of the United Nations*
7 *(Sanctions—Al-Qaida)*
8 *Regulations 2008* (Commonwealth);
9 or
10 (f) an offence against the *Crimes (Foreign*
11 *Incursions and Recruitment) Act 1978*
12 (Commonwealth) (repealed); or
13 (g) an offence against the *Crimes (Internationally*
14 *Protected Persons) Act 1976* (Commonwealth)
15 section 8; or
16 (h) an offence under a written law or a law of the
17 Commonwealth, another State, a Territory or
18 another country, that substantially corresponds
19 to an offence referred to in paragraph (a), (b),
20 (c), (d) or (f); or
21 (i) an offence of attempting, inciting or conspiring
22 to commit an offence referred to in
23 paragraph (a), (b), (c), (d), (e), (f) or (g);
24 **terrorist act** has the meaning given in the *Terrorism*
25 *(Commonwealth Powers) Act 2002* section 3;
26 **terrorist intelligence information** means information
27 relating to a prohibited act or suspected prohibited act,
28 the disclosure of which could reasonably be expected
29 to —
30 (a) prejudice national security; or
31 (b) endanger a person's life or physical safety; or
32 (c) threaten significant damage to infrastructure or
33 property; or

s. 5

- 1 (d) prejudice a criminal investigation; or
2 (e) reveal intelligence gathering methodologies,
3 investigative techniques or technologies or
4 covert practices; or
5 (f) enable the discovery of the existence or identity
6 of a confidential source of information relevant
7 to law enforcement;
8

9 (2) After section 4(2B) insert:
10

11 (2C) For the purposes of the definition of *terrorist*
12 *intelligence information*, a *prohibited act* is —

- 13 (a) a terrorism offence; or
14 (b) an offence against the Commonwealth Criminal
15 Code section 80.2C(1); or
16 (c) a terrorist act (whether in this State or
17 elsewhere).
18

19 **5. Section 6 amended**

20 In section 6(1) delete “section 87(d)” and insert:
21

22 section 87(1)(d)
23

24 **6. Section 12 amended**

25 In section 12(4) delete “section 66B(1),” and insert:
26

27 sections 66B(1) and 66G(1),
28

1 **7. Section 12A amended**

2 In section 12A(5) delete “section 66B(1),” and insert:

3

4 sections 66B(1) and 66G(1),

5

6 **8. Section 12C inserted**

7 At the beginning of Part 2 Division 4 insert:

8

9 **12C. References to Board**

10 In this Division, a reference to the *Board*, in relation to
11 a prisoner with links to terrorism who is being assessed
12 for inclusion in a re-socialisation programme under
13 section 13 or 14, is a reference to the Board as
14 constituted by the chairperson alone.

15

16 **9. Section 13 amended**

17 (1) In section 13(5) delete “subsection (5A)” and insert:

18

19 subsections (5A) and (5B)

20

21 (2) After section 13(5A) insert:

22

23 (5B) The Board must not endorse a re-socialisation
24 programme or make a recommendation for the
25 purposes of subsection (5) in relation to a prisoner with
26 links to terrorism who is subject to a Commissioner of
27 Police report unless the Board, having regard to the
28 report, is satisfied that the prisoner is suitable for
29 inclusion in the programme.

30

s. 10

1 **10. Section 14 amended**

2 (1) In section 14(5) after “in it,” insert:

3

4 except as provided in subsection (5A),

5

6 (2) After section 14(5) insert:

7

8 (5A) The Board must not approve a programme for the
9 purposes of subsection (5) in relation to a prisoner with
10 links to terrorism who is subject to a Commissioner of
11 Police report unless the Board, having regard to the
12 report, is satisfied that the prisoner is suitable for
13 inclusion in the programme.
14

15 **11. Section 20 amended**

16 In section 20(2)(aa) delete “section 66B(1); and” and insert:

17

18 sections 66B(1) and 66G(1); and

19

20 **12. Section 23 amended**

21 (1) In section 23(2a)(aa) delete “section 66B(1); and” and insert:

22

23 sections 66B(1) and 66G(1); and

24

25 (2) In section 23(3) delete “10 and 66B(1),” and insert:

26

27 10, 66B(1) and 66G(1),
28

1 **13. Section 44 amended**

2 In section 44(4) delete “If” and insert:

3

4 Except as provided in section 67A, if

5

6 **14. Section 48 amended**

7 In section 48(1)(d) delete “Division 10,” and insert:

8

9 Division 10 or section 67A,

10

11 **15. Section 52 amended**

12 In section 52(2) delete “section 66B(1)” and insert:

13

14 sections 66B(1) and 66G(1)

15

16 **16. Part 5 Division 1B inserted**

17 After Part 5 Division 1A insert:

18

19 **Division 1B — Prisoners with links to terrorism or**
20 **subject to Commissioner of Police reports**

21 **Subdivision 1 — Preliminary**

22 **66D. Terms used**

23 In this Division —

24 ***release action*** means making a parole order under
25 section 23(3)(b) in respect of a prisoner;

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- 1 *release decision* means —
- 2 (a) a decision under section 20(2) that it is
- 3 appropriate to release a prisoner on parole; or
- 4 (b) a decision under section 23(3)(a) to make a
- 5 parole order in respect of a prisoner; or
- 6 (c) a decision under section 52(1)(a) to make an
- 7 RRO in respect of a prisoner.

8 **Subdivision 2 — Early release orders in cases of prisoners**

9 **with links to terrorism**

10 **66E. References to Board**

11 In this Subdivision, a reference to the *Board* is a

12 reference to the Board as constituted by the chairperson

13 alone.

14 **66F. Additional release considerations**

15 In this Subdivision, a reference to the *additional*

16 *release considerations* relating to a prisoner is a

17 reference to the following considerations —

- 18 (a) the degree of risk (having regard to any
- 19 likelihood of the prisoner committing a
- 20 terrorism offence if subject to an early release
- 21 order and the likely nature and seriousness of
- 22 any such offence) that the release of the
- 23 prisoner would appear to present to the personal
- 24 safety of people in the community or of any
- 25 individual in the community;
- 26 (b) if the prisoner has made statements or carried
- 27 out activities that support, or advocate support
- 28 for, terrorist acts — the nature and seriousness
- 29 of the statements made or activities carried out;

- 1 (c) if the prisoner is sentenced for a terrorism
2 offence — any remarks made by the court that
3 sentenced the prisoner that are relevant to the
4 matters referred to in paragraphs (a) and (b);
- 5 (d) if the prisoner is, or was, subject to an interim
6 control order or confirmed control order
7 relating to a terrorism offence —
- 8 (i) any remarks made by the court that
9 made the order that are relevant to the
10 matters referred to in paragraphs (a) and
11 (b); and
- 12 (ii) the behaviour of the prisoner while
13 subject to the order;
- 14 (e) the behaviour of the prisoner when in custody
15 to the extent that it may be relevant to the
16 matters referred to in paragraphs (a) and (b);
- 17 (f) whether the prisoner has participated in any
18 programme or activity that addresses the
19 prisoner's risk of committing a terrorism
20 offence and the prisoner's performance in the
21 programme or activity;
- 22 (g) whether the prisoner is, or was, associated with
23 1 or more persons who have made statements
24 or carried out activities that support, or
25 advocate support for, terrorist acts, and the
26 nature of the association.

27 **66G. Making early release orders**

- 28 (1) The Board must not make a release decision, or take
29 release action, in respect of a prisoner with links to
30 terrorism unless the Board is satisfied that there are
31 exceptional reasons why the prisoner should be
32 released.

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- 1 (2) The Board must, in making any decision or taking any
2 action for the purposes of subsection (1), have regard
3 to all of the following —
- 4 (a) the requirements of section 66B(1);
5 (b) the release considerations relating to the
6 prisoner;
7 (c) the additional release considerations relating to
8 the prisoner;
9 (d) any report about the prisoner made by the CEO
10 under section 17;
11 (e) the Commissioner of Police report about the
12 prisoner;
13 (f) any other information about the prisoner
14 brought to the attention of the Board.
- 15 (3) Subsection (2) does not limit the matters that the Board
16 may have regard to in making a decision or taking
17 action for the purposes of subsection (1), including, for
18 example, a report, advice or professional services
19 provided by a person appointed under section 107A.
- 20 (4) Despite subsections (2) and (3), the Board must not
21 have regard to a Commissioner of Police report about
22 the prisoner if the report has been withdrawn under
23 section 66I(2).

24 **66H. Commissioner of Police reports**

- 25 (1) If the Board is required to consider whether to make a
26 release decision, or take release action, in respect of a
27 category 1 prisoner, the Board must make a written
28 request to the Commissioner of Police for a written
29 report about the prisoner.

- 1 (2) The report must deal with the additional release
2 considerations relating to the prisoner to the extent that
3 the information is within the knowledge of the
4 Commissioner of Police and may —
- 5 (a) include any other information that the
6 Commissioner of Police considers is, or may
7 be, relevant to whether the prisoner should be
8 released; and
- 9 (b) declare that some or all of the information in
10 the report is, in the opinion of the
11 Commissioner of Police, terrorist intelligence
12 information.
- 13 (3) The Commissioner of Police must give to the Board the
14 report within a reasonable period after receiving the
15 request.
- 16 (4) The Commissioner of Police may give to the Board a
17 written report dealing with the matters referred to in
18 subsection (2) in relation to any other prisoner.

19 **66L. Withdrawing Commissioner of Police reports**

- 20 (1) This section applies if the Board, as constituted by the
21 chairperson alone —
- 22 (a) is satisfied that a prisoner subject to a
23 Commissioner of Police report is not a prisoner
24 with links to terrorism; or
- 25 (b) after consulting with the Commissioner of
26 Police, is satisfied that a Commissioner of
27 Police report about a prisoner does not include
28 terrorist intelligence information.
- 29 (2) Before the Board makes a release decision or takes
30 release action in respect of the prisoner, the Board, as
31 constituted by the chairperson alone, must give the

s. 16

- 1 Commissioner of Police an opportunity to withdraw the
2 report.
- 3 (3) If the report is withdrawn under subsection (2), the
4 Board —
- 5 (a) must not have regard to the report for the
6 purposes of making the release decision or
7 taking the release action in respect of the
8 prisoner; and
- 9 (b) must prohibit the publication of, or a reference
10 to, the report.

11 **Subdivision 3 — Early release orders for other prisoners**
12 **subject to Commissioner of Police reports**

13 **66J. Term used: prisoner**

14 In this Subdivision —

15 *prisoner* does not include a prisoner with links to
16 terrorism.

17 **66K. Releasing prisoners subject to Commissioner of**
18 **Police report on parole**

- 19 (1) This section applies if —
- 20 (a) the Board is required to consider whether to
21 release a prisoner on parole under
22 section 20(1); and
- 23 (b) the prisoner is subject to a Commissioner of
24 Police report that the Board, as constituted by
25 the chairperson alone, is satisfied includes
26 terrorist intelligence information.
- 27 (2) The Board, as constituted by the chairperson alone,
28 must decide whether to release the prisoner in
29 accordance with section 20.

1 **66L. Making parole order in respect of prisoner subject**
2 **to Commissioner of Police report**

- 3 (1) This section applies if —
- 4 (a) the Board is required to decide whether to make
5 a parole order in respect of a prisoner under
6 section 23(3)(a); and
- 7 (b) the prisoner is subject to a Commissioner of
8 Police report that the Board, as constituted by
9 the chairperson alone, is satisfied includes
10 terrorist intelligence information.
- 11 (2) The Board, as constituted by the chairperson alone,
12 must decide whether to make the order in accordance
13 with section 23.

14 **66M. Making RRO in respect of prisoners subject to**
15 **Commissioner of Police report**

- 16 (1) This section applies if —
- 17 (a) the Board is required to consider whether to
18 make, or defer the making of, an RRO in
19 respect of a prisoner under section 52(1); and
- 20 (b) the prisoner is subject to a Commissioner of
21 Police report that the Board, as constituted by
22 the chairperson alone, is satisfied includes
23 terrorist intelligence information.
- 24 (2) The Board, as constituted by the chairperson alone,
25 must decide whether to make, or defer the making of,
26 the RRO in accordance with section 52.
- 27

s. 17

1 **17. Section 67A inserted**

2 At the beginning of Part 5 Division 2 insert:

3

4 **67A. Cancellation automatic in case of prisoner with**
5 **links to terrorism**

6 (1) In this section, a reference to the *Board* is a reference
7 to the Board as constituted by the chairperson alone.

8 (2) The Board must cancel an early release order in respect
9 of any of the following prisoners —

10 (a) a prisoner who, during the period the prisoner is
11 subject to the early release order —

12 (i) is charged with, or convicted of, a
13 terrorism offence; or

14 (ii) is charged with, or convicted of, an
15 offence against the *Commonwealth*
16 *Criminal Code* section 80.2C(1); or

17 (iii) becomes subject to an interim control
18 order or confirmed control order; or

19 (iv) becomes subject to a Commissioner of
20 Police report and who the Board is
21 satisfied has made statements or carried
22 out activities that support, or advocate
23 support for, terrorist acts;

24 (b) a prisoner for whom, during the period the
25 prisoner is subject to the early release order, an
26 interim control order is being sought under the
27 Commonwealth Criminal Code
28 section 104.3(1);

- 1 (c) a prisoner who the Board is satisfied —
2 (i) at the time that the early release order in
3 respect of the prisoner was made, was a
4 category 1 prisoner or a category 2
5 prisoner; and
6 (ii) in respect of whom, this fact was not
7 known by the person who made the
8 order at the time that the order was
9 made.
10

11 **18. Section 71 amended**

12 (1) Delete section 71(3)(b) and insert:
13

- 14 (b) if it is cancelled by virtue of section 67 or
15 67A —
16 (i) the day when the offence that resulted in
17 the charge or conviction was
18 committed; or
19 (ii) the day when the prisoner became
20 subject to the interim control order or
21 confirmed control order; or
22 (iii) the day when the interim control order
23 or confirmed control order was sought
24 in respect of the prisoner; or
25 (iv) the day when the Board's decision that
26 resulted in the cancellation was made.
27

28 (2) After section 71(3) insert:
29

- 30 (3A) If the day when an offence was committed cannot be
31 ascertained — the day is taken, for the purposes of
32 subsection (3)(b)(i), to be the latest day on which that

s. 19

1 offence could have been committed, as determined by
2 the CEO.
3

4 **19. Section 72 amended**

5 In section 72(1)(b) delete “section 67,” and insert:

6

7 section 67 or under section 67A(2),

8

9 **20. Section 73 amended**

10 In section 73(1) delete “section 67,” and insert:

11

12 section 67 or under section 67A(2),

13

14 **21. Section 108 amended**

15 (1) In section 108(2) delete “An” and insert:

16

17 Except as provided in subsection (2A), an

18

19 (2) After section 108(2) insert:

20

21 (2A) An order giving effect to a decision made, or an action
22 taken, by the Board under Part 5 Division 1B or
23 section 67A must be signed by the chairperson alone.
24

1 **22. Section 112A inserted**

2 After section 112 insert:

3

4 **112A. Information to be excluded from annual reports**

5 (1) In this section —

6 *protected information* means information the
7 disclosure of which would contravene a written law or
8 an order of a court;

9 *release action* has the meaning given in section 66D;

10 *release decision* has the meaning given in section 66D;

11 *sensitive information* means information the disclosure
12 of which could reasonably be expected to —

- 13 (a) prejudice national security; or
14 (b) endanger a person's life or physical safety; or
15 (c) threaten significant damage to infrastructure or
16 property; or
17 (d) prejudice a criminal investigation; or
18 (e) reveal intelligence gathering methodologies,
19 investigative techniques or technologies or
20 covert practices; or
21 (f) enable the discovery of the existence or identity
22 of a confidential source of information relevant
23 to law enforcement.

24 (2) This section applies if, during a financial year, the
25 chairperson decides —

- 26 (a) to make a release decision, or take release
27 action, under Part 5 Division 1B; or
28 (b) to refuse to make a release decision, or take
29 release action, under Part 5 Division 1B; or

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- 1 (c) to cancel an early release order under
2 section 67A(2).
- 3 (3) Before giving an annual report for the financial year,
4 the chairperson must notify the Commissioner of
5 Police and the Attorney General of the number of
6 decisions referred to in subsection (2) that are made in
7 the financial year (*notifiable information*).
- 8 (4) The Commissioner of Police must advise the Attorney
9 General whether, in the Commissioner's opinion, some
10 or all of the notifiable information is, or is likely to be,
11 sensitive information.
- 12 (5) If the Attorney General is satisfied that some or all of
13 the notifiable information is protected information or,
14 on advice given under subsection (4), is satisfied that
15 some or all of the notifiable information is sensitive
16 information, the Attorney General must direct the
17 chairperson to —
- 18 (a) exclude the information from the annual report;
19 and
- 20 (b) insert a statement in the annual report to the
21 effect that the information is excluded from the
22 annual report under this section.
- 23 (6) The chairperson must comply with a direction given
24 under subsection (5).
- 25 (7) The Attorney General may obtain legal advice as to the
26 matters in subsection (5).
- 27 (8) If the Attorney General does not give a direction under
28 subsection (5), the Board must include the notifiable
29 information in the annual report.
30

1 **23. Section 115 amended**

2 In section 115 delete “Parts 2” and insert:

3

4 Parts 1

5

6 **24. Section 115A amended**

7 Delete section 115A(4) and insert:

8

9 (4) For the purposes of this section, the following
10 decisions are not reviewable decisions —

- 11 (a) a decision made by the Board under Part 5
12 Division 1B or section 67A(2) in relation to an
13 early release order;
- 14 (b) a decision made by the Board in relation to a
15 prisoner with links to terrorism —
- 16 (i) not to make a request under
17 section 13(4) after receiving a report
18 about the prisoner under section 13(3);
19 or
- 20 (ii) not to endorse, with or without
21 variations, the prisoner’s participation in
22 a re-socialisation programme received
23 under section 13(4);
- 24 (c) a decision made by the Board as to the nature
25 or content of a re-socialisation programme
26 endorsed under section 13(5) or approved under
27 section 14(5) in relation to a prisoner with links
28 to terrorism;
- 29 (d) a decision made by the Board under
30 subsection (8), or by the Board on further

s. 25

1 consideration of a matter pursuant to a decision
2 under subsection (8).
3

4 **25. Section 115B inserted**

5 After section 115A insert:
6

7 **115B. Decisions made by Board as constituted by**
8 **chairperson alone may be reconsidered**

- 9 (1) This section applies to decisions referred to in
10 section 115A(4)(a), (b) and (c).
- 11 (2) A prisoner about whom the decision is made may
12 request that the Board, as constituted by the
13 chairperson alone, reconsider the decision.
- 14 (3) A request must —
15 (a) be in writing; and
16 (b) state the grounds for it; and
17 (c) include any submissions that the applicant
18 wants to make to the Board about the decision
19 concerned and the reasons for it.
- 20 (4) A request may be made only on the grounds that the
21 Board in making the decision —
22 (a) did not comply with this Act or the regulations;
23 or
24 (b) made an error of law; or
25 (c) used incorrect or irrelevant information or was
26 not provided with relevant information.
- 27 (5) When a request is made, the Board, as constituted by
28 the chairperson alone, must consider any submissions

- 1 included in it and reconsider the decision concerned
2 and may —
3 (a) confirm, amend or cancel the decision; or
4 (b) make another decision.
5 (6) The Board, as constituted by the chairperson alone,
6 must give the applicant written notice of any decision
7 made under subsection (5).
8 (7) A decision made under subsection (5) is not subject to
9 reconsideration under this section.
10

11 **26. Sections 119A to 119C inserted**

12 After section 119 insert:
13

14 **119A. Protection of Commissioner of Police reports that**
15 **may be withdrawn**

- 16 (1) In this section, a reference to the *Board* is a reference
17 to the Board as constituted by the chairperson alone.
18 (2) This section applies if the Board must, under
19 section 66I(2), give the Commissioner of Police an
20 opportunity to withdraw a Commissioner of Police
21 report.
22 (3) Until the Commissioner of Police is given a reasonable
23 opportunity to withdraw the report, the Board must
24 take all reasonable steps to prohibit the publication of,
25 or a reference to, the report.

26 **119B. Protection of Commissioner of Police reports**
27 **containing terrorist intelligence information**

- 28 (1) In this section, a reference to the *Board* is a reference
29 to the Board as constituted by the chairperson alone.

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- 1 (2) The Board must take all reasonable steps to maintain
2 the confidentiality of a Commissioner of Police report
3 that the Board is satisfied contains terrorist intelligence
4 information, including —
- 5 (a) receiving the report or hearing argument, or
6 opinion, about the report in private and in the
7 absence of any person other than a person to
8 whose presence the Board consents; and
- 9 (b) except as provided in paragraph (a), prohibiting
10 the publication of, or a reference to, the report;
11 and
- 12 (c) withholding any or all of the reasons for a
13 decision under section 114.
- 14 (3) Despite subsection (2), the Board may give the report
15 to —
- 16 (a) the Attorney General; or
17 (b) a court; or
18 (c) a person to whom the Board authorises
19 disclosure.
- 20 (4) Before giving a report under subsection (3)(b) or (c),
21 the Board must, in writing, notify the Commissioner of
22 Police of the Board's intention to give the report.

23 **119C. Protection of terrorist intelligence information in**
24 **legal proceedings**

- 25 (1) In this section —
- 26 *court* includes any tribunal, authority or person having
27 the power to require the production of documents or
28 the answering of questions;
- 29 *disclosure requirement* means a requirement under the
30 *Criminal Procedure Act 2004* section 35, 42, 61 or 95
31 to disclose any information.

- 1 (2) In any legal proceeding relating to, or requiring the
2 disclosure of, information included in a Commissioner
3 of Police report that the court is satisfied is terrorist
4 intelligence information, the court must —
- 5 (a) dispense with the disclosure requirements in
6 relation to the information if the court is
7 satisfied that no miscarriage of justice will
8 result; and
- 9 (b) ensure that such parts of the proceeding relating
10 to the disclosure of the information are held in
11 private; and
- 12 (c) make such orders as to the suppression of
13 evidence given before the court that, in the
14 court's opinion, will ensure that the information
15 is not disclosed; and
- 16 (d) make orders prohibiting the publication of the
17 information.
- 18 (3) Without limiting the matters that the court may
19 consider for the purpose of determining if the
20 information is terrorist intelligence information, the
21 court must, before it makes the determination, give the
22 Commissioner of Police an opportunity to be heard by,
23 or to make written submissions to, the court.
24

25 **27. Section 120A inserted**

26 After section 120 insert:
27

28 **120A. Delegation by Commissioner of Police**

- 29 (1) The Commissioner of Police may, in writing signed by
30 the Commissioner, delegate any of the Commissioner's
31 powers or duties under this Act to a police officer of or
32 above the rank of Commander.

**Sentencing Legislation Amendment (Persons Linked to Terrorism)
Bill 2021**

Part 2 Sentence Administration Act 2003 amended

s. 28

1 (2) For the purposes of this Act, the exercise of a power or
2 duty by a delegate under this section is taken to be the
3 exercise of the power or duty by the Commissioner of
4 Police.

5 (3) A police officer to whom a power or duty is delegated
6 under this section cannot delegate that power or duty to
7 any other person.
8

9 **28. Schedule 1 clause 5 amended**

10 Before Schedule 1 clause 5(1) insert:
11

12 (1A) This clause does not apply in relation to a meeting of the
13 Board held for the purposes of Part 5 Division 1B or
14 section 67A.
15

Part 3 — *Young Offenders Act 1994* amended

29. Act amended

This Part amends the *Young Offenders Act 1994*.

30. Section 3 amended

(1) In section 3 delete “In this Act,” and insert:

(1) In this Act,

(2) In section 3(1) insert in alphabetical order:

category 1 offender means —

(a) an offender who —

(i) has been charged with, or convicted of, a terrorism offence; or

(ii) is subject to an interim control order or a confirmed control order;

or

(b) an offender who has been subject to an interim control order or a confirmed control order at any time during —

(i) the period of the offender’s sentence (the *current sentence*); or

(ii) the period of 4 years ending on the day on which the offender’s current sentence begins or is taken to have begun;

or

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- 1 (c) an offender for whom an interim control order
2 in respect of the offender is being sought under
3 the Commonwealth Criminal Code
4 section 104.3;
- 5 **category 2 offender** means an offender who has been
6 charged with, or convicted of, an offence against the
7 Commonwealth Criminal Code section 80.2C(1);
- 8 **chairperson** means the person appointed under
9 section 152(1)(a);
- 10 **Commissioner of Police report** means a written report
11 referred to in section 150D(1) or (4);
- 12 **Commonwealth Criminal Code** means the Criminal
13 Code set out in the Schedule to the *Criminal Code*
14 *Act 1995* (Commonwealth);
- 15 **confirmed control order** has the meaning given in the
16 Commonwealth Criminal Code section 100.1(1);
- 17 **interim control order** has the meaning given in the
18 Commonwealth Criminal Code section 100.1(1);
- 19 **offender with links to terrorism** means —
- 20 (a) a category 1 offender; or
- 21 (b) a category 2 offender who is subject to a
22 Commissioner of Police report; or
- 23 (c) an offender who —
- 24 (i) is subject to a Commissioner of Police
25 report; and
- 26 (ii) the Supervised Release Review Board
27 as constituted by the chairperson alone
28 is satisfied, having regard to the report,
29 has made statements or carried out
30 activities that support, or advocate
31 support for, terrorist acts;

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terrorism offence means —

- (a) an offence against the Commonwealth Criminal Code Division 72 Subdivision A; or
- (b) an offence against the Commonwealth Criminal Code Division 80 Subdivision B; or
- (c) an offence against the Commonwealth Criminal Code Part 5.3, other than an offence against section 104.22, 104.27, 104.27A, 105.41 or 105.45; or
- (d) an offence against the Commonwealth Criminal Code Part 5.5; or
- (e) an offence against the following provisions of the *Charter of the United Nations Act 1945* (Commonwealth) —
 - (i) Part 4;
 - (ii) Part 5, to the extent that it relates to the *Charter of the United Nations (Sanctions—Al-Qaida) Regulations 2008* (Commonwealth);
- or
- (f) an offence against the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Commonwealth) (repealed); or
- (g) an offence against the *Crimes (Internationally Protected Persons) Act 1976* (Commonwealth) section 8; or
- (h) an offence under a written law or a law of the Commonwealth, another State, a Territory or another country, that substantially corresponds to an offence referred to in paragraph (a), (b), (c), (d) or (f); or

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- 1 (i) an offence of attempting, inciting or conspiring
2 to commit an offence referred to in
3 paragraph (a), (b), (c), (d), (e), (f) or (g);
4 **terrorist act** has the meaning given in the *Terrorism*
5 (*Commonwealth Powers*) Act 2002 section 3;
6 **terrorist intelligence information** means information
7 relating to a prohibited act or suspected prohibited act,
8 the disclosure of which could reasonably be expected
9 to —
10 (a) prejudice national security; or
11 (b) endanger a person’s life or physical safety; or
12 (c) threaten significant damage to infrastructure or
13 property; or
14 (d) prejudice a criminal investigation; or
15 (e) reveal intelligence gathering methodologies,
16 investigative techniques or technologies or
17 covert practices; or
18 (f) enable the discovery of the existence or identity
19 of a confidential source of information relevant
20 to law enforcement;
21
22 (3) At the end of section 3(1) insert:
23
24 (2) For the purposes of the definition of **terrorist**
25 **intelligence information**, a **prohibited act** is —
26 (a) a terrorism offence; or
27 (b) an offence against the Commonwealth Criminal
28 Code section 80.2C(1); or
29 (c) a terrorist act (whether in this State or
30 elsewhere).
31

1 **31. Sections 16B to 16D inserted**

2 After section 16A insert:

3

4 **16B. Protection of Commissioner of Police reports that**
5 **may be withdrawn**

6 (1) In this section —

7 *Board* means the Supervised Release Review Board,
8 established under s 151, as constituted by the
9 chairperson alone.

10 (2) This section applies if the Board must, under
11 section 150E(2), give the Commissioner of Police an
12 opportunity to withdraw a Commissioner of Police
13 report.

14 (3) Until the Commissioner of Police is given a reasonable
15 opportunity to withdraw the report, the Board must
16 take all reasonable steps to prohibit the publication of,
17 or a reference to, the report.

18 **16C. Protection of Commissioner of Police reports**
19 **containing terrorist intelligence information**

20 (1) In this section —

21 *Board* means the Supervised Release Review Board,
22 established under s 151, as constituted by the
23 chairperson alone.

24 (2) The Board must take all reasonable steps to maintain
25 the confidentiality of a Commissioner of Police report
26 that the Board is satisfied contains terrorist intelligence
27 information, including —

28 (a) receiving the report or hearing argument, or
29 opinion, about the report in private and in the
30 absence of any person other than a person to
31 whose presence the Board consents; and

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- 1 (b) except as provided in paragraph (a), prohibiting
2 the publication of, or a reference to, the report;
3 and
4 (c) withholding any or all of the reasons for a
5 decision.
- 6 (3) Despite subsection (2), the Board may give the report
7 to —
8 (a) the Attorney General; or
9 (b) a court; or
10 (c) a person to whom the Board authorises
11 disclosure.
- 12 (4) Before giving a report under subsection (3)(b) or (c),
13 the Board must, in writing, notify the Commissioner of
14 Police of the Board’s intention to give the report.
- 15 **16D. Protection of terrorist intelligence information in**
16 **legal proceedings**
- 17 (1) In this section —
18 *court* includes any tribunal, authority or person having
19 power to require the production of documents or the
20 answering of questions;
21 *disclosure requirement* means a requirement under the
22 *Criminal Procedure Act 2004* section 35, 42, 61 or 95
23 to disclose any information.
- 24 (2) In any legal proceedings relating to, or requiring the
25 disclosure of, information included in a Commissioner
26 of Police report that the court is satisfied is terrorist
27 intelligence information, the court must —
28 (a) dispense with the disclosure requirements in
29 relation to the information if the court is
30 satisfied that no miscarriage of justice will
31 result; and

- 1 (b) ensure that such parts of the proceeding relating
2 to the disclosure of the information are held in
3 private; and
- 4 (c) make such orders as to the suppression of
5 evidence given before the court that, in the
6 court's opinion, will ensure that the information
7 is not disclosed; and
- 8 (d) make orders prohibiting the publication of the
9 information.
- 10 (3) Without limiting the matters that the court may
11 consider for the purpose of determining if the
12 information is terrorist intelligence information, the
13 court must, before it makes the determination, give the
14 Commissioner of Police an opportunity to be heard by,
15 or to make written submissions to, the court.
16

17 **32. Section 132 amended**

18 In section 132(1) delete "If" and insert:

19

20 Except as provided in Division 2A, if

21

22 **33. Section 142 amended**

23 In section 142(1) delete "subsection (2)," and insert:

24

25 subsection (2) and section 142A,

26

s. 34

1 **34. Section 142A and 142B inserted**

2 After section 142 insert:

3

4 **142A. Cancellation automatic in case of offender with**
5 **links to terrorism**

6 (1) In this section, a reference to the *Board* is a reference
7 to the Board as constituted by the chairperson alone.

8 (2) The Board must cancel a supervised release order in
9 respect of any of the following offenders —

10 (a) an offender who, during the period the offender
11 is subject to the supervised release order —

12 (i) is charged with, or convicted of, a
13 terrorism offence; or

14 (ii) is charged with, or convicted of, an
15 offence against the Commonwealth
16 Criminal Code section 80.2C(1); or

17 (iii) becomes subject to an interim control
18 order or confirmed control order; or

19 (iv) becomes subject to a Commissioner of
20 Police report and who the Board is
21 satisfied has made statements or carried
22 out activities that support, or advocate
23 support for, terrorist acts;

24 (b) an offender for whom, during the period the
25 offender is subject to the supervised release
26 order, an interim control order is being sought
27 under the Commonwealth Criminal Code
28 section 104.3(1);

29 (c) an offender who the Board is satisfied —

30 (i) at the time that the supervised release
31 order in respect of the offender was

1 made, was a category 1 offender or a
2 category 2 offender; and
3 (ii) in respect of whom, this fact was not
4 known by the person who made the
5 order at the time that the order was
6 made.

7 **142B. Supervised release order, when cancellation under**
8 **s. 142A takes effect**

- 9 (1) If a supervised release order in respect of an offender is
10 cancelled under section 142A, the supervised release
11 order is taken to be cancelled —
12 (a) if the cancellation results from a charge or
13 conviction — on the day when the offence that
14 resulted in the charge or conviction was
15 committed; or
16 (b) if the cancellation results from an offender
17 becoming subject to an interim control order or
18 confirmed control order — on the day when the
19 offender became subject to the order; or
20 (c) if the cancellation results from an interim
21 control order or confirmed control order being
22 sought in respect of an offender— on the day
23 when the order was sought; or
24 (d) if the cancellation results from a decision by the
25 Board — the day when the decision was made.
- 26 (2) If the day when an offence was committed cannot be
27 ascertained — the day is taken, for the purposes of
28 subsection (1)(a), to be the latest day on which that
29 offence could have been committed, as determined by
30 the CEO.
31

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1 **35. Section 149 amended**

2 In section 149(1) delete “section 147A(1),” and insert:

3

4 section 142A(2) or 147A,

5

6 **36. Part 8 Division 2A inserted**

7 After Part 8 Division 2 insert:

8

9 **Division 2A — Offenders with links to terrorism or**
10 **subject to Commissioner of Police reports**

11 **Subdivision 1 — Preliminary**

12 **150A. Release considerations**

13 In this Division, a reference to the *release*
14 *considerations* relating to an offender is a reference to
15 the following considerations —

16 (a) if the offender has made statements or carried
17 out activities that support, or advocate support
18 for, terrorist acts — the nature and seriousness
19 of the statements made or activities carried out;

20 (b) if the offender is sentenced for a terrorism
21 offence — any remarks made by the court that
22 sentenced the offender that are relevant to
23 paragraph (a);

24 (c) if the offender is, or was, subject to an interim
25 control order or confirmed control order
26 relating to a terrorism offence —

27 (i) any remarks made by the court that
28 made the order that are relevant to
29 paragraph (a); and

- 1 (ii) the behaviour of the offender while
2 subject to the order;
- 3 (d) the behaviour of the offender when in custody
4 to the extent that it may be relevant to
5 paragraph (a);
- 6 (e) whether the offender has participated in any
7 programme or activity that addresses the
8 offender's risk of committing a terrorism
9 offence and the offender's performance in the
10 programme or activity;
- 11 (f) whether the offender is, or was, associated with
12 1 or more persons who have made statements
13 or carried out activities that support, or
14 advocate support for, terrorist acts, and the
15 nature of the association.

16 **Subdivision 2 — Supervised release orders in cases of**
17 **offenders with links to terrorism**

18 **150B. References to Board**

19 In this Subdivision, a reference to the *Board* is a
20 reference to the Board as constituted by the chairperson
21 alone.

22 **150C. Making supervised release orders**

- 23 (1) The Board must not order the release of an offender
24 with links to terrorism unless the Board is satisfied that
25 there are exceptional reasons why the offender should
26 be released.
- 27 (2) The Board must, in making any decision for the
28 purposes of subsection (1) —
- 29 (a) regard the personal safety of people in the
30 community or of any individual in the
31 community as the paramount consideration; and

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- 1 (b) apply the general principles of juvenile justice
2 in section 7, other than the principles referred to
3 in paragraphs (h) and (k); and
- 4 (c) have regard to all of the following —
- 5 (i) the release considerations relating to the
6 offender;
- 7 (ii) the Commissioner of Police report about
8 the offender;
- 9 (iii) any other information about the
10 offender brought to the attention of the
11 Board.
- 12 (3) Subsection (2) does not limit the matters that the Board
13 may have regard to in making a decision for the
14 purposes of subsection (1).
- 15 (4) Despite subsections (2) and (3), the Board must not
16 have regard to a Commissioner of Police report about
17 the offender if the report has been withdrawn under
18 section 150E(2).

19 **150D. Commissioner of Police reports**

- 20 (1) If the Board is required to consider whether to order
21 the release of a category 1 offender from custody, the
22 Board must make a written request to the
23 Commissioner of Police for a written report about the
24 offender.
- 25 (2) The report must deal with the release considerations
26 relating to the offender to the extent that the
27 information is within the knowledge of the
28 Commissioner of Police and may —
- 29 (a) include any other information that the
30 Commissioner of Police considers is, or may
31 be, relevant to whether the offender should be
32 released; and

- 1 (b) declare that some or all of the information in
2 the report is, in the opinion of the
3 Commissioner of Police, terrorist intelligence
4 information.
- 5 (3) The Commissioner of Police must give to the Board the
6 report within a reasonable period after receiving the
7 request.
- 8 (4) The Commissioner of Police may give to the Board a
9 written report dealing with the matters referred to in
10 subsection (2) in relation to any other offender.
- 11 **150E. Withdrawing Commissioner of Police reports**
- 12 (1) This section applies if the Board, as constituted by the
13 chairperson alone —
- 14 (a) is satisfied that an offender subject to a
15 Commissioner of Police report is not an
16 offender with links to terrorism; or
- 17 (b) after consulting with the Commissioner of
18 Police, is satisfied that a Commissioner of
19 Police report about an offender does not include
20 terrorist intelligence information.
- 21 (2) Before the Board decides whether to order the release
22 of the offender, the Board, as constituted by the
23 chairperson alone, must give the Commissioner of
24 Police an opportunity to withdraw the report.
- 25 (3) If the report is withdrawn under subsection (2), the
26 Board —
- 27 (a) must not have regard to the report for the
28 purposes of deciding whether to order the
29 release of the offender; and
- 30 (b) must prohibit the publication of, or a reference
31 to, the report.

1 **Subdivision 3 — Supervised release orders for other**
2 **offenders subject to Commissioner of Police reports**

3 **150F. Releasing offender subject to Commissioner of**
4 **Police report under supervised release order**

- 5 (1) In this section —
6 *offender* does not include an offender with links to
7 terrorism.
- 8 (2) This section applies if —
9 (a) the Board is deciding whether to order the
10 release of an offender under section 132(1); and
11 (b) the offender is subject to a Commissioner of
12 Police report that the Board, as constituted by
13 the chairperson alone, is satisfied includes
14 terrorist intelligence information.
- 15 (3) The Board, as constituted by the chairperson alone,
16 must decide whether to order the release of the
17 offender in accordance with Division 2.

18 **Subdivision 4 — Review**

19 **150G. Review of Division**

- 20 (1) The Minister must review the operation and
21 effectiveness of this Division, and prepare a report
22 based on the review —
23 (a) as soon as practicable after the 5th anniversary
24 of the day on which the *Sentencing Legislation*
25 *Amendment (Persons Linked to Terrorism)*
26 *Act 2021* section 36 comes into operation; and
27 (b) after that, at intervals of not more than 5 years.

- 1 (2) The Minister must cause the report to be laid before
2 each House of Parliament as soon as practicable after it
3 is prepared, but not later than 12 months after the 5th
4 anniversary or the expiry of the period of 5 years, as
5 the case may be.
6

7 **37. Section 157 amended**

8 After section 157(1) insert:
9

- 10 (2) This section does not apply in relation to a meeting of
11 the Board held for the purposes of section 16B or 142A
12 or Part 8 Division 2A.
13

14 **38. Section 165A inserted**

15 At the end of Part 8 Division 3 insert:
16

17 **165A. Information to be excluded from annual reports**

- 18 (1) In this section —
19 *protected information* means information the
20 disclosure of which would contravene a written law or
21 an order of a court;
22 *sensitive information* means information the disclosure
23 of which could reasonably be expected to —
24 (a) prejudice national security; or
25 (b) endanger a person's life or physical safety; or
26 (c) threaten significant damage to infrastructure or
27 property; or
28 (d) prejudice a criminal investigation; or

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- 1 (e) reveal intelligence gathering methodologies,
2 investigative techniques or technologies or
3 covert practices; or
- 4 (f) enable the discovery of the existence or identity
5 of a confidential source of information relevant
6 to law enforcement.
- 7 (2) This section applies if, during the year ending on the
8 last preceding 30 June, the chairperson decides —
- 9 (a) to make a supervised release order under Part 8
10 Division 2A; or
- 11 (b) to refuse to make a supervised release order
12 under Part 8 Division 2A; or
- 13 (c) to cancel a supervised release order under
14 section 142A.
- 15 (3) Before giving an annual report for the financial year,
16 the chairperson must notify the Commissioner of
17 Police and the Minister of the number of decisions
18 referred to in subsection (2) that are made during the
19 year ending on the last preceding 30 June (***notifiable***
20 ***information***).
- 21 (4) The Commissioner of Police must advise the Minister
22 whether, in the Commissioner's opinion, some or all of
23 the notifiable information is, or is likely to be, sensitive
24 information.
- 25 (5) If the Minister is satisfied that some or all of the
26 notifiable information is protected information or, on
27 advice given under subsection (4), is satisfied that
28 some or all of the notifiable information is sensitive
29 information, the Minister must direct the chairperson
30 to —
- 31 (a) exclude the information from the annual report;
32 and

- 1 (b) insert a statement in the annual report to the
2 effect that the information is excluded from the
3 annual report under this section.
- 4 (6) The chairperson must comply with a direction given
5 under subsection (5).
- 6 (7) The Minister may obtain legal advice as to the matters
7 in subsection (5).
- 8 (8) If the Minister does not give a direction under
9 subsection (5), the Board must include the notifiable
10 information in the annual report.
11

12 **39. Section 197A inserted**

13 At the end of Part 10 insert:
14

15 **197A. Delegation by Commissioner of Police**

- 16 (1) The Commissioner of Police may, in writing signed by
17 the Commissioner, delegate any of the Commissioner's
18 powers or duties under this Act to a police officer of or
19 above the rank of Commander.
- 20 (2) For the purposes of this Act, the exercise of a power or
21 duty by a delegate under this section is taken to be the
22 exercise of the power or duty by the Commissioner of
23 Police.
- 24 (3) A police officer to whom a power or duty is delegated
25 under this section cannot delegate that power or duty to
26 any other person.
27

**Sentencing Legislation Amendment (Persons Linked to Terrorism)
Bill 2021**

Part 3 Young Offenders Act 1994 amended

s. 40

1 **40. Various references to “Chairman” amended**

2 In the provisions listed in the Table delete “Chairman” and
3 insert:

4

5 chairperson

6

7

Table

s. 152(1)(a) and (5)	s. 154(3)
s. 156	s. 158(1) and (2)
s. 160(2)	

1 **Part 4 — *Criminal Procedure Act 2004* amended**

2 **41. Act amended**

3 This Part amends the *Criminal Procedure Act 2004*.

4 **42. Section 35 amended**

5 Delete section 35(2) and insert:

6

7 (2) The operation of this section is subject to —

8 (a) any order made under section 138; and

9 (b) the *Sentence Administration Act 2003*
10 section 119C(2)(a); and

11 (c) the *Young Offenders Act 1994*
12 section 16D(2)(a).

13

14 **43. Section 137A amended**

15 After section 137A(a) insert:

16

17 (aa) the *Sentence Administration Act 2003*
18 section 119C(2)(a); and

19 (ab) the *Young Offenders Act 1994*
20 section 16D(2)(a); and

21

1 **Part 5 — *Freedom of Information Act 1992* amended**

2 **44. Act amended**

3 This Part amends the *Freedom of Information Act 1992*.

4 **45. Schedule 1 clause 5 amended**

5 (1) After Schedule 1 clause 5(3) insert:

6

7 (3A) A Commissioner of Police report is exempt matter.

8

9 (2) In Schedule 1 clause 5(5) insert in alphabetical order:

10

11 ***Commissioner of Police report*** means a written report
12 referred to in —

13 (a) the *Sentence Administration Act 1995*
14 section 66H(1) or (4); and

15 (b) the *Young Offenders Act 1994* section 150D(1) or
16 (4);
17

=====