Parliamentary Committees



Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018

Report No. 30, 56th Parliament
Legal Affairs and Community Safety Committee
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Legal Affairs and Community Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mr James Lister MP, Member for Southern Downs
Members	Mr Stephen Andrew MP, Member for Mirani
	Mr Jim McDonald MP, Member for Lockyer
	Mrs Melissa McMahon MP, Member for Macalister
	Ms Corrine McMillan MP, Member for Mansfield

Committee Secretariat

Telephone	+61 7 3553 6641
Fax	+61 7 3553 6699
Email	lacsc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee Web Page	www.parliament.qld.gov.au/lacsc

Acknowledgements

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Contents

Abbreviations

Bail Act	*Bail Act 1980*
BAQ	Bar Association of Queensland
COAG	Council of Australian Governments
Corrective Services Act	*Corrective Services Act 2006*
Department	Department of Justice and Attorney-General
LSA	*Legislative Standards Act 1992*
PBQ	Parole Board of Queensland
PSA	*Penalties and Sentences Act 1992*
QCS	Queensland Corrective Services
QLS	Queensland Law Society
YAC	Youth Advocacy Centre Inc.
YJA	*Youth Justice Act 1992*

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Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the departments and agencies who assisted the committee at its public briefing.

I commend this report to the House.

Peter Russo MP
Chair

Recommendation

The committee recommends that the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018 be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Justice and Attorney-General, and
- Police, Fire and Emergency Services, and Corrective Services.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018 (Bill) was introduced into the Legislative Assembly and referred to the committee on 13 November 2018. The committee is to report to the Legislative Assembly by 7 March 2019.

1.2 Inquiry process

On 21 November 2018 the committee invited stakeholders and subscribers to make written submissions on the Bill. Five submissions were received. The committee received written advice from the department in response to matters raised in submissions.

The committee received a public briefing about the Bill from the department on 3 December 2018. A transcript is published on the committee's web page (see Appendix B for a list of officials).

The committee held a public hearing on 11 February 2019 (see Appendix C for a list of witnesses).

The submissions, briefing paper and correspondence from the department, and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The explanatory notes outlined the policy objectives for the Bill:

> *On 9 June 2017 the Council of Australian Governments (COAG) agreed 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' (the COAG commitment).*
>
> *The terrorist threat in Australia remains elevated. The cross-border nature of the threat of terrorism requires a national response to keep all Australians safe. National consistency is important to support interoperability and cooperation in national efforts to prevent and respond to terrorist threats.*
>
> *On 5 October 2017 COAG further agreed that implementation of the COAG commitment would be underpinned by agreed principles recognising the ongoing importance of national consistency in counter-terrorism legislation and responses more broadly.*

[1] *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

> *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*.[2]

The Australia New Zealand Counter-Terrorism Committee subsequently developed the aforementioned nationally consistent principles in consultation with each Australian jurisdiction.

Those principles are:

- Principle 1 - the presumption against bail and parole should apply to categories of persons who have demonstrated support for, or links to, terrorist activity;
- Principle 2 - high legal thresholds should be required to overcome the presumption against bail and parole;
- Principle 3 - The implementation of the presumption against bail and parole should draw on and support the effectiveness of the Joint Counter Terrorism Team model; and
- Principle 4 - implementing a presumption against bail and parole should appropriately protect sensitive information.

Under the first principle, there was 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 the 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 have made statements or carried out activities supporting, or advocating support for, terrorist acts.[3]

1.4 Government consultation on the Bill

The explanatory notes canvassed the consultation undertaken for the Bill:

> *A letter broadly outlining the proposed contents of the Bill and inviting comment was provided to key stakeholders including: heads of jurisdiction; the Parole Board Queensland; the Bar Association of Queensland; the Queensland Law Society; Aboriginal and Torres Strait Islander Legal Service; the 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); Youth Advocacy Centre; YFS Legal – Community Legal Centre; and Sisters Inside.*
>
> *Stakeholders were invited to comment on the proposed contents of the Bill.*
>
> *Stakeholder feedback has been taken into account in finalising the Bill.*[4]

Advice from the Department was that stakeholders that responded generally recognise the responsibility of government to minimise the risk to the community posed by terrorism, but consider such laws must be balanced against the preservation of fundamental principles of law and infringe on 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'.[5]

The department further advised that '[r]esponses to consultation largely focussed on matters of policy however the Bill takes account of specific feedback provided that was consistent with the policy'.[6]

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2 Explanatory notes, p 1.

3 Department of Justice and Attorney-General, briefing paper, pp 1-2.

4 Explanatory notes, p 6.

5 Department of Justice and Attorney-General, briefing paper, pp 8-9.

6 Department of Justice and Attorney-General, briefing paper, p 9.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation

The committee recommends that the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018 be passed.

2 Background to the Bill

Counter-terrorism is a national issue and is governed by a combination of Commonwealth and State and Territory laws, and two intergovernmental agreements. All States have referred the power to make laws relating to terrorist acts to the Commonwealth. These laws are contained in Part 5.3 of the Commonwealth Criminal Code and include:

- terrorist offences - largely focussed on preparatory action consistent with the priority of protecting public safety by disrupting terrorist activity 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 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 for, or facilitation of, a terrorist act or hostile activity in a foreign country.

As noted above at 1.3, the objectives of the Bill are to further the COAG commitment.

The Explanatory Notes advise that the Bill:

- Amends the *Bail Act 1980* (Bail Act), the *Corrective Services Act 2006* (Corrective Services Act), the *Penalties and Sentences Act 1992* (PSA) and the *Youth Justice Act 1992* (YJA) to give effect to the COAG commitment in Queensland.
- Will implement the COAG commitment in Queensland by reversing the statutory presumption in favour of bail for any adult or child offender who has previously been convicted of a terrorism offence or who is, or has been, subject to a control order under the Commonwealth Criminal Code. In those circumstances, the power to grant bail will be limited to a court and require an offender to satisfy the court that exceptional circumstances exist to justify granting bail.
- Introduces a higher threshold test into the Bail Act and introduces a reverse presumption of bail for children where it has not previously applied under the YJA.
- Amends the Bail Act and the YJA to also require bail decision makers to give specific consideration to potential links to terrorism when considering the question of unacceptable risk in relation to bail for adults and children.
- Creates a presumption against parole for prisoners who have been convicted of a terrorism offence or who are the subject of a control order as well as those who have promoted terrorism, to ensure that those offenders with demonstrable links to terrorist activity are captured by the reforms.
- Reverses the presumption for parole in circumstances where the commissioner of police (police commissioner) provides a report to the parole board identifying that there is a reasonable likelihood that a prisoner with terrorism antecedents or associations may carry out a terrorist act.
- Amends the PSA to allow a court the discretion to fix a parole eligibility date rather than a parole release date for offenders with previous terrorism convictions, and those who are the subject of a control order or who have promoted terrorism. This provision is to meet the underlying policy objective of the COAG commitment in relation to court ordered parole under the PSA.
- Amends the YJA to remove the discretion of a sentencing court to order a release date for a child that is any earlier than after serving 70% of a period of detention. This will apply to a child who has been found guilty of a terrorism offence, who is the subject of a control order, or who has promoted terrorism.

- Amends the YJA to require conditions to be imposed on the supervised release of a child who has been found guilty of a terrorism offence, who is the subject of a control order, or who has promoted terrorism. The conditions must be reasonably necessary to reduce the risk of the child carrying out a terrorist act or promoting terrorism.[7]

[7] Explanatory notes, pp 1-2.

3 Bail provisions - adults

3.1 Background

In respect of the bail provisions in the Bill, the explanatory notes advise:

> *The Bill will implement the COAG commitment in Queensland by reversing the statutory presumption in favour of bail for any adult or child offender who has previously been convicted of a terrorism offence, or who is, or has been, subject to a control order under the Commonwealth Criminal Code. In these circumstances, the power to grant bail will be limited to a court and require an offender to satisfy the court that there are exceptional circumstances to justify granting bail.*[8]

3.2 Proposed amendments to the bail system

Part 2 of the Bill amends the Bail Act.

Clause 3 amends s 6 of the Bail Act to insert definitions of a 'Commonwealth control order', 'terrorism offence' and 'terrorist act'.

A 'terrorism offence' is prescribed to cover a terrorism offence under the Commonwealth *Crimes Act 1914*, a terrorism offence against certain corresponding pieces of State legislation of other States, as well as '*another offence against a provision of a law of the Commonwealth or another State if the provision is prescribed by regulation and is in relation to an activity that involves a terrorist act, or is preparatory to the carrying out of an activity that involves a terrorist act'.*

Clause 5 amends s 13 of the Bail Act to provide that only a court may grant bail to a person who has previously been convicted or a terrorism offence or who is, or has been, the subject of a Commonwealth control order. The amendments also clarify that for the purposes of granting such bail, a 'court' does not include a justice or justices, which will therefore preclude a Magistrate or Magistrates Court from granting bail to a person with a previous terrorism conviction or who is, or has been, subject to a Commonwealth control order.

Clause 8 amends s 16 of the Bail Act to provide additional circumstances under which a defendant will be refused bail. Section 16(1)(a) provides that bail will be refused if the court or police officer authorised to grant bail is satisfied that there is 'an unacceptable risk' that the defendant, if released on bail –

- would fail to appear and surrender into custody; or
- would, while released on bail, commit an offence, endanger the safety or welfare of a victim or another person, interfere with witnesses, or otherwise obstruct the course of justice.

Bail will also be refused if the court or police officer is satisfied that the defendant should remain in custody for the defendant's own protection.

Section 16(2) provides a (non-exhaustive) list of relevant considerations for the court or police officer to have regard to in assessing whether there is 'an unacceptable risk' for the purposes of s 16(1)(a), being:

(a) the nature and seriousness of the offence;

(b) the character, antecedents, associations, home environment, employment and background of the defendant;

(c) the history of any previous grants of bail to the defendant;

(d) the strength of the evidence against the defendant;

[8] Explanatory notes, p 1.

(e) if the defendant is an Aboriginal or Torres Strait Islander person – any submissions made by a representative of the community justice group in the defendant's community, including for example, about –

i. the defendant's relationship to the defendant's community; or

ii. any cultural considerations; or

iii. any considerations relating to programs and services in which the community justice group participates;

(f) if the defendant is charged with a domestic violence offence or an offence against the *Domestic and Family Violence Protection Act 2012,* s 177(2) – the risk of further domestic violence or associated domestic violence, under the *Domestic and Family Violence Protection Act 2012,* being committed by the defendant.

The cl 8 amendment adds paragraphs (g) and (h) to this list to cover:

(g) any promotion by the defendant of terrorism;

(h) any association the defendant has or has had with –

i. a terrorist organisation within the meaning of the Criminal Code (Cwlth), s 102.1(1); or

ii. a person who has promoted terrorism.

The cl 8 amendments further clarify what will constitute the 'promotion of terrorism' by creating new ss 16(2B) and 16(2C) which state that:

(2B) For subsection (2)(g) and (h)(ii), a person has promoted terrorism if the person has –

(a) carried out an activity to support the carrying out of a terrorist act; or

(b) made a statement in support of the carrying out of a terrorist act; or

(c) carried out an activity, or made a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.

(2C) To remove any doubt, it is declared that a reference in subsection (2B) to a terrorist act –

(a) includes a terrorist act that has not happened; and

(b) is not limited to a specific terrorist act.

Clause 9 inserts a new s 16A into the Bail Act to provide for the mandatory refusal of bail for adult defendants who have been previously convicted of a terrorism offence, or are currently, or have been previously, the subject of a Commonwealth control order, unless the court is satisfied that exceptional circumstances exist to justify the granting of bail.[9] In considering whether exceptional circumstances exist to justify granting bail to the defendant, the court may have regard to any relevant matter.[10] If the court grants bail to the defendant, the order granting bail must state the reasons for the decision.[11]

[9] Proposed s 16A(1)-(2), *Bail Act 1980*

[10] Proposed s 16A(3), *Bail Act 1980*

[11] Proposed s 16A(4), *Bail Act 1980*

Even if a court considered that exceptional circumstances might justify the granting of bail for a defendant previously convicted of a terrorism offence or currently/previously the subject of a Commonwealth control order, bail must still be refused (under s 16(1)) if the court is satisfied that there is 'an unacceptable risk' that the defendant, if released on bail –

- would fail to appear and surrender into custody; or
- would, while released on bail, commit an offence, endanger the safety or welfare of a victim or another person, interfere with witnesses, or otherwise obstruct the course of justice.

Bail will also be refused if the court or police officer is satisfied that the defendant should remain in custody for the defendant's own protection.[12]

Clause 10 provides for a transitional provision, proposed new s 47 of the Bail Act, which provides that the Bail Act (as amended by the *Justice Legislation (Links to Terrorist Activity) Amendment Act 2018*) applies in relation to a decision made by a court or police officer on or after the commencement about whether to grant bail to a person or otherwise release the person from custody, and for those purposes it is irrelevant whether the offence in relation to which the decision is made happened, or the proceeding for the offence was started, before or after the commencement (of the Amendment Act).

3.3 Issues raised in submissions and the departmental response

Submitters to the Bill expressed concern about the proposed amendments to the Bail Act and bail regime in Queensland for persons with convictions for terrorism and related activities.

3.3.1 Eroding the presumption of innocence

The Bar Association of Queensland (BAQ) was concerned about an 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 the presumption of innocence and the 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 had previously been charged with potentially unrelated prior offences. The presumption that bail will be granted in the absence of unacceptable risk is based upon an understanding of the importance of the presumption of innocence. Its denial represents a fundamental undermining of that presumption.*
>
> *To undermine this presumption on the basis of the nature of one offence in a person's criminal history, regardless of its relevance to the charges on which a person is seeking bail, is unjustifiable*.[13]

In response to these concerns, the department advised:

> *The concerns raised are noted. The amendments are considered justified to ensure the safety of the Queensland community and address the risk recognised by First Ministers at the Council of Australian Governments (COAG). The provisions are only justified in this extraordinary circumstance and are not intended to create a new norm.*[14]

[12] Proposed s 16A(5), *Bail Act 1980*, which provides that (proposed) s 16A does not affect the operation of s 16(1).

[13] Submission 1, p 2.

[14] Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 4.

3.3.2 The disincentivising effect of a presumption against bail

The submission from BAQ also expressed its reservations about the potentially disincentivising effect of a presumption against bail:

> *To make a presumption against bail for a person on the basis of the nature of a previous offence (rather than the offence they are presently facing) may have the potential to actively undermine efforts towards rehabilitation. A person who has been sentenced and whose rehabilitation is progressing well could easily regard a justice system that ignores that progress when considering bail on a later offence unrelated to terrorism as a basis for reengaging with radical ideology as a result of perceived injustice.*[15]

In response to these concerns, the department advised:

> *This concern is noted. The Bill implements a nationally consistent COAG commitment for a presumption against bail or parole for persons who have demonstrated support for, or have links to, terrorist activity. The amendments are underpinned by agreed nationally consistent principles for implementation of the COAG agreement.*[16]

3.3.3 Fettering judicial discretion

The Queensland Law Society (QLS) expressed concern about the potential fettering of judicial discretion:

> *The Society is concerned about the interference with the court's discretion to grant bail. The power to grant bail will be limited to a court and require an offender to satisfy that there are exceptional circumstances to justify a grant of bail*.[17]

In response to QLS' concern about 'interference with the court's discretion to grant bail', the department advised:

> *The concerns raised are noted. The amendments are designed to address the risk, identified by COAG, posed by offenders with links to terrorist activity. The amendments are underpinned by agreed nationally consistent principles for implementation of COAG's agreement 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. The provisions are limited to links to terrorist activity that can be clearly demonstrated.*[18]

3.3.4 The 'exceptional circumstances' test for bail

The BAQ submission expressed concern about the requirement for persons with terrorism offence convictions to demonstrate 'exceptional circumstances' to justify a grant of bail.

> *Any person subject to the presumption against bail in the proposed amendments would have to demonstrate exceptional circumstances to justify a grant of bail.*
>
> *The Explanatory Notes assert that the exceptional circumstances test will be a higher threshold test than that presently in the Bail Act.*
>
> *The Association notes that ss 16(3) and (3A) of the Bail Act already require adult offenders charged with certain offences or charged in particular circumstances to show cause as to why their detention in custody is not justified.*
>
> *For this to apply to a person who "has been convicted of a terrorism offence", the person would have to have been charged with a different offence after being convicted of a terrorism offence.*

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15 Submission 1, p 2

16 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 6.

17 Submission 5, pp 3-4.

18 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 5.

> *It is important to note that none of the proposed amendments concerning bail are intended to apply to any person (child or adult) who has been charged with a terrorism offence. They talk only to those previously convicted of such offences.*
>
> *The Association could well understand the necessity for a more stringent test for those actually charged with a terrorism offence. However, the circumstances which give rise to the need for this test to apply to any person previously convicted of such an offence are unknown and certainly not explained in the material provided.*
>
> *It is easy enough to envisage a person who has been convicted of a terrorism offence, completed their sentence and been rehabilitated and even, deradicalised. The proposed amendments would then see such a person required to establish exceptional circumstances for any offence at all, even those with no link to terrorism.*[19]

In response to the BAQ concerns, the department advised:

> *The COAG commitment recognises the unique risks posed by a person with demonstrated links to terrorism. To ensure that the presumption against a grant of bail is only overcome in limited circumstances and to best support national consistency, the amendments will require an offender to satisfy the court that there are exceptional circumstances to justify a grant of bail. This will introduce a new, higher threshold test into the Bail Act.*
>
> *Exceptional circumstances is the threshold required by amendments implementing the COAG commitment in New South Wales and Tasmania, is one of two thresholds applying in Victoria (the other being compelling reasons). Recently introduced amendments in Western Australia use the comparable threshold of exceptional reasons.*
>
> *While not existing in the Bail Act, exceptional circumstances is a well understood legal concept and is the threshold generally applied, by precedent, for applications for bail pending appeal and where a defendant has been committed for trial on a charge of murder. Exceptional circumstances is also the existing threshold test applied when determining bail for an offender charged with a Commonwealth terrorism offence.*[20]

The departmental advice also noted that a person charged with a terrorism offence is already required to demonstrate that exceptional circumstances exist to justify a grant of bail under provisions of the *Crimes Act 1914* (Cth).[21]

3.3.5 The sufficiency of existing legislative arrangements

Some submitters argued that existing legislative provisions are sufficient to cover persons previously convicted of terrorism related offences, with the amendments merely codifying the existing law.

The QLS submitted:

> *In our view, section 16 of the* Bail Act 1980 *is comprehensive enough to encompass situations contemplated by clause 9 of the Bill. More specifically, we consider that section 16(1)(a)(ii) of the* Bail Act 1980 *is broad enough to apply to defendants who have previously been convicted of a terrorism offence or the subject of a Commonwealth control order.*[22]

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19 Submission 1, p 1.

20 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, pp 6-7.

21 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 6.

22 Submission 5, p 4.

Dr Rebecca Ananian-Welsh and Associate Professor Adrian Cherney of the University of Queensland's TC Beirne School of Law submitted:

> *We support the amendments requiring bail decision-makers to give specific consideration to potential links to terrorism when making bail determinations, though we submit that these amendments would simply codify the existing state of the law.*[23]

In response to these concerns, the department advised:

> *The comments are noted. Section 16(2) of the* Bail Act 1980 *already provides that in assessing whether there is an unacceptable risk that a defendant would: commit an offence; endanger the safety or welfare of a person; interfere with witnesses; or, obstruct the course of justice, a bail decision maker shall have regard to all matters appearing to be relevant. The provision contains a non-limiting list of specified considerations that includes the associations of the defendant.*
>
> *The proposed amendments to section 16(2) will signal to bail decision makers the importance of having regard to the risk of links to terrorist activity, in particular any promotion of terrorism or associations with terrorist organisations or another person who has promoted terrorism, for the discrete purpose of assessing whether the defendant currently poses an unacceptable risk if released on bail.*
>
> *The ordinary rules of procedure and evidence will apply to bail applications following commencement of the amendments in the Bill. The Bill does not introduce special provisions to restrict access to evidence*.[24]

[23] Submission 2, pp 1-2.

[24] Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, pp 3-4.

4 Parole provisions - adults

4.1 Background

In respect of the Bill's provisions concerning parole, the explanatory notes advise:

> *The Bill creates a presumption against parole for prisoners who have been convicted of a terrorism offence or who are the subject of a control order as well as those who have promoted terrorism. This ensures those offenders with demonstrable links to terrorist activity are captured by the reforms. The presumption for parole is also reversed in circumstances where the commissioner of police provides a report to the parole board identifying that there is a reasonable likelihood that a prisoner may carry out a terrorist act. This provision is limited in application, only applying to prisoners who have been previously charged with 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.*
>
> *The Bill amends the PSA to allow a court the discretion not to fix a parole release date, if otherwise required, if satisfied an offender has been convicted of a terrorism offence, is the subject of a control order or has promoted terrorism. The inclusion of this provision ensures the underlying policy objective of the COAG commitment is met in relation to court ordered parole under the PSA.*[25]

4.2 Proposed amendments to the parole system

4.2.1 Refusing parole for prisoners with terrorism convictions or associations

Clause 13 inserts new ss 193B-193E into the Corrective Services Act.

Subsection (2) of s 193B provides that the parole board must refuse to grant parole under s 193(1) for a prisoner who has, at any time, been convicted of a terrorism offence, who is the subject of a Commonwealth control order, or who has promoted terrorism, unless the parole board is satisfied that exceptional circumstances exist to justify granting the application. The same prohibition on parole exists where a report from the police commissioner under s 193E states that there is a reasonable likelihood the prisoner may carry out a terrorist act and any of the following apply:

- the prisoner has been charged with, but not convicted of, a terrorism offence;
- the prisoner has been the subject of a Commonwealth control order;
- the parole board is satisfied the prisoner is or has been associated with a terrorist organisation, or with a person who has promoted terrorism.

Under those circumstances, parole must also be refused unless the parole board is satisfied that exceptional circumstances exist to justify granting the application. In considering whether exceptional circumstances exist to justify granting the parole application, the parole board may have regard to any relevant matter.[26]

In considering whether a prisoner has 'promoted terrorism', or whether the prisoner is or has been associated with a terrorist organisation or with a person who has promoted terrorism,[27] the parole board may have regard to a report from the Police Commissioner under s 193E and any other information the board considers relevant.

A person 'promotes terrorism' if the person:

- carries out an activity to support the carrying out of a terrorist act; or

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25 Explanatory notes, p 2.

26 Clause 13, inserting proposed new s 193B(3).

27 For the purposes of s 193B(1)(c) and s 193B(1)(d)(iii) respectively.

- makes a statement in support of the carrying out of a terrorist act; or
- carries out an activity, or makes a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.[28]

A 'terrorist act' in these instances 'includes a terrorist act that has not happened' and 'is not limited to a specific terrorist act'.[29]

In addition, new s 193B does not limit or otherwise affect the existing power of the parole board to refuse a parole application under s 193(1).[30]

4.2.2 Section 193E reports

New s 193D allows the parole board to ask the police commissioner to give the board a report about:

- whether a prisoner has, at any time, been convicted of or charged with a terrorism offence;
- whether a prisoner is or has been the subject of a Commonwealth control order;
- any promotion by a prisoner of terrorism;
- the likelihood of a prisoner carrying out a terrorist act;
- any association a prisoner has or has had with a terrorist organisation or a person who has promoted terrorism.

The report from the police commissioner is provided to the parole board under new s 193E(1) and the report may also include a reference to/disclosure of a conviction for a terrorism offence mentioned in s 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.[31]

4.2.3 Amendment, suspension and cancellation of parole orders

Clauses 14-16 respectively amend ss 205, 208A and 208B of the Corrective Services Act.

Currently, under s 205, the parole board may amend or remove a condition of a prisoner's parole order if the board reasonably believes the amendment or removal of the condition is necessary or if the board reasonably believes the prisoner poses a serious risk of harm to himself or herself.[32]

The parole board may also amend, suspend or cancel a parole order if the board reasonably believes that the prisoner subject to the order:

- has failed to comply with the order; or
- poses a serious risk of harm to someone else; or
- poses an unacceptable risk of committing an offence; or
- is preparing to leave Queensland without authorisation.[33]

Other grounds for amending, suspending or cancelling a parole order (other than a court ordered parole order) are if the board receives information that, had it been received before the parole order

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28 Clause 18, inserting proposed new s 247A(1).

29 Clause 18, inserting proposed new s 247A(2).

30 Clause 13, inserting proposed new s 193B(6)(a).

31 See proposed new s 193E(4). Section 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* states that where the rehabilitation period has expired in relation to a conviction recorded against any person and the conviction has not been revived in respect of the person, neither that person nor any other person, if the person knows that the rehabilitation period has expired, shall disclose the conviction (other than in the circumstances set out in that section).

32 Section 205(1) *Corrective Services Act 2006*

33 Section 205(2)(a) *Corrective Services Act 2006*

was made, would have resulted in the board making a different parole order or not making a parole order at all. A parole order may also be amended or suspended if the prisoner subject to the parole order is charged with committing an offence.[34]

If practicable, the parole board must, before amending a parole order, give the prisoner an information notice about the proposed amendment and a reasonable opportunity to be heard on the proposed change. This is not required where the parole order is to be suspended or cancelled.[35]

Clause 14 amends s 205(2) to allow the parole board to also suspend or cancel a parole order if the board reasonably believes the prisoner subject to the parole order poses a risk of carrying out a terrorist act.

Clause 15 amends s 208A(1) of the Corrective Services Act.

Section 208A(1) currently allows the chief executive to request that the parole board suspend a prisoner's parole order and issue a warrant for his/her arrest when the chief executive reasonably believes that the paroled prisoner has failed to comply with the parole order, poses a serious and immediate risk of harm to another person, poses an unacceptable risk of committing an offence, or is preparing to leave the State without authorisation.

The cl 15 amendment adds a new criteria to the above, being that the chief executive may request that the parole board suspend a prisoner's parole order and issue a warrant for his/her arrest when the chief executive reasonably believes that the paroled prisoner 'poses a risk of carrying out a terrorist act.'

The suspension of the parole order occurs if one of the criteria above in s 208A(1) is met. The cl 16 amendment to s 208B adds the new criteria of 'poses a risk of carrying out a terrorist act' to the criteria that can justify suspension of the parole order and issuing of a warrant for the prisoner's arrest.

4.2.4 Fixing parole eligibility dates

Currently, for a person sentenced to a period of imprisonment of three years or less, where the offence is not a serious violent offence or a sexual offence, the court must fix a date for the offender to be released from their imprisonment on parole (a parole release date).[36]

Clause 23 of the Bill amends s 160B of the PSA to insert a new subsection (4) that will allow the court to fix a parole eligibility date for an offender (a date when the offender can apply for parole to the parole board), instead of a parole release date, if the offender has, at any time, been convicted of a terrorism offence, or if he/she is the subject of a Commonwealth control order. The court may also fix a parole eligibility date under this provision if the court is satisfied that the offender has:

- carried out an activity to support the carrying out of a terrorist act; or
- 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 for the carrying out of a terrorist act.[37]

4.3 Issues raised in submissions and the departmental response

Concerns were expressed by submitters about amendments proposed for the Corrective Services Act.

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34 Section 205(2)(b)-(c) *Corrective Services Act 2006*

35 Section 205(3)-(4) *Corrective Services Act 2006*

36 See s 160B, *Penalties and Sentences Act 1992*

37 Note that a terrorist act includes a terrorist act that has not happened and is not limited to a specific terrorist act, see proposed new s 160B(5).

4.3.1 The disincentivising effect of a presumption against parole

A number of submitters raised concerns regarding the disincentivising effect of the presumption against parole created by the amendments to the Corrective Services Act.

The BAQ submitted:

> *The Association is concerned that the creation of a presumption against parole, and the restriction on judicial discretion in sentencing to a parole eligibility date (instead of a court ordered parole date) for particular offenders, will deter those offenders from meaningfully engaging in rehabilitative programs in custody.*
>
> *…*
>
> *Any sensible consideration of parole laws must include a consideration of the head sentences to which any parole application will apply. The majority of sentences imposed are likely to be finite sentences. To disincentivise participation in rehabilitative programs in custody is likely to result in the release of prisoners who are not rehabilitated - and not motivated to rehabilitate - at the conclusion of their sentences.*[38]

The submission from Dr Rebecca Ananian-Welsh and Associate Professor Adrian Cherney of the University of Queensland's TC Beirne School of Law also cautioned that:

> *A presumption against parole for terrorist offenders or radicalised prisoners can have a range of unintended consequences, one being an inmate may see no incentive in disengaging from extremism because there is no clear path offered to be released into the community. While the argument can be made that in these circumstances such individuals should not be released because they are not committed to changing their extremist beliefs or behaviours, facilitating terrorist disengagement is partly reliant on strategies that help aid community reintegration, with parole playing an important role in this regard.*[39]

The QLS submission noted its concerns about the disincentivising effect of a presumption against parole:

> *… the requirement for exceptional circumstances to obtain parole as seen in proposed section 193B(2) will mean that most prisoners will have no hope of parole. This poses a danger to the administration of justice, as there is no incentive to co-operate with the authorities or plead guilty to offences. It is a disincentive to rehabilitation. It removes an incentive for good behaviour while in custody and will not be conducive to good order within the prisons. In essence, the proposal is to prevent the release of prisoners who would otherwise be assessed by the Parole Board as an acceptable risk*.[40]

In response to this issue, the department advised:

> *The concerns raised are noted. Regardless of legislative changes, QCS will continue to provide opportunities for prisoners to engage in relevant programs and services to support their rehabilitation and reintegration in the community.*
>
> *As part of the implementation of the Sofronoff Review, the QCS Specialised Clinical Services Unit was established in 2017 to assist in the assessment and management of high harm offenders, including persons charged and convicted of terrorism and violent extremist offences.*
>
> *In 2018-19 QCS also received funding from the Counter Violent Extremism Sub-Committee to develop a professional practice model and practitioner resources to assist in the assessment,*

[38] Submission 1, p 4.

[39] Submission 2, p 5.

[40] Submission 5, p 7.

management and intervention of terrorist/radicalised offenders and develop improved offender support of terrorist/radicalised offenders. This model is under development.

QCS is also a member of the national Prisoner Management and Reintegration Working Group and participates in regular meetings and teleconferences with other correctional jurisdictions and relevant agencies in relation to radicalised offender management.

It is noted a parole eligibility date is not a guarantee the prisoner will be granted parole on that particular date. There is no 'right to liberty' for prisoners as the deprivation of liberty has already occurred by way of the sentence imposed by the Court.[41]

4.3.2 Fettering judicial discretion

The submission from BAQ was concerned at new restrictions on judicial discretion for parole, noting:

Clause 23 of the Bill proposes to amend s 160B of the Penalties and Sentences Act 1992 (Qld) (the Penalties and Sentences Act) to provide that the sentencing judge can only set a date at which the sentenced offender is eligible for parole (as opposed to a fixed date for release on parole).

…

The Association is concerned that the creation of a presumption against parole, and the restriction on judicial discretion in sentencing to a parole eligibility date (instead of a court ordered parole date) for particular offenders, will deter those offenders from meaningfully engaging in rehabilitative programs in custody.

The Association has argued in submissions to the Queensland Sentencing Advisory Council's inquiries that the sentencing judge is best placed to take into account all of the matters which are relevant to sentence and to produce the result that is most just for the offender and most constructive in promoting community safety. Arbitrary limits to the discretion of sentencing judges guarantee that the sentence will not fit the crime and the circumstances of the offender. Introducing restrictions based on the theme of connection to terrorism is another way of introducing arbitrariness to the justice system. Connections with terrorism that are decades old or recent, serious or trivial; talking about armed resistance to an oppressive foreign government or promoting a bombing of a major sporting event are all matters which can be taken into account in the sentencing context.

The Association is of the view that taking the sentencing discretion out of the hands of sentencing courts is not justified by choosing a set of themed offences because they are perceived to be serious.

…

Last, the Association notes that cl 13 of the Bill proposes to allow the parole board to refuse to grant parole where there is a report from the commissioner which states there is a reasonable likelihood the prisoner may carry out a terrorist attack. The Association is of the view that this type of decision would be better made by a judge, apprised of the admissible evidence, at the time of sentencing, than by the parole board, informed solely on a report from the commissioner.[42]

In response to BAQ's concerns, the department advised:

The amendment to the PSA does not require a sentencing court to set a parole eligibility date or limit judicial discretion in sentencing.

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41 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, pp 7-8.

42 Submission 1, pp 3 and 4.

The amendment provides that a sentencing court may fix a parole eligibility date instead of a parole release date if the offender has been convicted of a terrorism offence, is the subject of a control order or has promoted terrorism. The court will retain power to sentence an offender to a short period of imprisonment and fix a date for release of the offender to parole.[43]

And

It is a matter for PBQ to determine whether the prisoner falls within the presumption against parole. This is not a matter for the courts.

The Police Commissioner's report is limited to identifying that there is a reasonable likelihood a prisoner may carry out a terrorist act. This requirement will only apply to prisoners who first fall within section 1938(1)(d)(i) to (iii).

The purpose of this information, and the ability for PBQ to consider any other information determined relevant (including, if required, evidence tendered at sentencing), is to assist in determining whether the presumption against parole applies to a prisoner, and subsequently whether that prisoner is released on parole.

It is noted under the Corrective Services Act 2006*, the President and Deputy President of PBQ must be a former judge of a State Court, the High Court or a court constituted under a Commonwealth Act, former Magistrate (Deputy President only), or have qualifications, experience or standing the Governor in Council considers equivalent to these.*[44]

4.3.3 Scope of the Bill

The QLS expressed concern about the application of proposed s 193D to persons of less established culpability than those with terror convictions. The QLS submitted:

The Society is concerned with proposed section 193D.

In relation to proposed section 193D(a), the Society is concerned that this provision will apply to people who have previously been merely charged with an offence. That is, the regime will apply even if the person was exonerated. This is particularly relevant in Queensland where the test for charging an individual with an offence is the same as for arrest - reasonable suspicion alone.

Similarly, if a control order was imposed, but later realised to have been unnecessary, the restriction will also apply. Therefore, a person, once charged, regardless of whether the charges proceed or whether the person has been found guilty or innocent will be considered a terror suspect forever. This regime imposes legal consequences upon individuals not because of anything they have been proved to have done, but because they fell under suspicion at some time.

In relation to proposed section 193D(e) (analogous to our comments on proposed section 193B(1)(d)(iii)), this would apply to prisoners who have family "associations". Essentially, the proposal will have the effect of keeping people in prison because of the activities and actions of their relatives.[45]

In response to these concerns, the department advised:

The Bill implements a nationally consistent COAG commitment for a presumption against parole for prisoners who have demonstrated support for, or have links to, terrorist activity. The presumption against parole provisions were carefully crafted to ensure they meet the COAG commitment, but do not unfairly target prisoners with tenuous or weak links to terrorist activity.

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43 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 12.

44 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 9.

45 Submission 5, pp 7-8.

It will ultimately be a matter for PBQ to determine whether the prisoner falls within the presumption against parole provisions, and subsequently whether that prisoner is released on parole. This includes the ability for PBQ to determine that exceptional circumstances exist to justify granting parole for a prisoner who falls within the presumption against parole provisions.[46]

[46] Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 10.

5 Bail and release from detention - children and terror offences

5.1 Background

The explanatory notes for the Bill advise, in respect of the amendments concerning children:

> *These amendments to the operation of bail for adults and children have no existing comparators within the Bail Act or YJA. However, the amendments are considered an appropriate and proportionate response to the unique and extreme risk to community safety posed by people with demonstrated links to terrorist activity. It does not follow, and in no way is it the Government's intention, that these amendments should be seen as setting a new norm for bail reform in relation to other categories of offending or offenders.*
>
> *Additional amendments to both the Bail Act and the YJA also require bail decision makers to give specific consideration to potential links to terrorism when considering the question of unacceptable risk in relation to bail for both adults and children generally.*
>
> *…*
>
> *The Bill also amends the YJA to remove the discretion of a sentencing court to order a release date any earlier than after serving 70% of a period of detention. This will apply to a child who has been found guilty of a terrorism offence, who is the subject of a control order, or who has promoted terrorism.*
>
> *The removal of the sentencing court's discretion in this context has no existing precedent under the YJA. As with the approach being taken in relation to bail for children it is not the Government's intention to create a precedent in relation to other categories of child offenders but rather to deal with the specific risk posed by child offenders with terrorism links.*
>
> *Additional amendments to the YJA require conditions to be imposed on the supervised release of a child who has been found guilty of a terrorism offence, who is the subject of a control order, or who has promoted terrorism. The conditions must be reasonably necessary to reduce the risk of the child carrying out a terrorist act or promoting terrorism.*
>
> *It is acknowledged that overall the Bill's amendments distinguish between how children with links to terrorism are dealt with in comparison to children charged with serious offences. The amendments also arguably depart from the objectives and principles of the YJA which exist to ensure that the special vulnerability of children is recognised and appropriately accommodated in the justice system. As has been indicated above, while it is recognised that the Bill's measures are extraordinary they are only justified because of the extreme risk to the community posed by persons with established terrorism links. While the number of children engaging in terrorism is not increasing in Australia, the current risk is predicted to persist for some time.*[47]

5.2 Proposed amendments to the youth justice system

Part 5 of the Bill amends the YJA in respect of bail for, and release of, certain child offenders.

5.2.1 Reversal of the statutory presumption in favour of bail for a child.

Section 47 of the YJA provides for the general principle with respect to bail for children, being that 'Subject to this Act, the Bail Act 1980 applies in relation to a child charged with an offence.'

Section 48 of the YJA provides for decisions about release or bail of children being held in custody in connection with a charge of an offence. Section 48(3) of the YJA lists the matters that a court or police officer must have regard to when determining questions of release or bail. Those matters include such things as the nature and seriousness of the offence; the child's character, criminal history and other relevant history, associations, home environment, employment and background; the history of any

[47] Explanatory notes, pp 2-3.

previous grants of bail to the child; the strength of the evidence against the child relating to the offence, and, for Aboriginal or Torres Strait Islander children – any submissions made by the community justice group in the child's community. Any other relevant matter may also be taken into consideration.[48]

Clause 26 of the Bill proposes to amend s 48(3) to insert additional matters to be taken into consideration, being:

- any promotion by the child of terrorism;[49]
- any association that the child has or has had with a terrorist organisation, or with a person who has promoted terrorism, that the court or officer is satisfied was entered into by the child for the purpose of supporting the organisation or person in the carrying out of a terrorist act or in promoting terrorism.[50]

As with similar aforementioned provisions for adults, a person or organisation promotes terrorism if the person or organisation:

- carries out an activity to support the carrying out of a terrorist act; or
- makes a statement in support of the carrying out of a terrorist act; or
- carrries out an activity, or makes a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.[51]

Also, as with the provisions for adults, a reference to a terrorist act includes a terrorist act that has not happened and is not limited to a specific terrorist act.[52]

Clause 27 of the Bill inserts a new s 48A into the YJA that requires exceptional circumstances to justify a court releasing a child from custody where that child has been charged with an offence and the child has a prior finding of guilt for a terrorism offence or where the child is or has been the subject of a Commonwealth control order.

As advised in the explanatory notes in respect of new s 48A:

> *Despite any other provision of the* Youth Justice Act 1992 *or the* Bail Act 1980*, a court*[53]*must not release the child from custody unless satisfied that exceptional circumstances exist to justify releasing the child.*
>
> *This section introduces a reversal of the statutory presumption in favour of bail for a child. It affects any child who has previously been found guilty of a terrorism offence; or is, or has been, the subject of a Commonwealth control order and applies to all charges to which an application for bail relates.*
>
> *In considering whether exceptional circumstances exist to justify releasing the child, the court may have regard to any relevant matter. If the court releases the child, the order releasing the child must state the reasons for the decision.*

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48 See s 48(3)(h), *Youth Justice Act 1992.*

49 See s 48(3)(f), *Youth Justice Act 1992.*

50 See s 48(3)(g), *Youth Justice Act 1992.*

51 Proposed new s 48(5), *Youth Justice Act 1992* and see also cl 29 inserting new s 226A(1) into the YJA.

52 Proposed new s 48(6), *Youth Justice Act 1992* and see also cl 29 inserting new s 226A(2) into the YJA.

53 Proposed new s 48A and amendments to s 50 YJA ensure that bail decisions for a child previously found guilty of a terrorism offence or that is/has been the subject of a Commonwealth control order, are limited to being made by the Childrens Court or Supreme Court – see also explanatory notes p 16.

New section 48A does not affect the operation of sections 48(8) (unacceptable risk) or (10) (safety considerations). If a court decides that exceptional circumstances exist to justify releasing the child, the court must then apply section 48.[54]

5.2.2 Release of child after period of detention

Clause 30 amends s 227 of the YJA to provide that a court may not make an order that a child be released from detention after serving between 50 and 70 percent of a period of detention, if the child has, at any time, been found guilty of a terrorism offence, or is the subject of a Commonwealth control order, or if the court is satisfied the child has promoted terrorism.

As advised in the explanatory notes, 'this amendment creates a non-release period by limiting the operation of section 227. A court sentencing a child for an offence cannot reduce the period of detention to less than 70 percent of the period of detention in those circumstances.'[55]

Clause 32 inserts new s 228A into the YJA to allow the chief executive to impose any reasonably necessary and appropriate conditions on a supervised release order for a child who has at any time been found guilty of a terrorism offence, who is the subject of a Commonwealth control order or who has, to the satisfaction of the chief executive, promoted terrorism, to reduce the risk of the child carrying out a terrorist act or promoting terrorism. Examples of conditions that may be imposed are given in s 228A and include a condition that prohibits a child from being at a stated place, a condition that prohibits the child from communicating with a stated person, and a condition that imposes a curfew on the child.

5.3 Issues raised in submissions and the departmental response

Submitters were generally concerned about the Bill's application to children. Those concerns fitted into four broad categories, discussed below.

5.3.1 Children being treated the same as adults

Youth Advocacy Centre (YAC) expressed its concern about the treatment of children under the Bill:

YAC's concern in relation to the Bill is that it expressly intends to treat children in the same way as adults despite the fact that we have a modified criminal justice system for dealing with children who have, or are alleged to have, broken the law. This is because children are considered to be less culpable than adults due to their limited life experience and an increased understanding that children and young people's development involves periods of opportunistic action, risk taking and reduced consequential thought. We also know that their behaviour can be changed with the right interventions.

This legislation, however, will apply to children from the day they turn 10 years of age effectively in the same way as adults. It is unclear why we would place on them the same level of decision making and responsibility as an adult when there are clear reasons why we generally do not do so. Terrorism is simply a descriptor for a group of criminal acts of a specific nature. Doli incapax *in Queensland is a very low bar and we have no confidence that this will protect children under the age of 14 years. Our understanding is that it has rarely been successfully argued in Queensland. We note that the Bill is part of a national COAG commitment but also that* doli incapax *in other States and Territories is defined differently and provides greater protection for younger children.*[56]

The submission from Dr Rebecca Ananian-Welsh and Associate Professor Adrian Cherney of the University of Queensland's TC Beirne School of Law cautioned that:

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54 Explanatory notes, p 16.

55 Explanatory notes, p 17.

56 Submission 4, p 2.

The special, vulnerable place of children is well-recognised in the common law and more broadly in the rules, principles and understandings on which our society is based. To reverse the presumptions in favour of bail and parole for children gravely undermines these principles.[57]

In response to this issue, the department advised:

The COAG commitment has been applied to children in Queensland to create, to the greatest extent possible, a nationally consistent bail and parole regime to counter the evolving threat of terrorism in Australia. This approach will ensure that no one jurisdiction is more vulnerable than another. Of those jurisdictions that have implemented the COAG commitment so far, all have applied the presumption against bail to children. New South Wales, Victoria and South Australia have applied the presumption against parole to children. Tasmania has not implemented the presumption against parole to children. On 28 November 2018, Western Australia introduced a Bill that applies the presumption against bail to children. Western Australia has indicated that a further Bill will be introduced in 2019 that deals with parole for people with links to terrorism.

The Bill recognises the particular vulnerability of children by:

(i) preserving the authority for a court to release a child without bail under section 55 of the Youth Justice Act 1992 *(Youth Justice Act) if the child satisfies the new exceptional circumstances test connected to the presumption against bail; and*

(ii) limiting consideration of associations of children to those associations that are for the purpose of supporting the carrying out of a terrorist act or promoting terrorism. This recognises the vulnerability and lack of autonomy of children in their associations.[58]

5.3.2 Youth justice principles

Submitters were also concerned about an apparent conflict between the Bill and the Charter of Youth Justice Principles. The submission from BAQ observed:

As far as the proposal relates to children, the Association notes that the Youth Justice Act includes in Schedule 1 the Charter of Youth Justice Principles. Principle 17 provides that "A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances". It is difficult to see how this principle can be reconciled with any presumption against bail.[59]

The submission from Dr Rebecca Ananian-Welsh and Associate Professor Adrian Cherney of the University of Queensland's TC Beirne School of Law similarly cautioned that:

The Bill contravenes the Convention on the Rights of the Child, particularly Article 37 which identifies that that the arrest, detention or imprisonment of a child 'shall be used only as a measure of last resort and for the shortest appropriate period of time'. It also contravenes Youth Justice Principles and is inconsistent with the broader approach of courts to making similar determinations in relation to children, even children standing trial for serious criminal offences.[60]

In response to these concerns, the department advised:

The amendments impact upon Principle 17 of the Youth Justice Principles that provide for detention to be a last resort. The approach taken by the Bill to apply the presumption against bail to children is considered necessary in view of the unique and extreme risk to community safety that is posed by people with demonstrated links to terrorist activity.

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57 Submission 2, p 3.

58 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, pp 12-13.

59 Submission 1, p 2.

60 Submission 2, p 4.

The provisions in the Bill are limited to apply only to those offenders with demonstrated and proven links to terrorist activity and appropriately recognise the direct risk such links pose to the community.[61]

5.3.3 Reversal of the presumption in favour of bail

The QLS expressed reservations about the operation of cl 27, noting:

The Society is concerned with clause 27 and does not support the reversal of the statutory presumption in favour of bail for a child.

…

… the reversal of the onus of proof will have significant adverse impacts on children and young people. Reversing the presumption of innocence for a child aged between 10 and 14 does not accord with section 29 of the Criminal Code Act 1899*, which recognises the age and immaturity of children and young people. Again, no evidence of increased terrorist activity by children or young people has been provided to justify the reversal of the statutory presumption of bail. As such, this reversal of the onus of proof is likely to result in the imprisonment of children because of their parents' activities.*[62]

In response to their concerns, the department advised:

Bail decisions for charges for particular offences relating to terrorism are dealt with under the Crimes Act 1914 *(Cth) and a presumption against bail already exists for both children and adults.*

Section 48 of the Youth Justice Act 1992 *provides a framework for a court or police officer in making a decision about the release or bail of a child in custody in connection with a charge for an offence. The amendments in the Bill include specific considerations when a child has demonstrated support for, or links to, terrorist activity. The approach taken by the Bill is considered necessary in view of the unique and extreme risk to community safety that is posed by people with demonstrated links to terrorist activity. The proposed amendments are intended to implement the COAG commitment and achieve national consistency as far as possible.*[63]

The Department's briefing paper on the Bill also notes that:

Of those jurisdictions that have so far implemented the COAG commitment, all have applied the reverse presumption for bail to children. NSW, Victoria and South Australia have applied the reverse presumption for parole to children. Tasmania, however, does not.[64]

5.3.4 Fettering judicial discretion

Several submitters expressed concern about the proposed limit on a sentencing judge's discretion to order a child's early release from detention.

The BAQ submitted:

With respect to children, the proposed amendments to the Youth Justice Act would affect the automatic release of children from sentences of detention. Section 227(1) of the Youth Justice Act provides for the automatic release of a child from detention after that child has served 70 percent of their sentence. If a sentencing judge finds that there are special circumstances, they may order that the child be released after serving between 50 and 70 percent. Special circumstances can include pleas of guilty, co-operation with authorities, absence of prior convictions, remorse and prospects of rehabilitation (see, e.g. R v IC [2012] QCA 148*).*

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61 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 13.

62 Submission 5, p 5.

63 Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 14.

64 Department of Justice and Attorney-General, briefing paper, p 2.

The proposed amendment to the Youth Justice Act would abolish the discretion of a sentencing judge imposing a sentence of detention to order the release of the child to a supervised release order after serving between 50 and 70 percent of the sentence. The Association opposes this proposal, as it opposes limitations on the discretion of sentencing judges generally.

The observations above relating to the Charter of Youth Justice Principles and the Convention apply equally to the abolition of judicial discretion in the fixing of a release date. A sentencing judge cannot ensure that a child is detained only for the least time justified in the circumstances without some discretion as to the setting of a release date.

The Association submits that a judge sentencing a child for a terrorism offence ought to have available to them the full gamut of discretionary powers to properly fashion a sentence appropriate to the circumstances of each case. This includes the ability to fix an earlier than usual release date when special circumstances warrant it.

Special circumstances in such cases could include demonstrated efforts at rehabilitation and deradicalisation during the period between the child being charged and being sentenced. Such efforts ought to be facilitated and encouraged by sentencing legislation as they are the very matters which merit recognition in the sentencing process.[65]

The submission from Dr Rebecca Ananian-Welsh and Associate Professor Adrian Cherney of the University of Queensland's TC Beirne School of Law cautioned that:

The provisions of the Bill requiring the accused to demonstrate exceptional circumstances to be granted bail or parole apply to children as well as adults. The Bill further removes the independent discretion of the sentencing court to set a release date any earlier than 70 per cent of the total sentence for a child who has demonstrated links to terrorism.

The removal of a court's discretion undermines the separation of powers and should be approached with great care. In this case, these provisions remove the ability of the court to take into account the circumstances of the individual case and of the individual child when making bail, parole and sentencing determinations. For instance, the court will have a very limited capacity to take into account factors such as the age of the child and the extent to which they made their own decisions or were influenced by others in the course of the alleged conduct.[66]

The QLS had similar reservations, noting:

… clause 30 removes the discretion of the court to release the child if the child has a conviction for a terrorism offence, is the subject of a control order, or has 'promoted terrorism'. This is an undue fetter on the court's power to impose a just sentence based on cogent evidence, and takes away the flexibility in the sentencing and detention of a young person.

…

The Society considers that the imposition of a mandatory non-parole period for children is an undue fetter on the Court's power to impose a just sentence.

…

It is essential that judicial discretion be maintained for sentencing in all youth criminal matters, including those arising from alleged terrorist activity. A mandatory sentence, by definition, prevents a court from fashioning a sentence appropriate to the facts of the case. A civilised society should put its trust in judicial officers to use their discretion based on individual circumstances.[67]

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65 Submission 1, pp 4-5.

66 Submission 2, p 3.

67 Submission 5, p 9.

In response, the department advised:

> *The Bill does limit judicial discretion in particular circumstances. However, the proposed amendments are considered necessary in view of the unique and extreme risk to community safety that is posed by people with demonstrated links to terrorist activity.*
>
> *While the Bill removes the opportunity for a court to consider the early release of a child, the full range of sentencing options remain at the discretion of a court, including setting the period of detention in circumstances when this is considered necessary in an individual case.*
>
> *The flexible sentencing framework that exists under the* Youth Justice Act 1992 *will still allow a sentencing judge to properly determine a sentence that is appropriate to the circumstances of each case. This includes the discretion to set the duration of a detention order if a custodial sentence is warranted. Circumstances such as a plea of guilty, co-operation with authorities, criminal history, remorse and prospects of rehabilitation can still be taken into consideration by the sentencing court in determining the head sentence. The court can also combine a detention order with a community based order if of the view that a longer period of supervision in the community would benefit the child.*
>
> *Police will also continue to have a range of diversionary options available to them when dealing with young people, for example, cautioning and referrals to restorative justice programs. These options can be used by police at any time prior to formally charging a child*.[68]

5.3.5 Children 'promoting terrorism'

Concern was raised by YAC about the risk of children being assessed as 'promoting terrorism'. YAC was particularly concerned that a child's use of social media could place the child at high risk of allegations that they have been 'promoting terrorism'. They submitted:

> *Of particular concern is that use of social media is likely to place children at high risk of allegations of "promoting terrorism". Following our experience of children being charged with making and distributing child exploitation material for sending a picture of themselves by phone to someone else, we are not confident that brash and immature remarks on social media will not be given a more sinister interpretation by adults than is necessary.*
>
> *It is likely that if children are involved in terrorist related activities, that they have been influenced and supported in doing this by an adult or adults either directly or through other media*.[69]

In response, the department advised:

> *The presumption that bail will not be granted to a child who has demonstrated support for, or has links to, terrorist activity is limited to a child who has previously been convicted of a terrorism offence, or who is currently, or has previously been, subject to a Commonwealth control order.*
>
> *The Bill does introduce 'promoting terrorism' as a new factor to be taken into consideration when determining bail generally, however this does not trigger a presumption against bail. Whether a court is satisfied that a child has promoted terrorism will depend on the facts of each matter and courts will have full judicial discretion to weigh the evidence and take it into account as appropriate. The Bill does not reverse the presumption of innocence for a child.*[70]

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[68] Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, pp 15-16.

[69] Submission 4, p 2.

[70] Department of Justice and Attorney-General, correspondence dated 7 January 2019, attachment, p 16.

6 Committee comment

The committee notes the concerns of submitters that a higher threshold test for the granting of bail and parole could be seen as an erosion of the usual legal protections afforded to defendants and prisoners in the Australian legal system. The committee considers however that Queensland's participation with the COAG commitment and the unique risk that could be posed by persons with terrorism antecedents or associations weigh in favour of these special measures.

7 Compliance with the *Legislative Standards Act 1992*

7.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

7.2 Compliance with the *Legislative Standards Act 1992*

In its examination of the Bill, the committee considered that clauses 3, 9, 10, 13, 19, 20, 23, 24, 26, 27, 30, 32 and 34 of the Bill raise potentially significant issues of fundamental legislative principle.

7.2.1 Bail, parole and youth justice amendments

Clause 9 inserts a new s 16A in the Bail Act regarding bail for persons convicted of terrorism offences or subject to Commonwealth control orders. New s 16A(1) provides that the section applies to an adult defendant who has previously been convicted of a terrorism offence, or is, or has been, the subject of a Commonwealth control order. New s 16A(2) provides that a court must refuse bail to such a defendant, unless the court is satisfied that 'exceptional circumstances' exist to justify granting bail.

As acknowledged in the explanatory notes, this establishes a higher threshold test for such defendants in applying for bail. What amounts to 'exceptional circumstances' is a matter for the court in each case.

Clause 26 amends s 48(3) of the YJA regarding consideration of bail for child defendants. It adds further factors that must be considered by a court or police officer in assessing whether there is an 'unacceptable risk', being any promotion by the child of terrorism; or any association the child has, or has had, with a terrorist organisation, or a person who has promoted terrorism, if the association is or was intended to support the organisation or person in the carrying out of a terrorist act or in promoting terrorism.

Clause 27 inserts new s 48A, which will apply to a child who is in custody in connection with a charge for any offence, if the child has previously been found guilty of a terrorism offence, or is, or has been, the subject of a Commonwealth control order. It provides that (despite any other provision of the YJA or Bail Act) a court must not release the child from custody unless satisfied that exceptional circumstances exist to justify releasing the child. It affects any child who has previously been found guilty of a terrorism offence, or is, or has been, the subject of a Commonwealth control order. It will apply to all charges to which an application for bail relates. If the court releases the child, it must provide its reasons in the order. This section reverses the statutory presumption in favour of bail for a child.

Clause 13 makes amendments to the Corrective Services Act which would have broadly similar effects on applications for parole made by prisoners who fall within the same categories (who have been convicted of a terrorism offence, are the subject of a control order, or have promoted terrorism). These amendments establish a presumption against parole for such prisoners, and also in circumstances where the parole board receives a report from the police commissioner that there is a reasonable likelihood that a prisoner may carry out a terrorist act.

Clause 30 amends s 227 of the YJA. Currently, that section provides in part:

> *(1) Unless a court makes an order under subsection (2), a child sentenced to serve a period of detention must be released from detention after serving 70% of the period of detention.*

> *(2) A court may order a child to be released from detention after serving 50% or more, and less than 70%, of a period of detention if it considers that there are special circumstances, for example to ensure parity of sentence with that imposed on a person involved in the same or related offence.*

The effect of the amendment will be that a court cannot make an order under s 227(2) in respect of a child where:

(a) the child has, at any time, been found guilty of a terrorism offence; or

(b) the child is the subject of a Commonwealth control order; or

(c) the court is satisfied the child has promoted terrorism.

The amendment in cl 30 adversely affects the rights of certain children to obtain an early release in certain circumstances. Additionally, the amendment might be seen as not having sufficient regard for the separation of powers and the independence of the judiciary. The QLS described the amendment as 'an undue fetter on the Court's power to impose a just sentence'.[71]

The explanatory notes acknowledge that cl 30 would:

> … [remove] *the ability of the Court when sentencing a child to take into consideration the circumstances of an individual case and to adjust the period of time spent in actual custody by the child accordingly. This approach is inconsistent with the approach that may be taken by the Court in sentencing children who do not have terrorism links, even those who have committed more serious offences.*[72]

The explanatory notes then give this justification:

> *However, any unfairness to the individual arising from these provisions in the Bill must also be considered in the context of the current operation of the YJA. In all cases where a child is to be sentenced to a period of detention, 70 per cent is the starting point for time to be served in detention. The court is only permitted to reduce this period to a minimum of 50 per cent, and only if the court is satisfied that special circumstances exist.*[73]

Clause 32 amends the YJA by adding s 228A, whereby the chief executive is required to impose conditions on a supervised release order for a child with links to terrorism that the chief executive considers are reasonably necessary and appropriate to reduce the risk of the child carrying out a terrorist act or promoting terrorism. Examples put forward in the Bill include a condition that prohibits the child from being at a stated place or communicating with a stated person, or a condition that imposes a curfew on the child.

The amendment in cl 32 would interfere with the normal activities of particular children.

The explanatory notes acknowledge that cl 32:

> *… may be seen as limiting the discretion of the chief executive in determining whether or not conditions should be attached to the supervised released order.*

And give this justification:

> *… the requirement for the chief executive to impose conditions is balanced against the need for any conditions imposed to be reasonably necessary and appropriate to reduce the risk that the child may carry out a terrorist act or promote terrorism. The amendments do not require the*

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71 Submission 5, p 9.

72 Explanatory notes, p 5.

73 Explanatory notes, p 5.

chief executive to impose any additional conditions on a child unless the chief executive considers such conditions are required to reduce a terrorism risk posed by the child.

Issues of fundamental legislative principle

Section 4(1) of the LSA provides that fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The presumption in favour of bail and equality before the law are integral elements of the rights and liberties of individuals. The amendments reversing the presumption for bail and requiring bail to be determined by a court will potentially impact on the rights and liberties of individuals.

Further, the explanatory notes accept that, if a broad interpretation of the presumption of innocence is adopted, the provisions could also be seen as a reversal of the onus of proof in criminal proceedings, given that the provisions displace the general expectation of bail prior to conviction.[74]

While not currently existing in the Bail Act itself, exceptional circumstances is the threshold generally applied by precedent, for an application for bail pending appeal and where a defendant has been committed for trial on a charge of murder.[75]

Legislation breaches a specific fundamental legislative principle if the onus of proof is reversed in criminal matters without adequate justification (LSA, s 4(3)(d)).

The explanatory notes acknowledge the unusual nature of the provisions and justify them this way:

These amendments to the operation of bail for adults and children have no existing comparators within the Bail Act or Youth Justice Act 1992. However, the amendments are considered an appropriate and proportionate response to the unique and extreme risk to community safety posed by people with demonstrated links to terrorist activity.[76]

The explanatory notes summarise the justification for the breaches of fundamental legislative principle occasioned in these provisions:

Overall the amendments to the Bail Act are considered justified because they are required to enhance community safety in response to the unique and potentially significant risks posed by people with demonstrated links to terrorist activity.[77]

The explanatory notes expand on this position:

The amendments to bail are limited in their application to circumstances where a defendant's support of or proximity to terrorism has been demonstrated. No person's rights to be released on bail are extinguished automatically and rights to appeal a decision to refuse bail are retained. Each person is able to present evidence and potentially satisfy the exceptional circumstances test for bail. However, for those persons who pose a higher risk on release, there is a higher bar for release. This is appropriate and proportionate given the seriousness of the matters dealt with and the direct risk posed to the Queensland community. What amounts to exceptional circumstances will be determined by the court on a case-by-case basis considering all of the relevant circumstances. The defendant is best placed to present this evidence to the court as it is likely to include matters specifically within their knowledge.[78]

Conversely, the QLS was critical:

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74 Explanatory notes, p 3.

75 Explanatory notes, p 3.

76 Explanatory notes, p 2.

77 Explanatory notes, p 4.

78 Explanatory notes, p 3.

> *Bail is a fundamental part of a democratic society and is an expression of the right to liberty. Any decision regarding the granting of bail to a defendant raises the questions fundamental to our justice system: a person's right to the presumption of innocence and to liberty. Incursions on this right must not be taken lightly. In recognition of this importance, the fundamental legislative principles require that legislation does not reverse the onus of proof in criminal proceedings without adequate justification. Reversal of the legal burden of proof arguably provides the greatest interference with the presumption of innocence, and its necessity requires the strongest justification.*[79]

In relation to the amendments to the YJA, the explanatory notes acknowledge the special position of children in the justice system as recognised in that Act, and offer this justification for those amendments:

> *The amendments also arguably depart from the objectives and principles of the YJA which exist to ensure that the special vulnerability of children is recognised and appropriately accommodated in the justice system. As has been indicated above, while it is recognised that the Bill's measures are extraordinary they are only justified because of the extreme risk to the community posed by persons with established terrorism links. While the number of children engaging in terrorism is not increasing in Australia, the current risk is predicted to persist for some time.*[80]

There is also acknowledgement in the explanatory notes that these amendments are contrary to provisions of the United Nations Convention on the Rights of the Child:

> *In relation to the amendments to the YJA the following articles of the United Nations Convention on the Rights of the Child (CRC) are potentially enlivened. Article 37 of the CRC provides that the arrest, detention or imprisonment of a child 'shall be used only as a measure of last resort and for the shortest appropriate period of time'. This is reflected in principle 17 of the Youth Justice Principles. Further, article 3 of the CRC provides that the best interests of the child shall be a primary consideration in all actions concerning children.*[81]

The YJA provides that the youth justice principles (set out in the Act at Schedule 1) underlie the operation of the Act.

Again, justification is offered in the notes:

> *Any potential breaches of these rights and fundamental legislative principles are considered justified by the unique threat to community safety posed by terrorism and the need to counter this risk, as far as is possible and in an appropriate and proportionate way.*[82]

BAQ, making reference to principle 17, states:

> *It is difficult to see how this principle can be reconciled with any presumption against bail.*[83]

These amendments are also the subject of criticism by YAC Inc:

> *YAC's concern in relation to the Bill is that it expressly intends to treat children in the same way as adults despite the fact that we have a modified criminal justice system for dealing with children who have, or are alleged to have, broken the law. This is because children are considered to be less culpable than adults due to their limited life experience and an increased understanding that children and young people's development involves periods of opportunistic action, risk*

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79 Submission 5, p 2.

80 Explanatory notes, p 3.

81 Explanatory notes, p 5

82 Explanatory notes, p 5.

83 Submission 1, p 2.

taking and reduced consequential thought. We also know that their behaviour can be changed with the right interventions.

This legislation, however, will apply to children from the day they turn 10 years of age effectively in the same way as adults. It is unclear why we would place on them the same level of decision making and responsibility as an adult when there are clear reasons why we generally do not do so.[84]

The justifications provided in the explanatory notes can be summarised in this statement:

Overall the amendments to the Bail Act are considered justified because they are required to enhance community safety in response to the unique and potentially significant risks posed by people with demonstrated links to terrorist activity.[85]

The explanatory notes themselves do not explain how the bail amendments are required to enhance safety in those circumstances nor how they will achieve that purpose.

Committee comment

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of those individuals. The committee notes the departure from usual legal principles that is inherent in the Bill's presumption against bail and parole for persons with terrorism related convictions and associations, but considers that public safety considerations justify the departure from fundamental legislative principles in these instances.

7.2.2 Retrospective application

There are a number of provisions in the Bill which will have a retrospective element to their application.

Clause 10 inserts new s 47 in the Bail Act. Section 47 is a transitional provision, the effect of which is to make it clear that the Bail Act amendments will apply to decisions regarding bail made after the commencement, irrespective of when the relevant offence occurred or any proceeding for that offence commenced.

Clause 33 inserts similar transitional provisions (ss 394 and 395) in the YJA, with similar effects regarding bail applications.

Clause 19 inserts part 13 in the Corrective Services Act. Again, these are transitional provisions, which have the effect that various of the new amendments to the Act will apply in respect of parole applications and orders made before the commencement of those provisions.

Clause 24 inserts a transitional provision (s 255) in the PSA to the effect that the relevant amendments in the Bill will apply in relation to sentencing for offences or convictions before or after the commencement of the amendments.

Issues of fundamental legislative principle

Section 4(3)(g) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of the individual depends on whether the legislation adversely affects rights and liberties, or imposes obligations, retrospectively. Strong argument is required to justify provisions having an adverse effect on rights and liberties, or imposing obligations, retrospectively.

The retrospective operation of the various provisions was criticised by BAQ:

… the Association notes that the Bill proposes transitional provisions which would make the effect of the proposed amendments with respect to bail for adults and children, parole for adults, and release from detention for children, retrospective. The Association is opposed to the creation of

[84] Submission 4.

[85] Explanatory notes, p 4.

retrospective legislation that has the potential to significantly affect the right to liberty of individuals, particularly children.[86]

The explanatory notes address the retrospectivity involved in the transitional operation of the provisions regarding bail:

This retrospective application is justified as the provision is procedural in nature and will ensure that the identified risk is considered for all future decisions regarding bail regardless of the stage of the relevant proceedings.[87]

The explanatory notes also acknowledge the breaches of fundamental legislative principle involved in the proposed amendments to the Corrective Services Act and provide the following justification:

… to apply the proposed presumption against parole to persons with terrorism links retrospectively potentially impacts on the rights and liberties of individuals … The retrospective application of the proposed amendments will ensure that the parole board and Queensland Corrective Services can respond to all identified terrorism related risks of a prisoner irrespective of the stage of a parole application or parole status of a prisoner.

It should be further noted that a parole eligibility date is not a guarantee that the prisoner will be granted parole on that particular date. There is no 'right to liberty' for prisoners as the deprivation of liberty has already occurred by way of the sentence imposed by the Court.

Nevertheless, as with the amendments to adult bail, the amendments to the Corrective Services Act are limited in their application to circumstances where the parole board is satisfied as to the prisoner's links to terrorism. The parole board may have regard to any relevant matter in making its decision in relation to parole. This includes the provision of a report by the commissioner of police in relation to any reasonable likelihood that the prisoner may carry out a terrorist act.[88]

Committee comment

The committee notes the concerns regarding the potentially retrospective application of some provisions of the Bill however considers that the limited application of the provisions and the overarching public safety considerations justify any departure from fundamental legislative principles.

7.2.3 The delegation of legislative power

The Bill inserts a definition of 'terrorism offence' into a number of Acts.

The relevant clauses are as follows:

- **Clause 3** inserts this definition into s 6 of the Bail Act.
- **Clause 20** inserts this definition into schedule 4 of the Corrective Services Act.
- **Clause 23** inserts this definition into s 160B of the PSA.
- **Clause 34** inserts this definition into schedule 4 of the YJA.

The definition of 'terrorism offence' sets out a number of specified offences, and adds:

(f) another offence against a provision of a law of the Commonwealth or another State if the provision -

(i) is prescribed by regulation; and

[86] Submission 1, p 5.

[87] Explanatory notes, p 4.

[88] Explanatory notes, p 4.

(ii) is in relation to an activity that involves a terrorist act, or preparatory to the carrying out of an activity that involves a terrorist act.

The provision allows for the possibility that a range of offences could be prescribed by regulation, provided that the offence must be *in relation to an activity that involves a terrorist act, or is preparatory to the carrying out of an activity that involves a terrorist act.*

This aspect is referred to in the explanatory notes, in providing the following justification for any breach of fundamental legislative principles:

While the definition allows for the delegation of legislative power, the regulation making power is strictly limited to the prescription of additional offences within another jurisdiction that are in relation to an activity that involves a terrorist act or something preparatory to the carrying out of a terrorist act. This provides a narrow and clearly identified power within the substantive legislation. This is considered justified to ensure Queensland can rapidly respond to the continually evolving threat of terrorism.[89]

Issues of fundamental legislative principle

Section 4(4) of the LSA states that:

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill -

(a) allows the delegation of legislative power only in appropriate cases and to appropriate persons

This principle is concerned with the level at which delegated legislative power is used.

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

Committee comment

The committee notes that the list of terrorism offences can be expanded by regulation. The committee also considered the inherent limitation on the delegation of legislative power, being that any prescribed offence must be *in relation to an activity that involves a terrorist act, or preparatory to the carrying out of an activity that involves a terrorist act*. The committee is of the view that allowing the list of terrorism offences to be dynamic and evolving will help ensure that law enforcement officers have the legislative support needed to respond quickly to evolving threats of terrorism.

7.3 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins and of the various issues of fundamental legislative principle which are enlivened by the Bill.

The committee notes however that the readability of the explanatory notes could be enhanced by their identifying the specific clauses being discussed when canvassing issues of fundamental legislative principles.

[89] Explanatory notes, p 5.

Appendix A – Submitters

Sub #	Submitter
001	Bar Association of Queensland
002	Dr Rebecca Ananian-Welsh and Associate Professor Adrian Cherney
003	Parole Board Queensland
004	Youth Advocacy Centre Inc.
005	Queensland Law Society

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Mrs Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Kristina Deveson, Principal Legal Officer, Strategic Policy and Legal Services

Department of Child Safety, Youth and Women

- Ms Megan Giles, Executive Director, Strategic Policy and Legislation, Strategy

Queensland Corrective Services

- Ms Kate Petrie, Director, Policy and Legislation, Strategy and Governance

Appendix C – Witnesses at public hearing

Queensland Law Society

- Mr Bill Potts, President
- Mr Ken Mackenzie, Accredited Specialist in Criminal Law and Member of the Queensland Law Society Criminal Law Committee
- Ms Deborah Kim, Policy Solicitor

TC Beirne School of Law, The University of Queensland

- Dr Rebecca Ananian-Welsh, Senior Lecturer

Parole Board Queensland

- Mr Michael Byrne QC, President