

Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018.

Policy objectives and the reasons for them

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.

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.

Achievement of policy objectives

The Bill amends the *Bail Act 1980* (the Bail Act), the *Corrective Services Act 2006* (the CSA), the *Penalties and Sentences Act 1992* (the PSA) and the *Youth Justice Act 1992* (the YJA) to give effect to the COAG commitment in Queensland.

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.

This introduces a new higher threshold test into the Bail Act and introduces a reverse presumption of bail for children where this has not previously applied under the YJA.

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 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.

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.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

Any costs arising from these legislative amendments will be met from existing agency resources.

Consistency with fundamental legislative principles

Proposed amendments to the Bail Act to reverse the presumption for bail, and require bail to be determined by a court, potentially impact on the rights and liberties of individuals (section 4(2) of *Legislative Standards Act 1992* (Qld) (LSA)).

The proposed amendments extend the circumstances already existing under the Bail Act that displace the general expectation of bail prior to conviction. The reversal of the presumption for bail may be viewed as a reversal of the onus of proof in criminal proceedings, if a broad interpretation of the presumption of innocence is adopted.

In addition, the amendments introduce into the Bail Act a higher threshold to justify a grant of bail, that is, exceptional circumstances. 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.

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.

A transitional provision clarifies that these amendments will apply to decisions made after commencement regardless of when an offence happened or proceeding started. 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.

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.

Proposed amendments to the CSA to apply the proposed presumption against parole to persons with terrorism links retrospectively potentially impacts on the rights and liberties of individuals (section 4(2) and section 4(3)(g) LSA). 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 CSA 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.

The extension of time of no more than 50 days for the parole board to decide these applications may also be seen to affect prisoner liberties. However, the extension of time is considered justified. It reflects the increased complexity and resource intensiveness that applications for parole in these circumstances are likely to present and ensures that the parole board has all relevant evidence before it when making its decision. This approach also reflects the significance of these decisions on the prisoner and the community.

Proposed amendments to the YJA to reverse the presumption for bail potentially impact on the rights and liberties of individuals (section 4(2) LSA). This will displace the general expectation of bail prior to conviction established by the YJA and require satisfaction of a high threshold test, exceptional circumstances, to justify release to bail. This is an extraordinary measure that does not currently exist within the YJA however is limited to circumstances when a child's support of, or proximity to, terrorism has been demonstrated. The amendments are considered justified by the need to ensure community safety in circumstances when a child presents a risk of terrorism.

Proposed amendments to the YJA will remove the Court's discretion to order a release date any earlier than 70 per cent for a child in circumstances where the child has links to terrorism. This removes 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. 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.

The proposed amendments also require the chief executive to impose conditions on a supervised release order for a child with links to terrorism. This 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. However, 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 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.

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. 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.

The Bill's definition of 'terrorism offence' in the Bail Act, CSA, PSA, and YJA includes a provision of a law of the Commonwealth or another state prescribed by regulation. This potentially impacts on the institution of Parliament by allowing for the delegation of legislative power (sections 4(2)(b) and section 4(4) of the *Legislative Standards Act 1992*.

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.

Consultation

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 Childrens 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.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland. However, the introduction of legislation will align Queensland with the majority of other Australian jurisdictions which have implemented the COAG commitment.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that, when enacted, the Bill may be cited as the *Justice Legislation (Links to Terrorist Activity) Amendment Act 2018*.

Part 2 Amendment of Bail Act 1980

Clause 2 states that this part amends the *Bail Act 1980*.

Clause 3 amends section 6 (Definitions) by inserting definitions of Commonwealth control order; terrorism offence; and terrorist act.

Commonwealth control order is defined by reference to the definition of control order in the Criminal Code (Cwlth) section 100.1(1).

The definition of *terrorism offence* captures a broad range of terrorism and terrorism related offences under Commonwealth legislation defined as a *terrorism offence* by the *Crimes Act 1914* (Cwlth); offences under the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cwlth) as in force before its repeal; three terrorism related offences under New South Wales, South Australian and Victorian law; as well as providing for the inclusion of terrorism-related offences under Commonwealth, state or territory legislation by prescription under regulation.

Terrorist act is defined by reference to section 211 of the *Police Powers and Responsibilities Act 2000*.

Clause 4 amends section 7 (Power of police officer to grant bail).

Section 7(2) is amended to clarify that a prescribed police officer must investigate whether the officer is authorised to grant bail under the Act.

The note to section 7(2) is amended consequential to the amendments to section 13.

Section 7(3) is amended to clarify that the section refers to bail that may be granted by the officer.

Clause 5 amends section 13 (When only the Supreme Court may grant bail).

The heading of section 13 is amended to read ‘When only particular courts may grant bail’.

New section 13(2) provides that only a court may grant bail to a person who has previously been convicted of a terrorism offence; or is, or has been, the subject of a Commonwealth control order.

New section 13(3) provides that for new section 13(2), *convicted*, of an offence, means found guilty of the offence by a court, on a plea of guilty or otherwise, whether or not a conviction is recorded; and *court*, as otherwise defined in section 6 (Definitions) does not include a justice or justices.

Clause 6 amends section 14 (Release of persons apprehended on making deposit of money as security for appearance).

Two notes are inserted to subsection 14(1A) to refer to section 13, for when only particular courts may grant bail, and section 16 for when a police officer must refuse to grant bail.

Clause 7 amends section 14A (Magistrates Courts may grant cash bail or permit to go at large).

Section 14A(1) is amended to include two notes to refer to sections 16 and 16A and the *Youth Justice Act 1992*, sections 48 and 48A for when a child must not be released from custody.

A new subsection (1A) is inserted to provide that a Magistrates Court must not permit the defendant to go at large without bail under this section if bail must be refused under section 16A (Refusal of bail for defendants convicted of terrorism offences or subject to Commonwealth control orders).

A note is inserted to cross reference to the *Youth Justice Act 1992*, sections 48 and 48A for when a child must not be released from custody.

Clause 8 amends section 16 (Refusal of bail)

The heading of section 16 is amended to read 'Refusal of bail generally'.

Section 16(2) is amended to insert new subsections (g) and (h) to add to the considerations that a court or police officer shall have regard to when considering if there is an unacceptable risk with respect to the matters in section 16(1). Subsection 16(2)(g) inserts any promotion by the defendant of terrorism. Subsection 16(2)(h) inserts any association the defendant has, or has had, with a terrorist organisation within the meaning of section 102.1(1) of the Criminal Code (Cwlth) or a person who has promoted terrorism.

New subsection (2B) provides that a person has promoted terrorism if the person has carried out an activity to support the carrying out of a terrorist act; made a statement in support of the carrying out of a terrorist act; or carried out an activity, or made a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.

New subsection (2C) declares that a reference to a terrorist act in subsection (2B) includes a terrorist act that has not happened and is not limited to a specific terrorist act.

Section 16(3)(b) is amended consequential to the amendment to section 13.

Section 16(3) is amended to insert a note to refer to section 16A(6) which limits the operation of section 16(3) in certain circumstances.

Clause 9 inserts a new section 16A (Refusal of bail for defendants convicted of terrorism offences or subject to Commonwealth control orders).

New section 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 section 16A(2) provides that a court must not grant bail to the defendant unless the court is satisfied that exceptional circumstances exist to justify granting bail. This inserts a new higher threshold test into the Act specific to a defendant subject of this section. What amounts to exceptional circumstances is a matter for the court with an assessment conducted on a case-by-case basis.

New section 16A(3) provides that the court may have regard to any relevant matter in considering whether exceptional circumstances exist to justify granting bail to the defendant despite any other provision of the Act.

New section 16A(4) provides that if the court grants bail to the defendant, the order granting bail must state the reasons for the decision.

New section 16A(5) provides that this section does not affect the operation of section 16(1) which requires a court or police officer to refuse bail if satisfied that there is an unacceptable risk specified in the section, or that the defendant should remain in custody for the defendant's own protection.

New section 16A(6) provides that if a defendant is charged with an offence mentioned in section 16(3)(a) to (g), section 16(3) does not apply in relation to the defendant.

New section 16A(7) provides that, for the purpose of section 16A, *convicted*, of an offence, means found guilty of the offence by a court, on a plea of guilty or otherwise, whether or not a conviction is recorded.

Clause 10 inserts a new section 47 (Transitional provision for Justice Legislation (Links to Terrorist Activity) Amendment Act 2018).

New section 47 provides that the Act, as amended by the Bill, applies in relation to a decision made about whether to grant bail or otherwise release a person from custody on or after the commencement. 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.

Part 3 Amendment of Corrective Services Act 2006

Clause 11 states that this part amends the *Corrective Services Act 2006*.

Clause 12 amends section 193 (Decision of parole board) to include notes in section 193(2) and section 193(3) to also see section 193C(1) and (2) in relation to deferring decision to obtain information about terrorism links.

Clause 13 inserts new sections 193B–193E.

New section 193B (Deciding applications for parole orders made by prisoners with links to terrorism) provides that the parole board must refuse to grant a parole application, unless the board is satisfied exceptional circumstances exist to justify granting the application, if:

- the prisoner has, at any time, been convicted of a terrorism offence; or
- the prisoner is the subject of a Commonwealth control order; or
- the parole board is satisfied the prisoner has promoted terrorism; or
- a report in relation to the prisoner provided by the commissioner of police states that there is a reasonable likelihood the prisoner may carry out a terrorist act, and
 - the prisoner has been charged with, but not convicted of, a terrorism offence; or
 - the prisoner has been the subject of a Commonwealth control order; or
 - the parole board is satisfied the prisoner is or has been associated with a terrorist organisation, or with a person who has promoted terrorism.

Section 193B(1) creates a two category model in implementing the presumption against parole. The first category reverses the presumption upon the prisoner falling into one of the circumstances listed at 193B(1)(a) to (c). The second category includes a two tier test for the presumption against parole to apply. Firstly, the prisoner must fall into one of the three legislated circumstances listed at 193B(d)(i) to (iii). Secondly, it must be established that there is a reasonable likelihood the prisoner may carry out a terrorist act.

Subsection (3) provides that when the parole board considers if exceptional circumstances exist to justify granting the parole application, the parole board may have regard to any relevant matter.

Subsection (4) provides that when the parole board considers if the prisoner has promoted terrorism, is or has been associated with a terrorist organisation, or with a person who has promoted terrorism, the parole board may have regard to a report given by the commissioner of police under section 193E, and any other information considered relevant. A report under section 193E can also be requested by the parole board to assist in determining or making a decision about parole in any of the situations referred to under section 193B(1).

Subsection (5) provides that if the parole board decides to grant the application for a prisoner subject to the presumption against parole, the board must give the prisoner written reasons for the decision.

Subsection (6) provides that this section does not limit the parole board's power to refuse the parole application under section 193(1) (Decision of parole board). It also provides that the parole board's consideration of whether exceptional circumstances exist to justify granting the parole application as part of the presumption against parole is not a decision under section 194(1)(a) (Types of parole orders granted by the parole board).

New section 193C (Deferring decision to obtain information about terrorism links) provides that, in determining whether section 193B applies in relation to a parole application, the parole board can defer its decision in order to obtain information the board considers necessary. If the parole board decides to defer a decision under subsection (1), the board must decide the application within 200 days after receiving the application. Read alongside section 193(3), this provides an extension of time of no more than 50 days for the parole board to decide these applications.

New section 193D (Parole board may ask commissioner for reports about prisoners' links to terrorism) provides that the parole board may, by written notice, request information from the commissioner of police in relation to any application, suspension or cancellation of a parole order of a person with terrorism links. This includes a report in relation to any of the following matters:

- 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 with a person who has promoted terrorism.

New section 193E (Reports about prisoner's links to terrorism) provides that the commissioner of police must comply with a request by the parole board for a written report.

Subsections (2) to (4) provide situations where the commissioner of police may not be able to provide information to the parole board for the purpose of the new provisions. The intent of these provisions is to ensure there is an adequate balance between information being provided to the parole board, and the need for sensitive information to be protected.

Subsection (2) provides that the commissioner of police is only required to provide information to the parole board which:

- is in the commissioner's possession; or
- can be accessed by the commissioner through an arrangement with a law enforcement agency, the Australian Security Intelligence Organisation, or an immigration and border protection department.

Subsection (3) provides that the commissioner of police is not required to give information to the parole board in relation to any promotion by a prisoner of terrorism, the likelihood of a prisoner carrying out a terrorist act, or any association a prisoner has or has had with a terrorist organisation, or with a person who has promoted terrorism, if:

- the information is protected information mentioned in section 803(2)(a) to (e) under the *Police Powers and Responsibilities Act 2000* and the commissioner is satisfied that withholding this information will not adversely affect public safety; or
- the commissioner accessed the information through an arrangement with a law enforcement agency, the Australian Security Intelligence Organisation, or an immigration and border protection department, and the arrangement prevents the commissioner from disclosing the information to the parole board.

Subsection (4) provides that in relation to whether a prisoner has been convicted of or charged with a terrorism offence, the information in the report may include a reference to, or a disclosure of a conviction mentioned in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.

Subsection (5) provides that the notice of request by the parole board to the commissioner of police must state the proposed hearing day, and that the commissioner of police must provide the report to the parole board at least 28 days before that day.

Subsection (6) provides a definition of immigration and border protection department for the purpose of this section.

Clause 14 amends section 205 (Amendment, suspension or cancellation) to ensure that the parole board can suspend or cancel a prisoner's parole order if they reasonably believe the prisoner poses a risk of carrying out a terrorist act.

Clause 15 amends section 208A (Request for immediate suspension of parole order) to ensure that the chief executive can request an immediate suspension of a parole order if the chief executive reasonably believes that the prisoner poses a risk of carrying out a terrorist act.

Clause 16 amends section 208B (Parole board or prescribed board member may suspend parole order and issue warrant) to ensure that the parole board or a prescribed board member may suspend a parole order if the board or member reasonably believes the prisoner poses a risk of carrying out a terrorist act.

Clause 17 amends section 234 (Meetings about particular matters relating to parole orders) to ensure that prisoners potentially subject to the presumption against parole provisions are included as prescribed prisoners. This requires the parole board to be constituted by at least five members, when considering the prisoner's application for a parole order, including: the president, a professional board member, a community board member, a public service representative, and a police representative.

Clause 18 inserts a new section 247A (When a person promotes terrorism) to provide that a person promotes terrorism if the person: carries out an activity to support the carrying out of a terrorist act; 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. A terrorist act includes a terrorist act that has not happened, and is not limited to a specific terrorist act. The wording of this provision requires a level of knowledge or intent attached to the person's action.

Clause 19 inserts a new Chapter 7A, Part 13 (Transitional provisions for Justice Legislation (Links to Terrorist Activity) Amendment Act 2018).

New section 490W (Definition for part) provides that the definition of 'amending Act' means the *Justice Legislation (Links to Terrorist Activity) Amendment Act 2018*.

New section 490X (Existing applications for parole orders or applications under s 490R) makes transitional provision for those prisoners who have made their parole application but the application is not yet decided at the time of commencement. That is, new sections 193B to 193E, 234, 247A and schedule 4 apply.

New section 490Y (Application of particular provisions to parole orders) provides that new sections, 193D, 193E, 205, 208A, 208B, 234, 247A and schedule 4 apply in relation to a parole order whether made before or after the date of commencement.

Clause 20 amends schedule 4 (Dictionary) and inserts new definitions for Commonwealth control order, conviction, prescribed provision, terrorism offence, terrorist act and terrorist organisation.

Commonwealth control order is defined by reference to the definition of control order in the Criminal Code (Cwlth) section 100.1(1).

Conviction for the purpose of a prescribed provision means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

Prescribed provision means section 193B, 193D, 234(7) for definition of *prescribed prisoner*, or definition of *criminal history*.

The definition of *terrorism offence* captures a broad range of terrorism and terrorism related offences under Commonwealth legislation defined as a *terrorism offence* by the *Crimes Act 1914* (Cwlth), offences under the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cwlth) as in force before its repeal, three terrorism related offences under South Australian, New South Wales and Victorian law as well as providing for the inclusion of terrorism-related offences under Commonwealth, state or territory legislation by prescription under regulation.

Terrorist act is defined by reference to section 211 of the *Police Powers and Responsibilities Act 2000*. This definition aligns with the agreed definition of terrorist act in the Commonwealth Criminal Code pursuant to the referrals of state power to the Commonwealth.

Terrorist organisation is defined by reference to the definition of terrorist organisation in the Criminal Code (Cwlth) section 102.1(1).

Part 4 Amendment of Penalties and Sentences Act 1992

Clause 21 states that this part amends the *Penalties and Sentences Act 1992*.

Clause 22 amends section 160 (Definitions for div 3) definition of *parole eligibility date* consequential to amendments to section 160B.

Clause 23 amends section 160B (Sentence of 3 years or less and not a serious violent offence or sexual offence).

New subsection 160B(4) provides that the court may fix the date an offender is eligible for parole instead of a date for the offender to be released on parole if the offender 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 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.

New section 160B(5) declares that a reference to a terrorist act in subsection (4)(c) includes a terrorist act that has not happened and is not limited to a specific terrorist act.

New definitions of Commonwealth control order; terrorism offence; and terrorist act are inserted.

Commonwealth control order is defined by reference to the definition of control order in the Criminal Code (Cwlth) section 100.1(1).

Terrorist act is defined by reference to section 211 of the *Police Powers and Responsibilities Act 2000*. This definition aligns with the agreed definition of terrorist act in the Commonwealth Criminal Code pursuant to the referrals of state power to the Commonwealth.

The definition of *terrorism offence* captures a broad range of terrorism and terrorism related offences under Commonwealth legislation defined as a *terrorism offence* by the *Crimes Act 1914* (Cwlth), offences under the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cwlth) as in force before its repeal, three terrorism related offences under South Australian, New South Wales and Victorian law as well as providing for the inclusion of terrorism-related offences under Commonwealth, state or territory legislation by prescription under regulation.

Consequential amendments are made to reflect the amendments and renumber.

Clause 24 inserts a new Part 14, Division 20 (Transitional provision for Justice Legislation (Links to Terrorist Activity) Amendment Act 2018).

New section 255 (Application of s 160B) provides that section 160B, as amended by this Act, applies in relation to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

Part 5 Amendment of Youth Justice Act 1992

Clause 25 states that this part amends the *Youth Justice Act 1992*.

Clause 26 amends section 48 (Decisions about bail and related matters).

Section 48(1)(b) is amended to add a note to refer to section 13 of the *Bail Act 1980* for when only particular courts may grant a child bail.

This amendment, read together with section 59, limits bail decisions for a child who has previously been found guilty of a terrorism offence; or is, or has been, the subject of a Commonwealth control order, to the Supreme Court or the Childrens Court.

Section 48(3) is amended to provide that, in assessing whether there is an unacceptable risk generally, a court or police officer must have regard to 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.

It is intended that associations or affiliations that are directed towards, or for the purpose of, supporting or advocating support for terrorist acts will be considered by a court or police officer and that incidental or accidental associations, or genuine close family, religious or legal interactions that are not for the purpose of carrying out a terrorist act or promoting terrorism, will not be considered relevant.

Sections 48(3)(da) to (e) are consequentially renumbered 48(3)(e) to (h).

New section 48(3B) is inserted and provides that, for subsections (3)(f) and (g), a person or organisation has promoted terrorism if the person or organisation 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.

New section 48(3C) is inserted and declares that a reference in subsection (3)(g) or (5) to a terrorist act includes a terrorist act that has not happened; and is not limited to a specific terrorist act.

Reference in section 48(7A) to subsection (3)(da) is consequentially amended to subsection (3)(e).

Section 48(8) is amended to insert a definition for terrorist organisation by referencing section 102.1(1) of the Criminal Code (Cwlth).

Sections 48(3A) to (8) are consequentially renumbered as sections 48(4) to (12).

Clause 27 inserts new section 48A (Releasing children found guilty of terrorism offences or subject to Commonwealth control orders).

Section 48A applies to a child who is in custody in connection with a charge of 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. Despite any other provision of the *Youth Justice Act 1992* or the *Bail Act 1980*, a court 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.

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.

Section 48A does not interfere with existing methods of proceeding that do not require an investigating police officer to consider the issue of bail, such as cautioning, notice to appear, or infringement notice.

Clause 28 amends section 50 (Dealing with a child if court cannot be promptly constituted).

Section 50 is amended to insert new subsection (3A) which states that subsection (2) applies subject to section 48; and a police officer may not, under subsection (2)(a), release a child if the child has previously been found guilty of a terrorism offence; or is, or has been, the subject of a Commonwealth control order. New subsection (3A) also provides that subsection (2)(b) applies subject to the *Bail Act 1980*, section 13.

Section 50 applies once a police officer has charged the child. The amendment does not prevent an investigating police officer from proceeding in ways that would not trigger a consideration of bail, such as cautioning, notice to appear, or infringement notice.

These amendments ensure that bail decisions for a child who has previously been found guilty of a terrorism offence; or is, or has been, the subject of a Commonwealth control order, are limited to the Supreme Court or the Childrens Court, even in circumstances where a court cannot be promptly constituted.

Reference to subsection (4) in section 50(5) is consequentially amended to subsection (5).

Section 50(6) is consequentially omitted.

Sections 50(3A) to (5) are consequentially renumbered sections 50(4) to (6).

Clause 29 inserts new section 226A (When a child has promoted terrorism).

New section 226A provides that a child has promoted terrorism if the child 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. It is declared that a reference to a terrorist act includes a terrorist act that has not happened; and is not limited to a specific terrorist act.

Clause 30 amends section 227 (Release of child after service of period of detention).

Section 227 is amended to insert new section (2A) which provides that a court may not make an order that a child be released from detention after serving between 50 percent 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. 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.

Sections 227(2A) and (3) and consequentially renumbered sections 227(3) and (4).

Clause 31 amends section 228 (Chief executive's supervised release order).

Reference to section 227(3) in section 228(2) is consequentially amended to section 227(4).

The phrase 'the conditions' in section 228(3)(b) is replaced with the words 'a condition of the supervised release order'.

Clause 32 inserts new section 228A (Supervised release orders for children with links to terrorism).

Section 228A applies in relation to a supervised release order for a child if the child has, at any time been found guilty of a terrorism offence; or is the subject of a Commonwealth control order; or the chief executive is satisfied the child has promoted terrorism. The chief executive must impose any conditions on the supervised release order 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 include conditions that prohibit the child from being at a stated place or communicating with a stated person, or that impose a curfew on the child.

Section 228A does not limit or otherwise affect the power of the chief executive to impose a condition on the supervised release order under section 228(3)(a).

Failure by the chief executive to impose conditions on the supervised release order that are reasonably necessary and appropriate to reduce the risk of the child carrying out a

terrorist act or promoting terrorism does not affect the validity of the supervised release order.

Clause 33 inserts new Part 11 Division 17 (Transitional provisions for Justice Legislation (Links to Terrorist Activity) Amendment Act 2018).

New section 393 provides that reference in Division 17 to ‘amending Act’ means the Justice Legislation (Links to Terrorist Activity) Amendment Act 2018.

New section 394 provides for application of particular provisions to decisions about release made on or after commencement. Sections 48, 48A and 50 and schedule 4, as amended or inserted by the amending Act, apply in relation to a decision made by a court or police officer on or after the commencement about whether to grant bail or otherwise release a child from custody. It is irrelevant when the offence happened or whether proceedings have started.

New section 395 provides for application of particular provisions to sentencing children after commencement. Sections 226A and 227 and schedule 4, as amended or inserted by the amending Act, apply in relation to the sentencing of a child after the commencement whether the offence or conviction happened before or after the commencement.

Clause 34 amends schedule 4 (Dictionary) by inserting definitions of Commonwealth control order; terrorism offence; and terrorist act.

Commonwealth control order is defined by reference to the definition of control order in the *Criminal Code* (Cwlth) section 100.1(1).

The definition of *terrorism offence* captures a broad range of terrorism and terrorism related offences under Commonwealth legislation defined as a terrorism offence by the *Crimes Act 1914* (Cwlth), offences under the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cwlth) as in force before its repeal, three terrorism related offences under South Australian, New South Wales and Victorian law as well as providing for the inclusion of terrorism-related offences under Commonwealth, state or territory legislation by prescription under regulation.

Terrorist act is defined by reference to section 211 of the *Police Powers and Responsibilities Act 2000*. This definition aligns with the definition of terrorist act in the Commonwealth Criminal Code pursuant to the referrals of state power to the Commonwealth.

Part 6 Other amendments

Clause 35 provides for Schedule 1. Schedule 1 makes minor and technical amendments to the *Bail Act 1980* and the *Youth Justice Act 1992*.