

**BAIL AMENDMENT (PERSONS LINKED TO TERRORISM) BILL 2018**

*Introduction and First Reading*

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

*Second Reading*

**MR J.R. QUIGLEY (Butler — Attorney General)** [12.23 pm]: I move —

That the bill be now read a second time.

The Bail Amendment (Persons Linked to Terrorism) Bill 2018 proposes amendments to the Bail Act 1982 to implement the 2017 Council of Australian Governments—otherwise known as COAG—agreement on the presumption against bail applying to persons with links to terrorism. The amendments form part of a range of practical and legislative measures agreed by COAG to strengthen the nationally consistent approach to countering the evolving terrorist risk.

On 9 June 2017, COAG agreed to ensure there will be presumptions against the granting of bail and parole to persons who have demonstrated support for, or have links to, terrorist activity. At a 5 October 2017 special meeting on counterterrorism, COAG agreed that the 9 June 2017 decision should be underpinned by a nationally consistent approach. The Australia–New Zealand Counter-Terrorism Committee was tasked by COAG to consult with each Australian jurisdiction to develop principles to guide the implementation of these presumptions. The first principle is that the presumption against bail and parole should apply to categories of persons who have demonstrated support for, or links to, terrorist activity. The second principle is that a high legal threshold should be required to overcome the presumption against bail and parole. The third principle is that the implementation of the presumption against bail and parole should draw on and support the effectiveness of the counterterrorism team model. The fourth principle is that implementing a presumption against bail and parole should appropriately protect sensitive information. These principles acknowledge that all jurisdictions have well established and accepted practices and procedures in relation to bail and parole. Implementation of the COAG agreement in Western Australia is being undertaken in two stages. This bill is the first stage. A second tranche of legislative proposals to implement the presumption against parole is being developed for introduction in 2019.

The bail of persons charged with certain commonwealth terrorism offences is dealt with in accordance with Western Australia's bail legislation and procedures, as read together with section 15AA of the commonwealth Crimes Act 1914. That act provides that bail must not be granted unless the person can demonstrate exceptional circumstances. The commonwealth legislation does not apply when a person is charged with an offence against a law of Western Australia.

The amendments to the Bail Act 1982 introduced by this bill will require that persons with links to terrorism are to be subject to a presumption against bail, regardless of whether these links to terrorism have any connection to the current charge for which bail is being considered. For the purposes of the bill, a person has links to terrorism if they are charged with, or have been convicted of, a terrorism offence, or are the subject of an interim control order or confirmed control order made under the commonwealth Criminal Code Act 1995, or have been the subject of a confirmed control order within the last 10 years. These criteria provide objective indicators of a person's links to terrorism and are consistent with the minimum scope identified by the Australia–New Zealand Counter-Terrorism Committee recommended that the presumption against bail should apply to a person who has been convicted of a terrorism offence or is the subject of a control order.

The bill provides that in the case of persons linked to terrorism, the power to grant bail can be exercised only by a court constituted by a judicial officer other than a justice of the peace. This restriction on who can grant bail recognises the seriousness of terrorism matters and puts into effect the policy that bail of persons with links to terrorism be subject to the scrutiny and oversight of a higher decision-making authority. The core of the presumption is in new clause 3E of part C in schedule 1 of the Bail Act 1982. It requires that a judicial officer must refuse to grant bail and remand the accused in custody, unless satisfied of two matters: firstly, that there are exceptional reasons why the accused should not be kept in custody; and, secondly, that bail may be granted having regard to the usual bail considerations. The bill provides that the exceptional reasons test is guided by special considerations. These will ensure that judicial officers retain discretion to consider the seriousness of the current charge and appropriately assess risk when deciding whether the accused has satisfied the exceptional reasons test. An example of special considerations may be whether the alleged offending is of a minor nature that does not ordinarily attract a penalty of imprisonment, or when the accused sufficiently demonstrates that they have disengaged from former terrorism links. The considerations provide an

opportunity to divert young people in appropriate circumstances, but with the overriding consideration being the safety of the community. Provision is also made for a judicial officer to refuse bail and make a hospital order. The presumption against bail under new clause 3E must still be applied when a person linked to terrorism has already overcome a different exceptional reasons test in the same proceedings—for example, bail for murder, a second serious offence, or breach of a dangerous sex offender order. The bill introduces greater flexibility for the prosecution to arrest an accused to bring the person back to court to show cause why bail should not be varied or revoked. This procedure may be used when new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was granted. The increased flexibility is of general application and may be applied to any accused, including when the accused person is, or has become, a person linked to terrorism.

This bill also introduces new provisions that will require a judicial officer to take all reasonable steps to maintain the confidentiality of information that the judicial officer considers is “terrorist intelligence information”. These steps include a closed court hearing of the information in the absence of certain persons and parties to the bail proceedings, and other prohibitions on disclosure, including orders to redact the information from certain bail documents and a requirement that the information must not be referred to in any reasons for the bail decision. These new confidentiality protections are designed to facilitate the sharing of classified terrorist intelligence information by the Australian intelligence and law enforcement agencies. This information would not ordinarily be made available in open court bail proceedings due to the risks that exposing this information may compromise covert terrorism investigations and national security. It is necessary to establish appropriate procedures to share terrorist intelligence information with the court, which may be critical to an assessment of whether an accused, if not kept in custody, may endanger the safety, welfare or property of any person.

Several jurisdictions have legislated to give effect to the 2017 Council of Australian Governments agreement. Each has taken a different approach to reform having regard to their legislative frameworks, which vary considerably between jurisdictions. The proposed amendments ensure that Western Australia’s bail legislation, like that in other states, addresses terrorism risk at the stage of bail. These reforms are a preventive measure, adding to the national and Western Australian legislative framework to deal with terrorism risk.

I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam**.