

Bail Amendment (Persons Linked to Terrorism) Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

**Bail Amendment (Persons Linked to Terrorism)
Bill 2018**

A Bill for

**An Act to amend the *Bail Act 1982* to provide for a presumption
against bail being granted to persons linked to terrorism.**

The Parliament of Western Australia enacts as follows:

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1 **1. Short title**

2 This is the *Bail Amendment (Persons Linked to Terrorism)*
3 *Act 2018*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
8 (b) the rest of the Act — on a day fixed by proclamation.

9 **3. Act amended**

10 This Act amends the *Bail Act 1982*.

11 **4. Section 3 amended**

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

13
14 ***Commonwealth Criminal Code*** means the Criminal
15 Code set out in the Schedule to the *Criminal Code*
16 *Act 1995* (Commonwealth);

17 ***confirmed control order*** has the meaning given in the
18 Commonwealth Criminal Code section 100.1(1);

19 ***interim control order*** has the meaning given in the
20 Commonwealth Criminal Code section 100.1(1);

21 ***person linked to terrorism*** means a person who —

- 22 (a) is charged with, or has been convicted of, a
23 terrorism offence; or
24 (b) is the subject of an interim control order or
25 confirmed control order, or has been the subject
26 of a confirmed control order within the last
27 10 years;

terrorism offence means —

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- (f) an offence against the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Commonwealth) (repealed); or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

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- 1 ***terrorist act*** has the meaning given in the *Terrorism*
2 (*Commonwealth Powers*) *Act 2002* section 3;
3 ***terrorist intelligence information*** means information
4 relating to an actual or suspected terrorist act (whether
5 in this State or elsewhere) the disclosure of which
6 could reasonably be expected —
7 (a) to prejudice national security; or
8 (b) to endanger a person’s life or physical safety;
9 or
10 (c) to threaten significant damage to infrastructure
11 or property; or
12 (d) to prejudice a criminal investigation; or
13 (e) to reveal intelligence-gathering methodologies,
14 investigative techniques or technologies or
15 covert practices; or
16 (f) to enable the discovery of the existence or
17 identity of a confidential source of information
18 relevant to law enforcement;
19

20 **5. Section 6 amended**

- 21 (1) In section 6(6) delete “(9) or (10)” and insert:
22
23 (9), (10) or (11)
24
25 (2) After section 6(10) insert:
26
27 (11) If section 16B applies, the arrester must bring the
28 accused or cause the accused to be brought before a
29 court constituted by a judicial officer other than a
30 justice, who must consider the accused’s case for bail
31 as soon as is practicable.
32

1 **6. Section 7 amended**

2 In section 7(5) delete “3A and 3D.” and insert:

3

4 3A, 3D and 3E.

5

6 **7. Section 16 amended**

7 In section 16(1) delete “14 and 15” and insert:

8

9 14, 15 and 16B

10

11 **8. Section 16B inserted**

12 After section 16A insert:

13

14 **16B. Person linked to terrorism**

15 (1) This section applies if a person linked to terrorism is in
16 custody —

17 (a) awaiting an appearance in court before
18 conviction for an offence; or

19 (b) waiting to be sentenced or otherwise dealt with
20 for an offence of which the person has been
21 convicted.

22 (2) The power to grant bail to the person can be exercised
23 only by a court constituted by a judicial officer other
24 than a justice.

25

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1 **9. Section 26 amended**

2 (1) In section 26(2)(aa) delete “3A or 3D” and insert:

3

4 3A, 3D or 3E

5

6 (2) After section 26(4) insert:

7

8 (5) A bail record form, or the record of a decision and
9 reasons for it, must not include information that is
10 terrorist intelligence information.

11

12 **10. Section 54 amended**

13 In section 54(1):

14 (a) in paragraph (b)(iii) delete “diligence.” and insert

15

16 diligence; or

17

18 (b) after paragraph (b)(iii) insert:

19

20 (iv) new facts have been discovered, new
21 circumstances have arisen or the
22 circumstances have changed since bail
23 was granted (including that the accused
24 is, or has become, a person linked to
25 terrorism).

26

1 **11. Section 66C inserted**

2 After section 66B insert:

3

4 **66C. Protection of terrorist intelligence information in**
5 **bail proceedings**

6 (1) In proceedings on a case for bail, the judicial officer
7 must take all reasonable steps to maintain the
8 confidentiality of information that the judicial officer
9 considers is terrorist intelligence information, including
10 steps —

11 (a) to receive evidence and hear argument about
12 the information in private and in the absence of
13 any person other than the prosecutor and any
14 other person to whose presence the prosecutor
15 consents; and

16 (b) to prohibit the publication of, or a reference to,
17 terrorist intelligence information; and

18 (c) to order that the following documents must be
19 provided in a redacted form —

20 (i) an approved form given under section 8;

21 (ii) a report made in accordance with
22 section 24 or 24A.

23 (2) If the judicial officer considers that the information is
24 not terrorist intelligence information, the judicial
25 officer must —

26 (a) give the prosecutor the opportunity to withdraw
27 the information from consideration; and

28 (b) if the information is withdrawn, prohibit the
29 publication of, or a reference to, the
30 information.

31 (3) Despite subsections (1) and (2), the judicial officer may
32 disclose terrorist intelligence information or

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- 1 information withdrawn under subsection (2) to any of
2 the following —
3 (a) the Attorney General;
4 (b) a court;
5 (c) a person to whom the prosecutor authorises
6 disclosure.
7

8 **12. Schedule 1 Part C amended**

- 9 (1) In Schedule 1 Part C clause 1 delete “3C and 3D,” and insert:
10

11 3C, 3D and 3E,
12

- 13 (2) Delete Schedule 1 Part C clause 2(3)(a) and insert:
14

15 (a) clauses 3A, 3C, 3D and 3E; and
16

- 17 (3) After Schedule 1 Part C clause 3D insert:
18

19 **3E. Bail in cases of person linked to terrorism**

- 20 (1) This clause applies where an accused who is a person linked
21 to terrorism is in custody —

- 22 (a) awaiting an appearance in court before conviction
23 for an offence; or
24 (b) waiting to be sentenced or otherwise dealt with for
25 an offence of which the accused has been convicted.

- 26 (2) Despite clause 1, 2 or 4 or any other provision of this Act,
27 and in addition to clauses 3A to 3D, where this clause
28 applies the judicial officer in whom jurisdiction is vested
29 must refuse to grant bail for the offence unless the judicial
30 officer is satisfied that —

- 31 (a) there are exceptional reasons why the accused
32 should not be kept in custody; and

- 1 (b) bail may properly be granted having regard to the
2 provisions of clauses 1 and 3 or, in the case of a
3 child, clauses 2 and 3.
- 4 (3) The judicial officer must, in making any decision for the
5 purposes of subclause (2)(a) —
- 6 (a) have regard to the nature and seriousness of the
7 offence or offences (including any other offence or
8 offences for which the accused is awaiting trial) and
9 the probable method of dealing with the accused for
10 it or them, if the accused is convicted; and
- 11 (b) have regard to the conduct of the accused since the
12 accused was —
- 13 (i) charged with or convicted of a terrorism
14 offence; or
- 15 (ii) made the subject of the relevant interim
16 control order or confirmed control order;
- 17 and
- 18 (c) consider whether it would be appropriate to refuse
19 bail and make a hospital order under the *Criminal*
20 *Law (Mentally Impaired Accused) Act 1996*
21 section 5; and
- 22 (d) in the case of a child, consider the *Young Offenders*
23 *Act 1994* section 6(d) as an objective of this Act
24 with the safety of the community being an
25 overriding objective.
- 26 (4) Subclause (3) does not limit the matters that the judicial
27 officer may take into account for the purposes of
28 subclause (2)(a).
- 29 (5) Despite section 7(1), where an accused is refused bail under
30 subclause (2) the accused's case for bail need not be
31 considered again under that subsection for an appearance for
32 that offence unless the accused satisfies the judicial officer
33 who may order detention that —
- 34 (a) new facts have been discovered, new circumstances
35 have arisen or the circumstances have changed
36 since bail was refused; or

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1 (b) the accused failed adequately to present the case for
2 bail on the occasion of that refusal.

3 (6) Where an accused is granted bail under subclause (2), on
4 any subsequent appearance in the same case a judicial
5 officer may order that bail is to continue on the same terms
6 and conditions.

7 (7) Where a child accused is refused bail under subclause (2),
8 the child accused shall be dealt with in accordance with the
9 *Young Offenders Act 1994* section 19(2).

10 Note for this clause:

11 The *Crimes Act 1914* (Commonwealth) section 15AA provides that
12 a bail authority must not grant bail to a person charged with, or
13 convicted of, a terrorism offence as defined in section 3(1) of that
14 Act unless the bail authority is satisfied that exceptional
15 circumstances exist to justify bail.
16

17 (4) In Schedule 1 Part C clause 4(1) delete “3C and 3D,” and insert:

18

19 3C, 3D and 3E,
20

21
