



Western Australia

Bail Amendment (Persons Linked to Terrorism) Act 2019

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No. 15 of 2019

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Bail Amendment (Persons Linked to Terrorism) Act 2019

No. 15 of 2019

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

[Assented to 5 July 2019]

The Parliament of Western Australia enacts as follows:

1. Short title

This is the *Bail Amendment (Persons Linked to Terrorism) Act 2019*.

2. Commencement

This Act comes into operation as follows —

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

3. Act amended

This Act amends the *Bail Act 1982*.

4. Section 3 amended

In section 3(1) insert in alphabetical order:

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

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

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

person linked to terrorism means a person who —

- (a) is charged with, or has been convicted of, a terrorism offence; or
- (b) is the subject of an interim control order or confirmed control order, or has been the subject of a confirmed control order within the last 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- (f) an offence against the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Commonwealth) (repealed); or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);

terrorist act has the meaning given in the *Terrorism (Commonwealth Powers) Act 2002* section 3;

terrorist intelligence information means information relating to an actual or suspected terrorist act (whether in this State or elsewhere) the disclosure of which could reasonably be expected —

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

5. Section 6 amended

- (1) In section 6(6) delete “(9) or (10)” and insert:

(9), (10) or (11)

- (2) After section 6(10) insert:

- (11) If section 16B applies, the arrester must bring the accused or cause the accused to be brought before a court constituted by a judicial officer other than a justice, who must consider the accused's case for bail as soon as is practicable.

6. Section 7 amended

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

3A, 3D and 3E.

7. Section 16 amended

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

14, 15 and 16B

8. Section 16B inserted

After section 16A insert:

16B. Person linked to terrorism

- (1) This section applies if a person linked to terrorism is in custody —
 - (a) awaiting an appearance in court before conviction for an offence; or
 - (b) waiting to be sentenced or otherwise dealt with for an offence of which the person has been convicted.
- (2) The power to grant bail to the person can be exercised only by a court constituted by a judicial officer other than a justice.

9. Section 26 amended

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

3A, 3D or 3E

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

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

10. Section 54 amended

In section 54(1):

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

diligence; or

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

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

11. Section 66C inserted

After section 66B insert:

66C. Protection of terrorist intelligence information in bail proceedings

- (1) In proceedings on a case for bail, the judicial officer must take all reasonable steps to maintain the confidentiality of information that the judicial officer considers is terrorist intelligence information, including steps —
 - (a) to receive evidence and hear argument about the information in private and in the absence of any person other than the prosecutor and any other person to whose presence the prosecutor consents; and
 - (b) to prohibit the publication of, or a reference to, terrorist intelligence information; and
 - (c) to order that the following documents must be provided in a redacted form —
 - (i) an approved form given under section 8;
 - (ii) a report made in accordance with section 24 or 24A.
- (2) If the judicial officer considers that the information is not terrorist intelligence information, the judicial officer must —
 - (a) give the prosecutor the opportunity to withdraw the information from consideration; and
 - (b) if the information is withdrawn, prohibit the publication of, or a reference to, the information.

- (3) Despite subsections (1) and (2), the judicial officer may disclose terrorist intelligence information or information withdrawn under subsection (2) to any of the following —
- (a) the Attorney General;
 - (b) a court;
 - (c) a person to whom the prosecutor authorises disclosure.

66D. Annual report to include information about application of s. 66C

- (1) In this section —

accountable authority means the accountable authority, as defined in the *Financial Management Act 2006* section 3, of the department of the Public Service principally assisting in the administration of this Act;

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

sensitive information means information the disclosure of which could reasonably be expected —

- (a) to prejudice national security; or
- (b) to endanger a person's life or physical safety;
or
- (c) to threaten significant damage to infrastructure or property; or
- (d) to prejudice a criminal investigation; or
- (e) to reveal intelligence gathering methodologies, investigative techniques or technologies or covert practices; or

- (f) to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement.
- (2) Subject to subsections (7) and (8), the accountable authority must, in each annual report submitted under the *Financial Management Act 2006* Part 5 Division 2, include information relating to action taken under section 66C(1) in proceedings on a case for bail in the financial year to which the annual report relates (*reportable information*).
- (3) Reportable information must, without disclosing terrorist intelligence information, specify —
 - (a) the number of proceedings in which action was taken under section 66C(1); and
 - (b) in each of those proceedings whether the accused had access to the terrorist intelligence information received by the judicial officer and whether —
 - (i) evidence by or on behalf of the accused was received; and
 - (ii) argument by or on behalf of the accused was heard.
- (4) Prior to submitting an annual report, the accountable authority must give a copy of the reportable information they propose to include in the annual report to the Attorney General and the Commissioner of Police.
- (5) The Commissioner of Police must advise the Attorney General whether any of the reportable information, in the Commissioner's opinion, is or is likely to be sensitive information.

- (6) A judicial officer may advise the Attorney General of any reportable information that, in the judicial officer's opinion, is or is likely to be protected information.
- (7) If the Attorney General is, on advice provided under subsection (5) or (6), satisfied that some or all of the reportable information is sensitive information or protected information, the Attorney General must direct the accountable authority to —
 - (a) exclude the information from the annual report; and
 - (b) insert a statement in the annual report to the effect that information has been excluded from the report under this section.
- (8) The accountable authority must comply with a direction under subsection (7).

12. Section 67A inserted

After section 67 insert:

67A. Review of amendments made by *Bail Amendment (Persons Linked to Terrorism) Act 2019*

- (1) The Minister must review the operation and effectiveness of the amendments made to this Act by the *Bail Amendment (Persons Linked to Terrorism) Act 2019* and prepare a report based on the review —
 - (a) as soon as practicable after the 3rd anniversary of the day on which the *Bail Amendment (Persons Linked to Terrorism) Act 2019* section 12 comes into operation; and
 - (b) after that, at intervals of not more than 3 years.

- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 90 days after the 3rd anniversary or the expiry of the period of 3 years, as the case may be.

13. Schedule 1 Part C amended

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

3C, 3D and 3E,

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

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

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

3E. Bail in cases of person linked to terrorism

- (1) This clause applies where an accused who is a person linked to terrorism is in custody —
 - (a) awaiting an appearance in court before conviction for an offence; or
 - (b) waiting to be sentenced or otherwise dealt with for an offence of which the accused has been convicted.
- (2) Despite clause 1, 2 or 4 or any other provision of this Act, and in addition to clauses 3A to 3D, where this clause applies the judicial officer in whom jurisdiction is vested must refuse to grant bail for the offence unless the judicial officer is satisfied that —
 - (a) there are exceptional reasons why the accused should not be kept in custody; and

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

- (b) the accused failed adequately to present the case for bail on the occasion of that refusal.
- (6) Where an accused is granted bail under subclause (2), on any subsequent appearance in the same case a judicial officer may order that bail is to continue on the same terms and conditions.
- (7) Where a child accused is refused bail under subclause (2), the child accused shall be dealt with in accordance with the *Young Offenders Act 1994* section 19(2).

Note for this clause:

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

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

3C, 3D and 3E,

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