



Western Australia

Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2022

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Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2022

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Western Australia

Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2022

No. 14 of 2022

An Act to amend —

- **the *Sentence Administration Act 2003*; and**
- **the *Young Offenders Act 1994*; and**
- **the *Criminal Procedure Act 2004*; and**
- **the *Freedom of Information Act 1992*.**

[Assented to 18 May 2022]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2022*.

2. Commencement

This Act comes into operation as follows —

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

Part 2 — *Sentence Administration Act 2003* amended

3. Act amended

This Part amends the *Sentence Administration Act 2003*.

4. Section 4 amended

- (1) In section 4(2) insert in alphabetical order:

category 1 prisoner means —

- (a) a prisoner who —

- (i) has been charged with, or convicted of, a terrorism offence; or
- (ii) is subject to an interim control order or a confirmed control order;

or

- (b) a prisoner who has been subject to an interim control order or a confirmed control order at any time during —

- (i) the period of the prisoner's sentence (the ***current sentence***); or
- (ii) the period of 10 years ending on the day on which the prisoner's current sentence begins or is taken to have begun;

or

- (c) a prisoner for whom an interim control order is being sought under the Commonwealth Criminal Code section 104.3;

category 2 prisoner means a prisoner who has been charged with, or convicted of, an offence against the Commonwealth Criminal Code section 80.2C(1);

chairperson means the person appointed under section 103(1)(a);

Commissioner of Police report means a written report referred to in section 66H(1) or (4);

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);

prisoner with links to terrorism means —

- (a) a category 1 prisoner; or
- (b) a category 2 prisoner who is subject to a Commissioner of Police report; or
- (c) a prisoner who —
 - (i) is subject to a Commissioner of Police report; and
 - (ii) the Board as constituted by the chairperson alone is satisfied, having regard to the report, has made statements or carried out activities that support, or advocate support for, terrorist acts;

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, other than 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 the following provisions of the *Charter of the United Nations Act 1945* (Commonwealth) —

- (i) Part 4;
- (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 referred to in paragraph (a), (b), (c), (d), (e) or (g); or
- (i) an offence of attempting, inciting or conspiring to commit an offence referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h);

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

terrorist intelligence information means information relating to a prohibited act or suspected prohibited act, the disclosure of which could reasonably be expected to —

- (a) prejudice national security; or
- (b) endanger a person's life or physical safety; or
- (c) threaten significant damage to infrastructure or property; or

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- (d) prejudice a criminal investigation; or
- (e) reveal intelligence gathering methodologies, investigative techniques or technologies or covert practices; or
- (f) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement;

(2) After section 4(2B) insert:

- (2C) For the purposes of the definition of *terrorist intelligence information*, a *prohibited act* is —
- (a) a terrorism offence; or
 - (b) an offence against the Commonwealth Criminal Code section 80.2C(1); or
 - (c) a terrorist act (whether in this State or elsewhere).

5. Section 6 amended

In section 6(1) delete “section 87(d)” and insert:

section 87(1)(d)

6. Section 12 amended

In section 12(4) delete “section 66B(1),” and insert:

sections 66B(1) and 66G(1),

7. Section 12A amended

In section 12A(5) delete “section 66B(1),” and insert:

sections 66B(1) and 66G(1),

8. Section 12C inserted

At the beginning of Part 2 Division 4 insert:

12C. References to Board

In this Division, a reference to the *Board*, in relation to a prisoner with links to terrorism who is being assessed for inclusion in a re-socialisation programme under section 13 or 14, is a reference to the Board as constituted by the chairperson alone.

9. Section 13 amended

(1) In section 13(5) delete “subsection (5A)” and insert:

subsections (5A) and (5B)

(2) After section 13(5A) insert:

(5B) The Board must not endorse a re-socialisation programme or make a recommendation for the purposes of subsection (5) in relation to a prisoner with links to terrorism who is subject to a Commissioner of Police report unless the Board, having regard to the report, is satisfied that the prisoner is suitable for inclusion in the programme.

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10. Section 14 amended

- (1) In section 14(5) after “in it,” insert:

except as provided in subsection (5A),

- (2) After section 14(5) insert:

- (5A) The Board must not approve a programme for the purposes of subsection (5) in relation to a prisoner with links to terrorism who is subject to a Commissioner of Police report unless the Board, having regard to the report, is satisfied that the prisoner is suitable for inclusion in the programme.

11. Section 20 amended

In section 20(2)(aa) delete “section 66B(1); and” and insert:

sections 66B(1) and 66G(1); and

12. Section 23 amended

- (1) In section 23(2a)(aa) delete “section 66B(1); and” and insert:

sections 66B(1) and 66G(1); and

- (2) In section 23(3) delete “10 and 66B(1),” and insert:

10, 66B(1) and 66G(1),

13. Section 44 amended

In section 44(4) delete “If” and insert:

Except as provided in section 67A, if

14. Section 48 amended

In section 48(1)(d) delete “Division 10,” and insert:

Division 10 or section 67A,

15. Section 52 amended

In section 52(2) delete “section 66B(1)” and insert:

sections 66B(1) and 66G(1)

16. Part 5 Division 1B inserted

After Part 5 Division 1A insert:

**Division 1B — Prisoners with links to terrorism or
subject to Commissioner of Police reports**

Subdivision 1 — Preliminary

66D. Terms used

In this Division —

release action means making a parole order under
section 23(3)(b) in respect of a prisoner;

release decision means —

- (a) a decision under section 20(2) that it is appropriate to release a prisoner on parole; or
- (b) a decision under section 23(3)(a) to make a parole order in respect of a prisoner; or
- (c) a decision under section 52(1)(a) to make an RRO in respect of a prisoner.

Subdivision 2 — Early release orders in cases of prisoners with links to terrorism

66E. References to Board

In this Subdivision, a reference to the *Board* is a reference to the Board as constituted by the chairperson alone.

66F. Additional release considerations

In this Subdivision, a reference to the *additional release considerations* relating to a prisoner is a reference to the following considerations —

- (a) the degree of risk (having regard to any likelihood of the prisoner committing a terrorism offence if subject to an early release order and the likely nature and seriousness of any such offence) that the release of the prisoner would appear to present to the personal safety of people in the community or of any individual in the community;
- (b) if the prisoner has made statements or carried out activities that support, or advocate support for, terrorist acts — the nature and seriousness of the statements made or activities carried out;

- (c) if the prisoner is sentenced for a terrorism offence — any remarks made by the court that sentenced the prisoner that are relevant to the matters referred to in paragraphs (a) and (b);
- (d) if the prisoner is, or was, subject to an interim control order or confirmed control order relating to a terrorism offence —
 - (i) any remarks made by the court that made the order that are relevant to the matters referred to in paragraphs (a) and (b); and
 - (ii) the behaviour of the prisoner while subject to the order;
- (e) the behaviour of the prisoner when in custody to the extent that it may be relevant to the matters referred to in paragraphs (a) and (b);
- (f) whether the prisoner has participated in any programme or activity that addresses the prisoner's risk of committing a terrorism offence and the prisoner's performance in the programme or activity;
- (g) whether the prisoner is, or was, associated with 1 or more persons who have made statements or carried out activities that support, or advocate support for, terrorist acts, and the nature of the association.

66G. Making early release orders

- (1) The Board must not make a release decision, or take release action, in respect of a prisoner with links to terrorism unless the Board is satisfied that there are exceptional reasons why the prisoner should be released.

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- (2) The Board must, in making any decision or taking any action for the purposes of subsection (1), have regard to all of the following —
 - (a) the requirements of section 66B(1);
 - (b) the release considerations relating to the prisoner;
 - (c) the additional release considerations relating to the prisoner;
 - (d) any report about the prisoner made by the CEO under section 17;
 - (e) the Commissioner of Police report about the prisoner;
 - (f) any other information about the prisoner brought to the attention of the Board.
- (3) Subsection (2) does not limit the matters that the Board may have regard to in making a decision or taking action for the purposes of subsection (1), including, for example, a report, advice or professional services provided by a person appointed under section 107A.
- (4) Despite subsections (2) and (3), the Board must not have regard to a Commissioner of Police report about the prisoner if the report has been withdrawn under section 66I(2).

66H. Commissioner of Police reports

- (1) If the Board is required to consider whether to make a release decision, or take release action, in respect of a category 1 prisoner, the Board must make a written request to the Commissioner of Police for a written report about the prisoner.

- (2) The report must deal with the additional release considerations relating to the prisoner to the extent that the information is within the knowledge of the Commissioner of Police and may —
 - (a) include any other information that the Commissioner of Police considers is, or may be, relevant to whether the prisoner should be released; and
 - (b) declare that some or all of the information in the report is, in the opinion of the Commissioner of Police, terrorist intelligence information.
- (3) The Commissioner of Police must give to the Board the report within a reasonable period after receiving the request.
- (4) The Commissioner of Police may give to the Board a written report dealing with the matters referred to in subsection (2) in relation to any other prisoner.

66L. Withdrawing Commissioner of Police reports

- (1) This section applies if the Board, as constituted by the chairperson alone —
 - (a) is satisfied that a prisoner subject to a Commissioner of Police report is not a prisoner with links to terrorism; or
 - (b) after consulting with the Commissioner of Police, is satisfied that a Commissioner of Police report about a prisoner does not include terrorist intelligence information.
- (2) Before the Board makes a release decision or takes release action in respect of the prisoner, the Board, as constituted by the chairperson alone, must give the

Commissioner of Police an opportunity to withdraw the report.

- (3) If the report is withdrawn under subsection (2), the Board —
- (a) must not have regard to the report for the purposes of making the release decision or taking the release action in respect of the prisoner; and
 - (b) must prohibit the publication of, or a reference to, the report.

**Subdivision 3 — Early release orders for other prisoners
subject to Commissioner of Police reports**

66J. Term used: prisoner

In this Subdivision —

prisoner does not include a prisoner with links to terrorism.

**66K. Releasing prisoners subject to Commissioner of
Police report on parole**

- (1) This section applies if —
- (a) the Board is required to consider whether to release a prisoner on parole under section 20(1); and
 - (b) the prisoner is subject to a Commissioner of Police report that the Board, as constituted by the chairperson alone, is satisfied includes terrorist intelligence information.
- (2) The Board, as constituted by the chairperson alone, must decide whether to release the prisoner in accordance with section 20.

66L. Making parole order in respect of prisoner subject to Commissioner of Police report

- (1) This section applies if —
 - (a) the Board is required to decide whether to make a parole order in respect of a prisoner under section 23(3)(a); and
 - (b) the prisoner is subject to a Commissioner of Police report that the Board, as constituted by the chairperson alone, is satisfied includes terrorist intelligence information.
- (2) The Board, as constituted by the chairperson alone, must decide whether to make the order in accordance with section 23.

66M. Making RRO in respect of prisoners subject to Commissioner of Police report

- (1) This section applies if —
 - (a) the Board is required to consider whether to make, or defer the making of, an RRO in respect of a prisoner under section 52(1); and
 - (b) the prisoner is subject to a Commissioner of Police report that the Board, as constituted by the chairperson alone, is satisfied includes terrorist intelligence information.
- (2) The Board, as constituted by the chairperson alone, must decide whether to make, or defer the making of, the RRO in accordance with section 52.

17. Section 67A inserted

At the beginning of Part 5 Division 2 insert:

67A. Cancellation automatic in case of prisoner with links to terrorism

- (1) In this section, a reference to the **Board** is a reference to the Board as constituted by the chairperson alone.
- (2) The Board must cancel an early release order in respect of any of the following prisoners —
 - (a) a prisoner who, during the period the prisoner is subject to the early release order —
 - (i) is charged with, or convicted of, a terrorism offence; or
 - (ii) is charged with, or convicted of, an offence against the *Commonwealth Criminal Code* section 80.2C(1); or
 - (iii) becomes subject to an interim control order or confirmed control order; or
 - (iv) becomes subject to a Commissioner of Police report and who the Board is satisfied has made statements or carried out activities that support, or advocate support for, terrorist acts;
 - (b) a prisoner for whom, during the period the prisoner is subject to the early release order, an interim control order is being sought under the *Commonwealth Criminal Code* section 104.3(1);

- (c) a prisoner who the Board is satisfied —
 - (i) at the time that the early release order in respect of the prisoner was made, was a category 1 prisoner or a category 2 prisoner; and
 - (ii) in respect of whom, this fact was not known by the person who made the order at the time that the order was made.

18. Section 71 amended

- (1) Delete section 71(3)(b) and insert:

- (b) if it is cancelled by virtue of section 67 or 67A —
 - (i) the day when the offence that resulted in the charge or conviction was committed; or
 - (ii) the day when the prisoner became subject to the interim control order or confirmed control order; or
 - (iii) the day when the interim control order or confirmed control order was sought in respect of the prisoner; or
 - (iv) the day when the Board's decision that resulted in the cancellation was made.

- (2) After section 71(3) insert:

- (3A) If the day when an offence was committed cannot be ascertained — the day is taken, for the purposes of subsection (3)(b)(i), to be the latest day on which that

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offence could have been committed, as determined by
the CEO.

19. Section 72 amended

In section 72(1)(b) delete “section 67,” and insert:

section 67 or under section 67A(2),

20. Section 73 amended

In section 73(1) delete “section 67,” and insert:

section 67 or under section 67A(2),

21. Section 108 amended

(1) In section 108(2) delete “An” and insert:

Except as provided in subsection (2A), an

(2) After section 108(2) insert:

(2A) An order giving effect to a decision made, or an action
taken, by the Board under Part 5 Division 1B or
section 67A must be signed by the chairperson alone.

22. Section 112A inserted

After section 112 insert:

112A. Information to be excluded from annual reports

(1) In this section —

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

release action has the meaning given in section 66D;

release decision has the meaning given in section 66D;

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

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

(2) This section applies if, during a financial year, the chairperson decides —

- (a) to make a release decision, or take release action, under Part 5 Division 1B; or
- (b) to refuse to make a release decision, or take release action, under Part 5 Division 1B; or

- (c) to cancel an early release order under section 67A(2).
- (3) Before giving an annual report for the financial year, the chairperson must notify the Commissioner of Police and the Attorney General of the number of decisions referred to in subsection (2) that are made in the financial year (*notifiable information*).
- (4) The Commissioner of Police must advise the Attorney General whether, in the Commissioner's opinion, some or all of the notifiable information is, or is likely to be, sensitive information.
- (5) If the Attorney General is satisfied that some or all of the notifiable information is protected information or, on advice given under subsection (4), is satisfied that some or all of the notifiable information is sensitive information, the Attorney General must direct the chairperson to —
 - (a) exclude the information from the annual report; and
 - (b) insert a statement in the annual report to the effect that the information is excluded from the annual report under this section.
- (6) The chairperson must comply with a direction given under subsection (5).
- (7) The Attorney General may obtain legal advice as to the matters in subsection (5).
- (8) If the Attorney General does not give a direction under subsection (5), the Board must include the notifiable information in the annual report.

23. Section 115 amended

In section 115 delete “Parts 2” and insert:

Parts 1

24. Section 115A amended

Delete section 115A(4) and insert:

- (4) For the purposes of this section, the following decisions are not reviewable decisions —
- (a) a decision made by the Board under Part 5 Division 1B or section 67A(2) in relation to an early release order;
 - (b) a decision made by the Board in relation to a prisoner with links to terrorism —
 - (i) not to make a request under section 13(4) after receiving a report about the prisoner under section 13(3); or
 - (ii) not to endorse, with or without variations, the prisoner’s participation in a re-socialisation programme received under section 13(4);
 - (c) a decision made by the Board as to the nature or content of a re-socialisation programme endorsed under section 13(5) or approved under section 14(5) in relation to a prisoner with links to terrorism;
 - (d) a decision made by the Board under subsection (8), or by the Board on further

consideration of a matter pursuant to a decision
under subsection (8).

25. Section 115B inserted

After section 115A insert:

**115B. Decisions made by Board as constituted by
chairperson alone may be reconsidered**

- (1) This section applies to decisions referred to in section 115A(4)(a), (b) and (c).
- (2) A prisoner about whom the decision is made may request that the Board, as constituted by the chairperson alone, reconsider the decision.
- (3) A request must —
 - (a) be in writing; and
 - (b) state the grounds for it; and
 - (c) include any submissions that the applicant wants to make to the Board about the decision concerned and the reasons for it.
- (4) A request may be made only on the grounds that the Board in making the decision —
 - (a) did not comply with this Act or the regulations;
or
 - (b) made an error of law; or
 - (c) used incorrect or irrelevant information or was not provided with relevant information.
- (5) When a request is made, the Board, as constituted by the chairperson alone, must consider any submissions

included in it and reconsider the decision concerned and may —

- (a) confirm, amend or cancel the decision; or
 - (b) make another decision.
- (6) The Board, as constituted by the chairperson alone, must give the applicant written notice of any decision made under subsection (5).
- (7) A decision made under subsection (5) is not subject to reconsideration under this section.

26. Sections 119A to 119C inserted

After section 119 insert:

119A. Protection of Commissioner of Police reports that may be withdrawn

- (1) In this section, a reference to the *Board* is a reference to the Board as constituted by the chairperson alone.
- (2) This section applies if the Board must, under section 66I(2), give the Commissioner of Police an opportunity to withdraw a Commissioner of Police report.
- (3) Until the Commissioner of Police is given a reasonable opportunity to withdraw the report, the Board must take all reasonable steps to prohibit the publication of, or a reference to, the report.

119B. Protection of Commissioner of Police reports containing terrorist intelligence information

- (1) In this section, a reference to the *Board* is a reference to the Board as constituted by the chairperson alone.

- (2) The Board must take all reasonable steps to maintain the confidentiality of a Commissioner of Police report that the Board is satisfied contains terrorist intelligence information, including —
 - (a) receiving the report or hearing argument, or opinion, about the report in private and in the absence of any person other than a person to whose presence the Board consents; and
 - (b) except as provided in paragraph (a), prohibiting the publication of, or a reference to, the report; and
 - (c) withholding any or all of the reasons for a decision under section 114.
- (3) Despite subsection (2), the Board may give the report to —
 - (a) the Attorney General; or
 - (b) a court; or
 - (c) a person to whom the Board authorises disclosure.
- (4) Before giving a report under subsection (3)(b) or (c), the Board must, in writing, notify the Commissioner of Police of the Board's intention to give the report.

119C. Protection of terrorist intelligence information in legal proceedings

- (1) In this section —

court includes any tribunal, authority or person having the power to require the production of documents or the answering of questions;

disclosure requirement means a requirement under the *Criminal Procedure Act 2004* section 35, 42, 61 or 95 to disclose any information.

- (2) In any legal proceeding relating to, or requiring the disclosure of, information included in a Commissioner of Police report that the court is satisfied is terrorist intelligence information, the court must —
- (a) dispense with the disclosure requirements in relation to the information if the court is satisfied that no miscarriage of justice will result; and
 - (b) ensure that such parts of the proceeding relating to the disclosure of the information are held in private; and
 - (c) make such orders as to the suppression of evidence given before the court that, in the court's opinion, will ensure that the information is not disclosed; and
 - (d) make orders prohibiting the publication of the information.
- (3) Without limiting the matters that the court may consider for the purpose of determining if the information is terrorist intelligence information, the court must, before it makes the determination, give the Commissioner of Police an opportunity to be heard by, or to make written submissions to, the court.

27. Section 120A inserted

After section 120 insert:

120A. Delegation by Commissioner of Police

- (1) The Commissioner of Police may, in writing signed by the Commissioner, delegate any of the Commissioner's powers or duties under this Act to a police officer of or above the rank of Commander.

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- (2) For the purposes of this Act, the exercise of a power or duty by a delegate under this section is taken to be the exercise of the power or duty by the Commissioner of Police.
- (3) A police officer to whom a power or duty is delegated under this section cannot delegate that power or duty to any other person.

28. Schedule 1 clause 5 amended

Before Schedule 1 clause 5(1) insert:

- (1A) This clause does not apply in relation to a meeting of the Board held for the purposes of Part 5 Division 1B or section 67A.

Part 3 — *Young Offenders Act 1994* amended

29. Act amended

This Part amends the *Young Offenders Act 1994*.

30. Section 3 amended

- (1) In section 3 delete “In this Act,” and insert:

(1) In this Act,

- (2) In section 3(1) insert in alphabetical order:

category 1 offender means —

- (a) an offender who —

- (i) has been charged with, or convicted of, a terrorism offence; or
- (ii) is subject to an interim control order or a confirmed control order;

or

- (b) an offender who has been subject to an interim control order or a confirmed control order at any time during —

- (i) the period of the offender’s sentence (the ***current sentence***); or
- (ii) the period of 4 years ending on the day on which the offender’s current sentence begins or is taken to have begun;

or

- (c) an offender for whom an interim control order in respect of the offender is being sought under the Commonwealth Criminal Code section 104.3;

category 2 offender means an offender who has been charged with, or convicted of, an offence against the Commonwealth Criminal Code section 80.2C(1);

chairperson means the person appointed under section 152(1)(a);

Commissioner of Police report means a written report referred to in section 150D(1) or (4);

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);

offender with links to terrorism means —

- (a) a category 1 offender; or
- (b) a category 2 offender who is subject to a Commissioner of Police report; or
- (c) an offender who —
 - (i) is subject to a Commissioner of Police report; and
 - (ii) the Supervised Release Review Board as constituted by the chairperson alone is satisfied, having regard to the report, has made statements or carried out activities that support, or advocate support for, terrorist acts;

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, other than 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 the following provisions of the *Charter of the United Nations Act 1945* (Commonwealth) —
 - (i) Part 4;
 - (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 referred to in paragraph (a), (b), (c), (d), (e) or (g); or

- (i) an offence of attempting, inciting or conspiring to commit an offence referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h);

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

terrorist intelligence information means information relating to a prohibited act or suspected prohibited act, the disclosure of which could reasonably be expected to —

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

- (3) At the end of section 3(1) insert:

- (2) For the purposes of the definition of **terrorist intelligence information**, a **prohibited act** is —

- (a) a terrorism offence; or
- (b) an offence against the Commonwealth Criminal Code section 80.2C(1); or
- (c) a terrorist act (whether in this State or elsewhere).

31. Sections 16B to 16D inserted

After section 16A insert:

16B. Protection of Commissioner of Police reports that may be withdrawn

- (1) In this section —

Board means the Supervised Release Review Board, established under s 151, as constituted by the chairperson alone.

- (2) This section applies if the Board must, under section 150E(2), give the Commissioner of Police an opportunity to withdraw a Commissioner of Police report.

- (3) Until the Commissioner of Police is given a reasonable opportunity to withdraw the report, the Board must take all reasonable steps to prohibit the publication of, or a reference to, the report.

16C. Protection of Commissioner of Police reports containing terrorist intelligence information

- (1) In this section —

Board means the Supervised Release Review Board, established under s 151, as constituted by the chairperson alone.

- (2) The Board must take all reasonable steps to maintain the confidentiality of a Commissioner of Police report that the Board is satisfied contains terrorist intelligence information, including —

- (a) receiving the report or hearing argument, or opinion, about the report in private and in the absence of any person other than a person to whose presence the Board consents; and

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- (b) except as provided in paragraph (a), prohibiting the publication of, or a reference to, the report; and
 - (c) withholding any or all of the reasons for a decision.
- (3) Despite subsection (2), the Board may give the report to —
 - (a) the Attorney General; or
 - (b) a court; or
 - (c) a person to whom the Board authorises disclosure.
- (4) Before giving a report under subsection (3)(b) or (c), the Board must, in writing, notify the Commissioner of Police of the Board's intention to give the report.

16D. Protection of terrorist intelligence information in legal proceedings

- (1) In this section —
 - court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions;
 - disclosure requirement* means a requirement under the *Criminal Procedure Act 2004* section 35, 42, 61 or 95 to disclose any information.
- (2) In any legal proceedings relating to, or requiring the disclosure of, information included in a Commissioner of Police report that the court is satisfied is terrorist intelligence information, the court must —
 - (a) dispense with the disclosure requirements in relation to the information if the court is satisfied that no miscarriage of justice will result; and

- (b) ensure that such parts of the proceeding relating to the disclosure of the information are held in private; and
 - (c) make such orders as to the suppression of evidence given before the court that, in the court's opinion, will ensure that the information is not disclosed; and
 - (d) make orders prohibiting the publication of the information.
- (3) Without limiting the matters that the court may consider for the purpose of determining if the information is terrorist intelligence information, the court must, before it makes the determination, give the Commissioner of Police an opportunity to be heard by, or to make written submissions to, the court.

32. Section 132 amended

In section 132(1) delete "If" and insert:

Except as provided in Division 2A, if

33. Section 142 amended

In section 142(1) delete "subsection (2)," and insert:

subsection (2) and section 142A,

34. Section 142A and 142B inserted

After section 142 insert:

142A. Cancellation automatic in case of offender with links to terrorism

- (1) In this section, a reference to the *Board* is a reference to the Board as constituted by the chairperson alone.
- (2) The Board must cancel a supervised release order in respect of any of the following offenders —
 - (a) an offender who, during the period the offender is subject to the supervised release order —
 - (i) is charged with, or convicted of, a terrorism offence; or
 - (ii) is charged with, or convicted of, an offence against the Commonwealth Criminal Code section 80.2C(1); or
 - (iii) becomes subject to an interim control order or confirmed control order; or
 - (iv) becomes subject to a Commissioner of Police report and who the Board is satisfied has made statements or carried out activities that support, or advocate support for, terrorist acts;
 - (b) an offender for whom, during the period the offender is subject to the supervised release order, an interim control order is being sought under the Commonwealth Criminal Code section 104.3(1);
 - (c) an offender who the Board is satisfied —
 - (i) at the time that the supervised release order in respect of the offender was

made, was a category 1 offender or a category 2 offender; and

- (ii) in respect of whom, this fact was not known by the person who made the order at the time that the order was made.

142B. Supervised release order, when cancellation under s. 142A takes effect

- (1) If a supervised release order in respect of an offender is cancelled under section 142A, the supervised release order is taken to be cancelled —
 - (a) if the cancellation results from a charge or conviction — on the day when the offence that resulted in the charge or conviction was committed; or
 - (b) if the cancellation results from an offender becoming subject to an interim control order or confirmed control order — on the day when the offender became subject to the order; or
 - (c) if the cancellation results from an interim control order or confirmed control order being sought in respect of an offender— on the day when the order was sought; or
 - (d) if the cancellation results from a decision by the Board — the day when the decision was made.
- (2) If the day when an offence was committed cannot be ascertained — the day is taken, for the purposes of subsection (1)(a), to be the latest day on which that offence could have been committed, as determined by the CEO.

35. Section 149 amended

In section 149(1) delete “section 147A(1),” and insert:

section 142A(2) or 147A,

36. Part 8 Division 2A inserted

After Part 8 Division 2 insert:

**Division 2A — Offenders with links to terrorism or
subject to Commissioner of Police reports**

Subdivision 1 — Preliminary

150A. Release considerations

In this Division, a reference to the *release considerations* relating to an offender is a reference to the following considerations —

- (a) if the offender has made statements or carried out activities that support, or advocate support for, terrorist acts — the nature and seriousness of the statements made or activities carried out;
- (b) if the offender is sentenced for a terrorism offence — any remarks made by the court that sentenced the offender that are relevant to paragraph (a);
- (c) if the offender is, or was, subject to an interim control order or confirmed control order relating to a terrorism offence —
 - (i) any remarks made by the court that made the order that are relevant to paragraph (a); and

- (ii) the behaviour of the offender while subject to the order;
- (d) the behaviour of the offender when in custody to the extent that it may be relevant to paragraph (a);
- (e) whether the offender has participated in any programme or activity that addresses the offender's risk of committing a terrorism offence and the offender's performance in the programme or activity;
- (f) whether the offender is, or was, associated with 1 or more persons who have made statements or carried out activities that support, or advocate support for, terrorist acts, and the nature of the association.

Subdivision 2 — Supervised release orders in cases of offenders with links to terrorism

150B. References to Board

In this Subdivision, a reference to the *Board* is a reference to the Board as constituted by the chairperson alone.

150C. Making supervised release orders

- (1) The Board must not order the release of an offender with links to terrorism unless the Board is satisfied that there are exceptional reasons why the offender should be released.
- (2) The Board must, in making any decision for the purposes of subsection (1) —
 - (a) regard the personal safety of people in the community or of any individual in the community as the paramount consideration; and

- (b) apply the general principles of juvenile justice in section 7, other than the principles referred to in paragraphs (h) and (k); and
- (c) have regard to all of the following —
 - (i) the release considerations relating to the offender;
 - (ii) the Commissioner of Police report about the offender;
 - (iii) any other information about the offender brought to the attention of the Board.
- (3) Subsection (2) does not limit the matters that the Board may have regard to in making a decision for the purposes of subsection (1).
- (4) Despite subsections (2) and (3), the Board must not have regard to a Commissioner of Police report about the offender if the report has been withdrawn under section 150E(2).

150D. Commissioner of Police reports

- (1) If the Board is required to consider whether to order the release of a category 1 offender from custody, the Board must make a written request to the Commissioner of Police for a written report about the offender.
- (2) The report must deal with the release considerations relating to the offender to the extent that the information is within the knowledge of the Commissioner of Police and may —
 - (a) include any other information that the Commissioner of Police considers is, or may be, relevant to whether the offender should be released; and

- (b) declare that some or all of the information in the report is, in the opinion of the Commissioner of Police, terrorist intelligence information.
- (3) The Commissioner of Police must give to the Board the report within a reasonable period after receiving the request.
- (4) The Commissioner of Police may give to the Board a written report dealing with the matters referred to in subsection (2) in relation to any other offender.

150E. Withdrawing Commissioner of Police reports

- (1) This section applies if the Board, as constituted by the chairperson alone —
 - (a) is satisfied that an offender subject to a Commissioner of Police report is not an offender with links to terrorism; or
 - (b) after consulting with the Commissioner of Police, is satisfied that a Commissioner of Police report about an offender does not include terrorist intelligence information.
- (2) Before the Board decides whether to order the release of the offender, the Board, as constituted by the chairperson alone, must give the Commissioner of Police an opportunity to withdraw the report.
- (3) If the report is withdrawn under subsection (2), the Board —
 - (a) must not have regard to the report for the purposes of deciding whether to order the release of the offender; and
 - (b) must prohibit the publication of, or a reference to, the report.

**Subdivision 3 — Supervised release orders for other
offenders subject to Commissioner of Police reports**

**150F. Releasing offender subject to Commissioner of
Police report under supervised release order**

- (1) In this section —
offender does not include an offender with links to terrorism.
- (2) This section applies if —
 - (a) the Board is deciding whether to order the release of an offender under section 132(1); and
 - (b) the offender is subject to a Commissioner of Police report that the Board, as constituted by the chairperson alone, is satisfied includes terrorist intelligence information.
- (3) The Board, as constituted by the chairperson alone, must decide whether to order the release of the offender in accordance with Division 2.

Subdivision 4 — Review

150G. Review of Division

- (1) The Minister must review the operation and effectiveness of this Division, and prepare a report based on the review —
 - (a) as soon as practicable after the 5th anniversary of the day on which the *Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2022* section 36 comes into operation; and
 - (b) after that, at intervals of not more than 5 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 12 months after the 5th anniversary or the expiry of the period of 5 years, as the case may be.

37. Section 157 amended

After section 157(1) insert:

- (2) This section does not apply in relation to a meeting of the Board held for the purposes of section 16B, 16C or 142A or Part 8 Division 2A.

38. Section 165A inserted

At the end of Part 8 Division 3 insert:

165A. Information to be excluded from annual reports

- (1) In this section —
- 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 to —
- (a) prejudice national security; or
 - (b) endanger a person's life or physical safety; or
 - (c) threaten significant damage to infrastructure or property; or
 - (d) prejudice a criminal investigation; or

- (e) reveal intelligence gathering methodologies, investigative techniques or technologies or covert practices; or
 - (f) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement.
- (2) This section applies if, during the year ending on the last preceding 30 June, the chairperson decides —
 - (a) to make a supervised release order under Part 8 Division 2A; or
 - (b) to refuse to make a supervised release order under Part 8 Division 2A; or
 - (c) to cancel a supervised release order under section 142A.
- (3) Before giving an annual report for the financial year, the chairperson must notify the Commissioner of Police and the Minister of the number of decisions referred to in subsection (2) that are made during the year ending on the last preceding 30 June (***notifiable information***).
- (4) The Commissioner of Police must advise the Minister whether, in the Commissioner's opinion, some or all of the notifiable information is, or is likely to be, sensitive information.
- (5) If the Minister is satisfied that some or all of the notifiable information is protected information or, on advice given under subsection (4), is satisfied that some or all of the notifiable information is sensitive information, the Minister must direct the chairperson to —
 - (a) exclude the information from the annual report; and

- (b) insert a statement in the annual report to the effect that the information is excluded from the annual report under this section.
- (6) The chairperson must comply with a direction given under subsection (5).
- (7) The Minister may obtain legal advice as to the matters in subsection (5).
- (8) If the Minister does not give a direction under subsection (5), the Board must include the notifiable information in the annual report.

39. Section 197A inserted

At the end of Part 10 insert:

197A. Delegation by Commissioner of Police

- (1) The Commissioner of Police may, in writing signed by the Commissioner, delegate any of the Commissioner's powers or duties under this Act to a police officer of or above the rank of Commander.
- (2) For the purposes of this Act, the exercise of a power or duty by a delegate under this section is taken to be the exercise of the power or duty by the Commissioner of Police.
- (3) A police officer to whom a power or duty is delegated under this section cannot delegate that power or duty to any other person.

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40. Various references to “Chairman” amended

In the provisions listed in the Table delete “Chairman” and insert:

chairperson

Table

s. 152(1)(a) and (5)	s. 154(3)
s. 156	s. 158(1) and (2)
s. 160(2)	

Part 4 — *Criminal Procedure Act 2004* amended

41. Act amended

This Part amends the *Criminal Procedure Act 2004*.

42. Section 35 amended

Delete section 35(2) and insert:

(2) The operation of this section is subject to —

- (a) any order made under section 138; and
- (b) the *Sentence Administration Act 2003* section 119C(2)(a); and
- (c) the *Young Offenders Act 1994* section 16D(2)(a).

43. Section 137A amended

After section 137A(a) insert:

- (aa) the *Sentence Administration Act 2003* section 119C(2)(a); and
- (ab) the *Young Offenders Act 1994* section 16D(2)(a); and

Part 5 — *Freedom of Information Act 1992* amended

44. Act amended

This Part amends the *Freedom of Information Act 1992*.

45. Schedule 1 clause 5 amended

(1) After Schedule 1 clause 5(3) insert:

(3A) A Commissioner of Police report is exempt matter.

(2) In Schedule 1 clause 5(5) insert in alphabetical order:

Commissioner of Police report means a written report referred to in —

- (a) the *Sentence Administration Act 1995* section 66H(1) or (4); and
- (b) the *Young Offenders Act 1994* section 150D(1) or (4);
