



New South Wales

Terrorism Legislation Amendment (Police Powers and Parole) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Terrorism (Police Powers) Act 2002* to enable the Commissioner of Police to declare an incident to which police officers are responding to be a terrorist act requiring planned and coordinated police action, and thereby authorise the use of force (including lethal force) that is reasonably necessary to defend any persons threatened by the terrorist act or to prevent or terminate their unlawful deprivation of liberty, and
- (b) to amend the *Crimes (Administration of Sentences) Act 1999* to provide that terrorism related offenders are not to be released on parole unless the Parole Authority is satisfied that the offender will not engage in, or incite or assist others to engage in, terrorist acts or violent extremism.

The amendments relating to police powers seek to clarify the use of force as recommended by the coroner in the report of the Lindt cafe siege.

The amendments relating to parole seek to implement the decision of COAG on 9 June 2017 for a presumption against the grant of parole or bail for persons who have demonstrated support for, or have links to, terrorist activity.

As far as the grant of bail is concerned, section 22A of the *Bail Act 2013* currently provides that a bail authority must refuse bail (unless exceptional circumstances exist) in the case of persons charged with or previously convicted of terrorism offences or subject to terrorism control orders. In addition, section 18 of that Act currently requires consideration to be given in a bail assessment of an accused's associations, statements and activities related to terrorist acts or violent extremism.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 inserts proposed Part 2AAA into the *Terrorism (Police Powers) Act 2002* to give effect to the amendment described in the Overview above on police powers when responding to terrorist acts. If the Commissioner of Police has declared that the incident to which police officers are responding is or is likely to be a terrorist act, the police action that is authorised includes authorising, directing or using force (including lethal force) that is reasonably necessary, in the circumstances as they perceive them, to defend any persons threatened by the terrorist act or to prevent or terminate their unlawful deprivation of liberty. Police officers will not incur criminal liability for taking any such police action in good faith for the purposes of a police action plan of the police officer in charge. The proposed Part does not limit any other police powers in relation to the incident concerned.

Schedule 2 inserts proposed Division 3A into Part 6 of the *Crimes (Administration of Sentences) Act 1999* to give effect to the amendment described in the Overview above on the grant of parole to terrorism related offenders.

For that purpose, a terrorism related offender is an offender:

- (a) who is serving a sentence for a terrorism offence, who has previously been convicted of a terrorism offence or who has been charged with a terrorism offence, or
- (b) who is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code, or
- (c) who has any associations with a terrorist organisation (within the meaning of Division 102 of Part 5.3 of the Commonwealth Criminal Code), or
- (d) who has made statements or carried out activities advocating support for terrorist acts or violent extremism, or
- (e) who has associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism.

Under the proposed Division, terrorism related offenders otherwise eligible for release on parole are not to be released on parole unless the Parole Authority is satisfied that the offender will not engage in, or incite or assist others to engage in, terrorist acts or violent extremism. The proposed Division will require the Parole Authority, when deciding whether or not to release any offender on parole, to have regard to any credible information it has on the risk that the offender may do so, and in particular have regard to whether the nature of any associations or affiliation that the offender has with any persons or groups advocating support for terrorist acts or violent extremism gives rise to any such risk.

The proposed Division also enables the revocation or suspension of parole when the Parole Authority (or relevant Parole Authority member) becomes aware of information that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism.