



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.



New South Wales

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New South Wales

Terrorism Legislation Amendment (Police Powers and Parole) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Terrorism (Police Powers) Act 2002* and the *Crimes (Administration of Sentences) Act 1999* with respect to police powers and parole in relation to terrorism.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Terrorism Legislation Amendment (Police Powers and Parole) Act 2017*.

2 Commencement

This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Terrorism (Police Powers) Act	1
	2002 No 115	2
Part 2AAA		3
Insert after Part 2:		4
Part 2AAA	Police use of force—ongoing terrorist acts	5
24A	Police Commissioner may declare this Part applies to terrorist act to which police are responding	6
	(1) If the Commissioner of Police is satisfied that:	7
	(a) an incident to which police officers are responding is or is likely to be a terrorist act, and	8
	(b) planned and coordinated police action is required to defend any persons threatened by the terrorist act or to prevent or terminate their unlawful deprivation of liberty,	9
	the Commissioner may declare that it is a terrorist act to which this Part applies.	10
	(2) A declaration may be made in respect of the specified location at which police officers are responding and in respect of any other related specified location.	11
	(3) The Commissioner of Police is to notify the police officer in charge of the police officers responding to the terrorist act that a declaration has been made under this Part.	12
	(4) Before or as soon as practicable after a declaration is made under this Part, the Commissioner of Police is to notify the Minister for Police of the declaration.	13
	(5) A Deputy Commissioner of Police may make and notify a declaration under this Part on behalf of the Commissioner of Police if satisfied that the Commissioner is not able to be contacted when a declaration is sought as a matter of urgency.	14
	(6) A declaration may be made under this Part orally or by instrument in writing. If the declaration is made orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so.	15
	(7) The Commissioner of Police may at any time revoke a declaration made under this Part, and must do so if no further police response is required at the location concerned. The Commissioner or a Deputy Commissioner of Police may revoke a declaration made by the Deputy Commissioner on behalf of the Commissioner.	16
24B	Use of force in relation to declared terrorist act	17
	(1) The police action that is authorised by this section when police officers respond to any incident that is declared to be a terrorist act to which this Part applies is authorising, directing or using force (including lethal force) that is reasonably necessary, in the circumstances as the police officer perceives them, to defend any persons threatened by the terrorist act or to prevent or terminate their unlawful deprivation of liberty.	18
	(2) A police officer does not incur any criminal liability for taking any such police action for the purposes of a police action plan of the police officer in charge of the police officers responding to the terrorist act.	19

- (3) This section applies only to action taken by a police officer in good faith. 1
- (4) If a declaration under this Part is revoked, this section continues to apply to any action taken by a police officer before the earlier of the following: 2
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 - (a) when the police officer became aware of the revocation of the declaration, 4
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 - (b) when the police officer, acting reasonably, ought to have been aware of the revocation of the declaration. 6
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- (5) If a court finds that a purported declaration under this Part was not validly made, this section continues to apply to any action taken by a police officer before the finding as if it were a valid declaration. 8
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- (6) This Part does not limit the powers of police officers to deal with a terrorist act, and police officers may exercise those powers whether or not the Commissioner of Police has been requested or has declined to make a declaration under this Part in relation to the terrorist act. 11
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Schedule 2	Amendment of Crimes (Administration of Sentences) Act 1999 No 93	1
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Part 6 Parole		3
Insert after Division 3:		4
Division 3A	Parole orders for terrorism related offenders	5
159A	Definitions	6
(1)	In this Division:	7
	<i>terrorism offence</i> means a terrorism offence within the meaning of the <i>Crimes Act 1914</i> of the Commonwealth or an offence under section 310J of the <i>Crimes Act 1900</i> .	8
	<i>terrorism related offender</i> means an offender to whom this Division applies.	9
	<i>terrorist act</i> has the same meaning as it has in Part 5.3 of the Commonwealth Criminal Code.	10
(2)	A reference in this Division to an offender engaging in, or inciting or assisting others to engage in, terrorist acts or violent extremism includes a reference to an offender doing so in this State, in any other part of Australia or in any other country.	11
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159B	Offenders to whom Division applies	18
	This Division applies to an offender:	19
(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	20
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(b)	who is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code, or	23
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(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	25
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(d)	who has made statements or carried out activities advocating support for terrorist acts or violent extremism, or	28
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(e)	who has any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism.	30
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159C	Limitation on release on parole of terrorism related offenders	32
(1)	The Parole Authority must not make a parole order directing the release of an offender who is known to the Parole Authority to be a terrorism related offender unless:	33
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(a)	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, and	36
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(b)	the offender is otherwise eligible under this Act to be released on parole.	39
(2)	The grounds on which the Parole Authority may revoke the parole order of an offender who is known to the Parole Authority to be a terrorism related offender include that the Parole Authority has become aware that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism.	40
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(3)	The grounds on which a judicial member of the Parole Authority may suspend the parole order of an offender who is known to the judicial member to be a terrorism related offender include that the judicial member has become aware that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism.	1 2 3 4 5
(4)	A court may decline to make a parole order under section 50 of the <i>Crimes (Sentencing Procedure) Act 1999</i> if the offender is known to the court as a terrorism related offender. Any such parole order may be revoked by the Parole Authority in accordance with this section at any time before or after the release of the offender on parole.	6 7 8 9 10
159D	General provisions relating to terrorism related offenders	11
(1)	In deciding whether or not to release a terrorism related offender on parole, the Parole Authority is to:	12 13
(a)	have regard to any credible information it has on the risk that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism under the terms of the proposed parole order and in the future, and	14 15 16 17
(b)	have regard in particular 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.	18 19 20
(2)	The Parole Authority or a judicial member of the Parole Authority may, for the purposes of this Division, have regard to advice received from the NSW Police Force or from any other public authority (whether of this or any other State or Territory or of the Commonwealth) established for law enforcement, security or anti-terrorist purposes.	21 22 23 24 25
(3)	This Division applies in addition to, and despite anything to the contrary in, any other provision of or made under this Act.	26 27
(4)	However, this Division does not limit the operation of section 160.	28
(5)	This Division extends to applications for parole orders pending on the commencement of this Division and to parole orders made before that commencement.	29 30 31