

TASMANIA

**TERRORISM (RESTRICTIONS ON BAIL AND
PAROLE) BILL 2018**

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – BAIL ACT 1994 AMENDED

3. Principal Act
4. Part 1A inserted
 - PART 1A – Grant of Bail to Terrorism-Linked Persons
 - 4A. Interpretation of Part 1A
 - 4B. Limitations on grant of bail to terrorism-linked person
 - 4C. Arrest of terrorism-linked person admitted to bail
 - 4D. Access to proceedings, &c., in relation to terrorism-linked persons

PART 3 – CORRECTIONS ACT 1997 AMENDED

5. Principal Act
6. Section 72 amended (Release on parole)
7. Part 8, Division 2A inserted
 - Division 2A – Parole for terrorism-linked prisoners or prisoners promoting terrorist acts*
 - 83AA. Interpretation of Division 2A
 - 83AB. Release on parole where prisoner is terrorism-linked prisoner or has promoted terrorist act

83AC. Revocation of parole where prisoner is terrorism-linked prisoner or has promoted terrorist act

83AD. Arrest where prisoner on parole is terrorism-linked prisoner or has promoted terrorist act

83AE. Information and access to proceedings, &c.

8. Section 92A inserted

92A. Savings and transitional provisions in relation to amendments made by *Terrorism (Restrictions on Bail and Parole) Act 2018*

PART 4 – CONCLUDING PROVISION

9. Repeal of Act

TERRORISM (RESTRICTIONS ON BAIL AND PAROLE) BILL 2018

(Brought in by the Minister for Justice, the Honourable Elise Nicole Archer)

A BILL FOR

An Act to amend the *Bail Act 1994*, and the *Corrections Act 1997*, in relation to the granting of bail or parole to certain persons linked to terrorist activities, and for related purposes

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Terrorism (Restrictions on Bail and Parole) Act 2018*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

s. 3

Part 2 – Bail Act 1994 Amended

PART 2 – BAIL ACT 1994 AMENDED

3. Principal Act

In this Part, the *Bail Act 1994** is referred to as the Principal Act.

4. Part 1A inserted

After section 4 of the Principal Act, the following Part is inserted:

PART 1A – GRANT OF BAIL TO TERRORISM-LINKED PERSONS

4A. Interpretation of Part 1A

In this Part –

control order has the same meaning as in section 100.1 of the *Criminal Code 1995* of the Commonwealth;

terrorism-linked person means a person who –

- (a) has been convicted of a terrorism offence; or
- (b) is subject to a control order;

*No. 9 of 1994

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

Part 2 – Bail Act 1994 Amended

s. 4

terrorism offence means –

- (a) an offence referred to in paragraph (a), (b) or (c) of the definition of *terrorism offence* in section 3 of the *Crimes Act 1914* of the Commonwealth; and
- (b) an offence against the former *Crimes (Foreign Incursions and Recruitment) Act 1978* of the Commonwealth; and
- (c) an offence, in relation to terrorism, that –
 - (i) is an offence under an Act of the Commonwealth, this State, another State or a Territory; and
 - (ii) is prescribed.

4B. Limitations on grant of bail to terrorism-linked person

- (1) A person, other than a judge or magistrate, must not admit a person to bail if the person is satisfied that the other person is a terrorism-linked person.

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

s. 4

Part 2 – Bail Act 1994 Amended

- (2) A judge or a magistrate must not admit a person to bail if the judge or magistrate is satisfied that the person is a terrorism-linked person.
- (3) Subsection (2) does not apply in relation to a person if the judge or magistrate is satisfied that there are exceptional circumstances.

4C. Arrest of terrorism-linked person admitted to bail

- (1) A police officer may arrest a person who is admitted to bail by a person other than a judge or magistrate, if the police officer suspects on reasonable grounds that the person admitted to bail is a terrorism-linked person.
- (2) A police officer may arrest a person who is admitted to bail by a judge or magistrate, if –
 - (a) the person was not admitted to bail because a judge or magistrate found, under section 4B(3), that there were exceptional circumstances in relation to the person; and
 - (b) the police officer suspects on reasonable grounds that the person is a terrorism-linked person.

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

Part 2 – Bail Act 1994 Amended

s. 4

- (3) A police officer may arrest a person who is admitted to bail by a judge or magistrate, if –
 - (a) the person was not, before he or she was admitted to bail, a terrorism-linked person; and
 - (b) the person, after his or her release on bail by the judge or magistrate, has become a terrorism-linked person.
- (4) On the arrest of a person under this section, the bail of the person is suspended.
- (5) Subsection (4) ceases to apply to a person if the person arrested is later released unconditionally.
- (6) Section 11 applies to a person arrested under this section as if the person had been arrested under section 10.
- (7) Despite subsection (6), section 11(1) does not apply in relation to a justice in respect of a person arrested under this section unless the justice is a magistrate.
- (8) This section applies in relation to a person who has made an application for bail, or who is admitted to bail, before, on or after the day on which this section commences.

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

s. 4

Part 2 – Bail Act 1994 Amended

4D. Access to proceedings, &c., in relation to terrorism-linked persons

In any proceedings before a judge, a magistrate or a court, in relation to bail in respect of a person who is, or is alleged by a party to the proceedings to be, a terrorism-linked person, the judge, magistrate or court may make any one or more of the following orders:

- (a) that all or part of the proceedings are to be heard in closed court;
- (b) that only persons, or members of a class of persons, specified by the judge, magistrate or court may be present during all or part of the proceedings;
- (c) that the publication of a report of all or part of the proceedings, or of any information that is disclosed in, or referred to in, the proceedings, is prohibited.

PART 3 – CORRECTIONS ACT 1997 AMENDED

5. Principal Act

In this Part, the *Corrections Act 1997** is referred to as the Principal Act.

6. Section 72 amended (Release on parole)

Section 72 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) The Board must notify the Commissioner of Police at least 7 days before the Board considers whether to release a prisoner on parole.

7. Part 8, Division 2A inserted

After section 83 of the Principal Act, the following Division is inserted in Part 8:

Division 2A – Parole for terrorism-linked prisoners or prisoners promoting terrorist acts

83AA. Interpretation of Division 2A

- (1) In this Division –

control order has the same meaning as in section 100.1 of the *Criminal*

*No. 51 of 1997

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

s. 7

Part 3 – Corrections Act 1997 Amended

Code 1995 of the
Commonwealth;

terrorism-linked prisoner means a
prisoner who –

- (a) has been convicted of a
terrorism offence; or
- (b) is subject to a control
order;

terrorism offence means –

- (a) an offence referred to in
paragraph (a), (b) or (c) of
the definition of *terrorism*
offence in section 3 of the
Crimes Act 1914 of the
Commonwealth; and
- (b) an offence against the
former *Crimes (Foreign*
Incursions and
Recruitment) Act 1978 of
the Commonwealth; and
- (c) an offence, in relation to
terrorism, that –
 - (i) is an offence
under an Act of
the
Commonwealth,
this State, another
State or a
Territory; and

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

Part 3 – Corrections Act 1997 Amended

s. 7

(ii) is prescribed;

terrorist act has the same meaning as in section 100.1 of the *Criminal Code 1995* of the Commonwealth.

(2) A reference in this Division to a prisoner promoting a terrorist act is a reference to the prisoner –

(a) engaging in, or inciting or assisting another person to engage in, a terrorist act; or

(b) making statements supporting a terrorist act; or

(c) carrying out activities supporting a terrorist act; or

(d) advocating the carrying out of a terrorist act; or

(e) advocating support for a terrorist act; or

(f) advocating the making of statements, or the carrying out of activities, that support, or that advocate support for, a terrorist act.

(3) A reference in this Division to a prisoner promoting a terrorist act includes a reference to a prisoner who, in this State, another State, a Territory, another

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

s. 7

Part 3 – Corrections Act 1997 Amended

country, or in any other place, including the high seas or international airspace, and whether or not before or after the commencement of this Division, promoted a terrorist act.

- (4) A reference in this Division to a person who has been convicted of a terrorism offence includes a reference to a person who has been, in this State, another State or a Territory and whether before or after the commencement of this Division, convicted of a terrorism offence.
- (5) A reference in this Division to a person who is subject to a control order includes a reference to a person who is subject to a control order, whether the control order was made before or after the commencement of this Division.
- (6) A reference in this Division to a terrorist act includes a reference to –
 - (a) a terrorist act that has occurred; and
 - (b) a terrorist act that has not occurred, that may not occur or that will not occur; and
 - (c) a terrorist act that subsequently occurs; and
 - (d) a terrorist act, whether the act is specifically or generally identified or is of a type of

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

Part 3 – Corrections Act 1997 Amended

s. 7

terrorist act that is specifically or generally identified.

83AB. Release on parole where prisoner is terrorism-linked prisoner or has promoted terrorist act

- (1) The Board must not release a prisoner on parole if the Board is satisfied that –
 - (a) the prisoner is a terrorism-linked prisoner; or
 - (b) the prisoner has promoted a terrorist act.
- (2) Subsection (1) does not apply in relation to a prisoner if the Board is satisfied that there are exceptional circumstances.

83AC. Revocation of parole where prisoner is terrorism-linked prisoner or has promoted terrorist act

- (1) The Board must exercise its powers under section 79(1) to revoke the parole order in respect of a prisoner if the Board, on the information before it, is satisfied that, if an application were made to the Board for parole, the Board would, in accordance with section 83AB, not release the prisoner on parole.
- (2) Section 79(2) does not apply to a prisoner in relation to a parole order if

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

s. 7

Part 3 – Corrections Act 1997 Amended

subsection (1) applies in relation to the prisoner.

83AD. Arrest where prisoner on parole is terrorism-linked prisoner or has promoted terrorist act

- (1) Without limiting the generality of section 80(1), the Board must exercise its powers under section 80(1) in relation to a prisoner who is released on parole if the prisoner has not been arrested under subsection (2) and the Board, on the information before it, is satisfied that, if an application were made to the Board for parole, the Board would, in accordance with section 83AB, not release the prisoner on parole.
- (2) A police officer may arrest a prisoner who is released on parole if –
 - (a) the prisoner was not released on parole because the Board was satisfied, under section 83AB(2), that there were exceptional circumstances and the police officer is satisfied on reasonable grounds that –
 - (i) the prisoner is a terrorism-linked prisoner; or
 - (ii) the prisoner has, before or after his or her release on

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

Part 3 – Corrections Act 1997 Amended

s. 7

parole, promoted a
terrorist act; or

- (b) the prisoner was released on parole because the Board was satisfied, under section 83AB(2), that there were exceptional circumstances and the police officer is satisfied on reasonable grounds that after the prisoner was released on parole –
- (i) there is information, not before the Board at the time when the prisoner was released on parole, that the person is a terrorism-linked person or promoted a terrorist act; or
 - (ii) the prisoner is convicted of a terrorist act; or
 - (iii) a control order is made in relation to the prisoner; or
 - (iv) the prisoner has promoted a terrorist act.
- (3) A police officer may, when arresting a person under subsection (2), exercise the same powers as a police officer may exercise when arresting a person who the police officer believes on reasonable grounds has committed an offence.

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

s. 7

Part 3 – Corrections Act 1997 Amended

- (4) A police officer who arrests a prisoner under subsection (2) must, as soon as practicable, return the prisoner to prison.
- (5) When a prisoner is returned to prison after being arrested under subsection (2), the following provisions apply:
 - (a) the Board, within 14 days after the prisoner is so returned to prison, is to give the prisoner an opportunity to be heard;
 - (b) subject to section 83AC(1), the Board, after complying with paragraph (a), is to exercise in relation to the prisoner the powers conferred on the Board by section 79(1);
 - (c) if the Board revokes the prisoner's release on parole pursuant to section 79(1), the provisions of section 79(5) apply to the prisoner accordingly.

83AE. Information and access to proceedings, &c.

- (1) The Board may receive and take into account any information provided by a body or agency of this State, another State, a Territory or the Commonwealth, that may be relevant to the Board making a decision –

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

Part 3 – Corrections Act 1997 Amended

s. 7

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- (a) as to whether a prisoner is a terrorism-linked prisoner or has promoted a terrorist act; or
 - (b) in relation to parole in respect of a prisoner who is a terrorism-linked prisoner or who has promoted a terrorist act.
- (2) Subsection (1) does not limit the information that the Board may receive and take into account for the purposes of making a decision referred to in that subsection.
- (3) In any proceedings before the Board in relation to the making of a decision referred to in subsection (1) in respect of a prisoner, the Board may make any one or more of the following orders:
- (a) that all or part of the proceedings are to be heard in private;
 - (b) that only persons, or members of a class of persons, specified by the Board may be present during all or part of the proceedings;
 - (c) that the publication of a report of all or part of the proceedings, or of any information that is disclosed in, or referred to in, all or part of the proceedings, is prohibited.

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

s. 7

Part 3 – Corrections Act 1997 Amended

- (4) In any proceedings before a court in relation to a decision, by the Board, referred to in subsection (1), in respect of a prisoner, the court may make any one or more of the following orders:
- (a) that all or part of the proceedings are to be heard in closed court;
 - (b) that only persons, or members of a class of persons, specified by the court may be present during all or part of the proceedings;
 - (c) that the publication of a report of all or part of any of the following is prohibited:
 - (i) the proceedings;
 - (ii) any information that is disclosed in, or referred to in, all or part of the proceedings;
 - (iii) any reasons given by the Board for a decision to which the proceedings relate;
 - (iv) any earlier proceedings in relation to the making of a decision referred to in subsection (1) in respect of a prisoner.

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

Part 3 – Corrections Act 1997 Amended

s. 8

8. Section 92A inserted

After section 92 of the Principal Act, the following section is inserted in Part 9:

92A. Savings and transitional provisions in relation to amendments made by *Terrorism (Restrictions on Bail and Parole) Act 2018*

The amendments to this Act made by a provision of the *Terrorism (Restrictions on Bail and Parole) Act 2018* apply in relation to –

- (a) a prisoner, whether or not the prisoner is released from prison on parole before or after the commencement of the provision; or
- (b) an application for the release from prison on parole of a prisoner, whether or not the application was made before or after the commencement of the provision.

Terrorism (Restrictions on Bail and Parole) Act 2018
Act No. of 2017

s. 9

Part 4 – Concluding Provision

PART 4 – CONCLUDING PROVISION

9. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.