

Legislative Council—No 243

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South Australia

**Statutes Amendment (Terror Suspect Detention)
Bill 2017**

A BILL FOR

An Act to amend the *Bail Act 1985*; the *Correctional Services Act 1982*; the *Criminal Law (High Risk Offenders) Act 2015*; and the *Police Act 1998*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Terror Suspect Detention) Act 2017*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Bail Act 1985*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *community corrections officer* insert:

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

- (2) Section 3(1)—after the definition of *telephone* insert:

terrorism intelligence authority means a terrorism intelligence authority designated by regulations under section 74B of the *Police Act 1998*;

terrorism notification means a terrorism notification under section 74B of the *Police Act 1998*;

terrorist offence means—

- (a) an offence against Division 72 Subdivision A of the Commonwealth Criminal Code (International terrorist activities using explosive or lethal devices); or
- (b) a terrorism offence against Part 5.3 of the Commonwealth Criminal Code (Terrorism) where the maximum penalty is 7 or more years imprisonment; or
- (c) an offence against Part 5.5 of the Commonwealth Criminal Code (Foreign incursions and recruitment), except an offence against subsection 119.7(2) or (3) (Publishing recruitment advertisements); or
- (d) an offence against the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978* of the Commonwealth, except an offence against paragraph 9(1)(b) or (c) of that Act (Publishing recruitment advertisements); or

- (e) an offence of a kind prescribed by the regulations for the purposes of this definition;

terror suspect—see section 3B;

5—Insertion of section 3B

5 After section 3A insert:

3B—Terror suspects

- (1) A person is a *terror suspect* for the purposes of a bail application or bail agreement under this Act if—
- 10 (a) the bail application or bail agreement does not relate to a terrorist offence; but
- (b) the person—
- (i) has previously been charged with, or convicted of, a terrorist offence; or
- 15 (ii) is the subject of a terrorism notification.

Note—

If the bail application or bail agreement relates to a terrorist offence, see section 15AA of the *Crimes Act 1914* of the Commonwealth.

- 20 (2) For the purposes of subsection (1)(b)(i), a person is only taken to have been charged with an offence if an information or other initiating process charging the person with the offence has been filed in a court.

6—Amendment of section 4—Eligibility for bail

- (1) Section 4(1)—after paragraph (g) insert:

(ga) a person who has been arrested without warrant under section 19B;

- 25 (2) Section 4(1)—after paragraph (h) insert:

(i) a person who has ceased to be a terror suspect.

- (3) Section 4—after subsection (1a) insert:

30 (1b) A person who is eligible to apply for bail in accordance with subsection (1)(i) may so apply despite the fact that the person is already subject to a bail agreement (the *previous bail agreement*) if, at the time of the previous bail agreement, the person was a terror suspect (and if a new bail agreement is entered into following such an application, the previous bail agreement ceases to be in force).

7—Amendment of section 5—Bail authorities

- 35 (1) Section 5(1)—delete "The following" and substitute:

Subject to subsection (3), the following

(2) Section 5—after subsection (2) insert:

(3) If the eligible person is a terror suspect—

(a) only a court may act as a bail authority in accordance with subsection (1) in relation to the eligible person; and

(b) a terrorism intelligence authority is entitled to be heard in relation to any application under this Act relating to the eligible person.

8—Amendment of section 10A—Presumption against bail in certain cases

Section 10A(2), definition of *prescribed applicant*—after paragraph (e) insert:

or

(f) an applicant who is a terror suspect.

9—Insertion of section 19B

After section 19A insert:

19B—Arrest of person who becomes a terror suspect

If a person who has been released under a bail agreement becomes a terror suspect while subject to the bail agreement, the bail agreement is taken to be revoked and a police officer may arrest the person without warrant.

10—Transitional provision

(1) The amendments to the *Bail Act 1985* effected by this Act apply in relation to—

(a) a person who applies for bail on or after the commencement of this Act; or

(b) a person who is, on the commencement of this Act, subject to a bail agreement,

regardless of when the relevant offence was committed.

(2) The reference in section 19B of the *Bail Act 1985* (as amended by this Act) to a person becoming a terror suspect includes a person who, on the commencement of this Part, becomes a terror suspect because they are a person to whom section 3B of the *Bail Act 1985* (as amended by this Act) applies.

Part 3—Amendment of *Correctional Services Act 1982*

11—Amendment of section 4—Interpretation

(1) Section 4(1)—after the definition of *child sexual offence* insert:

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

(2) Section 4(1)—after the definition of *spouse* insert:

terrorism intelligence authority means a terrorism intelligence authority designated by regulations under section 74B of the *Police Act 1998*;

terrorism notification means a terrorism notification under section 74B of the *Police Act 1998*;

terrorist offence means—

- (a) an offence against Division 72 Subdivision A of the Commonwealth Criminal Code (International terrorist activities using explosive or lethal devices); or
- (b) a terrorism offence against Part 5.3 of the Commonwealth Criminal Code (Terrorism) where the maximum penalty is 7 or more years imprisonment; or
- (c) an offence against Part 5.5 of the Commonwealth Criminal Code (Foreign incursions and recruitment), except an offence against subsection 119.7(2) or (3) (Publishing recruitment advertisements); or
- (d) an offence against the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978* of the Commonwealth, except an offence against paragraph 9(1)(b) or (c) of that Act (Publishing recruitment advertisements); or
- (e) an offence of a kind prescribed by the regulations for the purposes of this definition;

terror suspect—see subsection (4);

(3) Section 4—after subsection (3) insert:

- (4) A person is a **terror suspect** for the purposes of this Act if the person—
 - (a) is charged with a terrorist offence; or
 - (b) has ever been convicted of a terrorist offence; or
 - (c) is the subject of a terrorism notification.
- (5) For the purposes of subsection (4)(a), a person is only taken to have been charged with an offence if an information or other initiating process charging the person with the offence has been filed in a court.

12—Amendment of section 59—Deputies

Section 59—after subsection (2) insert:

- (3) If the presiding member of the Board is for any reason absent or unable to act for the purpose of section 74B or 77AA—
 - (a) if the first deputy presiding member of the Board is available, the first deputy presiding member must act as the presiding member for that purpose; or
 - (b) if the first deputy presiding member is for any reason absent or unable to act for that purpose, the second deputy presiding member of the Board must act as the presiding member for that purpose.

13—Amendment of section 66—Automatic release on parole for certain prisoners

Section 66(2)—after paragraph (aca) insert:

(acb) a prisoner who is a terror suspect; or

5 **14—Insertion of section 74B**

After section 74A insert:

74B—Suspension of parole if person becomes a terror suspect

- (1) If a person becomes a terror suspect while on parole—
- 10 (a) the presiding member of the Board must, on becoming aware of that fact, issue a warrant for the arrest of the person; and
- (b) on the warrant being so issued, the person's parole is suspended until a determination is made under this section.
- 15 (2) A warrant issued under this section authorises the detention of the person in custody pending the making of a determination under this section.
- (3) The presiding member of the Board must, as soon as practicable, determine whether there are special circumstances justifying the person's continued release on parole.
- 20 (4) A terrorism intelligence authority is entitled to be heard by the presiding member of the Board in relation to the making of a determination under this section.
- (5) The presiding member of the Board is not required to provide to the person any grounds or reasons for a determination under this section.
- 25 (6) Information forming the basis for the making of a determination under this section must not be disclosed to any person (except to the Attorney-General, a court or a person to whom a terrorism intelligence authority authorises its disclosure) if, at the time at which the question of disclosure is to be decided, the information is properly classified by the terrorism intelligence authority as terrorism intelligence under section 74B of the *Police Act 1998* (whether or not the information was so classified at the time at which the determination under this section was made).
- 30 (7) If the presiding member of the Board determines that there are special circumstances justifying the person's continued release on parole, the suspension under this section is lifted and, on release from custody under this section, the person will continue on parole for the balance of the period of parole remaining as at the date on which the parole was suspended under this section.
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- 5 (8) If the presiding member of the Board determines that there are not special circumstances justifying the person's continued release on parole, the person's parole is cancelled and the person is liable to serve in prison the balance of the sentence, or sentences, of imprisonment in respect of which the person was on parole, being the balance unexpired as at the day on which the parole was suspended under this section.

15—Amendment of section 77—Proceedings before Board

Section 77(1)—after paragraph (d) insert:

- 10 (e) if the prisoner to whom the application relates is a terror suspect—a terrorism intelligence authority.

16—Insertion of section 77AA

After section 77 insert:

77AA—Special procedures for terror suspects

- 15 (1) Despite any other provision of this Division, a decision of the Board relating to a terror suspect is of no effect unless it is confirmed by the presiding member of the Board in accordance with this section.
- 20 (2) The presiding member of the Board must, before confirming a decision relating to a terror suspect, invite a terrorism intelligence authority to make submissions to the presiding member in relation to the proposed decision.
- 25 (3) The presiding member of the Board—
- (a) must not confirm a decision of the Board to release a prisoner who is a terror suspect on parole unless the presiding member determines that there are special circumstances justifying the prisoner's release on parole; and
 - (b) must not confirm any other decision of the Board relating to a terror suspect unless the presiding member is satisfied that the decision is appropriate in all the circumstances.
- 30 (4) The presiding member of the Board may determine to—
- (a) confirm a decision of the Board (in which case the decision of the Board is taken to have effect immediately); or
 - (b) reject a decision of the Board and substitute the presiding member's own decision (in which case the Board is taken to have made the decision as so substituted and that decision is taken to have effect immediately); or
 - (c) refer the matter back to the Board for a further decision with any recommendations the presiding member thinks fit (in which case any further decision of the Board will be subject to the requirement for confirmation under this section in the same way as the decision at first instance).
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(5) The presiding member of the Board is not required to provide to the prisoner any grounds or reasons for a determination under this section.

(6) Information forming the basis for the making of a determination under this section must not be disclosed to any person (except to the Attorney-General, a court or a person to whom a terrorism intelligence authority authorises its disclosure) if, at the time at which the question of disclosure is to be decided, the information is properly classified by the terrorism intelligence authority as terrorism intelligence under section 74B of the *Police Act 1998* (whether or not the information was so classified at the time at which the determination under this section was made).

17—Transitional provision

(1) The amendments to the *Correctional Services Act 1982* effected by this Act apply in relation to—

(a) a prisoner who is serving a sentence of imprisonment (including a prisoner who has been released on home detention); or

(b) a person who is on parole,

on or after the commencement of this Part (regardless of when the relevant offence was committed).

(2) The reference in section 74B of the *Correctional Services Act 1982* (as amended by this Act) to a person becoming a terror suspect includes a person who, on the commencement of this Part, becomes a terror suspect because they are a person to whom section 4(4) of the *Correctional Services Act 1982* (as amended by this Act) applies.

Part 4—Amendment of *Criminal Law (High Risk Offenders) Act 2015*

18—Amendment of section 4—Interpretation

(1) Section 4—after the definition of *CE* insert:

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

(2) Section 4—after the definition of *supervision order* insert:

terrorism intelligence authority means a terrorism intelligence authority designated by regulations under section 74B of the *Police Act 1998*;

terrorism notification means a terrorism notification under section 74B of the *Police Act 1998*;

terrorist act has the same meaning as in Part 5.3 of the Commonwealth Criminal Code;

terrorist offence means—

- (a) an offence against Division 72 Subdivision A of the Commonwealth Criminal Code (International terrorist activities using explosive or lethal devices); or
- (b) a terrorism offence against Part 5.3 of the Commonwealth Criminal Code (Terrorism) where the maximum penalty is 7 or more years imprisonment; or
- (c) an offence against Part 5.5 of the Commonwealth Criminal Code (Foreign incursions and recruitment), except an offence against subsection 119.7(2) or (3) (Publishing recruitment advertisements); or
- (d) an offence against the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978* of the Commonwealth, except an offence against paragraph 9(1)(b) or (c) of that Act (Publishing recruitment advertisements); or
- (e) an offence of a kind prescribed by the regulations for the purposes of this definition;

terror suspect—see section 5A;

- (3) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
 - (2) A reference to the Attorney-General in a provision of this Act relating to any application or proceedings will be read as a reference to—
 - (a) in the case of an application or proceedings involving a terror suspect—the Commonwealth Attorney-General or the State Attorney-General; or
 - (b) in any other case—the State Attorney-General.

19—Amendment of section 5—Meaning of high risk offender

Section 5—after paragraph (c) insert:

- (ca) a terror suspect who is serving a sentence of imprisonment; or

20—Insertion of section 5A

After section 5 insert:

5A—Meaning of terror suspect

- (1) Subject to this section, a person is a ***terror suspect*** for the purposes of this Act if the person—
 - (a) is charged with a terrorist offence; or
 - (b) has ever been convicted of a terrorist offence; or
 - (c) is the subject of a terrorism notification.

(2) For the purposes of subsection (1)(a), a person is only taken to have been charged with an offence if an information or other initiating process charging the person with the offence has been filed in a court.

5 (3) A person is not a terror suspect for the purposes of this Act if the person is a terrorist offender within the meaning of subsection 105A.3(1) of the Commonwealth Criminal Code.

21—Amendment of section 6—Application of Act

(1) Section 6—delete "This" and substitute:

10 Subject to subsection (2), this

(2) Section 6—after its present contents (now to be designated as subsection (1)) insert:

(2) This Act applies (with any modifications prescribed by the regulations) in relation to a youth who is of or above the age of 16 years and is a terror suspect.

22—Amendment of section 7—Proceedings

(1) Section 7(3)—after paragraph (b) insert:

or

(c) if the respondent is a terror suspect—an assessment of the likelihood of the respondent committing a terrorist offence, or otherwise being involved in a terrorist act, or committing a serious offence of violence.

(2) Section 7(6)(a)—delete paragraph (a) and substitute:

(a) the likelihood of the respondent—

- (i) committing a further serious sexual offence; or
- (ii) committing a further serious offence of violence; or
- (iii) committing a terrorist offence, or otherwise being involved in a terrorist act, or committing a serious offence of violence,

(as the case may be) if not supervised under the order;

23—Amendment of section 8—Parties

Section 8—after its present contents (now to be designated as subsection (1)) insert:

(2) If an application relates to a terror suspect—

- (a) the Attorney-General may be represented in the proceedings by a terrorism intelligence authority; or
- (b) a terrorism intelligence authority has a right to appear and be heard in the proceedings.

24—Amendment of section 18—Continuing detention orders

Section 18—after subsection (5) insert:

- (2) If proceedings under this section relate to a terror suspect—
 - (a) the Attorney-General may be represented in the proceedings by a terrorism intelligence authority; or
 - (b) a terrorism intelligence authority has a right to appear and be heard in the proceedings.

25—Insertion of section 19A

Before section 20 insert:

19A—Special procedures for terror suspects

- (1) Despite any other provision of this Act, a decision of the Parole Board relating to a terror suspect (other than a decision to issue a direction under section 11(6)(b)) is of no effect unless it is confirmed by the presiding member of the Parole Board in accordance with this section.
- (2) The presiding member of the Parole Board must, before confirming a decision relating to a terror suspect, invite a terrorism intelligence authority to make submissions to the presiding member in relation to the proposed decision.
- (3) The presiding member of the Parole Board must not confirm a decision of the Parole Board relating to a terror suspect unless the presiding member is satisfied that the decision is appropriate in all the circumstances.
- (4) The presiding member of the Parole Board may determine to—
 - (a) confirm a decision of the Parole Board (in which case the decision of the Board is taken to have effect immediately); or
 - (b) reject a decision of the Parole Board and substitute the presiding member's own decision (in which case the Board is taken to have made the decision as so substituted and that decision is taken to have effect immediately); or
 - (c) refer the matter back to the Parole Board for a further decision with any recommendations the presiding member thinks fit (in which case any further decision of the Board will be subject to the requirement for confirmation under this section in the same way as the decision at first instance).
- (5) The presiding member of the Parole Board is not required to provide any grounds or reasons for a determination under this section to the person the subject of the determination.

- 5 (6) Information forming the basis for the making of a determination under this section must not be disclosed to any person (except to the Attorney-General, a court or a person to whom a terrorism intelligence authority authorises its disclosure) if, at the time at which the question of disclosure is to be decided, the information is properly classified by the terrorism intelligence authority as terrorism intelligence under section 74B of the *Police Act 1998* (whether or not the information was so classified at the time at which the determination under this section was made).
- 10 (7) If the presiding member of the Parole Board is for any reason absent or unable to act for the purpose of this section—
- 15 (a) if the first deputy presiding member of the Parole Board is available, the first deputy presiding member must act as the presiding member for that purpose; or
- (b) if the first deputy presiding member is for any reason absent or unable to act for that purpose, the second deputy presiding member of the Parole Board must act as the presiding member for that purpose.

26—Transitional provision

20 The amendments to the *Criminal Law (High Risk Offenders) Act 2015* effected by this Act apply in relation to a person serving a sentence of imprisonment on or after the commencement of this Part (regardless of when the relevant offence was committed).

Part 5—Amendment of *Police Act 1998*

27—Insertion of section 74B

25 After section 74A insert:

74B—Terrorism intelligence and terrorism notifications

- 30 (1) The regulations may designate a law enforcement authority, or any other authority, as a *terrorism intelligence authority*.
- (2) Information may be classified by a terrorism intelligence authority as *terrorism intelligence* in accordance with procedures prescribed by the regulations.
- 35 (3) In any proceedings before a court, the court—
- (a) must, on the application of a terrorism intelligence authority, take steps to maintain the confidentiality of information properly classified by the authority as terrorism intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and

(b) may take evidence consisting of or relating to information so classified by the terrorism intelligence authority by way of affidavit of a police officer of or above the rank of superintendent or another person authorised by the terrorism intelligence authority.

(4) A Minister may enter into an agreement with 1 or more other Australian jurisdictions for the provision, by a terrorism intelligence authority, of notifications relating to persons suspected of terrorist offences, or of supporting or otherwise being involved in terrorist offences, or of associating or being affiliated with such persons.

(5) If an agreement is entered into by a Minister under subsection (4), the Minister who entered into the agreement must ensure that information relating to the agreement (including information about the criteria on which terrorism notifications will be provided by a terrorism intelligence authority) is provided, as soon as practicable, to the Crime and Public Integrity Policy Committee of the Parliament.

(6) A police officer of or above the rank of inspector may, in accordance with guidelines issued by the Commissioner, provide a notification relating to persons suspected of terrorist offences, or of supporting or otherwise being involved in terrorist offences, or of associating or being affiliated with such persons.

(7) If the Commissioner issues guidelines under subsection (6), the Commissioner must ensure that information relating to the guidelines (including information about the criteria on which terrorism notifications will be provided by a police officer, the manner in which such terrorism notifications will be provided and the records that are to be kept in relation to each notification) is provided, as soon as practicable, to the Crime and Public Integrity Policy Committee of the Parliament.

(8) Information provided to the Crime and Public Integrity Policy Committee of the Parliament must not include any information classified as terrorism intelligence by a terrorism intelligence authority.

(9) In any proceedings, a certificate apparently signed by the Commissioner certifying that, on a date specified in the certificate, a person specified in the certificate was the subject of a terrorism notification is proof, in the absence of evidence to the contrary, of the matter so certified.

(10) The regulations may make other necessary or expedient provisions relating to the operations of a terrorism intelligence authority in the State including (without limitation)—

(a) provisions specifying the manner in which determinations may be made by a terrorism intelligence authority for the purposes of any law of the State;

- (b) provisions relating to the manner in which a terrorism intelligence authority may participate in any proceedings in the State;
- (c) provisions relating to record keeping and reporting;
- (d) evidentiary provisions,

and such regulations may leave a matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of a Minister, the Commissioner or another specified person.

(11) The power to make regulations under this section is in addition to any other power to make regulations under this Act.

(12) In this section—

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

terrorism intelligence means information relating to actual or suspected terrorist acts (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice investigations into such acts, to enable the discovery of the existence or identity of a confidential source of information or to endanger a person's life or physical safety;

terrorism notification means a notification provided by a terrorism intelligence authority under subsection (4) or a notification provided by a police officer of or above the rank of inspector under subsection (6);

terrorist act has the same meaning as in Part 5.3 of the Commonwealth Criminal Code;

terrorist offence means—

- (a) an offence against Division 72 Subdivision A of the Commonwealth Criminal Code (International terrorist activities using explosive or lethal devices); or
- (b) a terrorism offence against Part 5.3 of the Commonwealth Criminal Code (Terrorism) where the maximum penalty is 7 or more years imprisonment; or
- (c) an offence against Part 5.5 of the Commonwealth Criminal Code (Foreign incursions and recruitment), except an offence against subsection 119.7(2) or (3) (Publishing recruitment advertisements); or
- (d) an offence against the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978* of the Commonwealth, except an offence against paragraph 9(1)(b) or (c) of that Act (Publishing recruitment advertisements); or
- (e) an offence of a kind prescribed by the regulations for the purposes of this definition.