



SENATOR THE HON GEORGE BRANDIS QC

**ATTORNEY-GENERAL
LEADER OF THE GOVERNMENT IN THE SENATE**

MEDIA RELEASE

CRIMINAL CODE AMENDMENT (HIGH RISK TERRORIST OFFENDERS) BILL 2016

The Turnbull Government has secured support from all states and territories for the High Risk Terrorist Offenders Bill.

The Australian Government, backed by all states and territories, has accepted all 24 recommendations of the Parliamentary Joint Committee on Intelligence and Security (PJCIS), including that the Bill be passed.

The Bill, including amendments, will return for debate in the Senate today and is expected to pass the Parliament this week.

This Bill further strengthens Australia's national security laws and counter-terrorism framework by enabling continued detention of terrorist offenders who present an unacceptable risk to the community at the end of their custodial sentences.

For this to happen, a Supreme Court would need to be satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious terrorism offence if released into the community.

Implementing the Committee's recommendations will enhance operational safeguards and ensure adequate and effective oversight.

As recommended by the Committee, the Government has developed an Implementation Plan. This includes further detail on, and timeframes for, the key operational elements of the scheme, such as developing risk assessment tools and detention arrangements for offenders. This is being done in close consultation with the states and territories.

Amendments made to the Bill include:

- when sentencing an offender convicted under any of the provisions of the *Criminal Code* to which the continuing detention scheme applies, the sentencing court must warn the offender that an application for continuing detention could be considered;
- the application for a continuing detention order, or review of a continuing detention order, must include a copy of any material in the possession of the Attorney-General or any statements of facts that the Attorney-General is aware of that would reasonably be regarded as supporting a finding that an order should not be made;

- the continuing detention scheme must be subject to a sunset period of 10 years after the day the Bill receives Royal Assent;
- the Independent National Security Legislation Monitor (INSLM) must complete a review of the continuing detention scheme five years after the day the Bill receives Royal Assent; and
- the PJCIS must review the continuing detention scheme six years after the day the Bill receives Royal Assent.

The Government thanks the Committee for its valuable bipartisan work.

The Government also thanks the states and territories for their ongoing partnership with the Commonwealth in protecting the community from terrorism.

The PJCIS Report is available at:

aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/HRTOBill/Report-PDF

The Implementation Plan is available at:

aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/HRTOBill/Implementation_Plan

RECOMMENDATIONS OF THE PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY AND THE GOVERNMENT'S RESPONSE

| No. | Recommendation | Government Response |
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| 1 | The Committee recommends that, following the consideration of the other recommendations listed in this Report, the Government obtains legal advice from the Solicitor-General, or equivalent, on the final form of the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016. | Accepted |
| 2 | The Committee recommends that proposed section 105A.3 in the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to remove from the scope of offences section 80(B) of the Criminal Code, which refers to treason. | Accepted |
| 3 | The Committee recommends that proposed section 105A.3 in the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to remove from the scope of offences subsections 119.7(2) and (3) of the Criminal Code, which refer to publishing recruitment advertisements. | Accepted |
| 4 | The Committee recommends that the Explanatory Memorandum to the Criminal Code Amendment (High Risk Terrorist | Accepted |

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| | <p>Offenders) Bill 2016 be amended to clarify the interaction between parole and bail provisions, and make explicit that:</p> <ul style="list-style-type: none"> • a person is not eligible for parole if that person is subject to a continuing detention order, • a person detained for the purposes of giving effect to a continuing detention order is not entitled to seek bail, and • a person subject to a continuing detention order and charged with a further offence is entitled to make an application for bail for that offence. | |
| 5 | The Committee recommends that the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to provide that an application for a continuing detention order may be commenced up to 12 months (rather than six months) prior to the completion of an offender's sentence, in order to provide all parties additional time to prepare and for the offender to seek legal representation. | Accepted |
| 6 | The Committee recommends that, to avoid a potential ambiguity, proposed section 105A.8 of the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to make clear that the rules of evidence apply to the matters the Court is required to have regard to in its decision as to whether the terrorist offender poses an unacceptable risk of committing a serious terrorism offence if released into the community. | Accepted |
| 7 | The Committee recommends that the Explanatory Memorandum to the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to provide greater clarity to the definition of 'relevant expert' in proposed section 105A.2. This should include examples of persons who may potentially fall within the category 'any other expert' at item (d) of the definition. | Accepted |
| 8 | The Committee recommends that proposed sub section 105A.6(7) of the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to replace the word 'must' with 'may' so that the expert's report may include the matters listed in paragraphs (a) to (h). | Accepted |
| 9 | The Committee recommends that the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 and Explanatory Memorandum be amended to make explicit that | Accepted |

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| | each party is able to bring forward their preferred relevant expert, or experts, and that the Court will then determine the admissibility of each expert's evidence. | |
| 10 | The Committee recommends that the Explanatory Memorandum to the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to make explicit that a Court may appoint a relevant expert at any point during continuing detention order proceedings. | Accepted |
| 11 | The Committee recommends that the Explanatory Memorandum to the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to make explicit that an offender is to be provided in a timely manner with information to be relied on in an application for a continuing detention order. | Accepted |
| 12 | The Committee recommends that the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended so that if an offender, through no fault of his or her own, is unable to obtain legal representation: <ul style="list-style-type: none"> • the Court has the explicit power to stay proceedings for a continuing detention order, and • the Court is empowered to make an order for reasonable costs to be funded to enable the offender to obtain legal representation. | Accepted |
| 13 | The Committee recommends that the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to require documents related to a continuing detention order to be given to the offender's legal representative. If the offender does not have a legal representative, the documents may be delivered to the chief executive officer of the offender's prison as currently provided for in the Bill. | Accepted |
| 14 | The Committee recommends that the Explanatory Memorandum to the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to clarify what is proposed by a 'rehearing' as set out in proposed section 105A.17, namely <ul style="list-style-type: none"> • what matters may be considered within a rehearing, and • the types of circumstances that would constitute 'special grounds' to allow new evidence to be introduced during a rehearing. | Accepted |
| 15 | The Committee recommends that the Government clarify the process for the initiation of a periodic review of a continuing | Accepted |

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| | detention order in the Explanatory Memorandum, and, if necessary, in the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016. | |
| 16 | <p>The Committee recommends that, for the avoidance of doubt, the Government should amend Division 104 of the Criminal Code to make explicit that a control order can be applied for and obtained while an individual is in prison, but that the controls imposed by that order would not apply until the person is released.</p> <p>The Committee further recommends that the Government consider whether the existing control order regime could be further improved to most effectively operate alongside the proposed continuing detention order regime. Any potential changes should be developed in time to be considered as part of the reviews of the control order legislation to be completed by the INSLM by 7 September 2017 and the PJCIS by 7 March 2018.</p> | Accepted |
| 17 | The Committee recommends that the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be amended to require a Court, when sentencing an offender convicted under any of the provisions of the Criminal Code that apply to the continuing detention order regime, to warn the offender that an application for post-sentence detention could be considered. | Accepted |
| 18 | The Committee recommends that the continuing detention order regime be subject to an initial sunset period that expires 10 years after passage of the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016. | Accepted |
| 19 | The Committee recommends that the Intelligence Services Act 2001 be amended to require the PJCIS to complete a review of the continuing detention order regime at Division 105A of the Criminal Code six years after passage of the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016. | Accepted |
| 20 | The Committee recommends that the Independent National Security Legislation Monitor Act 2010 be amended to require the Independent National Security Legislation Monitor to complete a review of the continuing detention order regime at | Accepted |

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| | Division 105A of the Criminal Code five years after passage of the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016. | |
| 21 | The Committee recommends that the Government appoint a new Independent National Security Legislation Monitor as soon as possible. | Accepted |
| 22 | The Committee recommends that the Attorney-General provide the Committee with a clear development and implementation plan that includes timeframes to assist detailed consideration of the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016. This plan should be provided prior to the second reading debate in the Senate. | Accepted |
| 23 | <p>The Committee recommends that the Attorney-General provide the Committee a timetable for implementation of any outstanding matters being considered by the Implementation Working Group by 30 June 2017. The Attorney-General's report should include information about:</p> <ul style="list-style-type: none"> • the general categorisation and qualifications of relevant experts, • the development and validation of risk assessment tools, • conditions of detention, including any agreements reached with States and Territories on housing arrangements, and • progress in adapting the existing oversight mechanisms for use in the continuing detention order regime. <p>The report should also include any other matters relevant to implementation of the regime.</p> | Accepted |
| 24 | The Committee recommends that, following implementation of the recommendations in this report, the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 be passed. | Accepted |

30 November 2016