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# **Submission to the review of the Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Bill 2019**

**Parliamentary Joint Committee on Intelligence and Security**  
Attorney-General's Department

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# Introduction

On 1 August 2019, the *Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Bill 2019* (CTLA No. 1 Bill) was introduced into Parliament. The CTLA No. 1 Bill was previously introduced into Parliament on 20 February 2019 as the Counter-Terrorism Legislation Amendment Bill 2019 (lapsed Bill), which lapsed following the prorogation of Parliament on 11 April 2019. The CTLA No. 1 Bill re-introduces the lapsed Bill in substantially the same form.

The Attorney-General's Department and Department of Home Affairs previously provided a submission (titled 'Submission to the review of the Counter-Terrorism Legislation Amendment Bill 2019'), and two supplementary submissions (Supplementary Submission 1 and Supplementary Submission 2), to the Parliamentary Joint Committee on Intelligence and Security's (Committee) review of the lapsed Bill. These previous submissions remain applicable to the current CTLA No. 1 Bill and we acknowledge that the Committee has accepted them as evidence in this current review.

This submission supplements the previous submissions by addressing minor changes in the CTLA No. 1 Bill and providing updated statistics in relation to offenders who may become eligible under the high risk terrorist offender (HRTO) scheme. We have consulted the Department of Home Affairs on the content of this submission.

## Overview of the changes to the Bill

There are two small differences between the lapsed Bill and the CTLA No. 1 Bill. These are:

- a new title for the Bill - *Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Bill 2019*, and
- minor changes to item 11 in Schedule 1 of the CTLA No. 1 Bill as it relates to the presumption against bail in the *Crimes Act 1914* (Cth) (Crimes Act).

Item 11 in Schedule 1 of the CTLA No. 1 Bill relates to the presumption against bail in the Crimes Act and seeks to amend existing subsection 15AA(4) in the Crimes Act. Existing subsection 15AA(4) provides that to avoid doubt, except as provided by subsections 15AA(1) (the existing presumption against bail) and 15AA(3A)-(3D) (the appeal options available in relation to that presumption), section 15AA does not affect the operation of a law of a State or a Territory.

The proposed change from the same item in the lapsed Bill is that the new item 11 adds subsection 15AA(3AA) to this list of existing subsections. It puts beyond doubt that State and Territory laws do not affect the new requirement at s 15AA(3AA) (inserted by item 8 of the CTLA No. 1 Bill) for bail authorities to consider the interests of the child as a primary consideration and protection of the community as the paramount consideration when determining whether exceptional circumstances exist to grant bail for a child.

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This is a minor clarification and does not change the original policy intent behind the legislative proposal.

The effect of Item 11 is that it will make the following amendment (in bold and underlined) to existing 15AA(4) of the Crimes Act:

### *Relationship with laws of States and Territories*

(4) To avoid doubt, except as provided by subsections (1), **(3AA)**, (3A), (3B), (3C) and (3D), this section does not affect the operation of a law of a State or a Territory.

*Note: These provisions indirectly affect laws of the States and Territories because they affect section 68 of the Judiciary Act 1903.*

## Update to relevant statistics

As at 22 August 2019, 52 offenders are serving periods of imprisonment for terrorism offences and may be eligible for continuing detention at the end of their sentences. Eleven of these offenders may become eligible for a continuing detention order (CDO) from August 2019 - December 2020. They may be considered for a CDO if they pose an unacceptable risk to the community of committing a serious Part 5.3 terrorism offence and there is no less restrictive mechanism to mitigate that risk.