

1997
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Bail (Amendment) Bill 1997

A BILL

FOR

An Act to amend the *Bail Act 1992*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Bail (Amendment) Act 1997*.

5 Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on the day on which section 4 of the *Crimes (Amendment) Act (No. 2) 1997* commences.

10 Principal Act

3. In this Act, "Principal Act" means the *Bail Act 1992*.¹

Interpretation

4. Section 3 of the Principal Act is amended—

87004 (1995/135) (T4/97) 200/8.4.1997

- (a) by omitting the definitions of “child” and “domestic violence offence” in subsection (1) and substituting respectively the following definitions:

“ ‘child’—

- 5 (a) means a person who has not attained the age of 18 years; and
- (b) in relation to a person, includes a child—
- (i) who normally or regularly resides with the person; or
- 10 (ii) of whom the person is a guardian;

‘domestic violence offence’ means—

- (a) an offence against a provision of the Crimes Act specified in column 1 of the Schedule or an attempt to commit such an offence;
- 15 (b) an offence against section 27 of the *Domestic Violence Act 1986*; or
- (c) an offence against section 129 of the *Motor Traffic Act 1936*;

20 committed by a person so as to cause physical or emotional harm to—

- (d) a spouse of the person;
- (e) a child of the person or of a spouse of the person;
- (f) a relative; or
- (g) a household member;” and

- 25 (b) by inserting in subsection (1) the following definitions:

30 “ ‘de facto spouse’, in relation to a person, means a person of the opposite sex to the first-mentioned person who is living with the first-mentioned person as that person’s husband or wife although not legally married to the first-mentioned person;

‘household member’, in relation to a person, means a person who normally resides, or was normally resident, in the same household as the first-mentioned person (other than as a tenant or boarder);

35 ‘relative’, in relation to a person—

(a) means—

- 5 (i) the father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law of the person;
- (ii) the son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law of the person;
- 10 (iii) the brother, sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law of the person;
- (iv) the uncle, aunt, uncle-in-law or aunt-in-law of the person;
- 15 (v) the nephew or niece of the person; or
- (vi) the cousin of the person;
- (b) includes a person who would have been a relative of a kind referred to in paragraph (a) if the first-mentioned person had been legally married to his or her de facto spouse; and
- 20 (c) includes a former relative of a kind referred to in paragraph (a) or (b);

‘spouse’ includes former spouse, de facto spouse and former de facto spouse;” . .

25 **Bail for minor offences and breaches of the peace**

5. Section 7 of the Principal Act is amended—

- (a) by omitting from subparagraph (3) (e) (i) “or”; and
- (b) by adding at the end of paragraph (3) (e) the following subparagraph:
- 30 “(iii) an offence against section 493 of the Crimes Act; or”.

Bail for offences other than minor offences

6. Section 8 of the Principal Act is amended by omitting paragraph (1) (c) and substituting the following:

- “(c) persons not entitled to bail by virtue of paragraph 7A (c) or (d);

but does not apply in the case of a grant of bail by an authorised officer to a person accused of a domestic violence offence.”.

Insertion

7. After section 8 of the Principal Act the following section is inserted:

5 **Bail by authorised officer—domestic violence offences**

“8A. (1) Where a person is accused of a domestic violence offence, an authorised officer shall not grant bail to that person unless the authorised officer is satisfied on the balance of probabilities that the person poses no danger to the victim or an associated person during the period of bail.

10 “(2) Where an authorised officer is satisfied of the matters referred to in subsection (1), the accused person is entitled to be granted bail unless the authorised officer is satisfied that, having regard to the matters referred to in whichever of sections 22 and 23 apply to the accused person, he or she is justified in refusing bail.

15 “(3) Where an authorised officer grants bail to a person in accordance with this section, the authorised officer shall, in his or her record under section 27, state why in his or her opinion the person poses no danger to the victim or an associated person.

20 “(4) A person shall not be released on bail under this section unless he or she has given an undertaking in accordance with section 28 to appear before a specified court within 48 hours of being released.

“(5) In this section—

‘associated person’, in relation to a victim, means—

- (a) a spouse of the victim;
- 25 (b) a child of the victim or of a spouse of the victim;
- (c) a relative; or
- (d) a household member.”.

Determination of bail after charge laid

8. Section 13 of the Principal Act is amended—

- 30 (a) by inserting in subparagraph (1) (d) (i) “subsection 8A (1) and” after “whichever of”;
- (b) by omitting subparagraph (1)(e) (i) and substituting the following subparagraph:

“(i) where the police officer is authorised to grant bail to the person—shall consider whether the person should be granted bail; or”; and

5 (c) by omitting from subsection (2) “admitted to” and substituting “granted”.

Determination of questions of bail by authorised officers

9. Section 15 of the Principal Act is amended—

- (a) by omitting from subsection (1) “admit an accused person to bail” and substituting “grant bail to an accused person”;
- 10 (b) by inserting in paragraph (1) (b) “subsection 8A (1) and” after “whichever of”;
- (c) by omitting from paragraph (1) (b) “admitted to” and substituting “granted”;
- 15 (d) by inserting in subsection (2) “subsection 8A (1) and” after “whichever of”;
- (e) by inserting in subsection (3) “subsection 8A (1) and” after “whichever of” (first occurring);
- (f) by omitting from subsection (3) “admit the accused person to bail” (first occurring) and substituting “grant bail to the accused person”;
- 20 (g) by omitting from paragraph (3) (a) “admitting a person to bail” and substituting “granting bail to a person”;
- (h) by inserting in paragraph (3) (b) “subsection 8A (1) and” after “whichever of”; and
- 25 (j) by omitting from subsection (3) “admit the accused person to bail” (last occurring) and substituting “grant bail to the accused person”.

Notification of decision of authorised officer

10. Section 16 of the Principal Act is amended—

- (a) by omitting from paragraphs (1) (a) and (b) “admit an accused person to bail” and substituting “grant bail to an accused person”;
- 30 (b) by omitting from paragraph (1) (e) “admitted to” and substituting “granted”;
- (c) by omitting from subsection (2A) “admit an accused person to bail” and substituting “grant bail to an accused person”;
- 35 (d) by omitting from subsection (3) “admitted to” and substituting “granted”;

- (e) by omitting from paragraph (3) (a) “admit the person to bail” and “admitted to” and substituting “grant bail to the person” and “granted” (respectively);
- 5 (f) by omitting from paragraph (3) (b) “admit the person to bail” and substituting “grant bail to the person”; and
- (g) by omitting subsection (4).

Criteria for granting bail to adults

11. Section 22 of the Principal Act is amended by omitting from subsection (1) “, and only to the following matters”.

10 **Criteria for granting bail to children**

12. Section 23 of the Principal Act is amended by omitting “, and only to the following matters”.

Victim’s concern about need for protection

15 13. Section 23A of the Principal Act is amended by inserting in subsection (2) “subsection 8A (1) and” before “paragraph”.

Insertion

14. The Principal Act is amended by adding at the end the Schedule set out in Schedule 1 to this Act.

Formal amendments

20 15. The Principal Act is amended as set out in Schedule 2.

SCHEDULE 1

Section 14

SCHEDULE TO BE INSERTED IN PRINCIPAL ACT

SCHEDULE

Section 3

**DOMESTIC VIOLENCE OFFENCES UNDER THE
CRIMES ACT 1900**

Column 1 Provision	Column 2 Description of offence
12	Murder
15	Manslaughter
19	Intentionally inflicting grievous bodily harm
20	Recklessly inflicting grievous bodily harm
21	Wounding
22	Assault with intent to commit certain indictable offences
23	Intentionally or recklessly inflicting actual bodily harm
24	Assault occasioning actual bodily harm
25	Unlawfully or negligently causing grievous bodily harm
26	Common assault
27	Acts endangering human life
28	Acts endangering the health, safety or physical well-being of another person
29	Culpable driving of a motor vehicle
30	Threatening to kill
31	Threatening to inflict grievous bodily harm
32 (1) (a)	Making a demand with a threat to kill or inflict grievous bodily harm
32 (2) (a)	Making a demand with a threat to endanger health, safety or physical well-being
33	Possession of an object with intent to use it to kill or cause grievous bodily harm
34	Forcible confinement or imprisonment
34A	Stalking
36	Abduction of a young person
37	Kidnapping
92A	Inflicting grievous bodily harm on a person with intent to engage in sexual intercourse
92B	Inflicting actual bodily harm on a person with intent to engage in sexual intercourse
92C	Unlawful assault or threatening to inflict grievous or actual bodily harm with intent to engage in sexual intercourse

SCHEDULE 1—continued

Column 1 Provision	Column 2 Description of offence
92D	Sexual intercourse without consent
92E	Sexual intercourse with a young person
92F	Inflicting grievous bodily harm with intent to commit an act of indecency
92G	Inflicting actual bodily harm with intent to commit an act of indecency
92H	Unlawful assault or threatening to inflict grievous or actual bodily harm with intent to commit an act of indecency
92J	Committing an act of indecency without consent
92K	Committing an act of indecency upon or in the presence of a young person
92L	Incest or similar offences
92M	Abducting or detaining a person with intent to engage in sexual intercourse
128	Destroying or damaging property
129	Destroying or damaging property by means of fire or explosive
133	Possession of an article with intent to use it to destroy property
145 (1) (a)	Being armed with a weapon or instrument with intent to commit an offence
146	Forcible entry on to land in a manner likely to cause a breach of the peace
493	Possession of an offensive weapon or disabling substance in a public place in circumstances likely to cause alarm
494	Possession of an offensive weapon or disabling substance in circumstances indicating intent to use the weapon or substance

SCHEDULE 2

Section 15

FORMAL AMENDMENTS

Subsection 19 (6)—

Omit “admit an accused person to bail”, substitute “grant bail to an accused person”.

Paragraph 21 (a)—

Omit “admit the accused person to bail”, substitute “grant bail to the accused person”.

SCHEDULE 2—continued

Paragraph 21 (b)—

Omit “admitted to” (first occurring), substitute “granted”.

Subparagraphs 21 (b) (i) and (iii)—

Omit “admitted to”, substitute “granted”.

Paragraph 27 (1) (b)—

Omit “admit an accused person to bail”, substitute “grant bail to an accused person”.

Subsection 33 (4)—

Omit “admit a person to bail”, substitute “grant bail to a person”.

Subsections 34 (1) and (2)—

Omit “admitting an accused person to bail”, substitute “granting bail to an accused person”.

Paragraphs 38 (1) (a) and (b)—

Omit “admit the accused person to bail”, substitute “grant bail to the accused person”.

NOTE

Principal Act

1. Reprinted as at 29 February 1996. See also Act No 81, 1996.