

2003

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Mr Bill Stefaniak)

## **Bail (Serious Offences) Amendment Bill 2003**

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### **A Bill for**

An Act to amend the *Bail Act 1992*

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

1 **1 Name of Act**

2 This Act is the *Bail (Serious Offences) Amendment Act 2003*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on  
6 the notification day (see Legislation Act, s 75 (1)).

7 **3 Act amended**

8 This Act amends the *Bail Act 1992*.

9 **4 Interpretation**  
10 **Section 3 (1), definition of *applicable bail criteria***

11 *substitute*

12 *applicable bail criteria*, for a decision about the grant of bail by an  
13 authorised officer to a person accused of an offence, means criteria  
14 under any of the following provisions that applies to the decision:

- 15 (a) for a domestic violence offence—section 8A;  
16 (b) for an offence mentioned in section 8AB (1) (which relates to  
17 certain serious offences for which there is a presumption  
18 against bail under section 8AA)—section 8AA;  
19 (c) for a serious offence committed while a charge for another  
20 serious offence is pending or outstanding—section 9A;  
21 (d) for any offence committed by an adult—section 22;  
22 (e) for any offence committed by a child—section 23.

## **5 Bail for other than minor offences**

### **Section 8 (2)**

*substitute*

(2) However, this section does not apply to the grant of bail to an accused person if any of the following provisions applies:

(a) section 8A (Bail by authorised officer—domestic violence offences);

(b) section 8AA (Presumption against bail for certain serious offences);

(c) section 9A (Bail for serious offence committed while charge for another is pending or outstanding).

(2A) Also, this section is subject to the following provisions:

(a) section 9 (Bail for persons sentenced to imprisonment);

(b) section 14 (Grant of bail by authorised officers).

## **6 Section 8**

*renumber subsections when Act next republished under Legislation Act*

## **7 New sections 8AA and 8AB**

*before section 8A, insert*

### **8AA Presumption against bail for certain serious offences**

(1) A court or authorised officer must not grant bail to a person to whom this section applies unless satisfied, despite the gravity of the offence of which the person is accused, it would be appropriate to grant bail having regard to—

(a) if the person is an adult—the matters mentioned in section 22 (Criteria for granting bail to adults); or

- 1           (b) if the person is a child—the matters mentioned in section 23  
2           (Criteria for granting bail to children).
- 3       (2) However, even if the authorised officer is satisfied it would be  
4       appropriate to grant bail under subsection (1), the officer must not  
5       grant bail to a person accused of the domestic violence offence  
6       mentioned in section 8AB (1) (d) unless also satisfied that the  
7       accused person would not pose any danger to a protected person  
8       during the period of bail.
- 9       (3) Also, this section is subject to the following provisions:
- 10           (a) section 9 (Bail for persons sentenced to imprisonment);
- 11           (b) section 14 (2) (Grant of bail by authorised officers).
- 12       (4) In this section:
- 13           *protected person*—see section 8A (6).

14       **8AB People to whom s 8AA applies**

- 15       (1) Section 8AA applies if a person is accused of—
- 16           (a) treason; or
- 17           (b) murder; or
- 18           (c) an indictable offence and, at the time of the alleged offence,  
19           the person, or someone else acting in concert with the person,  
20           is alleged to have had a firearm, an imitation firearm, an  
21           offensive weapon, an explosive or an imitation explosive with  
22           him or her; or
- 23           *Note       Indictable offence* is defined in the Legislation Act, s 190 (1).
- 24       (d) an offence against the *Protection Orders Act 2001*, section 34  
25       (Offence for contravention of protection order), and—
- 26           (i) in the course of the alleged commission of the offence,  
27           the person is alleged to have used or threatened to use  
28           violence against someone else; and

- (ii) during the 12 months before the day the person is alleged to have committed the offence, the person has been convicted or found guilty of an offence that involved the person using or threatening to use violence against someone else; or

*Note* **Found guilty** is defined in the Legislation Act, dict, pt 1.

- (e) an offence against any of the following provisions of the *Drugs of Dependence Act 1989*:

(i) section 164 (2) in relation to a commercial quantity of a drug of dependence under that Act;

(ii) section 164 (3) in relation to a commercial quantity of a prohibited substance (other than cannabis) under that Act;

(iii) section 165 (1) in relation to a commercial quantity of cannabis under that Act; or

*Note* The Legislation Act, s 189 provides that a reference to an offence against a Territory law includes a reference to an offence against the Criminal Code, pt 2.4 (Extensions of criminal responsibility) or the *Crimes Act 1900*, s 181 (Accessory after the fact) that relates to the Territory law.

- (f) an offence against any of the following provisions of the *Customs Act 1901* (Cwlth) in relation to a commercial quantity of narcotic goods under that Act:

(i) section 231 (1) (Assembly for unlawful purposes);

(ii) section 233A (Master not to use or allow use of ship for smuggling etc.—goods that are not narcotic goods);

(iii) section 233B (1) (Special provisions with respect to narcotic goods); or

- (g) an offence against the *Criminal Code Act 1995* (Cwlth), part 2.4 (Extensions of criminal responsibility) in relation to an offence mentioned in paragraph (f).

- 1 (2) However, section 8AA does not apply to a person if section 9A  
2 (Bail for serious offence committed while charge for another is  
3 pending or outstanding) applies.
- 4 (3) In this section:
- 5 *explosive* means a substance or an article that is manufactured for  
6 the purpose of producing an explosion or that is intended by any  
7 person having it with him or her to be used for that purpose.
- 8 *firearm* includes an airgun and airpistol.
- 9 *imitation explosive* means an article, other than an explosive, that  
10 has the appearance of being or containing, or that may reasonably be  
11 taken to be or to contain, an explosive.
- 12 *imitation firearm* means an article, other than a firearm, that has the  
13 appearance of being a firearm, or that may reasonably be taken to be  
14 a firearm.
- 15 *offensive weapon*—see the *Crimes Act 1900*, dictionary.
- 16 (4) Section 8AA applies in relation to a decision about bail made on or  
17 after the commencement of that section even if the relevant offence  
18 is alleged to have been committed before the commencement.

19 **8 Dispensing with bail**  
20 **Section 10 (5)**

21 *substitute*

- 22 (5) A court must not dispense with the requirement for bail for an  
23 accused person to whom any of the following provisions applies  
24 unless satisfied that special or exceptional circumstances exist  
25 justifying dispensing with the requirement:
- 26 (a) section 8AA (Presumption against bail for certain serious  
27 offences);
- 28 (b) section 9 (Bail for persons sentenced to imprisonment);

- 1 (c) section 9A (Bail for serious offence committed while charge  
2 for another is pending or outstanding).
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## **Endnote**

### **Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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