

2001

**THE LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL
TERRITORY**

BAIL AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

Circulated by authority of the
Attorney-General
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Outline

This Bill amends the *Bail Act 1992* and makes a consequential amendment to the *Crimes Act 1900*.

Two of the amendments to the *Bail Act 1992* are procedural in nature. They amend the definition of "authorised officer" and enable the court to issue arrest warrants for people who fail to appear in accordance with their bail undertaking. These amendments will reduce the administrative burden on the Australian Federal Police (AFP) and the Office of the Director of Public Prosecutions (DPP).

The third amendment to the *Bail Act 1992* creates a presumption against bail for a person alleged to have committed a serious offence while on bail for another serious offence. It is inappropriate that such a person be granted bail in relation to the subsequent offence unless special or exceptional circumstances exist justifying the grant of bail.

The amendment to the *Crimes Act 1900* provides that the general procedure for the issuing of arrest warrants contained in section 349ZD of that Act does not apply to the issue of arrest warrants under the *Bail Act 1992*.

Financial Implications

The proposals relating to the definition of "authorised officer" and the issue of arrest warrants for failure to answer bail will reduce the administrative burden on the AFP and the DPP, and free up officers for other duties. The proposed introduction of the presumption against bail may lead to an increased number of remandees, however, it may lead to a reduction in the cost of crime to the community.

Notes on Clauses

Clause 1 Name of Act

This Bill, once enacted, will be known as the *Bail Amendment Act 2001*.

Clause 2 Commencement

The proposed Act will commence on the day it is notified in the Gazette.

Clause 3 Act amended

Provides that Part 2 of the proposed Act amends the *Bail Act 1992*.

Clause 4 Interpretation – section 3(1), new definition

Defines “applicable bail criteria”, a new term which is used in sections 13 and 15.

“Applicable bail criteria” are the criteria which authorised officers must consider when deciding on a grant of bail. They are set out in existing sections 8A, 22 and 23 and in new section 9A. The new term is simply a shorthand way to refer to these various criteria without having to list them all on each occasion.

It is clear that more than one set of criteria may be relevant in a particular case. For example, sections 8A, 9A and 23 will be relevant if a juvenile is alleged to have committed a domestic violence offence that is a serious offence while on bail for another serious offence under section 9A.

Clause 5 Section 3(1), definition of authorised officer

Amends the definition of “authorised officer” in section 3(1) of the *Bail Act 1992* by replacing the references to the Commissioner and a Deputy Commissioner of the AFP with a reference to the Chief Police Officer. The Chief Police Officer is the appropriate person to authorise officers to grant bail.

The new definition also includes a sergeant, superintendent or anyone acting in that capacity. This will reduce the administrative burden on the AFP by removing the need to individually authorise these officers, while ensuring that only officers of sufficient seniority are able to grant bail without the written authorisation of the Chief Police Officer.

Clause 6 Section 3(1), new definition

Inserts a new definition of "serious crime" in section 3(1) of the *Bail Act 1992*. The definition is used in relation to the presumption against bail created by new section 9A.

Clause 7 Availability of bail - section 5(1)

Removes the qualifying words in section 5(1) as they are not needed. Section 5(1) simply declares that there is a discretionary power to grant bail. The rest of the Part (ie. Part 2) sets out the parameters within which that discretion is to be exercised.

Clause 8 Bail for offences other than minor offences - section 8(1)

Removes the words "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", which have been moved to new subsection 8(1A)(a).

Clause 9 New section 8(1A)

Section 8 contains general rules for the grant of bail for offences other than minor offences. New section 8(1A) provides that these rules do not apply to the grant of bail to people accused of domestic violence offences and people who are alleged to have committed a serious offence while on bail for another serious offence.

There are separate considerations for the grant of bail when domestic violence or serious offences are involved. Domestic violence offences are dealt with in existing section 8A. Serious offences are dealt with in new section 9A.

**Clause 10 Bail by authorised officer – domestic violence offences
Section 8A(1)**

Removes the words "on the balance of probabilities" as they are unnecessary. There is no change to the meaning of the section, as section 55 provides that when an authorised officer is required to be satisfied of any matter in relation to the granting of bail, it is sufficient that he or she is satisfied on the balance of probabilities.

**Clause 11 Bail in respect of persons sentenced to imprisonment -
section 9, heading**

Amends the heading of section 9 in a manner consistent with the rest of the Act.

Clause 12 New section 9A

New section 9A creates a presumption against bail for a person alleged to have committed a serious offence whilst on bail for another serious offence. A "serious offence" is an offence that carries a maximum penalty of 5 years imprisonment or more.

Where the presumption applies, the court or authorised officer must not grant bail unless satisfied on two counts: (1) that there are special or exceptional circumstances justifying the grant of bail, and (2) that bail should be granted having regard to sections 22 and 23 the Act, as applicable.

This means, for example, that even if exceptional circumstances exist, the court must refuse bail if it is satisfied that the probability of the person absconding or re-offending justifies refusing bail.

In addition, if a serious offence is a domestic violence offence, the section makes it clear that an authorised officer must not grant bail if satisfied that refusal is required under section 8A of the Act.

The section also provides that section 8A continues to apply if an authorised officer grants bail to a person accused of a serious offence that is a domestic violence offence. That is, the officer must still comply with sections 8A(3) and (4).

Clause 13 Dispensing with bail – new section 10(5)

New section 10(5) provides that, unless special or exceptional circumstances exist, a court must not dispense with the requirement for bail in respect of persons sentenced to imprisonment or persons who are alleged to have committed a serious offence whilst on bail for a serious offence.

This ensures that if a person applies to be released without bail, the court cannot release the person without bail in circumstances where the person would not have been granted bail under new section 9A or existing section 9.

Clause 14 Determination of bail after charge laid – section 13(1)(d)(i)

Replaces current wording with the newly defined term of "applicable bail criteria". There is no change to the meaning of the section, except to include a reference to new section 9A.

Clause 15 Determination of questions of bail by authorised officers – sections 15(1)(b), (2) and (3)

As for clause 14.

Clause 16 Failure to answer bail – section 49

Amends section 49 to provide that if a person does not appear before a court in accordance with his or her bail undertaking, the court may issue a warrant to arrest the person and bring the person before the court.

Currently, the process for obtaining arrest warrants is set out in section 349ZD of the *Crimes Act 1900*. That section requires the informant to swear an information on oath and to provide an affidavit setting out the reasons for the warrant. This amendment empowers courts to issue arrest warrants for people who fail to appear in accordance with a bail undertaking without the documentation required by section 349ZD.

The amendment also rewords the current offence provision in section 49 so that it conforms to current drafting style, but does not change its effect.

Clause 17 Act amended

Provides that Part 3 amends the *Crimes Act 1900*.

Clause 18 Warrants for arrest – new section 349ZD(4)

Provides that section 349ZD, which sets out the general procedure for the issue of arrest warrants, does not apply to the issue of a warrant under new section 49(1) of the *Bail Act 1992*.