

2001

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

BAIL AMENDMENT BILL 2001 (No 2)

EXPLANATORY MEMORANDUM

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Attorney-General
Bill Stefaniak MLA

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Outline

This Bill amends the *Bail Act 1992* (the Act) to extend the operation of section 9A.

Section 9A of the Act currently provides that bail is not to be granted to a person who allegedly commits a serious offence whilst on bail for another serious offence unless there are special or exceptional circumstances why the person should be granted bail.

Not all people alleged to have committed a serious offence are bailed. A person may be summoned to appear in court or may enter into a Voluntary Agreement to Attend Court. If a person is arrested and brought before the court, the court may dispense with the requirement of bail. In addition, if a person fails to appear in court in accordance with a bail undertaking, he or she then ceases to be 'on bail'.

Accordingly, this Bill extends the presumption against bail to any person alleged to have committed a serious offence while charges in relation to another serious offence are pending or outstanding.

Financial Implications

The proposed extension 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 (No 2)*.

Clause 2 Commencement

This clause provides that the substantive provisions of the Act will commence 14 days after the Act is notified in the Gazette.

The naming and commencement provisions of the Act will commence on the notification day.

Clause 3 Act amended

This clause provides that the proposed Act amends the *Bail Act 1992*.

Clause 4 Interpretation – section 3 (1), definition of *applicable bail criteria*, paragraph (b)

This is a consequential amendment required by the changes to section 9A.

Clause 5 Section 3 (1), new definitions

This clause inserts references to the definitions of outstanding and pending charge in the general interpretation section of the Act. These terms are used in new section 9A (6).

Clause 6 Section 3 (1), definition of *serious offence*

This is a consequential amendment required by the changes to section 9A.

Clause 7 Bail for offences other than minor offences Section 8 (1A) (b)

This is a consequential amendment required by the changes to section 9A.

Clause 8 Bail for serious offences committed while on bail for another serious offence
Section 9A, heading

This is a consequential amendment required by the changes to section 9A.

Clause 9 Section 9A (1) (b)

Currently, section 9A provides that there is a presumption against bail in respect of a person alleged to have committed a serious offence whilst on bail for another serious offence. This clause amends the scope of section 9A by applying the presumption to a person alleged to have committed a serious offence while a charge against the person for another serious offence is pending or outstanding.

The amendment reflects the fact that not all people who allegedly commit a serious offence are bailed. It ensures that any person who has a charge in relation to a serious offence pending or outstanding at the time that he or she allegedly commits another serious offence, must prove special or exceptional circumstances before being granted bail for the subsequent offence.

New section 9A (6) explains what is meant by a pending charge and an outstanding charge.

Clause 10 New section 9A (6) to (8)

This clause defines outstanding charge and pending charge and explains the application of the amendments.

Outstanding charges

New section 9A (6) provides that charges are outstanding if the person has been charged with the offence and the charge has not been finally dealt with in one of the specified ways.

This means that a charge is no longer outstanding if the charge has been withdrawn or dismissed, the person is discharged following committal or the person has been acquitted or found guilty by a court of the offence charged. Being "found guilty" includes having an offence taken into account under section 448 of the *Crimes Act 1900* and having an order made in relation to the offence under section 96 of the *Children and Young People Act 1999* (Disposition of young offenders) or section 556A of the *Crimes Act 1900* (Conditional release of offender without proceeding to conviction).

If, however, a new trial is ordered on appeal following an acquittal or finding of guilt, the charge again becomes outstanding from the date that the new trial is ordered until the relevant charge is finally dealt with, or the order for the new trial is reversed on appeal.

The definition of outstanding charge ensures, for example, that the presumption against bail applies to a person who allegedly commits a serious offence:

- whilst on bail for another serious offence;
- whilst at large having been released without bail while waiting for a charge in relation to another serious offence to be finally determined; or
- whilst unlawfully at large having breached a bail undertaking to appear at court in relation to another serious offence.

Pending charges

Subsection (6) provides that a charge is pending if the person has not been charged but proceedings have been commenced in some other way, namely by way of summons or a voluntary agreement to attend court (a VATAC).

While it is anticipated that most people alleged to have committed a serious offence will be arrested and charged, police have the option of summoning the person to appear or having the person enter into a VATAC. It is appropriate for the presumption to extend to these classes of people.

Subsection (6) also provides that a charge is pending if the person has been arrested but not yet charged, unless the person is later released without charge. This is to cover a person who has been arrested for a serious offence and while being questioned, for example, allegedly commits another serious offence before being charged with the first alleged offence. It is appropriate that the presumption against bail should apply in relation to the subsequent offence.

Application of the amendments

New section 9A (7) provides that the proposed amendments to section 9A apply in relation to a decision to grant bail after the commencement of the Act, even if any relevant offence is alleged to have taken place before that date.

New section 9A (8) provides that subsections (7) and (8) cease to operate 2 years after the commencement of the Act. It is anticipated that by that time, subsection (7) will be almost, if not entirely, exhausted in its application. In any event, section 42 (1) of the *Interpretation Act 1967* provides that the expiry does not end the transitional effect of subsection (7).

Clause 11 Dispensing with bail Section 10 (5) (b)

This is a consequential amendment required by the changes to section 9A.