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THE LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY

BAIL (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

CIRCULATED BY AUTHORITY OF

GARY HUMPHRIES MLA
ATTORNEY-GENERAL

BAIL (AMENDMENT) BILL 1997

Outline

The purpose of the Bill is to amend the *Bail Act 1992* to provide for a stricter procedure and criteria for alleged domestic violence offenders to receive bail. This involves removing any presumption in favour of police bail when a person is charged with a domestic violence offence. The Bill provides that police bail is only available to a person charged with a domestic violence offence when a specified police officer is satisfied on the balance of probabilities that there is no danger to the alleged victim or an associated person during the period of bail.

Financial Impact

The Bill will have no impact on Australian Capital Territory finances.

Notes on clauses

Clauses 1, 2 and 3

These are formal requirements. They refer to the short title of the Bill, commencement and definition of the Principal Act.

Clause 4

This clause amends section 3 of the Act and refers to definitions which are amended to remain consistent with amendments to the *Crimes Act 1900* as well as the *Domestic Violence Act 1986*. The definitions in this clause are intended to describe the relationship between the criminal act and the particular class of victims that make the act a domestic violence offence.

Clause 5

This clause is intended to add the offence of "possessing an offensive weapon" to the list of offences which give rise to an exception to the general right to unconditional bail under section 7 of the Act.

Clause 6

This clause amends subsection 8(1) to exclude the application of section 8 to the grant of bail by an authorised officer (that is, a police officer - see section 3) to a person accused of a domestic violence offence. Section 8 will continue to apply to the grant of bail by a court to a person accused of a domestic violence offence, and to the grant of bail by a court and an authorised officer to a person accused of any other serious offence.

Clause 7

This clause adds new section 8A to the Act which is intended to remove any presumption in favour of police bail when a person is charged with a domestic violence offence. Subsection (1) provides that police bail is only available to a person charged with a domestic violence offence when an authorised officer is satisfied on the balance of probabilities that there is no danger to the alleged victim or an associated person during the period of bail.

Subsection 8A(2) provides that, if an authorised officer decides under new subsection 8A(1) that a person accused of a domestic violence offence poses no danger, the officer shall nevertheless refuse to grant bail if satisfied that the factors set out in existing sections 22 or 23 of the Act, whichever is applicable, justify refusing bail.

Subsection 8A(3) provides that a police officer who grants bail to a person accused of a domestic violence offence shall state in writing the factors leading to his or her decision that the person poses no danger.

Subsection 8A(4) provides that a person who is accused of a domestic violence offence cannot be granted bail unless, in addition to other provisions, he or she gives an undertaking to appear in court within 48 hours.

Subsection 8A(5) provides a definition of an “associated person” which is intended to protect a wider class of people who may have been affected by the alleged domestic violence offence. This requires an authorised police officer to consider any associated person’s safety before granting bail to a domestic violence defendant.

Clauses 8 and 9

These clauses amend sections 13 and 15 of the Act by, in addition to changing the verb used to describe the decision of bail from “admit” to “grant” (in its various conjugated forms), adding references to new section 8A.

Clause 10

This clause amends section 16 of the Act by, in addition to changing the verb used to describe the decision of bail from “admit” to “grant” (in its various conjugated forms), deleting the definition of a “child” as a definition is now included in section 3 of the Act (see clause 4).

Clauses 11 and 12

These clauses omit the phrase “, and only to the following matters” from sections 22 and 23 of the Act. It is not intended to broaden the list of criteria for bail applications. The list of criteria found in sections 22 and 23 are intended to remain the exclusive criteria for bail considerations, with the exception of matters concerning bail for a domestic violence offence.

Clause 13

This clause amends section 23A of the Act by adding a reference to new section 8A.

Clause 14

This clause inserts a schedule which lists criminal offences which, when committed by a person in a specified relationship with the victim of the offence, accords them the status of a domestic violence offence. This mirrors the list in the *Crimes Act 1900*, added by the Crimes (Amendment) Bill 1997. The list is relevant for the purposes of granting bail under new section 8A.

Clause 15

This clause, and Schedule 2, makes several formal amendments to the Act relating to changing the terminology “admit to bail” to “grant bail”.