

AUSTRALIAN CAPITAL TERRITORY
BAIL (SERIOUS OFFENCES) AMENDMENT BILL
2003

EXPLANATORY STATEMENT

Overview

This is an amending bill. It amends the Bail Act 1992.

This bill gives effect to recommendations made by the ACT Law Reform Commission in Report No 19 of July 2001. These recommendations contained at pages 36 and 37 paragraph 95 of the report are as follows:

“95. The Commission recommends that section 8 be amended:

- by adding to paragraph (2)(a) the words ‘other than an offence referred to in subsection (3); and
- by adding as subsection 3 the words:

Bail shall not be granted bail or dispensed to a person charged with an offence of:

- (a) treason or murder;
- (b) any offence in the course of committing which the accused person is alleged to have used or threatened to use violence with weapon apparently capable of causing death or serious injury or a replica of such a weapon;
- (c) contravening a protection order or restraining order in the course of committing which the accused person is alleged to have used or threatened to use violence and the accused person has within the preceding 12 months been convicted or found guilty of an offence in the course of committing which he or she used or threatened to use violence against any person;
- (d) an offence of trafficking in relation to a commercial quantity of a drug of dependence or an offence of conspiring to commit such an offence; or
- (e) an offence under section 231 (1), 233A or 233B(1) of the Customs Act 1901 of the Commonwealth (as amended and in force for the time being) in relation to a commercial quantity of narcotic goods within the meaning of that Act unless the court is satisfied exceptional circumstances exist which justify the grant of bail;

unless, having regard to the matters referred to in whichever of section 22 and 23 apply to the accused person, the court or authorised officer is satisfied that it would be appropriate to grant bail notwithstanding the gravity of the offence charged.”

Details

Name of Act

Clause 1 is a formal clause that gives the name that the bill will have if passed.

Commencement

Clause 2 is a formal clause that links the commencement of the bill to its notification on the legislation register.

Clause 3 is a formal clause that identifies the principal act.

Interpretation – section 3(1) definition of applicable bail criteria.

Clause 4 remakes the definition to include a reference to proposed new sections 8AA and 8AB. As the definition only applies to the grant of bail by an authorised officer, it would be inappropriate to include a further reference to the grant of bail by a court under s 9.

Bail for other than minor offences

Clause 5 sets out the circumstances when s 8 and the other provisions mentioned apply. In particular:

- s (2) (a) and (c) remake existing s 8 (2) and (b) without any intended change in meaning;
- s (2) (b), similarly, is to avoid overlap with proposed new s 8AA.

Subclause 2A sets out the current relationship between s8, s9 and s14.

Section 8

Clause 6 provides for the consequential renumbering of subsections.

New Sections 8AA and 8AB

8AA Presumption against bail for certain serious offences.

Clause 7 s (1) reflects the instructions to closely follow the Law Reform Commission recommendation. Bail must not be granted to a person to whom this section applies unless the court or authorised officer deems it appropriate having regards to the factors in s22 and s23.

Subclause (2) preserves the (danger to a protected person) test in s 8A (2) because a domestic violence offence (DVO) includes a contravention of a protection order (see s 3, defn of DVO). It would be anomalous if the same test did not apply in the aggravating circumstances mentioned in s 8AB (1) (d). This approach is also consistent with s 9A (4).

Subclause (3) spells out the relationship between s8AA, s9 and s14.

8AB People to whom s8AA applies

Note *Indictable offence* is defined in the Legislation Act, dict, pt 1.

9 So as to best describe the nature of these offences (see LRC, proposed s 8 (3) (b)), s (1) (c) refers to them as indictable offences. S (1) (c) also departs from the LRC wording in 3 other ways:

- First, s (1) (c) extends to cases where an accomplice has the weapon.
- Second, the nature of the weapon is spelt out more fully in line with existing provisions of the Crimes Act 1900, pt 6 (Offences relating to property) see particularly s 92 (Armed robbery) and s 94 (Aggravated burglary). These provisions do not rely on the definition of *offensive weapon* in the dictionary to the Act. It is as follows:

“offensive weapon means-

- (a) anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person; or
- (b) anything intended for that use by the person who is carrying it or otherwise has it in his or her possession;

and includes an imitation or replica of an offensive weapon.”

- Third, the element of violence is implied, rather than expressed. It is sufficient for the offender or accomplice to have the weapon with him or her at the time of the alleged offence. There is no express requirement for actual or threatened violence. This is also consistent with the Crimes Act, pt 6, see particularly s 94.
- In Subclass (d) *Found guilty* is defined in the Legislation Act, dict, pt 1.
- Subclause (1) (f) is similar to the provisions in NSW, Victoria and the Northern Territory and takes the same approach as that taken in those jurisdictions.

Subclause 2 states that section 8AA does not apply to a person if section 9A applies to that person.

In Subclause 3 the definitions of *explosive*, *firearm*, *imitation explosive* and *imitation firearm* are based on the definitions in the *Crimes Act 1900*, section 83.

In Subclause 4 ensures that persons seeking bail for offences that are alleged to have been committed prior to section 8AA coming into effect are dealt with under the terms of section 8AA.

Dispensing with bail Section 10 (5)

Clause 8 remakes s10(5) to include a reference to proposed new s8AA.