

**1992**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**BAIL (AMENDMENT) BILL (NO. 2) 1992**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of  
Terry Connolly MLA  
Attorney-General**

## BAIL BILL (AMENDMENT) BILL (NO. 2) 1992

### OUTLINE

The *Bail Act 1992* ('the Principal Act') was notified in the ACT Gazette on 28 May 1992, but its substantive provisions did not come into operation until 28 November 1992. The Principal Act consolidates, codifies and revises the law of bail.

Section 7 of the Principal Act creates a right to bail in respect of minor offences, which are offences punishable by fine only or by imprisonment of not more than 6 months. A person charged with a minor offence is entitled to be granted bail without any conditions and to be released from custody upon giving an undertaking to appear. There are exceptions to this entitlement such as a failure to appear on a previous undertaking, the person is in physical danger (eg intoxicated), the person is otherwise in custody or bail has been dispensed with.

A breach of a protection order or interim protection order under the Domestic Violence Act is an offence punishable by a period of imprisonment of not more than 6 months as is a breach of a restraining order made under the Magistrates Court Act. Therefore, any person who is charged with breaching such an order is automatically entitled to bail, without any conditions, if there is no other offence charged such as assault.

The Bail (Amendment) Bill (No. 2) 1992 contains an amendment to the *Bail Act 1992* to provide that the right to bail found in section 7 of the Act for minor offences does not apply to the offences of breaching a protection order under the *Domestic Violence Act 1986* or a restraining order under the *Magistrates Court Act 1930*.

The amendment will return the law to basically the same position that prevailed before the commencement of the Principal Act, that is, a person who breaches a protection order or restraining order under the relevant legislation will not have an automatic right to bail following arrest, but the police will have a discretion to grant bail.

The Bill contains one other minor amendment that would enable such offences as are prescribed to be excluded from the operation of the automatic bail provision. This second amendment is being proposed as a cautionary measure in case there are other offences that come to light which as a matter of public policy should not attract the operation of section 7.

### FINANCIAL CONSIDERATIONS

The Bill is intended to be budget neutral.

## **BAIL (AMENDMENT) BILL (NO. 2) 1992**

### **CLAUSE NOTES**

#### **Clauses 1, 2 and 3**

These clauses are formal. They contain the short title, the commencement date and a short form reference to the Principal Act.

The proposed Act will commence upon Gazettal.

#### **Clause 4: Bail for minor offences**

This clause amends section 7 of the Principal Act by adding two new exceptions to the statutory right to bail for minor offences.

There will be a new paragraph 7(3)(e) which excludes from the application of the section an accused person charged with an offence under section 27 of the *Domestic Violence Act 1986* or an offence under section 206L of the *Magistrates Court Act 1930*.

There will also be a new paragraph 7(3)(f) which excludes from the application of the section an accused person charged with an offence prescribed under the Regulations.