

2021

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

Bail Amendment Bill 2021

EXPLANATORY STATEMENT

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Bail Amendment Bill 2021

Introduction

This explanatory statement relates to the *Bail Amendment Bill 2021* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the Courts.

Overview of the Bill

The purpose of this Bill is to amend the *Bail Amendment Bill 2021* to extend the list of offences that do not have the presumption for Bail to include assaults on frontline community service providers as defined in the *Crimes Act 1900*.

Summary of clauses

1 Name of Act

This Act is the *Bail Amendment Act 2021*.

2 Commencement

This Act commences on the day after its notification day or on a day fixed in writing by the Minister.

3 Legislation amended

This Act amends the *Bail Act 1992*.

4 Offences against Crimes Act 1900 Schedule 1, part 1.1, new item 2A

The clause inserts a new item to include ‘assault of a frontline community service provider’ to the list of offences to which the presumption for Bail does not apply.

Human rights implications

As this Bill extends the list of offences to which the presumption for bail does not apply, it does have human rights implications. These include recognition and equality before the law (s8), freedom of movement (s13) and, most relevantly, the right to liberty and security of person (s18).

Section 28 of the *Human Rights Act* accepts there may be limitations on human rights and lists the factors to be considered including the nature of the right affected: the importance of the purpose of the limitation on human rights; the nature and extent of the limitation on human rights; the relationship between the limitation and its purpose; and any less restrictive means reasonably available to achieve the purpose.

i. Nature of the right affected.

The right to liberty is a fundamental human right and should, and has, been carefully considered before limitations are placed upon it.

Section 18 of the Human Rights Act states that:

- (1) Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.*
- (2) No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.*

And further, that:

(3) Anyone who is awaiting trial must not be detained in custody as a general rule, but his or her release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding, and, if appropriate, for execution of judgment.

(4) Anyone who is deprived of liberty by arrest or detention is entitled to apply to a court so that the court can decide, without delay, the lawfulness of the detention and order the person's release if the detention is not lawful.

The *Bail Act 1992* provides both the grounds and procedures for detention in custody following charge. This Bill does not change the criteria set out in the Act but does add to the list of offences to which no presumption for bail would apply and therefore extends, in a limited way, the extent of that limitation.

ii. Importance and purpose of the limitation.

As freedom of liberty is a fundamental right, freedom from assault is a right with competing importance.

This amendment recognises the importance and vulnerability of those in difficult circumstances with higher than usual risks as part of their occupation in service to our community.

The purpose of the amendment is to recognise those circumstances and risks and to promote and protect those who may be assaulted in those circumstances.

iii. Nature and extent of the limitation.

As stated, this Bill does not alter the conditions, rights or requirements in the Bail process, but adds an extra offence to the category where no presumption for bail applies.

This does remove completely the ability to apply for bail but does remove the presumption that bail will be granted. It does not go so far as to place the offence in the category where there is a presumption *against* bail, such as is the case for murder or very serious drug charges as in section 9C.

Furthermore, the right affected in this Bill is no more nor less impinged than it already is for a number of other offences. Part of assessing whether the amendment is appropriate and proportionate, is to compare this reform to the other offences to which the presumption does not apply.

The list, contained in Schedule 1 of the *Bail Act*, includes such offences as; the sale and supply of drugs of dependence (part 1.3), the supply of prescribed medicines (part 1.4) and assembly for unlawful purposes (part 1.5).

Assaults against frontline community service workers fit at least in the same category of seriousness as these offences and therefore warrants its inclusion where no presumption would apply.

Supporting other rights.

Finally, while noting the human rights implications, this measure is intended to support the rights of frontline community service providers and the community in general from assault.

Conclusion

This Bill responds in a limited way, in specific circumstances, to achieve the purpose of supporting the rights of frontline community service providers against assault. It does so with no further imposition than a range of other offences.