

2023

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

BAIL AMENDMENT BILL 2023

EXPLANATORY STATEMENT

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BAIL AMENDMENT BILL 2023

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to proposed amendments to the *Bail Act 1992*. This explanatory statement does not form part of the Bill and has not been endorsed by the Assembly. The statement is to provide assistance to the reader of the Bill and is to be read in conjunction with the Bill.

OVERVIEW OF THE AMENDMENTS

Purpose

The amendments to the *Bail Act 1992* prescribe the introduction of three offences to Schedule 1 of the Bail Act, offences of which there is to be no presumption of bail. These offences include culpable driving, driving at the police, and an offence against the Road Transport (Safety and Traffic Management) Act 1999 – furious, reckless or dangerous driving.

The Act amends the following legislation:
Bail Act 1992

Background

Currently, persons who have committed the most serious driving offences are provided a presumption for bail, irrespective of repeat offences. Culpable, furious, reckless or dangerous driving of motor vehicles and driving of a motor vehicle at a police, creates a very substantial risk of serious harm to the community.

The Standing Committee on Justice and Community Safety Inquiry into Dangerous Driving recommended that ‘the ACT Government introduce legislation for a neutral presumption of bail for serious dangerous driving offences such as driving at police and serious recidivist motor vehicle offenders’.

This Bill goes to addressing this recommendation.

CONSISTENCY WITH HUMAN RIGHTS

International human rights law places obligations on governments to “respect, protect and fulfil” rights. During the development of these amendments due regard was given to its compatibility with human rights as set out in the *Human Rights Act*

2004. The amendments engage positively with the Human Rights Act 2004, including Section 9, the Right to life, and Section 18, Right to liberty and security of person.

Section 9 of the *Human Rights Act 2004*, states that ‘everyone has the right to life, in particular no-one may be arbitrarily deprived of life’. These amendments seek to expand and improve the *Bail Act 1992*, to see that there is sufficient scrutiny on a bail application of someone that has committed such serious dangerous driving crimes that are considered a high risk to the community of causing harm.

Section 18 of the *Human Rights Act 2004*, states that ‘Anyone who is arrested or detained on a criminal charge— (a) must be promptly brought before a judge or magistrate; and (b) has the right to be tried within a reasonable time or released. These amendments are consistent with the right to liberty in that it is a neutral presumption of bail – it is not for or against bail. The decision to grant bail is not presumed, it is in the hands of courts to determine the merits of the bail application. These amendments uphold and protect Human Rights. These amendments do not limit any rights.

SUMMARY OF AMENDMENTS

SCHEDULE 1 Offences to which presumption of bail does not apply

Part 1.1 Offences against the Crimes Act 1900

New Item 2A - Culpable Driving

The Act amends the *Bail Act 1992* to insert a new column item (2A) to ensure that culpable driving, will also be an offence that does not have a presumption of bail.

New Item 2B - Driving Motor Vehicle at Police

The Act amends the *Bail Act 1992* to insert a new column item (2B); driving of a motor vehicle at police, which means deliberately or recklessly driving towards a police officer in a way that creates a substantial risk of serious harm.

New Item: Part 1.8 Offence against the Road Transportation (Safety and Traffic Management Act 1999)

The Act amends the *Bail Act 1992*, to create a new Part 1.8. This part creates conditions for offences against Road Transport (Safety and Traffic Management) Act 1999. The offence that is included is the offence of furious, reckless or dangerous driving.

The intention of these amendments is to provide suitable sentences to the recidivist dangerous driving offenders with neutral bail being considered more broadly.

CLAUSE NOTES

Clause 1 Name of Act

The clause provides that the name of the Act is the *Bail Amendment Act 2023*

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act identifies that the legislation will commence on the day after its notification day.

Clause 3 Legislation Amended

This Clause identifies that the legislation that will be amended is the *Bail Act 1992*

SCHEDULE 1 Offences to which presumption of bail does not apply

Clause 4 Part 1.1 New Item 2A and 2B

This clause provides the legislation that the culpable driving of a motor vehicle is an offence which does not have a presumption of bail.

This clause provides the legislation that driving of a motor vehicle at police is an offence which does not have a presumption of bail.

Clause 5 Proposed New Part 1.8

This clause provides the legislation that new offences of furious, reckless or dangerous driving will be added as offences against the Road Transport (Safety and Traffic Management) Act 1999.