

**2023**

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

**BAIL AMENDMENT BILL 2023**

**REVISED EXPLANATORY STATEMENT**

into

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Member for Murrumbidgee**

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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 Bill amends the *Bail Act 1992*, prescribing 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, including repeat offenders. Culpable, furious, reckless, or dangerous driving of motor vehicles and driving of a motor vehicle at police, creates a very substantial risk of serious harm to the community.

In its report of the Inquiry into Dangerous Driving, the Standing Committee on Justice and Community Safety recommended that the ACT Government enact legislation to establish a neutral presumption of

bail for serious dangerous driving offenses, including driving at police, and for recidivist motor vehicle offenders.

This Bill goes to addressing this recommendation.

These offences specifically speak to a person who drives a motor vehicle in a way that is dangerous to the public, police, or they have caused significant harm or death to another person.

## **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* (HRA). The Bill provides a balancing of rights. The Bill engages positively with the HRA, specifically Section 9, the ‘Right to life’. The amendments may limit rights with reference to Section 18, ‘Right to liberty and security of person’ and Section 13, ‘Right to freedom of movement’.

Section 9 of the HRA, states that ‘everyone has the right to life, in particular no-one may be arbitrarily deprived of life’. This Bill seeks 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 and police of causing harm.

The amendments in this bill are informed by the view that the presumption for bail should not apply to culpable driving, driving at the police, and an offence against the *Road Transport (Safety and Traffic Management) Act 1999* – furious, reckless, or dangerous driving.

These offences put innocent community members at serious risk of injury or loss of life, and therefore, any perceived limitations of human rights enacted by the refusal of bail is considered reasonable given the exponential risk to the community and in accordance with Section 28 of the HRA.

Section 18 of the HRA, 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. The Bill may engage or limit this right, as there is an increased possibility that a defendant may not receive bail and remain on remand awaiting trial. These amendments will see that the decision to grant bail is not presumed, it is in the hands of decision-maker to determine the merits of the bail application.

Section 13 of the HRA provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT. The Bill may also engage and limit the right to freedom of movement (section 13 of the HRA) as an increased likelihood of being refused bail would restrict an accused's freedom of movement as part of bail conditions imposed.

Section 28 of the HRA, states that 'Human rights may be limited'. A detailed outline is provided below of how human rights may be limited in respect to this Bill and why this is a legitimate, proportionate response to address the very serious risk to innocent people's lives as a result of these crimes.

**1. Nature of the right and the limitation (s 28 (2) (a) and (c))** The amendment creates a neutral presumption for bail in relation to three offences, two that are relevant to *the Crimes Act 1900* and one offence against the *Road Transport (Safety and Traffic Management) Act 1999*. The amendment does not create a presumption against bail and does not subject the decision-maker to be satisfied of the existence of special or exceptional circumstances favouring the grant of bail to a person.

The effect of the amendment is these crimes will move to Division 2.3 No Presumption of Bail of the *Bail Act 1992*; however, the decision-maker will continue to retain discretion in assessing a person's suitability for bail against the legislative criteria under Part 4 of the *Bail Act 1992*.

Nevertheless, it is recognised that creating a neutral presumption for bail may result in a greater likelihood in an accused person being refused bail.

The limitations relate to Section 13 and 18 of the HRA.

Section 13 of the HRA provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT. The amendment may engage and limit the right to freedom of movement as there is an increased likelihood of being refused bail would restrict an accused's freedom of movement as part of bail conditions imposed.

Section 18 of the HRA provides that no-one may be deprived of their liberty, except on grounds and in accordance with law. Subsection 5 provides that persons awaiting trial must not be detained in custody as a general rule. The amendment may limit the right to liberty (Section 18) by increasing the likelihood of someone being held on remand in custody while awaiting a trial.

**2. Legitimate purpose (s 28 (2) (b))** The amendment will not create a presumption against bail but rather will create a neutral presumption for bail.

The primary goal of the *Bail Amendment Bill 2023* is to enhance public safety by shifting the presumption of bail, to no presumption for bail, for the specific offences culpable driving of motor vehicle and driving motor vehicle at police (offences against the *Crimes Act 1900*), and furious, reckless or dangerous driving (an offence against the *Road Transport (Safety and Traffic Management) Act 1999*).

Evidence in the ACT sees a very clear pattern of offenders who have been charged with these particular crimes, many of whom reoffend while they were in the community on bail. This presents a significant risk to the safety of community, which is why it is critically important that an assessment of bail relating to these offences be provided significant scrutiny by the decision-maker.

Shifting these offences to a neutral presumption of bail will ensure that individuals who are charged with these offences receive increased scrutiny of their application through the bail process, to ensure that they will not put the community at significant risk, if granted bail. The Bill does not presume against bail. Rather, it allows for a robust assessment, ensuring that those who may pose a genuine risk to society are assessed appropriately, while those who do not pose such a risk are not unduly deprived of their liberty.

**3. Rational connection between the limitation and the purpose (s 28 (2) (d))** There is a rational connection between the limitation on the right to freedom of movement (Section 13 of the HRA) and right to liberty (Section 18 of the HRA) and the safety of the community. The amendment will create a neutral presumption for bail for three offences and ensure that the decision-maker appropriately consider the nature of these offences and the risks that driving in such a dangerous way pose to the community.

The amendment may act as a general deterrence by potential offenders or for the accused to commit further dangerous driving offences, thus improving overall criminal justice outcomes for the community.

**4. Proportionality (s 28 (2) (e))** The limitation of rights is proportionate to the aim of creating consistent approaches to bail applications for what is considered the most severe dangerous driving offences, that put community safety at significant risk. The amendment creates a neutral presumption of bail rather than a presumption against bail and does not seek to curb existing discretion held by the decision-maker in their bail determinations. The legislative criteria in the *Bail Act 1992* relating to the granting of bail is not altered by the amendment. The amendment does not impose any limitations on an accused's entitlement to bail in accordance with Division 2.2. including the need to be satisfied of the existence of special or exceptional circumstances favouring the grant of bail to a person.

## **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 the offence of culpable driving of a motor vehicle 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) to ensure that the offence of driving of a motor vehicle at police does not have a presumption of bail.

### **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 to ensure that the offence of furious, reckless or dangerous driving (under the Road Transport (Safety and Traffic Management) Act 1999) does not have a presumption of bail.

## **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.