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

**BAIL AMENDMENT BILL 2003
GOVERNMENT AMENDMENTS
EXPLANATORY STATEMENT**

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Bail Amendment Bill 2003

Government Amendments — Explanatory Statement

Outline

The Government amendments will enable the *Bail Act 1992* to contemplate bail decisions about offenders who have breached punitive orders, such as recognisances, community service orders, home detention, and periodic detention. The presumption towards bail for the original offence committed by the offender will determine the presumption the court must apply for breaches of punitive orders.

The Government amendments change clauses 30 and 31 of the Bail Amendment Bill 2003. The clauses are too open to interpretation. These clauses amend sections 42 and 43 of the *Bail Act 1992* which address the powers of magistrates and judges to review bail decisions.

The intent of the new sections is to enable magistrates or judges to review bail decisions if circumstances or evidence changes. The Government amendments clarify that the new sections contemplate magistrates reviewing their own, or other magistrates', decisions and judges reviewing their own, or other judges', decisions.

Government Amendments — Bail Amendment Bill 2003

Clauses

1: Amendment to Clause 5

Proposed new section 8(1)(e)

Page 4, line 21

Government amendment 1 removes the proposed new section 8(1)(e) which applied to people arrested for a breach of a periodic detention order. The subsection is removed in anticipation of the inclusion of a new section to contemplate all punitive orders that are not full-time custodial sentences.

2: Amendment to Clause 5

Proposed new section 8(5)

Page 5, line 12

Government amendment 2 removes the stand alone definition of periodic detention order in anticipation of a new section which contemplates all punitive orders that are not full-time custodial sentences.

3: Amendment to Clause 5

Proposed new section 8A

Page 5, line 14

Government amendment 3 inserts a new section 8A into the Bail Amendment Bill 2003.

New section 8A(1) provides for bail decisions to be made by the court for breaches of recognisances, community services orders, home detention orders, or periodic detention orders. These orders are punitive orders available to the court instead of, or combined with, full-time custodial sentences.

New section 8A(2) links the entitlement to bail to the offence committed by the person for which the punitive order relates. In this way, the type of presumption towards bail applied by the court is determined by the proven offence.

Two examples are provided for clarity. In the first example, a neutral presumption applies because the proven offence is an offence which would hold a neutral presumption.

The second example makes it clear that the presumption to apply is the presumption in relation to the offence for which the person has been convicted and any other qualifying factor provided in the *Bail Act 1992*. In the second example, the fictitious character 'Joe' attracts a presumption against bail because the circumstances meet the

test of proposed new section 9B(b). Namely, that Joe committed the offence of threatening to kill and was convicted three years earlier of a violence offence.

New section 8A(3) provides statutory references to definitions of community service order, home detention order and periodic detention order. Recognisance is not defined but means dispositions imposed by the court other than custodial sentences, or in conjunction with custodial sentences, under the *Crimes Act 1900* or the *Drugs of Dependence Act 1989*.

4: Amendment to Clause 30

Proposed new section 42(1)

Page 26, line 24

Government amendment 4 amends new section 42(1) of the Bail Amendment Bill 2003 to make it clear that the section contemplates a fresh application for bail.

5: Amendment to Clause 30

Proposed new section 42(2)

Page 27, line 1

Government amendment 5 amends new section 42(2) of the Bail Amendment Bill 2003 to clarify that the section means a magistrate can review a decision made by any magistrate, rather than just a decision made by the magistrate himself or herself.

6: New Clause 30A

Amendment to section 43(1)

Page 27, line 7

Government amendment 6 introduces a new clause — clause 30A — to the Bail Amendment Bill 2003. This clause will amend the *Bail Act 1992* to make it clear that the section contemplates a fresh application for bail.

7: Amendment to Clause 31

Proposed new section 43(1A)

Page 27, line 11

Government amendment 7 amends clause 31 of the Bail Amendment Bill 2003 to clarify that the section means a judge can review a decision made by any judge, rather than just a decision made by the judge himself or herself.

8: Amendment to Schedule 1, [1.8]

Proposed new dictionary, definition of *offence*, paragraph (b)(ii)

Page 38, line 19

Government amendment 8 updates the definition of offence in light of the Government amendment to specify that punitive orders are contemplated by the

Bail Act 1992. The amendment replaces the reference to periodic detention orders with a reference to all punitive orders mentioned in Government amendment 3.