LEGISLATIVE COUNCIL

BAIL AMENDMENT BILL 2023

<u>(Amendments and New Clauses to be proposed in Committee by KATHERINE COPSEY)</u>

1.   Clause 1, lines 8 to 10, omit all words and expressions on these lines and insert—

        "(i)   abolishing the 2 step tests; and".

2.   Clause 1, page 2, lines 1 and 2, omit all words and expressions on these lines and insert—

        "(iii)   changing the unacceptable risk test; and".

3.   Division heading before clause 4, omit this heading.

4.   Clause 4, omit this clause.

5.   Clause 5, omit this clause.

6.   Clause 6, omit this clause.

7.   Clause 7, omit this clause.

8.   Clause 8, omit this clause.

NEW CLAUSES

9.   Insert the following New Division after Division 2 of Part 2—

'Division 2A—Abolition of 2 step tests

11A Definitions

In section 3 of the Principal Act, the definitions of *Schedule 1 offence*, *Schedule 2 offence* and *unacceptable risk test* are **repealed**.

11B Sections 3AA, 3D, 4AA, 4A, 4C and 4D repealed

Sections 3AA, 3D, 4AA, 4A, 4C and 4D of the Principal Act are **repealed**.

11C Court to make preliminary determination if terrorism risk alleged

(1) Section 8AA(1)(b) of the Principal Act is **repealed**.

(2) Note 2 at the foot of section 8AA(1) of the Principal Act is **repealed**.

(3) The note at the foot of section 8AA(2) of the Principal Act is **repealed**.

11D Power of police officer, sheriff or authorised person to grant or refuse bail

(1) In the note at the foot of section 10(5) of the Principal Act—

    (a) **omit** the first dot point;

    (b) in the third dot point, for "record;" **substitute** "record.";

    (c) **omit** the fourth dot point.

(2) In section 10(5A), for "13, 13AA or 13A" **substitute** "13 or 13AA".

11E Power of bail justice to grant or refuse bail

(1) In the note at the foot of section 10A(5) of the Principal Act—

    (a) for "13, 13AA or 13A" **substitute** "13 or 13AA";

    (b) **omit** the first dot point;

    (c) in the third dot point, for "record;" **substitute** "record.";

    (d) **omit** the fourth dot point.

(2) In section 10A(5AAB), for "13, 13AA or 13A" **substitute** "13 or 13AA".

11F Informant must bring person to court if bail justice prohibited from granting bail

In section 10B(1) of the Principal Act, for "13, 13AA or 13A" **substitute** "13 or 13AA".

11G Section 12A repealed

Section 12A of the Principal Act is **repealed**.

11H Treason, murder, certain other offences

Section 13(3) and (4) of the Principal Act are **repealed**.

11I Section 13A repealed

Section 13A of the Principal Act is **repealed**.

11J Schedules 1 and 2 repealed

Schedules 1 and 2 to the Principal Act are **repealed**.'.

10.   Clause 12, omit this clause.

11.   Clause 13, omit this clause.

12.   Clause 14, lines 26 to 33, omit all words and expressions on these lines and insert—

'(1) For the heading to section 4E of the Principal Act **substitute**—

    "**Unacceptable risk test**".

(2) For section 4E(1) of the Principal Act **substitute**—

  "(1) A bail decision maker must refuse bail for a person accused of an offence if—

    (a) the bail decision maker is satisfied that, if the accused is released on bail, there is—

      (i) a specific and immediate risk to the safety and welfare of another person; or

      (ii) a serious risk of interfering with a witness; or

          (iii) a demonstrable risk that the person will abscond by fleeing the jurisdiction; and

     (b) the risk is an unacceptable risk.

(1A) A bail decision maker must not refuse bail under subsection (1) if the bail decision maker is satisfied that, if the person were found guilty of the offence charged, it is unlikely that the person would be sentenced to a term of imprisonment.

(1B) A bail decision maker must not refuse bail under subsection (1) solely because—

     (a) the decision maker considers that the accused may not attend court; or

     (b) the accused does not have—

          (i) any accommodation; or

          (ii) any adequate accommodation; or

          (iii) a fixed address.

(1C) If a court has determined under section 8AA(2) that there is a risk that a person accused of an offence will commit a terrorism or foreign incursion offence, the court must refuse bail for the person if the court is satisfied that the risk is an unacceptable risk.".

  (3) After section 4E(2) of the Principal Act **insert**—

"(2A) If subsection (1C) applies, the prosecutor bears the burden of satisfying the court that the risk referred to in that subsection is unacceptable.".

  (4) In section 4E(3) of the Principal Act, after "subsection (1)(a)" **insert** "or (1C)".'.

13.   Clause 15, omit this clause.

<div align="center">NEW CLAUSE</div>

14.   Insert the following New Clause to follow clause 15—

'15A Conduct conditions

  (1) For section 5AAA(1) of the Principal Act **substitute**—

"(1) A bail decision maker considering the release of an accused on bail must impose any condition that, in the opinion of the bail decision maker, will reduce the likelihood that the accused may—

     (a) be a risk to the safety or welfare of another person; or

     (b) interfere with a witness; or

     (c) abscond by fleeing the jurisdiction.

Example

A bail decision maker may impose a condition in order to reduce the likelihood that the accused may commit a family violence offence.".

      (2)   In section 5AAA(2)(a) of the Principal Act, for "(d);" **substitute** "(c);".'.

15.   Division heading preceding clause 16, omit this heading.

16.   Clause 16, omit this clause.

17.   Clause 17, omit this clause.

18.   Clause 18, omit this clause.

19.   Clause 19, omit this clause.

20.   Clause 20, omit this clause.

21.   Clause 21, omit this clause.

22.   Clause 22, omit this clause.

23.   Clause 23, omit this clause.

24.   Clause 24, omit this clause.

25.   Division heading preceding clause 25, omit this heading.

26.   Clause 25, omit this clause.

27.   Division heading preceding clause 26, omit this heading.

28.   Clause 26, omit this clause.

29.   Division heading preceding clause 27, omit this heading.

30.   Clause 27, omit this clause.

31.   Clause 28, omit this clause.

32.   Division heading preceding clause 29, omit this heading.

33.   Clause 29, omit this clause.

34.   Clause 30, omit this clause.

35.   Clause 117, line 11, omit all words and expressions on this line.