

# MEDIA RELEASE

## BAIL CHANGES THREATEN BASIC LEGAL RIGHTS

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NEW SOUTH WALES  
BAR ASSOCIATION

The government's proposed changes to the Bail Act, which only commenced on 20 May this year, are a retrograde step which has the potential to threaten fundamental legal rights, the president of the New South Wales Bar Association Jane Needham SC said today.

The government proposals, based on the recommendations of the Hatzistergos Bail report, bring back special categories of case where a different bail test for serious offences is to be applied. The onus in these cases will be on the alleged offender to establish that his or her detention is not justified.

'The changes represent a premature and reactive approach to criticisms in some sections of the media, rather than taking into account the thorough and thoughtful process by the NSW Law Reform Commission which led to the new Bail Act. The NSW Law Reform Commission was assisted in its important work by experienced stake holders such as the NSW Police Force, the NSW DPP, the NSW Department of Corrective Services and the NSW Public Defenders. Individual cases do not paint the overall picture of bail decisions in New South Wales or whether the current Bail Act is effective' Ms Needham SC said.

The new bail legislation which commenced only a matter of months ago introduced a risk-based approach. The legislation received support from all sides of politics and passed unanimously. The major change under those new laws was that bail is considered on the basis of an assessment of risk in each alleged offender's circumstances, rather than relying on fixed presumptions based on the kind of offence involved.

'Yet now, the government intends to undermine this system with arbitrary provisions which focus on the type of offence rather than the circumstances of each case, and which may result in persons being refused bail who should otherwise be granted bail. They would have to 'show cause' before bail could be granted. Nearly 50% of all persons who are charged are ultimately acquitted' Ms Needham said.

'These changes will have the effect of dealing with all crimes in certain categories in the same way, irrespective of the facts of the case. For instance, a wife who loses control and kills her husband after decades of violent abuse will be subject to the same just cause test as a member of a crime gang who kills a rival gang member in cold blood over a drug deal gone wrong'

‘The amendments to the Act are premature and based on perceptions rather than empirical evidence. The changes will see a return to the restrictive and unfair system under the old laws, and undermine the basic principle of our criminal justice system, the presumption of innocence’ said Ms Needham.

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