



AUSTRALIAN
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Media release

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Fears Fundamental Rights Ousted in NSW Bail Reforms

One of Australia's leading human rights organisations fears the Baird Government's proposed changes to bail laws in New South Wales threaten to breach Australia's international human rights obligations.

Under the proposed reforms the presumption of innocence will be relegated to the Preamble of the Act, rather than as a "purpose" of the Act. For serious offences, the onus will be on the accused to "show cause" that their detention in custody is unjustified.

Australian Lawyers for Human Rights (ALHR) President Nathan Kennedy said "The changes would undermine the basic common law presumption of innocence. Moreover they are inconsistent with Australia's international human rights obligations.

Australia is a signatory to the *International Covenant on Civil and Political Rights* (ICCPR), Article 9 of which confirms that the presumption of innocence underpins the concept of bail and recognises explicitly that "*it should not be the general rule that persons awaiting trial shall be detained in custody*".

Mr Kennedy said "It is important to remember that a person who is on bail or remanded before trial has not been convicted of an offence. Indeed, nearly half all people who are charged with an offence are ultimately acquitted.

Whilst the criminal justice system must recognise situations where pre-trial detention is justified, these reforms are not reasonable because they do not allow the courts to assess the risks of granting bail based on the circumstances of the offence. They instead introduce arbitrary provisions dealing with all crimes in certain categories in the same way, irrespective of the facts of the case. This will potentially see innocent people spend long periods on remand awaiting trial and significantly increase the pressure on our already overburdened prison system."

Mr Kennedy said "The present risk based bail law commenced only a matter of months ago after a detailed review by the Law Reform Commission. It was supported by the Office of the Director of Public Prosecutions, the NSW Police, Legal Aid NSW and passed unanimously through parliament. Rather than being based on empirical evidence these reforms appear to be a knee jerk reaction in response to alarmist media coverage of a handful of cases. The premature nature of these reforms jeopardises the maintenance of principled and balanced bail laws in New South Wales. ALHR calls on the government to reconsider the reforms in light of their apparent inconsistency with the presumption of innocence which is a fundamental and long held principle of the common law and international human rights.