

BAIL (DOMESTIC VIOLENCE) AMENDMENT ACT 1993

No. 102

NEW SOUTH WALES



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BAIL (DOMESTIC VIOLENCE) AMENDMENT ACT 1993
No. 102

NEW SOUTH WALES



Act No. 102, 1993

An Act to amend the Bail Act 1978 in relation to domestic or other personal violence, and other miscellaneous matters. [Assented to 2 December 1993]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Bail (Domestic Violence) Amendment Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Bail Act 1978 No. 161

3. The Bail Act 1978 is amended as set out in Schedules 1 and 2.

Transitional provision

4. The amendments made by this Act apply to determinations in relation to bail made after the commencement of those amendments even if the determinations relate to offences committed or proceedings instituted before the commencement of those amendments.

**SCHEDULE 1—AMENDMENTS RELATING TO DOMESTIC
OR OTHER PERSONAL VIOLENCE**

(Sec. 3)

(1) Section 9 (**Presumption in favour of bail for certain offences—exceptions**):

- (a) Omit “and” at the end of section 9 (1) (d).
- (b) At the end of section 9 (1) (e), insert:
 - (f) murder; and
 - (g) an offence excluded from this section by section 9A.

(2) Section 9A:

After section 9, insert:

Exception from presumption in favour of bail—domestic violence where history of violence

9A. (1) Section 9 does not apply:

- (a) in respect of a domestic violence offence; or

SCHEDULE 1—AMENDMENTS RELATING TO DOMESTIC OR OTHER PERSONAL VIOLENCE—*continued*

(b) in respect of an offence of contravening an apprehended domestic violence order by any act involving violence or by intimidation,

if the authorised officer or court is satisfied that:

- (c) the accused person has a history of violence against any person; or
- (d) there has been previous violence by the accused person against a person in respect of whom the offence referred to in paragraph (a) or (b) is alleged to have been committed (whether or not the accused person has been convicted of an offence in respect of that previous violence).

(2) For the purposes of this section, an accused person has a **history of violence** if the accused person has been found guilty, within the last 10 years, of a personal violence offence committed against any person or of an offence of contravening an apprehended violence order by any act involving violence.

(3) In this section:

“apprehended domestic violence order” means an apprehended violence order under Part 15A of the Crimes Act 1900, where the protected person:

- (a) is or has been the spouse or de facto partner of the defendant; or
- (b) is living with or has lived ordinarily in the same household as the defendant (otherwise than merely as a tenant or boarder); or
- (c) is or has been a relative (within the meaning of section 4 (6) of the Crimes Act 1900) of the defendant; or
- (d) has or has had an intimate personal relationship with the defendant;

“apprehended violence order” means an order under Part 15A of the Crimes Act 1900, and includes a similar order under the law of another State or Territory or of another country;

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OTHER PERSONAL VIOLENCE—*continued*

“**intimidation**” means an act that constitutes an offence against section 562AB of the Crimes Act 1900;

“**personal violence offence**” has the same meaning as in the Crimes Act 1900, and includes a similar offence under the law of another State or Territory or of another country.

SCHEDULE 2—OTHER AMENDMENTS

(Sec. 3)

(1) Section 3 (**Arrangement**):

Omit the section.

(2) Section 10 (**Dispensing with bail**):

After section 10 (2), insert:

(3) Subsection (2) does not apply if bail is continued in accordance with section 43 (3).

(3) Section 22A (**Special power of Supreme Court to refuse to entertain bail application**):

(a) After “application” where firstly occurring, insert “by a person”.

(b) After “application” where secondly occurring, insert “by the person”.

(4) Section 32 (**Criteria to be considered in bail applications**):

(a) At the end of section 32 (1) (a) (iii), insert “and”.

(b) Omit section 32 (1) (a) (v).

(5) Section 33 (**Bail test**):

Omit the section.

SCHEDULE 2—OTHER AMENDMENTS—*continued*(6) Section 34 (**General undertaking to appear**):

In section 34 (3), after “adjournment”, insert “, committal”.

(7) Section 42 (**Discharge of liability of other persons**):

(a) From section 42 (1), omit “(subject to subsection (5))”.

(b) Omit section 42 (5).

(8) Section 43 (**Continuation of bail**):

(a) In section 43 (1), after “adjournment”, insert “, committal”.

(b) After section 43 (2), insert:

(3) If the accused person appears before a court in accordance with a bail undertaking referred to in subsection (1) but no specific direction is made by the court in respect of bail, the court is taken to have continued bail.

(9) Section 48B:

After section 48A, insert:

Special limited review—bail conditions for reporting

48B. (1) In this section:

“**bail reporting conditions**” means bail conditions requiring the accused person to report to a police station while at liberty on bail;

“**justice**” means a justice employed in the Department of Courts Administration.

(2) A justice may review a decision of any court relating to bail reporting conditions.

(3) On any such review, the justice may only vary the police station to which the accused person must report or vary the days on which, or the times at which, the accused person must report.

(4) The justice may not, on any such review, vary the total number of days that the accused person must report.

(5) The justice may not, on any such review, vary a bail condition that the court imposing the condition directed should not be varied under this section.

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SCHEDULE 2—OTHER AMENDMENTS—*continued*

(10) Section 50 (**Arrest for absconding or breaching condition**):

After section 50 (3), insert:

(3A) A court is not to revoke or refuse to grant bail under this section unless satisfied that the person has failed, or was about to fail, to comply with the person's bail undertaking or agreement. For that purpose, the court may take into account any evidence or information which the court considers credible or trustworthy in the circumstances.

*[Minister's second reading speech made in—
Legislative Assembly on 15 September 1993
Legislative Council on 20 November 1993 a.m.]*