



New South Wales

Bail Amendment (Repeat Offenders) Act 2002 No 34

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Bail Amendment (Repeat Offenders) Act 2002 No 34

Act No 34, 2002

An Act to amend the *Bail Act 1978* with respect to the granting of bail to repeat offenders and other offenders; and for other purposes. [Assented to 24 June 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Bail Amendment (Repeat Offenders) Act 2002*.

2 Commencement

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

3 Amendment of Bail Act 1978 No 161

The *Bail Act 1978* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Insert “, (a1)” after “section 36 (2) (a)” in section 4 (3) (a).

[2] Section 9 Presumption in favour of bail for certain offences—exceptions

Insert “or 9B” after “section 9A” in section 9 (1) (g).

[3] Section 9B

Insert after section 9A:

9B Additional exceptions to presumption in favour of bail

- (1) Section 9 does not apply in respect of the grant of bail to a person accused of an offence if, at the time the offence is alleged to have been committed, the person, in connection with any other offence:
 - (a) was at liberty on bail, or
 - (b) was on parole, or
 - (c) was serving a sentence but was not in custody, or
 - (d) was subject to a good behaviour bond.
- (2) Section 9 does not apply in respect of the grant of bail to a person if the person has been previously convicted of an offence against section 51.
- (3) Section 9 does not apply in respect of the grant of bail to a person accused of an indictable offence if the person has been previously convicted of one or more indictable offences (whether dealt with on indictment or summarily).

[4] Section 32 Criteria to be considered in bail applications

Omit section 32 (1) (a) (i). Insert instead:

- (i) the person’s background and community ties, as indicated (in the case of a person other than an Aboriginal person or a Torres Strait Islander) by

- the history and details of the person's residence, employment and family situations and the person's prior criminal record (if known),
- (ia) the person's background and community ties, as indicated (in the case of an Aboriginal person or a Torres Strait Islander) by the person's ties to extended family and kinship and other traditional ties to place and the person's prior criminal record (if known),

[5] Section 32 (1) (b) (v) and (vi)

Insert after section 32 (1) (b) (iv):

- (v) if the person is under the age of 18 years, or is an Aboriginal person or a Torres Strait Islander, or has an intellectual disability or is mentally ill, any special needs of the person arising from that fact, and
- (vi) if the person is a person referred to in section 9B (3), the nature of the person's criminal history, having regard to the nature and seriousness of any indictable offences of which the person has been previously convicted, the number of any previous such offences and the length of periods between those offences, and

[6] Section 36 Conditions of bail

Insert "paragraph (a1) or" before "section 36A (2)" in section 36 (2) (a).

[7] Section 36 (2) (a1)

Insert after section 36 (2) (a):

- (a1) that the accused person enter into an agreement to reside, while at liberty on bail, in accommodation for persons on bail,

[8] Section 36 (2A)

Insert after section 36 (2):

- (2A) In considering whether to impose a condition referred to in subsection (2) (a1), the authorised officer or court is to consider whether placement in accommodation for persons on bail is available and suitable for the accused person. In considering the suitability of placement, the authorised officer or court is to have regard to the background of the accused person, particularly if the accused person is an Aboriginal person or a Torres Strait Islander.
- (2B) The Minister for Corrective Services is to ensure that adequate and appropriate accommodation for persons on bail is available for the purposes of the placement of persons on bail.

[9] Section 69 Regulations

Insert after section 69 (1) (b):

- (b1) requirements for accommodation for the purposes of section 36 (2) (a1),

[10] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule (with appropriate Part and clause numbers):

Part Bail Amendment (Repeat Offenders) Act 2002

Definition

In this Part:

2002 amending Act means the *Bail Amendment (Repeat Offenders) Act 2002*.

Review of repeat offender amendments

- (1) The Minister is to review the operation of the amendments made to this Act by the 2002 amending Act as soon as possible after the period of 12 months after the date of commencement of this clause.

- (2) Without limiting subclause (1), the review is to include a review of the operation of those amendments with respect to offenders who are Aboriginal persons or Torres Strait Islanders, offenders under the age of 18 years and offenders having an intellectual disability or who are mentally ill.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the 12-month period.

Presumptions in favour of bail

Section 9B, as inserted by the 2002 amending Act, extends to an offence alleged to have been committed before the commencement of that section if a person is charged with the offence on or after that commencement.

Bail and bail conditions

Sections 32 and 36, as amended by the 2002 amending Act, extend to an offence alleged to have been committed before the commencement of the amendments if a person is charged with the offence on or after that commencement.

[Second reading speech made in—
Legislative Assembly on 20 March 2002
Legislative Council on 7 May 2002]