



New South Wales

## **Bail Amendment (Repeat Offenders) Bill 2003**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to amend the *Bail Act 1978*:

- (a) to provide for a presumption against bail for certain offences where the offender committed the offence concerned while on bail for another offence, while on parole for another offence, while subject to a sentence (but not in custody) or to a good behaviour bond or an intervention program order relating to another offence or while in custody, and
- (b) to provide for a presumption against bail where the offender has previously been convicted of the offence of failing to appear before a court in accordance with a bail undertaking, and
- (c) to provide for a presumption against bail in respect of indictable offences where the offender has previously been convicted of one or more indictable offences, and
- (d) to require a court or authorised officer, when determining whether to grant bail to an offender referred to in paragraph (c), and when considering the

- interests of the person, to take into account the nature of the criminal history of the person, having regard to the nature, seriousness and number of those offences and the periods between them, and
- (e) to make other consequential amendments and provision of a savings and transitional nature.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** is a formal provision that gives effect to the amendments to the *Bail Act 1978* set out in Schedule 1.

## Schedule 1 Amendment of Bail Act 1978

### Presumption against bail for repeat offenders

Currently, section 8 of the *Bail Act 1978* (the *Principal Act*) provides a right to release on bail for persons accused of certain minor offences, including offences not punishable by imprisonment and other minor summary offences. In relation to other more serious offences (with some exceptions relating to drug-related offences, domestic violence offences and other specified offences), the *Principal Act* (in section 9) provides for an entitlement to bail subject to consideration of the matters set out in section 32 that are to be taken into account when determining whether to grant bail. For specified drug-related offences, the *Principal Act* provides for a presumption against bail. The *Principal Act* also provides for exceptions from the presumptions in favour of bail established by section 9 of the *Principal Act* in certain cases (including, in section 9B, in relation to repeat offenders). For offences in relation to which there is no entitlement to bail under section 8 or 9 of the *Principal Act*, there still remains an ability to be granted bail (see section 13).

The proposed Act provides for a presumption against bail in relation to repeat offenders. However, bail will still be available as referred to in section 13 of the *Principal Act*, subject to consideration of the matters listed in section 32.

**Schedule 1 [2]** inserts proposed section 8B. The proposed section provides for a presumption against bail if, at the time the person is alleged to have committed the offence concerned, the person was on bail or parole for another offence or was serving a sentence but was not in custody, or was subject to a good behaviour bond or an intervention program order, in relation to another offence,

or was in custody. The proposed section also provides for a presumption against bail in a case where:

- (a) a person has previously been convicted of the offence of failing to appear before a court in accordance with a bail undertaking, or
- (b) a person is accused of an indictable offence and has previously been convicted of one or more indictable offences.

**Schedule 1 [6]** omits section 9B of the Principal Act which is inconsistent with the operation of proposed section 8B. (Section 9B removes the presumption in favour of bail established by section 9 of the Principal Act in the same circumstances as those in which a presumption against bail is to arise under proposed section 8B, as referred to in the outline of Schedule 1 [2] above).

#### **Criteria to be considered in bail applications**

Section 32 of the Principal Act sets out the only matters that may be taken into account by a court or authorised officer in all cases when determining whether to grant bail. Currently, the section requires the court or authorised officer, in considering the interests of a person for whom the presumption of bail has been removed under section 9B (3), to consider the nature of the person's criminal history, having regard to the nature, seriousness and number of previous offences and the period of time between them. **Schedule 1 [7]** updates the reference to section 9B (3) with a reference to proposed section 8B (2) (b).

#### **Savings and transitional and consequential amendments**

**Schedule 1 [1], [3], [4], [5], [8], [10] and [11]** make consequential amendments.

**Schedule 1 [9]** makes provision of a savings and transitional nature consequent on the amendments made by Schedule 1 [7] and [8] (but only to the extent that it amends section 32 (6)).

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# Bail Amendment (Repeat Offenders) Bill 2003

No. , 2003

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## A Bill for

An Act to amend the *Bail Act 1978* to provide for a presumption against bail for repeat offenders.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Bail Amendment (Repeat Offenders) Act 2003</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent.	5
<b>3 Amendment of Bail Act 1978 No 161</b>	6
The <i>Bail Act 1978</i> is amended as set out in Schedule 1.	7



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## Schedule 1 Amendment of Bail Act 1978

(Section 3)

### [1] Part 2, Division 2A, heading

Insert “and for repeat offenders” after “certain drug offences”.

### [2] Section 8B

Insert after section 8A:

#### **8B Presumption against bail for repeat offenders**

- (1) This section applies 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 or an intervention program order, or
  - (e) was in custody.
- (2) This section also applies in respect of:
  - (a) the grant of bail to a person who has been previously convicted of an offence against section 51, and
  - (b) the grant of bail to a person accused of an indictable offence who has been previously convicted of one or more indictable offences (whether dealt with on indictment or summarily).
- (3) A person referred to in subsection (1) or (2) is not to be granted bail unless the person satisfies the authorised officer or court that bail should not be refused.
- (4) The requirement for bail cannot be dispensed with for a person referred to in subsection (1) or (2) and section 10 (2) does not apply with respect to any such person.

(5)	This section, as inserted by the <i>Bail Amendment (Repeat Offenders) Act 2003</i> , extends to an offence alleged to have been committed before the commencement of this section if a person is charged with the offence on or after that commencement.	1 2 3 4 5
(6)	In this section: <i>intervention program order</i> has the same meaning as in the <i>Crimes (Sentencing Procedure) Act 1999</i> .	6 7 8
<b>[3]</b>	<b>Section 9 Presumption in favour of bail for certain offences</b>	9
	Omit “or 9B” from section 9 (1) (g).	10
<b>[4]</b>	<b>Section 9 (3)</b>	11
	Omit “and section 9B (1) (e)”.	12
<b>[5]</b>	<b>Section 9 (5)</b>	13
	Insert after section 9 (4):	14
(5)	A person is not entitled under this section to be granted bail in respect of an offence to which this section applies if the person is a person referred to in section 8B (1) or (2).	15 16 17
<b>[6]</b>	<b>Section 9B Additional exceptions to presumption in favour of bail</b>	18
	Omit the section.	19
<b>[7]</b>	<b>Section 32 Criteria to be considered in bail applications</b>	20
	Omit “section 9B (3)” from section 32 (1) (b) (vi).	21
	Insert instead “section 8B (2) (b)”.	22
<b>[8]</b>	<b>Sections 32 (6) and 38 (1A)</b>	23
	Insert “or a person referred to in section 8B (1) or (2)” after “section 8A applies” wherever occurring.	24 25

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<b>[9] Section 32 (7)</b>	1
Insert after section 32 (6):	2
(7) This section, as amended by the <i>Bail Amendment (Repeat Offenders) Act 2003</i> , extends 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.	3 4 5 6 7
<b>[10] Schedule 1 Savings and transitional provisions</b>	8
Insert “, other than that inserting, or those relating to, section 9B as inserted by the 2002 amending Act,” after “the 2002 amending Act” in clause 17 (1).	9 10 11
<b>[11] Schedule 1, Part 9, clause 18</b>	12
Omit the clause.	13