

BAIL (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Bail Act 1978 so as—

- (a) to create a presumption against the granting of bail for serious drug offences; and
- (b) to remove the present presumption in favour of the granting of bail for certain other drug offences; and
- (c) to require victims and certain other persons to be taken into account in the making of a decision about whether to grant bail or to impose bail conditions.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Bail Act 1978.

Clause 4 provides that amendments to be made by the proposed Act apply only in respect of offences committed after they commence.

SCHEDULE 1—AMENDMENTS RELATING TO PRESUMPTIONS AS TO BAIL

Presumption against bail

The Bill inserts proposed section 8A (Presumption against bail for certain drug offences) into the Bail Act, which will have the effect of creating a presumption against the granting of bail for the offences listed in the proposed section. The offences are those under the Drug Misuse and Trafficking Act 1985 for which there is presently no presumption in favour of bail and additional offences under the Commonwealth Customs Act 1901, where commercial quantities of prohibited plants or prohibited drugs are involved. Before a person accused of any such offence is granted bail, the person will have to satisfy the officer or court granting bail that bail should not be refused. The requirement for bail cannot be dispensed with for any such offence. (Schedule 1(1) and (2) (a)).

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As at present, the officer or court must consider the matters in section 32 of the Bail Act (Criteria to be considered in bail applications) before granting or refusing bail, but may consider other matters relevant to whether the presumption against bail should be overcome in a particular case. (Schedule 1(3)).

The Bill also amends section 38 of the Bail Act (Reasons to be recorded) so as to require reasons to be given for granting bail to a person accused of an offence to which proposed section 8A applies. (Schedule 1(4)).

No presumption in certain cases

The Bill omits from section 9 of the Bail Act (Presumption in favour of bail for certain offences) the list of offences presently excepted from that presumption which will be dealt with by proposed section 8A. Proposed section 9 (1) (d) and (e) of that Act will list additional offences for which there will be no presumption that bail will be granted. The offences are similar to those to which proposed section 8A will apply, but where at least twice the indictable quantity (as defined in the Drug Misuse and Trafficking Act) of the prohibited plant or drug concerned is involved. (Schedule 1 (2) (b)).

SCHEDULE 2—AMENDMENTS RELATING TO THE PROTECTION OF VICTIMS AND OTHERS**Protection of victims and others: grant of bail**

The Bill amends section 32 of the Bail Act (Criteria to be considered in bail applications) by adding to the matters to be considered the protection of any victim of the offence concerned, of any close relative of any such victim and of any other person identified as being in need of protection. The additional matter presently applies (in a more limited fashion than that proposed) only in a case of domestic violence. Consequential amendments are also made to the section and a definition of “close relative” is inserted in section 4 of that Act. (Schedule 2 (1) and (2)).

Protection of victims and others: bail conditions

Section 37 of the Bail Act (Restrictions on imposing bail conditions) limits the imposition of bail conditions and the nature of those conditions. The Bill substitutes section 37 (1), (2) and (5) of that Act. The proposed subsections restate the present restrictions and, in addition, will require a person deciding whether to impose bail conditions to consider the protection and welfare of any victim, close relative or other person whose needs are seen to warrant special consideration because of the circumstances of the case. At present this has to be done only in a case of domestic violence. (Schedule 2 (3)).
