



New South Wales

Bail Amendment Bill 2015

Explanatory note

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

The *Terrorism (Police Powers) Amendment Bill 2015* is cognate with this Bill.

Overview of Bill

The object of this Bill is to amend the *Bail Act 2013* (the ***Bail Act***) in response to the following reports and reviews:

- (a) the *Review of the Bail Act 2013 (Final Report)* by Judge John Hatzistergos dated June 2015,
- (b) the *Bail–Additional show cause offences* report by the New South Wales Sentencing Council dated May 2015,
- (c) the *Martin Place Siege Joint Commonwealth – New South Wales Review* dated January 2015.

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 a day or days to be appointed by proclamation.

Schedule 1 Amendments of Bail Act 2013 No 26 in response to Hatzistergos and Sentencing Council reports

Schedule 1 [2] amends section 16B (Offences to which the show cause requirement applies) of the Bail Act to provide that a serious indictable offence committed by an accused person while the person was the subject of an arrest warrant under the Bail Act or Part 7 (Revocation and

reinstatement by Parole Authority of certain orders) of the *Crimes (Administration of Sentences) Act 1999* is a show cause offence for the purposes of the Bail Act. Show cause offences are offences for which a bail authority must refuse bail unless the accused person shows cause why his or her detention is not justified.

Schedule 1 [3] amends the definition of *serious personal violence offence* in section 16B (3) of the Bail Act (which is used for the purposes of the show cause requirement) so that the term includes not only offences under Part 3 (Offences against the person) of the *Crimes Act 1900* that are punishable by imprisonment for a term of 14 years or more, but also offences under a law of the Commonwealth, another State or Territory or any other jurisdiction that are similar to an offence under that Part.

Schedule 1 [4] amends section 18 (1) (f) of the Bail Act to provide that, in assessing bail concerns, a bail authority is to consider whether the accused person has a history of compliance or non-compliance with intensive correction orders, home detention orders, community service orders or non-association and place restriction orders. **Schedule 1 [1]** makes a consequential amendment to make clear what orders are caught within the terms *community service order* and *non-association and place restriction order*.

Schedule 1 [5] inserts proposed section 18 (1) (f1) into the Bail Act to provide that if a bail authority is assessing bail concerns because the accused person has failed or was about to fail to comply with a bail acknowledgment or a bail condition, the bail authority is to consider any warnings issued to the accused person by police officers and bail authorities regarding non-compliance with bail acknowledgments or bail conditions.

Schedule 1 [6] inserts proposed section 18 (1) (i1) into the Bail Act to provide that, in assessing bail concerns, a bail authority is, if the accused person has been convicted of the offence concerned, but has not yet been sentenced, to consider the likelihood of a custodial sentence being imposed.

Schedule 1 [7] inserts proposed section 28 (3) (a1) into the Bail Act to provide that an accommodation requirement can be imposed as a bail condition for the purpose of enabling the accused person to be admitted to a residential rehabilitation facility for treatment on the person's release on bail. **Schedule 1 [8]** makes a consequential amendment.

Schedule 1 [9] inserts proposed section 43 (1A) into the Bail Act to enable a police officer of or above the rank of sergeant who is at a hospital to make a bail decision for an offence if:

- (a) the person accused of the offence is present at the hospital to receive treatment, and
- (b) in the opinion of the police officer, it is not reasonable to take the person to a police station due to the person's incapacity or illness.

Schedule 1 [10] makes a consequential amendment.

Schedule 1 [12] omits section 78 (2) from the Bail Act which currently provides that a bail authority can revoke or refuse bail only if satisfied that:

- (a) the person has failed or was about to fail to comply with a bail acknowledgment or bail conditions, and
- (b) having considered all possible alternatives, the decision to refuse bail is justified.

Section 78 (1), which remains unchanged, provides that a bail authority before which an accused person is brought or appears may, if satisfied that the person has failed or was about to fail to comply with a bail acknowledgment or a bail condition, release the person on the person's original bail or vary the bail decision that applies to the person (including revoke or refuse bail). **Schedule 1 [11]** makes a consequential amendment to include a note explaining that under section 4 (3) (a) of the Bail Act the power to vary a bail decision includes a power to revoke the bail decision and substitute a new bail decision.

Schedule 2 Amendment of Bail Act 2013 No 26 in response to Martin Place Siege review

Schedule 2 [3] inserts provisions into section 18 of the Bail Act to provide that, in assessing bail concerns, a bail authority is to consider:

- (a) whether the accused person has any associations with a terrorist organisation, and
- (b) whether the accused person has made statements or carried out activities advocating support for terrorist acts or violent extremism, and
- (c) whether the accused person has any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism.

Schedule 2 [1] and [2] make consequential amendments and provide that, for the purposes of the Bail Act, *terrorist act* has the same meaning as it has in Part 5.3 of the Commonwealth Criminal Code.

Schedule 2 [4] inserts proposed section 22A into the Bail Act to provide that, despite anything to the contrary in that Act, a bail authority must, unless it is established that exceptional circumstances exist, refuse bail for:

- (a) an offence under section 310J (Membership of terrorist organisation) of the *Crimes Act 1900*, or
- (b) any other offence for which a custodial sentence may be imposed, if the bail authority is satisfied that the accused person:
 - (i) before being charged with that offence, has been charged with a Commonwealth terrorism offence or an offence under section 310J of the *Crimes Act 1900* and the proceedings relating to the offence have not concluded, or
 - (ii) has previously been convicted of a Commonwealth terrorism offence or an offence under section 310J of the *Crimes Act 1900*, or
 - (iii) is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code.



New South Wales

Bail Amendment Bill 2015

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New South Wales

Bail Amendment Bill 2015

No. , 2015

A Bill for

An Act to amend the *Bail Act 2013* to make further provision for bail decisions.

See also the *Terrorism (Police Powers) Amendment Bill 2015*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Bail Amendment Act 2015</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Bail Act 2013 No 26 in response to Hatzistergos and Sentencing Council reports	1
		2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4 (1):	4
	<i>community service order</i> means a community service order under the <i>Crimes (Sentencing Procedure) Act 1999</i> or a children’s community service order under the <i>Children (Community Service Orders) Act 1987</i> .	5
		6
		7
	<i>non-association and place restriction order</i> means a non-association order or a place restriction order under section 17A (2) of the <i>Crimes (Sentencing Procedure) Act 1999</i> or section 33D (2) of the <i>Children (Criminal Proceedings) Act 1987</i> .	8
		9
		10
		11
[2] Section 16B Offences to which the show cause requirement applies		12
	Insert after section 16B (1) (k):	13
	(l) a serious indictable offence that is committed by an accused person while the person is the subject of a warrant authorising the arrest of the person issued under:	14
		15
	(i) this Act, or	16
		17
	(ii) Part 7 of the <i>Crimes (Administration of Sentences) Act 1999</i> .	18
[3] Section 16B (3), definition of “serious personal violence offence”		19
	Omit the definition. Insert instead:	20
	<i>serious personal violence offence</i> means:	21
	(a) an offence under Part 3 of the <i>Crimes Act 1900</i> that is punishable by imprisonment for a term of 14 years or more, or	22
		23
	(b) an offence under a law of the Commonwealth, another State or Territory or any other jurisdiction that is similar to an offence under that Part.	24
		25
[4] Section 18 Matters to be considered as part of assessment		26
	Omit section 18 (1) (f). Insert instead:	27
	(f) whether the accused person has a history of compliance or non-compliance with any of the following:	28
		29
	(i) bail acknowledgments,	30
	(ii) bail conditions,	31
	(iii) apprehended violence orders,	32
	(iv) parole orders,	33
	(v) good behaviour bonds,	34
	(vi) intensive correction orders,	35
	(vii) home detention orders,	36
	(viii) community service orders,	37
	(ix) non-association and place restriction orders,	38
[5] Section 18 (1) (f1)		39
	Insert after section 18 (1) (f):	40
	(f1) if the bail authority is making the assessment of bail concerns because the accused person has failed or was about to fail to comply with a bail acknowledgment or a bail condition, any warnings issued to the accused	41
		42
		43

	person by police officers or bail authorities regarding non-compliance with bail acknowledgments or bail conditions,	1 2
[6]	Section 18 (1) (i1)	3
	Insert after section 18 (1) (i):	4
	(i1) if the accused person has been convicted of the offence, but not yet sentenced, the likelihood of a custodial sentence being imposed,	5 6
[7]	Section 28 Bail condition can impose accommodation requirements	7
	Insert after section 28 (3) (a):	8
	(a1) for the purpose of enabling the accused person to be admitted to a residential rehabilitation facility for treatment on the person's release on bail, or	9 10 11
[8]	Section 28, note	12
	Omit the note to the section. Insert instead:	13
	Note. The court can also impose the following types of bail condition (conduct requirements):	14 15
	(a) requiring the accused person to reside at the relevant accommodation while at liberty on bail,	16 17
	(b) if the accommodation requirement is for the purpose of enabling the accused person to be admitted to a residential rehabilitation facility, requiring the accused person to be accompanied by a person specified by the court to that facility on release on bail.	18 19 20 21
[9]	Section 43 Police power to make bail decision	22
	Insert after section 43 (1):	23
	(1A) A police officer of or above the rank of sergeant at a hospital may make a bail decision for an offence if:	24 25
	(a) the person accused of the offence is present at the hospital to receive treatment, and	26 27
	(b) in the opinion of the police officer, it is not reasonable to take the person to a police station due to the person's incapacity or illness.	28 29
[10]	Section 47 Review of police decision by senior police officer	30
	Omit section 47 (7) and (8). Insert instead:	31
	(7) In this section, <i>senior police officer</i> means:	32
	(a) in relation to a bail decision made by a police officer at a police station:	33
	(i) a police officer at the police station who is senior to the police officer who made the bail decision, or	34 35
	(ii) if no such police officer is available at the police station, any other police officer who is senior to the police officer who made the bail decision, or	36 37 38
	(b) in relation to a bail decision made by a police officer at a hospital, subject to the regulations, any other police officer who is senior to the police officer who made the bail decision.	39 40 41
[11]	Section 78 Powers of bail authorities	42
	Insert after section 78 (1) (b):	43
	Note. The power to vary a bail decision includes a power to revoke the bail decision and substitute a new bail decision—section 4 (3) (a).	44 45

[12] Section 78 (2)	1
Omit the subsection.	2

Schedule 2	Amendment of Bail Act 2013 No 26 in response to Martin Place Siege review	1
		2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4 (1):	4
	<i>Commonwealth Criminal Code</i> means the <i>Criminal Code</i> set out in the Schedule to the <i>Criminal Code Act 1995</i> of the Commonwealth.	5
	<i>terrorist act</i> has the same meaning as it has in Part 5.3 of the Commonwealth Criminal Code.	6
		7
		8
[2] Section 16B Offences to which the show cause requirement applies		9
	Omit “the <i>Criminal Code</i> set out in the Schedule to the <i>Criminal Code Act 1995</i> of the Commonwealth” from section 16B (1) (g).	10
	Insert instead “the Commonwealth Criminal Code”.	11
		12
[3] Section 18 Matters to be considered as part of assessment		13
	Insert after section 18 (1) (p):	14
	(q) whether the accused person has any associations with a terrorist organisation (within the meaning of Division 102 of Part 5.3 of the Commonwealth Criminal Code),	15
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		17
	(r) whether the accused person has made statements or carried out activities advocating support for terrorist acts or violent extremism,	18
		19
	(s) whether the accused person has any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism.	20
		21
		22
[4] Section 22A		23
	Insert after section 22:	24
22A Limitation on power to release in relation to terrorism related offences		25
	(1) Despite anything to the contrary in this Act, a bail authority must, unless it is established that exceptional circumstances exist, refuse bail for:	26
		27
	(a) an offence under section 310J of the <i>Crimes Act 1900</i> , or	28
	(b) any other offence for which a custodial sentence may be imposed, if the bail authority is satisfied that the accused person:	29
		30
	(i) before being charged with that offence, has been charged with a Commonwealth terrorism offence or an offence under section 310J of the <i>Crimes Act 1900</i> and the proceedings relating to the offence have not concluded, or	31
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		34
	(ii) has previously been convicted of a Commonwealth terrorism offence or an offence under section 310J of the <i>Crimes Act 1900</i> , or	35
		36
		37
	(iii) is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code.	38
		39
	(2) If the offence is a show cause offence, the requirement that the accused person establish that exceptional circumstances exist that justify a decision to grant bail or dispense with bail applies instead of the requirement that the accused person show cause why his or her detention is not justified.	40
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| (3) | Subject to subsection (1), Division 2 (Unacceptable risk test—all offences) applies to a bail decision made by a bail authority under this section. | 1 |
| | | 2 |
| (4) | In this section, <i>Commonwealth terrorism offence</i> has the same meaning as <i>terrorism offence</i> has in the <i>Crimes Act 1914</i> of the Commonwealth. | 3 |
| | | 4 |