

[Act 2002 No 34]



New South Wales

## **Bail Amendment (Repeat Offenders) Bill 2002**

### **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 remove the presumption in favour of bail for certain offences where the offender committed the offence concerned while on bail for another offence, while on parole for another offence or while subject to a sentence (but not in custody) or to a good behaviour bond relating to another offence, and
- (b) to remove the presumption in favour of 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 remove the presumption in favour of bail in respect of indictable offences where the offender has previously been convicted of one or more indictable offences, and

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\* Amended in committee—see table at end of volume.

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- (d) to require a court or authorised officer, when determining whether to grant bail to an offender who is a child or has an intellectual disability, to take into account any special needs of the offender arising from that fact, and
- (e) to require a court or authorised officer, when determining whether to grant bail to an offender who has been previously convicted of one or more indictable offences 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
- (f) to enable a court or authorised officer, when determining whether to grant bail, to grant it subject to a condition that the offender, while at liberty on bail, reside in accommodation for persons on bail and to provide for the matters to be considered when deciding whether to impose such a condition, including the availability and suitability of that accommodation, and
- (g) 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 a day or days to be appointed by proclamation.

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

### Removal of presumptions in favour of bail

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. 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 amendments remove the presumptions in favour of bail established by section 9 of the Principal Act in certain cases. The effect of

that removal is that, in those cases, 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. The amendments do not affect the right to bail in section 8 of the Principal Act.

**Schedule 1 [3]** inserts proposed section 9B. The proposed section removes the presumption in favour of bail established by section 9 of the Principal Act 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, in relation to another offence.

The proposed section also removes the presumption in favour of 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 charged with an indictable offence and has previously been convicted of one or more indictable offences.

**Schedule 1 [2]** makes a consequential amendment.

### **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.

**Schedule 1 [4]** adds a requirement that the court or authorised officer consider any special needs of an offender who is a child or a person who has an intellectual disability. It also adds a requirement that the court or authorised officer, in considering the interests of a person for whom the presumption of bail has been removed under proposed section 9B (3), consider the nature of the person's criminal history, having regard to the nature, seriousness and number of the previous offences and the periods of time between them.

### **Bail conditions**

**Schedule 1 [6]** and **[7]** enable a court or authorised officer to impose a bail condition that an accused person, while at liberty on bail, reside in accommodation for persons on bail. The court or authorised officer will be required to consider whether placement in such accommodation is available and suitable and is to consider the background of the accused person, particularly if the accused person is an Aboriginal person or a Torres Strait Islander.

**Schedule 1 [8]** enables regulations to be made with respect to requirements for bail hostels for the purposes of imposing such a condition.

**Schedule 1 [1]** and **[5]** make consequential amendments.

**Savings and transitional amendments**

**Schedule 1 [9]** inserts savings and transitional provisions consequent on the enactment of the proposed Act. They include a provision that requires the Minister to review the operation of the amendments made by the proposed Act as soon as possible after the period of 12 months after the date the proposed section commences. The report on the review is to be published in each House of Parliament within 12 months after the end of that 12-month period.