

Passed by both Houses



New South Wales

Bail Amendment Bill 2015

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Bail Act 2013 No 26 in response to Hatzistergos and Sentencing Council reports	3
Schedule 2 Amendment of Bail Act 2013 No 26 in response to Martin Place Siege review	6

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2015



New South Wales

Bail Amendment Bill 2015

Act No , 2015

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

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

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Bail Amendment Act 2015*.

2 Commencement

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

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

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

community service order means a community service order under the *Crimes (Sentencing Procedure) Act 1999* or a children's community service order under the *Children (Community Service Orders) Act 1987*.

non-association and place restriction order means a non-association order or a place restriction order under section 17A (2) of the *Crimes (Sentencing Procedure) Act 1999* or section 33D (2) of the *Children (Criminal Proceedings) Act 1987*.

[2] Section 16B Offences to which the show cause requirement applies

Insert after section 16B (1) (k):

- (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:
 - (i) this Act, or
 - (ii) Part 7 of the *Crimes (Administration of Sentences) Act 1999*.

[3] Section 16B (3), definition of "serious personal violence offence"

Omit the definition. Insert instead:

serious personal violence offence means:

- (a) an offence under Part 3 of the *Crimes Act 1900* that is punishable by imprisonment for a term of 14 years or more, or
- (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.

[4] Section 18 Matters to be considered as part of assessment

Omit section 18 (1) (f). Insert instead:

- (f) whether the accused person has a history of compliance or non-compliance with any of the following:
 - (i) bail acknowledgments,
 - (ii) bail conditions,
 - (iii) apprehended violence orders,
 - (iv) parole orders,
 - (v) good behaviour bonds,
 - (vi) intensive correction orders,
 - (vii) home detention orders,
 - (viii) community service orders,
 - (ix) non-association and place restriction orders,

[5] Section 18 (1) (f1)

Insert after section 18 (1) (f):

- (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

person by police officers or bail authorities regarding non-compliance with bail acknowledgments or bail conditions,

[6] Section 18 (1) (i1)

Insert after section 18 (1) (i):

- (i1) if the accused person has been convicted of the offence, but not yet sentenced, the likelihood of a custodial sentence being imposed,

[7] Section 28 Bail condition can impose accommodation requirements

Insert after section 28 (3) (a):

- (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

[8] Section 28, note

Omit the note to the section. Insert instead:

Note. The court can also impose the following types of bail condition (conduct requirements):

- (a) requiring the accused person to reside at the relevant accommodation while at liberty on bail,
- (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.

[9] Section 43 Police power to make bail decision

Insert after section 43 (1):

- (1A) A police officer of or above the rank of sergeant at a hospital may 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.

[10] Section 47 Review of police decision by senior police officer

Omit section 47 (7) and (8). Insert instead:

- (7) In this section, *senior police officer* means:
 - (a) in relation to a bail decision made by a police officer at a police station:
 - (i) a police officer at the police station who is senior to the police officer who made the bail decision, or
 - (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
 - (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.

[11] Section 78 Powers of bail authorities

Insert after section 78 (1) (b):

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).

[12] Section 78 (2)

Omit the subsection.

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

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Commonwealth Criminal Code means the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

terrorist act has the same meaning as it has in Part 5.3 of the Commonwealth Criminal Code.

[2] Section 16B Offences to which the show cause requirement applies

Omit “the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth” from section 16B (1) (g).

Insert instead “the Commonwealth Criminal Code”.

[3] Section 18 Matters to be considered as part of assessment

Insert after section 18 (1) (p):

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

[4] Section 22A

Insert after section 22:

22A Limitation on power to release in relation to terrorism related offences

- (1) Despite anything to the contrary in this Act, a bail authority must, unless it is established that exceptional circumstances exist, refuse bail for:
 - (a) an offence under section 310J 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.
- (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.

- (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.
- (4) In this section, ***Commonwealth terrorism offence*** has the same meaning as ***terrorism offence*** has in the *Crimes Act 1914* of the Commonwealth.