

[Act 1998 No 108]



New South Wales

Bail Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament. This Bill is cognate with the *Criminal Procedure Legislation Amendment (Bail Agreements) Bill 1998*.

Overview of Bill

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

- (a) to remove the presumption in favour of bail under section 9 of the Act for certain serious violent and sexual offences (Schedule 1 [1] and [2]), and
 - (b) to clarify the provisions concerning the application of the presumption in favour of bail for domestic violence offences and offences of contravening apprehended domestic violence orders and to provide an exception to the presumption in favour of bail for offences of contravening apprehended domestic violence orders where an accused person has failed to comply with certain bail conditions (Schedule 1 [3]–[5]) and
 - (c) to require a police officer to sign an acknowledgment that he or she has given information respecting the entitlement to or eligibility for bail of a person charged with an offence and who is in custody (Schedule 1 [7]) and
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- (d) to include within the criteria that a court or police officer must take into account under section 32 of the Act in determining whether to grant bail for a serious offence to a person, whether, at the time the offence is alleged to have been committed, the person had been granted bail or released on parole in connection with any other serious offence and to simplify certain other provisions of that section (Schedule 1 [8]-[10]), and
- (e) to require a police officer or court to be satisfied that a bail condition is appropriate having regard to any intellectual disability of an accused person that may affect the person's capacity to understand or comply with the bail condition before imposing the bail condition (Schedule 1 [11] and [12]), and
- (f) to enable NSW courts to make arrangements with courts in other States or Territories so that agreements, acknowledgments and deposits of security or amounts of money with respect to bail conditions imposed by the NSW courts can be entered into or made with or to the courts of the other States or Territories (Schedule 1 [13] and [14]), and
- (g) to enable a senior police officer to review a decision by another police officer to refuse to grant bail (Schedule 1 [16]), and
- (h) to require notice of any alteration or variation of a bail condition to be given to any person other than the accused who had entered into an agreement or made an acknowledgment pursuant to the bail condition (Schedule 1 [18]).

The Bill also makes various other amendments of a consequential or savings or transitional nature to the Act (Schedule 1 [6], [15], [17] and [19]).

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.

A detailed explanation of each of the amendments is set out in Schedule 1 to the proposed Act.

Clause 3 provides that the matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of the proposed Act.