



New South Wales

Bail Amendment Bill 2003

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 prevent a person who is accused of murder from being granted bail except in exceptional circumstances, and
- (b) to prevent a person who is accused of a serious personal violence offence and who has previously been convicted of a serious personal violence offence from being granted bail except in exceptional circumstances, and
- (c) to provide for a temporary stay of a decision by a magistrate or justice to grant bail to a person accused of a serious offence pending a review of that decision by the Supreme Court, and
- (d) to provide for a review of the amendments made by the Bill, and for other consequential and transitional matters.

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 that gives effect to the amendments to the *Bail Act 1978* set out in Schedule 1.

Schedule 1 Amendments

Grant of bail for murder offences or repeat offenders

The amendments relating to the grant of bail will prevent a person who is charged with murder, or who is charged with a serious personal violence offence and is a repeat offender, from being granted bail unless the authorised officer or court is satisfied that exceptional circumstances justify the grant of bail (see **Schedule 1 [2]**).

A person is a *repeat offender* for the purposes of the provisions if the person has previously been convicted of (or found guilty of) a serious personal violence offence other than the offence in connection with which bail is being sought. A *serious personal violence offence* includes an offence such as murder, sexual assault, kidnapping or armed robbery. It also includes several other serious offences under the *Crimes Act 1900* involving violence, related attempt offences, and any similar offences under the laws of the Commonwealth, another State or a Territory or of another country.

Schedule 1 [1] is a consequential amendment that ensures that there is no presumption of bail in cases to which the amendments apply. There is already no presumption of bail in murder cases.

Schedule 1 [4] and [5] provide for consequential and transitional matters.

Review of bail decisions

The provisions set out in **Schedule 1 [3]** provide for a temporary stay of a decision by a magistrate or justice to grant bail to a person accused of a serious offence, pending a review of that decision by the Supreme Court. A *serious offence*, for the purposes of the amendments, is the offence of murder or any other offence punishable by imprisonment for life, or an offence under certain provisions of the *Crimes Act 1900* involving sexual intercourse with, or an attempt to have sexual intercourse with, a person under the age of 16 years.

Under the amendments, if a magistrate or justice grants bail to a person accused of a serious offence (on the accused person's first appearance before a court on that charge), and a police officer or legal practitioner appearing on behalf of the Crown informs the court that a request for a review of the decision is to be made to the Supreme Court, the decision of the magistrate or justice is stayed. The stay has effect only if the police officer or legal practitioner requesting the review provides the court with a copy of the written approval of the Commissioner of Police (or a person authorised by the Commissioner of Police) or the Director of Public Prosecutions to seek a review by the Supreme Court of any decision to grant bail in the case. The stay has effect until:

- (a) the Supreme Court affirms or varies the decision, or substitutes another decision for the decision of the magistrate or justice, or refuses to entertain the request for review, or
- (b) a police officer or some other person acting on behalf of the Crown files with the Supreme Court notice that the Crown does not intend to proceed with the review, or
- (c) 4 pm on the day that is 3 business days after the day on which the decision was made,

whichever happens first.

Schedule 1 [5] includes a transitional amendment.

Review of amendments

Schedule 1 [5] also contains a transitional provision that requires the Minister to review the effect of the amendments made by the Bill at the end of the period of 12 months after the commencement of the amendments.

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Bail Amendment Bill 2003

No. , 2003

A Bill for

An Act to amend the *Bail Act 1978* to make further provision with respect to the grant of bail and review of bail decisions.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Bail Amendment Act 2003*.

2 Commencement

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

3 Amendment of Bail Act 1978 No 161

The *Bail Act 1978* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 9 Presumption in favour of bail for certain offences— exceptions

Omit “section 9A or 9B” from section 9 (1) (g).

Insert instead “section 9A, 9B or 9D”.

[2] Part 2, Division 3A

Insert after Division 3:

Division 3A Cases in which bail is to be granted in exceptional circumstances only

9C Murder

An authorised officer or court is not to grant bail to a person in respect of an offence of murder unless the authorised officer or court is satisfied that exceptional circumstances justify the grant of bail.

9D Repeat offenders—serious personal violence offences

(1) An authorised officer or court is not to grant bail to a person in respect of a serious personal violence offence if the person is a repeat offender unless the authorised officer or court is satisfied that exceptional circumstances justify the grant of bail.

(2) For the purposes of this section, a person is a *repeat offender* if the authorised officer or court is satisfied that the person has a previous conviction for a serious personal violence offence (other than the serious personal violence offence in connection with which bail is sought).

(3) Section 9 does not apply in respect of a grant of bail to a person in respect of a serious personal violence offence if this section applies to the person.

(4) In this section:

serious personal violence offence means:

(a) an offence under, or mentioned in, section 19A, 24, 26, 27, 28, 29, 30, 33, 33A, 35, 37, 38, 39, 46, 47, 48, 61B, 61C, 61D, 61I, 61J, 61JA, 61K, 61M, 63, 65, 66A, 66B,

66C, 66EA, 66F, 67, 68, 71, 73 (if the offence is committed against a person under the age of 16 years), 78H, 78I, 78K, 78N, 80A, 85A, 86, 87, 90A, 91, 95, 96, 97, 98, 103, 110, 195, 196 or 198 of the *Crimes Act 1900*, or

- (b) an offence under section 79, 106, 107, 109, 111, 112 or 113 of the *Crimes Act 1900* if the circumstances of the offence involve an act of actual or threatened violence against a person, or
- (c) an offence of attempting to commit an offence referred to in paragraph (a) or (b), or
- (d) an offence under the law of the Commonwealth, another State or a Territory or of another country that is similar to an offence referred to in paragraph (a), (b) or (c).

[3] Section 25A

Insert after section 25:

25A Stay of decision to grant bail if review sought

- (1) If a magistrate or justice grants bail to a person accused of a serious offence on the accused person's first appearance before a court in or in connection with proceedings for the offence, and a police officer or legal practitioner appearing on behalf of the Crown immediately informs the court that a request for a review of the decision is to be made to the Supreme Court, the decision of the magistrate or justice is stayed.
- (2) The decision of the magistrate or justice is not stayed unless the police officer or legal practitioner, on informing the magistrate or justice of the review request, provides the magistrate or justice with a copy of the written approval of an authorised officer or the Director of Public Prosecutions to seek a review by the Supreme Court of any decision to grant bail in the case.
- (3) The stay of the decision has effect until:
 - (a) the Supreme Court affirms or varies the decision, or substitutes another decision for the decision of the magistrate or justice, or refuses to entertain the request for review, or

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- (b) a police officer or some other person acting on behalf of the Crown files with the Supreme Court, or such other court as may be prescribed by the regulations, notice that the Crown does not intend to proceed with the review, or
- (c) 4 pm on the day that is 3 business days after the day on which the decision was made,
- whichever happens first.
- (4) The person granted bail is not entitled to be released under section 7 while a stay of the decision has effect under this section.
- (5) A request for the review by the Supreme Court of a decision that is stayed under this section is to be dealt with as expeditiously as possible.
- (6) In this section:
- authorised officer* means the Commissioner of Police or a member of NSW Police authorised by the Commissioner of Police to exercise the functions of an authorised officer under this section.
- business day* means a day that is not a Saturday, a Sunday or a public holiday throughout New South Wales.
- serious offence* means:
- (a) the offence of murder or any other offence punishable by imprisonment for life, or
- (b) an offence under or mentioned in a provision of Part 3 of the *Crimes Act 1900* involving sexual intercourse, or an attempt to have sexual intercourse, with a person under the age of 16 years.
- [4] Section 32 Criteria to be considered in bail applications**
- Insert after section 32 (6):
- (7) This section applies to a grant of bail to which section 9C or 9D applies, but does not prevent consideration of any matter accepted by the authorised officer or court as relevant to the question of whether bail should be granted under that section.

[5] Schedule 1 Savings and transitional provisions	1
Insert after Part 11:	2
Part 12 Bail Amendment Act 2003	3
23 Definition	4
In this Part:	5
<i>amending Act</i> means the <i>Bail Amendment Act 2003</i> .	6
24 Cases in which bail is to be granted in exceptional circumstances only	7
	8
(1) Section 9C, as inserted by the amending Act, extends to a grant of bail in respect of an offence of murder alleged to have been committed before the commencement of that section if a person is charged with the offence on or after that commencement.	9 10 11 12 13
(2) Section 9D, as inserted by the amending Act, extends to a grant of bail in respect of a serious personal violence offence alleged to have been committed before the commencement of that section if a person is charged with the offence on or after that commencement.	14 15 16 17 18
(3) A reference in section 9D to a conviction for a serious personal violence offence extends to a conviction occurring before the commencement of that section.	19 20 21
25 Stay of decision to grant bail pending review	22
(1) Section 25A, as inserted by the amending Act, extends to a serious offence alleged to have been committed before the commencement of that section if a person is charged with the offence on or after that commencement.	23 24 25 26
(2) A reference in section 25A to an offence under or mentioned in a provision of Part 3 of the <i>Crimes Act 1900</i> extends to an offence under or mentioned in a repealed provision of Part 3 of the <i>Crimes Act 1900</i> that was committed before the provision was repealed.	27 28 29 30 31

26 Review of amending Act

- (1) The Minister is to review the operation of the amendments made to this Act by the amending Act to determine the effect of those amendments.
- (2) The review required by this clause is to be undertaken as soon as possible after the period of 12 months from the commencement of the amendments.
- (3) A report on the outcome of the review required by this clause is to be tabled in each House of Parliament within 12 months after the end of the period of 12 months from the commencement of the amendments.

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