



New South Wales

Bail Amendment (Firearms and Property Offences) Bill 2003

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Bail Act 1978*:

- (a) to create a presumption against the granting of bail to persons charged with certain serious firearms and weapons offences, and
- (b) to create a presumption against the granting of bail to repeat property offenders charged with certain serious property offences (including burglary and car theft offences), and
- (c) to prohibit police bail from being granted to persons arrested on conviction warrants, except in exceptional circumstances, and
- (d) to enable information to be obtained so as to enable the return of sureties to those who provide them, and
- (e) to remove the prohibition on prosecuting a person for failing to appear in accordance with a bail undertaking where the original matter is dealt with on an ex parte basis, and

- (f) to provide for the automatic forfeiture of bail money where a person is convicted of the offence of failing to appear before a court in accordance with a bail undertaking, and
- (g) to provide for Local Courts to hear all objections to the confirmation of forfeiture orders, and
- (h) to provide for the consideration by courts of the disposition of bail sureties at the conclusion of proceedings, and
- (i) to make other consequential amendments and enact provisions of a savings and transitional nature.

The Bill also amends the *Criminal Procedure Act 1986* to require proceedings to be dealt with as expeditiously as possible where a person has been arrested on a conviction warrant.

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.

Clause 4 is a formal provision that gives effect to the amendment to the *Criminal Procedure Act 1986* set out in Schedule 2.

Schedule 1 Amendment of Bail Act 1978

Presumptions relating to bail

Currently under the *Bail Act 1978* (the *Principal Act*), there is a right to release on bail for a person accused of certain offences (see section 8) and a presumption in favour of bail for other offences, with certain exceptions (see sections 9, 9A and 9B). In only limited circumstances is there a presumption against the granting of bail (see section 8A, relating to drug-related offences, and sections 9C and 9D relating to murder and certain repeat offenders).

Schedule 1 [2] inserts proposed sections 8B and 8C, which provide for additional presumptions against the granting of bail.

Proposed section 8B provides that persons accused of certain serious firearms and weapons offences are not to be granted bail unless they satisfy the person granting bail that it should not be refused. The offences concerned are offences under the *Crimes Act 1900* and the *Firearms Act 1996* relating to possessing or

using firearms in public places, firing at dwelling-houses or other buildings, firing in or into buildings or land, possessing unregistered firearms in public places, stealing firearms, possessing or using firearms without any authorisation, selling, purchasing, possessing or using unregistered firearms, unauthorised manufacture, sale or purchase of firearms, possession of 3 or more unregistered firearms and selling firearms and firearms parts on an ongoing basis. The offences under the *Firearms Act 1996* (other than selling firearms or firearms parts on an ongoing basis) are limited to offences relating to prohibited firearms or pistols. Some of the offences included are to be enacted by the proposed *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003*.

Proposed section 8C provides that persons accused of 2 or more specified serious property offences who have been convicted of one or more serious property offences in the previous 2 years are not to be granted bail unless they satisfy the person granting bail that it should not be refused. The offences concerned include offences under the *Crimes Act 1900* relating to robbery or stealing from a person, armed robbery of a person or mail or mail vehicle, armed robbery and wounding of a person, demanding property with menaces, breaking and entering a place of worship, breaking out of a dwelling-house after committing an offence, entering a dwelling-house with intent to commit a serious indictable offence, breaking and entering a dwelling-house and committing, or intending to commit, a serious indictable offence or murder, stealing property in a dwelling-house with menaces, stealing a motor vehicle and car-jacking. The offences of which the person is accused must not arise out of the same circumstances.

Schedule 1 [1] and [3]–[6] make amendments consequential on the enactment of proposed sections 8B and 8C.

Schedule 1 [8] extends to the new provisions creating a presumption against the granting of bail a provision that makes it clear that section 32 of the Principal Act (which limits matters to be considered in bail applications) does not prevent an authorised officer or court from considering matters the officer or court accepts as being relevant to the question of whether bail should not be refused.

Schedule 1 [9] requires an authorised officer or court to record, or cause to be recorded, the reasons for granting bail to a person accused of an offence to which the new provisions, and existing provisions, creating a presumption against the granting of bail apply.

Persons arrested on conviction warrants

Schedule 1 [7] removes the right of police officers to grant police bail to persons arrested on a warrant to bring them before the court for sentencing, except in exceptional circumstances.

Information by surety providers

Schedule 1 [10] enables an officer or court with whom money or security is deposited pursuant to a bail condition to require the person who provides it to provide information, or to agree to a means, to enable the return of the money or security to the person if it is required to be returned.

Failure to appear in accordance with bail undertaking

Currently, a person may not be proceeded against for the offence of failing to appear in accordance with the person's bail undertaking if the matter concerns an offence that may be dealt with summarily and the court proceeds to determine the matter in the person's absence. **Schedule 1 [11]** omits the prohibition against proceeding against the person.

Forfeiture of bail money

Schedule 1 [13] inserts proposed section 53AA which provides for bail money to be forfeited on conviction of a person for failing to appear before a court in accordance with a bail undertaking given by the person. A forfeiture order is taken to be made in such circumstances. The result of this is that a right to object to the forfeiture within 28 days will be conferred and that, if the order is confirmed after the end of that period, it may not be enforced for a period of 12 months. **Schedule 1 [12]** makes a consequential amendment.

Schedule 1 [14] confers jurisdiction on Local Courts to hear all objections to forfeiture orders made by any court. Currently, an objection must be made to the court that made the forfeiture order. The amendment does not affect the right to object orally to the court that made the forfeiture order if the person affected by the order appears before that court. **Schedule 1 [15], [16], [19], [20] and [22]–[25]** make consequential amendments.

Schedule 1 [18] inserts proposed section 53DA which enables an objection to a forfeiture order taken to have been made under proposed section 53AA to be made. The court may vary the order if it is satisfied that in the circumstances of the case it would be unjust for the order to be confirmed in full. It may be so satisfied if it is satisfied that the guarantor took all reasonable steps to ensure that the accused person complied with the relevant bail undertaking. **Schedule 1 [17] and [21]** make consequential amendments.

Return of sureties

Schedule 1 [26] inserts proposed section 63 which provides for a court to consider whether to make an order for the return of bail money or a bail security deposited in connection with proceedings after a finding of guilt or otherwise.

Savings and transitional provisions

Schedule 1 [27] inserts savings and transitional provisions consequential on the amendments made by the proposed Act.

Schedule 2 Amendment of Criminal Procedure Act 1986

The Schedule inserts proposed section 317A which requires a court that issues a warrant for the arrest of a person to be brought before the court for sentencing to deal with the proceedings as expeditiously as possible after the person is arrested and brought before the court.

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No. , 2003

A Bill for

An Act to amend the *Bail Act 1978* with respect to presumptions against the granting of bail to persons accused of certain firearms and property offences, sureties and forfeiture of sureties; to amend the *Criminal Procedure Act 1986* with respect to persons arrested on conviction warrants; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Bail Amendment (Firearms and Property Offences) Act 2003</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Bail Act 1978 No 161	8
The <i>Bail Act 1978</i> is amended as set out in Schedule 1.	9
4 Amendment of Criminal Procedure Act 1986 No 209	10
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 2.	11 12

Schedule 1 Amendment of Bail Act 1978

(Section 3)

[1] Part 2, Division 2A, heading

Omit “drug”.

[2] Sections 8B and 8C

Insert after section 8A:

8B Presumption against bail for serious firearms and weapons offences

- (1) This section applies to the following offences:
 - (a) an offence under section 93G, 93GA, 93H (2), 93I (2) or 154D of the *Crimes Act 1900*,
 - (b) an offence under section 7, 36, 50, 50A (2), 51 (1A), 51 (2A), 51A or 51D (2) of the *Firearms Act 1996*, being an offence that relates to a prohibited firearm or pistol,
 - (c) an offence under section 51B or 51BB of the *Firearms Act 1996*.
- (2) A person accused of an offence to which this section applies is not to be granted bail unless the person satisfies the authorised officer or court that bail should not be refused.
- (3) The requirement for bail cannot be dispensed with for a person accused of an offence to which this section applies and section 10 (2) does not apply with respect to any such offence.

8C Presumption against bail for certain repeat property offenders

- (1) This section applies to an accused person if:
 - (a) the person is accused of 2 or more serious property offences, not being offences arising out of the same circumstances, and
 - (b) bail is sought in respect of one or more of those offences, and
 - (c) the person has been convicted of one or more serious property offences within the last 2 years.
- (2) The accused person is not to be granted bail unless the person satisfies the authorised officer or court that bail should not be refused.

(3)	The requirement for bail cannot be dispensed with for the accused person and section 10 (2) does not apply with respect to any such offence.	1 2 3
(4)	In this section: <i>serious property offence</i> means:	4 5
(a)	an offence under section 94, 95, 96, 97, 98, 99, 106, 107, 109, 110, 111, 112, 113, 149, 154AA or 154C of the <i>Crimes Act 1900</i> ,	6 7 8
(b)	an offence of attempting to commit an offence referred to in paragraph (a),	9 10
(c)	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) or (b).	11 12 13
[3]	Section 9 Presumption in favour of bail for certain offences	14
	Insert “or 8B (1)” after “section 8A (1)” in section 9 (1) (a).	15
[4]	Section 9 (1) (e1)	16
	Omit the paragraph.	17
[5]	Section 9 (1AA)	18
	Insert after section 9 (1):	19
(1AA)	This section does not apply in respect of a grant of bail to an accused person to whom section 8C applies.	20 21
[6]	Section 9D Repeat offenders—serious personal violence offences	22
	Omit “Section 9 does not” from section 9D (3).	23
	Insert instead “Sections 8C and 9 do not”.	24
[7]	Section 17 Authority for police to grant bail	25
	Insert after section 17 (2):	26
(3)	A police officer may not grant bail to a person who has been arrested pursuant to a warrant to bring the person before a court for sentencing and any such person must be brought before a court as soon as reasonably practicable.	27 28 29 30

(4)	Despite subsection (3), a police officer may grant bail to a person referred to in that subsection if the police officer is satisfied that exceptional circumstances justify the grant of bail and the police officer is otherwise entitled to grant bail under this Act.	1 2 3 4 5
[8]	Section 32 Criteria to be considered in bail applications	6
	Omit “section 8A applies”.	7
	Insert instead “section 8A or 8B applies, and a grant of bail to which section 8C applies”.	8 9
[9]	Section 38 Reasons to be recorded	10
	Insert “, 8B, 8C, 9C or 9D” after “section 8A” in section 38 (1A).	11
[10]	Section 40 Provisions respecting money or security	12
	Insert after section 40 (2):	13
(3)	An officer or court with whom money or security is deposited pursuant to a bail condition may require the person who provides the money or security to provide information, or to agree to a means, to enable the return of the money or security in the event that it is to be returned to the person.	14 15 16 17 18
[11]	Section 52 No penalty for failure to appear if case dealt with ex parte	19 20
	Omit the section.	21
[12]	Section 53 Definitions	22
	Insert “or an order taken to be made under section 53AA” after “section 53A” in the definition of <i>forfeiture order</i> .	23 24

[13] Section 53AA	1
Insert after section 53A:	2
53AA Forfeiture after conviction for offence of failing to appear	3
(1) On the conviction of a person for an offence under section 51, any bail money agreed to be forfeited under a bail agreement associated with the bail undertaking concerned is forfeited and a forfeiture order is taken to have been made under this Part by the court that convicted the person.	4 5 6 7 8
(2) This section does not affect any right to make a forfeiture order under section 53A in relation to a person accused of committing an offence under section 51.	9 10 11
[14] Section 53C Formal objection to confirmation of forfeiture order	12
Omit “the office of the court by which the order was made” from section 53C (1).	13 14
Insert instead “the registry of a Local Court”.	15
[15] Section 53C (4)	16
Omit “court”. Insert instead “Local Court”.	17
[16] Section 53D Hearing of formal objection to confirmation of forfeiture order	18 19
Omit “court” wherever occurring. Insert instead “Local Court”.	20
[17] Section 53D (5)	21
Insert after section 53D (4):	22
(5) This section does not apply to a forfeiture order taken to have been made under section 53AA.	23 24
[18] Section 53DA	25
Insert after section 53D:	26
53DA Hearing of formal objections to deemed forfeiture orders	27
(1) A Local Court to which an objection to the confirmation of a forfeiture order taken to have been made under section 53AA is duly made must conduct a hearing to determine whether or not the order should be confirmed.	28 29 30 31

(2)	After conducting a hearing, the Local Court must confirm the forfeiture order unless it is satisfied as referred to in subsection (3).	1 2 3
(3)	If the Local Court is satisfied that in the circumstances of the case it would be unjust for the forfeiture order to be confirmed in full in respect of a particular person affected by the order, the Local Court:	4 5 6 7
(a)	may vary the order so as to reduce the amount of bail money to be forfeited by that person, and	8 9
(b)	in that event, must confirm the order as so varied.	10
(4)	The Local Court may be satisfied that it would be unjust for a forfeiture order to be confirmed in full in respect of a particular bail guarantor if it is satisfied that the guarantor took all reasonable steps to ensure that the accused person complied with the relevant bail undertaking.	11 12 13 14 15
[19]	Section 53E Informal objection to forfeiture order	16
	Insert “in the registry of a Local Court” after “filed” in section 53E (3).	17
[20]	Section 53F When forfeiture order takes effect	18
	Omit “filed in the court” from section 53F (1) (b).	19
	Insert instead “filed in the registry of a Local Court or made under section 53E”.	20 21
[21]	Section 53F (1) (b)	22
	Insert “or 53DA” after “section 53D”.	23
[22]	Section 53K Application to set aside forfeiture order	24
	Omit “the office of the court” from section 53K (2).	25
	Insert instead “the registry of a Local Court”.	26
[23]	Section 53K (5)	27
	Omit “court”. Insert instead “Local Court”.	28
[24]	Section 53L Hearing of application to set aside forfeiture order	29
	Omit “court” wherever occurring. Insert instead “Local Court”.	30

[25] Section 53L (5)	1
Omit “court’s”. Insert instead “Local Court’s”.	2
[26] Section 63	3
Insert after section 62:	4
63 Return of sureties	5
(1) If bail money or a bail security has been deposited in connection with proceedings for an offence, and a finding is made that the accused person is guilty or not guilty of the offence, the court must, if it has not previously done so, consider whether to make an order for the return of the money or security or a forfeiture order (if applicable).	6 7 8 9 10 11
(2) Words and expressions in this section have the same meanings as they have in Part 7A.	12 13
[27] Schedule 1 Savings and transitional provisions	14
Insert in appropriate order with appropriate Part and clause numbers:	15
Part Bail Amendment (Firearms and Property Offences) Act 2003	16 17
Definition	18
In this Part:	19
<i>amending Act</i> means the <i>Bail Amendment (Firearms and Property Offences) Act 2003</i> .	20 21
Presumptions against bail	22
(1) Section 8B, as inserted by the amending Act, extends to a grant of bail in respect of an 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 27
(2) Section 8C, as inserted by the amending Act, extends to a grant of bail in respect of an 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.	28 29 30 31 32

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- (3) A reference in section 8C to a conviction for an offence extends to a conviction occurring before the commencement of that section.

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Forfeiture of sureties on failure to appear

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Section 53AA, as inserted by the amending Act, does not apply to bail money deposited before the commencement of that section.

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Objections to forfeiture orders

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Nothing in the amending Act affects the jurisdiction of a court to deal with an objection to the confirmation of a forfeiture order if the objection was made under this Act before the commencement of this clause.

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Schedule 2 Amendment of Criminal Procedure Act 1986

(Section 4)

Section 317A

Insert after section 317:

317A Courts to deal expeditiously with persons arrested for sentencing

A court that issues a warrant for the arrest of a person to be brought before the court for sentencing must, after the person is arrested and brought before the court, deal with the proceedings as expeditiously as possible.

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