

[Act 1998 No 107]



New South Wales

Criminal Procedure Legislation Amendment (Bail Agreements) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
The *Bail Amendment Bill 1998* is cognate with this Bill.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Bail Act 1978* so as to provide for the enforcement of bail agreements under that Act. and
 - (b) to amend the *Justices Act 1902* so as to abolish various recognizances under that Act. and
 - (c) to make consequential amendments to certain other Acts.
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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.

Clause 4 is a formal provision giving effect to the amendments to the *Justices Act 1902* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to other Acts set out in Schedule 3.

Amendment of Bail Act 1978

Schedule 1 [1] substitutes the definition of *court* in section 4 (1) so as to ensure that the definition applies to all courts exercising criminal jurisdiction.

Schedule 1 [2] amends section 6 as a consequence of the substitution by **Schedule 2 [17]** of section 123 of the *Justices Act 1902*.

Schedule 1 [3] amends section 34 so as to make it part of an accused person's bail undertaking to a court that the person notify the court of any change in the person's residential address.

Schedule 1 [4] amends section 36 so as to ensure that any person who gives a bail undertaking is made aware of the nature and effect of the undertaking.

Schedule 1 [5] inserts proposed sections 42A and 42B. Proposed section 42A makes it an offence (punishable by imprisonment for 2 years) for a person to dispose of bail security for the purpose of preventing the security from being realised. Proposed section 42B enables a court to revoke a person's bail if it appears that the person's bail security is no longer intact, subject to the person being given an opportunity to demonstrate that the security is still intact or, if it is not, to arrange for replacement or supplementary security.

Schedule 1 [6] omits section 53 as a consequence of the insertion by **Schedule 1 [7]** of proposed Part 7A.

Schedule 1 [7] inserts proposed Part 7A. The new Part (containing 4 Divisions) provides a mechanism for the enforcement of bail agreements entered into under section 36. A bail agreement is an agreement under section 36 under which an accused person, or some other person, agrees to forfeit money if an accused person's bail undertaking is not complied with. A bail agreement may or may not be supported with security.

Division 1 (Preliminary) contains a single provision (proposed section 53) that defines certain expressions for the purposes of the proposed Part.

Division 2 (Forfeiture orders) contains provisions for the way in which forfeiture orders are made, confirmed and enforced, including provisions:

- (a) allowing a court to make a forfeiture order if a person fails to appear before the court in accordance with a bail undertaking (proposed section 53A), and
- (b) requiring the registrar of the court to notify all persons affected by a forfeiture order of the making of the order (proposed section 53B), and
- (c) allowing persons affected by a forfeiture order to make formal objections to the confirmation of the order (proposed section 53C), and
- (d) providing for the hearing and determination of formal objections (proposed section 53D), and
- (e) allowing for the making of informal objections to the confirmation of a forfeiture order and providing for the hearing and determination of informal objections (proposed section 53E), and
- (f) providing that a forfeiture order takes effect when the time for making formal Objections ends or, if a formal objection is made before then, when the order is confirmed (proposed section 53F), and
- (g) providing that bail money guaranteed by a bail agreement is forfeited to, or becomes payable to, the Crown when a forfeiture order takes effect (proposed section 53G), and
- (h) requiring the registrar of the court to notify all persons affected by a forfeiture order of the fact that the order has taken effect (proposed section 53H), and
- (i) providing for the reference of a forfeiture order to the State Debt Recovery Office for enforcement (proposed section 53I), and
- (j) specifying to which public authority bail money is payable after a forfeiture order has taken effect (proposed section 53J).

Division 3 (Late applications to set aside forfeiture orders) contains provisions allowing a forfeiture order to be set aside in certain restricted circumstances, including provisions:

- (a) allowing an application for the setting aside of a forfeiture order at any time within 12 months after the order was made in circumstances where no objection to the order has been made (proposed section 53M), and

- (b) providing for the hearing and determination of such an application, subject to the restriction that the application will not be dealt with unless the court is satisfied that notice of the making of the forfeiture order has not been served on the applicant and the applicant has otherwise been unaware of the fact that the order has been made (proposed section 53L).

Division 4 (Miscellaneous) contains other provisions with respect to forfeiture orders, including provisions:

- (a) requiring the return of forfeited bail money in the event that a forfeiture order is set aside (proposed section 53M), and
- (b) providing that appeals from a Local Court's decision on certain matters under the proposed Part may be made under section 122 of the *Justices Act 1902* (proposed section 53N), and
- (c) allowing the Court of Criminal Appeal to authorise other courts to exercise its functions under the proposed Part (proposed section 53O), and
- (d) making the Crown a party to all proceedings under the proposed Part (proposed section 53P).

Schedule 1 [8], amends proposed section 53N as a consequence of the amendments to the *Justices Act 1902* proposed by the *Justices Legislation Amendment (Appeals) Bill 1998*.

Schedule 1 [9], [10] and [11] amend section 54 as a consequence of the proposed amendment by Schedule 3.6 of the *Forfeited Recognizances and Bail Act 1954*.

Schedule 1 [12] amends Schedule 1 (Savings and transitional provisions) so as to apply the provisions of proposed sections 42A and 42B, and of proposed Part 7A, to bail agreements entered into before the commencement of those provisions and so as to enable the regulations to make further provisions of a savings or transitional nature.

Amendment of Justices Act 1902

Schedule 2 [1] amends section 3 (Definitions) so as to define *bail* to have the same meaning as it has in the *Bail Act 1978*.

Schedule 2 [2] amends section 25 so as to remove a reference to recognizances.

Schedule 2 [3] amends section 31 so as to provide that a person arrested under a warrant under section 26 or 31 may be set at large on bail rather than, as at present, on a recognizance.

Schedule 2 [4] repeals Subdivision 8 of Division 1 of Part 4 (dealing with the procedures for accepting and enforcing recognizances) as a consequence of the amendments to be made by Schedule 2 [3] to section 31.

Schedule 2 [5] amends section 66 so as to provide that a person arrested under a warrant under section 61, 66 or 80AA may be set at large on bail rather than, as at present, on a recognizance.

Schedule 2 [6] substitutes section 69 so as to provide for the committal of a person to custody, or the release of a person on bail (rather than, as at present, on a recognizance), during the adjournment of proceedings. The new section 69 continues the power of a Justice under the existing section to call a person up from custody at any time during the period of adjournment.

Schedule 2 [7] repeals Subdivision 9 of Division 2 of Part 4 (dealing with the procedures for accepting and enforcing recognizances) as a consequence of the amendments to be made by Schedule 2 [5] and [6] to sections 66 and 69.

Schedule 2 [8] amends section 100C so as to exclude from the operation of Part 4A all forfeiture orders made under proposed Part 7A of the *Bail Act 1978*.

Schedule 2 [9] omits section 102, so abolishing the requirement that an appellant must give security for the prosecution in the Supreme Court of proceedings on a stated case under section 101.

Schedule 2 [10], [11], [12] and [14] amend sections 102A and 104, and repeal section 110, as a consequence of the proposed repeal by Schedule 2 [9] of section 102.

Schedule 2 [13] amends section 107 (as to be inserted by the proposed *Justices Legislation Amendment (Appeals) Act 1998*) so as to provide that an appeal under that section against an apprehended violence order does not bring about an automatic stay of execution of that order.

Schedule 2 [15] amends section 121B so as to remove a reference to sureties and recognizances.

Schedule 2 [16] omits subsection (5) of section 122, so abolishing the requirement that an appellant must give security for the prosecution of an appeal to the District Court under that section.

Schedule 2 [17] substitutes section 123 so as to restate the circumstances in which execution of a sentence or order is stayed following an application for statement of a case to the Supreme Court under section 101 or an appeal to the District Court under section 122.

Schedule 2 [18], [19] and [21] repeal sections 124 and 125A. and Division 5 of Part 5, as a consequence of the proposed repeal by Schedule 2 [9] of section 102 and proposed omission by Schedule 2 [16] of subsection (5) of section 122.

Schedule 2 [20] amends section 127 (as to be inserted by the proposed *Justices Legislation Amendment (Appeals) Act 1998*) so as to provide that an appeal under that section against an apprehended violence order does not bring about an automatic stay of execution of that order.

Schedule 2 [22] repeals section 153 partly as a consequence of the proposed repeal by Schedule 2 [9] of section 102 and proposed omission by Schedule 2 [16] of subsection (5) of section 122 and partly as a consequence of the existing provisions of the *Bail Act 1978* which, together, render section 153 obsolete.

Schedule 2 [23] substitutes section 153A so as to provide for the committal of a person to custody, or the release of a person on bail (rather than, as at present, on a recognizance), during the period between the person's arrest under a bench warrant issued by the Judge of a court and the person's being brought before that court.

Schedule 2 [24] and [25] amend section 154 (the regulation-making power) as a consequence of the proposed abolition by Schedule 2 of recognizances under the *Justices Act 1902* and of the proposed amendment by Schedule 3.6 of the *Forfeited Recognizances and Bail Act 1954*.

Schedule 2 [36] amends the Second Schedule so as to give effect to certain savings, transitional and other provisions consequent on the amendments and repeals to be effected by the proposed Act, both by Schedule 2 and Schedule 3.

Amendment of other Acts

Children (Criminal Proceedings) Act 1987 No 55

Schedule 3.1 omits section 42 (2) as a consequence of the proposed abolition by Schedule 2 of recognizances under the *Justices Act 1902*.

Conveyancing Act 1919 No 6

Schedule 3.2 [1] and [2] amend sections 186 and 189 so that the references in those sections to recognizances include references to bail agreements.

Coroners Act 1980 No 27

Schedule 3.3 substitutes section 40 so as to provide that a person arrested under a warrant under section 35 or 39 may be committed to custody or may be set at large on bail rather than, as at present, on a recognizance.

Evidence Act 1995 No 25

Schedule 3.4 amends section 194 so that the references in that section to recognizances include references to bail agreements.

Fines Act 1996 No 99

Schedule 3.5 [1],[2] and [3] amend the heading to Part 7, and sections 111 and 112, as a consequence of the proposed enactment by Schedule 1 [7] of Part 7A of the *Bail Act 1978*.

Schedule 3.5 [4] amends section 112 so as to ensure that the State Debt Recovery Office may not take action under Part 4 to recover forfeited bail money the subject of an application or appeal under Part 7A of the *Bail Act 1978* until proceedings on the application or appeal have been finally determined.

Schedule 3.5 [5] inserts a new section 112A so as to apply the provisions of section 72 to the enforcement of forfeited bail securities under the *Bail Act 1978*.

Forfeited Recognizances and Bail Act 1954 No 25

Schedule 3.6 [1]-[7] amend the Act so as to remove all provisions relating to bail as a consequence of the proposed enactment by Schedule 1 [7] of Part 7.4 of the *Bail Act 1978*.

Inebriates Act 1912 No 24

Schedule 3.7 [1],[2] and [3] amend sections 7 and 12, and insert a new section 17A, so as to apply proposed Part 7A of the *Bail Act 1978* to the enforcement of recognizances under the *Inebriates Act 1912*.

Local Courts (Civil Act 1970 No 11

Schedule 3.8 amends section 72 so as to apply the provisions of section 66 of the *Justices Act 1902* to any witness who is arrested under a warrant for failure to comply with a subpoena to appear at proceedings before a Local Court exercising civil jurisdiction.

Protected Estates Act 1983 No 179

Schedule 3.9 [1] and [2] amend section 9 so as to abolish the power of the Protective Commissioner to take recognizances.

Schedule 3.9 [3] amends section 31 as a consequence of the abolition by Schedule 3.9 [1] and [2] of the power of the Protective Commissioner to take recognizances.

Schedule 3.9 [3] amends section 31 so as to apply proposed Part 7A of the *Bail Act 1978* to the enforcement of bonds under the *Protected Estates Act 1983*.