

Forfeited Recognizances and Bail Act 1954 No 25

[1954-25]



New South Wales

Status Information

Currency of version

Repealed version for 17 March 1998 to 30 September 2000 (accessed 17 July 2024 at 23:22)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Fines and Forfeited Recognizances Act 1954
- **Does not include amendments by**
[Criminal Procedure Legislation Amendment \(Bail Agreements\) Act 1998 No 107](#) (not commenced)
- **Repeal**
The Act was repealed by Sch 1 to the [Crimes Legislation Amendment \(Sentencing\) Act 1999 No 94](#) with effect from 1.10.2000.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 October 2000

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Forfeited Recognizances and Bail Act 1954 No 25



New South Wales

An Act to make provision for and with respect to the forfeiture of certain recognizances and bail money and the recovery of certain fines and forfeited recognizances and bail money; to repeal the *Fines and Forfeited Recognizances Recovery Act 1902*; to amend the *Justices Act 1902* and certain other Acts; and for purposes connected therewith.

1 Name of Act and commencement

- (1) This Act is the *Forfeited Recognizances and Bail Act 1954*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2 Repeals and savings

- (1) The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed.
- (2) All orders of any Court of Quarter Sessions, and all rolls, writs, lists, processes, levies, securities, bonds, returns, and discharge warrants made or issued under the authority of any enactment repealed by this Act and in force at the commencement of this Act, shall be deemed to have been made or issued under the authority of this Act.
- (3) All persons lawfully in custody at the commencement of this Act under the provisions of any enactment repealed by this Act shall be deemed to be in lawful custody under the provisions of this Act, and may be dealt with accordingly.

3 Definitions

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

bail agreement means an agreement entered into pursuant to a monetary bail condition.

bail money means the amount of money agreed to be forfeited under a monetary bail condition.

bail undertaking means a bail undertaking under the *Bail Act 1978*.

justice means a justice of the peace.

monetary bail condition means a bail condition under the *Bail Act 1978*, that provides for a person to enter into an agreement to forfeit an amount of money.

3A (Repealed)

4 Forfeiture of certain recognizances

- (1) **Recognizance to which this section applies** means a recognizance the amount of which, if the conditions of the recognizance are not complied with, can, apart from this section, be recovered only as a debt due to Her Majesty in a court of competent jurisdiction.
- (2) Subject to subsection (3), any court may, on due proof that the conditions of any recognizance to which this section applies have not been complied with, forfeit the recognizance and transmit it, together with the certificate referred to in subsection (5) to the State Debt Recovery Office to be proceeded upon according to law.
- (3) A court shall not forfeit any recognizance to which this section applies unless the person bound by the recognizance who has therein made default is present before the court or a notice in a form approved by the Minister to show cause why the recognizance should not be forfeited has first been served on that person.
- (4) Any notice to be served pursuant to subsection (3) on any person shall be in writing and shall be sufficiently served:
 - (a) by delivering the notice to the person personally, or
 - (b) by forwarding the notice by post in a registered letter addressed to the person at the person's address as shown in the recognizance concerned; and such service shall be deemed to have been effected at the time at which the registered letter would be delivered in the ordinary course of post.
- (5) Where any recognizance to which this section applies is forfeited under this section by any court, the court shall certify in what respects the conditions thereof have not been complied with.

Such certificate shall be prima facie evidence of the matters stated therein.

4A Forfeiture of bail money

- (1) Any court may, on due proof that the bail undertaking to which a monetary bail condition relates has not been complied with, forfeit the bail money agreed to be forfeited by the bail agreement entered into pursuant to the condition and transmit the bail undertaking, the instrument by which the condition was imposed and the bail

agreement, together with the certificate referred to in subsection (2), to the State Debt Recovery Office to be proceeded upon according to law.

- (2) Where bail money is forfeited under this section by any court, the court shall certify in what respects the bail undertaking has not been complied with, and the certificate shall be prima facie evidence of the matters stated therein.

5 Procedure after forfeiture of certain recognizances

Where any Act makes provision for a court, judge, justice or justices to forfeit a recognizance but does not provide for certifying in what respects the conditions of any recognizance forfeited pursuant to that provision have not been complied with or for transmitting the forfeited recognizance to the State Debt Recovery Office to be proceeded upon according to law then the following provisions of this section shall apply in respect of any recognizance so forfeited, namely:

The court, judge, justice or justices shall certify in what respects the conditions of the recognizance have not been complied with and transmit the recognizance, together with the certificate, to the State Debt Recovery Office to be proceeded upon according to law.

Such certificate shall be prima facie evidence of the matters stated therein.

6 Enforcement of certain recognizances where amount has been deposited

- (1) Where a recognizance entered into after the commencement of this Act for the due appearance of any person:

- (i) before a court of summary jurisdiction, or
- (ii) before a Magistrate or a justice or justices in proceedings to determine whether that person should be committed for trial,

to answer, or to answer further, to any charge has been forfeited and the amount of the recognizance, not exceeding three hundred dollars, has been deposited by that person or the person's surety, then:

- (a) notwithstanding anything contained in this or any other Act, the forfeited recognizance shall not be transmitted to the State Debt Recovery Office,
- (b) that person if he or she deposited the amount of the recognizance or the person's surety if the surety deposited the amount of the recognizance may, within the prescribed period from the date on which the recognizance was forfeited, lodge with the clerk of the court of summary jurisdiction by, at or nearest to the place at which the recognizance was forfeited an application for the discharge of the forfeited recognizance,
- (c) the amount so deposited shall, if no application is lodged pursuant to paragraph

(b) within the prescribed period, be paid to the Consolidated Fund upon the expiration of that period,

(d) the amount so deposited shall, if an application is lodged pursuant to paragraph (b) within the prescribed period, be held by the person with whom it was deposited until the application is determined.

In this subsection **prescribed period** means twenty-one days or such longer period as may be prescribed in lieu thereof.

(1A) Where a bail undertaking entered into for the appearance of a person:

(a) before a court of summary jurisdiction, or

(b) before a Magistrate or a justice or justices in proceedings to determine whether that person should be committed for trial,

to answer, or to answer further, to any charge, has not been complied with, and an amount of bail money, not exceeding \$300, has been deposited by any person pursuant to a bail agreement, then:

(c) notwithstanding anything in this or any other Act, the documents referred to in section 4A (1) shall not be transmitted to the State Debt Recovery Office,

(d) the person who deposited the amount of bail money may, within the prescribed period from the date on which the bail money was forfeited, lodge with the clerk of the court of summary jurisdiction by, at or nearest to the place at which the bail money was forfeited an application for the discharge of the forfeited bail money,

(e) the amount so deposited shall, if no application is lodged pursuant to paragraph (d) within the prescribed period, be paid to the Consolidated Fund upon the expiration of that period,

(f) the amount so deposited shall, if the application is lodged pursuant to paragraph (d) within the prescribed period, be held by the person with whom it was deposited until the application is determined.

In this subsection **prescribed period** means 21 days or such longer period as may be prescribed in lieu thereof.

(2)

(a) An application lodged pursuant to subsection (10) (b) or (1A) (d) shall be heard and determined by the court of summary jurisdiction with the clerk of which the application was duly lodged or by any other court of summary jurisdiction to which the firstmentioned court may think fit to adjourn the application.

In this paragraph **court of summary jurisdiction** means a Local Court

constituted by a Magistrate or the Children's Court.

- (b) The court shall, at the hearing of the application, inquire into the circumstances of the case and may:
- (i) confirm the forfeiture, or
 - (ii) order the discharge of the whole of the forfeited recognizance or bail money or of any part thereof.
- (3) Where pursuant to subsection (2) the court orders the discharge of the whole of the forfeited recognizance or bail money or of any part thereof, the person with whom the amount of the recognizance or bail money was deposited shall forthwith pay the amount so ordered to be discharged to the person who deposited the amount of the recognizance or bail money and pay the balance, if any, to the Consolidated Fund.

Where pursuant to that subsection the court confirms the forfeiture of the recognizance or bail money the person with whom the amount of the recognizance or bail money was deposited shall forthwith pay that amount to the Consolidated Fund.

6A Enforcement under [Fines Act 1996](#)

Part 7 of the [Fines Act 1996](#) applies to the enforcement of a bail undertaking or recognizance transmitted to the State Debt Recovery Office in accordance with this Act.

7-15 (Repealed)

16 Payment in cases of recognizance to secure performance of orders made under the [Deserted Wives and Children Act 1901-1952](#)

Any moneys recovered by the Sheriff in respect of a recognizance conditioned to secure the due performance of an order made under the [Deserted Wives and Children Act 1901-1952](#), shall, after deduction therefrom of the fees and expenses of the Sheriff, be paid by him to the person entitled to payment under the order.

17 Fraudulent disposal of assets

Any person who, having been accepted by any court, justice or coroner, by virtue of the person's ownership of specific property, as a surety for any person entering into a recognizance, or who, having been accepted under the [Bail Act 1978](#), by virtue of the person's ownership of specific property, as an acceptable person referred to in section 36 of that Act, afterwards disposes of that property for the purpose of delaying or avoiding the execution of any writ issued pursuant to this Act shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years.

18 (Repealed)

19 Regulations

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) (Repealed)

First Schedule

(Section 2)

| Reference to Act | Title | Extent of repeal |
|------------------|-------------------------------------------------------------|------------------|
| No 75, 1902 | <i>Fines and Forfeited Recognizances Recovery Act 1902.</i> | The whole. |
| No 33, 1931 | <i>Deserted Wives and Children (Amendment) Act 1931.</i> | Section 11. |

Second-Fourth Schedules (Repealed)