

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, unauthorized 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 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.