



New South Wales

Bail Amendment Bill 2015

Explanatory note

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

The *Terrorism (Police Powers) Amendment Bill 2015* is cognate with this Bill.

Overview of Bill

The object of this Bill is to amend the *Bail Act 2013* (the ***Bail Act***) in response to the following reports and reviews:

- (a) the *Review of the Bail Act 2013 (Final Report)* by Judge John Hatzistergos dated June 2015,
- (b) the *Bail–Additional show cause offences* report by the New South Wales Sentencing Council dated May 2015,
- (c) the *Martin Place Siege Joint Commonwealth – New South Wales Review* dated January 2015.

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.

Schedule 1 Amendments of Bail Act 2013 No 26 in response to Hatzistergos and Sentencing Council reports

Schedule 1 [2] amends section 16B (Offences to which the show cause requirement applies) of the Bail Act to provide that a serious indictable offence committed by an accused person while the person was the subject of an arrest warrant under the Bail Act or Part 7 (Revocation and

reinstatement by Parole Authority of certain orders) of the *Crimes (Administration of Sentences) Act 1999* is a show cause offence for the purposes of the Bail Act. Show cause offences are offences for which a bail authority must refuse bail unless the accused person shows cause why his or her detention is not justified.

Schedule 1 [3] amends the definition of *serious personal violence offence* in section 16B (3) of the Bail Act (which is used for the purposes of the show cause requirement) so that the term includes not only offences under Part 3 (Offences against the person) of the *Crimes Act 1900* that are punishable by imprisonment for a term of 14 years or more, but also offences under a law of the Commonwealth, another State or Territory or any other jurisdiction that are similar to an offence under that Part.

Schedule 1 [4] amends section 18 (1) (f) of the Bail Act to provide that, in assessing bail concerns, a bail authority is to consider whether the accused person has a history of compliance or non-compliance with intensive correction orders, home detention orders, community service orders or non-association and place restriction orders. **Schedule 1 [1]** makes a consequential amendment to make clear what orders are caught within the terms *community service order* and *non-association and place restriction order*.

Schedule 1 [5] inserts proposed section 18 (1) (f1) into the Bail Act to provide that if a bail authority is assessing bail concerns because the accused person has failed or was about to fail to comply with a bail acknowledgment or a bail condition, the bail authority is to consider any warnings issued to the accused person by police officers and bail authorities regarding non-compliance with bail acknowledgments or bail conditions.

Schedule 1 [6] inserts proposed section 18 (1) (i1) into the Bail Act to provide that, in assessing bail concerns, a bail authority is, if the accused person has been convicted of the offence concerned, but has not yet been sentenced, to consider the likelihood of a custodial sentence being imposed.

Schedule 1 [7] inserts proposed section 28 (3) (a1) into the Bail Act to provide that an accommodation requirement can be imposed as a bail condition for the purpose of enabling the accused person to be admitted to a residential rehabilitation facility for treatment on the person's release on bail. **Schedule 1 [8]** makes a consequential amendment.

Schedule 1 [9] inserts proposed section 43 (1A) into the Bail Act to enable a police officer of or above the rank of sergeant who is at a hospital to make a bail decision for an offence if:

- (a) the person accused of the offence is present at the hospital to receive treatment, and
- (b) in the opinion of the police officer, it is not reasonable to take the person to a police station due to the person's incapacity or illness.

Schedule 1 [10] makes a consequential amendment.

Schedule 1 [12] omits section 78 (2) from the Bail Act which currently provides that a bail authority can revoke or refuse bail only if satisfied that:

- (a) the person has failed or was about to fail to comply with a bail acknowledgment or bail conditions, and
- (b) having considered all possible alternatives, the decision to refuse bail is justified.

Section 78 (1), which remains unchanged, provides that a bail authority before which an accused person is brought or appears may, if satisfied that the person has failed or was about to fail to comply with a bail acknowledgment or a bail condition, release the person on the person's original bail or vary the bail decision that applies to the person (including revoke or refuse bail). **Schedule 1 [11]** makes a consequential amendment to include a note explaining that under section 4 (3) (a) of the Bail Act the power to vary a bail decision includes a power to revoke the bail decision and substitute a new bail decision.

Schedule 2 Amendment of Bail Act 2013 No 26 in response to Martin Place Siege review

Schedule 2 [3] inserts provisions into section 18 of the Bail Act to provide that, in assessing bail concerns, a bail authority is to consider:

- (a) whether the accused person has any associations with a terrorist organisation, and
- (b) whether the accused person has made statements or carried out activities advocating support for terrorist acts or violent extremism, and
- (c) whether the accused person has any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism.

Schedule 2 [1] and [2] make consequential amendments and provide that, for the purposes of the Bail Act, *terrorist act* has the same meaning as it has in Part 5.3 of the Commonwealth Criminal Code.

Schedule 2 [4] inserts proposed section 22A into the Bail Act to provide that, despite anything to the contrary in that Act, a bail authority must, unless it is established that exceptional circumstances exist, refuse bail for:

- (a) an offence under section 310J (Membership of terrorist organisation) of the *Crimes Act 1900*, or
- (b) any other offence for which a custodial sentence may be imposed, if the bail authority is satisfied that the accused person:
 - (i) before being charged with that offence, has been charged with a Commonwealth terrorism offence or an offence under section 310J of the *Crimes Act 1900* and the proceedings relating to the offence have not concluded, or
 - (ii) has previously been convicted of a Commonwealth terrorism offence or an offence under section 310J of the *Crimes Act 1900*, or
 - (iii) is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code.