

Bail Amendment Bill 2003

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Bail Act 1978*:

- (a) to prevent a person who is accused of murder from being granted bail except in exceptional circumstances, and
- (b) to prevent a person who is accused of a serious personal violence offence and who has previously been convicted of a serious personal violence offence from being granted bail except in exceptional circumstances, and
- (c) to provide for a temporary stay of a decision by a magistrate or justice to grant bail to a person accused of a serious offence pending a review of that decision by the Supreme Court, and
- (d) to provide for a review of the amendments made by the Bill, and for other consequential and transitional matters.

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.

Schedule 1 Amendments

Grant of bail for murder offences or repeat offenders

The amendments relating to the grant of bail will prevent a person who is charged with murder, or who is charged with a serious personal violence offence and is a repeat offender, from being granted bail unless the authorised officer or court is satisfied that exceptional circumstances justify the grant of bail (see **Schedule 1 [2]**).

A person is a **repeat offender** for the purposes of the provisions if the person has previously been convicted of (or found guilty of) a serious personal violence offence other than the offence in connection with which bail is being sought. A **serious personal violence offence** includes an offence such as murder, sexual assault, kidnapping or armed robbery. It also includes several other serious offences under the *Crimes Act 1900* involving violence, related attempt offences, and any similar offences under the laws of the Commonwealth, another State or a Territory or of another country.

Schedule 1 [1] is a consequential amendment that ensures that there is no presumption of bail in cases to which the amendments apply. There is already no presumption of bail in murder cases.

Schedule 1 [4] and [5] provide for consequential and transitional matters.

Review of bail decisions

The provisions set out in **Schedule 1 [3]** provide for a temporary stay of a decision by a magistrate or justice to grant bail to a person accused of a serious offence, pending a review of that decision by the Supreme Court. A **serious offence**, for the purposes of the amendments, is the offence of murder or any other offence punishable by imprisonment for life, or an offence under certain provisions of the *Crimes Act 1900* involving sexual intercourse with, or an attempt to have sexual intercourse with, a person under the age of 16 years. Under the amendments, if a magistrate or justice grants bail to a person accused of a serious offence (on the accused person's first appearance before a court on that charge), and a police officer or legal practitioner appearing on behalf of the Crown informs the court that a request for a review of the decision is to be made

to the Supreme Court, the decision of the magistrate or justice is stayed. The stay has effect only if the police officer or legal practitioner requesting the review provides the court with a copy of the written approval of the Commissioner of Police (or a person authorised by the Commissioner of Police) or the Director of Public Prosecutions to seek a review by the Supreme Court of any decision to grant bail in the case. The stay has effect until:

(a) the Supreme Court affirms or varies the decision, or substitutes another decision for the decision of the magistrate or justice, or refuses to entertain the request for review, or

(b) a police officer or some other person acting on behalf of the Crown files with the Supreme Court notice that the Crown does not intend to proceed with the review, or

(c) 4 pm on the day that is 3 business days after the day on which the decision was made,

whichever happens first.

Schedule 1 [5] includes a transitional amendment.

Review of amendments

Schedule 1 [5] also contains a transitional provision that requires the Minister to review the effect of the amendments made by the Bill at the end of the period of 12 months after the commencement of the amendments.