



New South Wales

## Bail Amendment Bill 2014

### 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 2013* (the *principal Act*) as follows:

- (a) to provide for a preamble to the principal Act,
- (b) to require bail for certain serious offences to be refused unless the accused person shows cause why his or her detention is not justified,
- (c) to convert the current 2-step unacceptable risk assessment process that applies to all bail decisions into a one-step risk assessment, so that:
  - (i) the bail conditions that could reasonably be imposed to address bail concerns are considered as part of an unacceptable risk assessment, and
  - (ii) bail must be refused if there are any unacceptable risks,
- (d) to require additional matters to be considered by a bail authority in applying the unacceptable risk test,
- (e) to make other miscellaneous changes.

### 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     Amendment of Bail Act 2013 No 26**

### **Preamble**

**Schedule 1 [1]** inserts a preamble into the principal Act that sets out the underlying principles that the Parliament has regard to in enacting the Act. Those principles are:

- (a) the need to ensure the safety of victims of crime, individuals and the community, and
- (b) the need to ensure the integrity of the justice system, and
- (c) the common law presumption of innocence and the general right to be at liberty.

### **Show cause requirement**

**Schedule 1 [6]** requires a bail authority making a bail decision for a show cause offence to refuse bail unless the accused person shows cause why his or her detention is not justified.

Bail must be refused on this basis whether or not there is an unacceptable risk. If the bail authority decides not to refuse bail on this basis, the unacceptable risk test still applies.

Show cause offences are certain serious offences set out in proposed section 16B. The offences include offences punishable by imprisonment for life, child sex offences, serious personal violence offences, certain offences involving drugs, firearms or prohibited weapons, and serious offences committed by an accused person while on bail, on parole or subject to a supervision order.

**Schedule 1 [5]** inserts a new flow chart that sets out how the show cause requirement applies to show cause offences.

**Schedule 1 [10]** provides that the show cause requirement is displaced if the offence is one for which the accused person must establish special and exceptional circumstances for a decision to grant bail or dispense with bail. This special requirement applies if the accused person has been convicted on indictment and an appeal in relation to the conviction or sentence is pending. The unacceptable risk test will continue to apply to such an offence.

**Schedule 1 [19]** makes it clear that the power of a court to grant bail of its own motion does not apply if the offence is a show cause offence.

### **Unacceptable risk test—all offences**

**Schedule 1 [8]** replaces the existing 2-step unacceptable risk assessment process that must be carried out by a bail authority before making a bail decision with a one-step assessment.

Currently, the principal Act requires the bail authority to identify whether there is any unacceptable risk that the accused person, if released from custody, will:

- (a) fail to appear at any proceedings for the offence, or
- (b) commit a serious offence, or
- (c) endanger the safety of victims, individuals or the community, or
- (d) interfere with witnesses or evidence.

If there is an unacceptable risk, the bail authority must then consider whether bail conditions can be imposed to sufficiently mitigate that risk. If not, bail can be refused.

The amendments will require the bail authority to assess any bail concerns before making a bail decision. The bail authority will be required, as part of its assessment, to consider the bail conditions that could reasonably be imposed to address those concerns.

If the bail authority is satisfied, after making that assessment, that there is an unacceptable risk, the bail authority must refuse bail.

If there is no unacceptable risk, a release decision must be made (and bail conditions may be imposed to address bail concerns).

Accordingly, an unacceptable risk will always require bail to be refused.

In addition, the bail authority may impose bail conditions as a way of addressing bail concerns only if there are reasonable grounds to believe that those bail conditions will be complied with by the accused person.

**Schedule 1 [5]** inserts a flow chart that sets out the new unacceptable risk test.

**Schedule 1 [11] and [12]** repeal matters that are now provided for by Schedule 1 [8].

**Schedule 1 [4], [7], [13]–[15] and [21]** are consequential amendments.

**Schedule 1 [9]** makes it clear that the unacceptable risk test also applies to bail decisions for offences for which there is a right to release. However, it will continue to be the case that bail cannot be refused for right to release offences.

### **Additional matters to be considered in risk assessment**

**Schedule 1 [8]** (proposed section 18) sets out the matters to be considered by a bail authority in assessing bail concerns. Those matters replicate existing section 17 (3) of the principal Act, with the following changes and additions:

- (a) the bail authority must consider whether the accused person has a history of compliance or non-compliance with bail acknowledgments, bail conditions, apprehended violence orders, parole orders or good behaviour bonds (not a pattern of non-compliance),
- (b) the bail authority must consider whether the accused person has any criminal associations,
- (c) the bail authority must consider the conduct of the accused person towards the victim of the offence, or any family member of the victim, after the offence,
- (d) if the offence is a serious offence, the bail authority must consider the views of the victim of the offence, or any family member of the victim, if available, to the extent relevant to a concern about the safety of the victim, individuals or the community,
- (e) as mentioned above, the bail authority must consider the conditions that could reasonably be imposed to address bail concerns.

### **Miscellaneous amendments**

**Schedule 1 [2]** removes a requirement that the bail authority have regard to the presumption of innocence and the general right to be at liberty when making bail decisions.

**Schedule 1 [16]** limits the circumstances in which a senior police officer is required, at the request of an accused person, to review a bail decision of another police officer. The review will now be required only if the accused person was refused bail or bail was granted subject to a pre-release requirement and the accused person is unable to comply with the pre-release requirement. A pre-release requirement is a requirement of a bail condition that must be complied with before a person is released on bail, such as a requirement to provide security or a character acknowledgment. **Schedule 1 [17]** is a consequential amendment.

**Schedule 1 [18]** permits a review by a senior police officer of a decision by another police officer to refuse bail or to grant bail subject to conditions to be carried out by a senior police officer who is not present at the police station if no senior police officer is available at the police station to carry out the review.

**Schedule 1 [20]** limits the grounds on which a further release application or detention application can be made to a court that has already heard an application. The amendment will permit a further application to be made when new information relevant to the grant of bail is available only if that information is *material* information.

**Schedule 1 [22]** provides that the enactment of the principal Act is not a change in circumstances for the purposes of a release application or a detention application. This means that the enactment of the principal Act does not provide grounds for the making of a further bail application to a court if an application has already been heard by the relevant court.

**Schedule 1 [23]** provides for savings and transitional matters.

**Schedule 1 [3]** defines expressions used in the proposed amendments.