



Bail (Consequential Amendments) Bill 2013

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Extract from NSW Legislative Council Hansard and Papers Wednesday 5 March 2014.

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [3.37 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The purpose of the bill is to make a number of minor amendments to the Bail Act 2013 and to make miscellaneous amendments to other Acts to reflect the passage of that Act and the repeal of the Bail Act 1978.

The Government's new Bail Act 2013 was passed by Parliament on 22 May 2013 and received assent on 22 May 2013. The Government intends for the new Act to commence operation twelve months after its passage by Parliament in May 2014.

The process of implementing the new legislation and preparing for its commencement is underway. As a result of that activity some minor drafting issues with the new legislation have been identified and this bill will make amendments to the Act to clarify those issues.

The bill also makes a number of consequential amendments to other Acts which are needed to reflect the passage of the new bail Act. Many of the Acts which require amendment relate to aspects of the criminal justice system such as the Children (Criminal Proceedings) Act 1987 and the Crimes (Sentencing Procedure) Act 1999. However, whilst the determination of bail generally arises in the context of criminal proceedings, it also arises in a number of other contexts, such as where a warrant is issued for a witness in proceedings before the Coroner's Court or where a person is apprehended for failing to provide details to an authorised officer under the Protection of the Environment Operations Act 1997.

Consequently, there are a number of pieces of legislation, criminal and otherwise, which provide for the determination of bail under the Bail Act, all of which need to be updated in order to ensure a smooth transition to the new Act upon its commencement. This bill will make the necessary amendments to ensure this occurs.

I now turn to the main detail of the bill.

Schedule 1 to the bill contains a number of technical amendments to the new Bail Act 2013 to clarify aspects of that Act.

Items [1] and [2] of schedule 1 will amend section 26 of the Act to clarify that a person, other than the accused, who is required by a bail authority to provide security pursuant to a bail condition must be an acceptable person. Pursuant to section 26 (4) of the Act, the determination of whether or not a person is an acceptable person for this purpose will be made by the bail authority imposing the bail condition, or if the bail authority does not make this decision, the officer or court to whom the bail acknowledgment is given. The Bail Act 2013 already requires that the security provided for bail must be acceptable and that a person who provides a character acknowledgment must be an acceptable person, and these reforms will simply align the requirements as to acceptability.

Further, the requirement that a person who provides security for bail be acceptable is already imposed by the existing Bail Act 1978 and it is appropriate that it be retained.

Item [3] of schedule 1 will amend section 33 (4) (a) of the Act to clarify the standard information that must be included in a bail acknowledgment. In particular, it will require that the bail acknowledgment contain a warning that committing an offence while on bail could result in a more severe penalty on conviction for that offence, rather than a more severe penalty for the offence for which bail is granted.

Item [4] of schedule 1 will amend section 50 of the Act to insert a provision which makes clear that a prosecutor may oppose a release application by an accused person without having to make a detention application. This provision will not alter the intended operation of detention or release applications under the Act. It has simply been included to remove any doubt about whether a detention application is required in order to oppose a release application so that this issue does not create confusion when the new Act commences. It is not the intent of the new application procedure provided for under the Act that a prosecutor who wishes to oppose a release application will have to make a detention application in order to do so. Nor for that matter would the accused need to make a release application in order to oppose a detention application by the prosecutor. If an application is made by a party then that application can be opposed without a cross-application having to be made.

Item [5] of schedule 1 to the bill will clarify in section 64 of the Act that an authorised justice may hear a variation application for an offence even if a bail decision has previously been made by a court, so long as the condition subject of the variation application is one which can be reviewed by an authorised justice.

Item [6] of schedule 1 makes a small amendment to section 88 of the Act to make clear that after a finding is made as to the guilt of a person accused of an offence, the court must ensure that consideration is given to the return of any bail money or bail security deposited in connection with the offence. The existing wording of that provision requires the court itself to consider those matters, however, in practice this activity is often undertaken by Registry staff at the relevant courthouse. The proposed amendment reflects this reality.

Item [7] of schedule 1 makes a further amendment to section 88 to allow for the Regulations to make provision for the return of bail money and bail security.

Finally item [8] of schedule 1 will insert a provision in section 98 stipulating that the regulations can make provision for the forms to be used under the Act. The Regulations to support the new Act are presently being settled and they will need to make some provision for the forms required by the Act, such as the bail acknowledgement. This amendment will ensure that the Regulations can provide for these forms and that they can legally be made under the Regulation.

Schedule 2 to the bill contains miscellaneous amendments to other legislation which are necessary to reflect the enactment of the Bail Act 2013. I will not set these amendments out in detail as many of them are minor or technical in nature including updating references to provisions of the existing Bail Act 1978 with references to relevant provisions in the new Act.

However, I will briefly address some of the more noteworthy amendments contained in this schedule. Item 2.2 of schedule 2 includes amendments to remake sections 109U and 109V of the Children and Young Persons (Care and Protection) Act 1998. These sections provide for the making of a bail decision in relation to a person brought before the Children's Court pursuant to a warrant issued under that Act. As these proceedings do not relate to offences, proposed section 109U stipulates that the Bail Act 2013 is to apply to the person as if they were accused of an offence and the proceedings before the court are proceedings for that offence. This means that the unacceptable risk test for determining bail under the new bail Act will apply to the determination of bail for such a person. The existing sections 109U and 109V of the Children and Young Persons (Care and Protection) Act have the same effect by deeming the person an accused person under the Bail Act 1978.

The bill also remakes similar provisions, whereby proceedings following execution of a warrant are deemed to be proceedings for an offence so that bail can be determined, in relation to the Coroner's Act 2009, the Criminal Procedure Act 1986 and the Local Court Act 2007. Further, the bill remakes provisions that facilitate the making of a bail decision for people brought before the court by an authorised officer under the Local Government Act 1993, the Protection of the Environment Operations Act 1997 and the Water Management Act 2000.

Item 2.4 of schedule 2 contains amendments to the Children (Criminal Proceedings) Act 1987 including remaking section 33 (1) (c2) of that Act. This amendment will preserve the Children's Court's power to adjourn sentence proceedings for up to twelve months from the date of a finding of guilt for particular purposes, where a person is on bail or has had bail dispensed with under the new bail Act. The permitted purposes for such an adjournment include to assess the person's capacity and prospects of rehabilitation and to allow the person to demonstrate that rehabilitation has taken place. Such an adjournment was previously permitted under the common law and was colloquially known as a Griffiths remand.

Similar amendments are made to equivalent adjournment provisions in the Crimes (Sentencing Procedure) Act 1999 and the Criminal Procedure Act 1986.

This bill represents another step in the Government's comprehensive overhaul of bail laws in New South Wales. It will help to ensure a smooth transition to the Government's new regime for determining bail when the Bail Act 2013 commences operation next year.

I commend the bill to the House.