



New South Wales

# Bail (Consequential Amendments) Bill 2013

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Bail Act 2013*:
  - (i) to make it clear that a bail authority can decide who is an acceptable person to provide security for the grant of bail (in the same way as the bail authority can decide who is an acceptable person to give a character acknowledgment), and
  - (ii) to expand the regulation-making powers conferred by the Act, and
  - (iii) to make other minor changes of a statute law revision nature,
- (b) to make amendments to other legislation as a consequence of the enactment of that Act and the repeal of the *Bail Act 1978*.

## 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

**Schedule 1 [1] and [2]** make it clear that a bail authority, or an officer or court to whom a bail acknowledgment is given, has power to decide which person or persons, or class or description of persons, is an acceptable person to enter into a bail security agreement. A bail security agreement

is an agreement under which a person agrees to forfeit a specified amount of money if a person granted bail fails to appear before a court in accordance with his or her bail acknowledgment. The amendments ensure that the powers of a bail authority to decide who is an acceptable person to provide bail security mirror the powers of a bail authority to decide who is an acceptable person to give a character acknowledgment. This is consistent with current practice under the *Bail Act 1978*.

**Schedule 1 [3]** corrects a reference to an offence.

**Schedule 1 [4]** makes it clear that it is not necessary for a prosecutor to make a detention application to a court (an application for the refusal or revocation of bail in respect of a person) in order to oppose a release application (an application for the grant of bail) made by the accused person.

**Schedule 1 [5]** amends a provision that lists the powers of the Local Court and authorised justices to hear bail applications, to make it clear that an authorised justice has power to hear a variation application in relation to bail conditions imposed by a court if the bail conditions are reviewable by a justice, as contemplated by section 52 of the *Bail Act 2013*.

**Schedule 1 [6]** permits a court to put in place a process that ensures that consideration is given to the return of bail money if an accused person is convicted or acquitted of an offence. This replaces a requirement that the court itself give consideration to the return of bail money when an accused person is convicted or acquitted of an offence. Accordingly, the amendment will permit a court to deal with the matter by referring it to a registrar or other court officer for consideration.

**Schedule 1 [7]** permits the regulations to make further provision for the return of bail money and bail security.

**Schedule 1 [8]** permits the regulations to make provision for the forms to be used for the purposes of the *Bail Act 2013*.

## **Schedule 2    Amendment of other Acts**

Schedule 2 amends the Acts specified in that Schedule as a consequence of the enactment of the *Bail Act 2013* and the repeal of the *Bail Act 1978*.

The amendments continue the existing practice of permitting a bail decision to be made in respect of certain persons who are taken into State custody and are not charged with an offence (for example, a witness who fails to appear in proceedings before a court or a coroner, or a person who fails to provide a name and address to an enforcement officer). In such a case, the *Bail Act 2013* will apply to the person in custody as if the person were accused of an offence. The amendments also make it clear who is permitted to make a bail decision in such cases and otherwise modify the operation of the *Bail Act 2013* to accommodate a non-offence situation (as contemplated by clause 2 of Schedule 1 to the Act). See **Schedule 2.2 [2], 2.8, 2.15 [4], [9] and [11], 2.23, 2.24, 2.27 and 2.29**.

The *Evidence Act 1995* states that the *Evidence Act 1995* applies to proceedings relating to bail. An amendment to that Act makes it clear that the application of that Act is subject to certain provisions of the *Bail Act 2013* that require bail decisions to be made having regard to any credible or trustworthy evidence or information, and for decisions to be made on the balance of probabilities. See **Schedule 2.18 [1]**.

An amendment to the *Intoxicated Persons (Sobering Up Centres Trial) Act 2013* makes it clear that a police officer is not required to make a bail decision in respect of an intoxicated person while the person is detained under that Act. See **Schedule 2.21**.

The other amendments in Schedule 2 update references to the *Bail Act 1978* and to specific provisions of, or terminology used in, that Act, to reflect the appropriate provisions and terminology of the *Bail Act 2013*.