

BAIL (AMENDMENT) ACT 1988 No. 16

NEW SOUTH WALES



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AND OTHERS



BAIL (AMENDMENT) ACT 1988 No. 16

NEW SOUTH WALES



Act No. 16, 1988

An Act to amend the Bail Act 1978 with respect to presumptions about the granting of bail for certain drug offences and the matters to be considered when deciding whether to grant bail or impose bail conditions; and for related purposes. [Assented to 21 June 1988]

*Bail (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Bail (Amendment) Act 1988.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Bail Act 1978 No. 161

3. The Bail Act 1978 is amended as set out in Schedules 1 and 2.

Operation of amendments

4. (1) An amendment to the Bail Act 1978 effected by this Act applies only to offences alleged to have been committed after the commencement of the amendment.

(2) The Bail Act 1978 applies to offences alleged to have been committed before the commencement of an amendment effected by this Act as if the amendment had not been made.

**SCHEDULE 1—AMENDMENTS RELATING TO PRESUMPTIONS
AS TO BAIL**

(Sec. 3)

(1) Part 2, Division 2A—

After Division 2, insert:

DIVISION 2A—Presumption against bail for certain drug offences**Presumption against bail for certain drug offences**

8A. (1) This section applies—

- (a) to the following offences under the Drug Misuse and Trafficking Act 1985:
 - (i) an offence under section 23 (2), 24 (2) or 25 (2) of that Act;
 - (ii) an offence under section 26 of that Act of conspiring to commit an offence referred to in subparagraph (i);
 - (iii) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in subparagraph (i);

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 SCHEDULE 1—AMENDMENTS RELATING TO PRESUMPTIONS
 AS TO BAIL—*continued*

- (iv) an offence under section 28 of that Act of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales which corresponds to section 23 (2), 24 (2) or 25 (2) of that Act; and
 - (b) to an offence under section 231 (1), 233A or 233B of the Customs Act 1901 of the Commonwealth (but only if the goods concerned are alleged to be of a nature and quantity required for an offence referred to in paragraph (a)).
- (2) A person accused of an offence to which this section applies is not to be granted bail unless the person satisfies the authorised officer or court that bail should not be refused.
- (3) The requirement for bail cannot be dispensed with for a person accused of an offence to which this section applies and section 10 (2) does not apply with respect to any such offence.
- (2) Section 9 (**Presumption in favour of bail for certain offences**)—
- (a) Section 9 (1) (a)—
 After “section 8 (1)”, insert “or 8A (1)”.
 - (b) Omit section 9 (1) (d), insert instead:
 - (d) the following offences under the Drug Misuse and Trafficking Act 1985 (but only if the plant or drug concerned is alleged to be of a quantity which is at least twice the indictable quantity applicable under that Act):
 - (i) an offence under section 23 (1), 24 (1) or 25 (1) of that Act;
 - (ii) an offence under section 26 of that Act of conspiring to commit an offence referred to in subparagraph (i);
 - (iii) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in subparagraph (i);
 - (iv) an offence under section 28 of that Act of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales which corresponds to section 23 (1), 24 (1) or 25 (1) of that Act; and

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SCHEDULE 1—AMENDMENTS RELATING TO PRESUMPTIONS
AS TO BAIL—*continued*

- (e) offences under section 231 (1), 233A or 233B of the Customs Act 1901 of the Commonwealth (but only if the goods concerned are alleged to be of a nature and quantity required for an offence referred to in paragraph (d)).

(3) Section 32 (**Criteria to be considered in bail applications**)—

After section 32 (5), insert:

(6) This section applies to an offence to which section 8A applies, but does not prevent consideration of any matter accepted by the authorised officer or court as relevant to the question of whether bail should not be refused.

(4) Section 38 (**Reasons to be recorded**)—

After section 38 (1), insert:

(1A) If bail is granted to a person accused of an offence to which section 8A applies, the authorised officer or court must forthwith record the reasons for granting bail or cause those reasons to be recorded.

SCHEDULE 2—AMENDMENTS RELATING TO THE PROTECTION
OF VICTIMS AND OTHERS

(Sec. 3)

(1) Section 4 (**Definitions**)—

After the definition of “bail undertaking” in section 4 (1), insert:

“close relative”, in relation to a person, means—

- (a) any mother, father, wife, husband, daughter, son, step-daughter, step-son, sister, brother, half-sister, half-brother and de facto partner of the person; and
- (b) if the person has a de facto partner, anyone who would be such a relative if the de facto partners were married;

(2) Section 32 (**Criteria to be considered in bail applications**)—

(a) At the end of section 32 (1) (a) (v), insert “and”;

(b) After section 32 (1) (b), insert:

(b1) the protection of—

- (i) any person against whom it is alleged that the offence concerned was committed; and
- (ii) the close relatives of any such person; and

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SCHEDULE 2—AMENDMENTS RELATING TO THE PROTECTION OF VICTIMS AND OTHERS—*continued*

(iii) any other person the authorised officer or court considers to be in need of protection because of the circumstances of the case; and

(c) Section 32 (2A)—

Omit the subsection.

(3) Section 37 (**Restrictions on imposing bail conditions**)—

(a) Omit section 37 (1) and (2), insert instead:

(1) Bail shall be granted unconditionally unless the authorised officer or court is of the opinion that one or more conditions should be imposed for the purpose of—

(a) promoting effective law enforcement; or

(b) the protection and welfare of any specially affected person; or

(c) the protection and welfare of the community.

(2) Conditions shall not be imposed that are any more onerous for the accused person than appear to the authorised officer or court to be required—

(a) by the nature of the offence; or

(b) for the protection and welfare of any specially affected person; or

(c) by the circumstances of the accused person.

(b) Section 37 (5)—

Omit the subsection, insert instead:

(5) In this section—

“specially affected person” means—

(a) any person against whom it is alleged that the offence concerned was committed; and

(b) the close relatives of any such person; and

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SCHEDULE 2—AMENDMENTS RELATING TO THE PROTECTION
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- (c) any other person whose needs, in the opinion of the authorised officer or court, warrant special consideration because of the circumstances of the case.

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EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Bail Act 1978 so as—

- (a) to create a presumption against the granting of bail for serious drug offences; and
- (b) to remove the present presumption in favour of the granting of bail for certain other drug offences; and
- (c) to require victims and certain other persons to be taken into account in the making of a decision about whether to grant bail or to impose bail conditions.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Bail Act 1978.

Clause 4 provides that amendments to be made by the proposed Act apply only in respect of offences committed after they commence.

SCHEDULE 1—AMENDMENTS RELATING TO PRESUMPTIONS AS TO BAIL

Presumption against bail

The Bill inserts proposed section 8A (Presumption against bail for certain drug offences) into the Bail Act, which will have the effect of creating a presumption against the granting of bail for the offences listed in the proposed section. The offences are those under the Drug Misuse and Trafficking Act 1985 for which there is presently no presumption in favour of bail and additional offences under the Commonwealth Customs Act 1901, where commercial quantities of prohibited plants or prohibited drugs are involved. Before a person accused of any such offence is granted bail, the person will have to satisfy the officer or court granting bail that bail should not be refused. The requirement for bail cannot be dispensed with for any such offence. (Schedule 1(1) and (2) (a)).

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As at present, the officer or court must consider the matters in section 32 of the Bail Act (Criteria to be considered in bail applications) before granting or refusing bail, but may consider other matters relevant to whether the presumption against bail should be overcome in a particular case. (Schedule 1(3)).

The Bill also amends section 38 of the Bail Act (Reasons to be recorded) so as to require reasons to be given for granting bail to a person accused of an offence to which proposed section 8A applies. (Schedule 1(4)).

No presumption in certain cases

The Bill omits from section 9 of the Bail Act (Presumption in favour of bail for certain offences) the list of offences presently excepted from that presumption which will be dealt with by proposed section 8A. Proposed section 9 (1) (d) and (e) of that Act will list additional offences for which there will be no presumption that bail will be granted. The offences are similar to those to which proposed section 8A will apply, but where at least twice the indictable quantity (as defined in the Drug Misuse and Trafficking Act) of the prohibited plant or drug concerned is involved. (Schedule 1 (2) (b)).

SCHEDULE 2—AMENDMENTS RELATING TO THE PROTECTION OF VICTIMS AND OTHERS**Protection of victims and others: grant of bail**

The Bill amends section 32 of the Bail Act (Criteria to be considered in bail applications) by adding to the matters to be considered the protection of any victim of the offence concerned, of any close relative of any such victim and of any other person identified as being in need of protection. The additional matter presently applies (in a more limited fashion than that proposed) only in a case of domestic violence. Consequential amendments are also made to the section and a definition of "close relative" is inserted in section 4 of that Act. (Schedule 2 (1) and (2)).

Protection of victims and others: bail conditions

Section 37 of the Bail Act (Restrictions on imposing bail conditions) limits the imposition of bail conditions and the nature of those conditions. The Bill substitutes section 37 (1), (2) and (5) of that Act. The proposed subsections restate the present restrictions and, in addition, will require a person deciding whether to impose bail conditions to consider the protection and welfare of any victim, close relative or other person whose needs are seen to warrant special consideration because of the circumstances of the case. At present this has to be done only in a case of domestic violence. (Schedule 2 (3)).

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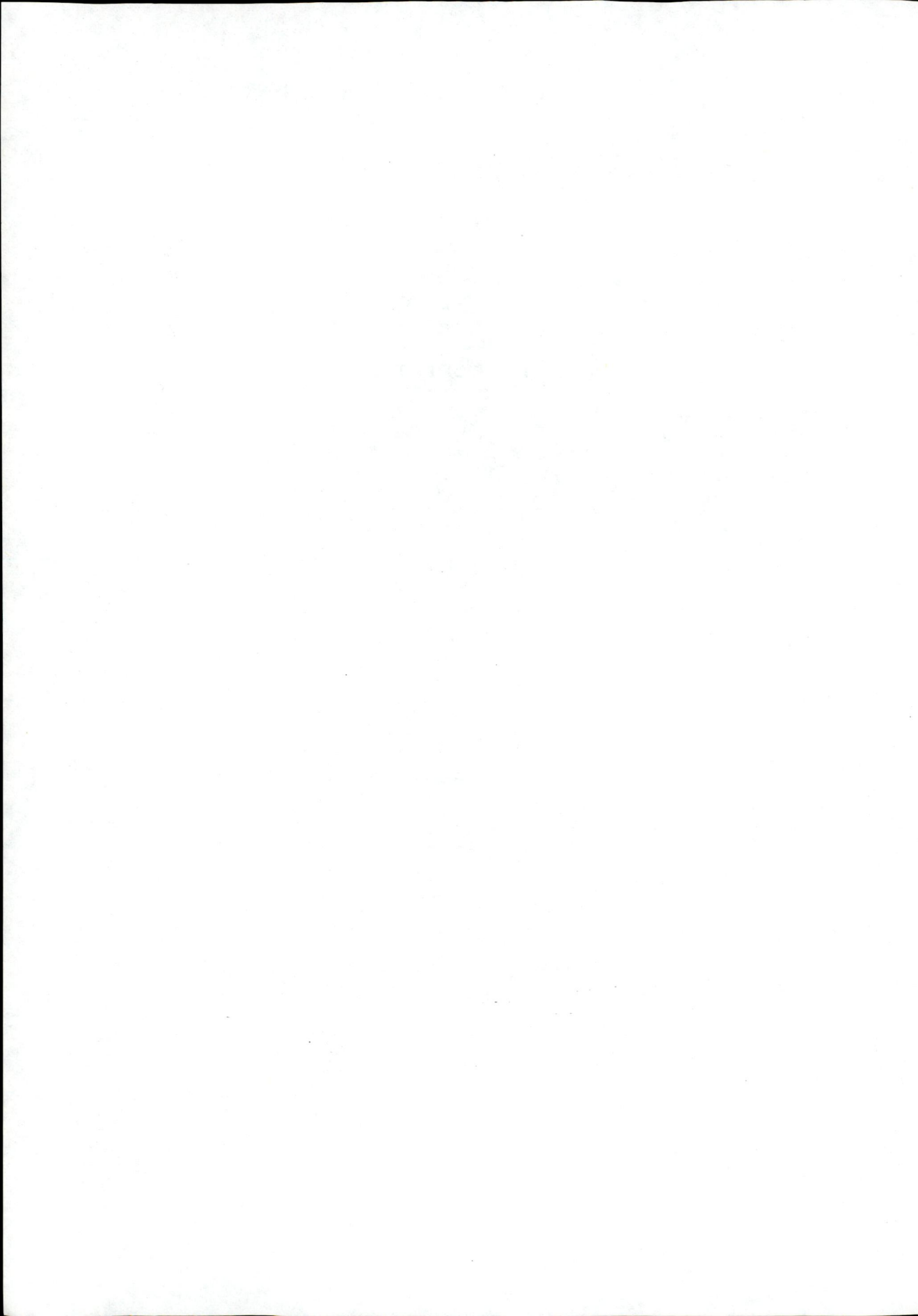


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SCHEDULE 2—AMENDMENTS RELATING TO THE PROTECTION OF VICTIMS
AND OTHERS



BAIL (AMENDMENT) BILL 1988

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to amend the Bail Act 1978 with respect to presumptions about the granting of bail for certain drug offences and the matters to be considered when deciding whether to grant bail or impose bail conditions; and for related purposes.

*Bail (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Bail (Amendment) Act 1988.

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2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Bail Act 1978 No. 161

3. The Bail Act 1978 is amended as set out in Schedules 1 and 2.

Operation of amendments

4. (1) An amendment to the Bail Act 1978 effected by this Act applies only to offences alleged to have been committed after the commencement of the amendment.

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**SCHEDULE 1—AMENDMENTS RELATING TO PRESUMPTIONS
AS TO BAIL**

(Sec. 3)

- (1) Part 2, Division 2A—

- After Division 2, insert:

DIVISION 2A—Presumption against bail for certain drug offences
Presumption against bail for certain drug offences

- 8A. (1) This section applies—

- (a) to the following offences under the Drug Misuse and Trafficking Act 1985:

- (i) an offence under section 23 (2), 24 (2) or 25 (2) of that Act;
- (ii) an offence under section 26 of that Act of conspiring to commit an offence referred to in subparagraph (i);
- (iii) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in subparagraph (i);

SCHEDULE 1—AMENDMENTS RELATING TO PRESUMPTIONS
AS TO BAIL—*continued*

- 5 (iv) an offence under section 28 of that Act of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales which corresponds to section 23 (2), 24 (2) or 25 (2) of that Act; and
- 10 (b) to an offence under section 231 (1), 233A or 233B of the Customs Act 1901 of the Commonwealth (but only if the goods concerned are alleged to be of a nature and quantity required for an offence referred to in paragraph (a)).
- (2) A person accused of an offence to which this section applies is not to be granted bail unless the person satisfies the authorised officer or court that bail should not be refused.
- 15 (3) The requirement for bail cannot be dispensed with for a person accused of an offence to which this section applies and section 10 (2) does not apply with respect to any such offence.
- (2) Section 9 (**Presumption in favour of bail for certain offences**)—
- (a) Section 9 (1) (a)—
- After “section 8 (1)”, insert “or 8A (1)”.
- 20 (b) Omit section 9 (1) (d), insert instead:
- (d) the following offences under the Drug Misuse and Trafficking Act 1985 (but only if the plant or drug concerned is alleged to be of a quantity which is at least twice the indictable quantity applicable under that Act):
- 25 (i) an offence under section 23 (1), 24 (1) or 25 (1) of that Act;
- (ii) an offence under section 26 of that Act of conspiring to commit an offence referred to in subparagraph (i);
- 30 (iii) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in subparagraph (i);
- 35 (iv) an offence under section 28 of that Act of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales which corresponds to section 23 (1), 24 (1) or 25 (1) of that Act; and

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SCHEDULE 1—AMENDMENTS RELATING TO PRESUMPTIONS
AS TO BAIL—*continued*

(e) offences under section 231 (1), 233A or 233B of the Customs Act 1901 of the Commonwealth (but only if the goods concerned are alleged to be of a nature and quantity required for an offence referred to in paragraph (d)).

5 (3) Section 32 (**Criteria to be considered in bail applications**)—

After section 32 (5), insert:

10 (6) This section applies to an offence to which section 8A applies, but does not prevent consideration of any matter accepted by the authorised officer or court as relevant to the question of whether bail should not be refused.

(4) Section 38 (**Reasons to be recorded**)—

After section 38 (1), insert:

15 (1A) If bail is granted to a person accused of an offence to which section 8A applies, the authorised officer or court must forthwith record the reasons for granting bail or cause those reasons to be recorded.

SCHEDULE 2—AMENDMENTS RELATING TO THE PROTECTION
OF VICTIMS AND OTHERS

(Sec. 3)

20 (1) Section 4 (**Definitions**)—

After the definition of “bail undertaking” in section 4 (1), insert:

“close relative”, in relation to a person, means—

25 (a) any mother, father, wife, husband, daughter, son, step-daughter, step-son, sister, brother, half-sister, half-brother and de facto partner of the person; and

(b) if the person has a de facto partner, anyone who would be such a relative if the de facto partners were married;

(2) Section 32 (**Criteria to be considered in bail applications**)—

(a) At the end of section 32 (1) (a) (v), insert “and”;

30 (b) After section 32 (1) (b), insert:

(b1) the protection of—

(i) any person against whom it is alleged that the offence concerned was committed; and

(ii) the close relatives of any such person; and

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 SCHEDULE 2—AMENDMENTS RELATING TO THE PROTECTION
 OF VICTIMS AND OTHERS—*continued*

- (iii) any other person the authorised officer or court considers to be in need of protection because of the circumstances of the case; and
- (c) Section 32 (2A)—
 5 Omit the subsection.
- (3) Section 37 (**Restrictions on imposing bail conditions**)—
- (a) Omit section 37 (1) and (2), insert instead:
- 10 (1) Bail shall be granted unconditionally unless the authorised officer or court is of the opinion that one or more conditions should be imposed for the purpose of—
- (a) promoting effective law enforcement; or
- (b) the protection and welfare of any specially affected person;
 or
- (c) the protection and welfare of the community.
- 15 (2) Conditions shall not be imposed that are any more onerous for the accused* person than appear to the authorised officer or court to be required—
- (a) by the nature of the offence; or
- 20 (b) for the protection and welfare of any specially affected person; or
- (c) by the circumstances of the accused person.
- (b) Section 37 (5)—
 Omit the subsection, insert instead:
- 25 (5) In this section—
- “specially affected person” means—
- (a) any person against whom it is alleged that the offence concerned was committed; and
- (b) the close relatives of any such person; and
- 30 (c) any other person whose needs, in the opinion of the authorised officer or court, warrant special consideration because of the circumstances of the case.



