

# **BAIL (AMENDMENT) ACT 1990 No. 81**

## **NEW SOUTH WALES**



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# **BAIL (AMENDMENT) ACT 1990 No. 81**

## **NEW SOUTH WALES**



### **Act No. 81, 1990**

An Act to amend the Bail Act 1978 to make further provision with respect to the matters to be considered in bail applications. [Assented to 7 December 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Bail (Amendment) Act 1990.

**Commencement**

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

**Amendment of Bail Act 1978 No. 161**

3. The Bail Act 1978 is amended as set out in Schedule 1.

**Transitional provision**

4. The amendments to the Bail Act 1978 made by this Act apply to a determination as to the grant of bail after the commencement of this Act even if the determination relates to an offence alleged to have been committed before that commencement.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

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

- (a) Omit section 32 (1) (c) and all words following that paragraph in section 32 (1), insert instead:
  - (c) the protection and welfare of the community, having regard only to:
    - (i) the nature and seriousness of the offence, in particular whether the offence is of a sexual or violent nature; and
    - (ii) whether or not the person has failed, or has been arrested for an anticipated failure, to observe a reasonable bail condition previously imposed in respect of the offence; and
    - (iii) the likelihood of the person interfering with evidence, witnesses or jurors; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (iv) the likelihood that the person will or will not commit an offence or offences while at liberty on bail, but the authorised officer or court may have regard to that likelihood only if permitted to do so under subsection (2).
- (b) Omit section 32 (2), insert instead:
  - (2) The authorised officer or court may, for the purposes of subsection (1) (c) (iv), have regard to the likelihood that the person will commit an offence or offences while at liberty on bail if the officer or court is:
    - (a) satisfied that the person is likely to commit the offence or offences; and
    - (b) satisfied that the offence or offences is or are likely to be serious by reason of the likely consequences; and
    - (c) satisfied that the likelihood that the person will commit the offence or offences, together with the likely consequences, outweighs the person's general right to be at liberty.
  - (2A) The following matters are to be considered in determining for the purposes of subsection (2) whether an offence or offences is or are serious (but do not limit the matters that can be considered):
    - (a) whether the offence or offences is or are likely to be of a sexual or violent nature;
    - (b) the likely effect of the offence or offences on the victim or victims and on the community generally;
    - (c) the number of offences likely to be committed.

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[*Minister's second reading speech made in -  
Legislative Assembly on 14 November 1990  
Legislative Council on 27 November 1990*]









FIRST PRINT

## BAIL (AMENDMENT) BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to amend the provision of the Bail Act 1978 that deals with the matters to be taken into account when the protection and welfare of the community is considered in the course of a bail application, to provide that:

- (a) the nature and seriousness of the alleged offence (in particular whether the offence is of a sexual or violent nature) is to be taken into account; and
- (b) when the likelihood of whether or not a person will commit an offence while on bail is being considered, the likelihood that the person will commit more than one offence can also be considered; and
- (c) in determining the seriousness of any offence or offences likely to be committed, regard is to be had to whether or not the offence or offences is or are of a sexual or violent nature, the effect on the victim and on the community generally and the number of offences likely to be committed.

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Clause 1 specifies the short title of the proposed Act.

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

Clause 3 gives effect to the Schedule of amendments (Schedule 1).

Clause 4 makes it clear that the proposed amendments apply to a bail determination even if it is in respect of an offence allegedly committed before the commencement of the proposed Act.

Schedule 1 makes the amendments described above.

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**FIRST PRINT**

**BAIL (AMENDMENT) BILL 1990**

**NEW SOUTH WALES**



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**SCHEDULE 1 - AMENDMENTS**

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# **BAIL (AMENDMENT) BILL 1990**

**NEW SOUTH WALES**



No. , 1990

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## **A BILL FOR**

**An Act to amend the Bail Act 1978 to make further provision with respect to the matters to be considered in bail applications.**

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*Bail (Amendment) 1990*

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**Short title**

1. This Act may be cited as the Bail (Amendment) Act 1990.

**Commencement**

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

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3. The Bail Act 1978 is amended as set out in Schedule 1.

**Transitional provision**

4. The amendments to the Bail Act 1978 made by this Act apply to a determination as to the grant of bail after the commencement of this Act even if the determination relates to an offence alleged to have been committed before that commencement.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

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- (a) Omit section 32 (1) (c) and all words following that paragraph in section 32 (1), insert instead:
  - (c) the protection and welfare of the community, having regard only to:
    - (i) the nature and seriousness of the offence, in particular whether the offence is of a sexual or violent nature; and
    - (ii) whether or not the person has failed, or has been arrested for an anticipated failure, to observe a reasonable bail condition previously imposed in respect of the offence; and
    - (iii) the likelihood of the person interfering with evidence, witnesses or jurors; and



SCHEDULE 1 - AMENDMENTS - *continued*

- (iv) the likelihood that the person will or will not commit an offence or offences while at liberty on bail, but the authorised officer or court may have regard to that likelihood only if permitted to do so under subsection (2).

(b) Omit section 32 (2), insert instead:

(2) The authorised officer or court may, for the purposes of subsection (1) (c) (iv), have regard to the likelihood that the person will commit an offence or offences while at liberty on bail if the officer or court is:

- (a) satisfied that the person is likely to commit the offence or offences; and
- (b) satisfied that the offence or offences is or are likely to be serious by reason of the likely consequences; and
- (c) satisfied that the likelihood that the person will commit the offence or offences, together with the likely consequences, outweighs the person's general right to be at liberty.

(2A) The following matters are to be considered in determining for the purposes of subsection (2) whether an offence or offences is or are serious (but do not limit the matters that can be considered):

- (a) whether the offence or offences is or are likely to be of a sexual or violent nature;
  - (b) the likely effect of the offence or offences on the victim or victims and on the community generally;
  - (c) the number of offences likely to be committed.
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