



New South Wales

# Bail Amendment Act 2015 No 44

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New South Wales

## **Bail Amendment Act 2015 No 44**

Act No 44, 2015

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An Act to amend the *Bail Act 2013* to make further provision for bail decisions. [Assented to 5 November 2015]

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See also the *Terrorism (Police Powers) Amendment Act 2015*.

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

**1 Name of Act**

This Act is the *Bail Amendment Act 2015*.

**2 Commencement**

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

## **Schedule 1      Amendment of Bail Act 2013 No 26 in response to Hatzistergos and Sentencing Council reports**

### **[1]      Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*community service order* means a community service order under the *Crimes (Sentencing Procedure) Act 1999* or a children's community service order under the *Children (Community Service Orders) Act 1987*.

*non-association and place restriction order* means a non-association order or a place restriction order under section 17A (2) of the *Crimes (Sentencing Procedure) Act 1999* or section 33D (2) of the *Children (Criminal Proceedings) Act 1987*.

### **[2]      Section 16B Offences to which the show cause requirement applies**

Insert after section 16B (1) (k):

- (l) a serious indictable offence that is committed by an accused person while the person is the subject of a warrant authorising the arrest of the person issued under:
  - (i) this Act, or
  - (ii) Part 7 of the *Crimes (Administration of Sentences) Act 1999*.

### **[3]      Section 16B (3), definition of "serious personal violence offence"**

Omit the definition. Insert instead:

*serious personal violence offence* means:

- (a) an offence under Part 3 of the *Crimes Act 1900* that is punishable by imprisonment for a term of 14 years or more, or
- (b) an offence under a law of the Commonwealth, another State or Territory or any other jurisdiction that is similar to an offence under that Part.

### **[4]      Section 18 Matters to be considered as part of assessment**

Omit section 18 (1) (f). Insert instead:

- (f) whether the accused person has a history of compliance or non-compliance with any of the following:
  - (i) bail acknowledgments,
  - (ii) bail conditions,
  - (iii) apprehended violence orders,
  - (iv) parole orders,
  - (v) good behaviour bonds,
  - (vi) intensive correction orders,
  - (vii) home detention orders,
  - (viii) community service orders,
  - (ix) non-association and place restriction orders,

### **[5]      Section 18 (1) (f1)**

Insert after section 18 (1) (f):

- (f1) if the bail authority is making the assessment of bail concerns because the accused person has failed or was about to fail to comply with a bail acknowledgment or a bail condition, any warnings issued to the accused

person by police officers or bail authorities regarding non-compliance with bail acknowledgments or bail conditions,

**[6] Section 18 (1) (i1)**

Insert after section 18 (1) (i):

- (i1) if the accused person has been convicted of the offence, but not yet sentenced, the likelihood of a custodial sentence being imposed,

**[7] Section 28 Bail condition can impose accommodation requirements**

Insert after section 28 (3) (a):

- (a1) for the purpose of enabling the accused person to be admitted to a residential rehabilitation facility for treatment on the person's release on bail, or

**[8] Section 28, note**

Omit the note to the section. Insert instead:

**Note.** The court can also impose the following types of bail condition (conduct requirements):

- (a) requiring the accused person to reside at the relevant accommodation while at liberty on bail,
- (b) if the accommodation requirement is for the purpose of enabling the accused person to be admitted to a residential rehabilitation facility, requiring the accused person to be accompanied by a person specified by the court to that facility on release on bail.

**[9] Section 43 Police power to make bail decision**

Insert after section 43 (1):

- (1A) A police officer of or above the rank of sergeant at a hospital may make a bail decision for an offence if:
  - (a) the person accused of the offence is present at the hospital to receive treatment, and
  - (b) in the opinion of the police officer, it is not reasonable to take the person to a police station due to the person's incapacity or illness.

**[10] Section 47 Review of police decision by senior police officer**

Omit section 47 (7) and (8). Insert instead:

- (7) In this section, *senior police officer* means:
  - (a) in relation to a bail decision made by a police officer at a police station:
    - (i) a police officer at the police station who is senior to the police officer who made the bail decision, or
    - (ii) if no such police officer is available at the police station, any other police officer who is senior to the police officer who made the bail decision, or
  - (b) in relation to a bail decision made by a police officer at a hospital, subject to the regulations, any other police officer who is senior to the police officer who made the bail decision.

**[11] Section 78 Powers of bail authorities**

Insert after section 78 (1) (b):

**Note.** The power to vary a bail decision includes a power to revoke the bail decision and substitute a new bail decision—section 4 (3) (a).

**[12] Section 78 (2)**

Omit the subsection.

## **Schedule 2 Amendment of Bail Act 2013 No 26 in response to Martin Place Siege review**

### **[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*Commonwealth Criminal Code* means the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

*terrorist act* has the same meaning as it has in Part 5.3 of the Commonwealth Criminal Code.

### **[2] Section 16B Offences to which the show cause requirement applies**

Omit “the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth” from section 16B (1) (g).

Insert instead “the Commonwealth Criminal Code”.

### **[3] Section 18 Matters to be considered as part of assessment**

Insert after section 18 (1) (p):

- (q) whether the accused person has any associations with a terrorist organisation (within the meaning of Division 102 of Part 5.3 of the Commonwealth Criminal Code),
- (r) whether the accused person has made statements or carried out activities advocating support for terrorist acts or violent extremism,
- (s) whether the accused person has any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism.

### **[4] Section 22A**

Insert after section 22:

#### **22A Limitation on power to release in relation to terrorism related offences**

- (1) Despite anything to the contrary in this Act, a bail authority must, unless it is established that exceptional circumstances exist, refuse bail for:
  - (a) an offence under section 310J of the *Crimes Act 1900*, or
  - (b) any other offence for which a custodial sentence may be imposed, if the bail authority is satisfied that the accused person:
    - (i) before being charged with that offence, has been charged with a Commonwealth terrorism offence or an offence under section 310J of the *Crimes Act 1900* and the proceedings relating to the offence have not concluded, or
    - (ii) has previously been convicted of a Commonwealth terrorism offence or an offence under section 310J of the *Crimes Act 1900*, or
    - (iii) is the subject of a control order made under Part 5.3 of the Commonwealth Criminal Code.
- (2) If the offence is a show cause offence, the requirement that the accused person establish that exceptional circumstances exist that justify a decision to grant bail or dispense with bail applies instead of the requirement that the accused person show cause why his or her detention is not justified.

- (3) Subject to subsection (1), Division 2 (Unacceptable risk test—all offences) applies to a bail decision made by a bail authority under this section.
- (4) In this section, ***Commonwealth terrorism offence*** has the same meaning as ***terrorism offence*** has in the *Crimes Act 1914* of the Commonwealth.

[Second reading speech made in—

Legislative Assembly on 20 October 2015

Legislative Council on 27 October 2015]