

1992

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**BAIL (CONSEQUENTIAL AMENDMENTS) BILL
1992**

EXPLANATORY MEMORANDUM

(Circulated by the authority of
the Attorney-General)

BAIL (CONSEQUENTIAL AMENDMENTS) BILL 1992

OUTLINE

This Bill makes a series of amendments to ACT legislation which impinges on the issue of bail. These amendments result from the comprehensive revision and consolidation of the law of bail proposed in the Bail Bill 1992. They will make procedures and terminology in other Acts, in particular the *Crimes Act 1900* (NSW) in its application to the Territory and the *Magistrates Court Act 1930*, consistent with the procedures and terminology proposed in the Bail Bill 1992.

The Bill also repeals bail provisions wherever they occur in other Acts (for example, Part III of the *Domestic Violence Act 1986*). The object is to consolidate the law of bail into the one Act.

The amendments are largely technical and do not make any substantive changes to the law which are not already proposed in the Bail Bill 1992.

FINANCIAL CONSIDERATIONS

The Bill has no implications for government expenditure or revenue.

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CLAUSE NOTES

PART I - PRELIMINARY

Clause 1: Short Title

This clause cites the proposed Act as being the *Bail (Consequential Amendments) Act 1992*

Clause 2: Commencement

Clause 2 provides that the substantive provisions of the Act come into force on a day which the Minister fixes by a notice in the Gazette. If no notice is gazetted within six months of the Act being made, the whole Act comes into effect automatically.

Clause 3: Savings

Clause 3 has the effect of applying the previous law on bail, as it existed immediately before the proposed new bail legislation comes into force, to bail decisions and other related decisions made under the old law.

PART II - AMENDMENTS OF THE *CRIMES AC, 1900* OF THE STATE OF NEW SOUTH WALES IN ITS APPLICATION IN THE TERRITORY

Clause 4: Crimes Act

This clause defines the term "Crimes Act" to mean the *Crimes Act, 1900* of the State of New South Wales in its application to the Territory.

Clause 5: Interpretation

Clause 5 inserts in section 4 of the Crimes Act a definition of the term *bail undertaking* to replace the word *recognizance* when used in connection with bail.

Clause 6: Directing prosecution for perjury

This clause amends section 340 of the Crimes Act by substituting the word *undertaking* for *recognizance*.

Clause 7: Failure to answer bail, etc. - offence

This clause amends section 358AI of the Crimes Act to limit its operation to bail granted under laws existing before the proposed Bail Act comes into force. Section 46 of the proposed Bail Act creates the same offence in respect of bail granted under its provisions.

Clause 8: Orders for amendment of indictment, separate trial and postponement of trial.

This clause clarifies paragraph 365(4)(c) of the Crimes Act by substituting the term *variation of bail arrangements* for the old term *enlargement of recognizances* when used in connection with bail.

Clause 9: Respiteing recognizances on postponement

Clause 9 amends section 369 of the Crimes Act by substituting *undertakings for recognizance* and by omitting references to the accused and his or her sureties. This has the effect of confining the application of section 369 to undertakings (formerly recognizances) of the prosecutor and witnesses or potential witnesses. The proposed Bail Act alone will govern the issue of dispensation of bail for the accused.

Clause 10: Reserving questions of law at trial

Clause 10 amends subsection 428(2) of the Crimes Act to apply the proposed Bail Act in the situation where an accused is granted bail pending the determination of a question of law referred to the Supreme Court.

Clause 11: Proceedings when question reserved

This clause amends subsection 470(5) by substituting *bail undertaking for recognizance*.

Clause 12: Failure to comply with condition of recognizance or release

This clause amends subsection 556C(3) of the Crimes Act to ensure that a magistrate's discretion to grant bail is exercised in accordance with the provisions of the proposed Bail Act.

Clause 13: Power of court where offender is convicted of a further offence

Section 556N stipulates procedures to be followed when a person who is subject to a community service order, is subsequently convicted of another offence while the order stands. In certain circumstances a magistrate may grant bail. Clause 12 amends subsection 556N(4) to ensure that bail is granted only in accordance with the proposed Bail Act.

Clause 14: No fees to be taken in criminal cases

This clause amends section 564 of the Crimes Act by substituting the word *bail* for the term *recognizance of bail*.

PART III - AMENDMENTS OF THE MAGISTRATES COURT ACT 1930

Clause 15: Principal Act

Clause 15 defines *Principal Act* to mean the *Magistrates Court Act 1930*.

Clause 16: Interpretation

This clause inserts into section 5 of the Principal Act a definition of the new term *bail undertaking*.

Clause 17: Procedure on filing of indictment

Clause 17 amends section 43 of the Principal Act by deleting *recognizances* and substituting *bail* and to ensure the proposed Bail Act governs bail granted in the circumstances envisaged in section 43.

Clause 18: Repeal

Clause 18 repeals section 50 of the Principal Act which deals with police bail. Substitute provisions are in Part IV of the proposed Bail Act.

Clause 19: Bail of defendant during examination

Clause 19 amends section 73 of the Principal Act to confine the power to take recognizances to secure the attendance of witnesses and potential witnesses only. The proposed Bail Act alone governs bail for defendants on remand.

Clause 20: Recognizances

Clause 20 amends section 77 of the Principal Act to confine the power to take recognizances to secure the attendance of witnesses and potential witnesses only. The proposed Bail Act alone governs bail for defendants.

Clause 21: Issue of warrant for non-appearance

Clause 21 amends section 78 to confine its application to witnesses and potential witnesses.

Clause 22: Recognizances taken out of court

This clause amends section 79 of the Principal Act to limit its application to recognizances which can still be taken under the Principal Act. Bail undertakings are effectively excluded from the ambit of section 79.

Clause 23: Forfeited recognizances - how enforced

This clause amends section 80 of the Principal Act to confine its operation to recognizances entered into by witnesses or potential witnesses.

Clause 24: Repeal

Clause 24 repeals section 81 of the Principal Act. The right of a surety to arrest an accused person on bail is to be abolished by proposed section 53 of the proposed Bail Act.

Clause 25: Particular cases may be adjourned

This clause amends section 84 of the Principal Act to apply the proposed Bail Act to the situation where bail is granted upon a case being adjourned.

Clause 26: Accused person may be excused from attendance before Court

Clause 26 amends section 89A of the Principal Act to limit its operation to cases where the accused has been brought before the court by way of summons rather than arrest. Proposed section 30 of the proposed Bail Act provides for excusing the accused in all other circumstances.

Clause 27 Heading to Division 3 of Part VI

Clause 27 renames Division 3 of Part VI of the Principal Act *Recognizances of Witnesses* to reflect the amended application of that Division.

Clause 28: Repeal

This clause repeals sections 99-102 inclusive of the Principal Act, which formerly governed the grant of bail in the Magistrates Court. The Principal Act still contains provision in sections 103-105 inclusive for taking recognizances from witnesses.

Clause 29: Transmission of depositions etc. to the Director of Public Prosecutions

This clause amends section 106 of the Principal Act to delete the word *recognizances* and substitute the phrase *bail undertakings*.

Clause 30: Appeals to which this Division applies

This clause deletes paragraphs 208(1)(g) and (ga) of the Principal Act which has the effect of removing bail decisions made in the Magistrates Court from the ambit of the appeal provisions in Part VI, Division 2 a new paragraph (g) is substituted. Substitute rights of appeal appear in Part VI of the proposed Bail Act.

Clause 31: Repeal

Clause 31 repeals section 214A of the Principal Act because it is made redundant by the omission of paragraph 208(1)(ga).

Clause 32: Stay of execution pending appeal in certain cases

Clause 32 amends section 216 of the Principal Act to apply the proposed Bail Act to the situation where the Magistrates Court grants bail pending an appeal to the Supreme Court.

Clause 33: Security for costs and stay of execution

Clause 33 amends section 219D of the Principal Act to apply the proposed Bail Act to the circumstances where the Magistrates Court may grant bail pending an appeal by way of an order to review a decision under section 219B of the Principal Act.

Clause 34: Repeal of Division 3A of Part XI

This clause repeals Division 3A of Part XI (sections 219G-219L) of the Principal Act which deals with absconding appellants. Substitute provisions are in Part VII of the proposed Bail Act.

Clause 35: Repeal

Clause 35 repeals section 220 of the Principal Act which provides for the forfeiture of recognizances. The proposed Bail Act makes appropriate provision in Part VII.

Clause 36: Power of court or judge to admit to bail

This clause amends section 226 of the Principal Act to ensure that the proposed Bail Act governs the granting of bail to accused persons in all cases.

Clause 37: Repeal of Part XIII A

Clause 37 repeals Part XIII A (sections 248A-248D inclusive) of the Principal Act. The proposed Bail Act supersedes these bail provisions.

Clause 38: Recovery of sum due under security

This clause amends section 250 of the Principal Act to extend its recovery procedures to securities made under the proposed Bail Act.

Clause 39: Sums paid by surety may be recovered from principal

Section 252 of the Principal Act gives a surety, who has had to pay a sum of money in respect of a security, a right to recover the amount plus expenses from the defaulting principal. Clause 39 extends this provision to sureties under the proposed Bail Act.

Clause 40: Payment enforced by security

Clause 40 extends the application of section 253 of the Principal Act to securities taken under the proposed Bail Act.

Clause 41: Enforcement of recognizance

Clause 41 amends section 254 of the Principal Act to confine its enforcement procedures to recognizances which can still be taken under the Principal Act. However, subclause 40(c) does extend the operation of subsection 254(4) of the Principal Act, which empowers the Magistrates Court to vary a forfeiture order, to a forfeiture order made under the proposed subsection 36(1) of the proposed Bail Act.

Clause 42: First Schedule

Clause 42 repeals forms in the First Schedule which are made obsolete by the proposed Bail Act and the amendments proposed in this Bill.

PART IV - AMENDMENTS OF OTHER ACTS

Clause 43: Consequential amendments of other Acts

This clause amends other Acts in the manner set out in the Schedule, as a consequence of the proposed Bail legislation. None makes a substantive change to the law of bail.

Schedule: Amendments of Acts

Children's Services Act 1986

The Schedule repeals section 37 of the Act. The criteria for granting bail to children are to be found in proposed section 23 of the proposed Bail Act.

The Schedule amends subparagraph 64(2)(a)(ii) and omits subsection 64(3) to ensure that the granting of bail where criminal proceedings involving a child are adjourned, is governed by the proposed Bail Act.

The Schedule also amends subsection 168(4) to omit the phrase *entering into a recognizance* and to substitute *giving an undertaking*.

Credit Act 1985

The Schedule amends paragraph 161(3)(b) to remove a reference to recognizances and to substitute modern terminology.

Domestic Violence Act 1986

Part III of the Act, which provides for bail for those charged with domestic violence offences, will be repealed. The provisions which require special notice to be given to those under the protection of the Act appear in the Bail Bill 1992. The repeal of Part III will not affect any substantive rights given under the Act.

Interpretation Act 1967

The Schedule amends the definition of *committed for trial* in subsection 14(1) of the Act by deleting *a recognizance* and substituting *an undertaking*.

Police Act 1927

Section 24 is amended by repealing the provisions for police bail in subsections 24(2)-24(7) inclusive and substitution in subsection 24(1) a reference to the corresponding provisions in the proposed Bail Act.