



New South Wales

# Bail Amendment (Firearms and Property Offences) Act 2003 No 84

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New South Wales

## **Bail Amendment (Firearms and Property Offences) Act 2003 No 84**

Act No 84, 2003

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An Act to amend the *Bail Act 1978* with respect to presumptions against the granting of bail to persons accused of certain firearms and property offences, sureties and forfeiture of sureties; to amend the *Criminal Procedure Act 1986* with respect to persons arrested on conviction warrants; and for other purposes. [Assented to 5 December 2003]

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

**1 Name of Act**

This Act is the *Bail Amendment (Firearms and Property Offences) Act 2003*.

**2 Commencement**

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

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

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

**4 Amendment of Criminal Procedure Act 1986 No 209**

The *Criminal Procedure Act 1986* is amended as set out in Schedule 2.

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## Schedule 1 Amendment of Bail Act 1978

(Section 3)

### [1] Part 2, Division 2A, heading

Omit “drug”.

### [2] Sections 8B and 8C

Insert after section 8A:

#### **8B Presumption against bail for serious firearms and weapons offences**

- (1) This section applies to the following offences:
  - (a) an offence under section 93G, 93GA, 93H (2), 93I (2) or 154D of the *Crimes Act 1900*,
  - (b) an offence under section 7, 36, 50, 50A (2), 51 (1A), 51 (2A), 51A or 51D (2) of the *Firearms Act 1996*, being an offence that relates to a prohibited firearm or pistol,
  - (c) an offence under section 51B or 51BB of the *Firearms Act 1996*.
- (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.

#### **8C Presumption against bail for certain repeat property offenders**

- (1) This section applies to an accused person if:
  - (a) the person is accused of 2 or more serious property offences, not being offences arising out of the same circumstances, and
  - (b) bail is sought in respect of one or more of those offences, and
  - (c) the person has been convicted of one or more serious property offences within the last 2 years.
- (2) The accused person 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 the accused person and section 10 (2) does not apply with respect to any such offence.
- (4) In this section:
  - serious property offence* means:
    - (a) an offence under section 94, 95, 96, 97, 98, 99, 106, 107, 109, 110, 111, 112, 113, 149, 154AA or 154C of the *Crimes Act 1900*,
    - (b) an offence of attempting to commit an offence referred to in paragraph (a),
    - (c) an offence under the law of the Commonwealth, another State or a Territory or of another country that is similar to an offence referred to in paragraph (a) or (b).

**[3] Section 9 Presumption in favour of bail for certain offences**

Insert “or 8B (1)” after “section 8A (1)” in section 9 (1) (a).

**[4] Section 9 (1) (e1)**

Omit the paragraph.

**[5] Section 9 (1AA)**

Insert after section 9 (1):

- (1AA) This section does not apply in respect of a grant of bail to an accused person to whom section 8C applies.

**[6] Section 9D Repeat offenders—serious personal violence offences**

Omit “Section 9 does not” from section 9D (3).

Insert instead “Sections 8C and 9 do not”.

**[7] Section 17 Authority for police to grant bail**

Insert after section 17 (2):

- (3) A police officer may not grant bail to a person who has been arrested pursuant to a warrant to bring the person before a court for sentencing and any such person must be brought before a court as soon as reasonably practicable.

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- (4) Despite subsection (3), a police officer may grant bail to a person referred to in that subsection if the police officer is satisfied that exceptional circumstances justify the grant of bail and the police officer is otherwise entitled to grant bail under this Act.

**[8] Section 32 Criteria to be considered in bail applications**

Omit “section 8A applies”.

Insert instead “section 8A or 8B applies, and a grant of bail to which section 8C applies”.

**[9] Section 38 Reasons to be recorded**

Insert “, 8B, 8C, 9C or 9D” after “section 8A” in section 38 (1A).

**[10] Section 40 Provisions respecting money or security**

Insert after section 40 (2):

- (3) An officer or court with whom money or security is deposited pursuant to a bail condition may require the person who provides the money or security to provide information, or to agree to a means, to enable the return of the money or security in the event that it is to be returned to the person.

**[11] Section 52 No penalty for failure to appear if case dealt with ex parte**

Omit the section.

**[12] Section 53 Definitions**

Insert “or an order taken to be made under section 53AA” after “section 53A” in the definition of *forfeiture order*.

**[13] Section 53AA**

Insert after section 53A:

**53AA Forfeiture after conviction for offence of failing to appear**

- (1) On the conviction of a person for an offence under section 51, any bail money agreed to be forfeited under a bail agreement associated with the bail undertaking concerned is forfeited and a forfeiture order is taken to have been made under this Part by the court that convicted the person.
- (2) This section does not affect any right to make a forfeiture order under section 53A in relation to a person accused of committing an offence under section 51.

**[14] Section 53C Formal objection to confirmation of forfeiture order**

Omit “the office of the court by which the order was made” from section 53C (1).

Insert instead “the registry of a Local Court”.

**[15] Section 53C (4)**

Omit “court”. Insert instead “Local Court”.

**[16] Section 53D Hearing of formal objection to confirmation of forfeiture order**

Omit “court” wherever occurring. Insert instead “Local Court”.

**[17] Section 53D (5)**

Insert after section 53D (4):

- (5) This section does not apply to a forfeiture order taken to have been made under section 53AA.

**[18] Section 53DA**

Insert after section 53D:

**53DA Hearing of formal objections to deemed forfeiture orders**

- (1) A Local Court to which an objection to the confirmation of a forfeiture order taken to have been made under section 53AA is duly made must conduct a hearing to determine whether or not the order should be confirmed.

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- (2) After conducting a hearing, the Local Court must confirm the forfeiture order unless it is satisfied as referred to in subsection (3).
  - (3) If the Local Court is satisfied that in the circumstances of the case it would be unjust for the forfeiture order to be confirmed in full in respect of a particular person affected by the order, the Local Court:
    - (a) may vary the order so as to reduce the amount of bail money to be forfeited by that person, and
    - (b) in that event, must confirm the order as so varied.
  - (4) The Local Court may be satisfied that it would be unjust for a forfeiture order to be confirmed in full in respect of a particular bail guarantor if it is satisfied that the guarantor took all reasonable steps to ensure that the accused person complied with the relevant bail undertaking.

**[19] Section 53E Informal objection to forfeiture order**

Insert “in the registry of a Local Court” after “filed” in section 53E (3).

**[20] Section 53F When forfeiture order takes effect**

Omit “filed in the court” from section 53F (1) (b).

Insert instead “filed in the registry of a Local Court or made under section 53E”.

**[21] Section 53F (1) (b)**

Insert “or 53DA” after “section 53D”.

**[22] Section 53K Application to set aside forfeiture order**

Omit “the office of the court” from section 53K (2).

Insert instead “the registry of a Local Court”.

**[23] Section 53K (5)**

Omit “court”. Insert instead “Local Court”.

**[24] Section 53L Hearing of application to set aside forfeiture order**

Omit “court” wherever occurring. Insert instead “Local Court”.



**[25] Section 53L (5)**

Omit “court’s”. Insert instead “Local Court’s”.

**[26] Section 63**

Insert after section 62:

**63 Return of sureties**

- (1) If bail money or a bail security has been deposited in connection with proceedings for an offence, and a finding is made that the accused person is guilty or not guilty of the offence, the court must, if it has not previously done so, consider whether to make an order for the return of the money or security or a forfeiture order (if applicable).
- (2) Words and expressions in this section have the same meanings as they have in Part 7A.

**[27] Schedule 1 Savings and transitional provisions**

Insert in appropriate order with appropriate Part and clause numbers:

**Part Bail Amendment (Firearms and Property Offences) Act 2003**

**Definition**

In this Part:

*amending Act* means the *Bail Amendment (Firearms and Property Offences) Act 2003*.

**Presumptions against bail**

- (1) Section 8B, as inserted by the amending Act, extends to a grant of bail in respect of an offence alleged to have been committed before the commencement of that section if a person is charged with the offence on or after that commencement.
- (2) Section 8C, as inserted by the amending Act, extends to a grant of bail in respect of an offence alleged to have been committed before the commencement of that section if a person is charged with the offence on or after that commencement.

- (3) A reference in section 8C to a conviction for an offence extends to a conviction occurring before the commencement of that section.

**Forfeiture of sureties on failure to appear**

Section 53AA, as inserted by the amending Act, does not apply to bail money deposited before the commencement of that section.

**Objections to forfeiture orders**

Nothing in the amending Act affects the jurisdiction of a court to deal with an objection to the confirmation of a forfeiture order if the objection was made under this Act before the commencement of this clause.

## **Schedule 2 Amendment of Criminal Procedure Act 1986**

(Section 4)

### **Section 317A**

Insert after section 317:

#### **317A Courts to deal expeditiously with persons arrested for sentencing**

A court that issues a warrant for the arrest of a person to be brought before the court for sentencing must, after the person is arrested and brought before the court, deal with the proceedings as expeditiously as possible.

[Second reading speech made in—

Legislative Council on 19 November 2003

Legislative Assembly on 2 December 2003]

BY AUTHORITY