



New South Wales

Bail Amendment Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Bail Act 1978*:

- (a) to create a presumption against bail in respect of certain serious firearms offences, and
- (b) to limit the number of applications in relation to bail that may be made to a court by a person accused of an offence, and
- (c) for statute law revision purposes.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] creates a presumption against bail in respect of offences against sections 44A and 62 of the *Firearms Act 1996*.

Section 44A of the *Firearms Act 1996* makes it an offence for a licensed firearms dealer to involve prescribed persons in the business authorised by the licence. (Prescribed persons include persons who have had a firearms dealer licence revoked, persons who have been convicted of serious offences or persons who have had their firearms licence refused or revoked because of a failure to satisfy good character requirements.) The offence carries a maximum penalty of imprisonment for 14 years.

Section 62 of the *Firearms Act 1996* makes it an offence for a person to shorten a firearm or sell or possess a firearm that has been shortened. The offence carries a maximum penalty of imprisonment for 10 years.

Schedule 1 [2] makes a statute law revision amendment that updates cross-references to provisions of the *Crimes Act 1900* which were amended by the *Crimes Legislation Amendment (Gangs) Act 2006*.

Schedule 1 [3] limits the number of applications in relation to bail that may be made to a court by an accused person. At present, there is no limit on the number of applications that may be made to a court by an accused person in relation to bail.

The amendment will require a court to refuse to entertain an application for bail by a person accused of an offence if an application by the person in relation to that bail has already been made and dealt with by a court, unless:

- (a) the person was not legally represented when the previous application was dealt with, and the person now has legal representation, or
- (b) the court is satisfied that new facts or circumstances have arisen since the previous application that justify the making of another application.

The amendment will also prevent further applications being made to a court by lawyers for an accused person (except where the application would be permitted under paragraph (a) or (b) above).

Schedule 1 [4] provides for transitional matters.

First print



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New South Wales

Bail Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Bail Act 1978* to make further provision with respect to bail for accused persons.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Bail Amendment Act 2007</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Bail Act 1978 No 161	6
The <i>Bail Act 1978</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 8B Presumption against bail for serious firearms and weapons offences	3
	Omit “51B or 51BB” from section 8B (1) (c).	4
	Insert instead “44A, 51B, 51BB or 62”.	5
[2]	Section 9D Repeat offenders—serious personal violence offences	6
	Omit “195 (b), 196 (b)” from paragraph (a) of the definition of <i>serious personal violence offence</i> in section 9D (4).	7
	Insert instead “195 (1) (b) or (2) (b), 196 (1) (b) or (2) (b)”.	8
[3]	Sections 22 and 22A	9
	Omit the sections. Insert instead:	10
	22 General provisions as to court bail	11
	(1) An application to a court in relation to bail is to be dealt with as soon as reasonably practicable.	12
	(2) The regulations may make provision for or with respect to the manner of making applications to courts in relation to bail.	13
	22A Power to refuse to hear bail application	14
	(1) A court is to refuse to entertain an application for bail by a person accused of an offence if an application by the person in relation to that bail has already been made and dealt with by a court, unless:	15
	(a) the person was not legally represented when the previous application was dealt with, and the person now has legal representation, or	16
	(b) the court is satisfied that new facts or circumstances have arisen since the previous application that justify the making of another application.	17
	(2) A court may refuse to entertain an application in relation to bail if it is satisfied that the application is frivolous or vexatious.	18
	(3) The Supreme Court may refuse to entertain an application in relation to bail if the bail application comprises a bail condition review that could be dealt with under section 48A by a magistrate or authorised justice or the District Court.	19
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- (4) Except as provided by subsection (3), this section does not affect the power of a court to review a decision in relation to bail under Division 2 of Part 6 or the right of a person to request such a review. 1
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- (5) If a court has previously dealt with an application for bail for a person accused of an offence, a further application to a court for bail in relation to that offence may not be made by a lawyer on behalf of that person, unless the lawyer is satisfied that: 5
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 - (a) the person was not legally represented when the previous application was dealt with, or 9
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 - (b) new facts or circumstances have arisen since the previous application that justify the making of another application. 11
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[4] Schedule 1 Savings and transitional provisions 13

Insert after Part 18: 14

Part 19 Bail Amendment Act 2007 15

36 Persons charged with firearms offences before commencement of Bail Amendment Act 2007 16
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The amendment made to section 8B by the *Bail Amendment Act 2007* extends to a grant of bail to a person in respect of an offence committed before the commencement of that amendment, but only if the person is charged with the offence on or after that commencement. 18
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37 Limit on bail applications 23

The amendments made to sections 22 and 22A by the *Bail Amendment Act 2007* extend to an application in relation to bail made by or on behalf of a person in a case where an application in relation to that bail has already been made by or on behalf of the person and dealt with by a court before the commencement of the amendments. 24
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