



## **BAIL AMENDMENT BILL 1998**

### **Explanatory Notes**

#### ***Part 1 - Preliminary***

##### *Clause 1 Short title*

Short title of the Act.

##### *Clause 2 Commencement*

The Act will come into operation on a date, or dates, to be specified by way of proclamation made by the Governor in Executive Council.

##### *Clause 3 The Act amended*

The various amendments proposed throughout the Act are amendments to the *Bail Act 1982*.

#### ***Part 2 - Amendment to restrict bail powers to a court or a Judge in certain cases***

##### *Clause 4 Section 3 amended*

Section 3 of the *Bail Act 1982* is amended to include a definition of early release order. Under the provisions of the *Sentence Administration Act 1995*, an early release order means either a parole order, work release order or a home detention order.

The purpose of including such a definition in the *Bail Act 1982* is that such orders have particular significance in relation to the granting of bail for certain defendants. The specific nature of such provisions is referred to in the proposed new section 16A of the *Bail Act 1982*, which will be inserted through Clause 6 of the *Bail Amendment Bill 1998*.

##### *Clause 5 Section 6 amended*

Section 6 of the *Bail Act 1982*, which deals with the duty of arresting officers in relation to bail, is amended so as to provide that where the provisions of the proposed new section 16A apply [see Clause 6 of the *Bail Amendment Bill 1998*], the arresting officer, or person, is required to bring the defendant before a court or a Judge for the purposes of bail consideration.

This provision is required as "authorised police officers" etc, will not have the power to consider bail for those defendants to whom the proposed section 16A will apply.

*Clause 6 Section 16A inserted and transitional provision*

The proposed new section 16A places restrictions on the consideration of bail for certain defendants.

This section applies where a person has been arrested in an urban area for a serious offence and such offence is alleged to have been committed while the defendant was either:

- on bail, in respect of another serious offence; or
- subject to an early release order, in respect of another serious offence.

In addition section 16A also applies where a person has been arrested anywhere in the State, either urban or non-urban areas, for a breach of a violence restraining order.

For defendants covered by the provisions of section 16A, the consideration of bail can only be made by a magistrate or, where section 15 of the *Bail Act 1982* applies, by a Judge of the Children's Court or the Supreme Court.

The notion of an "urban area" is provided for in section 16A(4) which provides the relevant definition for such an area. For the time being, the Bill provides that the Perth Metropolitan Region is the only urban area, but provision is made for further areas to be prescribed.

Section 16A also contains a transitional provision in subsection (5) such that where section 16A refers to the arrest of a person for a specified offence(s), the provisions only operate in respect of an arrest that takes place on or after section 16A comes into operation.

***Part 3 - Amendment to extend Schedule 1, Part C, clause 3A, to persons on parole etc.***

*Clause 7 Schedule 1 amended*

Currently clause 3A of Part C of Schedule 1 of the *Bail Act 1982*, limits the granting of bail in respect of defendants who are charged with committing a serious offence while on bail for another serious offence.

As with the proposed section 16A of the *Bail Act 1982* [see clause 6 of the *Bail Amendment Bill 1998*] the provisions of clause 3A of Part C of Schedule 1 will be extended so as to also apply to a defendant who is alleged to have committed a serious offence while subject to an early release order in respect of another serious offence.

***Part 4 - Insertion of another matter to be considered in making the decision to grant or refuse bail***

*Clause 8 Schedule 1 amended*

At present Part C of Schedule 1 of the *Bail Act 1982*, and in particular clause 1, provides a range of factors to be considered in exercising discretion to grant bail. While it may be that a person charged with a particularly vicious crime is likely to appear in court in accordance with their undertaking, and is unlikely to commit further offences or endanger witnesses or any other person or otherwise obstruct

the course of justice, it is clear that there will be cases where the sheer seriousness of the circumstances of the crime itself makes it inappropriate to release the defendant on bail.

It is proposed that this list of factors be supplemented by enabling the officer who is considering bail to consider whether the alleged circumstances of the offence(s) are of such a serious nature as to make the granting of bail inappropriate.

### ***Part 5 - Amendment relating to the imposition of bail conditions***

#### *Clause 9 Section 51 amended*

Section 51 of the *Bail Act 1982* provides that a breach of a bail undertaking, where the breach is by failure to attend court when required, is an offence which can attract a penalty of up to 3 years imprisonment or a fine of up to \$3,000.

Section 51 is to be expanded such that the breach of specified conditions in a bail undertaking will also constitute an offence. The specified conditions relate to conditions imposed to protect the safety of a person or their property [see clause 2(2)(c) or (d) of Part D of Schedule 1 of the *Bail Act 1982*: Clause 2(2)(c) relates to not endangering the safety, welfare or property of any person; and clause 2(2)(d) relates to not interfering with witnesses or otherwise obstructing the course of justice, whether in relation to the defendant or any other person].

In addition the penalty range for a "breach of bail" has been amended so that a fine of up to \$10,000 can now be imposed. The imprisonment provision, up to 3 years imprisonment, remains unaltered.

#### *Clause 10 Section 52 amended*

Section 52 of the *Bail Act 1982* which deals with summary proceedings in superior courts for offences under section 51, is consequentially amended as a result of the additional "breach of bail" offence inserted in section 51 of the Act [see clause 9 of the *Bail Amendment Bill 1998*].

#### *Clause 11 Section 57 amended*

Section 57 of the *Bail Act 1982* which deals with forfeiture of money under a bail undertaking, is consequentially amended as a result of the additional "breach of bail" offence inserted in section 51 of the Act [see clause 9 of the *Bail Amendment Bill 1998*].

#### *Clause 12 Schedule 1, clause 2, amended*

Clause 12 of the *Bail Amendment Bill 1998* inserts two key provisions into clause 2 of Part D of Schedule 1 of the *Bail Act 1982*.

First, a new subclause (2a) is inserted which directs the officer considering bail to have regard to the making of a restraining order in order to ensure, or assist in ensuring, that a defendant complies with their bail undertaking. While an authorised police officer cannot make a restraining order, such an officer is directed to consider whether to make a telephone application for such an order.

Secondly, a new subclause (2b) is inserted which will allow a judicial officer, when considering a grant of bail, to impose a condition that the defendant undergo counselling, or attend courses/programs, aimed at addressing a behavioural problem. Presently the *Bail Act 1982* makes provision for defendants to undergo various forms of treatment/examination: by the new subclause (2b) these provisions are broadened. The Bill provides that service providers be gazetted by regulation to ensure that the court is better placed to select courses or other interventions which have the best chance of achieving the objective being sought by the court in making the order.

In addition clause 2(2)(5) of Part D of Schedule 1 is repealed and replaced with similar provisions that will require the judicial officer when, imposing certain bail condition, to advise the relevant person [counsellor, doctor etc] of the reasons for the imposition of the conditions. Although clause 2(2)(5) already provides for this to occur, it has been re-drafted to better reflect the broadened types of conditions/treatments that can be imposed on a defendant.

***Part 6 - Amendment relating to defendants who, while on bail for a serious offence, commit another serious offence that constitutes a breach of a restraining order or a protective bail condition***

*Clause 13 Schedule 1 amended*

Clause 3A(1) of Part C of Schedule 1 of the *Bail Act 1982* presently provides a range of factors whereby the officer considering bail is directed to refuse bail unless there are exceptional reasons why the defendant should not be kept in custody.

Clause 3A(1) is to be amended to contain reference first to the restrictions imposed by the new section 16A of the Act [see clause 6 of the *Bail Amendment Bill 1998*], and secondly the additional matters that must be taken into account by virtue of the new subclause 3B, in considering whether there are exceptional circumstances which warrant the granting of bail.

A new clause 3B is inserted in Part C of Schedule 1 of the *Bail Act 1982* to provide a range of issues that the officer considering bail must have regard to before considering that there are exceptional reasons for the granting of bail to defendants to whom clause 3A of Part C of Schedule 1 applies.

Specifically, the officer considering bail will be required to have regard to:

- whether an alleged serious offence, as referred to in clause 3A(1)(b), would amount to a breach of a "protective condition or order";
- in determining whether there are exceptional reasons for the granting of bail, enquire whether there has been any proven or alleged breaches of protection conditions or orders; and
- if the officer is aware of any such breach, he/she is to give the "protected person" an opportunity to be heard.

In addition, the officer is to give due weight to any comments made by the "protected person"; any adverse effect the granting of bail may have on the protected person; and any difficulty that there may be in the future for the protected person in proving that there had been a breach of the protection condition or order.

Also, the officer considering bail must:

- consider whether it is appropriate to refuse bail and make a "hospital order" under the *Criminal Law (Mentally Impaired Defendants) Act 1996*;
- treat any alleged breach of a protection condition or order as serious; and
- consider whether any alleged breach of a protection condition or order requires the defendant to be kept in custody, as the purpose of protection condition or order has not been met.

The term "protective condition or order" relates to either:

- A condition imposed in relation to clause 2(2)(c) or (d) of Part D of Schedule 1 of the *Bail Act 1982* [see note at clause 9 of the *Bail Amendment Bill 1998*];
- A violence restraining order; or
- An order made under the now repealed Part VII of the *Justices Act 1902*, which is akin to a violence restraining order.

### *Part 7 - Amendment to include further offences in the definition of serious offence*

#### *Clause 14 Section 3 amended*

Section 3 of the *Bail Act 1982*, in the definition of "serious offence", is amended so as to also include the new "breach of bail" offence inserted in section 51 of the Act [see clause 9 of the *Bail Amendment Bill 1998*].

#### *Clause 15 Schedule 2 amended*

Item 1 of Schedule 2 of the *Bail Act 1982* details those offences under *The Criminal Code* which are treated as "serious offences" for the purposes of the *Bail Act 1982*. In particular:

##### *s.378(2) - Stealing a Motor Vehicle*

Presently Schedule 2 refers to offences under section 378(2) in terms of where the offence is "aggravated by reckless or dangerous driving".

##### *s.401 - Burglary*

Schedule 2 also refers to particular burglary offences (s.401) where "the defendant is charged on indictment".

These specific riders in respect of sections 378 and 401 are to be removed from Schedule 2 of the *Bail Act 1982*, such that all burglary and all car theft offences will be treated as serious offences.

In addition, Schedule 2 currently refers to "orders to keep the peace" made under the now repealed Part VII of the *Justices Act 1902*. Part VII of the *Justices Act 1902* was repealed with the enactment of the *Restraining Orders Act 1997*. As a consequence, Schedule 2 of the *Bail Act 1982* is being amended to refer to offences which constitute a breach of a violence restraining order.

Under the transitional provisions of the *Restraining Orders Act 1997*, reference was made to the "old" Part VII orders which were still in force at the time the *Restraining Orders Act 1997* came into operation. As a number of these "old" orders are still in force, and may have been breached, Schedule 2 of the *Bail Act 1982* is also amend to refer to these "old" Part VII orders [which are akin to a violence restraining order].