

# **Bail and Penalties and Sentences Amendment Bill 2007**

## **Explanatory Notes**

### **Objective of the Bill**

The objective of this Bill is to amend the *Bail Act* 1980 (Qld) (the '*Bail Act*') and the *Penalties and Sentences Act* 1992 (Qld) (the '*Penalties and Sentences Act*') to add a relevant consideration to bail and sentencing decisions.

### **Reasons for the Bill**

Currently under s 16(1) of the *Bail Act*, a person in custody will be refused bail by a court or police officer where it is necessary for the person's own protection; where the person may re-offend, endanger the safety or welfare of others, or interfere with witnesses; or where there is an unacceptable risk that the person, if released, will fail to appear and surrender into custody.

In determining whether bail should be granted, a court or police officer is required to take into consideration factors such as the nature and seriousness of the offence; the character, antecedents and background of the person; any history of previous grants of bail; and the strength of evidence against the person: s 16(2).

Section 16(3), as presently drafted, provides that where a person is charged with any of the serious offences listed in subsections 16(3)(a)-(d), a court or police officer shall refuse to grant bail unless the person shows cause why their detention in custody is not justified. If bail is granted under this provision or the person is released under s 11A (release of an intellectually impaired person) of the Act, the court or police officer must include in the order a statement of the reasons for granting bail or releasing the person: s 16(3).

Despite no general right to bail and, more specifically, the legislative requirement to satisfy a court or police officer that a person's release from custody is justified, there is increasing public outcry that bail is being granted too leniently. There is also growing community concern that persons are being released from custody in circumstances where their charges and previous offending history indicate that they should not be.

Media reports of persons committing serious offences whilst on bail for a prior offence are frequent. The financial and time costs that this re-offending places on the Courts, police and other justice agencies is significant. The community also undoubtedly suffers through repeat crime; through reduced security and safety; and through the diversion of police resources to attend to new criminal matters. Moreover, an alarming number of people who are released from custody ultimately breach bail warrants, failing to appear in court on charges they face. The number of people who breached bail warrants in south-east Queensland between 1 July 2005 and 12 June 2006 was 14,689.<sup>1</sup>

---

<sup>1</sup> Peter Gleeson, 'Bailed to disappear: killers, rapists roam free as 15,000 warrants breached', *Gold Coast Bulletin*, 27 June 2006, p 4.

The amendments to both the *Bail Act* and the *Penalties and Sentences Act* introduced in this Bill reinforce the seriousness of bail. The Bill achieves this by permitting the Courts and police officers to assess current applications for bail by considering previous grants to the defendant, and importantly, their compliance with the terms and conditions of that prior release. It also clarifies circumstances when a defendant's application for bail must be refused and makes an offender's conduct whilst on bail a relevant sentencing consideration.

## **Notes on Provisions**

### **Part 1 - Preliminary**

Clause 1 provides that the short title of the Act is the *Bail and Penalties and Sentences Amendment Act 2007*.

### **Part 2 – Amendment of Bail Act 1980**

Clause 2 provides that Part 2 amends the *Bail Act*.

Clause 3 amends s 16 of the *Bail Act* to legislate certain situations when a defendant should be refused bail. The amendment omits the current s 16(2)(c) and s 16(3), inserting new provisions in their place. The new subsection 16(2)(c) provides that in assessing whether the defendant poses an unacceptable risk, and accordingly, whether they should be granted bail under s 16, the Court or police officer shall have regard to the history of any previous grants of bail to the defendant and the conduct of the defendant whilst on bail. Specifically, subsection 16(2)(c) establishes as a relevant consideration whether the defendant committed, or is alleged to have committed, another offence during a previous grant of bail (s 16(2)(c)(i)) and whether the defendant failed to appear and surrender into custody in relation to a previous grant of bail.

The new subsection 16(3) introduced in this Bill sets out that if a defendant is charged with any offence for which the maximum penalty is at least 2 years imprisonment or with an offence against the *Bail Act*, the Court or police **must** refuse to grant bail unless the defendant shows cause why their detention in custody is not justified: s 16(3)(a). This provision, in effect, establishes a rebuttable presumption that bail should not be granted where an offence of the kind indicated has been committed. Subsection 16(3)(b) further requires that if bail is granted or the defendant is released under s 11A (Release of intellectually impaired person), the court or police officer must include in the order a statement of the reasons for granting bail or releasing the defendant.

### **Part 3 – Amendment of Penalties and Sentences Act 1992**

Clause 4 provides that Part 3 amends the *Penalties and Sentences Act*.

Clause 5 inserts a new subsection 9(2)(ia) into the *Penalties and Sentences Act*. Section 9(2) contains guidelines that the Courts are required to consider in determining the appropriate sentence for an offender. The new subsection establishes as a relevant consideration that if bail had been granted to the offender, whether the offender complied with the terms and conditions of the bail. It is not intended that this amendment create a positive consideration that can be

construed in favour of an offender. That is, if an offender has complied with the terms and conditions of bail, this new subsection 9(2)(ia) will not entitle an offender to a discount on their punishment. Grants of bail carry with them serious obligations and undertakings which are required to be satisfied. This legislation presumes that the terms and conditions of bail will be complied with. Subsection 9(2)(ia) will, however, permit a court to consider whether an offender's failure to comply with the terms and conditions of their bail should result in a higher punishment in the range available being imposed.

The rationale behind this provision, and indeed, behind the entire Bill, is to both punish the offender for showing disregard of the importance of bail and to deter further such behaviour by the offender and others. These amendments also intend to send a clear message to the community, through court processes, that the conduct of the offender is denounced.

\*\*\*\*\*