

**THE NEW SECTION 22B
OF THE *BAIL ACT* 2013 (NSW)**

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Scholars Of Bail



1. WHAT IS IT?



**2. WHERE DID IT
COME FROM?**



**3. WHERE HAS
IT BEEN?**



**4. WHERE WILL
IT GO?**

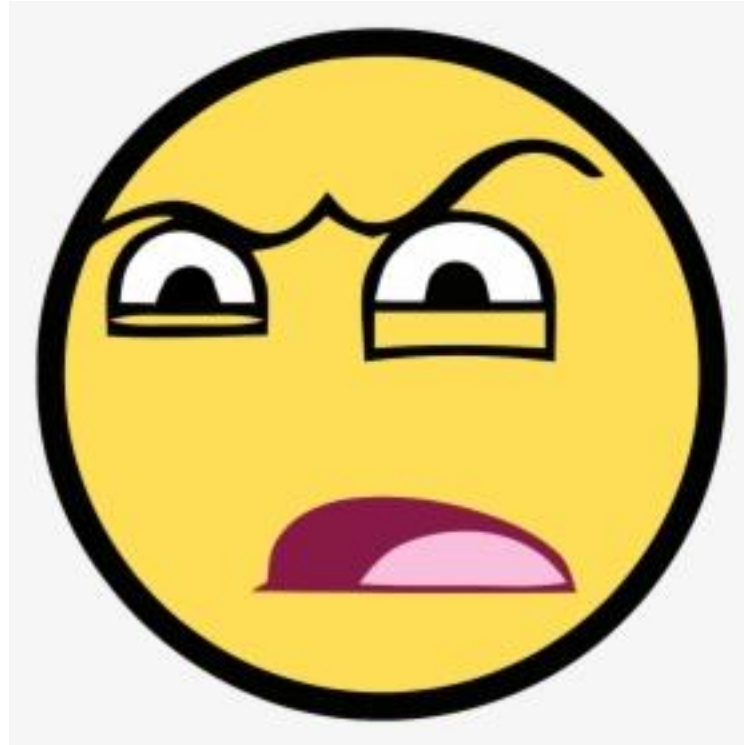
1. WHAT IS IT?



22B Limitation regarding bail during period following conviction and before sentencing for certain offences

- (1) During the period following conviction and before sentencing for an offence for which the accused person will be sentenced to imprisonment to be served by full-time detention, a court—
 - (a) on a release application made by the accused person—must not grant bail or dispense with bail, unless it is established that special or exceptional circumstances exist that justify the decision, or
 - (b) on a detention application made in relation to the accused person—must refuse bail, unless it is established that special or exceptional circumstances exist that justify the decision.
- (2) If the offence is a show cause offence, the requirement that the accused person establish that special or exceptional circumstances exist that justify a decision to grant bail or dispense with bail applies instead of the requirement that the accused person show cause why the accused person's detention is not justified.
- (3) Subject to subsection (1), Division 2 applies to a bail decision made by a court under this section.
- (4) This section applies despite anything to the contrary in this Act.

(5) In this section—***conviction*** also includes a plea of guilty.





Attorney General reviewing bail decision for two paedophiles

12/06/2022

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BY HADLEY EXCLUSIVE 

2. WHERE DID IT COME FROM?




The public prosecutor has been asked to review bail decisions for two paedophiles.



“The police have been throwing up their hands in frustration, saying, “Why in the hell do we work so hard and then we see these mongrels crawl out of the courts and straight back onto the streets?” I fully agree with the police and share their frustration. I remind this Chamber that this Government claimed it had “simplified” bail. Instead, it has created a revolving door for violent criminals.”

....

“I wish I had a dollar for every time the name Ray Hadley was mentioned in the Chamber this morning because I would be able to shout us all a drink this afternoon. No, Ray Hadley is not the Premier or the Leader of the Opposition, but sometimes I wish he sat in Cabinet because he appears to be able to get things done. I support the bill, as does our party. But it is a shame that it has taken recent media and public outcry to drag the Attorney General to draft this legislation and make amendments.”



“I have worked in the criminal justice system for many years, unlike other members in this House. Let us remember that we already have one of the toughest bail systems in the country. Let us also remember that we are talking about the State exercising its ultimate power of removing somebody's liberty and incarcerating them. It is one of the most extreme powers the State can ever exercise, and we must never forget that when we talk about bail laws. The proposed amendments are harsh, draconian and completely unnecessary. But most significantly, if these amendments to the Act are passed they will disproportionately impact Aboriginal communities, vulnerable and poor people, people with mental health issues and people with addiction. It is shocking that the Government would introduce a law that would result in impacts on Aboriginal communities when it is in partnership with legal organisations like the Aboriginal Legal Service and has committed to implement the work of Closing the Gap.”



3. WHERE HAS IT BEEN?

R v LM [2022] NSWSC 987 – 28 June 2022

[15] In the event that the offences are dealt with to finality in the Children’s Court, there can be no question of the application of the provision. That is because any sentence imposed by the Children’s Court would not include imprisonment.

Director of Public Prosecutions (NSW) v Van Gestel

Supreme Court review (of DC bail) – [2022] NSWSC
973 – 21 July 2022

On appeal – [2022] NSWCCA 171 (12 August 2022)

45. In making that assessment, the Court will have regard to:

- 1.the offence(s) for which the accused person has been convicted, bearing in mind the principles of sentencing and all applicable sentencing laws, specifically the *Sentencing Procedure Act*, including the available sentencing alternatives to full time imprisonment;**
- 2.the materials and submissions placed before the Court as the bail authority relevant to the future disposition of the sentence with respect to the convicted person; and**
- 3.the abbreviated nature of the release or detention application before the Court, especially, that the application is not a pseudo or abridged sentencing hearing.**

GREYER
AREA

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Director of Public Prosecutions (NSW) vs Day [2022] NSWCCA 173 15 August 2022

Found guilty after trial of 34 charges of fraudulent embezzlement. Bail continued after verdict by judge.

Applied *Van Gestal* – and concluded at [32]

In the present case, having regard to the objective circumstances of the offending set out in the Crown case statement, the maximum penalty, the deference that should be given to the view expressed by the trial judge as to the likely disposition of the sentence, the foreshadowed submissions of the parties on sentence and the applicable sentencing principles and laws, including the *Crimes (Sentencing Procedure) Act*, we were not satisfied that the respondent will be sentenced to imprisonment to be served by fulltime detention.



R v Sturmann [2022] NSWLC 3

15 September 2022

- Sentenced to full time imprisonment
- Severity appeal lodged
- Section 22B applies “during the period following conviction and before sentencing”
- If an appeal is filed and the person is continuing to serve their sentence of imprisonment, is it “following conviction and before sentencing”?



R v Boujandy [2022] NSWDC 517 – detention app in context of special hearing – s 22B did not apply

Director of Public Prosecutions v PH (NSW) [2022] NSWSC 1245 – det. application refused for a juvenile

R v Isaac [2023] NSWSC 22 – special and exceptional circumstances



4. WHERE WILL IT GO?

(AKA WHAT ARE WE GOING TO DO?)

- A. ADVISING YOUR CLIENT
- B. BEING READY FOR A BAIL APP
 - A. LAW;
 - B. SUBJECTIVE MATERIAL - VULNERABILITY
- C. WARN OF HIGH DEGREE OF CAUTION.
- D. RECUSAL??

Papers on this topic:

BAIL FOLLOWING CONVICTION AND BEFORE SENTENCING THE NEW SECTION 22B OF THE *BAIL ACT 2013* (with addendum)

By Nick Broadbent and Rose Khalilizadeh

<https://www.publicdefenders.nsw.gov.au/Documents/bail-amendments-after-conviction-with-addendum-110722.pdf>

BAIL FOLLOWING CONVICTION AND BEFORE SENTENCING SECTION 22B OF THE *BAIL ACT 2013* “NINE MONTHS LATER”

By Nick Broadbent and Rose Khalilizadeh

<https://www.publicdefenders.nsw.gov.au/Documents/bail-addendum2-march2023.pdf>

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