



Crimes Amendment (Bail and Sentencing) Act 2006

No. 171, 2006

An Act to amend the *Crimes Act 1914*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 171, 2006

An Act to amend the *Crimes Act 1914*, and for related purposes

[Assented to 12 December 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Crimes Amendment (Bail and Sentencing) Act 2006*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Crimes Act 1914

1 Subsection 3(1)

Insert:

bail authority means a court or person authorised to grant bail under a law of the Commonwealth, a State or a Territory.

2 Subsection 15AA(5) (definition of *bail authority*)

Repeal the definition.

3 After section 15AA

Insert:

15AB Matters to be considered in certain bail applications

- (1) In determining whether to grant bail to a person charged with, or convicted of, an offence against a law of the Commonwealth, or in determining conditions to which bail granted to such a person should be subject, a bail authority:
 - (a) must take into consideration the potential impact of granting bail on:
 - (i) any person against whom the offence is, or was, alleged to have been committed; and
 - (ii) any witness, or potential witness, in proceedings relating to the alleged offence, or offence; and
 - (b) must not take into consideration any form of customary law or cultural practice as a reason for:
 - (i) excusing, justifying, authorising, requiring or lessening the seriousness of the alleged criminal behaviour to which the alleged offence relates, or the criminal behaviour to which the offence relates; or
 - (ii) aggravating the seriousness of the alleged criminal behaviour to which the alleged offence relates, or the criminal behaviour to which the offence relates.

- (2) If a person referred to in subparagraph (1)(a)(i) or (ii) is living in, or otherwise located in, a remote community, the bail authority must also take into consideration that fact in considering the potential impact of granting bail on that person.
- (3) In paragraph (1)(b):
- criminal behaviour*** includes:
- (a) any conduct, omission to act, circumstance or result that is, or forms part of, a physical element of the offence in question; and
 - (b) any fault element relating to such a physical element.
- (4) To avoid doubt, except as provided by subsections (1) and (2), this section does not affect:
- (a) any other matters that a bail authority must, must not or may take into consideration in determining whether to grant bail or in determining conditions to which bail should be subject; or
 - (b) the operation of a law of a State or a Territory.

Note: Subsections (1) and (2) indirectly affect laws of the States and Territories because they affect section 68 of the *Judiciary Act 1903*.

4 Paragraph 16A(2)(m)

Omit “cultural background,”.

5 After subsection 16A(2)

Insert:

- (2A) However, the court must not take into account under subsection (1) or (2) any form of customary law or cultural practice as a reason for:
- (a) excusing, justifying, authorising, requiring or lessening the seriousness of the criminal behaviour to which the offence relates; or
 - (b) aggravating the seriousness of the criminal behaviour to which the offence relates.

(2B) In subsection (2A):

criminal behaviour includes:

- (a) any conduct, omission to act, circumstance or result that is, or forms part of, a physical element of the offence in question; and
- (b) any fault element relating to such a physical element.

5A Subparagraph 19B(1)(b)(i)

Omit “cultural background,”.

5B After subsection 19B(1)

Insert:

- (1A) However, the court must not take into account under subsection (1) any form of customary law or cultural practice as a reason for:
 - (a) excusing, justifying, authorising, requiring or lessening the seriousness of the criminal behaviour to which the offence relates; or
 - (b) aggravating the seriousness of the criminal behaviour to which the offence relates.

(1B) In subsection (1A):

criminal behaviour includes:

- (a) any conduct, omission to act, circumstance or result that is, or forms part of, a physical element of the offence in question; and
- (b) any fault element relating to such a physical element.

5C Paragraph 23WI(3)(c)

Omit “age, physical and mental health, cultural background and (where appropriate) religious beliefs”, substitute “age, physical health and mental health”.

5D Paragraph 23WI(3)(d)

Repeal the paragraph.

5E At the end of section 23WI

Add:

- (4) Without limiting the matters that the constable may take into account in considering, for the purposes of paragraph (3)(e), the

intrusiveness of the forensic procedure, the constable must (where appropriate) take into account the religious beliefs of the suspect.

5F Paragraph 23WO(3)(c)

Omit “age, physical and mental health, cultural background and (where appropriate) religious beliefs”, substitute “age, physical health and mental health”.

5G Paragraph 23WO(3)(d)

Repeal the paragraph.

5H At the end of section 23WO

Add:

- (4) Without limiting the matters that the senior constable may take into account in considering, for the purposes of paragraph (3)(e), the intrusiveness of the forensic procedure, the senior constable must (where appropriate) take into account the religious beliefs of the suspect.

5J Paragraph 23WT(3)(c)

Omit “age, physical and mental health, cultural background and (where appropriate) religious beliefs”, substitute “age, physical health and mental health”.

5K Paragraph 23WT(3)(d)

Repeal the paragraph.

5L At the end of section 23WT

Add:

- (4) Without limiting the matters that the magistrate may take into account in considering, for the purposes of paragraph (3)(f), the intrusiveness of the forensic procedure, the magistrate must (where appropriate) take into account the religious beliefs of the suspect.

6 Application of amendments

- (1) The amendments made by items 1 to 3 of this Schedule apply, after the commencement of this Act, in relation to offences committed, or alleged to have been committed, before or after that commencement.

- (2) The amendments made by items 4 to 5L of this Schedule do not apply in relation to offences committed before the commencement of this Act.
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*[Minister's second reading speech made in—
Senate on 14 September 2006
House of Representatives on 28 November 2006]*

(139/06)