



New South Wales

Bail Act 2013 No 26

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New South Wales

Bail Act 2013 No 26

Act No 26, 2013

An Act to make provision for bail in connection with criminal and other proceedings.
[Assented to 27 May 2013]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Bail Act 2013*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Purpose of Act

- (1) The purpose of this Act is to provide a legislative framework for a decision as to whether a person who is accused of an offence or is otherwise required to appear before a court should be detained or released, with or without conditions.
- (2) A bail authority that makes a bail decision under this Act is to have regard to the presumption of innocence and the general right to be at liberty.

4 Definitions

- (1) In this Act:

accommodation requirement—see section 28.

accused person or *person accused of an offence* includes the following:

- (a) a person who has been charged with or convicted of an offence,
- (b) a person whose conviction for an offence is stayed,
- (c) a person in respect of whom proceedings on an appeal against conviction or sentence for the offence are pending,
- (d) a person in respect of whom a new trial has been ordered to be held for an offence.

apprehended violence order has the same meaning as it has in the *Crimes (Domestic and Personal Violence) Act 2007*.

authorised justice means:

- (a) a registrar of the Local Court or the Children's Court, or
- (b) an officer of the Department of Attorney General and Justice who is declared, by order of the Minister, whether by reference to his or her name or office, to be an authorised justice for the purposes of this Act, or

- (c) a person, or member of a class of persons, declared by the regulations to be an authorised justice for the purposes of this Act.

bail—see section 7.

bail acknowledgment means the bail acknowledgment for a decision to grant bail given to the accused person under section 33.

bail application means:

- (a) a release application, or
- (b) a detention application, or
- (c) a variation application.

bail authority means a police officer, an authorised justice or a court.

bail condition means a condition of bail.

bail decision—see section 8.

bail guarantor means any person who enters into a bail security agreement, other than the accused person granted bail.

bail money means money agreed to be forfeited under a bail security agreement.

bail security means security for the payment of bail money deposited with a bail authority.

bail security agreement means an agreement entered into, or required to be entered into, under a security requirement of a bail condition (whether by the accused person or by any other person).

character acknowledgment—see section 27.

child means a person under the age of 18 years.

conclusion of proceedings—see section 6.

conduct requirement—see section 25.

conviction includes a finding of guilt.

correctional centre means a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999* and includes a detention centre within the meaning of that Act (subject to the *Children (Detention Centres) Act 1987*).

court means:

- (a) the Court of Criminal Appeal, the Supreme Court, the Land and Environment Court, the Industrial Court, the District Court or the Local Court, or
- (b) any other court which, or person who, exercises criminal jurisdiction.

detention application—see section 50.

enforcement condition—see section 30.

fail to appear offence means an offence against section 79.

fine-only offence means an offence not punishable by a sentence of imprisonment.

first appearance means a first appearance of an accused person before a court or authorised justice in proceedings for an offence.

function includes a power, authority or duty and ***exercise*** a function includes perform a duty.

intoxicated person means a person who appears to be seriously affected by alcohol or another drug or a combination of drugs.

Local Court includes the Children’s Court exercising jurisdiction under the *Children (Criminal Proceedings) Act 1987*.

offence includes an alleged offence.

personal violence offence means a personal violence offence of a kind referred to in section 4 (a) of the *Crimes (Domestic and Personal Violence) Act 2007*.

pre-release requirement—see section 29.

proceedings for an offence—see section 5.

proceedings on an appeal against conviction or sentence—see section 5 (2).

release application—see section 49.

security requirement—see section 26.

substantive proceedings for an offence—see section 5 (3).

unacceptable risk—see section 17.

variation application—see section 51.

- (2) A reference in this Act to a person charged with an offence includes a reference to a person who has been issued with a court attendance notice for the offence under the *Criminal Procedure Act 1986*.
- (3) In this Act, a power to ***vary a bail decision*** includes:
 - (a) a power to revoke the bail decision and substitute a new bail decision, and
 - (b) a power to vary bail conditions.
- (4) In this Act, a power to ***vary bail conditions*** includes:
 - (a) a power to revoke a bail condition, and
 - (b) a power to revoke a bail condition and substitute a new bail condition, and
 - (c) a power to impose a new bail condition.
- (5) Notes in this Act do not form part of this Act.

5 Proceedings for an offence

- (1) In this Act, *proceedings for an offence* means criminal proceedings against a person for an offence (whether summary or indictable), and includes the following:
 - (a) committal proceedings,
 - (b) proceedings relating to bail,
 - (c) proceedings relating to sentence,
 - (d) proceedings on an appeal against conviction or sentence,
 - (e) any other proceedings of a kind prescribed by the regulations.
- (2) *Proceedings on an appeal against conviction or sentence* include:
 - (a) proceedings on an application for annulment of a conviction or sentence made under section 4 or 5 of the *Crimes (Appeal and Review) Act 2001*, and
 - (b) proceedings on an appeal against an order imposed by the Land and Environment Court on conviction for an offence.
- (3) Proceedings for an offence are *substantive* unless the proceedings are:
 - (a) proceedings relating to bail, or
 - (b) proceedings on an appeal against any interlocutory judgment or order given in proceedings, or
 - (c) proceedings declared to be non-substantive by the regulations.

6 Conclusion of proceedings

- (1) Proceedings for an offence *conclude* when a court finally disposes of the proceedings concerned.
- (2) If a court convicts an accused person of an offence, and a sentence is to be imposed, proceedings for the offence do not conclude until the sentence has been imposed.
- (3) The committal of a person for trial or sentence is not a conclusion of proceedings for an offence.
- (4) If a person's conviction or sentence for an offence is stayed on or before the conclusion of proceedings for an offence, the proceedings do not conclude while the stay is in force.
- (5) The regulations may make further provision for the time at which proceedings for an offence are to be regarded as concluded and this section has effect subject to the regulations.

Part 2 General provisions

7 What is bail

- (1) Bail is authority to be at liberty for an offence.
Note. An offence includes an alleged offence.
- (2) Bail can be granted under this Act to any person accused of an offence.
- (3) A person who, because of bail, is entitled to be at liberty for an offence is entitled (if in custody) to be released from custody.
Note. Limitations to the entitlement to be at liberty are specified in section 14.

8 Bail decisions that can be made

- (1) The following decisions (each of which is a ***bail decision***) can be made under this Act in respect of a person accused of an offence:
 - (a) a decision to release the person without bail for the offence,
 - (b) a decision to dispense with bail for the offence,
 - (c) a decision to grant bail for the offence (with or without the imposition of bail conditions),
 - (d) a decision to refuse bail for the offence.**Note.** Part 3 sets out how a bail decision is to be made by a bail authority.
- (2) A bail decision cannot be made if substantive proceedings for the offence have concluded and no further substantive proceedings for the offence are pending before a court.
- (3) A bail decision can also be made in respect of a person who is not accused of an offence in the circumstances specified in Schedule 1.
Note. Schedule 1 provides for the grant of bail where a person is required to appear in proceedings otherwise than because he or she is accused of an offence. In such cases, this Act applies as if the person were accused of an offence.

9 Decision to release without bail

A decision to release a person without bail can be made only by a police officer with power to make that bail decision under this Act.

10 Decision to dispense with bail

- (1) A decision to dispense with bail can be made only by a court or authorised justice with power to make that bail decision under this Act.
- (2) If bail for an offence is dispensed with, the person accused of the offence is entitled to be at liberty for the offence, in the same way as if bail had been granted.

- (3) A court or authorised justice is taken to have dispensed with bail for an offence if:
- (a) a person accused of the offence appears before the court or authorised justice in proceedings for the offence, and
 - (b) the person has not previously been granted or refused bail for the offence, and
 - (c) the court or authorised justice does not grant or refuse bail for the offence.

11 Decision to grant or refuse bail

A decision to grant or refuse bail can be made only by a police officer, authorised justice or court with power to make that bail decision under this Act.

12 Duration of bail

- (1) Bail ceases to have effect if:
- (a) it is revoked, or
 - (b) substantive proceedings for the offence conclude and, at the conclusion of the proceedings, no further substantive proceedings for the offence are pending before a court.
- (2) Bail is not revived if, after the conclusion of substantive proceedings for an offence, further substantive proceedings for the offence are commenced. However, a new bail decision for the offence can be made under this Act.
- Note.** Proceedings for an offence generally conclude if a person is convicted of and sentenced for the offence. If an appeal against the conviction or sentence is lodged after that conclusion, bail is not revived, but a new bail decision can be made.
- (3) If bail is granted by a bail authority for a specified period, bail ceases to have effect at the end of that period, unless sooner revoked.
- (4) An authorised justice or a court before which an accused person is required to appear under a bail acknowledgment may continue bail if:
- (a) bail would otherwise cease to have effect, and
 - (b) substantive proceedings for the offence have not concluded.

13 Requirement to appear

- (1) A person granted bail, or in respect of whom bail is dispensed with, is required to appear in person before a court, and surrender to the custody of the court, as and when required to do so in proceedings for the offence for which the bail decision is made.

- (2) A requirement to appear is:
 - (a) if bail is granted—a requirement to appear in accordance with the accused person’s bail acknowledgment, or
 - (b) if bail is dispensed with—a requirement to appear as and when required by the court or by any notice or other process by which a person can be required to appear before a court.
- (3) The time at which a person is required to appear is the time at which the matter relating to the offence is called at court premises (whether or not the matter is dealt with at that time).
- (4) This section does not prevent a court before which a person is required to appear from excusing a failure to appear.
- (5) The regulations may make further provision for the requirement to appear.

14 Limitation on entitlement to be at liberty

- (1) Bail does not entitle a person to be at liberty until:
 - (a) the person signs, and gives to the bail authority, a copy of the bail acknowledgment for the decision to grant bail, and
 - (b) all pre-release requirements of bail conditions have been complied with.

Note. Pre-release requirements are dealt with in Part 3. For example, a bail condition may require an accused person, before being released on bail, to surrender his or her passport. Bail acknowledgments are dealt with in Part 4.

- (2) Bail does not entitle a person to be at liberty on those occasions on which the person is required to appear before a court under his or her bail acknowledgment.
- (3) Bail does not entitle a person to be at liberty while the person is in custody for some other offence, or reason, because of which the person is not entitled to be at liberty.

Note. For example, a person may be in custody for 2 offences. If bail is granted for one offence only, the person is not entitled to be released.

Part 3 Making and variation of bail decisions

Division 1 Preliminary

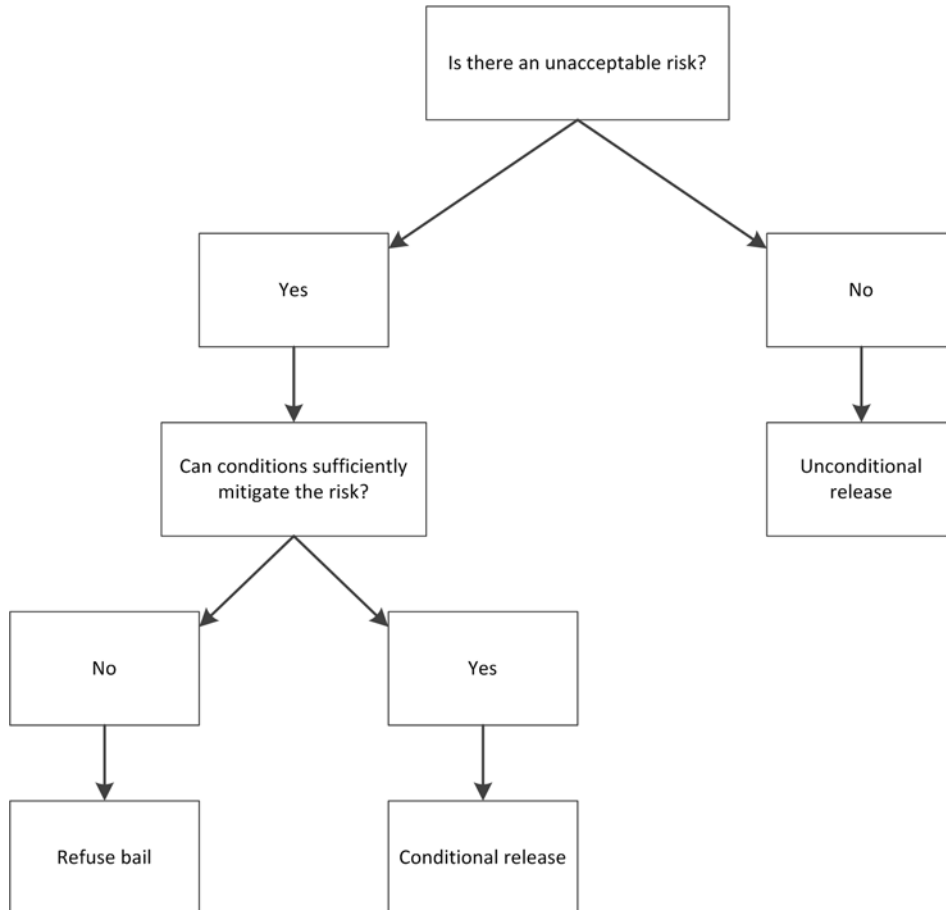
15 Bail decision to be made in accordance with this Part

- (1) A bail decision is to be made in accordance with this Part.
- (2) This Part applies to the making of a decision to affirm a bail decision, or to vary a bail decision, after hearing a bail application in the same way as it applies to the making of a bail decision.
- (3) A bail authority must exercise any function in relation to bail conferred by Part 5, 8 or 9 in accordance with this Part, except as otherwise provided by this Act.

16 Flow chart—key features of bail decision

- (1) The following flow chart shows the key features of a bail decision for an offence (other than an offence for which there is a right to release).
- (2) In the flow chart:
 - conditional release* means a decision to grant bail with the imposition of bail conditions.
 - unconditional release* means a decision:
 - (a) to release a person without bail, or
 - (b) to dispense with bail, or
 - (c) to grant bail without the imposition of bail conditions.

Flow chart—bail decision



Division 2 How a bail decision is to be made

17 Requirement to consider unacceptable risk

- (1) A bail authority must, before making a bail decision, consider whether there are any unacceptable risks.
- (2) For the purposes of this Act, an *unacceptable risk* is an unacceptable risk that an accused person, if released from custody, will:
 - (a) fail to appear at any proceedings for the offence, or
 - (b) commit a serious offence, or

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- (c) endanger the safety of victims, individuals or the community, or
 - (d) interfere with witnesses or evidence.
- (3) A bail authority is to consider the following matters, and only the following matters, in deciding whether there is an unacceptable risk:
- (a) the accused person's background, including criminal history, circumstances and community ties,
 - (b) the nature and seriousness of the offence,
 - (c) the strength of the prosecution case,
 - (d) whether the accused person has a history of violence,
 - (e) whether the accused person has previously committed a serious offence while on bail,
 - (f) whether the accused person has a pattern of non-compliance with bail acknowledgments, bail conditions, apprehended violence orders, parole orders or good behaviour bonds,
 - (g) the length of time the accused person is likely to spend in custody if bail is refused,
 - (h) the likelihood of a custodial sentence being imposed if the accused person is convicted of the offence,
 - (i) if the accused person has been convicted of the offence and proceedings on an appeal against conviction or sentence are pending before a court, whether the appeal has a reasonably arguable prospect of success,
 - (j) any special vulnerability or needs the accused person has including because of youth, being an Aboriginal or Torres Strait Islander, or having a cognitive or mental health impairment,
 - (k) the need for the accused person to be free to prepare for their appearance in court or to obtain legal advice,
 - (l) the need for the accused person to be free for any other lawful reason.
- (4) The following matters (to the extent relevant) are to be considered in deciding whether an offence is a serious offence (or the seriousness of an offence), but do not limit the matters that can be considered:
- (a) whether the offence is of a sexual or violent nature or involves the possession or use of an offensive weapon or instrument within the meaning of the *Crimes Act 1900*,
 - (b) the likely effect of the offence on any victim and on the community generally,
 - (c) the number of offences likely to be committed or for which the person has been granted bail or released on parole.

- (5) If the person is not in custody, the question of whether there are any unacceptable risks is to be decided as if the person were in custody and could be released as a result of the bail decision.

18 Bail decisions possible when there are no unacceptable risks

The following bail decisions can be made if there are no unacceptable risks:

- (a) a decision to release the person without bail,
- (b) a decision to dispense with bail,
- (c) a decision to grant bail (without the imposition of bail conditions).

19 Bail decisions possible when there is an unacceptable risk

The following bail decisions can be made if there is an unacceptable risk:

- (a) a decision to grant bail,
- (b) a decision to refuse bail.

20 When can bail be refused

- (1) A bail authority may refuse bail for an offence only if the bail authority is satisfied that there is an unacceptable risk that cannot be sufficiently mitigated by the imposition of bail conditions.
- (2) Bail cannot be refused for an offence for which there is a right to release under this Part.

21 Special rule for offences for which there is a right to release

- (1) The following decisions are the only bail decisions that can be made for an offence for which there is a right to release:
 - (a) a decision to release the person without bail,
 - (b) a decision to dispense with bail,
 - (c) a decision to grant bail to the person (with or without the imposition of bail conditions).
- (2) There is a right to release for the following offences:
 - (a) a fine-only offence,
 - (b) an offence under the *Summary Offences Act 1988*, other than an excluded offence,
 - (c) an offence that is being dealt with by conference under Part 5 of the *Young Offenders Act 1997*.

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- (3) Each of the following offences under the *Summary Offences Act 1988* is an ***excluded offence***:
- (a) an offence under section 5 (obscene exposure) if the person has previously been convicted of an offence under that section,
 - (b) an offence under section 11A (violent disorder) if the person has previously been convicted of an offence under that section or of a personal violence offence,
 - (c) an offence under section 11B, 11C or 11E (offences relating to knives and offensive implements) if the person has previously been convicted of an offence under any of those sections or of a personal violence offence,
 - (d) an offence under section 11FA (custody or use of laser pointer in public place),
 - (e) an offence under section 11G (loitering by convicted child sexual offenders near premises frequented by children).
- (4) An offence is not an offence for which there is a right to release if the accused person has previously failed to comply with a bail acknowledgment, or a bail condition, of a bail decision for the offence.

22 General limitation on court's power to release

Despite anything to the contrary in this Act, a court is not to grant bail or dispense with bail for any of the following offences, unless it is established that special or exceptional circumstances exist that justify that bail decision:

- (a) an offence for which an appeal is pending in the Court of Criminal Appeal against:
 - (i) a conviction on indictment, or
 - (ii) a sentence imposed on conviction on indictment,
- (b) an offence for which an appeal from the Court of Criminal Appeal is pending in the High Court in relation to an appeal referred to in paragraph (a).

Division 3 Bail conditions

23 Bail can be granted with or without conditions

- (1) Bail can be granted subject to conditions or unconditionally.
- (2) Bail conditions can be imposed when bail is granted or a bail decision is varied.

24 General rules for bail conditions

- (1) A bail condition can be imposed only for the purpose of mitigating an unacceptable risk.
- (2) Bail conditions must be reasonable, proportionate to the offence for which bail is granted, and appropriate to the unacceptable risk in relation to which they are imposed.
- (3) A bail condition is not to be more onerous than necessary to mitigate the unacceptable risk in relation to which the condition is imposed.
- (4) Compliance with a bail condition must be reasonably practicable.
- (5) This section does not apply to enforcement conditions.

25 Bail conditions can impose conduct requirements

- (1) Bail conditions can impose conduct requirements on an accused person.
- (2) A *conduct requirement* is a requirement that the accused person do or refrain from doing anything.
- (3) A conduct requirement cannot require an accused person to provide security for compliance with a bail acknowledgment. Such a requirement (if any) is a security requirement and is subject to the rules for imposing security requirements.

26 Bail conditions can require security to be provided

- (1) A bail condition can require security to be provided for compliance with a bail acknowledgment.
- (2) For that purpose, a bail condition can include the following requirements:
 - (a) that the accused person, or one or more other persons, or both, enter into an agreement under which the person agrees to forfeit a specified amount of money if the person granted bail fails to appear before a court in accordance with his or her bail acknowledgment,
 - (b) that a specified amount of money be deposited with the bail authority (and agreed to be forfeited under such an agreement if the person granted bail fails to appear before a court in accordance with his or her bail acknowledgment),
 - (c) that acceptable security be deposited with the bail authority as security for the payment of the money agreed to be forfeited under such an agreement.
- (3) A requirement of a kind referred to in this section is a *security requirement*.

- (4) A decision as to whether security is acceptable security for the purposes of a security requirement is to be made by:
 - (a) the bail authority imposing the bail condition, or
 - (b) the officer or court to whom the bail acknowledgment is given (if no decision has been made under paragraph (a)).
- (5) A security requirement can be imposed only for the purpose of mitigating an unacceptable risk that the accused person will fail to appear at any proceedings for the offence.
- (6) A bail authority is not to impose a security requirement unless of the opinion that the purpose for which the security requirement is imposed is not likely to be achieved by imposing one or more conduct requirements.
- (7) The regulations may make further provision for security requirements and bail security agreements.

Note. Part 9 contains further provisions about security requirements.

27 Bail conditions can require character acknowledgments

- (1) Bail conditions can require one or more character acknowledgments to be provided.
- (2) A *character acknowledgment* is an acknowledgment, given by an acceptable person, other than the accused person, to the effect that he or she is acquainted with the accused person and that he or she regards the accused person as a responsible person who is likely to comply with his or her bail acknowledgment.
- (3) A decision as to which person or persons, or class or description of persons, is an acceptable person for a character acknowledgment is to be made by:
 - (a) the bail authority imposing the bail condition, or
 - (b) the officer or court to whom the bail acknowledgment is given (if no decision has been made under paragraph (a)).
- (4) A bail authority is not to require a character acknowledgment unless of the opinion that the purpose for which the acknowledgment is required is not likely to be achieved by imposing one or more conduct requirements.
- (5) The regulations may make further provision for character acknowledgments and requirements to provide character acknowledgments.

28 Bail condition can impose accommodation requirements

- (1) A bail condition imposed by a court or authorised justice on the grant of bail can require that suitable arrangements be made for the accommodation of the accused person before he or she is released on bail.
- (2) A requirement of a kind referred to in this section is an *accommodation requirement*.
- (3) An accommodation requirement can be imposed only:
 - (a) if the accused person is a child, or
 - (b) in the circumstances authorised by the regulations.
- (4) The court responsible for hearing bail proceedings must ensure that, if an accommodation requirement is imposed in respect of a child, the matter is re-listed for further hearing at least every 2 days until the accommodation requirement is complied with.
- (5) The court may direct any officer of a Division of the Government Service to provide information about the action being taken to secure suitable arrangements for accommodation of an accused person.
- (6) The regulations may make further provision for accommodation requirements.

Note. The court can also impose a bail condition requiring the accused person to reside at the relevant accommodation while at liberty on bail (a conduct requirement).

29 Limitation on power to impose pre-release requirements

- (1) The following requirements (and no other requirements) can be imposed by a bail authority as pre-release requirements:
 - (a) a conduct requirement that requires the accused person to surrender his or her passport,
 - (b) a security requirement,
 - (c) a requirement that one or more character acknowledgments be provided,
 - (d) an accommodation requirement.
- (2) A requirement of a bail condition is a *pre-release requirement* if the bail condition specifies that the condition must be complied with before the accused person is released on bail.
- (3) A pre-release requirement (other than an accommodation requirement) is complied with when the requirements specified in the bail condition that imposes the pre-release requirement, and any requirements specified in the regulations, are complied with.

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- (4) An accommodation requirement is complied with when the court is informed by an appropriate Government representative, in writing or in person, that suitable accommodation has been secured for the accused person.
 - (5) If all pre-release requirements are complied with, the accused person is entitled to be released (subject to the other provisions of this Act) without any rehearing of the matter.
 - (6) In this section, an *appropriate Government representative* means:
 - (a) the Director-General of the Department of Family and Community Services or a delegate of the Director-General (if the accused person is a child), or
 - (b) the Director-General of the Department of Attorney General and Justice or a delegate of the Director-General, or
 - (c) the Commissioner of Corrective Services or a delegate of the Commissioner, or
 - (d) any other person prescribed by the regulations.

30 Bail conditions may include enforcement conditions

- (1) Bail conditions can include one or more enforcement conditions that are imposed for the purpose of monitoring or enforcing compliance with another bail condition (the *underlying bail condition*).
- (2) An *enforcement condition* is a bail condition that requires the person granted bail to comply, while at liberty on bail, with one or more specified kinds of police directions (given for the purpose of monitoring or enforcing compliance with the underlying bail condition).
- (3) An enforcement condition can be imposed:
 - (a) by a court only, and
 - (b) only at the request of the prosecutor in the proceedings.
- (4) An enforcement condition is to specify:
 - (a) the kinds of directions that may be given to the person while at liberty on bail, and
 - (b) the circumstances in which each kind of direction may be given (in a manner that ensures that compliance with the condition is not unduly onerous), and
 - (c) the underlying bail condition or conditions in connection with which each kind of direction may be given.

Note. For example, an enforcement condition imposed in connection with an underlying bail condition that requires a person to refrain from consuming drugs or alcohol may require the person to undergo testing for drugs or alcohol as

directed by a police officer and may include specifications as to when such directions may be given.

- (5) An enforcement condition can be imposed only if the court considers it reasonable and necessary in the circumstances, having regard to the following:
- (a) the history of the person granted bail (including criminal history and particularly if the person has a criminal history involving serious offences or a large number of offences),
 - (b) the likelihood or risk of the person committing further offences while at liberty on bail,
 - (c) the extent to which compliance with a direction of a kind specified in the condition may unreasonably affect persons other than the person granted bail.

Division 4 Procedural requirements

31 Rules of evidence do not apply

- (1) A bail authority may, for the purpose of exercising any of its functions in relation to bail, take into account any evidence or information that the bail authority considers credible or trustworthy in the circumstances and is not bound by the principles or rules of law regarding the admission of evidence.
- (2) This section does not apply:
 - (a) to proceedings for an offence in relation to bail, or
 - (b) to proceedings under Schedule 2 (Forfeiture of security).

32 Matters to be decided on balance of probabilities

- (1) Any matter that must be decided by a bail authority in exercising a function in relation to bail is to be decided on the balance of probabilities.
- (2) This section does not apply to proceedings for an offence in relation to bail.

Part 4 Procedures after decision is made or varied

Division 1 Functions of bail authorities

Note. This Division sets out the procedures applicable to all bail decisions. Additional procedures apply to police under Division 1 of Part 5.

33 Bail acknowledgment to be given on grant of bail

- (1) A bail authority that grants bail to an accused person must, as soon as practicable, ensure the person is given a bail acknowledgment for the decision.
- (2) A *bail acknowledgment* is a written notice that:
 - (a) requires the accused person to appear before a court, on such day and at such time and place as are from time to time specified in a notice given or sent to the person as prescribed by the regulations, and
 - (b) requires the accused person to notify the court before which the accused person is required to appear of any change in the person's residential address.

Note. An accused person is not entitled to be released on bail under Part 2 until he or she signs the bail acknowledgment and gives it to the bail authority.

- (3) An accused person who is granted bail is under a duty to comply with the requirements of the bail acknowledgment.

Note. An accused person who fails to appear as required by the bail acknowledgment commits an offence. Contravention of the requirements of a bail acknowledgment can also lead to bail being revoked.

- (4) The bail acknowledgment must also:
 - (a) warn the person that committing an offence while on bail could result in a more severe penalty being imposed on conviction for the offence for which bail is granted, and
 - (b) set out the bail conditions (if any), and
 - (c) explain the consequences that may follow if the person fails to comply with his or her bail acknowledgment or bail conditions, and
 - (d) include any information regarding the review or variation of the decision the regulations require to be provided when bail is granted.
- (5) The bail authority is to take reasonably practicable steps to ensure that the person granted bail understands the bail acknowledgment.
- (6) The regulations may make further provision for bail acknowledgments.

34 Notice of refusal of bail to be given

- (1) A court or authorised justice that refuses bail or that revokes bail must, as soon as practicable, ensure the accused person is given:
 - (a) a written notice setting out the terms of the decision, and
 - (b) any information regarding the review or variation of the decision the regulations require to be provided when bail is refused.
- (2) The regulations may make further provision for the requirement to give notice under this section and this section has effect subject to the regulations.

35 Notice of variation of bail conditions to be given

A bail authority that varies any bail condition must ensure the accused person is given a written notice setting out the terms of the bail condition as varied.

36 Information to be provided about bail security agreements

- (1) A bail authority must take all reasonable steps to ensure that a person who enters into a bail security agreement is made aware of:
 - (a) the obligations of the person under that agreement, and
 - (b) the consequences that may follow if the person granted bail fails to comply with his or her bail acknowledgment.
- (2) A bail authority must ensure that any person (other than an accused person) who enters into a bail security agreement in compliance with a bail condition is given a written notice setting out the terms of the condition.
- (3) A bail authority that varies a bail condition that requires entry into a bail security agreement must ensure that any person (other than the accused person) who entered into a bail security agreement in compliance with the bail condition is given a written notice setting out the terms of the condition as varied.

37 Information to be provided about character acknowledgments

- (1) A bail authority must, before a person provides a character acknowledgment, take all reasonable steps to ensure that the person is informed that providing false or misleading information in a character acknowledgment is a serious offence.

Note. The provision of false or misleading information to a public authority or to a person exercising functions under a law of the State is an offence under section 307B of the *Crimes Act 1900*.

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- (2) A bail authority must ensure that any person who provides a character acknowledgment is given a written notice setting out the terms of the bail condition under which the acknowledgment is required.
 - (3) A bail authority that varies a bail condition that requires provision of a character acknowledgment must ensure that any person who provided a character acknowledgment in compliance with the bail condition is given a written notice setting out the terms of the condition as varied.

38 Reasons for decision to be recorded

- (1) A bail authority that refuses bail must immediately record the reasons for refusing bail, including the unacceptable risk or risks identified by the bail authority.
- (2) A bail authority that imposes bail conditions must immediately make a record that:
 - (a) specifies the reasons for not granting bail unconditionally, and
 - (b) sets out the unacceptable risk or risks identified by the bail authority.
- (3) The record must include the bail authority's reasons for imposing any security requirement or requiring any character acknowledgments.
- (4) If an accused person requests that certain bail conditions be imposed, and other bail conditions are imposed, the bail authority must record reasons for imposing the other conditions.
- (5) The regulations may make provision for the making of records under this section and the manner of retaining and otherwise dealing with those records.

39 Power to issue warrant of commitment

- (1) A court or authorised justice may, if bail is refused to an accused person or is revoked, issue a warrant remanding the accused person to a correctional centre or other place of security.
- (2) A court or authorised justice may, if a person granted bail fails to sign a bail acknowledgment, issue a warrant remanding the accused person to a correctional centre or other place of security until the person signs the acknowledgment concerned.
- (3) A court or authorised justice may, if a person granted bail has not complied with any pre-release requirement of a bail condition, issue a warrant remanding the accused person to a correctional centre or other place of security until the bail condition is complied with.

Division 2 General

40 Stay of release decision if detention sought

- (1) A decision of a court or authorised justice to grant bail or dispense with bail for a serious offence on a first appearance by an accused person is stayed if a police officer or Australian legal practitioner appearing on behalf of the Crown immediately:
 - (a) informs the court or authorised justice that a detention application is to be made to the Supreme Court, and
 - (b) provides the court or authorised justice with a copy of the written approval of an authorised officer or the Director of Public Prosecutions to make a detention application to the Supreme Court if bail is granted or dispensed with.
- (2) The stay of the decision has effect until one of the following occurs (whichever happens first):
 - (a) the Supreme Court affirms or varies the decision, or substitutes another decision for the bail decision, or refuses to hear the detention application,
 - (b) a police officer or some other person acting on behalf of the Crown files with the Supreme Court, or such other court as may be prescribed by the regulations, notice that the Crown does not intend to proceed with the detention application,
 - (c) 4pm on the day that is 3 business days after the day on which the decision was made.
- (3) A bail decision does not entitle a person to be at liberty while the decision is stayed.
- (4) A detention application made to the Supreme Court when a decision is stayed under this section is to be dealt with as expeditiously as possible.
- (5) In this section:

authorised officer means the Commissioner of Police or a member of the NSW Police Force authorised by the Commissioner of Police to exercise the functions of an authorised officer under this section.

business day means a day that is not a Saturday, a Sunday or a public holiday throughout New South Wales.

serious offence means:

- (a) the offence of murder or any other offence punishable by imprisonment for life, or
- (b) an offence under or mentioned in a provision of Part 3 of the *Crimes Act 1900* involving sexual intercourse, or an attempt to have sexual intercourse, with a person under the age of 16 years.

41 Limitation on length of adjournments if bail refused

- (1) If an accused person is refused bail for an offence:
 - (a) an authorised justice or the Local Court is not to adjourn the hearing of the matter for a period exceeding 8 clear days, except with the consent of the accused person, and
 - (b) an authorised justice who is not a registrar of the Local Court is not to adjourn the hearing of the matter, on a first adjournment, for a period exceeding 3 clear days, and
 - (c) any second or subsequent adjournment of the hearing by an authorised justice who is not a registrar of the Local Court must:
 - (i) be for a period not exceeding 48 hours, and
 - (ii) be to the Local Court constituted by a magistrate, if a magistrate is reasonably available to deal with the case.
- (2) Subsection (1) does not apply to an adjournment of a hearing if:
 - (a) the accused person is in custody for some other offence, and
 - (b) the authorised justice or court is satisfied that there are reasonable grounds for a longer period of adjournment, and
 - (c) the accused person would be in custody for the other offence for the balance of the longer period.
- (3) The consent of the accused person is not to be sought or given for the purposes of subsection (1) (a) unless the authorised justice or court first advises the person whether or not bail will be granted to the person and the proposed bail conditions (if any).

42 Notice required if accused person granted bail remains in custody

- (1) A person who has custody of an accused person granted bail must cause a court to be given notice that the accused person is still in custody if the accused person is still in custody because a bail condition has not been complied with.
- (2) The notice must be given to a court that has power to hear a variation application before the expiration of 8 days after the person is received into custody.
- (3) A notice is required to be given only once for any particular grant of bail.
- (4) For the purposes of this section, the person who has custody of an accused person is:
 - (a) the general manager or other person who has the control and management of the correctional centre where the accused person is in custody, or

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Part 4 Procedures after decision is made or varied

- (b) the person in charge of the lock-up or police station where the accused person is in custody.
- (5) The regulations may make provision for the form of a notice under this section and for the information to accompany the notice.
- (6) This section does not affect the requirement that an accused person in police custody who is not released on bail granted by a police officer be brought before a court or authorised justice as soon as practicable.

Part 5 Powers to make and vary bail decisions

Note. Additional powers are conferred by Parts 8 and 9.

Division 1 Powers of police officers

43 Police power to make bail decision at a police station

- (1) A police officer may make a bail decision for an offence if the person accused of the offence is present at a police station and the officer is:
 - (a) a police officer of or above the rank of sergeant and present at the police station, or
 - (b) for the time being in charge of the police station.
- (2) The police officer may:
 - (a) release the person without bail, or
 - (b) grant bail (with or without the imposition of bail conditions), or
 - (c) refuse bail.
- (3) A police officer cannot make a bail decision if:
 - (a) a bail decision for the offence has been made by a court or authorised justice, or
 - (b) the accused person has already made a first appearance for the offence and bail has been dispensed with.
- (4) A police officer cannot grant bail or release a person without bail if the accused person has been arrested under a warrant to bring the person before a court for sentencing.
- (5) Despite subsection (4), a police officer may grant bail to a person arrested as referred to in that subsection if the police officer is satisfied that exceptional circumstances justify the grant of bail.

44 Bail decision to be made after person is charged

- (1) A police officer must ensure that, as soon as reasonably practicable after a person in police custody is charged with an offence:
 - (a) a bail decision is made for the offence by a police officer with power to make a bail decision, or the person is brought before a court or authorised justice to be dealt with according to law, and
 - (b) the person is given the bail eligibility information.
- (2) A record is to be kept, in the form prescribed by the regulations, verifying that the person charged has been given the bail eligibility information.

- (3) It is not necessary to give the bail eligibility information to a person if the person is released without bail.
- (4) A police officer may defer making a bail decision in respect of an intoxicated person while the person is an intoxicated person, but only if the deferral does not cause delay in bringing the person before a court or authorised justice.
- (5) In this section, ***bail eligibility information*** means written information, of a kind prescribed by the regulations, about eligibility for bail and the entitlement to request a review of a bail decision made by a police officer.

45 Procedures after bail decision is made

- (1) A police officer who grants or refuses bail must, without unreasonable delay:
 - (a) ensure that the accused person is informed that the person may communicate with an Australian legal practitioner or other person of the person's choice about bail, and
 - (b) subject to the regulations, ensure the accused person is provided with any facilities the person requests to enable the person to make that communication that the officer is reasonably able to provide.
- (2) A police officer is not required to comply with subsection (1) if the officer believes on reasonable grounds that it is necessary to do so in order to prevent:
 - (a) the escape of an accomplice of the accused person, or
 - (b) the loss, destruction or fabrication of evidence relating to any offence.

46 Duties if bail refused or accused person not released

- (1) A police officer must ensure any accused person charged with an offence who is refused bail by a police officer with power to grant bail, or is not released on bail granted by a police officer, is brought before a court or authorised justice as soon as practicable to be dealt with according to law.
- (2) A police officer must, if it is reasonably practicable to do so, ensure that the facilities prescribed by the regulations are made available to any accused person in police custody who is to be brought, on a first appearance for an offence, before a court or authorised justice more than 4 hours after the person came into custody.

47 Review of police decision by senior police officer

- (1) A senior police officer may carry out a review of a bail decision made by a police officer if:
 - (a) bail was refused, or
 - (b) bail conditions were imposed.
- (2) A senior police officer must carry out a review if the person the subject of the bail decision requests the review.
- (3) A senior police officer may carry out a review on the police officer's own initiative.
- (4) A senior police officer may, after carrying out a review of a bail decision:
 - (a) affirm the bail decision, or
 - (b) vary the bail decision.
- (5) A review is not to be carried out if to do so would cause a delay in bringing the person the subject of the bail decision before a court.
- (6) A review is not required if the bail decision has previously been reviewed by a senior police officer.
- (7) In this section, *senior police officer* means a police officer who has power to make a bail decision and is senior to the police officer who made the relevant bail decision.

Division 2 Powers of courts and authorised justices—bail applications**48 Powers of courts and authorised justices to hear bail applications**

- (1) A court or authorised justice may make or vary a bail decision, in the manner provided for by this Division, after hearing a bail application.
Note. There are 3 types of bail application:
 - (a) a release application (which can be made by the accused person), or
 - (b) a detention application (which can be made by the prosecutor), or
 - (c) a variation application (which can be made by any interested person).
- (2) A bail application can be made to, and heard by, a court or authorised justice only if the court or authorised justice has power to hear the application.
- (3) A court or authorised justice has power to hear a bail application in the circumstances specified in Part 6.
Note. In general, a court has power to hear a bail application if:
 - (a) proceedings for the offence are pending in the court, or

(b) proceedings on an appeal against a conviction or sentence of the court are pending in another court and the accused person has not made a first appearance before the other court, or

(c) the bail decision to be varied was made by the court.

However, additional powers, and restrictions on powers, also apply under Part 6.

49 Accused person may make release application

- (1) A person accused of an offence may apply to a court or authorised justice for bail for the offence to be granted or dispensed with.
- (2) An application under this section is a *release application*.
- (3) A court or authorised justice may, after hearing the release application:
 - (a) dispense with bail, or
 - (b) grant bail (with or without the imposition of bail conditions), or
 - (c) refuse bail.
- (4) If a bail decision has already been made, a court or authorised justice may, after hearing the release application:
 - (a) affirm the bail decision, or
 - (b) vary the bail decision.

50 Prosecutor may make detention application

- (1) The prosecutor in proceedings for an offence may apply to a court or authorised justice for the refusal or revocation of bail for an offence.
- (2) An application under this section is a *detention application*.
- (3) A court or authorised justice may, after hearing the detention application:
 - (a) dispense with bail, or
 - (b) grant bail (with or without the imposition of bail conditions), or
 - (c) refuse bail.
- (4) If a bail decision has already been made, a court or authorised justice may, after hearing the detention application:
 - (a) affirm the bail decision, or
 - (b) vary the bail decision.
- (5) A court or authorised justice is not to hear a detention application unless satisfied that the accused person has been given reasonable notice of the application by the prosecutor, subject to the regulations.

51 Interested person may make variation application

- (1) An interested person may apply to a court or authorised justice for a variation of bail conditions.
- (2) An application under this section is a *variation application*.
- (3) Each of the following persons is an *interested person*:
 - (a) the accused person granted bail,
 - (b) the prosecutor in proceedings for the offence,
 - (c) the complainant for a domestic violence offence,
 - (d) the person for whose protection an order is or would be made, in the case of bail granted on an application for an order under the *Crimes (Domestic and Personal Violence) Act 2007*,
 - (e) the Attorney General.
- (4) A court or authorised justice may, after hearing the variation application:
 - (a) refuse the application, or
 - (b) vary the bail decision the subject of the application.
- (5) An authorised justice may vary a bail decision only to the extent permitted by this Division.
- (6) A court or authorised justice is not to hear a variation application made by a person other than the accused person unless satisfied that the accused person has been given reasonable notice of the application, subject to the regulations.
- (7) A court or authorised justice is not to hear a variation application made by a person other than the prosecutor in the proceedings unless satisfied that the prosecutor has been given reasonable notice of the application, subject to the regulations.
- (8) A court or authorised justice must not vary a bail decision on the application of a person referred to in subsection (3) (c) or (d) unless the prosecutor in the proceedings has been given a reasonable opportunity to be heard on the application.
- (9) A court must not revoke bail on a variation application unless revocation is requested by the prosecutor in the proceedings.
- (10) For the purposes of this section, the Commissioner of Police is, in the case of bail granted on an application for an order under the *Crimes (Domestic and Personal Violence) Act 2007*, taken to be the prosecutor in the proceedings.

52 Powers of authorised justices to vary court decisions

- (1) An authorised justice may vary a bail decision of a court on a variation application only if the variation application relates to bail conditions that are reviewable by a justice.
- (2) The following bail conditions are reviewable by a justice:
 - (a) a reporting condition, which is a bail condition that requires the person granted bail to report to a police station while at liberty on bail,
 - (b) a residence condition, which is a bail condition that requires the person granted bail to reside at a specified address,
 - (c) an association condition, which is a bail condition (however expressed) that requires the person granted bail to refrain from associating with a specified person or class of persons or to refrain from frequenting a specified place or class of places,
 - (d) a curfew condition, which is a bail condition (however expressed) that imposes a curfew on the person.
- (3) After hearing the variation application, the authorised justice may:
 - (a) vary a reporting condition, or
 - (b) vary (but not revoke) a residence condition, an association condition or a curfew condition.
- (4) An authorised justice is not to vary a bail condition under this section unless satisfied that:
 - (a) in the case of a variation application made by a person other than the accused person—the accused person has been notified of the application and no objection to the application has been made by the accused person, and
 - (b) in the case of a variation application made by a person other than the prosecutor in the proceedings—the prosecutor has been notified of the application and no objection to the application has been made by the prosecutor.
- (5) An authorised justice is not to vary a bail condition under this section:
 - (a) at any time before the determination of summary or committal proceedings against the accused person, if the bail condition was imposed by the Supreme Court, or
 - (b) at any time after the determination of summary or committal proceedings against the accused person.

- (6) Subsection (5) does not prevent an authorised justice from varying a reporting condition:
- (a) to vary the days on which, or the times at which, an accused person must report to a police station, or
 - (b) to vary the police station to which the accused person must report.

Division 3 Additional powers of courts and authorised justices

53 Discretion to make or vary bail decision without bail application

- (1) A court or authorised justice with power to hear a bail application may, of its own motion, on a first appearance by an accused person for an offence:
- (a) grant bail to the person (with or without the imposition of bail conditions), or
 - (b) vary a previous bail decision made for the offence (but not so as to refuse bail).
- (2) A court or authorised justice may exercise a power under this section only to benefit the accused person.
- (3) This section does not limit the powers of a court when a bail application is made.

54 Discretion to refuse bail if no application is made

A court or authorised justice with power to hear a bail application may, of its own motion, refuse bail to an accused person or affirm a decision to refuse bail if:

- (a) the accused person is in custody and is brought before the court or authorised justice on a first appearance for an offence, and
- (b) a bail decision has not been made, or bail has been refused, and
- (c) a bail application is not made.

55 Variation of bail decision if accused person remains in custody

- (1) A court or authorised justice that has power to hear a variation application may conduct a hearing (without application) if an accused person granted bail has remained in custody because a bail condition has not been complied with.
- (2) The purpose of the hearing is to review the bail conditions imposed on the grant of bail, not the decision to grant bail.

- (3) The court or authorised justice may conduct the hearing of its own motion or at the request of the accused person or a police officer.
- (4) A hearing under this section is not to be conducted at the request of a police officer unless the court is satisfied that the request was made:
 - (a) to benefit the accused person, and
 - (b) with the consent of the accused person.
- (5) If the court or authorised justice decides to conduct a hearing, this Act applies (subject to the regulations) as if the hearing were a hearing of a variation application, except that the powers of the court or authorised justice are the powers conferred by this section.
- (6) The court or authorised justice may, after hearing a variation application of a kind referred to in this section:
 - (a) affirm the bail decision (as to the conditions of bail), or
 - (b) vary the bail decision, but not revoke or refuse bail.

56 Discretion to defer decision if accused person is intoxicated

- (1) A court or authorised justice may defer making a bail decision if an accused person is an intoxicated person.
- (2) For that purpose, the court or authorised justice may:
 - (a) adjourn the hearing of the matter, but not for more than 24 hours, and
 - (b) issue a warrant remanding the accused person to a correctional centre or other place of security until the further hearing of the matter.

Division 4 Restrictions on powers of courts and authorised justices

Note. Part 6 also provides that a court (other than the Supreme Court) must not hear a bail application if a bail decision has been made by the Supreme Court, unless special facts or circumstances justify hearing the application.

57 Bail conditions not to be varied contrary to court direction

- (1) The Local Court must not vary a bail condition imposed by a higher court that the higher court has directed is not to be varied by the Local Court, unless both the accused person and the prosecutor in the proceedings agree to the variation.
- (2) An authorised justice must not vary a bail condition imposed by a court if the court that imposed the bail condition has directed that the condition is not to be varied by an authorised justice.

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- (3) This section does not affect the powers of the Local Court or authorised justice under Part 8 or 9.

Note. Part 8 permits the Local Court or an authorised justice to revoke or refuse bail for a failure or threatened failure to comply with a bail acknowledgment. Part 9 permits bail to be revoked or a bail condition to be varied in connection with security requirements.

58 Authorised justice must not vary or impose enforcement conditions

- (1) An authorised justice must not vary enforcement conditions or impose new enforcement conditions.
- (2) However, an enforcement condition imposed by a court may be reimposed by an authorised justice who makes or varies a bail decision.

Part 6 Powers to hear bail applications

Division 1 Interpretation

59 Meaning of pending proceedings

In this Part, a reference to proceedings for an offence pending in a court is a reference to substantive proceedings pending in the court.

Note. See definition in section 5.

60 Part applies to bail applications only

To avoid doubt, this Part does not limit the powers of a court or authorised justice under Part 8 or 9.

Note. Parts 8 and 9 confer powers to vary bail decisions in connection with enforcement and security requirements.

Division 2 General powers

61 Power to hear bail application if proceedings are pending in court

A court may hear a bail application for an offence if proceedings for the offence are pending in the court.

62 Power to hear bail application if sentence or conviction appealed

A court may hear a bail application for an offence if:

- (a) the court has convicted a person of the offence, and
- (b) proceedings on an appeal against sentence or conviction are pending in another court, and
- (c) the person has not yet made his or her first appearance before the court in the appeal proceedings.

63 Power to hear variation application for own decision

- (1) A court may hear a variation application for a bail decision made by the court (however constituted).
- (2) An authorised justice may hear a variation application for a bail decision made by an authorised justice.

Division 3 Additional powers

64 Powers specific to Local Court and authorised justices

Note. The Local Court includes:

- (a) the Children's Court, and
- (b) the Drug Court (because of section 24 of the *Drug Court Act 1998*).

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- (1) The Local Court or an authorised justice may hear a release application or detention application in respect of a person:
 - (a) brought or appearing before the Court or authorised justice and accused of an offence, or
 - (b) not brought or appearing before the Court or authorised justice, if the person is an appellant under Part 3, 4 or 5 of the *Crimes (Appeal and Review) Act 2001*.
 - (2) Subsection (1) (b) is subject to any exceptions provided for by the regulations.
 - (3) The Local Court may hear a bail application for an offence if a bail decision for the offence has been made by an authorised justice or police officer.
 - (4) The Local Court may hear a variation application for an offence if a bail decision has been made by a higher court.

Note. Section 57 permits the Local Court to vary bail conditions imposed by a higher court only with the consent of the accused person and the prosecutor.

65 Powers specific to District Court

Note. The District Court includes the Drug Court (because of section 24 of the *Drug Court Act 1998*).

The District Court may hear a bail application if:

- (a) the District Court has made an order under section 104 of the *Criminal Procedure Act 1986* for the continuation of proceedings before a magistrate and the accused person is before the District Court, or
- (b) the District Court has made an order under section 20 (1) of the *Children (Criminal Proceedings) Act 1987* for the remission of a matter to the Children's Court and the accused person is before the District Court.

66 Powers specific to Supreme Court

- (1) The Supreme Court may hear a release application for an offence if bail for the offence has been refused by another court, an authorised justice or a police officer.
- (2) The Supreme Court may hear a detention application or variation application for an offence if a bail decision has been made by the District Court, the Local Court, an authorised justice or a police officer.

67 Powers specific to Court of Criminal Appeal

- (1) The Court of Criminal Appeal may hear a bail application for an offence if:
 - (a) the Court has ordered a new trial and the new trial has not commenced, or
 - (b) the Court has made an order under section 8A (1) of the *Criminal Appeal Act 1912* and the person is before the Court, or
 - (c) the Court has directed a stay of execution of a conviction and the stay is in force, or
 - (d) an appeal from the Court is pending in the High Court, or
 - (e) a bail decision has been made by the Land and Environment Court, the Industrial Court or the Supreme Court.
- (2) Despite subsection (1) (e), a Judge of the Court of Criminal Appeal sitting alone cannot hear a bail application if a bail decision has been made by the Supreme Court (however constituted) unless the rules made under the *Supreme Court Act 1970* permit the Judge to do so.

Division 4 Restrictions on powers

68 Limited powers when proceedings pending in another court

- (1) The Local Court or an authorised justice cannot hear a bail application if:
 - (a) proceedings for the offence are pending in a court (other than the Local Court) and the accused person has made his or her first appearance before the court in those proceedings, or
 - (b) summary proceedings for the offence are pending in the Supreme Court, or
 - (c) the accused person has made his or her first appearance before the Supreme Court after being brought up by a writ of habeas corpus following summary conviction for the offence.
- (2) Subsection (1) does not prevent the hearing of a release application in respect of a person if:
 - (a) the person is arrested under a bench warrant (as referred to in section 312 of the *Criminal Procedure Act 1986*), or
 - (b) the person's appearance is consequent on the making of an order under section 20 (1) of the *Children (Criminal Proceedings) Act 1987* (a provision that allows a court to remit an offence to the Children's Court for sentencing), or

- (c) proceedings for the offence concerned are continued before a magistrate under section 104 of the *Criminal Procedure Act 1986* or section 8A (2) of the *Criminal Appeal Act 1912*.
- (3) The District Court or the Land and Environment Court cannot hear a bail application if:
 - (a) proceedings for the offence are pending in the Supreme Court or the Court of Criminal Appeal and the accused person has made his or her first appearance before the court in those proceedings, or
 - (b) the accused person has made his or her first appearance before the Supreme Court after being brought up by a writ of habeas corpus following summary conviction for the offence.

69 Limited powers when decision made by Supreme Court or Court of Criminal Appeal

- (1) The Local Court, the District Court, the Land and Environment Court or the Industrial Court (a *relevant court*) may hear a bail application for an offence when a bail decision has been made by the Supreme Court (however constituted) or the Court of Criminal Appeal only if:
 - (a) proceedings for the offence are pending in the relevant court, and
 - (b) the person appears before the relevant court in those proceedings, and
 - (c) the relevant court is satisfied that special facts or special circumstances justify the hearing of the bail application.
- (2) This section has effect subject to any exceptions or other limitations prescribed by the regulations.
- (3) This section does not prevent a court from hearing a detention application under Part 8.

Note. Part 8 permits bail to be revoked because of a failure or threatened failure to comply with a bail acknowledgment or bail conditions.

70 Authorised justice cannot revoke or grant bail contrary to decision of court

- (1) An authorised justice cannot hear a release application if a decision to refuse or revoke bail has been made by a court.
- (2) An authorised justice cannot hear a detention application if a decision to grant bail has been made by a court.
- (3) This section does not prevent an authorised justice:
 - (a) from hearing a release application made by a person brought or appearing before the authorised justice after having his or her bail

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Part 6 Powers to hear bail applications

revoked for a failure or threatened failure to comply with a bail acknowledgment or bail condition, or

(b) from hearing a detention application under Part 8.

Note. Part 8 permits bail to be revoked because of a failure or threatened failure to comply with a bail acknowledgment or bail conditions.

Part 7 General provisions about bail applications

71 Bail applications to be dealt with expeditiously

A bail application is to be dealt with as soon as reasonably practicable.

72 Application by accused person must be heard on first appearance

- (1) A court or authorised justice must hear any release application or variation application made by an accused person on a first appearance in substantive proceedings for an offence.
- (2) The court or authorised justice is not to decline to hear the application because notice of the application has not been given to the prosecutor in the proceedings, but may adjourn the hearing, to enable notice to be given, if the court or authorised justice considers it necessary in the interests of justice.

73 Discretionary grounds to refuse to hear bail application

- (1) A court may refuse to hear a bail application if satisfied that:
 - (a) the application is frivolous or vexatious, or
 - (b) the application is without substance or otherwise has no reasonable prospect of success.
- (2) A court (other than the Local Court) may refuse to hear a bail application if satisfied that the application could be dealt with as a variation application by the Local Court or an authorised justice.
- (3) This section does not apply to a release application or a variation application made by an accused person on a first appearance in substantive proceedings for the offence.

74 Multiple release or detention applications to same court not permitted

- (1) A court that refuses bail for an offence, or that affirms a decision to refuse bail for an offence, after hearing a release application is to refuse to hear another release application made by the accused person for the same offence, unless there are grounds for a further release application.
- (2) A court that grants or dispenses with bail for an offence, or that affirms a decision to grant or dispense with bail for an offence, after hearing a detention application is to refuse to hear another detention application made by the prosecution for the same offence, unless there are grounds for a further detention application.

- (3) For the purposes of this section, the grounds for a further release application are:
- (a) the person was not legally represented when the previous application was dealt with and the person now has legal representation, or
 - (b) information relevant to the grant of bail is to be presented in the application that was not presented to the court in the previous application, or
 - (c) circumstances relevant to the grant of bail have changed since the previous application was made, or
 - (d) the person is a child and the previous application was made on a first appearance for the offence.
- (4) For the purposes of this section, the grounds for a further detention application are:
- (a) information relevant to the grant of bail is to be presented in the application that was not presented to the court in the previous application, or
 - (b) circumstances relevant to the grant of bail have changed since the previous application was made.
- (5) In this section, *court* does not include an authorised justice.

75 Fresh application to be dealt with as new hearing

Any bail application heard by a court or authorised justice is to be dealt with as a new hearing, and evidence or information may be given in addition to, or in substitution for, the evidence or information given in relation to an earlier bail decision.

76 Regulations relating to bail applications

The regulations may make provision for the following:

- (a) the manner of making bail applications,
- (b) the giving or sending to persons of notices relating to bail applications,
- (c) the circumstances in which a bail application may be heard in the absence of the accused person or the accused person's legal representative, as if the person or representative were present.

Part 8 Enforcement of bail requirements

Note. For enforcement of security given for the grant of bail, see Schedule 2.

77 Actions that may be taken to enforce bail requirements

- (1) A police officer who believes, on reasonable grounds, that a person has failed to comply with, or is about to fail to comply with, a bail acknowledgment or a bail condition, may:
 - (a) decide to take no action in respect of the failure or threatened failure, or
 - (b) issue a warning to the person, or
 - (c) issue a notice to the person (an *application notice*) that requires the person to appear before a court or authorised justice, or
 - (d) issue a court attendance notice to the person (if the police officer believes the failure is an offence), or
 - (e) arrest the person, without warrant, and take the person as soon as practicable before a court or authorised justice, or
 - (f) apply to an authorised justice for a warrant to arrest the person.
- (2) However, if a police officer arrests a person, without warrant, because of a failure or threatened failure to comply with a bail acknowledgment or a bail condition, the police officer may decide to discontinue the arrest and release the person (with or without issuing a warning or notice).
- (3) The following matters are to be considered by a police officer in deciding whether to take action, and what action to take (but do not limit the matters that can be considered):
 - (a) the relative seriousness or triviality of the failure or threatened failure,
 - (b) whether the person has a reasonable excuse for the failure or threatened failure,
 - (c) the personal attributes and circumstances of the person, to the extent known to the police officer,
 - (d) whether an alternative course of action to arrest is appropriate in the circumstances.
- (4) An authorised justice may, on application by a police officer under this section, issue a warrant to apprehend a person granted bail and bring the person before a court or authorised justice.

- (5) If a warrant for the arrest of a person is issued under this Act or any other Act or law, a police officer must, despite subsection (1), deal with the person in accordance with the warrant.

Note. Section 101 of the *Law Enforcement (Powers and Responsibilities) Act 2002* gives power to a police officer to arrest a person in accordance with a warrant.

- (6) The regulations may make further provision for application notices.

78 Powers of bail authorities

- (1) A relevant bail authority before which an accused person is brought or appears may, if satisfied that the person has failed or was about to fail to comply with a bail acknowledgment or a bail condition:
- (a) release the person on the person's original bail, or
 - (b) vary the bail decision that applies to the person.
- (2) The bail authority may revoke or refuse bail only if satisfied that:
- (a) the person has failed or was about to fail to comply with a bail acknowledgment or bail conditions, and
 - (b) having considered all possible alternatives, the decision to refuse bail is justified.
- (3) Part 3 applies to the exercise by the bail authority of its functions under this section.
- (4) However, a bail authority may revoke or refuse bail under this section even if the offence is an offence for which there is a right of release under Part 3. An offence ceases to be an offence for which there is a right to release if bail is revoked or refused under this section.
- (5) This section does not give an authorised justice power to vary enforcement conditions or impose new enforcement conditions. However, an enforcement condition imposed by a court may be reimposed by an authorised justice.
- (6) In this section, a ***relevant bail authority*** means:
- (a) an authorised justice, or
 - (b) the Local Court, or
 - (c) a court before which the person is required to appear by his or her bail acknowledgment.

79 Offence of failing to appear

- (1) A person who, without reasonable excuse, fails to appear before a court in accordance with a bail acknowledgment is guilty of an offence.
- (2) The onus is on the person granted bail to prove reasonable excuse.

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- (3) The maximum penalty for an offence against this section (a *fail to appear offence*) is the maximum penalty for the offence for which bail was granted, subject to this section.
 - (4) A penalty of imprisonment for a fail to appear offence is not to exceed 3 years and a monetary penalty for an offence against this section is not to exceed 30 penalty units.

80 Proceedings for fail to appear offence

- (1) Proceedings for a fail to appear offence may be commenced at any time.
- (2) Proceedings for a fail to appear offence are to be dealt with summarily:
 - (a) by the court dealing with the offence for which the person failed to appear, constituted in the same way, or
 - (b) where the court referred to in paragraph (a) is the Court of Criminal Appeal, the Supreme Court, the Land and Environment Court or the District Court—by that Court constituted in any other way, or
 - (c) in any case—by the Local Court.
- (3) A fail to appear offence, if dealt with by the Court of Criminal Appeal, is to be disposed of in accordance with:
 - (a) such rules made under the *Supreme Court Act 1970* as are expressed to apply to offences against this section, and
 - (b) subject to paragraph (a), Part 5 of Chapter 4 of the *Criminal Procedure Act 1986* (as if references to the Supreme Court were references to the Court of Criminal Appeal).

Note. The *Criminal Procedure Act 1986* makes provision for the summary disposal of matters by the Local Court, the District Court and the Supreme Court.
- (4) A person convicted by the Supreme Court, the Land and Environment Court, the Industrial Court or the District Court of a fail to appear offence is taken, for the purposes of section 5 (1) of the *Criminal Appeal Act 1912*, to have been convicted of the offence on indictment. Accordingly, an appeal to the Court of Criminal Appeal is available under that section.

81 Giving of directions under enforcement conditions

If bail is granted subject to an enforcement condition, a police officer may give a direction of a kind specified in the enforcement condition:

- (a) in the circumstances specified in the enforcement condition, or
- (b) at any other time the police officer has a reasonable suspicion that the accused person has contravened the underlying bail condition in connection with which the enforcement condition is imposed.

Part 9 General provisions about security requirements

82 Deposit of bail money or bail security

- (1) A receipt is to be given for any bail money or bail security deposited with a bail authority under a security requirement of a bail condition.
- (2) Any such money or security must, subject to the provisions of any other Act, be dealt with as prescribed by the regulations.
- (3) An officer or court with whom bail money or bail security is deposited under a security requirement of a bail condition may require the person who provides the money or security to provide information, or to agree to a means, to enable the return of the money or security if it is to be returned.

83 Bail guarantor may apply to be discharged of liability

- (1) A person who enters into a bail security agreement (other than the person granted bail) may at any time apply to a court to be discharged of his or her liability under the agreement.
- (2) An application may be made to the court that granted bail or to the court of appearance.
- (3) An authorised justice must, if an application for discharge of liability is made and the person granted bail is not then before the court or otherwise in custody:
 - (a) issue a warrant to apprehend the person and bring the person before the court, or
 - (b) issue a summons for the person's appearance before the court.
- (4) When the person granted bail appears before the court, the court must, unless satisfied that it would be unjust to do so, direct that the applicant be discharged from the applicant's liability. The applicant is discharged accordingly.
- (5) A court that discharges an applicant from liability under a bail security agreement may:
 - (a) vary the bail conditions of the person granted bail, and
 - (b) by warrant commit the person to a correctional centre or other place of security until those conditions are complied with.
- (6) In this section, *court of appearance* means the court before which a person granted bail is required to appear by that bail.

84 Bail guarantor must not dispose of bail security

A person who enters into a bail security agreement under which he or she deposits bail security must not dispose of the bail security, or cause or allow the bail security to be disposed of, for the purpose of preventing the bail security from being realised.

Maximum penalty: imprisonment for 2 years.

85 Revocation of bail if bail security no longer intact

- (1) A court may at any time revoke a person's bail if it appears that any bail security deposited with the bail authority under a bail condition of that bail has ceased to be intact.
- (2) Bail security ceases to be intact if:
 - (a) it ceases to exist, or
 - (b) its value is diminished, or
 - (c) it ceases to be available as security for any reason (for example, because it ceases to be in the ownership or control of the person by whom it was deposited).
- (3) The court must not revoke a person's bail under this section unless:
 - (a) it has caused written notice of the proposed revocation to be served on the person, and
 - (b) it has given the person at least 28 days from the date on which the notice was served:
 - (i) to demonstrate to the court that the bail security is still intact, or
 - (ii) to arrange for the deposit of replacement or supplementary security (whether by the same person or another person).
- (4) The written notice:
 - (a) must contain such information as the regulations require, and
 - (b) must be sent by post to the person at the person's address specified in the relevant bail acknowledgment or, if the person has subsequently notified the court of a change of address, to the person's address most recently notified, and
 - (c) is presumed to have been served on the person at the end of the seventh day after it was posted, unless the person establishes that it was not delivered to that address within that time.

86 Offence of indemnifying bail guarantor

- (1) A person who indemnifies another person, or agrees to indemnify another person, against any forfeiture that the other person may incur under a bail security agreement is guilty of an offence.
Maximum penalty on indictment: 30 penalty units or imprisonment for 3 years, or both.
- (2) A person who is indemnified by, or enters into any agreement under which the person is to be indemnified by, another person against any forfeiture the first person may incur under a bail security agreement is guilty of an offence.
Maximum penalty on indictment: 30 penalty units or imprisonment for 3 years, or both.
- (3) An offence is committed against this section:
 - (a) whether an agreement is entered into before or after a person to be indemnified enters into a bail security agreement, and
 - (b) whether the compensation is or is to be in money or in money's worth.
- (4) This section does not apply to any indemnity given by the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* against any forfeiture that a member of the Government Service may incur as a result of entering into a bail security agreement for the purpose of fulfilling a condition imposed on the grant of bail to a person under the parental responsibility of that Minister.
- (5) Proceedings for an offence against this section may be instituted only with the consent of the Minister.

87 Bail guarantor does not have right to arrest

A person who enters into a bail security agreement does not have a right to arrest an accused person as a result of entering into the agreement.

88 Return of bail money and security

A court that makes a finding that a person granted bail is guilty or not guilty of an offence must consider whether to make an order for the return of any bail money or bail security deposited in connection with the grant of bail for the offence.

Part 10 Miscellaneous

89 Restrictions on publication of association conditions

- (1) A person must not publish or broadcast:
- (a) the fact that a named person is a prohibited associate of an accused person, or
 - (b) any information calculated to identify a person as a prohibited associate of an accused person.

Maximum penalty: 10 penalty units.

- (2) A person is a *prohibited associate* of an accused person if a bail condition prohibits or restricts the accused person from associating with the person.
- (3) Subsection (1) does not apply to the disclosure of information to any of the following persons:
- (a) the accused person,
 - (b) the prohibited associate of the accused person,
 - (c) any member of the NSW Police Force,
 - (d) any person involved in the administration of bail or of any penalty to which the accused person is subject while on release on bail,
 - (e) any person involved in proceedings for an alleged failure to comply with a bail acknowledgment or a breach of bail conditions,
 - (f) any other person specified in the bail condition as a person to whom such information may be disclosed,
 - (g) any other person to whom such information is required to be disclosed under any other Act or law.

- (4) In the case of bail granted by a court, subsection (1) does not apply to the publication or broadcasting of an official report of the proceedings of the court.

90 Bail for contempt not affected

- (1) This Act does not affect any power or duty that a court, tribunal or person has to grant bail, or to grant relief in the nature of bail, for any contempt or alleged contempt.
- (2) Any such power or duty is additional to any power or duty that a court, tribunal or person may have under this Act in relation to any contempt or alleged contempt.

- (3) This section does not apply to a contempt or alleged contempt that constitutes an offence and proceedings for which may be commenced by way of information or complaint.

91 Powers in relation to writs of habeas corpus not affected

This Act does not affect the powers of the Supreme Court in relation to a writ of habeas corpus.

92 Time from which accused person is in custody of court

A person granted bail for an offence who is present in a courtroom or court premises when the matter is called is taken to be in the custody of the court on and from the calling of the matter concerned until the court completes its dealing with the matter (whether or not the person surrenders to the custody of the court).

93 Facilitation of proof of bail acknowledgments and decisions

- (1) A document purporting to be, or to be a copy of, a bail acknowledgment given to or signed by an accused person, and to be certified by a bail officer to be or to be a copy of the acknowledgment, is admissible in evidence in any proceedings and is prima facie evidence of the terms of the acknowledgment.
- (2) A document purporting to be a copy of the decision by which a bail condition was imposed, and to be certified by a bail officer to be or to be a copy of the decision, is admissible in evidence in any proceedings and is prima facie evidence of the terms of the bail condition.
- (3) A certificate purporting to be signed by a bail officer certifying the following is admissible in evidence in any proceedings and is prima facie evidence of the matters certified:
- (a) that a bail condition has been varied under this Act,
 - (b) that a bail condition has been varied under this Act in a specified manner and has not otherwise been varied.
- (4) A document purporting to be, or to be a copy of, a bail security agreement, and to be certified by a bail officer to be or to be a copy of a bail security agreement, is admissible in evidence in any proceedings and is prima facie evidence of the making of or entry into the agreement and its terms.
- (5) A document purporting to be, or to be a copy of, a character acknowledgment, and to be certified by a bail officer to be or to be a copy of the acknowledgment, is admissible in evidence in any proceedings and is prima facie evidence of the making of the acknowledgment and its terms.

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- (6) In any document, the words “bail officer” after a signature are evidence that the person whose signature it purports to be is in fact a bail officer.
- (7) In this section, *bail officer* means:
- (a) an officer of a court that has custody of the copy of the bail acknowledgment applicable to an accused person granted bail, or
 - (b) a police officer with power to make a bail decision under this Act, or
 - (c) a person prescribed by the regulations as a bail officer.

94 Facilitation of proof of failure to appear

- (1) A document purporting to be a copy of any notice given or sent to an accused person granted bail that specified when he or she was required to appear before a court, and to be certified by a court officer to be a copy of the notice, is admissible in evidence in any proceedings and is prima facie evidence of the terms of the notice.
- (2) A certificate purporting to be signed by a court officer certifying that a notice referred to in subsection (1) was given or sent to the accused person in a specified manner on a specified day is admissible in evidence in any proceedings and is prima facie evidence of the matters certified.
- (3) A certificate purporting to be signed by a court officer and stating that a specified person did not appear before a specified court, at a specified place, on a specified day and at a specified time or during a specified period, is admissible in evidence in any proceedings and is prima facie evidence of the matters so certified.
- (4) In any document, the words “court officer” after a signature are evidence that the person whose signature it purports to be is in fact a court officer.
- (5) In this section, *court officer* means:
- (a) a Judge, registrar or assistant registrar of the Court of Criminal Appeal, the Supreme Court, the Land and Environment Court, the Industrial Court, the District Court or the Drug Court, or
 - (b) a Magistrate of the Local Court or a Children’s Magistrate, or
 - (c) an authorised justice, or
 - (d) a person prescribed by the regulations as a court officer.

95 Exercise of functions of bail authority by appropriate officers

- (1) An appropriate officer acting as, or on behalf of, a bail authority may exercise any of the following functions of the bail authority under this Act:
 - (a) giving an accused person a bail acknowledgment or any other notice required to be given by the bail authority,
 - (b) accepting a signed bail acknowledgment from the accused person,
 - (c) accepting a character acknowledgment,
 - (d) entering into a bail security agreement,
 - (e) accepting money or security deposited under a bail condition,
 - (f) accepting any notice that demonstrates compliance with an accommodation requirement,
 - (g) any other functions prescribed by the regulations.
- (2) In this section, *appropriate officer* means:
 - (a) a Judge, registrar or assistant registrar of the Court of Criminal Appeal, the Supreme Court, the Land and Environment Court, the Industrial Court, the District Court or the Drug Court, or
 - (b) a Magistrate of the Local Court or a Children’s Magistrate, or
 - (c) an authorised justice, or
 - (d) a police officer with power to grant bail, or
 - (e) an officer of the Department of Attorney General and Justice authorised by the Commissioner of Corrective Services for the purposes of this section, or
 - (f) a person prescribed by the regulations as an appropriate officer.

96 Court attendance notices and warrants

- (1) The provisions of Chapter 4 of the *Criminal Procedure Act 1986* apply (with any necessary adaptations) in relation to a warrant or court attendance notice issued or to be issued under this Act in the same way as they apply to a warrant or court attendance notice of a corresponding kind issued or to be issued under that Act.
- (2) This section is subject to the regulations.

97 Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations, other than an offence for which a maximum penalty on indictment is specified, are to be dealt with summarily before the Local Court.

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- (2) Chapter 5 of the *Criminal Procedure Act 1986* applies to an offence under this Act for which a maximum penalty on indictment is specified.
 - (3) This section does not apply to proceedings for an offence under this Act for a fail to appear offence.

98 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may apply, with modifications, any of the provisions of the *Road Transport (Safety and Traffic Management) Act 1999* or the *Road Transport Act 2013* relating to drug or alcohol testing to or in respect of directions specified in enforcement conditions that require a person to undergo drug or alcohol testing.

99 Court rules

- (1) Rules (being rules not inconsistent with this Act) may be made under the *Supreme Court Act 1970* with respect to the powers, authorities, duties or functions of the Supreme Court and the Court of Criminal Appeal in respect of bail.
- (2) Those rules may prescribe forms to be used in connection with those powers, authorities, duties or functions. If such forms are prescribed, they may be used instead of forms prescribed by regulations made under this Act.

100 Repeal of Bail Act 1978 No 161

The *Bail Act 1978* and any regulations made under that Act are repealed.

101 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the repeal of the *Bail Act 1978*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

Schedule 1 Application of Act to non-offenders

(Section 8)

1 Bail decisions in proceedings for the administration of sentence

- (1) A court may make a bail decision in respect of a person if the person is brought or appears before the court in proceedings for the administration of sentence.
- (2) The following proceedings are *proceedings for the administration of sentence*:
 - (a) proceedings under the *Crimes (Sentencing Procedure) Act 1999* for an alleged failure by the person to comply with the conditions of a good behaviour bond imposed for an offence,
 - (b) proceedings under the *Children (Criminal Proceedings) Act 1987* for an alleged failure by the person to comply with the conditions of a good behaviour bond or probation imposed for an offence, or a failure to comply with an outcome plan determined under the *Young Offenders Act 1997* for an offence,
 - (c) proceedings under the *Crimes (Administration of Sentences) Act 1999* on an application for the extension or revocation of a community service order imposed on the person for an offence,
 - (d) proceedings under the *Children (Community Service Orders) Act 1987* on an application for the revocation of a children's community service order imposed on the person for an offence,
 - (e) proceedings of a kind prescribed by the regulations.
- (3) In such a case, this Act applies, with any modifications provided for by the regulations, as if:
 - (a) the person brought or appearing before the court is accused of an offence (for which there is no right to release under Part 3), and
 - (b) the proceedings for the administration of sentence are proceedings for that offence.

2 Bail decisions made under other Acts

If another Act confers power on a person, body or court to make a bail decision in respect of a person otherwise than for an offence, this Act applies with any modifications provided for by that other Act.

Note. The following are examples of provisions of other Acts that confer a power to grant bail, otherwise than for an offence:

- (a) section 109U of the *Children and Young Persons (Care and Protection) Act 1998*,
- (b) section 71 of the *Coroners Act 2009*,

(c) section 230 of the *Criminal Procedure Act 1986*.

Schedule 2 Forfeiture of security

Part 1 Preliminary

1 Definitions

- (1) In this Schedule:
 - appropriate State authority* means such person or body as is declared by the regulations to be the appropriate State authority for the purposes of this Schedule.
 - automatic forfeiture order* means an order under clause 3.
 - forfeiture notice* means a notice under clause 4.
 - forfeiture order* means an order under clause 2 and includes, unless the context otherwise requires, an automatic forfeiture order.
 - person affected* by a forfeiture order means the person whose bail money is forfeited to the Crown by operation of the order.
 - statutory review period*, for a forfeiture order, means the period of 28 days after service of a forfeiture notice for the order during which a person affected by the order may file an objection to the confirmation of the order.
- (2) For the purposes of this Schedule, bail money is *associated* with a bail acknowledgment if the bail money is money agreed to be forfeited under a bail security agreement if an accused person fails to appear before a court in accordance with the bail acknowledgment.

Part 2 Forfeiture orders

2 Court may make forfeiture order if accused person fails to appear

- (1) A court may make an order requiring the forfeiture to the Crown of any bail money associated with a bail acknowledgment if satisfied that a person granted bail has failed to appear before a court in accordance with the bail acknowledgment.
- (2) An order under this clause is a *forfeiture order*.
- (3) A forfeiture order may be made only by:
 - (a) the court that granted bail, or
 - (b) the court before which the person granted bail was required to appear under the bail acknowledgment.
- (4) A forfeiture order may not be made if more than 3 years have elapsed since the accused person allegedly failed to appear before the court in accordance with the relevant bail acknowledgment.

3 Forfeiture after conviction for offence of failing to appear

- (1) A court is taken to have made a forfeiture order under this Schedule in respect of any bail money associated with a bail acknowledgment if the court convicts a person of a fail to appear offence in connection with the bail acknowledgment.
- (2) An order under this clause is an *automatic forfeiture order*.
- (3) This clause does not affect the power of a court to make a forfeiture order in relation to a person who has not been convicted of a fail to appear offence.

4 Persons affected to be notified of forfeiture order

- (1) The registrar of the court by which a forfeiture order is made must cause written notice of the making of the order to be served on each person affected by the order as soon as practicable after it is made.
- (2) A notice under this clause is a *forfeiture notice*.
- (3) A forfeiture notice:
 - (a) must contain such information as the regulations require, and
 - (b) must be sent by post to the person at the person's address specified in the relevant bail acknowledgment or, if the person has subsequently notified the court of a change of address, to the person's address most recently notified, and
 - (c) is presumed to have been served on the person at the end of the seventh day after it was posted, unless the person establishes that it was not delivered to that address within that time.
- (4) This clause ceases to apply if, before the notice is sent, an oral objection to the confirmation of the forfeiture order is made under this Part.

5 Formal objection to confirmation of forfeiture order

- (1) Any person affected by a forfeiture order may file an objection to the confirmation of the order in the Local Court.
- (2) Such an objection may not be made more than 28 days after service of the forfeiture notice issued for the forfeiture order.
- (3) An objection must be made in accordance with rules of court and must include the grounds on which the applicant intends to rely.
- (4) The Local Court must ensure that notice of such an objection is given to the appropriate State authority in accordance with the regulations.

6 Hearing of formal objection to confirmation of forfeiture order

- (1) If an objection to a forfeiture order is duly made to the Local Court, the Local Court must conduct a hearing to determine whether or not the order should be confirmed.
- (2) After conducting a hearing, the Local Court must confirm the forfeiture order unless it is satisfied that the accused person did not fail to comply with the relevant bail acknowledgment, in which case it must set the forfeiture order aside.
- (3) However, if it is satisfied that in the circumstances of the case it would be unjust for the forfeiture order to be confirmed in full in respect of a particular person affected by the order, the Local Court:
 - (a) may vary the order so as to reduce the amount of bail money to be forfeited by that person, and
 - (b) in that event, must confirm the order as so varied.
- (4) The Local Court may be satisfied that it would be unjust for a forfeiture order to be confirmed in full in respect of a particular bail guarantor if it is satisfied that the guarantor took all reasonable steps to ensure that the person granted bail complied with the bail acknowledgment.
- (5) This clause does not apply in respect of an automatic forfeiture order.

7 Hearing of formal objection to automatic forfeiture order

- (1) If an objection to the confirmation of an automatic forfeiture order is duly made to the Local Court, the Local Court must conduct a hearing to determine whether or not the order should be confirmed.
- (2) After conducting a hearing, the Local Court must confirm the forfeiture order unless it is satisfied as referred to in subclause (3).
- (3) If the Local Court is satisfied that in the circumstances of the case it would be unjust for the forfeiture order to be confirmed in full in respect of a particular person affected by the order, the Local Court:
 - (a) may vary the order so as to reduce the amount of bail money to be forfeited by that person, and
 - (b) in that event, must confirm the order as so varied.
- (4) The Local Court may be satisfied that it would be unjust for a forfeiture order to be confirmed in full in respect of a particular bail guarantor if it is satisfied that the guarantor took all reasonable steps to ensure that the accused person complied with the relevant bail acknowledgment.

8 Informal objection to forfeiture order

- (1) If, after a forfeiture order is made but before a forfeiture notice is served, a person affected by the order appears before the court by which the order was made, that person may make an oral objection to the court against the confirmation of the order.
- (2) The court must ensure that notice of the objection is given to the appropriate State authority in accordance with the regulations.
- (3) The court may deal with the objection as if it had been an objection filed in the Local Court in response to a forfeiture notice.

9 When forfeiture order takes effect

- (1) A forfeiture order takes effect:
 - (a) at the expiry of the statutory review period, or
 - (b) if an objection to the confirmation of the order is duly made to a court before the expiry of the statutory review period, when the order is confirmed by the court.
- (2) A forfeiture order does not take effect if it is set aside under this Schedule.
- (3) No action may be taken to enforce a forfeiture order until the date the order takes effect.

10 Effect of forfeiture order

- (1) As soon as a forfeiture order takes effect, the bail money to which it relates:
 - (a) is forfeited to the Crown, in the case of bail money that is deposited with a bail authority, or
 - (b) becomes payable to the Crown, in the case of bail money that is agreed to be paid to an authorised officer or court.
- (2) In the case of unpaid bail money, any bail security becomes enforceable in accordance with its terms.
- (3) No action is to be taken to enforce any bail security the subject of an unconfirmed forfeiture order until 12 months after the date on which the order was made.
- (4) In this clause, an *unconfirmed forfeiture order* means any forfeiture order that was not objected to during the statutory review period.

11 Persons affected to be notified that forfeiture order has taken effect

- (1) As soon as practicable after a forfeiture order takes effect, the registrar of the court by which the order was made must cause written notice that

the order has taken effect to be served on each person affected by the order.

- (2) The notice:
- (a) must contain such information as the regulations require, and
 - (b) must be sent by post to the person at the person's address specified in the relevant bail acknowledgment or, if the person has subsequently notified the court of a change of address, to the person's address most recently notified, and
 - (c) is presumed to have been served on the person at the end of the seventh day after it was posted, unless the person establishes that it was not delivered to that address within that time.

12 Notice of forfeiture order for enforcement

- (1) The registrar of the court by which a forfeiture order is made is to notify the State Debt Recovery Office if any bail money to which a forfeiture order relates remains unpaid after the order takes effect and of the amount of bail money that remains unpaid as at the date of the notice.
- (2) A registrar who gives notice under this clause must, on the request of the State Debt Recovery Office, provide the State Debt Recovery Office with one or more of the following:
 - (a) a copy of the forfeiture order,
 - (b) a copy of the bail decision and the relevant bail security agreement,
 - (c) a copy of all documents evidencing any relevant bail security,
 - (d) a copy of a certificate, prepared by the registrar who made the notification, indicating the amount of bail money that remained unpaid as at the date notification was given.
- (3) A copy of the certificate referred to in subclause (2) (d) is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

13 Payment of forfeited bail money

- (1) Bail money that becomes payable to the Crown as a consequence of a forfeiture order taking effect must be paid:
 - (a) if paid before the State Debt Recovery Office is notified of the order—to the registrar of the court by which the order was made, or
 - (b) if paid after the State Debt Recovery Office is notified of the order—to the State Debt Recovery Office.

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- (2) A bail guarantor by whom an amount of bail money is payable is entitled to the return of any bail security deposited for that amount if he or she pays that amount in money to the court by which the forfeiture order was made or to the State Debt Recovery Office, as the case requires.

Part 3 Power to set aside forfeiture orders

14 Application to set aside forfeiture order

- (1) Any person affected by a forfeiture order may file in the Local Court an application to have the order set aside.
- (2) An application may be made by the person only if the person did not object to the confirmation of the forfeiture order within the statutory review period.
- (3) An application must be made within 12 months after the date on which the forfeiture order was made.
- (4) An application must be made in accordance with rules of court and must include the grounds on which the applicant intends to rely.
- (5) The relevant registrar of the Local Court must ensure that copies of such an application are given:
 - (a) to the appropriate State authority, and
 - (b) to the State Debt Recovery Office.
- (6) Action to enforce the order may not be commenced or continued until proceedings on an application under this clause are finally determined.

15 Hearing of application to set aside forfeiture order

- (1) If an application to have a forfeiture order set aside is duly made to the Local Court and the Court is satisfied that the applicant can be excused for failing to lodge an objection to the order, the Court must conduct a hearing to determine whether or not the order should be set aside.
- (2) An applicant can be excused for failing to lodge an objection to a forfeiture order if and only if:
 - (a) notice of the making of the order was not served on the applicant, and
 - (b) the applicant did not otherwise become aware that the order had been made before the expiry of the statutory review period.
- (3) After conducting a hearing on the application, the Local Court has the same powers to confirm or set aside the order, or vary the order, as it has in respect of an objection to the making of a forfeiture order (subject to

the same limitations as would apply if the application had been an objection).

Note. See clauses 6 and 7.

- (4) Notice of the Local Court's determination of the application is to be given to the State Debt Recovery Office.

Part 4 Miscellaneous

16 Effect of setting aside forfeiture order

- (1) If a court sets aside a forfeiture order, each person affected by the order is entitled to the return of:
 - (a) any bail money or bail security that has been provided by that person, or seized from that person, in relation to the bail acknowledgment to which the order relates, and
 - (b) the proceeds of sale of any bail security so provided or seized.
- (2) If a court varies a forfeiture order so as to reduce the amount of money forfeited by a particular person affected by the order, that person is entitled to the return of:
 - (a) any bail money or bail security that has been provided by that person, or seized from that person, in relation to the bail acknowledgment to which the order relates, and
 - (b) the proceeds of sale of any bail security so provided or seized, to the extent to which the amount of any such bail money, bail security or proceeds of sale exceeds the reduced amount of money forfeited.
- (3) A court that sets aside a forfeiture order may make such orders as are necessary to effect the return of any such bail money, bail security or proceeds of sale.
- (4) The Consolidated Fund is appropriated to the extent necessary to enable money that has been paid into that Fund to be returned in accordance with this clause.

17 Appeals

- (1) An appeal may be made to the District Court under Part 3 of the *Crimes (Appeal and Review) Act 2001* against:
 - (a) the Local Court's determination of an objection to a forfeiture order, or
 - (b) the Local Court's determination of an application to have a forfeiture order set aside.

- (2) Part 3 of the *Crimes (Appeal and Review) Act 2001* applies, with such modifications as are made by or in accordance with the regulations under this Act, to the appeal as if the Local Court's determination were a determination of a court attendance notice under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (3) The relevant registrar of the Local Court must ensure that notice of the appeal is given:
 - (a) to the appropriate State authority, and
 - (b) to the State Debt Recovery Office.
- (4) Action to enforce the order may not be commenced or continued until proceedings on an appeal under this clause are finally determined.

18 Court of Criminal Appeal may authorise other courts to take action

If a person granted bail is under a duty to appear before the Court of Criminal Appeal in connection with an appeal:

- (a) the Court of Criminal Appeal may instead authorise the court from which the appeal arose to take any action under this Schedule that the Court of Criminal Appeal is authorised to take, and
- (b) in that event, the court from which the appeal arose may take such action.

19 Crown is a party to forfeiture proceedings

The Crown, and the appropriate State authority, are entitled to appear and be heard at, and are taken to be parties to, all proceedings under this Schedule.

Schedule 3 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

existing security agreement means an agreement of a kind referred to in section 36 (2) (c)–(h) of the 1978 Act entered into before the repeal of that Act.

the 1978 Act means the *Bail Act 1978* as in force immediately before its repeal by this Act.

3 Saving of actions taken under 1978 Act

- (1) Any act, matter or thing that, immediately before the repeal of the 1978 Act, had effect under that Act continues to have effect under this Act.
- (2) In particular, any bail granted under the 1978 Act that had effect immediately before the repeal of that Act is taken, on that repeal:
 - (a) to have been granted under this Act, and

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- (b) to continue in force until it would have ceased to have effect under the 1978 Act, unless sooner revoked under this Act.
 - (3) A power under this Act to continue bail extends to bail referred to in subclause (2).
 - (4) A power under this Act to revoke or vary a bail decision extends to a decision to grant or refuse bail, or to dispense with the requirement for bail, made under the 1978 Act.
 - (5) Any variation made to a bail condition under the 1978 Act has effect on the repeal of the 1978 Act as if it had been made under this Act.

4 Bail undertakings given under 1978 Act

- (1) A bail undertaking given by a person under section 34 of the 1978 Act and in force on the repeal of that Act is taken, on that repeal:
 - (a) to be a bail acknowledgment for the decision to grant bail, and
 - (b) to have been given to the person under this Act.
- (2) Accordingly, the obligations imposed on an accused person under such a bail undertaking are taken, on the repeal of the 1978 Act, to be obligations imposed on the accused person under a bail acknowledgment.

5 Obligations under bail agreements continued

- (1) A bail agreement entered into under the 1978 Act and in force immediately before the repeal of that Act continues to have effect.
- (2) Anything an accused person is required to do or to refrain from doing under the bail agreement is taken, on that repeal, to be a bail condition.
- (3) A court or authorised justice may vary the requirements of the bail agreement in the same way as a bail condition (including by releasing the accused person from any of the requirements of the bail agreement).
- (4) To avoid doubt, subclauses (2) and (3) do not apply to the bail undertaking given to a court under section 34 of the 1978 Act.
- (5) In this clause, *bail agreement* means an agreement entered into by an accused person in compliance with a condition of bail granted under the 1978 Act, other than a security agreement.

6 Obligations under existing security agreements continued

- (1) An existing security agreement in force immediately before the repeal of the 1978 Act is taken, on that repeal, to be a bail security agreement.
- (2) However, the 1978 Act continues to apply in respect of any forfeiture order made under Part 7A of that Act before its repeal.

- (3) Except as provided by subclause (2), this Act extends to bail money agreed to be forfeited under an existing security agreement or bail security deposited, before the repeal of the 1978 Act, as security for the payment of bail money under an existing security agreement.
- (4) In Schedule 2, a reference to a fail to appear offence includes a reference to an offence under section 51 of the 1978 Act.
- (5) A reference in any existing security agreement to a bail undertaking is taken, for the purposes of this Act, to include a reference to a bail acknowledgment.

7 History of compliance with bail under 1978 Act

In sections 17 and 21:

- (a) a reference to a bail acknowledgment includes a reference to any bail undertaking given under section 34 of the 1978 Act, and
- (b) a reference to a bail condition includes a reference to a bail condition imposed under the 1978 Act.

8 Pending bail applications

- (1) An application to a court or authorised justice in relation to bail made by an accused person under the 1978 Act (other than an application referred to in subclause (2)) that is pending on the repeal of that Act is taken, on that repeal, to be a release application.
- (2) An application for a review of a decision to grant bail made to a court or authorised justice under Division 2 of Part 6 of the 1978 Act that is pending on the repeal of that Act is taken, on that repeal, to be:
 - (a) a detention application (if the application is an application for revocation of bail made by the prosecutor in the proceedings), or
 - (b) a variation application (in any other case).

9 Multiple release applications to same court not permitted

An application for the grant of bail for an offence that was refused by a court under the 1978 Act is taken, for the purposes of section 74, to have been refused by the court on a release application under this Act.

10 Facilitation of proof of things done under 1978 Act

- (1) Section 60 of the 1978 Act continues to apply to a document or certificate relating to anything that occurred before the repeal of the 1978 Act.
- (2) This clause does not prevent things that occurred before the repeal of the 1978 Act being certified as provided for by section 93 or 94 of this Act.

11 Abolition of common law by 1978 Act not affected

The repeal of the 1978 Act does not revive any power or duty that would exist, apart from statute, to grant bail.

[Second reading speech made in—
Legislative Assembly on 1 May 2013
Legislative Council on 21 May 2013]