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public consultation draft

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New South Wales

## Bail Bill 2010

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New South Wales

## **Bail Bill 2010**

No. , 2010

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### **A Bill for**

An Act to make provision for the grant of bail to persons in or in connection with criminal and other proceedings.

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Clause 1          Bail Bill 2010

Part 1            Preliminary

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**The Legislature of New South Wales enacts:**

## **Part 1    Preliminary**

### **1    Name of Act**

This Act is the *Bail Act 2010*.

### **2    Commencement**

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

### **3    Objects of Act**

The objects of this Act are:

- (a) to ensure that a person required to appear before a court in criminal or other proceedings appears as and when required by the court, and
- (b) to prevent the commission of any offences by a person required to appear in proceedings until the proceedings have been finally determined, and
- (c) to protect any person against whom it is alleged that an offence was committed, the close relatives of any such person and any other persons who may require protection in the case, and
- (d) to prevent a person required to appear in proceedings from interfering with witnesses or otherwise interfering with the course of justice.

### **4    Definitions**

(1) In this Act:

***appeal*** includes:

- (a) an application for leave to appeal, and
- (b) a proceeding by way of appeal, and
- (c) an application for annulment of a conviction or sentence, and
- (d) an application for review of a decision made by a court that may be made under any law.

***approved*** means approved by the Attorney General.

***authorised justice*** means:

- (a) a registrar of the Local Court, or
- (b) an officer of the Department of Justice and Attorney General who is declared, by order of the Minister, whether by reference to his



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Bail Bill 2010

Clause 4

Preliminary

Part 1

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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 agreement***—see section 11.

***bail application***—see section 24.

***bail variation application***—see section 24.

***bail authority*** means any court or person that has power to make a bail decision under or in accordance with this Act, whether that power is conferred by this Act or another Act.

***bail condition*** means a condition imposed on the grant of bail.

***bail decision*** means a decision in relation to bail, including a decision to grant, refuse or revoke bail and a decision to impose, vary or revoke bail conditions.

***bail guarantee agreement*** means an agreement under which a person agrees to forfeit a specified amount of money if a person granted bail fails to appear before a court in accordance with a bail agreement.

***bail guarantor*** means a person (other than the person granted bail) who agrees (with or without the deposit of security) to forfeit money under a bail guarantee agreement if the person granted bail fails to appear before a court in accordance with a bail agreement.

***bail money*** means money agreed to be forfeited under a bail guarantee agreement if a person granted bail fails to appear before a court in accordance with a bail agreement.

***bail security*** means any security deposited with a court for the payment of money agreed to be forfeited under a bail guarantee agreement.

***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, subject to the *Children (Detention Centres) Act 1987*, a detention centre within the meaning of that Act.

***court*** means any court that, or person who, exercises criminal jurisdiction.

***Court of Criminal Appeal*** includes a Judge of that Court.

***District Court*** means the District Court of New South Wales in its criminal and special jurisdiction and includes a Judge of that Court.

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

***exercise*** a function includes perform a duty.

***forfeiture order***—see section 97.

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Clause 4            Bail Bill 2010

Part 1              Preliminary

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*function* includes a power, authority or duty.

*Industrial Court* means the Industrial Court of New South Wales and includes a judicial member of that Court.

*Land and Environment Court* includes a Judge of the Land and Environment Court.

*level 1 offence*—see section 51.

*level 2 offence*—see section 54.

*level 3 offence*—see section 56 and Schedule 1.

*level 4 offence*—see sections 58 and 59 and Schedule 2.

*Local Court* means the Local Court of New South Wales and includes a Magistrate of that Court.

*minor offence*—see section 51.

*offence* includes an alleged offence.

*passport* has the same meaning as it has in the *Migration Act 1958* of the Commonwealth.

*proceedings for the administration of a sentence*—see section 14.

*prosecutor* means a police prosecutor, the Director of Public Prosecutions or any other person who institutes or is responsible for the conduct of a prosecution and includes (where the subject-matter or context allows or requires) an Australian legal practitioner representing the prosecutor.

*relative*, of a person, has the meaning given by the *Crimes (Domestic and Personal Violence) Act 2007*.

*senior police officer*—see section 16.

*Supreme Court* means the Supreme Court of New South Wales and includes a Judge of that Court.

- (2) Notes included in this Act do not form part of this Act.

**Note.** For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the *Bail Act 1978* as in force immediately before its repeal by this Act.

- (3) A reference in this Act to being charged with an offence includes a reference to being issued by a police officer with a court attendance notice for an offence under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.

- (4) In this Act, a reference to an offence punishable summarily includes a reference to an indictable offence that is punishable summarily, whether with or without the consent of the person charged, and whether or not it is in fact dealt with summarily.

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Bail Bill 2010

Clause 5

Preliminary

Part 1

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**5 Application of Act to children and the Children's Court** (cf s 5 Bail Act 1978)

- (1) This Act extends to a person who is under the age of 18 years.
- (2) A reference in this Act to the Local Court, or to a Magistrate, includes a reference to the Children's Court of New South Wales, and to a Children's Magistrate, exercising the functions of the Local Court or a Magistrate under the *Children (Criminal Proceedings) Act 1987*.

**Note.** The *Children (Criminal Proceedings) Act 1987* gives the Children's Court jurisdiction in respect of certain proceedings involving children and younger persons. The Local Court cannot hear and determine criminal proceedings that the Children's Court has jurisdiction to hear and determine.

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Clause 6          Bail Bill 2010

Part 2            Bail

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## **Part 2    Bail**

### **Division 1      Grant of bail in respect of offences**

#### **6    Grant of bail to offenders and alleged offenders**

A person who has committed or is alleged to have committed an offence can be granted bail under this Act.

#### **7    When can bail be granted** (cf ss 6 and 16 Bail Act 1978)

- (1) Bail can be granted to a person in respect of an offence if:
- (a) the person has been charged with the offence but has not been convicted of the offence, or
  - (b) the person has been convicted of the offence but has not been sentenced for the offence, or
  - (c) the person has been convicted of the offence but has lodged an appeal or a notice of intention to appeal in respect of the conviction or a sentence imposed for the offence that has not been finally determined, or
  - (d) the person has been convicted of the offence but the judge before whom the person was convicted has submitted any question of law arising at or in reference to the person's trial or conviction to the Court of Criminal Appeal for determination, or
  - (e) the person has entered into a recognizance to prosecute proceedings in respect of a stated case in relation to the offence, or
  - (f) the conviction or sentence of the person for the offence has been annulled or stayed, or
  - (g) a new trial has been ordered to be held for the offence, or
  - (h) the person has been brought up by a writ of habeas corpus, following a summary conviction by an authorised justice or Magistrate in respect of the offence, and the Supreme Court has not made a final decision in respect of the case.
- (2) Bail can also be granted in any circumstances authorised by the regulations.

**Note.** A conviction includes a finding of guilt in respect of an offence.

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Bail Bill 2010

Clause 8

Bail

Part 2

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## 8 Effect of grant of bail (cf ss 7 and 16A Bail Act 1978)

- (1) Bail confers an entitlement on a person to be at liberty, instead of in custody, in respect of an offence, except on those occasions on which the person is required to appear before a court, and surrender to the custody of the court, in connection with proceedings in respect of the offence.
- (2) The person is required to appear before a court, and surrender to the custody of the court, as and when required by the court in connection with proceedings in respect of the offence.
- (3) A requirement to appear before a court is a requirement to appear at the time at which the matter relating to the relevant offence is called at the court premises (whether or not the matter is dealt with at that time).
- (4) If a person required to appear before a court is present in the courtroom or other part of the court premises at the time when the matter is called, the person is taken to be in the custody of the court (whether or not he or she has surrendered to the custody of the court) on and from the calling of the matter concerned until the court completes its dealing with the matter.

## 9 Who can grant bail

Bail can be granted by any court or person that is authorised by this or another Act to grant bail in the circumstances concerned.

**Note.** Bail can be granted by a senior police officer under Part 3 or by a court under Part 4. Other Acts also confer powers to grant bail. A court or person that has power to grant bail is referred to in this Act as a bail authority.

## 10 Bail conditions

Bail can be granted unconditionally or subject to one or more conditions.

## 11 Release on bail (cf s 34 Bail Act 1978)

- (1) The entitlement to be at liberty conferred by bail does not take effect until:
  - (a) the person granted bail enters into a bail agreement, and
  - (b) any bail conditions that must be complied with before the person is released on bail are met.
- (2) A **bail agreement** is an agreement under which a person granted bail gives an undertaking:
  - (a) to appear before a court, and to surrender to the custody of the court, as and when required by the court to do so, and

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Clause 12      Bail Bill 2010

Part 2          Bail

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- (b) to notify a court before which the person is required to appear of any change in the person's residential address, in accordance with the terms of the agreement, and
- (c) to comply with any bail conditions imposed on the grant of bail that apply to the person.

### 12 Duration of bail

- (1) Bail ceases to have effect:
  - (a) if it is revoked by a court under this Act, or
  - (b) if the person granted bail is convicted of the offence in respect of which bail was granted, or
  - (c) if a court finally disposes of the proceedings for the offence concerned and sentences or discharges the person granted bail.

- (2) This section does not prevent a further grant of bail to a person in respect of an offence.

**Note.** Bail can be granted again after a person is convicted of an offence, but the presumptions in relation to bail change when the person is convicted. See Part 6 and Schedules 1 and 2.

- (3) If a court grants bail for a specified period, pursuant to another Act, bail ceases to have effect at the end of that period, unless it ceases to have effect sooner by operation of this section.

**Note.** For example, under section 17 of the *Mental Health (Forensic Provisions) Act 1990* bail is to be granted for a maximum period of 12 months in certain circumstances.

### 13 Limitation on entitlement conferred by bail

Bail does not confer any entitlement to be at liberty while a person is in custody for some other offence or reason, in respect of which the person is not entitled to be at liberty, whether under this Act or otherwise.

## Division 2      Grant of bail in other cases

### 14 Grant of bail in proceedings relating to the administration of a sentence (cf s 4 (2) (e) and (f) Bail Act 1978)

- (1) A person can be granted bail under this Act if the person is brought or appears before a court in proceedings relating to the administration of a sentence.

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Bail Bill 2010

Clause 15

Bail

Part 2

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- (2) The following proceedings are *proceedings relating to the administration of a sentence*:
- (a) proceedings under the *Crimes (Sentencing Procedure) Act 1999* in respect of an alleged failure by the person to comply with the conditions of a good behaviour bond imposed in respect of an offence,
  - (b) proceedings under the *Children (Criminal Proceedings) Act 1987* in respect of an alleged failure by the person to comply with the conditions of a good behaviour bond or probation imposed in respect of an offence, or a failure to comply with an outcome plan determined under the *Young Offenders Act 1997* in respect of 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 in respect of 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 in respect of an offence.
- (3) In such a case, this Act applies, with any necessary modifications, as if:
- (a) the person were alleged to have committed a minor offence of which the person has not been convicted, and
  - (b) the proceedings relating to the administration of a sentence were proceedings in respect of that offence.

**Note.** Generally, a minor offence is a level 1 offence and a person is entitled to be granted bail in respect of the offence.

## 15 Grant of bail to non-offenders

- (1) A person can be granted bail under this Act if the person is brought or appears before a bail authority that has power under another Act to grant bail to the person in accordance with this Act as if the person were alleged to have committed an offence.
- (2) In such a case, this Act applies, with any modifications provided for by the other Act, and any other necessary modifications, as if:
  - (a) the person were alleged to have committed a level 2 offence of which the person has not been convicted, and

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Clause 15      Bail Bill 2010

Part 2          Bail

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- (b) the proceedings in connection with which the person is brought or appears before the bail authority were proceedings in respect of that offence.

**Note.** The following are examples of provisions of other Acts that confer a power to grant bail in accordance with this Act, otherwise than in connection with 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 229 of the *Criminal Procedure Act 1986*.

A person granted bail under such a provision is treated, for the purposes of this Act, as if the person were alleged to have committed a level 2 offence (an offence for which there is a presumption in favour of the grant of bail).



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Bail Bill 2010

Clause 16

Police powers with respect to bail

Part 3

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## Part 3 Police powers with respect to bail

### Division 1 Police powers to grant bail (cf s 17 Bail Act 1978)

#### 16 Power of senior police officers to grant bail

- (1) A senior police officer may grant or refuse bail to a person in respect of an offence if:
  - (a) the senior police officer is present at a police station, and
  - (b) the person to be granted bail is present at the police station.
- (2) For the purposes of this Act, a *senior police officer* is a police officer who:
  - (a) is of or above the rank of sergeant, or
  - (b) is for the time being in charge of a police station.

#### 17 Limitations on police power to grant bail (cf s 17 Bail Act 1978)

- (1) A police officer cannot grant bail to a person if:
  - (a) a bail decision in respect of the offence concerned has been made by a court under this Act, or
  - (b) the requirement for bail in respect of the offence concerned has been dispensed with under this Act.
- (2) A senior police officer cannot grant bail to a person who has been arrested under a warrant to bring the person before a court for sentencing.
- (3) A senior police officer who has custody of a person arrested under such a warrant must cause the person to be brought before a court as soon as reasonably practicable.
- (4) However, a senior police officer may grant bail to a person arrested under such a warrant if the police officer is satisfied that exceptional circumstances justify the grant of bail and the police officer is otherwise authorised to grant bail under this Act.

#### 18 Bail decision to be made as soon as practicable after charge laid (cf s 18 Bail Act 1978)

- (1) A police officer who charges a person who is in custody with an offence must, as soon as reasonably practicable:
  - (a) give the person any written information the regulations require the police officer to give a person about his or her eligibility for bail in respect of the offence, and
  - (b) complete and sign a record, in an approved form, verifying that the officer has given the person that information.

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Clause 19      Bail Bill 2010

Part 3          Police powers with respect to bail

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- (2) The police officer charging the person must, if he or she is a senior police officer with power to grant bail, make a decision to grant or refuse bail to the person as soon as reasonably practicable after the charges are laid.
- (3) If the police officer charging the person does not have power to grant bail, the police officer must bring, or cause the person to be brought, before a senior police officer with power to grant bail as soon as reasonably practicable.
- (4) A senior police officer with power to grant bail before whom a person is brought by another police officer under this section must, as soon as reasonably practicable, make a decision to grant or refuse bail to the person.
- (5) If it is not reasonably practicable for the police officer who charges a person to exercise the functions conferred on the police officer by this section, the functions may be exercised by the police officer for the time being in charge of the police station at which the person is in custody.

**19 Person in custody to be given opportunity to communicate with lawyer following bail decision** (cf s 19 Bail Act 1978)

- (1) A senior police officer who grants or refuses bail to a person must immediately:
  - (a) cause the person to be informed that the person may communicate with an Australian legal practitioner or other person of the person's choice in connection with bail, and
  - (b) subject to the regulations, cause the person to be provided, if the person so requests, with such facilities as are reasonable in the circumstances to enable the person to make such a communication.
- (2) A police officer may refrain from complying with this section if the police officer believes on reasonable grounds that it is necessary to do so in order to prevent:
  - (a) the escape of an accomplice of the person, or
  - (b) the loss, destruction or fabrication of evidence relating to any offence.
- (3) The regulations may make provision for the facilities to be provided to enable the making of communications between a person in custody at a police station and an Australian legal practitioner or other person of the person's choice in connection with bail.

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# public consultation draft

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Bail Bill 2010

Clause 20

Police powers with respect to bail

Part 3

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**20 Person not released on bail to be brought before court** (cf ss 20 and 21 Bail Act 1978)

- (1) If a person being held in custody at a police station is refused bail or is not released following the grant of bail, the responsible police officer must, as soon as reasonably practicable, bring the person or cause the person to be brought before a court.
- (2) The responsible police officer must, if reasonably practicable, ensure that a person who is held in police custody for more than 4 hours before his or her first appearance in court in relation to an offence is provided with, and given an opportunity to use, such facilities as the regulations may prescribe.
- (3) In this section, the *responsible police officer* means the police officer for the time being in charge of the police station at which the person is being held in custody or any other police officer who has custody of the person.

## **Division 2 Internal review of bail decisions made by police**

**21 Who may request review** (cf s 43A Bail Act 1978)

A person who is being held in custody at a police station after having been refused bail by a senior police officer may request a review of the decision under this Division.

**22 Power of senior police officer to conduct review** (cf s 43A Bail Act 1978)

- (1) A review under this Division may be conducted only by a senior police officer who is more senior than the police officer who made the decision.
- (2) The senior police officer who conducts the review may:
  - (a) affirm the decision to refuse bail, or
  - (b) grant bail.

**23 Limitation on power to conduct review** (cf s 43A Bail Act 1978)

A decision to refuse bail is not to be reviewed under this Division:

- (a) if an application for the grant of bail has been made by the person to a court, or
- (b) if conducting the review would cause any delay in bringing the person before a court in accordance with this Act.

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Clause 24      Bail Bill 2010

Part 4          Court powers with respect to bail

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## **Part 4    Court powers with respect to bail**

### **Division 1      Bail applications**

#### **24    Bail applications**

- (1) A bail application can be made by a person at any time and to any court that has power to hear and determine the bail application.
- (2) A *bail application* is:
  - (a) an application that bail be granted or refused, or
  - (b) an application that bail be revoked, or
  - (c) a bail variation application.
- (3) A *bail variation application* is an application that bail conditions imposed on the grant of bail be varied.

#### **25    Who can make bail application**

- (1) A bail application may be made by the following persons:
  - (a) a person seeking bail or to whom bail has been granted,
  - (b) the prosecutor in the proceedings in which bail is sought or has been granted.
- (2) In addition, a bail variation application can also be made by the following persons:
  - (a) the Attorney General,
  - (b) the complainant, in the case of bail granted in respect of a domestic violence offence or an application for an order under the *Crimes (Domestic and Personal Violence) Act 2007*.

#### **26    Courts to which bail application may be made**

The following courts have power to hear and determine a bail application, subject to this Part:

- (a) the Local Court,
- (b) the District Court,
- (c) the Industrial Court,
- (d) the Land and Environment Court,
- (e) the Supreme Court,
- (f) the Court of Criminal Appeal.

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## **27 Powers of court with respect to bail application**

- (1) A court with power to hear and determine a bail application may:
  - (a) grant or refuse bail, or
  - (b) revoke bail, or
  - (c) vary bail conditions.
- (2) A power to vary bail conditions includes a power to impose new bail conditions or revoke bail conditions.
- (3) If bail has already been granted to a person, the court may affirm or vary the previous bail decision, or revoke the previous decision and substitute another decision.

## **28 General provisions as to bail applications** (cf s 22 Bail Act 1978)

- (1) A bail application is to be dealt with as soon as reasonably practicable.
- (2) A bail application that is made following an initial decision to grant or refuse bail is to be dealt with by way of rehearing and evidence or information in addition to, or in substitution for, the evidence or information given or obtained on the making of the original bail decision may be given or obtained.
- (3) The regulations may make provision for or with respect to the following:
  - (a) the manner of making bail applications,
  - (b) the giving or sending of notices relating to the proposed hearing of a bail application,
  - (c) the circumstances in which a bail application may be heard and determined in the absence of a person granted bail or any other person.

## **Division 2 Powers of courts to hear and determine bail applications**

### **29 Power of Local Court** (cf s 23 Bail Act 1978)

The Local Court may hear and determine a bail application in respect of an offence committed or alleged to have been committed by a person if the person is brought or appears before the court in connection with the offence.

### **30 General power of all courts to hear and determine bail applications**

A court may hear and determine a bail application in respect of an offence committed or alleged to have been committed by a person if:

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- (a) proceedings in respect of the offence are being dealt with by the court or are pending in the court, or
- (b) the person has been convicted of or sentenced for the offence by the court, but the person has lodged an appeal or notice of intention to appeal that has not been finally determined, or
- (c) an appeal or notice of intention to appeal in relation to a conviction or sentence for the offence is being dealt with by the court or is pending in the court.

**31 Additional power of Supreme Court** (cf ss 22A and 28 Bail Act 1978)

- (1) The Supreme Court may hear and determine a bail application in respect of an offence committed or alleged to have been committed by a person at any time (whether or not the person appears before the Court).
- (2) The Supreme Court may refuse to entertain a bail variation application if the bail variation application could be dealt with under this Act by an authorised justice, the Local Court or the District Court.

**32 Additional power of Court of Criminal Appeal** (cf s 30 Bail Act 1978)

The Court of Criminal Appeal may hear and determine a bail application in respect of an offence committed or alleged to have been committed by a person if:

- (a) the Court has ordered a new trial in respect of the offence and the new trial has not commenced, or
- (b) the Court has directed a stay of execution of a conviction in respect of the offence and the stay is in force, or
- (c) an appeal from the Court, in connection with the offence, is pending in the High Court.

**33 Functions of authorised justices** (cf s 4 (8) Bail Act 1978)

- (1) An authorised justice may exercise any function of the Local Court with respect to bail, except where otherwise provided by this Act.
- (2) A reference in this Act to the Local Court or a court is taken to include a reference to an authorised justice exercising the functions of the Local Court, except where otherwise provided by this Act.
- (3) A requirement under this Act to bring a person before a court can be satisfied by bringing a person before an authorised justice.

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## **Division 3      Limitations on power to hear and determine bail applications**

### **34 Matters being dealt with by superior courts** (cf ss 24 and 27 Bail Act 1978)

- (1) A court cannot hear and determine a bail application in respect of an offence if:
  - (a) proceedings in respect of the offence are being dealt with or are pending in a court of superior jurisdiction, and
  - (b) the person has made his or her first appearance before the court of superior jurisdiction in connection with those proceedings, and
  - (c) the court of superior jurisdiction has not disposed of those proceedings.
- (2) A court is taken to have disposed of proceedings if the court:
  - (a) orders that the proceedings be continued before another court, or
  - (b) remits the person to another court for sentencing or imposition of a penalty, or
  - (c) orders that a new trial be held in another court.
- (3) This section does not limit the power of the Local Court to hear and determine a bail application in respect of a person if:
  - (a) the person appears or is brought before the Court in connection with an allegation that the person has failed, or was about to fail, to comply with his or her bail agreement, or
  - (b) the person appears or is brought before the Court in connection with an application by a bail guarantor to be discharged of his or her liability under a bail guarantee agreement, or
  - (c) the person is brought before the Court under a bench warrant (as referred to in section 312 of the *Criminal Procedure Act 1986*).

### **35 Summary proceedings pending before the Supreme Court** (cf s 29 Bail Act 1978)

If summary proceedings for an offence are pending before the Supreme Court, only the Supreme Court can hear and determine a bail application in respect to the offence.

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## **Division 4      Grounds on which court can refuse to entertain bail application**

### **36 Further applications made to same court (cf s 22A Bail Act 1978)**

- (1) A court is to refuse to entertain an application for the grant of bail if a bail application by the person in relation to the offence concerned has already been made and dealt with by the court, unless there are grounds for a further bail application.
- (2) There are grounds for a further bail application if one or more of the following applies:
  - (a) the bail application is made by a person who was not legally represented when the previous bail application was dealt with by the court but who now has legal representation,
  - (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 bail application,
  - (c) circumstances relevant to the grant of bail have changed since the previous bail application was made.
- (3) If a court has previously dealt with a bail application, a lawyer may refuse to make a further application to the court on behalf of that person if there are no grounds for a further bail application.
- (4) In this section, a reference to a court does not include a reference to an authorised justice exercising the functions of a court.

### **37 Further applications made following decision by court of superior jurisdiction**

- (1) A court is to refuse to entertain a bail application if bail has been refused or granted by a court of superior jurisdiction, unless there are grounds for a further bail application.
- (2) There are grounds for a further bail application if one or more of the following applies:
  - (a) the bail application is made by a person seeking bail, or to whom bail has been granted, who was not legally represented when the previous bail application was dealt with by the court of superior jurisdiction, but who now has legal representation,
  - (b) information relevant to the grant of bail is to be presented in the application that was not presented to the court of superior jurisdiction,
  - (c) circumstances relevant to the grant of bail have changed since the bail application was made to the court of superior jurisdiction.



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## **38 Frivolous or vexatious applications** (cf s 22A Bail Act 1978)

A court may refuse to entertain a bail application if it is satisfied that the application is frivolous or vexatious.

## **Division 5 Functions of courts and others following bail decision**

### **39 Warrants of commitment**

- (1) A court that grants bail to a person may, if no bail agreement has been entered into by the person in respect of the offence concerned, issue a warrant committing the person to a correctional centre or other place of security until the person enters into a bail agreement.
- (2) A court that varies any conditions imposed on the grant of bail to a person may, if a new bail agreement is not entered into by the person, issue a warrant committing the person to a correctional centre or other place of security until the person enters into a bail agreement.
- (3) A court that imposes a bail condition that must be met before a person is released on bail may issue a warrant committing the person to a correctional centre or other place of security until the bail condition is met.
- (4) A court that refuses bail to a person or revokes bail in respect of a person may issue a warrant:
  - (a) remanding the person to a correctional centre or other place of security, and
  - (b) ordering the person to be brought before a court at the date, time and place specified in the order.

### **40 Limitation on length of adjournments if bail refused by court or authorised justice** (cf s 25 Bail Act 1978)

- (1) If a person is refused bail in respect of an offence by the Local Court:
  - (a) the Court or a registrar of the Court is not to adjourn the proceedings for a period exceeding 42 clear days, except with the consent of the person, and
  - (b) an authorised justice who is not a registrar of the Court is not to adjourn the hearing of the proceedings for a period exceeding 3 clear days (in the case of a first adjournment) or 48 hours (in the case of a second or subsequent adjournment), and
  - (c) any second or subsequent adjournment of the hearing granted by an authorised justice who is not a registrar of the Court is to be made to the Local Court constituted by a Magistrate, if reasonably available to deal with the case.

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- (2) This section does not apply to an adjournment of the hearing in connection with an offence if:
  - (a) the person is in custody in connection with some other offence, and
  - (b) the Court or authorised justice is satisfied that there are reasonable grounds for a longer period of adjournment, and
  - (c) the person would be in custody in connection with the other offence for the balance of the longer period.
- (3) The consent of a person is not to be sought or given for the purposes of this section unless the court or authorised justice first causes the person to be advised that bail has been or is to be refused.

**41 Court to be notified if person remains in custody after grant of bail** (cf s 54A Bail Act 1978)

- (1) If a person has been granted bail but remains in custody because of a failure to meet a bail condition, the person who has custody of the person granted bail must cause an appropriate court to be given notice that the person is still in custody because of that failure.
- (2) The person who has custody of a person granted bail is:
  - (a) the general manager or other person who has the control and management of the correctional centre where the person is in custody, or
  - (b) the person in charge of the lock-up or police station where the person is in custody.
- (3) The notice must be given to an appropriate court:
  - (a) in the case of a person who has not been released because of a failure to meet a bail condition that requires the person to make specified residential arrangements before being released on bail—within 2 days after the person is received into custody, or
  - (b) in any other case—within 8 days after the person is received into custody.
- (4) A notice is required to be given only once in respect of any particular grant of bail.
- (5) For the purposes of this section, an *appropriate court* is a court that has power to conduct hear and determine a bail application under this Act.  
**Note.** An appropriate court may conduct a review of bail conditions of its own motion. It is not necessary for the person granted bail to apply for the review.
- (6) The regulations may make provision for the form of a notice under this section and for the information to accompany the notice.

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Clause 42

Court powers with respect to bail

Part 4

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**42 Stay of decision to grant bail if application made to Supreme Court** (cf s 25A Bail Act 1978)

- (1) A decision of the Local Court to grant bail to a person in respect of a serious offence on the person's first appearance before a court in connection with proceedings for the offence is stayed if a police officer or Australian legal practitioner appearing on behalf of the Crown immediately:
  - (a) informs the Court that a bail application is to be made to the Supreme Court, and
  - (b) provides the Court with a copy of the written approval of an authorised officer or the Director of Public Prosecutions to make a bail application to the Supreme Court if bail is granted in the case.
- (2) The stay of the decision has effect until:
  - (a) the Supreme Court makes a decision in respect of the bail application or refuses to entertain the bail application, or
  - (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 bail application, or
  - (c) 4 pm on the day that is 3 business days after the day on which the decision was made,whichever happens first.
- (3) A person granted bail is not entitled to be released on bail while a stay of the decision has effect under this section.
- (4) A bail application made to the Supreme Court following the stay of a decision under this section is to be dealt with as expeditiously as possible.
- (5) In this section, a reference to a court does not include a reference to an authorised justice exercising the functions of a court.
- (6) 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

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- (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.

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Clause 43

Dispensing with bail

Part 5

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## Part 5 Dispensing with bail

### 43 Dispensing with bail (cf s 10 Bail Act 1978)

- (1) A court that has power to hear and determine a bail application in respect of an offence may, instead of granting or refusing bail, dispense with the requirement for bail in respect of the offence.
- (2) The requirement for bail in respect of a level 4 offence cannot be dispensed with.

### 44 Court taken to have dispensed with bail in certain circumstances (cf s 10 Bail Act 1978)

- (1) A court is taken to have dispensed with the requirement for bail in respect of an offence if, during an appearance by the person before the court in connection with the offence, no specific order is made by the court in respect of bail.
- (2) This section does not apply if person has already been granted or refused bail in respect of the offence.
- (3) This section does not apply in respect of a level 4 offence.

### 45 Bail to be dispensed with for certain juvenile offenders

- (1) The requirement for bail is to be dispensed with in respect of any offence for which a youth justice conference is convened or proposed to be convened under the *Young Offenders Act 1997*, subject to this section.
- (2) A court may grant bail to a person in respect of an offence for which a youth justice conference is convened or proposed to be convened under the *Young Offenders Act 1997* if, in the opinion of the court, exceptional circumstances justify the imposition of bail conditions on the person.

### 46 Effect of dispensing with bail (cf ss 11 and 16A Bail Act 1978)

- (1) If the requirement for bail in respect of an offence is dispensed with, the person is entitled to be at liberty in respect of the offence, except on those occasions on which the person is required to appear before a court, and surrender to the custody of the court, in connection with proceedings in respect of the offence.
- (2) The person is required to appear before the court, and surrender to the custody of the court, as and when required by the court in connection with proceedings in respect of the offence.
- (3) A requirement to appear before a court is a requirement to appear at the time at which the matter relating to the relevant offence is called at the court premises (whether or not the matter is dealt with at that time).

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- (4) If a person required to appear is present in the courtroom or other part of the court premises at the time when the matter is called, the person is taken to be in the custody of the court (whether or not he or she has surrendered to the custody of the court) on and from the calling of the matter concerned until the court completes its dealing with the matter.

**47 Limitation on entitlement conferred by this Part** (cf s 11 Bail Act 1978)

This Part does not confer an entitlement on a person to be at liberty while the person is in custody for some other offence or reason, in respect of which the person is not entitled to be at liberty, whether under this Act or otherwise.

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Clause 48

Eligibility for bail

Part 6

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## **Part 6 Eligibility for bail**

### **Division 1 Eligibility for bail**

#### **48 General**

- (1) In making any bail decision in relation to a person, a bail authority is to have regard to the objects of this Act.
- (2) In addition, a bail authority must have regard to any special needs arising from the fact that the person to whom the bail decision relates:
  - (a) is under the age of 18 years, or
  - (b) is an Aboriginal person or Torres Strait Islander, or
  - (c) is of a non-English speaking background, or
  - (d) has a mental illness or any other disability (whether physical, intellectual or otherwise).

#### **49 Classification of bail cases**

- (1) The question of whether bail should be granted, refused or revoked in a particular case is to be decided by reference to the classification applicable to the offence in respect of which the bail decision is to be made.
- (2) For the purposes of this Act, an offence is classified as a level 1 offence, a level 2 offence, a level 3 offence or a level 4 offence.

### **Division 2 Bail for level 1 offences**

#### **50 Level 1 offences—bail to be granted** (cf s 8 Bail Act 1978)

- (1) A person is to be granted bail in respect of a level 1 offence, subject to this Division.
- (2) A person is to be granted bail in respect of a level 1 offence even if the person is in custody for some other offence or reason, in respect of which the person is not entitled to be granted bail.
- (3) However, a person is not entitled to be granted bail in respect of a level 1 offence if:
  - (a) the person is in custody serving a sentence of imprisonment in connection with some other offence, and
  - (b) the bail authority is satisfied that the person is likely to remain in custody in connection with that other offence for a longer period than that for which bail in connection with the level 1 offence would be granted.

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Part 6 Eligibility for bail

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- (4) This section does not require the grant of bail if the requirement for bail is dispensed with under this Act.

### 51 What is a level 1 offence

- (1) An offence is a level 1 offence if it is a minor offence.
- (2) Each of the following offences is a *minor offence*:
- (a) an offence not punishable by a sentence of imprisonment (except in default of payment of a fine),
  - (b) an offence under the *Summary Offences Act 1988* that is punishable by a sentence of imprisonment,
  - (c) an offence punishable summarily that is of a class or description declared by the regulations to be a minor offence.
- (3) A minor offence is not a level 1 offence if it is a level 3 or 4 offence.  
**Note.** For example, a minor offence will be a level 3 offence if the person has been convicted of the offence or the person's conviction for the offence has been stayed.
- (4) A minor offence is not a level 1 offence if the person who committed the offence or is alleged to have committed the offence has previously failed to appear before a court in accordance with a bail agreement.

### 52 Exception for a person who is incapacitated or in danger

- (1) Bail may be refused to a person in respect of a level 1 offence if the person is, in the opinion of the bail authority, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection.
- (2) However, bail must be granted if the person ceases to be so incapacitated, in danger or in need of physical protection.

## Division 3 Bail for level 2 offences

### 53 Level 2 offences—presumption in favour of bail (cf s 9 Bail Act 1978)

- (1) A person is to be granted bail in respect of a level 2 offence, unless the prosecutor in respect of the offence satisfies the bail authority that bail should not be granted, having regard to the objects of this Act.
- (2) A person is to be granted bail in respect of a level 2 offence even if the person is in custody also for some other offence or reason, in respect of which the person is not entitled to be granted bail.
- (3) However, a person is not to be granted bail in respect of a level 2 offence if:



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- (a) the person is in custody serving a sentence of imprisonment in connection with some other offence, and
  - (b) the bail authority is satisfied that the person is likely to remain in custody in connection with that other offence for a longer period than that for which bail in connection with the level 2 offence would be granted.
- (4) This section does not require the grant of bail if the requirement for bail is dispensed with under this Act.

#### **54 What is a level 2 offence**

An offence is a level 2 offence if it is not a level 1, 3 or 4 offence.

### **Division 4 Bail for level 3 offences**

#### **55 Level 3 offences—no presumption** (cf ss 9, 9A and 9B Bail Act 1978)

- (1) A person is to be granted bail in respect of a level 3 offence, unless the bail authority considers that it is justified in refusing bail, having regard to the objects of this Act.
- (2) This section does not require the grant of bail if the requirement for bail is dispensed with under this Act.

#### **56 What is a level 3 offence**

- (1) An offence is a level 3 offence if it is a level 3 offence under Schedule 1.
- (2) An offence is not a level 3 offence if it is a level 4 offence under Schedule 2.

### **Division 5 Bail for level 4 offences**

#### **57 Level 4 offences—presumption against bail**

A person is not to be granted bail in respect of a level 4 offence, unless the person satisfies the bail authority that bail should be granted, having regard to the objects of this Act.

**Note.** The requirement for bail in respect of a level 4 offence cannot be dispensed with under this Act.

#### **58 What is a level 4 offence**

An offence is a level 4 offence if it is a level 4 offence under Schedule 2.

#### **59 Level 4 offences for which bail is to be granted in exceptional circumstances only**

- (1) A person is not to be granted bail for a level 4 offence for which bail is to be granted in exceptional circumstances only unless the person

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satisfies the bail authority that exceptional circumstances justify the grant of bail, having regard to the objects of this Act.

- (2) The level 4 offences for which bail is to be granted in exceptional circumstances only are set out in Part 3 of Schedule 2.

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Clause 60

Bail conditions

Part 7

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## Part 7 Bail conditions

### Division 1 Power to impose bail conditions

#### 60 Bail conditions (cf s 37 Bail Act 1978)

- (1) Bail is to be granted unconditionally unless the bail authority is of the opinion that one or more bail conditions should be imposed for the purpose of achieving the objects of this Act.
- (2) A bail condition is not to be imposed if it appears to the bail authority that it is more onerous than necessary, having regard to:
  - (a) the objects of this Act, and
  - (b) the nature of the offence, and
  - (c) the protection and welfare of any specially affected person, and
  - (d) the circumstances of the person granted bail.
- (3) Each of the following persons is a *specially affected person*:
  - (a) any person against whom it is alleged that the offence in relation to which bail is granted was committed,
  - (b) the relatives of any such person,
  - (c) any other person whose needs, in the opinion of the bail authority, warrant special consideration because of the circumstances of the case.
- (4) A bail authority must not impose a bail condition on the grant of bail to any of the following persons unless satisfied that the bail condition is appropriate having regard (as far as can reasonably be ascertained) to the capacity of the person granted bail to understand or comply with the bail condition:
  - (a) a person who is under the age of 18 years,
  - (b) an Aboriginal person or Torres Strait Islander,
  - (c) a person of a non-English speaking background,
  - (d) a person who has a mental illness or any other disability (whether physical, intellectual or otherwise).
- (5) A court that is considering imposing a bail condition on the grant of bail to a person who is an Aboriginal person or Torres Strait Islander must take into account any representations made by or on behalf of a group:
  - (a) that provides programs or services relating to criminal justice to Aboriginal persons or Torres Strait Islanders in the person's community, or

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Part 7          Bail conditions

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- (b) that is comprised of elders or other respected members of the person's community.

**61 Bail conditions for level 1 offences** (cf s 8 Bail Act 1978)

- (1) Bail for a level 1 offence is to be granted either:
  - (a) unconditionally, or
  - (b) subject to minimal bail conditions.
- (2) For the purposes of this section, *minimal bail conditions* are bail conditions that, in the opinion of the bail authority:
  - (a) are reasonably and readily able to be entered into by the person granted bail, and
  - (b) do not unreasonably delay the release of the person (if in custody).

**62 Types of bail conditions that may be imposed**

- (1) Bail conditions may impose the following requirements:
  - (a) conduct requirements,
  - (b) security requirements,
  - (c) character reference requirements.
- (2) A *conduct requirement* is a requirement (other than a security requirement) that the person granted bail do or refrain from doing a specified thing.
- (3) A provision of this Act that authorises or requires a particular type of conduct requirement to be imposed by a bail condition does not limit the type of conduct requirements that can be imposed on the grant of bail, or prevent the imposition of other conduct requirements.

**Note.** The following are examples of conduct requirements:

- (a) residential requirements,
- (b) intervention and treatment requirements,
- (c) association and place restrictions,
- (d) passport surrender requirements.

These requirements are explained further below.

- (4) A *security requirement* is a requirement that the person granted bail, or one or more other acceptable 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 agreement.
- (5) A security requirement may also require a person to deposit with the bail authority:

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- (a) security for the payment of money agreed to be forfeited under a bail guarantee agreement, or
  - (b) a specified amount of money to be forfeited under a bail guarantee agreement if the person granted bail fails to appear before a court in accordance with his or her bail agreement.
- (6) A ***character reference requirement*** is a requirement that one or more acceptable persons, other than the person granted bail, acknowledge that he or she is acquainted with the person granted bail and that he or she regards the person granted bail as a responsible person who is likely to comply with his or her bail agreement.
- (7) The requirements imposed by bail conditions must be requirements that the bail authority considers reasonable in the circumstances.

**63 Residential requirements** (cf s 36 (2) (a1) Bail Act 1978)

- (1) A conduct requirement imposed by a bail condition may include a residential requirement, if the bail authority considers that requirement should be imposed for the purpose of achieving the objects of this Act.
- (2) A ***residential requirement*** is a requirement that the person granted bail reside at a specified address or type of accommodation while at liberty on bail or make specified residential arrangements before being released on bail.

**64 Intervention and treatment requirements** (cf s 36A Bail Act 1978)

- (1) A conduct requirement imposed by a bail condition may include an intervention and treatment requirement, if the bail authority considers that requirement should be imposed in the interests of the person or for the purpose of achieving the objects of this Act.
- (2) An ***intervention and treatment requirement*** is a requirement:
  - (a) that the person granted bail enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for participation in an intervention program or other program for treatment or rehabilitation, or
  - (b) that the person granted bail enter into an agreement to participate in an intervention program and to comply with any intervention plan arising out of the program, or to participate in any other program for treatment or rehabilitation.
- (3) A person who is under the age of 18 years, or was under the age of 18 years at the time that an offence for which bail is granted was committed or is alleged to have been committed, cannot be required by a bail condition to undergo assessment for, or to participate in, an intervention program.

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Clause 65	Bail Bill 2010
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- (4) In this section:  
*intervention program* and *intervention plan* have the same meanings as they have in the *Criminal Procedure Act 1986*.

**65 Specific association and place restrictions** (cf s36B Bail Act 1978)

- (1) A conduct requirement imposed by a bail condition may include an association or place restriction, if the bail authority considers that restriction should be imposed for the purpose of achieving the objects of this Act.
- (2) An *association and place restriction* is a requirement that:
- (a) prohibits or restricts a person from associating with a specified person, or
  - (b) prohibits or restricts a person from frequenting or visiting a specified place or district.
- (3) A person does not contravene a requirement not to associate with a specified person:
- (a) if the person does so in compliance with an order of a court, or
  - (b) if, having associated with the specified person unintentionally, the person immediately terminates the association.
- (4) A person does not contravene a requirement not to frequent or visit a specified place or district if the person does so in compliance with an order of a court.
- (5) In this section, *associate with* another person means:
- (a) to be in company with the other person, or
  - (b) to communicate with the other person by any means (including post, facsimile, telephone and email).

**66 Passport surrender requirement** (cf s 37A Bail Act 1978)

- (1) A conduct requirement imposed by a bail condition may include a passport surrender requirement, if the bail authority considers that restriction should be imposed for the purpose of achieving the objects of this Act.
- (2) A *passport surrender requirement* is a requirement that a person granted bail to surrender to the bail authority any passport held by the person.
- (3) Bail is not to be granted to a person in respect of an offence occasioning death otherwise than subject to a passport surrender requirement.
- (4) However, a court may direct that bail is to be granted without the imposition of a passport surrender requirement if the person satisfies the

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court that, in the circumstances of the case, the giving of such a direction is justified.

**67 Pre-release bail conditions** (cf s 4 (3) Bail Act 1978)

- (1) Bail conditions may include requirements that must be met before the person granted bail is released on bail.
- (2) A bail condition that requires the person granted bail, or any other person, to enter into a bail guarantee agreement is met when the person enters into the agreement in accordance with the condition.
- (3) A bail condition that requires a person to deposit security or money with the bail authority is met when the security or money is deposited in accordance with the condition.
- (4) A bail condition that requires a person to make an acknowledgement under a character reference requirement is met when the person makes and signs the acknowledgement in accordance with the condition.
- (5) A bail condition that requires a person granted bail to surrender a passport is met when the person surrenders the passport in accordance with the condition.

**68 Supplementary decisions relating to bail conditions** (cf s 36 Bail Act 1978)

- (1) The bail authority or, in the absence of any determination by the bail authority, the officer or court before whom a bail agreement is entered into, may determine:
  - (a) which person or persons, or class or description of persons, are acceptable persons for the purposes of a bail condition that includes security requirements or character reference requirements and the number of acceptable persons required for those purposes, and
  - (b) the nature and sufficiency of security that is acceptable for the purposes of a bail condition that requires a person granted bail or another person to deposit security.
- (2) A determination is to be made in accordance with any requirements of the regulations.
- (3) The regulations may:
  - (a) specify the class or description of persons who are or are not acceptable persons for the purposes of a bail condition or specified type of bail condition, and
  - (b) make provision for the matters to be considered by the bail authority, officer or court, in making a determination under this section.

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Clause 69      Bail Bill 2010  
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## **Division 2      Offences relating to bail conditions**

### **69    Certain information not to be published or broadcast** (cf s 36C Bail Act 1978)

- (1) A person must not publish or broadcast:
  - (a) the fact that a bail condition names a person as a person with whom a person granted bail is prohibited or restricted from associating under the bail condition, or
  - (b) any information calculated to identify the person so named.Maximum penalty: 10 penalty units.
- (2) This section does not apply to the disclosure of information to any of the following persons:
  - (a) the person granted bail,
  - (b) any person named in the bail condition as a person with whom the person granted bail is prohibited or restricted from associating,
  - (c) any member of the NSW Police Force,
  - (d) any person involved in the administration of the bail agreement or of any sentence to which the person granted bail is subject while on release on bail,
  - (e) any person involved in proceedings for an alleged breach of the bail agreement,
  - (f) any other person specified in the bail agreement 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.
- (3) This section does not apply to the publication or broadcast of an official report of the proceedings of a court.

### **70    False statements in bail acknowledgements** (cf ss 56 and 57 Bail Act 1978)

- (1) A person who gives an acknowledgement for the purposes of a character reference requirement in a bail condition knowing it to be false or misleading in a material particular is guilty of an offence.  
Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.
- (2) Before a person gives an acknowledgement for the purposes of a character reference requirement in a bail condition, it is the duty of the person to whom the character reference is given to warn the person that it is an offence to give an acknowledgement knowing it to be untrue in a material particular.



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- (3) Failure to give a warning does not affect the validity of any proceedings for an offence against this section.

**71 Indemnification of bail guarantors** (cf s 58 Bail Act 1978)

- (1) A person who indemnifies another person for or against any liability which the other person incurs as a bail guarantor is guilty of an offence.  
Maximum penalty on indictment: 30 penalty units or imprisonment for 3 years, or both.
- (2) A person who accepts any benefit provided for the purpose of indemnifying the person for or against any liability which the person incurs as a bail guarantor is guilty of an offence.  
Maximum penalty on indictment: 30 penalty units or imprisonment for 3 years, or both.
- (3) A person who enters into an agreement under which a person agrees to indemnify another person for or against any liability a person incurs as a bail guarantor is guilty of an offence.  
Maximum penalty on indictment: 30 penalty units or imprisonment for 3 years, or both.
- (4) This section extends to any indemnification provided, or agreement entered into or made, before a person becomes a bail guarantor and applies whether or not the person to be indemnified becomes a bail guarantor.
- (5) This section does not apply to anything done by the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* for the purpose of indemnifying an officer of the Department of Human Services for or against any liability that the officer incurs as a result of entering into a bail agreement in relation to a person under the parental responsibility of that Minister.
- (6) Proceedings for an offence against this section may be instituted only with the consent of the Minister.
- (7) In this section:  
*agreement* includes an arrangement.  
*benefit* includes any payment or other benefit, whether provided in money or money's worth.

**72 Disposal of property deposited as security** (cf s 42A Bail Act 1978)

A person who deposits property as bail security must not dispose of the property, or cause or allow the property to be disposed of, for the purpose of preventing the security from being realised.

Maximum penalty: imprisonment for 2 years.

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## Division 3      Variation of bail conditions—special provisions

### 73      Court may vary bail conditions on own initiative in certain circumstances (cf s 48A Bail Act 1978)

- (1) A court may, at any time and of its own motion, conduct a bail condition hearing in relation to a person granted bail if the person has remained in custody after being granted bail because any bail conditions have not been met.
- (2) A ***bail condition hearing*** is a hearing, in relation to a person granted bail, the purpose of which is to determine whether any conditions of bail should be varied or revoked.  
**Note.** Generally a court can vary bail conditions on the making of a bail application under Part 4. This section gives a court the power to vary bail conditions of its own motion.
- (3) A bail condition hearing may be conducted by any court that would have power, if a bail variation application were made in relation to the person, to hear and determine and determine the bail application.
- (4) The court has the same powers with respect of a bail condition hearing as it has with respect to a bail variation application.
- (5) Part 4 applies, with any necessary modifications, in relation to the bail condition hearing in the same way as it would apply if the hearing were being conducted as a consequence of a bail variation application.

### 74      Power of authorised justice to vary reporting conditions (cf s 48B Bail Act 1978)

- (1) An authorised justice may, at any time, hear and determine a bail variation application that is an application for the variation of a reporting condition imposed by a court on the grant of bail to a person.
- (2) A ***reporting condition*** is a conduct requirement of a bail condition that requires the person granted bail to report to a police station while at liberty on bail.
- (3) The authorised justice may:
  - (a) affirm a reporting condition, or
  - (b) vary a reporting condition, or
  - (c) revoke a reporting condition.
- (4) The reporting condition may be varied by:
  - (a) varying the days on which, or the times at which, the person granted bail must report to a police station under the reporting condition,

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- (b) varying the police station to which the person granted bail must report under the reporting condition,
  - (c) reducing the number of days on which the person granted bail must report to a police station under the reporting condition.
- (5) An authorised justice must not vary or revoke a reporting condition under this section unless:
- (a) the prosecutor in the proceedings, and any bail guarantor, have been notified of the proposed action, and
  - (b) no objection to the proposed action has been made by or on behalf of the prosecutor or the bail guarantor.
- (6) An authorised justice must not reduce the number of days on which a person granted bail must report under a reporting condition, or revoke a reporting condition, under this section if:
- (a) the reporting condition is a condition that was imposed by the Supreme Court, or
  - (b) summary or committal proceedings against the person in respect of the offence for which bail was granted have been determined.
- (7) An authorised justice must not vary or revoke a reporting condition under this section if the court that imposed the reporting condition directed that the condition must not be varied or revoked under this section.
- (8) This section does not limit the functions of an authorised justice under Part 4 with respect to a bail variation application.

**Note.** Under Part 4, an authorised justice has the same powers as the Local Court in relation to a bail variation application. This section gives an authorised justice additional power to vary reporting conditions imposed by a court in situations where the authorised justice might not otherwise have power to do so under Part 4.

**75 Power of authorised justice to vary residence conditions** (cf s 48B Bail Act 1978)

- (1) An authorised justice may, at any time, hear and determine a bail variation application that is an application for the variation of a residence condition imposed by a court on the grant of bail to a person.
- (2) A **residence condition** is a conduct requirement of a bail condition that requires the person granted bail to reside at a specified address.
- (3) The authorised justice may:
  - (a) affirm a residence condition, or
  - (b) vary a residence condition by varying the address at which the person granted bail must reside under the residence condition.

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- (4) An authorised justice must not vary a residence condition under this section unless:
- (a) the prosecutor in the proceedings, and any bail guarantor, have been notified of the proposed action, and
  - (b) no objection to the proposed action has been made by or on behalf of the prosecutor or the bail guarantor.
- (5) An authorised justice must not vary a residence condition under this section if:
- (a) the residence condition is a condition that was imposed by the Supreme Court, or
  - (b) summary or committal proceedings against the person in respect of the offence for which bail was granted have been determined.
- (6) An authorised justice must not vary a residence condition under this section if the court that imposed the residence condition directed that the condition must not be varied under this section.
- (7) This section does not limit the functions of an authorised justice under Part 4 with respect to a bail variation application.

**Note.** Under Part 4, an authorised justice has the same powers as the Local Court in relation to a bail variation application. This section gives an authorised justice additional power to vary residence conditions imposed by a court in situations where the authorised justice might not otherwise have power to do so under Part 4.

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General provisions relating to bail decisions

Part 8

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## **Part 8 General provisions relating to bail decisions**

### **Division 1 Bail proceedings and decisions**

**76 Application of rules of evidence to bail proceedings** (cf s 4 Evidence Act 1995)

- (1) For the purpose of making a bail decision, a bail authority may take into account any evidence or information that the bail authority considers credible or trustworthy in the circumstances, subject to this section.
- (2) In proceedings relating to bail before a bail authority that is a court, the *Evidence Act 1995* does not apply unless the court directs that the law of evidence applies in the proceeding.
- (3) A direction may be limited to specified matters.
- (4) The court must make a direction if the court considers it appropriate to make such a direction in the interests of justice.
- (5) This section has effect despite anything to the contrary in the *Evidence Act 1995*.

**77 Civil standard of proof applies to bail proceedings** (cf s 59 Bail Act 1978)

The standard of proof applicable to bail proceedings is proof on the balance of probabilities.

**78 Reasons for bail decision to be recorded** (cf s 38 Bail Act 1978)

- (1) If bail is refused by a bail authority, the bail authority must immediately cause the reasons for the decision to be recorded.
- (2) If bail is granted to a person in respect of a level 4 offence, the bail authority must immediately cause the reasons for the decision to be recorded.
- (3) If bail is granted conditionally, the bail authority must immediately cause the reasons for the decision not to grant bail unconditionally to be recorded.
- (4) If the person requests that certain bail conditions be imposed, and other bail conditions are imposed, the bail authority must immediately cause the reasons for the decision to impose the other conditions.
- (5) This section extends to a bail authority that varies or substitutes a bail decision made by another bail authority.
- (6) The regulations may make provision for or with respect to the manner of recording reasons under this section and the manner of retaining and otherwise dealing with records made under this section.

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Clause 79      Bail Bill 2010

Part 8          General provisions relating to bail decisions

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## **Division 2      Bail agreements, bail guarantee agreements and acknowledgements**

### **79    Bail agreements** (cf ss 34, 35 Bail Act 1978)

- (1) A bail agreement is to be in writing.
- (2) A single bail agreement may be entered into in respect of more than one offence.
- (3) A bail agreement may be entered into by a person granted bail with:
  - (a) a bail authority, or
  - (b) an officer of the Department of Justice and Attorney General who is authorised by the Director-General of the Department of Justice and Attorney General to enter into bail agreements.

### **80    Bail guarantee agreements and acknowledgements** (cf s 39 Bail Act 1978)

- (1) A bail guarantee agreement, or acknowledgement made for the purposes of a bail condition, is to be in writing.
- (2) A single bail guarantee agreement or acknowledgement may be entered into or made in respect of more than one offence.
- (3) A bail guarantee agreement or acknowledgement may be made with or before the officer or court with whom the relevant bail agreement is made.
- (4) This section is subject to any requirements specified in the regulations.

## **Division 3      Bail information**

### **81    Information about bail rights** (cf s 54 (5) Bail Act 1978)

A bail authority that grants or refuses bail must immediately cause the person in respect of whom the bail decision is made to be given such information in writing as the regulations require the person to be given about the functions of courts and authorised justices in relation to bail.

### **82    Obligations under agreements to be explained** (cf s 39B Bail Act 1978)

The bail authority with whom a bail agreement or bail guarantee agreement is entered into must take all reasonable steps to ensure that the person who enters into the agreement is made aware of:

- (a) the obligations of the person under that agreement, and
- (b) in particular, the consequences that may follow if the person granted bail fails to comply with his or her bail agreement.

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**83 Copies of agreements and bail conditions to be provided** (cf s 54 Bail Act 1978)

- (1) The bail authority or officer with whom a bail agreement is entered into must immediately:
  - (a) cause a copy of the bail agreement or a notice setting out the terms of the agreement to be given to the person entering into the agreement, and
  - (b) cause a copy of any bail conditions imposed or a notice setting out the terms of any such conditions to be given to the person entering into the agreement.
- (2) The bail authority or officer with whom a bail guarantee agreement is entered into must immediately:
  - (a) cause a copy of the bail guarantee agreement or a notice setting out the terms of the agreement to be given to the person entering into the agreement, and
  - (b) cause a copy of any bail condition under which the bail guarantee agreement is entered into, or a notice setting out the terms of any such bail condition, to be given to the person entering into the agreement.
- (3) The bail authority to whom a person makes an acknowledgment for the purposes of a character reference requirement in a bail condition must immediately cause the person to be given a copy of the condition or a notice setting out the terms of the condition.

**84 Variation of bail conditions without consent of bail guarantor**

- (1) A court that varies, or proposes to vary, any bail conditions without the consent of a bail guarantor who entered into a bail guarantee agreement before the variation, must, unless satisfied it would be unjust to do so, direct that the bail guarantor is discharged of his or her liability under the relevant bail guarantee agreement.
- (2) The bail guarantor is discharged accordingly.
- (3) If the court discharges a bail guarantor of his or her liability under a bail guarantee agreement, the court may require a new bail guarantee agreement to be entered into before the person granted bail is released on bail subject to the bail conditions as varied.
- (4) A court that discharges a bail guarantor of his or her liability under a bail agreement must, as soon as practicable, cause notice of the discharge to be given to the bail guarantor.

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Part 8          General provisions relating to bail decisions

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**85 Variation of bail conditions** (cf s 54 Bail Act 1978)

A court that varies any bail condition must, as soon as practicable after varying the condition, cause notice of the variation to be given:

- (a) to the person granted bail, and
- (b) to any person who made an acknowledgement under the bail conditions before they were varied, and
- (c) to any person who entered into a bail guarantee agreement under the bail conditions before they were varied (unless the person has been discharged or his or her liability under the bail guarantee agreement), and
- (d) to any person who makes an acknowledgment or enters into a bail guarantee agreement under the bail conditions as varied.

**Division 4 Bail money and security**

**86 Deposit of security or money** (cf ss 39, 40 Bail Act 1978)

- (1) Security or money required to be deposited with a bail authority by a bail condition may be deposited with the officer or court with whom the relevant bail agreement is entered into.
- (2) A receipt is to be given for any money or security deposited under a bail condition.
- (3) Any security or money deposited under a bail condition must, subject to the provisions of any other Act, be dealt with in accordance with the regulations.
- (4) An officer or court with whom security or money is deposited under a bail condition may require the person who provides the security or money to provide information, or to agree to a means, to enable the return of the security or money in the event that it is to be returned to the person.
- (5) This section is subject to any requirements specified in the regulations.

**87 Substitution of cash for security** (cf ss 41 and 54 Bail Act 1978)

- (1) A person who deposits anything (other than cash) as security under a bail condition:
  - (a) is entitled afterwards to deposit in cash the amount for which the thing was deposited as security, and
  - (b) on depositing that amount in cash, is entitled to the return of the thing deposited as security.



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- (2) Cash may be deposited for the purposes of this section:
  - (a) with the court or an officer of the court at which the security was deposited or is currently held, or
  - (b) as prescribed by the regulations.
- (3) The court with whom cash is deposited under this section is to vary the bail conditions, or cause them to be varied, accordingly.
- (4) If a bail condition is varied by a court under this section, the court must as soon as practicable cause a copy of the condition as varied or a notice setting out the terms of the condition as varied to be given:
  - (a) to the person granted bail, and
  - (b) to any bail guarantor who entered into a bail guarantee agreement under the bail condition.

**88 Discharge of liability of bail guarantors** (cf s 42 Bail Act 1978)

- (1) A person may at any time apply to a court to be discharged of his or her liability under a bail guarantee agreement.
- (2) An application may be made to the court which granted bail or to the court before which the person granted bail is required to appear in accordance with the person's bail agreement.
- (3) When an application is made under this section, an authorised justice must, if 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 court attendance notice 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.
- (5) The applicant is discharged accordingly.
- (6) If the court discharges the applicant from the applicant's liability, the court may make a new bail decision in respect of the person granted bail, as if the person had made a bail application to the court.

**89 Revocation of bail if bail security ceases to be intact** (cf s 42B Bail Act 1978)

- (1) A court may at any time revoke a person's bail if it appears to the court that any bail security ceases to be intact.

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- (2) A 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 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 served on the person in accordance with the rules of the court applicable in criminal proceedings where personal service is not required.

### **Division 5 Miscellaneous**

#### **90 Entry into arrangements with courts in other States and Territories (cf s 39A Bail Act 1978)**

- (1) A court that imposes a bail condition may make an arrangement with a court of another State for the court in the other State to enter into an agreement, or accept an acknowledgment or deposit of security or an amount of money, that is required by the bail condition on behalf of the court.
- (2) An agreement entered into with, or acknowledgment made to or deposit made with, a court of another State in accordance with the arrangement is, for the purposes of this Act, to be treated as if it were entered into with, or made with or to, the court that imposed the bail condition.
- (3) The regulations may make provision for or with respect to entering into agreements or making acknowledgments or deposits of security or amounts of money under this section and any other relevant matters.
- (4) In this section:  
*State* includes a Territory.

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**91 Bail guarantor does not have right of arrest** (cf s 61 Bail Act 1978)

A bail guarantor does not, by virtue of the entering into a bail guarantee agreement in respect of a person granted bail, have the right to arrest the person.

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Clause 92          Bail Bill 2010

Part 9             Enforcement of bail agreements

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## **Part 9    Enforcement of bail agreements**

### **92    Power to issue arrest warrant** (cf s 50 Bail Act 1978)

- (1) A police officer may apply to an authorised justice for the issue of a warrant under this section if the police officer believes on reasonable grounds that a person who has been released on bail has failed to comply with, or is about to fail to comply with, the person's bail agreement.
- (2) The authorised justice may issue a warrant to apprehend the person and bring the person before a court, if satisfied that there are reasonable grounds for doing so.

### **93    Power to arrest without warrant** (cf s 50 Bail Act 1978)

- (1) A police officer may, without a warrant, arrest a person who has been released on bail if the police officer believes on reasonable grounds that the person has failed to comply with, or is about to fail to comply with, the person's bail agreement.
- (2) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person before a court to be dealt with according to law.
- (3) In this section, *court* includes an authorised justice who is a registrar of the Local Court or an officer of the Department of Justice and Attorney General.

### **94    Power to issue court attendance notice**

A police officer may issue a court attendance notice in respect of a person's failure to comply with a bail agreement.

### **95    Powers of court** (cf s 50 Bail Act 1978)

- (1) The court before which a person granted bail is brought or appears pursuant to his or her arrest, or the issue of a court attendance notice, under this Part may:
  - (a) revoke the person's original bail, or
  - (b) vary the conditions of the person's original bail (including by revoking conditions or imposing new conditions), or
  - (c) release the person of the person's original bail.
- (2) The court may revoke the person's original bail only if satisfied that the person has failed, or was about to fail, to comply with the person's bail agreement.

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- (3) If the court revokes the person's original bail, the court or any other court before which the person is brought or appears:
  - (a) may grant bail to the person in accordance with this Act, or
  - (b) may (despite anything in this Act) refuse to grant bail to the person and otherwise deal with the person according to law.
- (4) For the purpose of determining whether a person's bail should be revoked under this section, a court may take into account any evidence or information which the court considers credible or trustworthy in the circumstances.

**96 Offence of failing to appear** (cf s 51 Bail Act 1978)

- (1) A person who fails without reasonable excuse (proof of which lies on the person) to appear before a court in accordance with the person's bail agreement is guilty of an offence.  
Maximum penalty: 30 penalty units, or 3 years imprisonment, or both.
- (2) Proceedings for an offence against this section are to be dealt with summarily:
  - (a) by the court dealing with the offence in respect of which the person failed to appear, constituted in the same way, or
  - (b) where the court referred to in paragraph (a) is the District Court, Supreme Court or Court of Criminal Appeal—by that Court constituted in any other way, or
  - (c) in any case—by the Local Court.
- (3) If the offence is dealt with by the Local Court, the offence is to be disposed of in accordance with the *Criminal Procedure Act 1986*.
- (4) If the offence is dealt with by the District Court, the offence is to be disposed of:
  - (a) in accordance with any rules of the District Court that are expressed to apply in relation to an offence against this section, and
  - (b) subject to those rules, in accordance with Part 5 of Chapter 4 of the *Criminal Procedure Act 1986* (as if references to the Supreme Court were references to the District Court).
- (5) The *Criminal Appeal Act 1912* applies to a decision by the District Court in proceedings dealt with by the District Court under this section in the same way as it applies to an appeal from a decision of the Supreme Court in its summary jurisdiction.

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- (6) If the offence is dealt with by the Supreme Court, the offence is to be disposed of in accordance with Part 5 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (7) If the offence is dealt with by the Court of Criminal Appeal, the offence is to be disposed of:
  - (a) in accordance with any rules of the Supreme Court that are expressed to apply in relation to an offence against this section, and
  - (b) subject to those rules, in accordance with 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).
- (8) Proceedings for an offence against this section may be commenced at any time.
- (9) A person convicted by a Judge of the Supreme Court, the Land and Environment Court or the District Court, or a judicial member of the Industrial Court, of an offence against this section 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.

## **Part 10 Enforcement of security requirements imposed by bail conditions**

### **Division 1 Forfeiture orders**

#### **97 Court may make forfeiture order if person granted bail fails to appear**

(cf s 53A Bail Act 1978)

- (1) A court may make an order requiring the forfeiture to the Crown of any bail money agreed to be forfeited under a bail guarantee agreement if satisfied that a person granted bail has failed to appear before a court in accordance with the bail agreement associated with the bail guarantee agreement.
- (2) The order is a *forfeiture order*.
- (3) A forfeiture order may be made by:
  - (a) the court with which the person granted bail entered into the bail agreement, or
  - (b) the court before which the person granted bail is under a duty to appear under the bail agreement.
- (4) A forfeiture order may not be made if more than 3 years have elapsed since the person granted bail allegedly failed to appear before the court in accordance with the relevant bail agreement.

#### **98 Persons affected to be notified that forfeiture order has been made** (cf s 53B Bail Act 1978)

- (1) As soon as practicable after a forfeiture order is made, the registrar of the court by which the order was made must cause written notice of the making of the order to be served on each person affected by the order.
- (2) The notice is a *forfeiture notice*.
- (3) A forfeiture notice must contain such information as the regulations require.
- (4) A copy of a forfeiture notice must be served on each person affected by the order in accordance with the rules of the court applicable in criminal proceedings where personal service is not required.
- (5) A forfeiture notice is not required to be served on a person affected by a forfeiture order if, before the notice is sent, an oral objection to the forfeiture order is made under this Part.

#### **99 Who is a “person affected” by a forfeiture order**

- (1) A person granted bail whose bail money is forfeited to the Crown by operation of a forfeiture order is a person affected by the order.

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- (2) Any bail guarantor whose bail money is forfeited to the Crown by operation of a forfeiture order is a person affected by the order.

**100 Formal objection to forfeiture order** (cf s 53C Bail Act 1978)

- (1) A person affected by a forfeiture order may file in the Local Court an objection to the order.
- (2) An objection must be made before the end of the review period for a forfeiture order.
- (3) For the purposes of this Part, the *review period* for a forfeiture order is the period of 28 days after service of the forfeiture notice issued in relation to the forfeiture order.
- (4) An objection must be made in accordance with rules of court and must include the grounds on which the applicant intends to rely.
- (5) The Local Court must ensure that notice of an objection is given to the appropriate State authority in accordance with the regulations.

**101 Hearing of formal objection to forfeiture order** (cf s 53D Bail Act 1978)

- (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 the order should be confirmed, varied or set aside.
- (2) The Local Court may set aside a forfeiture order only if satisfied that the person granted bail did not fail to appear before a court in accordance with the relevant bail agreement.
- (3) In any other case, the Local Court must confirm the forfeiture order, subject to this section.
- (4) 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.
- (5) 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 relevant bail agreement.



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Part 10

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**102 Objection to forfeiture order made during proceedings** (cf s 53E Bail Act 1978)

- (1) A person affected by a forfeiture order who is appearing before the court that makes the order at the time that the order is made may make an objection to 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.

**103 When forfeiture order takes effect** (cf s 53F Bail Act 1978)

- (1) A forfeiture order takes effect with respect to a person:
  - (a) at the end of the review period for the forfeiture order, or
  - (b) if an objection to the order is duly made to a court before a forfeiture notice is served, or before the end of the review period, at the time the order is confirmed by the court.
- (2) A forfeiture order does not take effect if it is set aside by a court under this Part.
- (3) No action may be taken to enforce a forfeiture order until the date the order takes effect.

**104 Effect of forfeiture order** (cf s 53G Bail Act 1978)

- (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 an authorised officer or court, 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, subject to this Part.
- (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.

**Note.** See Division 2, which allows a person who fails to object to a forfeiture order before the end of the review period to apply for the forfeiture order to be set aside up to 12 months after the order is made.
- (4) An *unconfirmed forfeiture order* is any forfeiture order that has not been confirmed by a court following an objection under this Part.

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# public consultation draft

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Clause 105 Bail Bill 2010

Part 10 Enforcement of security requirements imposed by bail conditions

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**105 Persons affected to be notified that forfeiture order has taken effect** (cf s 53H Bail Act 1978)

- (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 must contain such information as the regulations require.
- (3) A copy of a the notice must be served on each person affected by the order in accordance with the rules of the court applicable in criminal proceedings where personal service is not required.

**106 Reference of forfeiture order for enforcement** (cf s 53I Bail Act 1978)

- (1) If any bail money to which a forfeiture order relates remains unpaid after the order takes effect, the relevant registrar of the court by which the order was made is to refer the following documents to the State Debt Recovery Office:
  - (a) a copy of the forfeiture order,
  - (b) a copy of the bail agreement and of the relevant bail guarantee agreement,
  - (c) a copy of all documents evidencing any relevant bail security,
  - (d) a certificate, issued by the registrar of the court, as to the amount of bail money that remains unpaid as at the date on which the order is referred.
- (2) A certificate issued by the registrar under this section is evidence in any legal proceedings of the matters stated in the certificate.

**107 Payment of forfeited bail money** (cf s 53J Bail Act 1978)

- (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 a copy of the order is referred to the State Debt Recovery Office, to the registrar of the court by which the order was made, or
  - (b) if paid after a copy of the order is referred to the State Debt Recovery Office, to the State Debt Recovery Office.
- (2) A bail guarantor or person granted bail who is required to pay an amount of bail money is entitled to the return of any bail security lodged in relation to 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.

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Clause 108

Enforcement of security requirements imposed by bail conditions

Part 10

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## **Division 2      Late applications to vary or set aside forfeiture orders**

### **108      Application to vary or set aside forfeiture order** (cf s 53K Bail Act 1978)

- (1) A person affected by a forfeiture order may file in the Local Court an application to have the order varied or set aside.
- (2) An application may be made by the person only if the person has not previously lodged an objection to the forfeiture order (whether orally or in writing as permitted by this Part).
- (3) The application may not be made more than 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 to the appropriate State authority and the State Debt Recovery Office.
- (6) Action to enforce the order may not be commenced or continued until proceedings on the application are finally determined.

### **109      Hearing of application—threshold test** (cf s 53L Bail Act 1978)

- (1) If an application to have a forfeiture order varied or set aside is duly made to the Local Court and the Local Court is satisfied that the applicant can be excused for not lodging an objection during the review period, the Local Court must conduct a hearing to determine whether or not the order should be confirmed, varied or set aside.
- (2) An applicant can be excused for not lodging an objection during the review period if:
  - (a) notice of the making of the order was not served on the applicant, and
  - (b) the applicant did not otherwise become aware of the making of the forfeiture order before the expiry of the review period.

### **110      Powers in respect of application** (cf s 53L Bail Act 1978)

The Local Court has the same powers with respect to an application to have a forfeiture order varied or set aside as it does in relation to an objection to a forfeiture order.

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**111 Notice of determination of application** (cf s 53L (5) Bail Act 1978)

The relevant registrar of the Local Court is to ensure that notice of the Local Court's determination of an application to vary or set aside a forfeiture order is given to the State Debt Recovery Office.

**Division 3      Miscellaneous**

**112 Effect of setting aside forfeiture order** (cf s 53M Bail Act 1978)

- (1) If a court sets aside a forfeiture order, every person affected by the order is entitled to the return of:
  - (a) any bail money or bail security that has been deposited by that person, or seized from that person, in relation to the bail agreement to which the order relates, and
  - (b) the proceeds of sale of any bail security so deposited 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 deposited by that person, or seized from that person, in relation to the bail agreement to which the order relates, and
  - (b) the proceeds of sale of any bail security so deposited or seized.
- (3) A person is entitled to the return of bail money or bail security, or the proceeds of sale of any bail security, only 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.
- (4) A court that varies or 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.
- (5) 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 section.

**113 Appeals** (cf s 53N Bail Act 1978)

- (1) An appeal against the Local Court's determination of an objection to a forfeiture order or of an application to set aside a forfeiture order may be made to the District Court under Part 3 of the *Crimes (Appeal and Review) Act 2001*.
- (2) The *Crimes (Appeal and Review) Act 2001* applies, with such modifications as are made by the regulations under that Act, in respect of the appeal as if it were an appeal against a determination of a court

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Enforcement of security requirements imposed by bail conditions

Part 10

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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 to the appropriate State authority and the State Debt Recovery Office.
- (4) Action to enforce the order may not be commenced or continued until proceedings on the appeal are finally determined.

**114 Court of Criminal Appeal may authorise other courts to take action** (cf s 53O Bail Act 1978)

- (1) If a person granted bail is under a duty to appear before the Court of Criminal Appeal in connection with an appeal, the Court of Criminal Appeal may authorise the court from which the appeal arose to take any action under this Part that the Court of Criminal Appeal is authorised to take.
- (2) In that event, the court from which the appeal arose may take such action.

**115 State is a party to forfeiture proceedings** (cf s 53P Bail Act 1978)

The Crown and the appropriate State authority is entitled to appear and be heard at, and is taken to be a party to, all proceedings under this Part.

**116 Return of bail money and security** (cf s 63 Bail Act 1978)

If bail money or bail security has been deposited in connection with proceedings for an offence, and a finding is made that the person granted bail is guilty or not guilty of the offence, the court must, if it has not previously done so, consider whether to make an order for the return of the money or security or a forfeiture order (if applicable).

**117 Appropriate State authority—meaning** (cf s 53 Bail Act 1978)

In this Part, the *appropriate State authority* means the person or body declared by the regulations to be the appropriate State authority for the purposes of this Part.

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Clause 118      Bail Bill 2010

Part 11          Miscellaneous

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## Part 11 Miscellaneous

### 118 Evidence of failure to appear (cf s 60 Bail Act 1978)

- (1) A document purporting to be a copy of a notice requiring a person to appear before a court in accordance with his or her bail agreement and to be certified by a prescribed officer to be a copy of the notice is evidence in any proceedings of the terms of the notice.
- (2) A certificate purporting to be signed by a prescribed officer certifying that a notice requiring a person to appear before a court in accordance with his or her bail agreement was given or sent to the person granted bail in a specified manner on a specified day is evidence in any proceedings of the matters so certified.
- (3) A certificate purporting to be signed or issued by or on behalf of a court or authorised justice 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 evidence in any proceedings of the matters so certified.
- (4) For the purposes of this section, a *prescribed officer* is any person, or member of a class of persons, prescribed by the regulations for the purposes of this section.

### 119 Evidence of agreements, conditions and acknowledgements (cf s 60 Bail Act 1978)

- (1) A document purporting to be, or to be a copy of, a bail agreement or bail guarantee agreement entered into by a person, and to be certified by an appropriate officer to be, or to be a copy of, the agreement, is evidence in any proceedings of the entry into the agreement by the person and of its terms.
- (2) A document purporting to be, or to be a copy of, the instrument by which a bail condition was imposed in relation to a person granted bail, and to be certified by an appropriate officer to be, or to be a copy of, the instrument, is evidence in any proceedings of the imposing of the condition and of its terms.
- (3) A certificate purporting to be signed by an appropriate officer certifying that a specified bail condition has not been altered or varied under this Act, or has been altered or varied under this Act in a specified manner, is evidence in any proceedings of the matters so certified.
- (4) A document purporting to be, or to be a copy of, an acknowledgment given by a person for the purposes of a character reference requirement of a bail condition, and to be certified by an appropriate officer to be, or to be a copy of, the acknowledgment, is evidence in any proceedings of the making of the acknowledgment and of its terms.

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Clause 120

Miscellaneous

Part 11

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- (5) For the purposes of this section, an *appropriate officer* is an officer of the court having the custody of a bail agreement entered into by a person granted bail.

**120 Provisions as to warrants and court attendance notices** (cf s 65 Bail Act 1978)

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

**121 Contraventions of Act by police officers** (cf s 66 Bail Act 1978)

- (1) If a police officer contravenes a provision of this Act that is applicable to the police officer, the contravention is not punishable as an offence (whether under this Act or otherwise) unless a penalty is expressly provided by this Act in respect of the contravention.
- (2) This section does not prevent a contravention of a provision of this Act by a police officer from:
- (a) being dealt with under the *Ombudsman Act 1974* or the *Police Integrity Commission Act 1996* or by way of a departmental charge under the regulations under the *Police Act 1990*, or
  - (b) constituting grounds for the institution of civil proceedings.

**122 Contempt** (cf s 64 Bail Act 1978)

- (1) Nothing in this Act affects any power or duty that a court, tribunal or person has to grant bail, or to grant relief in the nature of bail, in connection with 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 any contempt or alleged contempt that constitutes an offence and proceedings for which may be commenced by way of information or complaint.

**123 Habeas corpus** (cf s 55 Bail Act 1978)

This Act does not affect the powers of the Supreme Court in connection with a writ of habeas corpus, except as expressly provided for by this Act.

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Clause 124      Bail Bill 2010

Part 11          Miscellaneous

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## **124 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations, other than an offence against section 71 or 96, are to be dealt with summarily before the Local Court.
- (2) Chapter 5 of the *Criminal Procedure Act 1986* applies to an offence against section 71 (Indemnification of bail guarantors).
- (3) Proceedings for an offence against section 96 (Offence of failing to appear) are to be dealt with as provided for by that section.

## **125 Regulations** (cf s 69 Bail Act 1978)

- (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) In particular, regulations may be made for or with respect to the following:
  - (a) the release of persons from prison or any other place of custody consequent on the grant of bail or on the requirement for bail being dispensed with,
  - (b) warrants and notices issued under this Act,
  - (c) the fees to be paid in relation to any matter connected with this Act,
  - (d) the forms to be used for the purposes of this Act.
- (3) A provision of a regulation may impose a penalty not exceeding 5 penalty units for any contravention of the regulations.

## **126 Repeal of Bail Act 1978 No 161**

The *Bail Act 1978* is repealed.

## **127 Rules** (cf s 70 Bail Act 1978)

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



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Clause 128

Miscellaneous

Part 11

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### **128 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 5 years from the date of assent to this Act.
- (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 5 years.

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Bail Bill 2010

Schedule 1 Level 3 offences

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## Schedule 1 Level 3 offences

(Section 56)

### Part 1 Offences that are level 3 offences in all circumstances

**1 Conspiracy to murder and attempt to murder**

An offence under section 26, 27, 28, 29 or 30 of the *Crimes Act 1900* is a level 3 offence.

**2 Manslaughter**

Manslaughter is a level 3 offence.

**3 Threats to kill or inflict harm**

An offence under section 31 of the *Crimes Act 1900* is a level 3 offence.

**4 Wounding or causing grievous bodily harm**

An offence under section 33 of the *Crimes Act 1900* is a level 3 offence.

**5 Sexual offences**

An offence under section 61J, 61JA, 61K, 66A or 66B of the *Crimes Act 1900* is a level 3 offence.

**6 Kidnapping**

An offence under section 86 of the *Crimes Act 1900* is a level 3 offence.

**7 Robbery**

An offence under section 95, 96, 97 or 98 of the *Crimes Act 1900* is a level 3 offence.

**8 Participation in criminal organisations**

An offence under section 26 of the *Crimes (Criminal Organisations Control) Act 2009* is a level 3 offence.

**9 Supply of prohibited drugs on an ongoing basis**

(1) The following offences under the *Drug Misuse and Trafficking Act 1985* are level 3 offences:

- (a) an offence under 25A (Offence of supplying prohibited drugs on an ongoing basis),

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Level 3 offences

Schedule 1

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- (b) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a),
- (c) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a),
- (d) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales that corresponds to section 25A of that Act.

## 10 Offence of failing to appear

An offence under section 96 of this Act (Offence of failing to appear) is a level 3 offence, unless the offence arises from a failure to comply with a bail agreement entered into in connection with a minor offence not punishable by a sentence of imprisonment.

**Note.** An offence under section 96 that arises from a failure to comply with a bail agreement entered into in connection with a minor offence not punishable by a sentence of imprisonment is a level 2 offence.

## Part 2 Repealed offences that are level 3 offences in all circumstances

### 11 Sexual offences

An offence under section 78H of the *Crimes Act 1900* is a level 3 offence.

### 12 Kidnapping

An offence under section 90A of the *Crimes Act 1900* is a level 3 offence.

## Part 3 Offences that are level 3 offences in certain circumstances

### 13 Drug offences (large quantities)

- (1) The following offences under the *Drug Misuse and Trafficking Act 1985* are level 3 offences if the plant or drug concerned is alleged to be of a quantity which is at least twice the indictable quantity applicable under that Act:
  - (a) an offence under section 23 (1), 24 (1) or 25 (1),
  - (b) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a),

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Schedule 1      Level 3 offences

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- (c) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a),
  - (d) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales that corresponds to section 23 (1), 24 (1) or 25 (1) of that Act.
- (2) An offence under section 302.3, 302.4, 303.5, 303.6, 304.2, 304.3, 305.4, 305.5, 306.2, 306.3, 306.4, 307.2, 307.3, 307.6, 307.9, 307.11, 307.12, 307.13, 309.2, 309.3, 309.4, 309.7, 309.8, 309.10, 309.11, 309.12, 309.13, 309.14 or 309.15 of the *Criminal Code* of the Commonwealth, or an offence under Division 11 of Part 2.4 of the *Criminal Code* of the Commonwealth where that offence relates to any of the specified sections, is a level 3 offence if the goods or substances concerned are alleged to be of a nature and quantity required for an offence referred to in subclause (1).

### 14 Domestic violence offences

- (1) The following offences are level 3 offences if the bail authority is satisfied that the person who committed or is alleged to have committed the offence is a risk to others:
- (a) a domestic violence offence,
  - (b) an offence of contravening an apprehended domestic violence order by an act that involves violence or conduct referred to in section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* or section 545B of the *Crimes Act 1900*.
- (2) A person is a *risk to others* if:
- (a) the person has been violent in the past to the victim of the offence (whether or not the person has been convicted of an offence in respect of the violence), or
  - (b) the person has failed to comply with a bail condition in respect of the offence that was imposed for the protection and welfare of the victim, or
  - (c) the person has been found guilty, within the last 10 years, of a personal violence offence committed against any person or of an offence of contravening an apprehended violence order by any act involving violence.
- (3) For the purposes of this clause, the *victim of an offence* is the person against whom the domestic violence offence is alleged to have been committed or for whose protection or welfare the apprehended violence order was made.

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(4) In this clause:

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

***apprehended violence order*** means an order under the *Crimes (Domestic and Personal Violence) Act 2007*, and includes a similar order under the law of another State or Territory or of another country.

***personal violence offence*** has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*, and includes a similar offence under the law of another State or Territory or of another country.

**Note.** Serious personal violence offences committed by repeat offenders are level 4 offences. See Schedule 2.

## 15 Offences committed while on bail, in custody, on parole or serving a sentence

(1) An offence (other than a minor offence) is a level 3 offence if the person committed or is alleged to have committed the offence while the person:

- (a) was at liberty on bail, or
- (b) was in custody, or
- (c) was on parole, or
- (d) was serving a sentence but was not in custody, or
- (e) was subject to a good behaviour bond or an intervention program order.

(2) In this clause:

***intervention program order*** has the same meaning as in the *Crimes (Sentencing Procedure) Act 1999*.

## 16 Person with history of failing to appear in accordance with bail agreement

An offence (other than a minor offence) is a level 3 offence if the person who committed or is alleged to have committed the offence has previously been convicted of an offence against section 96 of this Act (Offence of failing to appear).

## 17 Past offenders

An offence (other than a minor offence) is a level 3 offence if the offence is an indictable offence and the person who committed or is alleged to have committed the offence has previously been convicted of one or more indictable offences (whether dealt with on indictment or summarily).

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Schedule 1      Level 3 offences

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## **18    Convicted offenders**

- (1)    An offence is a level 3 offence if the person who committed or is alleged to have committed the offence has been convicted of the offence or the person's conviction for the offence is stayed.
- (2)    This clause does not apply in relation to a bail application that is made to a court in proceedings relating to the administration of a sentence.

## Schedule 2 Level 4 offences

(Sections 58 and 59)

### Part 1 Offences that are level 4 offences in all circumstances

#### 1 Offences committed in the course of riots

An offence under section 93B of the *Crimes Act 1900* is a level 4 offence.

#### 2 Firearms and weapons offences

The following offences are level 4 offences:

- (a) an offence under section 93G, 93GA, 93H (2), 93I (2) or 154D of the *Crimes Act 1900*,
- (b) an offence under section 7, 36, 50, 50A (2), 51 (1A), 51 (2A), 51A or 51D (2) of the *Firearms Act 1996*, being an offence that relates to a prohibited firearm or pistol,
- (c) an offence under section 44A, 51B, 51BB or 62 of the *Firearms Act 1996*.
- (d) an offence under section 7 of the *Weapons Prohibition Act 1998*, being an offence that relates to a military-style weapon,
- (e) an offence under section 23A (2), 23B or 25A (2) of the *Weapons Prohibition Act 1998*.

#### 3 Serious drug offences

(1) The following offences under the *Drug Misuse and Trafficking Act 1985* are level 4 offences:

- (a) an offence under section 23 (1A), 23 (2), 23A (2), 23A (3), 24 (2), 24 (2A) or 25 (2),
- (b) an offence under section 26 of conspiring to commit an offence referred to in paragraph (a),
- (c) an offence under section 27 of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a),
- (d) an offence under section 28 of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales which corresponds to section 23 (1A), 23 (2), 23A (2), 23A (3), 24 (2), 24 (2A) or 25 (2) of that Act.

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Schedule 2      Level 4 offences

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- (2) The following offences are also level 4 offences:
- (a) an offence under section 302.2, 303.4, 304.1, 305.3, 307.1, 307.5 or 307.8 of the *Criminal Code* of the Commonwealth, or an offence under Division 11 of Part 2.4 of the *Criminal Code* of the Commonwealth where that offence relates to any of the specified sections,
  - (b) an offence under section 302.3, 302.4, 303.5, 303.6, 304.2, 304.3, 305.4, 305.5, 306.2, 306.3, 306.4, 307.2, 307.3, 307.6, 307.9, 307.11, 307.12, 307.13, 309.2, 309.3, 309.4, 309.7, 309.8, 309.10, 309.11, 309.12, 309.13, 309.14 or 309.15 of the *Criminal Code* of the Commonwealth, or an offence under Division 11 of Part 2.4 of the *Criminal Code* of the Commonwealth where that offence relates to any of the specified sections, but only if the goods or substances concerned are alleged to be of a nature and quantity required for an offence under the *Drug Misuse and Trafficking Act 1985* referred to in subclause (1),
  - (c) an offence under Division 101, 102 or 103 of the *Criminal Code* of the Commonwealth.

#### 4 Breach of extended supervision orders or interim supervision orders

An offence under section 12 of the *Crimes (Serious Sex Offenders) Act 2006* is a level 4 offence.

## Part 2 Offences that are level 4 offences in certain circumstances

#### 5 Serious property offences committed by repeat offenders

- (1) A serious property offence is a level 4 offence if the person who committed or is alleged to have committed the offence is a repeat offender.
- (2) A person is a *repeat offender* if the person:
  - (a) is charged with 2 or more serious property offences, not being offences arising out of the same circumstances, and
  - (b) the person has been convicted of one or more serious property offences within the last 2 years.
- (3) In this clause:  
*serious property offence* means:
  - (a) an offence under section 94, 95, 96, 97, 98, 99, 109, 110, 111, 112, 113, 149, 154C or 154F of the *Crimes Act 1900*, or



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- (b) a repealed serious property offence, being an offence under section 106, 107 or 154AA of the *Crimes Act 1900*, or
- (c) an offence of attempting to commit an offence referred to in paragraph (a) or (b), or
- (d) an offence under the law of the Commonwealth, another State or a Territory or of another country that is similar to an offence referred to in paragraph (a), (b) or (c).

## 6 Offences committed by persons on lifetime parole

An offence is a level 4 offence if the person who committed or is alleged to have committed the offence is serving a sentence of imprisonment for life and is on parole.

## Part 3 Offences that are level 4 offences for which bail is to be granted in exceptional circumstances only

### 7 Murder

Murder is a level 4 offence for which bail is to be granted in exceptional circumstances only.

### 8 Serious personal violence offences committed by repeat offenders

- (1) A serious personal violence offence is a level 4 offence for which bail is to be granted in exceptional circumstances only if the person who committed or is alleged to have committed the offence is a repeat offender.
- (2) A person is a *repeat offender* if the bail authority is satisfied that the person has a previous conviction for a serious personal violence offence (other than the serious personal violence offence in connection with which bail is sought).
- (3) In this clause:  
*serious personal violence offence* means:
  - (a) an offence under, or mentioned in, section 19A, 24, 26, 27, 28, 29, 30, 33, 33A, 35 (1) or (3), 37, 38, 39, 46, 47, 48, 61I, 61J, 61JA, 61K, 61M, 66A, 66B, 66C, 66D, 66EA, 66F, 73, 80A, 86, 87, 95, 96, 97, 98, 110, 195 (1) (b) or (2) (b), 196 (1) (b) or (2) (b) or 198 of the *Crimes Act 1900*, or
  - (b) an offence under section 79, 109, 111, 112 or 113 of the *Crimes Act 1900* if the circumstances of the offence involve an act of actual or threatened violence against a person, or

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- (c) a repealed personal violence offence, being an offence under, or mentioned in, section 61B, 61C, 61D, 63, 65, 67, 68, 71, 78H, 78I, 78K, 78N, 90A, 91 or 103 of the *Crimes Act 1900*, or
  - (d) a repealed property offence (being an offence under section 106 or 107 of the *Crimes Act 1900*) if the circumstances of the offence involve an act of actual or threatened violence against a person, or
  - (e) an offence of attempting to commit an offence referred to in paragraph (a), (b), (c) or (d), or
  - (f) an offence under the law of the Commonwealth, another State or a Territory or of another country that is similar to an offence referred to in paragraph (a), (b), (c), (d) or (e).
- (4) The reference in this clause to an offence under section 86 of the *Crimes Act 1900* includes a reference to an offence under section 85A of that Act (before it was renumbered as section 86).

### **9 Persons who have already been convicted on indictment**

- (1) An offence is a level 4 offence for which bail is to be granted in exceptional circumstances only if:
  - (a) the person who committed or is alleged to have committed the offence has been convicted on indictment of the offence, and
  - (b) an appeal is pending in respect of the offence.
- (2) An appeal is pending in respect of the offence if:
  - (a) the person has appealed, or lodged a notice of intention to appeal, to the Court of Criminal Appeal against the person's conviction for the offence or a sentence passed on the conviction, and the matter has not been finally determined, or
  - (b) the person has appealed, or lodged a notice of intention to appeal, to the High Court from a decision of the Court of Criminal Appeal on an appeal against the person's conviction for the offence or a sentence passed on conviction, and the matter has not been finally determined.

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## **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 the following Acts:  
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 Definition**

In this Part, *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
  - (b) to continue in force (even if granted for a specified period) until it ceases to have effect under this Act.

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## **4 Bail undertakings, agreements and recognizances**

- (1) Any bail undertaking given by an accused person under the 1978 Act that was in force on the repeal of that Act is taken, on that repeal, to be a bail agreement entered into under this Act.
- (2) Any agreement entered into by an accused person under section 36 the 1978 Act that was in force on the repeal of that Act is taken, on that repeal, to form part of the bail agreement entered into under this Act.
- (3) A reference in this Act or any other Act to a failure to comply with a bail agreement includes a failure (whether before or after the repeal of the 1978 Act) to comply with a bail undertaking entered into under the 1978 Act, a bail agreement entered into under section 36 of the 1978 Act or a recognizance of bail entered into before the commencement of Schedule 1 to the 1978 Act.
- (4) A reference in Schedule 1 to an offence against section 96 of this Act is taken to include a reference to an offence against section 51 of the 1978 Act.

## **5 Powers of courts with respect to bail**

- (1) A provision of this Act that allows a court to refuse to entertain an application for bail if a previous bail application has been made in relation to the offence extends to a previous application in relation to bail that was made to a court before the commencement of the provision.
- (2) A provision of this Act that allows a court to refuse to entertain an application for bail if bail has been refused or granted by a court of superior jurisdiction extends to bail granted or refused before the commencement of the provision.

## **6 Review of bail decisions pending under 1978 Act**

- (1) An application for review of a bail decision made under Division 2 of Part 6 of the 1978 Act, which is pending on the repeal of the 1978 Act, is to be dealt with by the bail authority to which it is made as if it were a bail application under this Act.
- (2) However, section 36 of this Act does not apply in relation to the bail application.

## **7 Common law relating to grant of bail not revived**

The repeal of the *Bail Act 1978* does not operate to revive any power or duty to grant bail that would exist apart from statute which was abolished by that Act.

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### **8 Industrial Magistrates**

- (1) A reference in this Act, or in section 312 of the *Criminal Procedure Act 1986* (as amended by this Act), to a Magistrate of the Local Court includes a reference to an Industrial Magistrate under the *Industrial Relations Act 1996*.
- (2) This clause has no effect on the commencement of Schedule 1 [15] to the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009*.

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## **Schedule 4      Amendment of other Acts**

### **4.1    Child Protection (Offenders Registration) Act 2000 No 42**

**[1]    Section 3G Child protection registration orders made after grant of bail under Mental Health (Forensic Provisions) Act 1990**

Omit section 3G (5). Insert instead:

- (5)    An order under this section is taken to impose a bail condition for the purposes of the *Bail Act 2010* and may be revoked under that Act in the same way as a bail condition.

**[2]    Section 3G (6) (c)**

Omit the paragraph. Insert instead:

- (c)    the order is revoked under the *Bail Act 2010*.

### **4.2    Children and Young Persons (Care and Protection) Act 1998 No 157**

**[1]    Section 3 Definitions**

Omit “*Bail Act 1978*” from paragraph (c) of the definition of *Registrar*.

Insert instead “*Bail Act 2010*”.

**[2]    Section 109U**

Omit sections 109U and 109V. Insert instead:

**109U    Application of Bail Act 2010**

- (1)    The Children’s Court, a Children’s Magistrate or a Registrar before whom a person arrested pursuant to a warrant issued under this Part is brought may grant bail to the person in accordance with the *Bail Act 2010* as if the person were alleged to have committed an offence.
- (2)    For that purpose:
- (a)    a reference in the *Bail Act 2010* to the Local Court is to be read as a reference to the Children’s Court or a Children’s Magistrate, and
- (b)    a reference in the *Bail Act 2010* to an authorised justice includes a reference to the Registrar, and
- (c)    a reference in the *Bail Act 2010* to a prosecutor is to be read as a reference to any party to the proceedings in respect of which the warrant is issued.

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- (3) A power to issue a warrant of commitment under this Part is subject to the provisions of the *Bail Act 2010*, as applied by this section.
- (4) In taking any action or making any decision under the *Bail Act 2010* as applied by this section concerning a particular child or young person, the safety, welfare and well-being of the child or young person must be the paramount consideration.
- (5) The regulations may modify the application of the *Bail Act 2010* in respect of the grant of bail under this section.

## 4.3 Children (Community Service Orders) Act 1987 No 56

### Section 21A Revocation of children's community service order

Omit "*Bail Act 1978*" from section 21A (1) (b). Insert instead "*Bail Act 2010*".

## 4.4 Children (Criminal Proceedings) Act 1987 No 55

- [1] Sections 9, 20 (2) (a), 27 (3), 29 (1A) (b), 30, 33 (1) (c2), 48L (7) (c), 50 and 50A (1) (a)

Omit "*Bail Act 1978*" wherever occurring. Insert instead "*Bail Act 2010*".

- [2] Section 48I Granting of bail for suitability assessments and charging procedure

Omit "section 36, 36A or 36B of the *Bail Act 1978*".

Insert instead "the *Bail Act 2010*".

## 4.5 Children (Detention Centres) Act 1987 No 57

- [1] Section 3 Definitions

Omit the definition of *person on remand* from section 3 (1). Insert instead:  
*person on remand*—see section 3A.

- [2] Section 3A

Insert after section 3:

### 3A Person on remand

- (1) For the purposes of this Act, a *person on remand* is any juvenile offender who is on remand.
- (2) A juvenile offender is any person being held in custody in connection with an offence committed or alleged to have been committed by the person who:

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- (a) is under the age of 18 years, or
- (b) has been charged with the offence before the Children's Court, or
- (c) is under the age of 21 years and is the subject of an order, as referred to in paragraph (c) of the definition of *detention order*, transferring the juvenile offender from a correctional centre or juvenile correctional centre to a detention centre.

- (3) A juvenile offender is on remand if the juvenile offender is a person who can be granted, or has been granted, bail in respect of the offence or alleged offence under the *Bail Act 2010*.

**[3] Section 28A Certain children may be remanded in correctional centres**

Omit "*Bail Act 1978*" from section 28A (2) (b). Insert instead "*Bail Act 2010*".

**[4] Section 42A Admission to detention centre following arrest or apprehension for breach of bail agreement**

Omit "under section 50 (1) of the *Bail Act 1978*" from section 42A (1).

Insert instead "under the *Bail Act 2010* on the basis that the child was failing to comply with, or was about to fail to comply with, his or her bail agreement".

## **4.6 Community Protection Act 1994 No 77**

### **Section 29 Bail Act 2010 does not apply**

Omit "*Bail Act 1978*". Insert instead "*Bail Act 2010*".

## **4.7 Conveyancing Act 1919 No 6**

**[1] Section 186 Writs and orders under judgments or relating to legal proceedings**

Omit section 186 (4). Insert instead:

- (4) In this section, *recognisance* includes a bail guarantee agreement within the meaning of the *Bail Act 2010*.

**[2] Section 189 Judgments not to be a charge on land until writ or order registered**

Omit section 189 (3). Insert instead:

- (3) In this section, *recognisance* includes a bail guarantee agreement within the meaning of the *Bail Act 2010*.



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## 4.8 Coroners Act 2009 No 41

### Section 71

Omit the section. Insert instead:

#### 71 Arrest of witness under warrant

- (1) A person arrested under an arrest warrant issued under this Part is to be brought before a coroner or authorised justice as soon as practicable after the person's arrest.
- (2) A person arrested under an arrest warrant may be dealt with in the same way as a witness arrested under a warrant issued under section 231 of the *Criminal Procedure Act 1986*, subject to this section.
- (3) A coroner or authorised justice may grant bail in accordance with the *Bail Act 2010* to a person brought before the coroner or authorised justice pursuant to an arrest warrant issued under this Part as if the person were alleged to have committed an offence.
- (4) For that purpose:
  - (a) a reference in the *Bail Act 2010* to the Local Court includes a reference to a coroner, and
  - (b) a reference in the *Bail Act 2010* to a prosecutor is to be read as a reference to any person who has been granted leave to appear in the proceedings in respect of which the warrant is issued.
- (5) A coroner or authorised justice before whom a person is brought after having been arrested under an arrest warrant issued under this Part:
  - (a) must, subject to the *Bail Act 2010*, order that a warrant be issued for the committal of the person to a correctional centre or other place of security, and
  - (b) must order the person to be brought before a coroner at such time and place as is specified in the order.
- (6) In this section:  
*authorised justice* has the same meaning as in the *Bail Act 2010*.

## 4.9 Crimes (Administration of Sentences) Act 1999 No 93

### [1] Section 106X Arrest warrants

Omit "*Bail Act 1978*" from section 106X (3). Insert instead "*Bail Act 2010*".

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**[2] Section 249 Definitions**

Omit section 249 (2). Insert instead:

- (2) For the removal of doubt, a *person in custody* includes a person in lawful custody:
  - (a) refused bail by a senior police officer under the *Bail Act 2010*, or
  - (b) granted bail by a senior police officer under the *Bail Act 2010* but not released on bail, or
  - (c) arrested under the *Bail Act 2010* on the grounds that the person has failed to comply with, or was about to fail to comply with, the person's bail agreement, or
  - (d) apprehended under a warrant issued under the *Bail Act 2010* on the grounds that the person has failed to comply with, or was about to fail to comply with, the person's bail agreement.

## **4.10 Crimes (Appeal and Review) Act 2001 No 120**

**[1] Section 63 Stay of execution of sentence pending determination of appeal**

Omit section 63 (2) (c). Insert instead:

- (c) in the case of an appellant who is in custody when the appeal is made or leave to appeal is granted, when the appellant enters into a bail agreement, or when bail is dispensed with, under the *Bail Act 2010*.

**[2] Sections 107 (6), 110 (1) and 117**

Omit "*Bail Act 1978*" wherever occurring. Insert instead "*Bail Act 2010*".

## **4.11 Crimes (Domestic and Personal Violence) Act 2007 No 80**

**[1] Section 83**

Omit the section. Insert instead:

**83 Application of Bail Act 2010**

- (1) A Magistrate, Registrar or authorised officer before whom a person is brought on arrest on a warrant issued under this Part or court before whom a person appears in answer to a direction to appear given under this Act may grant bail to the person in accordance with the *Bail Act 2010* as if the person were alleged to have committed an offence.

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- (2) For that purpose:
  - (a) a reference in the *Bail Act 2010* to an authorised justice includes a reference to a Registrar or authorised officer, and
  - (b) a reference in the *Bail Act 2010* to a prosecutor includes a reference to an applicant for a final apprehended violence order or interim court order.

**[2] Section 85 Presumption against stay of order**

Omit section 85 (5). Insert instead:

- (5) A stay on the operation of the order does not have effect if the appellant is in custody when the appeal is made, unless and until the appellant enters into a bail agreement in accordance with the *Bail Act 2010*, or bail is dispensed with.
- (5A) In the application of the *Bail Act 2010* to the appellant, the appellant is taken to be a person who, because of the prohibitions and restrictions imposed by the order, is in custody.

## **4.12 Crimes (Sentencing Procedure) Act 1999 No 92**

**[1] Section 11 Deferral of sentencing for rehabilitation, participation in an intervention program or other purposes**

Omit “*Bail Act 1978*” from section 11 (1). Insert instead “*Bail Act 2010*”.

**[2] Section 11 (2A), note**

Omit “Section 36A of the *Bail Act 1978*”. Insert instead “The *Bail Act 2010*”.

**[3] Section 80 Referral of offender for assessment**

Omit “*Bail Act 1978*” from section 80 (2) (b). Insert instead “*Bail Act 2010*”.

## **4.13 Crimes (Serious Sex Offenders) Act 2006 No 7**

**Section 28 Bail Act 2010 not to apply**

Omit “*Bail Act 1978*”. Insert instead “*Bail Act 2010*”.

## **4.14 Criminal Appeal Act 1912 No 16**

**Sections 8A (2), 24, 25A (5) and 29**

Omit “*Bail Act 1978*” wherever occurring. Insert instead “*Bail Act 2010*”.

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## 4.15 Criminal Case Conferencing Trial Act 2008 No 10

### Section 20

Omit the section. Insert instead:

#### 20 Relationship with Bail Act 2010

If bail is granted under the *Bail Act 2010* to a person in respect of an offence for which a compulsory conference is required, the bail agreement or a condition of bail may require the person to make himself or herself available for the purposes of the compulsory conference.

## 4.16 Criminal Procedure Act 1986 No 209

### [1] Section 3 Definitions

Omit the definition of *bail* from section 3 (1). Insert instead:

*bail* means bail under the *Bail Act 2010*.

### [2] Sections 21 (5) (c), 58 (2), 109 (note), 125 (2) (f), 241, 317, 352

Omit “*Bail Act 1978*” wherever occurring. Insert instead “*Bail Act 2010*”.

### [3] Section 61 Discharge of accused person if prosecutor not present for taking of evidence

Omit section 61 (3) and the note. Insert instead:

(3) Subsection (2) does not apply if the accused person is refused bail (as referred to in section 40 of the *Bail Act 2010*).

**Note.** Section 40 of the *Bail Act 2010* specifies the maximum period for adjournments if bail has been refused.

### [4] Section 110 Bail agreements and conditions to be notified

Omit “bail undertaking” wherever occurring. Insert instead “bail agreement”.

### [5] Section 229 Action that may be taken if person does not comply with subpoena

Insert after section 229 (2):

(2A) A Magistrate or authorised officer before whom a person is brought on arrest on a warrant issued under this section may grant bail to the person in accordance with the *Bail Act 2010* as if the person were alleged to have committed an offence.

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(2B) For that purpose:

- (a) a reference in the *Bail Act 2010* to an authorised justice includes a reference to an authorised officer, and
- (b) a reference in the *Bail Act 2010* to a prosecutor includes a reference to a party who requested or issued a subpoena.

**[6] Section 230**

Omit the section.

**[7] Section 247 Notices to be given to prosecutor**

Omit section 247 (2). Insert instead:

- (2) The registrar must, as soon as practicable after a notice is given or sent to a person referred to in section 246 requiring the person to appear before a court, cause a copy of the notice to be given to the prosecutor.

**[8] Section 308 Witnesses neglecting to attend trial captured under warrant may be admitted to bail**

Omit “bail undertaking”. Insert instead “bail agreement”.

**[9] Section 312**

Omit the section. Insert instead:

**312 Persons arrested under bench warrants**

- (1) A Magistrate, authorised officer or authorised justice before whom a person is brought after having been arrested under a bench warrant issued by a Judge in criminal proceedings may grant bail to the person in accordance with the *Bail Act 2010*.
- (2) If the person arrested is not alleged to have committed an offence, the *Bail Act 2010* applies as if the person were alleged to have committed an offence.
- (3) For that purpose, a Magistrate has the same functions as the Local Court under that Act and an authorised officer or authorised justice has the same functions as an authorised justice under that Act.
- (4) A Magistrate, authorised officer or authorised justice must, if bail is not dispensed with or granted:
  - (a) by warrant commit the person to a correctional centre or other place of security, and

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(b) order the person to be brought before the court out of which the bench warrant was issued in accordance with the terms of the warrant.

(5) In this section:  
*authorised justice* has the same meaning as it has in the *Bail Act 2010*.

*Judge* includes a Magistrate, a Children’s Court Magistrate, the President or a judicial member of the Industrial Court of New South Wales and any other person of a class prescribed for the purposes of this definition.

**[10] Chapter 7, Part 4, note**

Omit “section 36A of the *Bail Act 1978*”. Insert instead “the *Bail Act 2010*”.

**[11] Section 350 Court may adjourn proceedings to allow accused person to be assessed for or to participate in intervention program**

Omit “with the *Bail Act 1978*” from section 350 (1).

Insert instead “with the *Bail Act 2010*”.

**[12] Section 350 (1), note**

Omit “Section 36A of the *Bail Act 1978*”. Insert instead “The *Bail Act 2010*”.

**[13] Schedule 1 Indictable offences triable summarily**

Omit item 17 in Table 1. Insert instead:

**17 Bail Act 2010**

An offence under section 71 (Indemnification of bail guarantors) of the *Bail Act 2010*.

### **4.17 Drug Court Act 1998 No 150**

**Sections 14 (3) and 24 (2) (b)**

Omit “*Bail Act 1978*” wherever occurring. Insert instead “*Bail Act 2010*”.

### **4.18 Drug Misuse and Trafficking Act 1985 No 226**

**Section 36N Exemption from criminal liability for users of licensed injecting centre**

Omit “*Bail Act 1978*” from section 36N (3) (b).

Insert instead “*Bail Act 2010*”.

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## 4.19 Evidence Act 1995 No 25

### [1] Section 4 Courts and proceedings to which Act applies

Insert “subject to the *Bail Act 2010*,” after “bail,”.

### [2] Section 4, notes

Insert at the end of the notes:

5. The *Bail Act 2010* provides that the *Evidence Act 1995* applies to proceedings in relation to bail under that Act only if the court directs that this Act applies.

### [3] Section 194 Witnesses failing to attend proceedings

Omit section 194 (4). Insert instead:

- (4) In this section, *recognisance* includes a bail agreement under the *Bail Act 2010*.

## 4.20 Fines Act 1996 No 99

### [1] Section 111

Omit the section. Insert instead:

#### 111 Definitions

In this Part:

*forfeited bail money* means unpaid bail money the subject of a forfeiture order under the *Bail Act 2010*.

*forfeited bail security* means bail security given in relation to bail money the subject of a forfeiture order under the *Bail Act 2010*.

*objection to a forfeiture order* means:

- (a) an application to the Local Court to have a forfeiture order varied or set aside duly made under the *Bail Act 2010*, or
- (b) an appeal to the District Court against the Local Court’s determination of an objection to a forfeiture order or of an application to vary or set aside a forfeiture order duly made under the *Bail Act 2010*.

### [2] Section 112 Enforcement of forfeited bail money

Omit section 112 (2) (b1). Insert instead:

- (b1) if the State Debt Recovery Office is served with a copy of an objection to a forfeiture order in relation to forfeited bail money, action under Part 4 may not be commenced or

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continued until proceedings on the objection are finally determined,

**[3] Section 112A Enforcement of forfeited bail security**

Omit section 112A (2) (a). Insert instead:

- (a) if the State Debt Recovery Office is served with a copy of an objection to a forfeiture order in relation to the bail money for which the forfeited bail security is given, action under section 72 may not be commenced or continued until proceedings on the objection are finally determined,

**4.21 Government Information (Public Access) Act 2009 No 52**

**Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure**

Omit the matter relating to the *Bail Act 1978* from clause 1. Insert instead:

*Bail Act 2010*—section 69 (Certain information not to be published or broadcast)

**4.22 Inebriates Act 1912 No 24**

**Section 17A Forfeiture of securities under recognizances**

Omit “Part 7A of the *Bail Act 1978*”.

Insert instead “Part 10 of the *Bail Act 2010*”.

**4.23 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**[1] Part 8, note**

Omit “section 50 of the *Bail Act 1978*, to arrest a person who breaches bail undertakings or agreements”.

Insert instead “the *Bail Act 2010*, to arrest a person who breaches a bail agreement”.

**[2] Sections 104 (4) (b), 113 (2) (e) and 114 (5)**

Omit “*Bail Act 1978*” wherever occurring. Insert instead “*Bail Act 2010*”.

**[3] Section 104 (6)**

Omit the subsection. Insert instead:

- (6) If a person arrested under this section has been granted bail, and subsequently, but before the person has complied with his or her



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bail agreement, a warrant for the person's arrest is executed under a law of the Commonwealth, the person is taken at the time the warrant is executed to be released from that bail and to have complied with any undertaking given under that bail agreement at that time outstanding, not being an undertaking with which the person has by that time failed, without lawful excuse, to comply.

**[4] Schedule 1 Acts not affected by this Act**

Omit "*Bail Act 1978* No 161". Insert instead "*Bail Act 2010*".

**4.24 Local Government Act 1993 No 30**

**Section 680 Demanding name of offender**

Omit section 680 (3). Insert instead:

- (3) The Magistrate or authorised officer before whom the person is taken may grant bail to the person in accordance with the *Bail Act 2010* as if the person were alleged to have committed an offence.
- (3A) For that purpose, a reference to an authorised justice in that Act includes a reference to an authorised officer.

**4.25 Mental Health (Forensic Provisions) Act 1990 No 10**

**Sections 10 (3) (b), 14 (b) (ii), 17 (2), 31 (1), 32 (2) (b) and 33 (1) and (1D)**

Omit "*Bail Act 1978*" wherever occurring. Insert instead "*Bail Act 2010*".

**4.26 NSW Trustee and Guardian Act 2009 No 49**

**Section 68 Security may be required in respect of estate management**

Omit "Part 7A of the *Bail Act 1978*" from section 68 (5).

Insert instead "Part 10 of the *Bail Act 2010*".

**4.27 Protection of the Environment Operations Act 1997 No 156**

**Section 204 Power of authorised officers to demand name and address**

Omit section 204 (4). Insert instead:

(4) **Bail**

The Magistrate or authorised officer before whom the person is taken may grant bail to the person in accordance with the *Bail Act 2010* as if the person were alleged to have committed an offence.

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## public consultation draft

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- (4A) For that purpose, a reference to an authorised justice in that Act includes a reference to an authorised officer.

### **4.28 Supreme Court Act 1970 No 52**

#### **Section 69C Stay of execution of conviction, order or sentence pending review**

Omit “bail undertaking in accordance with the *Bail Act 1978*” from section 69C (3).

Insert instead “bail agreement in accordance with the *Bail Act 2010*”.

### **4.29 Water Management Act 2000 No 92**

#### **Section 338D Power of authorised officers to demand name and address**

Omit section 338D (4). Insert instead:

- (4) The Magistrate or authorised officer before whom the person is taken may grant bail to the person in accordance with the *Bail Act 2010* as if the person were alleged to have committed an offence.
- (5) For that purpose, a reference to an authorised justice in that Act includes a reference to an authorised officer.