

Bail Act 1978 No 161

[1978-161]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Criminal Procedure Legislation Amendment \(Bail Agreements\) Act 1998 No 107](#), Sch 1 [2] (not commenced)
 - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)
- **See also**
 - [Statute Law \(Miscellaneous Provisions\) Bill 2002](#)
 - [Courts Legislation Further Amendment Bill 2002](#)

Authorisation

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Bail Act 1978 No 161



New South Wales

An Act relating to bail for accused persons in or in connection with criminal proceedings.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Bail Act 1978*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette, being a day that is later than the day appointed and notified under section 2 (2) of the *Crimes (Amendment) Act 1979*.

3 (Repealed)

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

appeal includes an application for leave to appeal and a proceeding by way of appeal.

authorised officer, in relation to a person in custody, means a police officer who may grant bail to the person under Part 3.

bail means authorisation to be at liberty under this Act, instead of in custody.

bail condition means a condition under section 36, 36A or 36B.

bail undertaking means an undertaking under section 34.

close relative, in relation to a person, means:

- (a) a mother, father, wife, husband, daughter, son, step-daughter, step-son, sister, brother, half-sister or half-brother of the person, or the other party to a domestic

relationship to which the person is a party, or

- (b) if the person is a party to a domestic relationship, any person who is a relative, of the kind mentioned in paragraph (a), of either party to the relationship.

conviction includes a finding of guilt and (without limiting the generality of the foregoing provisions of this definition) the making of an order under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#) or section 33 (1) (a) of the [Children \(Criminal Proceedings\) Act 1987](#).

court means:

- (a) the Court of Criminal Appeal, the Supreme Court, the Land and Environment Court, the Industrial Relations Commission, the District Court or a Local Court, or
- (b) any other court which, 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 relationship has the same meaning as in the [Property \(Relationships\) Act 1984](#).

domestic violence offence has the same meaning as it has in the [Crimes Act 1900](#).

Industrial Relations Commission includes a judicial member of that Commission.

Judge means a Judge of the Supreme Court, Court of Criminal Appeal, Land and Environment Court or District Court, or a judicial member of the Industrial Relations Commission.

justice means a justice of the peace, but does not include a police officer, a magistrate or a Judge.

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

lawyer means a barrister or solicitor of the Supreme Court.

Local Court includes a licensing court under the [Liquor Act 1912](#) and the Children's Court.

magistrate means a magistrate under the [Local Courts Act 1982](#), a licensing magistrate under the [Liquor Act 1982](#), a Children's Magistrate or an industrial magistrate under the [Industrial Relations Act 1996](#).

offence includes an alleged offence.

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

regulations means regulations made under this Act.

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

- (2) A reference in this Act to an accused person, or a person accused of an offence, includes a reference to:
- (a) a person charged with, convicted of or found guilty of an offence,
 - (b) a person whose conviction for an offence is stayed,
 - (c) a person in respect of whom an appeal (including an appeal to the High Court) relating to an offence is pending,
 - (d) a person in respect of whom a new trial has been ordered to be held for an offence,
 - (e) a person who may appear or be brought before a court under section 98 of the *Crimes (Sentencing Procedure) Act 1999* or section 116 of the *Crimes (Administration of Sentences) Act 1999*, and
 - (f) a person who may appear or be brought before a court pursuant to section 21 (1) (d) or 26 (1) (c) of the *Children (Community Service Orders) Act 1987*.
- (3) A reference in this Act to entering into a bail condition is a reference, if the condition is imposed under:
- (a) section 36 (2) (a), (a1), (c) or (d), section 36A (2) (a) or (b) or section 36B (1) (a) or (b)—to entering into the agreement or agreements,
 - (b) section 36 (2) (b)—to making and signing the acknowledgment,
 - (c) section 36 (2) (e) or (f)—to entering into the agreement or agreements and depositing the security, or
 - (d) section 36 (2) (g) or (h)—to entering into the agreement or agreements and depositing the amount or amounts of money,
- in accordance with the condition.
- (4) A reference in this Act to an offence punishable summarily includes a reference to an indictable offence that is punishable summarily, whether with or without the consent of the accused person, and whether or not it is in fact dealt with summarily.
- (5) A reference (however expressed) in this Act (other than section 32) to the grant of bail

includes a reference to the continuation of bail under section 43.

- (6) A reference in this Act to a prison includes, in the case of a person who is under the age of 18 years, a reference to a detention centre within the meaning of the *Children (Detention Centres) Act 1987*.

5 Application of Act

This Act applies to a person whether or not the person has attained the age of 18 years.

Part 2 General provisions respecting bail

Division 1 Bail generally

6 Grant of bail for certain periods

Bail may be granted in accordance with this Act to an accused person in respect of any one or more of the following periods (so far as they relate to the offence of which the person is accused):

- (a) the period between the person being charged with the offence and the person's first appearance before a court in or in connection with proceedings for the offence,
- (b) the period between committal for trial or sentence and the person being brought before the Supreme Court or District Court consequent on the committal,
- (c) the period of any adjournment or adjournments, including:
 - (i) any adjournment or adjournments during the course of a trial, and
 - (ii) any period deemed by section 16 to be the period of an adjournment,
- (d) the period of a stay of execution of a conviction or sentence,
- (e) the period between the lodging of an appeal and its determination, being an appeal against a conviction or order or against the severity of the person's sentence,
- (f) the period between the person entering into a recognizance to prosecute proceedings in respect of a stated case and:
 - (i) the person's appearance to abide the decision in those proceedings, or
 - (ii) the person's appearance before the Judge, magistrate or justice to whom the matter is remitted,
- (g) the period between the determination of an appeal and:
 - (i) the person's appearance before a court to abide the decision on the appeal, or
 - (ii) the commencement of a new trial ordered on the appeal,

- (g1) the period during which an application for revocation, extension or amendment of a community service order (within the meaning of the *Crimes (Sentencing Procedure) Act 1999*) or a children's community service order (within the meaning of the *Children (Community Service Orders) Act 1987*) is pending,
- (g2) (Repealed)
- (g3) the period between a person's being found guilty of an offence under section 24 (1) of the *Children (Community Service Orders) Act 1987* and the person's appearing, pursuant to that Act, before the court that made the children's community service order, within the meaning of that Act, to which the person is subject,
- (g4) the period between the making and hearing of an application to annul a conviction under section 100A of the *Justices Act 1902*,
- (g5) the period between the referral of a conviction under section 100B of the *Justices Act 1902* and the hearing of the matter referred,
- (g6) the period between the annulment of a conviction under section 100A or 100B of the *Justices Act 1902* and the rehearing of the information in respect of which the conviction was made,
- (g7) the period between an application for review under section 45 of the *Children (Criminal Proceedings) Act 1987* of a decision in respect of an offence and the determination of the application,
- (g8) the period between the determination of an application for review under section 45 of the *Children (Criminal Proceedings) Act 1987* of a decision in respect of an offence and any further proceedings on the information laid or complaint made in relation to the offence, and
- (g9) the period between a person being referred to the Drug Court under section 6 of the *Drug Court Act 1998* and the person being brought before the Drug Court consequent on the referral,
- (g10) the period between a person being referred back to a court under section 8 of the *Drug Court Act 1998* and the person being brought before that court consequent on the referral,
- (h) any other period prescribed by the regulations.

7 Rights following grant of bail

- (1) When:
 - (a) bail is granted to an accused person in respect of an offence,
 - (b) the person enters into the bail undertaking, and

(c) if a bail condition or bail conditions are imposed, it or they are entered into, the person is, subject to this Act, entitled to be released (if in custody) and to remain at liberty in respect of the offence, until the person is required to appear before a court in accordance with the person's undertaking.

(2) Nothing in this section applies to an accused person while the person is in custody also 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 Right to release for certain offences

8 Right to release on bail for minor offences

(1) This section applies to:

(a) all offences not punishable by a sentence of imprisonment (except in default of payment of a fine),

(a1) offences under the *Summary Offences Act 1988* that are punishable by a sentence of imprisonment, and

(b) all offences punishable summarily that are of a class or description prescribed by the regulations for the purposes of this section, and

(c) all offences (whether or not of a kind referred to in paragraph (a) or (b)) in respect of which a person is an accused person by virtue of section 4 (2) (e) or (f),

except offences against section 51.

(2) A person accused of an offence to which this section applies:

(a) is entitled to be granted bail in accordance with this Act unless:

(i) the person has previously failed to comply with a bail undertaking given or bail condition imposed in respect of the offence,

(ii) the person is, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection,

(iii) the person stands convicted of the offence or the person's conviction for the offence is stayed, or

(iv) the requirement for bail is dispensed with, as referred to in section 10, and

(b) is entitled to be so granted bail either:

(i) unconditionally, or

(ii) subject to such bail condition or bail conditions imposed on the grant of bail to the person as, in the opinion of the authorised officer or court, is or are reasonably and readily able to be entered into,

to the intent that the person shall be, subject to section 7, released (if in custody) as soon as possible after the person gives the bail undertaking.

- (3) Subject to subsection (4), a person is entitled under this section to be granted bail in respect of an offence to which this section applies, notwithstanding that 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.
- (4) A person is not entitled under this section to be granted bail in respect of an offence to which this section applies, if:
- (a) the person is in custody serving a sentence of imprisonment in connection with some other offence, and
 - (b) the authorised officer or court 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 firstmentioned offence would be granted.

Division 2A Presumption against bail for certain drug offences

8A Presumption against bail for certain drug offences

- (1) This section applies:
- (a) to the following offences under the *Drug Misuse and Trafficking Act 1985*:
 - (i) an offence under section 23 (2), 24 (2) or 25 (2) of that Act,
 - (ii) an offence under section 26 of that Act of conspiring to commit an offence referred to in subparagraph (i),
 - (iii) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in subparagraph (i),
 - (iv) an offence under section 28 of that Act 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 (2), 24 (2) or 25 (2) of that Act, and
 - (b) to an offence under section 231 (1), 233A or 233B of the *Customs Act 1901* of the Commonwealth (but only if the goods concerned are alleged to be of a nature and quantity required for an offence referred to in paragraph (a)).
- (2) A person accused of an offence to which this section applies is not to be granted bail

unless the person satisfies the authorised officer or court that bail should not be refused.

- (3) The requirement for bail cannot be dispensed with for a person accused of an offence to which this section applies and section 10 (2) does not apply with respect to any such offence.

Division 3 Presumption in favour of bail for certain offences

9 Presumption in favour of bail for certain offences—exceptions

(1) This section applies to all offences, except:

- (a) offences referred to in section 8A (1),
- (b) subject to subsection (1A), offences referred to in section 8 (1) or offences against section 51,
- (c) offences under section 26, 27, 28, 29, 30, 31, 33, 61J, 61JA, 61K, 66A, 66B, 78H, 85A, 90A, 95, 96, 97 or 98 of the *Crimes Act 1900*, and
- (d) the following offences under the *Drug Misuse and Trafficking Act 1985* (but only 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):
 - (i) an offence under section 23 (1), 24 (1) or 25 (1) of that Act,
 - (ii) an offence under section 26 of that Act of conspiring to commit an offence referred to in subparagraph (i),
 - (iii) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in subparagraph (i),
 - (iv) an offence under section 28 of that Act 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 (1), 24 (1) or 25 (1) of that Act,
- (d1) the following offences under the *Drug Misuse and Trafficking Act 1985*:
 - (i) an offence under section 25A of that Act (Offence of supplying prohibited drugs on an ongoing basis),
 - (ii) an offence under section 26 of that Act of conspiring to commit an offence referred to in subparagraph (i),
 - (iii) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in

subparagraph (i),

(iv) an offence under section 28 of that Act 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,

(e) offences under section 231 (1), 233A or 233B of the *Customs Act 1901* of the Commonwealth (but only if the goods concerned are alleged to be of a nature and quantity required for an offence referred to in paragraph (d)),

(e1) an offence under section 7 of the *Firearms Act 1996* relating to the unauthorised possession or use of a firearm that is a prohibited firearm, or a pistol, within the meaning of that Act,

(f) murder or manslaughter, and

(g) an offence excluded from this section by section 9A or 9B.

(1A) This section applies to:

(a) an offence referred to in section 8 (1) if the person accused of the offence is not entitled to be granted bail under section 8 merely because the person has previously failed to comply with a bail undertaking given or bail condition imposed in respect of the offence, and

(b) an offence against section 51 arising from a failure to comply with a bail undertaking given in respect of an offence referred to in section 8 (1) (a).

(2) A person accused of an offence to which this section applies is entitled to be granted bail in accordance with this Act unless:

(a) the authorised officer or court is satisfied that the officer or the court is, pursuant to a consideration of the matters referred to in section 32, justified in refusing bail,

(b) the person stands convicted of the offence or the person's conviction for the offence is stayed, or

(c) the requirement for bail is dispensed with, as referred to in section 10.

(3) Subject to subsection (4), a person is entitled under this section to be granted bail in respect of an offence to which this section applies, notwithstanding that 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.

(4) A person is not entitled under this section to be granted bail in respect of an offence to which this section applies, if:

(a) the person is in custody serving a sentence of imprisonment in connection with

some other offence, and

- (b) the authorised officer or court 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 firstmentioned offence would be granted.

(5) (Repealed)

9A Exception from presumption in favour of bail—certain domestic violence offences and offences of contravening apprehended domestic violence orders

(1) This section applies to the following:

- (a) any domestic violence offence,
- (b) any offence of contravening an apprehended domestic violence order by an act:
 - (i) involving violence, or
 - (ii) that would constitute an offence against section 562AB of the *Crimes Act 1900*.

(1A) Section 9 does not apply if a grant of bail is sought for an accused person in respect of an offence to which this section applies alleged to have been committed (or to involve an act) against another person if the authorised officer or court is satisfied that the accused person:

- (a) has a history of violence, or
- (b) has been violent to the other person in the past (whether or not the accused person has been convicted of an offence in respect of the violence), or
- (c) has failed to comply with a bail condition in respect of the offence to which this section applies that was imposed for the protection and welfare of the other person (unless the authorised officer or court is satisfied that the accused person will comply with any such bail condition in the future).

(2) For the purposes of this section, an accused person has a **history of violence** if the accused 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) In this section:

apprehended domestic violence order means an apprehended violence order under Part 15A of the *Crimes Act 1900*, where the protected person:

- (a) is or has been the spouse or de facto partner of the defendant, or
- (b) is living with or has lived ordinarily in the same household as the defendant

(otherwise than merely as a tenant or boarder), or

(c) is or has been a relative (within the meaning of section 4 (6) of the *Crimes Act 1900*) of the defendant, or

(d) has or has had an intimate personal relationship with the defendant.

apprehended violence order means an order under Part 15A of the *Crimes Act 1900*, 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 Act 1900*, and includes a similar offence under the law of another State or Territory or of another country.

9B Additional exceptions to presumption in favour of bail

- (1) Section 9 does not apply in respect of the grant of bail to a person accused of an offence if, at the time the offence is alleged to have been committed, the person, in connection with any other offence:
 - (a) was at liberty on bail, or
 - (b) was on parole, or
 - (c) was serving a sentence but was not in custody, or
 - (d) was subject to a good behaviour bond.
- (2) Section 9 does not apply in respect of the grant of bail to a person if the person has been previously convicted of an offence against section 51.
- (3) Section 9 does not apply in respect of the grant of bail to a person accused of an indictable offence if the person has been previously convicted of one or more indictable offences (whether dealt with on indictment or summarily).

Division 4 Dispensing with bail

10 Dispensing with bail

- (1) A court that may grant bail to an accused person may instead dispense with the requirement for bail.
- (2) Where, during an appearance by an accused person before a court, no specific order or direction is made by the court in respect of bail, the court shall be deemed to have dispensed with the requirement for bail.
- (3) Subsection (2) does not apply if bail is continued in accordance with section 43 (3).

11 Effect of dispensing with bail

- (1) While the requirement for bail is dispensed with under this Act in respect of a person accused of an offence, the person is entitled to be and to remain at liberty in respect of the offence until the person is required to appear before a court in respect of the offence.
- (2) Nothing in this section applies to an accused person while the person is in custody also 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.

12 Decision to dispense with bail

For the purposes of Division 2 of Part 6, where a court dispenses with, or is deemed to have dispensed with, the requirement for bail, the court shall be deemed to have made a decision to dispense with the requirement for bail.

Division 5 Miscellaneous provisions

13 Eligibility for bail despite no entitlement

An accused person not entitled under section 8 or 9 to be granted bail may nevertheless be granted bail.

14 Power to refuse bail

A power conferred by this Act to grant bail shall, subject to this Act, be deemed to include a power to refuse bail, but the power to refuse bail may only be exercised in conformity with this Act.

15 Grant of bail when not in custody

- (1) An accused person may be granted or refused bail in accordance with this Act, notwithstanding that the person is not in custody.
- (2) Nothing in this Act requires the grant of bail to an accused person who is not in custody.

16 Extension of meaning of “adjournment” in section 6

For the purposes of section 6 (c) (ii), each of the following periods shall be deemed to be the period of an adjournment:

- (a) the period during which a defendant is excused, pursuant to section 41 (1B) of the *Justices Act 1902*, from attendance during the taking of any evidence,
- (b) the period between the making of an order under section 51A (1) (d) (i) of the *Justices Act 1902* and the continuation of the proceedings (as referred to in section 51A (3) of that Act) consequent on the making of the order,

- (c) the period between the apprehension of an accused person under a bench warrant (whether issued by a Judge or a magistrate) and the person's next appearance in the court out of which the bench warrant issued,
- (d) the period between the making of an order under section 20 (1) of the *Children (Criminal Proceedings) Act 1987* and the bringing of the offender before the Children's Court consequent on the making of the order,
- (e) the period between the making of an order under section 64 of the *Criminal Procedure Act 1986* for a separate trial, or for the postponement of a trial, and the commencement of the separate or postponed trial,
- (e1) the period between the conviction of a person and the sentencing of the person,
- (e2) the period between the finding of a person's guilt and the making of an order under section 33 of the *Children (Criminal Proceedings) Act 1987* against the person,
- (f) the period between the bringing up by a writ of habeas corpus of a person committed to prison by virtue of any summary conviction of a justice or justices or a magistrate and the final decision of the case, where the Supreme Court postpones the final decision of the case,
- (g) the period between the making of an order under section 8A (1) of the *Criminal Appeal Act 1912* and the continuation of the proceedings (as referred to in section 8A (2) of that Act) consequent on the making of the order,
- (h) the term of a stay of execution of sentence under section 80 of the *Crimes (Sentencing Procedure) Act 1999*.

16A Requirement to appear before a court

- (1) For the purposes of sections 7 and 11, the time at which a person is **required to appear** before a court is 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).
- (2) If the person is present in the courtroom or other part of the court premises at that time, the person is in the custody of the court (except during such additional periods of bail as may be granted under this Act) on and from the calling of the matter concerned until:
 - (a) bail is dispensed with, or
 - (b) bail is continued under section 43, or
 - (c) the court completes its dealing with the matter.

Part 3 Police bail

17 Authority for police to grant bail

- (1) A police officer may grant bail in accordance with this Act to an accused person who is present at a police station if the officer is:
 - (a) of or above the rank of sergeant and present at the police station, or
 - (b) for the time being in charge of the police station.
- (2) A police officer may not grant bail to a person accused of an offence if:
 - (a) a determination concerning bail has been made by a court under this Act, or
 - (b) the requirement for bail has been dispensed with under this Act, in respect of the offence.

18 Determination as to bail to be made after charge laid

- (1) Where a person is charged by a police officer with an offence and the person is in custody, the proper officer shall, as soon as reasonably practicable:
 - (a) give the accused person such information in writing respecting the person's entitlement to or eligibility for bail as is prescribed by the regulations and sign an acknowledgment in the prescribed form that he or she has given the accused person the information, and
 - (b) if the proper officer is:
 - (i) authorised to grant bail—determine whether or not bail should be granted to the person or bring the person or cause the person to be brought before a court, or
 - (ii) not authorised to grant bail—bring the person before a court or an authorised officer.
- (2) The authorised officer before whom a person is brought pursuant to subsection (1) (b) (ii) shall, as soon as reasonably practicable, determine whether or not bail should be granted to the person or bring the person or cause the person to be brought before a court.
- (3) In this section:
 - (a) a reference to the proper officer is a reference to:
 - (i) subject to subparagraph (ii)—the police officer who laid the charge against the accused person, or

- (ii) where it is not reasonably practicable for the police officer referred to in subparagraph (i) to perform the duties prescribed by subsection (1)—the police officer for the time being in charge of the police station at which the accused person is in custody or, if the person is not in custody at a police station, a police officer who has custody of the person, and
- (b) a reference to bringing a person before a court is a reference to bringing the person before a court for the purpose of having the court exercise its powers in relation to bail or for the purpose of the person being dealt with otherwise according to law.

19 Procedure following determination as to bail

- (1) Where an authorised officer makes a determination in relation to bail, the officer shall forthwith:
 - (a) inform the accused person, or cause the person to be informed, that the person may communicate with a lawyer or other person of the person's choice in connection with bail, and
 - (b) subject to the regulations, provide the accused person, or 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) An authorised officer may refrain from complying with subsection (1) if the officer believes on reasonable grounds that it is necessary to do so in order to prevent:
 - (a) the escape of an accomplice of the accused person, or
 - (b) the loss, destruction or fabrication of evidence relating to any offence.

20 Procedure where no release on bail

Where an accused person is refused bail by an authorised officer or is not released on bail granted by an authorised officer:

- (a) the police officer for the time being in charge of the police station at which the person is in custody, or
- (b) if the person is not in custody at a police station, a police officer who has custody of the person,

shall, as soon as practicable, bring the person or cause the person to be brought before a court for the purpose of having the court exercise its powers in relation to bail or for the purpose of the person being dealt with otherwise according to law.

21 Facilities to be provided

Where an accused person in police custody is to be brought, for the first time in relation to

the offence, before a court more than 4 hours after the person came into custody:

- (a) the police officer for the time being in charge of the police station at which the person is in custody, or
- (b) if the person is not in custody at a police station, a police officer who has custody of the person,

shall, if it is reasonably practicable to do so, cause the person to be provided with and allow the person to use the facilities prescribed by the regulations for the purposes of this section.

Part 4 Court bail

Division 1 Bail applications

22 General provisions as to court bail

- (1) There is no limit on the number of applications in relation to bail that may be made to a court by a person accused of an offence.
- (2) All applications to a court in relation to bail shall be dealt with as soon as reasonably practicable.
- (3) The regulations may make provision for or with respect to the manner of making applications to courts in relation to bail.
- (4) Notwithstanding subsections (1) and (2), a court may refuse to entertain an application in relation to bail if it is satisfied that the application is frivolous or vexatious.

22A Special power of Supreme Court to refuse to entertain bail application

- (1) Despite section 22 (1) and (2), the Supreme Court may refuse to entertain an application by a person in relation to bail if:
 - (a) an application by the person in relation to that bail has already been made and dealt with by the Supreme Court (however constituted), and
 - (b) the Court is not satisfied that there are special facts or special circumstances that justify the making of the application.
- (2) Despite section 22 (1) and (2), the Supreme Court may refuse to entertain an application in relation to bail if the bail application comprises a bail condition review that could be dealt with under section 48A by a magistrate or justice or the District Court.

Division 2 Magistrates and justices

23 Power of magistrates and justices to grant bail

A magistrate or justice (being a justice employed in the Department of Courts Administration) may at any time (subject to sections 24 and 29):

- (a) grant bail to a person brought or appearing before the magistrate or justice and accused of an offence, or
- (b) except as prescribed by the regulations, grant bail to a person not brought or appearing before the magistrate or justice, but being an appellant under Part 5, 5A or 5B of the *Justices Act 1902*.

24 Limitations on power of magistrates and justices

- (1) Bail may (subject to this section and sections 42 and 50) not be granted to a person under section 23 by a magistrate or justice after the person has appeared before the District Court, Supreme Court or Court of Criminal Appeal:
 - (a) following the person's committal for trial or sentence,
 - (b) on an appeal against a conviction or order or against the severity of the person's sentence,
 - (c) on a case signed and stated under Division 1 of Part 5 of the *Justices Act 1902*, or
 - (d) following the person being brought up by a writ of habeas corpus, as referred to in section 16 (f),in connection with the offence.
- (2) Where proceedings against a person accused of an offence are continued before a magistrate or justice pursuant to section 51A (3) of the *Justices Act 1902*, the magistrate or justice has such powers in relation to bail as the magistrate or justice would have had if the person had not previously appeared before the District Court or Supreme Court, as the case may require, in connection with the offence.
- (3) Where proceedings against a person accused of an offence are continued before a magistrate or justice pursuant to section 8A (2) of the *Criminal Appeal Act 1912*, the magistrate or justice has such powers in relation to bail as the magistrate or justice would have had if the person had not previously appeared before the Court of Criminal Appeal or before the District Court or Supreme Court, as the case may require, in connection with the offence.
- (4) Subsection (1) does not prevent the grant of bail to a person by a magistrate or justice where the person is apprehended under a bench warrant (as referred to in section 153A of the *Justices Act 1902*) notwithstanding that the person has appeared

before the District Court or Supreme Court.

- (5) Subsection (1) does not prevent the grant of bail to an accused person by a magistrate or justice where the person is brought before the Children's Court consequent on the making of an order under section 20 (1) of the *Children (Criminal Proceedings) Act 1987*, notwithstanding that the person has appeared before the District Court or Supreme Court.

25 Limitation on length of adjournments by magistrates and justices where bail refused

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

Division 3 District Court

26 Power of District Court to grant bail

- (1) The District Court may at any time (subject to sections 27, 42 and 50) grant bail to any person accused of an offence if, in connection with the offence:
 - (a) the person is committed for trial or sentence in the District Court or the offence is otherwise dealt with by the District Court,
 - (b) the person is committed for trial or sentence in the Supreme Court or the offence is otherwise dealt with by the Supreme Court and the person is in custody at or in a place to which subsection (2) applies,
 - (c) an appeal against a conviction or order or against the severity of the person's sentence is pending in the District Court,
 - (d) an appeal against a conviction or order or against the severity of the person's sentence is pending in the Supreme Court or Court of Criminal Appeal and the person is in custody at or in a place to which subsection (2) applies,
 - (e) a new trial has been ordered to be held in the District Court,
 - (f) the District Court has made an order under section 51A (1) (d) (i) of the *Justices Act 1902* for the continuation of proceedings before a magistrate or justice and the accused person is before the District Court, or
 - (g) the District Court has made an order under section 20 (1) of the *Children (Criminal Proceedings) Act 1987* and the person has not been brought before the Children's Court consequent on the making of the order.
- (2) For the purposes of subsection (1), this subsection applies to a place if it is not a place prescribed by the regulations for the purposes of this section.

27 Limitations on power of District Court

- (1) Bail may (subject to this section) not be granted to a person under section 26 by the District Court after the person has appeared before the Supreme Court or Court of Criminal Appeal:
 - (a) following the person's committal for trial or sentence in the Supreme Court,
 - (b) on an appeal against a conviction or order or against the severity of the person's sentence, or
 - (c) following the person being brought up by a writ of habeas corpus, as referred to in section 16 (f),in connection with the offence.

- (2) Subsection (1) does not prevent the grant of bail to a person by the District Court where a new trial has been ordered to be held in the District Court, notwithstanding that the person has appeared before the Court of Criminal Appeal.

Division 4 Supreme Court

28 Power of Supreme Court to grant bail

The Supreme Court may grant bail in accordance with this Act to any person accused of any offence, whether or not the person has appeared before the Supreme Court in connection with the offence.

29 Supreme Court (Summary Jurisdiction) Act 1967

Where proceedings for an offence are pending under the *Supreme Court (Summary Jurisdiction) Act 1967*, bail may only be granted in relation to the offence by the Supreme Court.

Division 5 Court of Criminal Appeal

30 Power of Court of Criminal Appeal to grant bail

The Court of Criminal Appeal may grant bail in accordance with this Act to any person accused of an offence if, in connection with the offence:

- (a) an appeal is pending in the Court,
- (b) the Court has ordered a new trial and the new trial has not commenced,
- (c) the Court has made an order under section 8A (1) of the *Criminal Appeal Act 1912* and the person is before the Court,
- (d) the Court has directed a stay of execution of a conviction and the stay is in force, or
- (e) an appeal from the Court is pending in the High Court.

30AA Limitation on power to grant bail

Notwithstanding anything in this Act, if:

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

bail shall not be granted by the Court of Criminal Appeal or any other court unless it is

established that special or exceptional circumstances exist justifying the grant of bail.

Division 6 Land and Environment Court

30A Power of Land and Environment Court to grant bail

The Land and Environment Court may grant bail in accordance with this Act to a person accused of an offence, where proceedings for the offence are pending in that Court under the *Land and Environment Court Act 1979*.

30AB Power of Land and Environment Court to grant bail on appeals

- (1) The Land and Environment Court may grant bail in accordance with this Act to any person accused of an offence if, in connection with the offence, an appeal against a conviction or order or against the severity of the sentence is pending in the Land and Environment Court.
- (2) Section 27 (1) applies to the Land and Environment Court's powers under this section in the same way that it applies to the District Court's powers under section 26 (1) (c).

Division 7 Industrial Relations Commission

30B Power of Industrial Relations Commission to grant bail

The Industrial Relations Commission in Court Session may grant bail in accordance with this Act to a person accused of an offence, where proceedings for the offence are pending in the Commission.

Part 5 Provisions applying to both police and court bail

Division 1 Criteria to be considered in bail applications

31 Application of Division

This Division does not apply to an accused person in relation to an offence, if the person is entitled to be granted bail under section 8 in respect of the offence.

32 Criteria to be considered in bail applications

- (1) In making a determination as to the grant of bail to an accused person, an authorised officer or court shall take into consideration the following matters (so far as they can reasonably be ascertained), and the following matters only:
 - (a) the probability of whether or not the person will appear in court in respect of the offence for which bail is being considered, having regard only to:
 - (i) the person's background and community ties, as indicated (in the case of a person other than an Aboriginal person or a Torres Strait Islander) by the history and details of the person's residence, employment and family

situations and the person's prior criminal record (if known),

- (ia) the person's background and community ties, as indicated (in the case of an Aboriginal person or a Torres Strait Islander) by the person's ties to extended family and kinship and other traditional ties to place and the person's prior criminal record (if known),
 - (ii) any previous failure to appear in court pursuant to a bail undertaking or pursuant to a recognizance of bail entered into before the commencement of this section,
 - (iii) the circumstances of the offence (including its nature and seriousness), the strength of the evidence against the person and the severity of the penalty or probable penalty, and
 - (iv) any specific evidence indicating whether or not it is probable that the person will appear in court, and
 - (v) (Repealed)
- (b) the interests of the person, having regard only to:
- (i) the period that the person may be obliged to spend in custody if bail is refused and the conditions under which the person would be held in custody,
 - (ii) the needs of the person to be free to prepare for the person's appearance in court or to obtain legal advice or both,
 - (iii) the needs of the person to be free for any lawful purpose not mentioned in subparagraph (ii), and
 - (iv) whether or not the person is, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection, and
 - (v) if the person is under the age of 18 years, or is an Aboriginal person or a Torres Strait Islander, or has an intellectual disability or is mentally ill, any special needs of the person arising from that fact, and
 - (vi) if the person is a person referred to in section 9B (3), the nature of the person's criminal history, having regard to the nature and seriousness of any indictable offences of which the person has been previously convicted, the number of any previous such offences and the length of periods between those offences, and
- (b1) the protection of:
- (i) any person against whom it is alleged that the offence concerned was

committed, and

- (ii) the close relatives of any such person, and
- (iii) any other person the authorised officer or court considers to be in need of protection because of the circumstances of the case, and

(c) the protection and welfare of the community, having regard only to:

- (i) the nature and seriousness of the offence, in particular whether the offence is of a sexual or violent nature or involves the possession or use of an offensive weapon or instrument within the meaning of the *Crimes Act 1900*, and
- (ii) whether or not the person has failed, or has been arrested for an anticipated failure, to observe a reasonable bail condition previously imposed in respect of the offence, and
- (iii) the likelihood of the person interfering with evidence, witnesses or jurors, and
- (iv) whether or not it is likely that the person will commit any serious offence while at liberty on bail, but the authorised officer or court may have regard to this likelihood only if permitted to do so under subsection (2), and
- (v) if the offence for which bail is being considered is a serious offence, whether, at the time the person is alleged to have committed the offence, the person had been granted bail, or released on parole, in connection with any other serious offence, and
- (vi) if the offence for which bail is being considered is an offence that involves the possession or use of an offensive weapon or instrument within the meaning of the *Crimes Act 1900*, any prior criminal record (if known) of the person in respect of such an offence.

(2) The authorised officer or court may, for the purposes of subsection (1) (c) (iv), have regard to whether or not it is likely that the person will commit one or more serious offences while at liberty on bail if the officer or court is satisfied that:

- (a) the person is likely to commit the offences, and
- (b) that likelihood, together with the likely consequences, outweighs the person's general right to be at liberty.

(2A) The following matters are to be considered in determining for the purposes of subsection (1) (c) or (2) whether an offence is a serious offence (but do not limit the matters that can be considered):

- (a) whether the offence is of a sexual or violent nature or involves the possession or use of an offensive weapon or instrument within the meaning of the *Crimes Act*

1900,

- (b) the likely effect of the offence on any victim and on the community generally,
 - (c) the number of offences likely to be committed or for which the person has been granted bail or released on parole.
- (3) For the purposes of this section, the authorised officer or court may take into account any evidence or information which the officer or court considers credible or trustworthy in the circumstances.
- (4) In having regard to the details of residence, as referred to in subsection (1) (a) (i), of an accused person who is under the age of 18 years, the fact that the person does not reside with a parent or guardian of the person shall be ignored.
- (5) The reference in subsection (1) (a) (i) to an accused person's residence includes a reference to the residential address at which the person may generally be found.
- (6) This section applies to an offence to which section 8A applies, but does not prevent consideration of any matter accepted by the authorised officer or court as relevant to the question of whether bail should not be refused.

33 (Repealed)

Division 2 Bail undertakings

34 General undertaking to appear

- (1) A person is not to be released on bail unless the person undertakes, in writing:
- (a) to appear before such court, on such day and at such time and place as are from time to time specified in a notice given or sent to the person as prescribed by the regulations, and
 - (b) to notify that court from time to time of any change in the person's residential address.
- (2) A bail undertaking may be given in respect of more than one offence.
- (3) A bail undertaking may include an undertaking, if bail is continued, to appear at any time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment, committal or otherwise.
- (4) An accused person who is granted bail is under a duty to appear in person before a court in accordance with the person's bail undertaking.

35 Giving of bail undertakings

A bail undertaking may be given to any authorised officer or court.

Division 3 Bail conditions

36 Conditions of bail

- (1) Bail may be granted unconditionally or subject to conditions imposed by instrument in writing.
- (2) Subject to sections 36A and 36B, one or more of the following conditions only may be imposed on the grant of bail:
 - (a) that the accused person enter into an agreement to observe specified requirements as to his or her conduct while at liberty on bail, other than financial requirements (whether for the giving of security, the depositing of money, the forfeiture of money or otherwise) and other than requirements of the kind referred to in paragraph (a1) or section 36A (2),
 - (a1) that the accused person enter into an agreement to reside, while at liberty on bail, in accommodation for persons on bail,
 - (b) that one or more than one acceptable person (other than the accused person) acknowledge that he or she is acquainted with the accused person and that he or she regards the accused person as a responsible person who is likely to comply with his or her bail undertaking,
 - (c) that the accused person enter into an agreement, without security, to forfeit a specified amount of money if the accused person fails to comply with his or her bail undertaking,
 - (d) that one or more than one acceptable person (other than the accused person) enter into an agreement or agreements, without security, to forfeit a specified amount or specified amounts of money if the accused person fails to comply with his or her bail undertaking,
 - (e) that the accused person enter into an agreement, and deposit acceptable security, to forfeit a specified amount of money if the accused person fails to comply with his or her bail undertaking,
 - (f) that one or more than one acceptable person (other than the accused person) enter into an agreement or agreements, and deposit acceptable security, to forfeit a specified amount or specified amounts of money if the accused person fails to comply with his or her bail undertaking,
 - (g) that the accused person deposit with an authorised officer or court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited if the accused person fails to comply with his or her bail undertaking,
 - (h) that one or more than one acceptable person (other than the accused person)

deposit with the authorised officer or court a specified amount or specified amounts of money in cash and enter into an agreement or agreements to forfeit the amount or amounts deposited if the accused person fails to comply with his or her bail undertaking,

(i) that the accused person surrender to the authorised officer or court any passport held by the person.

(2A) In considering whether to impose a condition referred to in subsection (2) (a1), the authorised officer or court is to consider whether placement in accommodation for persons on bail is available and suitable for the accused person. In considering the suitability of placement, the authorised officer or court is to have regard to the background of the accused person, particularly if the accused person is an Aboriginal person or a Torres Strait Islander.

(2B) The Minister for Corrective Services is to ensure that adequate and appropriate accommodation for persons on bail is available for the purposes of the placement of persons on bail.

(3) The determination as to:

- (a) which person or persons, or class or description of persons, are acceptable persons for the purposes of a condition referred to in subsection (2) (b), (d), (f) or (h) and the number of acceptable persons required for those purposes, or
- (b) the nature and sufficiency of security that is acceptable security for the purposes of a condition referred to in subsection (2) (e) or (f),

shall be made by:

- (c) the authorised officer or court imposing the condition, or
- (d) in the absence of a determination by the officer or court referred to in paragraph (c)—the authorised officer or court to whom the bail undertaking is given.

(4) The regulations may require an acknowledgment under this section to contain such details, to be provided by the person making the acknowledgment, as are prescribed respecting the circumstances in which the person is acquainted with the accused person.

(5) An agreement or acknowledgment under this section shall be in writing.

(6) A condition, agreement or acknowledgment under this section may be entered into or made in respect of more than one offence.

(7) (Repealed)

36A Additional bail conditions for persons requiring drug or alcohol assessment,

treatment or rehabilitation

- (1) This section applies in circumstances in which the authorised officer or court to whom an application for the granting of bail is made is of the opinion that the person to whom the application relates would benefit from undergoing assessment, treatment or rehabilitation for drug or alcohol misuse.
- (2) In circumstances in which this section applies, either or both of the following conditions may be imposed on the grant of bail:
 - (a) that the person enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for drug or alcohol treatment or rehabilitation,
 - (b) that the person enter into an agreement to participate in a drug or alcohol treatment or rehabilitation program.
- (3) Conditions of the kind referred to in subsection (2) may be imposed in addition to, or instead of, any condition imposed under section 36 or 36B.
- (4) An agreement under this section must be in writing.
- (5) A condition or agreement under this section may be entered into in respect of more than one offence.

36B Additional bail conditions as to non-association and place restriction

- (1) Either or both of the following conditions may be imposed on the grant of bail:
 - (a) that the accused person enter into an agreement to comply with specified requirements prohibiting or restricting the person from associating with a specified person,
 - (b) that the accused person enter into an agreement to comply with specified requirements prohibiting or restricting the person from frequenting or visiting a specified place or district.
- (2) Conditions of the kind referred to in subsection (1) may be imposed in addition to, or instead of, any condition imposed under section 36 or 36A.
- (3) An agreement under this section must be in writing.
- (4) A condition or agreement under this section may be entered into in respect of more than one offence.
- (5) A condition referred to in subsection (1) (a) or (b) is suspended while the accused person is in lawful custody.
- (6) The accused person does not contravene a condition not to associate with a specified

person:

- (a) if the accused person does so in compliance with an order of a court, or
- (b) if, having associated with the specified person unintentionally, the accused person immediately terminates the association.

(7) The accused person does not contravene a requirement not to frequent or visit a specified place or district if the accused person does so in compliance with an order of a court.

(8) In this section, **associate with** means:

- (a) to be in company with, or
- (b) to communicate with by any means (including post, facsimile, telephone and email).

36C Certain information not to be published or broadcast

(1) A person must not publish or broadcast:

- (a) the fact that a named person (other than the accused person) is specified in a condition imposed on the grant of bail referred to in section 36B (1) (a), or
- (b) any information calculated to identify any such person.

Maximum penalty: 10 penalty units.

(2) Subsection (1) does not apply to the disclosure of information to any of the following persons:

- (a) the accused person,
- (b) any person specified in the bail agreement as a person with whom the accused person is prohibited or restricted from associating,
- (c) any member of the Police Service,
- (d) any person involved in the administration of the bail agreement or of any penalty to which the accused person is subject while on release on bail,
- (e) any person involved in proceedings for an alleged 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 pursuant to any other Act or law,

and (in the case of bail granted by a court) does not apply to the publication or broadcasting of an official report of the proceedings of the court.

37 Restrictions on imposing bail conditions

- (1) Bail shall be granted unconditionally unless the authorised officer or court is of the opinion that one or more conditions should be imposed for the purpose of:
 - (a) promoting effective law enforcement, or
 - (b) the protection and welfare of any specially affected person, or
 - (c) the protection and welfare of the community.
- (2) Conditions shall not be imposed that are any more onerous for the accused person than appear to the authorised officer or court to be required:
 - (a) by the nature of the offence, or
 - (b) for the protection and welfare of any specially affected person, or
 - (c) by the circumstances of the accused person.
- (2A) Before imposing a bail condition on an accused person who has an intellectual disability, the authorised officer or court is to be satisfied that the bail condition is appropriate having regard (as far as can reasonably be ascertained) to the capacity of the accused person to understand or comply with the bail condition.
- (3) A condition referred to in section 36 (2) (b)–(h) shall not be imposed unless the authorised officer or court is of the opinion that any condition or combination of conditions referred to in any preceding paragraph or paragraphs of section 36 (2) is not likely to secure the purpose referred to in subsection (1) of this section.
- (4) Notwithstanding subsection (3), the authorised officer or court may, at the request of the accused person, grant bail subject to any conditions referred to in section 36 (2) appropriate to secure the purpose referred to in subsection (1) of this section.
- (5) In this section:

intellectual disability means a significantly below average intellectual functioning (existing concurrently with two or more deficits in adaptive behaviour) that results in the person requiring supervision or social rehabilitation in connection with daily life activities.

specially affected person means:

- (a) any person against whom it is alleged that the offence concerned was committed, and

- (b) the close relatives of any such person, and
- (c) any other person whose needs, in the opinion of the authorised officer or court, warrant special consideration because of the circumstances of the case.

37A Conditions concerning surrender of passports

- (1) Bail is not to be granted to a person who is accused of an offence occasioning death otherwise than subject to a condition requiring the person to surrender to the authorised officer or court any passport held by the person.
- (2) Despite subsection (1), a court may direct that bail is to be granted without the imposition of such a condition if the accused person satisfies the court that, in the circumstances of the case, the giving of such a direction is justified.

38 Reasons to be recorded

- (1) Where bail is refused by an authorised officer or court, the officer or court shall forthwith record or cause to be recorded the reasons for refusing bail.
- (1A) If bail is granted to a person accused of an offence to which section 8A applies, the authorised officer or court must forthwith record the reasons for granting bail or cause those reasons to be recorded.
- (2) Where bail is granted conditionally, the authorised officer or court shall forthwith record or cause to be recorded the reasons for not granting bail unconditionally and (if a bail condition referred to in section 36 (2) (b)-(h) is imposed) for holding the opinion referred to in section 37 (1).
- (3) Where the accused person requests that certain bail conditions be imposed, and other bail conditions are imposed, the authorised officer or court shall forthwith record or cause to be recorded the reasons for imposing the other conditions.
- (4) 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.

39 Entry into agreement and acceptance of acknowledgment or security

Except as prescribed by the regulations or, if any arrangement has been made under section 39A, in accordance with the arrangement, where an authorised officer or court imposes a bail condition under section 36, 36A or 36B that requires:

- (a) the entering into of an agreement—the agreement may be entered into with,
- (b) the making of an acknowledgment—the acknowledgment may be made to, or
- (c) the depositing of security or an amount of money—the deposit may be made with,

the authorised officer or court to whom the bail undertaking is given.

39A Entry into arrangements with courts in other States and Territories

(1) In this section:

State includes a Territory.

- (2) A court that imposes a bail condition referred to in section 39 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.
- (3) An agreement entered into with, or acknowledgment made to or deposit made with, a court of another State in accordance with an arrangement referred to in subsection (2) 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.
- (4) 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.

39B Explanation of bail agreement to persons affected

The authorised officer or court to whom a bail undertaking is given must take all reasonable steps to ensure that any person (including the accused person) who enters into an agreement in compliance with the accused person's bail conditions is made aware of:

- (a) the obligations incurred by the person under that agreement, and
- (b) in particular, the consequences that may follow if the accused person fails to comply with that undertaking.

40 Provisions respecting money or security

- (1) A receipt shall be given for any money or security deposited pursuant to a bail condition.
- (2) Any money or security deposited pursuant to a bail condition shall, subject to the provisions of any other Act, be dealt with as prescribed by the regulations.

41 Substitution of cash for security

- (1) Where, for the purposes of a bail condition, a person deposits by way of security a bank, building society or credit union passbook or other document for operating an account:
- (a) the person is entitled thereafter to deposit in cash the amount for which the book

or other document was deposited as security, and

(b) the person is, upon depositing that amount in cash, entitled to the return of the book or other document.

(2) Cash may be deposited for the purposes of subsection (1):

(a) with an authorised officer at the police station at which the book or other document was deposited or is currently held, or

(b) with the court or an officer of the court at which the book or other document was deposited or is currently held,

or as prescribed by the regulations.

(3) The officer or court with whom cash is deposited under this section shall alter the bail conditions, or cause them to be altered, accordingly.

42 Discharge of liability of other persons

(1) Where a person other than the accused person has entered into an agreement under section 36 (2) (d), (f) or (h), the person may at any time apply:

(a) where the bail was granted by a court:

(i) to the court which granted the bail, or

(ii) to the court of appearance, or

(b) where the bail was granted by an authorised officer—to the court of appearance, to discharge the applicant from the applicant's liability.

(2) On an application being made under subsection (1), a justice shall, if the accused person is not then before the court or otherwise in custody:

(a) issue a warrant to apprehend the accused person and bring the person before the court, or

(b) issue a summons for the person's appearance before the court.

(3) On the appearance of the accused person before the court, the court shall, unless satisfied that it would be unjust to do so, direct that the applicant be discharged from the applicant's liability, and the applicant is, upon the direction being given, thereby discharged accordingly.

(4) If the court discharges the applicant from the applicant's liability, the court may impose further conditions on the grant of bail, and may by warrant commit the accused person to prison until the person enters into the further conditions.

(5) (Repealed)

(6) In this section, ***court of appearance*** means the court before which the accused person is required to appear in accordance with the person's bail undertaking.

42A Fraudulent disposal of assets

(1) A person:

(a) who enters into an agreement referred to in section 36 (2) (e) or (f) to forfeit a specified amount of money if an accused person fails to comply with his or her bail undertaking, and

(b) who, under that agreement, deposits security in the form of property,

is guilty of an offence if he or she disposes of the property, or causes or allows the property to be disposed of, for the purpose of preventing the security from being realised.

Maximum penalty: imprisonment for 2 years.

(2) Proceedings for an offence against this section are to be dealt with by a Local Court constituted by a Magistrate sitting alone.

42B Revocation of bail if bail security no longer intact

(1) A court may at any time revoke a person's bail if it appears to the court that any security deposited for the purposes of a condition imposed on the grant of bail (the ***current bail security***) is no longer intact:

(a) having ceased to exist, or

(b) having diminished in value, or

(c) being no longer available as security for any reason (for example, because it is no longer in the ownership or control of the person by whom it was deposited).

(2) The court must not revoke an accused person's bail under this section unless:

(a) it has caused written notice of the proposed revocation to be served on the accused person, and

(b) it has given the accused person at least 28 days from the date on which the notice was served:

(i) to demonstrate to the court that the current bail security is still intact, or

(ii) to arrange for the deposit of replacement or supplementary security, whether by the person by whom the current bail security was deposited or by some other person.

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

Division 4 Continuation of bail

43 Continuation of bail

- (1) If a bail undertaking includes an undertaking to appear at any time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment, committal or otherwise, a court may accordingly continue bail already granted in respect of the offence, whether or not the accused person then appears in person.
- (2) Where bail is continued, the bail undertaking and the bail conditions continue to apply, except to the extent that a condition or agreement thereunder otherwise provides or the court otherwise orders.
- (3) If the accused person appears before a court in accordance with a bail undertaking referred to in subsection (1) but no specific direction is made by the court in respect of bail, the court is taken to have continued bail.

Part 6 Review of bail decisions

Division 1 Power of senior police officers to review

43A Power of senior police officer to review

- (1) An accused person who is refused bail by an authorised officer may request a review of the decision under this section.
- (2) A review is not to be conducted under this section if conducting the review would cause any delay in bringing the accused person before a court in accordance with section 20.
- (3) A review of a decision under this section is to be conducted by an authorised officer who is more senior than the authorised officer who made the decision.
- (4) The power to review a decision under this section is a power:

- (a) to affirm the decision to refuse bail, or
 - (b) to grant bail unconditionally or subject to conditions in accordance with this Act.
- (5) Without limiting the grounds on which an authorised officer conducting a review of a decision under this section may grant bail, the authorised officer may grant bail if the authorised officer is of the opinion that:
- (a) the accused person is no longer incapacitated by intoxication, injury or use of a drug or is no longer in danger of physical injury or in need of physical protection, or
 - (b) there has been a significant change in circumstances since the decision was made, or
 - (c) exceptional circumstances exist that justify a grant of bail.
- (6) The power to review a decision under this section may not be exercised if any power to review the decision has been, or has been sought to be, exercised under Division 2.

Division 2 Powers of justices, magistrates and courts to review

44 Power of justices, magistrates and certain courts to review

- (1) Except as prescribed by the regulations and subject to this Division, a justice may review any decision made by the justice in relation to bail.
- (2) Except as prescribed by the regulations and subject to this Division, a magistrate may review any decision made by any authorised officer, magistrate (including the reviewing magistrate) or justice in relation to bail.
- (3) Except as prescribed by the regulations and subject to this Division, the District Court may review any decision made by the District Court (however constituted) in relation to bail.
- (4) Subject to this Division, the Land and Environment Court may review any decision made by the Court (however constituted) in relation to bail.
- (5) Subject to this Division, the Industrial Relations Commission in Court Session may review any decision made by the Industrial Relations Commission in Court Session (however constituted) in relation to bail.
- (6) A decision of the Supreme Court (however constituted) in relation to bail may be reviewed by the Land and Environment Court, the Industrial Relations Commission in Court Session, the District Court or a magistrate if:
 - (a) the person to whom the decision relates is appearing before the Court or magistrate in proceedings for an offence, and

- (b) the Court or magistrate is satisfied that special facts or special circumstances justify the review.

This subsection has effect subject to any exceptions or other limitations prescribed by the regulations and to the other provisions of this Division.

45 Power of Supreme Court to review

- (1) Subject to this Division, the Supreme Court may review any decision of any authorised officer, magistrate or justice or of the District Court, Land and Environment Court, Industrial Relations Commission in Court Session or Supreme Court (however constituted) in relation to bail.
- (2) The power to review a decision pursuant to this section may be exercised whether or not any power to do so pursuant to section 44 has been, or has been sought to be, exercised.
- (3) Notwithstanding subsection (1), a Judge of the Supreme Court sitting alone may not, under that subsection, review a decision of the Court of Criminal Appeal, unless the rules made under the *Supreme Court Act 1970* so provide.

46 Power of Court of Criminal Appeal to review

- (1) Subject to this Division, the Court of Criminal Appeal may review any decision made by the Court (however constituted) in relation to bail.
- (2) Notwithstanding subsection (1), a Judge of the Court of Criminal Appeal sitting alone may not under that subsection review a decision of the Court constituted by 3 or more Judges, unless the rules made under the *Supreme Court Act 1970* so provide.

47 General limitation on power to review

A court may not pursuant to this Division review a decision in circumstances where, had the decision not been made, the court would be prohibited from making a decision in relation to the grant of bail.

48 Provisions respecting review of bail decisions

- (1) The power to review a decision pursuant to this Division:
 - (a) may be exercised only at the request of:
 - (i) the accused person,
 - (ii) the informant (being a police officer),
 - (iii) the informant or complainant (whether or not a police officer) in the case of bail granted in respect of a domestic violence offence or a complaint for an apprehended violence order under Part 15A of the *Crimes Act 1900*, or

- (iv) the Attorney General or the Director of Public Prosecutions, and
 - (b) includes the power to affirm or vary the decision or to substitute another decision.
- (2) A decision as varied or substituted must be in conformity with this Act.
- (3) The review of a decision shall be 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 decision may be given or obtained on the review.
- (4) Where, on a review of a decision pursuant to this Division, a court varies the decision, or substitutes another decision, section 38 applies to and in relation to the decision as varied or substituted as if originally made by the court.
- (5) Where, on a review of a decision pursuant to this Division, bail for an accused person is revoked, a justice may by warrant commit the person to prison.
- (6) Where, on a review of a decision pursuant to this Division:
- (a) bail is granted unconditionally and no bail undertaking has been given by the accused person, or
 - (b) a bail condition is imposed,
- a justice may by warrant commit the person to prison until the person gives the undertaking or enters into the condition, as the case may be.
- (7) A court may refuse to entertain a request to review a decision pursuant to this Division if the court is satisfied that the request is frivolous or vexatious.
- (7A) The Supreme Court may refuse to entertain a request to review a decision pursuant to this Division if the Court is satisfied that the request comprises a bail condition review that could be dealt with under section 48A by a magistrate or justice or the District Court.
- (8) The regulations may make provision for or with respect to:
- (a) the manner of making a request to review a decision pursuant to this Division,
 - (b) the giving or sending to persons of notices relating to the proposed exercise of the power to review a decision pursuant to this Division, and
 - (c) prescribing the circumstances in which such a power may be exercised in the absence of the accused person or the person's representative as if the person or the person's representative were present.

48A Special limited review—bail conditions

- (1) If an accused person has remained in custody after being granted bail because any

condition of the bail has not been complied with, the decision in relation to bail may be reviewed pursuant to this Division by way of a bail condition review:

- (a) at the request of the accused person, or
 - (b) at the request of a police officer, or
 - (c) of the court's own motion.
- (2) A bail condition review is a review pursuant to this Division of the decision in relation to bail to the extent only that it relates to the conditions of bail.
- (3) A bail condition review requested under this section by a police officer is not to be conducted unless the court is satisfied that the request was made:
- (a) for the purpose of benefiting the accused person, and
 - (b) with the consent of the accused person.
- (4) On a bail condition review, the power to review the bail decision pursuant to this Division is a power to do any of the following:
- (a) to affirm the decision as to the conditions of bail,
 - (b) to vary the decision by removing or imposing bail conditions,
 - (c) to grant bail unconditionally.
- (5) Despite section 45, the Supreme Court is empowered to conduct a bail condition review only in respect of bail granted by the Supreme Court (however constituted).
- (6) This section does not affect:
- (a) the power of a court to review a decision in relation to bail pursuant to a request under section 48 (1), or
 - (b) the right of a person to request such a review.

48B Special limited review—bail conditions reviewable by justice

- (1) In this section:

bail reporting condition means a bail condition requiring the accused person to report to a police station while at liberty on bail.

bail residence condition means a bail condition requiring the accused person to reside at a specified address.

justice means a justice employed in the Attorney General's Department.

- (2) A justice may review a decision of any court relating to a bail reporting condition or

bail residence condition.

- (3) On any such review, the justice may do any one or more of the following:
- (a) the justice may vary the days on which, or the times at which, the accused person must report to a police station under a bail reporting condition,
 - (b) the justice may vary the police station to which the accused person must report under a bail reporting condition,
 - (c) the justice may reduce the number of days on which the accused person must report to a police station under a bail reporting condition,
 - (d) the justice may revoke a bail reporting condition,
 - (e) the justice may vary the address at which the accused person must reside under a bail residence condition.
- (4) Action under subsection (3) (a) or (b) may not be taken if:
- (a) the informant or complainant in the proceedings has not been notified of the proposed action, or
 - (b) an objection to the proposed action has been made by any person appearing at the review on behalf of the informant or complainant in the proceedings.
- (5) Action under subsection (3) (c), (d) or (e) may not be taken:
- (a) at any time before the determination of summary or committal proceedings, if:
 - (i) the informant or complainant in the proceedings has not been notified of the proposed action, or
 - (ii) an objection to the proposed action has been made by any person appearing at the review on behalf of the informant or complainant in the proceedings, or
 - (b) at any time before the determination of summary or committal proceedings against the accused person, in respect of a bail reporting condition or bail residence condition imposed by the Supreme Court under section 45, or
 - (c) at any time after the determination of summary or committal proceedings against the accused person.
- (6) The justice may not, on any such review, vary or revoke a bail reporting condition, or vary a bail residence condition, if the court imposing the condition has directed that the condition must not be varied or revoked under this section.

49 Applications for bail not limited by this Division

Nothing in this Division limits the rights of an accused person in custody to apply for bail,

and the person may so apply for bail notwithstanding that the power to review a decision already made in relation to bail to the person has not been, or has not been sought to be, exercised pursuant to this Division.

Part 7 Non-compliance with undertakings and conditions

50 Arrest for absconding or breaching condition

- (1) Where a police officer believes on reasonable grounds that a person who has been released on bail has, while at liberty on bail, failed to comply with, or is, while at liberty on bail, about to fail to comply with, the person's bail undertaking or an agreement entered into by the person pursuant to a bail condition:
 - (a) a police officer may arrest the person without warrant and take the person as soon as practicable before a court, or
 - (b) a justice may:
 - (i) issue a warrant to apprehend the person and bring the person before a court, or
 - (ii) issue a summons for the person's appearance before a court.
- (2) The court before which the person is brought or appears may:
 - (a) release the person on the person's original bail, or
 - (b) revoke the person's original bail and otherwise deal with the person according to law.
- (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 (notwithstanding anything in this Act) refuse to grant bail to the person and by warrant commit the person to prison.
- (3A) A court is not to revoke or refuse to grant bail under this section unless satisfied that the person has failed, or was about to fail, to comply with the person's bail undertaking or agreement. For that purpose, the court may take into account any evidence or information which the court considers credible or trustworthy in the circumstances.
- (4) Nothing in this section limits the rights of an accused person in custody to apply for bail.
- (5) In this section, **court** does not include a justice who is not a justice employed in the Department of Courts Administration.

51 Offence of failing to appear

- (1) A person who fails without reasonable excuse (proof of which lies upon the person) to appear before a court in accordance with the person's bail undertaking is, on summary conviction, guilty of an offence against this section.
- (2) A person convicted of an offence against this section is liable to the same penalties as are by law provided for the offence in respect of which the person failed to appear, but no sentence of imprisonment imposed pursuant to this section shall exceed 3 years and no fine so imposed shall exceed 30 penalty units.
- (3) Proceedings for an offence against this section shall be dealt with:
 - (a) by the court dealing with the offence in respect of which the person failed to appear, constituted in the same way,
 - (b) where the court referred to in paragraph (a) is the Court of Criminal Appeal, Supreme Court or District Court—by that Court constituted in any other way, or
 - (c) in any case—by a Local Court constituted by any Magistrate sitting alone.
- (4) An offence against this section may not be dealt with by one or more justices.
- (5) An offence against this section shall be disposed of:
 - (a) if dealt with by a Local Court—in accordance with the *Justices Act 1902*,
 - (b) if dealt with by the District Court—in accordance with:
 - (i) such provisions of the regulations under section 171 of the *District Court Act 1973* as are expressed to apply in relation to offences against this section, and
 - (ii) subject to subparagraph (i), the *Supreme Court (Summary Jurisdiction) Act 1967* as if references in that Act to the Supreme Court were references to the District Court and references to rules were references to regulations under section 171 of the *District Court Act 1973* and as if the *Criminal Appeal Act 1912* applied to any appeal from the decision of the District Court in the same way as it applies to an appeal referred to in section 5 (1) of that Act,
 - (c) if dealt with by the Supreme Court—in accordance with the *Supreme Court (Summary Jurisdiction) Act 1967*, or
 - (d) if dealt with by the Court of Criminal Appeal—in accordance with:
 - (i) such rules made under the *Supreme Court Act 1970* as are expressed to apply in relation to offences against this section, and
 - (ii) subject to subparagraph (i), the *Supreme Court (Summary Jurisdiction) Act 1967* as if references in that Act to the Supreme Court or a Judge thereof were

references to the Court of Criminal Appeal and as if section 3 (2) of that Act had not been enacted.

- (6) Proceedings for an offence against this section may be commenced at any time.
- (7) A person convicted by a Judge of an offence against this section shall, for the purposes of section 5 (1) of the *Criminal Appeal Act 1912*, be deemed to have been convicted of the offence on indictment.
- (8) Notwithstanding anything in Division 2 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*, the court imposing a sentence of imprisonment pursuant to this section may direct that the sentence and any other specified sentence or sentences of imprisonment then imposed on the person convicted or then being served by the person be served consecutively, in which case the firstmentioned sentence shall commence at the expiration of the other sentence or sentences.

52 No penalty for failure to appear if case dealt with ex parte

Where:

- (a) a person fails to appear before a court in accordance with the person's bail undertaking in relation to an offence punishable summarily, and
- (b) that court or another court in the person's absence hears and determines the case relating to the offence in respect of which the undertaking was given,

the person is not thereafter liable to be prosecuted for an offence against section 51 unless the court makes an order for the payment of money (whether by way of penalty, costs, compensation or otherwise) in relation to the offence referred to in paragraph (b) and the person fails to pay the money within 7 days or such longer period as the court allows.

Part 7A Enforcement of bail agreements

Division 1 Preliminary

53 Definitions

In this Part:

appropriate State authority means such person or body as is declared by the regulations to be the appropriate State authority for the purposes of this Part.

bail agreement means an agreement entered into under section 36 in connection with an accused person's bail undertaking, whether entered into by the accused person or by any other person.

bail guarantor means any person who enters into a bail agreement in connection with

an accused person's bail undertaking, other than the accused person.

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

bail security means security given under a bail agreement to secure payment of bail money.

forfeiture notice means a notice referred to in section 53B.

forfeiture order means an order referred to in section 53A.

person affected, in relation to a forfeiture order, means the accused person or bail guarantor whose bail money is forfeited to the Crown by operation of the order.

registrar, in relation to a Local Court, means the clerk of the Local Court.

statutory review period, in relation to a forfeiture order, means the period of 28 days during which a person affected by the order may file an objection to the confirmation of the order, as referred to in section 53C.

Division 2 Forfeiture orders

53A Court may make forfeiture order if accused fails to appear

- (1) If satisfied that an accused person has failed to comply with his or her bail undertaking to appear before it, the court:
 - (a) with which the accused person entered into the undertaking, or
 - (b) before which the accused person is under a duty to appear under the undertaking,may make a forfeiture order in relation to any bail money agreed to be forfeited under an associated bail agreement.
- (2) A forfeiture order may not be made if more than 3 years have elapsed since the accused person allegedly failed to appear before the court in accordance with the relevant bail undertaking.

53B Persons affected to be notified that forfeiture order has been made

- (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:
 - (a) must contain such information as the regulations require, and
 - (b) must be sent by post to the person at the person's address specified in the relevant bail undertaking or, if the person has subsequently notified the court of a

change of address, to the person's address most recently notified, and

(c) is presumed to have been served on the person at the end of the seventh day after it was posted, unless the person establishes that it was not delivered to that address within that time.

(3) This section ceases to apply if, before the notice is sent, an oral objection to the confirmation of the forfeiture order is made under section 53E.

53C Formal objection to confirmation of forfeiture order

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

53D Hearing of formal objection to confirmation of forfeiture order

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

53E Informal objection to forfeiture order

- (1) If, after a forfeiture order is made but before a forfeiture notice is served, a person

affected by the order appears before the court by which the order was made, that person may make an oral objection to the court against the confirmation of the order.

- (2) The court must ensure that notice of the objection is given to the appropriate State authority in accordance with the regulations.
- (3) The court may deal with the objection as if it had been an objection filed in response to a forfeiture notice.

53F When forfeiture order takes effect

- (1) A forfeiture order takes effect:
 - (a) at the expiry of the statutory review period, or
 - (b) if an objection to the confirmation of the order is filed in the court before the expiry of the statutory review period, at the time the order is confirmed under section 53D.
- (2) A forfeiture order does not take effect if it is set aside under section 53D.
- (3) No action may be taken to enforce a forfeiture order until the date the order takes effect.

53G Effect of forfeiture order

- (1) As soon as a forfeiture order takes effect, the bail money to which it relates:
 - (a) is forfeited to the Crown, in the case of bail money that is deposited with 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,and (in the case of unpaid bail money) any bail security becomes enforceable in accordance with its terms.
- (2) Despite subsection (1), no action is to be taken to enforce any bail security the subject of a forfeiture order to which section 53K applies until 12 months after the date on which the order was made.

53H Persons affected to be notified that forfeiture order has taken effect

- (1) As soon as practicable after a forfeiture order takes effect, the registrar of the court by which the order was made must cause written notice that the order has taken effect to be served on each person affected by the order.
- (2) The notice:
 - (a) must contain such information as the regulations require, and

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

53I Reference of forfeiture order for enforcement

- (1) If any bail money to which a forfeiture order relates remains unpaid after the order takes effect, the 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 undertaking and of the relevant bail 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 referred to in subsection (1) (d) is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

53J Payment of forfeited bail money

- (1) Bail money that becomes payable to the Crown as a consequence of a forfeiture order taking effect must be paid:
 - (a) if paid before 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 by whom an amount of bail money is payable 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.

Division 3 Late applications to set aside forfeiture orders

53K Application to set aside forfeiture order

- (1) This section applies to a forfeiture order that has taken effect at the expiry of the statutory review period, no objection to the confirmation of the order having been made within that period.

- (2) Any person affected by a forfeiture order may file in the office of the court an application to have the order set aside.
- (3) Such an 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 registrar of the court must ensure that copies of such an application are given to:
 - (a) the appropriate State authority, and
 - (b) the State Debt Recovery Office,and action to enforce the order may not be commenced or continued until proceedings on the application are finally determined.

53L Hearing of application to set aside forfeiture order

- (1) If the court to which an application to have a forfeiture order set aside is duly made is satisfied:
 - (a) that notice of the making of the order was not served on the applicant, and
 - (b) that at no time before the expiry of the statutory review period was the applicant aware that the order had been made,the court must conduct a hearing to determine whether or not the order should be set aside.
- (2) After conducting a hearing, the court must dismiss the application unless it is satisfied that the accused person did not fail to comply with the relevant bail undertaking, in which case it must set the forfeiture order aside.
- (3) However, if it is satisfied that in the circumstances of the case it was unjust for the forfeiture order to have been confirmed in full in respect of a particular person affected by the order, the court may vary the order so as to reduce the amount of bail money that should have been forfeited by that person.
- (4) The court may be satisfied that it was unjust for a forfeiture order to have been confirmed in full in respect of a particular bail guarantor if it is satisfied that the guarantor took all reasonable steps to ensure that the accused person complied with the relevant bail undertaking.
- (5) Notice of the court's determination of the application is to be given to the State Debt Recovery Office.

Division 4 Miscellaneous

53M Effect of setting aside forfeiture order

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

53N Appeals

- (1) An appeal against a decision by a Local Court under section 53D or 53L with respect to a forfeiture order may be made to the District Court under section 120 of the *Justices Act 1902* in the same way as an appeal may be made to the District Court against an order referred to in that section, and Part 5A of that Act applies accordingly.
- (2) The clerk of the Local Court must ensure that notice of the appeal is given to:
 - (a) the appropriate State authority, and
 - (b) the State Debt Recovery Office,and action to enforce the order may not be commenced or continued until proceedings on the appeal are finally determined.

53O Court of Criminal Appeal may authorise other courts to take action

In the case of an accused person who is under a duty to appear before the Court of Criminal Appeal in connection with an appeal:

- (a) the Court of Criminal Appeal may instead authorise the court from which the appeal arose to take any action under this Part that the Court of Criminal Appeal is authorised

to take, and

(b) in that event, the court from which the appeal arose may take such action.

53P Crown etc party to forfeiture proceedings

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.

Part 8 Miscellaneous

54 Notices

- (1) The authorised officer or court to whom a bail undertaking is given by an accused person shall forthwith give or cause to be given to the accused person:
 - (a) a copy of the undertaking or a notice setting out the terms of the undertaking, and
 - (b) a copy of any bail conditions imposed or a notice setting out the terms of any such conditions.
 - (c) (Repealed)
- (2) The authorised officer or court to or with whom a person, other than the accused person, makes an acknowledgment, agreement or deposit of security or money pursuant to a bail condition shall forthwith give or cause to be given to that other person a copy of the condition or a notice setting out the terms of the condition.
- (3) Where:
 - (a) a bail condition is altered under section 41, or
 - (b) a bail condition is imposed or varied on a review pursuant to Division 2 of Part 6 of a decision to grant bail,the authorised officer or court shall forthwith give or cause to be given:
 - (c) to the accused person—a copy of the condition or a notice setting out the terms of the condition, and
 - (d) to any other person who makes an acknowledgment or enters into an agreement, pursuant to the condition—a copy of the condition or a notice setting out the terms of the condition.
- (3A) Where:
 - (a) a bail condition is altered under section 41, or
 - (b) a bail condition is varied on a review pursuant to Division 2 of Part 6 of a decision

to grant bail,

the court must forthwith give or cause to be given to any person other than the accused who entered into an agreement or made an acknowledgment pursuant to the condition that is altered or varied a copy of the condition as altered or varied.

- (4) The court continuing bail on an adjournment shall forthwith give or cause to be given to the accused person a notice specifying the time and place to which the proceedings are adjourned.
- (5) The authorised officer or court granting or refusing bail shall forthwith give or cause to be given to the accused person such information in writing as is prescribed by the regulations respecting the review of decisions, in relation to bail and the further powers of courts in relation to bail.

54A Special notice where accused person remains in custody after bail granted

- (1) This section applies to a person who has been granted bail but who has remained in custody since bail was granted because a condition of the bail has not been complied with.
- (2) The governor of the prison or the person in charge of the lock-up or police station where a person to whom this section applies is in custody shall give or cause to be given to an appropriate court notice that the person is still in custody because of a failure to meet a bail condition.
- (3) An appropriate court is a court authorised to conduct a bail condition review in relation to the bail of its own motion, as referred to in section 48A.
- (4) The notice must be given to an appropriate court before the expiration of 8 days after the person is received into custody.
- (5) A notice under this section is required to be given only once in respect of any particular grant of bail.
- (6) The regulations may make provision for the form of a notice under this section and for the information to accompany the notice.

55 Writ of habeas corpus

Except where expressly provided by this Act, nothing in this Act affects the powers of the Supreme Court in connection with writs of habeas corpus.

56 False statements in acknowledgments

- (1) A person who wilfully makes an acknowledgment under section 36 (2) (b) knowing it to be untrue in a material particular is, on summary conviction, guilty of an offence against this section.

- (2) A person convicted of an offence against this section is liable to the same penalties as are by law provided for the offence in respect of which bail was sought, but no sentence of imprisonment imposed pursuant to this section shall exceed 2 years and no fine so imposed shall exceed 20 penalty units.
- (3) Proceedings for an offence against this section shall be dealt with by any Local Court constituted by a Magistrate sitting alone.

57 Person making acknowledgment under sec 36 to be warned of penalties

- (1) Before a person makes an acknowledgment under section 36 (2) (b), it is the duty of the person to whom the acknowledgment is made to warn the person that if that person wilfully makes the acknowledgment knowing it to be untrue in a material particular that person is guilty of an offence under section 56.
- (2) Failure to give a warning in accordance with subsection (1) does not affect the operation of section 56.

58 Indemnification of agreeing parties

- (1) In this section, **agreeing party** means a person who enters (as an acceptable person) into an agreement under section 36.
- (2) If a person indemnifies another person, or agrees with another person to indemnify the other person, against any forfeiture which the other person may incur as an agreeing party, the person and the other person are each guilty of an offence against this section and liable:
 - (a) on summary conviction to a penalty not exceeding 20 penalty units or imprisonment for a term not exceeding 2 years, or
 - (b) on conviction on indictment to a penalty not exceeding 30 penalty units or imprisonment for a term not exceeding 3 years.
- (3) An offence is committed against this section:
 - (a) in relation to an agreement referred to in subsection (2)—whether the agreement is made before or after the person to be indemnified becomes an agreeing party and whether or not the person becomes an agreeing party, and
 - (b) whether the compensation is or is to be in money or in money's worth.
- (3A) This section does not apply in relation to an indemnity or an agreement to indemnify given by the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* to an officer of the Department of Community Services against any forfeiture that the officer may incur as a result of entering into any agreement under section 36 for the purpose of fulfilling a condition imposed on the grant of bail to a person under the parental responsibility of the Minister administering the *Children*

and Young Persons (Care and Protection) Act 1998.

- (4) Division 3 of Part 2 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under this section.
- (5) Proceedings for an offence against this section may only be instituted with the consent of the Minister.

59 Civil standard of proof for certain purposes

Where an authorised officer or court, in making a decision in relation to bail (other than a decision in proceedings for an offence committed in connection with bail), is to be or may be satisfied as to any matter, it is sufficient if the officer or court is satisfied on the balance of probabilities.

60 Evidence

(1) In any proceedings:

- (a) a document purporting to be or to be a copy of a bail undertaking given by an accused person, and to be certified by an appropriate officer (as referred to in subsection (2)) to be or to be a copy of the undertaking, is admissible in evidence and shall be prima facie evidence of the giving of the undertaking by the accused person and of its terms,
- (b) a document purporting to be or to be a copy of the instrument by which a bail condition was imposed in relation to an accused person, and to be certified by an appropriate officer (as referred to in subsection (2)) to be or to be a copy of the instrument, is admissible in evidence and shall be prima facie evidence of the imposing of the condition and of its terms,
- (c) a certificate purporting to be signed by an appropriate officer (as referred to in subsection (2)) certifying that a specified bail condition:
 - (i) has not been altered or varied under this Act, or
 - (ii) has been altered or varied under this Act in a specified manner and has not otherwise been altered or varied under this Act,

is admissible in evidence and shall be prima facie evidence of the matters so certified, and

- (d) a document purporting to be or to be a copy of an acknowledgment under section 36 (2) (b), and to be certified by an appropriate officer (as referred to in subsection (2)) to be or to be a copy of the acknowledgment, is admissible in evidence and shall be prima facie evidence of the making of the acknowledgment and of its terms.

- (2) For the purposes of subsection (1), an appropriate officer is an officer of the court having the custody of the bail undertaking given by the accused person.
- (3) In any proceedings:
- (a) a document purporting to be a copy of a notice referred to in section 34 (1) and to be certified by a prescribed officer to be a copy of the notice is admissible in evidence and shall be prima facie evidence of the terms of the notice,
 - (b) a certificate purporting to be signed by a prescribed officer certifying that a notice referred to in section 34 (1) was given or sent to the accused person in a specified manner on a specified day is admissible in evidence and shall be prima facie evidence of the matters so certified, and
 - (c) a certificate purporting to be signed by a Judge, magistrate, justice, registrar or other officer of the Supreme Court, registrar or assistant registrar of the District Court or clerk of a Local Court and stating that a specified person did not appear before a specified court, at a specified place, on a specified day and at a specified time or during a specified period is admissible in evidence and shall be prima facie evidence of the matters so certified.
- (4) In any document:
- (a) the words “authorised officer” after a signature shall be evidence that the person whose signature it purports to be is in fact an authorised officer within the meaning of this Act, and
 - (b) the words “appropriate officer” or “prescribed officer” after a signature shall be evidence that the person whose signature it purports to be is in fact an appropriate officer or prescribed officer (as the case may be) as referred to in this section,
- in connection with the matter to which the document relates.

61 Abolition of right of surety to arrest

A person who enters (as an acceptable person) into an agreement under section 36 does not, by virtue of the person entering into that agreement, have the right to arrest the accused person.

62 Abolition of common law powers to grant bail

Any power or duty that would, but for this Act, exist apart from statute to grant bail to an accused person in or in connection with criminal proceedings is abolished.

63 (Repealed)

64 Contempt

- (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) Subsection (1) does not apply to a contempt or alleged contempt that constitutes an offence proceedings for which may be commenced by way of information or complaint.
- (3) Any power or duty to which subsection (1) applies 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.

65 Provisions as to warrants or summonses

Subject to the regulations, the provisions of the [Justices Act 1902](#) apply (with any necessary adaptations) to and in relation to a warrant or summons issued or to be issued under this Act in the same way as they apply to and in relation to a warrant or summons of a corresponding kind issued or to be issued under that Act.

66 Contraventions of this Act by police officers

- (1) Where a police officer contravenes or fails to comply with a provision of this Act that is applicable to the police officer, the contravention or failure 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 or failure.
- (2) This section does not prevent a contravention of, or failure to comply with, a provision of this Act by a police officer from:
 - (a) being dealt with under the [Ombudsman Act 1974](#) or the [Police Regulation \(Allegations of Misconduct\) Act 1978](#) or by way of a departmental charge under the regulations under the [Police Service Act 1990](#), or
 - (b) constituting grounds for the institution of civil proceedings.

67 This Act to prevail

- (1) Except where otherwise expressly provided by this Act, this Act applies in relation to the grant of bail to accused persons to the exclusion of any other law in force immediately before the date of assent to this Act so far as any other such law makes provision for or with respect to bail for accused persons.
- (2) Nothing in this Act shall be construed as affecting the Imperial enactment 1 William and Mary sess 2 c 2 (The Bill of Rights) or section 6 of the [Imperial Acts Application Act 1969](#) so far as it relates to that enactment.

68 Savings and transitional provisions

Schedule 1 has effect.

69 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
 - (a) facilities to be provided to enable the making of communications referred to in section 19 (1) (a),
 - (b) the release of accused persons from prison or any other place of custody consequent upon the grant of bail or upon the requirement for bail being dispensed with,
 - (b1) requirements for accommodation for the purposes of section 36 (2) (a1),
 - (c) warrants and summonses issued under this Act,
 - (d) the fees to be demanded and taken in relation to any matter connected with this Act, and
 - (e) the forms to be used for the purposes of this Act.
- (2) A provision of a regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind,
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or
 - (d) impose a penalty not exceeding 5 penalty units for any breach of the regulations, or may do any combination of those things.

70 Rules

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

Schedule 1 Savings and transitional provisions

(Section 68)

Part 1 General

1 In this Part:

authorised means duly authorised by a court or person.

bail means bail that was authorised or granted before the commencement of this Schedule, so far as it could not have been so authorised or granted if this Act had then been in force.

law means any law, but does not include the *Justices Act 1902*, the *Crimes Act 1900*, the *Child Welfare Act 1939*, the *Criminal Appeal Act 1912* or the *Supreme Court (Summary Jurisdiction) Act 1967*.

recognizance of bail means a recognizance that was authorised or entered into before the commencement of this Schedule, so far as it could not have been so authorised or entered into if this Act had then been in force.

- 2 This Act does not affect bail authorised or granted, or a recognizance of bail authorised or entered into, under a law before the commencement of this Schedule in relation to an accused person, and for the purposes of or for purposes connected with any such bail or recognizance this Act shall be deemed not to have been enacted.
- 3 Nothing in clause 2 prevents the making of a decision under this Act, or the exercise or performance of a power, authority, duty or function thereunder, in respect of an offence or other matter (or any proceedings in connection therewith) to or with which the bail or recognizance of bail referred to in that clause relates or is connected.
- 4 The regulations or the rules referred to in section 70 may make other provisions of a savings or transitional nature consequent upon the enactment of this Act in connection with any law, and those provisions may, but need not, operate by reference to any provision of this Act and shall have effect notwithstanding anything in clause 2 or 3.

Part 1A Bail (Amendment) Act 1988

4A Definition

In this Part, **amending Act** means the *Bail (Amendment) Act 1988*.

4B Grant of bail and imposition of conditions

- (1) The amendments made to this Act by the amending Act apply only to offences alleged to have been committed after 21 August 1988 (the date of commencement of the amending Act).
- (2) This Act applies to offences alleged to have been committed before the commencement of an amendment effected by the amending Act as if the amendment had not been made.

- (3) This clause is taken to have commenced on 21 August 1988.
- (4) Subclauses (1) and (2) re-enact (with minor modification) section 4 of the amending Act. Subclauses (1) and (2) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Part 1B Bail (Further Amendment) Act 1988

4C Definition

In this Part, **amending Act** means the *Bail (Further Amendment) Act 1988*.

4D Presumptions in favour of bail

- (1) The amendments made to this Act by the amending Act apply to offences whether committed before or after 19 February 1989 (the date of commencement of the amending Act).
- (2) This clause is taken to have commenced on 19 February 1989.
- (3) Subclause (1) re-enacts (with minor modification) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

Part 2 Bail (Amendment) Act 1989

5 Application of amendments

Neither section 48A nor section 54A applies in respect of bail granted before the section commences.

Part 2A Bail (Amendment) Act 1990

5A Definition

In this Part, **amending Act** means the *Bail (Amendment) Act 1990*.

5B Determinations as to grant of bail

- (1) The amendments made to this Act by the amending Act apply to a determination as to the grant of bail after 17 March 1991 (the date of commencement of the amending Act) even if the determination relates to an offence alleged to have been committed before 17 March 1991.
- (2) This clause is taken to have commenced on 17 March 1991.
- (3) Subclause (1) re-enacts (with minor modification) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

Part 2B Bail (Amendment) Act 1992

5C Definition

In this Part, **amending Act** means the *Bail (Amendment) Act 1992*.

5D Review of bail determinations

- (1) The amendment made to section 44 by the amending Act applies to a decision of the Supreme Court (however constituted) in relation to bail made before or after 24 May 1992 (the date of commencement of the amending Act).
- (2) This clause is taken to have commenced on 24 May 1992.
- (3) Subclause (1) re-enacts (with minor modification) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

Part 2C Bail (Domestic Violence) Amendment Act 1993

5E Definition

In this Part, **amending Act** means the *Bail (Domestic Violence) Amendment Act 1993*.

5F Determinations in relation to bail

- (1) The amendments made to this Act by the amending Act apply to determinations in relation to bail made after 19 December 1993 (the date of commencement of the amending Act) even if the determinations relate to offences committed or proceedings instituted before 19 December 1993.
- (2) This clause is taken to have commenced on 19 December 1993.
- (3) Subclause (1) re-enacts (with minor modification) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

Part 3 Criminal Legislation Amendment Act 1995

6 Application of amendments

- (1) Section 22A, as amended by the *Criminal Legislation Amendment Act 1995*, extends to bail granted and to applications made to the Supreme Court but not determined by it before the commencement of the amendment made to section 22A by that Act.
- (2) Section 48, as amended by the *Criminal Legislation Amendment Act 1995*, extends to bail granted and to requests made to the Supreme Court but not determined by it before the commencement of the amendment made to section 48 by that Act.

Part 4 Crimes Legislation Amendment Act 1997

7 Application of amendments

Section 6, as amended by the *Crimes Legislation Amendment Act 1997*, extends:

- (a) to applications to annul convictions, and referrals of convictions, made under section 100A and 100B, respectively, of the *Justices Act 1902*, and
- (b) to applications made under section 45 of the *Children (Criminal Proceedings) Act 1987*,

before the commencement of the amendment made to section 6 by the *Crimes Legislation Amendment Act 1997*.

Part 5 Courts Legislation Further Amendment Act 1997

8 Application of amendments

- (1) Section 48B, as inserted by Schedule 1.2 [1] to the *Courts Legislation Further Amendment Act 1997*, applies to a bail decision made before the commencement of that section, as so inserted, in the same way it applies to a bail decision made after that commencement.
- (2) In this clause, **bail decision** means a decision of a court relating to a bail reporting condition or bail residence condition.

Part 6 Crimes Legislation Amendment Act 1998

9 Requirement to appear before a court

Section 16A extends to apply to a person who, on the commencement of that section, is at liberty on bail granted before that commencement.

Part 7 Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998

10 Application of sections 42A and 42B and Part 7A to existing bail agreements

The provisions of section 42A, section 42B and Part 7A apply to and in respect of any bail agreement entered into before the commencement of those provisions in the same way as they apply to and in respect of any bail agreement entered into after that commencement.

11 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998*.

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to that Act or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, 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 that 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 that publication.

Part 8 Bail Amendment Act 1998

12 Definition

In this Part, **amending Act** means the *Bail Amendment Act 1998*.

13 Presumptions in favour of bail

Sections 9 and 9A, as amended by Schedule 1 [1]-[5] to the amending Act, apply to offences alleged to have been committed by a person who is charged with an offence on or after the commencement of the amendments to those sections.

14 Grant of bail

Section 32, as amended by Schedule 1 [8]-[10] to the amending Act, applies to offences alleged to have been committed by a person who is charged with an offence on or after the commencement of the amendments to that section.

15 References to Part 6

A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind, to Part 6 of this Act, as in force immediately before the commencement of Schedule 1 [16] to the amending Act, is to be read as a reference to Division 2 of Part 6 of this Act.

Part 9 Bail Amendment (Repeat Offenders) Act 2002

16 Definition

In this Part:

2002 amending Act means the *Bail Amendment (Repeat Offenders) Act 2002*.

17 Review of repeat offender amendments

- (1) The Minister is to review the operation of the amendments made to this Act by the

2002 amending Act as soon as possible after the period of 12 months after the date of commencement of this clause.

- (2) Without limiting subclause (1), the review is to include a review of the operation of those amendments with respect to offenders who are Aboriginal persons or Torres Strait Islanders, offenders under the age of 18 years and offenders having an intellectual disability or who are mentally ill.
- (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 12-month period.

18 Presumptions in favour of bail

Section 9B, as inserted by the 2002 amending Act, extends to an offence alleged to have been committed before the commencement of that section if a person is charged with the offence on or after that commencement.

19 Bail and bail conditions

Sections 32 and 36, as amended by the 2002 amending Act, extend to an offence alleged to have been committed before the commencement of the amendments if a person is charged with the offence on or after that commencement.