

## Notes

- 1 *This Act has been modified by Part 6 of the Northern Territory National Emergency Response Act 2007 (Cth) in relation to prescribed areas declared under that Act.*

See <http://www.comlaw.gov.au/Details/C2011C00053>

- 2 *In order to give effect to the Cross-border Justice Act, this law must be applied with the modifications mentioned in section 13 of the Cross-border Justice Act as if this law had been altered in that way.*

*For modifications of this law prescribed by regulation, see Part 3, Division 3 of the Cross-border Justice Regulations.*

## NORTHERN TERRITORY OF AUSTRALIA

### BAIL ACT

As in force at 27 February 2012

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 27 February 2012. Any amendments that commence after that date are not included.

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## BAIL ACT

An Act to provide for the granting of bail to accused persons in or in connection with criminal proceedings

### Part 1 Preliminary matters

#### 1 Short title

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

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Interpretation

(1) In this Act:

***appeal*** means an appeal made under:

- (a) Division 2 of Part VI of the *Justices Act*, or
- (b) section 144 of the *Youth Justice Act*, or
- (c) section 10 of the *Parole of Prisoners Act*, or
- (d) Division 2 of Part X of the Criminal Code; or
- (e) Part III of the *Supreme Court Act*.

***approved monitoring device***, see section 5 of the *Prisons (Correctional Services) Act*.

***approved voice recognition system***, see section 5 of the *Prisons (Correctional Services) Act*.

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

***bail*** means authorisation under this Act:

- (a) to be at liberty instead of in custody; or
- (b) to be released from the obligation to comply with a non-custodial order.

***bail condition*** means a condition imposed under section 27.

***bail offence***, for Part 7, see section 37B(1).

***bail undertaking*** means an undertaking given under section 25.

***child*** means a person under the age of 18 years.

***Commonwealth sexual offence*** means an indictable offence against the law of the Commonwealth of which an element is:

- (a) sexual intercourse or sexual penetration; or
- (b) an indecent act or an act of a sexual nature; or
- (c) sexual slavery, sexual servitude or any other form of sexual exploitation; or
- (d) encouraging, or benefiting from, child sex tourism; or
- (e) production, communication, use, or any other act involving, pornographic material; or
- (f) an attempt to commit, an act of procuring, or any other act preparatory to the commission of, any of the above.

***conduct agreement***, see section 27(2)(a).

***conviction*** includes a finding of guilt and, without limiting the foregoing part of this definition, includes the making of an order under:

- (a) section 4 of the *Criminal Law (Conditional Release of Offenders) Act*, and
- (b) section 26(2)(b) of the *Child Welfare Act*, and
- (c) section 75(2) of the *Justices Act*.

***court*** means:

- (a) the Supreme Court; or
- (ba) the Local Court; or

- (b) the Court of Summary Jurisdiction; or
- (c) the Youth Justice Court continued in existence by section 45 of the *Youth Justice Act*,

and includes a Judge, magistrate or justice not sitting as a court.

**Judge** means:

- (a) a Judge of the Supreme Court; or
- (b) if the Rules of Court made under the *Supreme Court Act* permit the Master of the Supreme Court to exercise the powers of the Supreme Court under this Act – the Master of the Supreme Court.

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

**offence** includes:

- (a) a failure to comply with a condition of a parole order made under section 5(5) of the *Parole of Prisoners Act*, and
- (b) a failure to comply with a condition to which an order made under section 5(1)(a) of the *Criminal Law (Conditional Release of Offenders) Act* is subject.

**original offence**, for Part VII, see section 37B(1)(a).

**pornographic material** means material of an indecent, sadistic, sadomasochistic or abusive character (including material related to child abuse).

**serious offence** means an offence punishable by imprisonment for 5 or more years.

**serious sexual offence**, see section 3A.

**serious violence offence** means an offence against any of the following provisions of the Criminal Code that is punishable by imprisonment for 5 or more years:

- (a) Part V, Division 2;
- (b) Part VI, Divisions 3 to 6A;
- (c) section 211 or 212;
- (d) another provision prescribed by the Regulations.

***Supreme Court*** includes a Judge.

***surveillance officer***, see section 5 of the *Prisons (Correctional Services) Act*.

***Territory sexual offence*** means an indictable offence of which an element is:

- (a) sexual intercourse or sexual penetration; or
  - (b) a sexual relationship; or
  - (c) sexual abuse; or
  - (d) indecent touching or an indecent assault; or
  - (e) any other indecent act directed against a person; or
  - (f) the making, collection, exhibition or display of an indecent object or pornographic material; or
  - (g) sexual servitude or any other form of sexual exploitation; or
  - (h) an attempt to commit, an act of procuring, or any other act preparatory to the commission of, any of the above.
- (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; and
  - (b) a person in respect of whom an appeal is pending; and
  - (c) a person whose case has been remitted by the Supreme Court under section 177(2)(d) of the *Justices Act* to a court for hearing or further hearing; and
  - (d) a person committed under section 6(2A) or (6), 15(4) or 25(4) of the *Criminal Law (Conditional Release of Offenders) Act* or the *Sentencing Act* to appear before, or be dealt with by, a court; and
  - (e) a person brought before the Court of Summary Jurisdiction under section 5(10) of the *Parole of Prisoners Act*.
- (3) A reference in this Act to entering into a bail condition is a reference, if the condition is imposed under:
- (a) section 27(2)(a), (c) or (d) – to entering into the agreement or agreements; or



- (b) section 27(2)(b) – to making and signing the acknowledgement; or
- (c) section 27(2)(e) or (f) – to entering into the agreement or agreements and depositing the security; or
- (d) section 27(2)(g) or (h) – to entering into the agreement or agreements and depositing the amount or amounts of money; or
- (e) section 27(2)(j) – to depositing every passport, whether Australian or foreign, held by the accused person;

in accordance with the condition.

- (4) A reference, however expressed, in this Act (other than in section 24) to the grant of bail includes a reference to the continuation of bail under section 32.

### **3A Serious sexual offences**

- (1) In this Act, a serious sexual offence is a Territory sexual offence or a Commonwealth sexual offence for which a maximum penalty of imprisonment for 7 years or more is prescribed.
- (2) The following offences are also serious sexual offences (even though a lesser maximum penalty may be prescribed):
  - (a) an offence, committed by an adult, consisting of an attempt to procure, or the act of procuring, a child under the age of 16 years to engage in sexual intercourse or an indecent act;
  - (b) an offence, committed by an adult, consisting of indecent assault on a child under the age of 16 years;
  - (c) an offence, committed by an adult in the presence of a child, consisting of the commission of an act of gross indecency in a public place.

## **4 Application of Act**

- (1) This Act applies to a person whether the person is an adult or child.
- (2) Except where otherwise expressly provided by or under 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 commencement of this Act so far as any other such law makes provision for or with respect to bail for accused persons.

## **5            Savings and transitional**

- (1) This Act does not affect bail granted, or a discharge upon a recognizance of bail entered into, under a law before the commencement of this Act in relation to an accused person, and for the purposes of or for purposes connected with such bail or recognizance this Act shall be deemed not to have been enacted.
- (2) Nothing in subsection (1) 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 subsection relates or is connected.
- (3) The Regulations 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 subsection (1) or (2).

## **Part 2            General provisions relating to 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 accused person being charged with the offence and the accused 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 accused person's appearance before the Supreme Court consequent upon 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 adjournment or adjournments after the accused pleads, or is found, guilty but before he is sentenced; and

- (iii) any period deemed under section 15 to be the period of an adjournment;
- (ca) the period between the finding under section 357 of the Criminal Code by the Supreme Court that the accused person is not capable of understanding the proceedings at the accused person's trial so as to be able to make a proper defence and the accused person being dealt with according to law;
- (d) the period between the institution of an appeal and its determination;
- (e) the period between the determination of an appeal and:
  - (i) the accused person's appearance before a court to abide the result of the determination of the appeal; or
  - (ii) the accused person's appearance before a court to which the matter is remitted under section 177(2)(d) of the *Justices Act*;
- (f) the period between the committal of the accused person under section 6(2A) or (6), 15(4) or 25(4) of the *Criminal Law (Conditional Release of Offenders) Act* or section 40 of the *Sentencing Act* to appear before, or be dealt with by, a court and the accused person's appearance in accordance with that committal;
- (g) 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 accused person enters into the bail undertaking; and
  - (c) if a bail condition or bail conditions are imposed, it or they are entered into;

the accused person is, subject to this Act, entitled:

- (d) to be released from custody and to remain at liberty in respect of the offence; or
- (e) to be released from the obligation to comply with a non-custodial order in respect of the offence;

until the accused person is required to appear before a court in accordance with the bail undertaking.

- (2) Subsection (1) does not apply to an accused person while the accused person is also in custody or the subject of a non-custodial order for some other offence or reason in respect of which he is not entitled (whether under this Act or otherwise) to be at liberty or released.

## **Division 1A      Presumption against bail for certain offences**

### **7A            Presumption against bail for certain offences**

- (1) This section applies to the following offences:
- (a) murder;
  - (b) treason;
  - (c) an offence against the *Misuse of Drugs Act* punishable by a term of imprisonment for more than 7 years;
  - (d) an offence against the *Customs Act 1901* (Cth) in relation to narcotic goods punishable by a term of imprisonment for 10 years or more;
  - (da) an offence against Division 307 of the *Criminal Code* (Cth) punishable by a term of imprisonment for 10 years or more;
  - (db) an offence against section 36, 37, 38 or 55 of the *Serious Crime Control Act*;
  - (dc) an offence against section 103A of the Criminal Code;
  - (e) a serious violence offence (other than murder) alleged to have been committed within 5 years after the alleged offender has been found guilty of an earlier serious violence offence;
  - (f) a serious sexual offence.
- (2) A person accused of an offence to which this section applies is not to be granted bail unless the person satisfies an authorised member or court that bail should not be refused.
- (2A) However, subsection (2) does not apply to a person who:
- (a) is accused of an offence to which this section applies; but
  - (b) is assessed to be suitable to participate in a program of rehabilitation that is prescribed by the Regulations.

- (3) The requirement for bail cannot be dispensed with for a person accused of an offence to which this section applies and section 9(2) does not apply with respect to any such offence.

## Division 2            Presumption in favour of bail

### 8                      Presumption in favour of bail for certain offences

- (1) This section applies to all offences except the following:
- (a) an offence mentioned in section 7A(1);
  - (aa) an offence against section 181, 192(3), (4), (6), (7) or (8) of the Criminal Code, or section 120 of the *Domestic and Family Violence Act*, if the person accused of the offence has, within the period of 10 years immediately preceding the date of that offence, been found guilty of any of the following offences:
    - (i) the offence of murder;
    - (ii) an offence against section 181, 186, 188 or 192 of the Criminal Code;
    - (iii) an offence against a law of a State or other Territory or another country that is similar to an offence mentioned in subparagraph (i) or (ii);
  - (ab) a serious offence (the ***relevant offence***) if the person accused of the relevant offence:
    - (i) is an adult charged with committing the relevant offence while on bail for a serious offence; and
    - (ii) has been found guilty of another serious offence within the period specified in subsection (1A);
  - (b) an offence where the accused person is the subject of an order made under section 40 of the *Sentencing Act* which may be breached if the person is convicted of the offence, unless:
    - (i) the offence is a contravention of or failure to comply with an instrument of a legislative or administrative character; or
    - (ii) the authorised member or court is of the opinion that the offence is so minor that a court is unlikely to regard it as a breach of the suspended sentence.

- (1A) The following periods are specified for subsection (1)(ab)(ii):
- (a) if the serious offence mentioned in subsection (1)(ab)(ii) is a serious violence offence – the period of 10 years immediately preceding the date of the relevant offence;
  - (b) if the serious offence mentioned in subsection (1)(ab)(ii) is not a serious violence offence – the period of 2 years immediately preceding the date of the relevant offence.
- (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) an authorised member or court is satisfied refusing bail is justified having considered the matters mentioned in section 24; or
  - (b) the person stands convicted of the offence; or
  - (c) the requirement for bail is dispensed with under section 9.
- (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 even if the accused person is in custody for some other offence or reason for which the accused 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) he is in custody serving a sentence of imprisonment in connection with some other offence; and
  - (b) the authorised member 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 first-mentioned offence would be granted.
- (5) To avoid doubt, if an offence mentioned in subsection (1)(a), (aa), (ab) or (b) is also mentioned in section 7A(1), section 7A applies to that offence.

## **Division 3            Dispensing with bail**

### **9                    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 is taken to have dispensed with the requirement for bail.

#### **10                      Effect of dispensing with bail**

- (1) While the requirement for bail is or is taken to be dispensed with under this Act in respect of a person accused of an offence, the accused person is entitled:

- (a) to be released from custody and to remain at liberty in respect of the offence; or
- (b) to be released from the obligation to comply with a non-custodial order in respect of the offence;

until the accused person is required to appear before a court in respect of the offence.

- (2) Subsection (1) does not apply to an accused person while the accused person is also in custody or the subject of a non-custodial order for some other offence or reason in respect of which the accused person is not entitled (whether under this Act or otherwise) to be at liberty or released.

#### **11                      Decision to dispense with bail**

For Part VI, where a court dispenses with, or is taken to have dispensed with, the requirement for bail, the court is taken to have made a decision to dispense with the requirement for bail.

### **Division 4                      Miscellaneous provisions**

#### **12                      Bail may be granted where no entitlement**

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

#### **13                      Power to refuse bail**

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

#### **14                      Grant of bail when not in custody**

- (1) An accused person may be granted or refused bail in accordance with this Act, even if the accused person that he is not in custody.

- (2) Nothing in this Act requires the grant of bail to an accused person who is not in custody.

**15      Extension of meaning of adjournment in section 6**

For section 6(c)(iii), the following periods are taken to be the period of an adjournment:

- (a) the period between the making of an order for a separate trial or for the postponement of a trial and the commencement of the separate or postponed trial;
- (b) the period between the appearance of an accused person before a justice in pursuance of a warrant issued under section 301(1) of the Criminal Code and the date fixed for trial;
- (ba) the period of adjournment under section 383(3) of the Criminal Code;
- (c) the period between the bringing up by a writ of habeas corpus of a person committed to prison because 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.

**Part 3                  Police bail**

**16      Authority for police to grant bail**

- (2) A police officer may, as an alternative to bringing a person the officer has arrested before a justice or a court of competent jurisdiction as required by Part VII, Division 6 of the *Police Administration Act*, within the time in which under that Division the officer would be required to bring the person before the justice or the court:
- (a) inform the person charged of the person's right to apply for bail; and
  - (b) as far as practicable, ensure that the person charged is able to communicate with a legal practitioner or someone of the person's choosing in connection with an application for bail.
- (3) An authorised member must, as soon as practicable after a person becomes entitled to apply for bail, determine whether bail should be granted under this Act.



- (4) The police officer mentioned in subsection (2) may refrain from complying with subsection (2)(b) 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 an offence.
- (5) A police officer who holds the rank of Sergeant or higher rank or any other police officer who is for the time being in charge of a police station may grant bail under this Part.

## **17 Bail in respect of several offences**

Where a person is charged with 2 or more offences at the same time:

- (a) an authorised member considering whether to grant bail to the person must decide, at the same time, whether to grant, or refuse to grant, bail to the person in respect of all the charges; and
- (b) an application may be made for bail in respect of all the charges, but not otherwise; and
- (c) any bail that is granted to the person must be granted in respect of all the charges and separate undertakings must not be required in respect of each charge.

## **18 Bail register**

An authorised member must, upon granting bail to a person, enter either in a book kept for that purpose in the police station where bail is granted or cause to be stored on a computer maintained for that purpose elsewhere, the name, residence and occupation of the person and of a person who, pursuant to Part V, Division 3 makes an acknowledgement or enters into an agreement in respect of the person granted bail, together with details of the conditions of bail and details of any money or securities given or deposited, and must arrange to lay any undertaking, acknowledgement or agreement relating to the bail before a court before which the person is required to appear.

## **Part 4                      Court bail**

### **19                      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 must 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) Despite 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.

### **20                      Power of magistrates and justices to grant bail**

- (1) Subject to section 21, a magistrate or justice may, at any time:
  - (a) grant bail to a person brought or appearing before the magistrate or justice accused of an offence; or
  - (b) except as prescribed by the Regulations, grant bail to a person not brought or appearing before him, but being an appellant under Part VI, Division 2 of the *Justices Act*.
- (2) Subject to section 21, a magistrate may at any time grant bail by telephone to a person who is apprehended by a police officer in accordance with a warrant to apprehend the person and bring him or her before a court.

### **21                      Limitations on power of magistrates and justices**

Subject to sections 31 and 38, bail may not be granted under section 20 by a magistrate or a justice to a person accused of an offence after that person has appeared before the Supreme Court following:

- (a) the person's committal for trial or sentence in connection with the offence; or
- (b) the person being brought up by a writ of habeas corpus in connection with the offence as mentioned in section 15(c).

**22      Limitation on length of adjournments where bail refused**

Where an accused person is refused bail by a justice in respect of an offence, an adjournment of the hearing by the justice must, except with the consent of the accused person, be for a period not exceeding 15 clear days.

**23      Power of Supreme Court to grant bail**

- (1) The Supreme Court may grant bail in accordance with this Act to a person accused of an offence, whether or not the accused person has appeared before the Supreme Court in connection with the offence.
- (2) If a person is arrested by a police officer under a warrant issued by the Supreme Court, a Judge may grant bail to the person by telephone or another form of electronic communication the Judge considers appropriate.

**23A     Limitation on power to grant bail**

Despite anything in this Act, where an appeal is pending in the Court of Criminal Appeal against:

- (a) a conviction on indictment; or
- (b) a sentence passed on conviction on indictment;

bail must not be granted by the Court or any other court unless it is established that special or exceptional circumstances exist justifying the grant of bail.

## **Part 5                      Provisions applying to both police and court bail**

### **Division 1                Criteria to be considered in bail applications**

#### **24                      Criteria to be considered in bail applications**

- (1) In making a determination as to the grant of bail to an accused person, an authorised member or a court must take into consideration so far as they can reasonably be ascertained 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 by the history and details of the person's residence, employment and family situations and, if known, the person's prior criminal record; and
    - (ii) any previous failure to appear in court pursuant to a recognizance of bail entered into before the commencement of this section or pursuant to a bail undertaking; and
    - (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;
  - (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; and
    - (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; and
    - (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 member 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;
- (c) the risk (if any) that the accused person would (if released on bail) interfere with evidence, witnesses or jurors;
- (d) the risk (if any) that the accused person would (if released on bail) commit an offence, a breach of the peace, or a breach of the conditions of bail;
- (e) the risk (if any) that would result from the accused person's release on bail to the safety or welfare of:
  - (i) the alleged victim of the offence; or
  - (ii) the close relatives of the alleged victim; or
  - (iii) if the alleged victim is a child – any person (other than a close relative) who has the care of the child; or
  - (iv) any other person whose safety or welfare could, in the circumstances of the case, be at risk if the accused person were to be released on bail.
- (2) For this section, the authorised member or court may take into account any evidence or information which the authorised member or court considers credible or trustworthy in the circumstances, including hearsay evidence.
- (3) In assessing risks to others that could result from the release of an accused person on bail, the authorised member or court must have regard to risks of the following kinds:
  - (a) a risk of violence or intimidation;
  - (b) a risk of property damage;
  - (c) a risk of harassment;
  - (d) any other risk to safety or welfare.
- (4) If the alleged victim of an offence is a child, or the alleged offence is a serious sexual offence or a serious violence offence, the safety and welfare of the alleged victim must be considered with particular care.

- (5) In regard to a child's safety and welfare, the following matters are to be considered:
- (a) the child's age;
  - (b) the age of the accused person;
  - (c) any familial relationship that may exist between the child and the accused person;
  - (d) the living arrangements for the child and for the accused person (assuming the accused person's release on bail);
  - (e) the desirability of preserving the child's living arrangements and family and community relationships;
  - (f) the emotional as well as the physical wellbeing of the child;
  - (g) any other relevant matter.
- (6) If an alleged victim expresses concern to the prosecutor that the release of the accused person on bail could lead to a risk to the alleged victim's safety or welfare, the prosecutor must, wherever practicable, inform the authorised member or court about that concern and the reasons for it.

## **Division 2      Bail undertakings**

### **25      Bail undertakings**

- (1) A person must not be released on bail unless the person undertakes, in writing, to appear before such court, on such day and at such time and place as are specified in the undertaking.
- (2) A bail undertaking may be given in respect of more than one offence.
- (3) Despite subsection (1), a person who is to appear before the Supreme Court may be released on bail if the person undertakes in writing to appear before the Supreme Court at such date, time and place as are specified in the undertaking, or at such other date, time and place as are specified in a notice given to the person or the legal practitioner representing the person by the Director of Public Prosecutions or a person authorised by the Director of Public Prosecutions in writing in that behalf.
- (4) A bail undertaking may include an undertaking, if bail is continued, to appear at a time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment or otherwise.

- (5) An accused person who is granted bail is under a duty to appear in person before a court in accordance with the bail undertaking.

**26                      Persons to whom bail undertaking may be given**

A bail undertaking may be given to:

- (a) a court; or
- (b) an authorised member; or
- (c) a clerk of the Court of Summary Jurisdiction; or
- (d) the sheriff or a deputy sheriff; or
- (e) the officer in charge of a prison within the meaning of the *Prisons (Correctional Services) Act*.

**Division 3                      Bail conditions**

**27                      Conditions of bail**

- (1) Bail may be granted unconditionally or subject to conditions imposed by instrument in writing.
- (2) One or more of the following conditions may be imposed on the grant of bail under this section:
  - (a) that the accused person enter into an agreement (a ***conduct agreement***) to observe specified requirements as to the accused person's conduct while on bail, other than financial requirements (whether for the giving of security, the depositing of money, the forfeiture of money or otherwise);
  - (b) that one or more than one acceptable person, other than the accused person, acknowledge that the acceptable person is acquainted with the accused person and that the acceptable person regards the accused person as a responsible person who is likely to comply with the 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 the 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 the 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 the 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 the bail undertaking;
- (g) that the accused person deposit with an authorised member or a 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 the bail undertaking;
- (h) that one or more than one acceptable person, other than the accused person, deposit with an authorised member or a 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 the bail undertaking;
- (j) where:
  - (i) bail is granted by a court; and
  - (ii) the offence with respect to which the application is made is an offence punishable by a term of imprisonment for 2 years or more, or, by payment of a maximum penalty of, or of not more than an amount equal to, 85 penalty units;

that the accused person surrender every passport, whether Australian or foreign, held by the accused person.

(3) The determination as to:

- (a) which person or persons, or class or description of persons, are acceptable persons for 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 a condition referred to in subsection (2)(e) or (f);

must be made by:

- (c) the authorised member or the court imposing the condition; or



- (d) in the absence of a determination by the authorised member or the court referred to in paragraph (c) – the court or person to whom the bail undertaking is given.

(3A) Where a court imposes a bail condition under subsection (2)(j):

- (a) the passport or passports must be given to the Registrar or other appropriate officer of the court;
- (b) the Registrar or other appropriate officer of the court must cause the passport or passports to be kept in such custody as he or she thinks fit for such period, or on the occurrence of any contingency, as is specified by the court; and
- (c) the passport or passports must, in accordance with the terms specified under paragraph (b), be returned to the accused person unless the court orders otherwise.

(3B) Where a court imposes a condition on the grant of bail under subsection (2)(j) and an Australian passport is surrendered in compliance with the condition, the Registrar or appropriate officer of the court must, as soon as is practicable, give to the Minister administering the *Australian Passports Act 2005* (Cth) a copy of the order.

- (4) The Regulations may require an acknowledgement under this section to contain such details, to be provided by the person making the acknowledgement, as are prescribed relating to the circumstances in which the person is acquainted with the accused person.
- (5) An agreement or acknowledgement under this section must be in writing.
- (6) A condition, agreement or acknowledgement under this section may be entered into or made in respect of more than one offence.

## **27A Conduct agreements**

- (1) A conduct agreement may:
  - (a) prohibit an accused person from associating, or being in company, with one or more specified persons; or
  - (b) require an accused person to keep away from one or more specified persons or from persons of a specified class; or
  - (c) prohibit an accused person from communicating in any way (directly or indirectly) with one or more specified persons, or with a person of a specified class; or

- (d) prohibit an accused person from being within a particular locality or area; or
  - (e) prohibit an accused person from being outside a particular locality or area; or
  - (f) require an accused person to reside at a specified place; or
  - (g) require the accused person to report at specified intervals at a police station or other place; or
  - (h) prohibit an accused person from consuming alcohol or non-prescription drugs; or
  - (i) prohibit an accused person from engaging in conduct of any other specified kind; or
  - (ia) for bail granted by a court other than the Youth Justice Court – require the accused person:
    - (i) to wear or have attached an approved monitoring device while on bail or the lesser period ordered by the court; and
    - (ii) to allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device; or
  - (ib) for bail granted by a court other than the Youth Justice Court – require the accused person:
    - (i) to give a sample of the accused person's voice for use with an approved voice recognition system; and
    - (ii) to comply with the reasonable directions of a surveillance officer in the use of the system for the effective monitoring of the accused person's activities while on bail; or
  - (j) contain a combination of 2 or more of the above.
- (2) A conduct agreement operates (subject to its terms) throughout the period for which the accused person is on bail.
- (3) A conduct agreement may be subject to exceptions and qualifications stated in the agreement.

*Example*

*A conduct agreement might permit the accused person to leave a particular locality, contrary to a prohibition under subsection (1)(e), with a particular permission or in specified circumstances.*

- (4) Contravention of a provision of a conduct agreement is to be regarded as a breach of a condition of bail.
- (5) A court may excuse a contravention of a conduct agreement if satisfied that the accused person had a reasonable excuse for the contravention.

## **27B            Monitoring compliance with certain conduct agreements**

- (1) This section applies if:
  - (a) a conduct agreement is in force for an accused person; and
  - (b) the agreement is subject to the conditions mentioned in section 27A(1)(ia) or (ib).
- (2) While the conditions are in force, Part 27, Division 1 of the *Prisons (Correctional Services) Act* applies in relation to the accused person as if a reference:
  - (a) to a person for whom a monitoring order is in force were a reference to the accused person; and
  - (b) to a monitoring order were a reference to the conduct agreement.

*Note for section 27B*

*Accordingly, Part 27, Division 1 of the Prisons (Correctional Services) Act as applied by this section provides powers for surveillance officers for ensuring the accused person is complying with the conduct agreement.*

## **28                Imposition of bail conditions**

- (1) An authorised member or a court must, in granting bail, impose conditions that appear necessary to minimise risks to the safety or welfare of others, or to the proper administration of justice, that may result from releasing the accused person on bail.
- (2) The conditions must be reasonably proportionate to the risks.
- (3) In addition, a court may impose a condition that the accused person enter into a conduct agreement containing the conditions mentioned in section 27A(1)(ia) or (ib) only if satisfied, after considering a report by the Director of Correctional Services, the accused person is a suitable person for the conditions.

## **29 Entry into agreement**

Except as prescribed by the Regulations, where an authorised member or a court imposes a bail condition under section 27 that requires:

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

the court or person to whom the bail undertaking is given.

## **30 Provisions relating to money or security**

- (1) A receipt must be given for any money or security deposited pursuant to a bail condition.
- (2) Where a security or an amount of money is deposited with a person pursuant to section 29(c), otherwise than at a court, under an agreement entered into as a condition imposed on the grant of bail to an accused person, the person with whom the security or money is deposited must, as soon as practicable, cause it, together with the form of undertaking and agreement, to be lodged with the court before which the accused person is required by the bail undertaking to appear.
- (3) Where a security or an amount of money is deposited under an agreement entered into as a condition imposed on the grant of bail to an accused person, and the accused person appears before the court in accordance with the bail undertaking, then an amount equal to the security or the amount of money must be returned to the person by whom it was deposited.

## **31 Discharge of liability of persons other than accused**

- (1) Where a person other than the accused person has entered into an agreement under section 27(2)(d), (f) or (h), the person may, subject to subsection (5), 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 member – to the court of appearance;

to discharge the applicant from liability under the agreement.

- (2) On an application being made under subsection (1), a Judge, justice or magistrate must, if the accused person is not then in custody or before the court:
  - (a) issue a warrant to apprehend the accused person and bring the accused person before the court; or
  - (b) issue a summons for the accused person's appearance before the court.
- (3) On the appearance of the accused person before the court, the court must, unless satisfied that it would be unjust to do so, direct that the applicant be discharged from liability under the agreement, and the applicant is, upon the direction being given, discharged accordingly.
- (4) If the court discharges the applicant from liability under the agreement, the court may impose further conditions on the grant of bail, and may by warrant commit the accused person to prison until the accused person enters into the further conditions.
- (5) A person may not make an application under this section if the accused person has failed to comply with his bail undertaking or an agreement entered into by the accused person pursuant to a bail condition.
- (6) In this section:  
***court of appearance*** means the court before which the accused person is required to appear in accordance with the accused person's bail undertaking.

## Division 4      Continuation of bail

### 32      Continuation of bail

- (1) If a bail undertaking includes an undertaking to appear at a time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment or otherwise, a court may, as it thinks fit, 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.

## **Part 6            Review of bail decisions**

### **Division 1        Police bail**

#### **33            Review**

- (1) An authorised member must ensure that:
- (a) the person charged is made aware of the determination of the member with respect to the granting of or the refusal to grant bail as soon as practicable after that determination is made; and
  - (b) the person charged is aware of the person's right to apply to a magistrate or justice for a review of that determination in the circumstances mentioned in subsection (3); and
  - (c) as far as is practicable, the person charged is able to communicate with a legal practitioner or any other person in connection with an application to a magistrate or justice under this section.
- (2) An authorised member may refrain from complying with subsection (1)(c) if the member believes on reasonable grounds that it is necessary to do so in order to prevent:
- (a) the escape of an accomplice of the person charged; or
  - (b) the loss, destruction or fabrication of evidence relating to an offence.
- (3) The person charged may apply to a magistrate or justice for a review under this section of any of the following matters:
- (a) a decision by an authorised member to refuse to grant bail to the person;
  - (b) a failure of an authorised member to determine whether or not to grant bail to the person within 4 hours after the person was charged;

- (c) a determination by an authorised member to grant bail to the person subject to conditions (other than a bail undertaking) with which:
    - (i) the person is unable or unwilling to comply; or
    - (ii) the person is unable or unwilling to arrange for another person to comply.
- (4) Where the person charged indicates to a police officer that the person wishes to make an application under subsection (3), the member must, as soon as practicable after the person gives that indication, bring or arrange for the person to be brought before a magistrate or a justice or must arrange for the person to make an application to a magistrate or justice by telephone, telex, radio or similar facility.
- (5) If a person who may make an application under subsection (3) for a matter has not done so, a magistrate or justice may, at the initiative of the magistrate or justice, review that matter.
- (6) In reviewing a matter under subsection (3) or (5), a magistrate or justice must:
  - (a) for a matter mentioned in subsection (3)(a) or (c):
    - (i) review the decision or determination; and
    - (ii) confirm or vary the decision or determination (including varying or imposing conditions of bail for the person); or
  - (b) for a matter mentioned in subsection (3)(b) – determine whether or not to grant bail to the person (including imposing conditions of bail if bail is to be granted).
- (7) The magistrate or justice:
  - (a) must give the person, his or her legal representative and the authorised member reasonable opportunity to make submissions for subsection (6); and
  - (b) may make any order for exercising the power of the magistrate or justice under this section.

## **Division 2            Court bail**

### **34            Review of bail decision**

Except as provided in section 33 or prescribed by the Regulations:

- (a) a justice must not review a decision in relation to bail except a decision made by himself or herself; and
- (b) a magistrate must not review a decision in relation to bail except a decision made by a justice or himself or herself.

### **35            Review by Supreme Court**

- (1) Subject to this Act, the Supreme Court may review a decision of a magistrate or justice or of the 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 power to do so under section 34 has been, or has been sought to be, exercised.

### **36            Provisions relating to review of bail decisions**

- (1) The power under section 34 or 35 to review a bail decision:
  - (a) may only be exercised at the request of the accused person, the informant or complainant, being a police officer, 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 under subsection (1) must be in conformity with this Act.
- (3) The review of a decision is 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 under this Division of a decision, bail for an accused person is revoked, a magistrate or justice may by warrant commit the person to prison.
- (5) Where, on a review under this Division of a decision:
  - (a) bail is granted unconditionally and no bail undertaking has been given by the accused person; or



- (b) a bail condition is imposed;

a magistrate or 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.

- (6) A court may refuse to entertain a request to review, under this Division, a decision if the court is satisfied that the request is frivolous or vexatious.
- (7) The Regulations may make provisions for or in relation to:
  - (a) the manner of making a request to review under this Division a decision in relation to bail; and
  - (b) the giving or sending to persons of notices relating to the proposed exercise of the power to review under this Division a decision in relation to bail; and
  - (c) the circumstances in which such a power may be exercised in the absence of the accused person or the accused person's representative as if the accused person or representative were present.

### **36A        Immediate review and stay of decision to grant bail**

- (1) This section applies if:
  - (a) a magistrate or justice decides to release an accused person on bail; and
  - (b) a police officer or legal practitioner appearing for the Crown immediately informs the magistrate or justice that a request for review of the decision is to be made to the Supreme Court under this section.
- (2) The decision of the magistrate or justice is stayed.
- (3) The accused person must not be released while the stay of the decision has effect under this section.
- (4) The stay of the decision has effect until the earliest of the following:
  - (a) the Court affirms or varies the decision or substitutes another decision for the decision of the magistrate or justice;
  - (b) a police officer or legal practitioner appearing for the Crown files in the Court a notice that the Crown does not desire to proceed with the review;

- (c) 4 pm on the day that is 3 business days after the day the decision was made.
- (5) The Court may extend the time referred to in subsection (4)(c) if the Court thinks that it is appropriate to do so in the circumstances.
- (6) The Court may exercise its power under subsection (5) more than once.
- (7) The request for the review of the decision must be dealt with as expeditiously as possible.
- (8) The review is by way of rehearing.
- (9) 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.
- (10) A decision as varied or substituted under subsection (4)(a) must conform with this Act.
- (11) If the person is released because of subsection (4)(b) or (c), the conditions of bail are those that would have applied had the decision not been stayed.
- (12) In this section:

*business day* means a day other than a Saturday, Sunday or public holiday.

### **37 Right of accused to apply for bail**

Subject to section 36A, this Part does not limit the right of an accused person in custody to apply for bail, and the accused person may so apply for bail even if that the power to review a decision already made in relation to the grant of bail to the accused person has not been, or has not been sought to be, exercised under this Part.

## **Part 7 Non-compliance with undertaking or conditions**

### **37A Definitions**

In this Part:

*bail offence*, see section 37B(1).

*original offence*, see section 37B(1)(a).

**37B Offence to breach bail**

- (1) A person commits an offence (the *bail offence*) if the person:
  - (a) is granted bail for an offence (the *original offence*); and
  - (b) engages in conduct that results in a breach of the person's bail undertaking, or a condition of the grant of bail, for the original offence.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) It is a defence to a prosecution for the bail offence if the defendant establishes a reasonable excuse.
- (3) A penalty imposed for the bail offence must not exceed the maximum penalty that may be imposed for the original offence.
- (4) Part IIAA of the Criminal Code applies to bail offences.

**37C Hearing procedures for bail offence – general**

- (1) This section applies to a legal proceeding for a bail offence.
- (2) The proceeding may be commenced at any time.
- (3) The proceeding must be heard and determined by:
  - (a) if the court to which the offender's bail undertaking to appear for the original offence is the Supreme Court or Court of Criminal Appeal – the Supreme Court; or
  - (b) otherwise – the court to which the offender's bail undertaking to appear is given for the original offence.

**37D Hearing procedures for bail offence – Supreme Court**

- (1) This section applies if, under section 37C(3), the Supreme Court is to hear and determine the legal proceeding for a bail offence.
- (2) Despite another law of the Territory, the Court must hear and determine the proceeding in a summary way.
- (3) Subject to subsections (4) to (7), the proceeding must be commenced and conducted (with the necessary changes and changes prescribed by rules of court) as if it were a summary proceeding under the *Justices Act*.
- (4) The proceeding must be commenced by the complainant for the original offence or any police officer.

- (5) The proceeding must be conducted by the Director of Public Prosecutions.
- (6) A fee is not payable for a matter or thing required or permitted to be done for the proceeding.
- (7) In addition, the Court must not order a party to the proceeding to pay another party's costs of or relating to the proceeding.
- (8) Section 51 of the *Supreme Court Act* applies to the Court's determination on the legal proceeding.

### **38 Arrest for absconding or breach of condition**

- (1) Where a police officer believes on reasonable grounds that a person who has been released on bail has, while on bail, failed to comply with, or is, while 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 magistrate or 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.
- (2A) However, the court must revoke bail if:
  - (a) the person was charged with a serious violence offence and released on bail despite a presumption against bail; and
  - (b) the court finds that the person has breached a bail undertaking or a condition of bail.
- (3) If the court revokes the person's original bail, the court or any other court before which the person is brought or appears:
  - (a) may grant bail to the person in accordance with this Act; or

- (b) may, despite anything in this Act, refuse to grant bail to the person and by warrant commit the person to prison.
- (4) Nothing in this section limits the rights of an accused person in custody to apply for bail.

### **39 Failure to appear**

Where a person fails to appear before a court in accordance with the person's bail undertaking, the court may issue a warrant to apprehend the person and bring the person before the court.

### **40 Enforcement of bail undertakings etc.**

- (1) Where:
  - (a) an accused person fails to comply with the person's bail undertaking or a bail condition; and
  - (b) the person or another person has entered into an agreement pursuant to a bail condition to forfeit an amount of money;

the court before which the accused person was required to appear in accordance with the bail undertaking may order that the amount referred to in paragraph (b) be forfeited and paid to the Territory.

- (2) If security or an amount of money has been deposited under an agreement entered into as a condition of the grant of bail to an accused person, a court may, when making an order under subsection (1), make a further order that the security or amount of money so deposited be applied in or towards payment of the amount ordered to be forfeited.
- (2A) If a court makes an order under subsection (1), the court may, on application by the person in relation to whom the order is made or of its own motion:
  - (a) reduce the amount of the forfeiture; or
  - (b) confirm, rescind or suspend its order.
- (3) A court must endorse or cause to be endorsed on the bail undertaking of an accused person particulars of every order made under subsection (1) or (2).
- (4) Subject to subsection (5), Part 8 of the *Fines and Penalties (Recovery) Act* applies to a bail undertaking or recognizance that is ordered by a court to be forfeited and payment is to be enforced under that Act.

- (5) If a court orders forfeiture of a bail undertaking, the court may order that if the forfeited amount is not paid within 28 days the accused person is to be imprisoned until his or her liability to pay the forfeited amount is discharged.
- (6) If a court makes an order under subsection (5) and the forfeited amount is not paid within 28 days, the court may issue a warrant of commitment in respect of the accused person specifying the period of imprisonment calculated on the basis of the amount forfeited as follows:
  - (a) the period is to be one day for each amount (or part of the amount) that is prescribed for section 88 of the *Fines and Penalties (Recovery) Act* that comprises the amount forfeited;
  - (b) the period is not to be less than one day;
  - (c) the period is not to exceed 3 months.
- (7) If the accused person serves the total period of imprisonment under a warrant under subsection (6), the forfeiture is taken to be satisfied.
- (8) If the accused person serves part of the period of imprisonment under a warrant under subsection (6), the forfeiture is taken to be partially satisfied by the amount calculated at the rate prescribed for the purposes of section 88 of the *Fines and Penalties (Recovery) Act* for each day actually served.
- (9) Unless otherwise ordered by the court, any period of imprisonment that the accused person has to serve as a result of an order under subsection (5) is to be served:
  - (a) cumulatively on any incomplete sentence or sentences of imprisonment imposed on the person for the default of a payment of a fine or sum of money; and
  - (b) concurrently with any incomplete sentence or sentences of imprisonment imposed on the person other than for the default of a payment of a fine or sum of money, whether the other sentence was or the other sentences were imposed before or at the same time as that term.

#### **41 Suspension or mitigation of forfeiture**

- (1) A court may, when making an order under section 40(1), determine that the liability of all or any of the persons liable upon or in respect of an agreement mentioned in section 40(1)(b) must be remitted, suspended or reduced.

- (2) Where an order has been made under section 40(1), the court may, at any time, order:
  - (a) that the order for forfeiture and payment to the Territory made under section 40(1) be cancelled or suspended; or
  - (b) that the liability of all or any of the persons liable upon or in respect of the agreement mentioned in section 40(1)(b) must be remitted, suspended or reduced, or both.
- (3) The court, in making an order under subsection (2), may:
  - (a) impose such terms and conditions as it thinks fit; and
  - (b) make any order consequential on or incidental to such an order.
- (4) An order made under this section does not affect the validity of anything done to enforce the order under section 40(1) before making the first-mentioned order.

## **Part 8                      Miscellaneous matters**

### **42                      Notices**

- (1) The court or person to whom a bail undertaking is given by an accused person must immediately 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 the bail conditions, if any, imposed or a notice setting out the terms of such conditions.
- (2) The court or person to or with whom a person other than the accused person makes an acknowledgement, agreement or deposit of security or money pursuant to a bail condition must immediately 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 bail condition is imposed or varied on a review under Part VI of a decision in relation to bail, the court carrying out that review must give or cause to be given to:
  - (a) the accused person; and
  - (b) to any other person who makes an acknowledgement or enters into an agreement pursuant to the condition;

a copy of the condition or a notice setting out the terms of the condition.

- (4) A court may, in any of the circumstances mentioned in subsections (1) to (3), give or cause to be given to a person not referred to in those subsections, but whom it considers may be interested in or affected by a bail condition as imposed or varied, a copy of that bail condition or a notice setting out the terms of that bail condition.

#### **43 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.

#### **44 False statements in acknowledgements**

- (1) A person who wilfully makes an acknowledgement under section 27(2)(b) knowing it to be untrue in a material particular is guilty of an offence.

Maximum penalty: 17 penalty units or imprisonment for 2 years.

- (2) Before a person makes an acknowledgement under section 27(2)(b) it is the duty of the person to whom the acknowledgement is made to warn the person that if the person wilfully makes the acknowledgement knowing it to be untrue in a material particular the person is guilty of an offence under subsection (1).
- (3) Failure to give a warning in accordance with subsection (2) does not affect the operation of subsection (1).

#### **45 Indemnification of agreeing parties**

- (1) In this section, *agreeing party* means a person who enters (as an acceptable person) into an agreement under section 27.
- (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.

Maximum penalty: 25 penalty units or imprisonment for 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.

#### **46 Civil standard of proof for certain purposes**

Where an authorised member or a 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 authorised member or the court is satisfied on the balance of probabilities.

#### **47 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 to be or to be a copy of the undertaking, is admissible in evidence and is evidence of the giving of the undertaking by the accused person and of its terms; and
- (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 to be or to be a copy of the instrument, is admissible in evidence and is evidence of the imposing of the condition and of its terms; and
- (c) a certificate purporting to be signed by an appropriate officer 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 is evidence of the matters so certified; and

- (d) a document purporting to be or to be a copy of an acknowledgement under section 27(2)(b), and to be certified by an appropriate officer to be or to be a copy of the acknowledgement, is admissible in evidence and is evidence of the making of the acknowledgement and of its terms.
- (2) For subsection (1), an appropriate officer is:
- (a) in the case of police bail – an authorised member; and
  - (b) in the case of court bail – an officer of the court having custody of the bail undertaking given by the accused.
- (3) In any proceedings:
- (a) a certificate purporting to be signed by the Director of Public Prosecutions or a person authorised by the Director in writing in that behalf certifying that a notice referred to in section 25(3) was given or sent to the accused person, or the legal practitioner representing 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
  - (b) a certificate purporting to be signed by a Judge, magistrate, justice, clerk of the Court of Summary Jurisdiction, sheriff or deputy sheriff and stating that a specified person did not appear before a specified court, at a specified place, on a specified day at a specified time is admissible in evidence and is evidence of the matters so certified.
- (4) In any document:
- (a) the words "authorised member" or "authorized member" after a signature is evidence that the person whose signature it purports to be is in fact an authorised member within the meaning of this Act; and
  - (b) the words "appropriate officer" after a signature is evidence that the person whose signature it purports to be is in fact an appropriate officer as referred to in this section; and
  - (c) the words "authorised by the Director of Public Prosecutions" or "authorized by the Director of Public Prosecutions" after a signature is evidence that the person whose signature it purports to be has in fact been authorised by the Director of Public Prosecutions as referred to in section 25(3) and this section;

in connection with the matter to which the document relates.

**48 Surety to have no right of arrest**

A person who as an acceptable person enters into an agreement under section 27 does not, because of entering into that agreement, have the right to arrest the accused person.

**49 Abolition of common law right to grant bail**

All powers or duties that would, but for this Act, exist apart from statute to grant bail to an accused person in or in connection with criminal proceedings are abolished.

**50 Contempt**

- (1) Nothing in this Act affects a 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 a 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) A power or duty to which subsection (1) applies is additional to a power or duty that a court, tribunal or person may have under this Act in relation to any contempt or alleged contempt.

**51 Provisions as to warrants or summonses**

Subject to the Regulations, the provisions of the *Justices Act* apply, with the 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.

**52 Contravention of Act by authorised member**

- (1) Where an authorised member contravenes a provision of this Act that is applicable to the member, the contravention is not punishable as an offence (whether under this Act or otherwise) unless a penalty is expressly provided by this Act in respect of the contravention.
- (2) This section does not prevent a contravention of a provision of this Act by a police officer from:
  - (a) being dealt with under the *Police Administration Act*, or
  - (b) constituting grounds for civil proceedings.

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**52A Representative of mentally impaired or unfit person may enter into bail undertaking on behalf of person**

(1) In this section:

*accused person* means an accused person who:

- (a) has been declared to be liable to supervision under Part IIA, Division 2 or 4 of the Criminal Code; or
- (b) is or is likely to be the subject of an investigation or a special hearing under that Part.

(2) A person representing an accused person may:

- (a) exercise an independent discretion and act as he or she reasonably believes to be in the accused person's best interests in relation to the grant of bail to the accused person under this Act; and
- (b) enter into the bail undertaking and any bail conditions imposed in respect of the accused person on behalf of the accused person.

(3) When the representative of an accused person mentioned in subsection (1) enters into the bail undertaking and any bail conditions on behalf of the accused person, the representative must give an undertaking to the court that he or she will be responsible for ensuring that the accused person complies with the bail undertaking and the bail conditions.

**53 Regulations**

(1) The Administrator may make regulations under this Act.

(2) The Regulations may provide for any of the following:

- (a) facilities to be provided to enable the making of communications referred to in section 16(2)(b);
- (b) the procedures to be followed where an application is made, under section 33(4), to a magistrate or justice, by telephone, telex, radio or similar facility;
- (c) 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;
- (d) warrants and summonses issued under this Act;

- (e) the fees to be demanded and taken in relation to any matter connected with this Act;
- (f) the forms to be used for this Act.

## **Part 9                      Transitional matters for Bail Amendment                                     (Repeat Offenders) Act 2005**

### **54                      Application of sections 7A, 8 and 36A to pre-commencement offences**

Sections 7A and 8 as amended by the *Bail Amendment (Repeat Offenders) Act 2005*, and section 36A, apply in relation to the granting of bail to accused persons for offences committed before the commencement of that Act.

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## ENDNOTES

## 1

## KEY

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
*Gaz* = *Gazette*  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

## 2

## LIST OF LEGISLATION

***Bail Act 1982 (Act No. 57, 1982)***

Assent date 8 October 1982  
 Commenced 29 June 1983 (*Gaz* S19, 29 June 1983)

***Statute Law Revision Act 1983 (Act No. 58, 1983)***

Assent date 28 November 1983  
 Commenced 28 November 1983

***Bail (Criminal Code) Amendment Act 1983 (Act No. 59, 1983)***

Assent date 28 November 1983  
 Commenced 1 January 1984 (s 2, s 2 *Criminal Code Act 1983* (Act No. 47, 1983), *Gaz* G46, 18 November 1983, p 11 and *Gaz* G8, 26 February 1986, p 5)

***Statute Law Revision Act 1984 (Act No. 28, 1984)***

Assent date 20 July 1984  
 Commenced 20 July 1984

***Bail Amendment Act 1988 (Act No. 11, 1988)***

Assent date 30 March 1988  
 Commenced 30 March 1988

***Bail Amendment Act 1989 (Act No. 8, 1989)***

Assent date 28 March 1989  
 Commenced 30 October 1989 (s 2, s 2 *Justices Amendment Act 1989* (Act No. 7, 1989) and *Gaz* S61, 27 October 1989)

***Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)***

Assent date 11 June 1990  
 Commenced 21 January 1991 (s 2, s 2 *Director of Public Prosecutions Act 1990* (Act No. 35, 1990) and *Gaz* G2, 16 January 1991, p 9)

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***Statute Law Revision Act 1990 (Act No. 33, 1990)***

Assent date 11 June 1990  
Commenced 11 June 1990

***Bail Amendment Act 1993 (Act No. 74, 1993)***

Assent date 23 November 1993  
Commenced 1 January 1994 (*Gaz* G51, 22 December 1993, p 3)

***Bail Amendment Act 1994 (Act No. 10, 1994)***

Assent date 22 March 1994  
Commenced 5 April 1994 (*Gaz* S24, 31 March 1994)

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date 20 September 1994  
Commenced 20 September 1994

***Statute Law Revision Act 1995 (Act No. 14, 1995)***

Assent date 23 June 1995  
Commenced 23 June 1995

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

***Bail Amendment Act 1996 (Act No. 32, 1996)***

Assent date 5 September 1996  
Commenced 1 November 1996 (*Gaz* G41, 9 October 1996, p 4)

***Bail Amendment Act 1998 (Act No. 9, 1998)***

Assent date 25 March 1998  
Commenced 22 April 1998

***Statute Law Revision Act (No. 2) 1998 (Act No. No. 92, 1998)***

Assent date 11 December 1998  
Commenced 11 December 1998

***Bail Amendment Act 1999 (Act No. 19, 1999)***

Assent date 5 May 1999  
Commenced 5 May 1999

***Statute Law Revision Act 1999 (Act No. 27, 1999)***

Assent date 18 June 1999  
Commenced 18 June 1999

***Sentencing of Juveniles (Miscellaneous Provisions) Act 2000 (Act No. 17, 2000)***

Assent date 30 May 2000  
Commenced 1 June 2000 (s 2, s 2 *Justices Amendment Act 1998* (Act No. 6, 1998) and *Gaz* G15, 22 April 1998, p 3)

***Statute Law Revision Act 2000 (Act No. 19, 2000)***

Assent date 6 June 2000  
Commenced 12 July 2000 (*Gaz* G27, 12 July 2000, p 2)

***Statute Law Revision Act 2001 (Act No. 3, 2001)***

Assent date 22 March 2001  
Commenced 22 March 2001

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***Bail Amendment Act 2001 (Act No. 29, 2001)***

Assent date	19 July 2001
Commenced	19 July 2001

***Fines and Penalties (Recovery) (Consequential Amendments) Act 2001 (Act No. 60, 2001)***

Assent date	11 December 2001
Commenced	1 January 2002 (s 2, s 2 <i>Fines and Penalties (Recovery) Act 2001</i> (Act No. 59, 2001) and <i>Gaz</i> G50, 19 December 2001, p 3)

***Bail Amendment Act 2002 (Act No. 12, 2002)***

Assent date	7 June 2002
Commenced	15 June 2002 (s 2 and s 2 <i>Criminal Code Amendment (Mental Impairment and Unfitness to be Tried) Act 2002</i> (Act No. 11, 2002))

***Youth Justice (Consequential Amendments) Act 2005 (Act No. 33, 2005)***

Assent date	22 September 2005
Commenced	1 August 2006 (s 2, s 2 <i>Youth Justice Act 2005</i> (Act No. 32, 2005 and <i>Gaz</i> G30, 26 July 2006, p 3)

***Bail Amendment (Repeat Offenders) Act 2005 (Act No. 34, 2005)***

Assent date	22 September 2005
Commenced	22 September 2005

***Statute Law Revision Act 2005 (Act No. 44, 2005)***

Assent date	14 December 2005
Commenced	14 December 2005

***Justice Legislation Amendment (Group Criminal Activities) Act 2006 (Act No. 36, 2006)***

Assent date	3 November 2006
Commenced	20 December 2006 ( <i>Gaz</i> G51, 20 December 2006, p 2)

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date	8 March 2007
Commenced	8 March 2007

***Bail Amendment Act 2007 (Act No. 23, 2007)***

Assent date	29 October 2007
Commenced	1 January 2008 ( <i>Gaz</i> G51, 19 December 2007, p 4)

***Domestic and Family Violence Act 2007 (Act No. 34, 2007)***

Assent date	12 December 2007
Commenced	1 July 2008 ( <i>Gaz</i> G25, 25 June 2008, p 4)

***Justice Legislation Amendment Act 2008 (Act No. 2, 2008)***

Assent date	11 March 2008
Commenced	2 April 2008 ( <i>Gaz</i> G13, 2 April 2008, p 6)

***Serious Violent Offenders (Presumption Against Bail) Amendment Act 2008 (Act No. 31, 2008)***

Assent date	21 November 2008
Commenced	10 December 2008 ( <i>Gaz</i> S63, 10 December 2008)



***Serious Crime Control Act 2009 (Act No. 32, 2009)***

Assent date 11 November 2009  
Commenced 1 December 2011 (*Gaz* S69, 1 December 2011)

***Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)***

Assent date 20 May 2010  
Commenced 1 July 2010 (*Gaz* G24, 16 June 2010, p 2)

***Bail Amendment Act 2011 (Act No. 8, 2011)***

Assent date 18 April 2011  
Commenced 16 May 2011 (*Gaz* S19, 4 May 2011)

***Justice (Corrections) and Other Legislation Amendment Act 2011 (Act No. 24, 2011)***

Assent date 31 August 2011  
Commenced ss 3, 9 to 11, 15 to 17, 19, 20, 24, 33, 42, schs 1 and 2, sch 4 pt 1 and sch 5: 31 August 2011 (s 2); rem: 27 February 2012 (*Gaz* S9, 21 February 2012)

***Justice and Other Legislation Amendment Act 2011 (Act No. 25, 2011)***

Assent date 31 August 2011  
Commenced 21 September 2011 (*Gaz* G38, 21 September 2011, p 5)

***Statute Law Revision Act 2011 (Act No. 30, 2011)***

Assent date 31 August 2011  
Commenced 21 September 2011 (*Gaz* G38, 21 September 2011, p 5)

***Criminal Justice Legislation Amendment Act 2011 (Act No. 32, 2011)***

Assent date 15 November 2011  
Commenced 15 February 2012 (*Gaz* G7, 15 February 2012, p 6)

**3 LIST OF AMENDMENTS**

pt I hdg	amd No. 24, 2011, s 10; No. 30, 2011, s 3
s 3	amd No. 33, 1990, s 9; No. 74, 1993, s 4; No. 10, 1994, s 4; No. 17, 1996, s 6; No. 9, 1998, s 4; No. 92, 1998, s 4; No. 19, 2000, s 3; No. 34, 2005, s 3; No. 33, 2005, s 5; No. 36, 2006, s 9; No. 23, 2007, s 4; No. 2, 2008, s 4; No. 8, 2011, s 4; No. 24, 2011, s 10; No. 25, 2011, s 4; No. 30, 2011, s 3; No. 24, 2011, s 4
s 3A	ins No. 23, 2007, s 5; No. 24, 2011, s 4
s 4	amd No. 17, 2000, s 6; No. 30, 2011, s 3
pt II hdg	amd No. 24, 2011, s 10
s 6	amd No. 59, 1983, s 4; No. 17, 1996, s 6; No. 30, 2011, s 3
s 7	amd No. 9, 1998, s 5; No. 30, 2011, s 3
pt II	
div 1A hdg	ins No. 10, 1994, s 5
s 7A	ins No. 10, 1994, s 5 amd No. 32, 1996, s 3; No. 34, 2005, s 4; No. 44, 2005, s 24; No. 23, 2007, s 6; No. 31, 2008, s 4; No. 25, 2011, s 21; No. 30, 2011, s 3; No. 32, 2009, s 88
s 8	amd No. 10, 1994, s 6; No. 14, 1995, s 12; No. 17, 1996, s 6; No. 34, 2005, s 5; No. 34, 2007, s 146; No. 30, 2011, s 3; No. 32, 2011, s 4
s 9	amd No. 30, 2011, s 3
s 10	amd No. 9, 1998, s 6; No. 30, 2011, s 3
s 11	amd No. 30, 2011, s 3
ss 13 – 14	amd No. 30, 2011, s 3
s 15	amd No. 58, 1983, s 3; No. 59, 1983, s 5; No. 3, 2001, s 2; No. 30, 2011, s 3
pt III hdg	amd No. 24, 2011, s 10

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s 16	amd No. 11, 1988, s 2; No. 30, 2011, s 3
s 17	amd No. 24, 2011, s 3
s 18	amd No. 33, 1990, s 9; No. 30, 2011, s 3
pt IV hdg	amd No. 24, 2011, s 10
s 19	amd No. 30, 2011, s 3
s 20	amd No. 19, 1999, s 2; No. 30, 2011, s 3
ss 21 – 22	amd No. 30, 2011, s 3
s 23	amd No. 2, 2008, s 5; No. 30, 2011, s 3
s 23A	ins No. 10, 1994, s 7 amd No. 14, 1995, s 12; No. 30, 2011, s 3
pt V hdg	amd No. 24, 2011, s 10
s 24	amd No. 28, 1984, s 3; No. 8, 1989, s 3; No. 50, 1994, s 16; No. 9, 1998, s 7; No. 33, 2005, s 5; No. 23, 2007, s 7; No. 30, 2011, s 3
s 25	amd No. 29, 1990, s 7; No. 30, 2011, s 3
s 26	amd No. 30, 2011, s 3
s 27	amd No. 74, 1993, s 5; No. 9, 1998, s 8; No. 36, 2006, s 10; No. 4, 2007, s 7; No. 23, 2007, s 8; No. 12, 2010, s 3; No. 30, 2011, s 3; No. 24, 2011, s 5
s 27A	ins No. 36, 2006, s 11 sub No. 23, 2007, s 9 amd No. 24, 2011, ss 6 and 10
s 27B	ins No. 24, 2011, s 7
s 28	sub No. 23, 2007, s 9 amd No. 24, 2011, s 8
s 29	amd No. 36, 2006, s 12; No. 23, 2007, s 10; No. 30, 2011, s 3
ss 30 – 31	amd No. 30, 2011, s 3
pt VI hdg	amd No. 24, 2011, s 10
s 33	amd No. 30, 2011, s 3; No. 32, 2011, s 5
s 34	amd No. 30, 2011, s 3; No. 32, 2011, s 6
s 36	amd No. 29, 1990, s 7; No. 34, 2005, s 6; No. 30, 2011, s 3
s 36A	ins No. 34, 2005, s 7
s 37	amd No. 34, 2005, s 8; No. 30, 2011, s 3
pt VII hdg	amd No. 24, 2011, s 10
ss 37A – 37D	ins No. 8, 2011, s 5
s 38	amd No. 9, 1998, s 9; No. 31, 2008, s 5; No. 30, 2011, s 3
s 39	amd No. 30, 2011, s 3
s 40	amd No. 59, 1983, s 6; No. 27, 1999, s 3; No. 29, 2001, s 2; No. 60, 2001, s 3; No. 30, 2011, s 3
s 41	amd No. 30, 2011, s 3
pt VIII hdg	amd No. 24, 2011, s 10; No. 30, 2011, s 3
s 42	amd No. 30, 2011, s 3
ss 44 – 45	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 46	amd No. 30, 2011, s 3
s 47	amd No. 29, 1990, s 7; No. 30, 2011, s 3
s 48	amd No. 30, 2011, s 3
s 52	amd No. 30, 2011, s 3
s 52A	ins No. 12, 2002, s 3 amd No. 30, 2011, s 3
s 53	amd No. 30, 2011, s 3; No. 24, 2011, s 9
pt IX hdg	ins No. 34, 2005, s 9 amd No. 24, 2011, s 10
s 54	ins No. 34, 2005, s 9