

NORTHERN TERRITORY OF AUSTRALIA

BAIL ACT
No. 57 of 1982
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NORTHERN TERRITORY OF AUSTRALIA

No. 57 of 1982

AN ACT

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

[Assented to 8 October 1982]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Bail Act 1982*.

2. COMMENCEMENT

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

3. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"appeal" means an appeal made under -

- (a) Division 2 of Part VI of the *Justices Act*;
- (b) section 42(2) of the *Child Welfare Act*;
- (c) section 10 of the *Parole of Prisoners Act*;
or
- (d) Part III of the *Supreme Court Act*;

"authorized member", in relation to a person in custody, means a member of the Police Force who may, under Part III, grant bail to the person;

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"bail" means authorization under this Act to be at liberty instead of in custody;

"bail condition" means a condition imposed under section 27;

"bail undertaking" means an undertaking given under section 25;

"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*;

(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;

(b) the Court of Summary Jurisdiction; or

(c) the Children's Court,

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

"Judge" means a Judge of the Supreme Court;

"justice" means a Justice of the Peace, but does not include a member of the Police Force, a magistrate or a Judge;

"magistrate" has the same meaning as Magistrate in the *Magistrates Act*;

"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;

"Supreme Court" 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 -

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- (a) a person charged with, convicted of or found guilty of an offence;
 - (b) a person in respect of whom an appeal is pending;
 - (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;
 - (d) a person committed under section 6(2A) or (6), 15(4) or 25(4) of the *Criminal Law (Conditional Release of Offenders) 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;
 - (b) section 27(2)(b) - to making and signing the acknowledgement;
 - (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,

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.

(5) A reference in this Act to a prison includes, in the case of a child within the meaning of the *Child Welfare Act*, a reference to an institution within the meaning of that Act.

4. APPLICATION OF ACT

(1) This Act applies to a person whether or not he has attained the age of 17 years.

(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

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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 sub-section (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 sub-section 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 sub-section (1) or (2).

PART II - 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 his being charged with the offence and his first appearance before a court in or in connection with proceedings for the offence;
- (b) the period between committal for trial or sentence and his 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;
 - (ii) any adjournment or adjournments after the accused pleads, or is found, guilty but before he is sentenced; and

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- (iii) any period deemed under section 15 to be the period of an adjournment;
- (d) the period between the institution of an appeal and its determination;
- (e) the period between the determination of an appeal and -
 - (i) his appearance before a court to abide the result of the determination of the appeal; or
 - (ii) his 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 a person under section 6(2A) or (6), 15(4) or 25(4) of the *Criminal Law (Conditional Release of Offenders) Act* to appear before, or be dealt with by, a court and his appearance in accordance with that committal; and
- (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) he enters into the bail undertaking; and
 - (c) if a bail condition or bail conditions are imposed, it or they are entered into,

he is, subject to this Act, entitled to be released (if in custody) and to remain at liberty in respect of the offence, until he is required to appear before a court in accordance with his undertaking.

(2) Nothing in this section applies to an accused person while he is in custody also for some other offence or reason, in respect of which he is not entitled to be at liberty, whether under this Act or otherwise.

Division 2 - Presumption in Favour of Bail

8. PRESUMPTION IN FAVOUR OF BAIL FOR CERTAIN OFFENCES

(1) This section applies to all offences except murder and treason.

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

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- (a) an authorized member or court is satisfied that he or it is, pursuant to a consideration of the matters referred to in section 24, justified in refusing bail;
 - (b) the person stands convicted of the offence; or
 - (c) the requirement for bail is dispensed with under section 9.
- (3) Subject to sub-section (4), a person is entitled under this section to be granted bail in respect of an offence to which this section applies, notwithstanding that he is in custody also for some other offence or reason, in respect of which he 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 authorized 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.

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 shall be deemed to have dispensed with the requirement for bail.

10. EFFECT OF DISPENSING WITH BAIL

(1) While the requirement for bail is or is deemed to be dispensed with under this Act in respect of a person accused of an offence, he is entitled to be and to remain at liberty in respect of the offence until he is required to appear before a court in respect of the offence.

(2) Nothing in this section applies to an accused person while he is in custody also for some other offence or reason, in respect of which he is not entitled to be at liberty, whether under this Act or otherwise.

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11. DECISION TO DISPENSE WITH BAIL

For the purposes of Part VI, 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 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 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.

14. GRANT OF BAIL WHEN NOT IN CUSTODY

(1) An accused person may be granted or refused bail in accordance with this Act, notwithstanding 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 the purposes of section 6(c)(ii), the following periods shall be deemed to be the period of an adjournment:

- (a) the period between the making of an order under section 19 or 20 of the *Indictments Act* for a separate trial, or for the postponement of a trial respectively, and the commencement of the separate or postponed trial;
- (b) the period between the appearance of an accused person before the Supreme Court in pursuance of a summons or warrant issued under section 14(2) of the *Criminal Law and Procedure Act*, and the date fixed under section 14(3) of that Act for his trial; and
- (c) 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.

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PART III - POLICE BAIL

16. AUTHORITY FOR POLICE TO GRANT BAIL

(1) A member of the Police Force who arrests or charges a person with an offence shall, if it is practicable for the person to be brought before a magistrate or a justice forthwith after he is charged, bring the person, or cause the person to be brought, before a magistrate or a justice forthwith to be dealt with according to law.

(2) Where a member of the Police Force who charges a person with an offence is unable to comply with sub-section (1), the member shall -

- (a) inform the person charged of his 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 any other person of his choosing in connection with an application for bail.

(3) An authorized member shall, as soon as practicable after a person becomes entitled to apply for bail, determine whether bail should be granted under this Act.

(4) The member referred to in sub-clause (2) may refrain from complying with sub-section (2)(b) if he 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 member of the Police Force who holds the rank of Sergeant or higher rank or any other member of the Police Force 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 authorized member considering whether to grant bail to the person shall decide, at the same time, whether to grant, or refuse to grant, bail to the person in respect of all the charges;
- (b) an application may be made for bail in respect of all the charges, but not otherwise; and

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- (c) any bail that is granted to the person shall be granted in respect of all the charges and separate undertakings shall not be required in respect of each charge.

18. BAIL REGISTER

An authorized member shall, upon granting bail to a person, enter into a book, to be kept for that purpose in every police station, the name, residence and occupation of the person and of a person who, pursuant to Division 3 of Part V 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 shall arrange to lay any undertaking, acknowledgement or agreement relating to the bail before a court before which the person is required to appear.

PART IV - 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 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 sub-sections (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

Subject to section 21, a magistrate or justice may, at any time -

- (a) grant bail to a person brought or appearing before him 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 Division 2 of Part VI of the *Justices Act*.

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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 after that person has appeared before the Supreme Court -

(a) following his committal for trial or sentence;
or

(b) following his being brought up by a writ of habeas corpus, as referred to in section 15(c),

in connection with the offence.

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 shall, 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

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

PART V - 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 authorized member or a court shall 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 his residence, employment and family situations and, if known, his prior criminal record;

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- (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;
 - (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 he would be held in custody;
 - (ii) the needs of the person to be free to prepare for his 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 sub-paragraph (ii); and
 - (iv) whether or not the person is, in the opinion of the authorized 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; and
- (c) the protection and welfare of the community, having regard only to -
- (i) 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;
 - (ii) the likelihood of the person interfering with evidence, witnesses or jurors;
 - (iii) the likelihood that the person will or will not commit an offence while at liberty on bail; and

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- (iv) where the offence is alleged to have been committed against or in respect of a child within the meaning of the *Child Welfare Act*, the likelihood of injury or danger being caused to the child.

(2) For the purposes of this section, the authorized member or court may take into account any evidence or information which the authorized member or court considers credible or trustworthy in the circumstances, including hearsay evidence.

Division 2 - Bail Undertakings

25. BAIL UNDERTAKINGS

(1) A person shall not be released on bail unless he 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) Notwithstanding sub-section (1), a person who is to appear before the Supreme Court may be released on bail if he 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 him or the legal practitioner representing him by the Attorney-General or a person authorized by the Attorney-General 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 his bail undertaking.

26. PERSONS TO WHOM BAIL UNDERTAKING MAY BE GIVEN

A bail undertaking may be given to -

- (a) a court;
- (b) an authorized member;
- (c) a clerk of the Court of Summary Jurisdiction;
- (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*.

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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 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 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);
- (b) that one or more than one acceptable person, other than the accused person, acknowledge that he is acquainted with the accused person and that he regards the accused person as a responsible person who is likely to comply with his 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 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 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 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 bail undertaking;
- (g) that the accused person deposit with an authorized 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 his bail undertaking; or

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- (h) that one or more than one acceptable person, other than the accused person, deposit with an authorized 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 his bail undertaking.

(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 sub-section (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 sub-section (2)(e) or (f),

shall be made by -

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

(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 he is acquainted with the accused person.

(5) An agreement or acknowledgement under this section shall 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.

28. RESTRICTIONS ON IMPOSING BAIL CONDITIONS

(1) Bail shall be granted unconditionally unless the authorized member or the court granting it is of the opinion that one or more conditions should be imposed for the purpose of promoting effective law enforcement and the protection and welfare of the community.

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(2) Conditions shall not be imposed on the grant of bail that are more onerous for the accused person than the nature of the offence and the circumstances of the accused person appear to the authorized member or the court to require.

(3) A condition referred to in section 27(2)(b) to (h) inclusive shall not be imposed on the grant of bail unless the authorized member or the court is of the opinion that a condition or combination of conditions referred to in a preceeding paragraph or paragraphs of section 27(2) is or are not likely to secure the purpose referred to in sub-section (1) of this section.

(4) Notwithstanding sub-section (3), the authorized member or the court may, at the request of the accused person, grant bail subject to any conditions referred to in section 27(2) appropriate to secure the purpose referred to in sub-section (1) of this section.

29. ENTRY INTO AGREEMENT

Except as prescribed by the Regulations, where an authorized 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;
- (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 court or person to whom the bail undertaking is given.

30. PROVISIONS RELATING TO MONEY OR SECURITY

(1) A receipt shall 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 shall, 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 his 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

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his bail undertaking, then an amount equal to the security or the amount of money shall 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), he may, subject to sub-section (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 authorized member - to the court of appearance,

to discharge the applicant from his liability.

(2) On an application being made under sub-section (1), a Judge, justice or magistrate shall, if the accused person is not then in custody or before the court -

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

(b) issue a summons for his 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 his liability, and the applicant is, upon the direction being given, thereby discharged accordingly.

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

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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 VI - REVIEW OF BAIL DECISIONS

Division 1 - Police Bail

33. REVIEW

(1) An authorized member shall 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;

(b) the person charged is aware of his right to apply to a magistrate or justice for a review of that determination in the circumstances mentioned in sub-section (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 authorized member may refrain from complying with sub-section (1)(c) if he 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) Where an authorized member -

(a) refuses to grant bail to the person charged;

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- (b) fails to determine whether or not to grant bail to that person within a period of 4 hours after the person was charged with an offence; or
- (c) determines to grant bail to the person subject to conditions (other than a bail undertaking) which the person is unable or unwilling to comply with, or which the person is unable or unwilling to arrange for another person to comply with,

the person charged may apply to a magistrate or justice for a review of the determination, or for a grant of bail by the magistrate or justice where there has been a failure by the authorized member to grant bail, as the case may be.

(4) Where the person charged indicates to a member of the Police Force that he wishes to make an application under sub-section (3), the member shall, 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 shall arrange for the person to make an application to a magistrate or justice by telephone, telex, radio or similar facility.

(5) Where a person makes an application under this section to a magistrate or a justice, the magistrate or justice may, subject to this Act, after affording -

- (a) the applicant or a legal practitioner representing him; and
- (b) the authorized member concerned,

an opportunity to make submissions, in his discretion grant or refuse to grant the person bail, or may review any conditions of bail granted by an authorized member, and may make such other orders as he thinks fit.

Division 2 - Court Bail

34. REVIEW OF BAIL DECISION

Except as prescribed by the Regulations -

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

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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 this Division to review a bail decision -

(a) may only be exercised at the request of the accused person, the informant or complainant, being a member of the Police Force, or the Attorney-General; and

(b) includes the power to affirm or vary the decision or to substitute another decision.

(2) A decision as varied or substituted under sub-section (1) shall 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 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 he gives the undertaking or enters into the condition, as the case may be.

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(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;
- (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 his representative as if he or his representative were present.

37. APPLICATIONS FOR BAIL NOT LIMITED BY THIS PART

Nothing in this Part limits the right of an accused person in custody to apply for bail, and he may so apply for bail notwithstanding that the power to review a decision already made in relation to the grant of bail to him has not been, or has not been sought to be, exercised under this Part.

PART VII - NON-COMPLIANCE WITH UNDERTAKING, OR CONDITIONS

38. ARREST FOR ABSCONDING OR BREACH OF CONDITION

(1) Where a member of the Police Force 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, his bail undertaking or an agreement entered into by him pursuant to a bail condition -

- (a) a police officer may arrest the person without warrant and take him as soon as practicable before a court; or
- (b) a magistrate or justice may -
 - (i) issue a warrant to apprehend the person and bring him before a court; or
 - (ii) issue a summons for his appearance before a court.

(2) The court before which the person is brought or appears may -

- (a) release him on his original bail; or

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- (b) revoke his original bail and otherwise deal with him according to law.

(3) If the court revokes the person's original bail, the court or any other court before which he is brought or appears -

- (a) may grant bail to him in accordance with this Act; or

- (b) may, notwithstanding anything in this Act, refuse to grant bail to him and by warrant commit him 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 his bail undertaking, the court may issue a warrant to apprehend the person and bring him before the court.

40. ENFORCEMENT OF BAIL UNDERTAKINGS, &c.

- (1) Where -

- (a) an accused person fails to comply with his bail undertaking; and

- (b) he 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 his bail undertaking may order that the amount referred to in paragraph (b) be forfeited and paid to the Territory.

(2) Notwithstanding section 4(1) of the *Claims by and against the Government Act*, where 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 sub-section (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.

(3) A court shall endorse or cause to be endorsed on the bail undertaking of an accused person particulars of every order made under sub-section (1) or (2).

(4) Where an order is made under sub-section (1), it may be enforced under Division 6 of Part IV of the *Justices Act* or under the *Criminal Law Consolidation Act*.

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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 referred to in section 40(1)(b) shall 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 referred to in section 40(1)(b) shall 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 shall not affect the validity of anything done to enforce the order under section 40(1) before making the first-mentioned order.

PART VIII - MISCELLANEOUS

42. NOTICES

(1) The court or person 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 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 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.

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(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 shall 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 referred to in sub-sections (1) to (3), give or cause to be given to a person not referred to in those sub-sections, 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.

Penalty: \$2,000 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 he wilfully makes the acknowledgement knowing it to be untrue in a material particular he is guilty of an offence under sub-section (1).

(3) Failure to give a warning in accordance with sub-section (2) does not affect the operation of sub-section (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.

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(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, he and the other person are each guilty of an offence against this section.

Penalty: \$3,000 or imprisonment for 3 years.

(3) An offence is committed against this section -

(a) in relation to an agreement referred to in sub-section (2) - whether the agreement is made before or after the person to be indemnified becomes an agreeing party and whether or not he 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 authorized 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 authorized 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 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 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 certifying that a specified bail condition -

(i) has not been altered or varied under this Act; or

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- (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 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 shall be prima facie evidence of the making of the acknowledgement and of its terms.

(2) For the purposes of sub-section (1), an appropriate officer is -

- (a) in the case of police bail - an authorized 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 Attorney-General or a person authorized by him 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 him, 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 shall be prima facie evidence of the matters so certified.
- (4) In any document -
- (a) the words "authorized member" after a signature shall be evidence that the person whose signature it purports to be is in fact an authorized member within the meaning of this Act;

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- (b) the words "appropriate officer" after a signature shall be 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 "authorized by the Attorney-General" after a signature shall be evidence that the person whose signature it purports to be has in fact been authorized by the Attorney-General 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, by virtue of his 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) Sub-section (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 sub-section (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.

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52. CONTRAVENTION OF ACT BY AUTHORIZED MEMBER

(1) Where an authorized member contravenes or fails to comply with a provision of this Act that is applicable to him, 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 member of the Police Force from -

- (a) being dealt with under the *Police Administration Act*; or
- (b) constituting grounds for civil proceedings.

53. REGULATIONS

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Regulations may make provision for or in relation to -

- (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; and
- (f) the forms to be used for the purposes of this Act.

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(3) The Regulations may provide, in respect of an offence against the Regulations, for the imposition of a fine not exceeding \$500.
