

1991
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Bail Bill 1991

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1991
THE LEGISLATIVE ASSEMBLY
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(As presented)

(Attorney-General)

Bail Bill 1991

**A BILL
FOR**

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

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Bail Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“appeal” includes an application for leave to appeal and a proceeding by way of an appeal;

5 “authorised officer” means the Commissioner of Police, a Deputy Commissioner of Police of the Australian Federal Police or a police officer specified by one of those officers, in writing, as an authorised officer for the purposes of this Act;

10 “bail” means authorisation granted to a person under this Act to be at liberty;

“bail condition” means a condition on which bail is granted;

“bail undertaking” means an undertaking given to satisfy the requirements of a bail condition;

“child” means a person who has not attained the age of 18 years;

15 “clerk”, in relation to a court, includes the Registrar and Deputy Registrar (if any) of the court;

“court” means the Supreme Court or the Magistrates Court;

“Crimes Act” means the Crimes Act, 1900 of the State of New South Wales in its application in the Territory;

20 “domestic violence offence” means an offence that is—

(a) a domestic violence offence within the meaning of the *Domestic Violence Act 1986*; or

(b) an offence against section 27 of that Act;

“judge” means a judge of the Supreme Court;

25 “offence” includes an alleged offence;

“remand centre” has the same meaning as in the *Remand Centres Act 1976*;

“undertaking to appear” means an undertaking given pursuant to subsection 28 (1).

30 (2) A reference in this Act to an accused person, or a person accused of an offence, includes a reference to—

(a) a person charged with, convicted of, or found guilty of an offence;

(b) a person whose conviction for an offence is stayed;

- (c) a person discharged under section 556A of the Crimes Act on giving security in accordance with subsection (1) of that section;
- (d) a person in respect of whom an appeal relating to an offence is pending; and
- 5 (e) a person in respect of whom a new trial has been ordered to be held for an offence.

(3) A reference in this Act to entering into a bail condition includes a reference to—

- 10 (a) in the case of a condition referred to in paragraph 25 (1) (a) or (c)—to entering into the undertaking or agreement;
- (b) in the case of a condition referred to in paragraph 25 (1) (b)—to making and signing the acknowledgment;
- (c) in the case of a condition referred to in paragraph 25 (1) (d)—to entering into the agreement and giving the security; or
- 15 (d) in the case of a condition referred to in paragraph 25 (1) (e)—to entering into the agreement and depositing the amount of money;

in accordance with the condition.

(4) A reference in this Act (other than in section 22 or 23) to the granting of bail includes a reference to the continuation of bail.

- 20 (5) A reference in this Act to a surety shall be read as a reference to a person, other than the accused person, who has entered into a bail condition referred to in paragraph 25 (1) (c), (d) or (e) in relation to a grant of bail.

Application

- 25 4. (1) This Act applies to a person whether or not he or she has attained the age of 18 years.

- 30 (2) This Act applies in relation to a person who has been committed to prison pursuant to an order for commitment made by the Magistrates Court under Division 5 of Part IX of the *Magistrates Court Act 1930* and who has appealed against that order as if a reference in this Part to an accused person or a person accused of an offence were a reference to a person who has been so committed and has so appealed.

PART II—AVAILABILITY OF BAIL

Availability of bail

5 5. (1) Subject to subsection (2) and section 9, an accused person may be granted bail in respect of any period during which he or she is not required to attend court in relation to the offence with which he or she has been charged.

(2) A person who has been accused of an offence and is being held in custody in relation to the offence is not entitled to be granted bail in respect of any period during which—

- 10 (a) he or she is in custody for some other offence or reason in respect of which he or she is not entitled to be granted bail; or
- (b) he or she is in custody serving a sentence of imprisonment.

Rights following grant of bail

6. Where—

- 15 (a) bail is granted to an accused person in respect of an offence;
- (b) he or she gives an undertaking to appear; and
- (c) if a bail condition is imposed, it is entered into;

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

Bail for minor offences

7. (1) This section applies to—

- (a) all offences not punishable by a sentence of imprisonment (except in default of payment of a fine); and
- 25 (b) all offences punishable by a term of imprisonment not exceeding 6 months.

30 (2) Subject to subsection (3), a person charged with an offence to which this section applies is entitled to be granted bail without any condition and, if the person is in custody, he or she shall be released from custody as soon as he or she has given an undertaking to appear.

(3) Subsection (2) does not apply to—

- (a) an accused person who has previously failed to comply with—
- (i) an undertaking to appear;
- (ii) a bail condition; or

(iii) a bail undertaking;

given or imposed in relation to an offence;

(b) an accused person who is, in the opinion of the court or authorised officer, incapacitated by intoxication, injury or use of drugs or is otherwise in danger of physical injury or in need of physical protection;

(c) an accused person who is in custody serving a sentence of imprisonment; or

(d) an accused person in respect of whom the requirement for bail is dispensed with under section 10.

Bail for offences other than minor offences

8. (1) This section applies to all offences other than those referred to in subsection 7 (1).

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

(a) the court or authorised officer believes on reasonable grounds that the person will—

(i) fail to appear in court in respect of the offence if admitted to bail;

(ii) interfere with evidence, intimidate witnesses or otherwise obstruct the course of justice, whether in relation to himself or herself or any other person;

(iii) hinder police inquiries;

(iv) harass a prescribed person; or

(v) commit an offence while released on bail; or

(b) the court or authorised officer is satisfied that the person should remain in custody for his or her own physical protection, whether the need arises because the person is incapacitated by intoxication, injury or the use of drugs or arises from any other cause.

Bail in respect of persons sentenced to imprisonment

9. Notwithstanding anything contained in any other section in this Act, where—

(a) a person has been convicted of an offence by a court and sentenced to a period of imprisonment in respect of that offence; and

(b) an appeal is pending in the Supreme Court, the Federal Court or the High Court against the conviction or the sentence;

a court shall not grant bail to that person unless it is established that special or exceptional circumstances exist justifying the grant of bail.

PART III—DISPENSING WITH BAIL

Dispensing with bail

- 5 10. (1) A court that may grant bail to an accused person may instead dispense with the requirement for bail.

(2) In determining whether to release an accused person from custody without requiring bail, a court may have regard to any information which appears to the court to be relevant and reliable.

10 Effect of dispensing with bail

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

- 15 (2) Subsection (1) does not apply to an accused person while he or she is in custody for another offence or reason in respect of which he or she is not entitled to be at liberty, whether under this Act or otherwise.

Decision to dispense with bail

- 20 12. For the purposes of Part VI, where a court dispenses with the requirement for bail, the court shall be deemed to have made a decision in relation to bail.

PART IV—GRANT OF BAIL

Determination of bail after charge laid

13. (1) Where—

- 25 (a) a person who has been taken into custody by a police officer is charged with an offence; and
(b) the person is not to be brought before a court forthwith after being so charged;

the police officer who charges the person—

- 30 (c) shall inform the person, or cause the person to be informed, that he or she may—
 (i) apply for bail;
 (ii) communicate with a legal practitioner of his or her choice in connection with the making of an application for bail;

(iii) if he or she cannot speak or understand the English language—have recourse to the services of a competent interpreter, and

(iv) communicate with any other person of his or her choice, being a person who may reasonably be expected to assist him or her in connection with the provision of bail;

and, if the person asks for facilities to do so, shall provide the person with reasonable facilities to enable the person to communicate with a legal practitioner, such an interpreter or such other person;

(d) shall inform the person, or cause the person to be informed of—

(i) the matters specified in whichever of sections 22 and 23 would apply to the making of a determination regarding the granting of bail to the person; and

(ii) the conditions subject to which the person may be released on bail; and

(e) if the person applies for bail—

(i) where the police officer is authorised to admit the person to bail—shall consider whether the person should be admitted to bail; or

(ii) in any other case—shall bring the person before an authorised officer.

(2) Where a person is brought before an authorised officer pursuant to subparagraph (1) (e) (ii), the authorised officer shall consider whether the person should be admitted to bail.

(3) Where, before subsection (1) has been fully complied with in respect of an accused person, an authorised officer is satisfied that it is appropriate to release the person on bail subject only to the person giving an undertaking to appear, the authorised officer may so release the person.

(4) A police officer who charges a person may refrain from complying with subparagraph (1) (c) (ii), (iii) or (iv) if he or she 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 falsification of evidence relating to the offence.

(5) Where a police officer who charges a person refrains from complying with subparagraph (1) (c) (ii), (iii) or (iv) for a reason specified in subsection (4), he or she shall record, or cause to be recorded, his or her reasons for not so complying.

Grant of bail by authorised officers

14. (1) Subject to subsection (2), an authorised officer may grant bail in accordance with this Act to an accused person who is present at a police station.

5 (2) An authorised officer may not grant bail to a person accused of an offence if—

- (a) a determination concerning bail has been made by a court; or
- (b) the offence with which the accused person has been charged is a domestic violence offence of murder or attempted murder.

10 **Determination of questions of bail by authorised officers**

15. (1) An authorised officer who is required to consider whether to admit an accused person to bail shall as soon as reasonably practicable—

(a) afford—

15 (i) the accused person or a legal practitioner representing the accused person; and

(ii) any police officer involved in the investigation of the offence with which the accused person is charged;

20 an opportunity to make submissions to the authorised officer concerning the conditions to which any grant of bail to the accused person should be made subject; and

25 (b) having regard to those submissions, to the matters specified in whichever of sections 22 and 23 applies to the making of a determination regarding the granting of bail to the accused person and to any other available information that the authorised officer considers relevant and reliable, determine whether the person should be admitted to bail.

30 (2) Where the authorised officer is satisfied, having regard to the matters specified in whichever of sections 22 and 23 applies to the making of a determination regarding the granting of bail to the accused person, that—

(a) it is appropriate to release the person upon the person giving an undertaking to appear; and

(b) it is not necessary to impose a bail condition;

35 the authorised officer shall release the person upon the person giving that undertaking.

(3) Where the authorised officer is satisfied, having regard to the matters specified in whichever of sections 22 and 23 applies to the making of a determination regarding the granting of bail to the accused person, that

it is not appropriate to admit the accused person to bail without imposing a condition, the authorised officer shall, having regard to—

- (a) the conditions that may be imposed in admitting a person to bail; and
- 5 (b) the extent to which the imposition of 1 or more bail conditions would be appropriate having regard to the matters specified in whichever of sections 22 and 23 applies to the making of a determination regarding the granting of bail to the accused person;

determine whether to admit the accused person to bail.

10 **Notification of decision of authorised officer**

16. (1) Where an authorised officer decides—

- (a) to refuse to admit an accused person to bail; or
- (b) to admit an accused person to bail subject to 1 or more bail conditions;
- 15 the authorised officer shall inform the accused person—
 - (c) of his or her decision;
 - (d) where bail is refused—that the person is entitled to communicate with a legal practitioner; and
 - 20 (e) where the person would be admitted to bail subject to 1 or more bail conditions and that bail condition, or those bail conditions, are such that the person is unable or unwilling to comply, or to arrange for compliance, with them—that the person is entitled to communicate with a legal practitioner.

25 (2) An authorised officer shall, upon being requested to do so by an accused person in respect of whom he or she has made a decision of the kind referred to in paragraph (1) (a) or (b), provide the person with reasonable facilities to communicate with a legal practitioner.

(3) An authorised officer who considers whether an accused person should be admitted to bail in respect of a domestic violence offence shall—

- 30 (a) where he or she decides to admit the person to bail—take all reasonable steps to inform, as soon as practicable—
 - (i) if a child of the accused person was a person against whom it is alleged that the conduct which constituted the offence was directed—the person who has the care and control of the child; and
 - 35 (ii) if any other person was a person against whom it is alleged that the conduct which constituted the offence was directed—that other person;

of the decision and, where the accused person is admitted to bail subject to 1 or more bail conditions, of that condition or those conditions; or

(b) where he or she decides not to admit the person to bail—

5 (i) if a child of the accused person was a person against whom it is alleged that the conduct which constituted the offence was directed—inform the person who has the care and control of the child of the decision; and

10 (ii) if any other person was a person against whom it is alleged that the conduct which constituted the offence was directed—inform that other person of the decision.

(4) In this section—

“child” has the same meaning as in the *Domestic Violence Act 1986*.

Charged persons in custody to be brought before court

15 17. An accused person who—

(a) has been taken into custody and charged with an offence; and

(b) is refused bail by an authorised officer or is not released on bail granted by an authorised officer;

20 shall be brought before a court as soon as practicable after he or she has been taken into custody and, in any case, within 48 hours after having been taken into custody.

Facilities to be provided to accused persons

25 18. (1) Where an accused person in police custody is to be brought, for the first time in relation to the offence, before a court more than 4 hours after he or she came into custody—

(a) the police officer for the time being in charge of the police station at which the person is in custody; or

(b) if the person is not in custody at a police station, the police officer who has custody of the person;

30 shall, if it is reasonably practicable to do so, cause the person to be provided with, and allowed to use—

(c) facilities to enable the accused person to wash, shower or bathe and (if appropriate) to shave; and

35 (d) facilities to enable the accused person to change his or her clothing.

- 5 (2) Nothing in subsection (1) requires a police officer, the Territory or the Commonwealth to provide clothing for the accused person unless the clothing is brought to the police station or other place at which the accused person is in custody by a member of the accused person's family or some other person.

General provisions relating to court bail

19. (1) Subject to section 20, a court may—
- 10 (a) grant bail to an accused person who is being held in custody in connection with the offence with which he or she has been charged; or
- (b) enlarge, vary or revoke bail granted to an accused person.
- (2) There is no limit to the number of applications in relation to bail that may be made to a court by a person accused of an offence.
- 15 (3) All applications to a court in relation to bail shall be dealt with as soon as is reasonably practicable.
- (4) Notwithstanding the provisions of subsections (2) and (3), a court may refuse to entertain an application in relation to bail if it is satisfied that the application is frivolous or vexatious.
- 20 (5) Where a court has made a decision in relation to an application for bail by an accused person, a court may only consider a further application for bail by the accused person if—
- (a) the accused person was not represented by a solicitor or counsel at the hearing of his or her first application to a court for bail in respect of the offence with which he or she is charged; or
- 25 (b) the accused person can show that there is fresh evidence or information of material significance to the granting of bail to the accused person that was not available to be put before the court at the time of the hearing of the immediately preceding application to a court for bail.
- 30 (6) In determining whether to admit an accused person to bail, a court may have regard to any information it considers relevant and reliable.

Limitation on power of magistrates to grant bail

20. A magistrate may not grant bail to a person under section 19 where the person has appeared before the Supreme Court—
- 35 (a) following his or her committal for trial or sentence; or
- (b) on appeal against a conviction or order or in respect of a sentence imposed on the person.

Bail in respect of several offences

21. Where an accused person has been charged with 2 or more offences for which bail may be granted and is being held in custody in relation to those offences—

- 5 (a) a court or an authorised officer shall, in considering whether to admit the accused person to bail, have regard to all the offences with which the person stands charged; and
- (b) if the court or authorised officer determines that the accused person should be admitted to bail—
- 10 (i) the accused person shall be admitted to bail in respect of all the offences with which he or she has been charged for which bail may be granted;
- (ii) the accused person need give only 1 undertaking to appear in respect of all the offences with which he or she has been charged for which bail may be granted; and
- 15 (iii) where the accused person is admitted to bail subject to conditions—the conditions shall apply in respect of each offence with which the accused person is charged for which bail may be granted.

20 Criteria for granting bail to adults

22. (1) In making a determination regarding the grant of bail to an accused person who is not a child, a court or an authorised officer shall have regard to the following matters, so far as they are ascertainable, and only to the following matters:

- 25 (a) the probability of the person appearing in court in respect of the offence for which bail is being considered, having regard only to—
- (i) the background and community ties of the person, having regard to the nature of his or her home environment and employment and to his or her criminal record; and
- 30 (ii) the circumstances in which the offence is alleged to have been committed, the nature and seriousness of the alleged offence, the strength of the evidence against the person and any other information relevant to the likelihood of the person absconding;
- 35 (b) the interests of the person charged, having regard only to—
- (i) the period that the person may be held in custody if bail is refused and the conditions under which he or she would be held in custody;

- 5 (ii) the need of the person to be free for the purposes of preparing for his or her appearance before a court and obtaining legal advice and for other purposes; and
- (iii) the need of the person for physical protection, whether the need arises because the person is incapacitated by intoxication, injury or use of drugs or arises from other causes;
- (c) the protection of the community, having regard only to—
- 10 (i) the likelihood of the person interfering with evidence, intimidating witnesses or otherwise obstructing the course of justice whether in relation to himself or herself or any other person;
- (ii) the likelihood of the person committing an offence while released on bail; and
- 15 (iii) the likelihood of the person harassing other persons while released on bail.

20 (2) In subparagraph (1) (c) (ii) a reference to an offence shall be read as including a reference to an offence against a law in force in the Territory and a law of the Commonwealth, a State or another Territory (including an external Territory).

Criteria for granting bail to children

25 23. In making a determination regarding the grant of bail to an accused person who is a child, a court or an authorised officer shall have regard to the following matters, so far as they are ascertainable, and only to the following matters:

- (a) the matters referred to in paragraphs 22 (1) (a), (b) and (c);
- (b) the matters referred to in section 5 of the *Children's Services Act 1986*;
- 30 (c) where the determination is being made by a court and a report has been furnished to the court under section 162 of the *Children's Services Act 1986* in respect of the child—the contents of that report.

PART V—CONDITIONS OF BAIL, UNDERTAKING TO APPEAR AND BAIL UNDERTAKINGS

35 Conditions of bail

24. A court or an authorised officer may grant bail without imposing conditions or subject to bail conditions imposed—

- (a) in the case of a court—by order; or
- (b) in the case of an authorised officer—by instrument.

Conditions on which bail may be granted to adults

5 **25. (1)** The only conditions that may be imposed on a grant of bail to an accused person who is an adult are:

- (a) that the accused person undertakes, in writing, to observe specified requirements as to his or her conduct while released on bail;
- 10 (b) that an acceptable person, or each of a specified number of acceptable persons, (not being or including the accused person) acknowledges, in writing, that he or she is acquainted with the accused person and regards the accused person as a responsible person who is likely to appear in court to answer the charge;
- 15 (c) that the accused person, an acceptable person or each of a specified number of acceptable persons enters into an agreement, in writing, to pay to the Territory a specified sum if the accused person fails to appear in court in accordance with his or her undertaking to appear;
- 20 (d) that the accused person, an acceptable person or each of a specified number of acceptable persons—
 - (i) enters into an agreement, in writing, to pay to the Territory a specified sum; and
 - (ii) gives acceptable security for the payment of that sum;if the accused person fails to appear in court in accordance with his or her undertaking to appear;
- 25 (e) that the accused person, an acceptable person or each of a specified number of acceptable persons deposits with a court or an authorised officer a specified amount of money, paid either in cash or by a prescribed means of payment, and enters into an agreement, in writing, to forfeit the amount deposited if the accused person fails to appear in court in accordance with his or her undertaking to appear.
- 30

35 **(2)** Without limiting the generality of paragraph (1) (a), the requirements that an accused person may be required to observe relating to his or her conduct while released on bail include—

- (a) a requirement that the accused person report periodically, or at specified times, at a specified place;
- (b) a requirement that the accused person reside at a specified place;

- (c) a requirement that the person undergo psychiatric treatment or other medical treatment;
 - (d) a requirement that the accused person participate in a program of personal development, training or rehabilitation; and
 - 5 (e) in the case of a person charged with a domestic violence offence—
 - (i) a requirement that the accused person not harass or molest, or cause another person to harass or molest, a specified person;
 - 10 (ii) a requirement that the accused person not be in or on premises in or on which a specified person resides or works;
 - (iii) a requirement that the accused person not be in, on or near premises frequented by a specified person;
 - 15 (iv) a requirement that the accused person not be in a locality in which are situated premises in or on which a specified person resides or works;
 - (v) a requirement that the accused person not approach within a specified distance of a specified person; and
 - 20 (vi) where the accused person resides with another person—a requirement that the accused person not enter or remain in the place of residence while under the influence of liquor or a drug.
- 25 (3) A court or an authorised officer shall, in considering conditions for the release on bail of an accused person who is an adult, consider the conditions for the release of that person in the sequence in which they appear in subsection (1).
- (4) A court or an authorised officer, in granting bail to an accused person who is an adult—
- 30 (a) shall not impose a condition referred to in subsection (1) unless the court or authorised officer is of the opinion that the imposition of the condition is necessary to secure 1 or more of the following purposes:
- 35 (i) the attendance of the person before a court from time to time as required in relation to the offence in respect of which bail is being granted;
- (ii) the protection from harm or injury of the accused person or any other person;
- (iii) the prevention of the accused person from committing an offence while at liberty on bail;

- (iv) the prevention of the accused person from interfering with evidence, intimidating witnesses or otherwise obstructing the course of justice whether in relation to himself or herself or any other person; and

- 5 (b) shall not, except at the request of the accused person, impose a condition referred to in a particular paragraph of subsection (1) (other than paragraph (a)) unless the authorised officer or the court is of the opinion that there is substantial doubt that the imposition of a condition or conditions under a preceding paragraph or
10 preceding paragraphs of that subsection would secure the purposes referred to in paragraph (a) of this subsection.

- (5) A court or an authorised officer, in granting bail to an accused person on a condition referred to in paragraph (1) (d) or (e) shall not require the accused person to give an acceptable security for a specified sum, or to
15 deposit a specified sum with the court or authorised officer, where the court or authorised officer has reasonable grounds for believing that the accused person does not have the means to provide such a security or make the deposit, as the case may be.

- (6) Where a court or an authorised officer grants bail to an accused
20 person on a condition referred to in subsection (1) and the accused person satisfies the court or authorised officer that he or she is unable to comply with that condition, the court or authorised officer shall—

- (a) refuse bail; or
25 (b) grant the accused person bail subject to such other condition referred to in subsection (1) as the authorised officer or the court believes the accused person will be able to comply with and will secure the purposes referred to in paragraph (4) (a).

(7) In this section—

“premises” includes—

- 30 (a) any land;
(b) any structure, building, vehicle, vessel or place (whether built upon or not); and
(c) any part of such a structure, building, vehicle, vessel or place.

35 Conditions on which bail may be granted to children

26. (1) The conditions that may be imposed on the grant of bail to an accused person who is a child are—

- (a) the conditions referred to in subsection 25 (1) (being those conditions as amplified by subsection 25 (2)); and

- (b) any other conditions that the court or authorised officer considers appropriate having regard to the matters referred to in subsections 5 (1) and (3) of the *Children's Services Act 1986*.

5 (2) A court or an authorised officer shall, in considering the release on bail of an accused person who is a child, consider the conditions for the release of the person that are referred to in subsection 25 (1) in the sequence in which they are referred to in that subsection.

(3) A court or an authorised officer, in granting bail to an accused person who is a child—

10 (a) shall not impose a condition referred to in subsection 25 (1) unless the court or the authorised officer is of the opinion that the imposition of the condition is necessary to secure—

(i) 1 or more of the purposes specified in subparagraphs 25 (4) (a) (i), (ii), (iii) and (iv); or

15 (ii) the procurement for the child of the matters referred to in subsection 5 (1) of the *Children's Services Act 1986*; and

20 (b) shall not, except at the request of the accused person, impose a condition referred to in a particular paragraph of subsection 25 (1) (other than paragraph (a)) unless the court or authorised officer is of the opinion that there is substantial doubt whether a condition or conditions under a preceding paragraph or preceding paragraphs of that subsection would secure the purposes referred to in paragraph (a) of this subsection.

25 (4) Subsection 25 (5) applies in relation to a grant of bail under this section.

(5) Where a court or an authorised officer grants bail to an accused person who is a child on a condition referred to in subsection 25 (1) and the accused person satisfies the court or authorised officer that he or she is unable to comply with that condition, the court or authorised officer shall—

30 (a) refuse bail; or

35 (b) grant the accused person bail subject to such other conditions referred to in subsection (1) of this section as the court or authorised officer believes the accused person will be able to comply with and will secure the purposes referred to in subparagraphs (3) (a) (i) and (ii).

Recording of certain bail decisions

27. (1) Where—

- (a) a judge or magistrate hears an application by an accused person for bail, or release from custody without bail; or

- (b) an authorised officer is required to consider whether to admit an accused person to bail, or to release an accused person from custody without bail;

5 he or she shall record, or cause to be recorded, his or her reasons for his or her decision.

(2) Where a judge, a magistrate or an authorised officer decides to grant bail to an accused person subject to a condition referred to in subsection 25 (1) otherwise than in accordance with a request of an accused person that bail be granted on that condition, or on conditions that include that condition, the judge, magistrate or authorised officer shall record, or
10 cause to be recorded, his or her reasons for deciding—

- (a) that the imposition of a condition referred to in that subsection was necessary to secure the purposes of whichever of paragraphs 25 (4) (a) and 26 (3) (a) is applicable to the accused person; and
15 (b) where the condition is a condition referred to in subsection 25 (1) (other than a condition referred to in paragraph (a) of that subsection)—that the imposition of a condition under the earlier paragraph or paragraphs of that subsection would be unlikely to secure the purposes of whichever of paragraphs 25 (4) (a) and
20 26 (3) (a) is applicable to the accused person.

Undertaking to appear

28. (1) A person shall not be released on bail unless he or she undertakes, by instrument, to appear before a specified court—

- (a) at a place, date and time specified in the instrument; or
25 (b) at a place, date and time notified to him or her by a police officer.

(2) An undertaking to appear may be given in respect of more than 1 offence.

(3) An undertaking to appear may include an undertaking, if bail is continued, to appear at any time and place at which proceedings in respect of the alleged offence may be continued, whether upon adjournment or otherwise.
30

(4) Subject to section 30, an accused person who is granted bail is under a duty to appear in person before a court in accordance with his or her undertaking under subsection (1).

35 (5) An instrument under subsection (1) is an official document and is admissible in evidence in a proceeding to prove the undertaking it contains.

Bail undertakings in respect of more than 1 offence

29. A bail undertaking may be given in respect of more than 1 offence.

Accused person may be excused from attendance before court

30. (1) Where a person has given an undertaking to appear before a court pursuant to subsection 28 (1), the court may, on application made by or on behalf of that person, by order excuse the person from attendance before the court to answer the charge in respect of which bail has been granted or for any other purpose in connection with the proceedings relating to the charge.

(2) An order under subsection (1) may be made—

(a) whether or not any evidence has been given in the proceedings; and

(b) whether or not the applicant for the order is before the court or has attended before the court in connection with the proceedings.

(3) A court shall not make an order under subsection (1) unless it has been informed, by or on behalf of the applicant, that the applicant is represented by counsel or a solicitor for the purposes of the proceedings.

(4) A court may, at any time during proceedings in relation to which an order has been made in respect of a person under subsection (1), direct the informant or the Registrar or Clerk (as the case may be) of the court to serve the person in respect of whom the order has been made with a notice in writing requiring him or her to attend before the court, for the purposes of those proceedings, on such day and at such time and place as are specified by the court.

(5) A notice under subsection (4) may be served on a person by delivering a copy of the notice to him or her or by leaving a copy of the notice at his or her last known or usual place of residence or business with a person who is apparently resident or employed at that place and apparently over the age of 16 years.

(6) Service of a notice under subsection (4) in accordance with this section may be proved by the oath of the person who served it or by affidavit or otherwise.

(7) If a person on whom a notice under subsection (4) has been served does not attend before the court in accordance with the requirements of the notice, the court may issue a warrant for the arrest of the person and for bringing the person before the court at the time and place specified in the warrant.

(8) Where—

(a) a person has been discharged from custody on bail;

(b) an order is made under subsection (1) excusing the person from attendance before the court in accordance with his or her undertaking to appear; and

- (c) the person does not appear before the court at the place, date and time required by or under that undertaking;

5 the person shall not be taken to have failed to comply with a condition of his or her bail by reason only that he or she did not so attend before the court and bail continues subject to any condition other than a condition requiring the person to attend before the court.

Giving of bail undertakings and entry into bail agreements etc.

31. (1) A bail undertaking may be given to—

- 10 (a) in the case of an accused person who is in a remand centre—the superintendent of the remand centre or the officer for the time being in charge of the remand centre;
- (b) in the case of an accused person who is in gaol—the keeper of the gaol or the officer for the time being in charge of the gaol; or
- (c) in every case—
- 15 (i) a court;
- (ii) a clerk of a court; or
- (iii) an authorised officer.

20 (2) Where a court or an authorised officer imposes a bail condition that requires the entering into of an agreement, the making of an acknowledgment or the depositing of security or an amount of money, the agreement may be entered into with, the acknowledgment may be made to or the deposit may be made with—

- 25 (a) in the case of an accused person who is in a remand centre—the superintendent of the remand centre or the officer for the time being in charge of the remand centre;
- (b) in the case of an accused person who is in gaol—the keeper of the gaol or the person for the time being in charge of the gaol; or
- (c) in every case—
- 30 (i) a court;
- (ii) a clerk of a court; or
- (iii) an authorised officer.

Acceptable persons and security for bail

32. (1) The determination of—

- 35 (a) which person or persons, or class or description of persons are acceptable persons for the purposes of a condition referred to in

paragraph 25 (1) (b), (c), (d) or (e) and the number of acceptable persons required for those purposes; or

- (b) the nature and sufficiency of security that is acceptable for the purposes of a condition referred to in paragraph 25 (1) (d);

5 shall be made by—

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

- (d) in the absence of a determination by the court or authorised officer imposing the condition—the court or person to whom the undertaking to appear is given.

10 (2) A reference in paragraph 25 (1) (c), (d) or (e) to an acceptable person shall be deemed to include a reference to a person or body (whether incorporated or unincorporated) prescribed for the purposes of this subsection.

15 (3) The regulations may require an acknowledgment under paragraph 25 (1) (b) to contain such particulars, to be provided by the person making the acknowledgment, as are prescribed relating to his or her acquaintance with the accused person.

(4) A condition, agreement or acknowledgment under section 25 may be imposed, entered into or made in respect of more than 1 offence.

20 Continuation of bail and bail undertakings

25 33. (1) If a bail undertaking includes an undertaking by the accused person to appear at a place, date and time at which proceedings in respect of the offence may be continued, whether upon an adjournment or postponement of the proceedings, a court may, if the hearing of the charge is adjourned or postponed, continue the bail already granted in respect of the offence, whether or not the accused person is present in court.

(2) Where bail is continued under subsection (1), the undertaking to appear given by the accused person continues to apply except to the extent that the undertaking otherwise provides or the court otherwise orders.

30 (3) An agreement entered by a surety to satisfy the requirements of a bail condition referred to in paragraph 25 (1) (c), (d) or (e) may, with the consent of the surety, contain a provision for its extension without any further consent of the surety upon any adjournments or postponements of the hearing of the charge that are from time to time directed.

35 (4) Subsection (3) does not derogate from the right of a person offering to enter an agreement required by a bail condition referred to in paragraph 25 (1) (c), (d) or (e) to elect to be bound by an agreement which may be extended only with his or her consent given at the time of the extension and a court or an authorised officer shall not refuse to admit a

person to bail on the ground only that a person offering to enter such an agreement has so elected.

5 (5) Where a hearing of a charge against an accused person is adjourned or postponed, the place, date and time for the commencement of the sittings to which the hearing is adjourned or postponed shall be specified by the court and the court—

(a) with the consent of any surety for the grant of bail to the accused person; or

10 (b) where the bail agreement entered by any surety so provides—
without the consent of the surety;

may extend the bail of the person charged, and thereupon the person charged shall be bound to attend at that place, date and time without entering into a fresh undertaking and the surety shall be bound accordingly, or the court may make such other order as to bail and as to the commitment of the
15 person charged into custody until the bail conditions are satisfied as the court thinks fit.

(6) Where an accused person has been released on bail and the court is satisfied that the accused person is by reason of illness or accident or other sufficient cause unable to appear personally before the court on the day on
20 which he or she is required to appear, the court may, in the absence of the accused person, order him or her to be further remanded to such place, date and time as the court thinks fit and may order that the undertaking to appear given by the accused person and any undertaking given pursuant to a condition of the grant of bail be extended so as to require the appearance of
25 the accused person at every place, date and time to which the accused person is remanded or the hearing adjourned or postponed.

Written notice of conditions of bail

30 34. (1) A court or authorised officer admitting an accused person to bail shall give, or cause to be given, to the accused person a notice in writing setting out the obligations of the accused person concerning the conditions of his or her bail and the consequences of any failure by him or her to comply with those conditions and shall be satisfied before releasing the accused person, or causing the accused person to be released, that he or she will comply with the conditions.

35 (2) A court or an authorised officer admitting an accused person to bail with a surety or sureties for his or her appearance to answer the charges against him or her shall give, or cause to be given, to the surety or each of the sureties, as the case may be, notice in writing of the obligations of the accused person concerning the conditions of his or her bail and the
40 consequences of any failure by him or her to comply with those conditions and shall be satisfied before releasing the accused person, or causing the accused person to be released, that the surety or each of the sureties, as the

case may be, understands the nature and extent of the obligations of the accused person under the conditions of his or her bail and the consequences of any failure by him or her to comply with them.

5 (3) Where a bail condition is imposed or varied on a review under Part VI of a decision made in relation to bail, the court imposing or varying the condition shall—

10 (a) give, or cause to be given, to the accused person a notice in writing setting out the obligations of the accused person concerning the condition and the consequences of any failure by him or her to comply with the condition and shall be satisfied that the accused person will comply with the condition; and

15 (b) give, or cause to be given, to each surety (if any) for the appearance of the accused person to answer the charges against him or her a notice in writing of the obligations of the accused person concerning the condition and the consequences of any failure by him or her to comply with it and shall be satisfied that each surety understands the nature and extent of the obligations of the accused person under the condition and the consequences of any failure by him or her to comply with it.

20 (4) A court continuing bail on an adjournment or a postponement of proceedings shall forthwith give, or cause to be given, to the accused person a notice in writing that—

(a) states that bail is continued until the hearing is resumed or commenced;

25 (b) specifies the conditions on which bail is presently allowed; and

30 (c) specifies the place, date and time to which the proceedings are adjourned or postponed or states that the proceedings are adjourned or postponed to such place, date and time as are from time to time specified in a notice given or sent to the accused person as prescribed by the regulations.

Warning to person making acknowledgment

35 35. (1) Before a person makes an acknowledgment pursuant to a bail condition referred to in paragraph 25 (1) (b), the court or person to whom the acknowledgment is to be made shall warn the person by whom the acknowledgment is to be made that if he or she makes an acknowledgment knowing it to be untrue in a material particular he or she will be guilty of an offence against section 47.

40 (2) The failure of a court or person before whom an acknowledgment referred to in subsection (1) is made to comply with the requirements of that subsection does not affect the operation of section 47.

Discharge of sureties

36. (1) Subject to subsection (5), a surety who has entered an agreement required by a bail condition referred to in paragraph 25 (1) (c) or (d) or who has deposited a sum of money with an authorised officer or a court to satisfy the requirements of a bail condition referred to in paragraph 25 (1) (e) may, at any time, apply—

(a) where bail has been granted by a court—

(i) to the court which granted bail; or

(ii) to the court of appearance; or

(b) where bail has been granted by an authorised officer—to the court of appearance;

to discharge the applicant from his or her liability.

(2) On an application being made to a court under subsection (1), the court 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 or her before the court; or

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

(4) Where an applicant has given security to, or deposited a sum of money with, a court or an authorised officer to satisfy the requirements of a bail condition referred to in paragraph 25 (1) (d) or (e) and the liability of the applicant in respect of the grant of bail is discharged under subsection (3), the court or authorised officer shall release the security or the deposit, as the case may be.

(5) If the court discharges the applicant from his or her liability, the court may impose further conditions on the grant of bail, and may by warrant commit the accused person into custody until the further conditions are satisfied.

(6) A person may not make an application under this section if the accused person has failed to comply with his or her undertaking to appear or an undertaking or agreement entered into by the accused person pursuant to a bail condition.

(7) In this section—

“court of appearance” means the court before which the accused person is required to appear in accordance with his or her undertaking to appear.

5 Enforcement of bail agreements

37. (1) Where—

- (a) a person granted bail fails to comply with his or her undertaking to appear, and
- 10 (b) that person or another person has entered into an agreement pursuant to a bail condition to forfeit an amount of money;

the Magistrates Court may declare that amount, or any part of it, to be forfeited and order the person who entered the agreement to pay the sum so forfeited to the Territory.

- 15 (2) Where the Magistrates Court orders an amount to be paid to the Territory under subsection (1), that amount may be recovered by the Territory in the Magistrates Court as a debt due to the Territory irrespective of whether the amount exceeds \$50,000.

PART VI—REVIEW OF BAIL DECISIONS

Right of review of bail decisions

- 20 **38.** An accused person or the informant may apply for review of any decision by a court or an authorised officer in relation to bail.

Power of magistrate to review

- 25 **39.** Subject to section 41, a magistrate may review any decision made by an authorised officer or a magistrate (including himself or herself) in relation to bail.

Power of Supreme Court to review

- 40. (1)** The Supreme Court may review any decision of an authorised officer, the Magistrates Court or the Supreme Court (however constituted) in relation to bail.
- 30 **(2)** The power of the Supreme Court to review a decision under this section may be exercised whether or not any power to review the decision under section 39 has been exercised or has been sought to be exercised.

General limitation on power to review

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

Exercise of power to review

42. (1) The power to review a decision under this Part includes a power to affirm or vary the decision or to substitute another decision.

5 (2) A decision as varied or substituted must be in conformity with this Act.

(3) The review of a decision shall be by way of rehearing and evidence or information in addition to, or in substitution for, the evidence or information given or obtained on the making of the decision may be given or obtained on the review.

10 (4) Where, on a review of a decision under this Part the court varies the decision or substitutes another decision, section 27 applies in relation to the decision as varied or substituted as if that decision had been given by the court in relation to an application for bail.

15 (5) Where, on a review of a decision under this Part, bail for an accused person is revoked, the court may, by warrant, commit the person into custody.

(6) Where, on a review of a decision under this Part—

(a) bail is granted without any condition being imposed but the accused person has not given an undertaking to appear, or

20 (b) bail is granted subject to a condition;

the court may by warrant commit the person into custody until he or she gives the undertaking to appear, or satisfies the condition, as the case may be.

25 (7) A court may refuse to entertain a request to review a decision pursuant to this Part if the court is satisfied that the request is frivolous or vexatious.

(8) The regulations may make provision with respect to—

(a) the manner of making a request for the review of a decision under this Part; and

30 (b) the giving or sending to persons of notices relating to the proposed exercise of power to review a decision under this Part.

Review limited to bail conditions

35 43. (1) If an accused person has remained in custody after being granted bail by a court because any condition of the bail has not been complied with, the decision in relation to bail may be reviewed by the court that granted bail—

(a) at the request of the accused person;

- (b) at the request of a police officer, or
- (c) of the court's own motion.

(2) A review under this section of a decision in relation to bail is limited to a review of the conditions on which bail has been granted.

5 (3) A review requested under this section by a police officer shall not be conducted unless the court is satisfied that the request was made—

- (a) for the purpose of benefiting the accused person; and
- (b) with the consent of the accused person.

(4) On a review of a bail decision under this section, a court may—

- 10 (a) affirm the decision as to the conditions of bail;
- (b) vary the decision by removing or imposing bail conditions; or
- (c) grant bail without imposing any bail condition.

15 (5) Notwithstanding section 40, the Supreme Court is empowered to conduct a review of a bail decision under this section only in respect of bail granted by the Supreme Court (however constituted).

PART VII—MISCELLANEOUS

Furnishing of information relating to bail

20 44. (1) Where a person is charged by a police officer with an offence and the person charged is being held in custody in connection with the offence, the police officer shall, as soon as is reasonably practicable after the person is charged, furnish the person with the prescribed information relating to his or her entitlement to, or eligibility for, bail and to his or her entitlement to the review of decisions under this Act.

25 (2) Where an accused person is being held in custody in relation to an offence at the time of his or her first appearance in court in relation to that offence, the court shall, during that appearance, or as soon as is reasonably practicable thereafter, furnish the accused person, or cause the accused person to be furnished, with the prescribed information relating to his or her entitlement to, or eligibility for, bail.

30 (3) The regulations may prescribe the forms in which information is to be furnished under subsection (1) or (2).

Notification to court that bail condition not satisfied

35 45. (1) This section applies to a person who has been granted bail by a court but who has remained in custody since bail was granted because a condition of the bail has not been complied with.

5 (2) The keeper, superintendent or officer in charge of a gaol, remand centre or police station where a person to whom this section applies is in custody shall, within 7 days after the person is received into custody, give or cause to be given, to the court which granted bail to the person notice in writing that the person is still in custody because of a failure to meet a bail condition.

(3) A court to which a notice is given pursuant to subsection (2) may, of its own motion, conduct a review under section 43 of the condition on which bail was granted.

10 (4) A notice under this section is required to be given only once in respect of any particular grant of bail.

(5) The regulations may prescribe—

(a) the form in which a notice under this section is to be given; or

15 (b) information that is to be forwarded to a court with a notice under this section.

Failure to answer bail

20 46. (1) A person who has given an undertaking to appear and fails, without reasonable excuse, to appear before a court in accordance with his or her undertaking is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years or a fine not exceeding \$20,000, or both.

(2) Subsection (1) does not apply in relation to a bail undertaking given by a person following the institution of an appeal.

False statements in acknowledgments

25 47. A person who makes an acknowledgment under paragraph 25 (1) (b) knowing it to be untrue in a material particular is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years or a fine not exceeding \$20,000, or both.

Indemnification of sureties

30 48. (1) Where a person indemnifies another person, or agrees with another person to indemnify that other person, against a liability which that other person may incur as a surety to secure the appearance in answer to bail of a person accused of an offence, he or she and that other person are each guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years or a fine not exceeding \$20,000, or both.

35 (2) An offence is committed against subsection (1) whether the agreement is made before or after the person to be indemnified becomes a surety and whether or not he or she becomes a surety and whether the agreement contemplates compensation in money or money's worth.

Contravention of Act by police officers

5 49. (1) Where a police officer contravenes a provision of this Act that is applicable to him or her as a police officer or as an authorised officer, the contravention is not punishable as an offence unless a penalty is expressly provided by this Act in respect of the contravention.

(2) Subsection (1) does not apply to prevent a contravention of a provision of this Act by a police officer from—

- 10 (a) being dealt with under the *Complaints (Australian Federal Police) Act 1981* of the Commonwealth; or
- (b) constituting grounds for the institution of civil proceedings.

Apprehension of person admitted to bail

50. (1) Where a police officer believes on reasonable grounds that a person who has been admitted to bail subject to conditions—

- 15 (a) has failed to comply with a condition on which he or she was admitted to bail; or
- (b) will not comply with a condition on which he or she was admitted to bail;

the police officer may apprehend the person without a warrant.

20 (2) A person who has been apprehended under this section shall be brought before the Magistrates Court as soon as practicable after he or she has been taken into custody.

Power of court where person apprehended

25 51. Where an accused person who has been apprehended under section 50 is brought before the Magistrates Court pursuant to subsection (2) of that section, the Magistrates Court has the same power to remand the accused person in custody, admit the accused person to bail or dispense with the requirement for bail as it has in relation to other accused persons in custody.

Civil standard of proof to apply for certain purposes

30 52. Where a court or an authorised officer, in making a decision in relation to bail (not being 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 court or authorised officer is satisfied on the balance of probabilities.

Abolition of right of surety to arrest

35 53. A surety who gives an undertaking required by a bail condition referred to in paragraph 25 (1) (c), (d) or (e) does not, by virtue of his or

her having given that undertaking, have the right to arrest the accused person.

This Act to prevail

- 5 54. (1) Except where otherwise expressly provided by this Act, or the *Bail (Consequential Amendments) Act 1991*, 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 in relation to bail for accused persons.

- 10 (2) Nothing in this Act shall be construed as affecting the Imperial enactment 1 William and Mary sess 2 c2 (The Bill of Rights) or the *Imperial Acts Application Act 1986* so far as it relates to that enactment.

Regulations

55. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- 15 (a) required or permitted by this Act to be prescribed; or
 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.