



Australian Capital Territory

Bail Act 1992 No 8

Republication No 4

Republication date: 12 September 2001

Last amendment made by Act 2001 No 54

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Bail Act 1992* as in force on 12 September 2001. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

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12 September 2001



Australian Capital Territory

Bail Act 1992

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Australian Capital Territory

Bail Act 1992

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

Part 1 Preliminary

1 Short title

This Act may be cited as the *Bail Act 1992*.

3 Interpretation

(1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

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

applicable bail criteria, for a decision about the grant of bail by an authorised person to a person accused of an offence, means criteria under any of the following provisions that apply to the decision:

- (a) for a domestic violence offence—section 8A;
- (b) for a serious offence committed while the accused person was on bail for another serious offence—section 9A;
- (c) for any offence committed by an adult—section 22;
- (d) for any offence committed by a child—section 23.

authorised officer means any of the following:

- (a) the chief police officer;
- (b) a police officer exercising the functions of a superintendent or sergeant;
- (c) another police officer authorised in writing by the chief police officer.

bail means authorisation granted to a person under this Act to be at liberty.

bail condition means a condition on which bail is granted.

child—

- (a) means a person who has not attained the age of 18 years; and
- (b) in relation to a person, includes a child—
 - (i) who normally or regularly resides with the person; or
 - (ii) of whom the person is a guardian.

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.

de facto spouse, in relation to a person, means a person of the opposite sex to the firstmentioned person who is living with the firstmentioned person as that person's husband or wife although not legally married to the firstmentioned person.

domestic violence offence means an offence committed by a person against—

- (a) the *Domestic Violence Act 1986*, section 19D; or
- (b) a provision of the *Crimes Act 1900* specified in the schedule; or
- (c) any of the following provisions of the *Road Transport (Safety and Traffic Management) Act 1999*:
 - (i) section 6 (1) (which is about negligent driving);
 - (ii) section 7 (1) (which is about furious, reckless or dangerous driving);
 - (iii) section 8 (1) or (2) (which are about menacing driving); or
- (ca) an offence against the *Motor Traffic Act 1936*, section 129 (which is about reckless, dangerous or negligent driving); or
- (d) a spouse of the person; or

- (e) a child of a spouse of the person; or
- (f) a relative of the person; or
- (g) a household member.

harm includes—

- (a) physical injury; and
- (b) mental injury or emotional suffering (including grief); and
- (c) pregnancy; and
- (d) economic loss; and
- (e) substantial impairment of rights accorded by law.

household member, in relation to a person, means a person who normally resides, or was normally resident, in the same household as the firstmentioned person (other than as a tenant or boarder).

judge means a judge of the Supreme Court.

offence includes—

- (a) an alleged offence; and
- (b) except in the case of section 7 (1) (a)—a breach of the peace or an apprehended breach of the peace.

relative, in relation to a person—

- (a) means—
 - (i) the father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law of the person; or
 - (ii) the son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law of the person; or
 - (iii) the brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law of the person; or

- (iv) the uncle, aunt, uncle-in-law or aunt-in-law of the person;
or
 - (v) the nephew or niece of the person; or
 - (vi) the cousin of the person;
- (b) includes a person who would have been a relative of a kind referred to in paragraph (a) if the firstmentioned person had been legally married to his or her de facto spouse; and
- (c) includes a former relative of a kind referred to in paragraph (a) or (b).

remand centre—see the *Remand Centres Act 1976*.

serious offence—see section 9A (1) (a) (Bail for serious offence committed while on bail for another serious offence).

spouse includes former spouse, de facto spouse and former de facto spouse.

undertaking to appear means an undertaking given pursuant to section 28 (1).

victim, in relation to an accused person, means—

- (a) a person (the **primary victim**) who suffers harm—
 - (i) in the course of, or as the result of, the commission of an offence of which the accused person is accused; or
 - (ii) in the course of assisting a police officer in the exercise of the officer's power to arrest the accused person or to take action to prevent the commission of an offence of which the accused person is accused; or
- (b) where a primary victim dies as a result of the commission of an offence of which the accused person is accused—any person who was financially or psychologically dependent on the primary victim immediately before his or her death.

- (2) A reference in this Act to an ***accused person***, or a ***person accused of an offence***, includes a reference to—
- (a) a person charged with, convicted of, or found guilty of an offence; and
 - (ab) a person arrested for a breach of the peace or an apprehended breach of the peace; and
 - (b) a person whose conviction for an offence is stayed; and
 - (c) a person discharged under the *Crimes Act 1900*, section 556A on giving security in accordance with subsection (1) of that section; and
 - (d) a person in respect of whom an appeal relating to an offence is pending; and
 - (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—
- (a) in the case of a condition referred to in section 25 (1) (a) or (c)—to entering into the agreement;
 - (b) in the case of a condition referred to in section 25 (1) (b)—to making and signing the acknowledgment;
 - (c) in the case of a condition referred to in section 25 (1) (d)—to entering into the agreement and giving the security; or
 - (d) in the case of a condition referred to in section 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.

- (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 section 25 (1) (c), (d) or (e) in relation to a grant of bail.

4 Application

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

Part 2 Availability of bail

5 Availability of bail

- (1) 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—
 - (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.

6 Rights following grant of bail

Where—

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

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

7 Bail for minor offences and breaches of the peace

- (1) This section applies to—
 - (a) all offences not punishable by a sentence of imprisonment (except in default of payment of a fine); and

- (b) all offences punishable by a term of imprisonment not exceeding 6 months.
- (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, in relation to the commission of the same offence on a previous occasion, failed to comply with any undertaking to appear or bail condition given or imposed in relation to that offence on that occasion; or
 - (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; or
 - (d) an accused person in respect of whom the requirement for bail is dispensed with under section 10; or
 - (e) a person charged with—
 - (i) an offence against the *Domestic Violence Act 1986*, section 19D; or
 - (ii) an offence against the *Magistrates Court Act 1930*, section 206L; or
 - (iii) an offence against the *Crimes Act 1900*, section 493; or
 - (f) a person charged with a prescribed offence.

7A Bail following arrest for breach of peace

A person arrested for a breach of the peace or an apprehended breach of the peace—

- (a) is entitled to be granted bail without any condition or on condition that he or she keep the peace; and
- (b) shall be released from custody as soon as he or she has given an undertaking to appear and, if a condition to keep the peace is imposed, has entered into an agreement under section 25 (1) (a);

unless—

- (c) as a consequence of the conduct that resulted in his or her being arrested, another person would be likely to make application for a protection order under the *Domestic Violence Act 1986* or for a restraining order under the *Magistrates Court Act 1930* against the arrested person; or
- (d) in relation to a breach of the peace or an apprehended breach of the peace on a previous occasion, the person failed to comply with any undertaking to appear or bail condition given or imposed in relation to that breach or apprehended breach on that occasion.

8 Bail for offences other than minor offences

- (1) This section applies to—
 - (a) offences other than those referred to in section 7 (1); and
 - (b) persons to whom, by virtue of section 7 (3), section 7 (2) does not apply; and
 - (c) persons not entitled to bail by virtue of section 7A (c) or (d).
- (1A) However, this section does not apply to the grant of bail—
 - (a) by an authorised officer to a person accused of a domestic violence offence (see section 8A); or
 - (b) by a court or an authorised officer to a person accused of a serious offence that is alleged to have been committed while the person was on bail for another serious offence (see section 9A).

- (2) A person—
- (a) accused of an offence to which this section applies; or
 - (b) to whom this section applies;
- is entitled to be granted bail in accordance with this Act unless—
- (c) the court or authorised officer is satisfied that, having regard to the matters referred to in whichever of sections 22 and 23 apply to the accused person, the court or authorised officer is justified in refusing bail; or
 - (d) the requirement for bail is dispensed with under section 10.

8A Bail by authorised officer—domestic violence offences

- (1) Where a person is accused of a domestic violence offence, an authorised officer shall not grant bail to that person unless the authorised officer is satisfied that the person poses no danger to the relevant person during the period of bail.
- (2) Where an authorised officer is satisfied of the matters referred to in subsection (1), the accused person is entitled to be granted bail unless the authorised officer is satisfied that, having regard to the matters referred to in whichever of sections 22 and 23 apply to the accused person, he or she is justified in refusing bail.
- (3) Where an authorised officer grants bail to a person in accordance with this section, the authorised officer shall, in his or her record under section 27, state why in his or her opinion the person poses no danger to the relevant person.
- (4) A person shall not be released on bail under this section unless he or she has given an undertaking in accordance with section 28 to appear before a specified court within 48 hours of being released.
- (5) In this section:

relevant person means the person against whom the offence is alleged to have been directed, or—

- (a) a spouse of that person; or
- (b) a child of a spouse of that person; or
- (c) a relative of that person; or
- (d) a household member in relation to that person.

9 Bail for persons sentenced to imprisonment

- (1) This section applies if—
 - (a) a person has been convicted of an offence by a court and sentenced to a period of imprisonment for the offence; and
 - (b) an appeal is pending in relation to the conviction or sentence (including an appeal against a decision on appeal).
- (2) Despite anything else in this Act, a court must not grant bail to the person unless it is satisfied that special or exceptional circumstances exist justifying the grant of bail.

9A Bail for serious offence committed while on bail for another serious offence

- (1) This section applies if—
 - (a) a person is accused of an offence punishable by imprisonment for 5 years or more (a *serious offence*); and
 - (b) the person is alleged to have committed the offence while on bail for another serious offence (or a number of offences including a serious offence).
- (2) A court or an authorised officer must not grant bail to the accused person unless satisfied that special or exceptional circumstances exist justifying the grant of bail.
- (3) However, even if special or exceptional circumstances are established, the court or officer must refuse bail if satisfied that refusal is justified having regard to—

- (a) if the accused person is an adult—the matters mentioned in section 22 (Criteria for granting bail to adults); or
 - (b) if the accused person is a child—the matters mentioned in section 23 (Criteria for granting bail to children).
- (4) Also, if a serious offence mentioned in subsection (1) (a) or (b) is a domestic violence offence, an authorised person must refuse bail to the accused person if satisfied that refusal is required by section 8A (Bail by authorised officer—domestic violence offences).
- (5) This section does not prevent the application of section 8A to the accused person if—
- (a) a serious offence mentioned in subsection (1) (a) or (b) is a domestic violence offence; and
 - (b) an authorised person grants bail to the accused person.

Part 3 Dispensing with bail

10 Dispensing with bail

- (1) A court that may grant bail to an accused person may instead dispense with the requirement for bail.
- (2) 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.
- (3) 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.
- (4) Subsection (2) does not apply if, under section 33 (2A), the court is to be taken to have continued bail.
- (5) A court must not dispense with the requirement for bail for an accused person to whom either of the following sections apply unless satisfied that special or exceptional circumstances exist justifying dispensing with the requirement:
 - (a) section 9 (Bail for persons sentenced to imprisonment);
 - (b) section 9A (Bail for serious offence committed while on bail for another serious offence).

11 Effect of dispensing with bail

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

12 Decision to dispense with bail

For the purposes of part 6, where a court dispenses with the requirement for bail, the court shall be deemed to have made a decision in relation to bail.

Part 4 Grant of bail

13 Determination of bail after charge laid

(1) Where—

- (a) a person who has been taken into custody by a police officer is charged with an offence but is not to be brought before a court forthwith after being so charged; or
- (b) it is not practicable to bring before a court forthwith a person arrested under a warrant (being a warrant which does not expressly preclude the granting of bail) issued under the *Magistrates Court Act 1930*, section 42 (1) in respect of an offence punishable by a fine or by imprisonment for a period not exceeding 2 years;

the police officer who charges or arrests the person—

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

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 applicable bail criteria; 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 grant bail to the person—shall consider whether the person should be granted 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 subsection (1) (e) (ii), the authorised officer shall consider whether the person should be granted 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 or arrests a person may refrain from complying with subsection (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 or arrests a person refrains from complying with subsection (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.

14 Grant of bail by authorised officers

- (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.
- (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.

15 Determination of questions of bail by authorised officers

- (1) An authorised officer who is required to consider whether to grant bail to an accused person shall as soon as reasonably practicable—
 - (a) afford—
 - (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;
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
 - (b) having regard to those submissions, to the applicable bail criteria and to any other available information that the authorised officer considers relevant and reliable, determine whether the person should be granted bail.
- (2) Where the authorised officer is satisfied, having regard to the applicable bail criteria, 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;

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

(3) Where the authorised officer is satisfied, having regard to the applicable bail criteria, that it is not appropriate to grant bail to the accused person without imposing a condition, the authorised officer shall, having regard to—

(a) the conditions that may be imposed in granting bail to a person; and

(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 8A (1), 22 and 23 applies to the making of a determination regarding the granting of bail to the accused person;

determine whether to grant bail to the accused person.

16 Notification of decision of authorised officer

(1) Where an authorised officer decides—

(a) to refuse to grant bail to an accused person; or

(b) to grant bail to an accused person subject to 1 or more bail conditions;

the authorised officer shall inform the accused person—

(c) of his or her decision; and

(ca) the right of the accused person to request a review of the decision under section 38; and

(d) where bail is refused—that the person is entitled to communicate with a legal practitioner; and

- (e) where the person would be granted 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.
- (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 subsection (1) (a) or (b), provide the person with reasonable facilities to communicate with a legal practitioner.
- (2A) An authorised officer who refuses to grant bail to an accused person may refrain from complying with subsection (1) (d) or (e) and subsection (2) 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.
- (2B) Where an authorised officer refrains from complying with subsection (1) (d) or (e) and subsection (2) for a reason specified in subsection (2A), he or she shall record, or cause to be recorded, his or her reasons for not complying.
- (3) An authorised officer who considers whether an accused person should be granted bail in respect of a domestic violence offence shall—
 - (a) where he or she decides to grant bail to the person—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
 - (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 granted bail subject to 1 or more bail conditions, of that condition or those conditions; or

- (b) where he or she decides not to grant bail to the person—
 - (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
 - (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.

17 Charged persons in custody to be brought before court

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;

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.

18 Facilities to be provided to accused persons

- (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;

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

19 General provisions relating to court bail

- (1) Subject to section 20, a court may—
- (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.
- (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.
- (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 legal practitioner 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
 - (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.

- (6) In determining whether to grant bail to an accused person, a court may have regard to any information it considers relevant and reliable.

20 Limitation on power of magistrates to grant bail

A magistrate may not grant bail to a person under section 19 where the person has appeared before the Supreme Court—

- (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.

21 Bail in respect of several offences

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—

- (a) a court or an authorised officer shall, in considering whether to grant bail to the accused person, 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 granted bail—
 - (i) the accused person shall be granted bail in respect of all the offences with which he or she has been charged for which bail may be granted; and
 - (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
 - (iii) where the accused person is granted 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.

22 Criteria for granting bail to adults

- (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:
 - (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
 - (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;
 - (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; and
 - (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—

- (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; and
 - (ii) the likelihood of the person committing an offence while released on bail; and
 - (iii) the likelihood of the person harassing a victim or other persons while released on bail.
- (2) In subsection (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).

23 Criteria for granting bail to children

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:

- (a) the matters referred to in section 22 (1) (a), (b) and (c);
- (b) the principles in the *Children and Young People Act 1999*, sections 12 (General principles) and 68 (Principles);
- (c) if the determination is being made by a court and a report has been given to the court under the *Children and Young People Act 1999*, section 73 (Powers of court with respect to reports) in relation to the child—the contents of the report.

23A Victim's concern about need for protection

- (1) Where a court is determining the grant of bail to an accused person—
- (a) the prosecutor shall inform the court of any concern of which he or she is aware expressed by the victim about the need for protection from violence or harassment by the accused person; and

Part 4 Grant of bail

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- (b) the court shall receive any submission in respect of that concern and have regard to it in the context of the matter referred to in section 22 (1) (c).
- (2) Where an authorised officer determining the grant of bail to an accused person is aware that a victim has expressed concern about the need for protection from violence or harassment by the accused person, the authorised officer shall have regard to that concern in the context of the matter referred to in sections 8A (1) and 22 (1) (c).

Part 5

Bail conditions and undertakings to appear

24 Conditions of bail

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.

25 Conditions on which bail may be granted to adults

- (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 enters into an agreement, in writing, to observe specified requirements as to his or her conduct while released on bail; and
 - (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; and
 - (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; and
 - (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; and
- (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.

Note If a form is approved under s 58 (Approved forms) for an agreement or acknowledgment under this section, the form must be used.

- (2) Without limiting the generality of subsection (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; and
 - (b) a requirement that the accused person reside at a specified place; and
 - (c) a requirement that the person undergo psychiatric treatment or other medical treatment; and
 - (d) a requirement that the accused person participate in a program of personal development, training or rehabilitation; and
 - (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; and

- (ii) a requirement that the accused person not be in or on premises in or on which a specified person resides or works; and
 - (iii) a requirement that the accused person not be in, on or near premises frequented by a specified person; and
 - (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; and
 - (v) a requirement that the accused person not approach within a specified distance of a specified person; and
 - (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.
- (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—
- (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:
 - (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 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
 - (b) shall not, except at the request of the accused person, impose a condition, or a combination of conditions, which impose obligations that are more onerous than necessary to secure the purposes referred to in paragraph (a) for which the condition or combination of conditions is imposed.
- (5) A court or an authorised officer, in granting bail to an accused person on a condition referred to in subsection (1) (d) or (e) shall not require the accused person to give an acceptable security for a specified sum, or to 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 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
 - (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 subsection (4) (a).
- (6A) An agreement or acknowledgment under this section may be entered into or made in respect of more than 1 offence.
- (7) In this section:
premises includes—
 - (a) any land; and

- (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.

26 Conditions on which bail may be granted to children

- (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 section 25 (1) (being those conditions as amplified by section 25 (2)); and
 - (b) any other conditions that the court or authorised officer considers appropriate having regard to the principles in the *Children and Young People Act 1999*, sections 12 and 68.
- (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 section 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—
 - (a) may not impose a condition referred to in section 25 (1) unless the court or the authorised officer is of the opinion that the imposition of the condition is—
 - (i) necessary to secure 1 or more of the purposes specified in section 25 (4) (a) (i), (ii), (iii) and (iv) (the ***relevant purposes***); or
 - (ii) in accordance with the principles under the *Children and Young People Act 1999*, sections 12 and 68 (the ***relevant principles***); and
 - (b) may not, except at the request of the accused person, impose a condition, or a combination of conditions, that puts a greater obligation on the accused than is—
 - (i) necessary to secure the relevant purposes; or

(ii) in accordance with the relevant principles.

(4) Section 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 section 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—

(a) refuse bail; or

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

27 Recording of certain bail decisions

(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 grant bail to an accused person, or to release an accused person from custody without bail;

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 section 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 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 sections 25 (4) (a) and 26 (3) (a) is applicable to the accused person; and
- (b) where the condition is a condition referred to in section 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 sections 25 (4) (a) and 26 (3) (a) is applicable to the accused person.

27A Notice to victim of bail decisions

Where a court or authorised officer determining the grant of bail to an accused person is aware that a victim has expressed concern about the need for protection from violence or harassment by the accused person, the court or authorised officer shall take all reasonable steps to inform the victim (or if the victim is a child, the person who has care and control of the child), as soon as practicable of—

- (a) its decision concerning the grant of bail; and
- (b) if it decides to grant bail—any condition on which bail is granted.

28 Undertaking to appear

- (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
 - (b) at a place, date and time notified to him or her by a police officer.

Note If a form is approved under s 58 (Approved forms) for an instrument, the form must be used.

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

30 Accused person may be excused from attendance before court

- (1) Where a person has given an undertaking to appear before a court pursuant to section 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 a legal practitioner 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 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.

Note If a form is approved under s 58 (Approved forms) for a notice, the form must be used.

- (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; and
 - (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;

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.

31 Agreement to bail requirements and entry into bail agreements etc

- (1) A undertaking to appear may be given to—
- (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; or
 - (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—
 - (i) a court; or
 - (ii) a clerk of a court; or
 - (iii) an authorised officer.
- (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—
- (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; or
 - (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—
 - (i) a court; or

- (ii) a clerk of a court; or
- (iii) an authorised officer.

32 Acceptable persons and security for bail

- (1) The determination of—
- (a) which person or persons, or class or description of persons are acceptable persons for the purposes of a condition referred to in section 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 section 25 (1) (d);
- 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.
- (2) A reference in section 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.
- (4) A condition, agreement or acknowledgment under section 25 may be imposed, entered into or made in respect of more than 1 offence.

33 Continuation of bail and undertakings

- (1) If an accused person has given an undertaking to appear at a place, date and time at which proceedings in respect of the offence may be continued, whether on any adjournment, postponement or other deferment of the proceedings, or by way of committal, a court may 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 and the bail conditions continue to apply, except to the extent that the undertaking or condition otherwise provides or the court otherwise orders.
- (2A) If the accused person appears before a court in accordance with a bail undertaking referred to in subsection (1) but no specific direction is made by the court in respect of bail, the court is to be taken to have continued bail.
- (3) An agreement entered by a surety to satisfy the requirements of a bail condition referred to in section 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 if the court from time to time directs the proceedings in respect of the offence be adjourned, postponed or otherwise deferred or the accused person is committed for trial.
- (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 section 25 (1) (c), (d) or (e) to elect to be bound by an agreement which may be continued only with his or her consent given at the time of the continuation and a court or an authorised officer shall not refuse to grant bail to a person on the ground only that a person offering to enter such an agreement has so elected.
- (5) Where a hearing of a charge against an accused person is adjourned, postponed or otherwise deferred, the place, date and time for the commencement of the sittings to which the hearing is adjourned, postponed or otherwise deferred 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
 - (b) where the bail agreement entered by any surety so provides—without the consent of the surety;
- may continue the bail of the person charged, and the person charged shall be bound to attend at that place, date and time without entering

into a fresh undertaking to appear 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 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 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 agreement entered into pursuant to a condition of the grant of bail be continued so as to require the appearance of the accused person at every place, date and time to which the accused person is remanded or the hearing adjourned, postponed or otherwise deferred.

34 Written notice of conditions of bail

- (1) A court or authorised officer granting bail to an accused person 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.

Note If a form is approved under s 58 (Approved forms) for a notice under this section, the form must be used.

- (2) A court or an authorised officer granting bail to an accused person 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 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.

- (3) Where a bail condition is imposed or varied on a review under part 6 of a decision made in relation to bail, the court or authorised officer imposing or varying the condition shall—
- (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
 - (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.
- (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; and
 - (b) specifies the conditions on which bail is presently allowed; and
 - (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.

35 Warning to person making acknowledgment

- (1) Before a person makes an acknowledgment pursuant to a bail condition referred to in section 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 50.
- (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 50.

36 Discharge of sureties

- (1) Subject to subsection (5), a surety who has entered an agreement required by a bail condition referred to in section 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 section 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 section 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 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.

37 Enforcement of bail agreements

- (1) Where—
- (a) a person granted bail fails to comply with his or her undertaking to appear; and
- (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.

- (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 6 Review of bail decisions

Division 6.1 Review of decisions by authorised officers

38 Review by authorised officers

- (1) Where an authorised officer makes a decision under part 4 in relation to bail for an accused person, being—
 - (a) a decision to refuse to grant bail to the accused person; or
 - (b) a decision to grant bail to the accused person subject to 1 or more bail conditions;

the accused person may request a review of that decision by the authorised officer who made the decision or any other authorised officer.

- (2) Where an application for a review of a bail decision is made to an authorised officer under subsection (1), the authorised officer shall as soon as possible conduct a review of the decision.

39 Exercise of power to review

- (1) The power to review a decision under this division includes a power to affirm or vary a decision or to substitute another decision.
- (2) A decision as varied or substituted must be in conformity with this Act.
- (3) Where, on a review of a decision under this division, the authorised officer varies the decision or substitutes another decision, section 27 applies in relation to the decision as varied or substituted as if the decision had been made by the authorised officer under part 4.
- (4) An authorised officer may refuse to entertain a request to review a decision pursuant to this division if he or she is satisfied that the request is frivolous or vexatious.

- (5) The regulations may—
- (a) prescribe the manner of making a request for the review of a decision under this division; and
 - (b) prescribe procedures for the conduct of a review under this division; and
 - (c) limit the time within which, and the circumstances in which, an accused person may apply for a review of a decision under this division; and
 - (d) limit the number of applications that may be made for the review of a bail decision under this division.

40 Limitation on power of authorised officer to review

An authorised officer may not, pursuant to this division—

- (a) review a decision in circumstances where, had the decision not been made, the authorised officer would be prohibited from making a decision in relation to the grant of bail; or
- (b) review a decision that has been reviewed by a court.

Division 6.2 Review of decisions by courts

41 Right of review of bail decisions

An accused person or the informant may apply under this division for review of any decision by a court or an authorised officer in relation to bail.

42 Power of magistrate to review

Subject to section 44, a magistrate may review any decision made by an authorised officer or a magistrate (including himself or herself) in relation to bail.

43 Power of Supreme Court to review

- (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.
- (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 38 or 42 has been exercised or has been sought to be exercised.

44 General limitation on power of court to review

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

45 Exercise of power to review

- (1) The power to review a decision under this division includes a power to affirm or vary the decision or to substitute another decision.
- (2) A decision as varied or substituted 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 of a decision under this division 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.
- (5) Where, on a review of a decision under this division, 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 division—

- (a) bail is granted without any condition being imposed but the accused person has not given an undertaking to appear; or
 - (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.
- (7) A court may refuse to entertain a request to review a decision pursuant to this division if the court is satisfied that the request is frivolous or vexatious.
 - (8) The regulations may make provision with respect to—
 - (a) the manner of making a request for the review of a decision under this division; and
 - (b) the giving or sending to persons of notices relating to the proposed exercise of power to review a decision under this division.

46 Review limited to bail conditions

- (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; or
 - (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.
- (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—
 - (a) affirm the decision as to the conditions of bail; or
 - (b) vary the decision by removing or imposing bail conditions; or
 - (c) grant bail without imposing any bail condition.
- (5) Notwithstanding section 43, 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).

Division 6.3 Miscellaneous

46A Notice to victim of bail decisions

Where a court or authorised officer conducting a review under this part is aware that a victim has expressed concern about the need for protection from violence or harassment by the accused person, the court or authorised officer shall take all reasonable steps to inform the victim (or if the victim is a child, the person who has care and control of the child), as soon as practicable of its decision.

Part 7 Miscellaneous

47 **Furnishing of information relating to bail**

- (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, give to the person, by notice in writing, 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.

Note If a form is approved under s 58 (Approved forms) for a notice under this section, the form must be used.

- (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, give to the person, by notice in writing, information relating to his or her entitlement to, or eligibility for, bail.

48 **Notification to court that bail condition not satisfied**

- (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.
- (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.

Note If a form is approved under s 58 (Approved forms) for a notice, the form must be used.

- (3) A court to which a notice is given pursuant to subsection (2) may, of its own motion, conduct a review under section 46 of the condition on which bail was granted.
- (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 information that is to be forwarded to a court with a notice under this section.

49 Failure to answer bail

- (1) If a person who has given an undertaking to appear before a court fails to carry out the undertaking, that court may issue a warrant to arrest the person and to bring the person before the court (or a court with the same jurisdiction).
- (2) A person who has given an undertaking to appear before a court must not, without reasonable excuse, fail to carry out the undertaking.

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

50 False statements in acknowledgments

A person who makes an acknowledgment under section 25 (1) (b) knowing it to be untrue in a material particular commits an offence.

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

51 Indemnification of sureties

- (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 each commit of an offence.

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

- (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.

52 Contravention of Act by police officers

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

55 Civil standard of proof to apply for certain purposes

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.

56 Abolition of right of surety to arrest

A surety who enters into an agreement required by a bail condition referred to in section 25 (1) (c), (d) or (e) does not, by virtue of his or her having entered into that agreement, have the right to arrest the accused person.

57 This Act to prevail

- (1) Except where otherwise expressly provided by this Act, or the *Bail (Consequential Amendments) Act 1992*, 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.
- (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.

57AA Abolition of inherent power of bail

Any inherent power of the Supreme Court to grant bail is abolished.

58 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) A form approved for section 25, 28 (1), 30 (4), 34, 47 or 48 (2) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (4) Any other approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

- (5) If there is no approved form for an instrument under this Act, the instrument must be in a form acceptable to the registrar.

59 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Part 8 Transitional

39 Expiry—Motor Traffic Act reference

Section 3 (1), definition of *domestic violence offence*, paragraph (ca) and this section cease to have effect on 1 January 2002.

Schedule Domestic violence offences under the Crimes Act 1900

(see s 3)

1. An offence listed in the following table:

column 1 provision	column 2 description of offence
12	Murder
15	Manslaughter
19	Intentionally inflicting grievous bodily harm
20	Recklessly inflicting grievous bodily harm
21	Wounding
22	Assault with intent to commit certain indictable offences
23	Intentionally or recklessly inflicting actual bodily harm
24	Assault occasioning actual bodily harm
25	Unlawfully or negligently causing grievous bodily harm
26	Common assault
27	Acts endangering human life
28	Acts endangering the health, safety or physical wellbeing of another person
29	Culpable driving of a motor vehicle
30	Threatening to kill
31	Threatening to inflict grievous bodily harm
32 (1) (a)	Making a demand with a threat to kill or inflict grievous bodily harm
32 (2) (a)	Making a demand with a threat to endanger health, safety or physical wellbeing
33	Possession of an object with intent to use it to kill or cause grievous bodily harm
34	Forcible confinement or imprisonment
34A	Stalking
36	Abduction of a young person

column 1 provision	column 2 description of offence
37	Kidnapping
92A	Inflicting grievous bodily harm on a person with intent to engage in sexual intercourse
92B	Inflicting actual bodily harm on a person with intent to engage in sexual intercourse
92C	Unlawful assault or threatening to inflict grievous or actual bodily harm with intent to engage in sexual intercourse
92D	Sexual intercourse without consent
92E	Sexual intercourse with a young person
92F	Inflicting grievous bodily harm with intent to commit an act of indecency
92G	Inflicting actual bodily harm with intent to commit an act of indecency
92H	Unlawful assault or threatening to inflict grievous or actual bodily harm with intent to commit an act of indecency
92J	Committing an act of indecency without consent
92K	Committing an act of indecency upon or in the presence of a young person
92L	Incest or similar offences
92M	Abducting or detaining a person with intent to engage in sexual intercourse
128	Destroying or damaging property
129	Destroying or damaging property by means of fire or explosive
133	Possession of an article with intent to use it to destroy property
145 (1) (a)	Being armed with a weapon or instrument with intent to commit an offence
146	Forcible entry on to land in a manner likely to cause a breach of the peace
493	Possession of an offensive weapon or disabling substance in a public place in circumstances likely to cause alarm
494	Possession of an offensive weapon or disabling substance in circumstances indicating intent to use the weapon or substance

-
2. An offence against the *Crimes Act 1900*, part 8 that relates to an offence listed in the table in item 1.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

3 Legislation history

Bail Act 1992 No 8

notified 28 May 1992 (Gaz 1992 No S59)
s 1, s 2 commenced 28 May 1992 (s 2 (1))
remainder (ss 3-56) commenced 28 November 1992 (s 2(3))

as amended by

Bail (Amendment) Act 1992 No 75

notified 18 December 1992 (Gaz 1992 No S233)
commenced 18 December 1992 (s 2)

Bail (Amendment) Act 1994 No 73

notified 1 November 1994 (Gaz 1994 No S229)
ss 1-3 commenced 1 November 1994 (s 2 (1))
remainder (ss 4-22) commenced 1 May 1995 (s 2 (3))

Crimes (Amendment) Act (No. 2) 1994 No 75 sch 3

notified 23 November 1994 (Gaz 1994 No S247)
ss 1-3 commenced 23 November 1994 (s 2 (1))
sch 3 commenced 1 December 1994 (Gaz 1994 No S270)

Statute Law Revision (Penalties) Act 1994 No 81 sch

notified 29 November 1994 (Gaz 1994 No S253)
s 1, s 2 commenced 29 November 1994 (s 2 (1))
sch commenced 29 November 1994 (Gaz 1994 No S269)

Acts Revision (Victims of Crime) Act 1994 No 84 pt 2

notified 15 December 1994 (Gaz 1994 No S280)
s 1, s 2 commenced 15 December 1994 (s 2 (1))
pt 2 commenced 15 June 1995 (s 2 (3))

Remand Centres (Amendment) Act 1996 (No. 2) No 81 s 7

notified 20 December 1996 (Gaz 1996 No S328)
ss 1-3 commenced 20 December 1996 (s 2 (1))
s 7 commenced 1 January 1997 (s 2 (2) and Gaz 1996 No S353)

Bail (Amendment) Act 1997 No 22

notified 29 May 1997 (Gaz 1997 No S136)
ss 1-3 commenced 29 May 1997 (s 2 (1))

Endnotes

4 Amendment history

remainder (ss 4-15) commenced 30 May 1997 (s 2 (2) and Gaz 1997 No S149)

Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1

notified 1 December 1997 (Gaz 1997 No S380)
s 1, s 2 commenced 1 December 1997 (s 2 (1))
sch 1 commenced 1 June 1998 (s 2 (2))

Bail (Amendment) Act 1998 No 39

notified 14 October 1998 (Gaz 1998 No 41)
ss 1-3 commenced 14 October 1998 (s 2 (1))
remainder (ss 4-7) commenced 19 October 1998 (Gaz 1998 No 41)

Children and Young People (Consequential Amendments) Act 1999 No 64 sch 2

notified 10 November 1999 (Gaz 1999 No 45)
s 1, s 2 commenced 10 November 1999 (s 2 (1))
remainder (ss 3, 4) commenced 10 May 2000 (s 2 (2))

Road Transport Legislation Amendment Act 1999 No 79

notified 1 March 2000 (Gaz 1999 No S65)
commenced 1 March 2000 (s 2 and Gaz 2000 No S5)

Bail Amendment Act 2001 No 25 pt 2

notified 24 May 2001 (Gaz 2001 No 21)
commenced 24 May 2001 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 30

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 30 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

Supreme Court Amendment Act 2001 (No 2) No 54 sch 2 pt 2.2

notified 15 August 2001 (Gaz 2001 No S57)
commenced 15 August 2001 (s 2 (1))

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.316

Interpretation

s 3 am 1994 No 73 s 4

def **applicable bail criteria** ins 2001 No 25 s 4
 def **authorised officer** sub 2001 No 25 s 5
 def **bail undertaking** om 1994 No 73 s 4
 def **child** sub 1997 No 22 s 4
 def **Crimes Act** om R3 LRA
 def **de facto spouse** ins 1997 No 22 s 4
 def **domestic violence offence** sub 1997 No 22 s 4; 1998 No 39 s 4
 am 1999 No 79 sch 3
 par (ca) exp 1 January 2002 (s 59)
 def **harm** ins 1994 No 84 s 4
 def **household member** ins 1997 No 22 s 4
 def **offence** sub 1994 No 73 s 4
 def **relative** ins 1997 No 22 s 4
 def **serious offence** ins 2001 No 25 s 6
 def **spouse** ins 1997 No 22 s 4 (b)
 def **victim** ins 1994 No 84 s 4

Application

s 4 am R3 LRA

Availability of bail

s 5 am 2001 No 25 s 7

Bail for minor offences and breaches of the peace

s 7 am 1992 No 75 s 4; 1994 No 73 s 5; 1997 No 22 s 5; 1998 No 39 s 5

Bail following arrest for breach of peace

s 7A ins 1994 No 73 s 6

Bail for offences other than minor offences

s 8 sub 1994 No 73 s 6
 am 1997 No 22 s 6; 2001 No 25 s 8, s 9

Bail by authorised officer—domestic violence offences

s 8A ins 1997 No 22 s 7
 am 1998 No 39 s 6; 2001 No 25 s 10
 def **relevant person** ins 1998 No 39 s 6

Bail for persons sentenced to imprisonment

s 9 hdg sub 2001 No 25 s 11
 s 9 sub 2001 No 54 amdt 2.2

Bail for serious offence committed while on bail for another serious offence

s 9A ins 2001 No 25 s 12

Dispensing with bail

s 10 am 1994 No 73 s 7; 2001 No 25 s 13

Determination of bail after charge laid

s 13 am 1994 No 73 s 8; 1997 No 22 s 8; 2001 No 25 s 14

Endnotes

4 Amendment history

Determination of questions of bail by authorised officers

s 15 am 1997 No 22 s 9; 2001 No 25 s 15

Notification of decision of authorised officer

s 16 am 1994 No 73 s 9; 1997 No 22 s 10

General provisions relating to court bail

s 19 am 1997 No 22 sch 2; am 1997 No 96 sch 1

Bail in respect of several offences

s 21 am 1997 No 22 s 11 and sch 2

Criteria for granting bail to adults

s 22 am 1994 No 84 s 5; 1997 No 22 s 11

Criteria for granting bail to children

s 23 am 1997 No 22 s 12; 1999 No 64 sch 2

Victim's concern about need for protection

s 23A ins 1994 No 84 s 6
am 1997 No 22 s 13

Bail conditions and undertakings to appear

pt 5 hdg sub 1994 No 73 s 10

Conditions on which bail may be granted to adults

s 25 am 1994 No 73 s 11; am 1994 No 84 s 7; 2001 No 44 amdt 1.317

Conditions on which bail may be granted to children

s 26 am 1999 No 64 sch 2

Recording of certain bail decisions

s 27 am 1997 No 22 sch 2

Notice to victim of bail decisions

s 27A ins 1994 No 84 s 8

Undertaking to appear

s 28 am 2001 No 44 amdt 1.318

Undertakings in respect of more than 1 offence

s 29 om 1994 No 73 s 12

Accused person may be excused from attendance before court

s 30 am 1997 No 96 sch 1; 2001 No 44 amdt 1.319

Agreement to bail requirements and entry into bail agreements etc

s 31 am 1994 No 73 s 13

Acceptable persons and security for bail

s 32 am 1994 No 73 s 14

Continuation of bail and undertakings

s 33 am 1994 No 73 s 15; 1997 No 22 sch 2

Written notice of conditions of bail

s 34 am 1997 No 22 sch 2; 2001 No 44 amdt 1.320

Discharge of sureties

s 36 am 1994 No 73 s 16

Review of decisions by authorised officers

div 6.1 hdg (prev pt 6 div 1 hdg) renum R4 LA

Review by authorised officers

s 38 am 1997 No 22 sch 2

Review of decisions by courts

pt 6 div 6.2 hdg (prev pt 6 div 2 hdg) renum R4 LA

Miscellaneous

pt 6 div 6.3 hdg orig pt 6 div 3 hdg ins 1994 No 84 s 9
(prev pt 6 div 3 hdg) renum R4 LA

Notice to victim of bail decisions

s 46A ins 1994 No 84 s 9

Furnishing of information relating to bail

s 47 am 1994 No 73 s 17; 2001 No 44 amdt 1.321

Notification to court that bail condition not satisfied

s 48 am 1994 No 73 s 18; 2001 No 44 amdt 1.322

Failure to answer bail

s 49 am 1994 No 73 s 19; 1994 No 81 sch
sub 2001 No 25 s 16

False statements in acknowledgments

s 50 am 1994 No 81 sch

Indemnification of sureties

s 51 am 1994 No 81 sch

Apprehension of person admitted to bail

s 53 om 1994 No 75 sch 3

Power of court where person apprehended

s 54 om 1994 No 75 sch 3

Abolition of right of surety to arrest

s 56 am 1994 No 73 s 20

Abolition of inherent power of bail

s 57AA ins 1996 No 81 s 7

Form of certain instruments

s 57A ins 1994 No 73 s 21
om 2001 No 44 amdt 1.323

Approved forms

s 58 sub 2001 No 44 amdt 1.323

Endnotes

5 Earlier republications

Regulation-making power

s 59 ins 2001 No 44 amdt 1.323

Transitional

pt 8 hdg ins 1999 No 79 sch 3

Expiry—Motor Traffic Act reference

s 39 ins 1999 No 79 sch 3
exp 1 January 2002 (s 59)

Domestic violence offences under the Crimes Act 1900

sch ins 1997 No 22 s 14
am 1998 No 39 s 7

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	Act 1994 No 84	29 February 1996
2	Act 1996 No 81	1 January 1997
3	Act 1998 No 39	31 January 1999

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