



Australian Capital Territory

Bail Act 1992

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Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Bail Act 1992* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 September 2008. It also includes any amendment, repeal or expiry affecting the republished law to 9 September 2008.

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

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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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 does not include 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 is—

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



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Australian Capital Territory

Bail Act 1992

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

Part 1 Preliminary

1 Name of Act

This Act is the *Bail Act 1992*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*mental dysfunction*—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.' means that the term 'mental dysfunction' is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

4 Act applies to children

This Act applies to a person whether or not the person is an adult.

Part 2 Availability of bail

Division 2.1 When bail may be granted and rights following

5 When may bail be granted?

- (1) An accused person may be granted bail in relation to any period when the person is not required to attend court in relation to the offence with which the person has been charged.
- (2) However, an accused person who is in custody in relation to an offence must not be granted bail in relation to any period when—
 - (a) the person is in custody for another offence or reason in relation to which the person is not entitled to be granted bail; or
 - (b) the person is serving a sentence of imprisonment.

6 Rights following grant of bail

- (1) This section applies if—
 - (a) bail is granted to an accused person in relation to an offence; and
 - (b) the person gives an undertaking to appear; and
 - (c) if a bail condition mentioned in section 25 (1) (b) (ii) or (c) is imposed—the security is given or the deposit made.
- (2) The person is entitled—
 - (a) if the person is in custody—to be released from custody; and
 - (b) to remain at liberty in relation to the offence until required to appear before a court in accordance with the undertaking.
- (3) This section is subject to section 56A (Arrest without warrant of person on bail).

Division 2.2 Presumption for bail

7 Div 2.2 subject to div 2.3 and div 2.4

This division is subject to division 2.3 (No presumption for bail) and division 2.4 (Presumption against bail).

8 Entitlement to bail—certain minor offences etc

- (1) This section applies to—
 - (a) a person charged with an offence not punishable by imprisonment (except in default of payment of a fine); and
 - (b) a person charged with an offence punishable by imprisonment for not longer than 6 months; and
 - (c) a person arrested for a breach of the peace or apprehended breach of the peace; and
 - (d) a person arrested under a warrant because of failure to comply with a summons or subpoena; and
 - (e) a person brought up to attend a trial or hearing following the issue of a habeas corpus order.
- (2) The person is entitled—
 - (a) to be granted bail; and
 - (b) if the person is in custody—to be released from custody as soon as the person gives an undertaking to appear.
- (3) However, if no further appearance is required for a person arrested for a breach of the peace or an apprehended breach of the peace, the person may be released from custody without giving an undertaking to appear.

- (4) A condition to keep the peace may be imposed on a grant of bail to a person arrested for a breach of the peace or an apprehended breach of the peace.

Note For other conditions that may be imposed on a grant of bail, see s 25 and s 26.

8A Entitlement to bail—breach of sentence obligations

- (1) This section applies to a person arrested, or otherwise brought before the court or a magistrate, in relation to a breach, or anticipated breach, of—
- (a) a deferred sentence obligation under the *Crimes (Sentencing) Act 2005*; or
 - (b) any of the following obligations under the *Crimes (Sentence Administration) Act 2005*:
 - (i) a periodic detention obligation;
 - (ii) a good behaviour obligation;
 - (iii) a parole obligation;
 - (iv) a release on licence obligation.
- (2) The person has the same entitlement to bail in relation to the breach, or anticipated breach, of the obligation as the person has under this part in relation to the offence to which the obligation relates.

Examples

- 1 Martin has been found guilty of armed robbery and sentenced to periodic detention. He has breached his periodic detention obligations and is arrested and brought before a magistrate under the *Crimes (Sentence Administration) Act 2005*, section 65 (Arrest warrant—breach of periodic detention obligations). There is no presumption in relation to bail because the offence of armed robbery is an offence to which division 2.2 (Presumption for bail) does not apply.

- 2 Joe has been found guilty of threatening to kill. Joe had, 3 years before, been found guilty of an offence involving violence. A suspended sentence order under the *Crimes (Sentencing) Act 2005* is made as part of the sentence for the offence of threatening to kill and Joe is released under the order on signing an undertaking under a good behaviour order. However, Joe breaches the good behaviour order and is before the court on an application to cancel the order. There is no presumption in relation to bail because section 9B (b) applies to make the offence of threatening to kill an offence to which division 2.2 (Presumption for bail) does not apply.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) This section also applies to a person arrested, or otherwise brought before the court, in relation to a breach, or anticipated breach, of an obligation under an order to which the *Crimes (Sentence Administration) Act 2005*, section 332 (Home detention orders—Rehabilitation of Offenders (Interim) Act) applies.
- (4) Subsection (3) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This subsection, subsection (3) and subsection (4) expire 3 years after the day this section commences.

8B Entitlement to bail—custody relating to sentence administration board hearings

- (1) This section applies if—
- (a) a person is arrested under the *Crimes (Sentence Administration) Act 2005*, section 206 (Arrest of offender for board hearing) and brought before a magistrate; or
- (b) a person is remanded in custody under the *Crimes (Sentence Administration) Act 2005*, section 210 (Custody of offender during board hearing adjournment) and an application for bail for the person is made to a court or magistrate.

- (2) The person has the same entitlement to bail as the person had for the offence to which the board hearing relates.

9 Limitations on entitlement to bail

- (1) A person charged with an offence mentioned in section 8 (1) (a) or (b) is not entitled to be granted bail if—
- (a) the person has previously failed to comply with an undertaking to appear, or a bail condition imposed, in relation to the same or a similar offence; or
 - (b) in the opinion of the court or authorised officer, the person is incapacitated by intoxication, injury or use of drugs or is otherwise in danger of physical injury or in need of physical protection.
- (2) A person arrested for a breach of the peace or apprehended breach of the peace is not entitled to be granted bail if the person has previously, without reasonable excuse, failed to comply with an undertaking to appear, or a bail condition imposed, in relation to a breach of the peace or apprehended breach of the peace.

9A Entitlement to bail—offences other than minor offences

- (1) This section applies to—
- (a) a person in relation to an offence other than an offence mentioned in section 8 (1) (a) or (b) (Entitlement to bail—certain minor offences etc); and
 - (b) a person who is not entitled to bail under section 8 (2) because of section 9 (1) or (2).
- (2) The person is entitled to be granted bail unless the court or authorised officer is satisfied that refusal is justified after considering—
- (a) for an adult—the matters mentioned in section 22 (Criteria for granting bail to adults); or

- (b) for a child—the matters mentioned in section 23 (Criteria for granting bail to children).

Division 2.3 No presumption for bail

9B Div 2.2 not to apply to certain offences

Division 2.2 (Presumption for bail) does not apply to the grant of bail—

- (a) to a person accused of an offence mentioned in schedule 1 (Offences to which presumption for bail does not apply); or
- (b) to a person accused of any of the following offences, if the person has in the previous 10 years been found guilty of an offence involving violence or the threat of violence:
- (i) an offence against the *Crimes Act 1900*, section 30 (Threat to kill);
 - (ii) an offence against the *Crimes Act 1900*, section 31 (Threat to inflict grievous bodily harm);
 - (iii) an offence against the *Crimes Act 1900*, section 35 (Stalking);
 - (iv) an offence against the *Domestic Violence and Protection Orders Act 2001*, section 34 (Offence for contravention of protection order); or
- (c) to a person accused of an offence against the *Criminal Code Act 1995* (Cwlth), section 80.1 (Treason); or
- (d) to a person convicted of an indictable offence but not sentenced.

Division 2.4 Presumption against bail

9C Bail for murder and certain serious drug offences

- (1) This section applies to a person accused of—
- (a) murder; or
 - (b) an offence against any of the following provisions of the Criminal Code, chapter 6 (Serious drug offences):
 - (i) section 603 (1) (which is about trafficking in a large commercial quantity of a controlled drug);
 - (ii) section 607 (1) (which is about manufacturing a large commercial quantity of a controlled drug for selling);
 - (iii) section 616 (1) (which is about cultivating a large commercial quantity of a controlled plant for selling);
 - (iv) section 619 (1) (which is about selling a large commercial quantity of a controlled plant);
 - (v) section 622 (1) (which is about supplying etc a commercial quantity of a controlled drug to a child for selling);
 - (vi) section 624 (1) (which is about procuring a child to traffic in a commercial quantity of a controlled drug).

Note A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

- (2) A court or authorised officer must not grant bail to the person unless satisfied that special or exceptional circumstances exist favouring 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 after considering—

- (a) for an adult—the matters mentioned in section 22 (Criteria for granting bail to adults); or
- (b) for a child—the matters mentioned in section 23 (Criteria for granting bail to children).

U 9D Bail for serious offence committed while charge for another pending or outstanding

- (1) This section applies if—
 - (a) a person is accused of a serious offence; and
 - (b) the person is alleged to have committed the offence while a charge against the person for another serious offence is pending or outstanding.

Example

Claude is served with a summons to attend the Magistrates Court to answer a charge that he has committed the offence of taking a motor vehicle without consent (punishable by 5 years imprisonment under the Criminal Code, section 318 (1), and so a serious offence for this section). Before the court date, Claude is arrested and charged with having committed an aggravated robbery the day after being served with the summons (punishable by 25 years imprisonment under the Criminal Code, section 310, and so also a serious offence for this section). At the time of the alleged aggravated robbery, the charge of taking a motor vehicle without consent was still pending. This section will apply to any decision about the grant of bail to Claude in relation to the aggravated robbery charge.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A court or an authorised officer must not grant bail to the accused person unless satisfied that special or exceptional circumstances exist favouring 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 after considering—

- (a) for an adult—the matters mentioned in section 22 (Criteria for granting bail to adults); or
 - (b) for a child—the matters mentioned in section 23 (Criteria for granting bail to children).
- (4) Also, if the serious offence mentioned in subsection (1) (a) or (b) is a domestic violence offence, an authorised person must not grant bail to the accused person if satisfied that refusal of bail is required under section 9F (Domestic violence offence—bail by authorised officer).
- (5) This section does not affect the application of section 9F (4) and (5) to the accused person if—
- (a) the 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.
- (6) In this section:
- outstanding***—a charge against a person for an offence is ***outstanding***—
- (a) until the charge is finally dealt with in any of the following ways:
 - (i) the charge is withdrawn;
 - (ii) the charge is dismissed by a court;
 - (iii) the person is discharged by the Magistrates Court following a committal hearing;
 - (iv) the person is acquitted or found guilty by a court of the offence; and

- (b) if the person is acquitted or found guilty by a court of the offence charged, but a new trial on the charge (or a charge based on the same facts) is later ordered on appeal—from the date the new trial is ordered until the earliest of the following happens—
- (i) the charge (or a charge based on the same facts) is finally dealt with as mentioned in paragraph (a) (i), (ii) or (iv);
 - (ii) the order for the new trial is reversed on a further appeal.

Note **Found guilty**, of an offence, includes—

- having an order made for the offence under the *Crimes (Sentencing) Act 2005*, s 17 (Non-conviction orders—general)
- having the offence taken into account under the *Crimes (Sentencing) Act 2005*, s 57 (Outstanding additional offences taken into account in sentencing)
- having an order made for the offence under the *Children and Young People Act 1999*, s 98 (Disposition without proceeding to conviction)

(see Legislation Act, dict, pt 1).

pending—a charge against a person for an serious offence is **pending** if the person has not yet been charged with the offence, but the person has—

- (a) been arrested for the offence (unless the person is later released without being charged with a serious offence); or
- (b) been served with a summons to appear before a court to answer a charge for the offence; or
- (c) at the invitation of a police officer, signed an agreement to attend court to answer a charge for the offence.

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

9E Bail for person 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.
- (2) A court must not grant bail to the person unless satisfied that special or exceptional circumstances exist favouring the grant of bail.
- (3) In this section:
appeal includes an appeal against a decision on appeal.

9F Domestic violence offence—bail by authorised officer

- (1) This section applies to a person accused of a domestic violence offence.
- (2) An authorised officer must not grant bail to the person unless satisfied that the person poses no danger to a protected person while released on bail.
- (3) However, even if the authorised officer is satisfied under subsection (2), the officer must refuse bail if satisfied that the refusal is justified after considering—
 - (a) for an adult—the matters mentioned in section 22 (Criteria for granting bail to adults); or
 - (b) for a child—the matters mentioned in section 23 (Criteria for granting bail to children).
- (4) Also, the person must not be released on bail under this section unless the person gives an undertaking to appear within 48 hours of being released.

(5) If the authorised officer grants bail to the person under this section, the officer must, in the record made under section 27 (Recording of certain bail decisions), state why the officer is satisfied that the person poses no danger to any protected person.

(6) In this section:

protected person, in relation to a person accused of a domestic violence offence—

- (a) means a person against whom the alleged conduct making up the offence was directed; and
- (b) includes any other relevant person in relation to the accused person.

relevant person—see the *Domestic Violence and Protection Orders Act 2001*, dictionary.

Note The *Domestic Violence and Protection Orders Act 2001*, dict defines a *relevant person* in relation to the accused person as any of the following people:

- a domestic partner of the accused person (*domestic partner* is defined in the Legislation Act, s 169 (1))
- a relative of the accused person (*relative* is defined in the *Domestic Violence and Protection Orders Act 2001*, s 10A)
- a child of a domestic partner of the accused person
- a parent of a child of the accused person.

9G Special or exceptional circumstances

- (1) This section applies if a court or authorised officer is required under this part to be satisfied of the existence of special or exceptional circumstances favouring the grant of bail to a person.
- (2) A circumstance that would be an applicable bail criteria for the person is not a special or exceptional circumstance only because it is an applicable bail criteria.

- (3) Also, the court or authorised officer must consider the applicable bail criteria for the person only after the court or authorised officer is satisfied of the existence of the special or exceptional circumstances.

Examples for s (3)

- 1 Damien is before the court charged with having committed an aggravated robbery. He has earlier been charged with having committed aggravated robbery. Section 9D applies and there is a presumption against bail unless there are special or exceptional circumstances. Damien argues that there are special circumstances as he needs to support his child, he may lose his job and he may lose an opportunity to take up public housing. The court considers that the circumstances are not special or exceptional. Bail is not granted and the criteria in section 22 are not considered.
- 2 Jason is facing similar charges. Jason has had a car accident before his arrest for the second offence. His kidneys are damaged requiring dialysis every 3 days. Jason argues that his need for regular treatment and his reduced mobility mean that he is highly unlikely to abscond. The court considers these circumstances are special or exceptional. The court then considers the criteria in section 22 in deciding whether to grant bail.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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 deciding whether to release an accused person from custody without requiring bail, a court may have regard to any information that appears to the court to be relevant and reliable.
- (3) If, during an appearance by an accused person before a court, no specific order or direction is made by the court in relation to bail, the court is taken to have dispensed with the requirement for bail.
- (4) Subsection (2) does not apply if, under section 33 (3), the court is 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 9D (Bail for serious offence committed while charge for another pending or outstanding);
 - (b) section 9E (Bail for person sentenced to imprisonment).

11 Effect of dispensing with bail

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

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

12 Decision to dispense with bail

For part 6, if a court dispenses with the requirement for bail, the court is taken to have made a decision in relation to bail.

Part 4 Grant of bail

13 Deciding bail after charge laid

- (1) If—
- (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 (2) (Issue of warrant and summons) in relation to 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 the person may—
 - (i) apply for bail; and
 - (ii) communicate with a lawyer of his or her choice in relation to the making of an application for bail; and
 - (iii) if the person 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 relation to 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 lawyer, such an interpreter or such other person; and

- (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) if 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) If a person is brought before an authorised officer under subsection (1) (e) (ii), the authorised officer shall consider whether the person should be granted bail.
- (3) If, before subsection (1) has been fully complied with in relation to 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 the police officer believes on reasonable grounds that it is necessary to do so 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) If 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), the police officer 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 must not grant bail to a person accused of an offence if—
- (a) a decision about bail in relation to the offence has been made by a court; or
 - (b) the offence is a domestic violence offence of murder.

Note A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

15 Deciding 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) give—
 - (i) the accused person or a lawyer 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 about 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, decide whether the person should be granted bail.
- (2) If the authorised officer is satisfied, having regard to the applicable bail criteria, that—
 - (a) it is appropriate to release the person on 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 on the person giving that undertaking.
- (3) If 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 mentioned in whichever of section 9F (2), section 22 or section 23 applies to the making of a decision regarding the granting of bail to the accused person;decide whether to grant bail to the accused person.

16 Notification of decision of authorised officer

- (1) If 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
 - (d) the right of the accused person to request a review of the decision under section 38; and
 - (e) if bail is refused—that the person is entitled to communicate with a lawyer; and
 - (f) if 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 lawyer.
- (2) An authorised officer shall, on being requested to do so by an accused person in relation to whom the authorised officer 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 lawyer.
- (3) An authorised officer who refuses to grant bail to an accused person may refrain from complying with subsection (1) (e) or (f) and subsection (2) if the authorised officer believes on reasonable grounds that it is necessary to do so 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.
- (4) If an authorised officer refrains from complying with subsection (1) (e) or (f) and subsection (2) for a reason mentioned in subsection (3), the authorised officer shall record, or cause to be recorded, his or her reasons for not complying.

- (5) If an authorised officer decides to grant bail to an accused person in relation to a domestic violence offence, the officer must take reasonable steps to tell each protected person, as soon as practicable, about the decision and, if the accused person is granted bail subject to a bail condition, about the condition.
- (6) If an authorised officer decides not to grant bail to an accused person in relation to a domestic violence offence, the officer must tell each protected person about the decision.
- (7) In this section:
protected person, in relation to a domestic violence offence, means—
 - (a) if the conduct making up the offence was directed at a child—a person with parental responsibility for the child; or
 - (b) if the conduct making up the offence was directed at someone else—the person at whom the conduct was directed.

17 Charged people 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 the person 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 people

- (1) If an accused person in police custody is to be brought, for the first time in relation to the offence, before a court more than 4 hours after the person came into custody—

- (a) the police officer for the time being in charge of the police station where 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 where 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 relation to the offence with which the person 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) If 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 lawyer at the hearing of his or her first application to a court for bail in relation to the offence with which the person is charged; or
 - (b) the accused person can show—
 - (i) that since the most recent application to a court for bail there has been a significant change in circumstances relevant to the granting of bail; or
 - (ii) that there is fresh evidence or information of material significance to the granting of bail to the person that was unavailable on the most recent application to a court for bail.
- (6) In deciding whether to grant bail to an accused person, a court may have regard to any information it considers relevant and reliable.

20 Limitations on power of magistrate

- (1) A magistrate must not grant bail to a person under section 19 in relation to an offence if the person has appeared before the Supreme Court—
- (a) after the person's committal for trial or sentence for the offence; or
 - (b) on appeal against a conviction, order or sentence imposed on the person for the offence.
- (2) A magistrate must not enlarge, vary or revoke bail granted to an accused person following the person's committal for trial.

21 Bail in relation to several offences

If 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 decides that the accused person should be granted bail—
 - (i) the accused person shall be granted bail in relation to all the offences with which the person has been charged for which bail may be granted; and
 - (ii) the accused person need give only 1 undertaking to appear in relation to all the offences with which the person has been charged for which bail may be granted; and
 - (iii) if the accused person is granted bail subject to conditions—the conditions shall apply in relation to 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 decision about the grant of bail to an adult in relation to an offence, a court or authorised officer must consider—
 - (a) the likelihood of the person appearing in court in relation to the offence; and
 - (b) the likelihood of the person, while released on bail—
 - (i) committing an offence; or
 - (ii) harassing or endangering the safety or welfare of anyone; or

(iii) interfering with evidence, intimidating a witness, or otherwise obstructing the course of justice, in relation to the person or anyone else; and

(c) the interests of the person.

Examples for par (c)

- 1 the need of the person for physical protection
- 2 the period that the person may be held in custody if bail is refused and the conditions under which the person would be held

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Also, if the person is convicted of an indictable offence, or the elements of an indictable offence are proven in relation to the person, but the person has not been sentenced, a court must consider the likelihood of the person being given a sentence of imprisonment.
- (3) In considering the matters mentioned in subsection (1) or (2), the court or authorised officer may have regard to any relevant matter, including—
 - (a) the nature and seriousness of the offence; or
 - (b) the person's character, background and community ties; or
 - (c) the likely effect of a refusal of bail on the person's family or dependants; or
 - (d) any previous grants of bail to the person; or
 - (e) the strength of the evidence against the person.

Example

In considering under subsection (1) the likelihood of the person appearing in court in relation to the offence, the court or authorised officer may have regard to whether the person failed to comply with a bail condition previously.

- (4) The reference in subsection (1) (b) (i) to an *offence* includes a reference to an offence against a law of the Commonwealth, a State or another Territory (including an external territory).

U 23 **Criteria for granting bail to children**

- (1) In making a decision about the grant of bail to a child in relation to an offence, a court or authorised officer must consider—
- (a) the matters mentioned in section 22 (1) (a) and (b), (2) and (3); and
 - (b) the principles in the *Children and Young People Act 2008*, section 94 (Youth justice principles); and
 - (c) if the decision 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 in relation to reports) in relation to the child—the report.
- (2) In addition, the court or authorised officer must consider, as a primary consideration, the best interests of the child.

23A **Victim's concern about need for protection**

- (1) If a court is making a decision about the grant of bail to an accused person—
- (a) the prosecutor must tell the court about any concern of which the prosecutor is aware expressed by a victim about the need for protection from violence or harassment by the accused person; and
 - (b) the court must receive any submission in relation to the concern and consider it in the context of the matter mentioned in section 22 (1) (b).
- (2) If an authorised officer who is making a decision about 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

Part 4 Grant of bail

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by the accused person, the authorised officer must consider that concern in the context of the matters mentioned in section 9F (Domestic violence offence—bail by authorised officer) and section 22 (1) (b).

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) for a court—by order; or
- (b) for an authorised officer—in writing.

U 25 Conditions on which bail may be granted to adults

(1) The following conditions may be imposed on a grant of bail to an adult:

- (a) conditions about the person's conduct while released on bail;
- (b) a condition that the person, an acceptable person or each of a number of acceptable people—
 - (i) pays to the Territory a stated amount if the person fails to appear in court in accordance with his or her undertaking; or
 - (ii) gives acceptable security for the payment to the Territory of a stated amount if the person fails to appear in court in accordance with his or her undertaking;

Note For acceptable people and acceptable security, see s 32.

- (c) a condition that the person, an acceptable person or each of a number of acceptable people—
 - (i) deposits a stated amount with a court or authorised officer; and

- (ii) forfeits the amount if the person fails to appear in court in accordance with his or her undertaking.
- (2) With the consent of a person who makes a deposit or gives security under subsection (1) (b) (ii) or (c), it may be a condition of bail that the deposit or security continues to apply if bail is continued.
- (3) It must not be a condition of bail that a person gives consent under subsection (2).
- (4) Without limiting 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 stated place; and
 - (b) a requirement that the accused person reside at a stated 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) a requirement that the person—
 - (i) accept supervision by the chief executive; and
 - (ii) comply with any reasonable direction of the chief executive; and

Examples of directions

- 1 a direction to attend a program
- 2 a direction to comply with a mental health assessment or treatment order made by the mental health tribunal
- 3 a direction to attend drug or alcohol counselling

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (f) for a person (the *accused person*) charged with a domestic violence offence—
 - (i) a requirement that the accused person not contact, harass, threaten or intimidate, or cause someone else to contact, harass, threaten or intimidate, a stated person; or
 - (ii) a requirement that the accused person not be on premises where a stated person lives or works; or
 - (iii) a requirement that the accused person not be on or near premises where a stated person is likely to be; or
 - (iv) a requirement that the accused person not be in a stated place; or
 - (v) a requirement that the accused person not be within a stated distance of a stated person; or
 - (vi) if the accused person lives with someone—a requirement that the accused person not enter or remain at the home if the accused person is under the influence of alcohol or another drug.
- (5) 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).
- (6) A court or an authorised officer, in granting bail to an accused person who is an adult—
 - (a) shall not impose a condition mentioned 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 relation to 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 anyone else; and
 - (b) shall not, except at the request of the accused person, impose a condition, or a combination of conditions, that 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.
- (7) A court or an authorised officer, in granting bail to an accused person on a condition referred to in subsection (1) (b) or (c) shall not require the accused person to give an acceptable security for a stated sum, or to deposit a stated sum with the court or authorised officer, if 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.
- (8) If a court or an authorised officer grants bail to an accused person on a condition mentioned in subsection (1) and the accused person satisfies the court or authorised officer that the person 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 mentioned 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 mentioned in subsection (6) (a).

(9) In this section:

premises includes—

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

U 25A **Supervision condition when offence committed as young person**

U 26 **Conditions on which bail may be granted to children**

- (1) The following conditions may be imposed on the grant of bail to a child—
 - (a) the conditions mentioned in section 25 (1) (other than a requirement mentioned in section 25 (4) (e)); and
 - (b) any other conditions that the court or authorised officer considers appropriate—
 - (i) having regard to the principles in the *Children and Young People Act 2008*, section 94; and
 - (ii) considering, as a primary consideration, the best interests of the child.
- (2) Without limiting section 25 (1), the requirements that a child may be required to comply with about his or her conduct while released on bail include a requirement that the child—
 - (a) accept supervision by the chief executive under the *Children and Young People Act 1999*, chapter 6 (Young offenders); and

(b) comply with any reasonable direction of the chief executive.

Examples of directions

- 1 a direction to attend a program
- 2 a direction to comply with an order for assessment or a treatment order made by the mental health tribunal
- 3 a direction to attend drug or alcohol counselling.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) 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 mentioned in section 25 (1) in the sequence in which they are mentioned in that subsection.
- (4) 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 mentioned in section 25 (6) (a) (i), (ii), (iii) and (iv) (the ***relevant purposes***); or
 - (ii) in accordance with the principles under the *Children and Young People Act 2008*, section 94 (Youth justice 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.
- (5) Section 25 (7) applies in relation to a grant of bail under this section.

- (6) If 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 the person 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 the other conditions referred to in subsection (1) that the court or authorised officer believes the accused person will be able to comply with and will secure the purposes mentioned in subsection (4) (a) (i) and (ii).

27 Recording of certain bail decisions

- (1) If—
- (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 the decision.
- (2) If a judge, a magistrate or an authorised officer decides to grant bail to an accused person subject to a condition mentioned 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 mentioned in that subsection was necessary to secure the purposes of whichever of section 25 (6) (a) and section 26 (4) (a) applies to the accused person; and
- (b) if the condition is a condition referred to in section 25 (1) (other than a condition mentioned in section 25 (1) (a))—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 section 25 (6) (a) and section 26 (4) (a) applies to the accused person.

28 Undertakings to appear

- (1) A person may be released on bail only if the person gives a written undertaking—
 - (a) to appear before a stated court at the place, date and time—
 - (i) stated in the undertaking; or
 - (ii) notified to the person by a police officer; and
 - (b) to comply with the bail conditions (if any).

Note If a form is approved under s 58 for an undertaking, the form must be used.

- (2) For a continuation of bail, the person may undertake to appear at any time when, and at any place where, proceedings in relation to the offence with which the person has been charged may be continued.
- (3) An undertaking may be given in relation to more than 1 offence.
- (4) A court must accept an undertaking given under this section as proof of the matters stated in it if there is no evidence to the contrary.
- (5) Subsection (1) (a) does not apply to a person in relation to a breach of the peace or apprehended breach of the peace if no further appearance is required.

30 Accused person may be excused from attendance before court

- (1) If a person has given an undertaking to appear before a court under 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 relation to which bail has been granted or for any other purpose in relation to 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 relation to 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 lawyer 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 relation to a person under subsection (1), direct the informant or the registrar of the court to serve the person in relation to whom the order has been made with a written notice requiring him or her to attend before the court, for the purposes of those proceedings, on a day and at a time and place stated by the court.

Note 1 For how documents may be served, see the Legislation Act, pt 19.5.

Note 2 If a form is approved under s 58 for a notice, the form must be used.

- (5) 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.

- (6) If—
- (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 under that undertaking;

the person shall not be taken to have failed to comply with a condition of his or her bail only because the person 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 Bail requirements

- (1) An undertaking to appear may be given to—
- (a) a court; or
 - (b) a registrar or deputy registrar; or
 - (c) an authorised officer; or
 - (d) for an accused person who is at a correctional centre or a NSW correctional centre—the person in charge of the centre.
- (2) An amount may be deposited, or security given, in accordance with a bail condition, to—
- (a) a court; or
 - (b) registrar or deputy registrar; or
 - (c) an authorised officer.
- (3) In this section:

deposit includes a payment by cash or electronic funds transaction.

security includes security given by way of bond or bank guarantee.

32 Acceptable people and security for bail

- (1) A court or authorised officer imposing a condition on bail may decide—
 - (a) the person, people or class of people who are acceptable people for a condition mentioned in section 25 (1) (b) or (c); and
 - (b) the number of people required for the condition; and
 - (c) the security acceptable for a condition mentioned in section 25 (1) (b) (ii).
- (2) If a decision has not been made when the undertaking to appear is given, the court or person to whom the undertaking to appear is given may decide.
- (3) Without limiting subsections (1) and (2), an acceptable person for a condition includes an entity prescribed by regulation for this subsection.

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 relation to 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 relation to the offence, whether or not the accused person is present in court.
- (2) If 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.

Note A court continuing bail must give notice of the continuation, bail conditions and place, date and time to which the proceedings are adjourned, postponed or deferred (see s 34 (4)).

- (3) If no direction is made by the court in relation to bail, whether or not the accused person appears in accordance with the undertaking—
 - (a) the court is taken to have continued bail; and
 - (b) the undertaking to appear and any bail conditions continue to apply.
- (4) If the hearing of a charge against an accused person is adjourned or postponed, the court may—
 - (a) continue the person's bail; or
 - (b) make another order about bail.
- (5) However, if a deposit has been made, or security given, by a surety in accordance with a bail condition, the court must not continue bail without the surety's consent unless it is a condition of bail that the deposit or security continues to apply if bail is continued.
- (6) If bail is continued—
 - (a) the undertaking to appear is taken to be an undertaking to appear at any time when, and at any place where, proceedings in relation to the offence with which the person has been charged may be continued; and
 - (b) any bail conditions continue to apply.
- (7) If an accused person has been released on bail and the court is satisfied that the accused person is because of illness or accident or other sufficient cause unable to appear personally before the court on the day when the person is required to appear, the court may, in the absence of the accused person, order the person to be further remanded to the place, date and time that the court considers appropriate and may order that the undertaking to appear given by the accused person and any agreement entered into under 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 written notice setting out the obligations of the accused person about the conditions of his or her bail and the consequences of any failure by the person to comply with those conditions and shall be satisfied before releasing the accused person, or causing the accused person to be released, that the person will comply with the conditions.

Note If a form is approved under s 58 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 the person shall give, or cause to be given, to the surety or each of the sureties, as the case may be, written notice of the obligations of the accused person about the conditions of his or her bail and the consequences of any failure by the person 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 the person to comply with them.
- (3) If 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 written notice setting out the obligations of the accused person about the condition and the consequences of any failure by the person 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 the person a written notice of the obligations of the accused person about the condition and the consequences of any failure by the person 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 the person 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 written notice that—
- (a) states that bail is continued until the hearing is resumed or stated; and
 - (b) states the conditions on which bail is presently allowed; and
 - (c) states the place, date and time to which the proceedings are adjourned or postponed or states that the proceedings are adjourned or postponed to a place, date and time that are from time to time stated in a notice given or sent to the accused person as prescribed by regulation.

36 Discharge of surety

- (1) A surety may, at any time apply to be discharged from his or her liability under a bail condition—
- (a) if bail has been granted by a court—
 - (i) to the court that granted bail; or
 - (ii) to the court of appearance; or
 - (b) if bail has been granted by an authorised officer—to the court of appearance.
- (2) However, an application may not be made if the person granted bail has failed to comply with a bail condition or undertaking to appear.

- (3) If the person granted bail is not in custody or before the court when the application is made, the court must—
- (a) issue a warrant to apprehend the person and bring the person before the court; or
 - (b) issue a summons for the person's appearance before the court.
- (4) On the person's appearance before the court, the court must, unless the court considers it would be unjust to do so—
- (a) direct that the applicant be discharged from his or her liability; and
 - (b) release the security or deposit.
- (5) If the court discharges the applicant from liability, the court may—
- (a) impose further bail conditions; and
 - (b) remand the person granted bail into custody until the further conditions are satisfied.

- (6) 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 Payment of amounts to Territory

- (1) This section applies if—
- (a) a person granted bail fails to appear in court in accordance with his or her undertaking; and
 - (b) a bail condition mentioned in section 25 (1) (b) or (c) requires the person or someone else (the *person required to pay*) to pay, or forfeit, an amount to the Territory if the person fails to appear.

- (2) If the amount has been deposited in accordance with a condition mentioned in section 25 (1) (c), the amount is forfeited to the Territory.
- (3) If the amount has not been deposited, the court may order the person required to pay to pay the amount to the Territory.
- (4) Notice of the order must be given to the person required to pay as soon as practicable.

Note For how documents may be served, see the Legislation Act, pt 19.5.

- (5) If, after the end of 28 days after the day the notice is given, the amount has not been paid the amount may be recovered under the *Magistrates Court Act 1930*, division 3.9.2 (Enforcement of fines) as if it were a fine within the meaning of that division.
- (6) Subsection (4) applies to an amount even if 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) If an authorised officer makes a decision under part 4 in relation to bail for an accused person that is—
 - (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) If 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 confirm or vary a decision or to substitute another decision.
- (2) A decision as varied or substituted must be in conformity with this Act.
- (3) If, 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 under this division if the authorised officer is satisfied that the request is frivolous or vexatious.
- (5) A regulation may—
 - (a) prescribe the way 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, under this division—

- (a) review a decision in circumstances if, 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.

41A Court may review on its own initiative

- (1) A court that has made a decision in relation to bail may review the decision on its own initiative if the court considers it is in the interests of justice to do so.
- (2) 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 stated in the warrant.

42 Power of Magistrates Court to review

- (1) The Magistrates Court may, on application under this division, review any decision of an authorised officer or the Magistrates Court (however constituted) in relation to bail.
- (2) However, the Magistrates Court may review the decision only if the application for review is based on—
 - (a) a significant change in circumstances relevant to the granting of bail; or
 - (b) the availability of fresh evidence or information of material significance to the granting of bail to the person that was unavailable on the most recent application in relation to bail.
- (3) The power of the Magistrates Court to review a decision under this section may be exercised whether or not any power to review the decision under section 38 has been exercised or been sought to be exercised.

43 Power of Supreme Court to review

- (1) The Supreme Court may, on application under this division, review any decision of an authorised officer, the Magistrates Court or the Supreme Court (however constituted) in relation to bail.
- (2) However, the Supreme Court may review the decision only if the application for review is based on—

- (a) a significant change in circumstances relevant to the granting of bail; or
 - (b) the availability of fresh evidence or information of material significance to the granting of bail to the person that was unavailable on the most recent application in relation to bail.
- (3) 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 section 42 has been exercised or has been sought to be exercised.

45 Exercise of power to review

- (1) The power to review a decision under this division includes a power to confirm 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) If, 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) If, 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) If, 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 the person gives the undertaking to appear or satisfies the condition.

- (7) A court may refuse to entertain a request to review a decision under this division if the court is satisfied that the request is frivolous or vexatious.
- (8) A regulation may make provision in relation to—
- (a) the way of making a request for the review of a decision under this division; and
 - (b) the giving or sending to people 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) on the court's own initiative.
- (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) confirm the decision about 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 relation to bail granted by the Supreme Court (however constituted).

Part 7 Miscellaneous

47 Giving information relating to bail

- (1) If a person is charged by a police officer with an offence and the person charged is being held in custody in relation to the offence, the police officer shall, as soon as is reasonably practicable after the person is charged, give to the person, by written notice, 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 for a notice under this section, the form must be used.

- (2) If 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 written notice, information relating to his or her entitlement to, or eligibility for, bail.

47A Notice to victim of bail decisions

- (1) This section applies if—
 - (a) a court or authorised officer makes a decision about a grant of bail, or reviews a bail decision, in relation to a person; and
 - (b) the informant is aware that a victim has expressed concern about the need for protection from violence or harassment by the person.
- (2) The informant must tell a police officer assigned to liaise with victims of crime (a *victim liaison officer*) that the victim has expressed the concern.

- (3) If a victim liaison officer is told about a victim's concern, the victim liaison officer must take all reasonable steps to tell the victim (or, if the victim is a child, a person who has parental responsibility for the child) about the bail decision as soon as practicable.

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 person in charge of the correctional centre or other place where the person is in custody must give the court written notice that the person remains in custody because of the failure to comply with a bail condition.

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

- (3) The notice must be given to the court not later than 7 days after the day the person is received into custody.
- (4) To remove any doubt, the court to which a notice is given under subsection (2) may, on its own initiative, conduct a review under section 46 of the condition on which bail was granted.
- (5) A notice under this section is required to be given only once in relation to any particular grant of bail.
- (6) A regulation may prescribe information that is to be given to a court with a notice under this section.

49 Failure to answer bail

- (1) A person commits an offence if the person—
 - (a) gives an undertaking to appear before a court; and
 - (b) fails to carry out the undertaking.

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

- (2) The court may issue a warrant to arrest the person and to bring the person before the court.
- (3) Subsection (1) does not apply if the person has a reasonable excuse for failing to carry out the undertaking.

51 Indemnification of sureties

- (1) A person commits an offence if the person indemnifies, or agrees to indemnify, anyone else against a liability the other person incurs or may incur as surety for an accused person.

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

- (2) A person commits an offence if the person is indemnified, or agrees to be indemnified, by someone else against a liability the person incurs or may incur as surety for an accused person.

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

- (3) For this section, it does not matter whether—
 - (a) the agreement is for compensation in money or anything else; or
 - (b) the agreement is made before or after the person indemnified, or agreed to be indemnified, becomes a surety; or
 - (c) the person indemnified, or agreed to be indemnified, becomes a surety.

52 Contravention of Act by police officers

- (1) If 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 relation to 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

If a court or an authorised officer, in making a decision in relation to bail (other than a decision in proceedings for an offence committed in relation to 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 No right of surety to arrest

A surety for an accused person does not have the right to arrest the accused person because the surety is a surety for the accused person.

56A Arrest without warrant of person on bail

- (1) This section applies if a person has been granted bail in the ACT, a State or another Territory.
- (2) A police officer may arrest the person without warrant if the officer believes on reasonable grounds that the person—
 - (a) has failed to comply with a bail condition; or
 - (b) will not comply with a bail condition.
- (3) The police officer must bring the person before a court as soon as practicable.
- (4) The court may—
 - (a) for a person granted bail in the ACT—exercise the same powers in relation to bail as it has in relation to any other accused person in custody; or

- (b) for a person granted bail in a State or another Territory—
 - (i) release the person unconditionally; or
 - (ii) grant the person bail subject to the conditions that the court considers appropriate; or
 - (iii) remand the person in custody for a reasonable time while a warrant for the person's arrest is obtained from the State or other Territory.
- (5) A release mentioned in subsection (4) (b) (i) does not affect the grant of bail in the State or other Territory.

56B Arrest for breach of condition by person outside ACT

- (1) This section applies if a police officer reasonably believes that—
 - (a) a person who has been granted bail in the ACT has failed to comply with a bail condition; and
 - (b) the person is in a State or another Territory.
- (2) An issuing officer may, on the information of a police officer—
 - (a) issue a warrant to arrest the person in the State or other Territory and bring the person before a court; or
 - (b) issue a summons for the person's appearance before a court.
- (3) In this section
issuing officer, for a warrant, means—
 - (a) a judge, the registrar or a deputy registrar of the Supreme Court; or
 - (b) a magistrate; or
 - (c) if authorised by the Chief Magistrate to issue a warrant—the registrar or deputy registrar of the Magistrates Court.

57 Act to prevail

- (1) Except if otherwise expressly provided by this Act, this Act applies in relation to the grant of bail to accused people to the exclusion of any other law in force immediately before the commencement of this Act so far as any other law makes provision for or in relation to bail for accused people.
- (2) This Act does not affect the *Bill of Rights 1688* 1 Will and Mary sess 2 c 2.

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 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.

- (4) Any other approved form is a notifiable instrument.
Note A notifiable instrument must be notified under the Legislation Act.
- (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

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) Without limiting subsection (1), a regulation may make provision in relation to the management (including the investment) of an amount deposited in accordance with a condition mentioned in section 25 (1) (c).

U **Schedule 1** **Offences to which presumption
of bail does not apply**

(see s 9B (a))

Part 1.1 **Offences against Crimes Act
1900**

column 1 item	column 2 provision	column 3 description of offence
1	15	manslaughter
2	19	intentionally inflicting grievous bodily harm
3	49C	industrial manslaughter (employer offence)
4	49D	industrial manslaughter (senior officer offence)
5	51	sexual assault in the first degree
6	52	sexual assault in the second degree
7	54	sexual intercourse without consent
8	55 (1)	sexual intercourse with young person under 10 years old

Part 1.2 **Offences against Criminal Code**

column 1 item	column 2 provision	column 3 description of offence
1	310	aggravated robbery
2	312	aggravated burglary

column 1 item	column 2 provision	column 3 description of offence
3	603 (3)	trafficking in commercial quantity of controlled drug
4	603 (5)	trafficking in trafficable quantity of cannabis
5	603 (7)	trafficking in controlled drug other than cannabis
6	607 (3)	manufacturing commercial quantity of controlled drug for selling
7	607 (5)	manufacturing controlled drug for selling
8	610 (1)	selling large commercial quantity of controlled precursor for manufacture of controlled drug
9	610 (3)	selling commercial quantity of controlled precursor for manufacture of controlled drug
10	611 (1)	manufacturing large commercial quantity of controlled precursor for manufacture of controlled drug
11	611 (3)	manufacturing large commercial quantity of controlled precursor for selling
12	611 (5)	manufacturing commercial quantity of controlled precursor for manufacture of controlled drug
13	611 (7)	manufacturing commercial quantity of controlled precursor for selling
14	612 (1)	possessing large commercial quantity of controlled precursor
15	612 (3)	possessing commercial quantity of controlled precursor

Schedule 1
Part 1.3

Offences to which presumption of bail does not apply
Offences against Drugs of Dependence Act 1989

column 1 item	column 2 provision	column 3 description of offence
16	616 (3)	cultivating commercial quantity of controlled plant
17	619 (3)	selling commercial quantity of controlled plant
18	622 (3)	supplying etc controlled drug to child for selling
19	624 (4)	procuring child to traffic in controlled drug
20	625 (1)	supplying etc controlled drug (other than cannabis) to child
21	639	concealing etc property derived from drug offence

U **Part 1.3**

Offences against Drugs of Dependence Act 1989

column 1 item	column 2 provision	column 3 description of offence
1	161	manufacture of drug of dependence or prohibited substance
2	164	sale, supply etc of prohibited substance or drug of dependence

**U Part 1.3A Offences against Medicines,
Poisons and Therapeutic Goods
Act 2008**

**U Part 1.4 Offences against Customs Act
1901 (Cwlth)**

column 1 item	column 2 provision	column 3 description of offence
1	231 (1)	assembly for unlawful purposes
2	233AC	master allowing use of ship for smuggling etc narcotic goods
3	233B	special provisions about narcotic goods

U Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act (see s 7)
- adult
- child
- chief executive
- Chief Magistrate
- chief police officer
- correctional centre
- domestic partner (see s 169 (1))
- found guilty
- indictable offence (see s 190 (1))
- judge
- magistrate
- Magistrates Court
- mental health tribunal
- penalty unit (see s 133)
- police officer
- public trustee
- State
- Supreme Court
- the Territory.

accused person includes—

- (a) a person charged with, convicted of, or found guilty of, an offence; and
- (b) a person mentioned in section 8 (1) (c), (d) or (e); and
- (c) a person whose conviction for an offence is stayed; and

-
- (d) a person subject to an order under the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general); and
 - (e) a person in relation to whom an appeal relating to an offence is pending; and
 - (f) a person in relation to whom a new trial has been ordered to be held for an offence.

appeal includes an application for leave to appeal and an appeal proceeding.

applicable bail criteria, for a decision about bail, means criteria under any of the following provisions applying to the decision:

- (a) section 9D (Bail for serious offence committed while charge for another is pending or outstanding);
- (b) section 9F (Domestic violence offence—bail by authorised officer);
- (c) section 22 (Criteria for granting bail to adults);
- (d) section 23 (Criteria for granting bail to children).

authorised officer means—

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

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

bail condition means a condition on which bail is granted.

child, of a person, includes a child—

- (a) who normally or regularly lives with the person; or

(b) of whom the person is a guardian.

court means the Supreme Court or Magistrates Court.

domestic violence offence—an offence that a person is accused of committing is a **domestic violence offence** if the conduct making up the offence is domestic violence under the *Domestic Violence and Protection Orders Act 2001*.

grant, in relation to bail (other than in section 22 (Criteria for granting bail to adults) or section 23 (Criteria for granting bail to children)), includes continue.

offence includes—

- (a) an alleged offence; and
- (b) except for section 8 (1) (a) and section 9 (1)—
 - (i) a breach of the peace or an apprehended breach of the peace; and
 - (ii) a breach of an obligation mentioned in section 8A (Entitlement to bail—breach of sentence obligations).

parental responsibility—a person has **parental responsibility** for a child or young person if the person has parental responsibility for the child or young person under the *Children and Young People Act 1999*, section 18.

Note For the meaning of **parental responsibility**, see the *Children and Young People Act 1999*, s 17.

surety, in relation to an accused person, means a person other than the accused person who is subject to a liability under a bail condition mentioned in section 25 (1).

undertaking to appear means an undertaking given under 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 because 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) if a primary victim dies because of the commission of an offence of which the accused person is accused—anyone who was financially or psychologically dependent on the primary victim immediately before his or her death.

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 and expiries 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 endnote.

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.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

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 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 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)

Endnotes

3 Legislation history

Bail (Amendment) Act 1997 No 22

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

Bail Amendment Act 2001 (No 2) No 60

notified 10 September 2001 (Gaz 2001 No S66)
s 1, s 2 commenced 10 September 2001 (IA s 10B)
remainder commenced 24 September 2001 (s 2)

**Protection Orders (Consequential Amendments) Act 2001 No 90
sch 1 pt 1**

notified LR 27 September 2001
s 1, s 2 commenced 27 September 2001 (LA s 75)
sch 1 pt 1 commenced 27 March 2002 (s 2 and see the Protection
Orders Act 2001, s 3 and LA s 79)

Legislation Amendment Act 2002 No 11 amdt 2.5, amdt 2.6

notified LR 27 May 2002
s 1, s 2 commenced 27 May 2002 (LA s 75)
amdt 2.5, amdt 2.6 commenced 28 May 2002 (s 2 (2))

Criminal Code 2002 No 51 pt 1.1

notified LR 20 December 2002
s 1, s 2 commenced 20 December 2002 (LA s 75)
pt 1.1 commenced 1 January 2003 (s 2 (1))

**Legislation (Gay, Lesbian and Transgender) Amendment Act 2003
A2003-14 sch 1 pt 1.2**

notified LR 27 March 2003
s 1, s 2 commenced 27 March 2003 (LA s 75)
sch 1 pt 1.1 commenced 28 March 2003 (s 2)

Bail Amendment Act 2004 A2004-14

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
s 44 commenced 26 June 2004 (s 2 (2) (a))
remainder commenced 26 June 2004 (s 2 (1))

**Criminal Code (Theft, Fraud, Bribery and Related Offences)
Amendment Act 2004 A2004-15 sch 3 pt 3.1**

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 3 pt 3.1 commenced 26 June 2004 (s 2 (2) and see Bail
Amendment Act 2004 A2004-14 s 2)

Endnotes

3 Legislation history

Criminal Code (Serious Drug Offences) Amendment Act 2004 A2004-56 sch 1 pt 1.1

notified LR 6 September 2004
s 1, s 2 commenced 6 September 2004 (LA s 75 (1))
sch 1 pt 1.1 commenced 6 March 2005 (s 2 and LA s 79)

Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.5

notified LR 2 September 2004
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))
sch 1 pt 1.5 commenced 10 January 2005 (s 2 and see Court
Procedures Act 2004 A2004-59, s 2 and CN2004-29)

Justice and Community Safety Legislation Amendment Act 2005 A2005-5 pt 3

notified LR 23 February 2005
s 1, s 2 commenced 23 February 2005 (LA s 75 (1))
pt 3 commenced 24 February 2005 (s 2 (2))

Domestic Violence and Protection Orders Amendment Act 2005 A2005-13 sch 1 pt 1.1

notified LR 24 March 2005
s 1, s 2 commenced 24 March 2005 (LA s 75 (1))
sch 1 pt 1.1 commenced 25 March 2005 (s 2)

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.4

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.4 commenced 2 June 2005 (s 2 (1))

Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.7

notified LR 27 October 2005
s 1, s 2 commenced 27 October 2005 (LA s 75 (1))
sch 1 pt 1.7 commenced 24 November 2005 (s 2)

Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.2

notified LR 18 May 2006
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))
sch 1 pt 1.2 commenced 2 June 2006 (s 2 (1) and see Crimes
(Sentence Administration) Act 2005 A2005-59 s 2, Crimes
(Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

**Justice and Community Safety Legislation Amendment Act 2006
A2006-40 sch 2 pt 2.6**

notified LR 28 September 2006
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))
sch 2 pt 2.6 commenced 29 September 2006 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2008
A2008-7 sch 1 pt 1.3**

notified LR 16 April 2008
s 1, s 2 commenced 16 April 2008 (LA s 75 (1))
sch 1 pt 1.3 commenced 7 May 2008 (s 2)

**Children and Young People (Consequential Amendments) Act 2008
A2008-20 sch 2 pt 2.1, sch 3 pt 3.2, sch 4 pt 4.1**

notified LR 17 July 2008
s 1, s 2 commenced 17 July 2008 (LA s 75 (1))
s 3 commenced 18 July 2008 (s 2 (1))
sch 2 pt 2.1 commenced 9 September 2008 (s 2 (3) and see Children
and Young People Act 2008 A2008-19, s 2 and CN2008-13)
sch 3 pt 3.2 commences 27 October 2008 (s 2 (4) and see Children
and Young People Act 2008 A2008-19, s 2 and CN2008-13)
sch 4 pt 4.1 commences 27 February 2009 (s 2 (5) and see Children
and Young People Act 2008 A2008-19, s 2 and CN2008-13)

**Medicines, Poisons and Therapeutic Goods Act 2008 A2008-26
sch 2 pt 2.2**

notified LR 14 August 2008
s 1, s 2 commenced 14 August 2008 (LA s 75 (1))
sch 2 pt 2.2 awaiting commencement (s 2)

Note default commencement under LA s 79: 14 February 2009

**ACT Civil and Administrative Tribunal Legislation Amendment
Act 2008 A2008-36 sch 1 pt 1.6**

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.6 commences on the commencement of ACT Civil and
Administrative Tribunal Act 2008 A2008-35 s 6 (s 2 (1))

Note default commencement under A2008-35: 4 September 2010

Endnotes

4 Amendment history

4 Amendment history

Name of Act

s 1 sub A2004-14 amdt 1.1

Dictionary

s 2 om 2001 No 44 amdt 1.316
ins A2004-14 amdt 1.1
am A2005-13 amdt 1.1; A2006-23 amdt 1.4

Notes

s 3 (prev s 3) am 1994 No 73 s 4; s (2) pars renum R6 LA;
A2004-14 s 4
def **appeal** om A2004-14 amdt 1.1
def **applicable bail criteria** ins 2001 No 25 s 4
am 2001 No 60 s 4
om A2004-14 amdt 1.1
def **authorised officer** sub 2001 No 25 s 5
om A2004-14 amdt 1.1
def **bail** om A2004-14 amdt 1.1
def **bail condition** om A2004-14 amdt 1.1
def **bail undertaking** om 1994 No 73 s 4
def **child** sub 1997 No 22 s 4
om A2004-14 amdt 1.1
def **clerk** om A2004-14 amdt 1.1
def **court** om A2004-14 amdt 1.1
def **Crimes Act** om R3 LRA
def **de facto spouse** ins 1997 No 22 s 4
om A2003-14 amdt 1.4
def **domestic violence offence** sub 1997 No 22 s 4; 1998
No 39 s 4
am 1999 No 79 sch 3
sub 2001 No 90 amdt 1.1
par (e) exp 27 March 2002 (see s 60)
am 2002 No 11 amdt 2.5; pars renum R7 LA (see 2002
No 11 amdt 2.6); 2002 No 51 amdt 1.1
om A2004-14 amdt 1.1
def **harm** ins 1994 No 84 s 4
om A2004-14 amdt 1.1
def **household member** ins 1997 No 22 s 4
om 2001 No 90 amdt 1.2
def **judge** om A2004-14 amdt 1.1
def **offence** sub 1994 No 73 s 4
om A2004-14 amdt 1.1
def **outstanding** ins 2001 No 60 s 5
om A2004-14 amdt 1.1
def **pending** ins 2001 No 60 s 5
om A2004-14 amdt 1.1

def **relative** ins 1997 No 22 s 4
 sub 2001 No 90 amdt 1.3
 am A2003-14 amdt 1.5
 om A2004-14 amdt 1.1
 def **relevant person** ins 2001 No 90 amdt 1.4
 am A2003-14 amdt 1.6, amdt 1.7
 om A2004-14 amdt 1.1
 def **remand centre** om A2004-14 amdt 1.1
 def **serious offence** ins 2001 No 25 s 6
 sub 2001 No 60 s 6
 om A2004-14 amdt 1.1
 def **spouse** ins 1997 No 22 s 4 (b)
 om A2003-14 amdt 1.8
 def **undertaking to appear** om A2004-14 amdt 1.1
 def **victim** ins 1994 No 84 s 4
 om A2004-14 amdt 1.1
 pres s 3 sub A2004-14 amdt 1.1

Offences against Act—application of Criminal Code etc

s 3A ins A2005-54 amdt 1.44

Act applies to children

s 4 am R3 LRA
 sub A2004-14 amdt 1.2

Availability of bail

pt 2 hdg sub A2004-14 s 5

When bail may be granted and rights following

div 2.1 hdg ins A2004-14 s 5

When may bail be granted?

s 5 am 2001 No 25 s 7
 sub A2004-14 s 5

Rights following grant of bail

s 6 sub A2004-14 s 5

Presumption for bail

div 2.2 hdg ins A2004-14 s 5

Div 2.2 subject to div 2.3 and div 2.4

s 7 am 1992 No 75 s 4; 1994 No 73 s 5; 1997 No 22 s 5; 1998
 No 39 s 5; 2001 No 90 amdt 1.5
 sub A2004-14 s 5

Bail following arrest for breach of peace

s 7A ins 1994 No 73 s 6
 sub 2001 No 90 amdt 1.6
 om A2004-14 s 5

Endnotes

4 Amendment history

Entitlement to bail—certain minor offences etc

s 8 sub 1994 No 73 s 6
am 1997 No 22 s 6; 2001 No 25 s 8, s 9; 2001 No 60 s 7
sub 2001 No 90 amdt 1.6; A2004-14 s 5
am A2006-40 amdt 2.59

Entitlement to bail—breach of sentence obligations

s 8A ins 1997 No 22 s 7
am 1998 No 39 s 6; 2001 No 25 s 1
sub 2001 No 90 amdt 1.6; A2004-14 s 5; A2006-23 amdt 1.5
(3)-(5) exp 2 June 2009 (s 8A (5) (LA s 88 declaration
applies))

Entitlement to bail—custody relating to sentence administration board hearings

s 8B ins A2006-23 amdt 1.5

Limitations on entitlement to bail

s 9 hdg sub 2001 No 25 s 11
s 9 sub 2001 No 54 amdt 2.2; A2004-14 s 5

Entitlement to bail—offences other than minor offences

s 9A hdg sub 2001 No 60 s 8
s 9A ins 2001 No 25 s 12
am 2001 No 60 s 9, s 10
(7), (8) exp 24 September 2003 (s 9A (8))
sub A2004-14 s 5

No presumption for bail

div 2.3 hdg ins A2004-14 s 5

Div 2.2 not to apply to certain offences

s 9B ins A2004-14 s 5
am A2005-13 amdt 1.2

Presumption against bail

div 2.4 hdg ins A2004-14 s 5

Bail for murder and certain serious drug offences

s 9C hdg sub A2004-56 amdt 1.1
s 9C ins A2004-14 s 5
am A2004-56 amdt 1.2

Bail for serious offence committed while charge for another pending or outstanding

s 9D ins A2004-14 s 5
am A2004-15 amdt 3.1; A2006-23 amdt 1.6; A2008-20
amdt 4.1

Bail for person sentenced to imprisonment

s 9E ins A2004-14 s 5

Domestic violence offence—bail by authorised officer

s 9F ins A2004-14 s 5
am A2005-13 amdt 1.3

Special or exceptional circumstances

s 9G ins A2004-14 s 5
am A2004-15 amdt 3.2

Dispensing with bail

s 10 am 1994 No 73 s 7; 2001 No 25 s 13; 2001 No 60 s 11;
A2004-14 s 6

Deciding bail after charge laid

s 13 am 1994 No 73 s 8; 1997 No 22 s 8; 2001 No 25 s 14;
A2005-20 amdt 3.14

Grant of bail by authorised officers

s 14 am A2004-14 s 7

Deciding of questions of bail by authorised officers

s 15 am 1997 No 22 s 9; 2001 No 25 s 15; A2004-14 s 8

Notification of decision of authorised officer

s 16 am 1994 No 73 s 9; 1997 No 22 s 10; 2001 No 90 amdt 1.7;
ss renum R6 LA (see also 2001 No 90 amdt 1.8); A2005-13
amdt 1.4

General provisions relating to court bail

s 19 am 1997 No 22 sch 2; am 1997 No 96 sch 1; A2004-14 s 9

Limitations on power of magistrate

s 20 sub A2004-14 s 10

Bail in relation to 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
sub A2004-14 s 11

Criteria for granting bail to children

s 23 am 1997 No 22 s 12; 1999 No 64 sch 2
sub A2004-14 s 11
am A2008-20 amdt 2.1, amdt 4.2

Victim's concern about need for protection

s 23A ins 1994 No 84 s 6
am 1997 No 22 s 13
sub A2004-14 s 11

Bail conditions and undertakings to appear

pt 5 hdg sub 1994 No 73 s 10

Endnotes

4 Amendment history

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; 2001 No 90 amdt 1.9; ss renum R6 LA;
A2004-14 s 12, s 13, s 15, s 16; pars renum R11 LA
(see A2004-14 s 14); ss renum R11 LA (see A2004-14 s 17);
A2006-23 amdt 1.7; [A2008-36 amdt 1.58](#)

Supervision condition when offence committed as young person

s 25A ins A2008-20 amdt 4.3

Conditions on which bail may be granted to children

s 26 am 1999 No 64 sch 2; A2004-14 s 18, s 19; ss renum R11 LA
(see A2004-14 s 20); A2008-20 amdt 2.2, amdt 2.3, [amdt 4.4](#)

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
om A2004-14 s 21

Undertakings to appear

s 28 am 2001 No 44 amdt 1.318
sub A2004-14 s 22

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; A2004-14
amdt 1.3, amdt 1.4; ss renum R11 LA (see A2004-14
amdt 1.5)

Bail requirements

s 31 am 1994 No 73 s 13
sub A2004-14 s 23
am A2006-23 amdt 1.8; A2008-7 amdt 1.21

Acceptable people and security for bail

s 32 am 1994 No 73 s 14; ss renum R6 LA
sub A2004-14 s 23

Continuation of bail and undertakings

s 33 am 1994 No 73 s 15; 1997 No 22 sch 2; ss renum R6 LA;
A2004-14 s 24, s 25

Written notice of conditions of bail

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

Warning to person making acknowledgment

s 35 om A2004-14 s 26

Discharge of surety

s 36 am 1994 No 73 s 16
sub A2004-14 s 27

Payment of amounts to Territory

s 37 sub A2004-14 s 28
am A2004-60 amdt 1.16

Review of decisions by authorised officers

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

Review by authorised officers

s 38 am 1997 No 22 sch 2

Expiry—Motor Traffic Act reference

s 39 renum as s 60 R5 LA

Review of decisions by courts

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

Court may review on its own initiative

s 41A ins A2004-14 s 29

Power of Magistrates Court to review

s 42 sub A2004-14 s 30; A2005-5 s 6

Power of Supreme Court to review

s 43 am A2004-14 s 31, s 32; ss renum R11 LA; A2005-5 s 8 (and see s 7)

General limitation on power of court to review

s 44 om A2004-14 s 33

Miscellaneous

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
om A2004-14 s 34

Notice to victim of bail decisions

s 46A ins 1994 No 84 s 9
om A2004-14 s 34

Giving information relating to bail

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

Notice to victim of bail decisions

s 47A ins A2004-14 s 35; ss renum R11 LA
am A2005-13 amdt 1.5

Notification to court that bail condition not satisfied

s 48 am 1994 No 73 s 18; 2001 No 44 amdt 1.322; A2006-23
amdt 1.9

Endnotes

4 Amendment history

Failure to answer bail

s 49 am 1994 No 73 s 19; 1994 No 81 sch
sub 2001 No 25 s 16; A2005-54 amdt 1.45

False statements in acknowledgments

s 50 am 1994 No 81 sch
om A2004-14 s 36

Indemnification of sureties

s 51 am 1994 No 81 sch
sub A2005-54 amdt 1.46

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

No right of surety to arrest

s 56 am 1994 No 73 s 20
sub A2004-14 s 37

Arrest without warrant of person on bail

s 56A ins A2004-14 s 28

Arrest for breach of condition by person outside ACT

s 56B ins A2004-14 s 28

Act to prevail

s 57 am A2004-14 amdt 1.6, amdt 1.7

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
am A2004-14 s 39

Regulation-making power

s 59 ins 2001 No 44 amdt 1.323
am A2004-14 s 40, s 41

Transitional

pt 8 hdg ins 1999 No 79 sch 3
om R6 LA

Expiry—Motor Traffic Act reference

s 60 (prev s 39) ins 1999 No 79 sch 3
 sub 2001 No 90 amdt 1.10 as s 59
 renum R5 LA
 exp 27 March 2002 (see s 60)

Domestic violence offences against the *Crimes Act 1900*

sch 1 ins 1997 No 22 s 14
 am 1998 No 39 s 7
 sub 2001 No 90 amdt 1.11
 am 2002 No 51 amdt 1.2
 sub A2004-14 s 43
 am A2004-14 s 44; A2004-15 amdt 3.3, amdt 3.4; pts renum
 R11 LA (see A2004-15 amdt 3.5); items renum R11 LA;
 A2004-56 amdt 1.3, amdt 1.4; items renum R14 LA;
A2008-26 amdt 2.2, amdt 2.3

Dictionary

dict ins A2004-14 amdt 1.8
 am A2006-23 amdt 1.10-1.12; A2008-36 amdt 1.59,
amdt 1.60
 def **accused person** ins A2004-14 s 42
 am A2006-23 amdt 1.13
 def **appeal** ins A2004-14 amdt 1.8
 def **applicable bail criteria** ins A2004-14 amdt 1.8
 def **authorised officer** ins A2004-14 amdt 1.8
 def **bail** ins A2004-14 amdt 1.8
 def **bail condition** ins A2004-14 amdt 1.8
 def **child** ins A2004-14 amdt 1.8
 def **court** ins A2004-14 amdt 1.8
 def **domestic violence offence** ins A2004-14 amdt 1.8
 sub A2005-13 amdt 1.6
 def **grant** ins A2004-14 amdt 1.8
 def **offence** ins A2004-14 amdt 1.8
 am A2006-23 amdt 1.14
 def **parental responsibility** ins A2005-13 amdt 1.7
 sub A2006-23 amdt 1.15; A2008-20 amdt 3.3
 def **relevant person** ins A2004-14 amdt 1.8
 om A2005-13 amdt 1.8
 def **surety** ins A2004-14 amdt 1.8
 def **undertaking to appear** ins A2004-14 amdt 1.8
 def **victim** ins A2004-14 amdt 1.8

Endnotes

5 Earlier republications

5 Earlier republications

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

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

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
4	Act 2001 No 54	12 September 2001
5	<u>Act 2001 No 90</u>	12 October 2001
6	Act 2001 No 90	27 March 2002
7*	Act 2002 No 11	28 May 2002
8	Act 2002 No 51	1 January 2003
9	A2003-14	28 March 2003
10	A2003-14	25 September 2003
11	A2004-15	26 June 2004
12	A2004-60	10 January 2005
13	A2005-5	24 February 2005
14	A2005-5	6 March 2005
15	A2005-13	25 March 2005
16*	A2005-20	2 June 2005
17	A2005-54	24 November 2005
18	A2006-23	2 June 2006
19	A2006-40	29 September 2006
20	A2008-7	7 May 2008

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Children and Young People (Consequential Amendments)
Act 2008 A2008-20 sch 3 pt 3.2, sch 4 pt 4.1**

Part 3.2 Bail Act 1992

[3.3] Dictionary, definition of *parental responsibility*

substitute

parental responsibility—a person has *parental responsibility* for a child or young person if the person has parental responsibility for the child or young person under the *Children and Young People Act 2008*.

Note Parental responsibility is dealt with in the *Children and Young People Act 2008*, div 1.3.2.

Part 4.1 Bail Act 1992

[4.1] Section 9D (6), definition of *outstanding*, note, 3rd dot point

omit

[4.2] Section 23 (1) (c)

omit

Children and Young People Act 1999, section 73 (Powers of court in relation to reports)

substitute

Court Procedures Act 2004, section 74D (Court may order report about young person)

[4.3] New section 25A

insert

25A Supervision condition when offence committed as young person

- (1) This section applies if—
 - (a) a condition is imposed on the grant of bail to an accused person under section 25 (4) (e); and
 - (b) the accused person is at least 18 years old but less than 21 years old; and
 - (c) the accused person was under 18 years old when the offence to which the grant of bail relates was committed.
- (2) The chief executive responsible for this Act and the chief executive responsible for the *Children and Young People Act 2008* must decide which of them is to be the responsible chief executive for matters relating to the supervision of the accused person.

[4.4] Section 26 (2) (a)

omit

Children and Young People Act 1999, chapter 6 (Young Offenders)

substitute

Children and Young People Act 2008

<p>Medicines, Poisons and Therapeutic Goods Act 2008 A2008-26 sch 2 pt 2.2</p>
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Part 2.2 Bail Act 1992

[2.2] Schedule 1, part 1.3

substitute

Part 1.3 Offence against Drugs of Dependence Act 1989

column 1 item	column 2 provision	column 3 description of offence
1	164	sale, supply etc of drug of dependence or prohibited substance

Part 1.3A Offences against Medicines, Poisons and Therapeutic Goods Act 2008

column 1 item	column 2 provision	column 3 description of offence
1	26	supply of controlled medicine or prohibited substance
2	33	manufacture of controlled medicine or prohibited substance

[2.3] Schedule 1, parts 1.3A and 1.4

renumber as schedule 1, parts 1.4 and 1.5

**ACT Civil and Administrative Tribunal Legislation
Amendment Act 2008 A2008-36 sch 1 pt 1.6**

Part 1.6 Bail Act 1992

[1.58] Sections 25 (4) (e), example 2 and 26 (2) (b), example 2

substitute

- 2 a direction to comply with a mental health assessment or treatment order made by the ACAT

Endnotes

6 Uncommenced amendments

[1.59] Dictionary, note 2, new dot point

insert

- ACAT

[1.60] Dictionary, note 2, dot points

omit

- mental health tribunal

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