



Australian Capital Territory

# Bail Amendment Act 2004

A2004-14

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2003 030B

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Australian Capital Territory

# Bail Amendment Act 2004

**A2004-14**

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An Act to amend the *Bail Act 1992*, and for other purposes

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

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2003 030B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## **1 Name of Act**

This Act is the *Bail Amendment Act 2004*.

## **2 Commencement**

- (1) This Act (other than section 44) commences 3 months after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Section 44 commences—

(a) if the *Crimes (Industrial Manslaughter) Amendment Act 2003* has commenced before the remainder of this Act commences—on the commencement of the remainder of this Act; and

(b) otherwise—on the commencement of the *Crimes (Industrial Manslaughter) Amendment Act 2003*.

- (3) If the *Crimes (Industrial Manslaughter) Amendment Act 2003* has not commenced within 6 months beginning on the day the remainder of this Act commences, section 44 expires at the end of that period.

## **3 Legislation amended**

This Act amends the *Bail Act 1992*.

*Note* This Act also amends the following legislation (see sch 2):

- *Crimes Act 1900*
- *Magistrates Court Act 1930*
- *Mental Health (Treatment and Care) Act 1994*.

## **4 Interpretation Section 3 (3)**

*omit*

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**5 Part 2**

*substitute*

**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 writ of habeas corpus.
- (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.



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- (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—breaches of certain orders**

- (1) This section applies to a person who is arrested for, or in another way brought before the court in relation to, a breach of—
- (a) a recognisance; or
  - (b) a community service order; or
  - (c) a home detention order; or
  - (d) a periodic detention order.
- (2) The person has the same entitlement to be granted bail in relation to the breach of the order as the person has under this part in relation to the offence to which the order relates.

#### **Examples**

- 1 Martin has been found guilty of armed robbery and sentenced to periodic detention. He has breached the periodic detention order and is before the court on an application to cancel the order. 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. After serving part of his sentence of imprisonment for the offence of threatening to kill, he was released on entering into a recognisance. He has breached the recognisance and is before the court on an application to cancel the order for his release. 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) In this section:

*community service order*—see the *Crimes Act 1900*, section 407.

*home detention order*—see the *Rehabilitation of Offenders (Interim) Act 2001*, dictionary.

*periodic detention order* means an order under the *Periodic Detention Act 1995*, section 4 (Power to order periodic detention).

## **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 *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**

- (1) This section applies to a person accused 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).

- (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).

### **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 vehicle without authority (punishable by 5 years imprisonment under the *Crimes Act 1900*, section 111, and

so a serious offence for this section). Before the court date, Claude is arrested and charged with having committed an armed robbery the day after being served with the summons (punishable by 25 years imprisonment under the *Crimes Act 1900*, section 92, and so also a serious offence for this section). At the time of the alleged armed robbery, the charge of taking a vehicle without authority was still pending. This section will apply to any decision about the grant of bail to Claude in relation to the armed 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 the offence taken into account under the *Crimes Act 1900*, s 357 and having an order made in relation to the offence under the *Crimes Act 1900*, s 402 or the *Children and Young People Act 1999*, s 98 (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 domestic violence offence—
    - (a) means a person against whom the alleged conduct making up the offence was directed; and
    - (b) includes a relevant person in relation to that 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 armed robbery. He has earlier been charged with having committed armed 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).

## **6 Dispensing with bail Section 10 (5) (a) and (b)**

*substitute*

- (a) section 9D (Bail for serious offence committed while charge for another pending or outstanding);
- (b) section 9E (Bail for person sentenced to imprisonment).

## **7 Grant of bail by authorised officers Section 14 (2)**

*substitute*

- (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).

**8 Determination of questions of bail by authorised officers  
Section 15 (3) (b)**

*omit*

8A (1)

*substitute*

9F (2)

**9 General provisions relating to court bail  
Section 19 (5) (b)**

*substitute*

- (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.

**10 Section 20**

*substitute*

**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.

## **11 Sections 22, 23 and 23A**

*substitute*

## **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).

## **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 1999*, section 68; 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 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).

**12 Conditions on which bail may be granted to adults  
Section 25 (1)**

*substitute*

- (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 (Acceptable people and security for bail).

- (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.

(1A) 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.

(1B) It must not be a condition of bail that a person gives consent under subsection (1A).

### **13 New section 25 (2) (da)**

*insert*

- (da) a requirement that the person—
  - (i) accept supervision by the director of corrective services; and
  - (ii) comply with any reasonable direction of the director; 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).

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**14 Section 25 (2)**

*renumber paragraphs when Act next republished under Legislation Act*

**15 Section 25 (5)**

*omit*

subsection (1) (d) or (e)

*substitute*

subsection (1) (b) or (c)

**16 Section 25 (7)**

*omit*

**17 Section 25**

*renumber subsections when Act next republished under Legislation Act*

**18 Conditions on which bail may be granted to children  
Section 26 (1)**

*substitute*

- (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 (2) (da)); 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 1999*, section 68; and

(ii) considering, as a primary consideration, the best interests of the child.

(1A) 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).

**19 Section 26 (3) (a) (ii)**

*omit*

sections 12 and 68

*substitute*

section 68

**20 Section 26**

*renumber subsections when Act next republished under Legislation Act*

**21 Notice to victim of bail decisions  
Section 27A**

*omit*



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**22 Section 28**

*substitute*

**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.

**23 Sections 31 and 32**

*substitute*

**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 in a remand centre or prison—the person in charge of the remand centre or prison.
- (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 under the regulations for this subsection.

---

**24 Continuation of bail and undertakings**  
**Section 33 (2), new note**

*insert*

*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)).

**25 Section 33 (3) to (6)**

*substitute*

- (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.

**26 Warning to person making acknowledgment  
Section 35**

*omit*

**27 Section 36**

*substitute*

**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.

## **28 Section 37**

*substitute*

### **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 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 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.

## **29 New section 41A**

*insert*

### **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.

## **30 Section 42**

*substitute*

### **42 Power of magistrate to review**

- (1) A magistrate may, on application under this division, review any decision made by an authorised officer or a magistrate (including his or her own decision) in relation to bail.
- (2) However, a magistrate 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 to the magistrate.

**31 Power of Supreme Court to review  
Section 43 (1)**

*omit*

may

*insert*

may, on application under this division,

**32 Power of Supreme Court to review  
New section 43 (1A)**

*insert*

(1A) However, the 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 to the judge.

**33 General limitation on power of court to review  
Section 44**

*omit*

**34 Miscellaneous  
Division 6.3**

*omit*

**35 New section 47A**

*insert*

**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.
- (2) 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 care and control of the child) about the bail decision as soon as practicable.

**36 False statements in acknowledgments  
Section 50**

*omit*

**37 Section 56**

*substitute*

**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.



---

**38 New sections 56A and 56B***insert***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.

**39 Approved forms**  
**Section 58 (3)**

*omit*

25,

**40 Regulation-making power**  
**Section 59**

*omit*

The Executive

*substitute*

- (1) The Executive

**41 New section 59 (2)**

*insert*

- (2) Without limiting subsection (1), the regulations 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).

**42 Dictionary, new definition of *accused person***

*insert*

***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 discharged under the *Crimes Act 1900*, section 402 (Conditional release of offenders without proceeding to conviction) on giving security under that section; 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.

**43 Schedule 1**

*substitute*

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

(see s 9B (a) and (b))

**Part 1.1 Offences against Crimes Act  
1900**

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
1	15	manslaughter
2	19	intentionally inflicting grievous bodily harm
3	51	sexual assault in the first degree
4	52	sexual assault in the second degree
5	54	sexual intercourse without consent
6	55 (1)	sexual intercourse with young person under 10 years old
7	92	armed robbery
8	94	aggravated burglary

## Part 1.2 Offences against Drugs of Dependence Act 1989

column 1 item	column 2 provision	column 3 description of offence
11	161	manufacture of drug of dependence or prohibited substance
12	162 (3)	cultivation, or participation in cultivation of, prohibited plants for sale or supply
13	163	wholesale selling of prohibited substance or drug of dependence
14	164	sale, supply etc of prohibited substance or drug of dependence

## Part 1.3 Offences against Customs Act 1901 (Cwlth)

column 1 item	column 2 provision	column 3 description of offence
15	231 (1)	assembly for unlawful purposes
16	233AC	master allowing use of ship for smuggling etc narcotic goods
17	233B	special provisions about narcotic goods

### 44 Schedule 1, part 1.1, new items 1A and 1B

*insert*

1A	49C	industrial manslaughter (employer offence)
1B	49D	industrial manslaughter (senior officer offence)

## Schedule 1 Technical amendments

(see s 3)

### [1.1] Sections 1 and 3

*substitute*

#### 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 ‘*domestic violence offence*—see the *Crimes Act 1900*, dictionary.’ means that the term ‘domestic violence offence’ 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 Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

#### Explanatory note

This amendment brings the naming provision of the Act into line with current drafting practice.

This amendment also adds a standard dictionary provision consequential on the insertion of a new dictionary by another amendment.

The definitions in section 3 (1) are inserted into the new dictionary. The substance of section 3 (4) and (5) has been included in definitions. Section 3 (2) has been amended and included in the new dictionary in another amendment. Section 3 (3) has been omitted as the expression *entering into a bail condition* is no longer used.

This amendment also adds a standard provision about the legal status of notes.

#### **[1.2] Section 4**

*substitute*

### **4 Act applies to children**

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

#### **Explanatory note**

This amendment updates language. *Adult* is defined in the Legislation Act, dictionary, part 1.

#### **[1.3] Section 30 (4), note**

*substitute*

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

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

#### **Explanatory note**

This amendment is consequential on the following amendment and inserts a standard note about the service of documents.

#### **[1.4] Section 30 (5) and (6)**

*omit*

#### **Explanatory note**

This amendment omits provisions made unnecessary by the service provisions of the Legislation Act.

**[1.5] Section 30**

*renumber subsections when Act next republished under Legislation Act*

**Explanatory note**

This amendment is consequential on the previous amendment.

**[1.6] Section 57 (1)**

*omit*

or the *Bail (Consequential Amendments) Act 1992*,

**Explanatory note**

This amendment omits an obsolete reference to transitional provisions.

**[1.7] Section 57 (2)**

*substitute*

- (2) This Act does not affect the *Bill of Rights 1688* 1 Will and Mary sess 2 c 2.

**Explanatory note**

This amendment updates language and omits an obsolete reference to the *Imperial Acts Application Act 1986*.

**[1.8] New dictionary**

*insert*

## 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 Magistrate
- chief police officer
- director of corrective services
- domestic partner (see s 169 (1))
- 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.

*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**—see the *Crimes Act 1900*, dictionary.

**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 sections 8 (1) (a) and 9 (1)—  
(i) a breach of the peace or an apprehended breach of the peace; and  
(ii) breach of a recognisance or an order mentioned in section 8A (1).

**relevant person**—see the *Crimes Act 1900*, dictionary.

**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.

#### Explanatory note

This amendment inserts a dictionary that incorporates all the definitions currently in section 3 (Interpretation) that are still needed. The definitions have, where necessary, been revised to bring them more closely into line with current drafting practice and, if there are equivalent definitions in the *Crimes Act 1900*, been signposted to that Act.

The definition of **clerk** is no longer needed.

The definition of **judge** is unnecessary because the term is defined in the Legislation Act, dictionary, part 1.

The signpost definition of **outstanding** is unnecessary because it is not used outside section 9D, where it is defined.

The signpost definition of **pending** is unnecessary because it is not used, in the sense in which it is defined, outside section 9D, where it is defined for that section.

The definition of **relative** has been omitted because it defines an expression used in the definition of **relevant person** only and is therefore picked up by the signpost definition of **relevant person**.

The definition of **remand centre** is unnecessary because the term is defined in the Legislation Act, dictionary, part 1.

The signpost definition of **serious offence** is not necessary because it is not used outside section 9D, where it is defined.

## Schedule 2      Other amendments

(see s 3)

### Part 2.1      Crimes Act 1900

#### [2.1] Sections 215 and 216

*omit*

#### [2.2] Section 309 (4), definition of *authorised officer*

*substitute*

*authorised officer*—see the Bail Act, dictionary.

#### [2.3] Dictionary, definition of *bail undertaking*

*omit*

### Part 2.2      Magistrates Court Act 1930

#### [2.4] Section 70

*substitute*

#### 70 Remand of defendant

- (1) This section applies if the court considers it is necessary or desirable to adjourn the hearing of a proceeding for an indictable offence—
  - (a) because of the absence of witnesses; or
  - (b) for any other reasonable cause.
- (2) The court may—
  - (a) adjourn the hearing; and
  - (b) remand the defendant into the custody of the administrator—

- (i) by warrant; or
  - (ii) if the period of remand is not longer than 3 days—by an order made orally.
- (3) Any single period of remand under this section must be no longer than—
  - (a) 28 days; or
  - (b) if the defendant chooses to be remanded for a longer period without review—a longer period that the court considers reasonable.
- (4) The warrant or order must direct the administrator to—
  - (a) keep the defendant in custody for a stated period; and
  - (b) bring the defendant before the court at a stated time and place for the hearing.
- (5) If the warrant or order gives a transfer direction to all police officers, the direction is taken to be given to each police officer and may be executed by any police officer.
- (6) If the warrant or order gives a transfer direction to all escorts, the direction is taken to be given to each escort and may be executed by any escort.
- (7) In this section:  
***transfer direction*** means a direction that the defendant be taken, safely transported and delivered into the custody of the administrator.

## Part 2.3      Mental Health (Treatment and Care) Act 1994

### [2.5] Section 4, definition of *referring officer*, paragraph (c)

*substitute*

- (c) a member of the staff of the director of public prosecutions who is responsible for the prosecution of an offence against the person; or
- (d) if the person is required to accept supervision by someone else as a condition of bail under the *Bail Act 1992*—that other person.

*Note*      Under the *Bail Act 1992*, s 25 (2) and s 26 (2), an adult may be supervised by the director of corrective services and a child may be supervised by the chief executive under the *Children and Young People Act 1999*, ch 6 (Young Offenders).

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### Endnotes

**1      Presentation speech**

Presentation speech made in the Legislative Assembly on 11 December 2003.

**2      Notification**

Notified under the Legislation Act on 26 March 2004.

**3      Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Bail Amendment Bill 2004 which originated in the Assembly as the Bail Amendment Bill 2003 and was passed by the Legislative Assembly on 11 March 2004.

Clerk of the Legislative Assembly

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