



Australian Capital Territory

# Bail Amendment Act 2011

A2011-2

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Australian Capital Territory

# Bail Amendment Act 2011

**A2011-2**

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An Act to amend the *Bail Act 1992*

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

**1 Name of Act**

This Act is the *Bail Amendment Act 2011*.

**2 Commencement**

This Act commences on a day fixed by the Minister by written notice.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

**3 Legislation amended**

This Act amends the *Bail Act 1992*.

**4 New sections 12A to 12C**

*in part 4, insert*

**12A Meaning of *bail order* and *bail review application*—pt 4**

In this part:

*bail order*—see section 19 (1).

*bail review application* means an application in relation to bail made under section 41 (Right of review of bail decisions).

**12B When is a proceeding *before the Supreme Court*?—pt 4**

For this part, a proceeding for an offence is *before the Supreme Court* if the court has jurisdiction in the proceeding because the accused person to whom the proceeding relates—

- (a) has been committed to the court for trial or sentence; or
- (b) is an accused in a prosecution on indictment instituted by the director of public prosecutions under the *Director of Public Prosecutions Act 1990*, section 7; or
- (c) has lodged an appeal to the court against a conviction, order or sentence imposed on the person by the Magistrates Court.

**12C Applications for bail—repeat application provisions**

- (1) A reference to an application for bail in section 20A and section 20C is a reference to an application for bail made on or after the day this section commences.
- (2) This section expires 3 years after the day it commences.

**5 Sections 19 and 20**

*substitute*

**19 Court bail—general**

- (1) A court may, in accordance with this part, make any of the following orders in relation to bail (a *bail order*):
  - (a) an order granting bail to an accused person who is being held in custody in relation to an offence with which the person has been charged;
  - (b) an order enlarging, varying or revoking bail granted to the person.

- (2) In deciding whether to make a bail order in relation to an accused person, a court may have regard to any information it considers relevant and reliable.
- (3) This Act does not limit the number of applications in relation to bail that an accused person may make to a court in accordance with this Act.
- (4) A court must deal with an application in relation to bail as soon as reasonably practicable.
- (5) However, a court may decide not to hear an application in relation to bail if the application is frivolous or vexatious.

## **20 Power in relation to bail—Magistrates Court**

- (1) The Magistrates Court has power to make a bail order in relation to an accused person only if a proceeding for an offence with which the person is charged—
  - (a) is, or is about to be brought, before the Magistrates Court; or
  - (b) is before the Supreme Court, and the following apply:
    - (i) the Magistrates Court or the Supreme Court has granted bail to the person in the proceeding;
    - (ii) the person is in custody because the person has been arrested under section 56A (Arrest without warrant of person on bail) and has not been brought before the Supreme Court in relation to the reason for the arrest;
    - (iii) the day on which the application for bail is made is not a Supreme Court sitting day, and is a day on which a magistrate is sitting in relation to another proceeding before the Magistrates Court.

- (2) In this section:

***Supreme Court sitting day*** means a day other than a Saturday, a Sunday or a public holiday.

**20A Repeat application for bail—Magistrates Court**

- (1) This section applies to an application for bail (other than a bail review application) by an accused person in a proceeding if—
  - (a) the proceeding is one in which the Magistrates Court has power to make a bail order under section 20 (1) (a); and
  - (b) the accused person has made 2 applications in the Magistrates Court for bail in the proceeding.
- (2) The court may only consider a third or subsequent application for bail by the person in the proceeding if the court is satisfied—
  - (a) that since the last application for bail there has been a change in circumstances relevant to the granting of bail; or
  - (b) that there is fresh evidence or information of relevance to the granting of bail that was unavailable at the last application for bail.

**20B Power in relation to bail—Supreme Court**

The Supreme Court has power to make a bail order in relation to an accused person only if —

- (a) a proceeding for an offence with which the person is charged is before the Supreme Court; or
- (b) if the proceeding is not before the Supreme Court—section 43 (Power of Supreme Court to review—decision of authorised officer) or section 43A (Power of Supreme Court to review—decision of Magistrates Court or Supreme Court) apply.

**20C Repeat application for bail—Supreme Court**

- (1) This section applies to an application for bail (other than a bail review application) by an accused person in a proceeding if—
  - (a) the proceeding is one in which the Supreme Court has power to make a bail order under section 20B (a); and

- (b) the accused person has—
  - (i) made 2 or more applications for bail in the Magistrates Court when the proceeding was before that court; or
  - (ii) if subparagraph (i) does not apply—made 1 application in the Supreme Court for bail in the proceeding.
- (2) The court may only consider a further application for bail (other than a bail review application) by the person in the proceeding if the court is satisfied—
  - (a) that since the last application for bail there has been a change in circumstances relevant to the granting of bail; or
  - (b) that there is fresh evidence or information of relevance to the granting of bail that was unavailable at the last application for bail.

**Examples**

- 1 An accused person has made only 1 application for bail in the Magistrates Court in a criminal proceeding. The person is committed for trial in the Supreme Court in relation to the proceeding. If the accused makes an application for bail in the Supreme Court in the proceeding, subsection (2) will not apply to the court's consideration of the application because the person did not make 2 or more applications for bail in the Magistrates Court when the proceeding was before that court.
- 2 An accused person has made 3 applications for bail in the Magistrates Court in a criminal proceeding. The person is committed for trial in the Supreme Court in relation to the proceeding. If the accused makes an application for bail in the Supreme Court in the proceeding, subsection (2) will apply to the court's consideration of the application.

*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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**6 Sections 42 and 43**

*substitute*

**42 Power of Magistrates Court to review—decision of authorised officer**

- (1) The Magistrates Court may, on application under this division, review any decision of an authorised officer in relation to bail for an accused person, only if—
  - (a) the court has power to make a bail order under section 20 (1) (a) (Power in relation to bail—Magistrates Court); and
  - (b) the court is satisfied that the applicant has shown—
    - (i) a change in circumstances relevant to the granting of bail since the authorised officer’s decision; or
    - (ii) the availability of fresh evidence or information relevant to the granting of bail to the accused person that was unavailable when the authorised officer made the decision.
- (2) 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 (Review by authorised officers) has been exercised or been sought to be exercised.

**42A Power of Magistrates Court to review—decision of Magistrates Court**

The Magistrates Court may, on application under this division, review any decision of the court (however constituted) in relation to bail for an accused person, only if—

- (a) the court has power to make a bail order under section 20 (1) (a) (Power in relation to bail—Magistrates Court); and

- (b) the court is satisfied that the applicant has shown—
  - (i) a change in circumstances relevant to the granting of bail since the court's decision; or
  - (ii) the availability of fresh evidence or information relevant to the granting of bail to the accused person that was unavailable when the court made the decision; and
- (c) for an application made by the accused person—the person has made 2 applications for bail in the Magistrates Court in the proceeding to which the bail relates.

**43 Power of Supreme Court to review—decision of authorised officer**

- (1) This section applies if, in relation to a decision of an authorised officer in relation to bail for an accused person, the Magistrates Court—
  - (a) does not have power to hear an application for review of the decision; or
  - (b) has heard an application for review of the decision.
- (2) The Supreme Court may, on application under this division, review the decision of the authorised officer, only if the court is satisfied that the applicant has shown—
  - (a) a change in circumstances relevant to the granting of bail since the authorised officer's decision; or
  - (b) the availability of fresh evidence or information relevant to the granting of bail to the accused person that was unavailable when the authorised officer made the decision.
- (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 (Review by authorised officers) has been exercised or been sought to be exercised.

**43A Power of Supreme Court to review—decision of Magistrates Court or Supreme Court**

- (1) This section applies if a decision in relation to bail for an accused person has been made by—
  - (a) the Magistrates Court in accordance with section 42A (Power of Magistrates Court to review—decision of Magistrates Court); or
  - (b) the Supreme Court.
- (2) The Supreme Court may, on application under this division, review the decision of the court, only if the court is satisfied that the applicant has shown—
  - (a) a change in circumstances relevant to the granting of bail since the court's decision; or
  - (b) the availability of fresh evidence or information relevant to the granting of bail to the accused person that was unavailable when the court made the decision.

**7 Review limited to bail conditions  
Section 46 (5)**

*after*

section 43

*insert*

or section 43A

**8 Dictionary, new definitions**

*insert*

***bail order***, for part 4 (Grant of bail)—see section 19 (1).

***bail review application***, for part 4 (Grant of bail)—see section 12A.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 18 November 2010.

**2 Notification**

Notified under the Legislation Act on 22 February 2011.

**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 2011, which originated in the Legislative Assembly as the Bail Amendment Bill 2010 and was passed by the Assembly on 15 February 2011.

Clerk of the Legislative Assembly

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