

1991
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Bail (Consequential Amendments) Bill
1991**

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Savings

PART II—AMENDMENTS OF THE CRIMES ACT, 1900
OF THE STATE OF NEW SOUTH WALES IN ITS
APPLICATION IN THE TERRITORY

4. Crimes Act
5. Interpretation
6. Directing prosecution for perjury
7. Failure to answer bail etc.—offence

81115 1991/141 (T115/91)

TABLE OF PROVISIONS—continued

Section	
8.	Orders for amendment of indictment, separate trial and postponement of trial
9.	Respite undertakings on postponement
10.	Reserving questions of law at trial
11.	Proceedings when question reserved
12.	Failure to comply with condition of recognizance or release
13.	Power of court where offender convicted of further offence
14.	No court fees to be taken in criminal cases
	PART III—AMENDMENTS OF THE MAGISTRATES COURT ACT 1930
15.	Principal Act
16.	Interpretation
17.	Procedure on filing of indictment
18.	Repeal
19.	Bail of defendant during examination
20.	Recognizances
21.	Issue of warrant for non-appearance
22.	Recognizances taken out of Court
23.	Forfeited recognizances—how enforced
24.	Repeal
25.	Particular cases may be adjourned
26.	Accused person may be excused from attendance before Court
27.	Heading to Division 3 of Part VI
28.	Repeal
29.	Transmission of depositions etc. to Director of Public Prosecutions
30.	Appeals to which this Division applies
31.	Repeal
32.	Stay of execution pending appeal in certain cases
33.	Security for costs and stay of execution
34.	Repeal of Division 3A of Part XI
35.	Repeal
36.	Power of Court or Judge to admit to bail
37.	Repeal of Part XIII A
38.	Recovery of sum due under security
39.	Sums paid by surety may be recovered from principal
40.	Payment enforced by security
41.	Enforcement of recognizance
42.	First Schedule
	PART IV—AMENDMENTS OF OTHER ACTS
43.	Consequential amendments of other Acts

Bail (Consequential Amendments) No. , 1991

TABLE OF PROVISIONS—continued

SCHEDULE

AMENDMENTS OF OTHER ACTS

1991
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Bail (Consequential Amendments) Bill
1991**

A BILL
FOR

An Act to amend certain Acts in consequence of the
enactment of the *Bail Act 1991* and for related
purposes

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Bail (Consequential Amendments) Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

5 (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Savings

3. Notwithstanding the amendments of—

- 10 (a) the Crimes Act, 1900 of the State of New South Wales in its application in the Territory;
- (b) the *Magistrates Court Act 1930*; and
- (c) the Acts specified in the Schedule;

15 made by this Act, the provisions of the Acts so amended as in force immediately before the commencement of this Act continue to apply in relation to—

- (d) bail granted under the provisions;
- (e) the release or discharge under the provisions of a person arrested or charged with an offence on the person entering into a recognizance with or without a surety;
- 20 (f) recognizances given or respited under the provisions; and
- (g) security given under the provisions for the release or discharge of a person arrested in respect of, or charged with, an offence.

25 PART II—AMENDMENTS OF THE CRIMES ACT, 1900 OF THE STATE OF NEW SOUTH WALES IN ITS APPLICATION IN THE TERRITORY

Crimes Act

4. In this Part, "Crimes Act" means the Crimes Act, 1900 of the State of New South Wales in its application in the Territory.

Interpretation

30 5. Section 4 of the Crimes Act is amended by inserting in subsection (1) the following definition:

" 'bail undertaking' means an undertaking given by a person charged with an offence in order to obtain bail in relation to the offence;".

Directing prosecution for perjury

35 6. Section 340 of the Crimes Act is amended—

- (a) by omitting "a recognizance" and substituting "an undertaking";
- (b) by omitting "recognizances" and substituting "undertakings"; and
- (c) by omitting "recognizance" (second occurring) and substituting "undertaking".

5 **Failure to answer bail etc.—offence**

7. Section 358AI of the Crimes Act is amended—

- (a) by inserting in paragraph (1) (a) "(other than the *Bail Act 1991*)" after "Territory" (first occurring);
- 10 (b) by inserting in subsection (1) "a period not exceeding" before "2 years"; and
- (c) by omitting from subsection (1) "of \$5,000" and substituting "not exceeding \$20,000".

Orders for amendment of indictment, separate trial and postponement of trial

- 15 8. Section 365 of the Crimes Act is amended by omitting from paragraph (4) (c) "enlargement of recognizances" and substituting "variation of bail arrangements".

Respiting undertakings on postponement

9. Section 369 of the Crimes Act is amended—

- 20 (a) by omitting "recognizance" and substituting "undertakings";
- (b) by omitting ", and of the accused and her or his sureties, if any,"; and
- (c) by omitting "or be tried,".

Reserving questions of law at trial

- 25 10. Section 428 of the Crimes Act is amended by omitting from subsection (2) all the words after "either" and substituting "admit the person to bail in accordance with the provisions of the *Bail Act 1991* or commit him or her to prison."

Proceedings when question reserved

- 30 11. Section 470 of the Crimes Act is amended by omitting from subsection (5) "recognizance" and substituting "bail undertaking".

Failure to comply with condition of recognizance or release

12. Section 556C of the Crimes Act is amended—

- (a) by omitting from subsection (3) all the words from and including “on such recognizance” to and including “or may” and substituting “in accordance with the provisions of the *Bail Act 1991* or”; and
- 5 (b) by omitting from subsection (3) “so dealt with” and substituting “dealt with under this section”.

Power of court where offender convicted of further offence

- 10 13. Section 556N of the Crimes Act is amended by omitting from subsection (4) “on such recognizance as it thinks fit, on condition that she or he appears before the Supreme Court at a time and place to be fixed to be dealt with by the Supreme Court in accordance with subsection (1), or may” and substituting “in accordance with the provisions of the *Bail Act 1991* or”.

No court fees to be taken in criminal cases

14. Section 564 of the Crimes Act is amended by omitting “, for taking a recognizance of bail, or” and substituting “in relation to bail or for”.

15 **PART III—AMENDMENTS OF THE MAGISTRATES COURT ACT 1930**

Principal Act

15. In this Part, “Principal Act” means the *Magistrates Court Act 1930*.

20 **Interpretation**

16. Section 5 of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘bail undertaking’ means an undertaking given by a person charged with an offence in order to obtain bail in relation to the offence;”.

25 **Procedure on filing of indictment**

17. Section 43 of the Principal Act is amended—

- (a) by omitting from subsection (1) “recognizances” and substituting “bail”; and
- 30 (b) by omitting from the end of paragraph (2) (b) “as herein provided” and substituting “in accordance with the provisions of the *Bail Act 1991*”.

Repeal

18. Section 50 of the Principal Act is repealed.

Bail of defendant during examination

- 5 19. Section 73 of the Principal Act is amended by omitting “, subject to this Act, order her or his discharge upon recognizance” and substituting “admit the defendant to bail in accordance with the provisions of the *Bail Act 1991*”.

Recognizances

20. Section 77 of the Principal Act is amended by omitting “defendant, witness or other person” and substituting “witness, or person sought to be made a witness”.

10 **Issue of warrant for non-appearance**

21. Section 78 of the Principal Act is amended by omitting “defendant, witness, or other person,” and substituting “witness or person sought to be made a witness”.

Recognizances taken out of Court

- 15 22. Section 79 of the Principal Act is amended by inserting “under this Act” after “recognizance” (first occurring).

Forfeited recognizances—how enforced

- 20 23. Section 80 of the Principal Act is amended—
- (a) by omitting from subsection (1) “any recognizance (other than a recognizance entered into under Division 3A of Part XI)” and substituting “a recognizance entered by a witness or a person sought to be made a witness”; and
 - (b) by omitting subsection (2).

Repeal

- 25 24. Section 81 of the Principal Act is repealed.

Particular cases may be adjourned

25. Section 84 of the Principal Act is amended by omitting from subsection (2) all the words after “or may” and substituting “admit the defendant to bail in accordance with the provisions of the *Bail Act 1991*”.

30 **Accused person may be excused from attendance before Court**

26. Section 89A of the Principal Act is amended—
- (a) by omitting paragraph (1) (b) and substituting the following paragraph:
 - 35 “(b) a summons has been issued against the person named in the information;”;

(b) by omitting from paragraph (2) (a) "where a summons has been issued—"; and

(c) by omitting subsection (9).

Heading to Division 3 of Part VI

5 27. The heading to Division 3 of Part VI of the Principal Act is amended by omitting "*Bail*" and substituting "*Recognizances of Witnesses*".

Repeal

28. Sections 98 to 102 (inclusive) of the Principal Act are repealed.

10 **Transmission of depositions etc. to Director of Public Prosecutions**

29. Section 106 of the Principal Act is amended by omitting from subsection (1) "recognizances" and substituting "bail undertakings".

Appeals to which this Division applies

15 30. Section 208 of the Principal Act is amended by omitting paragraphs (1) (g) and (ga) and substituting the following word and paragraph:

"; and (g) an appeal, by the person against whom the order is made, from an order for commitment made by the Magistrates Court under Division 5 of Part IX."

20 **Repeal**

31. Section 214A of the Principal Act is repealed.

Stay of execution pending appeal in certain cases

32. Section 216 of the Principal Act is amended—

25 (a) by omitting from subsection (1) all the words after "cause," and substituting "be granted bail in accordance with the provisions of the *Bail Act 1991*."; and

(b) by omitting subsection (2).

Security for costs and stay of execution

30 33. Section 219D of the Principal Act is amended by omitting from paragraph (1) (c) all the words after "cause," and substituting "grant the appellant bail in accordance with the provisions of the *Bail Act 1991*; and".

Repeal of Division 3A of Part XI

34. Division 3A of Part XI of the Principal Act is repealed.

Repeal

35. Section 220 of the Principal Act is repealed.

Power of Court or Judge to admit to bail

5 36. Section 226 of the Principal Act is amended by omitting from subsection (1) all the words after "may" and substituting "admit the person to bail in accordance with the provisions of the *Bail Act 1991*."

Repeal of Part XIII A

37. Part XIII A of the Principal Act is repealed.

Recovery of sum due under security

10 38. Section 250 of the Principal Act is amended by inserting "or the *Bail Act 1991*" after "Act".

Sums paid by surety may be recovered from principal

39. Section 252 of the Principal Act is amended by inserting "or the *Bail Act 1991*" after "Act".

15 **Payment enforced by security**

40. Section 253 of the Principal Act is amended by inserting "or the *Bail Act 1991*" after "Act".

Enforcement of recognizance

41. Section 254 of the Principal Act is amended—

20 (a) by omitting subsection (1) and substituting the following subsection:

"(1) Where—

25 (a) a witness or a person sought to be made a witness has entered into a recognizance for the purposes of this Act; and

(b) the Court is satisfied that the witness or person sought to be made a witness has failed to comply with a condition of the recognizance;

30 the Court may declare the recognizance to be forfeited and may make an order that the witness or person sought to be made a witness pay the whole or a part of the sum in which he or she is bound under the recognizance.";

(b) by omitting from paragraph (2) (a) all the words after "forfeited" and substituting "under subsection (1); and";

- (c) by inserting in subsection (4) "or under subsection 36 (1) of the *Bail Act 1991*" after "subsection (1) or (2)"; and
- (d) by inserting in paragraph (4) (b) "of this section" after "subsection (1)".

5 **First Schedule**

42. The First Schedule to the Principal Act is amended by omitting Forms 23, 24, 25, 26, 27, 29, 32, 32A, 32B and 77.

PART IV—AMENDMENTS OF OTHER ACTS

Consequential amendments of other Acts

- 10 43. The Acts specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

Section 43

AMENDMENTS OF OTHER ACTS

Children's Services Act 1986

Section 37—

Repeal the section.

Section 64—

- (a) Omit subparagraph (2)(a)(ii), substitute the following subparagraph:

"(ii) release the child on bail in accordance with the provisions of the *Bail Act 1991*;"

- (b) Omit subsection (3).

Subsection 168 (4)—

Omit "entering into a recognizance", substitute "giving an undertaking".

Credit Act 1985

Paragraph 161 (3) (b)—

Omit all the words after "application", substitute "at liberty on bail in respect of an offence, or alleged offence, in the Territory or elsewhere involving fraud or dishonesty; or".

SCHEDULE—continued

Domestic Violence Act 1986

Part III—

Repeal the Part.

Interpretation Act 1967

Subsection 14 (1) (definition of “committed for trial”)—

Omit “a recognizance”, substitute “an undertaking”.

Police Act 1927

Subsection 24 (1)—

Omit all the words after “secured”, substitute:

“until—

- (a) he or she can be brought before a magistrate to be dealt with according to law; or
- (b) he or she is set at liberty on bail in accordance with the provisions of the *Bail Act 1991*.”

Subsections 24 (2) to (7) (inclusive)—

Omit the subsections.