



## BAIL ACT 2005

[Consolidated as at 31 January 2013  
on the authority of the Administrator  
and in accordance with  
the *Enactments Reprinting Act 1980*]

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NORFOLK



ISLAND

## BAIL ACT 2005

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An Act to provide for the granting of bail to accused persons in or in connection with criminal proceedings

### PART 1 – PRELIMINARY

#### Short title

1. This Act may be cited as the *Bail Act 2005*.

#### Commencement

2. This Act shall come into operation on the date notification of assent by the Administrator is published in the Gazette.

#### Interpretation

3. (1) In this Act, unless the contrary intention appears –

“appeal” means an appeal made under –

- (a) Part 8 of the *Court of Petty Sessions Act 1960*;

.....

- (c) section 66 of the *Norfolk Island Act 1979*; or

- (d) Part 5 of the *Supreme Court Act 1960*;

“authorised member”, in relation to a person in custody, means a member of the Police Force who may, under Part 3, grant bail to the person;

“bail” means authorisation under this Act –

- (a) to be at liberty instead of in custody; or

- (b) to be released from the obligation to comply with a non-custodial order;

“bail condition” means a condition imposed under section 28;

“bail undertaking” means an undertaking given under section 26;

“Chief Magistrate” has the same meaning as in the *Court of Petty Sessions Act 1960*;

“conviction” includes a finding of guilt;

“court” means –

- (a) the Supreme Court;
- (b) the Court of Petty Sessions;
- (c) the Children’s Court;

and includes a Judge or the Chief Magistrate not sitting as a court;

“*Crimes Act*” means the *Crimes Act 1900* of New South Wales as applied in Norfolk Island by the *Criminal Law Act 1960*;

“Crown Law Officer” means the principal law officer of the Administration and includes his or her deputy and includes a person authorised under a law of Norfolk Island or the principal law officer or the Minister to exercise a power or perform a function in the name of or on behalf of a Crown Law Officer and reference to “a Crown Law Officer” means the principal law officer or in his or her absence the deputy;

**NOTE:** The principal law officers were at the commencement of the Act known as the Crown Counsel and Deputy Crown Counsel.

“Judge” means a Judge of the Supreme Court;

“offence” includes –

- (a) a failure to comply with a condition of a parole order; and
- (b) a failure to comply with a condition to which an order made by a court is subject;

“Supreme Court” includes a Judge of that Court.

**(2)** A reference in this Act to an accused person, or a person accused of an offence, includes a reference to –

- (a) a person charged with, convicted of or found guilty of an offence;
- (b) a person in respect of whom an appeal is pending;
- (c) a person whose case has been remitted by the Supreme Court for hearing or further hearing.

**(3)** A reference in this Act to entering into a bail condition is a reference, if the condition is imposed under –

- (a) section 26(2)(a), (c) or (d) – to entering into the agreement or agreements;
- (b) section 26(2)(b) – to making and signing the acknowledgement;
- (c) section 26(2)(e) or (f) – to entering into the agreement or agreements and depositing the security;
- (d) section 26(2)(g) or (h) – to entering into the agreement or agreements and depositing the amount or amounts of money; or
- (e) section 26(2)(j) – to depositing every passport, whether Australian or foreign, held by the accused person,

in accordance with the condition.

**(4)** A reference, however expressed, in this Act (other than in section 23) to the grant of bail includes a reference to the continuation of bail under section 31.

**Note:** this provision excludes ss. 66 - 72 of the *Court of Petty Sessions Act 1960*.

### Application of Act

**4. (1)** This Act applies to a person whether or not he or she has attained the age of 18 years.

(2) Except where otherwise expressly provided by or under this Act, this Act applies in relation to the grant of bail to accused persons to the exclusion of any other law in force immediately before the commencement of this Act so far as any other such law makes provision for or with respect to bail for accused persons.

### **Savings and transitional**

5. (1) This Act does not affect bail granted, or a discharge upon a recognisance of bail entered into, under a law before the commencement of this Act in relation to an accused person, and for the purposes of or for purposes connected with such bail or recognisance this Act shall be deemed not to have been enacted.

(2) Nothing in subsection (1) prevents the making of a decision under this Act, or the exercise or performance of a power, authority, duty or function thereunder, in respect of an offence or other matter (or any proceedings in connection therewith) to or with which the bail or recognisance of bail referred to in that subsection relates or is connected.

(3) The Regulations may make other provisions of a savings or transitional nature consequent upon the enactment of this Act in connection with any law, and those provisions may, but need not, operate by reference to any provision of this Act and shall have effect notwithstanding anything in subsection (1) or (2).

## **PART 2 – GENERAL PROVISIONS RELATING TO BAIL**

### *Division 1 – Bail generally*

#### **Grant of bail for certain periods**

6. (1) Bail may be granted in accordance with this Act to an accused person in respect of any one or more of the following periods (so far as they relate to the offence of which the person is accused):

- (a) the period between his or her being charged with the offence and his or her first appearance before a court in or in connection with proceedings for the offence;
- (b) the period between committal for trial or sentence and his or her appearance before the Supreme Court consequent upon the committal;
- (c) the period of any adjournment or adjournments, including –
  - (i) any adjournment or adjournments during the course of a trial;
  - (ii) any adjournment or adjournments after the accused pleads, or is found, guilty but before he or she is sentenced; and
  - (iii) any period deemed under subsection (2) to be the period of an adjournment;
- (d) the period between the finding under section 425D of the *Crimes Act* by the Supreme Court or the Court of Petty Sessions that an accused is not capable of understanding the proceedings at his or her trial so as to be able to make a proper defence and his or her being dealt with according to law;

- (e) the period between the institution of an appeal and its determination;
  - (f) the period between the determination of an appeal and –
    - (i) his or her appearance before a court to abide the result of the determination of the appeal; or
    - (ii) his or her appearance before a court to which the matter is remitted under section 31 of the *Supreme Court Act 1960*;
  - (g) any other period prescribed by the Regulations.
- (2) For the purposes of paragraph (1)(c)(iii), the following periods shall be deemed to be the period of an adjournment:
- (a) the period between the making of an order for a separate trial or for the postponement of a trial and the commencement of the separate or postponed trial; and
  - (b) the period between the bringing up by a writ of *habeas corpus* of a person committed to prison by virtue of any summary conviction of the Court of Petty Sessions and the final decision of the case, where the Supreme Court postpones the final decision of the case.

**Note:** Under this Act, bail may be granted by an authorised member, the Chief Magistrate, the Court of Petty Sessions, the Children’s Court and the Supreme Court.

### **Rights following grant of bail**

7. (1) When –
- (a) bail is granted to an accused person in respect of an offence;
  - (b) he or she enters into the bail undertaking; and
  - (c) if a bail condition or bail conditions are imposed, it or they are entered into,
- he or she is, subject to this Act, entitled –
- (d) to be released from custody and to remain at liberty in respect of the offence; or
  - (e) to be released from the obligation to comply with a non-custodial order in respect of the offence,
- until he or she is required to appear before a court in accordance with his or her undertaking.

(2) Subsection (1) does not apply to an accused person while he or she is also in custody or the subject of a non-custodial order for some other offence or reason in respect of which he or she is not entitled (whether under this Act or otherwise) to be at liberty or released.

#### *Division 2 – Presumption against bail for certain offences*

### **Presumption against bail for certain offences**

8. (1) This section applies to the following offences:
- (a) murder; and

(b) an offence against the *Dangerous Drugs Act 1927* punishable by a term of imprisonment for more than 7 years

(2) A person accused of an offence to which this section applies is not to be granted bail unless the person satisfies a court that bail should not be refused.

(3) The requirement for bail cannot be dispensed with for a person accused of an offence to which this section applies and section 10(2) does not apply with respect to any such offence.

*Division 3 – Presumption in favour of bail*

**Presumption in favour of bail for certain offences**

9. (1) This section applies to all offences except an offence –

- (a) referred to in section 8(1);
- (b) against section 54 of the *Crimes Act*;
- (c) against part 3A of the *Crimes Act*; or
- (d) against section 42 of the *Domestic Violence Act 1995*,

where the accused person has, within the period of 10 years immediately preceding the date of the offence, been found guilty of murder or an offence against section 54, 59, 61 93D, or 93E, of the *Crimes Act* or an offence against a law of a State or another Territory of the Commonwealth, or of another country, that is similar to those offences.

(2) A person accused of an offence to which this section applies is entitled to be granted bail in accordance with this Act unless –

- (a) an authorised member or court is satisfied that he or she or it is, pursuant to a consideration of the matters referred to in section 23, justified in refusing bail;
- (b) the person stands convicted of the offence; or
- (c) the requirement for bail is dispensed with under section 9.

(3) Subject to subsection (4), a person is entitled under this section to be granted bail in respect of an offence to which this section applies, notwithstanding that he or she is in custody also for some other offence or reason, in respect of which he or she is not entitled to be granted bail.

(4) A person is not entitled under this section to be granted bail in respect of an offence to which this section applies, if –

- (a) he or she is in custody serving a sentence of imprisonment in connection with some other offence; and
- (b) the court is satisfied that the person is likely to remain in custody in connection with that other offence for a longer period than that for which bail in connection with the first-mentioned offence would be granted.

**Note:** In SS (1) - s.54 (Causing grievous bodily harm); 59 (Assault occasioning actual bodily harm); 61 (Common assault prosecuted by indictment); 63 (Rape); 67 (Carnally knowing a girl under 10); 72A (Carnal knowledge of an idiot or imbecile); 73 (Carnal knowledge by teacher); s. 42 (Contravention of a protection order).



*Division 4 – Dispensing with bail*

**Dispensing with bail**

**10. (1)** A court that may grant bail to an accused person may instead dispense with the requirement for bail.

**(2)** Where, during an appearance by an accused person before a court, no specific order or direction is made by the court in respect of bail, the court shall be deemed to have dispensed with the requirement for bail.

**Effect of dispensing with bail**

**11. (1)** While the requirement for bail is or is deemed to be dispensed with under this Act in respect of a person accused of an offence, he or she is entitled –

- (a) to be released from custody and to remain at liberty in respect of the offence; or
- (b) to be released from the obligation to comply with a non-custodial order in respect of the offence,

until he or she is required to appear before a court in respect of the offence.

**(2)** Subsection (1) does not apply to an accused person while he or she is also in custody or the subject of a non-custodial order for some other offence or reason in respect of which he or she is not entitled (whether under this Act or otherwise) to be at liberty or released.

**Decision to dispense with bail**

**12.** For the purposes of Part 6, where a court dispenses with, or is deemed to have dispensed with, the requirement for bail, the court shall be deemed to have made a decision to dispense with the requirement for bail.

*Division 5– Miscellaneous provisions*

**Bail may be granted where no entitlement**

**13.** An accused person not entitled under section 9 to be granted bail may nevertheless be granted bail.

**Power to refuse bail**

**14.** A power conferred by this Act to grant bail shall, subject to this Act, be deemed to include a power to refuse bail, but the power to refuse bail may only be exercised in conformity with this Act.

**Grant of bail when not in custody**

**15. (1)** An accused person may be granted or refused bail in accordance with this Act, notwithstanding that he or she is not in custody.

**(2)** Nothing in this Act requires the grant of bail to an accused person who is not in custody.

**PART 3 – POLICE BAIL**

**Authority for police to grant bail**

**16. (1)** A member of the Police Force shall before taking bail under section 15 of the *Summary Offences Act 2005*—

- (a) inform the person charged of his or her right to apply for bail; and

(b) as far as practicable, ensure that the person charged is able to communicate with a legal practitioner or any other person of his or her choosing in connection with an application for bail.

(2) An authorised member shall, as soon as practicable after a person becomes entitled to apply for bail, determine whether bail should be granted under this Act.

(3) The member referred to in subclause (1) may refrain from complying with subsection (1)(b) if he or she believes, on reasonable grounds, that it is necessary to do so in order to prevent –

(a) the escape of an accomplice of the accused person; or

(b) the loss, destruction or fabrication of evidence relating to an offence.

(4) A member of the Police Force who holds the rank of Sergeant or higher rank or any other member of the Police Force who is for the time being in charge of a police station may grant bail under this Part.

#### **Bail in respect of several offences**

17. Where a person is charged with 2 or more offences at the same time –

(a) an authorised member considering whether to grant bail to the person shall decide, at the same time, whether to grant, or refuse to grant, bail to the person in respect of all the charges;

(b) an application may be made for bail in respect of all the charges, but not otherwise; and

(c) any bail that is granted to the person shall be granted in respect of all the charges and separate undertakings shall not be required in respect of each charge.

#### **Bail register**

18. An authorised member shall, upon granting bail to a person, enter either in a book kept for that purpose in the police station where bail is granted or cause to be stored on a computer maintained for that purpose elsewhere, the name, residence and occupation of the person and of a person who, pursuant to Division 3 of Part 5 makes an acknowledgement or enters into an agreement in respect of the person granted bail, together with details of the conditions of bail and details of any money or securities given or deposited, and shall arrange to lay any undertaking, acknowledgement or agreement relating to the bail before a court before which the person is required to appear.

### **PART 4 – COURT BAIL**

#### **General provisions as to court bail**

19. (1) There is no limit on the number of applications in relation to bail that may be made to a court by a person accused of an offence.

(2) All applications to a court in relation to bail shall be dealt with as soon as reasonably practicable.

(3) The Regulations may make provision for or with respect to the manner of making applications to courts in relation to bail.

(4) Notwithstanding subsections (1) and (2), a court may refuse to entertain an application in relation to bail if it is satisfied that the application is frivolous or vexatious.

#### **Power of Chief Magistrate to grant bail**

20. (1) Subject to section 21, the Chief Magistrate may, at any time grant bail to a person brought or appearing before him or her accused of an offence.

(2) Subject to section 21, the Chief Magistrate may at any time grant bail by telephone to a person who is apprehended by a member of the Police Force in accordance with a warrant to apprehend the person and bring him or her or her before a court.

#### **Limitations on power of Chief Magistrate**

21. Subject to sections 32 and 39, bail may not be granted under section 20 by the Chief Magistrate to a person after that person has appeared before the Supreme Court –

- (a) following his or her committal for trial or sentence; or
- (b) following his or her being brought up by a writ of *habeas corpus*, as referred to in section 6(2)(b),

in connection with the offence.

#### **Limitation on length of adjournments where bail refused**

22. Where an accused person is refused bail in respect of an offence, any adjournment of the hearing shall, except with the consent of the accused person, be for a period not exceeding 15 clear days.

#### **Power of Supreme Court to grant bail**

23. The Supreme Court may grant bail in accordance with this Act to a person accused of an offence, whether or not he or she has appeared before the Supreme Court in connection with the offence.

#### **Limitation on power to grant bail**

24. Notwithstanding anything in this Act, where an appeal is pending in the Federal Court on appeal from the Supreme Court against –

- (a) a conviction on indictment; or
- (b) a sentence passed on conviction on indictment,

bail shall not be granted by the Court or any other court unless it is established that special or exceptional circumstances exist justifying the grant of bail.

### **PART 5 – PROVISIONS APPLYING TO BOTH POLICE AND COURT BAIL**

#### ***Division 1 – Criteria to be considered in bail applications***

##### **Criteria to be considered in bail applications**

25. (1) In making a determination as to the grant of bail to an accused person, an authorised member or a court shall take into consideration so far as they can reasonably be ascertained the following matters only:

- (a) the probability of whether or not the person will appear in court in respect of the offence for which bail is being considered, having regard only to –
  - (i) the person's background and community ties, as indicated by the history and details of his or her residence, employment and family situations and, if known, his or her prior criminal record;
  - (ii) any previous failure to appear in court pursuant to a recognisance of bail entered into before the commencement of this section or pursuant to a bail undertaking;
  - (iii) the circumstances of the offence (including its nature and seriousness), the strength of the evidence against the person and the severity of the penalty or probable penalty; and
  - (iv) any specific evidence indicating whether or not it is probable that the person will appear in court;
- (b) the interests of the person, having regard only to –
  - (i) the period that the person may be obliged to spend in custody if bail is refused and the conditions under which he or she would be held in custody;
  - (ii) the needs of the person to be free to prepare for his or her appearance in court or to obtain legal advice or both;
  - (iii) the needs of the person to be free for any lawful purpose not mentioned in subparagraph (ii); and
  - (iv) whether or not the person is, in the opinion of the authorised member or court, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection;
- (c) the protection and welfare of the community, having regard only to –
  - (i) whether or not the person has failed, or has been arrested for an anticipated failure, to observe a reasonable bail condition previously imposed in respect of the offence;
  - (ii) the likelihood of the person interfering with evidence, witnesses or jurors;
  - (iii) the likelihood that the person will or will not commit an offence while on bail; and
  - (iv) where the offence is alleged to have been committed against or in respect of a child within or a juvenile the likelihood of injury or danger being caused to the child or juvenile; and
- (d) where the offence alleged against the accused person involves the contravention of, or a failure to comply with, an order under the *Domestic Violence Act 1995*, the likelihood of –
  - (i) personal injury being caused, or threats being made, to a person for whose benefit, expressly or impliedly, the order exists;

- (ii) damage to property in the possession of or being used by a person referred to in subparagraph (i) occurring; or
- (iii) a breach of the peace involving the accused person occurring.

(2) For the purposes of this section, the authorised member or court may take into account any evidence or information which the authorised member or court considers credible or trustworthy in the circumstances, including hearsay evidence.

#### *Division 2 – Bail undertakings*

#### **Bail undertakings**

26. (1) A person shall not be released on bail unless he or she undertakes, in writing, to appear before such court, on such day and at such time and place as are specified in the undertaking.

(2) A bail undertaking may be given in respect of more than one offence.

(3) Notwithstanding subsection (1), a person who is to appear before the Supreme Court may be released on bail if he or she undertakes in writing to appear before the Supreme Court at such date, time and place as are specified in the undertaking, or at such other date, time and place as are specified in a notice given to him or her or the legal practitioner representing him or her by a Crown Law Officer or a person authorised by a Crown Law Officer in writing in that behalf.

(4) A bail undertaking may include an undertaking, if bail is continued, to appear at a time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment or otherwise.

(5) An accused person who is granted bail is under a duty to appear in person before a court in accordance with his or her bail undertaking.

#### **Persons to whom bail undertaking may be given**

27. A bail undertaking may be given to –

- (a) a court;
- (b) an authorised member;
- (c) a clerk of the Court of Petty Sessions.

#### *Division 3 – Bail conditions*

#### **Conditions of bail**

28. (1) Bail may be granted unconditionally or subject to conditions imposed by instrument in writing.

(2) One or more of the following conditions only may be imposed on the grant of bail –

- (a) that the accused person enter into an agreement to observe specified requirements as to his or her conduct while on bail, other than financial requirements (whether for the giving of security, the depositing of money, the forfeiture of money or otherwise);

- (b) that one or more than one acceptable person, other than the accused person, acknowledge that he or she is acquainted with the accused person and that he or she regards the accused person as a responsible person who is likely to comply with his or her bail undertaking;
- (c) that the accused person enter into an agreement, without security, to forfeit a specified amount of money if the accused person fails to comply with his or her bail undertaking;
- (d) that one or more than one acceptable person, other than the accused person, enter into an agreement or agreements, without security, to forfeit a specified amount or specified amounts of money if the accused person fails to comply with his or her bail undertaking;
- (e) that the accused person enter into an agreement, and deposit acceptable security, to forfeit a specified amount of money if the accused person fails to comply with his or her bail undertaking;
- (f) that one or more than one acceptable person, other than the accused person, enter into an agreement or agreements, and deposit acceptable security, to forfeit a specified amount or specified amounts of money if the accused person fails to comply with his or her bail undertaking;
- (g) that the accused person deposit with an authorised member or a court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited if the accused person fails to comply with his or her bail undertaking;
- (h) that one or more than one acceptable person, other than the accused person, deposit with an authorised member or a court a specified amount or specified amounts of money in cash and enter into an agreement or agreements to forfeit the amount or amounts deposited if the accused person fails to comply with his or her bail undertaking; or
- (j) where –
  - (i) bail is granted by a court; and
  - (ii) the offence with respect to which the application is made is an offence punishable by a term of imprisonment for 2 years or more, or, by payment of a penalty of 100 penalty units or more, that the accused person surrender every passport, whether Australian or foreign, held by the accused person.

**Note:** an amount deposited with an authorised member must be lodged with the court as soon as practicable – s. 31(2)

- (3) The determination as to –
  - (a) which person or persons, or class or description of persons, are acceptable persons for the purposes of a condition referred to in subsection (2)(b), (d), (f) or (h) and the number of acceptable persons required for those purposes; or
  - (b) the nature and sufficiency of security that is acceptable security for the purposes of a condition referred to in subsection (2)(e) or (f),

shall be made by –

- (c) the authorised member or the court imposing the condition; or
  - (d) in the absence of a determination by the authorised member or the court referred to in paragraph (c) – the court or person to whom the bail undertaking is given.
- (4) Where a court imposes a bail condition under subsection (2)(j) –
    - (a) the passport or passports shall be given to the Registrar or other appropriate officer of the court;
    - (b) the Registrar or other appropriate officer of the court shall cause the passport or passports to be kept in such custody as he or she thinks fit for such period, or on the occurrence of any contingency, as is specified by the court; and
    - (c) the passport or passports shall, in accordance with the terms specified under paragraph (b), be returned to the accused person unless the court orders otherwise.

(5) Where a court imposes a condition on the grant of bail under subsection (2)(j) and an Australian passport is surrendered in compliance with the condition, the Registrar or appropriate officer of the court shall, as soon as is practicable, give to the Minister administering the *Immigration Act 1980* and the Commonwealth Minister administering the *Passports Act 1938* (Cwlth) a copy of the order.

(6) The Regulations may require an acknowledgement under this section to contain such details, to be provided by the person making the acknowledgement, as are prescribed relating to the circumstances in which he or she is acquainted with the accused person.

(7) An agreement or acknowledgement under this section shall be in writing.

(8) A condition, agreement or acknowledgement under this section may be entered into or made in respect of more than one offence.

### **Restrictions on imposing bail conditions**

29. (1) Bail shall be granted unconditionally unless the authorised member or the court granting it is of the opinion that one or more conditions should be imposed for the purpose of promoting effective law enforcement and the protection and welfare of the community.

(2) Conditions shall not be imposed on the grant of bail that are more onerous for the accused person than the nature of the offence and the circumstances of

the accused person appear to the authorised member or the court to require.

(3) A condition referred to in section 28(2)(b) to (h) inclusive shall not be imposed on the grant of bail unless the authorised member or the court is of the opinion that a condition or combination of conditions referred to in a preceding paragraph or paragraphs of section 28(2) is or are not likely to secure the purpose referred to in subsection (1) of this section.

(4) Notwithstanding subsection (3), the authorised member or the court may, at the request of the accused person, grant bail subject to any conditions referred to in section 29(2) appropriate to secure the purpose referred to in subsection (1) of this section.

### **Entry into agreement**

30. Except as prescribed by the Regulations, where an authorised member or a court imposes a bail condition under section 28 that requires –

- (a) the entering into of an agreement – the agreement may be entered into with;
- (b) the making of an acknowledgment – the acknowledgement may be made to; or
- (c) the depositing of security or an amount of – the deposit may be made with,

the court or person to whom the bail undertaking is given.

### **Provisions relating to money or security**

31. (1) A receipt shall be given for any money or security deposited pursuant to a bail condition.

(2) Where a security or an amount of money is deposited with a person pursuant to section 30(1)(c), otherwise than at a court, under an agreement entered into as a condition imposed on the grant of bail to an accused person, the person with whom the security or money is deposited shall, as soon as practicable, cause it, together with the form of undertaking and agreement, to be lodged with the court before which the accused person is required by his or her bail undertaking to appear.

(3) Where a security or an amount of money is deposited under an agreement entered into as a condition imposed on the grant of bail to an accused person, and the accused person appears before the court in accordance with his or her bail undertaking, then an amount equal to the security or the amount of money shall be returned to the person by whom it was deposited.

### **Discharge of liability of persons other than accused**

32. (1) Where a person other than the accused person has entered into an agreement under section 28(2)(d), (f) or (h), he or she may, subject to subsection (5), at any time apply –

- (a) where the bail was granted by a court –
  - (i) to the court which granted the bail; or
  - (ii) to the court of appearance; or



- (b) where the bail was granted by an authorised member – to the court of appearance,

to discharge the applicant from his or her liability.

(2) On an application being made under subsection (1), a Judge or magistrate shall, if the accused person is not then in custody or before the court –

- (a) issue a warrant to apprehend the accused person and bring him or her before the court; or
- (b) issue a summons for his or her appearance before the court.

(3) On the appearance of the accused person before the court, the court shall, unless satisfied that it would be unjust to do so, direct that the applicant be discharged from his or her liability, and the applicant is, upon the direction being given, thereby discharged accordingly.

(4) If the court discharges the applicant from his or her liability, the court may impose further conditions on the grant of bail, and may by warrant commit the accused person to prison until he or she enters into the further conditions.

(5) A person may not make an application under this section if the accused person has failed to comply with his or her bail undertaking or an agreement entered into by the accused person pursuant to a bail condition.

(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 bail undertaking.

#### *Division 4 – Continuation of bail*

#### **Continuation of bail**

33. (1) If a bail undertaking includes an undertaking to appear at a time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment or otherwise, a court may, as it thinks fit, continue bail already granted in respect of the offence, whether or not the accused person then appears in person.

(2) Where bail is continued, the bail undertaking and the bail conditions continue to apply, except to the extent that a condition or agreement thereunder otherwise provides or the court otherwise orders.

### **PART 6 – REVIEW OF BAIL DECISIONS**

#### *Division 1 – Police bail*

#### **Review**

34. (1) An authorised member shall ensure that –
- (a) the person charged is made aware of the determination of the member with respect to the granting of or the refusal to grant bail as soon as practicable after that determination is made;
  - (b) the person charged is aware of his or her right to apply to a magistrate for a review of that determination in the circumstances mentioned in subsection (3); and

- (c) as far as is practicable, the person charged is able to communicate with a legal practitioner or any other person in connection with an application to a magistrate under this section.

(2) An authorised member may refrain from complying with subsection (1)(c) if he or she believes on reasonable grounds that it is necessary to do so in order to prevent –

- (a) the escape of an accomplice of the person charged; or
  - (b) the loss, destruction or fabrication of evidence relating to an offence.
- (3) Where an authorised member –
- (a) refuses to grant bail to the person charged;
  - (b) fails to determine whether or not to grant bail to that person within a period of 4 hours after the person was charged with an offence; or
  - (c) determines to grant bail to the person subject to conditions (other than a bail undertaking) which the person is unable or unwilling to comply with, or which the person is unable or unwilling to arrange for another person to comply with,

the person charged may apply to a magistrate for a review of the determination, or for a grant of bail by the magistrate where there has been a failure by the authorised member to grant bail, as the case may be.

(4) Where the person charged indicates to a member of the Police Force that he or she wishes to make an application under subsection (3), the member shall, as soon as practicable after the person gives that indication, bring or arrange for the person to be brought before a magistrate or shall arrange for the person to make an application to a magistrate by facsimile, telephone, radio or similar facility.

(5) Where a person makes an application under this section to a magistrate, the magistrate may, subject to this Act, after affording –

- (a) the applicant or a legal practitioner representing him or her; and
- (b) the authorised member concerned,

an opportunity to make submissions, in his or her discretion grant or refuse to grant the person bail, or may review any conditions of bail granted by an authorised member, and may make such other orders as he or she thinks fit.

#### *Division 2 – Court bail*

#### **Review of bail decision**

**35.** Except as prescribed by the Regulations the Chief Magistrate shall not review a decision in relation to bail except a decision made by himself or an authorised person.

#### **Review by Supreme Court**

**36. (1)** Subject to this Act, the Supreme Court may review a decision of the Chief Magistrate or the Court of Petty Sessions or of the Supreme Court (however constituted) in relation to bail.

(2) The power to review a decision pursuant to this section may be exercised whether or not power to do so under section 35 has been, or has been sought to be, exercised.

**Provisions relating to review of bail decisions**

37. (1) The power under this Division to review a bail decision –
- (a) may only be exercised at the request of the accused person, the informant or complainant, being a member of the Police Force, or a Crown Law Officer; and
  - (b) includes the power to affirm or vary the decision or to substitute another decision.

(2) A decision as varied or substituted under subsection (1) shall be in conformity with this Act.

(3) The review of a decision shall be by way of rehearing, and evidence or information in addition to, or in substitution for, the evidence or information given or obtained on the making of the decision may be given or obtained on the review.

(4) Where, on a review under this Division of a decision, bail for an accused person is revoked, a magistrate may by warrant commit the person to prison.

- (5) Where, on a review under this Division of a decision –
- (a) bail is granted unconditionally and no bail undertaking has been given by the accused person; or
  - (b) a bail condition is imposed,

a magistrate may by warrant commit the person to prison until he or she gives the undertaking or enters into the condition, as the case may be.

(6) A court may refuse to entertain a request to review, under this Division, a decision if the court is satisfied that the request is frivolous or vexatious.

- (7) The Regulations may make provisions for or in relation to –
- (a) the manner of making a request to review under this Division a decision in relation to bail;
  - (b) the giving or sending to persons of notices relating to the proposed exercise of the power to review under this Division a decision in relation to bail; and
  - (c) the circumstances in which such a power may be exercised in the absence of the accused person or his or her representative as if he or she or his or her representative were present.

**Applications for bail not limited by this Part**

38. Nothing in this Part limits the right of an accused person in custody to apply for bail, and he or she may so apply for bail notwithstanding that the power to review a decision already made in relation to the grant of bail to him or her has not been, or has not been sought to be, exercised under this Part.

## **PART 7 – NON-COMPLIANCE WITH UNDERTAKING OR CONDITIONS**

### **Arrest for absconding or breach of condition**

**39. (1)** Where a member of the Police Force believes on reasonable grounds that a person who has been released on bail has, while on bail, failed to comply with, or is, while on bail, about to fail to comply with, his or her bail undertaking or an agreement entered into by him or her pursuant to a bail condition –

- (a) a police officer may arrest the person without warrant and take him or her as soon as practicable before a court; or
- (b) the Chief Magistrate may –
  - (i) issue a warrant to apprehend the person and bring him or her before a court; or
  - (ii) issue a summons for his or her appearance before a court.

**(2)** The court before which the person is brought or appears may –

- (a) release him or her on his or her original bail; or
- (b) revoke his or her original bail and otherwise deal with him or her according to law.

**(3)** If the court revokes the person's original bail, the court or any other court before which he or she is brought or appears –

- (a) may grant bail to him or her in accordance with this Act; or
- (b) may, notwithstanding anything in this Act, refuse to grant bail to him or her and by warrant commit him or her to prison.

**(4)** Nothing in this section limits the rights of an accused person in custody to apply for bail.

### **Failure to appear**

**40.** Where a person fails to appear before a court in accordance with his or her bail undertaking, the court may issue a warrant to apprehend the person and bring him or her before the court.

### **Enforcement of bail undertakings**

**41. (1)** Where –

- (a) an accused person fails to comply with his or her bail undertaking or a bail condition; and
- (b) he or she or another person has entered into an agreement pursuant to a bail condition to forfeit an amount of money,

the court before which the accused person was required to appear in accordance with his or her bail undertaking may order that the amount referred to in paragraph (b) be forfeited and paid to the Administration.

**(2)** If security or an amount of money has been deposited under an agreement entered into as a condition of the grant of bail to an accused person, a court may, when making an order under subsection (1), make a further order that the security or amount of money so deposited be applied in or towards payment of the amount ordered to be forfeited.

(3) If a court makes an order under subsection (1), the court may, on application by the person in relation to whom the order is made or of its own motion –

- (a) reduce the amount of the forfeiture; or
- (b) confirm, rescind or suspend its order.

(4) A court shall endorse or cause to be endorsed on the bail undertaking of an accused person particulars of every order made under subsection (1) or (2).

(5) Subject to subsection (6), Part 7 Division 2 of the *Court of Petty Sessions Act 1960* applies to a bail undertaking or recognisance that is ordered by a court to be forfeited and payment is to be enforced under that Act.

(6) If a court orders forfeiture of a bail undertaking, the court may order that if the forfeited amount is not paid within 28 days the accused person is to be imprisoned until his or her or her liability to pay the forfeited amount is discharged.

(7) If a court makes an order under subsection (6) and the forfeited amount is not paid within 28 days, the court may issue a warrant of commitment in respect of the accused person specifying the period of imprisonment calculated on the basis of the amount forfeited as follows:

- (a) the period is to be one day for each \$100 (or part thereof) that comprises the amount forfeited;
- (b) the period is not to be less than one day;
- (c) the period is not to exceed 3 months.

(8) If the accused person serves the total period of imprisonment under a warrant under subsection (7), the forfeiture is taken to be satisfied.

(9) If the accused person serves part of the period of imprisonment under a warrant under subsection (7)(a), the forfeiture is taken to be partially satisfied by the amount calculated at the rate in subsection (7) for each day actually served.

(10) Unless otherwise ordered by the court, any period of imprisonment that the accused person has to serve as a result of an order under subsection (6) is to be served –

- (a) cumulatively on any incomplete sentence or sentences of imprisonment imposed on the person for the default of a payment of a fine or sum of money; and
- (b) concurrently with any incomplete sentence or sentences of imprisonment imposed on the person other than for the default of a payment of a fine or sum of money, whether the other sentence was or the other sentences were imposed before or at the same time as that term.

### **Suspension or mitigation of forfeiture**

42. (1) A court may, when making an order under section 41(1), determine that the liability of all or any of the persons liable upon or in respect of an agreement referred to in section 41(1)(b) shall be remitted, suspended or reduced.

(2) Where an order has been made under section 41(1), the court may, at any time, order –

- (a) that the order for forfeiture and payment to the Administration made under section 41(1) be cancelled or suspended; or
- (b) that the liability of all or any of the persons liable upon or in respect of the agreement referred to in section 41(1)(b) shall be remitted, suspended or reduced, or both.

(3) The court, in making an order under subsection (2), may –

- (a) impose such terms and conditions as it thinks fit; and
- (b) make any order consequential on or incidental to such an order.

(4) An order made under this section shall not affect the validity of anything done to enforce the order under section 41(1) before making the first-mentioned order.

## PART 8 – MISCELLANEOUS

### Notices

43. (1) The court or person to whom a bail undertaking is given by an accused person shall forthwith give or cause to be given to the accused person –

- (a) a copy of the undertaking or a notice setting out the terms of the undertaking; and
- (b) a copy of the bail conditions, if any, imposed or a notice setting out the terms of such conditions.

(2) The court or person to or with whom a person other than the accused person makes an acknowledgement, agreement or deposit of security or money pursuant to a bail condition shall forthwith give or cause to be given to that other person a copy of the condition or a notice setting out the terms of the condition.

(3) Where a bail condition is imposed or varied on a review under Part 6 of a decision in relation to bail, the court carrying out that review shall give or cause to be given to –

- (a) the accused person; and
- (b) to any other person who makes an acknowledgement or enters into an agreement pursuant to the condition,

a copy of the condition or a notice setting out the terms of the condition.

(4) A court may, in any of the circumstances referred to in subsections (1) to (3), give or cause to be given to a person not referred to in those subsections, but whom it considers may be interested in or affected by a bail condition as imposed or varied, a copy of that bail condition or a notice setting out the terms of that bail condition.

### Writ of habeas corpus

44. Except where expressly provided by this Act, nothing in this Act affects the powers of the Supreme Court in connection with writs of *habeas corpus*.

### **False statements in acknowledgements**

**45. (1)** A person who wilfully makes an acknowledgement under section 28(2)(b) knowing it to be untrue in a material particular is guilty of an offence.

Penalty: 20 penalty units or imprisonment for 2 years.

**(2)** Before a person makes an acknowledgement under section 28(2)(b) it is the duty of the person to whom the acknowledgement is made to warn the person that if he or she wilfully makes the acknowledgement knowing it to be untrue in a material particular he or she is guilty of an offence under subsection (1).

**(3)** Failure to give a warning in accordance with subsection (2) does not affect the operation of subsection (1).

### **Indemnification of agreeing parties**

**46. (1)** In this section, “agreeing party” means a person who enters (as an acceptable person) into an agreement under section 28.

**(2)** If a person indemnifies another person, or agrees with another person to indemnify the other person, against any forfeiture which the other person may incur as an agreeing party, he or she and the other person are each guilty of an offence against this section.

Penalty: 30 penalty units or imprisonment for 3 years.

**(3)** An offence is committed against this section –

(a) in relation to an agreement referred to in subsection (2) – whether the agreement is made before or after the person to be indemnified becomes an agreeing party and whether or not he or she becomes an agreeing party; and

(b) whether the compensation is or is to be in money or in money’s worth.

### **Civil standard of proof for certain purposes**

**47.** Where an authorised member or a court, in making a decision in relation to bail (other than a decision in proceedings for an offence committed in connection with bail) is to be or may be satisfied as to any matter, it is sufficient if the authorised member or the court is satisfied on the balance of probabilities.

### **Evidence**

**48. (1)** In any proceedings –

(a) a document purporting to be or to be a copy of a bail undertaking given by an accused person, and to be certified by an appropriate officer to be or to be a copy of the undertaking, is admissible in evidence and shall be *prima facie* evidence of the giving of the undertaking by the accused person and of its terms;

(b) a document purporting to be or to be a copy of the instrument by which a bail condition was imposed in relation to an accused person, and to be certified by an appropriate officer to be or to be a copy of the instrument, is admissible in evidence and shall be *prima facie* evidence of the imposing of the condition and of its terms;

- (c) a certificate purporting to be signed by an appropriate officer certifying that a specified bail condition –
  - (i) has not been altered or varied under this Act; or
  - (ii) has been altered or varied under this Act in a specified manner and has not otherwise been altered or varied under this Act,
 is admissible in evidence and shall be *prima facie* evidence of the matters so certified; and
- (d) a document purporting to be or to be a copy of an acknowledgement under section 28(2)(b), and to be certified by an appropriate officer to be or to be a copy of the acknowledgement, is admissible in evidence and shall be *prima facie* evidence of the making of the acknowledgement and of its terms.
- (2) For the purposes of subsection (1), an appropriate officer is –
  - (a) in the case of police bail – an authorised member; and
  - (b) in the case of court bail – an officer of the court having custody of the bail undertaking given by the accused.
- (3) In any proceedings –
  - (a) a certificate purporting to be signed by a Crown Law Officer or a person authorised by him or her in writing in that behalf certifying that a notice referred to in section 26(3) was given or sent to the accused person, or the legal practitioner representing him or her, in a specified manner on a specified day is admissible in evidence and shall be *prima facie* evidence of the matters so certified; and
  - (b) a certificate purporting to be signed by a Judge, magistrate or clerk of the Court of Petty Sessions and stating that a specified person did not appear before a specified court, at a specified place, on a specified day at a specified time is admissible in evidence and shall be *prima facie* evidence of the matters so certified.
- (4) In any document –
  - (a) the words “authorised member” after a signature shall be evidence that the person whose signature it purports to be is in fact an authorised member within the meaning of this Act;
  - (b) the words “appropriate officer” after a signature shall be evidence that the person whose signature it purports to be is in fact an appropriate officer as referred to in this section; and
  - (c) the words “authorised by a Crown Law Officer” after a signature shall be evidence that the person whose signature it purports to be has in fact been authorised by a Crown Law Officer as referred to in section 26(3) and this section,

in connection with the matter to which the document relates.

#### **Surety to have no right of arrest**

**49.** A person who as an acceptable person enters into an agreement under section 28 does not, by virtue of his or her entering into that agreement, have the right to arrest the accused person.



### **Abolition of common law right to grant bail**

**50.** All powers or duties that would, but for this Act, exist apart from statute to grant bail to an accused person in or in connection with criminal proceedings are abolished.

### **Contempt**

**51. (1)** Nothing in this Act affects a power or duty that a court, tribunal or person has to grant bail, or to grant relief in the nature of bail, in connection with a contempt or alleged contempt.

**(2)** Subsection (1) does not apply to a contempt or alleged contempt that constitutes an offence proceedings for which may be commenced by way of information or complaint.

**(3)** A power or duty to which subsection (1) applies is additional to a power or duty that a court, tribunal or person may have under this Act in relation to any contempt or alleged contempt.

### **Provisions as to warrants or summonses**

**52.** Subject to the Regulations, the provisions of the *Court of Petty Sessions Act 1960* apply, with the necessary adaptations, to and in relation to a warrant or summons issued or to be issued under this Act in the same way as they apply to and in relation to a warrant or summons of a corresponding kind issued or to be issued under that Act.

### **Contravention of Act by authorised member**

**53. (1)** Where an authorised member contravenes or fails to comply with a provision of this Act that is applicable to him or her, the contravention or failure is not punishable as an offence (whether under this Act or otherwise) unless a penalty is expressly provided by this Act in respect of the contravention or failure.

**(2)** This section does not prevent a contravention of, or failure to comply with, a provision of this Act by a member of the Police Force from –

- (a) being dealt with under the *Police Act 1931*; or
- (b) constituting grounds for civil proceedings.

### **Representative of mentally impaired or unfit person may enter into bail undertaking on behalf of person**

**54. (1)** In this section –

“accused person” means an accused person who –

- (a) has been declared to be liable to supervision under Division 1 or 2 of Part 11A of the *Crimes Act*; or
  - (b) is or is likely to be the subject of an investigation or a special hearing under that Part.
- (2)** A person representing an accused person may –
- (a) exercise an independent discretion and act as he or she reasonably believes to be in the accused person’s best interests in relation to the grant of bail to the accused person under this Act; and
  - (b) enter into the bail undertaking and any bail conditions imposed in respect of the accused person on behalf of the accused person.

(3) When the representative of an accused person referred to in subsection (1) enters into the bail undertaking and any bail conditions on behalf of the accused person, the representative must give an undertaking to the court that he or she will be responsible for ensuring that the accused person complies with the bail undertaking and the bail conditions.

### **Regulations**

**55. (1)** The Administrator may make Regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Regulations may make provision for or in relation to –

- (a) facilities to be provided to enable the making of communications referred to in section 16(2)(b);
- (b) the procedures to be followed where an application is made, under section 34(4), to a magistrate, by facsimile, telephone, radio or similar facility;
- (c) the release of accused persons from prison or any other place of custody consequent upon the grant of bail or upon the requirement for bail being dispensed with;
- (d) warrants and summonses issued under this Act;
- (e) the fees to be demanded and taken in relation to any matter connected with this Act; and
- (f) the forms to be used for the purposes of this Act.

(3) The Regulations may provide, in respect of an offence against the Regulations, for the imposition of a fine not exceeding 5 penalty units.

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**NOTES**

The *Bail Act 2005* as shown in this consolidation comprises Act No. 27 of 2005 and amendments as indicated in the Tables below.

<b>Enactment</b>	<b>Number and year</b>	<b>Date of commencement</b>	<b>Application saving or transitional provision</b>
<i>Bail Act 2005</i>	27, 2005	28.10.2005	5
<i>Bail (Amendment) Act 2005</i>	28, 2005	25.11.2005	
<i>Bail (Amendment) Act 2006</i>	7, 2006	7.4.2006	

*[Previously consolidated as at 11 April 2006]*

*Interpretation (Amendment) Act 2012* 14, 2012 28.12.12

*[to substitute throughout —  
Commonwealth Minister for Minister;  
and to substitute Minister for executive  
member]*

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**Table of Amendments**

ad = added or am = amended rep = repealed rs = repealed and  
inserted substituted

<b>Provisions affected</b>	<b>How affected</b>
3 (def “appeal” (b))	rep 28, 2005
9(1)(c), 9(1)(d)	rs 7, 2006
16	am 28, 2005

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