



Australian Capital Territory

# **Bail Act 1992**

**A1992-8**

**Republication No 44**

**Effective: 14 May 2020 – 19 February 2021**

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## About this republication

### The republished law

This is a republication of the *Bail Act 1992* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 14 May 2020. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 14 May 2020.

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

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Bail Act 1992

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Australian Capital Territory

## Bail Act 1992

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

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Bail Act 1992*.

### 2 Dictionary

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

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

For example, the signpost definition ‘*bail order*, for part 4 (Grant of bail)—see section 19 (1).’ means that the term ‘bail order’ is defined in that section for part 4.

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

### 3 Notes

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

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

### 3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

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

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

*Note 2 Penalty units*

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

### 4 Act applies to children

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

## **Part 2** Availability of bail

### **Division 2.1** When bail may be granted and rights following

#### **5** When may bail be granted?

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

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

- (1) This section applies if—
  - (a) bail is granted to an accused person in relation to an offence; and
  - (b) the person gives an undertaking to appear; and
  - (c) if a bail condition mentioned in section 25 (1) (b) (ii) or (c) is imposed—the security is given or the deposit made.
- (2) The person is entitled—
  - (a) if the person is in custody—to be released from custody; and
  - (b) to remain at liberty in relation to the offence until required to appear before a court in accordance with the undertaking.
- (3) This section is subject to section 56A (Arrest for failure to comply with bail condition).

## **Division 2.2                      Presumption for bail**

### **7                      Div 2.2 subject to div 2.3 and div 2.4**

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

### **8                      Entitlement to bail—certain minor offences etc**

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

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

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

### **8A Entitlement to bail—breach of sentence obligations**

- (1) This section applies to a person arrested, or otherwise brought before the court or a magistrate, in relation to a breach, or anticipated breach, of—
- (a) a deferred sentence obligation under the *Crimes (Sentencing) Act 2005*; or
  - (b) a treatment order obligation under the *Crimes (Sentencing) Act 2005*; or
  - (c) any of the following obligations under the *Crimes (Sentence Administration) Act 2005*:
    - (i) an intensive correction order obligation;
    - (ii) a good behaviour obligation;
    - (iii) a parole obligation;
    - (iv) a release on licence obligation.

- (2) The person has the same entitlement to bail in relation to the breach, or anticipated breach, of the obligation as the person has under this part in relation to the offence to which the obligation relates.

**Example—bail entitlement**

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

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

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

## **9 Limitations on entitlement to bail**

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

## **9A Entitlement to bail—offences other than minor offences**

- (1) This section applies to—
  - (a) a person in relation to an offence other than an offence mentioned in section 8 (1) (a) or (b) (Entitlement to bail—certain minor offences etc); and
  - (b) a person who is not entitled to bail under section 8 (2) because of section 9 (1) or (2).
- (2) The person is entitled to be granted bail unless the court or authorised officer is satisfied that refusal is justified after considering—
  - (a) for an adult—the matters mentioned in section 22 (Criteria for granting bail to adults); or
  - (b) for a child—the matters mentioned in section 23 (Criteria for granting bail to children).



## **Division 2.3                      No presumption for bail**

### **9B                      Div 2.2 not to apply to certain offences**

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

- (a) to a person accused of an offence mentioned in schedule 1 (Offences to which presumption for bail does not apply); or
- (b) to a person accused of any of the following offences, if the person has in the previous 10 years been found guilty of an offence involving violence or the threat of violence:
  - (i) an offence against the *Crimes Act 1900*, section 30 (Threat to kill);
  - (ii) an offence against the *Crimes Act 1900*, section 31 (Threat to inflict grievous bodily harm);
  - (iii) an offence against the *Crimes Act 1900*, section 35 (Stalking);
  - (iv) an offence against the *Domestic Violence and Protection Orders Act 2008* (repealed), section 90 (Offence for contravention of protection order);
  - (v) an offence against the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);
  - (vi) an offence against the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order);  
or
- (c) to a person accused of an offence against the *Criminal Code Act 1995* (Cwlth), section 80.1 (Treason); or
- (d) to a person convicted of an indictable offence but not sentenced.

## Division 2.4 Presumption against bail

### 9C Bail for murder and certain serious drug offences

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

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

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

- (3) However, even if special or exceptional circumstances are established, the court or officer must refuse bail if satisfied that refusal is justified after considering—
- (a) for an adult—the matters mentioned in section 22 (Criteria for granting bail to adults); or
  - (b) for a child—the matters mentioned in section 23 (Criteria for granting bail to children).

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

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

**Example**

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

- (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 family violence offence, an authorised person must not grant bail to the accused person if satisfied that refusal of bail is required under section 9F (Family 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 family violence offence; and
  - (b) an authorised person grants bail to the accused person.
- (6) In this section:
- outstanding***—a charge against a person for an offence is ***outstanding***—
- (a) until the charge is finally dealt with in any of the following ways:
    - (i) the charge is withdrawn;
    - (ii) the charge is dismissed by a court;
    - (iii) the person is discharged by the Magistrates Court following a committal hearing;
    - (iv) the person is acquitted or found guilty by a court of the offence; and

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

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

- having an order made for the offence under the *Crimes (Sentencing) Act 2005*, s 17 (Non-conviction orders—general)
- having the offence taken into account under the *Crimes (Sentencing) Act 2005*, s 57 (Outstanding additional offences taken into account in sentencing)

(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 (other than an offence in relation to which an election for summary disposal has been made under the *Crimes Act 1900*, section 374 (Summary disposal of certain cases at prosecutor's election)).

**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 Family violence offence—bail by authorised officer**

- (1) This section applies to a person accused of a family 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:

*family member*, in relation to a person accused of a family violence offence—see the *Family Violence Act 2016*, section 9.

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

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

## **9G Special or exceptional circumstances**

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

### **Examples for s (3)**

- 1 Damien is before the court charged with having committed an aggravated robbery. He has earlier been charged with having committed aggravated robbery. Section 9D applies and there is a presumption against bail unless there are special or exceptional circumstances. Damien argues that there are special circumstances as he needs to support his child, he may lose his job and he may lose an opportunity to take up public housing. The court considers that the circumstances are not special or exceptional. Bail is not granted and the criteria in section 22 are not considered.

- 2 Jason is facing similar charges. Jason has had a car accident before his arrest for the second offence. His kidneys are damaged requiring dialysis every 3 days. Jason argues that his need for regular treatment and his reduced mobility mean that he is highly unlikely to abscond. The court considers these circumstances are special or exceptional. The court then considers the criteria in section 22 in deciding whether to grant bail.



## Part 3                      Dispensing with bail

### 10                      Dispensing with bail

- (1) A court that may grant bail to an accused person may instead dispense with the requirement for bail.
- (2) In deciding whether to release an accused person from custody without requiring bail, a court may have regard to any information that appears to the court to be relevant and reliable.
- (3) If, during an appearance by an accused person before a court, no specific order or direction is made by the court in relation to bail, the court is taken to have dispensed with the requirement for bail.
- (4) Subsection (3) does not apply if, under section 33 (3), the court is taken to have continued bail.
- (5) A court must not dispense with the requirement for bail for an accused person to whom either of the following sections apply unless satisfied that special or exceptional circumstances exist justifying dispensing with the requirement:
  - (a) section 9D (Bail for serious offence committed while charge for another pending or outstanding);
  - (b) section 9E (Bail for person sentenced to imprisonment).

### 11                      Effect of dispensing with bail

- (1) While the requirement for bail is dispensed with under this Act in relation to a person accused of an offence, the person is entitled to be and to remain at liberty in relation to the offence until the person is required to appear before a court in relation to the offence.
- (2) Subsection (1) does not apply to an accused person while the person is in custody for another offence or reason in relation to which the person is not entitled to be at liberty, whether under this Act or otherwise.

**12            Decision to dispense with bail**

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

## Part 4 Grant of bail

### 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.

### 13 Deciding bail after charge laid

(1) If—

- (a) a person who has been taken into custody by a police officer is charged with an offence but is not to be brought before a court immediately after being charged; or
- (b) it is not practicable to bring immediately before a court a person arrested under a warrant (being a warrant which does not expressly preclude the granting of bail) issued under the *Magistrates Court Act 1930*, section 42 (2) (Issue of warrant and summons) in relation to an offence punishable by a fine or by imprisonment for a period not exceeding 2 years;

the police officer who charges or arrests the person—

- (c) must tell the person that the person may—
  - (i) apply for bail; and
  - (ii) communicate with a lawyer of the person's choice in relation to the making of an application for bail; and
  - (iii) if the person cannot speak or understand the English language—have recourse to the services of a competent interpreter; and
  - (iv) communicate with someone else of the person's choice who may reasonably be expected to assist the person in relation to the provision of bail; and

if the person asks for facilities to do so, must provide the person with reasonable facilities to enable the person to communicate with a lawyer, an interpreter or someone else; and

- (d) must tell the person about—
  - (i) the applicable bail criteria; and
  - (ii) the conditions subject to which the person may be released on bail; and

- (e) if the person applies for bail—
  - (i) if the police officer is authorised to grant bail to the person—must consider whether the person should be granted bail; or
  - (ii) in any other case—must bring the person before an authorised officer.
- (2) If a person is brought before an authorised officer under subsection (1) (e) (ii), the authorised officer must consider whether the person should be granted bail.
- (3) If, before subsection (1) has been fully complied with in relation to an accused person, an authorised officer is satisfied that it is appropriate to release the person on bail subject only to the person giving an undertaking to appear, the authorised officer may so release the person.
- (4) A police officer who charges or arrests a person need not comply with subsection (1) (c) (ii), (iii) or (iv) if the police officer believes on reasonable grounds that non-compliance is necessary to prevent—
  - (a) the escape of an accomplice of the accused person; or
  - (b) the loss, destruction or falsification of evidence relating to the offence.
- (5) If a police officer who charges or arrests a person does not comply with subsection (1) (c) (ii), (iii) or (iv) for a reason mentioned in subsection (4), the police officer must record the reason.

## 14 Grant of bail by authorised officers

- (1) Subject to subsection (2), an authorised officer may grant bail in accordance with this Act to an accused person who is present at a police station.
- (2) An authorised officer must not grant bail to a person accused of an offence if—
  - (a) a decision about bail in relation to the offence has been made by a court; or
  - (b) the offence is a family violence offence of murder.

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

## 15 Deciding of questions of bail by authorised officers

- (1) An authorised officer who is required to consider whether to grant bail to an accused person must as soon as reasonably practicable—
  - (a) give—
    - (i) the accused person or a lawyer representing the accused person; and
    - (ii) any police officer involved in the investigation of the offence with which the accused person is charged;  
an opportunity to make submissions to the authorised officer about the conditions to which any grant of bail to the accused person should be made subject; and
  - (b) having regard to those submissions, to the applicable bail criteria and to any other available information that the authorised officer considers relevant and reliable, decide whether the person should be granted bail.

- (2) If the authorised officer is satisfied, having regard to the applicable bail criteria, that—
- (a) it is appropriate to release the person on the person giving an undertaking to appear; and
  - (b) it is not necessary to impose a bail condition;

the authorised officer must release the person on the person giving that undertaking.

- (3) If the authorised officer is satisfied, having regard to the applicable bail criteria, that it is not appropriate to grant bail to the accused person without imposing a condition, the authorised officer must, having regard to—
- (a) the conditions that may be imposed in granting bail to a person; and
  - (b) the extent to which the imposition of 1 or more bail conditions would be appropriate having regard to the matters mentioned in whichever of section 9F (2), section 22 or section 23 applies to the making of a decision regarding the granting of bail to the accused person;

decide whether to grant bail to the accused person.

## **16 Notification of decision of authorised officer**

- (1) If an authorised officer decides—
- (a) to refuse to grant bail to an accused person; or
  - (b) to grant bail to an accused person subject to 1 or more bail conditions;

the authorised officer must inform the accused person—

- (c) of his or her decision; and
- (d) the right of the accused person to request a review of the decision under section 38; and

- (e) if bail is refused—that the person is entitled to communicate with a lawyer; and
  - (f) if the person would be granted bail subject to 1 or more bail conditions and that bail condition, or those bail conditions, are such that the person is unable or unwilling to comply, or to arrange for compliance, with them—that the person is entitled to communicate with a lawyer.
- (2) An authorised officer must, on being requested to do so by an accused person in relation to whom the authorised officer has made a decision of the kind referred to in subsection (1) (a) or (b), provide the person with reasonable facilities to communicate with a lawyer.
- (3) An authorised officer who refuses to grant bail to an accused person need not comply with subsection (1) (e) or (f) and subsection (2) if the authorised officer believes on reasonable grounds that non-compliance is necessary to prevent—
- (a) the escape of an accomplice of the accused person; or
  - (b) the loss, destruction or falsification of evidence relating to the offence.
- (4) If an authorised officer does not comply with subsection (1) (e) or (f) and subsection (2) for a reason mentioned in subsection (3), the authorised officer must record the reason.
- (5) If an authorised officer decides to grant bail to an accused person, or is notified that bail has been granted to an accused person, in relation to a family violence offence, the officer must take reasonable steps to tell each protected person, as soon as practicable, about the decision and, if the accused person is granted bail subject to a bail condition, about the condition.
- (6) If an authorised officer decides not to grant bail to an accused person in relation to a family violence offence, the officer must tell each protected person about the decision.



(7) In this section:

***protected person***, in relation to a family violence offence, means—

- (a) if the conduct making up the offence was directed at a child—a person with parental responsibility for the child; or
- (b) if the conduct making up the offence was directed at someone else—the person at whom the conduct was directed.

## **17 Charged people in custody to be brought before court**

An accused person who—

- (a) has been taken into custody and charged with an offence; and
- (b) is refused bail by an authorised officer or is not released on bail granted by an authorised officer;

must be brought before a court as soon as practicable after the person has been taken into custody and, in any case, within 48 hours after having been taken into custody.

## **18 Facilities to be provided to accused people**

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

- (a) the police officer for the time being in charge of the police station where the person is in custody; or
- (b) if the person is not in custody at a police station—the police officer who has custody of the person;

must, if it is reasonably practicable to do so, provide the person with, and allow the person to use—

- (c) facilities to enable the accused person to wash, shower or bathe and (if appropriate) to shave; and

- (d) facilities to enable the accused person to change his or her clothing.
- (2) Nothing in subsection (1) requires a police officer, the Territory or the Commonwealth to provide clothing for the accused person unless the clothing is brought to the police station or other place where the accused person is in custody by a member of the accused person's family or some other person.

## 19 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 for failure to comply with bail condition) 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.

**21 Bail in relation to several offences**

If an accused person has been charged with 2 or more offences for which bail may be granted and is being held in custody in relation to those offences—

- (a) a court or an authorised officer must, in considering whether to grant bail to the accused person, have regard to all the offences with which the person stands charged; and
- (b) if the court or authorised officer decides that the accused person should be granted bail—
  - (i) the accused person must be granted bail in relation to all the offences with which the person has been charged for which bail may be granted; and

- (ii) the accused person need give only 1 undertaking to appear in relation to all the offences with which the person has been charged for which bail may be granted; and
- (iii) if the accused person is granted bail subject to conditions—the conditions apply in relation to each offence with which the accused person is charged for which bail may be granted.

## 22 Criteria for granting bail to adults

- (1) In making a decision about the grant of bail to an adult in relation to an offence, a court or authorised officer must consider—
- (a) the likelihood of the person appearing in court in relation to the offence; and
  - (b) the likelihood of the person, while released on bail—
    - (i) committing an offence; or
    - (ii) harassing or endangering the safety or welfare of anyone; or
    - (iii) interfering with evidence, intimidating a witness, or otherwise obstructing the course of justice, in relation to the person or anyone else; and
  - (c) the interests of the person.

### Examples for par (c)

- 1 the need of the person for physical protection
  - 2 the period that the person may be held in custody if bail is refused and the conditions under which the person would be held
- (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 2008*, section 94 (Youth justice principles); and
  - (c) if the decision is being made by a court and a report has been given to the court under the *Court Procedures Act 2004*, section 74D (Court may order report about young person) 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 (Family violence offence—bail by authorised officer) and section 22 (1) (b).



## Part 5                      **Bail conditions and undertakings to appear**

### 24                      **Conditions of bail**

A court or an authorised officer may grant bail without imposing conditions or subject to bail conditions imposed—

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

### 25                      **Conditions on which bail may be granted to adults**

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

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

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

- (c) a condition that the person, an acceptable person or each of a number of acceptable people—
  - (i) deposits a stated amount with a court or authorised officer; and
  - (ii) forfeits the amount if the person fails to appear in court in accordance with his or her undertaking.

- (2) With the consent of a person who makes a deposit or gives security under subsection (1) (b) (ii) or (c), it may be a condition of bail that the deposit or security continues to apply if bail is continued.
- (3) It must not be a condition of bail that a person gives consent under subsection (2).
- (4) Without limiting subsection (1) (a), the requirements that an accused person may be required to observe relating to his or her conduct while released on bail include—
- (a) a requirement that the accused person report periodically, or at specified times, at a stated place; and
  - (b) a requirement that the accused person reside at a stated place; and
  - (c) a requirement that the person undergo psychiatric treatment or other medical treatment; and
  - (d) a requirement that the accused person participate in a program of personal development, training or rehabilitation; and
  - (e) a requirement that the person—
    - (i) accept supervision by the director-general; and
    - (ii) comply with any reasonable direction of the director-general; 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 ACAT
- 3 a direction to attend drug or alcohol counselling

- (f) for a person (the *accused person*) charged with a family violence offence—
- (i) a requirement that the accused person not contact, harass, threaten or intimidate, or cause someone else to contact, harass, threaten or intimidate, a stated person or engage in any other behaviour mentioned in the *Family Violence Act 2016*, section 8 (1), definition of *family violence*, paragraph (a), in relation to the stated person; or
  - (ii) a requirement that the accused person not be on premises where a stated person lives or works; or
  - (iii) a requirement that the accused person not be on or near premises where a stated person is likely to be; or
  - (iv) a requirement that the accused person not be in a stated place; or
  - (v) a requirement that the accused person not be within a stated distance of a stated person; or
  - (vi) if the accused person lives with someone—a requirement that the accused person not enter or remain at the home if the accused person is under the influence of alcohol or another drug.
- (5) A court or an authorised officer must, in considering conditions for the release on bail of an accused person who is an adult, consider the conditions for the release of that person in the sequence in which they appear in subsection (1).

- (6) A court or an authorised officer, in granting bail to an accused person who is an adult—
- (a) must not impose a condition mentioned in subsection (1) unless the court or authorised officer is of the opinion that the imposition of the condition is necessary to secure 1 or more of the following purposes:
    - (i) the attendance of the person before a court from time to time as required in relation to the offence in relation to which bail is being granted;
    - (ii) the protection from harm of the accused person or any other person;
    - (iii) the prevention of the accused person from committing an offence while at liberty on bail;
    - (iv) the prevention of the accused person from interfering with evidence, intimidating witnesses or otherwise obstructing the course of justice whether in relation to himself or herself or anyone else; and
  - (b) must not, except at the request of the accused person, impose a condition, or a combination of conditions, that impose obligations that are more onerous than necessary to secure the purposes referred to in paragraph (a) for which the condition or combination of conditions is imposed.
- (7) A court or an authorised officer, in granting bail to an accused person on a condition referred to in subsection (1) (b) or (c) must not require the accused person to give an acceptable security for a stated sum, or to deposit a stated sum with the court or authorised officer, if the court or authorised officer has reasonable grounds for believing that the accused person does not have the means to provide such a security or make the deposit, as the case may be.

- (8) If a court or an authorised officer grants bail to an accused person on a condition mentioned in subsection (1) and the accused person satisfies the court or authorised officer that the person is unable to comply with that condition, the court or authorised officer must—
- (a) refuse bail; or
  - (b) grant the accused person bail subject to such other condition mentioned in subsection (1) as the authorised officer or the court believes the accused person will be able to comply with and will secure the purposes mentioned in subsection (6) (a).
- (9) In this section:
- director-general* means—
- (a) if section 25A applies in relation to the accused person—the responsible director-general decided under that section; or
  - (b) in any other case—the director-general responsible for this Act.
- premises* includes—
- (a) any land; and
  - (b) any structure, building, vehicle, vessel or place (whether built on or not); and
  - (c) any part of such a structure, building, vehicle, vessel or place.

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

- (1) This section applies if—
- (a) a condition is imposed on the grant of bail to an accused person under section 25 (4) (e); and
  - (b) the accused person is at least 18 years old but less than 21 years old; and

- (c) the accused person was under 18 years old when the offence to which the grant of bail relates was committed.
- (2) The director-general responsible for this Act and the director-general responsible for the *Children and Young People Act 2008* must decide which of them is to be the responsible director-general for matters relating to the supervision of the accused person.
- (3) If the responsible director-general for matters relating to the supervision of an accused person is the director-general responsible for the *Children and Young People Act 2008*, the accused person must be supervised as a person under 18 years old.
- (4) If the responsible director-general for matters relating to the supervision of an accused person is the director-general responsible for this Act, the accused person must be supervised as an adult.

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

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

(b) comply with any reasonable direction of the director-general.

**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 ACAT
  - 3 a direction to attend drug or alcohol counselling.
- (3) A court or an authorised officer must, in considering the release on bail of an accused person who is a child, consider the conditions for the release of the person that are mentioned in section 25 (1) in the sequence in which they are mentioned in that subsection.
- (4) A court or an authorised officer, in granting bail to an accused person who is a child—
- (a) may not impose a condition referred to in section 25 (1) unless the court or the authorised officer is of the opinion that the imposition of the condition is—
    - (i) necessary to secure 1 or more of the purposes mentioned in section 25 (6) (a) (i), (ii), (iii) and (iv) (the *relevant purposes*); or
    - (ii) in accordance with the principles under the *Children and Young People Act 2008*, section 94 (Youth justice principles); and
  - (b) may not, except at the request of the accused person, impose a condition, or a combination of conditions, that puts a greater obligation on the accused than is—
    - (i) necessary to secure the relevant purposes; or
    - (ii) in accordance with the relevant principles.
- (5) Section 25 (7) applies in relation to a grant of bail under this section.

- (6) If a court or an authorised officer grants bail to an accused person who is a child on a condition referred to in section 25 (1) and the accused person satisfies the court or authorised officer that the person is unable to comply with that condition, the court or authorised officer must—
- (a) refuse bail; or
  - (b) grant the accused person bail subject to the other conditions referred to in subsection (1) that the court or authorised officer believes the accused person will be able to comply with and will secure the purposes mentioned in subsection (4) (a) (i) and (ii).

## **27 Recording of certain bail decisions**

- (1) If—
- (a) a judge or magistrate hears an application by an accused person for bail, or release from custody without bail; or
  - (b) an authorised officer is required to consider whether to grant bail to an accused person, or to release an accused person from custody without bail;
- he or she must record, or cause to be recorded, his or her reasons for the decision.
- (2) If a judge, a magistrate or an authorised officer decides to grant bail to an accused person subject to a condition mentioned in section 25 (1) otherwise than in accordance with a request of an accused person that bail be granted on that condition, or on conditions that include that condition, the judge, magistrate or authorised officer must record, or cause to be recorded, his or her reasons for deciding—
- (a) that the imposition of a condition mentioned in that subsection was necessary to secure the purposes of whichever of section 25 (6) (a) and section 26 (4) (a) applies to the accused person; and



- (b) if the condition is a condition referred to in section 25 (1) (other than a condition mentioned in section 25 (1) (a))—that the imposition of a condition under the earlier paragraph or paragraphs of that subsection would be unlikely to secure the purposes of whichever of section 25 (6) (a) and section 26 (4) (a) applies to the accused person.

## **28 Undertakings to appear**

- (1) A person may be released on bail only if the person gives a written undertaking—
- (a) to appear before a stated court at the place, date and time—
    - (i) stated in the undertaking; or
    - (ii) notified to the person by a police officer; and
  - (b) to comply with the bail conditions (if any).
- Note* If a form is approved under s 58 for an undertaking, the form must be used.
- (2) For a continuation of bail, the person may undertake to appear at any time when, and at any place where, proceedings in relation to the offence with which the person has been charged may be continued.
- (2A) During a COVID-19 emergency, an undertaking—
- (a) may be in writing or given before the court; and
  - (b) if given before the court, must be recorded by the court.
- (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.

(6) In this section:

**COVID-19 emergency** means—

- (a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or
  - (b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).
- (7) This subsection and subsections (2A) and (6) expire 12 months after the day the *COVID-19 Emergency Response Act 2020*, section 4 commenced.

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

- (1) If a person has given an undertaking to appear before a court under section 28 (1), the court may, on application made by or on behalf of that person, by order excuse the person from attendance before the court to answer the charge in relation to which bail has been granted or for any other purpose in relation to the proceedings relating to the charge.
- (2) An order under subsection (1) may be made—
  - (a) whether or not any evidence has been given in the proceedings; and
  - (b) whether or not the applicant for the order is before the court or has attended before the court in relation to the proceedings.
- (3) A court must not make an order under subsection (1) unless it has been informed, by or on behalf of the applicant, that the applicant is represented by a lawyer for the purposes of the proceedings.

- (4) A court may, at any time during proceedings in relation to which an order has been made in relation to a person under subsection (1), direct the informant or the registrar of the court to serve the person in relation to whom the order has been made with a written notice requiring him or her to attend before the court, for the purposes of those proceedings, on a day and at a time and place stated by the court.

*Note 1* For how documents may be served, see the [Legislation Act](#), pt 19.5.

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

- (5) If a person on whom a notice under subsection (4) has been served does not attend before the court in accordance with the requirements of the notice, the court may issue a warrant for the arrest of the person and for bringing the person before the court at the time and place specified in the warrant.

- (6) If—

- (a) a person has been discharged from custody on bail; and
- (b) an order is made under subsection (1) excusing the person from attendance before the court in accordance with his or her undertaking to appear; and
- (c) the person does not appear before the court at the place, date and time required under that undertaking;

the person is not taken to have failed to comply with a condition of his or her bail only because the person did not so attend before the court and bail continues subject to any condition other than a condition requiring the person to attend before the court.

## **31 Bail requirements**

- (1) An undertaking to appear may be given to—
- (a) a court; or
  - (b) a registrar or deputy registrar; or
  - (c) an authorised officer; or

- (d) for an accused person who is at a correctional centre or a NSW correctional centre—the person in charge of the centre.
- (2) An amount may be deposited, or security given, in accordance with a bail condition, to—
  - (a) a court; or
  - (b) registrar or deputy registrar; or
  - (c) an authorised officer.
- (3) In this section:
  - deposit* includes a payment by cash or electronic funds transaction.
  - security* includes security given by way of bond or bank guarantee.

### **32 Acceptable people and security for bail**

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

**33 Continuation of bail and undertakings**

- (1) If an accused person has given an undertaking to appear at a place, date and time at which proceedings in relation to the offence may be continued, whether on any adjournment, postponement or other deferment of the proceedings, or by way of committal, a court may continue the bail already granted in relation to the offence, whether or not the accused person is present in court.
- (2) If bail is continued under subsection (1), the undertaking to appear and the bail conditions continue to apply, except to the extent that the undertaking or condition otherwise provides or the court otherwise orders.

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

- (3) If no direction is made by the court in relation to bail, whether or not the accused person appears in accordance with the undertaking—
  - (a) the court is taken to have continued bail; and
  - (b) the undertaking to appear and any bail conditions continue to apply.
- (4) If the hearing of a charge against an accused person is adjourned or postponed, the court may—
  - (a) continue the person's bail; or
  - (b) make another order about bail.
- (5) However, if a deposit has been made, or security given, by a surety in accordance with a bail condition, the court must not continue bail without the surety's consent unless it is a condition of bail that the deposit or security continues to apply if bail is continued.

- (6) If bail is continued—
- (a) the undertaking to appear is taken to be an undertaking to appear at any time when, and at any place where, proceedings in relation to the offence with which the person has been charged may be continued; and
  - (b) any bail conditions continue to apply.
- (7) If an accused person has been released on bail and the court is satisfied that the accused person is because of illness or accident or other sufficient cause unable to appear personally before the court on the day when the person is required to appear, the court may, in the absence of the accused person, order the person to be further remanded to the place, date and time that the court considers appropriate and may order that the undertaking to appear given by the accused person and any agreement entered into under a condition of the grant of bail be continued so as to require the appearance of the accused person at every place, date and time to which the accused person is remanded or the hearing adjourned, postponed or otherwise deferred.

### **34 Written notice of conditions of bail**

- (1) A court or authorised officer granting bail to an accused person—
- (a) must give the accused person a written notice setting out—
    - (i) the person's obligations under the person's bail conditions; and
    - (ii) the consequences of any failure by the person to comply with the conditions; and
  - (b) must be satisfied, before releasing the accused person, that the person will comply with the conditions.

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

- (2) A court or authorised officer granting bail to an accused person with a surety for the accused person's appearance to answer the charges against the person —
- (a) must give the surety written notice of—
    - (i) the accused person's obligations under the person's bail conditions; and
    - (ii) the consequences of any failure by the person to comply with the conditions; and
  - (b) must be satisfied, before releasing the accused person, that the surety understands—
    - (i) the nature and extent of the accused person's obligations under the person's bail conditions; and
    - (ii) the consequences of any failure by the person to comply with the conditions.
- (3) If a bail condition is imposed or varied on a review under part 6 of a decision made in relation to bail, the court or authorised officer imposing or varying the condition—
- (a) must give the accused person a written notice setting out—
    - (i) the person's obligations under the condition; and
    - (ii) the consequences of any failure by the person to comply with the condition; and
  - (b) must be satisfied that the accused person will comply with the condition; and
  - (c) if there is a surety for the appearance of the accused person to answer the charges against the accused person—
    - (i) must give the surety a written notice setting out—
      - (A) the accused person's obligations under the condition; and

- (B) the consequences of any failure by the person to comply with the condition; and
- (ii) must be satisfied that the surety understands—
  - (A) the nature and extent of the accused person's obligations under the condition; and
  - (B) the consequences of any failure by the person to comply with the condition.
- (4) A court continuing bail on an adjournment or a postponement of proceedings must immediately give, or cause to be given, to the accused person a written notice that—
  - (a) states that bail is continued until the hearing is resumed or stated; and
  - (b) states the conditions on which bail is presently allowed; and
  - (c) states the place, date and time to which the proceedings are adjourned or postponed or states that the proceedings are adjourned or postponed to a place, date and time that are from time to time stated in a notice given or sent to the accused person as prescribed by regulation.

### **36 Discharge of surety**

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



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

- (6) In this section:

*court of appearance* means the court before which the accused person is required to appear in accordance with his or her undertaking to appear.

### **37 Payment of amounts to Territory**

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

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

*Note* For how documents may be served, see the [Legislation Act](#), pt 19.5.

- (5) If, after the end of 28 days after the day the notice is given, the amount has not been paid the amount may be recovered under the [Crimes \(Sentence Administration\) Act 2005](#), chapter 6A (Court imposed fines) as if it were a fine within the meaning of that chapter.
- (6) Subsection (5) applies to an amount even if the amount exceeds \$50 000.

## **Part 6**                      **Review of bail decisions**

### **Division 6.1**              **Review of decisions by authorised officers**

#### **38**              **Review by authorised officers**

- (1) If an authorised officer makes a decision under part 4 in relation to bail for an accused person that is—
  - (a) a decision to refuse to grant bail to the accused person; or
  - (b) a decision to grant bail to the accused person subject to 1 or more bail conditions;

the accused person may request a review of that decision by the authorised officer who made the decision or any other authorised officer.

- (2) If an application for a review of a bail decision is made to an authorised officer under subsection (1), the authorised officer must as soon as possible conduct a review of the decision.

#### **39**              **Exercise of power to review**

- (1) The power to review a decision under this division includes a power to confirm or vary a decision or to substitute another decision.
- (2) A decision as varied or substituted must be in conformity with this Act.
- (3) If, on a review of a decision under this division, the authorised officer varies the decision or substitutes another decision, section 27 applies in relation to the decision as varied or substituted as if the decision had been made by the authorised officer under part 4.
- (4) An authorised officer may refuse to entertain a request to review a decision under this division if the authorised officer is satisfied that the request is frivolous or vexatious.

- (5) A regulation may—
- (a) prescribe the way of making a request for the review of a decision under this division; and
  - (b) prescribe procedures for the conduct of a review under this division; and
  - (c) limit the time within which, and the circumstances in which, an accused person may apply for a review of a decision under this division; and
  - (d) limit the number of applications that may be made for the review of a bail decision under this division.

**40 Limitation on power of authorised officer to review**

An authorised officer may not, under this division—

- (a) review a decision in circumstances if, had the decision not been made, the authorised officer would be prohibited from making a decision in relation to the grant of bail; or
- (b) review a decision that has been reviewed by a court.

**Division 6.2 Review of decisions by courts**

**41 Right of review of bail decisions**

An accused person or the informant may apply under this division for review of any decision by a court or an authorised officer in relation to bail.

**41A Court may review on its own initiative**

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

- (2) The court may issue a warrant for the arrest of the person and for bringing the person before the court at the time and place stated in the warrant.

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

- (1) The Magistrates Court may, on application under this division (other than under section 44 (Right of review of bail decisions—prosecution)), 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 (other than under section 44 (Right of review of bail decisions—prosecution)), 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 (other than under section 44 (Right of review of bail decisions—prosecution)), 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 (other than under section 44 (Right of review of bail decisions—prosecution)), 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.

**44 Right of review of bail decisions—prosecution**

- (1) This section applies to a decision by a court in relation to bail for an accused person charged with a family violence offence or a serious offence.
- (2) The director of public prosecutions may apply to the Supreme Court for review of the decision if the director of public prosecutions considers that exceptional circumstances exist and that it is in the public interest to make the application.

- (3) An application must be made, and written notice of the application given to the accused person—
  - (a) within 2 hours after the decision is made; or
  - (b) if the decision is made between 4pm on a day and 8am the next day (*day 2*)—by 10am on day 2 (whether or not it is a working day).
- (4) However, an application may only be made if the director of public prosecutions gives the court that made the decision oral notice of the proposed application immediately after the decision is made.
- (5) On giving notice under subsection (4), the operation of the decision is stayed until the first of the following happens:
  - (a) the director of public prosecutions tells the court that made the decision that an application will not be made;
  - (b) 24 hours have passed since notice was given under subsection (4) and the director of public prosecutions has not—
    - (i) made an application; and
    - (ii) given written notice of the application to the accused person;
  - (c) the Supreme Court makes a decision on the application;
  - (d) 48 hours have passed since notice was given under subsection (4) and the Supreme Court has not made a decision on the application.



(6) In this section:

*family violence offence*—see the *Family Violence Act 2016*, dictionary.

*serious offence* means—

- (a) an offence that involves causing harm, or threatening to cause harm, to anyone, punishable by imprisonment for more than 10 years; or
- (b) an offence under the [Criminal Code](#), chapter 3 (Theft, fraud, bribery and related offences), punishable by imprisonment for more than 10 years; or
- (c) an offence under the [Criminal Code](#), part 4.1 (Property damage offences), punishable by imprisonment for more than 14 years; or
- (d) an offence under the [Criminal Code](#), chapter 6 (Serious drug offences), punishable by imprisonment for more than 10 years.

## **45 Exercise of power to review**

- (1) The power to review a decision under this division includes a power to confirm or vary the decision or to substitute another decision.
- (2) A decision as varied or substituted must be in conformity with this Act.
- (3) The review of a decision must be by way of rehearing and evidence or information in addition to, or in substitution for, the evidence or information given or obtained on the making of the decision may be given or obtained on the review.
- (4) If, on a review of a decision under this division the court varies the decision or substitutes another decision, section 27 applies in relation to the decision as varied or substituted as if that decision had been given by the court in relation to an application for bail.

- (5) If, on a review of a decision under this division, bail for an accused person is revoked, the court may, by warrant, commit the person into custody.
- (6) If, on a review of a decision under this division—
- (a) bail is granted without any condition being imposed but the accused person has not given an undertaking to appear; or
  - (b) bail is granted subject to a condition;
- the court may by warrant commit the person into custody until the person gives the undertaking to appear or satisfies the condition.
- (7) A court may refuse to entertain a request to review a decision under this division if the court is satisfied that the request is frivolous or vexatious.
- (8) A regulation may make provision in relation to—
- (a) the way of making a request for the review of a decision under this division; and
  - (b) the giving or sending to people of notices relating to the proposed exercise of power to review a decision under this division.

#### **46 Review limited to bail conditions**

- (1) If an accused person has remained in custody after being granted bail by a court because any condition of the bail has not been complied with, the decision in relation to bail may be reviewed by the court that granted bail—
- (a) at the request of the accused person; or
  - (b) at the request of a police officer; or
  - (c) on the court's own initiative.
- (2) A review under this section of a decision in relation to bail is limited to a review of the conditions on which bail has been granted.

- (3) A review requested under this section by a police officer must not be conducted unless the court is satisfied that the request was made—
  - (a) for the purpose of benefiting the accused person; and
  - (b) with the consent of the accused person.
- (4) On a review of a bail decision under this section, a court may—
  - (a) confirm the decision about the conditions of bail; or
  - (b) vary the decision by removing or imposing bail conditions; or
  - (c) grant bail without imposing any bail condition.
- (5) Notwithstanding section 43, section 43A or section 44, the Supreme Court is empowered to conduct a review of a bail decision under this section only in relation to bail granted by the Supreme Court (however constituted).



**48 Notification to court that bail condition not satisfied**

- (1) This section applies to a person who has been granted bail by a court but who has remained in custody since bail was granted because a condition of the bail has not been complied with.
- (2) The person in charge of the correctional centre or other place where the person is in custody must give the court written notice that the person remains in custody because of the failure to comply with a bail condition.

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

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

**49 Failure to answer bail**

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

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

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

## 51 Indemnification of sureties

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

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

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

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

- (3) For this section, it does not matter whether—

- (a) the agreement is for compensation in money or anything else; or
- (b) the agreement is made before or after the person indemnified, or agreed to be indemnified, becomes a surety; or
- (c) the person indemnified, or agreed to be indemnified, becomes a surety.

## 52 Contravention of Act by police officers

- (1) If a police officer contravenes a provision of this Act that is applicable to him or her as a police officer or as an authorised officer, the contravention is not punishable as an offence unless a penalty is expressly provided by this Act in relation to the contravention.

- (2) Subsection (1) does not apply to prevent a contravention of a provision of this Act by a police officer from—

- (a) being dealt with under the—
  - (i) *Australian Federal Police Act 1979* (Cwlth), part 5; or
  - (ii) *Law Enforcement Integrity Commissioner Act 2006* (Cwlth); or

(iii) *Ombudsman Act 1976* (Cwlth); or

(b) constituting grounds for the institution of civil proceedings.

**55 Civil standard of proof to apply for certain purposes**

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

**56 No right of surety to arrest**

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

**56A Arrest for failure to comply with bail condition**

(1) This section applies if—

(a) a person has been granted bail in the ACT or a State; and

*Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

(b) a police officer believes on reasonable grounds that the person—

(i) has failed to comply with a bail condition; or

(ii) will not comply with a bail condition.

(2) A police officer may, without a warrant, arrest the person.

**56AA Police power to enter premises to arrest**

- (1) This section applies if—
  - (a) a police officer has power under section 56A to arrest a person without a warrant; and
  - (b) the offence for which the person has been granted bail is a relevant offence; and
  - (c) the police officer believes on reasonable grounds that the person is on premises that are not a public place.
- (2) The police officer may enter the premises to search the premises for the person or to arrest the person, using the force that is necessary and reasonable in the circumstances.
- (3) However, the police officer must not enter a dwelling house under this section unless the police officer believes on reasonable grounds that—
  - (a) it is necessary having regard to the circumstances of the person's failure to comply, or expected failure to comply, with the bail condition; and
  - (b) it would not be reasonable to arrest the person somewhere else; and
  - (c) for entry before 6 am or after 9 pm on any day—
    - (i) it is necessary to do so to prevent the concealment, loss or destruction of evidence of a matter relating to whether the person has failed to comply, or will not comply, with a bail condition; or
    - (ii) it would not be practicable to arrest the person at another time.



(4) In this section:

*dwelling house*—see the *Crimes Act 1900*, section 220 (4).

*premises*—see the *Crimes Act 1900*, section 185.

*public place*—see the *Crimes Act 1900*, section 174.

*relevant offence*—see the *Crimes Act 1900*, section 220 (4).

#### **56AB Police officer must announce entry before entering**

- (1) A police officer must, before entering premises under section 56AA (2)—
- (a) announce that the police officer is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) A police officer is not required to comply with subsection (1) if they believe on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of a person (including a police officer); or
  - (b) that the arrest is not frustrated.

#### **56AC Police powers on arrest for failure to comply with bail condition**

The following sections of the *Crimes Act 1900* apply in relation to the arrest of a person under section 56A as if the person were arrested for an offence:

- (a) section 221 (Use of force in making arrest);
- (b) section 222 (Persons to be informed of grounds of arrest);
- (c) section 223 (Power to conduct frisk search of arrested person);

- (d) section 224 (Power to conduct ordinary search of arrested person);
- (e) section 225 (Power to conduct search of arrested person's premises);
- (f) section 226 (Power to conduct search at police station);
- (g) section 227 (Power to conduct strip search);
- (h) section 228 (Rules for conduct of strip search);
- (i) section 229 (Safekeeping of things seized).

**56AD Arrested person to be brought before court**

- (1) If a police officer arrests a person under section 56A, the police officer must bring the person before a court as soon as practicable.
- (2) 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—
    - (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.
- (3) A release mentioned in subsection (2) (b) (i) does not affect the grant of bail in the State.

*Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

**56B Arrest for breach of condition by person outside ACT**

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

**57 Act to prevail**

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

**57AA Abolition of inherent power of bail**

Any inherent power of the Supreme Court to grant bail is abolished.

**58 Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) A form approved for section 28 (1), 30 (4), 34, 47 or 48 (2) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (4) Any other approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

- (5) If there is no approved form for an instrument under this Act, the instrument must be in a form acceptable to the registrar.

**59 Regulation-making power**

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

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

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

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

(see s 9B (a))

### **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	49C	industrial manslaughter (employer offence)
4	49D	industrial manslaughter (senior officer offence)
5	51	sexual assault in the first degree
6	52	sexual assault in the second degree
7	54	sexual intercourse without consent
8	55 (1)	sexual intercourse with young person under 10 years old

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## **Part 1.2                      Offences against Criminal Code**

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
1	310	aggravated robbery
2	312	aggravated burglary
3	603 (3)	trafficking in commercial quantity of controlled drug
4	603 (5)	trafficking in trafficable quantity of cannabis
5	603 (7)	trafficking in controlled drug other than cannabis
6	607 (3)	manufacturing commercial quantity of controlled drug for selling
7	607 (5)	manufacturing controlled drug for selling
8	610 (1)	selling large commercial quantity of controlled precursor for manufacture of controlled drug
9	610 (3)	selling commercial quantity of controlled precursor for manufacture of controlled drug
10	611 (1)	manufacturing large commercial quantity of controlled precursor for manufacture of controlled drug
11	611 (3)	manufacturing large commercial quantity of controlled precursor for selling
12	611 (5)	manufacturing commercial quantity of controlled precursor for manufacture of controlled drug

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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
13	611 (7)	manufacturing commercial quantity of controlled precursor for selling
14	612 (1)	possessing large commercial quantity of controlled precursor
15	612 (3)	possessing commercial quantity of controlled precursor
16	616 (3)	cultivating commercial quantity of controlled plant
17	619 (3)	selling commercial quantity of controlled plant
18	622 (3)	supplying etc controlled drug to child for selling
19	624 (4)	procuring child to traffic in controlled drug
20	625 (1)	supplying etc controlled drug (other than cannabis) to child
21	639	concealing etc property derived from drug offence

**Schedule 1**  
**Part 1.3**

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

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**Part 1.3**                      **Offence against Drugs of  
Dependence Act 1989**

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

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**Part 1.4**                      **Offences against Medicines,  
Poisons and Therapeutic Goods  
Act 2008**

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

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## **Part 1.5**

### **Offences against Customs Act 1901 (Cwlth)**

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
1	231 (1)	assembly for unlawful purposes
2	233AC	master allowing use of ship for smuggling etc narcotic goods

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## **Part 1.6**                      **Offences against Criminal Code (Cwlth)**

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
1	307.1	importing and exporting commercial quantities of border controlled drugs or border controlled plants
2	307.2	importing and exporting marketable quantities of border controlled drugs or border controlled plants
3	307.3	importing and exporting border controlled drugs or border controlled plants
4	307.5	possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants
5	307.6	possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants
6	307.8	possessing commercial quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported
7	307.9	possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported
8	307.11	importing and exporting commercial quantities of border controlled precursors
9	307.12	importing and exporting marketable quantities of border controlled precursors
10	307.13	importing and exporting border controlled precursors

## 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:

- ACAT
- Act (see s 7)
- adult
- child
- Chief Magistrate
- chief police officer
- correctional centre
- director-general (see s 163)
- domestic partner (see s 169 (1))
- found guilty
- indictable offence (see s 190 (1))
- judge
- magistrate
- Magistrates Court
- penalty unit (see s 133)
- police officer
- State
- Supreme Court
- the Territory.

*accused person* includes—

- (a) a person charged with, convicted of, or found guilty of, an offence; and
- (b) a person mentioned in section 8 (1) (c), (d) or (e); and
- (c) a person whose conviction for an offence is stayed; and
- (d) a person subject to an order under the [Crimes \(Sentencing\) Act 2005](#), section 17 (Non-conviction orders—general); and

- (e) a person in relation to whom an appeal relating to an offence is pending; and
- (f) a person in relation to whom a new trial has been ordered to be held for an offence.

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

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

- (a) section 9D (Bail for serious offence committed while charge for another is pending or outstanding);
- (b) section 9F (Family 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.

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

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

**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.

**family violence offence**—see the [Family Violence Act 2016](#), 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 section 8 (1) (a) and section 9 (1)—
  - (i) a breach of the peace or an apprehended breach of the peace; and
  - (ii) a breach of an obligation mentioned in section 8A (Entitlement to bail—breach of sentence obligations).

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

*Note* Parental responsibility is dealt with in the [Children and Young People Act 2008](#), div 1.3.2.

**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) or (2A).

**victim** in relation to an accused person, means—

- (a) a person (the **primary victim**) who suffers harm—
  - (i) in the course of, or because of, the commission of an offence of which the accused person is accused; or
  - (ii) in the course of assisting a police officer in the exercise of the officer's power to arrest the accused person or to take action to prevent the commission of an offence of which the accused person is accused; or
- (b) if a primary victim dies because of the commission of an offence of which the accused person is accused—anyone who was financially or psychologically dependent on the primary victim immediately before his or her death.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

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



### 3 Legislation history

**Bail Act 1992 A1992-8**

notified 28 May 1992 (Gaz 1992 No S59)  
s 1, s 2 commenced 28 May 1992 (s 2 (1))  
remainder commenced 28 November 1992 (s 2(3))

as amended by

**Bail (Amendment) Act 1992 A1992-75**

notified 18 December 1992 (Gaz 1992 No S233)  
commenced 18 December 1992 (s 2)

**Bail (Amendment) Act 1994 A1994-73**

notified 1 November 1994 (Gaz 1994 No S229)  
ss 1-3 commenced 1 November 1994 (s 2 (1))  
remainder commenced 1 May 1995 (s 2 (3))

**Crimes (Amendment) Act (No 2) 1994 A1994-75 sch 3**

notified 23 November 1994 (Gaz 1994 No S247)  
ss 1-3 commenced 23 November 1994 (s 2 (1))  
sch 3 commenced 1 December 1994 (Gaz 1994 No S270)

**Statute Law Revision (Penalties) Act 1994 A1994-81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (Gaz 1994 No S269)

**Acts Revision (Victims of Crime) Act 1994 A1994-84 pt 2**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
pt 2 commenced 15 June 1995 (s 2 (3))

**Remand Centres (Amendment) Act (No 2) 1996 A1996-81 s 7**

notified 20 December 1996 (Gaz 1996 No S328)  
ss 1-3 commenced 20 December 1996 (s 2 (1))  
s 7 commenced 1 January 1997 (s 2 (2) and Gaz 1996 No S353)

**Bail (Amendment) Act 1997 A1997-22**

notified 29 May 1997 (Gaz 1997 No S136)  
ss 1-3 commenced 29 May 1997 (s 2 (1))  
remainder commenced 30 May 1997 (s 2 (2) and Gaz 1997 No S149)

## Endnotes

3 Legislation history

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### **Legal Practitioners (Consequential Amendments) Act 1997 A1997-96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

### **Bail (Amendment) Act 1998 A1998-39**

notified 14 October 1998 (Gaz 1998 No 41)  
ss 1-3 commenced 14 October 1998 (s 2 (1))  
remainder commenced 19 October 1998 (Gaz 1998 No 41)

### **Children and Young People (Consequential Amendments) Act 1999 A1999-64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (s 2 (1))  
remainder commenced 10 May 2000 (s 2 (2))

### **Road Transport Legislation Amendment Act 1999 A1999-79**

notified 1 March 2000 (Gaz 1999 No S65)  
commenced 1 March 2000 (s 2 and Gaz 2000 No S5)

### **Bail Amendment Act 2001 A2001-25 pt 2**

notified 24 May 2001 (Gaz 2001 No 21)  
commenced 24 May 2001 (s 2)

### **Legislation (Consequential Amendments) Act 2001 A2001-44 pt 30**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 30 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

### **Supreme Court Amendment Act 2001 (No 2) A2001-54 sch 2 pt 2.2**

notified 15 August 2001 (Gaz 2001 No S57)  
commenced 15 August 2001 (s 2 (1))

### **Bail Amendment Act 2001 (No 2) A2001-60**

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

**Protection Orders (Consequential Amendments) Act 2001 A2001-90  
sch 1 pt 1**

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

**Legislation Amendment Act 2002 A2002-11 amdt 2.5, amdt 2.6**

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

**Criminal Code 2002 A2002-51 pt 1.1**

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

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

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

**Bail Amendment Act 2004 A2004-14**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

notified LR 14 August 2008  
s 1, s 2 commenced 14 August 2008 (LA s 75 (1))  
sch 2 pt 2.2 commenced 14 February 2009 (s 2 and LA s 79)

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

notified LR 4 September 2008  
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))  
sch 1 pt 1.6 commenced 2 February 2009 (s 2 (1) and see [ACT Civil and Administrative Tribunal Act 2008](#) A2008-35, s 2 (1) and [CN2009-2](#))

**Domestic Violence and Protection Orders Act 2008 A2008-46 sch 3****pt 3.1**

notified LR 10 September 2008  
s 1, s 2 commenced 10 September 2008 (LA s 75 (1))  
sch 3 pt 3.1 commenced 30 March 2009 (s 2)

## Endnotes

3 Legislation history

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### **Justice and Community Safety Legislation Amendment Act 2009 A2009-7 sch 1 pt 1.1**

notified LR 5 March 2009  
s 1, s 2 commenced 5 March 2009 (LA s 75 (1))  
sch 1 pt 1.1 commenced 30 March 2009 (s 2 (2) and see [Domestic Violence and Protection Orders Act 2008 A2008-46 s 2](#))

### **Crimes Legislation Amendment Act 2009 A2009-24 sch 1 pt 1.1**

notified LR 3 September 2009  
s 1, s 2 commenced 3 September 2009 (LA s 75 (1))  
sch 1 pt 1.1 commenced 4 September 2009 (s 2)

### **Crimes (Sentence Administration) Amendment Act 2010 A2010-21 sch 1 pt 1.1**

notified LR 30 June 2010  
s 1, s 2 commenced 30 June 2010 (LA s 75 (1))  
sch 1 pt 1.1 commenced 1 July 2010 (s 2)

### **Bail Amendment Act 2011 A2011-2**

notified LR 22 February 2011  
s 1, s 2 commenced 22 February 2011 (LA s 75 (1))  
remainder commenced 16 May 2011 (s 2 and [CN2011-6](#))

### **Statute Law Amendment Act 2011 A2011-3 sch 3 pt 3.3**

notified LR 22 February 2011  
s 1, s 2 commenced 22 February 2011 (LA s 75 (1))  
sch 3 pt 3.3 commenced 1 March 2011 (s 2)

### **Courts Legislation Amendment Act 2011 A2011-13 sch 1 pt 1.1**

notified LR 11 May 2011  
s 1, s 2 commenced 11 May 2011 (LA s 75 (1))  
sch 1 pt 1.1 commenced 25 July 2011 (s 2 and [CN2011-8](#))

### **Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.16**

notified LR 30 June 2011  
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))  
sch 1 pt 1.16 commenced 1 July 2011 (s 2 (1))

**Crimes Legislation Amendment Act 2013 (No 2) A2013-50 pt 2**

notified LR 9 December 2013

s 1, s 2 commenced 9 December 2013 (LA s 75)

pt 2 commenced 10 December 2013 (s 2 (2))

**Crimes Legislation Amendment Act 2015 (No 2) A2015-36 pt 2**

notified LR 1 October 2015

s 1, s 2 commenced 1 October 2015 (LA s 75)

pt 2 commenced 2 October 2015 (s 2)

**Mental Health Act 2015 A2015-38 sch 2 pt 2.4 div 2.4.1**

notified LR 7 October 2015

s 1, s 2 commenced 7 October 2015 (LA s 75 (1))

sch 2 pt 2.4 div 2.4.1 commenced 1 March 2016 (s 2 (1) and see

[Mental Health \(Treatment and Care\) Amendment Act 2014](#) A2014-51, s 2 (as am by [A2015-38](#) amdt 2.54))

**Crimes (Sentencing and Restorative Justice) Amendment Act 2016  
A2016-4 sch 1 pt 1.2**

notified LR 24 February 2016

s 1, s 2 commenced 24 February 2016 (LA s 75 (1))

sch 1 pt 1.2 commenced 2 March 2016 (s 2 (1))

**Protection of Rights (Services) Legislation Amendment Act 2016  
(No 2) A2016-13 sch 1 pt 1.4**

notified LR 16 March 2016

s 1, s 2 commenced 16 March 2016 (LA s 75 (1))

sch 1 pt 1.4 commenced 1 April 2016 (s 2 and see [Protection of Rights \(Services\) Legislation Amendment Act 2016](#) A2016-1 s 2)

**Family Violence Act 2016 A2016-42 sch 2 pt 2.1, sch 3 pt 3.1 (as am  
by A2017-10 s 7)**

notified LR 18 August 2016

s 1, s 2 commenced 18 August 2016 (LA s 75 (1))

sch 2 pt 2.1, sch 3 pt 3.1 commenced 1 May 2017 (s 2 (2) as am by [A2017-10](#) s 7)

## Endnotes

3 Legislation history

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### **Crimes (Serious and Organised Crime) Legislation Amendment Act 2016 A2016-48 pt 2**

notified LR 23 August 2016  
s 1, s 2 commenced 23 August 2016 (LA s 75 (1))  
s 8, s 9 commenced 1 May 2017 (s 2 (3))  
pt 2 remainder commenced 1 May 2017 (s 2 (2))

### **Family and Personal Violence Legislation Amendment Act 2017 A2017-10 s 7**

notified LR 6 April 2017  
s 1, s 2 commenced 6 April 2017 (LA s 75 (1))  
s 7 commenced 30 April 2017 (s 2 (1))  
*Note* This Act only amends the Family Violence Act 2016 A2016-42.

### **Crimes Legislation Amendment Act 2019 A2019-23 pt 2**

notified LR 8 August 2019  
s 1, s 2 commenced 8 August 2019 (LA s 75 (1))  
pt 2 commenced 8 November 2019 (s 2 (3))

### **Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Act 2019 A2019-31 pt 2**

notified LR 9 October 2019  
s 1, s 2 commenced 9 October 2019 (LA s 75 (1))  
pt 2 commenced 3 December 2019 (s 2 (1) and [CN2019-19](#))

### **COVID-19 Emergency Response Legislation Amendment Act 2020 A2020-14 sch 1 pt 1.2**

notified LR 13 May 2020  
s 1, s 2 taken to have commenced 30 March 2020 (LA s 75 (2))  
amdt 1.6 awaiting commencement  
sch 1 pt 1.2 remainder commenced 14 May 2020 (s 2 (1))



## 4 Amendment history

### Name of Act

s 1 sub [A2004-14](#) amdt 1.1

### Dictionary

s 2 om [A2001-44](#) amdt 1.316  
ins [A2004-14](#) amdt 1.1  
am [A2005-13](#) amdt 1.1; [A2006-23](#) amdt 1.4; [A2015-38](#)  
amdt 2.56

### Notes

s 3 (prev s 3) am [A1994-73](#) s 4; s (2) pars renum R6 LA;  
[A2004-14](#) s 4  
def **appeal** om [A2004-14](#) amdt 1.1  
def **applicable bail criteria** ins [A2001-25](#) s 4  
am [A2001-60](#) s 4  
om [A2004-14](#) amdt 1.1  
def **authorised officer** sub [A2001-25](#) s 5  
om [A2004-14](#) amdt 1.1  
def **bail** om [A2004-14](#) amdt 1.1  
def **bail condition** om [A2004-14](#) amdt 1.1  
def **bail undertaking** om [A1994-73](#) s 4  
def **child** sub [A1997-22](#) s 4  
om [A2004-14](#) amdt 1.1  
def **clerk** om [A2004-14](#) amdt 1.1  
def **court** om [A2004-14](#) amdt 1.1  
def **Crimes Act** om R3 LRA  
def **de facto spouse** ins [A1997-22](#) s 4  
om [A2003-14](#) amdt 1.4  
def **domestic violence offence** sub [A1997-22](#) s 4; [A1998-39](#)  
s 4  
am [A1999-79](#) sch 3  
sub [A2001-90](#) amdt 1.1  
par (e) exp 27 March 2002 (see s 60)  
am [A2002-11](#) amdt 2.5; pars renum R7 LA (see [A2002-11](#)  
amdt 2.6); [A2002-51](#) amdt 1.1  
om [A2004-14](#) amdt 1.1  
def **harm** ins [A1994-84](#) s 4  
om [A2004-14](#) amdt 1.1  
def **household member** ins [A1997-22](#) s 4  
om [A2001-90](#) amdt 1.2  
def **judge** om [A2004-14](#) amdt 1.1  
def **offence** sub [A1994-73](#) s 4  
om [A2004-14](#) amdt 1.1  
def **outstanding** ins [A2001-60](#) s 5  
om [A2004-14](#) amdt 1.1

## Endnotes

### 4 Amendment history

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def **pending** ins [A2001-60](#) s 5  
om [A2004-14](#) amdt 1.1  
def **relative** ins [A1997-22](#) s 4  
sub [A2001-90](#) amdt 1.3  
am [A2003-14](#) amdt 1.5  
om [A2004-14](#) amdt 1.1  
def **relevant person** ins [A2001-90](#) amdt 1.4  
am [A2003-14](#) amdt 1.6, amdt 1.7  
om [A2004-14](#) amdt 1.1  
def **remand centre** om [A2004-14](#) amdt 1.1  
def **serious offence** ins [A2001-25](#) s 6  
sub [A2001-60](#) s 6  
om [A2004-14](#) amdt 1.1  
def **spouse** ins [A1997-22](#) s 4 (b)  
om [A2003-14](#) amdt 1.8  
def **undertaking to appear** om [A2004-14](#) amdt 1.1  
def **victim** ins [A1994-84](#) s 4  
om [A2004-14](#) amdt 1.1  
pres s 3 sub [A2004-14](#) amdt 1.1

**Offences against Act—application of Criminal Code etc**  
s 3A ins [A2005-54](#) amdt 1.44

**Act applies to children**  
s 4 am R3 LRA  
sub [A2004-14](#) amdt 1.2

**Availability of bail**  
pt 2 hdg sub [A2004-14](#) s 5

**When bail may be granted and rights following**  
div 2.1 hdg ins [A2004-14](#) s 5

**When may bail be granted?**  
s 5 am [A2001-25](#) s 7  
sub [A2004-14](#) s 5

**Rights following grant of bail**  
s 6 sub [A2004-14](#) s 5  
am [A2019-23](#) s 4

**Presumption for bail**  
div 2.2 hdg ins [A2004-14](#) s 5

**Div 2.2 subject to div 2.3 and div 2.4**  
s 7 am [A1992-75](#) s 4; [A1994-73](#) s 5; [A1997-22](#) s 5; [A1998-39](#) s 5;  
[A2001-90](#) amdt 1.5  
sub [A2004-14](#) s 5

**Bail following arrest for breach of peace**

s 7A ins [A1994-73](#) s 6  
sub [A2001-90](#) amdt 1.6  
om [A2004-14](#) s 5

**Entitlement to bail—certain minor offences etc**

s 8 sub [A1994-73](#) s 6  
am [A1997-22](#) s 6; [A2001-25](#) s 8, s 9; [A2001-60](#) s 7  
sub [A2001-90](#) amdt 1.6; [A2004-14](#) s 5  
am [A2006-40](#) amdt 2.59

**Entitlement to bail—breach of sentence obligations**

s 8A ins [A1997-22](#) s 7  
am [A1998-39](#) s 6; [A2001-25](#) s 1  
sub [A2001-90](#) amdt 1.6; [A2004-14](#) s 5; [A2006-23](#) amdt 1.5  
(3)-(5) exp 2 June 2009 (s 8A (5) (LA s 88 declaration  
applies)); [A2016-4](#) amdts 1.4-1.6;  
am [A2019-31](#) s 4; pars renum R42 LA

**Entitlement to bail—custody relating to sentence administration board hearings**

s 8B ins [A2006-23](#) amdt 1.5

**Limitations on entitlement to bail**

s 9 hdg sub [A2001-25](#) s 11  
s 9 sub [A2001-54](#) amdt 2.2; [A2004-14](#) s 5

**Entitlement to bail—offences other than minor offences**

s 9A hdg sub [A2001-60](#) s 8  
s 9A ins [A2001-25](#) s 12  
am [A2001-60](#) s 9, s 10  
(7), (8) exp 24 September 2003 (s 9A (8))  
sub [A2004-14](#) s 5

**No presumption for bail**

div 2.3 hdg ins [A2004-14](#) s 5

**Div 2.2 not to apply to certain offences**

s 9B ins [A2004-14](#) s 5  
am [A2005-13](#) amdt 1.2; [A2008-46](#) amdt 3.1; [A2016-42](#)  
amdt 3.1

**Presumption against bail**

div 2.4 hdg ins [A2004-14](#) s 5

**Bail for murder and certain serious drug offences**

s 9C hdg sub [A2004-56](#) amdt 1.1  
s 9C ins [A2004-14](#) s 5  
am [A2004-56](#) amdt 1.2

## Endnotes

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

s 9D ins [A2004-14](#) s 5  
am [A2004-15](#) amdt 3.1; [A2006-23](#) amdt 1.6; [A2008-20](#)  
amdt 4.1; [A2011-13](#) amdt 1.1; [A2016-42](#) amdt 3.2, amdt 3.3

### **Bail for person sentenced to imprisonment**

s 9E ins [A2004-14](#) s 5

### **Family violence offence—bail by authorised officer**

s 9F hdg sub [A2016-42](#) amdt 3.4  
s 9F ins [A2004-14](#) s 5  
am [A2005-13](#) amdt 1.3; [A2008-46](#) amdt 3.2; [A2009-7](#)  
amdt 1.1; [A2016-42](#) amdt 3.5, amdt 3.6

### **Special or exceptional circumstances**

s 9G ins [A2004-14](#) s 5  
am [A2004-15](#) amdt 3.2

### **Dispensing with bail**

s 10 am [A1994-73](#) s 7; [A2001-25](#) s 13; [A2001-60](#) s 11; [A2004-14](#)  
s 6

### **Meaning of *bail order* and *bail review application*—pt 4**

s 12A ins [A2011-2](#) s 4

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

s 12B ins [A2011-2](#) s 4

### **Applications for bail—repeat application provisions**

s 12C ins [A2011-2](#) s 4  
exp 16 May 2014 (s 12C (2))

### **Deciding bail after charge laid**

s 13 am [A1994-73](#) s 8; [A1997-22](#) s 8; [A2001-25](#) s 14; [A2005-20](#)  
amdt 3.14; [A2011-3](#) amdts 3.25-3.34

### **Grant of bail by authorised officers**

s 14 am [A2004-14](#) s 7; [A2016-42](#) amdt 3.7

### **Deciding of questions of bail by authorised officers**

s 15 am [A1997-22](#) s 9; [A2001-25](#) s 15; [A2004-14](#) s 8; [A2011-3](#)  
amdt 3.35

### **Notification of decision of authorised officer**

s 16 am [A1994-73](#) s 9; [A1997-22](#) s 10; [A2001-90](#) amdt 1.7;  
ss renum R6 LA (see also [A2001-90](#) amdt 1.8); [A2005-13](#)  
amdt 1.4; [A2011-3](#) amdts 3.35-3.37; [A2016-42](#) amdt 2.1,  
amdt 3.8

### **Charged people in custody to be brought before court**

s 17 am [A2011-3](#) amdt 3.38

**Facilities to be provided to accused people**

s 18 am [A2011-3](#) amdt 3.39

**Court bail—general**

s 19 am [A1997-22](#) sch 2; am [A1997-96](#) sch 1; [A2004-14](#) s 9;  
[A2011-3](#) amdt 3.40  
sub [A2011-2](#) s 5

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

s 20 sub [A2004-14](#) s 10; [A2011-2](#) s 5  
am [A2019-23](#) s 5

**Repeat application for bail—Magistrates Court**

s 20A ins [A2011-2](#) s 5

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

s 20B ins [A2011-2](#) s 5

**Repeat application for bail—Supreme Court**

s 20C ins [A2011-2](#) s 5

**Bail in relation to several offences**

s 21 am [A1997-22](#) s 11 and sch 2; [A2011-3](#) amdt 3.41, amdt 3.42

**Criteria for granting bail to adults**

s 22 am [A1994-84](#) s 5; [A1997-22](#) s 11  
sub [A2004-14](#) s 11

**Criteria for granting bail to children**

s 23 am [A1997-22](#) s 12; [A1999-64](#) sch 2  
sub [A2004-14](#) s 11  
am [A2008-20](#) amdt 2.1, amdt 4.2

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

s 23A ins [A1994-84](#) s 6  
am [A1997-22](#) s 13  
sub [A2004-14](#) s 11  
am [A2016-42](#) amdt 3.9

**Bail conditions and undertakings to appear**

pt 5 hdg sub [A1994-73](#) s 10

**Conditions on which bail may be granted to adults**

s 25 am [A1994-73](#) s 11; am [A1994-84](#) s 7; [A2001-44](#) amdt 1.317;  
[A2001-90](#) amdt 1.9; ss renum R6 LA; [A2004-14](#) s 12, s 13,  
s 15, s 16; pars renum R11 LA (see [A2004-14](#) s 14); ss  
renum R11 LA (see [A2004-14](#) s 17); [A2006-23](#) amdt 1.7;  
[A2008-36](#) amdt 1.58; [A2009-24](#) amdt 1.1; [A2011-3](#)  
amdt 3.43; [A2011-22](#) amdt 1.58, amdt 1.61; [A2016-42](#)  
amdt 3.10, amdt 3.11

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#### **Supervision condition when offence committed as young person**

s 25A ins [A2008-20](#) amdt 4.3  
am [A2009-24](#) amdt 1.2; [A2011-22](#) amdt 1.61

#### **Conditions on which bail may be granted to children**

s 26 am [A1999-64](#) sch 2; [A2004-14](#) s 18, s 19; ss renum R11 LA  
(see [A2004-14](#) s 20); [A2008-20](#) amdt 2.2, amdt 2.3,  
amdt 4.4; [A2008-36](#) amdt 1.58; [A2011-3](#) amdt 3.43;  
[A2011-22](#) amdt 1.61

#### **Recording of certain bail decisions**

s 27 am [A1997-22](#) sch 2; [A2011-3](#) amdt 3.43

#### **Notice to victim of bail decisions**

s 27A ins [A1994-84](#) s 8  
om [A2004-14](#) s 21

#### **Undertakings to appear**

s 28 am [A2001-44](#) amdt 1.318  
sub [A2004-14](#) s 22  
am [A2020-14](#) amdt 1.3, amdt 1.4  
(2A), (6), (7) exp 8 April 2021 (s 28 (7))

#### **Undertakings in respect of more than 1 offence**

s 29 om [A1994-73](#) s 12

#### **Accused person may be excused from attendance before court**

s 30 am [A1997-96](#) sch 1; [A2001-44](#) amdt 1.319; [A2004-14](#)  
amdt 1.3, amdt 1.4; ss renum R11 LA (see [A2004-14](#)  
amdt 1.5); [A2011-3](#) amdt 3.43, amdt 3.44

#### **Bail requirements**

s 31 am [A1994-73](#) s 13  
sub [A2004-14](#) s 23  
am [A2006-23](#) amdt 1.8; [A2008-7](#) amdt 1.21

#### **Acceptable people and security for bail**

s 32 am [A1994-73](#) s 14; ss renum R6 LA  
sub [A2004-14](#) s 23

#### **Continuation of bail and undertakings**

s 33 am [A1994-73](#) s 15; [A1997-22](#) sch 2; ss renum R6 LA;  
[A2004-14](#) s 24, s 25

#### **Written notice of conditions of bail**

s 34 am [A1997-22](#) sch 2; [A2001-44](#) amdt 1.320; [A2011-3](#)  
amdt 3.45, amdt 3.46

#### **Warning to person making acknowledgment**

s 35 om [A2004-14](#) s 26

**Discharge of surety**

s 36 am [A1994-73](#) s 16  
sub [A2004-14](#) s 27

**Payment of amounts to Territory**

s 37 sub [A2004-14](#) s 28  
am [A2004-60](#) amdt 1.16; [A2010-21](#) amdt 1.1, amdt 1.2

**Review of decisions by authorised officers**

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

**Review by authorised officers**

s 38 am [A1997-22](#) sch 2; [A2011-3](#) amdt 3.47

**Review of decisions by courts**

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

**Court may review on its own initiative**

s 41A ins [A2004-14](#) s 29

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

s 42 sub [A2004-14](#) s 30; [A2005-5](#) s 6; [A2011-2](#) s 6  
am [A2016-48](#) s 5

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

s 42A ins [A2011-2](#) s 6  
am [A2016-48](#) s 5

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

s 43 am [A2004-14](#) s 31, s 32; ss renum R11 LA; [A2005-5](#) s 8 (and  
see s 7)  
sub [A2011-2](#) s 6  
am [A2016-48](#) s 5

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

s 43A ins [A2011-2](#) s 6  
am [A2016-48](#) s 5

**Right of review of bail decisions—prosecution**

s 44 om [A2004-14](#) s 33  
ins [A2016-48](#) s 6  
am [A2016-48](#) s 8, s 9

**Review of s 44**

s 44A ins [A2016-48](#) s 7  
exp 1 May 2020 (s 44A (3))

**Exercise of power to review**

s 45 am [A2011-3](#) amdt 3.47

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#### **Miscellaneous**

div 6.3 hdg orig pt 6 div 3 hdg ins [A1994-84](#) s 9  
(prev pt 6 div 3 hdg) renum R4 LA  
om [A2004-14](#) s 34

#### **Review limited to bail conditions**

s 46 am [A2011-3](#) amdt 3.47; [A2011-2](#) s 7; [A2016-48](#) s 10

#### **Notice to victim of bail decisions**

s 46A ins [A1994-84](#) s 9  
om [A2004-14](#) s 34

#### **Giving information relating to bail**

s 47 am [A1994-73](#) s 17; [A2001-44](#) amdt 1.321; [A2011-3](#) amdt 3.47

#### **Notice to victim of bail decisions**

s 47A ins [A2004-14](#) s 35; ss renum R11 LA  
am [A2005-13](#) amdt 1.5

#### **Notification to court that bail condition not satisfied**

s 48 am [A1994-73](#) s 18; [A2001-44](#) amdt 1.322; [A2006-23](#) amdt 1.9

#### **Failure to answer bail**

s 49 am [A1994-73](#) s 19; [A1994-81](#) sch  
sub [A2001-25](#) s 16; [A2005-54](#) amdt 1.45

#### **False statements in acknowledgments**

s 50 am [A1994-81](#) sch  
om [A2004-14](#) s 36

#### **Indemnification of sureties**

s 51 am [A1994-81](#) sch  
sub [A2005-54](#) amdt 1.46

#### **Contravention of Act by police officers**

s 52 am [A2013-50](#) s 4

#### **Apprehension of person admitted to bail**

s 53 om [A1994-75](#) sch 3

#### **Power of court where person apprehended**

s 54 om [A1994-75](#) sch 3

#### **No right of surety to arrest**

s 56 am [A1994-73](#) s 20  
sub [A2004-14](#) s 37

#### **Arrest for failure to comply with bail condition**

s 56A ins [A2004-14](#) s 28  
sub [A2019-23](#) s 6

#### **Police power to enter premises to arrest**

56AA ins [A2019-23](#) s 6



**Police officer must announce entry before entering**56AB ins [A2019-23](#) s 6**Police powers on arrest for failure to comply with bail condition**56AC ins [A2019-23](#) s 6**Arrested person to be brought before court**56AD ins [A2019-23](#) s 6**Arrest for breach of condition by person outside ACT**s 56B ins [A2004-14](#) s 28**Act to prevail**s 57 am [A2004-14](#) amdt 1.6, amdt 1.7**Abolition of inherent power of bail**s 57AA ins [A1996-81](#) s 7**Form of certain instruments**s 57A ins [A1994-73](#) s 21  
om [A2001-44](#) amdt 1.323**Approved forms**s 58 sub [A2001-44](#) amdt 1.323  
am [A2004-14](#) s 39; [A2011-3](#) amdt 3.48**Regulation-making power**s 59 **orig s 59**  
renum as s 60  
**pres s 59**  
ins [A2001-44](#) amdt 1.323  
am [A2004-14](#) s 40, s 41**Transitional**pt 8 hdg ins [A1999-79](#) sch 3  
om R6 LA**Expiry—Motor Traffic Act reference**s 60 (prev s 39) ins [A1999-79](#) sch 3  
sub [A2001-90](#) amdt 1.10 as s 59  
renum as s 60 R5 LA  
exp 27 March 2002 (see s 60)

## Endnotes

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### Domestic violence offences against the *Crimes Act 1900*

sch 1 ins [A1997-22](#) s 14  
am [A1998-39](#) s 7  
sub [A2001-90](#) amdt 1.11  
am [A2002-51](#) amdt 1.2  
sub [A2004-14](#) s 43  
am [A2004-14](#) s 44; [A2004-15](#) amdt 3.3, amdt 3.4; pts renum R11 LA (see [A2004-15](#) amdt 3.5); items renum R11 LA; [A2004-56](#) amdt 1.3, amdt 1.4; items renum R14 LA; [A2008-26](#) amdt 2.2; pts renum [A2008-26](#) amdt 2.3; [A2015-36](#) s 4, s 5

### Dictionary

dict ins [A2004-14](#) amdt 1.8  
am [A2006-23](#) amdts 1.10-1.12; [A2008-36](#) amdt 1.59, amdt 1.60; [A2011-22](#) amdt 1.59, amdt 1.60; [A2016-13](#) amdt 1.7  
def **accused person** ins [A2004-14](#) s 42  
am [A2006-23](#) amdt 1.13  
def **appeal** ins [A2004-14](#) amdt 1.8  
def **applicable bail criteria** ins [A2004-14](#) amdt 1.8  
am [A2016-42](#) amdt 3.12  
def **authorised officer** ins [A2004-14](#) amdt 1.8  
def **bail** ins [A2004-14](#) amdt 1.8  
def **bail condition** ins [A2004-14](#) amdt 1.8  
def **bail order** ins [A2011-2](#) s 8  
def **bail review application** ins [A2011-2](#) s 8  
def **child** ins [A2004-14](#) amdt 1.8  
def **court** ins [A2004-14](#) amdt 1.8  
def **domestic violence offence** ins [A2004-14](#) amdt 1.8  
sub [A2005-13](#) amdt 1.6  
am [A2008-46](#) amdt 3.3  
om [A2016-42](#) amdt 3.13  
def **family violence offence** ins [A2016-42](#) amdt 3.14  
def **grant** ins [A2004-14](#) amdt 1.8  
def **offence** ins [A2004-14](#) amdt 1.8  
am [A2006-23](#) amdt 1.14  
def **parental responsibility** ins [A2005-13](#) amdt 1.7  
sub [A2006-23](#) amdt 1.15; [A2008-20](#) amdt 3.3  
def **relevant person** ins [A2004-14](#) amdt 1.8  
om [A2005-13](#) amdt 1.8  
def **surety** ins [A2004-14](#) amdt 1.8  
def **undertaking to appear** ins [A2004-14](#) amdt 1.8  
am [A2020-14](#) amdt 1.5  
def **victim** ins [A2004-14](#) amdt 1.8

## 5 Earlier republications

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

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

Republication No	Amendments to	Republication date
1	<a href="#">A1994-84</a>	29 February 1996
2	<a href="#">A1996-81</a>	1 January 1997
3	<a href="#">A1998-39</a>	31 January 1999
4	<a href="#">A2001-54</a>	12 September 2001
5	<a href="#">A2001-90</a>	12 October 2001
6	<a href="#">A2001-90</a>	27 March 2002
7*	<a href="#">A2002-11</a>	28 May 2002
8	<a href="#">A2002-51</a>	1 January 2003
9	<a href="#">A2003-14</a>	28 March 2003
10	<a href="#">A2003-14</a>	25 September 2003
11	<a href="#">A2004-15</a>	26 June 2004
12	<a href="#">A2004-60</a>	10 January 2005
13	<a href="#">A2005-5</a>	24 February 2005
14	<a href="#">A2005-5</a>	6 March 2005
15	<a href="#">A2005-13</a>	25 March 2005
16*	<a href="#">A2005-20</a>	2 June 2005
17	<a href="#">A2005-54</a>	24 November 2005
18	<a href="#">A2006-23</a>	2 June 2006
19	<a href="#">A2006-40</a>	29 September 2006
20	<a href="#">A2008-7</a>	7 May 2008
21	<a href="#">A2008-36</a>	9 September 2008
22	<a href="#">A2008-46</a>	27 October 2008

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### 5 Earlier republications

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
23	<a href="#">A2008-46</a>	2 February 2009
24	<a href="#">A2008-46</a>	14 February 2009
25	<a href="#">A2008-46</a>	27 February 2009
26	<a href="#">A2009-7</a>	30 March 2009
27*	<a href="#">A2009-7</a>	3 June 2009
28	<a href="#">A2009-24</a>	4 September 2009
29	<a href="#">A2010-21</a>	1 July 2010
30	<a href="#">A2011-3</a>	1 March 2011
31	<a href="#">A2011-2</a>	16 May 2011
32	<a href="#">A2011-22</a>	1 July 2011
33	<a href="#">A2011-22</a>	25 July 2011
34	<a href="#">A2013-50</a>	10 December 2013
35	<a href="#">A2013-50</a>	17 May 2014
36	<a href="#">A2015-36</a>	2 October 2015
37	<a href="#">A2015-38</a>	1 March 2016
38	<a href="#">A2016-4</a>	2 March 2016
39	<a href="#">A2016-13</a>	1 April 2016
40	<a href="#">A2017-10</a>	1 May 2017
41	<a href="#">A2019-23</a>	8 November 2019
42	<a href="#">A2019-31</a>	3 December 2019
43	<a href="#">A2019-31</a>	2 May 2020

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