

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Bail Amendment Bill 2003

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Bail Amendment Bill 2003

A Bill for

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

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

1 **1 Name of Act**

2 This Act is the *Bail Amendment Act 2003*.

3 **2 Commencement**

4 (1) This Act (other than section 40) commences 3 months after its
5 notification day.

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

8 (2) Section 40 commences—

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

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

14 (3) If the *Crimes (Industrial Manslaughter) Amendment Act 2003* has
15 not commenced within 6 months beginning on the day the
16 remainder of this Act commences, section 40 expires at the end of
17 that period.

18 **3 Legislation amended**

19 This Act amends the *Bail Act 1992*.

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

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

1 **4 Interpretation**
2 **Section 3 (3)**

3 *omit*

4 **5 Part 2**

5 *substitute*

6 **Part 2 Availability of bail**

7 **Division 2.1 When bail may be granted and**
8 **rights following**

9 **5 When may bail be granted?**

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

18 **6 Rights following grant of bail**

- 19 (1) This section applies if—
- 20 (a) bail is granted to an accused person in relation to an offence;
21 and
- 22 (b) the person gives an undertaking to appear; and
- 23 (c) if a bail condition mentioned in section 25 (1) (b) (ii) or (c) is
24 imposed—the security is given or the deposit made.

- 1 (2) The person is entitled—
2 (a) if the person is in custody—to be released from custody; and
3 (b) to remain at liberty in relation to the offence until required to
4 appear before a court in accordance with the undertaking.
5 (3) This section is subject to section 56A (Arrest without warrant of
6 person on bail).

7 **Division 2.2 Presumption for bail**

8 **7 Div 2.2 subject to div 2.3 and div 2.4**

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

11 **8 Entitlement to bail—certain minor offences etc**

- 12 (1) This section applies to—
13 (a) a person charged with an offence not punishable by
14 imprisonment (except in default of payment of a fine); and
15 (b) a person charged with an offence punishable by imprisonment
16 for not longer than 6 months; and
17 (c) a person arrested for a breach of the peace or apprehended
18 breach of the peace; and
19 (d) a person arrested under a warrant because of failure to comply
20 with a summons or subpoena; and
21 (e) a person arrested for a breach of a periodic detention order; and
22 (f) a person brought up to attend a trial or hearing following the
23 issue of a writ of habeas corpus.
24 (2) The person is entitled—
25 (a) to be granted bail; and

- 1 (b) if the person is in custody—to be released from custody as
2 soon as the person gives an undertaking to appear.
- 3 (3) However, if no further appearance is required for a person arrested
4 for a breach of the peace or an apprehended breach of the peace, the
5 person may be released from custody without giving an undertaking
6 to appear.
- 7 (4) A condition to keep the peace may be imposed on a grant of bail to a
8 person arrested for a breach of the peace or an apprehended breach
9 of the peace.
- 10 *Note* For other conditions that may be imposed on a grant of bail, see s 25
11 and s 26.
- 12 (5) In this section:
- 13 *periodic detention order* means an order under the *Periodic*
14 *Detention Act 1995*, section 4 (Power to order periodic detention).

15 **9 Limitations on entitlement to bail**

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

1 **9A Entitlement to bail—offences other than minor offences**

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

15 **Division 2.3 No presumption for bail**

16 **9B Div 2.2 not to apply to certain offences**

- 17 Division 2.2 (Presumption for bail) does not apply to the grant of
18 bail—
- 19 (a) to a person accused of an offence mentioned in schedule 2
20 (Offences to which presumption for bail does not apply); or
- 21 (b) to a person accused of any of the following offences, if the
22 person has in the previous 10 years been found guilty of an
23 offence involving violence or the threat of violence:
- 24 (i) an offence against the *Crimes Act 1900*, section 30
25 (Threat to kill);
- 26 (ii) an offence against the *Crimes Act 1900*, section 31
27 (Threat to inflict grievous bodily harm);

- 1 (iii) an offence against the *Crimes Act 1900*, section 35
2 (Stalking);
- 3 (iv) an offence against the *Protection Orders Act 2001*,
4 section 34 (Offence for contravention of protection
5 order); or
- 6 (c) to a person accused of an offence against the *Criminal Code*
7 *Act 1995* (Cwlth), section 80.1 (Treason); or
- 8 (d) to a person convicted of an indictable offence but not
9 sentenced.

10 **Division 2.4 Presumption against bail**

11 **9C Bail for murder**

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

13 *Note* A reference to an offence against a Territory law includes a reference to
14 a related ancillary offence, eg attempt (see Legislation Act, s 189).

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

- 18 (3) However, even if special or exceptional circumstances are
19 established, the court or officer must refuse bail if satisfied that
20 refusal is justified after considering—

21 (a) for an adult—the matters mentioned in section 22 (Criteria for
22 granting bail to adults); or

23 (b) for a child—the matters mentioned in section 23 (Criteria for
24 granting bail to children).

1 **9D Bail for serious offence committed while charge for**
2 **another pending or outstanding**

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

8 **Example**

9 Claude is served with a summons to attend the Magistrates Court to answer a
10 charge that he has committed the offence of taking a vehicle without authority
11 (punishable by 5 years imprisonment under the *Crimes Act 1900*, section 111, and
12 so a serious offence for this section). Before the court date, Claude is arrested and
13 charged with having committed an armed robbery the day after being served with
14 the summons (punishable by 25 years imprisonment under the *Crimes Act 1900*,
15 section 92, and so also a serious offence for this section). At the time of the
16 alleged armed robbery, the charge of taking a vehicle without authority was still
17 pending. This section will apply to any decision about the grant of bail to Claude
18 in relation to the armed robbery charge.

19 *Note* An example is part of the Act, is not exhaustive and may extend, but
20 does not limit, the meaning of the provision in which it appears (see
21 Legislation Act, s 126 and s 132).

- 22 (2) A court or an authorised officer must not grant bail to the accused
23 person unless satisfied that special or exceptional circumstances
24 exist favouring the grant of bail.
- 25 (3) However, even if special or exceptional circumstances are
26 established, the court or officer must refuse bail if satisfied that
27 refusal is justified after considering—
28 (a) for an adult—the matters mentioned in section 22 (Criteria for
29 granting bail to adults); or
30 (b) for a child—the matters mentioned in section 23 (Criteria for
31 granting bail to children).

- 1 (4) Also, if the serious offence mentioned in subsection (1) (a) or (b) is
2 a domestic violence offence, an authorised person must not grant
3 bail to the accused person if satisfied that refusal of bail is required
4 under section 9F (Domestic violence offence—bail by authorised
5 officer).
- 6 (5) This section does not affect the application of section 9F (4) and (5)
7 to the accused person if—
- 8 (a) the serious offence mentioned in subsection (1) (a) or (b) is a
9 domestic violence offence; and
- 10 (b) an authorised person grants bail to the accused person.
- 11 (6) In this section:
- 12 **outstanding**—a charge against a person for an offence is
13 **outstanding**—
- 14 (a) until the charge is finally dealt with in any of the following
15 ways:
- 16 (i) the charge is withdrawn;
- 17 (ii) the charge is dismissed by a court;
- 18 (iii) the person is discharged by the Magistrates Court
19 following a committal hearing;
- 20 (iv) the person is acquitted or found guilty by a court of the
21 offence; and
- 22 (b) if the person is acquitted or found guilty by a court of the
23 offence charged, but a new trial on the charge (or a charge
24 based on the same facts) is later ordered on appeal—from the
25 date the new trial is ordered until the earliest of the following
26 happens—
- 27 (i) the charge (or a charge based on the same facts) is finally
28 dealt with as mentioned in paragraph (a) (i), (ii) or (iv);

1 (ii) the order for the new trial is reversed on a further appeal.

2 *Note* **Found guilty**, of an offence, includes having the offence taken into
3 account under the *Crimes Act 1900*, s 357 and having an order made in
4 relation to the offence under the *Crimes Act 1900*, s 402 or the *Children*
5 *and Young People Act 1999*, s 98 (see Legislation Act, dict, pt 1).

6 **pending**—a charge against a person for an serious offence is
7 **pending** if the person has not yet been charged with the offence, but
8 the person has—

9 (a) been arrested for the offence (unless the person is later released
10 without being charged with a serious offence); or

11 (b) been served with a summons to appear before a court to answer
12 a charge for the offence; or

13 (c) at the invitation of a police officer, signed an agreement to
14 attend court to answer a charge for the offence.

15 **serious offence** means an offence punishable by imprisonment for
16 5 years or longer.

17 **9E Bail for person sentenced to imprisonment**

18 (1) This section applies if—

19 (a) a person has been convicted of an offence by a court and
20 sentenced to a period of imprisonment for the offence; and

21 (b) an appeal is pending in relation to the conviction or sentence.

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

24 (3) In this section:

25 **appeal** includes an appeal against a decision on appeal.

- 1 **9F Domestic violence offence—bail by authorised officer**
- 2 (1) This section applies to a person accused of a domestic violence
3 offence.
- 4 (2) An authorised officer must not grant bail to the person unless
5 satisfied that the person poses no danger to a protected person while
6 released on bail.
- 7 (3) However, even if the authorised officer is satisfied under
8 subsection (2), the officer must refuse bail if satisfied that the
9 refusal is justified after considering—
- 10 (a) for an adult—the matters mentioned in section 22 (Criteria for
11 granting bail to adults); or
- 12 (b) for a child—the matters mentioned in section 23 (Criteria for
13 granting bail to children).
- 14 (4) Also, the person must not be released on bail under this section
15 unless the person gives an undertaking to appear within 48 hours of
16 being released.
- 17 (5) If the authorised officer grants bail to the person under this section,
18 the officer must, in the record made under section 27 (Recording of
19 certain bail decisions), state why the officer is satisfied that the
20 person poses no danger to any protected person.
- 21 (6) In this section:
- 22 *protected person*, in relation to a domestic violence offence—
- 23 (a) means a person against whom the alleged conduct making up
24 the offence was directed; and
- 25 (b) includes a relevant person in relation to that person.

1 **9G Special or exceptional circumstances**

2 (1) This section applies if a court or authorised officer is required under
3 this part to be satisfied of the existence of special or exceptional
4 circumstances favouring the grant of bail to a person.

5 (2) A circumstance that would be an applicable bail criteria for the
6 person is not a special or exceptional circumstance only because it is
7 an applicable bail criteria.

8 (3) Also, the court or authorised officer must consider the applicable
9 bail criteria for the person only after the court or authorised officer
10 is satisfied of the existence of the special or exceptional
11 circumstances.

12 **Examples for s (3)**

13 1 Damien is before the court charged with having committed an armed
14 robbery. He has earlier been charged with having committed armed robbery.
15 Section 9D applies and there is a presumption against bail unless there are
16 special or exceptional circumstances. Damien argues that there are special
17 circumstances as he needs to support his child, he may lose his job and he
18 may lose an opportunity to take up public housing. The court considers that
19 the circumstances are not special or exceptional. Bail is not granted and the
20 criteria in section 22 are not considered.

21 2 Jason is facing similar charges. Jason has had a car accident before his arrest
22 for the second offence. His kidneys are damaged requiring dialysis every
23 3 days. Jason argues that his need for regular treatment and his reduced
24 mobility mean that he is highly unlikely to abscond. The court considers
25 these circumstances are special or exceptional. The court then considers the
26 criteria in section 22 in deciding whether to grant bail.

27 *Note* An example is part of the Act, is not exhaustive and may extend, but
28 does not limit, the meaning of the provision in which it appears (see
29 Legislation Act, s 126 and s 132).

1 **6 Dispensing with bail**
2 **Section 10 (5) (a) and (b)**

3 *substitute*

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

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

9 *substitute*

- 10 (2) An authorised officer must not grant bail to a person accused of an
11 offence if—
12 (a) a decision about bail in relation to the offence has been made
13 by a court; or
14 (b) the offence is a domestic violence offence of murder.

15 *Note* A reference to an offence against a Territory law includes a reference to
16 a related ancillary offence, eg attempt (see Legislation Act, s 189).

17 **8 Determination of questions of bail by authorised officers**
18 **Section 15 (3) (b)**

19 *omit*

20 8A (1)

21 *substitute*

22 9F (2)

1 **9 General provisions relating to court bail**
2 **Section 19 (5) (b)**

3 *substitute*

4 (b) the accused person can show—

5 (i) that since the most recent application to a court for bail
6 there has been a significant change in circumstances
7 relevant to the granting of bail; or

8 (ii) that there is fresh evidence or information of material
9 significance to the granting of bail to the person that was
10 unavailable on the most recent application to a court for
11 bail.

12 **10 Section 20**

13 *substitute*

14 **20 Limitations on power of magistrate**

15 (1) A magistrate must not grant bail to a person under section 19 in
16 relation to an offence if the person has appeared before the Supreme
17 Court—

18 (a) after the person's committal for trial or sentence for the
19 offence; or

20 (b) on appeal against a conviction, order or sentence imposed on
21 the person for the offence.

22 (2) A magistrate must not enlarge, vary or revoke bail granted to an
23 accused person following the person's committal for trial.

11 Sections 22, 23 and 23A

substitute

22 Criteria for granting bail to adults

(1) In making a decision about the grant of bail to an adult in relation to an offence, a court or authorised officer must consider—

(a) the likelihood of the person appearing in court in relation to the offence; and

(b) the likelihood of the person, while released on bail—

(i) committing an offence; or

(ii) harassing or endangering the safety or welfare of anyone; or

(iii) interfering with evidence, intimidating a witness, or otherwise obstructing the course of justice, in relation to the person or anyone else; and

(c) the interests of the person.

Examples for par (c)

1 the need of the person for physical protection

2 the period that the person may be held in custody if bail is refused and the conditions under which the person would be held

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) Also, if the person is convicted of an indictable offence, or the elements of an indictable offence are proven in relation to the person, but the person has not been sentenced, a court must consider the likelihood of the person being given a sentence of imprisonment.

- 1 (3) In considering the matters mentioned in subsection (1) or (2), the
2 court or authorised officer may have regard to any relevant matter,
3 including—
- 4 (a) the nature and seriousness of the offence; or
5 (b) the person’s character, background and community ties; or
6 (c) the likely effect of a refusal of bail on the person’s family or
7 dependants; or
8 (d) any previous grants of bail to the person; or
9 (e) the strength of the evidence against the person.

10 **Example**

11 In considering under subsection (1) the likelihood of the person appearing in court
12 in relation to the offence, the court or authorised officer may have regard to
13 whether the person failed to comply with a bail condition previously.

- 14 (4) The reference in subsection (1) (b) (i) to an *offence* includes a
15 reference to an offence against a law of the Commonwealth, a State
16 or another Territory (including an external Territory).

17 **23 Criteria for granting bail to children**

- 18 (1) In making a decision about the grant of bail to a child in relation to
19 an offence, a court or authorised officer must consider—
- 20 (a) the matters mentioned in section 22 (1) (a) and (b), (2) and (3);
21 and
22 (b) the principles in the *Children and Young People Act 1999*,
23 section 68; and
24 (c) if the decision is being made by a court and a report has been
25 given to the court under the *Children and Young People*
26 *Act 1999*, section 73 (Powers of court in relation to reports) in
27 relation to the child—the report.
- 28 (2) In addition, the court or authorised officer must consider, as a
29 primary consideration, the best interests of the child.

23A Victim's concern about need for protection

- (1) If a court is making a decision about the grant of bail to an accused person—
- (a) the prosecutor must tell the court about any concern of which the prosecutor is aware expressed by a victim about the need for protection from violence or harassment by the accused person; and
 - (b) the court must receive any submission in relation to the concern and consider it in the context of the matter mentioned in section 22 (1) (b).
- (2) If an authorised officer who is making a decision about the grant of bail to an accused person is aware that a victim has expressed concern about the need for protection from violence or harassment by the accused person, the authorised officer must consider that concern in the context of the matters mentioned in section 9F (Domestic violence offence—bail by authorised officer) and section 22 (1) (b).

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

substitute

- (1) The following conditions may be imposed on a grant of bail to an adult:
- (a) conditions about the person's conduct while released on bail;
 - (b) a condition that the person, an acceptable person or each of a number of acceptable people—

- 1 (i) pays to the Territory a stated amount if the person fails to
2 appear in court in accordance with his or her undertaking;
3 or
- 4 (ii) gives acceptable security for the payment to the Territory
5 of a stated amount if the person fails to appear in court in
6 accordance with his or her undertaking;
- 7 *Note* For acceptable people and acceptable security, see s 32
8 (Acceptable people and security for bail).
- 9 (c) a condition that the person, an acceptable person or each of a
10 number of acceptable people—
- 11 (i) deposits a stated amount with a court or authorised
12 officer; and
- 13 (ii) forfeits the amount if the person fails to appear in court in
14 accordance with his or her undertaking.
- 15 (1A) With the consent of a person who makes a deposit or gives security
16 under subsection (1) (b) (ii) or (c), it may be a condition of bail that
17 the deposit or security continues to apply if bail is continued.
- 18 (1B) It must not be a condition of bail that a person gives consent under
19 subsection (1A).

20 **13 New section 25 (2) (da)**

21 *insert*

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

26 **Examples of directions**

- 27 1 a direction to attend a program
28 2 a direction to comply with a mental health assessment or treatment order
29 made by the mental health tribunal

1 3 a direction to attend drug or alcohol counselling

2 *Note* An example is part of the Act, is not exhaustive and may extend, but
3 does not limit, the meaning of the provision in which it appears (see
4 Legislation Act, s 126 and s 132).

5 **14 Section 25 (2)**

6 *renumber paragraphs when Act next republished under Legislation*
7 *Act*

8 **15 Section 25 (5)**

9 *omit*

10 subsection (1) (d) or (e)

11 *substitute*

12 subsection (1) (b) or (c)

13 **16 Section 25 (7)**

14 *omit*

15 **17 Section 25**

16 *renumber subsections when Act next republished under Legislation*
17 *Act*

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

20 *substitute*

21 (1) The following conditions may be imposed on the grant of bail to a
22 child—

23 (a) the conditions mentioned in section 25 (1) (other than a
24 requirement mentioned in section 25 (2) (da); and

- 1 (b) any other conditions that the court or authorised officer
2 considers appropriate—
- 3 (i) having regard to the principles in the *Children and Young*
4 *People Act 1999*, section 68; and
- 5 (ii) considering, as a primary consideration, the best interests
6 of the child.

7 (1A) Without limiting section 25 (1), the requirements that a child may be
8 required to comply with about his or her conduct while released on
9 bail include a requirement that the child—

- 10 (a) accept supervision by the chief executive under the *Children*
11 *and Young People Act 1999*, chapter 6 (Young offenders); and
- 12 (b) comply with any reasonable direction of the chief executive.

13 **Examples of directions**

- 14 1 a direction to attend a program
- 15 2 a direction to comply with an order for assessment or a treatment order made
16 by the mental health tribunal
- 17 3 a direction to attend drug or alcohol counselling.

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

21 **19 Section 26 (3) (a) (ii)**

22 *omit*

23 sections 12 and 68

24 *substitute*

25 section 68

26 **20 Section 26**

27 *renumber subsections when Act next republished under Legislation*
28 *Act*

1 **21 Notice to victim of bail decisions**
2 **Section 27A**

3 *omit*

4 **22 Section 28**

5 *substitute*

6 **28 Undertakings to appear**

7 (1) A person may be released on bail only if the person gives a written
8 undertaking—

9 (a) to appear before a stated court at the place, date and time—

10 (i) stated in the undertaking; or

11 (ii) notified to the person by a police officer; and

12 (b) to comply with the bail conditions (if any).

13 *Note* If a form is approved under s 58 for an undertaking, the form must be
14 used.

15 (2) For a continuation of bail, the person may undertake to appear at
16 any time when, and at any place where, proceedings in relation to the
17 offence with which the person has been charged may be continued.

18 (3) An undertaking may be given in relation to more than 1 offence.

19 (4) A court must accept an undertaking given under this section as proof
20 of the matters stated in it if there is no evidence to the contrary.

21 (5) Subsection (1) (a) does not apply to a person in relation to a breach
22 of the peace or apprehended breach of the peace if no further
23 appearance is required.

1 **23 Sections 31 and 32**

2 *substitute*

3 **31 Bail requirements**

4 (1) An undertaking to appear may be given to—

5 (a) a court; or

6 (b) a registrar or deputy registrar; or

7 (c) an authorised officer; or

8 (d) for an accused person who is in a remand centre or prison—the
9 person in charge of the remand centre or prison.

10 (2) An amount may be deposited, or security given, in accordance with
11 a bail condition, to—

12 (a) a court; or

13 (b) registrar or deputy registrar; or

14 (c) an authorised officer.

15 (3) In this section:

16 *deposit* includes a payment by cash or electronic funds transaction.

17 *security* includes security given by way of bond or bank guarantee.

18 **32 Acceptable people and security for bail**

19 (1) A court or authorised officer imposing a condition on bail may
20 decide—

21 (a) the person, people or class of people who are acceptable people
22 for a condition mentioned in section 25 (1) (b) or (c); and

23 (b) the number of people required for the condition; and

24 (c) the security acceptable for a condition mentioned in
25 section 25 (1) (b) (ii).

- 1 (2) If a decision has not been made when the undertaking to appear is
2 given, the court or person to whom the undertaking to appear is
3 given may decide.
- 4 (3) Without limiting subsections (1) and (2), an acceptable person for a
5 condition includes an entity prescribed under the regulations for this
6 subsection.

7 **24 Continuation of bail and undertakings**
8 **Section 33 (2), new note**

9 *insert*

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

13 **25 Section 33 (3) to (6)**

14 *substitute*

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

1 (a) the undertaking to appear is taken to be an undertaking to
2 appear an any time when, and at any place where, proceedings
3 in relation to the offence with which the person has been
4 charged may be continued; and

5 (b) any bail conditions continue to apply.

6 **26 Warning to person making acknowledgment**
7 **Section 35**

8 *omit*

9 **27 Section 36**

10 *substitute*

11 **36 Discharge of surety**

12 (1) A surety may, at any time apply to be discharged from his or her
13 liability under a bail condition—

14 (a) if bail has been granted by a court—

15 (i) to the court that granted bail; or

16 (ii) to the court of appearance; or

17 (b) if bail has been granted by an authorised officer—to the court
18 of appearance.

19 (2) However, an application may not be made if the person granted bail
20 has failed to comply with a bail condition or undertaking to appear.

21 (3) If the person granted bail is not in custody or before the court when
22 the application is made, the court must—

23 (a) issue a warrant to apprehend the person and bring the person
24 before the court; or

25 (b) issue a summons for the person's appearance before the court.

- 1 (4) On the person's appearance before the court, the court must, unless
2 the court considers it would be unjust to do so—
- 3 (a) direct that the applicant be discharged from his or her liability;
4 and
- 5 (b) release the security or deposit.
- 6 (5) If the court discharges the applicant from liability, the court may—
- 7 (a) impose further bail conditions; and
- 8 (b) remand the person granted bail into custody until the further
9 conditions are satisfied.
- 10 (6) In this section:
- 11 *court of appearance* means the court before which the accused
12 person is required to appear in accordance with his or her
13 undertaking to appear.

14 **28 Section 37**

15 *substitute*

16 **37 Payment of amounts to Territory**

- 17 (1) This section applies if—
- 18 (a) a person granted bail fails to appear in court in accordance with
19 his or her undertaking; and
- 20 (b) a bail condition mentioned in section 25 (1) (b) or (c) requires
21 the person or someone else (the *person required to pay*) to pay,
22 or forfeit, an amount to the Territory if the person fails to
23 appear.
- 24 (2) If the amount has been deposited in accordance with a condition
25 mentioned in section 25 (1) (c), the amount is forfeited to the
26 Territory.

- 1 (3) If the amount has not been deposited, the court may order the person
2 required to pay to pay the amount to the Territory.
- 3 (4) Notice of the order must be given to the person required to pay as
4 soon as practicable.
- 5 *Note* For how documents may be served, see Legislation Act, pt 19.5.
- 6 (5) If, after the end of 28 days after the day the notice is given, the
7 amount has not been paid the amount may be recovered under the
8 *Magistrates Court Act 1930*, division 9.2 (Enforcement of fines) as
9 if it were a fine within the meaning of that division.
- 10 (6) Subsection (4) applies to an amount even if the amount exceeds
11 \$50 000.

29 New section 41A

13 *insert*

14 41A Court may review on its own initiative

- 15 (1) A court that has made a decision in relation to bail may review the
16 decision on its own initiative if the court considers it is in the
17 interests of justice to do so.
- 18 (2) The court may issue a warrant for the arrest of the person and for
19 bringing the person before the court at the time and place stated in
20 the warrant.

21 30 Section 42

22 *substitute*

23 42 Power of magistrate to review

- 24 (1) A magistrate may review any decision made by an authorised
25 officer or a magistrate (including his or her own decision) in relation
26 to bail.

- 1 (2) However, a magistrate may review a decision made by the
2 magistrate only if the application for review is based on—
- 3 (a) a significant change in circumstances relevant to the granting
4 of bail; or
- 5 (b) the availability of fresh evidence or information of material
6 significance to the granting of bail to the person that was
7 unavailable on the most recent application to the magistrate.

8 **31 Power of Supreme Court to review**
9 **New section 43 (1A)**

10 *insert*

- 11 (1A) However, a judge may review a decision made by the judge only if
12 the application for review is based on—
- 13 (a) a significant change in circumstances relevant to the granting
14 of bail; or
- 15 (b) the availability of fresh evidence or information of material
16 significance to the granting of bail to the person that was
17 unavailable on the most recent application to the judge.

18 **32 General limitation on power of court to review**
19 **Section 44**

20 *omit*

21 **33 Miscellaneous**
22 **Division 6.3**

23 *omit*

1 **34 New section 47A**

2 *insert*

3 **47A Notice to victim of bail decisions**

4 (1) This section applies if—

5 (a) a court or authorised officer makes a decision about a grant of
6 bail, or reviews a bail decision, in relation to a person; and

7 (b) the informant is aware that a victim has expressed concern
8 about the need for protection from violence or harassment by
9 the person.

10 (2) The informant must tell a police officer assigned to liaise with
11 victims of crime (a *victim liaison officer*) that the victim has
12 expressed the concern.

13 (2) If a victim liaison officer is told about a victim's concern, the victim
14 liaison officer must take all reasonable steps to tell the victim (or, if
15 the victim is a child, a person who has care and control of the child)
16 about the bail decision as soon as practicable.

17 **35 False statements in acknowledgments**
18 **Section 50**

19 *omit*

20 **36 Section 56**

21 *substitute*

22 **56 No right of surety to arrest**

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

37 New sections 56A and 56B

insert

56A Arrest without warrant of person on bail

- (1) This section applies if a person has been granted bail in the ACT, a State or another Territory.
- (2) A police officer may arrest the person without warrant if the officer believes on reasonable grounds that the person—
- (a) has failed to comply with a bail condition; or
 - (b) will not comply with a bail condition.
- (3) The police officer must bring the person before a court as soon as practicable.
- (4) The court may—
- (a) for a person granted bail in the ACT—exercise the same powers in relation to bail as it has in relation to any other accused person in custody; or
 - (b) for a person granted bail in a State or another Territory—
 - (i) release the person unconditionally; or
 - (ii) grant the person bail subject to the conditions that the court considers appropriate; or
 - (iii) remand the person in custody for a reasonable time while a warrant for the person's arrest is obtained from the State or other Territory.
- (5) A release mentioned in subsection (4) (b) (i) does not affect the grant of bail in the State or other Territory.

- 1 **56B Arrest for breach of condition by person outside ACT**
- 2 (1) This section applies if a police officer reasonably believes that—
- 3 (a) a person who has been granted bail in the ACT has failed to
- 4 comply with a bail condition; and
- 5 (b) the person is in a State or another Territory.
- 6 (2) An issuing officer may, on the information of a police officer—
- 7 (a) issue a warrant to arrest the person in the State or other
- 8 Territory and bring the person before a court; or
- 9 (b) issue a summons for the person’s appearance before a court.
- 10 (3) In this section
- 11 *issuing officer*, for a warrant, means—
- 12 (a) a judge, the registrar or a deputy registrar of the Supreme
- 13 Court; or
- 14 (b) a magistrate; or
- 15 (c) if authorised by the Chief Magistrate to issue a warrant—the
- 16 registrar or deputy registrar of the Magistrates Court.

17 **38 Approved forms**

18 **Section 58 (3)**

19 *omit*

20 25,

1 **39 Regulation-making power**
2 **Section 59**

3 *omit*

4 The Executive

5 *substitute*

6 (1) The Executive

7 **40 New section 59 (2)**

8 *insert*

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

13 **41 Dictionary, new definition of *accused person***

14 *insert*

15 *accused person* includes—

- 16 (a) a person charged with, convicted of, or found guilty of, an
17 offence; and
- 18 (b) a person mentioned in section 8 (1) (c), (d), (e) or (f); and
- 19 (c) a person whose conviction for an offence is stayed; and
- 20 (d) a person discharged under the *Crimes Act 1900*, section 402
21 (Conditional release of offenders without proceeding to
22 conviction) on giving security under that section; and
- 23 (e) a person in relation to whom an appeal relating to an offence is
24 pending; and
- 25 (f) a person in relation to whom a new trial has been ordered to be
26 held for an offence.

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42 Schedule 1

substitute

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

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

**Part 1.1 Offences against Crimes Act
1900**

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

1 **Part 1.2** **Offences against Drugs of**
 2 **Dependence Act 1989**

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

3 **Part 1.3** **Offences against Customs Act**
 4 **1901 (Cwlth)**

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

5 **43 Schedule 1, part 1.1, new items 1A and 1B**

6 *insert*

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

Schedule 1 Technical amendments

(see s 3)

[1.1] Sections 1 and 3

substitute

1 Name of Act

This Act is the *Bail Act 1992*.

2 Dictionary

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

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

For example, the signpost definition ‘*domestic violence offence*—see the *Crimes Act 1900*, dictionary.’ means that the term ‘domestic violence offence’ is defined in that dictionary and the definition applies to this Act.

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

3 Notes

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

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

Explanatory note

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

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

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

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

6 **[1.2] Section 4**

7 *substitute*

8 **4 Act applies to children**

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

10 **Explanatory note**

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

13 **[1.3] Section 30 (4), note**

14 *substitute*

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

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

17 **Explanatory note**

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

20 **[1.4] Section 30 (5) and (6)**

21 *omit*

22 **Explanatory note**

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

1 **[1.5] Section 30**

2 *renumber subsections when Act next republished under Legislation*
3 *Act*

4 **Explanatory note**

5 This amendment is consequential on the previous amendment.

6 **[1.6] Section 57 (1)**

7 *omit*
8 *or the Bail (Consequential Amendments) Act 1992,*

9 **Explanatory note**

10 This amendment omits an obsolete reference to transitional provisions.

11 **[1.7] Section 57 (2)**

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

15 **Explanatory note**

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

18 **[1.8] New dictionary**

19 *insert*

20 **Dictionary**

21 (see s 3)

22 *Note 1* The Legislation Act contains definitions and other provisions relevant to
23 this Act.

24 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 25 • Act (see s 7)
26 • adult
27 • child

-
- 1 • Chief Magistrate
2 • chief police officer
3 • director of corrective services
4 • domestic partner (see s 169 (1))
5 • indictable offence (see s 190 (1))
6 • judge
7 • magistrate
8 • Magistrates Court
9 • mental health tribunal
10 • penalty unit (see s 133)
11 • police officer
12 • public trustee
13 • State
14 • Supreme Court
15 • the Territory.

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

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

- 20 (a) section 9D (Bail for serious offence committed while charge
21 for another is pending or outstanding);
- 22 (b) section 9F (Domestic violence offence—bail by authorised
23 officer);
- 24 (c) section 22 (Criteria for granting bail to adults);
- 25 (d) section 23 (Criteria for granting bail to children).

26 ***authorised officer*** means—

- 27 (a) the chief police officer; or
- 28 (b) a police officer exercising the functions of a superintendent or
29 sergeant; or

- 1 (c) another police officer authorised in writing by the chief police
2 officer.
- 3 **bail** means an authorisation granted to a person under this Act to be
4 at liberty.
- 5 **bail condition** means a condition on which bail is granted.
- 6 **child**, of a person, includes a child—
- 7 (a) who normally or regularly lives with the person; or
8 (b) of whom the person is a guardian.
- 9 **court** means the Supreme Court or Magistrates Court.
- 10 **domestic violence offence**—see the *Crimes Act 1900*, dictionary.
- 11 **grant**, in relation to bail (other than in section 22 (Criteria for
12 granting bail to adults) or section 23 (Criteria for granting bail to
13 children)), includes continue.
- 14 **offence** includes—
- 15 (a) an alleged offence; and
16 (b) except for sections 8 (1) (a) and 9 (1)—
- 17 (i) a breach of the peace or an apprehended breach of the
18 peace; and
19 (ii) breach of a periodic detention order.
- 20 **relevant person**—see the *Crimes Act 1900*, dictionary.
- 21 **surety**, in relation to an accused person, means a person other than
22 the accused person who is subject to a liability under a bail
23 condition mentioned in section 25 (1).
- 24 **undertaking to appear** means an undertaking given under
25 section 28 (1).

- 1 **victim** in relation to an accused person, means—
- 2 (a) a person (the **primary victim**) who suffers harm—
- 3 (i) in the course of, or because of, the commission of an
- 4 offence of which the accused person is accused; or
- 5 (ii) in the course of assisting a police officer in the exercise
- 6 of the officer’s power to arrest the accused person or to
- 7 take action to prevent the commission of an offence of
- 8 which the accused person is accused; or
- 9 (b) if a primary victim dies because of the commission of an
- 10 offence of which the accused person is accused—anyone who
- 11 was financially or psychologically dependent on the primary
- 12 victim immediately before his or her death.

13 **Explanatory note**

14 This amendment inserts a dictionary that incorporates all the definitions currently in

15 section 3 (Interpretation) that are still needed. The definitions have, where necessary, been

16 revised to bring them more closely into line with current drafting practice and, if there are

17 equivalent definitions in the *Crimes Act 1900*, been signposted to that Act.

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

19 The definition of **judge** is unnecessary because the term is defined in the Legislation Act,

20 dictionary, part 1.

21 The signpost definition of **outstanding** is unnecessary because it is not used outside section

22 9D, where it is defined.

23 The signpost definition of **pending** is unnecessary because it is not used, in the sense in

24 which it is defined, outside section 9D, where it is defined for that section.

25 The definition of **relative** has been omitted because it defines an expression used in the

26 definition of **relevant person** only and is therefore picked up by the signpost definition of

27 **relevant person**.

28 The definition of **remand centre** is unnecessary because the term is defined in the

29 Legislation Act, dictionary, part 1.

30 The signpost definition of **serious offence** is not necessary because it is not used outside

31 section 9D, where it is defined.

1 **Schedule 2 Other amendments**

2 (see s 3)

3 **Part 2.1 Crimes Act 1900**

4 **[2.1] Sections 215 and 216**

5 *omit*

6 **[2.2] Section 309 (4), definition of *authorised officer***

7 *substitute*

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

9 **[2.3] Dictionary, definition of *bail undertaking***

10 *omit*

11 **Part 2.2 Magistrates Court Act 1930**

12 **[2.4] Section 70**

13 *substitute*

14 **70 Remand of defendant**

15 (1) This section applies if the court considers it is necessary or desirable
16 to adjourn the hearing of a proceeding for an indictable offence—

17 (a) because of the absence of witnesses; or

18 (b) for any other reasonable cause.

19 (2) The court may—

20 (a) adjourn the hearing; and

21 (b) remand the defendant into the custody of the administrator—

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

1 **Part 2.3** **Mental Health (Treatment and**
2 **Care) Act 1994**

3 **[2.5] Section 4, definition of *referring officer*, paragraph (c)**

4 *substitute*

5 (c) a member of the staff of the director of public prosecutions
6 who is responsible for the prosecution of an offence against the
7 person; or

8 (d) if the person is required to accept supervision by someone else
9 as a condition of bail under the *Bail Act 1992*—that other
10 person.

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2003.

2 Notification

Notified under the Legislation Act on 2003.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
