

Western Australia

Bail Amendment Act 2008

As at 31 Mar 2008

No. 6 of 2008

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Bail Amendment Act 2008

(No. 6 of 2008)

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Bail Amendment Act 2008

Part 1 0 Preliminary

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Western Australia

Bail Amendment Act 2008

No. 6 of 2008

An Act to amend the *Bail Act 1982*, to consequentially amend the *Criminal Procedure Act 2004* and the *Supreme Court Act 1935*, and for related purposes.

[Assented to 31 March 2008]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Bail Amendment Act 2008*.

2. Commencement

This Act comes into operation as follows:

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Bail Act 1982* amended

3. The Act amended in this Part

The amendments in this Part are to the *Bail Act 1982**.

[* *Reprint 5 as at 1 April 2005.*

For subsequent amendments see Western Australian Legislation Information Tables for 2006, Table 1, and Act No. 65 of 2006.]

4. Section 3 amended

Section 3(1) is amended as follows:

- (a) by deleting the definition of “appropriate judicial officer” and inserting instead —

“

“appropriate judicial officer” means —

- (a) subject to paragraphs (b), (c) and (d), a judicial officer who is empowered to exercise jurisdiction in the court before which the accused is required to appear pursuant to his bail undertaking; or
- (b) if the court is the Court of Appeal, a judge of appeal; or
- (c) except in section 49, a Judge of the Supreme Court or of the Children’s Court, as the case may require, in any case where —
 - (i) under section 15 only a Judge of the Supreme Court or of the Children’s Court has power to grant bail; or
 - (ii) a judicial officer has exercised the power contained in section 31(2)(d), for the appearance in question; or
- (d) except in section 49, a Judge of the Supreme Court, of the District Court, or of the

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Children's Court, as the case may require, in any case where such a Judge has granted bail under section 14 for the appearance in question;

”;

- (b) in the definition of “court” by deleting paragraph (c) and inserting instead —

“

(c) the Coroner's Court of Western Australia;

”;

- (c) in the definition of “judicial officer” by inserting after “justice” —

“

and, where the context so requires, the Court of Appeal exercising jurisdiction under this Act

”;

- (d) by inserting in the appropriate alphabetical positions —

“

“approved”, in relation to a form, means approved by the chief executive officer of the department of the Public Service principally assisting in the administration of this Act;

“Chief Judge” means the Chief Judge of the District Court;

“Chief Justice” means the Chief Justice of Western Australia;

“court custody centre” has the meaning given in the *Court Security and Custodial Services Act 1999* section 3;

“Director of Public Prosecutions” means —

- (a) the Director of Public Prosecutions for the State; or

- (b) the officer in charge in the State of the Commonwealth Office of the Director of Public Prosecutions,

as the case requires;

“electronic address” means a facsimile number, email address or other electronic address, as the case requires;

“electronic communication” means facsimile transmission, email or other form of electronic communication as defined in the *Electronic Transactions Act 2003* section 5;

“judge of appeal” has the meaning given in the *Supreme Court Act 1935* section 4(1);

“registrar” of a court means —

- (a) for a court other than the Coroner’s Court of Western Australia, the principal registrar, a registrar or a deputy registrar of the court; or
- (b) for the Coroner’s Court of Western Australia, a coroner’s registrar as defined in the *Coroners Act 1996* section 3;

”.

5. Section 3A inserted

After section 3 the following section is inserted —

“

3A. Sending notices by electronic communication

- (1) A reference in this Act, however expressed, to a notice being sent to a person (the **“addressee”**) by electronic communication is a reference to the notice being sent by electronic communication —
 - (a) to an electronic address provided by the addressee for the purpose of being served with the notice; and

- (b) in an electronic format that enables it to be printed or otherwise generated by the addressee.
- (2) If a notice is sent in accordance with subsection (1), the notice is to be presumed, unless the contrary is shown, to have been received at the time when, in the ordinary course of events, the electronic communication would have entered the information system, as defined in the *Electronic Transactions Act 2003* section 5, of the addressee.

”.

6. Section 4A inserted and transitional provision

- (1) After section 4 the following section is inserted in Part I —

“

4A. Detention and bail where accused appears in response to summons or court hearing notice

- (1) Where —
 - (a) an accused has appeared in court for an offence pursuant to a summons or court hearing notice issued under the *Criminal Procedure Act 2004*; and
 - (b) a judicial officer adjourns the proceedings,
the accused is not to be detained in custody to further appear before the court for that offence unless the judicial officer so orders.
- (2) If an order is made under subsection (1), the duty described in section 7(1) applies.
- (3) On any appearance in court by the accused a judicial officer to whom section 7(1) applies may revoke an order made under subsection (1).

”.

- (2) The *Bail Act 1982* section 4A as inserted by subsection (1) applies to appearances in court referred to in subsection (1)(a) of that section that occur after the commencement of this section.

7. Section 5 amended

Section 5(2) is amended by deleting “7(3)” and inserting instead —

“ 7B, 7C, 7E ”.

8. Section 7 amended

- (1) Section 7(1) is amended as follows:

- (a) by deleting “(including detention during the period of his trial)”;
- (b) by deleting “subsection (2)” and inserting instead —
“ section 7B, 7C or 7E ”.

- (2) Section 7(2), (3) and (4) are repealed.

- (3) Section 7(5) is amended by deleting “power conferred by section 9” and inserting instead —

“ powers conferred by sections 7A and 9 ”.

9. Section 7A replaced by sections 7A to 7F, related amendments to sections 8 and 21 and transitional provisions

- (1) Section 7A is repealed and the following sections are inserted instead —

“

7A. Bail may be dispensed with by court

- (1) A judicial officer referred to in section 7(1) may, instead of discharging the duty imposed by that subsection, dispense with the requirement for bail for

an appearance in court for an offence by an accused if the judicial officer —

- (a) has jurisdiction to do so under section 13A(1); and
 - (b) may properly do so under section 13A(2).
- (2) Where the requirement for bail is dispensed with under this section, the accused has a right to be at liberty until the accused is required to appear before a court for the offence, but subject to —
- (a) section 59A; and
 - (b) any requirement that the accused be in custody for some other offence or reason.

7B. Special provision for adult accused in murder cases

- (1) In this section —
“Judge” means a Judge of the Supreme Court.
- (2) This section applies where —
- (a) an accused is in custody for an offence of wilful murder or murder so that under section 15 only a Judge has power to grant bail; and
 - (b) the accused is not a child.
- (3) Where this section applies the accused, or a person on the accused’s behalf, may make an application to a Judge for bail at any time before conviction for the offence.
- (4) Upon an accused’s initial appearance in court for an offence of wilful murder or murder, the judicial officer who may order the accused’s detention in custody is under a duty to inform the accused of the right conferred by subsection (3).

- (5) Where —
- (a) an accused's case for bail has been considered by a Judge on an application under subsection (3); and
 - (b) bail has been refused,
- the accused's case for bail shall not be considered on any subsequent occasion in the same case when the accused's continued detention may be ordered unless subsection (6) applies.
- (6) The accused's case for bail shall again be considered by a Judge if the accused, or a person on the accused's behalf, applies to a Judge and satisfies the Judge that —
- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused; or
 - (b) the accused failed to adequately present the accused's case for bail on the previous occasion.
- (7) Where —
- (a) an accused's case for bail has been considered by a Judge on an application under subsection (3); and
 - (b) bail has been granted,
- on any subsequent appearance in the same case a judicial officer may order, notwithstanding section 15, that bail is to continue on the same terms and conditions.
- (8) The accused is to be taken before a Judge for the purposes of an application under this section only if the Judge so orders.

7C. Special provision for child accused in murder cases

- (1) This section applies where a child accused is in custody for an offence of wilful murder or murder so that under section 15 only a Judge of the Children's Court has power to grant bail.
- (2) Where this section applies, the judicial officer referred to in section 7(1) other than a Judge of the Children's Court, shall, whether or not an application for bail is made by the accused or on the accused's behalf, cause the accused to be taken as soon as is practicable before a Judge of the Children's Court for the purpose of having the accused's case for bail considered by the Judge.
- (3) Notwithstanding subsection (2), where —
 - (a) the duty described in that subsection has been discharged once in relation to a child accused's case for bail; and
 - (b) bail has on that occasion been refused by a Judge of the Children's Court,the accused's case for bail need not be considered on any subsequent occasion in the same case when the accused's continued detention may be ordered unless subsection (4) applies.
- (4) On a subsequent occasion the accused may apply to the judicial officer who may order the accused's continued detention for a reconsideration of the accused's case for bail on the ground that —
 - (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused on the occasion mentioned in subsection (3); or
 - (b) the accused failed to adequately present the accused's case for bail on that occasion.

- (5) If the judicial officer is satisfied as to one or more of those grounds the judicial officer shall cause the accused to be taken as soon as is practicable before a Judge of the Children's Court for the purpose of having the accused's case for bail considered by the Judge.

7D. Previous decision may be adopted

- (1) Notwithstanding section 7(1), after —
 - (a) the duty described in that subsection has been discharged once in relation to an accused's case for bail; or
 - (b) a Judge of the Children's Court has considered the case under section 15,

it is sufficient on any subsequent consideration of bail in the same case for a judicial officer, including a Judge of the Children's Court acting under section 15, to make inquiry of the accused in terms of subsection (2).

- (2) The inquiry to be so made is —
 - (a) whether any new fact has been discovered or new circumstance has arisen, or whether the circumstances have changed, since bail was previously granted or refused; and
 - (b) whether the accused considers that the accused failed to adequately present the accused's case for bail on a previous occasion.
- (3) Unless the judicial officer is satisfied that there is any reason of the kind mentioned in subsection (2) for not doing so, the judicial officer may adopt the decision previously made in the case, but with power to make such variations of the terms and conditions of bail as the judicial officer thinks fit.

7E. Bail during trial

- (1) Where —
- (a) an accused has been refused bail for the accused's appearance for trial for an offence; and
 - (b) the trial extends beyond one day,

a judicial officer referred to in section 7(1) need not comply with that subsection unless the accused, or a person on the accused's behalf, applies for bail.

- (2) In subsection (1) —
- “trial”** means that part of proceedings for an offence when evidence is being received by the court in respect of the offence and also extends to any time when —
- (a) legal argument is being heard; or
 - (b) a judicial officer or a jury is deliberating.

7F. Bail for appeal from courts of summary jurisdiction

- (1) If a person is in custody and an appeal has been commenced under the *Criminal Appeals Act 2004* Part 2 in connection with the decision by virtue of which the person is in custody, the person may apply for bail —
- (a) if the appeal is to be heard and determined by the Court of Appeal or if an application has been made to the Court of Appeal for leave to appeal to the Court of Appeal — to a judge of appeal; or
 - (b) in any other case — to a Judge of the Supreme Court.

-
- (2) Bail shall not be granted to an applicant for bail under subsection (1) unless —
- (a) the applicant has given notice of the application for bail to —
 - (i) the Director of Public Prosecutions; or
 - (ii) the State Solicitor,as the case may require; and
 - (b) that official has been given an opportunity to be heard on the application.
- ”.
- (2) Section 8(5) is amended by deleting “7A(1)” and inserting instead —
- “ 7F(1) ”.
- (3) Section 21(2) is amended as follows:
- (a) after paragraph (a) by inserting —

“ or ”;
 - (b) by deleting paragraph (b) and “or” after it and inserting instead —

“

 - (b) the Director of Public Prosecutions or the State Solicitor to receive notice and be heard under section 7F(2); or

”.
- (4) The *Bail Act 1982* section 7A as inserted by subsection (1) applies in relation to appearances in court coming within the *Bail Act 1982* section 7(1) that occur after the commencement of this section.
- (5) The *Bail Act 1982* section 7B(3) as inserted by subsection (1) applies so as to enable an accused who is detained in custody after the commencement of this section to make an application allowed for by that subsection.

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- (6) The *Bail Act 1982* section 7B(4) as inserted by subsection (1) applies in relation to appearances in court coming within that subsection that occur after the commencement of this section.
- (7) The *Bail Act 1982* section 7B(5) as inserted by subsection (1) applies in relation to an accused who is in custody on the commencement of this section as if the reference in section 7B(5)(a) to an application under subsection (3) included a reference to an application under the *Bail Act 1982* as in force immediately before the commencement of this section.
- (8) The *Bail Act 1982* section 7C(2) as inserted by subsection (1) applies in relation to appearances in court coming within that subsection that occur after the commencement of this section.
- (9) The *Bail Act 1982* section 7D as inserted by subsection (1) applies to any subsequent consideration of bail referred to in section 7D(1) that occurs after the commencement of this section.
- (10) The *Bail Act 1982* section 7E as inserted by subsection (1) applies to any trial as defined in section 7E(2), or part of a trial, that takes place after the commencement of this section.
- (11) The *Bail Act 1982* section 7F(2) as inserted by subsection (1) applies in relation to a pending application for bail under the *Bail Act 1982* section 7A(1), as in force immediately before the commencement of this section, as if it were an application for bail under the *Bail Act 1982* section 7F(1) as inserted by subsection (1).

10. Section 9 amended and transitional provision

- (1) Section 9(1)(b) is amended by inserting after “24(1)” —
“ or 24A(1) or (2) ”.
- (2) The *Bail Act 1982* section 9(1)(b) as amended by subsection (1) applies to any consideration of a case for bail that occurs after the commencement of this section.

11. Section 11 amended and transitional provision

- (1) Section 11(1)(e) is amended by inserting after “46,” —
“ 50F, ”.
- (2) Section 11(2) and (3) are repealed and the following subsections are inserted instead —
“
- (2) Where the accused is in custody in a lock-up, court custody centre or prison, the right conferred by subsection (1) is also subject to the person in charge of the lock-up, court custody centre or prison either —
- (a) signing a certificate under subsection (3); or
 - (b) receiving notice that a certificate has been signed by another person under that subsection.
- (3) After an accused becomes entitled to be at liberty as provided in subsection (1), a person referred to in section 29 may sign a certificate to that effect in the prescribed form.
- (4) The person in charge of a lock-up, court custody centre or prison in which the accused is in custody shall release the accused from custody as soon as is practicable after —
- (a) the person in charge signs the certificate; or
 - (b) if the certificate is signed by a person other than the person in charge, the person in charge receives notice as described in subsection (2)(b).
- ”.
- (3) A certificate under the *Bail Act 1982* section 11(2) as in force immediately before the commencement of this section that has not been fully acted upon is to be treated after that commencement as a certificate under the *Bail Act 1982* section 11(3) as inserted by subsection (2).

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12. Section 12 amended

Section 12 is amended by deleting “section 11(1)” and inserting instead —

“ sections 7A(2) and 11(1) ”.

13. Heading to Part III replaced

The heading to Part III is deleted and the following heading is inserted instead —

“

Part III — Jurisdiction relating to bail

”.

14. Sections 13A and 13B inserted

After section 13 the following sections are inserted —

“

13A. Jurisdiction to dispense with bail and how jurisdiction to be exercised

- (1) Jurisdiction to dispense with the requirement for bail under section 7A for any appearance described in the first column of Schedule 1 Part A clause 2 or 3 is vested, subject to Schedule 1 Part B, in the judicial officer specified in the second column of that clause opposite that description, but Schedule 1 Part A clause 7 does not apply for the purposes of this subsection.
- (2) The jurisdiction referred to in subsection (1) is exercisable only —
 - (a) in respect of an appearance in court before conviction for an offence; and
 - (b) if it appears to the judicial officer that bail would be granted in accordance with Schedule 1 Part C clause 1 or 2 but that in the

circumstances the completion of bail papers is an unnecessary imposition.

- (3) Where a judicial officer dispenses with the requirement for bail for an appearance by an accused the registrar of the court shall, in accordance with section 13B, give written notice to the accused of the time and place for the appearance.

13B. Giving and proof of notices under section 13A(3)

- (1) A written notice to an accused under section 13A(3) shall be —
- (a) given to the accused personally; or
 - (b) sent to the accused —
 - (i) by post to the accused's address appearing in the records of the court; or
 - (ii) in urgent cases or with the accused's consent, by electronic communication.
- (2) A person who gives or sends a notice in accordance with subsection (1) shall endorse on a file copy of the notice a certificate showing —
- (a) that the person has done so; and
 - (b) the time of doing so.
- (3) If a notice is sent by post under subsection (1)(b)(i), the notice is to be presumed, unless the contrary is shown, to have been received at the time when, in the ordinary course of events, it would have been delivered.
- (4) In any proceedings —
- (a) a document purporting to be a copy of a notice referred to in subsection (1) is evidence of the terms of the notice; and
 - (b) an endorsement on a copy of a notice referred to in subsection (2) purporting to be a

certificate referred to in that subsection is evidence of the matters appearing in the certificate without proof of the signature of the person who made the endorsement.

”.

15. Section 14 amended and transitional provisions

(1) Section 14(1) is amended as follows:

- (a) by deleting “of the Supreme Court”;
- (b) after paragraph (b) by deleting the full stop and inserting instead —

“

; and

- (c) under section 7A dispense with the requirement for bail or revoke an existing dispensation.

”.

(2) Section 14(2) is amended as follows:

- (a) by deleting “of the Supreme Court”;
- (b) in paragraph (a) by deleting “or refused” and inserting instead —

“ , refused or dispensed with ”.

(3) Section 14(2a) and (3) are each amended by deleting “of the Supreme Court”.

(4) Section 14(4) and (5) are repealed and the following subsection is inserted instead —

“

(4) In this section —

- (a) references to a Judge are references —
 - (i) in the case of a child charged with an offence before the Children’s Court, to a Judge of that Court; and

- (ii) in the case of an accused committed for trial or sentence to the District Court, to a Judge of that Court; and
- (iii) in any other case, to a Judge of the Supreme Court;

and

- (b) references to any other judicial officer —
 - (i) in relation to the exercise of powers under this section by a Judge, are references to any judicial officer whose jurisdiction is inferior to that of the Judge; but
 - (ii) in relation to the exercise of powers under this section by a Judge of the Supreme Court, do not include a Judge of the Children's Court or a Judge of the District Court.

”.

- (5) The *Bail Act 1982* section 14(4)(a)(i) as inserted by subsection (4) applies in respect of a child charged with an offence on or after the commencement.
- (6) The *Bail Act 1982* section 14(4)(a)(ii) as inserted by subsection (4) applies in respect of an accused committed to the District Court on or after the commencement for trial or sentence.
- (7) The *Bail Act 1982* section 14(4)(b) as inserted by subsection (4) applies in respect of any power referred to in the *Bail Act 1982* section 14(1) that is exercised, or could be exercised, on or after the commencement by any other judicial officer as defined in that paragraph.
- (8) In subsections (5), (6) and (7) —
“commencement” means the commencement of subsection (4).

Note: The heading to section 14 is to read **“Extent of Judge's jurisdiction”**.

16. Sections 15A and 15B inserted and transitional provision

(1) After section 15 the following sections are inserted —

“

15A. Appeal from decision of Judge

(1) In this section —

“**bail decision**” means a decision —

- (a) to grant or refuse bail; or
- (b) to vary or revoke bail; or
- (c) to dispense with the requirement for bail; or
- (d) to impose any condition on a grant of bail,
and includes a decision under section 55
or 59A(4).

(2) The prosecutor or the accused may appeal to the Court of Appeal against a bail decision of —

- (a) a Judge of the Children’s Court; or
- (b) a Judge of the District Court; or
- (c) a Judge of the Supreme Court.

(3) The leave of the Court of Appeal is required for each ground of appeal in an appeal under this section.

(4) The *Criminal Appeals Act 2004* section 27(2), (3) and (4) apply, with necessary modifications, as if an appeal under this section were an appeal under Part 3 of that Act.

(5) An appeal under this section shall be commenced and conducted in accordance with this section, section 15B and rules of court made by the Supreme Court.

(6) An appeal under this section shall be commenced by lodging with the Court of Appeal an application for leave to appeal that sets out the grounds of the appeal.

- (7) An appeal under this section cannot be commenced later than 21 days after the date of the bail decision unless the Court of Appeal orders otherwise.
- (8) An accused who is a party to an appeal under this section and who is in custody is entitled to be present at the hearing of the appeal if the accused so requests, and any official responsible for that custody who is informed of such a request shall do what is necessary to give effect to it.
- (9) For the purposes of giving effect to a request referred to in subsection (8), arrangements may be made for the accused to appear before the Court of Appeal by means of a video link or an audio link in accordance with section 66B, unless the Court of Appeal has ordered that the accused appear before it in person.

15B. Determination of appeal under section 15A and related provisions

- (1) The Court of Appeal has jurisdiction to hear and determine an appeal under section 15A.
- (2) The Court of Appeal shall determine an appeal on the material and evidence that was before the Judge whose decision is the subject of the appeal.
- (3) Any decision of the Court of Appeal in relation to bail shall be made in accordance with the relevant provisions of sections 13A and 17 and Schedule 1.
- (4) Where in determining an appeal the Court of Appeal revokes the bail of an accused who is at liberty, it may order that the accused be returned to custody to await the appearance for which the bail was granted.
- (5) Where in determining an appeal the Court of Appeal varies the bail of an accused who is at liberty, it may order that the accused be returned to custody until the

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accused becomes entitled to be again at liberty pursuant to section 11.

- (6) A judge of appeal may issue any warrant that may be necessary to carry into effect an order under subsection (4) or (5).

”.

- (2) The *Bail Act 1982* sections 15A and 15B as inserted by subsection (1) apply to a bail decision, as defined in section 15A(1), made after the commencement of this section by a judge referred to in section 15A(2).

17. Section 26 amended

- (1) Section 26(1) is amended as follows:

(a) after paragraph (a) by inserting —

“ or ”;

(b) before paragraph (c) by inserting —

“

(ba) grants bail to an accused for a serious offence to which Schedule 1 Part C clause 3A applies;
or

”.

- (2) Section 26(2) is amended before paragraph (b) by inserting —

“

(aa) grants bail to an accused for a serious offence to which Schedule 1 Part C clause 3A applies;
or

”.

18. Section 28 amended, related amendments to sections 35, 49, 51 and 58 and Schedule 1 and transitional provisions

- (1) Section 28(2) is amended as follows:
- (a) by deleting paragraph (b) and inserting instead —
- “
- (b) that if the accused fails to appear at that time and place the accused will, as soon as is practicable, appear at the court at which the accused was required to appear, when that court is sitting; and
- ”;
- (b) after each of paragraphs (a) and (c) by inserting —
- “ and ”.
- (2) Section 49(1) is amended after “or (b)” by deleting “(ii)”.
- (3) Each provision in the Table to this section is amended by deleting “(ii)” in each place where it occurs.

Table

s. 35(1)	s. 58(1)(b)
s. 51(2)	Sch. 1 Pt. D cl. 1(2)(a) and (b)

- (4) A bail undertaking that has effect under the *Bail Act 1982* immediately before the commencement of this section continues to have effect, on and after that commencement, as if it were a bail undertaking described in the *Bail Act 1982* section 28(2) as amended by subsection (1).
- (5) A surety undertaking that has effect under the *Bail Act 1982* immediately before the commencement of this section continues to have effect, on and after that commencement, as if it were a surety undertaking within the meaning of the *Bail Act 1982* section 35(1) as amended by subsection (3).

s. 19

19. Section 29 amended

Section 29(b) to (i) are deleted and the following paragraphs are inserted instead —

“

- (b) a registrar of a court, other than a deputy registrar of the Magistrates Court or the Children’s Court;
- (c) an authorised police officer;
- (d) an associate of a Judge of the Supreme Court, the District Court or the Children’s Court;
- (e) where the accused is in a lock-up or prison, any person for the time being in charge of the lock-up or prison;
- (f) where the accused is in a court custody centre, any person for the time being in charge of the centre who is approved for the purposes of this paragraph by the chief executive officer of the department of the Public Service principally assisting in the administration of the *Court Security and Custodial Services Act 1999*;
- (g) where the accused is a child, any authorised community services officer.

”.

20. Section 30 amended

Section 30(1)(a) is deleted and the following paragraph is inserted instead —

“

- (a) either —
 - (i) read it to the accused; or
 - (ii) be informed by the accused that the accused has read it; or
 - (iii) if necessary, have it translated to the accused;

”.

21. Section 31 amended and transitional provision

(1) Section 31(2) is amended as follows:

(a) in paragraph (b) by deleting “give written notice thereof” and inserting instead —

“

cause written notice of the time and place to be given

”;

(b) in paragraph (c) by inserting after “a Judge of the Supreme Court” in the second place where it occurs —

“

or a Judge of the Children’s Court, as the case may require,

”;

(c) in paragraphs (c) and (d) by deleting “give written notice” and inserting instead —

“ cause written notice to be given ”;

(d) in paragraph (e) by deleting “give written notice thereof” and inserting instead —

“ cause written notice of the day to be given ”;

(e) in paragraph (f) by inserting after “of the court” —

“ , or a person authorised under subsection (5), ”;

(f) in paragraph (f) by deleting “giving written notice thereof” and inserting instead —

“ causing written notice of the time to be given ”.

(2) After section 31(4) the following subsection is inserted —

“

(5) The Chief Justice, in respect of committals to the Supreme Court, and the Chief Judge, in respect of committals to the District Court, may authorise a

person or persons, by name or office, to perform the functions referred to in subsection (2)(f).

”.

- (3) The *Bail Act 1982* section 31 as amended by this section applies in relation to any adjournment or committal to which it refers that occurs after the commencement of this section.

22. Section 31A inserted and transitional provision

- (1) After section 31 the following section is inserted —

“

31A. Amendment of conditions during trial

- (1) In this section —

“**amendment**” means an addition, variation or cancellation under subsection (2);

“**trial**” means that part of proceedings for an offence when evidence is being received by the court in respect of the offence and also extends to any time when —

- (a) legal argument is being heard; or
- (b) a judicial officer or a jury is deliberating.

- (2) Where —

- (a) an accused has been granted bail for the accused’s appearance for trial for an offence; and
- (b) the trial extends beyond one day,

a judicial officer who grants bail for the next appearance by exercising the power in section 31(2)(a) may also do one or more of the following —

- (c) add any condition to the extent that is authorised by clause 2 or 3 of Part D of Schedule 1;
- (d) vary a condition to that extent;

- (e) cancel a condition.
- (3) A judicial officer who adds, varies or cancels a condition under subsection (2) shall cause an officer of the court —
 - (a) to endorse the amendment on the accused's copy of the bail undertaking or, if that copy is not available for endorsement, to give written notice of the amendment to the accused; and
 - (b) to endorse on a file copy of the undertaking a certificate as to the amendment and the action taken under paragraph (a).
- (4) If the judicial officer considers that the amendment is of a minor nature, the judicial officer may, for the purposes of section 44(4), cause the officer of the court to include a statement to that effect in the endorsement or notice under subsection (3)(a) and the certificate under subsection (3)(b).
- (5) When action is taken under subsection (3)(a) —
 - (a) the bail undertaking is to be regarded as having been amended as provided in the endorsement or notice, as the case requires; and
 - (b) the terms and conditions of the bail undertaking continue to apply as so amended as if the accused had entered into the bail undertaking in that form.
- (6) In any proceedings an endorsement on a copy of a bail undertaking referred to in subsection (3)(b) purporting to be a certificate referred to in that paragraph is evidence of the matters appearing in it without proof of the signature of the person who made the endorsement.

”.

s. 23

- (2) The *Bail Act 1982* section 31A as inserted by subsection (1) applies to any trial as defined in section 31A(1), or part of a trial, that takes place after the commencement of this section.

23. Section 32 amended and transitional provision

- (1) Section 32(1), (2) and (3) are repealed and the following subsections are inserted instead —

“

- (1) A written notice to an accused under section 31(2) —
- (a) shall be given to the accused personally; or
 - (b) shall be sent to the accused by post to the accused’s address appearing in the records of the court; or
 - (c) in urgent cases or with the accused’s consent, shall be sent to the accused by electronic communication.
- (2) A person who gives or sends a notice in accordance with subsection (1) shall endorse on a file copy of the notice a certificate showing —
- (a) that the person has done so; and
 - (b) the time of doing so.
- (3) If a notice is sent by post under subsection (1)(b), the notice is to be presumed, unless the contrary is shown, to have been received at the time when, in the ordinary course of events, it would have been delivered.

”.

- (2) Section 32(4) is amended as follows:
- (a) by deleting “endorse” and inserting instead —
“ cause to be endorsed ”;
 - (b) by deleting “he notified the accused thereof.” and inserting instead —
“ the accused has been notified of them. ”.

- (3) Section 32(5) is amended as follows:
- (a) after paragraph (a) by inserting —
“ and ”;
 - (b) by deleting paragraph (b) and inserting instead —
“
(b) an endorsement —
(i) on a copy of a notice referred to in subsection (2); or
(ii) on a bail undertaking,
purporting to be a certificate referred to in subsection (2) or (4) is evidence of the matters appearing in it without proof of the signature of the person who made the endorsement.
”.
- (4) The *Bail Act 1982* section 32 as amended by this section applies in relation to oral notifications given, and written notices given or sent, after the commencement of this section.

24. Section 36 replaced, related amendments to sections 3, 37, 39, 40, 41 and 42 and transitional provisions

- (1) Section 36 is repealed and the following section is inserted instead —

“

36. Authority to approve sureties

- (1) The decision whether an applicant should be approved as a surety in any case is to be made —
- (a) by a person referred to in section 29(a) to (d);
or
 - (b) where the accused to whom bail has been granted is in prison, by a person for the time being in charge of the prison; or

- (c) where the accused to whom bail has been granted is a child, by an authorised community services officer.
- (2) A judicial officer when granting bail to an accused subject to a requirement for a surety or sureties may make an order as to —
 - (a) the giving of notice to the prosecutor of an application for approval of any surety; or
 - (b) the person or persons who are to, or may, approve any surety,and subsection (1) has effect subject to any such order. ”.
- (2) Section 3(1) is amended by inserting in the appropriate alphabetical position —

“

 - “**surety approval officer**” means a person who is authorised by section 36 to decide whether an applicant should be approved as a surety;

”.
- (3) Section 41(2) is amended as follows:
 - (a) by inserting before “officer” in the first place where it occurs —

“ surety approval ”;
 - (b) by deleting “he” in the first place where it occurs and inserting instead —

“ that officer ”;
 - (c) by deleting “officer acting in his position” and inserting instead —

“ surety approval officer ”.

- (4) Each provision in the Table to this subsection is amended by deleting “an officer referred to in section 36(1)” and inserting instead —

“ a surety approval officer ”.

Table

s. 37(1)	s. 41(1)
s. 39	

- (5) Each provision in the Table to this subsection is amended by inserting before “officer” —

“ surety approval ”.

Table

s. 37(1)(c) and (2)	s. 42
s. 40(1) and (2)	

- (6) The *Bail Act 1982* section 36(1) as inserted by subsection (1) applies to any decision as to whether a person should be approved as a surety that has to be made after the commencement of this section.
- (7) The *Bail Act 1982* section 36(2) as inserted by subsection (1) applies to any grant of bail that occurs after the commencement of this section.

25. Section 37 amended

After section 37(2) the following subsection is inserted —

“

- (3) For the purposes of this section it is sufficient if —
- the notice, information and declaration referred to in subsection (1) are sent by electronic communication to an electronic address provided by the applicant; and
 - the declaration referred to in subsection (1)(c) duly completed is sent by electronic

communication to an electronic address
provided by the surety approval officer.

”.

26. Section 43A inserted

After section 43 the following section is inserted —

“

**43A. Use of video link and electronic communication
where proposed surety is interstate**

(1) In this section —

“**proposed surety**” means a person who is to enter into
a surety undertaking;

“**relevant official**” means the person before whom the
surety undertaking is to be entered into or was
entered into, as the case requires;

“**video link**” means facilities (including closed circuit
television) that enable, at the same time —

- (a) the relevant official to see and hear the
proposed surety; and
- (b) the proposed surety to see and hear the
relevant official.

(2) This section applies if a proposed surety is in another
State or a Territory.

(3) The relevant official may comply with section 43(a)
and (b) by means of a video link.

(4) The relevant official may send the surety undertaking
to the proposed surety by electronic communication for
completion.

(5) The proposed surety may enter into the surety
undertaking by sending the completed surety
undertaking to the relevant official by electronic
communication.

- (6) If the surety undertaking is sent by electronic communication under subsection (4) or (5), any requirement for the proposed surety or the relevant official to sign it is to be taken to have been complied with if the full name of the proposed surety or the relevant official, as the case requires, appears in the appropriate place in the undertaking.
- (7) The relevant official may comply with section 43(c) by sending a copy of the surety undertaking as duly completed to the surety by electronic communication.
- (8) A surety undertaking that is entered into in accordance with this section is to be taken to have been entered into before the relevant official.
- (9) In any proceedings a document purporting to be a copy of a surety undertaking and purporting to be certified by the relevant official to be a copy of a surety undertaking entered into in accordance with this section is evidence of the surety undertaking without proof of the signature of the relevant official.
- (10) A reference in this section to sending a surety undertaking or copy of a surety undertaking to a person by electronic communication is a reference to sending the undertaking or copy by electronic communication to an electronic address provided by the person.

”.

27. Section 44 replaced and transitional provisions

- (1) Section 44 is repealed and the following section is inserted instead —

“

44. When surety undertaking extends to different time or different time and place substituted under section 31

- (1) A surety undertaking does not extend to the failure by the accused to appear at a different time or a different time and place substituted pursuant to section 31 unless —
- (a) the surety undertaking contains a provision stating that it does so extend and, where applicable under subsection (5), the surety has received notice as mentioned in that subsection; or
 - (b) subsection (2) applies.
- (2) A surety undertaking extends to the failure by the accused to appear at a different time substituted pursuant to section 31 during a trial if, at the option of the surety, the undertaking contains a provision stating —
- (a) that it does so extend; and
 - (b) the effect of subsection (4).
- (3) In subsection (2) —
- “trial”** means that part of proceedings for an offence when evidence is being received by the court in respect of the offence and also extends to any time when —
- (a) legal argument is being heard; or
 - (b) a judicial officer or a jury is deliberating.

-
- (4) Subsection (2) applies despite any amendment as defined in section 31A(1) if the endorsement or notice under section 31A(3)(a) in respect of the amendment includes a statement referred to in section 31A(4).
- (5) A surety undertaking may, at the option of the surety, also contain a provision stating that where —
- (a) a different time or a different time and place for the accused's appearance is substituted pursuant to section 31; and
 - (b) subsection (2) does not apply,
- the surety's liability only arises if the surety is given notice, as soon as is practicable, of the different time or the different time and place.
- (6) Where, by operation of this section, a surety undertaking would extend to the failure by the accused to appear at a different time or a different time and place substituted pursuant to section 31, that extension is not affected by a reduction in the number of offences to which the accused's bail undertaking relates.

”.

- (2) The *Bail Act 1982* section 44 as inserted by subsection (1) applies to a surety undertaking whether entered into before or after the commencement of this section.
- (3) For the purposes of subsection (2), if a surety undertaking entered into before the commencement of this section contains a provision of the kind referred to in the *Bail Act 1982* section 44(2) as in force before that commencement, the provision is to be taken to be a provision of the kind referred to in the *Bail Act 1982* section 44(5) as inserted by subsection (1).

28. Section 45 amended and transitional provision

(1) Section 45(1) is amended as follows:

- (a) by deleting “44(2)” and inserting instead —
“ 44(5) ”;
- (b) after paragraph (a) by inserting —
“ or ”;
- (c) in paragraph (b) by deleting “prescribed” and inserting instead —
“ approved ”;
- (d) by deleting paragraph (c) and inserting instead —
“
 - (c) by a person authorised under subsection (5) sending or causing to be sent the approved form to the surety —
 - (i) by post to the surety’s address appearing in the records of the court; or
 - (ii) in urgent cases or with the surety’s consent, by electronic communication.”.

(2) Section 45(2) is repealed and the following subsections are inserted instead —

- “
- (2) A person who gives a notice in accordance with subsection (1)(b) or (c) shall endorse on a file copy of the notice a certificate showing —
 - (a) that the person has done so; and
 - (b) the time of doing so.
 - (2a) If a notice is sent by post under subsection (1)(c), the notice is to be presumed, unless the contrary is shown, to have been received at the time when, in the ordinary course of events, it would have been delivered.
- ”.

- (3) Section 45(3) is amended as follows:
- (a) by deleting “endorse on” and inserting instead —
“ cause to be endorsed on a file copy of ”;
 - (b) by deleting “he notified the surety thereof.” and inserting instead —
“ the surety has been notified of them. ”.
- (4) Section 45(4) is amended as follows:
- (a) in paragraph (a) by deleting “44(2)” and inserting instead —
“ 44(5) ”;
 - (b) by deleting paragraph (b) and inserting instead —
“
 - (b) an endorsement —
 - (i) on a file copy of a notice given under subsection (1)(b) or (c) purporting to be a certificate referred to in subsection (2); or
 - (ii) on a file copy of a surety undertaking purporting to be a certificate referred to in subsection (3),is evidence of the matters appearing in the certificate without proof of the signature of the person who made the endorsement.”;
 - (c) after paragraph (a) by inserting —
“ and ”.

(5) After section 45(4) the following subsection is inserted —

“

(5) A registrar of the court, other than a deputy registrar of the Magistrates Court or the Children’s Court, is an authorised person for the purposes of subsection (1)(c) and in addition —

(a) in respect of committals to the Supreme Court, the Chief Justice; and

(b) in respect of committals to the District Court, the Chief Judge,

may authorise a person or persons, by name or office, to perform the function referred to in subsection (1)(c).

”.

(6) The *Bail Act 1982* section 45 as amended by subsection (1) applies to notices given for the purposes of the *Bail Act 1982* section 44(5) after the commencement of this section.

29. Section 48 amended

Section 48(5) is amended as follows:

(a) in paragraph (a) by deleting “regulations made under the *Criminal Procedure Act 2004*,” and inserting instead —

“ the regulations; ”;

(b) in paragraph (b) by deleting “made under the *Criminal Procedure Act 2004*”.

30. Section 49 amended, related amendment to section 67 and transitional provisions

(1) Section 49(1) is amended as follows:

(a) by deleting paragraph (a) and inserting instead —

“

(a) an application for an order that the sum be paid may be made to an appropriate judicial officer —

(i) by the Director of Public Prosecutions where the court before which the accused failed to appear was —

(I) the District Court, the Supreme Court or the Court of Appeal;
or

(II) another court, if the Director of Public Prosecutions is the prosecutor in that court of the case against the accused;

or

(ii) in other cases, by the State Solicitor or the registrar of the court before which the accused failed to appear;

”;

(b) by deleting paragraph (b).

(2) Section 49(2) is amended as follows:

(a) in paragraph (a) by deleting “regulations made under the *Criminal Procedure Act 2004*,” and inserting instead —

“ the regulations; ”;

(b) in paragraph (b) by deleting “made under the *Criminal Procedure Act 2004*”.

s. 31

- (3) Section 67(2)(a) is amended as follows:
- (a) by deleting the comma at the end of subparagraph (iv) and inserting a semicolon instead;
 - (b) after subparagraph (iv) by inserting —
“
(v) for an order under section 49,
”.
- (4) Subject to subsection (5), the *Bail Act 1982* section 49 as amended by this section applies in relation to a failure by an accused to comply with any requirement of the accused's bail undertaking irrespective of when the failure occurred.
- (5) Any proceedings under the *Bail Act 1982* section 49 in progress immediately before the commencement of this section may be continued after that commencement as if this section had not come into operation.

31. Section 51A inserted and transitional provisions

- (1) After section 51 the following section is inserted —

“

51A. Proceedings before courts of summary jurisdiction for an offence under section 51

- (1) This section applies for the purpose of prosecuting an offence against section 51(1), (2) or (2a) where the court before which the accused is bound to appear at the time when the accused fails to comply with the accused's bail undertaking is a court of summary jurisdiction.
- (2) Where this section applies, the prosecution shall be commenced and conducted by the person who was conducting the proceedings in which the accused failed to comply with the accused's bail undertaking or by a police officer.

- (3) Where this section applies, the registrar of the court before which the accused was bound to appear shall cause to be issued to the Commissioner of Police a certificate under section 64 as to the accused's failure to appear.

”.

- (2) Subject to subsection (3), the *Bail Act 1982* section 51A as inserted by this section applies for the purpose of prosecuting an offence described in subsection (1) of that section irrespective of when the offence occurred.
- (3) Any prosecution for an offence referred to in subsection (2) in progress immediately before the commencement of this section may be continued after that commencement as if this section had not come into operation.

32. Section 52 amended and transitional provisions

- (1) Section 52(3) is amended by inserting after “undertaking” —
“ or by a police officer ”.
- (2) After section 52(3) the following subsections are inserted —
“
- (3a) Where this section applies, a person authorised under subsection (3b) shall cause to be issued to the Commissioner of Police a certificate under section 64 as to the accused's failure to appear.
- (3b) The Chief Justice, in respect of cases where the court before which the accused was bound to appear is the Supreme Court, and the Chief Judge, in respect of cases where the court before which the accused was bound to appear is the District Court, may authorise a person or persons, by name or office, to perform the function referred to in subsection (3a).

s. 33

(3c) A prosecution that has been commenced under subsection (3) by a police officer shall be conducted by the Director of Public Prosecutions.

”.

(3) Subject to subsection (4), the *Bail Act 1982* section 52 as amended by this section applies for the purpose of prosecuting an offence described in subsection (1) of that section irrespective of when the offence occurred.

(4) Any prosecution for an offence referred to in subsection (3) in progress immediately before the commencement of this section may be continued after that commencement as if this section had not come into operation.

33. Section 54 amended, related amendment to section 46 and transitional provision

(1) Before section 54(1) the following subsection is inserted —

“

(1a) In this section —

“**relevant officer**” means —

- (a) if the court before which the accused is required to appear is the District Court, the Supreme Court or the Court of Appeal — the prosecutor; or
- (b) in any other case — the prosecutor or a police officer.

”.

(2) Section 54(1) is amended by deleting the passage beginning “A police officer” and ending “the police officer — ” and inserting instead —

“

Where an accused has been released on bail the relevant officer may cause the accused to appear before an appropriate judicial officer to show cause why the

accused's bail should not be varied or revoked if the relevant officer —

”.

- (3) Section 54(2) is repealed and the following subsections are inserted instead —

“

- (2) For the purposes of causing an accused to appear before an appropriate judicial officer as provided in subsection (1) —
- (a) a police officer may arrest the accused without warrant and bring the accused before an appropriate judicial officer; or
 - (b) the relevant officer may apply to an appropriate judicial officer for a summons or warrant on any ground specified in subsection (1).
- (2a) A police officer shall not exercise the power conferred by subsection (2)(a) unless the police officer is the relevant officer or is requested in writing to do so by the relevant officer.

”.

- (4) After section 54(4) the following subsection is inserted —

“

- (5) If —
- (a) the court before which the accused is required to appear is the District Court, the Supreme Court or the Court of Appeal; and
 - (b) a police officer is satisfied that because of the urgency of the case it is not practicable for the prosecutor to exercise the power conferred by subsection (1),

the police officer may exercise that power.

s. 34

(6) If a police officer, acting under subsection (5), exercises the power conferred by subsection (1), the police officer is to be regarded as the relevant officer for the purposes of this section.

”.

(5) Section 46(1)(b) is amended by deleting “a police” and inserting instead —

“ the relevant ”.

(6) Despite the amendments made by subsections (1) to (4), the *Bail Act 1982* section 54 as in force immediately before the commencement of this section continues to apply in relation to —

(a) an accused arrested under subsection (2)(a) of that section; and

(b) an application made under subsection (2)(b) of that section,

before that commencement.

34. Section 54A inserted

After section 54 the following section is inserted —

“

54A. Accused on committal may be taken before court by which committed

(1) This section applies to an accused —

(a) who has been released on bail following the accused’s committal to the District Court or the Supreme Court to be tried (otherwise than for wilful murder or murder) or sentenced or otherwise dealt with; and

(b) who has not made an appearance in that court on the committal; and

- (c) who, in the opinion of the relevant officer under section 54, should be made to show cause in terms of subsection (1) of that section.
- (2) The relevant officer may, under section 54, cause an accused to whom this section applies to appear before a judicial officer who is empowered to exercise jurisdiction in the court in which the committal order was made, instead of before an appropriate judicial officer.
- (3) A judicial officer before whom an accused so appears is to be regarded as an appropriate judicial officer for the purposes of section 54(2).
- (4) A judicial officer before whom an accused so appears is not obliged to exercise any power conferred by section 55 but may refuse to do so and direct the relevant officer to cause the accused to appear before an appropriate judicial officer.
- (5) A relevant officer shall comply with a direction given to that officer under subsection (4).

”.

35. Section 56 repealed

Section 56 is repealed.

36. Sections 59A and 59B inserted and related amendments to sections 16 and 58

- (1) After section 59 the following sections are inserted —

“

59A. Where bail dispensed with, accused may be taken before judicial officer for reconsideration of matter

- (1) In this section —
“relevant officer” has the meaning given in section 54(1a).

- (2) Where the requirement for bail has been dispensed with for an accused under section 7A, the relevant officer may cause the accused to appear before an appropriate judicial officer for reconsideration of the matter, if the relevant officer has reasonable grounds to believe that the accused is not likely to appear at the time and place specified in a notice under section 13A(3).
- (3) Section 54(2), (2a), (3) and (4) apply, with necessary modifications, for the purposes of subsection (2).
- (4) The judicial officer before whom an accused appears under subsection (2) shall reconsider the accused's case and may, notwithstanding section 13 —
- (a) again dispense with the requirement for bail; or
 - (b) grant bail; or
 - (c) refuse to grant bail,
- in accordance with this Act, for the accused's appearance in court.
- (5) If —
- (a) the court before which the accused is required to appear is the District Court, the Supreme Court or the Court of Appeal; and
 - (b) a police officer is satisfied that because of the urgency of the case it is not practicable for the prosecutor to exercise the power conferred by subsection (2),
- the police officer may exercise that power.
- (6) If a police officer, acting under subsection (5), exercises the power conferred by subsection (2), the police officer is to be regarded as the relevant officer for the purposes of this section.

59B. Warrant for arrest of absconding accused

Where —

- (a) at any time after that specified in an accused's bail undertaking for an accused's appearance the accused has failed to comply with the requirements of the accused's bail undertaking mentioned in section 28(2)(a) or (b); or
- (b) an accused has failed to appear at the time and place specified in a notice under section 13A(3),

the court before which the accused was required to appear may issue a warrant to arrest the accused and bring the accused before that court or a court of like jurisdiction.

”.

- (2) Sections 16(2)(a) and 58(1)(a) are amended by deleting “56” and inserting instead —

“ 59B ”.

37. Section 60 amended

Section 60 is amended as follows:

- (a) after “Where” by inserting —
“ the residential address of ”;
- (b) in paragraph (a) by inserting after “bail” —
“
or for whom the requirement for bail has been dispensed with
”;
- (c) by deleting “his place of residence, employment or business”;

s. 38

- (d) by deleting “or surety undertaking” and inserting instead —

“

, surety undertaking or notice under section 13A(3), as the case may be,

”.

38. Section 61 amended

Section 61(2)(a) is amended by deleting “or by reason of section 16”.

39. Section 66A amended

Section 66A(1) is amended by inserting before paragraph (b) —

“

- (aa) a function conferred by section 11(3) or 36(1)(a); or

”.

40. Section 66B inserted and transitional provision

- (1) After section 66A the following section is inserted —

“

66B. Use of video link or audio link

- (1) In this section —

“**audio link**” means facilities (including telephone) that enable, at the same time, a judicial officer or authorised officer at one place to hear the accused at another place and vice versa;

“**bail proceedings**” means any proceedings under this Act including —

- (a) proceedings on a case for bail;
(b) proceedings relating to the variation or revocation of bail;

- (c) proceedings on an application under section 48 or 49;
- (d) proceedings on an appeal under section 15A or 53;

“video link” means facilities (including closed circuit television) that enable, at the same time, a judicial officer or authorised officer at one place to see and hear the accused at another place and vice versa.

- (2) Bail proceedings may be conducted by means of a video link or an audio link.
- (3) Without limiting subsection (2), if a provision of this Act requires or authorises an accused to be brought before, or appear before, a court, judicial officer or authorised officer, the accused may be brought before, or appear before, the court or officer by means of a video link or an audio link.
- (4) An audio link is not to be used under this section unless a video link is not available and cannot reasonably be made available.
- (5) Nothing in this section prevents a court, judicial officer or authorised officer from requiring that an accused be brought before, or appear before, the court or officer in person for the purposes of bail proceedings.

”.

- (2) The *Bail Act 1982* section 66B as inserted by subsection (1) applies in relation to any bail proceedings, as defined in section 66B, conducted after the commencement of this section irrespective of when those proceedings were initiated.

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41. Schedule 1 amended and transitional provisions

- (1) Schedule 1 is amended before the heading to Part A by deleting “Schedule 1” and “[Sections 13 and 17]” and inserting instead —

“

Schedule 1 — Jurisdiction as to bail and related matters

[s. 13, 17]

”.

- (2) Schedule 1 Part A is amended as follows:
- (a) by deleting the heading to that Part and inserting instead —

“

Part A — Jurisdiction relating to bail

”.

- (b) in the heading to the First Column by deleting “referred to in section 13”;
- (c) in the heading to the Second Column by inserting after “granted” —
- “ *or (where applicable) dispensed with* ”.

- (3) Schedule 1 Part B is amended as follows:
- (a) by deleting the heading to that Part and inserting instead —

“

Part B — Cessation of powers relating to bail

”.

- (b) by deleting clause 1 and inserting the following clauses instead —

“

1. Upon decision by Judge, power of other officers ceases

- (1) In this clause —

“**Judge**” means a Judge of the Supreme Court, the Children’s Court or the District Court.

- (2) After a Judge has granted or refused bail for an appearance by an accused the power to grant bail for that appearance ceases to be vested in —

- (a) any judicial officer whose jurisdiction is inferior to that of the Judge; or
 (b) any authorised officer.

- (3) After a Judge has dispensed with the requirement for bail for an appearance by an accused the power to grant or refuse bail for that appearance ceases to be vested in any officer referred to in subclause (2)(a) or (b).

1A. Upon decision by Court of Appeal, other powers cease

After the Court of Appeal on an appeal under section 15A —

- (a) has granted or refused bail for an appearance by an accused, the power to grant or refuse bail for that appearance; or
 (b) has dispensed with the requirement for bail for an appearance by an accused, the power to grant or refuse bail for that appearance,

ceases to be vested in any judicial officer or in any authorised officer.

”;

- (c) in clause 2 by inserting after “to grant” —
 “ , refuse or dispense with ”;

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- (d) in clause 2 by deleting “or refused” and inserting instead —
“ , refused or dispensed with ”;
- (e) by deleting clause 3 and inserting instead —

“

3. Cessation of power upon refusal of bail for initial appearance

- (1) After an authorised officer has refused bail for an initial appearance by an accused, the power to grant bail for that appearance ceases to be vested in another authorised officer, but a justice may nevertheless grant bail for that appearance.
- (2) After a justice has refused bail for an initial appearance by an accused, the power to grant bail for that appearance ceases to be vested in an authorised officer or another justice.

”.

- (4) Schedule 1 Part C is amended as follows:
 - (a) before clause 1 by deleting “Principles governing grant or refusal of bail”;
 - (b) in clause 1 by deleting “clause 3A” and inserting instead —
“ clauses 3A and 3C ”;
 - (c) in clause 2(3)(a) by deleting “clause 3A” and inserting instead —
“ clauses 3A and 3C ”;
 - (d) in clause 3A(1) —
 - (i) by deleting “or 2” and inserting instead —
“ , 2 or 4 ”;

(ii) by deleting paragraph (a) and “and” after it and inserting instead —

“

(a) an accused is in custody —

(i) awaiting an appearance in court before conviction for a serious offence; or

(ii) waiting to be sentenced or otherwise dealt with for a serious offence of which the accused has been convicted;

and

”;

(e) by inserting after clause 3B —

“

3C. Bail in murder cases

Notwithstanding clause 1, 2 or 4 or any other provision of this Act, where an accused is in custody —

(a) awaiting an appearance in court before conviction for an offence of wilful murder or murder; or

(b) waiting to be sentenced or otherwise dealt with for an offence of wilful murder or murder of which the accused has been convicted,

the judicial officer in whom jurisdiction is vested shall refuse to grant bail for the offence unless the judicial officer is satisfied that —

(c) there are exceptional reasons why the accused should not be kept in custody; and

(d) bail may properly be granted having regard to the provisions of clauses 1 and 3 or, in the case of a child, clauses 2 and 3.

”;

(f) by deleting clause 4 and inserting instead —

“

4. Bail after conviction: accused awaiting sentence

- (1) Subject to clauses 3A and 3C, the grant or refusal of bail to an accused, other than a child, who is in custody waiting to be sentenced or otherwise dealt with for an offence of which the accused has been convicted shall be at the discretion of the judicial officer in whom jurisdiction is vested, and that discretion shall be exercised having regard to the questions set out in clause 1 as well as to any others which the judicial officer considers relevant.
- (2) A child accused who is in custody waiting to be sentenced or otherwise dealt with for an offence of which the child accused has been convicted has the same right to be granted bail as a child accused referred to in clause 2(2), and the provisions of clause 2 apply accordingly.

4A. Bail after conviction: accused awaiting disposal of appeal

In deciding whether or not to grant bail to an accused who is in custody waiting for the disposal of appeal proceedings, the judicial officer shall consider whether there are exceptional reasons why the accused should not be kept in custody, and shall only grant bail to the accused if satisfied that —

- (a) exceptional reasons exist; and
- (b) it is proper to do so having regard to the provisions of clauses 1 and 3 or, in the case of a child, clauses 2 and 3.

”;

- (g) in clause 5 by deleting “4” and inserting instead —
“ 4A ”;
- (h) before clause 7 by deleting “Limitation on period of bail”;

- (i) in clause 7 by deleting “7” and inserting instead —
“ 30 ”.
- (5) The *Bail Act 1982* Schedule 1 Part B clause 1A as inserted by subsection (3)(b) applies in respect of —
 - (a) a grant or refusal of bail; or
 - (b) a dispensation from the requirement for bail,
coming within that clause that occurs after the commencement of subsection (3)(b).
- (6) The *Bail Act 1982* Schedule 1 Part B clause 3 as inserted by subsection (3)(e) applies in relation to a refusal of bail for an initial appearance that occurs after the commencement of subsection (3)(e).
- (7) The *Bail Act 1982* Schedule 1 Part C clause 3C as inserted by subsection (4)(e) applies to any consideration of a case for bail that occurs after the commencement of subsection (4)(e).
- (8) The *Bail Act 1982* Schedule 1 Part C clauses 4 and 4A as inserted by subsection (4)(f) apply to any consideration of a case for bail that occurs after the commencement of subsection (4)(f).
- (9) The *Bail Act 1982* Schedule 1 Part C clause 7 as amended by subsection (4)(i) applies to any grant of bail that occurs after the commencement of subsection (4)(i).

Note: The heading to Schedule 1 Part C clause 7 is to be altered by deleting “7” and inserting instead “30”.

42. Schedule 2 amended and transitional provision

- (1) Schedule 2 is amended by deleting “Schedule 2”, “[Section 3(1)]” and “Serious offences” and inserting instead —

“

Schedule 2 — Serious offences

[s. 3(1)]

”.

made to the *Bail Act 1982* by this Part, the Governor may make regulations (the “**transitional regulations**”) prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.

- (2) The transitional regulations may provide that specified provisions of the *Bail Act 1982* or this Part —
 - (a) do not apply; or
 - (b) apply with specified modifications,to or in relation to any matter.
- (3) If the transitional regulations provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the transitional regulations are published in the *Gazette* but not earlier than the commencement of this section, the transitional regulations have effect according to their terms.
- (4) In subsections (2) and (3) —

“**specified**” means specified or described in the transitional regulations.
- (5) If the transitional regulations contain a provision referred to in subsection (3), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

Part 3 — Consequential amendments to other Acts

45. *Criminal Procedure Act 2004* amended

- (1) The amendments in this section are to the *Criminal Procedure Act 2004**.

[* *Act No. 71 of 2004.*

For subsequent amendments see Western Australian Legislation Information Tables for 2006, Table 1.]

- (2) Schedule 4 clause 3(3) is amended by inserting after “31” —
“ , 31A ”.

- (3) Schedule 4 clause 4(3) is amended by inserting after
“sections” —
“ 51A, ”.

46. *Supreme Court Act 1935* amended

- (1) The amendments in this section are to the *Supreme Court Act 1935**.

[* *Reprint 7 as at 19 August 2005.*

For subsequent amendments see Western Australian Legislation Information Tables for 2006, Table 1, and Act No. 77 of 2006.]

- (2) Section 58(1)(b) is amended by inserting before “appeals” —
“ subject to subsection (1a) ”.

- (3) After section 58(1) the following subsection is inserted —
“

- (1a) An appeal does not lie to the Court of Appeal under subsection (1)(b) against a bail decision as defined in the *Bail Act 1982* section 15A(1).

”.

