

ACTS AMENDMENT (BAIL) ACT 1982.

(No. 87 of 1982)

ARRANGEMENT.

PART I—PRELIMINARY.

Section.

1. Short title.
2. Commencement.

PART II—JUSTICES ACT 1902-1980.

3. Citation.
4. Section 4 amended.
5. Section 4A inserted.
6. Section 47 amended.
7. Section 64 and 82 repealed.
8. Section 84 amended.
9. Section 86 amended.
10. Section 90 amended.
11. Section 91 amended.
12. Sections 94, 94A, 97, 98, 99, and 100 repealed.
13. Section 107 amended.
14. Section 111 amended.
15. Section 114 amended.
16. Sections 115, 116, 117, 118, 119, 120, 121, 121A, and 122 repealed.
17. Section 130 amended.
18. Section 134 amended.
19. Section 136A amended.
20. Section 184 amended.
21. Section 188 repealed and substituted.
22. Section 197 amended.
23. Section 200 amended.
24. Section 201 amended.
25. Section 203 amended.
26. Section 210 repealed.
27. Section 216 amended.
28. Section 217 repealed.

Section.

PART III—THE CRIMINAL CODE.

- 29. Citation.
- 30. Section 1 amended.
- 31. Section 139 amended.
- 32. Sections 140, 570, and 573 repealed.
- 33. Section 577 amended.
- 34. Section 580 amended.
- 35. Section 608 amended.
- 36. Section 611 amended.
- 37. Section 645 amended.
- 38. Section 669 amended.
- 39. Section 690 amended.
- 40. Section 700 amended.
- 41. Section 746A amended.

PART IV—POLICE ACT 1892-1981.

- 42. Citation.
- 43. Section 43 amended.
- 44. Section 44 amended.
- 45. Section 48 repealed.
- 46. Section 52A inserted.
- 47. Section 94B amended.
- 48. Second Schedule amended.

PART V—CHILD WELFARE ACT 1947-1979.

- 49. Citation.
- 50. Section 27 amended.
- 51. Section 28 amended.
- 52. Section 33 repealed and substituted.
- 53. Section 73 amended.

PART VI—OFFENDERS PROBATION AND PAROLE
ACT 1963-1980.

- 54. Citation.
- 55. Section 5 amended.
- 56. Section 9 amended.
- 57. Section 16 amended.
- 58. Section 17 amended.
- 59. Section 19 amended.
- 60. Section 19A amended.
- 61. Section 20D amended.
- 62. Section 20H amended.
- 63. Section 20K amended.
- 64. Section 20P amended.
- 65. Section 50G amended.
- 66. Section 50H amended.
- 67. Section 50J amended.
- 68. Section 50K amended.

Section.

PART VII—CORONERS ACT 1920-1979.

- 69. Citation.
- 70. Sections 17 and 18 repealed.
- 71. Section 20 amended.
- 72. Section 44 amended.

PART VIII—EXPLOSIVES AND DANGEROUS GOODS
ACT 1961-1981.

- 73. Citation.
- 74. Section 12 amended.

PART IX—REPEAL.

- 75. Repeal of Delivery of Prisoners Act 1873.

ACTS AMENDMENT (BAIL).

No. 87 of 1982.

AN ACT to amend the Justices Act 1902-1980, The Criminal Code, the Police Act 1892-1981, the Child Welfare Act 1947-1979, the Offenders Probation and Parole Act 1963-1980, the Coroners Act 1920-1979 and the Explosives and Dangerous Goods Act 1961-1981, and to repeal the Delivery of Prisoners Act 1873.

[Assented to 17 November 1982.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment (Bail) Act 1982*. Short title.

2. This Act shall come into operation on the day fixed for the coming into operation of the Bail Act 1982. Commence-
ment.

PART II—JUSTICES ACT 1902-1980.

Citation.
Reprinted as
approved 30
November
1977; subse-
quently
amended by
Acts No. 6
and 67 of
1979, and
67 of 1980.

3. (1) In this Part, the Justices Act 1902-1980 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Justices Act 1902-1982.

Section 4
amended.

4. Section 4 of the principal Act is amended, in the definition of "Decision", by deleting "and an admission to bail".

Section 4A
inserted.

5. The principal Act is amended by inserting, after section 4, the following section—

Bail Act 1982
to prevail
over this Act.

" 4A. Nothing in this Act empowering the detention in, or committal to, custody of any person (however the power may be expressed) shall be read as limiting the operation of section 4 of the Bail Act 1982. "

Section 47
amended.

6. Section 47 of the principal Act is amended by deleting " , or discharge him upon recognisance".

Sections 64
and 82
repealed.

7. Sections 64 and 82 of the principal Act are repealed.

Section 84
amended.

8. Section 84 of the principal Act is amended—

(a) by deleting "or discharged upon recognisances";

and

(b) by deleting the proviso.

9. Section 86 of the principal Act is amended by deleting “suffer the defendant to go at large, or may commit him, or may order his discharge upon his entering into a recognisance conditioned for his appearance” and substituting the following—

Section 86
amended.

“ commit the defendant to appear ” .

10. Section 90 of the principal Act is amended by deleting “defendant, witness,” and substituting the following—

Section 90
amended.

“ witness ” .

11. Section 91 of the principal Act is amended by deleting “defendant, witness,” and substituting the following—

Section 91
amended.

“ witness ” .

12. Sections 94, 94A, 97, 98, 99 and 100 of the principal Act are repealed.

Sections 94,
94A, 97, 98,
99, and
100 repealed.

13. Section 107 of the principal Act is amended by deleting “or admitted to bail as hereinafter mentioned”.

Section 107
amended.

14. Section 111 of the principal Act is amended—

Section 111
amended.

(a) by deleting “or bailed to appear for trial”;

and

(b) by deleting “or bailed”.

15. Section 114 of the principal Act is amended by deleting “or admitted to bail as hereinafter mentioned”.

Section 114
amended.

16. Sections 115, 116, 117, 118, 119, 120, 121, 121A, and 122 of the principal Act are repealed.

Sections 115,
116, 117, 118,
119, 120, 121,
121A, and 122
repealed.

Section 130
amended.

17. Section 130 of the principal Act is amended—

- (a) by deleting “, whether the defendant has been admitted to bail or not,”;
- (b) by deleting “, and may, in a proper case, admit him to bail as hereinbefore provided, or enlarge his bail, if he has been already admitted to bail”; and
- (c) by deleting “, and may, in a proper case, admit him to bail, subject to the provisions hereinbefore contained, or enlarge his bail if he has been already admitted to bail”.

Section 134
amended.

18. Section 134 of the principal Act is amended by deleting “, or may discharge him upon recognisances conditioned”.

Section 136A
amended.

19. Section 136A of the principal Act is amended—

- (a) by repealing subsection (3) and substituting the following subsections—

“ (3) An applicant shall enter into a recognisance requiring him to appear before the court to which the application is made and being otherwise in accordance with section 187 of this Act; and that section shall apply as if references therein to the appellant and an appeal were references to the applicant and an application respectively.

(3a) On a recognisance being given under subsection (3) execution shall be stayed until the application is disposed of or the court of petty sessions otherwise orders, and the applicant, if then in custody for non-payment of any sum of money, shall be released upon presentation of the recognisance to the person by whom he is held in custody. ” ;

- (b) in subsection (4), by deleting “unless the applicant was released from custody on recognisance pending the decision on the application and has not complied with the requirements of this section relating to security for appearance of the applicant” and substituting the following—

“ if the applicant does not appear, strike out the application and, if he does appear ” ; and

- (c) in subsection (5) by deleting “the decision contained a sentence of imprisonment but”.

20. Section 184 of the principal Act is amended— Section 184 amended.

- (a) by inserting after the section designation “184.” the subsection designation “(1)” ;

and

- (b) by inserting the following subsection—

“ (2) Where an appeal is brought under section 183 against a conviction or sentence for an offence and the maximum period of imprisonment which could be imposed on the appellant for that conviction is 6 months or longer, bail shall not be granted to the appellant under the Bail Act 1982 until he has given notice of his application therefor to the respondent. ” .

21. Section 188 of the principal Act is repealed and the following section is substituted— Section 188 repealed and substituted.

- “ 188. (1) On a recognisance being entered into under section 187 of this Act execution shall, subject to subsection (2), be stayed until the appeal is disposed of or the Supreme Court or a Judge otherwise orders. Stay of execution and release of appellant from custody.

(2) Where the appellant is in custody, he shall not be released unless he is granted bail under the Bail Act 1982 and becomes entitled to be released in accordance with that Act. ” .

Section 197
amended.

22. Section 197 of the principal Act is amended—

- (a) in subsection (1), by deleting the passage from and including “and where, at any time within such period of two months” to the end of the subsection;
- (b) in subsection (5), by deleting “or for the release of an appellant from custody”; and
- (c) by inserting, after subsection (5), the following subsection—

“ (5a) Where an order to review is granted in respect of a conviction or sentence for an offence and the maximum period of imprisonment which could be imposed on the appellant for that conviction is 6 months or longer, bail shall not be granted to the appellant under the Bail Act 1982 until he has given notice of his application therefor to the respondent. ” .

Section 200
amended.

23. Section 200 (1) of the principal Act is amended—

- (a) by inserting a comma after “without delay”; and
- (b) by deleting “to appear before the Court to which the appeal is made”.

Section 201
amended.

24. Section 201 of the principal Act is amended by repealing subsections (2) and (3) and substituting the following subsections—

“ (2) On a recognisance being entered into under section 200 (1) of this Act execution shall, subject to subsection (3) of this section,

be stayed until the order to review is disposed of in the Supreme Court or a Judge otherwise orders.

(3) Where the appellant is in custody, he shall not be released unless he is granted bail under the Bail Act 1982 and becomes entitled to be released in accordance with that Act. ” .

25. Section 203 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

Section 203 amended.

“ (2) An order to review shall not be entered for hearing unless, at the time an application is made for the entry for hearing, a recognisance has been entered into by the appellant under section 200 (1). ” .

26. Section 210 of the principal Act is repealed.

Section 210 repealed.

27. Section 216 of the principal Act is amended, in subsection (1), by deleting ”, if the appellant has been released from custody,”.

Section 216 amended.

28. Section 217 of the principal Act is repealed.

Section 217 repealed.

PART III—THE CRIMINAL CODE.

29. In this Part, “the Code” mean The Criminal Code contained in the Schedule to the Criminal Code Act 1913 which Act is set out in Appendix B to the Criminal Code Act Compilation Act 1913.

Citation. Reprinted as approved 8 December 1978; subsequently amended by Acts Nos. 67, 68 and 107 of 1979, 96 of 1980, and 103 and 118 of 1981.

30. Section 1 of the Code is amended by inserting, after subsection (2), the following subsection—

Section 1 amended.

“ (3) Nothing in this Code empowering the detention in, or committal to, custody of any person (however the power may be expressed) shall be read as limiting the operation of section 4 of the Bail Act 1982. ” .

Section 139
amended.

31. Section 139 of the Code is amended by deleting paragraph (1).

Sections 140,
570, and 573
repealed.

32. Sections 140, 570 and 573 of the Code are repealed.

Section 577
amended.

33. Section 577 of the Code is amended—

(a) by deleting “, whether he has been admitted to bail or not,”;

(b) by deleting “; and, if he has been admitted to bail, the recognisances of bail are to be deemed to be enlarged to that time and place accordingly”; and

(c) by deleting “in like manner to be deemed to be enlarged to the same time and place” and substituting the following—

“ deemed to be enlarged to that time and place accordingly ” .

Section 580
amended.

34. Section 580 of the Code is amended by deleting “or may, in a proper case, admit him to bail with sufficient sureties to attend to be tried on the indictment”.

Section 608
amended.

35. Section 608 of the Code is amended by deleting the second paragraph.

Section 611
amended.

36. Section 611 of the Code is amended—

(a) by deleting “, and may, in a proper case, admit him to bail, or enlarge his bail if he had already been admitted to bail”;

(b) by deleting “the accused person is bound to attend to be tried, and”; and

(c) by deleting “to appear and”.

37. Section 645 of the Code is amended—

Section 645
amended.

- (a) by inserting after the section designation “645.” the subsection designation “(1)”;
- (b) in subsection (1) as so designated, by deleting the second paragraph; and
- (c) by inserting the following subsection—

“ (2) In any such case the accused person shall remain in custody until he can be brought before another judge who may remand him in custody to appear for a new trial. ” .

38. Section 669 of the Code is amended, in subsection (3) (b), by deleting “, or may admit him to bail with a sufficient surety conditional on his appearing for judgment”.

Section 669
amended.

39. Section 690 of the Code is amended, in subsection (2), by deleting “An offender so arrested may be admitted to bail by order of the Court, which may be made at the time when the order directing judgment to be pronounced is made or afterwards. ” .

Section 690
amended.

40. Section 700 of the Code is amended by repealing subsection (2).

Section 700
amended.

41. Section 746A of the Code is amended by deleting “take his trial or attend any other” and substituting the following—

Section 746A
amended.

“ attend any ” .

PART IV—POLICE ACT 1892-1981.

Citation.
Reprinted as
approved 11
July 1978;
subsequently
amended by
Acts Nos. 17,
29, and 83
of 1979, 71
of 1980, and
103 and 107
of 1981.

42. (1) In this Part, the Police Act 1892-1981 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Police Act 1892-1982.

Section 43
amended.

43. Section 43 of the principal Act is amended, in subsection (1), by deleting “, or until he shall have given bail for his appearance before a Justice, in the manner hereinafter mentioned”.

Section 44
amended.

44. Section 44 of the principal Act is amended by deleting “, or until he shall have given bail for his appearance before a Justice in manner hereinafter mentioned”.

Section 48
repealed.

45. Section 48 of the principal Act is repealed.

Section
52A inserted.

46. The principal Act is amended by inserting, after section 52, the following section—

Detention
to be subject
to the
Bail Act
1982.

“ 52A. Nothing in this Act shall be read as limiting or affecting—

(a) the right conferred by section 5 of the Bail Act 1982 on every person taken into the custody of a police officer or constable for an offence, as provided by this Act, to have his case for bail considered under and in accordance with the Bail Act 1982 or to be brought before a court as soon as is practicable;

(b) the duties imposed on police officers by section 6 of that Act. ” .

47. The Second Schedule to the principal Act is amended by deleting the form headed "Recognisance for the Appearance of a person in charge of a Police Station or Lock-up."

Second
Schedule
amended.

PART V—CHILD WELFARE ACT 1947-1979.

48. (1) In this Part, the Child Welfare Act 1947-1979 is referred to as the principal Act.

Citation.
Reprinted as
approved 11
November
1977; sub-
sequently
amended by
Act No. 77
of 1979.

(2) The principal Act as amended by this Act may be cited as the Child Welfare Act 1947-1982.

49. Section 27 of the principal Act is amended by repealing subsection (3).

Section 27
amended.

50. Section 28 of the principal Act is amended by repealing subsection (1).

Section 28
amended.

51. Section 33 of the principal Act is repealed and the following section is substituted—

Section 33
repealed and
substituted.

“ 33. (1) Subject to section 24 of this Act, where a child is required to appear before a court for an offence, the officer on whose decision the child would otherwise be arrested, or the Justice or court by which a warrant to arrest may be issued, shall consider whether it would be appropriate to proceed by way of summons rather than arrest.

Bringing
child
before court,
and place of
detention
of child.

(2) If a child who is in custody is refused bail under the Bail Act 1982, or is not released on bail, he shall, subject to section 28 (2) of this Act, be taken to and placed in a Departmental Centre or Departmental facility of an appropriate kind, or such other place as is approved by the Director. ” .

Section 39C
amended.

52. Section 39C of the principal Act is amended in subsection (2) by deleting “and, where it does so, shall release the child on bail, with or without sureties, to appear at the adjourned hearing”.

Section 73
amended.

53. Section 73 of the principal Act is amended, in subsection (6), by deleting “conferred upon justices”.

PART VI—OFFENDERS PROBATION AND PAROLE
ACT 1963-1980.

Citation.
Reprinted as
approved 11
November
1977;
subsequently
amended by
Act No. 96
of 1980.

54. (1) In this Part, the Offenders Probation and Parole Act 1963-1980 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Offenders Probation and Parole Act 1963-1982.

Section 5
amended.

55. Section 5 of the principal Act is amended by inserting, after subsection (2), the following subsection—

“ (2a) Without limiting the generality of subsection (2), nothing in this Act empowering the detention in or committal to custody of any person (however the power may be expressed) shall be construed as in any way derogating from or diminishing the operation of section 4 of the Bail Act 1982. ” .

Section 9
amended.

56. Section 9 of the principal Act is amended, in subsection (1a), by deleting “and release the person on bail, with or without sureties to appear on the adjourned hearing” .

Section 16
amended.

57. Section 16 of the principal Act is amended, in subsection (3) (c), by deleting “or release him on bail, with or without sureties, to be brought or to appear” and substituting the following—

“ to be brought ” .

58. Section 17 of the principal Act is amended— Section 17 amended.

(a) in subsection (2a), by deleting “or release him on bail, with or without sureties, to be brought or to appear” and substituting the following—

“ to be brought ” ; and

(b) in subsection (3), by deleting “or release him on bail, with or without sureties, to appear or be brought” and substituting the following—

“ to be brought ” .

59. Section 19 of the principal Act is amended by repealing subsection (2). Section 19 amended.

60. Section 19A of the principal Act is amended, in subsection (3) (b), by deleting “or release him on bail, with or without sureties”. Section 19A amended.

61. Section 20D of the principal Act is amended, in subsection (2), by deleting “and release the person on bail, with or without sureties to appear at the adjourned hearing”. Section 20D amended.

62. Section 20H of the principal Act is amended, in subsection (4) (d), by deleting “or release him on bail, with or without sureties, to be brought or to appear” and substituting the following— Section 20H amended.

“ to be brought ” .

63. Section 20K of the principal Act is amended, in subsection (2) (b), by deleting “or release him on bail, with or without sureties, to be brought or to appear” and substituting the following— Section 20K amended.

“ to be brought ” .

Section 20P
amended.

64. Section 20P of the principal Act is amended by repealing subsection (2).

Section 50G
amended.

65. Section 50G of the principal Act is amended—

(a) in subsection (4) (c), by deleting “or release him on bail, with or without sureties, to be brought or to appear” and substituting the following—

“ to be brought ” ; and

(b) in subsection (8), by deleting “, warrants and admission to bail” and substituting the following—

“ and warrants ” .

Section 50H
amended.

66. Section 50H of the principal Act is amended, in subsection (6), by deleting “discharge the probationer, admit him to bail on such conditions as it thinks fit, or” and substituting the following—

“ adjourn the proceedings and may ” .

Section 50J
amended.

67. Section 50J of the principal Act is amended, in subsection (4), by deleting “or release him on bail, with or without sureties, to be brought or to appear” and substituting the following—

“ to be brought ” .

Section 50K
amended.

68. Section 50K of the principal Act is amended, in subsection (6), by deleting “discharge the probationer, admit him to bail on such conditions as it thinks fit, or” and substituting the following—

“ adjourn the proceedings and may ” .

PART VII—CORONERS ACT 1920-1979.

Citation.
Reprinted
as approved
2 December
1980.

69. (1) In this Part, the Coroners Act 1920-1979 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Coroners Act 1920-1982.

70. Sections 17 and 18 of the principal Act are repealed. Section 17
and 18
repealed.

71. Section 20 of the principal Act is amended— Section 20
amended.

(a) by repealing subsection (1) and substituting the following—

“ (1) Every finding at a coroner’s inquest and the warrant of commitment thereupon issued shall, for the purposes of the prosecution or discharge of the person committed, be regarded as equivalent to an ordinary commitment by justices. ” ; and

(b) in subsection (2), by deleting “or held him to bail”.

72. Section 44 of the principal Act is amended, in subsection (3), by deleting “give evidence, or be tried” in both places where it occurs and substituting in each place the following— Section 44
amended.

“ or give evidence, ” .

PART VIII—EXPLOSIVES AND DANGEROUS GOODS ACT 1961-1981.

73. The Explosives and Dangerous Goods Act 1961-1981 as amended by this Act may be cited as the Explosives and Dangerous Goods Act 1961-1982. Citation.
Reprinted as
approved 5
September
1979,
subsequently
amended by
Act No. 58 of
1981.

74. Section 12 of the Explosives and Dangerous Goods Act 1961-1981 is amended by repealing subsection (2). Section 12
amended.

PART IX—REPEAL.

75. The Delivery of Prisoners Act 1873 is repealed. Repeal of
Delivery of
Prisoners Act
1873.