

Western Australia

Bail Act 1982

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Bail Act 1982

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Western Australia

Bail Act 1982

An Act to make better provision for bail in criminal proceedings.

Part I — Preliminary

1. Short title

This Act may be cited as the *Bail Act 1982* ¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation ¹.

3. Interpretation

(1) In this Act, unless a contrary intention appears —

“accused” includes —

- (a) a person charged with, convicted of, or found guilty of an offence;
- (b) a person whose conviction for an offence is stayed;
- (c) a person in respect of whom an appeal relating to an offence is pending;
- (d) a person in respect of whom a new trial for an offence has been ordered;

“adjournment”—

- (a) means any order of a court by which proceedings for an offence are postponed or interrupted or are to be held at a different time or place before the same court; and
- (b) is deemed to include any order of a court, other than a committal to the Supreme Court or District Court, by which the venue of any proceedings for an offence is changed to another court or a court at another place whether by way of a remand, referral, or recommittal of the accused or otherwise;

“appeal” includes an application for leave to appeal;

“appropriate judicial officer”—

- (a) subject to paragraphs (b) and (c), means 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;
- (b) if the court is the Court of Appeal, means a judge of appeal;
- (c) except in section 49, also means a Judge of the Supreme Court or a Judge of the Children’s Court in any case where —
 - (i) only a Judge of the Supreme Court or a Judge of the Children’s Court has power to grant bail under section 15, or a judicial officer has exercised the power contained in section 31(2)(d); or
 - (ii) a Judge of the Supreme Court or a Judge of the Children’s Court has granted bail under section 14,

for the appearance in question;

“as soon as is practicable” means as soon as is reasonably practicable;

“authorised community services officer” means any of the following persons —

- (a) the CEO (Justice) or a delegate of the CEO (Justice) under subsection (5);
- (b) a registrar of the Children’s Court;
- (c) a superintendent of a detention centre under the *Young Offenders Act 1994*;
- (d) the officer for the time being in charge of any detention centre under the *Young Offenders Act 1994*;

“authorised officer” means an authorised police officer or an authorised community services officer;

“authorised police officer” means a police officer who holds the rank of sergeant, or a higher rank, or is for the time being in charge of a police station or lock-up;

“bail undertaking” means an undertaking described in section 28(2);

“CEO (Justice)” means the chief executive officer of the department of the Public Service principally assisting the Minister to whom the administration of the *Sentence Administration Act 2003* is for the time being committed by the Governor in the administration of that Act;

“child” has the same meaning as “young person” has in the *Young Offenders Act 1994*;

“community corrections officer” has the same meaning as in the *Sentence Administration Act 2003*;

“court” means each of the following —

- (a) the Magistrates Court;
- (b) the Children’s Court;
- (c) a Coroner’s Court;
- (d) the District Court;
- (e) the Supreme Court;
- (f) the Court of Appeal;

“early release order” means an early release order made under the *Sentence Administration Act 1995* or *Sentence Administration Act 2003*;

“home detention condition” means a home detention condition imposed under clause 3 of Part D of Schedule 1;

“judicial officer” means any person empowered to exercise jurisdiction in a court whether or not he is sitting as a court, and includes a single justice;

“lock-up” includes a place prescribed as a lock-up for the purposes of the *Court Security and Custodial Services Act 1999*;

“offence” means any act, omission or conduct which renders the person doing the act, making the omission or engaging in the conduct liable to any punishment, and includes an alleged offence; but nothing in this definition shall limit the operation of subsection (4);

“police officer” means any member of the Police Force of Western Australia;

“prosecutor” includes —

- (a) in the case of an offence charged in a prosecution notice, the prosecutor;
- (b) in the case of an offence charged in an indictment, the State or the Commonwealth, as the case may be;

“serious offence” means —

- (a) an offence against section 51(2a); and
- (b) an offence described in Schedule 2;

“surety” and **“surety undertaking”** have the meanings assigned to them by section 35;

“trial” means all proceedings for an offence between —

- (a) the time when the accused is called upon to plead to the prosecution notice or the indictment; and
- (b) the time when the accused is found not guilty or is sentenced.

(2) A reference in this Act —

- (a) to a power to grant bail includes a reference to a power to refuse bail;
- (b) to a grant of bail includes a reference to a grant of bail by the exercise of a power in section 31(2).

(3) Where in this Act there is a reference to a requirement that an accused appear in court, the reference is to a requirement, unless a contrary intention appears, that the accused —

- (a) surrender himself into the custody of the court or, in the case of a bail undertaking, of the court specified therein,

or of such person as the court may direct, to be dealt with according to law;

- (b) submit himself to a search of his person and any property then in his possession (which is hereby authorised) and allow to be taken from him, to be dealt with according to the relevant law and procedures, anything so found; and
 - (c) remain in custody until authorised to be released therefrom.
- (4) If a person is arrested under a warrant issued —
- (a) under section 50, 79 or 129 of the *Sentencing Act 1995* in connection with a possible breach of a conditional release order, a sentence of suspended imprisonment, or a community order imposed under that Act; or
 - (b) under section 43 of the *Young Offenders Act 1994* in respect of an alleged breach of a youth community based order, an intensive youth supervision order or a conditional release order made under that Act,
- then —
- (c) the person is to be taken as having been arrested and to be in custody awaiting an appearance in court for the offence for which the sentence was imposed;
 - (d) the first appearance in court after the arrest is to be taken, for the purposes of sections 5(1) and 8(1) and clause 1 of Part A and clause 7 of Part C of Schedule 1, to be the initial appearance for that offence; and
 - (e) the proceedings following the arrest are to be taken to be proceedings for that offence and to be a trial for the purpose of the definition in subsection (1) of “trial”.
- (5) The CEO (Justice) may by writing signed by him delegate to any officer of the department of which he is the chief executive officer any function he has under this Act as an authorised community services officer.

[Section 3 amended by No. 74 of 1984 s. 3; No. 15 of 1988 s. 4; No. 49 of 1988 s. 78; No. 61 of 1990 s. 4; No. 31 of 1993 s. 6; No. 45 of 1993 s. 4 and 12; No. 78 of 1995 s. 7; No. 57 of 1997 s. 21(1); No. 54 of 1998 s. 4 and 14; No. 47 of 1999 s. 7; No. 50 of 2003 s. 29(3); No. 65 of 2003 s. 121(2); No. 34 of 2004 s. 251; No. 45 of 2004 s. 28(4); No. 59 of 2004 s. 141; No. 84 of 2004 s. 11, 82 and 83(2).]

4. Application of this Act

The operation of this Act extends to any appearance in a court for an offence —

- (a) except to the extent that in this Act, or in the law creating the offence or applicable thereto, express provision is made excluding or limiting the operation of this Act in respect of that appearance;
- (b) whether or not that law contains a reference to the granting of bail;
- (c) however any reference in that law to the granting of bail may be expressed; and
- (d) as if any reference therein to the taking of a recognizance were to a requirement that, except where bail is dispensed with under this Act, the accused enter into a bail undertaking.

[Section 4 amended by No. 84 of 2004 s. 82.]

Part II — Rights of accused in relation to bail

[Heading amended by No. 84 of 2004 s. 82.]

5. Right of accused to have bail considered under this Act

- (1) An accused who is in custody for an offence awaiting his initial appearance in court therefor is entitled —
 - (a) subject to sections 9, 10, 12 and 16(2), to have his case for bail for that appearance considered under and in accordance with this Act as soon as is practicable;
 - (b) if his case is not so considered, or if he is refused bail or is not released on bail, to be brought before a court as soon as is practicable.
- (2) An accused who is in custody awaiting any appearance in court for an offence, other than an initial appearance, is entitled, subject to sections 7(3), 9 and 10, to have his case for bail for that appearance considered under and in accordance with this Act.

[Section 5 amended by No. 74 of 1984 s. 4; No. 84 of 2004 s. 82.]

6. Duty imposed on arresting officer or person

- (1) The police officer or other person who arrests a person for an offence has a duty —
 - (a) if he is empowered by this Act to grant bail; and
 - (b) unless, as soon as is practicable, he brings the person or causes him to be brought before a court,to consider that person's case for bail as soon as is practicable, whether or not an application for bail is made by the person or on his behalf.
- (2) If that police officer or that other person is not so empowered he shall, subject to subsections (3) and (3a) and unless he brings the person or causes him to be brought before a court as soon as

is practicable, bring or cause the accused to be brought before an authorised police officer or a justice or, in the case of a child, any authorised officer or a justice, as soon as is practicable, and thereupon —

- (a) such officer is subject to the duty described in subsection (1); or
 - (b) if the accused is brought before a justice, the justice is under a duty to consider the person's case for bail as soon as is practicable, whether or not an application for bail is made by the person or on his behalf.
- (2a) A police officer or other person who arrests a person for an offence may, notwithstanding that he is empowered by this Act to grant bail, instead of complying with subsection (1) comply with subsection (2) as if he were not so empowered.
- (3) Where under section 15 or 16 only a Judge of the Supreme Court, a Judge of the Children's Court or a justice has power to grant bail for an offence, the police officer or other person who arrests a person for an offence shall —
- (a) unless, as soon as is practicable, he brings the person or causes him to be brought before a court; and
 - (b) whether or not an application for bail is made by the person or on his behalf,

bring or cause the accused to be brought as soon as is practicable —

- (c) where section 15 applies, before a Judge of the Supreme Court or a Judge of the Children's Court, as the case may require; or
- (d) where section 16 applies, before a justice,

for the purpose of having the accused's case for bail considered by the Judge, or the justice acting in terms of subsection (2)(b), as the case may be.

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(3a) Where section 16A applies, the police officer or other person who arrests a person for an offence shall as soon as is practicable bring the accused, or cause the accused to be brought, before a court or Judge mentioned in subsection (1) of that section for the purpose of having the accused's case for bail considered by that court or Judge.

(4) The operation of this section is subject to the exercise of the power conferred by section 9 and to the provisions of sections 10, 12 and 16(2) and clause 3A of Part C of Schedule 1.

[Section 6 amended by No. 15 of 1988 s. 5; No. 49 of 1988 s. 79; No. 45 of 1993 s. 5; No. 54 of 1998 s. 5; No. 84 of 2004 s. 82.]

7. Duty imposed on judicial officers in respect of unconvicted accused

(1) Upon and following an accused's initial appearance in court for an offence every judicial officer who may thereafter order his detention or continued detention in custody before conviction for the offence (including detention during the period of his trial) is under a duty, unless subsection (2) applies, to consider the accused's case for bail, whether or not an application for bail is made by the accused or on his behalf.

(2) Where under section 15 only a Judge of the Supreme Court or a Judge of the Children's Court has power to grant bail for an offence, the judicial officer referred to in subsection (1), other than a Judge of the Supreme Court or a Judge of the Children's Court, shall, whether or not an application for bail is made by the person or on his behalf, cause the accused to be taken as soon as is practicable before a Judge of the Supreme Court or a Judge of the Children's Court, as the case may require 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 or in section 6(3) has been discharged once in relation to an accused's case for bail; and
 - (b) bail has on that occasion been refused by a Judge of the Supreme Court or 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 the accused satisfies the judicial officer who may order his detention that —

- (c) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused on the occasion mentioned in paragraph (b); or
- (d) he failed to adequately present his case for bail on that occasion,

but if the judicial officer is so satisfied he shall cause the accused to be taken as soon as is practicable before a Judge of the Supreme Court or a Judge of the Children's Court as the case may require for the purpose of having the accused's case for bail considered by the Judge.

- (4) Notwithstanding subsection (1), after the duty described in that subsection has been discharged once in relation to an accused's case for bail or after a Judge of the Supreme Court or 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 Supreme Court or a Judge of the Children's Court acting under section 15 —
- (a) to inquire 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 whether the accused considers

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that he failed to adequately present his case for bail on a previous occasion; and

- (b) unless he is satisfied that there is any reason of the kind mentioned in paragraph (a) for not doing so, to adopt the decision previously made in the case, but with power to make such variations of the terms and conditions of bail as he thinks fit.

- (5) The operation of this section is subject to the exercise of the power conferred by section 9 and to the provisions of sections 10, 12 and 16(2) and clause 3A of Part C of Schedule 1.

[Section 7 amended by No. 74 of 1984 s. 5; No. 49 of 1988 s. 80; No. 45 of 1993 s. 6; No. 84 of 2004 s. 82.]

7A. Bail for appeal under *Criminal Procedure (Summary) Act 1902*

- (1) If a person is in custody and an appeal has been commenced under Part 2 of the *Criminal Appeals Act 2004* 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 the 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) until he has given notice of his application for bail to —
 - (a) the State Solicitor; or
 - (b) the Deputy Director of Public Prosecutions (Commonwealth) in Perth,

as the case may require, and that official has been given an opportunity to be heard on the application.

[Section 7A inserted by No. 33 of 1989 s. 18; amended by No. 65 of 2003 s. 88(2); No. 45 of 2004 s. 28(4); No. 59 of 2004 s. 141; No. 84 of 2004 s. 11.]

8. Accused to be given information and prescribed forms

- (1) Subject to subsection (4), a judicial officer or authorised officer who is called upon to consider an accused's case for bail, on the first occasion when it arises in relation to an offence or group of offences for which an accused is required to appear, shall ensure that the accused is, or has been, given —
- (a) such information in writing as to the effect of this Act as is prescribed for the purposes of this paragraph;
 - (b) a prescribed form for completion, designed to disclose to the judicial officer or authorised officer all information relevant to the decision; and
 - (c) where the accused is unable or insufficiently able, to read, speak or write English, such assistance as he may reasonably require in order to have communicated to him the information mentioned in paragraph (a) and complete the form referred to in paragraph (b).
- (2) After an accused case for bail has been considered once, a judicial officer or authorised officer on any subsequent consideration of bail in the same case shall —
- (a) comply with subsection (1)(a); and
 - (b) either comply with subsection (1)(b) or obtain the form previously completed for the purposes of that paragraph, if any, and ensure that —
 - (i) the form is revised in order to show any changes which he is informed have occurred since it was completed; and
 - (ii) any assistance, of the kind referred to in subsection (1)(c) is given to the accused for the purpose of completing or revising the form, as the case may be.

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- (3) Nothing in this section shall be read as limiting section 23.
- (3a) Notwithstanding subsection (1)(a) or (2)(a) a judicial officer or authorised officer need not comply with that paragraph if it appears to him that the accused's case for bail is such that bail is likely to be granted to him in accordance with this Act; but if it subsequently appears to him that bail will not be granted or that the accused is dissatisfied with any condition imposed on the grant of bail he shall then comply with that paragraph.
- (4) Notwithstanding subsection (1)(b) or (2)(b), a judicial officer or an authorised officer may dispense with completion or revision of the form referred to in those paragraphs if it appears to him that —
 - (a) the accused's case for bail is such that bail is likely to be granted to him in accordance with this Act; and
 - (b) the information in the possession of the judicial officer or authorised officer is sufficient for his consideration of the case.
- (5) Where a person has applied for bail for an appeal as mentioned in section 7A(1), this section applies as if the consideration of bail for the appeal were a first consideration of bail for an offence.

[Section 8 amended by No. 74 of 1984 s. 6; No. 15 of 1988 s. 6; No. 33 of 1989 s. 18; No. 84 of 2004 s. 82.]

9. Bail decision may be deferred until further information obtained

- (1) Subject to section 26(2) of the *Young Offenders Act 1994*, a judicial officer or authorised officer who is called upon to consider a case for bail may defer consideration of the case for a period not exceeding 30 days if he thinks it is necessary —
 - (a) to obtain more information for the purpose of making a decision in accordance with this Act; or
 - (b) to take any step authorised by section 24(1).

- (2) Nothing in this section shall be taken to limit the right of an accused to be brought before a court as soon as is practicable if he is not released on bail.

[Section 9 amended by No. 57 of 1997 s. 21(2); No. 84 of 2004 s. 82.]

10. Sections 5, 6 and 7 do not apply where accused imprisoned for other cause

Notwithstanding sections 5, 6 and 7, the rights conferred on an accused and the duties imposed on police officers, authorised officers and judicial officers by those sections in respect of an appearance in court for an offence do not arise where —

- (a) the accused is in custody for some other offence or reason (including the non-payment of a sum of money); and
- (b) the police officer, authorised officer or judicial officer is satisfied that the accused is likely to remain in custody for that other offence or reason until or beyond the time for the appearance for the first-mentioned offence.

[Section 10 amended by No. 84 of 2004 s. 82.]

11. Rights following grant of bail

- (1) When —
- (a) bail has been granted to an accused for an appearance in court;
 - (b) all conditions which are to be complied with before the release of the accused have been complied with; and
 - (c) he has entered into a bail undertaking for that appearance or his bail undertaking is deemed to be amended under section 31(3),

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the accused has a right to be at liberty until he is required to appear, or to next appear, before a court, but subject to —

- (d) any requirement that he be in custody for some other reason;
 - (e) the exercise of the powers in sections 14(3), 17A, 46, 54 and 55; and
 - (f) the limitation mentioned in section 12.
- (2) As soon as is practicable after an accused becomes entitled to be at liberty as provided in subsection (1) —
- (a) an authorised officer, where bail was granted by an authorised officer;
 - (b) a justice who has granted bail otherwise than while sitting as a court;
 - (c) a Judge’s associate, where bail was granted by a Judge of the District Court or the Supreme Court or the Children’s Court; and
 - (d) in any other case, the registrar of the court where the judicial officer who granted bail exercises jurisdiction or a justice,

shall, where the accused is in custody in a lock-up or prison, forthwith deliver or cause to be delivered a certificate to that effect in the prescribed form to the person in charge of the lock-up or prison, and that person shall release the accused from custody as soon as is practicable after he receives the certificate.

- (3) In subsection (2)(a) “**authorised officer**” does not include an authorised officer who is also the person in charge of the lock-up in which the accused is in custody.

[Section 11 amended by No. 74 of 1984 s. 7; No. 15 of 1988 s. 7; No. 49 of 1988 s. 81; No. 45 of 1993 s. 7; No. 47 of 1999 s. 8; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

12. Further limitation on rights in sections 5 and 11

The right of an accused to have his case for bail considered as soon as is practicable, his right to be at liberty as mentioned in section 11(1), and the corresponding duties created by this Part, are limited so far as is reasonably necessary for the exercise or performance by a person of any statutory power or function vested in him which requires the continued custody of the accused, including the exercise of the powers set out in section 236 of *The Criminal Code*, section 50AA of the *Police Act 1892* and Parts 6 and 7 of the *Criminal Investigation (Identifying People) Act 2002*.

[Section 12 amended by No. 6 of 2002 s. 96; No. 84 of 2004 s. 82.]

Part III — Jurisdiction to grant bail

13. Jurisdiction to grant bail

- (1) Jurisdiction to grant bail for any appearance described in the first column of Part A of Schedule 1 is vested in the judicial officer or authorised officer specified in the second column of that Part opposite thereto and shall be exercised subject to and in accordance with this Part and the further provisions in Parts B, C and D of Schedule 1.
- (2) A home detention condition shall not be imposed as a condition of bail except by a judicial officer.

[Section 13 amended by No. 61 of 1990 s. 5; No. 45 of 1993 s. 12.]

14. Supreme Court Judge has jurisdiction in all cases

- (1) A Judge of the Supreme Court may, in accordance with this Act —
 - (a) exercise a power to grant bail which is conferred upon any other judicial officer or any authorised officer by this Act; and
 - (b) revoke or vary any bail previously granted by any other such officer.
- (2) Subject to subsection (2a), the jurisdiction of a Judge of the Supreme Court under subsection (1) in respect of an appearance by an accused may be invoked by application made by either the prosecutor or the accused, and whether or not any other judicial officer has —
 - (a) previously granted or refused bail; or
 - (b) exercised any power conferred on him by section 55,in respect of that appearance.
- (2a) After the jurisdiction under subsection (1) has been invoked once by an accused in relation to an offence or group of

offences for which he is required to appear, it may not be further invoked by that accused in relation to that offence or group of offences unless the accused satisfies a Judge of the Supreme Court that —

- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since the occasion when the jurisdiction was invoked; or
 - (b) he failed to adequately present his case for bail on that occasion.
- (3) Where under subsection (1) a Judge of the Supreme Court —
- (a) revokes the bail of an accused who is at liberty, he may order that the accused be returned to custody to await the appearance for which the bail was granted;
 - (b) varies the bail of such an accused, he may order that the accused be returned to custody until he becomes entitled to be at liberty pursuant to section 11,

and the Judge may issue any warrant which may be necessary to carry such an order into effect.

- (4) In this section “**any other judicial officer**” means any judicial officer whose jurisdiction is inferior to that of a Judge of the Supreme Court.
- (5) The powers and duties conferred on a Judge of the Supreme Court by this section may in the case of a child charged with an offence before the Children’s Court also be exercised by a Judge of the Children’s Court.

[Section 14 amended by No. 74 of 1984 s. 8; No. 49 of 1988 s. 82; No. 84 of 2004 s. 82.]

15. Exclusive jurisdiction of Supreme Court Judge in murder cases

- (1) Where an accused is in custody for wilful murder or murder, the power to grant bail shall be exercised only by a Judge of the

Supreme Court, or in the case of an accused who is a child by a Judge of the Children's Court, except —

- (a) where section 31(2)(d) applies; or
- (b) to the extent that the Court of Appeal exercises its powers under Part A of Schedule 1.

[(2) *repealed*]

[Section 15 amended by No. 52 of 1984 s. 35; No. 74 of 1984 s. 9; No. 49 of 1988 s. 83; No. 70 of 1988 s. 45; No. 45 of 1993 s. 12; No. 45 of 2004 s. 28(4); No. 84 of 2004 s. 82.]

16. Bail of person arrested on warrant

- (1) Subject to sections 14 and 15 where the arrest of an accused for an offence is made pursuant to a warrant he shall not be granted bail before he is brought before a court or judicial officer as commanded by the warrant, except by a justice acting in terms of section 6(2)(b).
- (2) Notwithstanding subsection (1) or any other provision of this Act, an accused who has been arrested pursuant to a warrant —
 - (a) issued under section 56; or
 - (b) issued under the *Criminal Procedure Act 2004* for an offence against section 51(1) or (2),

shall not have a right to have his case for bail considered, and shall not be granted bail, before he is brought before the court as commanded by the warrant.

[Section 16 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82.]

16A. Restrictions on powers of authorised officers and justices in certain cases

- (1) Where this section applies to a person who has been arrested for an offence jurisdiction does not arise under section 13 until the person is brought before —

- (a) a court constituted by or so as to include a magistrate; or
 - (b) where section 15 applies, a Judge of the Supreme Court or a Judge of the Children’s Court as the case may require.
- (2) This section applies where —
- (a) a person has been arrested in an urban area for a serious offence; and
 - (b) the serious offence is alleged to have been committed while the accused was —
 - (i) on bail for; or
 - (ii) at liberty under an early release order made in respect of,
another serious offence.
- (3) This section also applies where a person has been arrested in an urban area for an offence against section 61(1) of the *Restraining Orders Act 1997* (which creates offences for breaches of violence restraining orders).
- (4) In this section —
- “urban area”** means —
- (a) the metropolitan region as defined in the *Planning and Development Act 2005* and any prescribed area that adjoins that region; and
 - (b) any other prescribed area of the State, being the whole or part of, or an area adjoining, a local government district under the *Local Government Act 1995* that is designated under that Act as a city or a town.

[Section 16A inserted by No. 54 of 1998 s. 6(1); amended by No. 38 of 2004 s. 59; No. 84 of 2004 s. 82; No. 38 of 2005 s. 15.]

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17. Conditions which may be imposed

- (1) A judicial officer or authorised officer may impose conditions on a grant of bail only to the extent that he is authorised to do so by clause 2(3)(c) of Part C and Part D of Schedule 1.
- (2) Conditions imposed on a grant of bail shall not be any more onerous on the accused than the judicial officer or authorised officer considers is required in the public interest having regard to the nature of the offence for which the accused is in custody and the circumstances of the accused.

[Section 17 amended by No. 45 of 1993 s. 8 and 12; No. 84 of 2004 s. 82.]

17A. Further provisions as to responsible person's undertaking (Schedule 1 Part C clause 2)

- (1) Where this section applies, an authorised police officer may —
 - (a) cancel an undertaking of the kind described in clause 2(3)(c) of Part C of Schedule 1;
 - (b) approve of another person as a responsible person within the meaning in that clause; and
 - (c) detain the accused or order his detention until the person so approved enters into an undertaking of the kind mentioned in paragraph (a).
- (2) Subsection (1) applies where —
 - (a) a person has entered into an undertaking referred to in paragraph (a) of that subsection;
 - (b) a judicial officer when granting bail ordered that the person may under this section be released from the undertaking by an authorised police officer; and
 - (c) the person wishes to be so released.
- (3) A police officer may, for the purpose of the exercise of the powers in subsection (1), take into custody a child accused who has been released on bail.

- (4) If the police officer is not an authorised police officer he shall, as soon as is practicable, bring the accused before an authorised police officer for the purpose referred to in subsection (3).
- (5) After an undertaking has been entered into as mentioned in subsection (1)(c), the accused, subject to this Act, has a right to be at liberty until he is required to appear before a court.

[Section 17A inserted by No. 45 of 1993 s. 9; amended by No. 84 of 2004 s. 82.]

18. Police officer may dispense with bail in certain cases upon deposit of cash

- (1) Except where section 16 applies, an authorised police officer may, in accordance with this section, dispense with the requirement for bail for an appearance in court by an accused for a prescribed simple offence.
- (2) Before an authorised police officer dispenses with the requirement for bail under this section, he shall —
 - (a) give to the accused a notice in the prescribed form specifying the time and place at which he is to appear to be dealt with for the offence and setting out the effect of section 19(1) and (2);
 - (b) fix an amount in cash, not exceeding the amount prescribed for that offence, which the accused shall deposit as security for his appearance at that time and place; and
 - (c) receive the amount of such deposit and an acknowledgment from the accused that he has been given the notice provided for by paragraph (a).
- (3) Where the requirement for bail is dispensed with under this section, the accused has a right to be at liberty, subject to any requirement that he be in custody for some other offence or reason, until he is required to appear before a court for the offence.
- (4) In any proceedings production of a document purporting to be the acknowledgment referred to in subsection (2)(c) and of a

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copy of the notice referred to in subsection (2)(a) shall be evidence that subsection (2) has been complied with and of the contents of such notice.

[Section 18 amended by No. 15 of 1988 s. 8; No. 84 of 2004 s. 82.]

19. Return or application of deposit where bail dispensed with

- (1) If an accused appears at the time and place notified to him under section 18(2)(a), or at a time to which the proceedings are adjourned as mentioned in subsection (3), he is entitled to have his deposit refunded to him, but, notwithstanding the foregoing, the court may order that the deposit be applied wholly or partly in or towards payment of any sum of money ordered to be paid in respect of the commission of the offence, or may direct that it be retained as mentioned in subsection (3).
- (2) If an accused fails to appear as mentioned in subsection (1), he does not commit an offence against section 51 but the court shall, if it is satisfied that section 18(2)(a) has been complied with, and whether or not the accused is convicted of the offence for which the appearance was required, order —
 - (a) that the deposit be applied wholly or partly in or towards payment of any sum of money ordered to be paid in respect of the commission of that offence (but without prejudice to the recovery of any balance remaining unpaid); and
 - (b) subject to subsection (3), that so much (if any) of the deposit as is not thereby disposed of be paid to the State.
- (3) If at the time notified to the accused under section 18(2)(a) the proceedings are adjourned or are thereafter further adjourned, whether or not the accused appears, the court may, instead of granting bail to him, from time to time so long as the accused remains unconvicted dispense with the requirement for bail as provided in section 18(1) and (2) and, notwithstanding section 18(2)(c) or subsection (2)(b), direct that the amount

already deposited be retained as security for any further appearance.

- (4) Where under subsection (3) proceedings are adjourned in the absence of the accused, the notice required by section 18(2)(a) may, notwithstanding that paragraph, be sent to the accused by the registrar of the court, and section 32(1), (2) and (3) shall apply to the notice and proof of receipt thereof.

[Section 19 amended by No. 65 of 2003 s. 121(3); No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

Part IV — Hearing of case for bail, parties, and evidence

20. Power to consider bail *in camera* and to prohibit publication

- (1) On the consideration by a judicial officer of a case for bail of an accused who is charged with an offence triable by jury, the judicial officer may, to avoid prejudice to either party, exercise the powers described in subsection (2), but shall only exercise the power in paragraph (b) thereof if he considers that the exercise of the power in paragraph (a) is not, on its own, likely to be sufficient to avoid prejudice.
- (2) The powers referred to in subsection (1) are to order —
 - (a) that no report, or summary, of any statement, or of any specified statement, made or furnished at the hearing shall be published by any means;
 - (b) that the bail application be heard *in camera*.
- (3) Where an order is made under subsection (2)(a), no report, or summary, of any statement referred to in that paragraph shall be published by any means —
 - (a) if the offence is one that may be tried on indictment, before a court decides that it is to be tried on indictment;
 - (b) if the accused is discharged from further proceedings upon the prosecution notice or indictment brought against him for the offence, before he is so discharged; or
 - (c) if the accused is tried on indictment for the offence, before the trial is ended.
- (4) A person who, except with lawful excuse, fails to comply with an order made under this section commits an offence.

Penalty: \$1 000.

[Section 20 amended by No. 50 of 2003 s. 37(2); No. 4 of 2004 s. 58; No. 84 of 2004 s. 11 and 82.]

21. Parties

- (1) The parties to proceedings on a case for bail are the prosecutor and the accused and, subject to subsection (2), no other person shall be a party to, or be represented at, the proceedings.
- (2) Nothing in subsection (1) affects the right of —
 - (a) the Attorney General to apply for leave, or be an appellant, under Part 2 of the *Criminal Appeals Act 2004*;
 - (b) the State Solicitor or the Deputy Director of Public Prosecutions (Commonwealth) to receive notice and be heard under section 7A(2); or
 - (c) an officer referred to in section 33 of the *Children's Court of Western Australia Act 1988* to be present at and participate in proceedings concerning a child under that section.

[Section 21 amended by No. 15 of 1988 s. 9; No. 49 of 1988 s. 84; No. 33 of 1989 s. 18; No. 31 of 1993 s. 7; No. 65 of 2003 s. 88(3); No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82.]

22. Evidence

A judicial officer or authorised person may in considering any case for bail receive and take into account such information as he thinks fit whether or not the same would normally be admissible in a court of law.

23. Accused not bound to supply information

An accused is not obliged to complete, or furnish information for, the prescribed form referred to in section 8(1)(b), or for any revision thereof, or to furnish any information, whether on oath or otherwise, for the purpose of having his case for bail considered.

[Section 21 amended by No. 84 of 2004 s. 82.]

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24. Information may be referred to police officer for verification or for report

- (1) A judicial officer or authorised officer who is called upon to consider a case for bail may —
 - (a) request that any information placed before the judicial officer or authorised officer by the accused for the purposes of the case be verified by a police officer, and to that end may refer to a police officer the prescribed form mentioned in section 8(1)(b), after it has been completed or revised;
 - (b) request that a report on any matter mentioned in Part C of Schedule 1, so far as it applies to an accused whose case is being or to be considered, be made by a police officer.
- (2) Where a reference or request is made under subsection (1) a police officer shall, as soon as is practicable —
 - (a) make a report to the judicial officer or the authorised officer accordingly; and
 - (b) furnish a copy of the report to the accused or his solicitor or counsel.

[Section 24 inserted by No. 61 of 1990 s. 6; amended by No. 45 of 1993 s. 12; No. 84 of 2004 s. 11 and 82.]

24A. Information may be referred to community corrections officer for verification or for report

- (1) A judicial officer who is called upon to consider a case for bail may refer to a community corrections officer any matter referred to in section 24(1) and may request a community corrections officer to do any matter referred to in that section.
- (2) A judicial officer who is called upon to consider a case for bail and who desires to impose a home detention condition as a condition on a grant of bail, shall request that a report be made

by a community corrections officer about the suitability of the accused to be subject to a home detention condition.

- (3) Where a reference or a request is made under subsection (1) or a report is requested under subsection (2) a community corrections officer shall, as soon as is practicable, make a report to the judicial officer and, at the discretion of the judicial officer, copies may be made available to the prosecution or to the accused or his solicitor or counsel.
- (4) Where a community corrections officer makes a report that an accused is suitable to be subject to a home detention condition, the officer shall annex to the report and provide to the accused or his solicitor or counsel, a list of those conditions in rules made under section 50L that may be applied to the accused by the CEO (Justice) while the accused is subject to the home detention condition.

[Section 24A inserted by No. 61 of 1990 s. 7; amended by No. 31 of 1993 s. 9; No. 84 of 2004 s. 11 and 82.]

25. Protection of accused as to information given for bail purposes

A statement made by an accused to a judicial officer or authorised officer for the purpose of a decision whether bail should be granted to him for any appearance in court for an offence shall not be admissible in evidence against him at his trial for that offence.

[Section 25 amended by No. 84 of 2004 s. 82.]

26. Record of decision and reasons

- (1) A bail record form shall be completed by an authorised officer or a justice if he —
- (a) refuses to grant bail to an accused;
 - (b) grants bail to an accused in the circumstances referred to in clause 3 of Part B of Schedule 1; or

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- (c) imposes any condition on a grant of bail and it appears to him that the accused is dissatisfied with the condition.
- (2) Where a judicial officer, other than a justice —
 - (a) refuses to grant bail to an accused; or
 - (b) imposes any condition on a grant of bail and it appears to him that the accused is dissatisfied with the condition,a record of the decision and of the reasons therefor shall be made.
- (3) The accused, the prosecutor or an intending prosecutor shall be entitled, upon request, to be furnished with a copy of the bail record form or, where subsection (2) applies, of the record made.
- (4) For the purposes of this section —
 - (a) references to a justice do not include a magistrate or a Judge of the District Court or the Supreme Court or the Children's Court who is a justice; and
 - (b) a bail record form is a prescribed form designed to contain a summary of the matters relevant to the decision as to the bail of an accused, including those matters set out in Part C of Schedule 1, the decision made, and the reasons for the decision.

[Section 26 inserted by No. 15 of 1988 s. 10; amended by No. 49 of 1988 s. 85; No. 45 of 1993 s. 12; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

27. Transmission of relevant papers to court

- (1) An authorised officer and a judicial officer who consider an accused's case for bail for an appearance for an offence, an authorised police officer who dispenses with bail under section 18, and a person before whom a bail undertaking or a surety undertaking is entered into shall ensure that the relevant papers are sent as soon as is practicable, to the court before which the accused is required to appear.

- (2) In subsection (1) “**the relevant papers**” in relation to any particular officer or person means such papers as are prescribed to be sent by that officer or person.

[Section 27 amended by No. 84 of 2004 s. 82.]

27A. Transmission of papers to CEO (Justice)

A judicial officer who grants bail subject to a home detention condition shall ensure that a copy of the bail record form and of the bail undertaking are sent as soon as is practicable to the CEO (Justice).

[Section 27A inserted by No. 61 of 1990 s. 8; amended by No. 31 of 1993 s. 9.]

Part V — Bail undertakings

28. Bail undertaking

- (1) A person shall not be released on bail for an appearance in court unless he has entered into a bail undertaking for that appearance or is deemed to have done so under section 31(3).
- (2) A bail undertaking is an undertaking in writing by an accused in the prescribed form —
 - (a) that he will appear at a time and place specified, or deemed by section 31(3) to be specified, in the undertaking;
 - (b) that if he fails to appear at that time and place he will as soon as is practicable —
 - (i) notify the registrar of the court at which he is required to appear of the cause of his failure; and
 - (ii) appear at that court when the court is sitting;
 - (c) that he will comply with such conditions as may be imposed on him under clause 2 of Part D of Schedule 1;
 - (d) that he will comply with any home detention condition which may be imposed as a condition on a grant of bail to him pursuant to clause 3 of Part D of Schedule 1,and containing any agreement as to forfeiture of money by the accused which may be required pursuant to clause 1 of that Part.
- (3) A bail undertaking for any appearance may be entered into in respect of more than one offence.
- (4) The undertakings mentioned in subsection (2)(a) and (b) are, subject to section 34, enforceable under sections 51, 57 and 58.

[Section 28 amended by No. 61 of 1990 s. 9; No. 45 of 1993 s. 12; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

29. Before whom bail undertaking may be entered into

A bail undertaking need not be entered into before the judicial officer or authorised officer who granted bail but may be entered into before any of the following persons —

- (a) a judicial officer;
- (b) the Principal Registrar or a Registrar of the Supreme Court;
- (c) the Registrar or a Deputy Registrar of the District Court;
- (d) a registrar of the Magistrates Court;
- (da) a registrar of the Children's Court;
- (e) a coroner's registrar within the meaning of the *Coroners Act 1996*;
- (f) an authorised police officer;
- (g) an associate of a Judge of the Supreme Court or of the District Court or of the Children's Court;
- (h) where the accused is in prison, any person for the time being in charge of the prison;
- (i) where the accused is a child, any authorised community services officer.

[Section 29 amended by No. 15 of 1988 s. 11; No. 49 of 1988 s. 86; No. 2 of 1996 s. 61; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

30. Duties of person before whom bail undertaking is entered into

- (1) The person before whom a bail undertaking is to be entered into by an accused shall before it is entered into —
 - (a) (i) read the undertaking to the accused; or
 - (ii) be informed by the accused that the accused has read it; or
 - (iii) if necessary, have the undertaking translated to the accused;
- and

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- (b) ensure that all conditions which are to be complied with before the release of the accused have been complied with.
- (2) The person before whom a bail undertaking is entered into by an accused shall give to him, or cause to be given to him —
 - (a) a copy of the bail undertaking as duly completed; and
 - (b) a notice in writing in the prescribed form showing —
 - (i) his obligations pursuant to the undertaking; and
 - (ii) the consequences of his failure to comply with them.
- (3) The person before whom a bail undertaking is entered into by an accused shall enquire of the accused whether he requires the notice referred to in subsection (2)(b) to be read or translated to him and shall take such steps as are necessary to comply with any such requirement of the accused.

[Section 30 inserted by No. 15 of 1988 s. 12; amended by No. 84 of 2004 s. 82.]

31. Different time and place for appearance may be substituted

- (1) A different time or a different time and place may be substituted in accordance with this section for the time and place for appearance specified, or deemed by this section to be specified, in a bail undertaking.
- (2) A different time, or a different time and place, for the appearance by the accused may be substituted as mentioned in subsection (1) —
 - (a) upon an adjournment of proceedings at which the accused is present, by the judicial officer, if he has power to grant bail for that appearance, fixing a time and place for the resumed proceedings and notifying the accused orally thereof;
 - (b) upon an adjournment of proceedings from which the accused is absent for reasonable cause, by the judicial

officer, if he has power to grant bail for that appearance, fixing a time and place for the resumed proceedings and directing the registrar of the court to give written notice thereof to the accused;

(c) where —

(i) a Judge of the Supreme Court or a Judge of the Children's Court has granted bail to an accused under section 15; and

(ii) a judicial officer, other than such a Judge, has committed the accused to the Supreme Court,

by a Judge of the Supreme Court notifying the accused orally, or directing the registrar of the court to give written notice to the accused of the time or time and place for the proceedings;

(d) where —

(i) a Judge of the Supreme Court or a Judge of the Children's Court has granted bail to an accused under section 15;

[(ii) deleted]

(iii) the judicial officer is satisfied that there has been no material change in the facts or circumstances which applied on the grant of bail,

by the judicial officer notifying the accused orally, or directing the registrar of the court to give written notice to the accused, of the time or time and place for the resumed proceedings;

(e) upon a committal to the Supreme Court or District Court, by a judicial officer, if he has power to grant bail for that appearance, fixing a specified day in a specified sitting or session of that court and directing the registrar of the court to give written notice thereof to the accused;

(f) where an accused has been committed for trial in the Supreme Court or the District Court in a specified sitting

or session thereof or on a specified day in a specified sitting or session thereof, by an officer of the court fixing a time for the trial in that sitting or session and giving written notice thereof to the accused;

- (g) if the parties agree to a different time or a different time and place for the proceedings, by an officer of the court giving written notice thereof to the accused.
- (3) Where a different time or a different time and place is notified to an accused pursuant to subsection (2) the bail undertaking shall be deemed to be amended to specify that time or that time and place for appearance, and the terms and conditions thereof shall continue to apply as so amended as if the accused had entered into the bail undertaking in that form.
- (4) Where the power in subsection (2)(b) is exercised upon an adjournment of proceedings the right of the accused to be at liberty under section 11(1) does not lapse by reason only that there is an interval between the adjournment of the proceedings and the time when he is notified of the time and place for the resumed proceedings.

[Section 31 amended by No. 15 of 1988 s. 13; No. 49 of 1988 s. 87; No. 27 of 2002 s. 21; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

32. Giving and proof of notices under section 31

- (1) A written notice to an accused under section 31(2), shall be given to him personally or sent to him by registered post or telegram at his address appearing in his bail undertaking or notified under section 60.
- (2) Without limiting section 75(2) of the *Interpretation Act 1984*, “**registered post**” in subsection (1) includes any method of post whereby an acknowledgment of receipt is obtained from the person to whom a letter is addressed; and if a notice is sent to a person by that method, production of an acknowledgment

purporting to be signed by that person shall be evidence of his receipt of the same.

- (3) If notice is sent by registered post (otherwise than as mentioned in subsection (2)) or by telegram it shall be presumed, unless the contrary is shown, to have been received and at the time when, in the ordinary course of events, the letter or telegram would have been delivered.
- (4) The judicial officer who under section 31(2)(a) notifies an accused of the time and place for resumed proceedings shall endorse on the accused's bail undertaking a certificate showing details of such time and place and that he notified the accused thereof.
- (5) In any proceedings —
 - (a) a document purporting to be a copy of a notice referred to in subsection (1) shall be evidence of the terms of the notice;
 - (b) an endorsement on a bail undertaking purporting to be a certificate referred to in subsection (4) shall be evidence of the matters appearing therein without proof of the signature of the judicial officer who made it.

[Section 32 amended by No. 74 of 1984 s. 12; No. 84 of 2004 s. 82.]

33. Judicial officer may order accused to enter into bail undertaking

- (1) Where bail is granted to an accused by a judicial officer, whether with or without any condition being attached thereto, and the accused fails or refuses to enter into a bail undertaking in terms of the grant, the judicial officer who granted bail may, subject to subsection (3), order that the accused enter into the bail undertaking within such time as he may specify.
- (2) If an accused does not comply with an order under subsection (1), the judicial officer may, subject to

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subsection (3), further order that a bail undertaking, in such form as the judicial officer may approve, shall be deemed to have been entered into by the accused on the date of such further order, and thereupon that undertaking shall be treated as if it had been duly entered into by the accused for the purposes of this Act.

- (3) A judicial officer shall not —
- (a) make an order under subsection (2) unless he has personally informed the accused of the terms and effect of the order made under subsection (1);
 - (b) exercise any of the powers conferred on him by this section unless he is satisfied that the accused has the capacity to enter into and comply with the undertaking.

[Section 33 amended by No. 84 of 2004 s. 82.]

34. Cessation and suspension of bail undertaking

A bail undertaking ceases to have effect —

- (a) upon the revocation of bail under section 55;
- (b) upon the death of the accused, but only if no order has been made under section 57;
- (c) subject to section 31, upon the appearance in court by the accused as required by his bail undertaking;
- (d) upon the discharge of the accused according to law from any further proceedings for the offence, or all of the offences, to which the bail undertaking relates;
- (e) during any period before the time at which the accused is required to appear in court when he is in custody for any other offence or reason.

[Section 34 amended by No. 84 of 2004 s. 82.]

Part VI — Sureties and surety undertakings

35. Meaning of surety and surety undertaking

- (1) A surety is a person who, as a condition of the grant of bail to an accused, enters into a surety undertaking, that is to say, undertakes in writing that he will, subject to this Act, forfeit a specified amount of money if the accused fails to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) and (b)(ii).
- (2) A surety is required to be approved under section 40.
- (3) A forfeiture of money by a surety as mentioned in subsection (1) is enforceable as provided in section 49 but not otherwise.

[Section 35 amended by No. 84 of 2004 s. 82.]

36. Authority to approve sureties

- (1) The decision whether an applicant should be approved as a surety in any case shall be made, on notice to the prosecutor in the prescribed manner —
 - (a) where a judicial officer imposed the requirement for a surety in that case, by that judicial officer or by a judicial officer whose jurisdiction is co-extensive with that judicial officer's;
 - (b) where an authorised officer imposed the requirement for a surety in that case, by that or any other authorised officer; or
 - (c) where subsection (2) applies, by an officer of the court authorised under that subsection.
- (2) A judicial officer when granting bail to an accused subject to a requirement for a surety or sureties may authorise a justice, a registrar of any court or an associate of a Judge of the Supreme Court or of the District Court or of the Children's Court, by name or office, to decide whether any applicant should be approved as a surety in that case.

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[Section 36 amended by No. 15 of 1988 s. 14; No. 49 of 1988 s. 88; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

37. Proposed surety to receive certain information and prescribed form for completion

- (1) Whenever an officer referred to in section 36(1) is called upon to decide whether an applicant should be approved as a surety, he shall ensure that the applicant is, or has been, given —
 - (a) a duly completed notice in the prescribed form showing details of the terms and conditions on which bail has been granted to the accused in whose case the surety is required;
 - (b) such information in writing as to the effect of this Act in relation to the rights, obligations and liabilities of sureties as is prescribed for the purposes of this paragraph; and
 - (c) a prescribed form of declaration for completion designed to disclose to the officer all information relevant to the decision.
- (2) Before he makes his decision, the officer shall ensure that the applicant furnishes to him the declaration referred to in subsection (1)(c) duly completed.

[Section 37 amended by No. 84 of 2004 s. 82.]

38. Persons disqualified from being sureties

- (1) A person is not qualified to be approved as a surety if —
 - (a) he is under 18 years of age; or
 - (b) subject to subsection (2), the value of his assets, after provision is made for his debts and liabilities, is less than the amount which he might become liable to forfeit under his proposed surety undertaking; or
 - (c) there are reasonable grounds for believing that he has been, or will be, indemnified by any person against any forfeiture referred to in paragraph (b).

- (2) Subsection (1)(b) does not apply where the applicant for approval is required to give security sufficient to cover the amount which he might become liable to forfeit.

39. Matters relevant to approval of sureties

In determining whether an applicant is suitable to be a surety an officer referred to in section 36(1) shall have regard to all matters which appear to him to be relevant including, as well as any others, the following —

- (a) the character and antecedents of the applicant;
- (b) his proximity to or connection with the accused, whether by kinship, place of residence or otherwise; and
- (c) his ability to pay, or give security for, the amount which he might become liable to forfeit under his proposed surety undertaking, without excessive hardship to himself or his dependants.

[Section 39 amended by No. 84 of 2004 s. 82.]

40. Decision on application by proposed surety

- (1) Upon receipt of the duly completed declaration referred to in section 37(1)(c), the officer shall, after making any enquiries which he thinks desirable, make a decision, as soon as is practicable, either to approve or not to approve of the applicant as a surety in that case.
- (2) If the officer does not approve of the applicant as a surety he shall record the reasons for his doing so and inform the applicant and the accused thereof, or cause them to be so informed.

[Section 40 amended by No. 15 of 1988 s. 15; No. 84 of 2004 s. 82.]

41. Finality of decision to refuse approval

- (1) A decision by an officer referred to in section 36(1) not to approve of the applicant as a surety is final unless the applicant becomes entitled to re-apply under subsection (2).
- (2) An applicant who is refused approval as a surety may re-apply for approval to the officer who made that decision, or if he is absent or unavailable to another officer acting in his position, on the ground that —
 - (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since he was refused approval; or
 - (b) he failed to adequately present his case for approval on his previous application,

and the provisions of this Act, except section 37, shall, with necessary modifications, apply to any such further application and the decision thereon.

42. Before whom surety undertaking may be entered into

A surety undertaking need not be entered into before the officer who approved the surety but may be entered into before any person before whom the accused for whose appearance the surety is approved might enter into his bail undertaking under section 29.

[Section 42 amended by No. 84 of 2004 s. 82.]

43. Duties of persons before whom surety undertaking is entered into

A person before whom a surety undertaking is to be entered into —

- (a) shall —
 - (i) read to the surety;
 - (ii) be informed by the surety that he has read; or

- (iii) if necessary, have translated to the surety, the documents described in section 37(1)(a) and (b), and the surety undertaking, before the surety enters into the undertaking;
- (b) shall ensure that all conditions which are to be complied with by the surety have been complied with before the surety enters into his undertaking; and
- (c) shall give to the surety a copy of his surety undertaking as duly completed.

[Section 43 amended by No. 74 of 1984 s. 13.]

44. Surety undertaking extends to adjourned hearing only by consent

- (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 pursuant to section 31 unless —
 - (a) his surety undertaking contains a provision that it does so extend; and
 - (b) where applicable, pursuant to subsection (2), he has received notice as mentioned in that subsection.
- (2) A surety undertaking may, at the option of the surety, also contain a provision that, where a different time or a different time and place for the accused's appearance is substituted pursuant to section 31, the surety's liability shall only arise if he is given notice, as soon as is practicable, of the different time or the different time and place.

[Section 44 amended by No. 74 of 1984 s. 14; No. 84 of 2004 s. 82.]

45. Giving and proof of notices under section 44

- (1) For the purposes of section 44(2) notice to a surety may be given —
 - (a) orally to the surety by the judicial officer when he fixes a time and place for the proceedings or the resumed proceedings;
 - (b) in the prescribed form to the surety personally; or
 - (c) by the registrar of the court sending the prescribed form by registered post or telegram to him at his address appearing in his undertaking or notified under section 60.
- (2) Section 32(2) and (3) shall apply to the service and proof of service of a notice under subsection (1)(c).
- (3) A judicial officer who, under subsection (1)(a), notifies a surety of the time and place for the proceedings or the resumed proceedings shall endorse on the surety's undertaking a certificate showing details of such time and place and that he notified the surety thereof.
- (4) In any proceedings —
 - (a) a document purporting to be a copy of a notice referred to in section 44(2) shall be evidence of the terms of the notice;
 - (b) an endorsement on a surety undertaking purporting to be a certificate referred to in subsection (3) shall be evidence of the matters appearing therein without proof of the signature of the judicial officer who made it.

[Section 45 amended by No. 74 of 1984 s. 15; No. 59 of 2004 s. 141.]

46. Power of surety to apprehend accused

- (1) A surety may arrest an accused for whose appearance in court he has entered into a surety undertaking if the surety has reasonable grounds to believe that —

- (a) the accused —
 - (i) is not likely to comply with the requirements of his bail undertaking mentioned in section 28(2)(a) or (b);
 - (ii) is, or has been, in breach of any condition of his bail undertaking mentioned in section 28(2)(c);
or
 - (iii) is, or has been, in breach of a home detention condition mentioned in section 28(2)(d);and
 - (b) it is not expedient to invoke the assistance of a police officer under section 54(1) because the delay occasioned by doing so would defeat the purpose of that section.
- (2) A surety who arrests an accused under subsection (1) shall, as soon as is practicable, deliver him into the custody of a police officer and thereafter he shall be dealt with under section 54(4) and section 55, and those provisions shall apply, as if he had been arrested by a police officer under section 54(2).

[Section 46 amended by No. 74 of 1984 s. 16; No. 61 of 1990 s. 10; No. 84 of 2004 s. 82.]

47. Cessation and suspension of surety undertaking

A surety undertaking ceases to have effect —

- (a) upon the revocation of bail under section 55(1);
- (b) upon the release of an accused under section 55(2) if the surety does not consent to the continuance in force of his surety undertaking;
- (c) upon its being cancelled under section 48(4) (and as from the time fixed therefor) by an appropriate judicial officer;
- (d) upon the death of the surety, but only if no order under section 49(1) has been made before then;

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- (e) subject to sections 31 and 44, upon the appearance in court by the accused as required by his bail undertaking;
- (f) upon the discharge of the accused according to law from any further proceedings for the offence, or all of the offences, to which the surety undertaking relates; or
- (g) during any period before the time at which the accused is required to appear in court when he is in custody for any other offence or reason.

[Section 47 amended by No. 84 of 2004 s. 82.]

48. Surety may apply for cancellation of his undertaking

- (1) A surety may apply to an appropriate judicial officer for cancellation of his undertaking.
- (2) An application under subsection (1) may be made at any time before that specified, or deemed by section 31(3) to be specified, in the accused's bail undertaking for his appearance in court.
- (3) Upon an application being made under subsection (1) an appropriate judicial officer shall cause the accused to appear before him or another such officer and may issue a warrant or summons for that purpose.
- (4) Upon the appearance of the accused before the time mentioned in subsection (2) an appropriate judicial officer shall —
 - (a) cancel the surety undertaking; and
 - (b) exercise one of the powers set out in section 55(1)(d) or (e).
- (5) An application under subsection (1) must be made, and proceedings on it are to be conducted —
 - (a) in a court of summary jurisdiction — in accordance with regulations made under the *Criminal Procedure Act 2004*;

- (b) in the Supreme Court or the District Court — in accordance with rules of court made under the *Criminal Procedure Act 2004*.

[Section 48 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 7 and 82.]

49. Forfeiture of money under surety's undertaking

- (1) Where an accused has failed to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b)(ii) the following provisions of this section apply for the purpose of enforcing payment to the State of any sum thereupon payable by a surety in terms of his surety undertaking —
- (a) the registrar of the court before which the accused failed to appear may apply to an appropriate judicial officer for an order that the sum be paid;
 - (b) that judicial officer shall summon the surety to appear before the court in which the judicial officer exercises jurisdiction to show cause why an order of forfeiture should not be made under this section;
 - (c) on the hearing of the application and upon proof of the surety's liability in terms of his undertaking, the judicial officer shall order forfeiture of the full amount specified in the undertaking unless the surety attends at the hearing and shows to the satisfaction of the judicial officer that there was reasonable cause for the failure of the accused to comply with the requirement to which the application relates;
 - (d) notwithstanding paragraph (c), the judicial officer may decline to make an order under that paragraph or may order forfeiture in part only where the surety attends and shows to the satisfaction of the judicial officer —
 - (i) that, by reason of a change of circumstances since the undertaking was entered into, an order for forfeiture, or for forfeiture in full (as the case

- may be), would cause excessive hardship to the surety or his dependants; and
- (ii) that such hardship would not be relieved by the exercise of one or more of the powers conferred by section 59;
- (e) an order may be made under this section whether or not the accused has been convicted of an offence against section 51(1) or (2) but if, after an order has been made, the surety satisfies the Governor that new facts have been discovered or new circumstances have arisen which show that there was reasonable cause for the failure of the accused as mentioned in paragraph (c), the Governor may exercise the power in section 139 of the *Sentencing Act 1995* as if the forfeiture were one to which that section applied.
- (2) An application under subsection (1) must be made, and proceedings on it are to be conducted —
- (a) in a court of summary jurisdiction — in accordance with regulations made under the *Criminal Procedure Act 2004*;
- (b) in the Supreme Court or the District Court — in accordance with rules of court made under the *Criminal Procedure Act 2004*.
- (3) Without prejudice to the recovery of such an amount as a civil debt due to the State, any amount to be paid under an order made under this section is to be paid, and its payment may be enforced under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, unless an order has been made under subsection (4).
- (4) If under this section the Supreme Court or the District Court makes an order requiring the payment of money, the court may make an order under section 59 of the *Sentencing Act 1995* in respect of the amount payable and for that purpose that section,

with any necessary changes, applies as if the amount were a fine imposed on the surety.

[Section 49 amended by No. 74 of 1984 s. 17; No. 92 of 1994 s. 5; No. 78 of 1995 s. 8; No. 65 of 2003 s. 121(3); No. 74 of 2003 s. 29; No. 59 of 2004 s. 141; No. 84 of 2004 s. 8, 11 and 82.]

50. Offence to indemnify surety

- (1) If a person indemnifies, or agrees to indemnify, a surety or proposed surety against any liability which the surety or proposed surety may incur under this Act (including this section) he and the surety or proposed surety and any person with whom he agrees as aforesaid each commits an offence.
Penalty: \$1 000 or imprisonment for 12 months or both.
- (2) An offence is committed under subsection (1) —
 - (a) whether the agreement is made before or after the surety undertaking is entered into and whether or not a proposed surety actually becomes a surety; and
 - (b) whether the compensation is to be in money or in money's worth.
- (3) An offence is not committed under subsection (1) by a surety or proposed surety if he shows —
 - (a) that he had no knowledge of an agreement within the meaning of subsection (1) proposed to be entered into between 2 other persons; or
 - (b) that having such knowledge he took all steps reasonably available to him to prevent the agreement being entered into.

[Section 50 amended by No. 74 of 1984 s. 18.]

Part VIA — Administration of home detention conditions

[Heading inserted by No. 61 of 1990 s. 11.]

50A. Powers of CEO (Justice)

The CEO (Justice) has all of the powers conferred under this Act on a community corrections officer and may review, vary, or rescind a direction given by a community corrections officer.

[Section 50A inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9.]

[50B. Repealed by No. 78 of 1995 s. 8.]

50C. Powers and duties of community corrections officers

- (1) A community corrections officer may give such reasonable directions to an accused subject to a home detention condition as are necessary for the proper administration of the condition and any other condition imposed on the grant of bail to the accused including, without limiting the generality of the foregoing, directions as to —
 - (a) when the accused may leave the place where he is required by the home detention condition to remain;
 - (b) the period of any authorised absence from the place where he is required by the home detention condition to remain;
 - (c) when the accused shall return to the place where he is required by the home detention condition to remain;
 - (d) the method of travel to be used by the accused during any absence from the place where he is required by the home detention condition to remain; and
 - (e) the manner in which the accused shall report his whereabouts.

- (2) For the purpose of ascertaining whether or not an accused is complying with a home detention condition or any direction given pursuant to subsection (1), a community corrections officer may, at any time —
- (a) enter or telephone the place where the accused is required by a home detention condition to remain;
 - (b) enter or telephone the accused's place of employment or any other place where the accused is permitted or required to attend; or
 - (c) question any person at any place referred to in paragraph (a) or (b).
- (3) A person who —
- (a) hinders a person exercising powers under subsection (2); or
 - (b) fails to answer a question put pursuant to subsection (2)(c) or gives an answer that the person knows is false or misleading in a material particular,
- commits an offence.
- Penalty: \$2 000 and imprisonment for 12 months.
- (4) A community corrections officer —
- (a) shall keep such records and make such returns and reports in relation to accused persons subject to home detention conditions as the CEO (Justice) directs; and
 - (b) shall make any records relating to a defendant subject to a home detention condition available on the request of the CEO (Justice) to him.

[Section 50C inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 50 of 2003 s. 37(3); No. 84 of 2004 s. 82, 83(3).]

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50D. Powers of members of the Police Force

- (1) For the purpose of ascertaining whether or not an accused is complying with a home detention condition, a member of the Police Force may —
 - (a) require the accused to produce a copy of his bail undertaking and any notice by the CEO (Justice) under section 50E(a) for inspection; and
 - (b) require the accused to explain why he is absent from the place where he is required by the home detention condition to remain.

- (2) An accused who fails to comply with subsection (1)(a) or who fails to explain when required to do so under subsection (1)(b) or who gives an explanation that the accused knows is false or misleading in a material particular, commits an offence.

Penalty: \$2 000.

[Section 50D inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 50 of 2003 s. 37(4) ; No. 84 of 2004 s. 82.]

50E. CEO (Justice) may substitute a different place of detention and apply conditions

The CEO (Justice) may, at any time, by notice in writing given to an accused granted bail subject to a home detention condition —

- (a) substitute a different place for the place where an accused is required by a home detention condition to remain;
- (b) require the accused to comply with such of the conditions specified in the list provided to the accused under section 24A(4) as are specified in the notice.

[Section 50E inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 84 of 2004 s. 82.]

50F. CEO (Justice) may revoke bail

- (1) Where a home detention condition has been imposed as a condition on a grant of bail to an accused the CEO (Justice) may, in his absolute discretion, by instrument signed by him and if practicable, given to the accused, revoke the bail.
- (2) Without limiting the generality of subsection (1), the power to revoke bail may be exercised where the accused —
 - (a) is not likely to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b); or
 - (b) is, or has been, or is likely to be in breach of any condition of his bail undertaking mentioned in section 28(2)(c).
- (3) Subject to subsection (4), where the CEO (Justice) revokes bail he shall include a statement of his reasons for the cancellation in the instrument cancelling the bail.
- (4) Where the CEO (Justice) is of the opinion that it would be in the interest of the accused or any other person, or the public, to withhold from the accused any or all of the reasons referred to in subsection (3), the CEO (Justice) may so withhold the reason or reasons.
- (5) Where the CEO (Justice) revokes bail, he may, whenever necessary, issue a warrant directed to all members of the Police Force to have the accused arrested and brought before an appropriate judicial officer.

[Section 50F inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 84 of 2004 s. 82.]

50G. Procedure on arrest after revocation of bail

- (1) An accused arrested pursuant to a warrant issued under section 50F shall be taken as soon as is practicable before an appropriate judicial officer unless he is arrested less than 24 hours before the time at which he is due to appear in

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accordance with his bail undertaking, in which case he shall be held in custody and brought before an appropriate judicial officer at that time.

- (2) The judicial officer before whom an accused appears under this section may —
- (a) remand the accused in custody to appear at the time and place specified, or deemed by section 31(3) to be specified, in his bail undertaking; or
 - (b) grant fresh bail to the accused in accordance with this Act, other than clause 2 of Part B of Schedule 1.

[Section 50G inserted by No. 61 of 1990 s. 11; amended by No. 45 of 1993 s. 12; No. 84 of 2004 s. 82.]

50H. Exclusion of the rules of natural justice

The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this Part by the CEO (Justice).

[Section 50H inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9.]

50J. Delegation by CEO (Justice)

The CEO (Justice) may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to any person any power or duty under this Part, other than this power of delegation.

[Section 50J inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9.]

50K. Retrieval of monitoring equipment

If under rules made under section 50L any device or equipment has been installed at the place where an accused is required by a

home detention condition to remain, section 118 of the *Sentence Administration Act 2003* applies.

[Section 50K inserted by No. 78 of 1995 s. 8; amended by No. 50 of 2003 s. 29(3); No. 84 of 2004 s. 82.]

50L. Rules

- (1) The CEO (Justice) may, with the approval of the Minister, make rules for the purposes of this Part which may provide for the manner of ensuring that accused persons are complying with home detention conditions and for conditions to be applied to accused persons granted bail subject to home detention conditions including conditions —
 - (a) requiring a defendant to wear any device;
 - (b) requiring a defendant to permit the CEO (Justice) to install any device or equipment at the place where the defendant is required by a home detention condition to remain.
- (2) Rules made under this section may confer a discretionary authority on any person or class of persons.
- (3) Sections 41 and 42 of the *Interpretation Act 1984* do not apply to rules made under this section.

[Section 50L inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 84 of 2004 s. 82 and 83(3).]

Part VII — Enforcement of bail undertakings

51. Offence to fail to comply with bail undertaking

- (1) An accused who, without reasonable cause, fails to comply with the requirement of his bail undertaking mentioned in section 28(2)(a) commits an offence.
- (2) An accused who fails to comply with the requirement of his bail undertaking mentioned in section 28(2)(b)(ii) commits an offence.
- (2a) An accused —
 - (a) whose bail undertaking includes any condition imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D of Schedule 1; and
 - (b) who fails to comply with the condition,commits an offence.
- (3) An accused shall not be convicted in his absence of an offence against this section.
- (4) An accused who is charged with an offence against subsection (1) or (2) may be convicted of the other of those offences if that other offence is proved by the evidence.
- (5) A prosecution for an offence against subsection (1), (2) or (2a) may be brought at any time.
- (6) A person who is convicted of an offence against subsection (1), (2) or (2a) is liable to a fine not exceeding \$10 000 or imprisonment for a term not exceeding 3 years, or both.
- (7) A court which convicts an accused of an offence against this section may, in addition to any penalty which it may impose, order that the accused pay such sum as it may fix in or towards defraying the costs and expenses of and consequent upon his apprehension following the failure to comply with his bail undertaking for which he was convicted.

- (8) An order made under subsection (7) —
- (a) shall specify to whom and in what manner the sum shall be paid; and
 - (b) may be enforced as though the sum were a penalty imposed under this section.

[Section 51 amended by No. 54 of 1998 s. 9; No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82.]

52. Provisions as to summary proceedings before superior courts for an offence under section 51

- (1) This section applies, notwithstanding any other Act, 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 he fails to comply with his bail undertaking is the Supreme Court or the District Court.
- (2) Where this section applies, the accused shall be dealt with summarily for the offence and shall be so dealt with —
- (a) by a judge of the Supreme Court in any case where the accused was bound to appear before the General Division of the Supreme Court;
 - (ab) by a judge of appeal in any case where the accused was bound to appear before the Court of Appeal;
 - (b) by a Judge of the District Court in any case where the accused was bound to appear before that Court.
- (3) A prosecution for an offence which is to be dealt with under this section shall be commenced by the authorised officer (as defined in section 80 of the *Criminal Procedure Act 2004*) who was conducting the proceedings in which the accused failed to comply with his bail undertaking —
- (a) where subsection (2)(a) or (ab) applies, in the Supreme Court; and
 - (b) where subsection (2)(b) applies, in the District Court.

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- (4) Subject to section 51(3) and (5), a prosecution for an offence which is to be dealt with under this section is to be commenced and conducted under the *Criminal Procedure Act 2004* as if it were a prosecution of a simple offence in a court of summary jurisdiction.
- (5) If under section 51(6) or (7) the Supreme Court or the District Court imposes a pecuniary penalty the court may make an order under section 59 of the *Sentencing Act 1995* in respect of the amount payable.

[Section 52 amended by No. 92 of 1994 s. 6; No. 78 of 1995 s. 8; No. 54 of 1998 s. 10; No. 45 of 2004 s. 28(2) and (4); No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82.]

53. Appeals against decisions made under s. 52

- (1) A person who is dissatisfied with a decision (as defined in section 6 of the *Criminal Appeals Act 2004*) made under section 52 may, with the leave of the Court of Appeal, appeal against it.
- (2) For the purposes of subsection (1), Part 2 of the *Criminal Appeals Act 2004*, with any necessary changes, applies as if —
 - (a) the decision referred to in subsection (1) were a decision of a court of summary jurisdiction;
 - (b) a reference in that Part to a court of summary jurisdiction were a reference to the court that made the decision referred to in subsection (1); and
 - (c) a reference in that Part to commencing an appeal were a reference to applying for leave to appeal.
- (3) Despite section 13(1) of the *Criminal Appeals Act 2004*, the appeal is to be dealt with by the Court of Appeal.

[Section 53 inserted by No. 45 of 2004 s. 28(3); amended by No. 84 of 2004 s. 11 and 82.]

54. Accused on bail may be taken before a judicial officer for variation or revocation of bail

- (1) A police officer may cause an accused who has been released on bail to appear before an appropriate judicial officer to show cause why his bail should not be varied or revoked if the police officer —
- (a) has reasonable grounds to believe, or is notified in writing by a surety for the accused that the surety has reasonable grounds to believe, that the accused —
 - (i) is not likely to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b);
 - (ii) is, or has been, or is likely to be in breach of any condition of his bail undertaking mentioned in section 28(2)(c); or
 - (iii) is, or has been, in breach of a home detention condition mentioned in section 28(2)(d);
 - (b) has reasonable grounds to believe that —
 - (i) any surety for the accused's appearance is no longer suitable under section 39 to be a surety, or is dead;
 - (ii) for any reason any security required under Part D of Schedule 1 is no longer sufficient; or
 - (iii) in a case where the accused has been granted bail for the purposes of an appeal, the accused has discontinued the appeal or has not prosecuted it with all due diligence.
- (2) For the purpose of causing an accused to appear before an appropriate judicial officer as provided in subsection (1) a police officer may —
- (a) arrest the accused without warrant and bring him before an appropriate judicial officer; or

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- (b) apply to an appropriate judicial officer for a summons or warrant on any ground specified in subsection (1).
- (3) An application under subsection (2)(b) must be made, and proceedings on it are to be conducted —
 - (a) in a court of summary jurisdiction — in accordance with regulations made under the *Criminal Procedure Act 2004*;
 - (b) in the Supreme Court or the District Court — in accordance with rules of court made under the *Criminal Procedure Act 2004*.
- (4) An accused arrested under this section shall be taken as soon as is practicable before an appropriate judicial officer unless he is arrested less than 24 hours before the time at which he is due to appear in accordance with his bail undertaking, in which case he shall be held in custody and brought before an appropriate judicial officer at that time.

[(5) repealed]

[Section 54 amended by No. 33 of 1989 s. 18; No. 61 of 1990 s. 12; No. 45 of 1993 s. 12; No. 59 of 2004 s. 141; No. 84 of 2004 s. 9, 11 and 82.]

55. Powers of judicial officer to revoke or vary bail

- (1) If the judicial officer before whom an accused appears under section 54 is satisfied that —
 - (a) the accused is not likely to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b);
 - (b) he is, or has been, or is likely to be, in breach of any condition of his bail undertaking mentioned in section 28(2)(c);
 - (ba) he is, or has been, in breach of a home detention condition mentioned in section 28(2)(d); or

- (c) any of the grounds set out in section 54(1)(b) has been established,
- he may —
- (d) revoke the bail and remand the accused in custody to appear at the time and place specified, or deemed by section 31(3) to be specified, in his bail undertaking; or
 - (e) revoke the bail and grant fresh bail to the accused in accordance with this Act, other than clause 2 of Part B of Schedule 1.
- (2) If the judicial officer before whom the accused so appears is not satisfied as to any of the matters mentioned in subsection (1)(a), (b), or (c) he shall release the accused on his existing bail undertaking and, with the consent in writing of the surety, on any existing surety undertaking.

[Section 55 amended by No. 61 of 1990 s. 13; No. 45 of 1993 s. 12; No. 84 of 2004 s. 82.]

56. Warrant for arrest of absconding accused

Where at any time after that specified in his bail undertaking for his appearance an accused has failed to comply with the requirements of his bail undertaking mentioned in section 28(2)(a) or (b), the court before which he was required to appear may issue a warrant to arrest the accused and bring him before that court or a court of like jurisdiction.

[Section 56 amended by No. 15 of 1988 s. 16; No. 84 of 2004 s. 82.]

57. Forfeiture of money under bail undertaking

- (1) Where an accused is convicted of an offence against section 51(1), (2) or (2a), the court by which he is convicted shall, whether or not an application is made therefor by the prosecutor, order that the full amount agreed to be forfeited, in the accused's bail undertaking, be forfeited to the State.

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- (2) Notwithstanding subsection (1), the court may decline to make an order thereunder or may order forfeiture in part only where the accused shows to the satisfaction of the judicial officer —
- (a) that, by reason of a change of circumstances since the bail undertaking was entered into, an order for forfeiture, or for forfeiture in full (as the case may be), would cause excessive hardship to the accused or his dependants; and
 - (b) that such hardship would not be relieved by the exercise of one of the powers conferred by section 59.
- (3) Without prejudice to the recovery of such an amount as a civil debt due to the State, any amount to be paid under an order made under this section is to be paid, and its payment may be enforced under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, unless an order has been made under subsection (4).
- (4) If under this section the Supreme Court or the District Court makes an order requiring the payment of money, the court may make an order under section 59 of the *Sentencing Act 1995* in respect of the amount payable and for that purpose that section, with any necessary changes, applies as if the amount were a fine imposed on the accused.

[Section 57 amended by No. 74 of 1984 s. 19; No. 92 of 1994 s. 7; No. 78 of 1995 s. 8; No. 54 of 1998 s. 11; No. 65 of 2003 s. 121(3); No. 84 of 2004 s. 82.]

58. Automatic forfeiture on expiration of one year after absconding

- (1) If after the expiration of one year from the day on which the accused is required to appear in court in accordance with the requirement of his bail undertaking mentioned in section 28(2)(a) he has not —
- (a) been arrested under section 56; or
 - (b) appeared in court in accordance with the requirement of his bail undertaking mentioned in section 28(2)(b)(ii); or

- (c) otherwise surrendered himself or been taken into custody to be dealt with on the charge or charges for which the bail undertaking was entered into,

the full amount specified in the bail undertaking shall, on the expiration of the said period, be forfeited to the State by virtue of this section without any order of the court or other formality.

- (2) Upon the occurrence of a forfeiture under subsection (1) any security given by the accused may be resorted to by the State as if an order of forfeiture had been made under section 57(1).

[Section 58 amended by No. 65 of 2003 s. 121(3); No. 84 of 2004 s. 82.]

Part VIII — Miscellaneous

59. Further power of judicial officer in relation to enforcement of undertakings

A court or an appropriate judicial officer who makes an order for forfeiture under section 49 or 57 may, when doing so, or at any time thereafter, further order —

- (a) that payment of any sum be made by specified instalments or be postponed to a specified date;
- (b) that any security given be applied in or towards payment of the sum forfeited; or
- (c) that the accused or the surety, as the case may be, do all such things and execute all such documents as may be necessary, or as may be specified in the order, for the purpose of vesting any security in the State or enabling the State to realize the same or to resort thereto to recover the sum forfeited,

and the court or an appropriate judicial officer may at any time vary or revoke an order made under paragraph (a), (b), or (c).

[Section 59 amended by No. 65 of 2003 s. 121(3); No. 84 of 2004 s. 82.]

60. Accused and surety to notify any change of address

Where —

- (a) an accused who has been released on bail; or
- (b) a surety,

changes his place of residence, employment, or business from that appearing on his bail undertaking or surety undertaking he shall forthwith, in writing, notify details of the change to the registrar of the court before which, at the time when the change occurs, the accused is required to appear, and if without reasonable cause he fails to do so he commits an offence.

Penalty: \$1 000.

[Section 60 amended by No. 50 of 2003 s. 37(5); No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

61. Offence of failing to bring arrested person before court or person able to grant bail

- (1) A person to whom this section applies commits an offence if, having arrested another for an offence, he wilfully and without reasonable excuse fails to take that other person, or cause him to be taken, as soon as is practicable —
- (a) before an authorised officer or judicial officer empowered by this Act to grant bail for that offence; or
 - (b) before a court.

Penalty: \$1 000 or imprisonment for 12 months or both.

- (2) This section applies to a person who —
- (a) is not empowered by this Act to grant bail for the offence or by reason of section 16; or
 - (b) being so empowered, elects to act under section 6(2a).

[Section 61 amended by No. 15 of 1988 s. 17.]

62. Offence to give false information for bail purposes

A person who for the purpose of obtaining —

- (a) a grant of bail for himself or a variation of the terms and conditions thereof; or
- (b) approval of himself as a surety,

makes any statement which he knows is false in a material particular, or recklessly makes any statement which is false in a material particular, commits an offence.

Penalty: \$1 000 or imprisonment for 12 months or both.

63. Protection of persons carrying out this Act

A person shall not be liable in civil proceedings on account of anything done, or omitted to be done, by him in good faith in

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the course of carrying out any provision of this Act, or purporting to be so done or omitted; but the liability (if any) of any other person (including the State or the Commonwealth) as his employer is not affected by this section and shall be determined as if it had not been passed.

[Section 63 amended by No. 65 of 2003 s. 121(4).]

64. Evidence of non-appearance, etc., by an accused

Where it is required for the purposes of this Act to prove —

- (a) that an accused did not appear before a particular court, at a particular place, on a particular day, at a particular time or during a particular period; or
- (b) the day, time or period when or during which an accused did appear before a particular court at a particular place,

a certificate as to any such matter, purporting to be signed by a judicial officer or registrar of the court before which the accused was required to appear, shall be evidence of the matter so certified.

[Section 64 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

65. Bail undertakings by minors

A bail undertaking entered into by a person who is under the age of 18 years shall bind him as if he were of full age.

66. Abolition of other powers to grant bail

- (1) Any power or duty that, at the commencement of this Act, exists apart from statute to grant bail to an accused awaiting an appearance in court for an offence, is abolished.
- (2) Subsection (1) has effect notwithstanding anything in section 16 of the *Supreme Court Act 1935*.
- (3) In subsection (1) “**statute**” means an Act of the Parliament of Western Australia, other than the *Supreme Court Act 1935*.

[Section 66 amended by No. 84 of 2004 s. 82.]

66A. Delegation by registrar

- (1) The registrar of a court may, either generally or as otherwise provided by the instrument of delegation, by instrument signed by him, delegate to an officer of that court any function conferred on him by or under this Act other than —
 - (a) this power of delegation; or
 - (b) any function that a judicial officer has required him to perform personally.
- (2) The superintendent of a detention centre may, either generally or as otherwise provided by the instrument of delegation, by instrument signed by him, delegate to an officer of the department of which the CEO (Justice) is the chief executive officer any function conferred on him by or under this Act, other than this power of delegation.

[Section 66A inserted by No. 15 of 1988 s. 18; amended by No. 49 of 1988 s. 89; No. 31 of 1993 s. 8; No. 59 of 2004 s. 141.]

67. Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, prescribing such things as are required or permitted by this Act to be prescribed or as it is necessary or expedient to prescribe for the purposes thereof.
- (2) Without limiting the generality of subsection (1) regulations may —
 - (a) make provision for or with respect to the making of applications —
 - (i) for or in relation to bail;
 - (ii) for the approval of sureties;
 - (iii) for the approval of security to be given by accused persons and sureties;

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- (iv) for the cancellation of a surety undertaking, and for the manner in which such applications are to be made and the procedure to be followed on such applications;
 - (b) for the purposes of clause 5 of Part A of Schedule 1, prescribe the officer or officers who may grant bail for any prescribed appearance or class of appearance in court by a defendant who is in custody;
 - (c) make provision for, or with respect to the management, control, supervision and good order of premises established for the accommodation of persons to whom bail has been granted.
- (3) Regulations made under this section may provide that a contravention or failure to comply with a regulation constitutes an offence and may provide for penalties not exceeding a fine of \$500 for offences against the regulations.

[Section 67 amended by No. 45 of 1993 s. 12; No. 84 of 2004 s. 83(3).]

[68. *Omitted under the Reprints Act 1984 s. 7(4)(g).]*

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[Heading amended by No. 45 of 1993 s. 10(1).]

[Sections 13 and 17]

Part A — Jurisdiction to grant bail

First Column

*Appearances in court referred
to in section 13*

Second Column

*By whom bail may be
granted*

1. Initial appearance

- | | |
|--|---|
| (1) The initial appearance in a court of summary jurisdiction or the Children's Court by an accused in, or in connection with, proceedings for an offence. | In any case —
(a) a justice; or
(b) an authorised police officer; and
in addition, in the case of a child, an authorised community services officer. |
| (2) The initial appearance in the District Court or the Supreme Court, not being the initial appearance to which clause 3 applies. | A judge of the District Court or a judge of the Supreme Court, as the case requires. |

[Clause 1 amended by No. 15 of 1988 s. 19; No. 49 of 1988 s. 90(a)(i); No. 59 of 2004 s. 141; No. 84 of 2004 s. 10(1) and 82.]

2. Appearance after adjournment

- | | |
|---|--|
| Appearance in any court or before a judicial officer by an accused after any adjournment of proceedings for an offence, not being a committal under clause 3. | The judicial officer who orders the adjournment. |
|---|--|

[Clause 2 amended by No. 84 of 2004 s. 82.]

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<u>First Column</u> <i>Appearances in court referred to in section 13</i>	<u>Second Column</u> <i>By whom bail may be granted</i>
<p>3. Appearance on committal to Supreme Court or District Court</p> <p>The initial appearance by an accused in the Supreme Court or District Court after he has been committed thereto under any Act to be tried or sentenced or otherwise dealt with.</p> <p><i>[Clause 3 amended by No. 84 of 2004 s. 82.]</i></p>	<p>The judicial officer who orders the committal.</p>
<p>4. Appearance in connection with appeal etc.</p> <p>(1) Appearance in connection with an application or appeal made under the <i>Criminal Appeals Act 2004</i> or with any order made in determining the application or appeal.</p> <p>(2) Appearance in connection with a rehearing of proceedings ordered under section 28 of the <i>Children's Court of Western Australia Act 1988</i>.</p> <p>(3) Appearance in connection with the reconsideration of an order under section 40 of the <i>Children's Court of Western Australia Act 1988</i>.</p> <p><i>[Clause 4 inserted by No. 84 of 2004 s. 10(2).]</i></p>	<p>If the appeal is being determined by a single judge of the Supreme Court, a single judge of the Supreme Court;</p> <p>If the appeal is being determined by the Court of Appeal, the Court of Appeal or a single judge of appeal.</p> <p>The Children's Court.</p> <p>The Children's Court constituted by the President.</p>

<u>First Column</u> <i>Appearances in court referred to in section 13</i>	<u>Second Column</u> <i>By whom bail may be granted</i>
5. Appearance prescribed by regulation Appearance in a court for any other purpose or following any other occurrence prescribed by regulations under this Act.	The judicial or other officer prescribed by such regulations.
6. Appearances not otherwise provided for Any appearance in a court not otherwise provided for in this Part or by regulations under this Act.	The judicial officer who, or court which, orders the appearance.
7. Interpretation in this Part In this Part, unless the contrary intention appears — “proceedings for an offence” in clause 2 (but not in clause 1) includes any of the following proceedings relating to that offence — (a) appeal proceedings; (b) proceedings on a writ of <i>habeas corpus</i> ; and (c) proceedings on the re-appearance of an offender under section 50 of the <i>Sentencing Act 1995</i> . <i>[Clause 7 inserted by No. 84 of 2004 s. 10(3).]</i>	

Part B — Cessation of power to grant bail

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

After a Judge of the Supreme Court has granted or refused bail for an appearance by an accused the power to grant bail for that appearance ceases to be vested in any judicial officer whose jurisdiction is inferior to that of such Judge or in any authorised officer.

[Clause 1 amended by No. 84 of 2004 s. 82.]

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2. Upon decision by judicial officer, his power and that of his peers ceases

Except where clause 4 applies, the power to grant bail for an appearance by an accused ceases to be vested in any judicial officer (including a Judge of the Supreme Court) after he, or another judicial officer whose jurisdiction is co-extensive with his, has granted or refused bail for that appearance.

[Clause 2 amended by No. 84 of 2004 s. 82.]

3. Upon refusal by justice power of authorised officer or justice ceases

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, but an authorised officer or a justice may grant bail for an initial appearance notwithstanding that one or more other authorised officers have previously refused bail for that appearance.

[Clause 3 amended by No. 34 of 1988 s. 90(b); No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

4. Judicial officer's powers where accused proves new facts or changed circumstances

Notwithstanding clause 2, where an accused has been refused bail for an appearance or has been granted bail therefor on terms or conditions with which he is unable or unwilling to comply, the judicial officer who granted or refused bail or another judicial officer whose jurisdiction is co-extensive with his has power to grant bail for that appearance or to vary the terms or conditions of bail previously granted therefor if the accused makes application and satisfies him that —

- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was previously granted or refused for that appearance;
- (b) he failed to adequately present his case for bail on the previous occasion when it was considered; or
- (c) where bail was granted subject to a home detention condition, he has, since the previous occasion when his case for bail was

considered, complied with the home detention condition for a period of one month or more.

[Clause 4 amended by No. 61 of 1990 s. 14; No. 84 of 2004 s. 82.]

Part C — Manner in which jurisdiction to be exercised

Principles governing grant or refusal of bail

1. Bail before conviction to be at discretion of bail authority, except for a child

Subject to clause 3A, the grant or refusal of bail to an accused, other than a child, who is in custody awaiting an appearance in court before conviction for an offence shall be at the discretion of the judicial officer or authorised officer in whom jurisdiction is vested, and that discretion shall be exercised having regard to the following questions as well as to any others which he considers relevant —

- (a) whether, if the accused is not kept in custody, he may —
 - (i) fail to appear in court in accordance with his bail undertaking;
 - (ii) commit an offence;
 - (iii) endanger the safety, welfare, or property of any person; or
 - (iv) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (b) whether the accused needs to be held in custody for his own protection;
- (c) whether the prosecutor has put forward grounds for opposing the grant of bail;
- (d) whether, as regards the period when the accused is on trial, there are grounds for believing that, if he is not kept in custody, the proper conduct of the trial may be prejudiced;
- (e) whether there is any condition which could reasonably be imposed under Part D which would —
 - (i) sufficiently remove the possibility referred to in paragraphs (a) and (d);

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- (ii) obviate the need referred to in paragraph (b); or
- (iii) remove the grounds for opposition referred to in paragraph (c);
- (f) where the accused is charged with an offence that is alleged to have been committed in respect of a child, whether a condition should be imposed under Part D requiring the accused to reside at a place other than the place where the child resides;
- (g) whether the alleged circumstances of the offence or offences amount to wrongdoing of such a serious nature as to make a grant of bail inappropriate.

[Clause 1 amended by No. 14 of 1992 s. 11; No. 45 of 1993 s. 10(2)(a); No. 54 of 1998 s. 8(a) and (b); No. 84 of 2004 s. 82.]

2. Child to have qualified right to bail

- (1) In this clause —
“**responsible person**” means a parent, relative, employer or other person who, in the opinion of the judicial officer or authorised officer, is in a position to both influence the conduct of the child and provide the child with support and direction.
- (2) Subject to subclause (3), a child accused who is in custody awaiting an appearance in court before conviction for an offence has a right to be granted bail unless —
 - (a) in the opinion of the judicial officer or authorised officer in whom jurisdiction is vested —
 - (i) one or more of the questions set out in clause 1(a), (b), (d) and (g) must be answered in the affirmative; and
 - (ii) there is no condition which he could reasonably impose under Part D which would satisfy the relevant provision of clause 1(e);
 - or
 - (b) there is no responsible person willing to enter into an undertaking of the kind described in subclause (3)(c),

and if the child is refused bail he shall be dealt with in accordance with section 19(2) of the *Young Offenders Act 1994*.

- (3) The right of a child accused under subclause (2) is subject to —
- (a) clause 3A; and
 - [(b) deleted]*
 - (c) there being imposed as a condition on the grant of bail a requirement that before the release of the child on bail a responsible person undertakes in writing in the prescribed form to ensure that the child complies with any requirement of his bail undertaking mentioned in section 28(2)(a), (b), (c) and (d).
- (4) Subclauses (2)(b) and (3)(c) do not apply to a child accused if it appears to the judicial officer or authorised officer that the accused —
- (a) is over the age of 17 years; and
 - (b) has sufficient maturity to live independently without the guidance or control of a parent or guardian.
- (5) For the purposes of this clause, the provisions of sections 46, 47, 48, 54, 55(2), 60 and 67(2)(a)(iv) apply with all necessary changes as if —
- (a) references in those provisions to a surety and a surety undertaking were references to a responsible person and to an undertaking referred to in subclause (3)(c) respectively; and
 - (b) section 54(1)(b)(i) read as follows —
 - “
 - (i) a person who has entered into an undertaking referred to in clause 2(3)(c) of Part C of Schedule 1 should no longer be regarded as a responsible person for the purposes of that clause, or is dead;
 - ”
- (6) Where a child accused is released on bail his right to be at liberty is subject to the exercise of the powers in section 17A.
- [Clause 2 inserted by No. 45 of 1993 s. 10(2)(b); amended by No. 57 of 1997 s. 21(3)(a); No. 54 of 1998 s. 8(c); No. 34 of 2004 s. 251; No. 84 of 2004 s. 82.]*

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3. Matters relevant to consideration of clause 1(a)

In considering whether an accused may do any of the things mentioned in clause 1(a), the judicial officer or authorised officer shall have regard to the following matters, as well as to any others which he considers relevant —

- (a) the nature and seriousness of the offence or offences (including any other offence or offences for which he is awaiting trial) and the probable method of dealing with the accused for it or them, if he is convicted;
- (b) the character, previous convictions, antecedents, associations, home environment, background, place of residence, and financial position of the accused;
- (c) the history of any previous grants of bail to him; and
- (d) the strength of the evidence against him.

[Clause 3 amended by No. 84 of 2004 s. 82.]

3A. Bail where serious offence committed while accused on bail for another serious offence

- (1) Notwithstanding clause 1 or 2 or any other provision of this Act, where —
 - (a) an accused is in custody awaiting an appearance in court before conviction for a serious offence; and
 - (b) the serious offence is alleged to have been committed while the accused was —
 - (i) on bail for; or
 - (ii) at liberty under an early release order made in respect of,
another serious offence,

the judicial officer or (if section 16A does not apply) the authorised officer in whom jurisdiction is vested shall refuse to grant bail for the serious offence referred to in paragraph (a) unless the judicial officer or authorised officer —

- (c) is satisfied that there are exceptional reasons why the accused should not be kept in custody and, if clause 3B applies, is so satisfied only after complying with that clause; and

- (d) is also satisfied that bail may properly be granted having regard to the provisions of clauses 1 and 3 or, in the case of a child accused, clauses 2 and 3.
- (2) Notwithstanding section 7(1), where an accused is refused bail under subclause (1) for an appearance for a serious offence his case for bail need not be considered again under that subsection for an appearance for that offence unless he satisfies the judicial officer who may order his detention that —
- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused; or
- (b) he failed to adequately present his case for bail on the occasion of that refusal.
- (3) Where a child accused is refused bail under subclause (1) he shall be dealt with in accordance with section 19(2) of the *Young Offenders Act 1994*.

[Clause 3A inserted by No. 45 of 1993 s. 10(2)(c); amended by No. 57 of 1997 s. 21(3)(b); No. 54 of 1998 s. 7 and 13(1); No.84 of 2004 s. 82.]

3B. Determination of exceptional reasons under clause 3A(1)

- (1) This clause applies where it appears to the judicial officer or (if section 16A does not apply) the authorised officer that all or any of the acts alleged to constitute a serious offence referred to in clause 3A(1)(b) would, if proved in the appropriate proceedings, amount to a breach by the accused of a protective condition or order.
- (2) The judicial officer or authorised officer shall, before making a decision that there are exceptional reasons for the purposes of clause 3A(1)(c), make enquiry, or cause enquiry to be made, whether there has already been —
- (a) any breach by the accused of the protective condition or order that has been proved in proceedings;
- (b) any alleged breach by the accused of the protective condition or order that has not been so proved, including an allegation that has not been the subject of a prosecution or any other communication to any relevant official; or

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- (c) any alleged breach by the accused of any other protective condition or order that has been the subject of a prosecution.
- (3) On becoming aware of any such alleged breach, the judicial officer or authorised officer shall give each person for whose protection a protective condition or order referred to in subclause (2) was imposed or made (a **“relevant person”**) a reasonable opportunity to give evidence by affidavit on matters relating to that protective condition or order.
- (4) The judicial officer or authorised officer shall in making any decision for the purposes of clause 3A(1)(c) —
 - (a) give due weight to —
 - (i) any evidence given under subclause (3);
 - (ii) any adverse effect that a grant of bail to the accused would have on a relevant person; and
 - (iii) any difficulty that a relevant person might have in proving any future breach of a protective condition or order;
 - (b) consider whether it would be appropriate to refuse bail and make a hospital order under section 5 of the *Criminal Law (Mentally Impaired Accused) Act 1996*;
 - (c) in the case of a condition imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D, treat any alleged breach of the condition as a serious matter even if the conduct alleged to amount to the breach in itself appears to be trivial; and
 - (d) consider whether any alleged breach of a protective condition or order that has occurred shows that the purpose of the condition or order has not been achieved and that the accused should be kept in custody.
- (5) The provisions of this clause do not limit the matters that the judicial officer or authorised officer may take into account for the purposes of clause 3A(1)(c).
- (6) In this clause —
 - “protective condition or order”** means —
 - (a) a condition imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D;

- (b) a violence restraining order or a police order under the *Restraining Orders Act 1997*; or
- (c) a Part VII order under the *Justices Act 1902* —
 - (i) that under section 86 of the *Restraining Orders Act 1997* is taken to be a misconduct restraining order under that Act; and
 - (ii) that shows on the face of the order that the causing or threatening of personal injury by the accused was a ground for the making of the order.

[Clause 3B inserted by No. 54 of 1998 s. 13(2); amended by No. 38 of 2004 s. 60; No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82.]

4. **When bail to be granted after conviction**

In deciding whether or not to grant bail to an accused who is in custody waiting to be sentenced or otherwise dealt with for an offence of which he has been convicted or awaiting the disposal of appeal proceedings, the judicial officer shall, subject to clauses 5 and 6, consider whether —

- (a) in the case of an accused waiting to be sentenced, there is a strong likelihood that he will impose a non-custodial sentence; or
- (b) in either case, there are exceptional reasons why the accused should not be kept in custody,

and shall only grant bail to him if he is satisfied that —

- (c) in the case of an accused waiting to be sentenced, at least one of those reasons exists and, in the case of an appellant, the reason mentioned in paragraph (b) exists; and
- (d) he may properly do so having regard to the provisions of clauses 1 and 3 or, in the case of a child, clauses 2 and 3.

[Clause 4 amended by No. 84 of 2004 s. 82.]

5. **Exception for bail for an appeal under the *Criminal Procedure (Summary) Act 1902***

Clause 4 does not apply to the bail of a person who is awaiting the disposal of appeal proceedings under Part 2 of the *Criminal Appeals Act 2004*; such a person shall be deemed for the purposes of this Part

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to be awaiting an appearance in court before conviction for an offence.

[Clause 5 inserted by No. 33 of 1989 s. 18; amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82.]

6. Bail of people on community orders, etc.

For the purpose of determining whether clause 4 applies, a person in custody —

- (a) under section 50, 79, 128, 129 or 132 of the *Sentencing Act 1995* in connection with a possible breach of a conditional release order, a sentence of suspended imprisonment or a community order imposed under that Act; or
- (b) under section 43 of the *Young Offenders Act 1994* in respect of an alleged breach of a youth community based order, an intensive youth supervision order or a conditional release order made under that Act,

is to be taken as not having been convicted of the offence for which the sentence was imposed.

[Clause 6 inserted by No. 78 of 1995 s. 8.]

Limitation on period of bail

7. Bail for initial appearance to be for not more than 7 days

In fixing the terms of bail of an accused for his initial appearance in court for an offence, a justice or an authorised officer shall require him to make the appearance within the period of 7 days commencing on and including the day on which the accused was arrested for the offence.

[Clause 7 amended by No. 84 of 2004 s. 82.]

8. Bail on adjournment in petty sessions to be for not more than 30 days except by consent

In fixing the terms of bail of an accused for an appearance in court after an adjournment of proceedings for an offence, a judicial officer sitting as a court of summary jurisdiction shall require him to make

the appearance within the period of 30 days commencing on and including the day on which the proceedings are adjourned, unless the accused consents to appear on a later day.

[Clause 8 amended by No. 49 of 1988 s. 90(c); No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

9. Provision as to calculation of time

The periods specified in clauses 7 and 8 shall be calculated to include any Sunday or public holiday.

Part D — Conditions which may be imposed on a grant of bail

1. Conditions as to forfeiture and giving security may be imposed on the accused and sureties

- (1) A judicial officer or authorised officer, on a grant of bail, may impose conditions under this clause if he considers that it is desirable to do so to ensure the performance of the accused's bail undertaking.
- (2) If a judicial officer or authorised officer considers that it is desirable as mentioned in subclause (1), he may in addition to releasing the accused on his bail undertaking impose any one or more of the following conditions —
 - (a) that the accused in his bail undertaking agree to forfeit a specified amount of money if he fails to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b)(ii);
 - (b) that a surety or a specified number of sureties enter into a surety undertaking or surety undertakings whereby he or they agree to forfeit a specified amount or specified amounts of money if the accused fails to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b)(ii);
 - (c) that any of them the accused and the surety or sureties give security of a specified value, including the deposit of a specified amount of cash, for the performance of their respective obligations;
 - (d) that any of them the accused and the surety or sureties deposit with a specified officer any specified passbook or document

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relating to the title to, or ownership of, any account or other asset offered as security for the performance of their respective obligations; or

- (e) that any of them the accused and the surety or sureties, at his or their own expense or otherwise, enter into such mortgage, charge, assignment or other transaction, or take such other step, as may be required, including completion of the necessary documents, to render any security effective and enforceable by the State.
- (3) The nature and sufficiency of any security, and the documentation therefor, required under subclause (2) shall be determined by the judicial officer or authorised officer who imposed the condition or, if no determination is so made —
- (a) by the person before whom the bail undertaking is entered into, where the security is to be given by the accused; and
 - (b) where the security is to be given by a surety, by any person authorised under section 36 to approve the surety or before whom the surety undertaking is entered into.
- (4) When a bail undertaking ceases to have effect as provided in section 34(a) to (d), or upon an accused being acquitted of a charge under section 51(1) or (2) or discharged from further proceedings therefor, each of them the accused, or where section 34(b) applies his personal representative, and any surety is entitled to have returned to him any security given under subclause (2).
- (5) When a surety undertaking ceases to have effect as provided in section 47(a) to (f), a surety is entitled to have returned to him any security given under subclause (2).

[Clause 1 amended by No. 65 of 2003 s. 121(3); No. 84 of 2004 s. 82.]

2. Other conditions which may be imposed

- (1) A judicial officer or authorised officer, on a grant of bail, may impose conditions —
- (a) to be complied with before the accused is released on bail or while the accused is on bail;
 - (b) as to the accused's conduct while on bail; or

- (c) as to where the accused shall reside while on bail,
if he considers that it is desirable for any purpose mentioned in subclause (2), (2b), (3) or (4).
- (1a) Without limiting subclause (1), a judicial officer or authorised officer shall, on a grant of bail to a child accused, consider whether it is desirable for any purpose mentioned in subclause (2) to impose a condition as to —
- (a) any period in each day during which the child is to remain at a particular place;
 - (b) any person with whom the child is not to associate or communicate;
 - (c) any place that the child is not to frequent;
 - (d) the attendance by the child at a school or other educational institution; or
 - (e) any other matter,
- and the judicial officer or authorised officer may impose any such condition.
- (2) Any condition may be imposed under subclause (1) or (1a) to ensure that an accused —
- (a) appears in court in accordance with his bail undertaking;
 - (b) does not while on bail commit an offence;
 - (c) does not endanger the safety, welfare or property of any person;
 - (d) does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or
 - (e) as regards the period when the accused is on trial, does not prejudice the proper conduct of the trial.
- (2a) Before imposing a condition on a grant of bail for a purpose mentioned in subclause (2)(c) or (d) a judicial officer or authorised officer is to consider whether that purpose would be better served, or could be better assisted, by a restraining order made under the *Restraining Orders Act 1997* and whether, in the case of a judicial officer, to exercise the power in section 63 of that Act or, in the case

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of an authorised officer, to make a telephone application under that Act.

- (2b) Where a judicial officer is of the opinion that the accused should while on bail —
- (a) be counselled for a behavioural problem; or
 - (b) attend a course or programme that may assist with such a problem,

the judicial officer may under subclause (1) impose a condition for that purpose that requires the accused to —

- (c) attend a prescribed person to be counselled; or
- (d) attend a prescribed course or programme,

that is specified by the judicial officer in the condition.

- (3) Where a judicial officer who grants bail to an accused is of the opinion that the accused's physical condition ought to be examined the officer may, under subclause (1), impose any condition which the officer considers desirable for the purpose of ensuring that the accused is examined by a medical practitioner.

- (3a) Where a judicial officer who grants bail to an accused is of the opinion that the accused's mental condition ought to be examined the officer may, under subclause (1), impose any condition which the officer considers desirable for the purpose of ensuring that the accused's mental condition is examined including a condition —

- (a) that the accused be examined by a medical practitioner or an authorised mental health practitioner (as defined in the *Mental Health Act 1996*) for the purpose of deciding whether to make a referral under section 29 of that Act;
- (b) that the accused be admitted to an authorised hospital (as defined in the *Mental Health Act 1996*);
- (c) that the accused be examined by a psychiatrist.

- (4) Where a judicial officer is of the opinion that an accused is suffering from alcohol or drug abuse and is in need of care or treatment either on that account, or to enable him to be prepared for his trial, the judicial officer may, under subclause (1), impose any condition which he considers desirable for the purpose of ensuring that the accused receives such care or treatment, including that he lives in, or from

time to time attends at, a specified institution or place in order to receive such care or treatment.

- (5) Where a judicial officer imposes a condition for a purpose mentioned in subclause (2b), (3), (3a) or (4), the judicial officer shall cause to be sent to the person who is to counsel or examine the accused, or the place at which the accused is to attend, a statement of the reasons for imposing the condition.
- (6) Where a condition is imposed under this clause that an accused shall reside in premises established for the accommodation of persons to whom bail has been granted, that condition shall be deemed to include a further condition that the accused shall comply with such rules as are for the time being laid down for the maintenance of the good order of those premises, whether such rules are made under section 67 or by the authority responsible for the good order of the premises.
- (7) In this clause —
“medical practitioner” means a medical practitioner within the meaning of the *Medical Act 1894*; and
“psychiatrist” has the same meaning as it has in the *Mental Health Act 1996*.

[Clause 2 amended by No. 45 of 1993 s. 10(3); No. 69 of 1996 s. 3; No. 54 of 1998 s. 12; No. 84 of 2004 s. 82.]

3. Home detention condition may be imposed

- (1) A judicial officer may, subject to this clause, impose a home detention condition as a condition on a grant of bail.
- (2) A home detention condition shall not be imposed unless the accused is over the age of 17 years and the judicial officer is satisfied —
- (a) after considering a report from a community corrections officer about the accused and his circumstances, that the accused is suitable to be subject to a home detention condition;
 - (b) that the place where it is proposed the accused will remain while subject to the home detention condition is a suitable place; and

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- (c) that unless a home detention condition is imposed, the accused will not be released on bail.
- (3) A home detention condition is a condition that while the accused is on bail the accused shall —
- (a) remain at and not leave the place specified in the bail record form and in the bail undertaking (or in a notice under section 50E) until the time specified, or deemed by section 31(3) to be specified, in the bail undertaking except —
 - (i) to work in gainful employment approved by a community corrections officer;
 - (ii) with the approval of a community corrections officer, to seek gainful employment;
 - (iii) to obtain urgent medical or dental treatment for the accused;
 - (iv) for the purpose of averting or minimizing a serious risk of death or injury to the accused or to another person;
 - (v) to obey an order issued under a written law (such as a summons) requiring the accused's presence elsewhere;
 - (vi) for a purpose approved of by a community corrections officer; or
 - (vii) on the direction of a community corrections officer;
 - (b) not leave the State;
 - (c) comply with every reasonable direction of a community corrections officer;
 - (d) comply with such of the conditions specified in the list provided under section 24A(4) as may be specified in a notice given under section 50E(b); and
 - (e) when requested to do so, produce a copy of his bail undertaking and any notice by the CEO (Justice) under section 50E for inspection by a community corrections officer or a member of the Police Force.

[Clause 3 inserted by No. 61 of 1990 s. 15; amended by No. 31 of 1993 s. 9; No. 84 of 2004 s. 82.]

Schedule 2

[Heading inserted by No. 45 of 1993 s. 11.]

[Section 3(1)]

Serious offences

<i>Enactment</i>	<i>Description of offence</i>
1. <i>The Criminal Code</i>	
s. 278 (as read with s. 282)	Wilful murder
s. 279 (as read with s. 282)	Murder
s. 280 (as read with s. 287)	Manslaughter
s. 292	Disabling in order to commit indictable offence
s. 294	Acts intended to cause grievous bodily harm or to resist or prevent arrest
s. 297	Grievous bodily harm
s. 301	Wounding and similar acts
s. 304(2)	Acts or omissions, with intent to harm, causing bodily harm or danger
s. 317	Assault occasioning bodily harm
s. 317A(a)	Assault with intent to commit or facilitate a crime
s. 317A(b)	Assault with intent to do grievous bodily harm
s. 318	Serious assaults
s. 323	Indecent assault
s. 324	Aggravated indecent assault
s. 325	Sexual penetration without consent

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<i>Enactment</i>	<i>Description of offence</i>
s. 326	Aggravated sexual penetration without consent
s. 331B	Sexual servitude
s. 331C	Conducting business involving sexual servitude
s. 331D	Deceptive recruiting for commercial sexual services
s. 332	Kidnapping
s. 333	Deprivation of liberty
s. 338E	Stalking
s. 378	Stealing a motor vehicle
s. 392	Robbery
s. 393	Assault with intent to rob
s. 401	Burglary
s. 444	Criminal damage, if the property is destroyed or damaged by fire
2.	<i>Bush Fires Act 1954</i>
s. 32	Wilfully lighting a fire or causing a fire to be lit under such circumstances as to be likely to injure or damage a person or property
2a.	<i>Misuse of Drugs Act 1981</i>
s. 6(1)	Offences concerned with prohibited drugs generally
s. 7(1)	Offences concerned with prohibited plants generally
s. 33(1)(a)	Attempting to commit an offence under section 6(1) or 7(1)

<i>Enactment</i>	<i>Description of offence</i>
s. 33(2)(a)	Conspiracy to commit an offence under s. 6(1) or 7(1)
2b. <i>Restraining Orders Act 1997</i>	
s. 61(1)	Breach of a violence restraining order
s. 61(2a)	Breach of a police order
s. 86(2)	Breach of a Part VII order under the <i>Justices Act 1902</i> — <ul style="list-style-type: none"> (a) that under section 86 of the <i>Restraining Orders Act 1997</i> is taken to be a misconduct restraining order under that Act; and (b) that shows on the face of the order that the causing or threatening of personal injury by the accused was a ground for the making of the order.
3. <i>Road Traffic Act 1974</i>	
s. 59	Dangerous driving causing death, injury, etc.
s. 59A	Dangerous driving causing bodily harm

[Schedule 2 inserted by No. 45 of 1993 s. 11; amended by No. 82 of 1994 s. 13; No. 38 of 1998 s. 4(2); No. 54 of 1998 s. 15; No. 23 of 2001 s. 10(1); No. 4 of 2004 s. 24 and 26; No. 38 of 2004 s. 61; No. 62 of 2004 s. 9(1); No. 84 of 2004 s. 82.]

Notes

¹ This is a compilation of the *Bail Act 1982* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Bail Act 1982</i>	86 of 1982	18 Nov 1982	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984 Pt. III</i>	52 of 1984	5 Sep 1984	3 Oct 1984
<i>Bail Amendment Act 1984</i> ²	74 of 1984	29 Nov 1984	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Bail Amendment Act 1988</i>	15 of 1988	6 Sep 1988	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
Reprint of the <i>Bail Act 1982</i> under the Reprints Act 1984 and s. 21 of the Bail Amendment Act 1988 ³ (includes amendments listed above)			
<i>Criminal Law Amendment Act 1988 Pt. 4</i>	70 of 1988	15 Dec 1988	6 Feb 1989 (see s. 2(2)(b) and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Acts Amendment (Children's Court) Act 1988 Pt. 13</i>	49 of 1988	22 Dec 1988	1 Dec 1989 (see s. 2 and <i>Gazette</i> 24 Nov 1989 p. 4327)
<i>Justices Amendment Act 1989 s. 18</i>	33 of 1989	22 Dec 1989	1 Jun 1991 (see s. 2 and <i>Gazette</i> 17 May 1991 p. 2455)
<i>Community Corrections Legislation Amendment Act 1990 Pt. 2</i>	61 of 1990	17 Dec 1990	3 Apr 1991 (see s. 2 and <i>Gazette</i> 22 Mar 1991 p. 1209)
<i>Child Welfare Amendment Act (No. 2) 1990 s. 15</i>	83 of 1990	22 Dec 1990	1 Aug 1991 (see s. 2 and <i>Gazette</i> 1 Aug 1991 p. 3983)
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991 s. 21</i>	15 of 1991	21 Jun 1991	9 Aug 1991 (see s. 2(2) and <i>Gazette</i> 9 Aug 1991 p. 4101)
Reprint of the <i>Bail Act 1982</i> as at 17 Oct 1991 (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Sexual Offences) Act 1992 Pt. 3</i>	14 of 1992	17 Jun 1992	1 Aug 1992 (see s. 2 and <i>Gazette</i> 28 Jul 1992 p. 3671)
<i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 3⁴</i>	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
<i>Criminal Procedure Amendment Act 1993 Pt. 2⁵</i>	45 of 1993	20 Dec 1993	Act other than s. 7-9 and 10(2)(b): 17 Jan 1994 (see s. 2(1)); s. 7-9 and 10(2)(b): 4 Mar 1994 (see s. 2(2) and <i>Gazette</i> 4 Mar 1994 p. 915)
<i>Criminal Law Amendment Act 1994 s. 13(1) and (2)</i>	82 of 1994	23 Dec 1994	20 Jan 1995 (see s. 2(2))
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 3</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 5</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Coroners Act 1996 s. 61</i>	2 of 1996	24 May 1996	7 Apr 1997 (see s. 2 and <i>Gazette</i> 18 Mar 1997 p. 1529)
<i>Mental Health (Consequential Provisions) Act 1996 Pt. 2</i>	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the Bail Act 1982 as at 13 Mar 1997 (includes amendments listed above except those in the <i>Coroners Act 1996</i> and the <i>Mental Health (Consequential Provisions) Act 1996</i>) (corrections to reprint in <i>Gazette</i> 25 Jul 1997 p. 3909 and 14 Nov 1997 p. 6426)			
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 21</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Criminal Law Amendment Act (No. 1) 1998 s. 4(2)</i>	38 of 1998	25 Sep 1998	23 Oct 1998

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Short title	Number and year	Assent	Commencement
<i>Bail Amendment Act 1998</i> ⁶	54 of 1998	11 Jan 1999	Pt. 4 and 7: 15 May 1999 (see s. 2 and <i>Gazette</i> 11 May 1999 p. 1905); Pt. 2, 3 and 5 (other than s. 12): 8 Mar 2000 (see s. 2 and <i>Gazette</i> 7 Mar 2000 p. 1039); s. 12: 1 Sep 2000 (see s. 2 and <i>Gazette</i> 29 Aug 2000 p. 4985); Pt. 6: 4 Dec 2000 (see s. 2 and <i>Gazette</i> 4 Dec 2000 p. 6799)
Reprint of the <i>Bail Act 1982</i> as at 27 Aug 1999 (includes amendments listed above)			
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999</i> Pt. 3	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
<i>Criminal Law Amendment Act 2001</i> s. 10(1)	23 of 2001	26 Nov 2001	24 Dec 2001
<i>Criminal Investigation (Identifying People) Act 2002</i> s. 96	6 of 2002	4 Jun 2002	20 Nov 2002 (see s. 2 and <i>Gazette</i> 19 Nov 2002 p. 5505)
<i>Criminal Law (Procedure) Amendment Act 2002</i> Pt. 4 Div. 1	27 of 2002	25 Sep 2002	27 Sep 2002 (see s. 2 and <i>Gazette</i> 27 Sep 2002 p. 4875)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 29(3) and 37	50 of 2003	9 Jul 2003	s. 29(3): 31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833); s. 37: 15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 88, 97, 121 ⁷	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 29	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004</i> s. 24, 26 and 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Family and Domestic Violence) Act 2004 Pt. 3</i>	38 of 2004	9 Nov 2004	1 Dec 2004 (see s. 2 and <i>Gazette</i> 26 Nov 2004 p. 5309)
<i>Children and Community Services Act 2004 s. 251</i>	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Acts Amendment (Court of Appeal) Act 2004 s. 28</i>	45 of 2004	9 Nov 2004	s. 28(1), (2) and (4) (other than the amendment to s. 7A(1)): 1 Feb 2005 (see. s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163) s. 28(3) and (4) (the amendment to s. 7A(1)): 2 May 2005 (see. s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Misuse of Drugs Amendment Act 2004 s. 9(1)</i>	62 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 10 Dec 2004 p. 5965)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 Pt. 3 and s. 82 and 83</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 5: The Bail Act 1982 as at 1 Apr 2005 (includes amendments listed above except those in the <i>Acts Amendment (Court of Appeal) Act 2004 s. 28(3) and (4)</i> (the amendment to s. 7A(1)), the <i>Children and Community Services Act 2004</i> , the <i>Courts Legislation Amendment and Repeal Act 2004</i> and the <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i>)			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment Act 2004</i> s. 13 ⁸	27 of 2004	14 Oct 2004	To be proclaimed (see s. 2)

² The *Bail Amendment Act 1984* s. 10 and 11 were repealed by the *Bail Amendment Act 1988* s. 20.

³ The *Bail Act 1982* was not in operation at the time when the reprint was compiled, but the reprinting was authorised by s. 21 of the *Bail Amendment Act 1988*.

⁴ The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 is a transitional provision that is of no further effect.

⁵ The *Criminal Procedure Amendment Act 1993* s. 13 reads as follows:

“

13. Transitional

(1) The amendments to the principal Act effected by a provision of this Part apply in relation to —

- (a) a child arrested for any offence; and
- (b) a person, other than a child, arrested for a serious offence,

on or after the day on which that provision comes into operation.

(2) In subsection (1) “**child**” and “**serious offence**” have the same meanings as in the principal Act.

”

⁶ The *Bail Amendment Act 1998* s. 6(2) reads as follows:

“

(2) Section 16A inserted by subsection (1) applies to persons arrested for an offence referred to in subsection (2)(a) or (3) of that section on or after the day on which this section comes into operation.

”

⁷ The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 97 reads as follows:

“

97. References to Crown Solicitor

If in a written law or other document or instrument there is a reference to the Crown Solicitor that reference may, where the

context so requires, be read as if it had been amended to be a reference to the State Solicitor.

”

⁸ On the date as at which this compilation was prepared, the *Sentencing Legislation Amendment Act 2004* s. 13 had not come into operation. It reads as follows:

“

13. Bail Act 1982 amended

- (1) The amendments in this section are to the *Bail Act 1982*.
- (2) Section 3(4)(a) is amended as follows:
 - (a) by inserting after “79” —
“ , 84E ”;
 - (b) by inserting after “imprisonment” —
“ or conditional suspended imprisonment ”.
- (3) Schedule 1 Part C clause 6(a) is amended as follows:
 - (a) by inserting after “79” —
“ , 84E ”;
 - (b) by inserting after “imprisonment” —
“ or conditional suspended imprisonment ”.

”

⁹ Footnote no longer applicable.

¹⁰ The amendment in the *Courts Legislation Amendment and Repeal Act 2004* s. 141 is not included because the clause it sought to amend had been amended by the *Acts Amendment (Court of Appeal) Act 2004* s. 28(4) before the amendment purported to come into operation.