

TASMANIA

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**BAIL BILL 2021**

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# **BAIL BILL 2021**

*(Brought in by the Minister for Justice, the Honourable Elise  
Nicole Archer)*

## **A BILL FOR**

**An Act to provide for bail in certain legal proceedings and  
to repeal the *Bail Act 1994***

Be it enacted by Her Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Bail Act 2021*.

#### **2. Commencement**

The provisions of this Act commence on a day  
or days to be proclaimed.

#### **3. Purposes of Act**

The purposes of this Act are –

- (a) to ensure that the safety of victims of  
crime, individuals and the community is  
taken into account when granting bail;  
and

- (b) to provide a legislative framework for deciding when, or if, bail should be granted; and
- (c) to ensure that the presumption of innocence, and the general right of an individual to be at liberty, is taken into account when granting bail; and
- (d) to promote impartiality, transparency and consistency when granting bail.

#### **4. Interpretation**

(1) In this Act –

*affected child* has the same meaning as in the *Family Violence Act 2004*;

*affected person* has the same meaning as in the *Family Violence Act 2004*;

*appropriate officer*, in relation to a grant of bail, means –

- (a) if the bail is granted by the Supreme Court, the Registrar of that court; or
- (b) if the bail is granted by the Court of Criminal Appeal, the Registrar of that court; or
- (c) if the bail is granted by any other court, a clerk of petty sessions appointed under section 16A of the *Justices Act 1959*;

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***authorised officer*** means –

- (a) a police officer of, or above, the rank of sergeant; or
- (b) a police officer appointed as a custody officer for a police station under section 14(1) of the *Criminal Law (Detention and Interrogation) Act 1995*, or otherwise authorised under that Act to act as a custody officer for a police station, while acting in his or her capacity as the custody officer; or
- (c) in relation to an offence under the *Marine Safety (Misuse of Alcohol) Act 2006*, or the *Road Safety (Alcohol and Drugs) Act 1970*, an approved operator under the relevant Act;

***bail authority*** means –

- (a) in relation to a grant of bail under a bail notice, an authorised officer under section 11; or
- (b) in relation to an application for bail made to a court, the court to whom the application was made; or
- (c) in relation to a grant of bail under a bail order, the court that made the order;

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***bail document*** means –

- (a) a bail notice; or
- (b) a bail order;

***bail notice*** means a notice given under section 11(3)(a) in respect of a grant of bail;

***bail order*** means an order for bail made by a relevant court, other than a remand order;

***charge*** means an allegation of a summary offence, indictable offence or breach of duty;

***contravene*** includes fail to comply with;

***crown law officer*** has the same meaning as in the *Criminal Code*;

***Director of Public Prosecutions*** means the Director within the meaning of the *Director of Public Prosecutions Act 1973*;

***family violence order*** has the same meaning as in the *Family Violence Act 2004*;

***initial proceedings***, in relation to an offence, means the determination of proceedings in respect of the offence other than any appeal that may occur as a result of the determination;

***intervention program*** means a program that is designed to address problem behaviours



by providing one or more of the following:

- (a) supervised treatment;
- (b) supervised rehabilitation;
- (c) supervised behaviour management;
- (d) supervised access to support services;
- (e) another prescribed treatment or service;

***judicial officer*** means a person, including a single justice, empowered to exercise jurisdiction in a court, whether or not that person is sitting as a court;

***problem behaviours*** means one or more of the following:

- (a) substance abuse;
- (b) alcohol abuse;
- (c) behavioural problems, including problem gambling;
- (d) mental impairment that results in behavioural problems;
- (e) any other prescribed behaviours;

***recognizance***, in relation to a grant of bail, means an agreement entered into in

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accordance with section 16(1)(g) as a condition of the bail;

***relevant court***, in relation to an application for bail or a grant of bail, means –

- (a) in relation to an application for bail, the court determining the application; or
- (b) in relation to a grant of bail, the court that granted the bail; or
- (c) in relation to a grant of bail under a bail notice, the court that is determining the offence in respect of which the bail was granted;

***remand order*** means an order to remand a person in custody rather than granting bail;

***restraint order*** means a restraint order under Part XA of the *Justices Act 1959*;

***serious indictable offence*** – see section 5;

***suspended sentence*** means a sentence of imprisonment where the whole, or a part, of the sentence is suspended by order of a court;

***terrorism-linked person*** means a person who –

- (a) has been convicted of a terrorism offence; or

- (b) is subject to a control order, within the meaning of section 100.1 of the *Criminal Code Act 1995* of the Commonwealth;

***terrorism offence*** means an offence –

- (a) referred to in paragraph (a), (b) or (c) of the definition of *terrorism offence* in section 3 of the *Crimes Act 1914* of the Commonwealth; or
- (b) under the former *Crimes (Foreign Incursions and Recruitment) Act 1978* of the Commonwealth; or
- (c) under an Act of the Commonwealth, this State, another State or a Territory that –
- (i) relates to terrorism; and
  - (ii) is prescribed;

***unacceptable risk*** – see section 6;

***youth*** has the same meaning as in the *Youth Justice Act 1997*.

(2) In this Act –

- (a) a reference to bail being granted in respect of an offence includes a reference to bail being granted in respect of –
- (i) a breach of duty; or

- (ii) an application for a restraint order; and
- (b) a reference to an offence, in respect of which bail is sought or granted, includes a reference to –
  - (i) a breach of duty, if bail may be sought for such a breach; or
  - (ii) an application for a restraint order.

#### **5. Serious indictable offences**

For the purposes of this Act, an offence specified in Schedule 1 is a serious indictable offence.

#### **6. Unacceptable risk**

- (1) A person charged with an offence poses an unacceptable risk if the person meets one or more of the following criteria:
  - (a) the person is a danger to the safety or welfare of one or more of the following:
    - (i) any individual;
    - (ii) a class of persons;
    - (iii) members of the public generally;
  - (b) the person is at risk of not attending the court, in respect of the offence, as required;

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- (c) the person is likely to commit an offence while released on bail;
  - (d) the person is likely to interfere with witnesses, or potential witnesses, in respect of the offence or any other offence;
  - (e) the person is likely to interfere with, or impede or otherwise obstruct, the course of justice in respect of the offence or any other offence;
  - (f) the person poses, on reasonable grounds, an unacceptable risk for any other reason.
- (2) In determining whether or not a person charged with an offence poses an unacceptable risk in relation to the granting of bail under this Act, the relevant bail authority may take into account any one or more of the following:
- (a) the nature of the offence in respect of which bail is sought and the strength of the evidence for the offence;
  - (b) the character, antecedents, associations, home environment and background of the person charged with the offence;
  - (c) if the person charged with the offence has publically expressed support for –
    - (i) a terrorist act, within the meaning of section 100.1 of the *Criminal Code Act 1995* of the Commonwealth; or

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- (ii) a terrorist organisation, within the meaning of section 102.1 of the *Criminal Code Act 1995* of the Commonwealth; or
- (iii) the provision of resources for such a terrorist act or to such a terrorist organisation;
- (d) the criminal history of the person charged with the offence;
- (e) the history of the person charged with the offence in relation to previous bail applications or grants of bail;
- (f) the attitude of the prosecution to the grant of bail;
- (g) the person's ties to, and within, the community into which the person is to be released if the person is granted bail;
- (h) the difficulty for the person to conduct a defence while in custody;
- (i) whether the person is likely to consent to being assessed for his or her suitability for participation in an intervention program;
- (j) when it is anticipated that the offence is to go to trial;
- (k) any special vulnerability or needs of the person, including, but not limited to, age,

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- health, background, nationality and ethnicity;
- (l) any conditions that may be imposed on the person to mitigate the risk that the person may pose;
  - (m) any other prescribed matter or circumstance;
  - (n) any other matter, or circumstance, that the person making the determination considers relevant in the circumstances.
- (3) In addition to any matter or circumstance taken into account under subsection (2) in determining if a person charged with an offence poses an unacceptable risk, the relevant bail authority must also take into account the following matters if the person is charged with a family violence offence within the meaning of the *Family Violence Act 2004*, or is the subject of an application for a family violence order or restraint order:
- (a) whether, as a consideration of paramount importance, the person so charged poses a risk to the protection and welfare of –
    - (i) a person against whom the offence was committed; or
    - (ii) an affected person or affected child; or
    - (iii) a person for whose benefit the family violence order, restraint

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- order, interim restraint order or telephone interim restraint order is sought or was made;
- (b) any previous violence by the person so charged against –
- (i) a person against whom the offence was committed; or
  - (ii) an affected person or affected child; or
  - (iii) a person for whose benefit the family violence order, restraint order, interim restraint order or telephone interim restraint order is sought or was made; or
  - (iv) any other person whether or not the person so charged was convicted of an offence, or had a prior family violence order or restraint order made against him or her, in respect of the violence;
- (c) whether a recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*, is in force under that Act in respect of the person so charged;
- (d) any available risk screening, or rehabilitation program assessment, within the meaning of the *Family Violence Act 2004* of the person so charged;



- (e) the availability of suitable accommodation for the person so charged and any affected person or affected child;
- (f) the demeanour of the person so charged.

## **7. Application of Act**

- (1) This Act applies to the grant, revocation or variation of bail whether the grant, revocation or variation is provided for by this Act or any other Act.
- (2) Unless otherwise specified, this Act applies to the granting of bail, however the grant, admission or provision of bail is specified.

Consultation Draft

**PART 2 – BAIL**

***Division 1 – Preliminary***

**8. Persons not entitled to bail for certain crimes or offences**

(1) Except as otherwise specified in this Act or any other Act, a person who is charged with, and taken into custody in respect of, one or more of the following offences must not be granted bail in respect of the offence:

(a) one of the following crimes under the *Criminal Code*:

(i) section 56 – treason;

(ii) section 158 – murder;

(iii) section 297 – conspiracy to commit murder or conspiracy to commit treason;

(iv) section 298 – incitement to commit murder or incitement to commit treason;

(v) section 299 – attempting to commit murder or attempting to commit treason;

(b) a serious indictable offence, if the person is taken into custody in respect of the serious indictable offence while the person is –

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- (i) released on bail for a serious indictable offence; or
  - (ii) serving a suspended sentence; or
  - (iii) subject to a home detention order, or a community correction order or the deferral of sentencing, within the meaning of the *Sentencing Act 1997*;
- (c) an indictable offence, if the person is taken into custody in respect of the indictable offence while –
- (i) the person has been found guilty in respect of another indictable offence and an appeal has been lodged, in respect of the other indictable offence, and has not yet been finally determined; or
  - (ii) the person has been found guilty in respect of another indictable offence and has not yet been sentenced for the other indictable offence; or
  - (iii) the person is on parole in respect of an indictable offence;
- (d) an offence committed by a person that the bail authority believes, on reasonable grounds, is a terrorism-linked person.
- (2) Subsection (1)(b) and (c) do not apply in respect of a youth who is charged with, and taken into

custody in respect of, an offence specified in the relevant paragraph.

**9. Bail authority may use information**

In making a decision or determination under this Act, a bail authority –

- (a) may use such information as is lawfully available to the bail authority at the time of making the decision; and
- (b) may inform itself in any lawful way that the bail authority thinks appropriate.

**10. Determination of relevant court in certain circumstances**

If the Supreme Court orders that the hearing of a charge, or application, in respect of an offence be remitted to justices, an application under this Act in respect of the offence must be made –

- (a) to the Supreme Court if the application is filed before the day on which the person charged is required to appear before the justices; or
- (b) to the justices if the application is filed on or after that day.

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*Division 2 – Grants of bail*

**11. Grants of bail by authorised officer**

- (1) This Act only authorises an authorised officer to grant bail to a person charged with, or taken into custody in respect of, the following matters:
- (a) an offence of a breach of duty;
  - (b) a warrant issued under section 33 by a justice;
  - (c) the making of an application for a restraint order;
  - (d) an offence in respect of which bail may be granted under section 4(3), (5) or (6) of the *Criminal Law (Detention and Interrogation) Act 1995*;
  - (e) an offence, or matter, for which a person may be granted bail by police under another Act;
  - (f) a prescribed offence or prescribed matter.
- (2) If an authorised officer is authorised under subsection (1) to grant bail to a person in respect of a matter, the authorised officer must grant bail to the person unless –
- (a) the authorised officer is satisfied, on reasonable grounds, that the person poses an unacceptable risk; or

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- (b) the authorised officer is satisfied, on reasonable grounds, that it is not desirable in the interests of justice to grant bail for the matter; or
- (c) the person is also charged with, or taken into custody in respect of, an offence or matter that is not specified in subsection (1); or
- (d) the person is charged with, or taken into custody in respect of, an offence referred to in section 8; or
- (e) a court has already heard an application for bail in respect of the matter; or
- (f) the person has already made a first appearance in respect of the matter and bail in respect of the matter has been dispensed with; or
- (g) the person has been arrested in accordance with a warrant –
  - (i) issued by the Supreme Court, for the arrest of the person; or
  - (ii) issued by a court, for the person to appear in front of the court for sentencing; or
- (h) a court, or other person acting judicially, has specified that the person is not to be granted bail under a bail notice in the circumstances.

- (3) If an authorised officer grants bail under this section to a person in respect of a matter, the authorised officer is to –
- (a) give the person a notice specifying –
    - (i) the day on which, and the time and place at which, the person is required to appear in court for the matter; and
    - (ii) any conditions imposed in respect of the bail so granted; and
  - (b) ensure that the person signs a copy of the notice given to the person under paragraph (a); and
  - (c) endorse, on the copy of the notice signed by the person under paragraph (b), a statement that the notice was given to the person on his or her release from custody; and
  - (d) ensure that the copy of the notice so endorsed is retained by, or on behalf of, the authorised officer.

## **12. Applications to court for grant of bail**

- (1) A person charged with an offence may apply to the relevant court, in respect of the offence, for bail to be granted to the person for that offence.
- (2) An application made under subsection (1) –

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- (a) may only be made to the Supreme Court if the application relates to –
    - (i) a crime referred to in section 8(a); or
    - (ii) an offence where proceedings in respect of the offence have already commenced before the Supreme Court; and
  - (b) may only be dealt with by a magistrate, or judge, if the application relates to an offence specified in section 8(b), (c) or (d); and
  - (c) is to be made and determined in accordance with the rules of court of the relevant court.
- (3) A relevant court must not grant bail to a person under this Act in respect of an offence if –
- (a) the relevant court believes, on reasonable grounds, that the person poses an unacceptable risk; or
  - (b) if the offence is an offence referred to in section 8, the relevant court is not satisfied, on reasonable grounds, that there are exceptional circumstances in respect of the person or the offence.
- (4) For the purposes of subsection (3)(b), it is up to the person charged with the offence to prove that there are exceptional circumstances in respect of the person or the offence.



### **13. Grants of bail**

- (1) For the purposes of this Act, a person is granted bail in respect of an offence if –
  - (a) a bail notice has been given to the person in respect of the offence; or
  - (b) a bail order has been made in respect of the offence and the practices and procedures of the court granting bail have been completed in respect of the bail order.
- (2) Subject to this Act, a person who is granted bail in respect of an offence is entitled to be released from custody, and to remain at liberty, in accordance with the conditions imposed on the bail, if any.
- (3) Subsection (2) does not entitle a person to be released from custody if he or she may be otherwise lawfully held in custody.

### **14. Duration of bail**

- (1) A grant of bail under this Act in respect of an offence remains in force until whichever of the following first occurs:
  - (a) initial proceedings in respect of the offence have been determined by a court;
  - (b) the grant of bail has been revoked by a court.

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- (2) For the avoidance of doubt, a grant of bail under this Act in respect of an offence remains in force if –
- (a) the bail is suspended in accordance with this Act; or
  - (b) the person granted bail –
    - (i) is notified by a judicial officer, or a crown law officer, that any or all of the day, time or place specified in his or her bail document, as the day, time or place on or at which the person is required to appear, is altered to a later day, time or place; and
    - (ii) as a result of receiving the notice under subparagraph (i), does not appear in court as originally specified in his or her bail document; and
    - (iii) appears in court in accordance with the later day, time or place so altered.

***Division 3 – Conditions of bail***

**15. Bail may be granted subject to conditions**

- (1) A grant of bail under this Act, to a person in respect of an offence, may be subject to one or more of the conditions specified in section 16.

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- (2) A bail authority is to only impose a condition on a grant of bail if –
- (a) the condition being imposed is reasonable, given –
    - (i) the nature of the offence in respect of which bail is sought; and
    - (ii) the circumstances of the person charged with the offence in respect of which bail is sought; and
  - (b) the condition is no more onerous on the person, charged with the offence in respect of which bail is sought, than is necessary.
- (3) Unless otherwise specified in a condition of bail for an offence, each condition imposed on a grant of bail remains in force until whichever of the following first occurs:
- (a) the grant of bail for the offence is varied and the variation –
    - (i) revokes the condition; or
    - (ii) imposes a period for which the condition remains in force and that period has expired;
  - (b) initial proceedings in respect of the offence have been determined.

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- (4) If a grant of bail that is subject to conditions is extended by a bail authority, each such condition in force is taken to still apply in respect of the grant of bail until it ceases to be in force under subsection (3).
- (5) A condition imposing a recognizance may require the security, to be provided under the recognizance, to be in such form or to be given on such terms –
  - (a) as is specified in the condition; or
  - (b) if not specified in the condition, as is determined by a judicial officer.
- (6) All money payable pursuant to a condition of bail is to be paid to the appropriate officer.
- (7) For the avoidance of doubt –
  - (a) a condition imposed under this section; or
  - (b) the failure to impose a condition under this section –does not remove, or replace, a requirement imposed under any other Act or any other lawful obligation.

**16. Types of conditions that may be imposed on bail**

- (1) One or more of the following conditions may be imposed on bail granted to a person in respect of an offence:

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- (a) the person must report at a specified place at a specified time;
  - (b) the person must not attend a specified location or area;
  - (c) the person is subject to a curfew at a specified time and specified location;
  - (d) the person must not interact with a specified person or class of specified persons;
  - (e) the person must not breach any legal instrument, or order, that may be specified in the condition;
  - (f) the person must deposit a specified amount of money to be forfeited to the Crown if the person –
    - (i) fails to appear before a court as specified in the bail document; or
    - (ii) fails to comply with a condition of his or her bail;
  - (g) a person, other than the person being granted bail, must enter into an agreement, in an approved form and before an authorised person, to forfeit a specified amount of money to the Crown if the person granted bail –
    - (i) fails to appear before a court as specified in the bail document; or

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- (ii) fails to comply with a condition of his or her bail;
  - (h) the person must be assessed for his or her suitability for participation in an intervention program, provided that the person consents to such an assessment;
  - (i) the person must undertake an intervention program if the person is suitable for the program;
  - (j) any other condition that the person granting bail considers reasonable in the circumstances.
- (2) Without limiting the conditions that may be imposed under subsection (1) and subject to subsection (4), bail granted under a bail order, made by a magistrate or a judge, may also be granted on one or more of the following conditions:
- (a) the person must submit to electronic monitoring, including by wearing or carrying an electronic device, for a specified period;
  - (b) if required to submit to electronic monitoring as a condition of bail, the person –
    - (i) must not tamper with, damage or disable any device used for the purposes of the monitoring; and

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- (ii) must comply with all reasonable and lawful directions given to the person in relation to the electronic monitoring.
- (3) Before imposing a condition referred to in subsection (2) on a grant of bail, the relevant bail authority may request that a person specified in the request provide either or both of the following:
  - (a) further details of the proposed requirements for the electronic monitoring;
  - (b) a recommendation as to whether or not the imposition of the condition is appropriate in respect of the person to be granted bail.
- (4) A condition referred to in subsection (2) may only be imposed on a grant of bail if –
  - (a) the grant of bail relates to one of the following offences:
    - (i) a family violence offence within the meaning of the *Family Violence Act 2004*;
    - (ii) an offence specified in section 8; and
  - (b) without the imposition of the condition on the grant of bail, the relevant bail authority intends to refuse the application for bail.

**17. Compliance with conditions of bail**

- (1) A person who has been granted bail subject to one or more conditions must comply with each condition imposed on his or her bail.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (2) Despite subsection (1), a person is taken to have complied with a condition imposed on his or her bail that requires the person to appear in the Court of Criminal Appeal, or the Supreme Court, at a specified time and a specified place if –
- (a) a crown law officer has notified the person in writing that the person is not required to appear in the court until a later day; and
  - (b) the person has appeared in the court in accordance with the notification.

***Division 4 – Variation or revocation of bail***

**18. Variation of condition of bail granted under bail notice**

- (1) A person who has been granted bail under a bail notice in respect of an offence may apply to an authorised officer for a variation of a condition of the bail so granted.
- (2) An application for a variation of a condition of bail under subsection (1) may only be made before the first appearance of the defendant in



respect of the offence for which the bail was granted.

- (3) After receiving an application under subsection (1) in respect of a grant of bail, an authorised officer may only vary a condition of the bail if the authorised officer is satisfied that –
- (a) the varied condition is within the power of the authorised officer to grant or impose in respect of bail; and
  - (b) the variation is reasonable in the circumstances.

**19. Application for variation of conditions of bail generally**

- (1) Each of the following persons may apply, at any time and without limiting the powers conferred by or under any other law, for a variation of a grant of bail or of a condition of bail so granted:
- (a) the person who has been granted bail;
  - (b) the person responsible for prosecuting the offence in respect of which the bail has been granted.
- (2) An application under subsection (1) is to be –
- (a) in an approved form; and
  - (b) made to the relevant court in the prescribed manner.

**20. Application to revoke bail, &c.**

(1) In this section –

*eligible applicant*, in respect of a grant of bail for an offence, means –

- (a) a complainant in respect of the offence; or
- (b) the person who is responsible for prosecuting the offence; or
- (c) if the person responsible for prosecuting the offence is not the Crown, the Crown; or
- (d) a respondent to an appeal for the offence; or
- (e) if the offence is an application for a restraint order, an applicant for the restraint order.

(2) If bail has been granted in respect of an offence, an eligible applicant in respect of the offence may apply, at any time and without limiting the powers conferred by any other law, for an order –

- (a) for the variation, or addition, of a condition of the bail granted in respect of the offence; or
- (b) revoking the bail granted in respect of the offence.

(3) An application under subsection (2) is to be –

- (a) in an approved form; and
- (b) made and determined in accordance with the rules of court of the relevant court.

**21. Court may order variation or revocation of bail**

- (1) If a person, who is released on bail, appears before a judicial officer pursuant to an order of remand or an order of adjournment, or on an application under section 19 or 20, made in the prescribed manner, the judicial officer may –
  - (a) add, vary or revoke a condition of the grant of bail under which the person is so released; or
  - (b) revoke the bail granted to the person.
- (2) A judicial officer may exercise the powers conferred by subsection (1) of his or her own motion in respect of a person if –
  - (a) a plea of guilty for any offence has been taken from the person while he or she is released on bail; or
  - (b) the person is found guilty of an offence; or
  - (c) a charge against any such person is found to be proved.
- (3) If an application has been made under section 19 or 20 in respect of a person who is released on bail and the person fails to appear before the

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relevant court for the purpose of determining the application, the relevant court may –

- (a) add, vary or revoke a condition of the grant of bail under which the person is so released; or
- (b) revoke the bail granted to the person.

**22. Court may release person from recognizance**

- (1) This section applies to a person who is bound by a recognizance under this Act in respect of a grant of bail.
- (2) A person to whom this section applies may apply to be released from the recognizance.
- (3) An application under subsection (2) –
  - (a) is to be made to the court that imposed the recognizance; and
  - (b) is to be made and determined in accordance with the rules of court of that court.
- (4) On receipt of an application under subsection (2), a court may release that person from that recognizance.

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**PART 3 – APPEALS IN RESPECT OF BAIL**

*Division 1 – Appeals relating to bail notices*

**23. No right of appeal for refusal to issue bail notice**

A person may not appeal a decision of an authorised officer under section 11 not to grant bail under that section.

*Division 2 – Appeals relating to orders by Magistrates Court*

**24. Appeals from bail orders made by justices**

- (1) A person may appeal to the Magistrates Court, as constituted by a magistrate, against a bail order or remand order, made by the Magistrates Court as constituted other than by a magistrate, if –
- (a) the person is the subject of the order; or
  - (b) the person is a crown law officer; or
  - (c) if the appeal relates to an order made in respect of an offence against a law of the Commonwealth, the person is –
    - (i) the Commonwealth Director of Public Prosecutions; or
    - (ii) a person acting on behalf of the Commonwealth Director of Public Prosecutions.
- (2) An appeal under subsection (1) –

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- (a) must be made within 21 days after the order, to which the appeal relates, was made; and
  - (b) is to be commenced by notice of appeal filed with a district registry established under section 15A of the *Magistrates Court Act 1987*.
- (3) An appeal under this section is to be determined by way of a new hearing.

**25. Appeals from bail orders made by magistrates**

- (1) In this section –

*formal bail application* means an application for bail made either orally, or in writing, where submissions are made in support of the application.

- (2) A person may appeal to the Supreme Court against a bail order, or remand order, made by the Magistrates Court constituted by a magistrate if –
- (a) the person is the subject of the order and the order is the result of a formal bail application; or
  - (b) the person is a crown law officer; or
  - (c) if the appeal relates to an order made in respect of an offence against a law of the Commonwealth, the person is –

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- (i) the Commonwealth Director of Public Prosecutions; or
  - (ii) a person acting on behalf of the Commonwealth Director of Public Prosecutions.
- (3) An appeal under subsection (1) –
- (a) must be made within 21 days after the order, to which the appeal relates, was made; and
  - (b) is to be commenced by notice of appeal, filed with the Registrar of the Supreme Court, that specifies which orders are sought on appeal.
- (4) An appeal under this section is to be determined by way of a new hearing.

**26. Power of court hearing appeal**

On hearing an appeal under this Division, the court hearing the appeal may do any one or more of the following:

- (a) dismiss the appeal;
- (b) confirm, vary, amend, set aside or quash the order to which the appeal relates;
- (c) make a new bail order, or remand order, in respect of the subject of the order to which the appeal relates;

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- (d) refuse to grant bail to the subject of the order to which the appeal relates and remand the subject in custody to a time and day specified by the court;
- (e) make any other order that the court considers appropriate in the circumstances.

***Division 3 – Appeals relating to bail orders by Supreme Court***

**27. Appeal as to bail to Court of Criminal Appeal or Full Court**

- (1) A person who is the subject of a bail order, or remand order, made by a judge of the Supreme Court, may apply for a new hearing in respect of the order or a condition of the order.
- (2) A crown law officer may, by application for a new hearing, appeal against one or more of the following in respect of a bail order made by a judge of the Supreme Court:
  - (a) an order of a judge of the Supreme Court admitting a person to bail;
  - (b) a condition imposed by a judge of the Supreme Court to which an order admitting a person to bail is subject, or the failure to impose any such condition.
- (3) An application made under this section in respect of a bail order, or remand order, is to be made to –



- (a) the Court of Criminal Appeal, if the subject of the order is bound to appear before that Court; or
- (b) the Full Court of the Supreme Court, in any other case.

**28. Power of court hearing appeal**

On hearing an appeal under this Division, the court hearing the appeal may do any one or more of the following:

- (a) dismiss the appeal;
- (b) confirm, vary, amend, set aside or quash the order to which the appeal relates;
- (c) make a new bail order, or remand order, in respect of the subject of the order to which the appeal relates;
- (d) refuse to grant bail to the subject of the order to which the appeal relates and remand the subject in custody to a time and day specified by the court;
- (e) make any other order that the court considers appropriate in the circumstances.

**PART 4 – POWERS IN RESPECT OF BAIL**

*Division 1 – Powers of arrest*

**29. Arrest for contravention of condition of bail**

- (1) A police officer may arrest a person who has been granted bail if the police officer believes, on reasonable ground, that the person –
- (a) has contravened –
    - (i) a condition of the person’s bail;  
or
    - (ii) a notification to appear in court given to that person in accordance with section 17(2); or
  - (b) is about to contravene any such requirement or condition.
- (2) If a person is arrested under subsection (1), the bail of the person is suspended.
- (3) Subsection (2) ceases to apply to a person arrested under subsection (1) if the person is later released unconditionally.

**30. Person bound by recognizance may arrange arrest in certain circumstances**

- (1) A person may request that a police officer arrest another person if the person making the request –

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- 
- (a) has entered into a recognizance on behalf of the other person; and
  - (b) believes, on reasonable grounds, that the other person has contravened, or is about to contravene, a condition of the bail.
- (2) If a person is arrested as a result of a request under subsection (1) –
- (a) as soon as practicable after the arrest, the person who made the request must provide the police officer who made the arrest with a copy of the recognizance that was entered into, in respect of the arrested person, by the person who made the request; and
  - (b) the police officer who made the arrest is to arrange for the arrested person to be taken before a justice as soon as is practicable.

**31. Arrest of persons granted bail for certain offences**

- (1) A police officer may arrest a person who is granted bail in respect of an offence referred to in section 8, if the police officer believes, on reasonable grounds –
- (a) that new information is available in respect of the person; and
  - (b) if that information had been available at the time when the court granted bail to

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the person, it is likely that the court would not have found that –

- (i) there were exceptional circumstances in respect of the person or the offence; or
  - (ii) the person did not pose an unacceptable risk.
- (2) On the arrest of a person under this section, the bail of the person is suspended.
  - (3) Subsection (2) ceases to apply to a person if the person arrested is later released unconditionally.
  - (4) This section does not apply in relation to a person who is granted bail before the day on which this section commences.

**32. Arrest of certain terrorism-linked persons granted bail**

- (1) A police officer may arrest a person who is granted bail under a bail notice, if the police officer suspects on reasonable grounds that the person granted bail is a terrorism-linked person.
- (2) A police officer may arrest a person who is granted bail under a bail order, if –
  - (a) at the time the person was granted bail under the bail order, he or she was not believed to be a terrorism-linked person; and

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- (b) after the person's release on bail under the bail order, the police officer suspects on reasonable grounds that the person is, or has become, a terrorism-linked person.
  - (3) On the arrest of a person under this section, the bail of the person is suspended.
  - (4) Subsection (3) ceases to apply to a person if the person arrested is later released unconditionally.
  - (5) This section applies in relation to a person who is, or has been, granted bail, before, on or after the day on which this section commences.

**33. Court may issue warrant for arrest**

A judge of the Court of Criminal Appeal or the Supreme Court or a justice may issue a warrant for the arrest of a person granted bail –

- (a) if new information is made available in respect of the offence for which the person was granted bail; or
- (b) in respect of a person who fails to appear at a court –
  - (i) as specified in the relevant bail document; or
  - (ii) pursuant to a requirement specified in a notification given to that person in accordance with section 17(2).

**34. Powers of courts on arrest under this Division**

- (1) If a person is arrested under this Division and is taken before a justice, the justice may –
- (a) if the arrested person was granted bail by a bail authority other than the Supreme Court –
    - (i) revoke the bail and remand the person in custody; or
    - (ii) restore the bail as previously granted; or
    - (iii) if the justice has jurisdiction to do so, revoke the bail and make a fresh bail order in respect of the person; or
  - (b) if the arrested person was granted bail by the Supreme Court –
    - (i) remand the person in custody to appear before that court, at such time, not more than 7 days after the day on which that person was arrested, and at such place as is fixed by the justice; or
    - (ii) restore the bail as previously granted.
- (2) If a person is remanded in accordance with subsection (1)(b)(i) and appears before the Supreme Court as required under that subsection, the Supreme Court may –

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- (a) revoke the bail and remand the person in custody; or
  - (b) revoke the bail and make a fresh bail order in respect of the person; or
  - (c) restore the bail as previously granted.

*Division 2 – Orders for forfeiture of money*

**35. Forfeiture on breach of condition of bail**

(1) In this section –

*bail money*, in respect of a grant of bail, means money that –

- (a) is, or is to be, deposited under a condition imposed on the bail under section 16(1)(f); or
- (b) is to be forfeited under a recognizance entered into in respect of the grant of bail.

(2) If a person who is granted bail is found guilty of an offence under section 17(1), the court that has made the finding of guilt in respect of the person must order –

- (a) that the full amount of bail money in respect of the bail granted to the person is to be forfeited to the Crown; and
- (b) that the amount of bail money to be forfeited is to be payable to the Crown

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within such period as the court specifies  
in the order.

- (3) An order must be made under subsection (2) whether or not an application for such an order was made as part of the proceedings for the offence under section 17(1).
- (4) Despite subsection (2), the court may decline to make an order under that subsection, or may order forfeiture of part of the bail money forfeitable under that subsection, if –
  - (a) the person found guilty of the offence, or a person required to forfeit money under the proposed order, shows to the satisfaction of the court –
    - (i) that an order under that subsection for forfeiture in full would cause excessive hardship to the person, or the dependants of the person, who is required to forfeit money under the order; and
    - (ii) that the hardship would not be relieved by payment of the amount to be forfeited in instalments or by postponement of that payment to a specified date; or
  - (b) the court is satisfied that in the circumstances of the case it is just to do so.



**36. Forfeiture on non-appearance of person granted bail**

If a person granted bail fails to appear in accordance with his or her bail document, the court in which a person is required to appear may order that money deposited for bail by any person must be forfeited to the Crown.

**37. Forfeiture on conviction in absentia of person granted bail**

(1) If a person who is granted bail does not appear in accordance with his or her bail document and is found guilty, in his or her absence, of the offence in respect of which the bail was granted, an appropriate officer must comply with subsection (2) if –

- (a) ordered to do so by the relevant judicial officer; and
- (b) money has been deposited for bail in respect of that person.

(2) If subsection (1) applies, the appropriate officer must —

- (a) if the money that has been deposited for bail in respect of a person is more than the amount required to cover any fine, levy, charge or costs payable on that person being found guilty –
  - (i) use that money to pay that fine, levy or charge or those costs; and

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- (ii) repay the remaining amount that was deposited, if any, to the person who deposited the money; or
- (b) if the money that has been deposited for bail in respect of a person is less than the amount required to cover any fine or costs payable on the person being found guilty, retain the whole amount as part-payment of the fine, levy, charge or costs.

**38. Forfeiture of recognizance**

- (1) A person may apply for an order for the forfeiture of all, or any part, of a recognizance that has been entered into as a condition of bail for an offence.
- (2) An application under subsection (1) in respect of the bail that was granted subject to the recognizance –
  - (a) is to be made to the relevant court for the grant of bail; and
  - (b) is to be in an approved form; and
  - (c) is to be accompanied by the relevant fee for such an application; and
  - (d) is to be accompanied by –
    - (i) a copy of the recognizance; and

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- (ii) evidence that the person granted bail has failed to comply with a condition of the bail; and
  - (iii) evidence that notice of the application has been served, as prescribed, on the person who entered into the recognizance.
- (3) A court, to whom an application in respect of a recognizance is made under subsection (1), may make an order that the amount of the recognizance, or such part of that amount as the court considers appropriate, be forfeited to the Crown.

**39. Enforcement of orders for forfeiture of money deposited, &c.**

For the purposes of the *Monetary Penalties Enforcement Act 2005* –

- (a) an amount, or part of an amount, ordered to be forfeited under this Act –
  - (i) is taken to be a fine imposed by the Court on the person who is required under the order to pay the forfeited amount; and
  - (ii) may be referred to the Director, Monetary Penalties Enforcement Services for collection and enforcement under that Act; and

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- (b) a reference to an offender under that Act is taken to be a reference to the person who is required under the order to pay the forfeited amount.

Consultation draft

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**PART 5 – MISCELLANEOUS**

**40. Oral applications in respect of bail**

- (1) A person who is charged with an offence, other than an offence referred to in section 8, may make an oral application under section 12 or 19 in respect of the offence.
- (2) A person may not make an oral application to a justice under subsection (1) if –
  - (a) the offence in respect of which bail is sought is not an offence in respect of which the justice has jurisdiction to grant bail; or
  - (b) the person is in custody as a result of an arrest under section 29 arising from a breach, or a suspected breach, of a bail order made by the Supreme Court.
- (3) Despite subsection (1), a bail authority may permit a person charged with an offence referred to in section 8 to make an oral application under section 12 or 19 in respect of the offence if the bail authority –
  - (a) has jurisdiction to grant bail to the person under the application; and
  - (b) considers it reasonable in the circumstances for such an oral application to be made.
- (4) For the avoidance of doubt, the bail authority determining an oral application under this

section may require the applicant to provide further information, whether orally or in writing, in respect of the application.

**41. Court proceedings, &c., in relation to terrorism-linked persons**

- (1) This section applies to proceedings before a court that relate to bail for a person who is, or is alleged by a party to the proceedings to be, a terrorism-linked person.
- (2) In any proceedings to which this section applies, the court hearing the proceedings may make any one or more of the following orders:
  - (a) that all or part of the proceedings are to be heard in closed court;
  - (b) that only persons, or members of a class of persons, specified by the judge, magistrate or court may be present during all or part of the proceedings;
  - (c) that the publication of a report of all or part of the proceedings, or of any information that is disclosed in, or referred to in, the proceedings, is prohibited.

**42. Prohibition on publishing accounts of bail proceedings**

- (1) In this section –

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***application in respect of bail*** includes an application made in respect of an appeal that relates to bail or a refusal to grant bail.

- (2) Unless otherwise permitted by a magistrate or judge and despite anything in the *Defamation Act 2005*, a person must not publish, or cause or allow to be published –
- (a) information given, or produced in evidence, in proceedings in respect of an application in respect of bail under any Act; or
  - (b) an account of proceedings in respect of an application in respect of bail under any Act; or
  - (c) any information relating to proceedings in respect of an application in respect of bail under any Act.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (3) Subsection (1) does not apply to the publication of information, or an account, if –
- (a) the prosecutor, or the defendant, publishes the information or account to another person and the publication to that person is necessary for the prosecutor or defendant to effectively conduct his or her case in relation to the offence in

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respect of which the bail application relates; or

- (b) the publication is a report of proceedings in the Supreme Court, or before a judge, that is written as a law report; or
- (c) the prosecutor publishes the information or account to another person and the publication to that person is necessary in respect of any other criminal proceedings, where such matters may be disclosed, in respect of the defendant; or
- (d) the publication only specifies that an application in respect of bail has been made and that bail has been granted, or refused, in relation to the application.

**43. Repayment of bail money on final determination**

- (1) In this section –

*bail money*, in respect of a grant of bail, means money that was deposited under a condition imposed on the bail under section 16(1)(f).

- (2) If a person is granted bail in respect of an offence and proceedings in respect of the offence have been finally determined, the appropriate officer must repay, subject to subsection (3), the bail money deposited in respect of the person for the offence.



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- (3) If an appropriate officer must repay bail money under subsection (2) in respect of a person who has been found guilty of the offence in respect of which he or she was granted bail, the appropriate officer must, if ordered to do so by the relevant judicial officer —
- (a) if the bail money to be repaid is more than the amount required to cover the fine, levy, charge or costs payable on that finding of guilt –
    - (i) use that money to pay that fine, levy or charge or those costs; and
    - (ii) repay the remaining money, if any, to the person who deposited the money; or
  - (b) if the bail money to be repaid is less than the amount required to cover any fine, levy, charge or costs payable on that finding of guilt, retain the whole amount as part-payment of the fine, levy, charge or costs.

**44. Court may order return of money forfeited in certain circumstances**

- (1) A person may apply to the relevant court to show cause for money to be returned to that person if –
  - (a) the person deposited money as part of a bail condition for bail in respect of another person; and

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- (b) by virtue of the other person failing to appear before a court as required, that money is forfeited in accordance with section 36.
- (2) An application under subsection (1) –
- (a) is to be in an approved form; and
  - (b) is to be made to the court that made the order under section 36 for the money to be forfeited; and
  - (c) may only be made –
    - (i) within 2 months after the order was made; or
    - (ii) within such further time as may be allowed by the court which made the order.
- (3) On receipt of an application under subsection (1), the court must enquire into the circumstances of the case and, if it thinks fit, may order the return of the whole or any part of that money to the applicant.
- (4) If an order is made under this section for the return of money deposited for bail, the appropriate officer must give to the person, entitled to the return of the money under the order, an order for the payment of that money or so much of that money as has been ordered to be returned.

**45. Evidentiary provision**

In any proceedings –

- (a) a document purporting to be a copy of a notice given under section 11(3) and to be endorsed and signed as mentioned in that subsection is evidence –
  - (i) that the endorsement was signed by the person whose signature it purports to be; and
  - (ii) that the notice was given to the person specified in the notice; and
- (b) a document purporting to specify the terms of a bail document, and purporting to be signed by the person granted bail, is evidence of the fact that the person specified in the document was granted bail on those terms.

**46. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for, or in respect of –
  - (a) the approval of persons entering into recognizances; and

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- (b) the approval of security to be given by persons granted bail or persons entering into any such recognizance; and
- (c) the service of notices of application under this Act and the procedure for any such application; and
- (d) the procedure to be followed if a person granted bail fails to appear in accordance with the terms of the bail document; and
- (e) the enforcement of recognizances.

**47. Savings and transitional**

- (1) In this section –

*commencement day* means the day on which this Act commences;

*former Act* means the *Bail Act 1994*;

- (2) In any Act, instrument or document, a reference to admit to bail is taken to be a reference to a grant of bail.

- (3) On the commencement day –

- (a) a grant of bail, however described, that is in force on the commencement day is taken, on and after the commencement day, to be a grant of bail under this Act; and
- (b) a bail notice under the former Act is taken, on and after the commencement

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day, to be a bail notice under this Act;  
and

- (c) an order of a court granting bail is taken, on and after the commencement day, to be a bail order under this Act; and
- (d) an application under the former Act in respect of a matter is taken, on and after the commencement day, to be an application under this Act for the matter.

**48. Administration of Act**

Until provision is made in relation to this Act by order made under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

**49. Legislation repealed**

The legislation specified in Schedule 2 is repealed.

**SCHEDULE 1 – SERIOUS INDICTABLE OFFENCES**

Section 5

1. Section 124 of the Criminal Code.
2. Section 125A of the Criminal Code.
3. Section 125C(2) of the Criminal Code.
4. Section 126 of the Criminal Code.
5. Section 130 of the Criminal Code.
6. Section 130A of the Criminal Code.
7. Section 130B of the Criminal Code.
8. Section 133 of the Criminal Code.
9. Section 159 of the Criminal Code.
10. Section 170 of the Criminal Code.
11. Section 170A of the Criminal Code.
12. Section 172 of the Criminal Code.
13. Section 185 of the Criminal Code.

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- 14.** Section 186 of the Criminal Code.
- 15.** Section 189 of the Criminal Code.
- 16.** Section 191(1) of the Criminal Code.
- 17.** Section 191A of the Criminal Code.
- 18.** Section 240(3) of the Criminal Code.
- 19.** Section 240(4) of the Criminal Code.
- 20.** Section 240A of the Criminal Code.
- 21.** Section 9 of the *Sex Industry Offences Act 2005*.
- 22.** Part 2 of the *Misuse of Drugs Act 2001*.
- 23.** Part 9.1 of the *Criminal Code Act 1995* of the Commonwealth.

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**SCHEDULE 2 – LEGISLATION REPEALED**

Section 49

*Bail Act 1994* (No. 9 of 1994)

Consultation draft