

Queensland



BAIL ACT 1980

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Information about this reprint

This Act is reprinted as at 30 April 1999. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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BAIL ACT 1980

[as amended by all amendments that commenced on or before 30 April 1999]

An Act to consolidate and amend the law relating to the release of defendants charged with offences and for incidental and other purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Bail Act 1980*.

Definitions

6. In this Act—

“**adjourn**” includes postpone or reserve a question on a point of law.

“**admit**” to bail includes grant bail.

“**appeal**” includes an application for leave to appeal.

“**approved form**” see section 36C.¹

“**committal for trial**” includes a committal for sentence.

“**conviction**” includes—

- (a) a finding of guilt;
- (b) a finding that a person is not guilty by reason of unsoundness of mind;
- (c) a conviction of an offence for which an order is made—

¹ Section 36C (Approval of forms)

- (i) placing the defendant on probation; or
- (ii) requiring the person to perform unpaid community service; or
- (iii) discharging the person absolutely or conditionally.

“court” includes a judge or justice whether sitting in court or chambers or acting in any other manner, a court exercising appellate jurisdiction and any justice or justices conducting an examination of witnesses in relation to an indictable offence.

“criminal proceeding” includes a hearing, trial or appeal in relation to an offence.

“defendant” means a person charged with or convicted of an offence and includes such a person who is a party to an appeal.

“deputy director of public prosecutions” means, where the charge out of which a prosecution arises is a charge for an offence against the laws of the Commonwealth, the deputy director of public prosecutions in Queensland.

“hearing” means a proceeding before a court or judge or before any justice or justices dealing summarily with a charge of a simple offence or conducting an examination of witnesses in relation to an indictable offence or a proceeding wherein a person is to be sentenced and includes a proceeding wherein a person is charged with an offence on indictment whether or not the person has been called upon to plead to that indictment.

“judge” includes a District Court judge.

“offence” includes an alleged offence.

“prison” includes any institution or place at which a child is detained pursuant to the *Juvenile Justice Act 1992* and any other place where persons may be detained in lawful custody.

“proper officer”, when used in relation to a court, means—

- (a) in the case of the Supreme Court or a District Court—the registrar or any sheriff, deputy sheriff or under sheriff;
- (b) in the case of a Magistrates Court—the clerk of the court.

“simple offence” means an offence (whether or not indictable) punishable

on summary conviction before a Magistrates Court by fine, imprisonment or otherwise.

“surrender into custody”, when used in relation to a defendant who is—

- (a) on bail; or
- (b) permitted to go at large without bail;

means surrender into the custody of the court at the time and place for the time being appointed for the defendant to do so.

“trial” means a proceeding wherein a person is charged with an offence on indictment and includes a proceeding wherein a person is to be sentenced.

“undertaking” means a promise in writing with respect to bail signed by a defendant or by a defendant and the defendant’s surety or sureties that the defendant will appear at a hearing or an adjourned hearing or upon the defendant’s trial or an appeal and surrender into custody and comply with such other conditions as are imposed for the defendant’s release on bail.

“vary”, when used in relation to bail, means impose further conditions after bail is granted, alter, amend or rescind conditions or alter the amount of bail.

Delegation of powers by proper officer

6A.(1) A proper officer may delegate the proper officer’s powers under this Act to an officer of the public service (an **“officer”**) mentioned in subsection (2) if the officer is a justice.

(2) If the proper officer is—

- (a) the sheriff—the powers may be delegated to an officer employed in the sheriff’s office or Magistrates Court registry; or
- (b) the registrar—the powers may be delegated to an officer employed in the District Court registry or Magistrates Court registry; or
- (c) the clerk of the court—the powers may be delegated to an officer employed in the Magistrates Court registry.

PART 2—GRANT AND ENLARGEMENT OF BAIL

Power of police officer to grant bail

7.(1) Where a person who has been apprehended on a charge of an offence is delivered into the custody of a police officer at a place that is a police station, watch-house or lockup and it is not practicable to bring the person before a court forthwith, the police officer who is in charge of or the watch-house keeper at that place—

- (a) shall investigate the question whether or not bail should be granted; and
- (b) may and, if it is not practicable to bring the person before a court within 24 hours after the person is taken into custody, shall, save where this Act otherwise provides, grant bail to that person and release the person from custody in accordance with this Act.

(2) A person granted bail and released in accordance with this section shall be released—

- (a) pursuant to section 14;² or
- (b) on conditions for the person's release made by the police officer pursuant to section 11.³

(3) The police officer authorised by this section to grant bail who refuses to grant bail to a person under this section shall endorse on the papers relating to that person or the warrant or in a register or record of persons in custody the officer's reasons for such refusal.

(3A) Failure by such police officer to endorse the officer's reasons for such refusal shall not of itself render the custody unlawful.

(4) A grant of bail to a person under this section and the person's release from custody thereon discharges the duty of taking that person before a justice to be dealt with according to law.

² Section 14 (Release of persons apprehended on making deposit of money as security for appearance)

³ Section 11 (Conditions of release on bail)

(5) A court before which a person granted bail pursuant to this section appears may enlarge, vary or revoke bail so granted.

Power of court as to bail

8.(1) A court, subject to this Act—

- (a) may grant bail to a person held in custody on a charge of or in connection with an offence if—
 - (i) the person is awaiting a criminal proceeding to be held by that court in relation to that offence; or
 - (ii) the court has adjourned the criminal proceeding; or
 - (iii) the court has committed or remanded the person in the course of or in connection with a criminal proceeding to be held by that court or another court in relation to that offence;
- (b) may enlarge, vary or revoke bail so granted.

(2) A person in custody on a charge of or in connection with an offence who is not granted bail shall, unless the person has been sentenced for that offence, be remanded in custody.

(3) Save where this Act or any other Act otherwise provides, an enlargement of bail may, if the court thinks fit, be granted in the absence of the defendant.

(4) A person to whom bail is granted shall not be released from custody while the person is, for any other cause, being lawfully held in custody.

(5) The powers of the Court of Appeal with respect to bail may be exercised by a judge of the Supreme Court in the same manner as they may be exercised by the Court of Appeal, but, if the judge refuses an application with respect to bail, the person making the application may apply to the Court of Appeal and that court shall hear and determine the application.

Duty of court to grant bail in certain cases

9. Where a person held in custody on a charge of an offence of which the person has not been convicted appears or is brought before a court empowered by section 8 to grant bail to the person in relation to that

offence, the court shall, subject to this Act, grant bail to that person or enlarge or vary bail already granted to the person in relation to that offence.

General powers as to bail

10.(1) The Supreme Court or a judge thereof may, subject to this Act, grant bail to a person held in custody on a charge of an offence, or in connection with a criminal proceeding, or enlarge, vary or revoke bail granted to a person in or in connection with a criminal proceeding whether or not the person has appeared before the Supreme Court in or in connection therewith.

(2) Notwithstanding that a person has been given in charge to the jury in connection with the person's trial commenced in the Supreme Court or a District Court the trial judge may in the trial judge's discretion exercise the powers conferred on a court by section 8(1)⁴ to grant bail to that person or to enlarge, vary or revoke bail already granted to the person.

(3) A decision as to bail made in accordance with subsection (2) by a trial judge shall be final and, notwithstanding this Act, a defendant in respect of whom such decision has been made shall not have the right to make a further application for bail in relation to the custody in which the defendant is then held.

No court fee payable for making application to Supreme Court

10A. No fee is payable to an office of the Supreme Court for the making of an application for bail to the Supreme Court or a judge of the court.

Conditions of release on bail

11.(1) A court or police officer authorised by this Act to grant bail shall consider the conditions for the release of a person on bail in the following sequence—

- (a) the release of the person on the person's own undertaking without sureties and without deposit of money or other security;

⁴ Section 8 (Power of court as to bail)

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- (b) the release of the person on the person's own undertaking with a deposit of money or other security of stated value;
- (c) the release of the person on the person's own undertaking with a surety or sureties of stated value;
- (d) the release of the person on the person's own undertaking with a deposit of money or other security of stated value and a surety or sureties of stated value;

but shall not make the conditions for a grant of bail more onerous for the person than those that in the opinion of the court or police officer are necessary having regard to the nature of the offence, the circumstances of the defendant and the public interest.

(2) Where a court or a police officer authorised by this Act to grant bail considers that the imposition of special conditions is necessary to secure that a person—

- (a) appears in accordance with the person's bail and surrenders into custody;
- (b) while released on bail does not—
 - (i) commit an offence; or
 - (ii) endanger the safety or welfare of members of the public; or
 - (iii) interfere with witnesses or otherwise obstruct the course of justice whether in relation to the person or another person;

that court or police officer shall impose such conditions as the court or police officer thinks fit for any or all of such purposes.

(2A) Conditions imposed pursuant to subsection (2) shall not be more onerous for the person than those that in the opinion of the court or police officer are necessary having regard to the nature of the offence, the circumstances of the defendant and the public interest.

(3) If a court that grants bail on an adjournment of a hearing or while the defendant is awaiting trial considers an investigation ought to be made into the defendant's physical or mental condition, the bail may be made subject to a condition that the defendant undergo medical examination—

- (a) by a doctor at a specified institution or place (other than a security patients' hospital under the *Mental Health Act 1974*); or

(b) by a specified doctor.

(3A) However, bail may be made subject to a condition that the defendant undergo a medical examination only if the proposed examination is an examination the defendant could lawfully be required to undergo if the defendant remained in custody.

(3B) If bail is subject to a condition mentioned in subsection (3), the court must arrange for a statement containing the following matters to be given to the institution, place or doctor—

- (a) the reasons for the investigation;
- (b) the information before the court about the defendant's physical or mental condition.

Restriction on publication of information, evidence and the like given in bail application

12.(1) Where the complainant or prosecutor or a person appearing on behalf of the Crown opposes the grant of bail to a defendant, the court, at any time during the hearing of the application for bail, may make an order directing that the evidence taken, the information furnished, the representations made by or on behalf of either party or the reasons given by the court for the grant or refusal of bail or any part thereof or any of them shall not be published by any means—

- (a) if an examination of witnesses in relation to an indictable offence is held—before the defendant is discharged; or
- (b) if the defendant is tried or committed for trial—before the trial is ended.

(2) A person who fails without lawful excuse, the proof of which lies upon the person, to comply with an order made under subsection (1) commits an offence against this Act.

Maximum penalty—10 penalty units or imprisonment for 6 months.

When only the Supreme Court may grant bail

13. Only the Supreme Court or a judge of the Supreme Court may grant bail to a person charged with an offence under the Criminal Code if, on

conviction, the sentencing court will have to decide which of the following sentences to impose on the person—

- (a) imprisonment for life, which cannot be mitigated or varied under the Criminal Code or any other law;
- (b) an indefinite sentence under the *Penalties and Sentences Act 1992*, part 10.⁵

Release of persons apprehended on making deposit of money as security for appearance

14.(1) Where a person who has been apprehended for an offence other than an indictable offence or an offence specified in the schedule is delivered into the custody of a police officer at a place that is a police station, watch-house or lockup, without having first appeared before a justice in relation to that offence, the police officer who is in charge of or the watch-house keeper at that place, if the police officer or watch-house keeper is satisfied that the person cannot be taken forthwith before a justice and if the police officer or watch-house keeper thinks it prudent to do so, may grant bail to the person and release the person from custody on the person making a deposit of money as security for the person's appearance before a court or justice on such day and at such time and place as are notified to the person in accordance with this section.

(2) The police officer who accepts a deposit of money from a person and grants bail to the person pursuant to subsection (1)—

- (a) shall cause a bench charge sheet to be completed with the following particulars and lodged at the police station, watch-house or lockup—
 - (i) the name, place of residence and occupation of the person;
 - (ii) a short statement of the offence;
 - (iii) the amount of the deposit of money;
 - (iv) the day, time and place appointed for the person's appearance before the court or justice and the court or justice before which or whom the person is required to appear;

⁵ *Penalties and Sentences Act 1992*, part 10 (Indefinite sentences)

(b) must give the person a notice in the approved form that includes the particulars required under a regulation.

(3) The police officer who accepts a deposit of money from a person and grants bail to the person at a place other than a place for holding Magistrates Courts and thereupon releases the person from custody shall cause the bench charge sheet referred to in subsection (2)(a) to be forwarded to the clerk of the court at the place where that person is required to appear.

(5) Where a person granted bail and released from custody pursuant to this section fails to appear before a court or justice in accordance with the bail, the court or justice shall, subject to subsections (7) and (9), order the forfeiture of the deposit of money made by the person in connection with the bail.

(6) Where a person granted bail and released from custody pursuant to this section appears before a court or justice in accordance with the bail, the court or justice shall order that the amount of the deposit of money paid by the person be refunded to the person unless the court or justice orders that the amount or a part thereof be applied in or towards payment of any penalty or costs imposed or awarded or unless, where the hearing is adjourned and the person is permitted to go at large without bail, the court or justice orders that the amount or a part thereof be applied as security for the person's appearance at the time and place to which the hearing is adjourned or to be determined (which the court or justice is hereby empowered to do) whereupon, in the latter case, if the person fails to appear at the time and place to which the hearing is adjourned or that has been determined the court or justice shall deal with the deposit of money in accordance with subsection (5) and that subsection shall apply and extend accordingly.

(7) Where a person granted bail and released from custody pursuant to this section does not appear in accordance with the bail but applies to the court or justice by counsel or solicitor for an adjournment of the hearing and the court or justice grants the adjournment, the court or justice may, in lieu of ordering the amount of the deposit of money to be forfeited, order that the amount or a part thereof be applied as security for the person's appearance at the time and place to which the hearing is adjourned or to be determined or permit the person to go at large without bail.

(7A) If the person fails to appear at the time and place appointed or determined for the continuation of the hearing in accordance with the bail the court or justice shall deal with the deposit of money in accordance with

subsection (5) and that subsection shall apply and extend accordingly.

(8) Subsections (6) to (7A) apply in relation to the proceedings before a court or justice at all times and places to which the hearing is, from time to time, adjourned.

(9) Where a person has been granted bail and released thereon after making a deposit of money as security for the person's appearance and the hearing is adjourned pursuant to subsection (7) to a time and place to be determined and that person does not appear at the time and place so determined, steps shall not be taken to forfeit such deposit of money unless the court or justice is satisfied that reasonable notice of the time and place so determined has been given to the person.

(10) This section does not prejudice or in any way affect—

- (a) the powers of a court or justice with respect to adjournments or the issue of warrants of apprehension; or
- (b) the operation of any Act relating to the forfeiture of bail.

Magistrates Courts may grant cash bail or permit to go at large

14A.(1) Where a Magistrates Court adjourns the hearing of a charge of an offence other than an indictable offence or an offence specified in the schedule, the court (whether or not the defendant is already on bail) may—

- (a) grant bail to the defendant and, in lieu of ordering the defendant to enter into an undertaking, order that the defendant be released from custody on making a deposit of money with the clerk of the court as security that the defendant will surrender into custody; or
- (b) permit the defendant to go at large without bail on the condition that the defendant will surrender into custody.

(2) Where—

- (a) a person accepts a deposit of money from a defendant pursuant to subsection (1)(a), that person; or
- (b) a Magistrates Court permits a defendant to go at large pursuant to subsection (1)(b), the clerk of the court;

must give the defendant a notice in the approved form that includes the particulars required under a regulation.

(3) Where a defendant granted bail pursuant to this section and released from custody fails to surrender into custody, the court shall, subject to subsections (5) and (7), order the forfeiture of the deposit of money made by the defendant in connection with the bail.

(4) Where a defendant granted bail pursuant to this section and released from custody surrenders into custody, the court shall order that the amount of the deposit of money paid by the defendant be refunded to the defendant unless—

- (a) it orders that the amount or a part thereof be applied in or towards payment of any penalty or costs imposed or awarded; or
- (b) where the hearing is adjourned and the defendant is permitted to go at large without bail, the court orders that the amount or a part thereof be applied as security that the defendant will surrender into custody.

(4A) In the case specified in subsection (4)(b), if the defendant fails to surrender into custody the court shall deal with the deposit of money in accordance with subsection (3) and that subsection shall apply and extend accordingly.

(5) Where a defendant granted bail pursuant to this section and released from custody fails to surrender into custody but applies to the court by the defendant's counsel or solicitor for an adjournment of the hearing and the court grants the adjournment, the court may—

- (a) in lieu of ordering the amount of the deposit of money to be forfeited, order that the amount or a part thereof be applied as security that the defendant will surrender into custody; or
- (b) permit the defendant to go at large without bail on the condition that the defendant will surrender into custody.

(5A) Where an order is made under subsection (5)(a) and the defendant fails to surrender into custody the court shall deal with the deposit of money in accordance with subsection (3) and that subsection shall apply and extend accordingly.

(6) Subsections (4) to (5A) apply in relation to proceedings before a Magistrates Court at all times and places to which the hearing is adjourned.

(7) Where a defendant has been granted bail and released thereon after making a deposit of money as security that the defendant will surrender into

custody and the hearing is adjourned pursuant to subsection (5) to a time and place to be determined and the defendant fails to surrender into custody the court shall not make an order forfeiting the deposit of money unless it is satisfied that reasonable notice of the time and place so determined has been given to the defendant.

Procedure upon application for bail

15. In a proceeding with respect to bail—

- (a) the court may, subject to paragraph (b), make such investigations on oath or otherwise of and concerning the defendant as the court thinks fit; and
- (b) the defendant shall not be examined or cross-examined by the court or any other person as to the offence with which the defendant is charged and no inquiry shall be made of the defendant as to that offence; and
- (c) the complainant or prosecutor or any person appearing on behalf of the Crown may submit, in addition to other relevant evidence, evidence by affidavit or otherwise—
 - (i) to prove that the defendant—
 - (A) has been convicted previously of an indictable offence;
 - (B) has been charged with and is awaiting trial on an indictable offence;
 - (C) has failed previously to appear in accordance with the defendant's undertaking and surrender into custody; or
 - (ii) to show the circumstances of the offence particularly as they relate to the probability of conviction of the defendant; and
- (d) the court shall take into consideration such relevant matters as are agreed upon by the complainant or prosecutor and the defendant or the defendant's counsel or solicitor; and
- (e) the court may receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances.

Refusal of bail

16.(1) Notwithstanding this Act, a court or police officer authorised by this Act to grant bail shall refuse to grant bail to a defendant if the court or police officer is satisfied—

- (a) that there is an unacceptable risk that the defendant if released on bail—
 - (i) would fail to appear and surrender into custody;
 - (ii) would while released on bail—
 - (A) commit an offence; or
 - (B) endanger the safety or welfare of a person who is claimed to be a victim of the offence with which the defendant is charged or anyone else's safety or welfare; or
 - (C) interfere with witnesses or otherwise obstruct the course of justice, whether for the defendant or anyone else; or
- (b) that the defendant should remain in custody for the defendant's own protection.

(1A) Where it has not been practicable to obtain sufficient information for the purpose of making a decision in connection with any matter specified in subsection (1) due to lack of time since the institution of proceedings against a defendant the court before which the defendant appears or is brought shall remand the defendant in custody with a view to having further information obtained for that purpose.

(2) In assessing whether there is an unacceptable risk with respect to any event specified in subsection (1)(a) the court or police officer shall have regard to all matters appearing to be relevant and in particular, without in any way limiting the generality of this provision, to such of the following considerations as appear to be relevant—

- (a) the nature and seriousness of the offence;
- (b) the character, antecedents, associations, home environment, employment and background of the defendant;
- (c) the history of any previous grants of bail to the defendant;

(d) the strength of the evidence against the defendant.

(3) Where the defendant is charged—

- (a) with an indictable offence that is alleged to have been committed while the defendant was at large with or without bail between the date of the defendant's apprehension and the date of the defendant's committal for trial or while awaiting trial for another indictable offence; or
- (b) with an offence to which section 13⁶ applies; or
- (c) with an indictable offence in the course of committing which the defendant is alleged to have used or threatened to use a firearm, offensive weapon or explosive substance; or
- (d) with an offence against this Act;

the court or police officer shall refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified and, where bail is granted, shall include in the order a statement of the reasons for granting bail.

(4) In granting bail in accordance with subsection (3) a court or police officer may impose conditions in accordance with section 11.⁷

Enlargement of undertaking

17.(1) An undertaking may, with the consent of any person or persons offering to be surety or sureties, contain a provision for its enlargement without the further consent of the surety or sureties upon such adjournments of the criminal proceeding as are from time to time directed.

(1A) Subsection (1) does not prejudice in any way the right of a person offering to be surety to elect to be bound with respect to an undertaking that may be enlarged only with the person's consent given at the time of the enlargement and the court shall not refuse to grant bail to a person by reason only that a person offering to be surety has so elected.

(2) Where a criminal proceeding is adjourned, the court may enlarge the

⁶ Section 13 (When only the Supreme Court may grant bail)

⁷ Section 11 (Conditions of release on bail)

undertaking of the defendant if the defendant is then on bail and, where there is a surety or are sureties to the undertaking, the court shall, unless the undertaking otherwise provides, obtain the consent of the surety or sureties to such enlargement and thereupon the defendant shall be bound to attend the court at the time and place or sittings to which the criminal proceeding has been adjourned and be bound by all other conditions imposed by the original undertaking without entering into a fresh undertaking and the surety or sureties shall be bound accordingly.

(3) An enlargement pursuant to subsection (2) may include a condition that the defendant surrender into custody at the date, time and place fixed for the trial or appeal.

(4) Notwithstanding subsection (2), the court may make such order as to bail and as to the commitment of the defendant to prison until bail is forthcoming as the court thinks fit.

(5) An undertaking may be enlarged pursuant to subsection (2) if any condition of the undertaking remains to be fulfilled notwithstanding that the defendant has surrendered into custody in compliance with the undertaking.

(6) An endorsement on the papers relating to the defendant to the effect that the defendant's undertaking has been enlarged in accordance with subsection (2) and specifying the time and place or sittings at which the defendant is bound to attend the court and purporting to be signed by the judge or justices constituting the court or the proper officer thereof shall be evidence and, in the absence of evidence to the contrary, conclusive evidence that the bail was so enlarged.

Endorsement of decision as to bail on papers and warrant

18. A court that grants or refuses bail to a defendant shall endorse or cause to be endorsed on the papers relating to the defendant and on the warrant of remand, committal or, as the case may be, commitment (if any) its decision as to bail and the court or the proper officer thereof shall certify—

- (a) where bail is granted—
 - (i) consent to the defendant's release on bail; and
 - (ii) the amount of money or other security (if any) to be deposited; and

- (iii) the amount of any surety or sureties to be required; and
 - (iv) the special conditions (if any) applicable to the defendant's release on bail; or
- (b) where bail is refused—
- (i) the refusal of bail; and
 - (ii) the grounds for such refusal.

Application re refusal or conditions of bail

19.(1) A defendant held in custody in relation to an offence who has been refused bail or having been granted bail feels aggrieved by the amount fixed or any condition imposed for the defendant's release from custody may make application to a court empowered by section 8⁸ to grant bail to the defendant for an order granting or varying bail.

(2) On the hearing of the application, the court may, subject to this Act, grant bail to the defendant, vary the bail already granted or refuse the application.

Consideration of findings of guilt, cautions and community conference agreements as child for decisions about release from custody

19A.(1) This section applies to a person in custody on a charge of an offence, if—

- (a) the person—
 - (i) has been found guilty as a child of an offence without a conviction being recorded; or
 - (ii) has been administered a caution as a child for an offence; or
 - (iii) has made a community conference agreement as a child about an offence; and
- (b) the finding, caution or agreement may be treated as part of the person's criminal history by a court that sentences the person on the charge.

⁸ Section 8 (Power of court as to bail)

(2) A court or person deciding whether to remand the person in custody on the charge or release the person from custody may have regard to the finding, caution or agreement.

Review of certain bail decisions

19B.(1) This section does not apply to the following decisions about bail—

- (a) a decision by the Supreme Court;
- (b) a decision under section 10(2);⁹
- (c) a decision by a magistrate acting as a reviewing court under this section.

(2) If a decision has been made about bail for a defendant, the defendant, complainant or prosecutor or a person appearing on behalf of the Crown may apply to the reviewing court for a review of the decision.

(3) The reviewing court is—

- (a) for a decision by a police officer or justice who is not a magistrate—a Magistrates Court constituted by a magistrate; or
- (b) for any other decision—the Supreme Court constituted by a single judge.

(4) A complainant, prosecutor or a person appearing on behalf of the Crown who makes an application under subsection (2) must take reasonable steps to inform the defendant of the time and place for the hearing of the application.

(5) The hearing may proceed in the defendant's absence, if the reviewing court is satisfied the steps were taken.

(6) On the review, additional or substitute evidence or information may be given and the reviewing court may make any order it considers appropriate.

(7) However, the orders that may be made under subsection (6) are

⁹ Section 10 (General powers as to bail)

limited by sections 13, 16 and 17(1A).¹⁰

(8) The person or court that made the decision under review must give the reviewing court any documents in the person's or court's possession that may be relevant to the review.

(9) The reviewing court must decide an application under this section as soon as is reasonably practicable.

Review by Supreme Court of magistrate's decision on a review

19C.(1) If a decision is made by a magistrate on a review of a bail decision, the defendant, complainant or prosecutor or a person appearing on behalf of the Crown may apply to the Supreme Court as constituted by a single judge for a review of the magistrate's decision.

(2) A complainant, prosecutor or a person appearing on behalf of the Crown who makes an application under subsection (1) must take reasonable steps to inform the defendant of the time and place for the hearing of the application.

(3) The hearing may proceed in the defendant's absence, if the reviewing court is satisfied the steps were taken.

(4) The decision may be reviewed only with the court's leave.

(5) On the review, additional or substitute evidence or information may be given and the court may make any order it considers appropriate.

(6) However, the orders that may be made under subsection (5) are limited by sections 16 and 17(1A).

Warrants in aid of orders under section 19B or 19C

19D. A reviewing court that makes an order under section 19B or 19C may, for the purpose of giving effect to the order, issue a warrant for the apprehension of the defendant directing that the defendant be brought before a stated court.

¹⁰ Sections 13 (When only the Supreme Court may grant bail), 16 (Refusal of bail) and 17 (Enlargement of undertaking)

Review provisions do not affect other powers

19E. Sections 19B to 19D do not affect a power of the Supreme Court under section 10,¹¹ or any other power of a court to grant, enlarge, vary or revoke bail under other provisions of this or any other Act.

PART 3—UNDERTAKINGS AND SURETIES**Undertaking as to bail**

20.(1) A defendant to whom bail is granted in or in connection with a criminal proceeding (other than a defendant to whom bail is granted under section 14 or 14A¹²) shall, before being released from custody, enter into an undertaking in the approved form.

(2) A defendant—

- (a) who is committed for trial; or
- (b) who has been convicted and has appealed against the conviction or sentence imposed thereon;

and to whom bail is granted shall provide and the undertaking shall contain the defendant's residential address and an address for service of notices within 25 km of the court before which the defendant is required to appear.

(3) In the case of bail granted to a defendant requiring the defendant's appearance before a Magistrates Court, Childrens Court or, as the case may be, any justice or justices conducting an examination of witnesses in relation to an indictable offence the undertaking shall be subject to—

- (a) conditions that the defendant—
 - (i) shall surrender into custody;
 - (ii) shall not depart from the court unless the bail is enlarged

¹¹ Section 10 (General powers as to bail)

¹² Section 14 (Release of persons apprehended on making deposit of money as security for appearance) or 14A (Magistrates Courts may grant cash bail or permit to go at large)

Bail Act 1980

and, as often as the bail is enlarged, shall return to the court and surrender into custody;

(b) such further conditions—

- (i) as are imposed in accordance with section 11(2) or (3);¹³ and
- (ii) as the court thinks fit to impose.

(3A) In the case of bail granted to a defendant following the defendant's committal for trial the undertaking shall be subject to—

(a) conditions that the defendant—

- (i) shall appear or be represented by the defendant's counsel or solicitor before the court to which the defendant is committed for trial at the time stated in, and in accordance with, the notice given pursuant to section 27;¹⁴
- (ii) if the notice states that it is intended to ask the court to proceed with the trial at the time stated in the notice—shall surrender into custody and not depart from the court unless the bail is enlarged;
- (iii) shall obey the directions of the court, whether given to the defendant personally or to the defendant's counsel or solicitor, with respect to any further appearance and, if directed to appear personally, shall surrender into custody and not depart from the court unless the bail is enlarged;
- (iv) shall notify the director of public prosecutions or, as the case may be, deputy director of public prosecutions in writing forthwith of any change of address for service of notices or residential address other than that arising from the defendant's surrender into custody;

(b) such further conditions—

- (i) as are imposed in accordance with section 11(2) or (3); and
- (ii) as the court thinks fit to impose.

¹³ Section 11 (Conditions of release on bail)

¹⁴ Section 27 (Notice of trial)

Bail Act 1980

(3B) In the case of bail granted to a defendant under section 13¹⁵ at a time prior to the commencement of or during the examination of witnesses in relation to the indictable offence in respect of which the defendant has been so granted bail the undertaking may be subject to the condition that if the defendant is committed for trial the bail shall be enlarged, in which case the undertaking shall be subject to the conditions set out in subsection (3A)(a).

(3C) In the case of bail granted to a defendant in circumstances not provided for in subsection (3), (3A) or (3B) the undertaking shall be subject to—

- (a) the condition that the defendant notify the director of public prosecutions or, as the case may be, deputy director of public prosecutions in writing forthwith of any change of address for service of notices or residential address other than that arising from the defendant's surrender into custody;
- (b) such further conditions as are imposed by the court granting bail.

(4) A defendant who is taken into custody upon charges for 2 or more offences and who has been granted bail may be released from custody upon entering, together with the defendant's surety or sureties (if any) into 1 undertaking for the defendant's appearance at a specified court, time and place or sittings upon all or any 2 or more of the charges.

(5) The justice, police officer, general manager of a prison or his or her delegate, or officer of the department for the time being administering the *Juvenile Justice Act 1992* authorised by subsection (6) before whom a defendant and the defendant's surety or sureties (if any) sign an undertaking—

- (a) shall satisfy himself or herself that the defendant and the surety or sureties understand the nature and extent of the obligations of the defendant under the conditions of the bail and the consequences of the defendant's failure to comply with them;
- (b) shall give to the defendant and the defendant's surety or sureties a notice of the undertaking in the approved form.

(6) An undertaking in respect of which the conditions have been fixed may be entered into before—

¹⁵ Section 13 (When only the Supreme Court may grant bail)

- (a) a justice;
- (b) a police officer authorised by this Act to grant bail;
- (c) where a party to the undertaking—
 - (i) is in prison, the general manager within the meaning of the *Corrective Services Act 1988* of the prison, or the general manager's delegate authorised in writing in that behalf;
 - (ii) is a child within the meaning of the *Juvenile Justice Act 1992* detained in a place established under part 5¹⁶ of that Act—a person for the time being in charge of the place.

(7) A person referred to in subsection (6) before whom an undertaking is entered into shall, forthwith after it is entered into, forward the undertaking to the proper officer of the court that granted the bail referred to in the undertaking.

Sureties

21.(1) Every surety to an undertaking must be a person who—

- (a) has attained the age of 18 years; and
- (b) has not been convicted of an indictable offence; and
- (c) is not detained in a hospital, as a patient or otherwise, for treatment for mental illness pursuant to the *Mental Health Act 1974* or is not a protected person within the meaning of the *Public Trustee Act 1978*; and
- (d) is not an insolvent under administration; and
- (e) has not been, and is not likely to be, charged; and
- (f) is worth not less than the amount of bail in real or personal property.

(2) A person who enters into an undertaking as a surety becomes bound, upon its forfeiture, to pay to Her Majesty the sum of money set forth in the undertaking with respect to that surety.

(3) Where a defendant is required to provide any surety or sureties,

¹⁶ *Juvenile Justice Act 1992*, part 5 (Sentencing)

Bail Act 1980

regard shall be had in considering the suitability of a person as a surety, in addition to other relevant matters, to the following—

- (a) the person's financial resources;
- (b) the person's character and antecedents;
- (c) the person's proximity to the defendant (whether by kinship, place of residence or otherwise).

(4) Before accepting a person as a surety, a justice shall satisfy himself or herself as to the sufficiency of the means of the person and shall require that person to make before the justice an affidavit of justification in the approved form.

(5) A justice before whom an affidavit of justification is sworn shall ask the proposed surety all questions that are required by any Act or law to be asked in the circumstances or that appear to the justice to be necessary.

(6) A surety, in order to satisfy the sufficiency of his or her means, may deposit in the office of the proper officer of the court that granted bail to the defendant or of some other court or with the keeper of the prison in which the defendant is detained the amount of his or her surety in money and where the undertaking is subsequently forfeited, the court shall apply the amount so deposited towards satisfaction of the surety's obligation with respect thereto.

(6A) Where a surety, in order to satisfy the sufficiency of his or her means, produces to a justice before whom the surety makes an affidavit of justification—

- (a) any property; or
- (b) any document to satisfy the justice that the surety owns or has an interest in any real or personal property;

the justice shall record on the affidavit details of the property or document and return the property or document to the surety.

(7) A court to which it is made to appear that a surety required to be provided by an undertaking has sworn an affidavit of justification that is false in a material particular may revoke the bail and issue a warrant for the apprehension of the defendant concerned.

(8) A person shall not be accepted as a surety if it appears to the justice before whom the affidavit of justification of that person is sworn that it

would be ruinous or injurious to the person or the person's family if the undertaking were forfeited.

Procedure where sureties do not attend prison

22.(1) Where a certificate as to bail is endorsed on papers or warrant pursuant to section 18¹⁷ and it is not convenient for the proposed surety or sureties to attend at the prison in which the defendant is detained to sign the undertaking, the proper officer of the court that made the endorsement may make a duplicate of the certificate endorsed on the papers or warrant.

(1A) A justice, upon production to the justice of that duplicate and the undertaking, may obtain the signature or, as the case may be, signatures of the proposed surety or sureties on the undertaking in conformity with the certificate and witness that signature or those signatures.

(1B) Where the undertaking as so signed is transmitted to the keeper of the prison and produced to a person authorised by section 20(6)¹⁸ together with the papers or warrant with the certificate endorsed thereon and the duplicate certificate, that person may thereupon obtain the signature of the defendant on the undertaking, witness that signature and order the release from custody of the defendant and the keeper of the prison shall, if the defendant is detained for no other lawful purpose, forthwith obey such order.

(2) Where a defendant is detained in a prison at 1 place and the proposed surety or sureties is or are resident at another place too far removed to enable the procedure laid down in subsections (1) to (1B) to be carried out immediately, it shall be sufficient compliance with the subsections if the following procedure is adopted—

- (a) upon request made in that behalf the keeper of the prison in which the defendant is detained shall advise the proper officer of the court in the district in which the surety or sureties are resident that a certificate of bail has been granted and of the terms and conditions of that bail;
- (b) the proper officer may thereupon arrange to have the surety or, as

¹⁷ Section 18 (Endorsement of decision as to bail on papers and warrant)

¹⁸ Section 20 (Undertaking as to bail)

the case requires, sureties execute a separate undertaking binding the surety or sureties in conformity with the certificate as to bail, advise the keeper of the prison in which the defendant is detained that this has been done and forward forthwith to the keeper of the prison the undertaking so executed;

- (c) a person authorised by section 20(6) upon being satisfied that the undertaking referred to in paragraph (b) has been executed and production to the person of the papers or warrant with the certificate as to bail endorsed thereon may thereupon obtain the signature of the defendant on a separate undertaking and witness that signature and thereupon the provisions of subsections (1) to (1B) as to the release of the defendant from custody apply.

Application to court by surety for discharge

23.(1) A surety for the appearance of a defendant who has been released on bail may make application to the court before which the defendant is required to appear in accordance with his or her undertaking or the court that granted bail at any time before a condition of the undertaking is broken or the defendant is apprehended pursuant to section 29¹⁹ for the discharge of the surety from liability with respect to the undertaking.

(2) The court may make such orders as it thinks fit including an order that the surety be discharged from liability with respect to the undertaking.

(3) The court, where it discharges a surety in accordance with subsection (2), may issue a warrant for the apprehension of the defendant directing that the defendant be committed to prison and that the keeper of the prison keep the defendant until such time as—

- (a) a further surety or other security is furnished; or
- (b) the defendant is bound by a condition of the undertaking to appear before the court specified in the undertaking, in which case the keeper shall cause the defendant to so appear in accordance with that condition.

¹⁹ Section 29 (Apprehension by police officer of defendant on bail)

Apprehension of defendant by surety

24.(1) Where a defendant has been released on bail to appear before a court, a surety for the bail may, at any time before the defendant is required to appear and surrender into custody in accordance with this Act, apprehend the defendant and bring the defendant before the court before which the defendant is required to appear or a justice.

(1A) A police officer shall, if required by the surety to do so, assist the surety in the apprehension.

(2) The court or justice may, upon the appearance of the defendant before the court or justice, order that the liability of the surety be discharged and may call upon the defendant to furnish another surety in the same amount and, if the defendant fails to do so, may commit the defendant to prison.

(3) A defendant committed to prison following the defendant's appearance pursuant to subsection (2) may apply to the court before which the defendant was required to appear or any other court to be granted bail again and the court—

- (a) may refuse the application; or
- (b) may grant the application and make such order with respect to the number of sureties (if any) and the amount and conditions of bail as it thinks proper in the circumstances.

Effect of death of surety

25.(1) The estate of a surety who dies before an undertaking entered into by a defendant is forfeited shall not be subject to liability in respect of that undertaking.

(2) Where a surety has died, the defendant may be required by the court to furnish another surety to act in the stead of the surety who has died.

Offence of indemnifying surety

26.(1) Where a person indemnifies another person or agrees with another person to indemnify that other person against any liability that that other person may incur as a surety to secure the appearance in answer to bail and the surrender into custody of a defendant the first mentioned person and that other person commit an offence against this Act.

Maximum penalty—17 penalty units or imprisonment for 1 year.

- (2) It is immaterial, in relation to an offence defined in subsection (1)—
- (a) whether the agreement is made before or after the person to be indemnified becomes a surety; or
 - (b) whether or not the person becomes a surety; or
 - (c) whether the agreement contemplates compensation in money or money's worth.

PART 4—GENERAL PROVISIONS

Notice of trial

27.(1) Where a defendant who has been committed for trial is on bail to appear at the trial and it is intended to present an indictment against the defendant the director of public prosecutions or, as the case may be, deputy director of public prosecutions or a person duly authorised by the director or deputy director in writing in that behalf, either generally or in a particular case, shall cause notice to be given to the defendant or the defendant's solicitor and to each of the defendant's sureties (if any) advising of the time when and the place where the indictment will be presented.

(2) The notice shall be given a reasonable time before the date fixed for the presentation of the indictment having regard to all the circumstances and it may be oral or written save when it is given to a defendant in which case it shall be written.

(3) The notice shall state whether it is intended to ask the court to proceed with the trial upon the presentation of the indictment or adjourn the trial.

(4) Where the trial is to be adjourned the defendant need not appear personally before the court when an indictment is presented against the defendant provided the defendant is represented by the defendant's counsel or solicitor.

Warrant for apprehension of defendant by Supreme or District Court

28.(1) Where a defendant who has entered into an undertaking conditioned that the defendant will appear before the Supreme Court or a District Court breaks a condition of the defendant's undertaking, or if the court is satisfied that the defendant is likely to break any such condition, the court before which the defendant is required to appear, on application made by the director of public prosecutions or, as the case may be, deputy director of public prosecutions or a person duly authorised by the director or deputy director in writing in that behalf, either generally or in a particular case—

- (a) after notice of the intention to make the application has been given to the defendant; or
- (b) without giving notice pursuant to paragraph (a) if the defendant cannot be found, has absconded or is likely to abscond;

may issue a warrant for the apprehension of the defendant.

(2) Where a defendant for whose apprehension a warrant has been issued under subsection (1) for failing to surrender into custody in accordance with the defendant's undertaking—

- (a) surrenders into the custody of the court that issued the warrant as soon as is practicable after the time for the time being appointed for the defendant to do so; and
- (b) satisfies the court that the failure to surrender into custody was due to reasonable cause;

the court may withdraw and cancel the warrant.

(2A) Where a defendant for whose apprehension a warrant has been issued under subsection (1) on the ground that the defendant has broken a condition of the defendant's undertaking (other than the condition that the defendant surrender into custody) prior to the execution of the warrant satisfies the court that issued the warrant that breaking of the condition was due to reasonable cause the court may withdraw and cancel the warrant.

(2B) Where a defendant for whose apprehension a warrant has been issued under subsection (1) on the ground that the defendant is likely to break a condition of the defendant's undertaking (including the condition that the defendant surrender into custody) prior to the execution of the warrant satisfies the court that issued the warrant that the defendant is not likely to break that condition the court may withdraw and cancel the warrant.

(3) A warrant issued under this section—

- (a) shall name or otherwise describe the defendant against whom it is issued; and
- (b) shall set out the reasons for the issue thereof; and
- (c) shall order the police officers to whom it is directed to apprehend the defendant against whom it is issued and cause the defendant to be brought before a Magistrates Court or, as the case may be, Childrens Court to be dealt with according to law.

Warrant for apprehension of defendant by Magistrates Court or Childrens Court

28A.(1) Where a defendant charged with any offence has been—

- (a) released on bail in accordance with section 7(1)(b)²⁰ or by a Magistrates Court or a Childrens Court or by any justice or justices conducting an examination of witnesses in relation to an indictable offence on the defendant entering into an undertaking; or
- (b) released on bail on the defendant making a deposit of money pursuant to section 14 or 14A;²¹ or
- (c) permitted to go at large without bail;

fails to surrender into custody the court before which the defendant is required to appear may issue a warrant for the apprehension of the defendant.

(2) Where a defendant for whose apprehension a warrant has been issued under subsection (1)—

- (a) surrenders into the custody of the court that issued the warrant as soon as is practicable after the time for the time being appointed for the defendant to do so; and

²⁰ Section 7 (Power of police officer to grant bail)

²¹ Section 14 (Release of persons apprehended on making deposit of money as security for appearance) or 14A (Magistrates Courts may grant cash bail or permit to go at large)

- (b) satisfies the court that the failure to surrender into custody was due to reasonable cause;

the court may withdraw and cancel the warrant.

(3) A warrant issued under this section—

- (a) shall name or otherwise describe the defendant against whom it is issued; and
- (b) shall set out the court into the custody of which the defendant failed to surrender and the time and place of that failure; and
- (c) shall order the police officers to whom it is directed to apprehend the defendant against whom it is issued and cause the defendant to be brought before a Magistrates Court or, as the case may be, Childrens Court to be dealt with according to law.

(4) A court shall not issue a warrant under subsection (1)—

- (a) where the defendant was released on bail or permitted to go at large without bail to appear at a time and place to be determined; or
- (b) where the hearing was adjourned in the defendant's absence and the defendant was not represented by counsel or solicitor;

unless it is satisfied that—

- (c) the defendant cannot be found, has absconded or is likely to abscond; or
- (d) reasonable notice of the time and place so determined or, as the case may be, the time to which the hearing was adjourned has been given to the defendant.

Warrant authority to apprehend defendant on other charges

28B. A warrant issued under section 28 or 28A(1)(a) to apprehend a defendant for the reason that the defendant failed to surrender into custody shall be sufficient authority for a police officer to whom it is directed to apprehend the defendant upon any other charge in respect of which the defendant failed to surrender into custody at the same court, time and place or sittings as the defendant was required to surrender into custody on the charge in respect of which the warrant was issued.

Apprehension by police officer of defendant on bail

29.(1) A police officer may apprehend without warrant a defendant who has been released on bail—

- (a) if the police officer believes on reasonable grounds—
 - (i) that the defendant is likely to break the condition for the defendant's appearance or any other condition of the undertaking on which the defendant was granted bail or that the defendant is breaking or has broken any such condition; or
 - (ii) that any surety for the defendant's appearance is dead; or
 - (iii) that for any reason the security is no longer sufficient; or
- (b) if the police officer is notified in writing by a surety for the defendant that the surety believes that the defendant is likely to break the condition for the defendant's appearance and for that reason the surety wishes to be relieved of the surety's obligations as a surety.

(2) A defendant (other than a defendant who is a child within the meaning of the *Juvenile Justice Act 1992*) who breaks any condition (other than the condition that the defendant surrender into custody) of the undertaking on which the defendant was granted bail requiring the defendant's appearance before a court commits an offence against this Act.

Procedure in respect of defendants apprehended pursuant to s 21(7) or 29(1)

29A.(1) A defendant apprehended—

- (a) under a warrant issued under section 21(7);²² or
- (b) pursuant to section 29(1);

shall—

- (c) subject to paragraph (d), be brought forthwith before a Magistrates Court or, as the case may be, Childrens Court to be dealt with according to law;

²² Section 21 (Sureties)

- (d) where the defendant is apprehended within 24 hours before the time at which the defendant is bound by a condition of the defendant's undertaking to appear before a court—be kept in custody and the person in whose custody the defendant is shall cause the defendant to surrender into the custody of the court at the time and place for the time being appointed for the defendant to do so.

(2) The court before which a defendant is brought pursuant to subsection (1)—

- (a) if it is satisfied that the defendant has broken, or is likely to break, a condition of the defendant's undertaking—may—
- (i) revoke the bail and commit the defendant to prison with a direction to the keeper of the prison that the keeper keep the defendant and cause the defendant to surrender into the custody of the court specified in the undertaking at the time and place for the time being appointed for the defendant to do so; or
- (ii) release the defendant on the defendant's original undertaking or vary the defendant's bail; or
- (b) if it is not satisfied that the defendant has broken, or is likely to break, a condition of the defendant's undertaking—may release the defendant on the defendant's original undertaking or vary the defendant's bail.

Apprehension on variation or revocation of bail

30.(1) Bail granted to a defendant on an undertaking may be varied or revoked, upon the application of the Crown or, as the case may be, complainant by—

- (a) the court that granted the bail; or
- (b) the court before which an indictment has been presented; or
- (c) the Supreme Court;

if the court is of the opinion that it is necessary or desirable in the interests of justice to do so.

- (2) An application under subsection (1) may be made *ex parte*—
- (a) after notice of intention to make the application has been given to the defendant and the defendant's surety or sureties; or
 - (b) without giving notice pursuant to paragraph (a) if the defendant—
 - (i) has absconded or if the court is satisfied that the defendant is likely to abscond; or
 - (ii) has broken, or if the court is satisfied that the defendant is likely to break, a condition of the defendant's undertaking.
- (3) If an application under subsection (1) is made in the manner permitted by subsection (2)(b), the court may—
- (a) order that notice of the application be given to the defendant and the defendant's surety or sureties notifying that if the defendant fails to surrender into custody in accordance with the notice a warrant may issue for the apprehension of the defendant; or
 - (b) forthwith issue a warrant to apprehend the defendant and bring the defendant before the court to show cause why the defendant's bail should not be varied or revoked.
- (4) If on the date and at the time and place specified in a notice given pursuant to subsection (2)(a) or (3)(a) the defendant—
- (a) fails to surrender into custody, the court may issue a warrant for the defendant's apprehension;
 - (b) surrenders into custody and fails to satisfy the court that it is not necessary or desirable in the interests of justice that the defendant's bail be varied or revoked the court may—
 - (i) vary the bail in such manner as it thinks fit; or
 - (ii) revoke the bail;
 - (c) surrenders into custody and satisfies the court that it is not necessary or desirable in the interests of justice that the defendant's bail be varied or revoked the court may order that the defendant be released from custody on the defendant's original undertaking.
- (5) A surety or sureties to whom notice is given under subsection (2)(a) or (3)(a) shall be entitled to appear at the hearing of the application and give

evidence and the court may if it thinks fit adjourn the hearing to enable the surety or sureties to do so.

Forfeiture of undertaking

31.(1) Where a defendant who has been released on bail fails to appear before the court in accordance with the defendant's undertaking and surrender into custody the court may forthwith declare the undertaking to be forfeited.

(2) The court that forfeits an undertaking—

- (a) shall endorse or cause to be endorsed on the undertaking—
 - (i) the respects in which the undertaking has not been complied with; and
 - (ii) the declaration of forfeiture and particulars of any order made by the court;
- (b) shall transmit to the proper officer of the court the undertaking so endorsed.

Forfeiture of deposit or other security

32.(1) Where an undertaking that has been declared forfeited because of the failure of the person released on bail to appear in accordance with the undertaking contains as a condition of bail the making of a deposit of money or other security, the court that declares the forfeiture may order that the deposit or other security so made be forfeited and paid to Her Majesty.

(1A) The court shall endorse or cause to be endorsed on the undertaking particulars of every order made pursuant to this section.

(2) A person released on bail to whom subsection (1) applies shall have the same right as a surety has under the *Crown Proceedings Act 1980*, section 15²³ to apply for an order varying or rescinding the forfeiture and for that purpose the provisions of that section shall, so far as they are applicable and with such modifications as are necessary, apply with respect

²³ *Crown Proceedings Act 1980*, section 15 (Variation or rescission of order forfeiting recognisance or made against a surety to an undertaking as to bail)

to a forfeited deposit of money or other security and in particular with the modification that any reference in those provisions to a surety shall be read and construed as a reference to the person released on bail.

Failure to appear in accordance with undertaking

33.(1) A defendant who—

- (a) fails to surrender into custody in accordance with the defendant's undertaking; and
- (b) is apprehended under a warrant issued pursuant to section 28 or 28A(1)(a);²⁴

commits an offence against this Act.

(2) It is a defence to an offence defined in subsection (1) if the defendant satisfies the court that the defendant had reasonable cause—

- (a) for failing to surrender into custody in accordance with the defendant's undertaking; and
- (b) for failing to appear before the court specified in the defendant's undertaking and surrender into custody as soon after the time for the time being appointed for the defendant to do so as is reasonably practicable.

(3) Proceedings for an offence against this section—

- (a) shall be instituted and taken, without the laying of a complaint;
- (b) shall be taken in accordance with the following procedures—
 - (i) production to the court before which a defendant apprehended under a warrant issued under section 28 or 28A(1)(a) is brought of that warrant shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the undertaking and of the failure to surrender into custody and that the issue of the warrant was duly authorised by the decision or order of the court that issued the warrant;

²⁴ Section 28 (Warrant for apprehension of defendant by Supreme or District Court) or 28A (Warrant for apprehension of defendant by Magistrates Court or Childrens Court)

- (ii) judicial notice shall be taken of the signature of the person who issued the warrant referred to in subparagraph (i) and that that person was duly authorised to issue the warrant.

(3A) Upon production to the court of the warrant the court shall then and there call on the defendant to prove why the defendant should not be convicted of an offence against this section.

(4) Where a court in making an order under this section directs that a term of imprisonment (the “**first mentioned term of imprisonment**”) be imposed (whether in the first instance or in default payment of a fine) upon a defendant then, notwithstanding any Act, law or practice—

- (a) the first mentioned term of imprisonment shall take effect from the expiration of the deprivation of liberty of the defendant pursuant to a term of imprisonment—
 - (i) imposed upon the defendant pursuant to this section or a law of the Commonwealth or the State at the same time as the first mentioned term of imprisonment is imposed; or
 - (ii) which the defendant is serving pursuant to this section or a law of the Commonwealth or the State at the time the first mentioned term of imprisonment is imposed;
- (b) if during the time the defendant is serving the first mentioned term of imprisonment a further term of imprisonment is imposed upon the defendant pursuant to a law of the Commonwealth or the State—the further term of imprisonment shall take effect from the expiration of the deprivation of liberty of the defendant pursuant to the first mentioned term of imprisonment;
- (c) if before the defendant commences to serve the first mentioned term of imprisonment a further term of imprisonment is imposed upon the defendant pursuant to a law of the Commonwealth or the State—the first mentioned term of imprisonment shall take effect from the expiration of the deprivation of liberty of the defendant pursuant to the further term of imprisonment.

Certain offences may be dealt with

33A. Where—

- (a) a defendant has been dealt with by a Magistrates Court or, as the case may be, Childrens Court under section 33; and
- (b) the court is informed that the defendant consents to the court dealing with—
 - (i) the offence in respect of which the defendant failed to surrender into custody; or
 - (ii) any other offence with which the defendant has been charged and not dealt with; and
- (c) the offence referred to in paragraph (b) is an offence which may be heard and determined by the court; and
- (d) the court is satisfied from material produced before it by evidence on oath or otherwise that the defendant has not been dealt with for the offence referred to in paragraph (b); and
- (e) the defendant pleads guilty to the offence referred to in paragraph (b);

the court shall then and there proceed to deal with the defendant for the offence referred to in paragraph (b).

Committal or remand of certain defendants

33B.(1) Where a defendant appears before a Magistrates Court or, as the case may be, Childrens Court (the “**first mentioned court**”) charged with an offence against section 33,²⁵ the first mentioned court, whether or not it convicts the defendant of that offence, without further inquiry or examination, shall commit the defendant to be dealt with according to law by the court that issued the warrant referred to in section 33(1)(b) for the offence in respect of which the defendant failed to surrender into custody unless the first mentioned court deals with the defendant under section 33A for the offence.

(2) A court in exercising the jurisdiction conferred by subsection (1) may grant bail to the defendant or by its warrant commit the defendant to prison with a direction to the keeper of the prison that the keeper cause the defendant to surrender into the custody of the court that issued the warrant

²⁵ Section 33 (Failure to appear in accordance with undertaking)

referred to in section 33(1)(b) in accordance with the defendant's undertaking at the time and place for the time being appointed for the defendant to do so.

Jurisdiction

33C.(1) The powers conferred by sections 33 and 33A²⁶ may be exercised by a Magistrates Court or Childrens Court at a place appointed for the holding of Magistrates Courts in any district appointed for the purpose of Magistrates Courts under the *Justices Act 1886* or in any division deemed to be such a district, regardless of where the offence was committed.

(2) The exercise of jurisdiction conferred by section 33B in respect of a defendant brought before a Magistrates Court or Childrens Court shall be in addition to the exercise of jurisdiction conferred by the *Justices Act 1886*, section 101.²⁷

Effect of apprehension on another charge of defendant on bail

34.(1) The apprehension of a defendant who has been released on bail to appear before a court on another charge shall not vacate the undertaking to which the bail relates and that undertaking shall continue to bind the defendant and the defendant's surety or sureties (if any) until the defendant is discharged or sentenced in respect of the offence to which the bail relates.

(2) Notwithstanding subsection (1), the court may commit to prison a defendant on bail who is arrested on another charge or may grant bail to the defendant.

(3) Where a defendant who has been released on bail to appear for trial is committed to prison pursuant to subsection (2), the sureties (if any) for the defendant's appearance are, without other authority than this subsection, discharged from liability in respect of the bail while the defendant remains in prison.

²⁶ Sections 33 (Failure to appear in accordance with undertaking) and 33A (Certain offences may be dealt with)

²⁷ *Justices Act 1886*, s 101 (Committal of person who has been apprehended)

Proceedings for offences

35.(1) A prosecution for an offence against this Act shall be taken by way of summary proceedings in accordance with the provisions of the *Justices Act 1886* (subject to such modifications to those provisions as are made by sections 33 and 33A²⁸), and may be taken notwithstanding that more than 1 year has elapsed since commission of the offence.

(2) A person who commits an offence against this Act shall be liable to a penalty of 40 penalty units or to imprisonment for 2 years.

Evidentiary provisions

36. In a proceeding for the purposes of this Act—

(a) a certificate purporting to be signed by the director of public prosecutions or, as the case may be, deputy director of public prosecutions or person duly authorised by the director or deputy director setting forth—

(i) that a notice has been given to a specified person at a specified address and the contents of such notice;

(ii) that a notice has or has not been received by the director of public prosecutions or, as the case may be, deputy director of public prosecutions or, where the director of public prosecutions or, as the case may be, deputy director of public prosecutions has authorised another person to sign a certificate, that other person from a specified person and, where the certificate relates to the receipt of the notice, the contents of such notice;

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;

(b) a document purporting to be or to be a copy of—

(i) an undertaking;

(ii) a declaration of forfeiture made by a court of an undertaking;

²⁸ Sections 33 (Failure to appear in accordance with undertaking) and 33A (Certain offences may be dealt with)

(iii) an order made by a court in consequence of a forfeiture by that court of an undertaking with respect to a surety, deposit of money or security;

(iv) a certificate containing particulars of the respects in which an undertaking has not been complied with;

(v) an enlargement or variation of an undertaking;

in any case purporting to be certified by an officer of the court having custody of the document to be or relate to the undertaking with which it is alleged in the proceeding the defendant has failed to comply shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;

(ba) where an officer of the court does not have knowledge of the respects in which a defendant has failed to comply with his or her undertaking—an affidavit, or a document purporting to be a copy of an affidavit, sworn by a person having that knowledge shall be evidence, and in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;

(c) it shall not be necessary to prove the appointment or signature of the director of public prosecutions or, as the case may be, deputy director of public prosecutions or other authorised person;

(d) a bench charge sheet purporting to be a bench charge sheet referred to in sections 14(2) and 14(3)²⁹ shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of all matters recorded therein that are relevant to the proceeding.

Service of notices

36A. A written notice required to be given under this Act shall be taken to have been duly given to the person to whom it is directed if it is served on the person personally or—

(a) in the case of a defendant—if it is delivered to the defendant's address for service of notices or sent by prepaid post to the

²⁹ Section 14 (Release of persons apprehended on making deposit of money as security for appearance)

defendant at that address;

- (b) in the case of a defendant's solicitor—it is delivered to the solicitor's place of business or sent by prepaid post to the solicitor at that address;
- (c) in the case of a surety—it is delivered to the surety's address given with respect to his or her undertaking or sent by prepaid post to the surety at that address.

When bail ceases to have effect

36B. Where the director of public prosecutions or, as the case may be, deputy director of public prosecutions or a person duly authorised by the director or deputy director in writing in that behalf, either generally or in a particular case, advises the court to which a defendant has been committed for trial that the director or deputy director will not be presenting an indictment against the defendant the defendant is thereby discharged from complying with the conditions specified in the defendant's undertaking and to which the undertaking is subject pursuant to this Act and thereupon the undertaking shall cease to have effect.

Approval of forms

36C.(1) The chief executive may approve forms for—

- (a) anything for which this Act requires or permits an approved form to be used; or
- (b) another use under this Act.

(2) Subsection (1)(b) does not apply to forms for court proceedings.

Regulation-making power

37. The Governor in Council may make regulations under this Act.

SCHEDULE**OFFENCES IN RESPECT OF WHICH BAIL BY WAY
OF DEPOSIT OF MONEYS SHALL NOT BE
GRANTED**

section 14

Offences defined in—

- the *Traffic Act 1949*, section 16³⁰
- the *Gaming Act 1850* (NSW), section 1 as amended for the purpose of its application in Queensland by the *Gaming Act 1972*
- the *Racing and Betting Act 1980*, sections 214, 216, 217 and 219.³¹

³⁰ *Traffic Act 1949*, section 16 (Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood)

³¹ *Racing and Betting Act 1980*, sections 214 (Unlawful bookmaking), 216 (Prohibition of opening, keeping or using a common betting house), 217 (Possession of instrument of betting) and 219 (Resorting to common betting house prohibited)

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 30 April 1999. Future amendments of the Bail Act 1980 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

| | | | | | |
|--------|---|------------------------------|--------|---|--------------------------------|
| AIA | = | Acts Interpretation Act 1954 | prev | = | previous |
| amd | = | amended | (prev) | = | previously |
| amdt | = | amendment | proc | = | proclamation |
| ch | = | chapter | prov | = | provision |
| def | = | definition | pt | = | part |
| div | = | division | pubd | = | published |
| exp | = | expires/expired | R[X] | = | Reprint No.[X] |
| gaz | = | gazette | RA | = | Reprints Act 1992 |
| hdg | = | heading | reloc | = | relocated |
| ins | = | inserted | renum | = | renumbered |
| lap | = | lapsed | rep | = | repealed |
| notfd | = | notified | s | = | section |
| o in c | = | order in council | sch | = | schedule |
| om | = | omitted | sdiv | = | subdivision |
| p | = | page | SIA | = | Statutory Instruments Act 1992 |
| para | = | paragraph | SL | = | subordinate legislation |
| prec | = | preceding | sub | = | substituted |
| pres | = | present | unnum | = | unnumbered |

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

| Reprint No. | Amendments included | Reprint date |
|-------------|-----------------------|------------------|
| 1 | to Act No. 76 of 1993 | 23 December 1993 |
| 2 | to Act No. 58 of 1995 | 2 May 1996 |
| 2A | to Act No. 22 of 1996 | 24 January 1997 |
| 2B | to Act No. 9 of 1997 | 1 July 1997 |
| 3 | to Act No. 9 of 1997 | 28 August 1998 |

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

| Name of table | Reprint No. |
|--------------------------|-------------|
| Changed names and titles | 1, 2 |
| Renumbered provisions | 1 |

6 List of legislation

Bail Act 1980 No. 35

date of assent 14 May 1980

commenced 1 July 1980 (proc pubd gaz 28 June 1980 p 1634)

as amended by—

Bail Act Amendment Act 1982 No. 56

date of assent 3 December 1982

ss 1–2 commenced on date of assent

remaining provisions commenced 18 April 1983 (proc pubd gaz 9 April 1983 p 1689)

Bail Act Amendment Act 1984 No. 11

date of assent 27 February 1984

commenced on date of assent

Criminal Code and Bail Act Amendment Act 1984 No. 32 pt 3

date of assent 12 April 1984

commenced on date of assent

Drugs Misuse Act 1986 No. 36 s 60(2) sch 6 pt 2

date of assent 5 September 1986

commenced 27 October 1986 (proc pubd gaz 25 October 1986 p 1242)

- Family Services Act 1987 No. 32 s 69(1), (11) sch (as amd 1988 No. 47 s 3 sch 1)**
date of assent 30 April 1987
commenced 9 June 1987 (proc pubd gaz 30 May 1987 p 846)
- Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1**
date of assent 1 December 1988
commenced 15 December 1988 (see s 2(2) and order pubd gaz 10 December 1988 p 1675)
- Bail Act and Other Acts Amendment Act 1988 No. 105 pt 2 (as amd 1989 No. 38 pt 3)**
date of assent 14 December 1988
s 8 commenced on date of assent
remaining provisions commenced 4 December 1989 (proc pubd gaz 11 November 1989 p 1961)
- Bail Act and Another Act Amendment Act 1989 No. 38 pt 2**
date of assent 5 May 1989
commenced on date of assent
- Juvenile Justice Act 1992 No. 44 s 235 sch 3**
date of assent 19 August 1992
commenced 1 September 1993 (1993 SL No. 313)
- Bail Amendment Act 1993 No. 34**
date of assent 23 July 1993
commenced on date of assent
- Justice and Attorney-General Legislation (Miscellaneous Provisions) Act 1993 No. 68 s 12 sch**
date of assent 23 November 1993
commenced on date of assent
- Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 sch 1**
date of assent 14 December 1993
commenced on date of assent
- Criminal Offence Victims Act 1995 No. 54 ss 1–2, 45 sch 2**
date of assent 22 November 1995
ss 1–2 commenced on date of assent
remaining provisions commenced 18 December 1995 (1995 SL No. 383)
- Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**
date of assent 28 November 1995
commenced on date of assent
- Juvenile Justice Legislation Amendment Act 1996 No. 22 pts 1, 4 sch 3**
date of assent 15 August 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 23 December 1996 (1996 SL No. 395)

Criminal Law Amendment Act 1997 No. 3 pt 1, s 122 sch 2

date of assent 3 April 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 152)

Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9**ss 1–2(1), pt 3**

date of assent 15 May 1997

commenced on date of assent

Justice Legislation (Miscellaneous Provisions) Act 1999 No. 16 s 1 pt 2

date of assent 22 April 1999

commenced on date of assent

7 List of annotations**Long title** amd 1988 No. 105 s 5**Commencement****s 2** om R2 (see RA s 37)**Arrangement****s 3** om R1 (see RA s 36)**Repeals and savings****s 4** om 1993 No. 34 s 2 sch**Non-application****s 5** om 1993 No. 34 s 2 sch**Definitions****prov hdg** sub 1995 No. 58 s 4 sch 1**s 6** amd 1995 No. 58 s 4 sch 1def “**admit**” ins 1995 No. 58 s 4 sch 1def “**approved form**” 1995 No. 58 s 4 sch 1def “**conviction**” amd 1988 No. 105 s 6(a)def “**Crown Solicitor**” om 1988 No. 105 s 6(b)def “**deputy director of public prosecutions**” ins 1988 No. 105 s 6(c)def “**Director of Prosecutions**” ins 1988 No. 105 s 6(c)

om 1995 No. 58 s 4 sch 1

def “**judge**” ins 1988 No. 105 s 6(d)def “**police force**” om 1993 No. 34 s 2 schdef “**prison**” amd 1992 No. 44 s 235 sch 3def “**surrender into custody**” sub 1988 No. 105 s 6(e)def “**undertaking**” amd 1988 No. 105 s 6(f)**Delegation of powers by proper officer****s 6A** ins 1993 No. 76 s 3 sch 1**Power of police officer to grant bail****prov hdg** amd 1993 No. 34 s 2 sch**s 7** amd 1993 No. 34 s 2 sch

Power of court as to bail

s 8 amd 1982 No. 56 s 3; 1993 No. 34 s 2 sch

General powers as to bail

s 10 amd 1982 No. 56 s 4; 1999 No. 16 s 4

No court fee payable for making application to Supreme Court

s 10A ins 1993 No. 34 s 3

Conditions of release on bail

s 11 amd 1988 No. 105 s 7; 1993 No. 34 s 2 sch; 1993 No. 68 s 12 sch; 1993 No. 76 s 3 sch 1

Restriction on publication of information, evidence and the like given in bail application

s 12 amd 1993 No. 34 s 2 sch

When only the Supreme Court may grant bail

s 13 amd 1984 No. 11 s 2; 1984 No. 32 s 7; 1986 No. 36 s 60(2) sch 6 pt 2; 1988 No. 105 s 8; 1989 No. 38 s 3
sub 1993 No. 34 s 4

Release of persons apprehended on making deposit of money as security for appearance

s 14 amd 1988 No. 105 s 9; 1993 No. 34 s 2 sch; 1995 No. 58 s 4 sch 1

Magistrates Courts may grant cash bail or permit to go at large

s 14A ins 1988 No. 105 s 10
amd 1993 No. 34 s 2 sch; 1995 No. 58 s 4 sch 1

Release of persons apprehended for drunkenness on making deposit of money as security for appearance

s 14B ins 1988 No. 105 s 10A (as amd by 1989 No. 38 s 5)
exp 3 December 1992 (see s 14B(8))
om R1 (see RA s 37)

Procedure upon application for bail

s 15 amd 1988 No. 105 s 11

Refusal of bail

s 16 amd 1982 No. 56 s 13; 1988 No. 105 s 12; 1992 No. 44 s 235 sch 3; 1993 No. 34 ss 5, 2 sch; 1995 No. 54 s 45 sch 2

Enlargement of undertaking

s 17 amd 1988 No. 105 s 13

Consideration of findings of guilt, cautions and community conference agreements as child for decisions about release from custody

s 19A ins 1996 No. 22 s 105

Review of certain bail decisions

s 19B ins 1999 No. 16 s 5

Review by Supreme Court of magistrate's decision on a review

s 19C ins 1999 No. 16 s 5

Warrants in aid of orders under section 19B or 19C

s 19D ins 1999 No. 16 s 5

Review provisions do not affect other powers

s 19E ins 1999 No. 16 s 5

Undertaking as to bail

s 20 amd 1982 No. 56 ss 5, 13; 1987 No. 32 s 69(1) sch; 1988 No. 88 s 3(1) sch 1; 1988 No. 105 s 14; 1992 No. 44 s 235 sch 3; 1993 No. 34 ss 6, 2 sch; 1993 No. 76 s 3 sch 1; 1997 No. 3 s 122 sch 2

Sureties

s 21 amd 1988 No. 105 s 15; 1993 No. 34 s 2 sch; 1993 No. 76 s 3 sch 1

Application to court by surety for discharge

s 23 amd 1988 No. 105 s 16

Apprehension of defendant by surety

s 24 amd 1988 No. 105 s 17; 1993 No. 34 s 2 sch

Offence of indemnifying surety

s 26 amd 1988 No. 105 s 18; 1993 No. 34 s 2 sch

Notice of trial

s 27 amd 1982 No. 56 s 6
sub 1988 No. 105 s 19

Warrant for apprehension of defendant by Supreme or District Court

s 28 amd 1982 No. 56 s 7
sub 1988 No. 105 s 20
amd 1993 No. 34 s 2 sch

Warrant for apprehension of defendant by Magistrates Court or Childrens Court

s 28A ins 1988 No. 105 s 20 (as amd by 1989 No. 38 s 6)
amd 1993 No. 34 s 2 sch

Warrant authority to apprehend defendant on other charges

s 28B ins 1988 No. 105 s 20
amd 1993 No. 34 s 2 sch

Apprehension by police officer of defendant on bail

s 29 amd 1988 No. 105 s 21; 1992 No. 44 s 235 sch 3; 1993 No. 34 s 2 sch; 1997 No. 9 s 9

Procedure in respect of defendants apprehended pursuant to s 21(7) or 29(1)

s 29A ins 1988 No. 105 s 22

Apprehension on variation or revocation of bail

s 30 amd 1982 No. 56 s 8
sub 1988 No. 105 s 23

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s 31 amd 1982 No. 56 s 9; 1988 No. 105 s 24

Forfeiture of deposit or other security

s 32 amd 1982 No. 56 s 13

Failure to appear in accordance with undertaking

s 33 sub 1982 No. 56 s 10; 1988 No. 105 s 25

Certain offences may be dealt withs 33A ins 1982 No. 56 s 10
sub 1988 No. 105 s 25**Committal or remand of certain defendants**

s 33B ins 1988 No. 105 s 25

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s 33C ins 1988 No. 105 s 25

Proceedings for offences

s 35 sub 1982 No. 56 s 11; 1988 No. 105 s 26

Evidentiary provisions

s 36 amd 1988 No. 105 s 27

Service of notices

s 36A ins 1988 No. 105 s 28

When bail ceases to have effect

s 36B ins 1988 No. 105 s 28

Approval of forms

s 36C ins 1995 No. 58 s 4 sch 1

Regulation making power

prov hdg amd 1995 No. 58 s 4 sch 1

s 37 sub 1993 No. 34 s 2 sch
amd 1995 No. 58 s 4 sch 1**Transitional provision about forms**s 38 prev s 38 ins 1993 No. 34 s 2 sch
prev s 38 om 1993 No. 76 s 3 sch 1
pres s 38 ins 1995 No. 58 s 4 sch 1
exp 28 May 1996 (see s 38(3))**SCHEDULE 1**

om 1993 No. 34 s 2 sch

**SCHEDULE—OFFENCES IN RESPECT OF WHICH BAIL BY WAY OF
DEPOSIT OF MONEYS SHALL NOT BE GRANTED**sch hdg (prev sch 2 hdg) sub 1993 No. 34 s 2 sch
amd 1982 No. 56 s 12