

Queensland



ANNO TRICESIMO PRIMO

ELIZABETHAE SECUNDAE REGINAE



No. 56 of 1982

**An Act to amend the Bail Act 1980 in certain particulars and
for other purposes**

[ASSENTED TO 3RD DECEMBER, 1982]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

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

(2) In this Act the *Bail Act 1980* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Bail Act 1980–1982*.

2. Commencement. (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided in subsection (1), this Act shall commence on a day appointed by Proclamation.

3. Amendment of s. 8. Power of court as to bail. Section 8 of the Principal Act is amended by—

(a) omitting subsection (4);

(b) renumbering subsections (5) and (6) as subsections (4) and (5) respectively.

4. Amendment of s. 10. General powers as to bail. Section 10 of the Principal Act is amended by, in subsection (2), omitting the first paragraph and substituting the following paragraph:—

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

5. Amendment of s. 20. Undertaking as to bail. Section 20 of the Principal Act is amended by—

(a) inserting after subsection (2) the following subsection:—

“(2A) In the case of bail granted to a person charged with an offence referred to in section 13 (1) at a time prior to the commencement of or during the examination of witnesses in relation to that offence the undertaking shall be subject to the further condition that the defendant—

(a) shall appear before the court to which he may be committed in respect of that offence at the sittings specified by the court by which he is so committed and surrender himself into custody; and

(b) shall not depart without leave of the court to which he is so committed and shall as often as leave is granted, return at the time appointed by that court and again surrender himself into custody.”;

(b) omitting subsection (3), and substituting the following subsection:—

“(3) In the case of an undertaking conditioned that the defendant shall appear at a sittings, whether specified in the undertaking or by the court referred to in subsection (2A), the undertaking shall be subject to the further condition that the defendant shall appear and surrender himself into custody at the date, time and place fixed for the trial or

appeal of which notice has been given in accordance with section 27 to to him or his solicitor by the Crown Solicitor or a person duly authorized by the Crown Solicitor.”;

(c) in subsection (6), adding at the end of subparagraph (i) of paragraph (c) the words “or the superintendent of the prison or the superintendent’s delegate authorized in writing in that behalf”.

6. Amendment of s. 27. Notice of date, time and place of trial or appeal. Section 27 of the Principal Act is amended by in subsection (1)—

(a) omitting the words “at the respective addresses appearing in the undertaking or notified under subsection (2)”;

(b) adding at the end of the subsection the following paragraph:—

“A notice pursuant to this section shall be taken to have been duly given to the person to whom it is directed if—

(a) it is served on him personally; or

(b) upon reasonable enquiries having failed to locate the whereabouts of that person, it is left at his address appearing in the undertaking or last notified under subsection (2).”.

7. Amendment of s. 28. Warrant for apprehension of defendant on bail. Section 28 of the Principal Act is amended by—

(a) numbering the existing provisions as subsection (1);

(b) adding at the end thereof the following subsections:—

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

(a) surrenders himself into custody as soon as is practicable after the time at which he is to appear before a court in accordance with his undertaking and surrender himself into custody; and

(b) satisfies the court that issued the warrant that his breach of his undertaking was due to reasonable cause,

the court may withdraw the warrant for his apprehension.

(3) A warrant issued under subsection (1)—

(a) shall name or otherwise describe the person against whom it is issued;

(b) shall describe shortly the breach in respect of which it is issued; and

(c) shall order the members of the police force to whom it is directed to apprehend the person against whom it is issued and to bring him before justices to be dealt with according to law.”

8. Amendment of s. 30. Apprehension for revocation or variation of bail. Section 30 of the Principal Act is amended by, in subsection (1), inserting after the words “to a defendant” the words “or a court before which an indictment has been presented against the defendant”.

9. Amendment of s. 31. Forfeiture of undertaking. Section 31 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

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

10. Repeal of and new s. 33. Failure to appear in accordance with undertaking. The Principal Act is amended by repealing section 33 and substituting the following sections:—

“**33. Failure to appear in accordance with undertaking.** (1) A person released on bail who—

- (a) fails without reasonable cause to appear in accordance with his undertaking and surrender himself into custody; or
- (b) having reasonable cause therefor, has failed to appear in accordance with his undertaking and surrender himself into custody and fails to appear before the court specified in his undertaking and surrender himself into custody as soon after the time so specified as is reasonably practicable,

commits a breach of duty, is liable to a penalty of \$1 000 or imprisonment for 2 years and in respect of that breach shall be dealt with in accordance with the provisions of this section.

(2) Jurisdiction is hereby conferred on every court to exercise the powers conferred on it by this section.

(3) A person released on bail who has been apprehended for failing to appear in accordance with his undertaking and surrender himself into custody shall be taken before a Magistrates Court in the Magistrates Court District in which he was apprehended and the justices then and there present shall call on that person to show cause why he should not be punished for a breach of duty referred to in subsection (1).

The exercise of jurisdiction conferred by this section in respect of the person brought before them shall be in addition to the exercise of jurisdiction conferred on justices by section 101 of the *Justices Act* 1886–1982.

(4) If the person called on to show cause informs the justices that he does not propose to do so the justices may impose on him such penalty as they think fit.

If the person called on to show cause informs the justices that he proposes to do so then—

- (a) where the warrant of apprehension was issued out of a Magistrates Court in the same Magistrates Court District as that in which the justices are then and there sitting, the justices shall conduct the show cause proceedings and, if the

person does not show cause sufficient in the justices' opinion why he should not be punished for a breach of duty referred to in subsection (1), may impose on him such penalty as they think fit;

- (b) where the warrant of apprehension was issued out of any other court, the justices shall remand the person, either in custody or on bail, to that court to be dealt with in accordance with this section.

(5) The judge or justices constituting a court before which a person is brought upon remand ordered under subsection (4) shall call on that person to show cause why he should not be punished for a breach of duty referred to in subsection (1) and, where necessary, shall conduct the show cause proceedings and, if the person does not show cause sufficient in the judge's or justices' opinion why he should not be so punished, may impose on him such penalty as he or they think fit.

(6) Proceedings to show cause pursuant to this section—

(a) may be instituted and had notwithstanding that one year has elapsed since the occurrence of the breach of duty concerned;

(b) may be instituted and had without the laying of a complaint or information in relation to the breach of duty concerned;

(c) may be had in accordance with the following procedures:—

proof of the undertaking and failure to appear in question may be dispensed with if those matters are within the court's own knowledge;

proof of the undertaking and failure to appear in question may be given by way of a certificate or writing made by the proper officer of the court.

(7) Every order made upon proceedings to show cause that requires the payment of a fine, within a specified time or with time to pay, shall further provide for imprisonment in default of payment of the fine.

The provisions of section 19 of The Criminal Code shall apply in relation to such an order made by the Supreme Court or a District Court as if it were an order of sentence made upon the person to whom it relates on his conviction upon indictment.

(8) Notwithstanding any Act, law or practice, a term of imprisonment imposed on a person pursuant to this section shall be cumulative upon any other term of imprisonment to which he is subject pursuant to a law of the Commonwealth or the State, at the time he is sentenced pursuant to this section, or to which he is sentenced, pursuant to a law of the Commonwealth or the State, at the same time as he is sentenced pursuant to this section or subsequently during the term of imprisonment to which he is sentenced pursuant to this section.

An order that a term of imprisonment be served in default of payment of a fine or sum of money pursuant to this Act or any other Act shall be taken to be a sentence of imprisonment for the purposes of this subsection.

Where a person is subsequently sentenced to imprisonment during the term of imprisonment to which he was sentenced pursuant to this section then, whether or not it is so ordered by a court, the imprisonment to which he has been so subsequently sentenced shall not commence until the termination of the imprisonment to which he was sentenced pursuant to this section.

(9) The provisions of this Act apply in respect of the granting of bail to a person taken before a court pursuant to subsection (3) as if he were before that court on a charge of or in connexion with an offence.

33A. Appeals from orders under s. 33. A person who is aggrieved by an order of a court made under section 33 has the same rights of appeal as he would have—

- (a) in the case of an order made by the Supreme Court or a District Court, had the court made the order in the exercise of its ordinary criminal jurisdiction; or
- (b) in the case of an order made by a Magistrates Court, had the court made the order in the exercise of its jurisdiction under the *Justices Act 1886–1982* upon a complaint of a breach of duty.”.

11. Repeal of and new s. 35. Proceedings for offences. The Principal Act is amended by repealing section 35 and substituting the following section:—

“ **35. Proceedings for offences.** A prosecution for an offence against this Act shall be taken by way of summary proceedings under the *Justices Act 1886–1982*.”.

12. Amendment of Second Schedule. Offences in respect of which bail by way of deposit of money shall not be granted. The Principal Act is amended by, in the Second Schedule, omitting the words “ Sections 106, 108 and 110 of the *Racing and Betting Act 1954–1980* ” and substituting the words “ Sections 214, 216, 217 and 219 of the *Racing and Betting Act 1980–1982* ”.

13. Amendment of various enactments. The enactments specified in the following Table are amended as provided in that Table.

An Act amended as provided in the Table may be cited in the manner provided in the Table.

TABLE

Enactment and Amendment	Citation as amended
<i>Bail Act 1980—</i>	
Section 16 (1) (b), omit the expression “ 1978 ” and substitute the expression “ 1982 ”	
Section 20 (6) (c) (ii), omit the expression “ 1978 ” and substitute the expression “ 1982 ”	
Section 32 (2), omit the expression “ 1979 ” and substitute the expression “ 1980 ”	
Section 35 (1), omit the expression “ 1979 ” and substitute the expression “ 1982 ”	
<i>Children's Services Act 1965–1980—</i>	
Section 26 (1) (a), omit the expression “ 1979 ” and substitute the expression “ 1980–1982 ”	
Section 26 (2) (b), omit the expression “ 1979 ” and substitute the expression “ 1980–1982 ”	<i>Children's Services Act 1965–1982</i>
<i>Coroners Act 1958–1980—</i>	
Section 29 (5), omit the expression “ 1979 ” and substitute the expression “ 1982 ”	
Section 41 (2), omit the expression “ 1979 ” where it twice occurs and substitute	
(a) in the case of the first omission, the expression “ 1982 ”;	
(b) in the case of the second omission, the expression “ 1980–1982 ”	<i>Coroners Act 1958–1982</i>
<i>Justices Act 1886–1980—</i>	
Section 93 (2), omit the expression “ 1979 ” and substitute the expression “ 1980–1982 ”	<i>Justices Act 1886–1982</i>