



Bail Act 1980

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Queensland

Bail Act 1980

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Bail Act 1980

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

1 Short title

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

6 Definitions

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.

committal for trial includes a committal for sentence.

Commonwealth control order means a control order as defined in the Criminal Code (Cwlth), section 100.1(1).

community justice group means—

- (a) the community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, part 4, division 1, for the community of a defendant who is an Aboriginal or Torres Strait Islander person; or

- (b) a group of persons within the community of a defendant who is an Aboriginal or Torres Strait Islander person, other than a department of government, that is involved in the provision of any of the following—
 - (i) information to a court about Aboriginal or Torres Strait Islander defendants;
 - (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander defendants;
 - (iii) other activities relating to local justice issues; or
- (c) a group of persons made up of elders or other respected persons of the defendant's community.

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—
 - (ii) requiring the person to perform unpaid community service; or
 - (iii) discharging the person absolutely or conditionally.

court includes—

- (a) a judge or justice, whether sitting in court or acting in another way; and
- (b) a court exercising appellate jurisdiction; and
- (c) a justice or justices conducting an examination of witnesses in relation to an indictable offence; and
- (d) a justice acting under section 15A or conducting a bail proceeding by using video link facilities or audio link facilities under the *Justices Act 1886*, part 6A.

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.

defendant's community, in relation to a defendant who is an Aboriginal or Torres Strait Islander person, means the defendant's Aboriginal or Torres Strait Islander community, whether it is—

- (a) an urban community; or
- (b) a rural community; or
- (c) a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

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.

lawyer means an Australian lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State.

offence includes an alleged offence.

police establishment means a police establishment under the *Police Service Administration Act 1990*.

precincts, of a court, means any land or building, or the part of any land or building, used for the purposes of the court.

prison includes any institution or place at which a child is detained pursuant to the *Youth 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 the District Court—the registrar or any sheriff or deputy sheriff; or
- (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.

SPER means the State Penalties Enforcement Registry established under the *State Penalties Enforcement Act 1999*.

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.

terrorism offence means—

- (a) a terrorism offence under the *Crimes Act 1914* (Cwlth); or
- or
- (b) an offence against the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cwlth), sections 6 to 9; or
- (c) an offence against the *Terrorism (Community Protection) Act 2003* (Vic), section 4B; or
- (d) an offence against the *Crimes Act 1900* (NSW), section 310J; or
- (e) an offence against the *Criminal Law Consolidation Act 1935* (SA), section 83CA; or

- (f) another offence against a provision of a law of the Commonwealth or another State if the provision—
- (i) is prescribed by regulation; and
 - (ii) is in relation to an activity that involves a terrorist act, or is preparatory to the carrying out of an activity that involves a terrorist act.

terrorist act see the *Police Powers and Responsibilities Act 2000*, section 211.

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.

watch-house manager means a watch-house manager under the *Police Powers and Responsibilities Act 2000*.

6A Delegation of powers by proper officer

- (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

-
- (4) A person granted bail and released in accordance with this section shall be released—
- (a) pursuant to section 14; or
 - (b) on conditions for the person's release made by the police officer pursuant to section 11.

Note—

For the release of a person on bail subject to a special condition imposed under section 11(2) requiring the person to surrender the person's current passport, see section 11AA.

- (5) If the prescribed police officer refuses to grant bail to a person under this section, the officer must write the officer's reasons for the refusal—
- (a) on the papers relating to the person; or
 - (b) on the warrant; or
 - (c) in a register or record of persons in custody.
- (6) The keeping of the person in custody is not unlawful only because of a failure to comply with subsection (5).
- (7) A grant of bail to a person under this section, the issuing and serving on a person of a notice to appear 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.
- (8) A court before which a person granted bail pursuant to this section appears may enlarge, vary or revoke bail so granted.
- (9) This section does not apply if the arrested person is a child.
- (10) In this section—

notice to appear see the *Police Powers and Responsibilities Act 2000*, schedule 6.

officer-in-charge, of a police station or police establishment, includes a police officer nominated by the officer-in-charge of the police station or police establishment as the officer-in-charge of the police station or police establishment during the officer-in-charge's absence.

prescribed police officer, in relation to a person in custody, means—

- (a) if the person is in custody at a police station or police establishment—the officer-in-charge of the police station or police establishment; or
- (b) if the person is in custody at a watch-house—
 - (i) the watch-house manager; or
 - (ii) another police officer whose duties include performing functions at the watch-house in relation to persons in custody.

8 Power of court as to bail

- (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
 - (ia) the court is a Magistrates Court and the person is awaiting an appeal under the *Justices Act 1886*, section 222 to be held in the District Court; 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; and
 - (b) may enlarge, vary or revoke bail so granted.

Notes—

- 1 If the court is a Magistrates Court, see the *Justices Act 1886*, part 6A, for provisions about the use of video link facilities or audio link facilities for proceedings, including bail proceedings.
- 2 The provisions about the sexual assault counselling privilege in the *Evidence Act 1977*, part 2, division 2A apply in relation to bail proceedings.

- (2) A person in custody on a charge of or in connection with an offence who is not granted bail or released under section 11A must, 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.

9 Duty of court to grant bail in certain cases

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.

10 General powers as to bail

- (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 the District Court the trial judge may in the trial judge's 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 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.

10A No court fee payable for making application to Supreme Court

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.

10B No costs order

- (1) A court may not make any order concerning costs in a bail proceeding.
- (2) It does not matter whether the bail proceeding started, or the relevant offence was committed, before or after the commencement of this section.
- (3) In this section—
bail proceeding includes—
 - (a) an application under this Act; and
 - (b) an application to grant, enlarge, vary or revoke bail under another Act; and
 - (c) an appeal to the Court of Appeal from an order made on an application mentioned in paragraph (a) or (b).

11 Conditions of release on bail

- (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;
 - (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; or
 - (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;

Examples of special conditions for paragraph (b)(ii)—

- a special condition that prohibits a person from associating with a stated person or a person of a stated class
- a special condition that prohibits a person from entering or being in the vicinity of a stated place or a place of a stated class

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

- (3) Without limiting subsection (2), a special condition may prohibit a person from doing, or attempting to do, any of the following while the person is released on bail—
- (a) entering or remaining in stated licensed premises or a stated class of licensed premises;
 - (b) entering or remaining in, during stated hours, a stated area that is designated by its distance from, or location in relation to, the stated licensed premises or stated class of licensed premises mentioned in a special condition imposed under paragraph (a);

Examples of special conditions for paragraph (b)—

- a special condition that prohibits a person from entering or remaining in, between the hours of 10p.m. and 6a.m., an area that is within 10m of stated licensed premises mentioned in a special condition imposed under paragraph (a)
 - a special condition that prohibits a person from entering or remaining in, between the hours of 11p.m. and 5a.m., a stated street, or an area abutting several stated streets, that is located near stated licensed premises mentioned in a special condition imposed under paragraph (a)
 - a special condition that prohibits a person from entering or remaining in, between the hours of 11p.m. and 5a.m., the safe night precinct under the *Liquor Act 1992* in which the stated licensed premises mentioned in a special condition imposed under paragraph (a) are located
- (c) attending or remaining at a stated event, to be held in a public place, at which liquor will be sold for consumption.

-
- (4) A court or a police officer authorised by this Act to grant bail for the release of a person must consider the imposition of a special condition mentioned in subsection (3) if—
- (a) the alleged offence to which the bail relates involved the use, threatened use or attempted use of unlawful violence to another person or property; and
 - (b) having regard to the evidence available to the court or the police officer, the court or the police officer is satisfied that the alleged offence was committed in licensed premises or in a public place in the vicinity of licensed premises.
- (4AA) If bail for a person is subject to a special condition mentioned in subsection (3)—
- (a) for bail that is granted by a police officer at a police station, watch-house or police establishment (each a *relevant place*)—a police officer may detain and photograph the person at the relevant place for the purposes of the *Police Powers and Responsibilities Act 2000*, chapter 19, part 5B; or
 - (b) otherwise—the court may impose a condition that requires the person to report to a police station within 48 hours after bail is granted to be photographed under the *Police Powers and Responsibilities Act 2000*, chapter 19, part 5B.
- (4A) A court or a police officer authorised by this Act to grant bail for the release of a person who is not an Australian citizen or permanent resident must consider the imposition of a special condition under subsection (2)—
- (a) requiring the person to surrender the person's current passport; and
 - (b) prohibiting the person from applying for a passport.
- (5) 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.

- (6) 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 high security unit under the *Mental Health Act 2016*; or
 - (b) by a specified doctor.
- (7) 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.
- (8) If bail is subject to a condition mentioned in subsection (6), 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.
- (9) Without limiting a court's power to impose a condition on bail under another provision of this section, a Magistrates Court may impose on the bail a condition that the defendant participate in a rehabilitation, treatment or other intervention program or course, after having regard to—
- (a) the nature of the offence; and
 - (b) the circumstances of the defendant, including any benefit the defendant may derive by participating in the program or course; and
 - (c) the public interest.

Notes—

- 1 The defendant does not commit an offence against section 29 by breaking the condition. See section 29(2)(c).
- 2 Section 30 sets out the procedures for varying the defendant's bail if the condition is broken or is likely to be broken.

-
- (9A) Section 11AB also provides for a condition requiring completion of a Drug and Alcohol Assessment Referral course that may be imposed on a person's release on bail in particular circumstances.
- (9B) Without limiting a court's power to impose a condition on bail under another provision of this section, a court may impose on the bail a condition that the defendant wear a tracking device while the defendant is released on bail.
- (9C) If bail for a person is subject to a condition mentioned in subsection (9B), the court may impose any other condition the court considers necessary to facilitate the operation of the tracking device.

Examples of conditions a court may consider necessary to facilitate the operation of a tracking device required to be worn by a defendant—

- a condition that requires the defendant to attend at a stated place to be fitted with the tracking device
- a condition that requires the defendant to take stated and other reasonable steps to ensure the tracking device and any equipment necessary for the operation of the tracking device are, or remain, in good working order
- a condition that requires the defendant to permit a police officer to enter stated premises to install equipment necessary for the operation of the tracking device
- a condition that requires the defendant to permit a police officer to take stated and other reasonable steps to ensure the tracking device and any equipment necessary for the operation of the tracking device are, or remain, in good working order
- a condition that requires the defendant to comply with a direction given by a police officer that is reasonably necessary for the operation of the tracking device

- (10) In this section—

Australian citizen see the *Australian Citizenship Act 2007* (Cwlth), section 4.

permanent resident means—

- (a) the holder of a permanent visa within the meaning of the *Migration Act 1958* (Cwlth), section 30(1); or

- (b) a New Zealand citizen who is the holder of a special category visa within the meaning of the *Migration Act 1958* (Cwlth), section 32.

tracking device means an electronic device capable of being worn, and not removed, by a person for the purpose of the Queensland police service, or the chief executive of the department in which the *Corrective Services Act 2006* is administered, finding or monitoring the geographical location of the person.

11AA Release of a person only after surrender of passport

- (1) This section applies if a court or a police officer authorised by this Act to grant bail imposes a special condition under section 11(2) requiring the person to surrender the person's current passport.
- (2) If the condition is imposed by a court, the court must order that the person be detained in custody until the passport is surrendered.
- (3) If the condition is imposed by a police officer, the person must be detained in custody until the passport is surrendered.

11AB Condition requiring completion of DAAR course

- (1) This section applies to a court authorised by this Act to grant bail for the release of a person.
- (2) If the person consents to completing a DAAR course, the court may impose a condition for the person's release that the person complete a DAAR course by a stated day.

Notes—

- 1 The person does not commit an offence against section 29 by breaking the condition. See section 29(2)(c).
 - 2 Section 30 sets out the procedures for varying the person's bail if the condition is broken or is likely to be broken.
- (3) In deciding whether to impose the condition, the court must have regard to the following—

-
- (a) the nature of the offence in relation to which bail is proposed to be granted;
 - (b) the person's circumstances, including any benefit the person may derive by completing a DAAR course;
 - (c) the public interest.
- (4) However, subsection (2) does not apply if—
- (a) the person has completed 2 DAAR courses within the previous 5 years; or
 - (b) the person is under 18 years; or
 - (c) section 11A applies.
- (5) This section does not limit the conditions the court may impose under section 11.
- (6) In this section—

approved provider means an entity approved by the chief executive (health) by gazette notice to provide DAAR courses.

chief executive (health) means the chief executive of the department in which the *Health Act 1937* is administered.

DAAR stands for Drug and Alcohol Assessment Referral.

DAAR course means a course provided to a person by an approved provider in which—

- (a) the person's drug or alcohol use is assessed; and
- (b) the person is given information about appropriate options for treatment and may be offered counselling or education.

11A Release of a person with an impairment of the mind

- (1) This section applies if a police officer or court authorised by this Act or the *Youth Justice Act 1992* to grant bail considers—
- (a) a person held in custody on a charge of or in connection with an offence is, or appears to be, a person with an impairment of the mind; and

- (b) the person does not, or appears not to, understand the nature and effect of entering into an undertaking under section 20; and
 - (c) if the person understood the nature and effect of entering into the undertaking, the person would be released on bail.
- (2) The police officer or court may release the person without bail by—
- (a) releasing the person into the care of another person who ordinarily has the care of the person or with whom the person resides; or
 - (b) permitting the person to go at large.
- (3) A person's release is on condition the person will surrender, at the time and place stated in the notice under section 11B, into the custody of the court stated in the notice.
- (4) If the person surrenders into the custody of the court stated in the notice, the court may release the person again under subsection (2).
- (5) A court authorised by this Act or the *Youth Justice Act 1992* to grant bail may revoke a release.
- (6) A person's release by a police officer discharges any duty to take the person before a justice to be dealt with according to law.
- (7) In this section—
- person with an impairment of the mind*** means a person who has a disability that—
- (a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and
 - (b) results in—
 - (i) a substantial reduction of the person's capacity for communication, social interaction or learning; and
 - (ii) the person needing support.

11B Release notice

- (1) This section applies if a person is released under section 11A, whether for the first time or because of section 11A(4).
- (2) The police officer or court releasing the person must give the person a notice in the approved form stating—
 - (a) the person's name and place of residence; and
 - (b) the charge on which or the offence in connection with which the person was in custody; and
 - (c) if the person is released into the care of another person, the other person's name and place of residence; and
 - (d) the court into whose custody the person is required to surrender as a condition of release; and
 - (e) the time and place the person is required to surrender into the court's custody.
- (3) The notice must also include a warning that a warrant will be issued for the person's arrest if the person fails to surrender into the court's custody at the time and place stated.
- (4) If the person is released into the care of another person, the police officer or court must also give the other person a copy of the notice.

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

- (1) Where the complainant or prosecutor or a person appearing on behalf of the Crown opposes a defendant's release under this part or the *Youth Justice Act 1992*, part 5, 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 release under section 11A or any part thereof or any of them shall not be published by any means—

[s 13]

- (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.

13 When only particular courts may grant bail

- (1) 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.
- (2) Only a court may grant bail to a person who—
- (a) has previously been convicted of a terrorism offence; or
 - (b) is or has been the subject of a Commonwealth control order.
- (3) For subsection (2)—
- convicted**, of an offence, means found guilty of the offence by a court, on a plea of guilty or otherwise, whether or not a conviction is recorded.

court does not include a justice or justices.

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

- (1) This section applies if—
- (a) a person, who has been arrested in connection with a charge of an offence, other than an indictable offence or an offence mentioned in the schedule, is delivered into the custody of a police officer who is—
 - (i) the officer-in-charge of a police station or police establishment; or
 - (ii) a watch-house manager; and
 - (b) the person has not first appeared before a justice in relation to the offence; and
 - (c) the police officer is satisfied the person can not be taken promptly before a court.

(1A) If the police officer considers it appropriate, the police officer 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 on the day and at the time and place notified to the person under this section.

Notes—

- 1 See also section 13 for when only particular courts may grant a person bail.
- 2 See also section 16 for when a police officer must refuse to grant bail.

(1B) If either of the following happens, the police officer may release the person without bail—

- (a) a person charged with being drunk in a public place is released into the care of a person at a place of safety under the *Police Powers and Responsibilities Act 2000*, section 378;
- (b) a person charged with a minor drugs offence within the meaning of the *Police Powers and Responsibilities Act 2000*, schedule 6 signs an agreement to attend a drug diversion assessment program under section 379 of that Act.

- (2) The police officer who accepts a deposit of money from a person and grants bail to the person under subsection (1A) or the *Youth Justice Act 1992*, part 5—
- (a) shall cause a bench charge sheet to be completed with the following particulars and kept at the police establishment or watch-house—
- (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; and
- (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.
- (4) Without limiting subsection (3), the bench charge sheet may be forwarded by electronic communication.
- (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.

Note—

If an order is made under this subsection, an order may also be made under the *Justices Act 1886*, section 150A to end the complaint in relation to the matter for which the person was granted 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 the person's lawyer applies to the court or justice 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.

14A Magistrates Courts may grant cash bail or permit to go at large

- (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.

Notes—

- 1 See also sections 16 and 16A for when a court must refuse to grant bail.
- 2 See also the *Youth Justice Act 1992*, sections 48 and 48A for when a child must not be released from custody.

- (1A) However, the Magistrates Court must not permit the defendant to go at large without bail under subsection (1)(b) if bail must be refused under section 16A.

Note—

See also the *Youth Justice Act 1992*, sections 48 and 48A for when a child must not be released from 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 the defendant's lawyer applies to the court 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.

15 Procedure upon application for bail

- (1) In a proceeding about the release of a person under this part or the *Youth Justice Act 1992*, part 5—
 - (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; and

- (B) has been charged with and is awaiting trial on an indictable offence; and
 - (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 lawyer; and
 - (e) the court may receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances; and
 - (f) if the defendant is an Aboriginal or Torres Strait Islander person—the court may receive and take into account any submissions made by a representative of the community justice group in the defendant's community, including, for example, about—
 - (i) the defendant's relationship to the defendant's community; or
 - (ii) any cultural considerations; or
 - (iii) any considerations relating to programs and services in which the community justice group participates.
- (2) If required by a court for subsection (1)(f), a representative of the community justice group in the defendant's community must advise the court whether—
- (a) any member of the community justice group that is responsible for the submission is related to the defendant or the victim; or
 - (b) there are any circumstances that give rise to a conflict of interest between any member of the community justice

group that is responsible for the submission and the defendant or victim.

15A Conduct of proceeding by Magistrates Court outside district or division

- (1) This section applies if—
 - (a) a Magistrates Court (the *original court*) has jurisdiction under this Act or another Act to hear a bail proceeding; and
 - (b) a practice direction made by the Chief Magistrate provides for a bail proceeding to be heard by an alternative court under this section.
- (2) The bail proceeding may be heard by the alternative court under an Act mentioned in subsection (1)(a) as if the alternative court—
 - (a) had jurisdiction to hear the bail proceeding; and
 - (b) were the original court for the purpose of that Act.
- (3) In hearing the bail proceeding, the alternative court may make any order for the disposition of the charge the court considers necessary.
- (4) In this section—

alternative court means a Magistrates Court for a district or division outside the district or division in which the bail proceeding would otherwise be required to be heard.

16 Refusal of bail generally

- (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; or

- (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;
 - (e) if the defendant is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the defendant's community, including, for example, about—

- (i) the defendant's relationship to the defendant's community; or
 - (ii) any cultural considerations; or
 - (iii) any considerations relating to programs and services in which the community justice group participates;
- (f) if the defendant is charged with a domestic violence offence or an offence against the *Domestic and Family Violence Protection Act 2012*, section 177(2)—the risk of further domestic violence or associated domestic violence, under the *Domestic and Family Violence Protection Act 2012*, being committed by the defendant;
- Note—*
- See section 15(1)(e) for the power of a court to receive and take into account evidence relating to the risk of further domestic violence or associated domestic violence.
- (g) any promotion by the defendant of terrorism;
 - (h) any association the defendant has or has had with—
 - (i) a terrorist organisation within the meaning of the Criminal Code (Cwlth), section 102.1(1); or
 - (ii) a person who has promoted terrorism.
- (2A) However, in assessing whether there is an unacceptable risk with respect to any event specified in subsection (1)(a) a court must not have regard to the effect on the risk of imposing a condition under section 11(9B).
- (2B) For subsection (2)(g) and (h)(ii), a person has promoted terrorism if the person has—
- (a) carried out an activity to support the carrying out of a terrorist act; or
 - (b) made a statement in support of the carrying out of a terrorist act; or
 - (c) carried out an activity, or made a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.

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- (2C) To remove any doubt, it is declared that a reference in subsection (2B) to a terrorist act—
- (a) includes a terrorist act that has not happened; and
 - (b) is not limited to a specific terrorist act.
- (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 13(1) 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; or

Note—

For this paragraph, a person proceeded against under section 33(3) is taken to be charged with an offence against this Act—see section 33(6).

- (e) with an offence against the *Penalties and Sentences Act 1992*, section 161ZI or the *Peace and Good Behaviour Act 1982*, section 32; or
- (f) with an offence against the Criminal Code, section 359 with a circumstance of aggravation mentioned in section 359(2); or
- (g) with a relevant offence;

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, if bail is granted or the defendant is released under section 11A, must include in the order a statement of the reasons for granting bail or releasing the defendant.

Note—

See also section 16A(6).

- (4) In granting bail in accordance with subsection (3)—
- (a) a court may impose conditions under section 11 or 11AB; or
 - (b) a police officer may impose conditions under section 11.
- (5) This section does not apply if the defendant is a child.
- (6) If required by a court or police officer for subsection (2)(e), a representative of the community justice group in the defendant's community must advise the court or police officer whether—
- (a) any member of the community justice group that is responsible for the submission is related to the defendant or the victim; or
 - (b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the defendant or victim.
- (7) In this section—
- domestic violence offence*** see the Criminal Code, section 1.
- relevant offence*** means—
- (a) an offence against the Criminal Code, section 315A; or
 - (b) an offence punishable by a maximum penalty of at least 7 years imprisonment if the offence is also a domestic violence offence; or
 - (c) an offence against the Criminal Code, section 75, 328A, 355, 359E or 468 if the offence is also a domestic violence offence; or
 - (d) an offence against the *Domestic and Family Violence Protection Act 2012*, section 177(2) if—
 - (i) the offence involved the use, threatened use or attempted use of unlawful violence to person or property; or

- (ii) the defendant, within 5 years before the commission of the offence, was convicted of another offence involving the use, threatened use or attempted use of unlawful violence to person or property; or
- (iii) the defendant, within 2 years before the commission of the offence, was convicted of another offence against the *Domestic and Family Violence Protection Act 2012*, section 177(2).

16A Refusal of bail for defendants convicted of terrorism offences or subject to Commonwealth control orders

- (1) This section applies in relation to a defendant if—
 - (a) the defendant—
 - (i) has previously been convicted of a terrorism offence; or
 - (ii) is or has been the subject of a Commonwealth control order; and
 - (b) the defendant is an adult.
- (2) Despite any other provision of this Act, a court must refuse to grant bail to the defendant unless the court is satisfied exceptional circumstances exist to justify granting bail.
- (3) In considering whether exceptional circumstances exist to justify granting bail to the defendant, the court may have regard to any relevant matter.
- (4) If the court grants bail to the defendant, the order granting bail must state the reasons for the decision.
- (5) This section does not affect the operation of section 16(1).
- (6) If the defendant is charged with an offence mentioned in section 16(3)(a) to (g), section 16(3) does not apply in relation to the defendant.
- (7) In this section—

convicted, of an offence, means found guilty of the offence by a court, on a plea of guilty or otherwise, whether or not a conviction is recorded.

17 Enlargement of undertaking

- (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 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.
- (7) Also, any record of an order of the court relating to the defendant, whether or not the record is signed, is evidence that the defendant's bail was enlarged if—
 - (a) an indictment relating to the defendant has been presented to the court; and
 - (b) the record is to the effect that—
 - (i) the defendant's undertaking has been enlarged under subsection (2); and
 - (ii) the defendant's trial has been adjourned to a later sittings of a court to be held at a particular place.

18 Endorsement of decision as to bail or release on papers and warrant

A court that grants or refuses bail to a defendant or releases a defendant under section 11A 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 or release 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 the defendant is released under section 11A—
 - (i) consent to the defendant's release without bail; and
 - (ii) whether the defendant is released into the care of another person or permitted to go at large; and
 - (iii) if the defendant is released into the care of another person, the person's name; and
 - (iv) the court into whose custody the defendant is required to surrender as a condition of release; and
 - (v) the time and place the defendant is required to surrender into the court's custody; or
- (c) where bail is refused—
 - (i) the refusal of bail; and
 - (ii) the grounds for such refusal.

19 Application re refusal or conditions of bail

- (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 8 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.

19A Consideration of unrecorded convictions

- (1) This section applies to a person in custody in connection with a charge of an offence if the person has previously been found

guilty of an offence, as a child, without a conviction being recorded.

- (2) A court or police officer deciding whether to release the person or keep the person in custody may have regard to the finding.

19B Review of particular decisions

- (1) This section does not apply to the following decisions about release under this part—
 - (a) a decision by the Supreme Court;
 - (b) a decision under section 10(2);
 - (c) a decision by a magistrate acting as a reviewing court under this section.
- (2) If a decision has been made about release under this part or the *Youth Justice Act 1992*, part 5, 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 limited by sections 13, 16, 16A and 17(1A) and, if the defendant is a child, the *Youth Justice Act 1992*, sections 48 and 48A.
- (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.

19C Review by Supreme Court of magistrate's decision on a review

- (1) If a decision is made by a magistrate on a review of a decision about release under this part or the *Youth Justice Act 1992*, part 5, 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, 16A and 17(1A) and, if the defendant is a child, the *Youth Justice Act 1992*, sections 48 and 48A.

19CA Stay of release decision relating to relevant domestic violence offence

- (1) This section applies if—
 - (a) a decision has been made about release under this part or the *Youth Justice Act 1992*, part 5, for a defendant charged with a relevant domestic violence offence; and
 - (b) the prosecutor or other person appearing on behalf of the Crown applies to the reviewing court for a review of the decision.
- (2) The decision about release is stayed until the earlier of the following—
 - (a) the reviewing court makes an order under section 19B(6) or 19C(5);
 - (b) the application for the review of the decision is discontinued;
 - (c) 4p.m. on the day that is 3 business days after the day on which the decision about release was made.
- (3) A decision about release does not entitle a person to be at liberty while the decision is stayed.

19D Warrants in aid of orders under section 19B or 19C or stay under section 19CA

- (1) 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.
- (2) Also, a reviewing court may, for giving effect to a stay under section 19CA, issue a warrant for the apprehension of the defendant directing that the defendant be brought before a stated court.

19E Review provisions do not affect other powers

Sections 19B to 19D do not affect a power of the Supreme Court under section 10, 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

20 Undertaking as to bail

(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 14A) 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.

(2A) For subsection (2), the defendant's address for service of notices may be the same as the defendant's residential address.

(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) the following conditions—

(i) that the defendant must surrender into custody as required;

(ii) that the defendant must not depart from the court unless the bail is enlarged;

- (iii) whether or not the defendant is represented, that the defendant must obey the directions of the court in relation to any further appearance, whether the directions are given to the defendant personally or to the defendant's lawyer; and
 - (b) such further conditions—
 - (i) as are imposed under section 11(2), (3), (6) or (9) or 11AB or the *Youth Justice Act 1992*, section 52; and
 - (ii) as the court thinks fit to impose.
- (3AA) Despite subsection (3), the defendant need not surrender into custody or appear personally if the defendant is represented by the defendant's lawyer unless—
 - (a) the court directs otherwise; or
 - (b) a charge is being heard and determined, an examination of a witness is being conducted or a penalty is being imposed.
- (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 lawyer 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; and
 - (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; and
 - (iii) shall obey the directions of the court, whether given to the defendant personally or to the defendant's lawyer, 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; and

(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; and

(b) such further conditions—

(i) as are imposed under section 11(2), (3), (6) or (9) or 11AB or the *Youth Justice Act 1992*, section 52; and

(ii) as the court thinks fit to impose.

(3B) In the case of bail granted to a defendant under section 13(1) 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; and

(b) such further conditions as are imposed by the court granting bail.

(3D) In the case of bail granted to a defendant subject to a passport surrender condition, the undertaking must include a statement that the defendant has surrendered the defendant's current passport.

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- (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, chief executive (corrective services) or his or her delegate, or officer of the department in which the *Youth Justice Act 1992* is administered 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; and
 - (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—
- (a) a justice; or
 - (b) a police officer authorised by this Act or the *Youth Justice Act 1992* to grant bail; or
 - (c) where a party to the undertaking—
 - (i) is in prison, the chief executive (corrective services) or his or her delegate; or
 - (ii) is a child detained in a place established under the *Youth Justice Act 1992*, part 8—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.

- (8) A reference in subsection (3)(a)(iii) and (3AA) to a lawyer, for the mention of a matter in a Magistrates Court or the Childrens Court relating to a defendant released on bail in which there is no issue about the bail, includes a person who is undertaking practical legal training.
- (9) For subsection (8), there is no issue about bail if the complainant or prosecutor or person appearing on behalf of the Crown does not oppose the defendant continuing on bail and there is no application to vary, as opposed to enlarge, bail.
- (10) In this section—

passport surrender condition, for a defendant, means a special condition under section 11(2) that includes a requirement that the defendant surrender the defendant's current passport.

practical legal training means practical legal training under the supervision of a lawyer under rules made under the *Supreme Court of Queensland Act 1991*, section 85(1)(b).

21 Sureties

- (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—
 - (i) an involuntary patient under the *Mental Health Act 2016* who is, or is liable to be, detained in an authorised mental health service under that Act; or
 - (ii) a forensic disability client within the meaning of the *Forensic Disability Act 2011*; or
 - (iii) a person for whom a guardian or administrator has been appointed under the *Guardianship and Administration Act 2000*; 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, 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 chief executive (corrective services) 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.

22 Procedure where sureties do not attend prison

- (1) Where a certificate as to bail is endorsed on papers or warrant pursuant to section 18 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 chief executive (corrective services) and produced to a person authorised by section 20(6) 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 chief executive (corrective services) shall, if the defendant is detained for no other lawful purpose, forthwith obey such order.

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- (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 chief executive (corrective services) 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 the case requires, sureties execute a separate undertaking binding the surety or sureties in conformity with the certificate as to bail, advise the chief executive (corrective services) that this has been done and give the undertaking to the chief executive (corrective services);
 - (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.

23 Application to court by surety for discharge

- (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 arrested by a police officer under the *Police Powers and Responsibilities Act 2000*, section 367, 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 chief executive (corrective services) 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 chief executive (corrective services) shall cause the defendant to so appear in accordance with that condition.

24 Apprehension of defendant by surety

- (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.

25 Effect of death of surety

- (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.

26 Offence of indemnifying surety

- (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.

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- (2) The court may issue a warrant for the apprehension of the defendant.
 - (3) The warrant must—
 - (a) name the defendant against whom it is issued; and
 - (b) state the reason, under subsection (1)(a) or (b), for its issue; and
 - (c) order all police officers to apprehend the defendant and bring the defendant before the court to be dealt with according to law.

27B Warrant for apprehension of defendant—bail granted using video link facilities or audio link facilities under Justices Act 1886, pt 6A

- (1) This section applies if—
 - (a) a magistrate grants bail to a defendant and the proceeding is conducted using video link facilities or audio link facilities under the *Justices Act 1886*, part 6A; and
 - (b) the defendant leaves the precincts of the associated place—
 - (i) if the defendant is required to enter into an undertaking under section 20—without entering into the undertaking; or
 - (ii) if there are conditions of the bail with which the defendant must comply before leaving the precincts of the associated place—without fulfilling the conditions.
- (2) A Magistrates Court may issue a warrant for the apprehension of the defendant.
- (3) The warrant must—
 - (a) name the defendant against whom it is issued; and
 - (b) state the reason, under subsection (1)(b)(i) or (ii), for its issue; and

- (c) order all police officers to apprehend the defendant and bring the defendant before the court to be dealt with according to law.
- (4) In this section—
 - associated place* see the *Justices Act 1886*, section 178B.
 - audio link facilities* see the *Justices Act 1886*, section 4.
 - precincts*, of an associated place, means the part of the associated place used for the bail proceeding.
 - video link facilities* see the *Justices Act 1886*, section 4.

28 Warrant for apprehension of defendant by Supreme or District Court

- (1) Where a defendant who has entered into an undertaking conditioned that the defendant will appear before the Supreme Court or the 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.

28A Other warrants for apprehension of defendant

- (1) A court that a defendant is required to appear before may issue a warrant for the defendant's apprehension if the defendant fails to surrender into custody after being—

- (a) released on bail by the Supreme Court or District Court on condition that the defendant will appear before a Magistrates Court; or
 - (b) released on bail by a Magistrates Court or the Childrens Court, or by any justice or justices conducting a committal proceeding, on the defendant entering into an undertaking; or
 - (c) released on bail under section 7(3)(a); or
 - (d) released on bail on the defendant making a deposit of money under section 14A; or
 - (e) released on bail that has been continued under section 34A(2), 34B(2), 34BA(2) or 34BB(2); or
 - (ea) released, on bail or without bail, under the *Youth Justice Act 1992*, part 5; or
 - (f) permitted to go at large without bail.
- (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
 - (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.

Note—

A defendant may be granted bail before being brought before the court under paragraph (c) if the defendant shows cause under section 16(3) why the defendant's detention in custody is not justified.

- (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 a lawyer;

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.

28B Warrant authority to apprehend defendant on other charges

A warrant issued under section 28 or 28A(1)(a), (b), (c) or (e) 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.

28C Warrant for apprehension of person released under section 11A

- (1) If a person is released under section 11A on condition the person will surrender into the custody of a particular court at the time and place stated in the notice under section 11B and the person fails to surrender into the court's custody at the time and place—
 - (a) the court may issue a warrant for the apprehension of the person directing that the person be brought before the court; and
 - (b) the person is not liable to any other penalty for the failure to surrender.
- (2) The warrant must—
 - (a) name or describe the person; and
 - (b) state the name of the court; and
 - (c) state the time and place stated in the notice under section 11B at which the person was required to surrender into the court's custody; and
 - (d) state the person failed to surrender into the court's custody at the stated time and place; and
 - (e) order the police officers to whom it is directed to apprehend the person and cause the person to be brought before the court to be dealt with according to law.
- (3) The court may withdraw and cancel the warrant if—
 - (a) the person surrenders into the court's custody as soon as is practicable after the stated time; and
 - (b) the court is given a satisfactory explanation as to why the person failed to surrender into custody as required.

29 Offence to breach conditions of bail

- (1) A defendant must not break any condition of the undertaking on which the defendant was granted bail requiring the defendant's appearance before a court.

Maximum penalty—40 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to—
- (a) a defendant who is a child; or
 - (b) a condition that the defendant surrender into custody; or

Note—

For defendants who fail to surrender into custody, see section 33.

- (c) a condition of the defendant's undertaking imposed under section 11(9) or 11AB.

29A Procedure in respect of defendants apprehended under s 21(7) or the Police Powers and Responsibilities Act 2000

- (1) A defendant apprehended—
- (a) under a warrant issued under section 21(7); or
 - (b) under the *Police Powers and Responsibilities Act 2000*, section 367;

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; or
 - (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 chief executive (corrective services) to 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.
- (3) This section does not apply if under subsection (1)(b) the only condition the defendant has broken, or is likely to break, is a condition of the defendant's undertaking imposed under section 11(9) or 11AB.

30 Apprehension on variation or revocation of bail

- (1) Bail granted to a defendant on an undertaking may be varied or revoked, on the application of a complainant, prosecutor or person appearing on behalf of the Crown, 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.
- (1A) Also, bail granted to a defendant on an undertaking by a police officer authorised by this Act or the *Youth Justice Act*

1992 to grant bail may be varied or revoked, on the application of a complainant, prosecutor or person appearing on behalf of the Crown, by—

- (a) if the defendant is required to appear before the Childrens Court—the Childrens Court; or
- (b) a Magistrates 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 this section 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 this section 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; or

- (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; or
 - (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.
- (6) If the only ground for making an application under this section is that the defendant has broken, or is likely to break, a condition of the defendant's undertaking imposed under section 11(9) or 11AB, the court may vary the defendant's bail, including by rescinding the condition imposed under section 11(9) or 11AB, but may not revoke the bail.
- (7) This section does not limit the powers of a police officer under the *Police Powers and Responsibilities Act 2000*, section 367(3) to arrest a defendant who is a child.

31 Forfeiture of undertaking

- (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; and
- (b) shall transmit to the proper officer of the court the undertaking so endorsed.

32 Forfeiture of deposit or other security

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

32A Order for payment of amount under forfeited undertaking

- (1) A court that orders the payment of a deposit of money or other security (the *amount*) under section 32 for which there is a surety must also order—
 - (a) that the surety pay the amount to the proper officer of the court immediately or within the time or by the instalments stated in the order; or
 - (b) that the proper officer of the court is to give the prescribed particulars of the amount to SPER for registration under the *State Penalties Enforcement Act 1999*, section 34.
- (2) If the court makes an order under subsection (1)(a), the court may also order that the surety be imprisoned for the term, of not more than 2 years, stated in the order if the surety defaults in paying the amount.

32B Variation or revocation of order forfeiting bail undertaking

- (1) If a court orders a defendant or a surety to pay an amount under section 32 or 32A, the defendant or the surety may apply in the approved form to the court that made the order or, for a Magistrates Court, any magistrate, for an order revoking or varying the order.
- (2) The application—
 - (a) may only be made on the ground that, having regard to all the circumstances, it would be against the interests of justice to require the person to pay the amount ordered to be paid; and
 - (b) must be made within 28 days after the relevant undertaking is forfeited or the longer time the court allows for payment of the amount; and
 - (c) must briefly state the circumstances relied on; and
 - (d) must be filed with the proper officer of the court and served, at least 14 days before the date set for the hearing of the application, on the complainant or, for an undertaking entered into after an indictment is presented, whoever of the following is relevant—
 - (i) the State crown solicitor;
 - (ii) for an offence against a law of the Commonwealth, the Australian Government Solicitor in Queensland.
- (3) Despite subsection (2)(b), if the undertaking was forfeited in the absence of the defendant, an application may be made within 28 days after the order comes to the notice of the applicant.
- (4) At any time after the application is filed, the applicant may apply to the court for a stay of proceedings to which the application relates.
- (5) The court may grant the stay and do any of the following—
 - (a) direct the return of any unenforced warrant;

- (b) postpone the issue of a warrant;
 - (c) stay the enforcement of any warrant until the application is decided.
- (6) Also, the court may hear the application earlier than 14 days after service of the application if the parties consent to the earlier hearing.
- (7) The court must decide the application and may—
- (a) vary the order; or
 - (b) revoke the order; or
 - (c) refuse the application.

33 Failure to appear in accordance with undertaking

- (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), (b), (c) or (e);
- 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), (b), (c) or (e) 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;
 - (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, the following applies—
 - (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.
- (5) Subsection (4) does not apply if the defendant was a child when the defendant committed the offence mentioned in subsection (1).
- (6) Despite subsection (3)(a), a defendant mentioned in subsection (1)(b) is taken to be charged with an offence under subsection (1) for the purpose of—
 - (a) applying for bail under any provision of this Act; and
 - (b) section 16(3)(d).

33A Certain offences may be dealt with

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).

33B Committal or remand of certain defendants

- (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, 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 chief executive (corrective services) to cause the defendant to surrender into the custody of the court that issued the warrant 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.

33C Jurisdiction

- (1) The powers conferred by sections 33 and 33A 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.

33D Postponing issue or enforcement of a warrant

- (1) This section applies if an application is made to the court for a warrant for the apprehension of a person who has failed to appear before the court.
- (2) The court may postpone the issue or enforcement of the warrant to allow the person a further opportunity to appear before the court.

34 Effect of apprehension on another charge of defendant on bail

- (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.

34A Varying bail if summary charge transmitted from court of summary jurisdiction to another court

- (1) This section applies if—

[s 34B]

- (a) a person charged with a summary offence before a court of summary jurisdiction is granted bail (the *summary bail*) by the court to appear before it on the charge; and
 - (b) the clerk of the court of summary jurisdiction transmits the complaint or bench charge sheet or a copy of it to the registrar of another court (the *receiving court*) under the Criminal Code, section 652(4).
- (2) The summary bail is continued and is taken to have been granted by the receiving court on the conditions imposed by the court of summary jurisdiction.
- (3) However, the summary bail is taken to be varied to require the defendant to appear before the receiving court for the hearing of the summary offence on the day the receiving court has set for the hearing of the charge on indictment before it.

34B Varying bail if summary charge transmitted from receiving court back to court of summary jurisdiction

- (1) This section applies if—
- (a) section 34A applies; and
 - (b) under the Criminal Code, section 653(2), the receiving court—
 - (i) directs that the charge be heard by a court exercising summary jurisdiction; and
 - (ii) orders the court registrar to send the relevant court record to the clerk of the court exercising summary jurisdiction.
- (2) The summary bail is taken to have been granted by the court exercising summary jurisdiction on the conditions that applied to it under section 34A.
- (3) However, the summary bail is taken to be varied to require the defendant to appear before the court of summary jurisdiction for the hearing of the summary charge on the day set by the receiving court on the day it gives the direction and makes the order.

- (4) The day set by the receiving court must be not earlier than 1 month after the day it gives the direction and makes the order.
- (5) In this section—
receiving court has the meaning given by section 34A(1)(b).
summary bail has the meaning given by section 34A(1)(a).

34BA Varying bail on registry committal

- (1) This section applies if—
 - (a) under a registry committal under the *Justices Act 1886*, the clerk of the court at a place orders a defendant charged with an indictable offence to be committed to be tried or sentenced for the offence; and
 - (b) immediately before the registry committal, the defendant is on bail.
- (2) The bail applying to the defendant immediately before the registry committal (the *summary bail*) is continued, and is taken to have been granted by the court (the *receiving court*) to which the defendant is committed for trial or sentence on the same conditions that applied immediately before the registry committal.
- (3) However, the summary bail is taken to be varied to require the defendant to appear before the receiving court as required by the receiving court.
- (4) Also, if the clerk of the court amends the charges under the *Justices Act 1886*, section 115(6), the summary bail is taken to be granted for the charges on which the defendant is committed for trial or sentence under the registry committal.
- (5) An undertaking given for the purposes of the summary bail, including any promise of a surety, is, for the continuance of the summary bail, taken to have been given to the receiving court, and, to the greatest practicable extent, the provisions of this Act relating to undertakings continue to apply.

Example for subsection (5)—

The entitlement of a surety to apply to the receiving court for a discharge under section 23 (Application to court by surety for discharge) continues to apply.

34BB Varying bail for charge for indictable offence referred to clerk of the court under Justices Act 1886

- (1) This section applies if a charge for an indictable offence is referred to the clerk of the court at a place under the *Justices Act 1886*, section 23EB.
- (2) The bail applying to the defendant in relation to the charge (the *summary bail*) is continued, and is taken to have been granted by the court (the *receiving court*) in which the relevant indictment has been or is to be presented, on the same conditions that applied immediately before the referral of the charge to the clerk of the court.
- (3) However, the summary bail is taken to be varied to require the defendant to appear before the receiving court as required by the receiving court.
- (4) An undertaking given for the purposes of the summary bail, including any promise of a surety, is, for the continuance of the summary bail, taken to have been given to the receiving court, and, to the greatest practicable extent, the provisions of this Act relating to undertakings continue to apply.

Example for subsection (4)—

The entitlement of a surety to apply to the receiving court for a discharge under section 23 (Application to court by surety for discharge) continues to apply.

- (5) If the clerk of the court, under the *Justices Act 1886*, section 23EB(3)(a)(ii), refers the charge back to the Magistrates Court, and the relevant indictment has not been presented, the bail is taken to be varied to require the defendant to appear at the time and place advised to the parties by the clerk of the court under the *Justices Act 1886*, section 23EB(6).
- (6) In this section—

relevant indictment means the indictment mentioned in the *Justices Act 1886*, section 23EB(2)(b)(i) or (ii).

34C Access to court files by representative of community justice group in defendant's community

- (1) This section applies if a defendant is an Aboriginal or Torres Strait Islander person.
- (2) A representative of the community justice group in the defendant's community may inspect a court file, or a document in a court file, or obtain a copy of information from a court file or document, that may be relevant to making a submission about the defendant under section 15(1)(f) or 16(2)(e).
- (3) However, subsection (2) applies only if the court directs that the information be made available or given to the representative.
- (4) The court may make the direction whether or not the representative has made an application to the court for the direction.
- (5) In deciding whether to direct that information be made available or given to the representative, the court may have regard to the following—
 - (a) whether the representative would otherwise have access to the information;
 - (b) whether the defendant consents to the information being made available or given to the representative.
- (6) Subsection (5) does not limit the matters to which the court may have regard.

34D Confidentiality

- (1) A person who is a member of a community justice group must not—
 - (a) record or use information the person, or another person who is a member of the community justice group, gains

through performing a function under this Act, or intentionally disclose it to anyone, other than under subsection (2); or

(b) recklessly disclose the information to anyone.

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) A person who is a member of a community justice group may—

(a) record, use or disclose the information if the recording, use or disclosure—

(i) is done as part of making submissions to—

(A) the court under section 15(1)(f); or

(B) the court or a police officer under section 16(2)(e); or

(ii) is otherwise required or permitted by law; or

(b) disclose the information to another member of the community justice group.

(3) In this section—

disclose information to someone else means—

(a) orally disclose the information to the other person; or

(b) produce to the other person, or give the other person access to, a document containing the information; or

(c) disclose the information to the other person in another way.

34E Protection from liability

(1) This section applies to a person who—

(a) is a member of the community justice group in a defendant's community; and

(b) is responsible for the making of a submission about the defendant to—

-
- (i) a court under section 15(1)(f); or
 - (ii) a court or a police officer under section 16(2)(e).
- (2) For subsection (1)(b), it does not matter that the person did not personally make the submission to the court or the police officer.
 - (3) The person is not civilly liable for an act done, or an omission made, honestly and without negligence in relation to the making of the submission.

34F Commissioner may give information about special condition of bail to particular persons

- (1) The commissioner may give information about a special condition mentioned in section 11(3) to—
 - (a) the licensee of any licensed premises stated in the special condition; or
 - (b) the licensee of any licensed premises within a class of licensed premises stated in the special condition; or
 - (c) the holder of a licence or permit to sell liquor at an event stated in the special condition; or
 - (d) an approved manager working at the licensed premises mentioned in paragraph (a) or (b) or the event mentioned in paragraph (c); or
 - (e) the Commissioner for Liquor and Gaming under the *Gaming Machine Act 1991*; or
 - (f) an approved operator under the *Liquor Act 1992*, section 173EE.
- (2) In this section—

approved manager means a person holding an approval as an approved manager under the *Liquor Act 1992*.

commissioner means the commissioner of the Queensland Police Service under the *Police Service Administration Act 1990*.

licence see the *Liquor Act 1992*, section 4.

licensed premises see the *Liquor Act 1992*, section 4.

licensee see the *Liquor Act 1992*, section 4.

permit see the *Liquor Act 1992*, section 4.

35 Proceedings for offences

- (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 33A), 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.

36 Evidentiary provisions

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;
or
 - (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; and

- (b) a document purporting to be or to be a copy of—
 - (i) an undertaking; or
 - (ii) a declaration of forfeiture made by a court of an undertaking; or
 - (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; or
 - (iv) a certificate containing particulars of the respects in which an undertaking has not been complied with; or
 - (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; and

- (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; and
- (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; and
- (d) a bench charge sheet purporting to be a bench charge sheet referred to in section 14(2) and (3) 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.

36A Service of notices

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 defendant at that address; or
- (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; or
- (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.

36B When bail ceases to have effect

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.

36BA Review of domestic violence provisions

- (1) The Minister must ensure the operation of the domestic violence provisions is reviewed as soon as practicable after

the day that is 2 years after the commencement of the provisions.

- (2) The review must include a review of whether the domestic violence provisions—
 - (a) have been effective in protecting people from domestic violence; and
 - (b) have had sufficient regard to rights and liberties of defendants; and
 - (c) remain appropriate.
- (3) The Minister must, as soon as practicable after the review is finished, table in the Legislative Assembly a report on the outcome of the review.

- (4) In this section—

domestic violence provisions means sections 19CA and 19D(2).

36C Approval of forms

- (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.

37 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 5 Transitional provisions

38 Transitional provisions for State Penalties Enforcement Act 1999

- (1) This section applies if, on the commencement of this section, a surety has not paid an amount under an order under the *Crown Proceedings Act 1980*, section 14 (the *repealed law*).
- (2) Despite the repeal of the repealed law, the following provisions have effect—
 - (a) the order continues to have effect as if it were an order made under section 32A of this Act;
 - (b) any amount that has not been paid under the order continues to be payable until it is paid or otherwise satisfied;
 - (c) despite the repeal of the *Crown Proceedings Act 1980*, section 15, an application may be made under section 32B as if the order forfeiting the recognisance or made against the surety were an order under section 32A;
 - (d) any warrant that has not been enforced may be enforced according to its terms as if the repealed law had not been repealed;
 - (e) any proceeding commenced before the repeal for an order under the repealed law may be continued as if it were a proceeding for an order under section 32A.

39 Provision concerning references to s 28A(1)(a)

- (1) It is declared that, during the relevant period, the *Acts Interpretation Act 1954*, section 14H applied so that the reference to section 28A(1)(a) in sections 28B and 33 included a reference to section 28A(1)(b), (c) and (e).
- (2) Without limiting subsection (1), if a defendant was apprehended during the relevant period under an affected warrant, subsections (3) and (4) apply.

- (3) Section 28B is taken to have applied in relation to the affected warrant as if the reference in section 28B to a warrant issued under section 28A(1)(a) included a reference to the affected warrant.
- (4) If the defendant was convicted of an offence against section 33, section 33 is taken to have applied, in relation to the defendant and the proceedings for the offence against section 33, as if the references in section 33 to a warrant issued under section 28A(1)(a) included a reference to the affected warrant.
- (5) In this section—

affected warrant means a warrant issued before the commencement date under old section 28A(1)(a)(ii), (iii) or (iv) or during the relevant period under section 28A(1)(b), (c) or (e).

commencement date means the date the *Criminal Law Amendment Act 2002*, the schedule, amendments of the *Bail Act 1980* commenced.

old, in relation to a provision, means the provision as in force from time to time before the commencement date.

relevant period means the period beginning on the commencement date and ending immediately before the commencement of this section.

40 Provisions concerning bail decisions under s 7

- (1) It is declared that a bail decision made under section 7 during the relevant period is not invalid only because the police officer making the decision lacked the capacity to make it.
- (2) In this section—

bail decision means a decision to grant, or refuse to grant, bail.

relevant period means the period starting on 1 July 2000 and ending immediately before the commencement of this section.

41 Transitional provision for Liquor and Other Legislation Amendment Act 2010

- (1) Section 11(3) and (4), as inserted by the *Liquor and Other Legislation Amendment Act 2010*, section 8 applies in relation to the release of a person on bail for an offence only if proceedings for the offence were started after the commencement of this section.
- (2) For subsection (1), it is irrelevant whether the act or omission constituting the offence happened before or after the commencement.

42 Transitional provision for Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013

- (1) Sections 6 and 15A as amended or inserted by the amending Act apply to a bail proceeding heard on or after the commencement.
- (2) Section 16(3A) as in force on 17 October 2013 applies and is taken to have always applied to a bail application hearing on or after that date but before the commencement.
- (3) Section 16(3A) as in force on the commencement applies to a bail application hearing on or after the commencement.
- (4) For subsections (1) to (3), it is irrelevant whether the act or omission constituting the offence the subject of the proceeding happened before or after—
 - (a) for subsections (1) and (3)—the commencement; or
 - (b) for subsection (2)—17 October 2013.
- (5) In this section—

amending Act means the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.

commencement means the commencement of this section.

43 Transitional provision for Criminal Law Amendment Act 2014

- (1) Sections 11(4A), 11AA and 20(3D) apply in relation to the release of a person on bail on or after the commencement of this section.
- (2) For subsection (1), it is irrelevant whether the act or omission constituting the offence in relation to which the person is released on bail happened before or after the commencement of this section.

44 Transitional provision for Safe Night Out Legislation Amendment Act 2014

- (1) Section 11AB applies in relation to the release of a person on bail on or after the commencement of this section.
- (2) For subsection (1), it is irrelevant whether the act or omission constituting the offence in relation to which the person is released on bail happened, or proceedings for the offence started, before or after the commencement of this section.

45 Transitional provision for Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016

- (1) Section 11AB, as inserted by the amending Act, applies in relation to the release of a person on bail on or after the commencement.
- (2) For subsection (1), it is irrelevant whether the act or omission constituting the offence in relation to which the person is released on bail happened, or the proceeding for the offence was started, before or after the commencement.
- (3) For section 29(2)(c), as inserted by the amending Act, a reference to a condition imposed under section 11(9) or 11AB includes a condition imposed under either of those sections before the commencement.
- (4) In this section—

amending Act means the *Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016*.

46 Transitional provision for Bail (Domestic Violence) Amendment Act 2017

- (1) Sections 11 and 16, as amended by the amending Act, apply in relation to the release of a person on bail on or after the commencement.
- (2) For subsection (1), it is irrelevant whether the alleged offence in relation to which the person is released on bail happened, or the proceeding for the offence was started, before or after the commencement.
- (3) In this section—

amending Act means the *Bail (Domestic Violence) Amendment Act 2017*.

47 Transitional provision for Justice Legislation (Links to Terrorist Activity) Amendment Act 2019

- (1) This Act, as amended by the *Justice Legislation (Links to Terrorist Activity) Amendment Act 2019*, applies in relation to a decision made by a court or police officer on or after the commencement about whether to grant bail to a person or otherwise release the person from custody.
- (2) For subsection (1), it is irrelevant whether the offence in relation to which the decision is made happened, or the proceeding for the offence was started, before or after the commencement.

Schedule **Offences for which bail must
not be granted under
section 14 or 14A**

sections 14 and 14A

Offences defined in—

- *Racing Integrity Act 2016*, sections 221, 223 and 225
- *Transport Operations (Road Use Management) Act 1995*, section 79.