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Robyn Webb  
Chief Parliamentary Counsel  
Dated 1 July 2021



## TASMANIA

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## BAIL ACT 1994

### No. 9 of 1994

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## **BAIL ACT 1994**

**No. 9 of 1994**

**An Act relating to bail in legal proceedings**

**[Royal Assent 17 March 1994]**

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

### **PART 1 – PRELIMINARY**

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

This Act may be cited as the *Bail Act 1994*.

#### **2. Commencement**

This Act commences on a day to be proclaimed.

### 3. Interpretation

(1) In this Act, unless the contrary intention appears

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*appropriate officer* means –

- (a) in the case of the Supreme Court, the Registrar of the Supreme Court; or
- (ab) in the case of the Court of Criminal Appeal, the Registrar of the Court of Criminal Appeal; or
- (b) in any other case, a clerk of petty sessions;

*contravene* includes fail to comply with;

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

*intervention program* means a program that provides –

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

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(e) a combination of any of the matters referred to in paragraphs (a), (b), (c) and (d) –

designed to address behavioural problems (including problem gambling), substance abuse, alcohol abuse or mental impairment;

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

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

- (2) Where a magistrate is authorized by law to exercise a power that may be exercised by 2 or more justices, references in this Act to justices are taken to include references to a magistrate.

#### **4. Application of this Act**

Where it is provided by any other Act or law that a person may be admitted to bail, that bail may be granted to a person or that bail may be revoked or varied, however that provision is expressed, this Act applies to that admission to bail or grant, revocation or variation of bail.

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Part 1A – Grant of Bail to Terrorism-Linked Persons

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**PART 1A – GRANT OF BAIL TO TERRORISM-  
LINKED PERSONS**

**4A. Interpretation of Part 1A**

In this Part –

*control order* has the same meaning as in section 100.1 of the *Criminal Code 1995* of the Commonwealth;

*terrorism-linked person* means a person who –

- (a) has been convicted of a terrorism offence; or
- (b) is subject to a control order;

*terrorism offence* means –

- (a) an offence referred to in paragraph (a), (b) or (c) of the definition of *terrorism offence* in section 3 of the *Crimes Act 1914* of the Commonwealth; and
- (b) an offence against the former *Crimes (Foreign Incursions and Recruitment) Act 1978* of the Commonwealth; and
- (c) an offence, in relation to terrorism, that –

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- (i) is an offence under an Act of the Commonwealth, this State, another State or a Territory; and
- (ii) is prescribed.

**4B. Limitations on grant of bail to terrorism-linked person**

- (1) A person, other than a judge or magistrate, must not admit a person to bail if the person is satisfied that the other person is a terrorism-linked person.
- (2) A judge or a magistrate must not admit a person to bail if the judge or magistrate is satisfied that the person is a terrorism-linked person.
- (3) Subsection (2) does not apply in relation to a person if the judge or magistrate is satisfied that there are exceptional circumstances.

**4C. Arrest of terrorism-linked person admitted to bail**

- (1) A police officer may arrest a person who is admitted to bail by a person other than a judge or magistrate, if the police officer suspects on reasonable grounds that the person admitted to bail is a terrorism-linked person.
- (2) A police officer may arrest a person who is admitted to bail by a judge or magistrate, if –
  - (a) the person was not admitted to bail because a judge or magistrate found,

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- under section 4B(3), that there were exceptional circumstances in relation to the person; and
- (b) the police officer suspects on reasonable grounds that the person is a terrorism-linked person.
- (3) A police officer may arrest a person who is admitted to bail by a judge or magistrate, if –
- (a) the person was not, before he or she was admitted to bail, a terrorism-linked person; and
  - (b) the person, after his or her release on bail by the judge or magistrate, has become a terrorism-linked person.
- (4) On the arrest of a person under this section, the bail of the person is suspended.
- (5) Subsection (4) ceases to apply to a person if the person arrested is later released unconditionally.
- (6) Section 11 applies to a person arrested under this section as if the person had been arrested under section 10.
- (7) Despite subsection (6), section 11(1) does not apply in relation to a justice in respect of a person arrested under this section unless the justice is a magistrate.
- (8) This section applies in relation to a person who has made an application for bail, or who is

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admitted to bail, before, on or after the day on which this section commences.

**4D. Access to proceedings, &c., in relation to terrorism-linked persons**

In any proceedings before a judge, a magistrate or a court, in relation to bail in respect of a person who is, or is alleged by a party to the proceedings to be, a terrorism-linked person, the judge, magistrate or court may make any one or more of the following orders:

- (a) that all or part of the proceedings are to be heard in closed court;
- (b) that only persons, or members of a class of persons, specified by the judge, magistrate or court may be present during all or part of the proceedings;
- (c) that the publication of a report of all or part of the proceedings, or of any information that is disclosed in, or referred to in, the proceedings, is prohibited.

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Part 2 – Police Bail

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**PART 2 – POLICE BAIL**

**5. Police bail**

- (1) Where a person admits another person to bail under section 34 of the *Justices Act 1959* or section 4(3), (5) or (6) of the *Criminal Law (Detention and Interrogation) Act 1995*, the person who admits him or her to bail must—
  - (a) hand to the person admitted to bail on his or her release from custody a notice specifying the day on which and the time and place at which he or she is required to appear before justices; and
  - (b) endorse on a copy of the notice a statement that the notice was handed to the person admitted to bail on his or her release from custody; and
  - (c) sign the endorsement.
- (2) It is a condition of bail under section 34 of the *Justices Act 1959* or section 4(3), (5) or (6) of the *Criminal Law (Detention and Interrogation) Act 1995* –
  - (a) that the person admitted to bail must appear before justices on the day and at the time and place specified in a notice referred to in subsection (1)(a); and
  - (b) that the person admitted to bail must deposit, if the person admitting him or her to bail under either of those sections

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considers it desirable and so requires, a sum to be forfeited to the Crown if the person admitted to bail fails to appear before justices as required by paragraph (a).

- (3) If a person is admitted to bail, that person must comply with any other conditions (including conditions controlling the conduct of the person)
- 
- (a) that the person admitting him or her to bail considers necessary or desirable; and
  - (b) that are specified in the notice referred to in subsection (1)(a).
- (3A) For the purposes of but without limiting subsection (3), conditions controlling the conduct of a person may include any one or more of the following:
- (a) a condition requiring the person to report at a specified place at a specified time;
  - (b) a condition limiting the person's movements and social intercourse;
  - (ba) a condition of a family violence order, police family violence order or interim family violence order, made under the *Family Violence Act 2004*;
  - (bb) a condition of a recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*;

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- (c) a condition preventing the person from acting in a manner specified in section 106B (1) of the *Justices Act 1959*.
- (4) A person who without reasonable cause contravenes a notice referred to in subsection (1)(a) or a condition of the notice is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months, or both.
- (5) Where a person admitted to bail fails to appear before justices on the day and at the time specified in a notice referred to in subsection (1)(a), the justices may issue a warrant for his or her arrest.
- (5A) If a police officer has reasonable grounds to believe that a person who was admitted to bail has contravened, or is about to contravene, a notice referred to in subsection (1)(a) or a condition of the notice, the police officer may arrest that person.
- (5B) Where a person arrested under subsection (5A) is taken before a justice, the justice is to proceed as provided in section 34A of the *Justices Act 1959*.
- (5C) On the arrest of a person under subsection (5A) the bail of that person is revoked.
- (5D) Subsection (5C) does not apply if the person arrested is later released unconditionally.

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- (6) A sum for the purposes of subsection (2)(b) is not to be more than is, in the opinion of the person admitting a person to bail under section 34 of the *Justices Act 1959* or section 4 (3) of the *Criminal Law (Detention and Interrogation) Act 1995*, sufficient to ensure that that person will appear before justices as specified in the notice.
- (7) Money deposited under subsection (2) on the admission of a person to bail is to be paid to the clerk of petty sessions for the court held at the place specified in the notice.

### **PART 3 – ORDERS FOR BAIL**

#### **6. Application of this Part**

This Part applies to an order for, or with respect to, bail made by a judicial officer.

#### **7. Conditions to which bail is subject**

- (1) In this section, *authorized person* means –
- (a) a justice; or
  - (ab) the Registrar of the Supreme Court; or
  - (ac) an officer of the Supreme Court appointed in writing by the Registrar of the Supreme Court; or
  - (b) an associate to a judge of the Court of Criminal Appeal or the Supreme Court; or
  - (c) a clerk to a justice; or
  - (d) a clerk of petty sessions; or
  - (e) an officer of a court of petty sessions appointed in writing by a clerk of petty sessions; or
  - (f) where the person admitted to bail is in prison, a person for the time being in charge of the prison; or

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- (g) a person appointed by a judge of the Court of Criminal Appeal or the Supreme Court in a particular case; or
  - (h) such other person as the Governor may, by order, appoint.
- (2) On the making of an order for bail, the person making that order may require the person admitted to bail to sign a document that specifies the terms of that order and, if the person does so require that signature, the person admitted to bail–
- (a) must go to such place as the person making that order may specify and remain at that place for such time as may be necessary for the person admitted to bail to be provided with a document in the prescribed form specifying the terms of the order for bail; and
  - (b) must not be released from custody until that person signs a document referred to in paragraph (a) in the presence of an authorized person acknowledging the terms of the order and that the person admitted to bail is bound by those terms.
- (3) It is a condition of an order for bail, except an order made under section 117A (2) of the *Justices Act 1959*, that the person admitted to bail must, unless otherwise ordered by a judicial officer, appear and surrender to the order of the court at the time and place specified in the order and to which, during the course of the

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subsequent proceedings, the hearing may from time to time be adjourned or to which the person may be remanded.

- (3A) Notwithstanding subsection (3), a person admitted to bail to appear in the Court of Criminal Appeal or the Supreme Court is not required to appear in court at the time and place specified in an order, or to which the hearing may from time to time be adjourned, if he or she is advised in writing by a Crown Law Officer, within the meaning of section 1 of the *Criminal Code*, that his or her attendance is not required until a later date, but he or she must appear on the last date so advised.
- (4) An order for bail may be made subject to such other conditions as the judicial officer thinks desirable in the interests of justice and any such other condition may be expressed to take effect either before or after the person admitted to bail is released from custody.
- (5) Without limiting the generality of subsection (4), an order for bail may be made on condition that
- 
- (a) a person must deposit a specified amount of money to be forfeited to the Crown if the person admitted to bail fails to appear before a court as required by subsection (3) or fails to comply with a condition of the order for bail; or
- (b) one or more suitable persons (other than the person admitted to bail) must enter

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- into a recognizance in the prescribed form before an authorized person to forfeit a specified amount of money if the person admitted to bail fails to appear before a court as required by subsection (3) or fails to comply with a condition of the order for bail; or
- (c) the person admitted to bail be assessed for his or her suitability for participation in an intervention program, provided that the person consents to such an assessment; or
  - (d) subject to subsection (5A), the person admitted to bail undertake an intervention program.
- (5A) Before imposing a condition under subsection (5)(d), the court must satisfy itself that –
- (a) the person consents to the imposition of such a condition; and
  - (b) the person is eligible for the services to be included in the program; and
  - (c) the intervention program is available for the person to participate in at a suitable place and time.
- (6) A recognizance referred to in subsection (5) may require a suitable person to give security in such terms or in such manner as a judicial officer may order to better secure compliance with the recognizance.

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**7A. Circumstances in which Supreme Court may grant bail order**

- (1) An application for an order for bail may only be made to the Supreme Court in respect of a person if –
  - (a) the person is charged with either or both of the following crimes:
    - (i) murder;
    - (ii) treason; or
  - (b) the person has been committed to the Supreme Court in respect of an offence and has appeared in that court in respect of the offence.
- (2) An application for an order for bail made to the Supreme Court under this section is to be made to a judge in chambers.
- (3) A person who has applied for bail in accordance with subsection (2) must serve a copy of the application on the Director of Public Prosecutions.

**8. Effect of bail order**

- (1) Subject to this Act, a person who is admitted to bail is entitled, after compliance with the requirements specified in section 7(2) and any conditions of the order for bail expressed to take effect before the release of that person, to be released from custody and to remain at liberty in accordance with that order.

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- (2) Subsection (1) does not entitle a person to be released if he or she may be otherwise lawfully held in custody.

**9. Contravention, &c., of condition of bail order to be offence**

A person who has been admitted to bail and who, without reasonable cause, contravenes the requirements specified in section 7(2) or any condition of an order for bail that has effect after the release of that person from custody is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both.

**10. Power of arrest on contravention of condition of bail**

- (1) Where a police officer has reasonable grounds to believe that a person –
- (a) has contravened –
    - (i) a requirement of section 7(2); or
    - (ii) the condition specified in section 7(3); or
    - (iii) any condition of an order for bail that has effect after the release of that person from custody; or

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(iv) a requirement specified in written advice given to that person in accordance with section 7(3A); or

(b) is about to contravene any such requirement or condition –

the police officer may arrest that person.

(2) On the arrest of a person by a police officer under subsection (1), the bail of the arrested person is suspended.

(3) Subsection (2) does not apply if the person arrested is later released unconditionally.

**11. Power of judicial officers to deal with arrested person**

(1) Where a person is, under section 10, arrested and taken before a justice, the justice may restore the order for bail or may –

(a) if the arrested person is subject to an order for bail made under the *Justices Act 1959* –

(i) revoke the order for bail and remand that person in custody pursuant to that Act; or

(ii) revoke the order for bail and make a fresh order for bail pursuant to that Act; or

(b) if the arrested person is subject to an order for bail made by the Court of

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Criminal Appeal or the Supreme Court or a judge or has appeared in either such Court in proceedings in respect of which the order for bail was made, remand that person in custody to appear before a judge of the Court of Criminal Appeal or the Supreme Court, as the case may be, at such time, not more than 7 days after the day on which that person was arrested, and at such place as are fixed by the justice.

- (2) Where a person appears before a judge of the Court of Criminal Appeal or the Supreme Court pursuant to a remand under subsection (1)(b), the judge may—
  - (a) restore the order for bail; or
  - (b) revoke the order for bail and remand that person in custody; or
  - (c) revoke the order for bail and make a fresh order for bail for that person.
- (3) The application of this Act extends to, and in relation to, a person who is admitted to bail under subsection (1)(a)(ii) or (2)(c).

**12. Power of judge or justice to issue warrant for arrest**

A judge of the Court of Criminal Appeal or the Supreme Court or a justice may issue a warrant for the arrest of a person admitted to bail who fails to appear at a court –

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- (a) in accordance with the order for bail; or
- (b) pursuant to a requirement specified in written advice given to that person in accordance with section 7(3A).

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**PART 4 – FORFEITURE OF BAIL MONEY AND  
RECOGNIZANCES**

**13. Application of Part 4**

The application of this Part extends to money deposited for bail under section 5(2)(b) as if it were money paid pursuant to an order for bail.

**14. Deposit of money for bail**

All money payable pursuant to an order for bail is to be paid to the appropriate officer.

**15. Procedure for repayment of bail money**

(1) On the determination of the proceedings in respect of which a person has been admitted to bail the appropriate officer must, subject to subsection (2), repay the money paid pursuant to the order for bail to the person who paid it.

(2) Where –

(a) a person admitted to bail appears before a court in accordance with the order for bail; and

(b) that person is convicted of the offence or breach of duty in respect of which the money was deposited –

the appropriate officer must, if so ordered by a judicial officer –

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- (c) appropriate any money so paid by that person, or so much of it as is required, to pay on behalf of that person any fine and costs payable on conviction; or
- (d) if the money deposited for bail is less than any fine or costs so payable, appropriate it in part payment of the fine or costs –

and, on making any such appropriation, must pay the balance of that money, if any, to that person.

**16. Procedure on non-appearance of person admitted to bail**

- (1) If a person admitted to bail does not appear in accordance with the order for bail and the judicial officer presiding in the court in which that person is required to appear orders that the money deposited for bail by any person must be forfeited to the Crown, that money is payable to the Public Account.
- (2) If –
  - (a) a person admitted to bail does not appear in accordance with the order for bail; and
  - (b) the judicial officer does not order that the money deposited for bail by that person is to be forfeited to the Crown; and

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- (c) while absent, that person is convicted of the offence or breach of duty in respect of which the money was paid –

the appropriate officer must, if so ordered by the judicial officer –

- (d) appropriate that money, or so much of it as is required, to pay on behalf of that person any fine or costs payable on conviction; or
- (e) if the money deposited for bail is less than any fine or costs so payable, appropriate it in part payment of the fine or costs –

and, on making any such appropriation, the appropriate officer must pay the balance of that money, if any, to that person.

**17. Power to return money deposited for bail**

- (1) A person whose money deposited for bail is payable to the Public Account under section 16 may–
  - (a) within 2 months after the failure of the person admitted to bail to appear in accordance with the order for bail; or
  - (b) within such further time as may be allowed by the court before which that person failed to appear–

show cause to that court why that money should be returned to that person.

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- (2) The court must enquire into the circumstances of the case and, if it thinks fit, may order the return of the whole or any part of that money to that person.

**18. Procedure on order for return of money deposited for bail**

Where an order is made for the return of money deposited for bail under section 17, the appropriate officer must—

- (a) if that money is still in the possession of the appropriate officer, deal with it in accordance with the order; or
- (b) if that money has been paid to the Public Account, give to the person entitled an order for the payment of that money or so much of that money as has been ordered to be returned—

and the amount of money so specified is to be paid out of the Public Account accordingly.

**19. Forfeiture of money deposited for bail**

- (1) Where a person is convicted of an offence against section 9, the court by which that person is convicted must order –
- (a) that the full amount of money ordered to be deposited is to be forfeited to the Crown; and

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- (b) that the amount is to be payable to the Crown within such period as the court may determine –

whether or not any application is made in the proceedings in that behalf.

- (2) Notwithstanding subsection (1), where –

- (a) the convicted person shows to the satisfaction of the court –

- (i) that an order for forfeiture, or for forfeiture in full, as the case may be, would cause excessive hardship to that person or the dependants of that person; and

- (ii) that the hardship would not be relieved by payment of the amount to be forfeited in instalments or by postponement of that payment to a specified date; or

- (b) the court is satisfied that in the circumstances of the case it is just to do so –

the court may decline to make an order under that subsection or may order forfeiture in part only.

## **20. Forfeiture of recognizances**

Where a recognizance is entered into pursuant to section 7(5), a judge of the Court of Criminal

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Appeal or the Supreme Court, in a case where the person in respect of whom the recognizance is given is required to appear in either such Court, or a justice, in any other case, may–

- (a) on application made in the prescribed manner to the judge or justice; and
- (b) on production of the recognizance; and
- (c) on proof that the person admitted to bail has failed to comply with a condition of bail; and
- (d) on proof that notice of the application to the judge or justice has been served in accordance with the regulations on the person who entered into the recognizance–

order that the amount of the recognizance or such part of that amount as the judge or justice considers appropriate be forfeited to the Crown.

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

An amount or part of an amount ordered to be forfeited under section 19(1)(a) or 20 is taken to be a fine imposed by the Court that may be referred to the Director, Monetary Penalties Enforcement Services for collection and enforcement.

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Part 4A – Appeals relating to bail

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**PART 4A – APPEALS RELATING TO BAIL**

**21A. Appeal to Supreme Court**

- (1) A person referred to in subsection (2) may appeal, to a judge of the Supreme Court, a decision of a magistrate to –
  - (a) grant an order for bail in respect of a person; or
  - (b) impose a condition on an order for bail made in respect of a person; or
  - (c) refuse to make an order for bail in respect of a person.
- (2) An appeal under subsection (1) may only be made by one or more of the following persons:
  - (a) the person –
    - (i) admitted to bail under the order to which the appeal relates; or
    - (ii) refused the order for bail to which the appeal relates;
  - (b) a Crown Law Officer within the meaning of section 1 of the *Criminal Code*;
  - (c) if the appeal relates to an order for bail, or a refusal to grant bail, in respect of an offence against a law of the Commonwealth –

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- (i) the Director of Public Prosecutions of the Commonwealth; or
  - (ii) a person acting on behalf of the Director of Public Prosecutions of the Commonwealth.
- (3) An appeal under subsection (1) –
  - (a) may only be made by the defendant if the decision of the magistrate being appealed was made on an application for bail, whether orally or in writing, where submissions were made in support of the application; and
  - (b) must be made within 21 days after the order, to which the appeal relates, was made or was refused; and
  - (c) is to be commenced by filing a notice of appeal, with the Registrar of the Supreme Court, that specifies which orders are sought.
- (4) Within 7 days after filing a notice of appeal in accordance with subsection (3)(c), the appellant must serve a copy of the notice of appeal on –
  - (a) if the appellant is a person referred to in subsection (2)(a) –
    - (i) the Director of Public Prosecutions; and

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- (ii) if the appeal relates to an order for bail, or a refusal to grant bail, in respect of an offence against a law of the Commonwealth, the Director of Public Prosecutions of the Commonwealth; or
  - (b) if the appellant is a person referred to in subsection (2)(b) or (c), the person who is admitted to bail under the order to which the appeal relates.
- (5) A judge may, at his or her discretion –
  - (a) extend the period specified in subsection (4) if the judge is satisfied that it is reasonable to do so; or
  - (b) waive a requirement for service under subsection (4) if the judge is satisfied that it is in the interests of justice to do so.

**21B. Appeal to Court of Criminal Appeal or Full Court**

- (1) A person referred to in subsection (2) may appeal, to the relevant court specified in subsection (3), a decision of a judge of the Supreme Court to –
  - (a) grant an order for bail in respect of a person; or
  - (b) impose a condition on an order for bail made in respect of a person; or

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- (c) refuse to make an order for bail in respect of a person.
- (2) An appeal under subsection (1) may only be made by one or more of the following persons:
- (a) the person –
    - (i) admitted to bail under the order to which the appeal relates; or
    - (ii) refused the order for bail to which the appeal relates;
  - (b) a Crown Law Officer within the meaning of section 1 of the *Criminal Code*;
  - (c) if the appeal relates to an order for bail, or a refusal to grant bail, in respect of an offence against a law of the Commonwealth –
    - (i) the Director of Public Prosecutions of the Commonwealth; or
    - (ii) a person acting on behalf of the Director of Public Prosecutions of the Commonwealth.
- (3) An appeal under subsection (1) –
- (a) is to be commenced by filing a notice of appeal, in the registry of the relevant court, that specifies which orders are sought; and
  - (b) is to be made to –

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- (i) if the appeal relates to an order for bail that requires the person admitted to bail under the order to appear before the Court of Criminal Appeal, that court; or
    - (ii) in any other case, the Full Court of the Supreme Court; and
  - (c) must be made within 21 days after the order, to which the appeal relates, was made or was refused.
- (4) Within 7 days after filing a notice of appeal in accordance with subsection (3)(a), the appellant must serve a copy of the notice of appeal on –
- (a) if the appellant is a person referred to in subsection (2)(a) –
    - (i) the Director of Public Prosecutions; and
    - (ii) if the appeal relates to an order for bail, or a refusal to grant bail, in respect of an offence against a law of the Commonwealth, the Director of Public Prosecutions of the Commonwealth; or
  - (b) if the appellant is a person referred to in subsection (2)(b) or (c), the person who is admitted to bail under the order to which the appeal relates.
- (5) A judge may, at his or her discretion –

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- (a) extend the period specified in subsection (4) if the judge is satisfied that it is reasonable to do so; or
- (b) waive a requirement for service under subsection (4) if the judge is satisfied that it is in the interests of justice to do so.

**21C. Appeal to be by way of new hearing**

An appeal under this Part is to be by way of a new hearing.

**21D. Powers on appeal**

A judge hearing an appeal under this Part may do any one or more of the following in respect of the appeal:

- (a) dismiss the appeal;
- (b) confirm, vary, set aside or quash the order to which the appeal relates;
- (c) make an order for bail, or an order of remand, in respect of the person to whom the appeal relates;
- (d) make any other order that the judge considers appropriate in the circumstances.

## **PART 5 – MISCELLANEOUS**

### **22. Oral application for bail**

- (1) A person who is charged with an offence or breach of duty or in respect of whom an application for a restraint order has been made may, on any occasion when he or she appears before the Supreme Court or a justice pursuant to an order of remand, an order of adjournment or on arrest under section 10, apply orally –
  - (a) to be admitted to bail; or
  - (b) for a variation of a bail order to which he or she is subject.
- (2) Subsection (1) does not entitle a person to make an application for bail before a justice if he or she is in custody as a result of an arrest under section 10 arising from a breach, or a suspected breach, of an order for bail made by the Supreme Court.

### **23. Application for bail or variation of conditions**

- (1) A person who is charged with an offence or breach of duty or in respect of whom an application for a restraint order has been made may, at any time and without limiting the powers conferred by any other law, apply in the prescribed manner to the court in which he or she last appeared in answer to that charge or application to be admitted to bail or for variation

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of a condition of an order for bail made in respect of that charge or application.

- (2) Where the Supreme Court orders that the hearing of a charge or application be remitted to justices, an application under subsection (1) –
  - (a) if it is filed before the day on which the person charged is required to appear before the justices, must be made to the Supreme Court; or
  - (b) if it is filed on or after that day, must be made to those justices.
- (3) A person admitted to bail under section 34 of the *Justices Act 1959* or section 4(3), (5) or (6) of the *Criminal Law (Detention and Interrogation) Act 1995* may apply, in the prescribed manner, to justices at any time before the day specified in a notice referred to in section 5(1)(a) for variation of a condition contained in that notice.

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

- (1) A complainant, prosecutor, respondent to an appeal or an applicant for a restraint order may, at any time and without limiting the powers conferred by any other law, apply in the prescribed manner to the court in which a person admitted to bail has last appeared in answer to a charge, an application for a restraint order or in respect of his or her appeal for an order revoking the order for bail made in respect of that charge, application or appeal or for variation or addition

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of a condition of an order for bail made in respect of that charge, application or appeal.

- (2) In a case where the prosecutor is not the Crown, an application under subsection (1) may be made by the Crown.
- (3) Where the Supreme Court orders that the hearing of a charge or application be remitted to justices, an application under subsection (1) –
  - (a) if it is filed before the day on which the person charged is required to appear before the justices, must be made to the Supreme Court; or
  - (b) if it is filed on or after that day, must be made to those justices.

**25. Power of judicial officer to revoke or vary bail**

- (1) A judicial officer may, on any occasion when a person appears before the judicial officer pursuant to an order of remand, an order of adjournment or on an application under section 23 or 24 made in the prescribed manner, add, vary or revoke a condition of the order for bail for that person or revoke the order for bail.
- (2) Where –
  - (a) a plea of guilty has been taken from a person admitted to bail; or
  - (b) a charge against any such person is found to be proved –

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a judicial officer may exercise the powers conferred by subsection (1) of his or her own motion.

**26. Arrest of person admitted to bail by person bound by recognizance**

- (1) A person who is bound by a recognizance under section 7(5) and who believes on reasonable grounds that the person admitted to bail has contravened, or is about to contravene, a condition of bail may arrest that person.
- (2) On the arrest of a person under subsection (1) it is the duty of the person conducting the arrest to take the arrested person as soon as practicable before a justice.
- (3) Where a person is, under subsection (2), arrested and taken before a justice, the justice may restore the order for bail or may –
  - (a) if the arrested person is subject to an order for bail made under the *Justices Act 1959* –
    - (i) revoke the order for bail and remand that person in custody pursuant to that Act; or
    - (ii) revoke the order for bail and make a fresh order for bail pursuant to that Act; or
  - (b) if the arrested person is subject to an order for bail made by the Supreme

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Court or a judge, remand that person in custody to appear before a judge of that Court, at such time, not more than 7 days after the day on which that person was arrested, and at such place as are fixed by the justice.

- (4) Where a person appears before a judge of the Supreme Court pursuant to a remand under subsection (3)(b), the judge may revoke the order for bail and remand that person in custody or make a fresh order for bail for that person.
- (5) A police officer who is requested by a person bound by recognizance under section 7(5) to assist that person in arresting a person under subsection (1) of this section must do so.
- (6) The application of this Act extends to, and in relation to, a person who is admitted to bail under subsection (3)(a)(ii) or (4).

**27. Power of court to release person bound by recognizance**

A court which has ordered that a person must be bound by recognizance as mentioned in section 7(5)(b) may, on application by that person in the prescribed manner, release that person from that recognizance.

**28. Evidentiary provision**

In any proceedings –

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- (a) a document purporting to be a copy of a notice handed to a person on admission to bail as mentioned in subsection (1) of section 5 and to be endorsed and signed as mentioned in that subsection is evidence –
  - (i) that the endorsement was signed by the person whose signature it purports to be; and
  - (ii) that the notice was handed to the person specified in the notice on his or her release from custody; and
- (b) a document purporting to specify the terms of an order for bail as mentioned in section 7(2)(a) and to be signed by the person admitted to bail is evidence of the fact that the person specified in the document was admitted to bail on those terms.

**29. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for, or with respect to –
  - (a) the approval of persons entering into recognizances referred to in section 7(5)(b); and

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- (b) the approval of security to be given by persons admitted to bail or persons entering into any such recognizance; and
- (c) the service of notices of application under this Act and the procedure for any such application; and
- (d) the procedure to be followed where a person admitted to bail fails to appear in accordance with the terms of the order for bail; and
- (e) the enforcement of recognizances referred to in section 7(5)(b).

**30. Transitional provisions**

- (1) In this section, *commencement day* means the day on which this Act commences.
- (2) This Act applies to an appearance in court for an offence or breach of duty or in connection with an application for a restraint order –
  - (a) by a person arrested on or after the commencement day; and
  - (b) by a person who before that day was arrested for an offence or breach of duty or to facilitate the making of any such application if, on or after that day, he or she may be ordered to be detained in custody for that offence or breach of duty or to facilitate the making of that application.

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- (3) A grant or refusal of bail to a person before the commencement day for an appearance in court on or after that day is not affected by this Act, and continues to be governed, including all matters relating to, and arising directly or indirectly from, that grant or refusal, by the law in force immediately before that day but, on that appearance, this Act applies in respect of any further appearance relating to the relevant offence, breach of duty or application.
- (4) Where –
- (a) an order for bail made under the *Justices Act 1959* was in force immediately before the commencement day; and
  - (b) that order was subject to a condition imposed or varied by the Supreme Court
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that order for bail continues to have effect as if it had been made subject to that condition pursuant to that Act as in force on that day.

**31. Administration of Act**

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

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

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administration of this Act is the  
Department of Justice.

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**NOTES**

The foregoing text of the *Bail Act 1994* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 July 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Justice Legislation Amendment (Restraint Orders) Act 1994</i>	No. 64 of 1994	25.11.1994
<i>Bail Act 1994</i>	No. 9 of 1994	9.1.1995
<i>Bail Amendment Act 1995</i>	No. 51 of 1995	2.12.1996
<i>Justice Legislation (Miscellaneous Amendments) Act 1999</i>	No. 61 of 1999	24.11.1999
<i>Justice Legislation (Miscellaneous Amendments) Act 2000</i>	No. 62 of 2000	14.11.2000
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Family Violence Act 2004</i>	No. 67 of 2004	30.3.2005
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2006</i>	No. 43 of 2006	18.12.2006
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2007</i>	No. 65 of 2007	1.1.2008
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2012</i>	No. 13 of 2012	30.5.2012
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2013</i>	No. 20 of 2013	20.6.2013
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2015</i>	No. 38 of 2015	13.10.2015
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2017</i>	No. 29 of 2017	5.9.2017
<i>Domestic Violence Orders (National Recognition) Act 2016</i>	No. 29 of 2016	25.11.2017
<i>Justice and Related Legislation (Miscellaneous Amendments) Act</i>	No. 29 of 2018	10.12.2018

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Act	Number and year	Date of commencement
<i>2018</i>		
<i>Terrorism (Restrictions on Bail and Parole) Act 2018</i>	No. 14 of 2018	14.12.2018
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Justice Miscellaneous (Court Backlog and Related Matters) Act 2020</i>	No. 27 of 2020	1.7.2021
<i>Magistrates Court (Criminal and General Division) (Consequential Amendments) Act 2019</i>	No. 44 of 2019	not commenced

**TABLE OF AMENDMENTS**

Provision affected	How affected
Section 3	Amended by No. 76 of 2003, Sched. 1, No. 20 of 2013, s. 8, No. 38 of 2015, s. 17 and No. 27 of 2020, s. 5
Section 4A	Inserted by No. 14 of 2018, s. 4
Section 4B	Inserted by No. 14 of 2018, s. 4
Section 4C	Inserted by No. 14 of 2018, s. 4
Section 4D	Inserted by No. 14 of 2018, s. 4
Section 5	Amended by No. 64 of 1994, s. 14, No. 51 of 1995, s. 4, No. 67 of 2004, Sched. 1, No. 65 of 2007, s. 6, No. 38 of 2015, s. 18, No. 29 of 2016, Sched. 1 and No. 29 of 2018, s. 12
Section 7	Amended by No. 61 of 1999, Sched. 1, No. 62 of 2000, Sched. 1, No. 43 of 2006, s. 6, No. 13 of 2012, s. 8, No. 20 of 2013, s. 9, No. 38 of 2015, s. 19 and No. 29 of 2017, Sched. 1
Section 7A	Inserted by No. 27 of 2020, s. 6
Section 9	Amended by No. 65 of 2007, s. 7
Section 10	Amended by No. 51 of 1995, s. 5, No. 20 of 2013, s. 10 and No. 38 of 2015, s. 20
Section 11	Amended by No. 62 of 2000, Sched. 1 and No. 20 of 2013, s. 11
Section 12	Substituted by No. 20 of 2013, s. 12
Section 16	Amended by No. 4 of 2017, Sched. 1
Section 17	Amended by No. 4 of 2017, Sched. 1
Section 18	Amended by No. 4 of 2017, Sched. 1
Section 20	Amended by No. 20 of 2013, s. 13
Section 21	Substituted by No. 20 of 2013, s. 14
Section 21A	Inserted by No. 27 of 2020, s. 7
Section 21B	Inserted by No. 27 of 2020, s. 7
Section 21C	Inserted by No. 27 of 2020, s. 7
Section 21D	Inserted by No. 27 of 2020, s. 7

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Provision affected	How affected
Section 23	Amended by No. 51 of 1995, s. 6 and No. 29 of 2018, s. 13
Section 24	Amended by No. 20 of 2013, s. 15