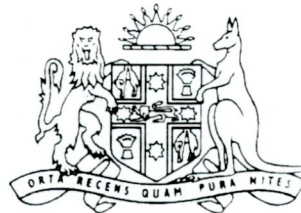


First print



New South Wales

Criminal Procedure Legislation Amendment (Bail Agreements) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The *Bail Amendment Bill 1998* is cognate with this Bill.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Bail Act 1978* so as to provide for the enforcement of bail agreements under that Act, and
 - (b) to amend the *Justices Act 1902* so as to abolish various recognizances under that Act, and
 - (c) to make consequential amendments to certain other Acts.
-

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Bail Act 1978* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Justices Act 1902* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to other Acts set out in Schedule 3.

Amendment of Bail Act 1978

Schedule 1 [1] substitutes the definition of *court* in section 4 (1) so as to ensure that the definition applies to all courts exercising criminal jurisdiction.

Schedule 1 [2] amends section 6 as a consequence of the substitution by Schedule 2 [17] of section 123 of the *Justices Act 1902*.

Schedule 1 [3] amends section 34 so as to make it part of an accused person's bail undertaking to a court that the person notify the court of any change in the person's residential address.

Schedule 1 [4] amends section 36 so as to ensure that any person who gives a bail undertaking is made aware of the nature and effect of the undertaking.

Schedule 1 [5] inserts proposed sections 42A and 42B. Proposed section 42A makes it an offence (punishable by imprisonment for 2 years) for a person to dispose of bail security for the purpose of preventing the security from being realised. Proposed section 42B enables a court to revoke a person's bail if it appears that the person's bail security is no longer intact, subject to the person being given an opportunity to demonstrate that the security is still intact or, if it is not, to arrange for replacement or supplementary security.

Schedule 1 [6] omits section 53 as a consequence of the insertion by Schedule 1 [7] of proposed Part 7A.

Schedule 1 [7] inserts proposed Part 7A. The new Part (containing 4 Divisions) provides a mechanism for the enforcement of bail agreements entered into under section 36. A bail agreement is an agreement under section 36 under which an accused person, or some other person, agrees to forfeit money if an accused person's bail undertaking is not complied with. A bail agreement may or may not be supported with security.

Explanatory note

Division 1 (Preliminary) contains a single provision (proposed section 53) that defines certain expressions for the purposes of the proposed Part.

Division 2 (Forfeiture orders) contains provisions for the way in which forfeiture orders are made, confirmed and enforced, including provisions:

- (a) allowing a court to make a forfeiture order if a person fails to appear before the court in accordance with a bail undertaking (proposed section 53A), and
- (b) requiring the registrar of the court to notify all persons affected by a forfeiture order of the making of the order (proposed section 53B), and
- (c) allowing persons affected by a forfeiture order to make formal objections to the confirmation of the order (proposed section 53C), and
- (d) providing for the hearing and determination of formal objections (proposed section 53D), and
- (e) allowing for the making of informal objections to the confirmation of a forfeiture order and providing for the hearing and determination of informal objections (proposed section 53E), and
- (f) providing that a forfeiture order takes effect when the time for making formal objections ends or, if a formal objection is made before then, when the order is confirmed (proposed section 53F), and
- (g) providing that bail money guaranteed by a bail agreement is forfeited to, or becomes payable to, the Crown when a forfeiture order takes effect (proposed section 53G), and
- (h) requiring the registrar of the court to notify all persons affected by a forfeiture order of the fact that the order has taken effect (proposed section 53H), and
- (i) providing for the reference of a forfeiture order to the State Debt Recovery Office for enforcement (proposed section 53I), and
- (j) specifying to which public authority bail money is payable after a forfeiture order has taken effect (proposed section 53J).

Division 3 (Late applications to set aside forfeiture orders) contains provisions allowing a forfeiture order to be set aside in certain restricted circumstances, including provisions:

- (a) allowing an application for the setting aside of a forfeiture order at any time within 12 months after the order was made in circumstances where no objection to the order has been made (proposed section 53K), and

- (b) providing for the hearing and determination of such an application, subject to the restriction that the application will not be dealt with unless the court is satisfied that notice of the making of the forfeiture order has not been served on the applicant and the applicant has otherwise been unaware of the fact that the order has been made (proposed section 53L).

Division 4 (Miscellaneous) contains other provisions with respect to forfeiture orders, including provisions:

- (a) requiring the return of forfeited bail money in the event that a forfeiture order is set aside (proposed section 53M), and
- (b) providing that appeals from a Local Court's decision on certain matters under the proposed Part may be made under section 122 of the *Justices Act 1902* (proposed section 53N), and
- (c) allowing the Court of Criminal Appeal to authorise other courts to exercise its functions under the proposed Part (proposed section 53O), and
- (d) making the Crown a party to all proceedings under the proposed Part (proposed section 53P).

Schedule 1 [8] amends proposed section 53N as a consequence of the amendments to the *Justices Act 1902* proposed by the *Justices Legislation Amendment (Appeals) Bill 1998*.

Schedule 1 [9], [10] and [11] amend section 54 as a consequence of the proposed amendment by Schedule 3.6 of the *Forfeited Recognizances and Bail Act 1954*.

Schedule 1 [12] amends Schedule 1 (Savings and transitional provisions) so as to apply the provisions of proposed sections 42A and 42B, and of proposed Part 7A, to bail agreements entered into before the commencement of those provisions and so as to enable the regulations to make further provisions of a savings or transitional nature.

Amendment of Justices Act 1902

Schedule 2 [1] amends section 3 (Definitions) so as to define *bail* to have the same meaning as it has in the *Bail Act 1978*.

Schedule 2 [2] amends section 25 so as to remove a reference to recognizances.

Schedule 2 [3] amends section 31 so as to provide that a person arrested under a warrant under section 26 or 31 may be set at large on bail rather than, as at present, on a recognizance.

Schedule 2 [4] repeals Subdivision 8 of Division 1 of Part 4 (dealing with the procedures for accepting and enforcing recognizances) as a consequence of the amendments to be made by Schedule 2 [3] to section 31.

Schedule 2 [5] amends section 66 so as to provide that a person arrested under a warrant under section 61, 66 or 80AA may be set at large on bail rather than, as at present, on a recognizance.

Schedule 2 [6] substitutes section 69 so as to provide for the committal of a person to custody, or the release of a person on bail (rather than, as at present, on a recognizance), during the adjournment of proceedings. The new section 69 continues the power of a Justice under the existing section to call a person up from custody at any time during the period of adjournment.

Schedule 2 [7] repeals Subdivision 9 of Division 2 of Part 4 (dealing with the procedures for accepting and enforcing recognizances) as a consequence of the amendments to be made by Schedule 2 [5] and [6] to sections 66 and 69.

Schedule 2 [8] amends section 100C so as to exclude from the operation of Part 4A all forfeiture orders made under proposed Part 7A of the *Bail Act 1978*.

Schedule 2 [9] omits section 102, so abolishing the requirement that an appellant must give security for the prosecution in the Supreme Court of proceedings on a stated case under section 101.

Schedule 2 [10], [11], [12] and [14] amend sections 102A and 104, and repeal section 110, as a consequence of the proposed repeal by Schedule 2 [9] of section 102.

Schedule 2 [13] amends section 107 (as to be inserted by the proposed *Justices Legislation Amendment (Appeals) Act 1998*) so as to provide that an appeal under that section against an apprehended violence order does not bring about an automatic stay of execution of that order.

Schedule 2 [15] amends section 121B so as to remove a reference to sureties and recognizances.

Schedule 2 [16] omits subsection (5) of section 122, so abolishing the requirement that an appellant must give security for the prosecution of an appeal to the District Court under that section.

Schedule 2 [17] substitutes section 123 so as to restate the circumstances in which execution of a sentence or order is stayed following an application for statement of a case to the Supreme Court under section 101 or an appeal to the District Court under section 122.

Schedule 2 [18], [19] and [21] repeal sections 124 and 125A, and Division 5 of Part 5, as a consequence of the proposed repeal by Schedule 2 [9] of section 102 and proposed omission by Schedule 2 [16] of subsection (5) of section 122.

Schedule 2 [20] amends section 127 (as to be inserted by the proposed *Justices Legislation Amendment (Appeals) Act 1998*) so as to provide that an appeal under that section against an apprehended violence order does not bring about an automatic stay of execution of that order.

Schedule 2 [22] repeals section 153 partly as a consequence of the proposed repeal by Schedule 2 [9] of section 102 and proposed omission by Schedule 2 [16] of subsection (5) of section 122 and partly as a consequence of the existing provisions of the *Bail Act 1978* which, together, render section 153 obsolete.

Schedule 2 [23] substitutes section 153A so as to provide for the committal of a person to custody, or the release of a person on bail (rather than, as at present, on a recognizance), during the period between the person's arrest under a bench warrant issued by the Judge of a court and the person's being brought before that court.

Schedule 2 [24] and [25] amend section 154 (the regulation-making power) as a consequence of the proposed abolition by Schedule 2 of recognizances under the *Justices Act 1902* and of the proposed amendment by Schedule 3.6 of the *Forfeited Recognizances and Bail Act 1954*.

Schedule 2 [26] amends the Second Schedule so as to give effect to certain savings, transitional and other provisions consequent on the amendments and repeals to be effected by the proposed Act, both by Schedule 2 and Schedule 3.

Amendment of other Acts

Children (Criminal Proceedings) Act 1987 No 55

Schedule 3.1 omits section 42 (2) as a consequence of the proposed abolition by Schedule 2 of recognizances under the *Justices Act 1902*.

Conveyancing Act 1919 No 6

Schedule 3.2 [1] and [2] amend sections 186 and 189 so that the references in those sections to recognisances include references to bail agreements.

Coroners Act 1980 No 27

Schedule 3.3 substitutes section 40 so as to provide that a person arrested under a warrant under section 35 or 39 may be committed to custody or may be set at large on bail rather than, as at present, on a recognizance.

Evidence Act 1995 No 25

Schedule 3.4 amends section 194 so that the references in that section to recognizances include references to bail agreements.

Fines Act 1996 No 99

Schedule 3.5 [1], [2] and [3] amend the heading to Part 7, and sections 111 and 112, as a consequence of the proposed enactment by Schedule 1 [7] of Part 7A of the *Bail Act 1978*.

Schedule 3.5 [4] amends section 112 so as to ensure that the State Debt Recovery Office may not take action under Part 4 to recover forfeited bail money the subject of an application or appeal under Part 7A of the *Bail Act 1978* until proceedings on the application or appeal have been finally determined.

Schedule 3.5 [5] inserts a new section 112A so as to apply the provisions of section 72 to the enforcement of forfeited bail securities under the *Bail Act 1978*.

Forfeited Recognizances and Bail Act 1954 No 25

Schedule 3.6 [1]–[7] amend the Act so as to remove all provisions relating to bail as a consequence of the proposed enactment by Schedule 1 [7] of Part 7A of the *Bail Act 1978*.

Inebriates Act 1912 No 24

Schedule 3.7 [1], [2] and [3] amend sections 7 and 12, and insert a new section 17A, so as to apply proposed Part 7A of the *Bail Act 1978* to the enforcement of recognizances under the *Inebriates Act 1912*.

Local Courts (Civil Claims) Act 1970 No 11

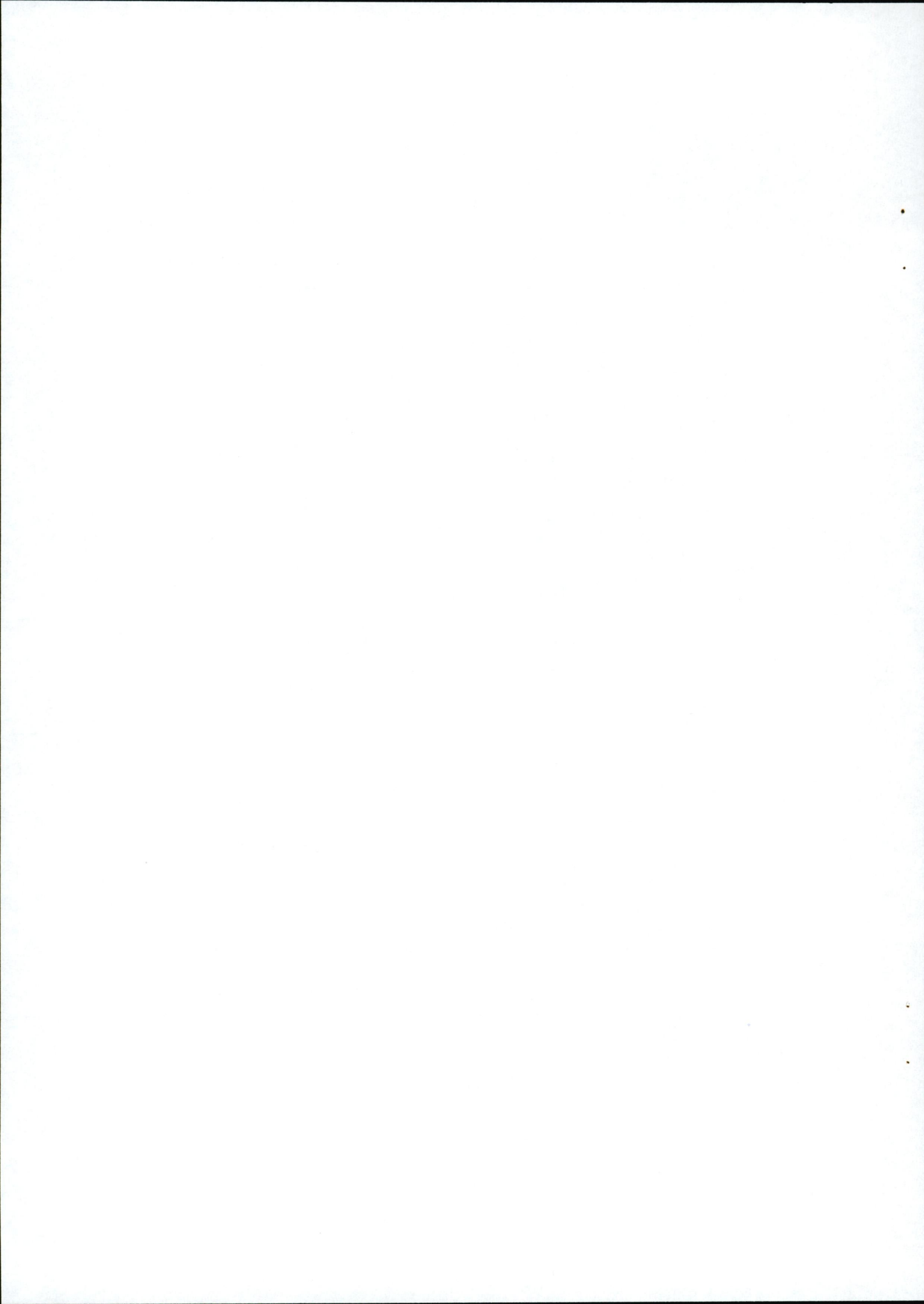
Schedule 3.8 amends section 72 so as to apply the provisions of section 66 of the *Justices Act 1902* to any witness who is arrested under a warrant for failure to comply with a subpoena to appear at proceedings before a Local Court exercising civil jurisdiction.

Protected Estates Act 1983 No 179

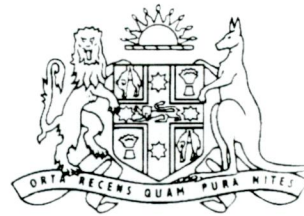
Schedule 3.9 [1] and [2] amend section 9 so as to abolish the power of the Protective Commissioner to take recognizances.

Schedule 3.9 [3] amends section 31 as a consequence of the abolition by Schedule 3.9 [1] and [2] of the power of the Protective Commissioner to take recognizances.

Schedule 3.9 [4] amends section 31 so as to apply proposed Part 7A of the *Bail Act 1978* to the enforcement of bonds under the *Protected Estates Act 1983*.



First print



New South Wales

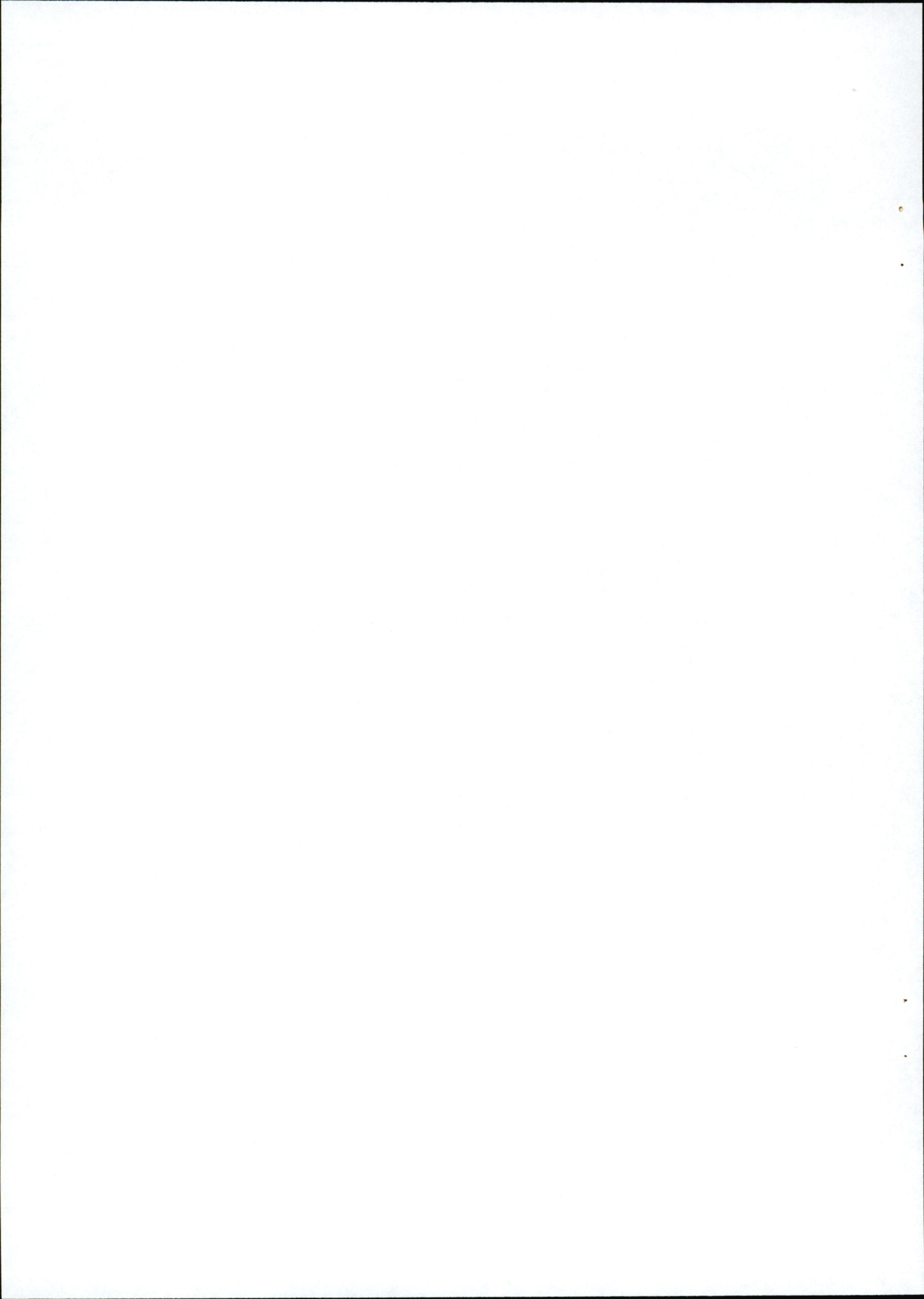
Criminal Procedure Legislation Amendment (Bail Agreements) Bill 1998

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New South Wales

Criminal Procedure Legislation Amendment (Bail Agreements) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Bail Act 1978* in relation to the enforcement of bail agreements, to amend the *Justices Act 1902* so as to abolish certain recognizances and to make consequential amendments to certain other Acts; and for other purposes.

See also *Bail Amendment Bill 1998*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Bail Act 1978 No 161

The *Bail Act 1978* is amended as set out in Schedule 1.

4 Amendment of Justices Act 1902 No 27

10

The *Justices Act 1902* is amended as set out in Schedule 2.

5 Amendment of other Acts

Each Act referred to in Schedule 3 is amended as set out in that Schedule.

Schedule 1 Amendment of Bail Act 1978

(Section 3)

[1] Section 4 Definitions

Omit the definition of *court* from section 4 (1). Insert instead:

court means: 5

- (a) the Court of Criminal Appeal, the Supreme Court, the Land and Environment Court, the Industrial Relations Commission, the District Court or a Local Court, or
- (b) any other court which, or person who, exercises criminal jurisdiction. 10

[2] Section 6 Grant of bail to accused persons for certain periods

Omit "entering into a recognizance to prosecute proceedings in respect of a stated case" from section 6 (f).

Insert instead "applying to a Justice or Justices for the statement of a case under section 101 of the *Justices Act 1902*". 15

[3] Section 34 General undertaking to appear

Omit section 34 (1). Insert instead:

- (1) A person is not to be released on bail unless the person undertakes, in writing: 20
 - (a) to appear before such court, on such day and at such time and place as are from time to time specified in a notice given or sent to the person as prescribed by the regulations, and
 - (b) to notify that court from time to time of any change in the person's residential address. 25

[4] Section 36 Conditions of bail

Insert after section 36 (6):

- (7) The authorised officer or court to whom the bail undertaking is given must take all reasonable steps to ensure that any person who enters into an agreement in compliance with a condition referred to in subsection (2) is made aware of: 5
- (a) the obligations incurred by the person under that agreement, and
 - (b) in particular, the consequences that may follow if the accused person by whom the bail undertaking is given fails to comply with that undertaking. 10

[5] Sections 42A and 42B

Insert after section 42:

42A Fraudulent disposal of assets 15

- (1) A person:
- (a) who enters into an agreement referred to in section 36 (2) (e) or (f) to forfeit a specified amount of money if an accused person fails to comply with his or her bail undertaking, and 20
 - (b) who, under that agreement, deposits security in the form of property,
- is guilty of an offence if he or she disposes of the property, or causes or allows the property to be disposed of, for the purpose of preventing the security from being realised. 25

Maximum penalty: imprisonment for 2 years.

- (2) Proceedings for an offence against this section are to be dealt with by a Local Court constituted by a Magistrate sitting alone. 30

42B Revocation of bail if bail security no longer intact

- (1) A court may at any time revoke a person's bail if it appears to the court that any security deposited for the purposes of a condition imposed on the grant of bail (the *current bail security*) is no longer intact: 5
- (a) having ceased to exist, or
 - (b) having diminished in value, or
 - (c) being no longer available as security for any reason (for example, because it is no longer in the ownership or control of the person by whom it was deposited). 10
- (2) The court must not revoke an accused person's bail under this section unless:
- (a) it has caused written notice of the proposed revocation to be served on the accused person, and 15
 - (b) it has given the accused person at least 28 days from the date on which the notice was served:
 - (i) to demonstrate to the court that the current bail security is still intact, or
 - (ii) to arrange for the deposit of replacement or supplementary security, whether by the person by whom the current bail security was deposited or by some other person. 20
- (3) The written notice:
- (a) must contain such information as the regulations require, and 25
 - (b) must be sent by post to the person at the person's address specified in the relevant bail undertaking or, if the person has subsequently notified the court of a change of address, to the person's address most recently notified, and 30
 - (c) is presumed to have been served on the person at the end of the seventh day after it was posted, unless the person establishes that it was not delivered to that address within that time. 35

[6] Section 53 Enforcement of bail agreements

Omit the section.

[7] Part 7A

Insert after Part 7:

Part 7A Enforcement of bail agreements 5

Division 1 Preliminary

53 Definitions

In this Part:

appropriate State authority means such person or body representing the Crown as is declared by the regulations to be the appropriate State authority for the purposes of this Part. 10

bail agreement means an agreement entered into under section 36 in connection with an accused person's bail undertaking, whether entered into by the accused person or by any other person. 15

bail guarantor means any person who enters into a bail agreement in connection with an accused person's bail undertaking, other than the accused person.

bail money means money agreed to be forfeited under a bail agreement. 20

bail security means security given under a bail agreement to secure payment of bail money.

forfeiture notice means a notice referred to in section 53B. 25

forfeiture order means an order referred to in section 53A.

person affected, in relation to a forfeiture order, means the accused person or bail guarantor whose bail money is forfeited to the Crown by operation of the order. 30

registrar. in relation to a Local Court, means the clerk of the Local Court.

statutory review period. in relation to a forfeiture order, means the period of 28 days during which a person affected by the order may file an objection to the confirmation of the order, as referred to in section 53C.

5

Division 2 Forfeiture orders

53A Court may make forfeiture order if accused fails to appear

(1) If satisfied that an accused person has failed to comply with his or her bail undertaking to appear before it, the court:

10

(a) with which the accused person entered into the undertaking, or

(b) before which the accused person is under a duty to appear under the undertaking.

15

may make a forfeiture order in relation to any bail money agreed to be forfeited under an associated bail agreement.

(2) A forfeiture order may not be made if more than 3 years have elapsed since the accused person allegedly failed to appear before the court in accordance with the relevant bail undertaking.

20

53B Persons affected to be notified that forfeiture order has been made

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(1) As soon as practicable after a forfeiture order is made, the registrar of the court by which the order was made must cause written notice of the making of the order to be served on each person affected by the order.

(2) The notice:

30

(a) must contain such information as the regulations require, and

- (b) must be sent by post to the person at the person's address specified in the relevant bail undertaking or, if the person has subsequently notified the court of a change of address, to the person's address most recently notified. and 5
- (c) is presumed to have been served on the person at the end of the seventh day after it was posted, unless the person establishes that it was not delivered to that address within that time.
- (3) This section ceases to apply if, before the notice is sent, an oral objection to the confirmation of the forfeiture order is made under section 53E. 10

53C Formal objection to confirmation of forfeiture order

- (1) Any person affected by a forfeiture order may file in the office of the court by which the order was made an objection to the confirmation of the order. 15
- (2) Such an objection may not be made more than 28 days after service of the forfeiture notice issued in relation to the forfeiture order.
- (3) An objection must be made in accordance with rules of court and must include the grounds on which the applicant intends to rely. 20
- (4) The court must ensure that notice of such an objection is given to the appropriate State authority in accordance with the regulations. 25

53D Hearing of formal objection to confirmation of forfeiture order

- (1) The court to which an objection to the confirmation of a forfeiture order is duly made must conduct a hearing to determine whether or not the order should be confirmed. 30
- (2) After conducting a hearing, the court must confirm the forfeiture order unless it is satisfied that the accused person did not fail to comply with the relevant bail undertaking, in which case it must set the forfeiture order aside. 35

-
- (3) However, if it is satisfied that in the circumstances of the case it would be unjust for the forfeiture order to be confirmed in full in respect of a particular person affected by the order, the court:
- (a) may vary the order so as to reduce the amount of bail money to be forfeited by that person, and 5
 - (b) in that event, must confirm the order as so varied.
- (4) The court may be satisfied that it would be unjust for a forfeiture order to be confirmed in full in respect of a particular bail guarantor if it is satisfied that the guarantor took all reasonable steps to ensure that the accused person complied with the relevant bail undertaking. 10

53E Informal objection to forfeiture order

- (1) If, after a forfeiture order is made but before a forfeiture notice is served, a person affected by the order appears before the court by which the order was made, that person may make an oral objection to the court against the confirmation of the order. 15
- (2) The court must ensure that notice of the objection is given to the appropriate State authority in accordance with the regulations. 20
- (3) The court may deal with the objection as if it had been an objection filed in response to a forfeiture notice.

53F When forfeiture order takes effect

- (1) A forfeiture order takes effect: 25
- (a) at the expiry of the statutory review period, or
 - (b) if an objection to the confirmation of the order is filed in the court before the expiry of the statutory review period, at the time the order is confirmed under section 53D. 30
- (2) A forfeiture order does not take effect if it is set aside under section 53D.
- (3) No action may be taken to enforce a forfeiture order until the date the order takes effect. 35

53G Effect of forfeiture order

- (1) As soon as a forfeiture order takes effect, the bail money to which it relates:
- (a) is forfeited to the Crown, in the case of bail money that is deposited with an authorised officer or court, or 5
 - (b) becomes payable to the Crown, in the case of bail money that is agreed to be paid to an authorised officer or court.
- and (in the case of unpaid bail money) any bail security becomes enforceable in accordance with its terms. 10
- (2) Despite subsection (1), no action is to be taken to enforce any bail security the subject of a forfeiture order to which section 53K applies until 12 months after the date on which the order was made. 15

53H Persons affected to be notified that forfeiture order has taken effect

- (1) As soon as practicable after a forfeiture order takes effect, the registrar of the court by which the order was made must cause written notice that the order has taken effect to be served on each person affected by the order. 20
- (2) The notice:
- (a) must contain such information as the regulations require, and
 - (b) must be sent by post to the person at the person's address specified in the relevant bail undertaking or, if the person has subsequently notified the court of a change of address, to the person's address most recently notified, and 25
 - (c) is presumed to have been served on the person at the end of the seventh day after it was posted, unless the person establishes that it was not delivered to that address within that time. 30

53I Reference of forfeiture order for enforcement

- (1) If any bail money to which a forfeiture order relates remains unpaid after the order takes effect, the registrar of the court by which the order was made is to refer the following documents to the State Debt Recovery Office: 5
- (a) a copy of the forfeiture order.
 - (b) a copy of the bail undertaking and of the relevant bail agreement.
 - (c) a copy of all documents evidencing any relevant bail security. 10
 - (d) a certificate, issued by the registrar of the court, as to the amount of bail money that remains unpaid as at the date on which the order is referred.
- (2) A certificate referred to in subsection (1) (d) is admissible in any legal proceedings and is evidence of the matters stated in the certificate. 15

53J Payment of forfeited bail money

- (1) Bail money that becomes payable to the Crown as a consequence of a forfeiture order taking effect must be paid: 20
- (a) if paid before a copy of the order is referred to the State Debt Recovery Office, to the registrar of the court by which the order was made, or
 - (b) if paid after a copy of the order is referred to the State Debt Recovery Office, to the State Debt Recovery Office. 25
- (2) A bail guarantor by whom an amount of bail money is payable is entitled to the return of any bail security lodged in relation to that amount if he or she pays that amount in money to the court by which the forfeiture order was made or to the State Debt Recovery Office, as the case requires. 30

Division 3 Late applications to set aside forfeiture orders

53K Application to set aside forfeiture order

- (1) This section applies to a forfeiture order that has taken effect at the expiry of the statutory review period, no objection to the confirmation of the order having been made within that period. 5
- (2) Any person affected by a forfeiture order may file in the office of the court an application to have the order set aside. 10
- (3) Such an application may not be made more than 12 months after the date on which the forfeiture order was made.
- (4) An application must be made in accordance with rules of court and must include the grounds on which the applicant intends to rely. 15
- (5) The registrar of the court must ensure that copies of such an application are given to:
- (a) the appropriate State authority, and
 - (b) the State Debt Recovery Office. 20
- and action to enforce the order may not be commenced or continued until proceedings on the application are finally determined.

53L Hearing of application to set aside forfeiture order

- (1) If the court to which an application to have a forfeiture order set aside is duly made is satisfied: 25
- (a) that notice of the making of the order was not served on the applicant, and
 - (b) that at no time before the expiry of the statutory review period was the applicant aware that the order had been made, 30

the court must conduct a hearing to determine whether or not the order should be set aside.

-
- (2) After conducting a hearing, the court must dismiss the application unless it is satisfied that the accused person did not fail to comply with the relevant bail undertaking, in which case it must set the forfeiture order aside.
- (3) However, if it is satisfied that in the circumstances of the case it was unjust for the forfeiture order to have been confirmed in full in respect of a particular person affected by the order, the court may vary the order so as to reduce the amount of bail money that should have been forfeited by that person. 5 10
- (4) The court may be satisfied that it was unjust for a forfeiture order to have been confirmed in full in respect of a particular bail guarantor if it is satisfied that the guarantor took all reasonable steps to ensure that the accused person complied with the relevant bail undertaking. 15
- (5) Notice of the court's determination of the application is to be given to the State Debt Recovery Office.

Division 4 Miscellaneous

53M Effect of setting aside forfeiture order 20

- (1) If a court sets aside a forfeiture order, each person affected by the order is entitled to the return of:
- (a) any bail money or bail security that has been deposited by that person, or seized from that person, in relation to the bail undertaking to which the order relates, and 25
 - (b) the proceeds of sale of any bail security so deposited or seized.
- (2) If a court varies a forfeiture order so as to reduce the amount of money forfeited by a particular person affected by the order, that person is entitled to the return of: 30
- (a) any bail money or bail security that has been deposited by that person, or seized from that person, in relation to the bail undertaking to which the order relates, and 35
 - (b) the proceeds of sale of any bail security so deposited or seized.

to the extent to which the amount of any such bail money, bail security or proceeds of sale exceeds the reduced amount of money forfeited.

- (3) A court that sets aside a forfeiture order may make such orders as are necessary to effect the return of any such bail money, bail security or proceeds of sale. 5
- (4) The Consolidated Fund is appropriated to the extent necessary to enable money that has been paid into that Fund to be returned in accordance with this section.

53N Appeals 10

- (1) An appeal against a decision by a Local Court under section 53D or 53L with respect to a forfeiture order may be made to the District Court under section 122 of the *Justices Act 1902* in the same way as an appeal may be made to the District Court against an order referred to in that section, and Division 4 of Part 5 of that Act applies accordingly. 15
- (2) The clerk of the Local Court must ensure that notice of the appeal is given to:
 - (a) the appropriate State authority, and 20
 - (b) the State Debt Recovery Office,and action to enforce the order may not be commenced or continued until proceedings on the appeal are finally determined.

53O Court of Criminal Appeal may authorise other courts to take action 25

In the case of an accused person who is under a duty to appear before the Court of Criminal Appeal in connection with an appeal:

- (a) the Court of Criminal Appeal may instead authorise the court from which the appeal arose to take any action under this Part that the Court of Criminal Appeal is authorised to take, and 30
- (b) in that event, the court from which the appeal arose may take such action. 35

53P Crown a party to forfeiture proceedings

The Crown is entitled to appear and be heard at, and is taken to be a party to, all proceedings under this Part.

[8] Section 53N Appeals

Omit section 53N (1) (as inserted by item [7]).

5

Insert instead:

- (1) An appeal against a decision by a Local Court under section 53D or 53L with respect to a forfeiture order may be made to the District Court under section 120 of the *Justices Act 1902* in the same way as an appeal may be made to the District Court against an order referred to in that section, and Part 5A of that Act applies accordingly.

10

[9] Section 54 Notices

Insert "and" after "undertaking," in section 54 (1) (a).

[10] Section 54 (1) (b)

15

Omit "conditions, and". Insert instead "conditions."

[11] Section 54 (1) (c)

Omit the paragraph.

[12] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule (with appropriate Part and clause numbers):

20

**Part Criminal Procedure Legislation Amendment
(Bail Agreements) Act 1998**

**Application of sections 42A and 42B and Part 7A to
existing bail agreements**

25

The provisions of section 42A, section 42B and Part 7A apply to and in respect of any bail agreement entered into before the commencement of those provisions in the same way as they apply to and in respect of any bail agreement entered into after that commencement.

30

Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998*. 5
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to that Act or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 10
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication. 15

Schedule 2 Amendment of Justices Act 1902

(Section 4)

[1] Section 3 Definitions

Insert in section 3 (1), in alphabetical order:

Bail has the same meaning as it has in the *Bail Act 1978*. 5

[2] Section 25 Issue of warrant where indictment filed

Omit “, whether on recognizances or not” from section 25 (1).

[3] Section 31 On non-appearance to summons, warrants may be issued

Omit section 31 (2). Insert instead: 10

(2) The Justice or Justices before whom a person is brought after having been apprehended under a warrant referred to in subsection (1) or section 26:

(a) subject to the *Bail Act 1978*, must order that a warrant be issued for the committal of the person to a correctional centre or other place of security, and 15

(b) must order the person to be brought before the Justice or Justices at such time and place as is specified in the order, and 20

(c) must give due notice to the informant or complainant of the time and place so specified.

(3) A warrant under this section may be issued by any Justice.

(4) The *Bail Act 1978* applies to the person (not being an accused person) in the same way as it applies to an accused person and, for that purpose, bail may be granted to the person with respect to the period between: 25

(a) the person's being brought before the Justice or Justices under a warrant for the purpose of being examined as a witness or producing a document or thing, and 30

(b) the person's being examined as a witness or producing the document or thing.

[4] Part 4, Division 1, Subdivision 8 Recognizances

Omit the Subdivision.

[5] Section 66 On non-appearance to summons, warrants may be issued

Omit section 66 (2). Insert instead: 5

(2) The Justice or Justices before whom a person is brought after having been apprehended under a warrant referred to in subsection (1), section 61 or 80AA:

(a) subject to the *Bail Act 1978*, must order that a warrant be issued for the committal of the person to a correctional centre or other place of security, and 10

(b) must order the person to be brought before the Justice or Justices at such time and place as is specified in the order, and 15

(c) must give due notice to the informant or complainant of the time and place so specified.

(3) A warrant under this section may be issued by any Justice.

(4) The *Bail Act 1978* applies to the person (not being an accused person) in the same way as it applies to an accused person and, for that purpose, bail may be granted to the person with respect to the period between: 20

(a) the person's being brought before the Justice or Justices under a warrant for the purpose of being examined as a witness or producing a document or thing, and 25

(b) the person's being examined as a witness or producing the document or thing.

[6] Section 69

Omit the section. Insert instead:

69 How defendant to be dealt with during adjournment

- (1) Subject to the *Bail Act 1978*, the Justice or Justices by whom a hearing is adjourned under section 65 or 68: 5
 - (a) in the case of any defendant, whether or not an accused person, may order that a warrant be issued for the committal of the defendant to a correctional centre or other place of security, or
 - (b) in the case of a defendant who is not an accused person, may allow the defendant to be at large, 10
for the period of the adjournment.
- (2) A warrant under this section may be issued by any Justice.
- (3) At any time during the period of adjournment, any Justice may order that a defendant who has been committed to a correctional centre or other place of security be brought before that or any other Justice or Justices. 15
- (4) The person having the custody of a defendant in respect of whom such an order is made must comply with the requirements of the order. 20
- (5) The *Bail Act 1978* applies to the defendant (not being an accused person) in the same way as it applies to an accused person and, for that purpose, bail may be granted to the defendant with respect to the period of the adjournment. 25

[7] Part 4, Division 2, Subdivision 9 Recognizances

Omit the Subdivision.

[8] Section 100C Part does not apply to fines and forfeiture orders 30

Insert at the end of section 100C:

- (2) This Part does not apply to a forfeiture order within the meaning of Part 7A of the *Bail Act 1978*.

- [9] Section 102 Before case is stated appellant to give security**
Omit the section.
- [10] Section 102A Extension of periods**
Omit section 102A (2).
- [11] Section 102A (3)** 5
Omit "subclause (1) or (2)". Insert instead "subsection (1)".
- [12] Section 104 Supreme Court may direct case to be stated**
Omit "subject to the appellant entering into the recognizance mentioned in subsection (1) of section 102".
- [13] Section 107 Stay of execution of conviction, order or sentence pending appeal** 10
Insert "(or, in relation to an apprehended violence order under Part 15A of the *Crimes Act 1900*, to the person against whom the order has been made)" after "appeal is made" in section 107 (2) (as inserted by the *Justices Legislation Amendment (Appeals) Act 1998*). 15
- [14] Section 110 Forfeiture of recognizance to be certified**
Omit the section.
- [15] Section 121B No appeal in certain cases**
Omit ". for the finding of sureties or for the entering into of recognizances" from section 121B (1) (a). 20
- [16] Section 122 Appeal allowed in every case of conviction or order made by Justices**
Omit section 122 (5).

[17] Section 123

Omit the section. Insert instead:

123 Conditions on which execution of sentence stayed

- (1) The execution of a sentence imposed as a consequence of a conviction, or of any other order, is stayed: 5
 - (a) if an application for statement of a case is duly made within the time specified in section 101 (1), or
 - (b) if notice of appeal is duly given within the time specified in section 122. 10
- (2) Subsection (1) does not apply to a person who is in custody when the application or appeal is made (or, in relation to an apprehended violence order under Part 15A of the *Crimes Act 1900*, to the person against whom the order has been made) unless and until the person enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is dispensed with. 15
- (3) The stay of execution continues until the matter to which the application or appeal relates is finally determined, subject to any order or direction of the Supreme Court or District Court, as the case requires. 20
- (4) Despite subsection (1), any period during which the stay of execution is in force is not to be taken into account when calculating the length of a period of disqualification from holding a driver's licence resulting from a conviction under the *Traffic Act 1909*. 25
- (5) An application for leave to appeal does not result in a stay of execution under this section.

[18] Section 124 Conditions on which appellant may be liberated

Omit the section. 30

[19] Section 125A Further recognizance to prosecute appeal

Omit the section.

- [20] Section 127 Stay of execution of conviction, order or sentence pending appeal**
- Insert "(or, in relation to an apprehended violence order under Part 15A of the *Crimes Act 1900*, to the person against whom the order has been made)" after "appeal is made" in section 127 (2) (as inserted by the *Justices Legislation Amendment (Appeals) Act 1998*). 5
- [21] Part 5, Division 5 Absconding appellants**
- Omit the Division.
- [22] Section 153 Certain persons authorised to grant bail**
- Omit the section. 10
- [23] Section 153A**
- Omit the section. Insert instead:
- 153A Persons arrested under bench warrants**
- (1) The Justice or Justices before whom a person is brought after having been apprehended under a bench warrant issued by a Judge of any court in any criminal proceedings: 15
- (a) subject to the *Bail Act 1978*, must order that a warrant be issued for the committal of the person to a correctional centre or other place of security, and 20
- (b) must order the person to be brought before the court out of which the bench warrant was issued in accordance with the terms of the warrant.
- (2) A warrant under this section may be issued by any Justice. 25
- (3) The *Bail Act 1978* applies to the person (not being an accused person) in the same way as it applies to an accused person and, for that purpose, bail may be granted to the person with respect to the period between: 30
- (a) the person's being committed under this section, and
- (b) the person's being brought before the court out of which the bench warrant was issued.

[24] Section 154 Regulations

Omit "or in respect of any recognizance or security taken in pursuance of section 153" from section 154 (1) (a).

[25] Section 154 (1) (f)

Omit the paragraph.

5

[26] Second Schedule Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Criminal Procedure Legislation Amendment
(Bail Agreements) Act 1998** 10

Definitions

In this Part:

the amended 1954 Act means the *Forfeited Recognizances and Bail Act 1954*, as in force immediately before its amendment by the 1998 amending Act. 15

the 1998 amending Act means the *Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998*.

Application of sections 31, 66 and 153A 20

The provisions of sections 31, 66 and 153A, as amended by the 1998 amending Act, apply to and in respect of any warrant issued before the commencement of those provisions in the same way as they apply to and in respect of any warrant issued after that commencement. 25

Application of section 69

The provisions of section 69, as amended by the 1998 amending Act, apply to and in respect of any hearing that began before the commencement of those provisions in the same way as they apply to and in respect of any hearing that begins after that commencement. 5

Continuation of certain recognizances

(1) The provisions of:
(a) Subdivision 8 of Division 1 of Part 4 of the *Justices Act 1902*, and 10

(b) the amended 1954 Act,
continue to apply to a recognizance entered into under section 49 of the *Justices Act 1902* before the repeal of that section by the 1998 amending Act as if the 1998 amending Act had not been enacted. 15

(2) The provisions of:
(a) Subdivision 9 of Division 2 of Part 4 of the *Justices Act 1902*, and

(b) the amended 1954 Act,
continue to apply to a recognizance entered into under section 96 of the *Justices Act 1902* before the repeal of that section by the 1998 amending Act as if the 1998 amending Act had not been enacted. 20

(3) The provisions of:
(a) sections 102 and 131B of the *Justices Act 1902*, and 25

(b) the amended 1954 Act,
continue to apply to a recognizance entered into under section 102 of the *Justices Act 1902* before the repeal of that section by the 1998 amending Act as if the 1998 amending Act had not been enacted. 30

-
- (4) The provisions of:
- (a) sections 123 and 131B of the *Justices Act 1902*, and
 - (b) the amended 1954 Act.
- continue to apply to a recognizance entered into under section 123 of the *Justices Act 1902* before the substitution of that section by the 1998 amending Act as if the 1998 amending Act had not been enacted. 5
- (5) The provisions of:
- (a) sections 125A and 131B of the *Justices Act 1902*, and 10
 - (b) the amended 1954 Act.
- continue to apply to a recognizance entered into under section 125A of the *Justices Act 1902* before the repeal of that section by the 1998 amending Act as if the 1998 amending Act had not been enacted. 15
- (6) The provisions of:
- (a) section 153A of the *Justices Act 1902*, and
 - (b) the amended 1954 Act.
- continue to apply to a recognizance entered into under section 153A of the *Justices Act 1902* before the substitution of that section by the 1998 amending Act as if the 1998 amending Act had not been enacted. 20

Stay of execution under section 123 or 125A

- (1) Any stay of execution that was in force under section 123, immediately before its substitution by the 1998 amending Act, is unaffected by that substitution. 25
- (2) Any stay of execution that was in force under section 125A, immediately before its repeal by the 1998 amending Act, is unaffected by that repeal. 30

Application of section 40 of Coroners Act 1980

The provisions of:

- (a) section 40 of the *Coroners Act 1980*, and
- (b) the amended 1954 Act.

continue to apply to a recognizance entered into under section 40 of the *Coroners Act 1980* before the substitution of that section by the 1998 amending Act as if the 1998 amending Act had not been enacted. 5

Application of section 72 of Local Courts (Civil Claims) Act 1970

The provisions of:

- (a) section 72 of the *Local Courts (Civil Claims) Act 1970*, and
- (b) the amended 1954 Act.

continue to apply to a recognizance entered into under section 72 of the *Local Courts (Civil Claims) Act 1970* before the amendment of that section by the 1998 amending Act as if the 1998 amending Act had not been enacted. 10 15

Application of section 17A of Inebriates Act 1912

The provisions of section 17A of the *Inebriates Act 1912*, as inserted by the 1998 amending Act, apply to and in respect of any recognizance entered into before the commencement of those provisions in the same way as they apply to and in respect of any recognizance entered into after that commencement. 20 25

Application of section 31 (4) of Protected Estates Act 1983

The provisions of section 31 of the *Protected Estates Act 1983*, as amended by the 1998 amending Act, apply to and in respect of any bond or recognizance given or entered into before the commencement of those provisions in the same way as they apply to and in respect of any bond given after that commencement. 30

Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998*. 5
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to that Act or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 10
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication. 15

Schedule 3 Amendment of other Acts

(Section 5)

- 3.1 Children (Criminal Proceedings) Act 1987 No 55**
- Section 42 Appeals**
- Omit section 42 (2). 5
- 3.2 Conveyancing Act 1919 No 6**
- [1] Section 186 Writs and orders under judgments or relating to legal proceedings**
- Insert after section 186 (3):
- (4) In this section, *recognisance* includes bail agreement within the meaning of Part 7A of the *Bail Act 1978*. 10
- [2] Section 189 Judgments not to be a charge on land until writ or order registered**
- Insert after section 189 (2):
- (3) In this section, *recognisance* includes bail agreement within the meaning of Part 7A of the *Bail Act 1978*. 15
- 3.3 Coroners Act 1980 No 27**
- Section 40**
- Omit the section. Insert instead:
- 40 Apprehension of witness under warrant** 20
- (1) The coroner before whom a person is brought after having been apprehended under a warrant referred to in section 35 or 39:
- (a) subject to the *Bail Act 1978*, must order that a warrant be issued for the committal of the person to a correctional centre or other place of security, and 25

-
- (b) must order the person to be brought before the coroner at such time and place as is specified in the order.
- (2) The *Bail Act 1978* applies to the person (not being an accused person within the meaning of that Act) in the same way as it applies to an accused person within the meaning of that Act and, for that purpose, bail may be granted to such a person under that Act with respect to the period between:
- (a) the person's being brought before the coroner under a warrant for the purpose of being examined as a witness or producing a document or thing, and
- (b) the person's being examined as a witness or producing the document or thing.
- 3.4 Evidence Act 1995 No 25**
- Section 194 Witnesses failing to attend proceedings**
- Insert after section 194 (3):
- (4) In this section, *recognisance* includes bail undertaking within the meaning of the *Bail Act 1978*.
- 3.5 Fines Act 1996 No 99**
- [1] Part 7, heading**
- Omit "monetary bail or recognizances".
Insert instead "bail agreements".

[2] Section 111

Omit the section. Insert instead:

111 Definitions

In this Part:

forfeited bail money means unpaid bail money the subject of a forfeiture order under Part 7A of the *Bail Act 1978*. 5

forfeited bail security means bail security given in relation to bail money the subject of a forfeiture order under Part 7A of the *Bail Act 1978*. 10

[3] Section 112 Enforcement of forfeited bail money

Omit "a forfeited bail undertaking or recognizance" from section 112 (1).

Insert instead "forfeited bail money".

[4] Section 112 (2) 15

Insert after section 112 (2) (b):

(b1) if the State Debt Recovery Office is served with a copy of an application or appeal duly made under section 53K or 53N of the *Bail Act 1978* in relation to forfeited bail money, action under Part 4 may not be commenced or continued until proceedings on the application or appeal are finally determined, 20

[5] Section 112A

Insert after section 112: 25

112A Enforcement of forfeited bail security

(1) Section 72 applies to a forfeited bail security as if the bail money in relation to which it is given were a fine imposed by a court for an offence.

(2) The application of that section is subject to the following:

- (a) if the State Debt Recovery Office is served with a copy of an application or appeal duly made under section 53K or 53N of the *Bail Act 1978* in relation to the bail money for which the forfeited bail security is given, action under section 72 may not be commenced or continued until proceedings on the application or appeal are finally determined.
- (b) all other necessary or prescribed modifications to the application of that section apply.

5

10

3.6 Forfeited Recognizances and Bail Act 1954 No 25

[1] Long title

Omit "and bail money" wherever occurring.

15

[2] Section 3 Definitions

Omit the definitions of *bail agreement*, *bail money*, *bail undertaking* and *monetary bail condition*.

[3] Section 4A Forfeiture of bail money

Omit the section.

20

[4] Section 6 Enforcement of certain recognizances where amount thereof has been deposited

Omit section 6 (1A).

- [5] **Section 6 (2) (a)**
Omit "or (1A) (d)".
- [6] **Section 6 (2) and (3)**
Omit "or bail money" wherever occurring.
- [7] **Section 17 Fraudulent disposal of assets** 5
Omit "or who, having been accepted under the *Bail Act 1978*, by virtue of the person's ownership of specific property, as an acceptable person referred to in section 36 of that Act."
- 3.7 Inebriates Act 1912 No 24**
- [1] **Section 7 Forfeiture of recognizances** 10
Omit "If". Insert instead "Subject to section 17A, if".
- [2] **Section 12 Forfeiture of recognizances**
Omit "If". Insert instead "Subject to section 17A, if".
- [3] **Section 17A** 15
Insert after section 17:
- 17A Forfeiture of securities under recognizances**
- The provisions of Part 7A of the *Bail Act 1978* and Part 7 of the *Fines Act 1996* apply to the forfeiture of any security under a recognizance under this Act and to the recovery of any security so forfeited in the same way as they apply to the forfeiture of bail money and to the recovery of any bail money so forfeited. 20

3.8 Local Courts (Civil Claims) Act 1970 No 11

Section 72 Witnesses

Omit section 72 (5), (6), (7) and (8). Insert instead:

- (5) The provisions of section 66 (2), (3) and (4) of the *Justices Act 1902* apply to a person who is apprehended under a warrant referred to in subsection (3) (b) in the same way as they apply to a person who is apprehended under a warrant referred to in section 66 (1) of that Act.

5

3.9 Protected Estates Act 1983 No 179

[1] Section 9 Power to take evidence

10

Omit "affidavit, and" from section 9 (1) (b).
Insert instead "affidavit."

[2] Section 9 (1) (c)

Omit the paragraph.

[3] Section 31 Security in respect of management

15

Omit "bonds and recognizances given or entered into" from section 31 (3).
Insert instead "bonds given".

[4] Section 31 (4)

Omit the subsection. Insert instead:

- (4) The provisions of Part 7A of the *Bail Act 1978* and Part 7 of the *Fines Act 1996* apply to the forfeiture of any security under a bond and to the recovery of any security so forfeited in the same way as they apply to the forfeiture of bail money and to the recovery of any bail money so forfeited.

5