

## **BAIL BILL, 1978**

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### **EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The following Bills are cognate with this Bill:—

- Justices (Bail) Amendment Bill, 1978;
- Child Welfare (Bail) Amendment Bill, 1978;
- Supreme Court (Summary Jurisdiction) Bail (Amendment) Bill, 1978;
- Criminal Appeal (Bail) Amendment Bill, 1978;
- Crimes (Bail) Amendment Bill, 1978;
- Fines and Forfeited Recognizances (Bail) Amendment Bill, 1978.

The object of this Bill is to enact provisions setting out the circumstances in which, and the basis on which, bail is to be granted in the course of criminal proceedings to persons accused of offences.

The Bill deals with the grant of bail while any proceedings (including appeal proceedings) are pending in connection with an offence. The Bill authorises bail to be granted by police officers, magistrates or justices of the peace or the District Court, Supreme Court or Court of Criminal Appeal or a Judge of any such court, in appropriate circumstances.

The Bill contains the following provisions:—

#### **PART I.—PRELIMINARY.**

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement of the proposed Act.

Clause 4. Interpretation. One of the definitions is that of "bail" which is defined to mean the authorisation to be at liberty under the proposed Act, instead of in custody.

Clause 5 provides that the proposed Act applies to persons under or over the age of 18 years.

**PART II.—GENERAL PROVISIONS RESPECTING BAIL.**

Clauses 6 and 16 specify the periods during which bail may be granted.

Clause 7 states that a person to whom bail is granted is entitled to be released unless he is being held for some other reason.

Clause 8 requires the release on bail of persons accused of offences not punishable by imprisonment, or offences (punishable summarily) prescribed by the regulations, except in specified circumstances.

Clause 9 sets up a presumption in favour of bail for other offences, except in specified circumstances. The clause does not apply to offences against the Crimes Act, 1900, involving armed robbery, nor to offences against the proposed Act relating to the failure to appear before a court in accordance with a bail undertaking.

Clauses 10 and 11 enable a court to dispense with the requirement for bail, which has the result of entitling the accused person to be released on bail unless he is being held for some other offence.

Clause 10 (2) deems a court to have dispensed with the requirement for bail if it makes no specific order or direction in respect of bail.

Clause 13 authorises the grant of bail in cases where there is no requirement or presumption in favour of bail.

Clause 14 authorises the refusal of bail.

Clause 15 authorises the grant or refusal of bail to a person who is not in custody.

Clause 16 extends the periods for which bail may be granted.

**PART III.—POLICE BAIL.**

Clause 17 (1) authorises a police officer to grant bail if he is of or above the rank of sergeant or is for the time being in charge of a police station.

Clause 17 (2) prohibits a police officer from granting bail if a court has made a determination in respect of bail.

Clause 18 (1) requires a police officer to give information to a person charged with an offence concerning his entitlement to or eligibility for bail.

Clause 18 requires a decision as to bail to be made as soon as practicable after a person is charged by a police officer with an offence.

Clause 19 requires a police officer after making a determination in relation to bail to notify the accused person that he may communicate with a lawyer or other person of his choice in connection with bail and to provide the accused person with reasonable facilities to make such a communication.

Clause 20 provides for an accused person refused bail by a police officer to be brought before a court.

Clause 21 requires an accused person in police custody to be provided with facilities prescribed by the regulations if he is to be brought, for the first time in relation to the offence, before a court more than 4 hours after he came into custody.

## PART IV.—COURT BAIL.

Clause 22 provides that there is no limit on the number of bail applications that may be made to a court and requires any such applications to be dealt with as soon as practicable.

Clauses 23 and 24 empower magistrates and justices to grant bail.

Clause 25 limits the period for which a magistrate or justice may adjourn a hearing if the accused person is refused bail.

Clauses 26 and 27 authorise the District Court and Judges of the District Court to grant bail.

Clauses 28 and 29 authorise the Supreme Court and Judges of the Supreme Court to grant bail.

Clause 30 authorises the Court of Criminal Appeal and Judges of the Court of Criminal Appeal to grant bail.

## PART V.—PROVISIONS APPLYING TO BOTH POLICE AND COURT BAIL.

Clauses 31 and 32 spell out the criteria to be considered when determining whether or not bail should be granted (except where the accused person is entitled to bail as mentioned in clause 8), those criteria being—

- (a) the probability of whether or not the accused person will appear in court, having regard to his background and community ties, any previous failure to appear, the circumstances, nature and seriousness of the offence, and certain other matters;
- (b) the interests of the person; and
- (c) the protection and welfare of the community, having regard to the likelihood of his committing an offence while on bail, and certain other matters.

Clause 33 authorises regulations to be made prescribing a test to obtain a rating as an indication of an accused person's background and community ties.

Clause 34 requires a person, before being released on bail, to enter into a bail undertaking to appear before a court as notified.

Clause 35 specifies the persons to whom the bail undertaking may be given.

Clause 36 authorises conditions to be imposed on the grant of bail, as follows:—

- (a) that the accused person observe specific requirements as to his conduct;
- (b) that another person acknowledge that he is acquainted with the accused person and that he regards the accused person as a responsible person who is likely to comply with the bail undertaking;
- (c) that the accused person enter into an agreement, without security, to forfeit an amount of money;
- (d) that another person enter into an agreement, without security, as referred to in paragraph (c);
- (e) that the accused person enter into an agreement, with security, to forfeit a specified amount of money;

- (f) that another person enter into an agreement, with security, as referred to in paragraph (e);
- (g) that the accused person deposit a specified amount of money and enter into an agreement to forfeit the amount deposited;
- (h) that another person deposit an amount of money and enter into an agreement, as referred to in paragraph (g).

Clause 37 requires bail to be granted unconditionally, unless the authority granting bail is satisfied that conditions should be imposed to promote effective law enforcement and the protection and welfare of the community. The clause also requires conditions to be imposed that are not more onerous than the nature of the offence and the circumstances of the accused person appear to require. Clause 37 (4) enables the accused person to request that a particular condition be imposed.

Clause 38 requires the reasons for making a bail decision to be recorded in certain cases.

Clause 39 specifies the manner of entering into an agreement, making an acknowledgment or depositing security or money pursuant to a bail condition.

Clause 40 requires a receipt to be given for money or security deposited pursuant to a bail condition and enables regulations to be made as to the manner of dealing with any money or security so deposited.

Clause 41 enables a person lodging a bank-book to lodge cash instead and to have the bank-book returned.

Clause 42 provides for a person who has entered into an agreement pursuant to a bail condition to apply to be discharged of his liability.

Clause 43 enables a court to continue bail.

#### PART VI.—REVIEW OF BAIL DECISIONS.

Clauses 44–46 authorise the review of bail decisions.

Clause 47 prohibits a court from reviewing a decision where it would not be able to make a decision in the first place.

Clause 48 permits a bail decision to be reviewed only at the request of the accused person, the informant being a police officer or the Attorney-General and enables additional information to be given. The clause also authorises the reviewing court to affirm or vary the decision or to substitute another decision and provides that the decision as varied or substituted must be in conformity with the proposed Act and requires the review to be conducted by way of rehearing.

Clause 49 provides that the power to review conferred by the proposed Act does not affect the rights of an accused person to apply for bail.

#### PART VII.—NON-COMPLIANCE WITH UNDERTAKINGS AND CONDITIONS.

Clause 50 authorises the arrest of a person who has failed or is about to fail to comply with his bail undertaking or an agreement entered into pursuant to a bail condition.

Clause 51 makes it an offence to fail to appear before a court in accordance with a bail undertaking.

Clause 52 provides that a person is not liable to be prosecuted for an offence against the proposed clause 51 if the court in his absence hears and determines the offence in respect of which bail was granted, unless he fails to pay any money ordered to be paid by the court.

Clause 53 provides that an amount of money agreed to be forfeited pursuant to a bail condition may be recovered as a debt in a court of competent jurisdiction.

#### PART VIII.—MISCELLANEOUS.

Clause 54 requires accused persons and other persons to be given notices setting out the terms of the relevant bail undertakings and bail conditions, and the giving of certain other notices.

Clause 55 preserves the powers of the Supreme Court in connection with writs of habeas corpus.

Clause 56 makes it an offence to make an untrue statement in an acknowledgment referred to in clause 36.

Clause 57 makes it the duty of the person with whom such an acknowledgment is made to warn the person that an untrue acknowledgment constitutes an offence under the proposed section 56.

Clause 58 makes it an offence for persons to indemnify or agree to indemnify another person against any forfeiture pursuant to a bail condition.

Clause 59 provides that the civil standard of proof (the balance of probabilities) applies in connection with the making of a bail decision.

Clause 60 contains evidentiary provisions.

Clause 61 abolishes the rights of a surety to arrest an accused person.

Clause 62 abolishes any common law powers to grant bail to accused persons.

Clause 63 treats perjury in all respects as if it were an offence.

Clause 64 preserves any powers to grant bail in connection with contempt of court.

Clause 65 applies the Justices Act, 1902, to warrants or summonses issued under the proposed Act.

Clause 66 enacts that a police officer is not guilty of an offence by reason of his failing to comply with a provision of the proposed Act unless a penalty is expressly provided.

Clause 67 provides that the proposed Act prevails over other Acts.

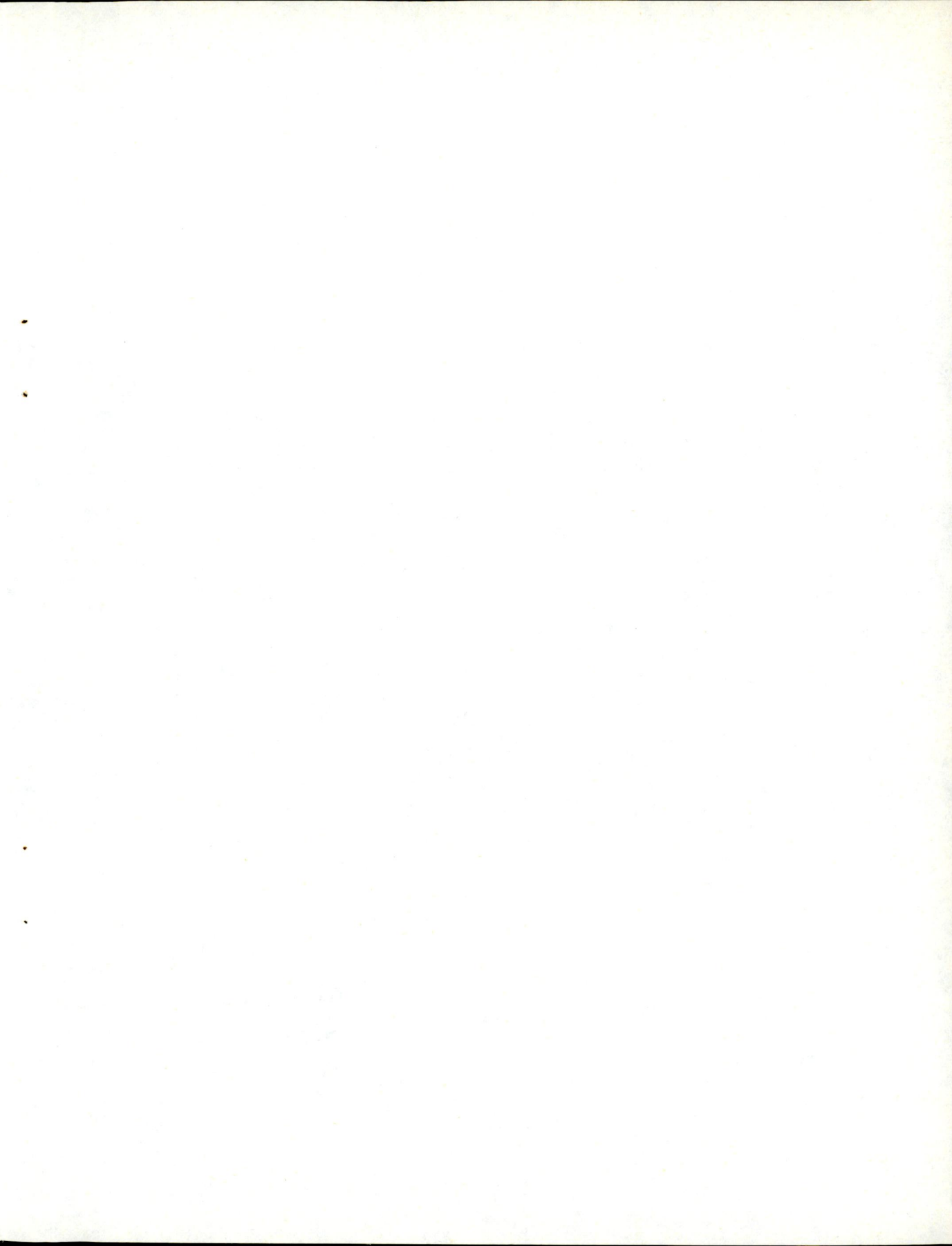
Clause 68 gives effect to Schedule 1 (relating to savings and transitional provisions).

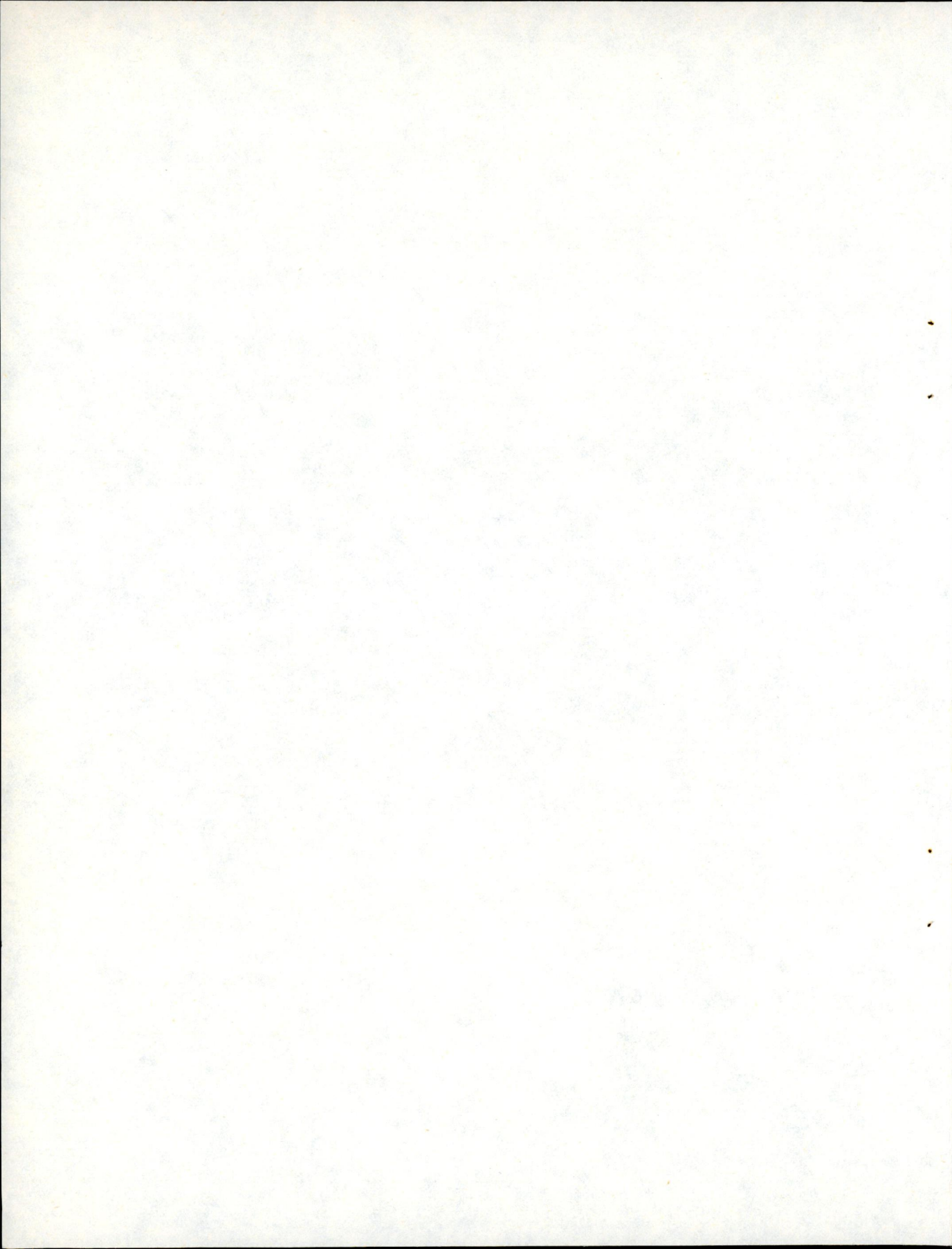
Clause 69 authorises regulations to be made.

Clause 70 authorises rules to be made under the Supreme Court Act, 1970, in connection with the functions of the Supreme Court and the Court of Criminal Appeal in respect of bail.

Schedule 1 contains provisions of a savings and transitional nature.

The Bill also contains other provisions of a minor, consequential or ancillary nature.







# BAIL BILL, 1978

No.           , 1978.

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## A BILL FOR

An Act relating to bail for accused persons in or in connection  
with criminal proceedings.

[MR F. J. WALKER—13 *December*, 1978.]

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See also Justices (Bail) Amendment Bill, 1978; Child Welfare (Bail) Amendment Bill, 1978; Supreme Court (Summary Jurisdiction) Bail (Amendment) Bill, 1978; Criminal Appeal (Bail) Amendment Bill, 1978; Crimes (Bail) Amendment Bill, 1978; Fines and Forfeited Recognizances (Bail) Amendment Bill, 1978.

*Bail.*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

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## PART I.

## PRELIMINARY.

1. This Act may be cited as the "Bail Act, 1978". Short title.

2. (1) This section and section 1 shall commence on the date of assent to this Act. Commence-  
ment.

10 (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :— Arrange-  
ment.

15 PART I.—PRELIMINARY—ss. 1–5.

PART II.—GENERAL PROVISIONS RESPECTING BAIL—ss.  
6–16.

DIVISION 1.—*Bail generally*—ss. 6, 7.

DIVISION 2.—*Right to release for certain offences*—s. 8.

20 DIVISION 3.—*Presumption in favour of bail for certain offences*—s. 9.

DIVISION 4.—*Dispensing with bail*—ss. 10–12.

DIVISION 5.—*Miscellaneous provisions*—ss. 13–16.

PART III.—POLICE BAIL—ss. 17–21.

*Bail.*PART IV.—COURT BAIL—*ss.* 22–30.DIVISION 1.—*Bail applications—s.* 22.DIVISION 2.—*Magistrates and justices—ss.* 23–25.DIVISION 3.—*District Court—ss.* 26, 27.5 DIVISION 4.—*Supreme Court—ss.* 28, 29.DIVISION 5.—*Court of Criminal Appeal—s.* 30.PART V.—PROVISIONS APPLYING TO BOTH POLICE AND COURT BAIL—*ss.* 31–43.10 DIVISION 1.—*Criteria to be considered in bail applications—ss.* 31–33.DIVISION 2.—*Bail undertakings—ss.* 34, 35.DIVISION 3.—*Bail conditions—ss.* 36–42.DIVISION 4.—*Continuation of bail—s.* 43.PART VI.—REVIEW OF BAIL DECISIONS—*ss.* 44–49.15 PART VII.—NON-COMPLIANCE WITH UNDERTAKINGS AND CONDITIONS—*ss.* 50–53.PART VIII.—MISCELLANEOUS—*ss.* 54–70.

## SCHEDULE 1.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. (1) In this Act, except in so far as the context or subject-  
 20 matter otherwise indicates or requires — Interpre-  
tation.

“appeal” includes an application for leave to appeal and a proceeding by way of appeal;

25 “authorised officer”, in relation to a person in custody, means a police officer who may grant bail to the person under Part III;

“bail” means authorisation to be at liberty under this Act, instead of in custody;

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“bail condition” means a condition under section 36;

“bail undertaking” means an undertaking under section 34;

5 “conviction” includes a finding of guilt and (without limiting the generality of the foregoing provisions of this definition) the making of an order under section 556A of the Crimes Act, 1900, or section 83 (3) of the Child Welfare Act, 1939;

“court” means —

- 10 (a) the Supreme Court;  
(b) the Court of Criminal Appeal;  
(c) the District Court; or  
(d) a court of petty sessions,

and includes a Judge, magistrate or justice not sitting as a court;

15 “Court of Criminal Appeal” includes a Judge of that Court;

20 “court of petty sessions” includes a licensing court under the Liquor Act, 1912, a children’s court under the Child Welfare Act, 1939, and a court constituted by an industrial magistrate under the Industrial Arbitration Act, 1940;

“District Court” means the District Court of New South Wales in its criminal and special jurisdiction, and includes a Judge of that Court;

25 “Judge” means a Judge of the Supreme Court, Court of Criminal Appeal or District Court;

“justice” means a justice of the peace, but does not include a police officer, a magistrate or a Judge;

“lawyer” means a barrister or solicitor of the Supreme Court;

30 “magistrate” means a stipendiary magistrate, a licensing magistrate under the Liquor Act, 1912, a special magistrate under the Child Welfare Act, 1939, or an industrial magistrate under the Industrial Arbitration Act, 1940;

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“offence” includes an alleged offence;

“police officer” means any member of the Police Force;

“regulations” means regulations made under this Act;

5 “sentence of imprisonment” includes a sentence of penal servitude;

“Supreme Court” means the Supreme Court of New South Wales, and includes a Judge of that Court.

(2) A reference in this Act to an accused person, or a person accused of an offence, includes a reference to—

- 10 (a) a person charged with, convicted of or found guilty of an offence;
- (b) a person whose conviction for an offence is stayed;
- (c) a person in respect of whom an appeal (including an appeal to the High Court) relating to an offence is pending; and
- 15 (d) a person in respect of whom a new trial has been ordered to be held for an offence.

(3) A reference in this Act to entering into a bail condition is a reference, if the condition is imposed under—

- 20 (a) section 36 (2) (a), (c) or (d)—to entering into the agreement or agreements;
- (b) section 36 (2) (b)—to making and signing the acknowledgment;
- (c) section 36 (2) (e) or (f)—to entering into the agreement or agreements and depositing the security; or
- 25 (d) section 36 (2) (g) or (h)—to entering into the agreement or agreements and depositing the amount or amounts of money,

in accordance with the condition.

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(4) A reference in this Act to an offence punishable summarily includes a reference to an indictable offence that is punishable summarily, whether with or without the consent of the accused person, and whether or not it is in fact dealt with summarily.

(5) A reference (however expressed) in this Act (other than section 32) to the grant of bail includes a reference to the continuation of bail under section 43.

(6) A reference in this Act to a prison includes, in the case of a child or young person (within the meaning of the Child Welfare Act, 1939), a reference to a shelter or institution (within the meaning of that Act).

5. This Act applies to a person whether or not he has attained the age of 18 years. Application  
of Act.

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PART II.

GENERAL PROVISIONS RESPECTING BAIL.

DIVISION 1.—*Bail generally.*

6. Bail may be granted in accordance with this Act to an accused person in respect of any one or more of the following periods (so far as they relate to the offence of which the person is accused) :— Grant of  
bail for  
certain  
periods.

- (a) the period between his being charged with the offence and his first appearance before a court in or in connection with proceedings for the offence;

*Bail.*

- (b) the period between committal for trial or sentence and his being brought before the Supreme Court or District Court consequent on the committal;
- 5 (c) the period of any adjournment or adjournments, including—
- (i) any adjournment or adjournments during the course of a trial; and
- (ii) any period deemed by section 16 to be the period of an adjournment;
- 10 (d) the period of a stay of execution of a conviction;
- (e) the period between the lodging of an appeal and its determination, being an appeal against a conviction or order or against the severity of his sentence;
- 15 (f) the period between his entering into a recognizance to prosecute proceedings in respect of a stated case and—
- (i) his appearance to abide the decision in those proceedings; or
- (ii) his appearance before the Judge, magistrate or justice to whom the matter is remitted;
- 20 (g) the period between the determination of an appeal and—
- (i) his appearance before a court to abide the decision on the appeal; or
- (ii) the commencement of a new trial ordered on the appeal; and
- 25 (h) any other period prescribed by the regulations.

## 7. (1) When—

- (a) bail is granted to an accused person in respect of an offence;
- (b) he enters into the bail undertaking; and
- 30 (c) if a bail condition or bail conditions are imposed, it or they are entered into,

Rights  
following  
grant of  
bail.

*Bail.*

he is, subject to this Act, entitled to be released (if in custody) and to remain at liberty in respect of the offence, until he is required to appear before a court in accordance with his undertaking.

(2) Nothing in this section applies to an accused person while he is in custody also for some other offence or reason, in respect of which he is not entitled to be at liberty, whether under this Act or otherwise.

*DIVISION 2.—Right to release for certain offences.*

8. (1) This section applies to—

10 (a) all offences not punishable by a sentence of imprisonment (except in default of payment of a fine); and

Right to  
release  
on bail  
for minor  
offences.

(b) all offences punishable summarily that are of a class or description prescribed by the regulations for the purposes of this section,

15 except offences against section 51.

(2) A person accused of an offence to which this section applies—

(a) is entitled to be granted bail in accordance with this Act unless—

20 (i) the person has previously failed to comply with a bail undertaking given or bail condition imposed in respect of the offence;

25 (ii) the person is, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection;

(iii) the person stands convicted of the offence or his conviction for the offence is stayed; or

30 (iv) the requirement for bail is dispensed with, as referred to in section 10; and

(b) is entitled to be so granted bail either—

(i) unconditionally; or



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*Bail.*


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- (ii) subject to such bail condition or bail conditions imposed on the grant of bail to him as, in the opinion of the authorised officer or court, is or are reasonably and readily able to be entered into, to the intent that he shall be, subject to section 7, released (if in custody) as soon as possible after he gives the bail undertaking.

(3) Subject to subsection (4), a person is entitled under this section to be granted bail in respect of an offence to which this section applies, notwithstanding that he is in custody also for some other offence or reason, in respect of which he is not entitled to be granted bail.

(4) A person is not entitled under this section to be granted bail in respect of an offence to which this section applies, if—

- (a) he is in custody serving a sentence of imprisonment in connection with some other offence; and
- (b) the authorised officer or court is satisfied that the person is likely to remain in custody in connection with that other offence for a longer period than that for which bail in connection with the firstmentioned offence would be granted.

*DIVISION 3.—Presumption in favour of bail for certain offences.*

9. (1) This section applies to all offences, except—
- (a) offences referred to in section 8 (1);
- (b) offences against section 51; and
- (c) offences under section 95, 96, 97 or 98 of the Crimes Act, 1900.

Presump-  
tion in  
favour of  
grant of  
bail for  
certain  
other  
offences.

(2) A person accused of an offence to which this section applies is entitled to be granted bail in accordance with this Act unless—

- (a) the authorised officer or court is satisfied that he or it is, pursuant to a consideration of the matters referred to in section 32, justified in refusing bail;

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**Bail.**

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- (b) the person stands convicted of the offence or his conviction for the offence is stayed; or
- (c) the requirement for bail is dispensed with, as referred to in section 10.

5           (3) Subject to subsection (4), a person is entitled under this section to be granted bail in respect of an offence to which this section applies, notwithstanding that he is in custody also for some other offence or reason, in respect of which he is not entitled to be granted bail.

10           (4) A person is not entitled under this section to be granted bail in respect of an offence to which this section applies, if—

- (a) he is in custody serving a sentence of imprisonment in connection with some other offence; and
- 15           (b) the authorised officer or court is satisfied that the person is likely to remain in custody in connection with that other offence for a longer period than that for which bail in connection with the firstmentioned offence would be granted.

20                           DIVISION 4.—*Dispensing with bail.*

10. (1) A court that may grant bail to an accused person may instead dispense with the requirement for bail. Dispensing with bail.

(2) Where, during an appearance by an accused person before a court, no specific order or direction is made by the court  
25 in respect of bail, the court shall be deemed to have dispensed with the requirement for bail.

11. (1) While the requirement for bail is dispensed with under this Act in respect of a person accused of an offence, he is entitled to be and to remain at liberty in respect of the offence  
30 until he is required to appear before a court in respect of the offence. Effect of dispensing with bail.

*Bail.*

(2) Nothing in this section applies to an accused person while he is in custody also for some other offence or reason, in respect of which he is not entitled to be at liberty, whether under this Act or otherwise.

5 **12.** For the purposes of Part VI, where a court dispenses with, or is deemed to have dispensed with, the requirement for bail, the court shall be deemed to have made a decision to dispense with the requirement for bail. Decision to dispense with bail.

*DIVISION 5.—Miscellaneous provisions.*

10 **13.** An accused person not entitled under section 8 or 9 to be granted bail may nevertheless be granted bail. Eligibility for bail despite no entitlement.

**14.** A power conferred by this Act to grant bail shall, subject to this Act, be deemed to include a power to refuse bail, but the power to refuse bail may only be exercised in conformity with this Power to refuse bail.  
15 Act.

**15.** (1) An accused person may be granted or refused bail in accordance with this Act, notwithstanding that he is not in custody. Grant of bail when not in custody.

(2) Nothing in this Act requires the grant of bail to an 20 accused person who is not in custody.

**16.** For the purposes of section 6 (c) (ii), each of the following periods shall be deemed to be the period of an adjournment :— Extension of meaning of adjournment in sec. 6.

25 (a) the period during which a defendant is excused, pursuant to section 41 (1B) of the Justices Act, 1902, from attendance during the taking of any evidence;

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*Bail.*

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- 5 (b) the period between the making of an order under section 51A (1) (d) (i) of the Justices Act, 1902, and the continuation of the proceedings (as referred to in section 51A (3) of that Act) consequent on the making of the order;
  - (c) the period between the apprehension of an accused person under a bench warrant (as referred to in section 153A of the Justices Act, 1902) and his next appearance in the court out of which the bench warrant issued;
  - 10 (d) the period between the making of an order under section 87 (2) (a) of the Child Welfare Act, 1939, and the bringing of the offender before the children's court consequent on the making of the order;
  - 15 (e) the period between the making of an order under section 365 of the Crimes Act, 1900, for a separate trial, or for the postponement of a trial, and the commencement of the separate or postponed trial;
  - 20 (f) the period between the bringing up by a writ of habeas corpus of a person committed to prison by virtue of any summary conviction of a justice or justices or a magistrate and the final decision of the case, where the Supreme Court postpones the final decision of the case; and
  - 25 (g) the period between the making of an order under section 8A (1) of the Criminal Appeal Act, 1912, and the continuation of the proceedings (as referred to in section 8A (2) of that Act) consequent on the making of the order.
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*Bail.*

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PART III.

POLICE BAIL.

17. (1) A police officer may grant bail in accordance with this Act to an accused person who is present at a police station if the officer is— Authority for police to grant bail.

- (a) of or above the rank of sergeant and present at the police station; or
- (b) for the time being in charge of the police station.

(2) A police officer may not grant bail to a person accused of an offence if—

- (a) a determination concerning bail has been made by a court under this Act; or
- (b) the requirement for bail has been dispensed with under this Act,

15 in respect of the offence.

18. (1) Where a person is charged by a police officer with an offence and the person is in custody, the proper officer shall, as soon as reasonably practicable— Determination as to bail to be made after charge laid.

20 (a) give the accused person such information in writing respecting his entitlement to or eligibility for bail as is prescribed by the regulations; and

(b) if the proper officer is—

25 (i) authorised to grant bail—determine whether or not bail should be granted to the person or bring him or cause him to be brought before a court; or

(ii) not authorised to grant bail—bring the person before a court or an authorised officer.

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*Bail.*

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(2) The authorised officer before whom a person is brought pursuant to subsection (1) (b) (ii) shall, as soon as reasonably practicable, determine whether or not bail should be granted to the person or bring him or cause him to be brought before a court.

(3) In this section—

(a) a reference to the proper officer is a reference to—

(i) subject to subparagraph (ii)—the police officer who laid the charge against the accused person; or

(ii) where it is not reasonably practicable for the police officer referred to in subparagraph (i) to perform the duties prescribed by subsection (1)—the police officer for the time being in charge of the police station at which the accused person is in custody or, if he is not in custody at a police station, a police officer who has custody of him; and

(b) a reference to bringing a person before a court is a reference to bringing the person before a court for the purpose of having the court exercise its powers in relation to bail or for the purpose of his being dealt with otherwise according to law.

19. (1) Where an authorised officer makes a determination in relation to bail, he shall forthwith—

Procedure following determination as to bail.

(a) inform the accused person, or cause him to be informed, that he may communicate with a lawyer or other person of his choice in connection with bail; and

(b) subject to the regulations, provide the accused person, or cause him to be provided, if he so requests, with such facilities as are reasonable in the circumstances to enable him to make such a communication.

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(2) An authorised officer may refrain from complying with subsection (1) if he believes on reasonable grounds that it is necessary to do so in order to prevent—

- (a) the escape of an accomplice of the accused person; or
- 5 (b) the loss, destruction or fabrication of evidence relating to any offence.

**20.** Where an accused person is refused bail by an authorised officer or is not released on bail granted by an authorised officer—

Procedure where no release on bail.

- 10 (a) the police officer for the time being in charge of the police station at which the person is in custody; or
- (b) if he is not in custody at a police station, a police officer who has custody of him,

shall, as soon as practicable, bring him or cause him to be brought before a court for the purpose of having the court exercise its  
15 powers in relation to bail or for the purpose of his being dealt with otherwise according to law.

**21.** Where an accused person in police custody is to be brought, for the first time in relation to the offence, before a court more than 4 hours after he came into custody—

Facilities to be provided.

- 20 (a) the police officer for the time being in charge of the police station at which the person is in custody; or
- (b) if he is not in custody at a police station, a police officer who has custody of him,

shall, if it is reasonably practicable to do so, cause him to be  
25 provided with and allow him to use the facilities prescribed by the regulations for the purposes of this section.

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*Bail.*

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**PART IV.**

**COURT BAIL.**

**DIVISION 1.—*Bail applications.***

**22.** (1) There is no limit on the number of applications in relation to bail that may be made to a court by a person accused of an offence. General provisions as to court bail.

(2) All applications to a court in relation to bail shall be dealt with as soon as reasonably practicable.

(3) The regulations may make provision for or with respect to the manner of making applications to courts in relation to bail.

(4) Notwithstanding subsections (1) and (2), a court may refuse to entertain an application in relation to bail if it is satisfied that the application is frivolous or vexatious.

**DIVISION 2.—*Magistrates and justices.***

**23.** A magistrate or justice may at any time (subject to sections 24 and 29)— Power of magistrates and justices to grant bail.

(a) grant bail to a person brought or appearing before him accused of an offence; or

(b) except as prescribed by the regulations, grant bail to a person not brought or appearing before him, but being an appellant under Division 1 or 4 of Part V of the Justices Act, 1902.

**24.** (1) Bail may (subject to this section and sections 42 and 50) not be granted to a person under section 23 by a magistrate or justice after the person has appeared before the District Court, Supreme Court or Court of Criminal Appeal— Limitations on power of magistrates and justices.

(a) following his committal for trial or sentence;



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*Bail.*

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- (b) on an appeal against a conviction or order or against the severity of his sentence;
- (c) on a case signed and stated under Division 1 of Part V of the Justices Act, 1902; or
- 5 (d) following his being brought up by a writ of habeas corpus, as referred to in section 16 (f),

in connection with the offence.

(2) Where proceedings against a person accused of an offence are continued before a magistrate or justice pursuant to  
10 section 51A (3) of the Justices Act, 1902, the magistrate or justice has such powers in relation to bail as he would have had if the person had not previously appeared before the District Court or Supreme Court, as the case may require, in connection with the offence.

15 (3) Where proceedings against a person accused of an offence are continued before a magistrate or justice pursuant to section 8A (2) of the Criminal Appeal Act, 1912, the magistrate or justice has such powers in relation to bail as he would have had if the person had not previously appeared before the Court of  
20 Criminal Appeal or before the District Court or Supreme Court, as the case may require, in connection with the offence.

(4) Subsection (1) does not prevent the grant of bail to a person by a magistrate or justice where the person is apprehended under a bench warrant (as referred to in section 153A of the  
25 Justices Act, 1902) notwithstanding that the person has appeared before the District Court or Supreme Court.

(5) Subsection (1) does not prevent the grant of bail to an accused person by a magistrate or justice where the person is brought before a children's court consequent on the making of  
30 an order under section 87 (2) (a) of the Child Welfare Act, 1939, notwithstanding that the person has appeared before the District Court or Supreme Court.

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*Bail.*

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**25.** (1) Where an accused person is refused bail in respect of an offence —

Limitation  
on length  
of adjourn-  
ments by  
magistrates  
and justices  
where bail  
refused.

(a) an adjournment of the hearing by —

(i) a magistrate; or

5 (ii) a justice who is a clerk of petty sessions,  
shall be for a period not exceeding 8 clear days except  
with the consent of the person;

10 (b) a first adjournment of the hearing by a justice who is  
not a clerk of petty sessions shall be for a period not  
exceeding 3 clear days; and

(c) a second or subsequent adjournment of the hearing by  
a justice who is not a clerk of petty sessions —

(i) shall be for a period not exceeding 48 hours; and

15 (ii) shall be to a court constituted by a magistrate,  
if a magistrate is reasonably available to deal  
with the case.

(2) Subsection (1) does not apply to an adjournment of  
the hearing in connection with an offence if —

20 (a) the accused person is in custody in connection with some  
other offence;

(b) the magistrate or justice is satisfied that there are reason-  
able grounds for a longer period of adjournment; and

25 (c) the accused person would be in custody in connection  
with the other offence for the balance of the longer  
period.

(3) The consent of the accused person shall not be sought  
or given for the purposes of subsection (1) (a) unless the magis-  
trate or justice first advises him whether or not bail will be granted  
to him and, if so, on what conditions (if any) it will be granted.

*Bail.*

DIVISION 3.—*District Court.*

**26.** (1) The District Court may at any time (subject to sections 27, 42 and 50) grant bail to any person accused of an offence if, in connection with the offence—

Power of District Court to grant bail.

- 5 (a) he is committed for trial or sentence in the District Court;
- (b) he is committed for trial or sentence in the Supreme Court and he is in custody at or in a place to which subsection (2) applies;
- 10 (c) an appeal against a conviction or order or against the severity of his sentence is pending in the District Court;
- (d) an appeal against a conviction or order or against the severity of his sentence is pending in the Supreme Court or Court of Criminal Appeal and he is in custody at or in a place to which subsection (2) applies;
- 15 (e) a new trial has been ordered to be held in the District Court;
- (f) the District Court has made an order under section 51A (1) (d) (i) of the Justices Act, 1902, for the continuation of proceedings before a magistrate or justice and the accused person is before the District Court; and
- 20 (g) the District Court has made an order under section 87 (2) (a) of the Child Welfare Act, 1939, and he has not been brought before the children's court consequent on the making of the order.
- 25

(2) For the purposes of subsection (1), this subsection applies to a place if it is not a place prescribed by the regulations for the purposes of this section.

30 **27.** (1) Bail may (subject to this section) not be granted to a person under section 26 by the District Court after the person has appeared before the Supreme Court or Court of Criminal Appeal—

Limitations on power of District Court.

- 35 (a) following his committal for trial or sentence in the Supreme Court;

*Bail.*

- (b) on an appeal against a conviction or order or against the severity of his sentence; or
- (c) following his being brought up by a writ of habeas corpus, as referred to in section 16 (f),

5 in connection with the offence.

(2) Subsection (1) does not prevent the grant of bail to a person by the District Court where a new trial has been ordered to be held in the District Court, notwithstanding that the person has appeared before the Court of Criminal Appeal.

10 DIVISION 4.—*Supreme Court.*

28. The Supreme Court may grant bail in accordance with this Act to any person accused of any offence, whether or not he has appeared before the Supreme Court in connection with the offence.

Power of Supreme Court to grant bail.

15 29. Where proceedings for an offence are pending under the Supreme Court (Summary Jurisdiction) Act, 1967, bail may only be granted in relation to the offence by the Supreme Court.

Supreme Court (Summary Jurisdiction) Act, 1967.

DIVISION 5.—*Court of Criminal Appeal.*

20 30. The Court of Criminal Appeal may grant bail in accordance with this Act to any person accused of an offence if, in connection with the offence—

Power of Court of Criminal Appeal to grant bail.

- (a) an appeal is pending in the Court;
- (d) the Court has directed a stay of execution of a conviction has not commenced;

25 (c) the Court has made an order under section 8A (1) of the Criminal Appeal Act, 1912, and the person is before the Court;

(b) the Court has ordered a new trial and the new trial and the stay is in force; or

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*Bail.*

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(e) an appeal from the Court is pending in the High Court.

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PART V.

PROVISIONS APPLYING TO BOTH POLICE AND COURT BAIL.

DIVISION 1.—*Criteria to be considered in bail applications.*

**5 31.** This Division does not apply to an accused person in **Application** relation to an offence, if he is entitled to be granted bail under **of Division.** section 8 in respect of the offence.

**10 32.** (1) In making a determination as to the grant of bail to **Criteria** an accused person, an authorised officer or court shall take into **to be con-** consideration the following matters (so far as they can reasonably **sidered** be ascertained), and the following matters only :— **in bail** **applica-** **tions.**

(a) the probability of whether or not the person will appear in court in respect of the offence for which bail is being considered, having regard only to —

- 15 (i) the person's background and community ties, as indicated by the history and details of his residence, employment and family situations and his prior criminal record (if known);
- 20 (ii) any previous failure to appear in court pursuant to a bail undertaking or pursuant to a recognizance of bail entered into before the commencement of this section;
- 25 (iii) the circumstances of the offence (including its nature and seriousness), the strength of the evidence against the person and the severity of the penalty or probable penalty;

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*Bail.*

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- (iv) any specific evidence indicating whether or not it is probable that the person will appear in court; and
- 5 (v) the rating obtained in relation to the person in the test referred to in section 33;
- (b) the interests of the person, having regard only to—
- (i) the period that the person may be obliged to spend in custody if bail is refused and the conditions under which he would be held in custody;
- 10 (ii) the needs of the person to be free to prepare for his appearance in court or to obtain legal advice or both;
- (iii) the needs of the person to be free for any lawful purpose not mentioned in subparagraph (ii); and
- 15 (iv) whether or not the person is, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection; and
- 20 (c) the protection and welfare of the community, having regard only to—
- (i) whether or not the person has failed, or has been arrested for an anticipated failure, to observe a reasonable bail condition previously imposed in respect of the offence;
- 25 (ii) the likelihood of the person interfering with evidence, witnesses or jurors; and

*Bail.*

(iii) the likelihood that the person will or will not commit an offence while at liberty on bail,

but the authorised officer or court may only have regard to the likelihood that the person will commit such an offence if the  
5 officer or court is authorised to do so under subsection (2).

(2) The authorised officer or court may, for the purposes of subsection (1) (c) (iii), have regard to the likelihood that the person will commit an offence while at liberty on bail if the officer or court is—

- 10 (a) satisfied that the person is likely to commit it;
- (b) satisfied that it is likely to involve violence or otherwise to be serious by reason of its likely consequences; and
- (c) satisfied that the likelihood that the person will commit  
15 it, together with the likely consequences, outweighs the person's general right to be at liberty.

(3) For the purposes of this section, the authorised officer or court may take into account any evidence or information which the officer or court considers credible or trustworthy in the circumstances.

20 **33.** The regulations may make provision for or with respect **Bail** to a test to be carried out in relation to an accused person for **test.** the purpose of obtaining a rating as an indication of his background and community ties.

*DIVISION 2.—Bail undertakings.*

25 **34.** (1) A person shall not be released on bail unless he undertakes, in writing, 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 him as prescribed by the regulations. **General under-taking to appear.**

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*Bail.*

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(2) A bail undertaking may be given in respect of more than one offence.

(3) A bail undertaking may include an undertaking, if bail is continued, to appear at any time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment or otherwise.

(4) An accused person who is granted bail is under a duty to appear in person before a court in accordance with his bail undertaking.

10 **35.** A bail undertaking may be given to any authorised officer or court. Giving of  
bail under-  
takings.

DIVISION 3.—*Bail conditions.*

**36.** (1) Bail may be granted unconditionally or subject to conditions imposed by instrument in writing. Con-  
ditions of  
bail.

15 (2) One or more of the following conditions only may be imposed on the grant of bail :—

20 (a) that the accused person enter into an agreement to observe specified requirements as to his conduct while at liberty on bail, other than financial requirements (whether for the giving of security, the depositing of money, the forfeiture of money or otherwise);

25 (b) that one or more than one acceptable person (other than the accused person) acknowledge that he is acquainted with the accused person and that he regards the accused person as a responsible person who is likely to comply with his bail undertaking;

(c) that the accused person enter into an agreement, without security, to forfeit a specified amount of money if the accused person fails to comply with his bail undertaking;



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*Bail.*

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- 5 (d) that one or more than one acceptable person (other than the accused person) enter into an agreement or agreements, without security, to forfeit a specified amount or specified amounts of money if the accused person fails to comply with his bail undertaking;
- (e) that the accused person enter into an agreement, and deposit acceptable security, to forfeit a specified amount of money if the accused person fails to comply with his bail undertaking;
- 10 (f) that one or more than one acceptable person (other than the accused person) enter into an agreement or agreements, and deposit acceptable security, to forfeit a specified amount or specified amounts of money if the accused person fails to comply with his bail undertaking;
- 15 (g) that the accused person deposit with an authorised officer or court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited if the accused person fails to comply with his bail undertaking;
- 20 (h) that one or more than one acceptable person (other than the accused person) deposit with the authorised officer or court a specified amount or specified amounts of money in cash and enter into an agreement or agreements to forfeit the amount or amounts deposited if the accused person fails to comply with his bail undertaking.
- 25
- (3) The determination as to—
- 30 (a) which person or persons, or class or description of persons, are acceptable persons for the purposes of a condition referred to in subsection (2) (b), (d), (f) or (h) and the number of acceptable persons required for those purposes; or
- (b) the nature and sufficiency of security that is acceptable security for the purposes of a condition referred to in subsection (2) (e) or (f).
- 35 shall be made by—
- (c) the authorised officer or court imposing the condition; or

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*Bail.*

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(d) in the absence of a determination by the officer or court referred to in paragraph (c)—the authorised officer or court to whom the bail undertaking is given.

(4) The regulations may require an acknowledgment under this section to contain such details, to be provided by the person making the acknowledgment, as are prescribed respecting the circumstances in which he is acquainted with the accused person.

(5) An agreement or acknowledgment under this section shall be in writing.

(6) A condition, agreement or acknowledgment under this section may be entered into or made in respect of more than one offence.

**37.** (1) Bail shall be granted unconditionally unless the authorised officer or court is of the opinion that one or more conditions should be imposed for the purpose of promoting effective law enforcement and the protection and welfare of the community. Restrictions on imposing bail conditions.

(2) Conditions shall not be imposed that are any more onerous for the accused person than the nature of the offence and the circumstances of the accused person appear to the authorised officer or court to require.

(3) A condition referred to in section 36 (2) (b)–(h) shall not be imposed unless the authorised officer or court is of the opinion that any condition or combination of conditions referred to in any preceding paragraph or paragraphs of section 36 (2) is not likely to secure the purpose referred to in subsection (1) of this section.

(4) Notwithstanding subsection (3), the authorised officer or court may, at the request of the accused person, grant bail subject to any conditions referred to in section 36 (2) appropriate to secure the purpose referred to in subsection (1) of this section.

*Bail.*

38. (1) Where bail is refused by an authorised officer or court, the officer or court shall forthwith record or cause to be recorded the reasons for refusing bail. Reasons to be recorded.

5 (2) Where bail is granted conditionally, the authorised officer or court shall forthwith record or cause to be recorded the reasons for not granting bail unconditionally and (if a bail condition referred to in section 36 (2) (b)–(h) is imposed) for holding the opinion referred to in section 37 (1).

10 (3) Where the accused person requests that certain bail conditions be imposed, and other bail conditions are imposed, the authorised officer or court shall forthwith record or cause to be recorded the reasons for imposing the other conditions.

15 (4) The regulations may make provision for or with respect to the manner of recording reasons under this section and the manner of retaining and otherwise dealing with records made under this section.

39. Except as prescribed by the regulations, where an authorised officer or court imposes a bail condition under section 36 that requires— Entry into of agreement, etc.

- 20 (a) the entering into of an agreement—the agreement may be entered into with;
- (b) the making of an acknowledgment—the acknowledgment may be made to; or
- 25 (c) the depositing of security or an amount of money—the deposit may be made with,

the authorised officer or court to whom the bail undertaking is given.

40. (1) A receipt shall be given for any money or security deposited pursuant to a bail condition. Provisions respecting money or security.

30 (2) Any money or security deposited pursuant to a bail condition shall, subject to the provisions of any other Act, be dealt with as prescribed by the regulations.

*Bail.*

**41.** (1) Where, for the purposes of a bail condition, a person deposits by way of security a savings bank passbook or other document for operating a bank or other account—

Substitution of cash for security.

- 5 (a) he is entitled thereafter to deposit in cash the amount for which the book or other document was deposited as security; and
- (b) he is, upon depositing that amount in cash, entitled to the return of the book or other document.

10 (2) Cash may be deposited for the purposes of subsection (1)—

- (a) with an authorised officer at the police station at which the book or other document was deposited or is currently held; or
- 15 (b) with the court or an officer of the court at which the book or other document was deposited or is currently held,

or as prescribed by the regulations.

(3) The officer or court with whom cash is deposited under this section shall alter the bail conditions, or cause them to be altered, accordingly.

20

**42.** (1) Where a person other than the accused person has entered into an agreement under section 36 (2) (d), (f) or (h), he may at any time (subject to subsection (5)) apply—

Discharge of liability of other persons.

- (a) where the bail was granted by a court—
- 25 (i) to the court which granted the bail; or
- (ii) to the court of appearance; or
- (b) where the bail was granted by an authorised officer—to the court of appearance,

to discharge the applicant from his liability.

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*Bail.*

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(2) On an application being made under subsection (1), a justice shall, if the accused person is not then in custody or before the court—

- 5 (a) issue a warrant to apprehend the accused person and bring him before the court; or
- (b) issue a summons for his appearance before the court.

(3) On the appearance of the accused person before the court, the court shall, unless satisfied that it would be unjust to do so, direct that the applicant be discharged from his liability, 10 and the applicant is, upon the direction being given, thereby discharged accordingly.

(4) If the court discharges the applicant from his liability, the court may impose further conditions on the grant of bail, and may by warrant commit the accused person to prison until he 15 enters into the further conditions.

(5) A person may not make an application under this section if the accused person has failed to comply with his bail undertaking or an agreement entered into by the accused person pursuant to a bail condition.

20 (6) In this section, “court of appearance” means the court before which the accused person is required to appear in accordance with his bail undertaking.

DIVISION 4.—*Continuation of bail.*

25 **43.** (1) If a bail undertaking includes an undertaking to appear at any time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment or otherwise, a court may accordingly continue bail already granted in respect of the offence, whether or not the accused person then appears in person. **Continuation of bail.**

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*Bail.*

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(2) Where bail is continued, the bail undertaking and the bail conditions continue to apply, except to the extent that a condition or agreement thereunder otherwise provides or the court otherwise orders.

5

PART VI.

REVIEW OF BAIL DECISIONS.

**44.** (1) Except as prescribed by the regulations and subject to this Part, a justice may review any decision made by himself in relation to bail.

Power of justices, magistrates and District Court to review.

10 (2) Except as prescribed by the regulations and subject to this Part, a magistrate may review any decision made by any authorised officer, magistrate (including himself) or justice in relation to bail.

15 (3) Except as prescribed by the regulations and subject to this Part, the District Court may review any decision made by the District Court (however constituted) in relation to bail.

**45.** (1) Subject to this Part, the Supreme Court may review any decision of any authorised officer, magistrate or justice or of the District Court or Supreme Court (however constituted) in relation to bail.

Power of Supreme Court to review.

(2) The power to review a decision pursuant to this section may be exercised whether or not any power to do so pursuant to section 44 has been, or has been sought to be, exercised.

25 (3) Notwithstanding subsection (1), a Judge of the Supreme Court sitting alone may not, under that subsection, review a decision of the Court of Criminal Appeal, unless the rules made under the Supreme Court Act, 1970, so provide.

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*Bail.*

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46. (1) Subject to this Part, the Court of Criminal Appeal may review any decision made by the Court (however constituted) in relation to bail.

Power of Court of Criminal Appeal to review.

(2) Notwithstanding subsection (1), a Judge of the Court of Criminal Appeal sitting alone may not under that subsection review a decision of the Court constituted by 3 or more Judges, unless the rules made under the Supreme Court Act, 1970, so provide.

47. A court may not pursuant to this Part review a decision in circumstances where, had the decision not been made, the court would be prohibited from making a decision in relation to the grant of bail.

General limitation on power to review.

48. (1) The power to review a decision pursuant to this Part—

Provisions respecting review of bail decisions.

15 (a) may only be exercised at the request of the accused person, the informant, being a police officer, or the Attorney-General; and

(b) includes the power to affirm or vary the decision or to substitute another decision.

20 (2) A decision as varied or substituted must be in conformity with this Act.

(3) The review of a decision shall be by way of rehearing, and evidence or information in addition to, or in substitution for, the evidence or information given or obtained on the making of the decision may be given or obtained on the review.

25 (4) Where, on a review of a decision pursuant to this Part, a court varies the decision, or substitutes another decision, section 38 applies to and in relation to the decision as varied or substituted as if originally made by the court.

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*Bail.*

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(5) Where, on a review of a decision pursuant to this Part, bail for an accused person is revoked, a justice may by warrant commit the person to prison.

(6) Where, on a review of a decision pursuant to this Part—

(a) bail is granted unconditionally and no bail undertaking has been given by the accused person; or

(b) a bail condition is imposed,

a justice may by warrant commit the person to prison until he gives the undertaking or enters into the condition, as the case may be.

(7) A court may refuse to entertain a request to review a decision pursuant to this Part if the court is satisfied that the request is frivolous or vexatious.

(8) The regulations may make provision for or with respect to—

(a) the manner of making a request to review a decision pursuant to this Part;

(b) the giving or sending to persons of notices relating to the proposed exercise of the power to review a decision pursuant to this Part; and

(c) prescribing the circumstances in which such a power may be exercised in the absence of the accused person or his representative as if he or his representative were present.

49. Nothing in this Part limits the rights of an accused person in custody to apply for bail, and he may so apply for bail notwithstanding that the power to review a decision already made in relation to bail to him has not been, or has not been sought to be, exercised pursuant to this Part. Applications for bail not limited by this Part.



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*Bail.*

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## PART VII.

## NON-COMPLIANCE WITH UNDERTAKINGS AND CONDITIONS.

50. (1) Where a police officer believes on reasonable grounds that a person who has been released on bail has, while at liberty on bail, failed to comply with, or is, while at liberty on bail, about to fail to comply with, his bail undertaking or an agreement entered into by him pursuant to a bail condition—
- Arrest for absconding or breaching condition.
- (a) a police officer may arrest the person without warrant and take him as soon as practicable before a court; or
- 10 (b) a justice may—
- (i) issue a warrant to apprehend the person and bring him before a court; or
- (ii) issue a summons for his appearance before a court.
- 15 (2) The court before which the person is brought or appears may—
- (a) release him on his original bail; or
- (b) revoke his original bail and otherwise deal with him according to law.
- 20 (3) If the court revokes the person's original bail, the court or any other court before which he is brought or appears—
- (a) may grant bail to him in accordance with this Act; or
- (b) may (notwithstanding anything in this Act) refuse to grant bail to him and by warrant commit him to prison.
- 25 (4) Nothing in this section limits the rights of an accused person in custody to apply for bail.

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*Bail.*

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**51.** (1) A person who fails without reasonable excuse (proof of which lies upon him) to appear before a court in accordance with his bail undertaking is, on summary conviction, guilty of an offence against this section. <sup>Offence of failing to appear.</sup>

5 (2) A person convicted of an offence against this section is liable to the same penalties as are by law provided for the offence in respect of which he failed to appear, but no sentence of imprisonment imposed pursuant to this section shall exceed 3 years and no fine so imposed shall exceed \$3,000.

10 (3) Proceedings for an offence against this section shall be dealt with—

(a) by the court dealing with the offence in respect of which he failed to appear, constituted in the same way;

15 (b) where the court referred to in paragraph (a) is the Court of Criminal Appeal, Supreme Court or District Court—by that Court constituted in any other way; or

(c) in any case—by a court of petty sessions constituted by any stipendiary magistrate sitting alone.

(4) An offence against this section may not be dealt with 20 by one or more justices.

(5) An offence against this section shall be disposed of—

(a) if dealt with by a court of petty sessions—in accordance with the Justices Act, 1902;

(b) if dealt with by the District Court—in accordance with—

25 (i) such provisions of the regulations under section 171 of the District Court Act, 1973, as are expressed to apply in relation to offences against this section; and

30 (ii) subject to subparagraph (i), the Supreme Court (Summary Jurisdiction) Act, 1967, as if references in that Act to the Supreme Court were references to the District Court, references to rules were references to regulations under section 171 of the District Court Act, 1973, and references to the Court of Appeal were references 35 to the Court of Criminal Appeal;

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*Bail.*

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- (c) if dealt with by the Supreme Court—in accordance with the Supreme Court (Summary Jurisdiction) Act, 1967; or
- 5 (d) if dealt with by the Court of Criminal Appeal—in accordance with—
- (i) such rules made under the Supreme Court Act, 1970, as are expressed to apply in relation to offences against this section; and
- 10 (ii) subject to subparagraph (i), the Supreme Court (Summary Jurisdiction) Act, 1967, as if references in that Act to the Supreme Court or a Judge thereof were references to the Court of Criminal Appeal and as if sections 3 (2) and 18–24 of that Act had not been enacted.
- 15 (6) Proceedings for an offence against this section may be commenced at any time.
- (7) A person convicted by a Judge of an offence against this section shall, for the purposes of section 5 (1) of the Criminal Appeal Act, 1912, be deemed to have been convicted of the offence
- 20 on indictment.
- (8) Notwithstanding anything in section 444 of the Crimes Act, 1900, the court imposing a sentence of imprisonment pursuant to this section may direct that the sentence and any other specified sentence or sentences of imprisonment then imposed on
- 25 the person convicted or then being served by him be served consecutively, in which case the firstmentioned sentence shall commence at the expiration of the other sentence or sentences.
- 52. Where—**
- 30 (a) a person fails to appear before a court in accordance with his bail undertaking in relation to an offence punishable summarily; and

No penalty for failure to appear if case dealt with ex parte.

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*Bail.*


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- (b) that court or another court in his absence hears and determines the case relating to the offence in respect of which the undertaking was given,

he is not thereafter liable to be prosecuted for an offence against section 51 unless the court makes an order for the payment of money (whether by way of penalty, costs, compensation or otherwise) in relation to the offence referred to in paragraph (b) and the person fails to pay the money within 7 days or such longer period as the court allows.

10 **53.** Where—

Enforcement  
of bail  
agreements.

- (a) a person accused of an offence fails to comply with his bail undertaking; and

- 15 (b) he or another person has entered into an agreement pursuant to a bail condition to forfeit an amount of money,

that amount may be recovered as a debt due to Her Majesty in a court of competent jurisdiction.

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**PART VIII.**

**MISCELLANEOUS.**

- 20 **54.** (1) The authorised officer or court to whom a bail undertaking is given by an accused person shall forthwith give or cause to be given to the accused person— **Notices.**

- (a) a copy of the undertaking or a notice setting out the terms of the undertaking;
- 25 (b) a copy of any bail conditions imposed or a notice setting out the terms of any such conditions; and

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*Bail.*

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(c) such information in writing as is prescribed by the regulations respecting the Fines and Forfeited Recognizances Act, 1954.

5 (2) The authorised officer or court to or with whom a person, other than the accused person, makes an acknowledgment, agreement or deposit of security or money pursuant to a bail condition shall forthwith give or cause to be given to that other person a copy of the condition or a notice setting out the terms of the condition.

10 (3) Where—

(a) a bail condition is altered under section 41; or

(b) a bail condition is imposed or varied on a review pursuant to Part VI of a decision to grant bail,

15 the authorised officer or court shall forthwith give or cause to be given—

(c) to the accused person—a copy of the condition or a notice setting out the terms of the condition; and

20 (d) to any other person who makes an acknowledgment or enters into an agreement, pursuant to the condition— a copy of the condition or a notice setting out the terms of the condition.

(4) The court continuing bail on an adjournment shall forthwith give or cause to be given to the accused person a notice specifying the time and place to which the proceedings are  
25 adjourned.

(5) The authorised officer or court granting or refusing bail shall forthwith give or cause to be given to the accused person such information in writing as is prescribed by the regulations respecting the review of decisions in relation to bail and the further  
30 powers of courts in relation to bail.

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*Bail.*

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**55.** Except where expressly provided by this Act, nothing in this Act affects the powers of the Supreme Court in connection with writs of habeas corpus. Writ of habeas corpus.

**56.** (1) A person who wilfully makes an acknowledgment False statements in acknowledgments.  
5 under section 36 (2) (b) knowing it to be untrue in a material particular is, on summary conviction, guilty of an offence against this section.

(2) A person convicted of an offence against this section is liable to the same penalties as are by law provided for the 10 offence in respect of which bail was sought, but no sentence of imprisonment imposed pursuant to this section shall exceed 2 years and no fine so imposed shall exceed \$2,000.

(3) Proceedings for an offence against this section shall be dealt with by any court of petty sessions constituted by a 15 stipendiary magistrate sitting alone.

**57.** (1) Before a person makes an acknowledgment under section 36 (2) (b), it is the duty of the person to whom the acknowledgment is made to warn the person that if he wilfully makes the acknowledgment knowing it to be untrue in a material 20 particular he is guilty of an offence under section 56. Person making acknowledgment under sec. 36 to be warned of penalties.

(2) Failure to give a warning in accordance with subsection (1) does not affect the operation of section 56.

**58.** (1) In this section, "agreeing party" means a person who enters (as an acceptable person) into an agreement under section 25 36. Indemnification of agreeing parties.

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*Bail.*

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(2) If a person indemnifies another person, or agrees with another person to indemnify the other person, against any forfeiture which the other person may incur as an agreeing party, he and the other person are each guilty of an offence against this section and liable—

- (a) on summary conviction to a penalty not exceeding \$2,000 or imprisonment for a term not exceeding 2 years; or
- 10 (b) on conviction on indictment to a penalty not exceeding \$3,000 or imprisonment for a term not exceeding 3 years.

(3) An offence is committed against this section—

- 15 (a) in relation to an agreement referred to in subsection (2) —whether the agreement is made before or after the person to be indemnified becomes an agreeing party and whether or not he becomes an agreeing party; and
- (b) whether the compensation is or is to be in money or in money's worth.

(4) Summary proceedings for an offence against this section shall be dealt with by a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(5) Proceedings for an offence against this section may only be instituted with the consent of the Minister.

25 **59.** Where an authorised officer or court, in making a decision in relation to bail (other than a decision in proceedings for an offence committed in connection with bail), is to be or may be satisfied as to any matter, it is sufficient if the officer or court is satisfied on the balance of probabilities. Civil standard of proof for certain purposes.

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*Bail.*

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**60.** (1) In any proceedings—**Evidence.**

5 (a) a document purporting to be or to be a copy of a bail undertaking given by an accused person, and to be certified by an appropriate officer (as referred to in subsection (2)) to be or to be a copy of the undertaking, is admissible in evidence and shall be prima facie evidence of the giving of the undertaking by the accused person and of its terms;

10 (b) a document purporting to be or to be a copy of the instrument by which a bail condition was imposed in relation to an accused person, and to be certified by an appropriate officer (as referred to in subsection (2)) to be or to be a copy of the instrument, is admissible in evidence and shall be prima facie evidence of the imposing of the condition and of its terms;

15 (c) a certificate purporting to be signed by an appropriate officer (as referred to in subsection (2)) certifying that a specified bail condition—

(i) has not been altered or varied under this Act; or

20 (ii) has been altered or varied under this Act in a specified manner and has not otherwise been altered or varied under this Act,

is admissible in evidence and shall be prima facie evidence of the matters so certified; and

25 (d) a document purporting to be or to be a copy of an acknowledgment under section 36 (2) (b), and to be certified by an appropriate officer (as referred to in subsection (2)) to be or to be a copy of the acknowledgment, is admissible in evidence and shall be  
30 prima facie evidence of the making of the acknowledgment and of its terms.

(2) For the purposes of subsection (1), an appropriate officer is an officer of the court having the custody of the bail undertaking given by the accused person.



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*Bail.*

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## (3) In any proceedings —

- 5 (a) a document purporting to be a copy of a notice referred to in section 34 (1) and to be certified by a prescribed officer to be a copy of the notice is admissible in evidence and shall be prima facie evidence of the terms of the notice;
- 10 (b) a certificate purporting to be signed by a prescribed officer certifying that a notice referred to in section 34 (1) was given or sent to the accused person in a specified manner on a specified day is admissible in evidence and shall be prima facie evidence of the matters so certified; and
- 15 (c) a certificate purporting to be signed by a Judge, magistrate, justice or clerk of petty sessions or the Clerk or Deputy Clerk of the Peace and stating that a specified person did not appear before a specified court, at a specified place, on a specified day and at a specified time or during a specified period is admissible in evidence and shall be prima facie evidence of the matters so certified.

## 20 (4) In any document—

- (a) the words “authorised officer” after a signature shall be evidence that the person whose signature it purports to be is in fact an authorised officer within the meaning of this Act; and
- 25 (b) the words “appropriate officer” or “prescribed officer” after a signature shall be evidence that the person whose signature it purports to be is in fact an appropriate officer or prescribed officer (as the case may be) as referred to in this section,

30 in connection with the matter to which the document relates.

61. A person who enters (as an acceptable person) into an agreement under section 36 does not, by virtue of his entering into that agreement, have the right to arrest the accused person. Abolition of right of surety to arrest.

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*Bail.*

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**62.** Any power or duty that would, but for this Act, exist apart from statute to grant bail to an accused person in or in connection with criminal proceedings is abolished.

Abolition  
of common  
law powers  
to grant  
bail.

**63.** For the purposes of this Act—

Perjury.

- 5 (a) a person in respect of whom a direction to prosecute for perjury is given under section 340 of the Crimes Act, 1900, shall be deemed to be charged with an offence; and
- (b) the alleged perjury shall be deemed to be an offence.

**64.** (1) Nothing in this Act affects any power or duty that a court, tribunal or person has to grant bail, or to grant relief in the nature of bail, in connection with any contempt or alleged contempt.

Contempt.

(2) Subsection (1) does not apply to a contempt or alleged contempt that constitutes an offence proceedings for which may be commenced by way of information or complaint.

(3) Any power or duty to which subsection (1) applies is additional to any power or duty that a court, tribunal or person may have under this Act in relation to any contempt or alleged contempt.

20 **65.** Subject to the regulations, the provisions of the Justices Act, 1902, apply (with any necessary adaptations) to and in relation to a warrant or summons issued or to be issued under this Act in the same way as they apply to and in relation to a warrant or summons of a corresponding kind issued or to be issued under 25 that Act.

Provisions  
as to  
warrants or  
summonses.

*Bail.*

**66.** (1) Where a police officer contravenes or fails to comply with a provision of this Act that is applicable to him, the contravention or failure is not punishable as an offence (whether under this Act or otherwise) unless a penalty is expressly provided by this Act in respect of the contravention or failure.

Contraventions of this Act by police officers.

(2) This section does not prevent a contravention of, or failure to comply with, a provision of this Act by a police officer from —

- 10 (a) being dealt with under the Ombudsman Act, 1974, or the Police Regulation (Allegations of Misconduct) Act, 1978, or by way of a departmental charge under the rules under the Police Regulation Act, 1899; or
- (b) constituting grounds for the institution of civil proceedings.

15 **67.** (1) Except where otherwise expressly provided by this Act, this Act applies in relation to the grant of bail to accused persons to the exclusion of any other law in force immediately before the date of assent to this Act so far as any other such law makes provision for or with respect to bail for accused persons.

This Act to prevail.

20 (2) Nothing in this Act shall be construed as affecting the Imperial enactment 1 William and Mary sess. 2 c. 2 (The Bill of Rights) or section 6 of the Imperial Acts Application Act, 1969, so far as it relates to that enactment.

**68.** Schedule 1 has effect.

Savings and transitional provisions.

25 **69.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

Regulations.

30 (a) facilities to be provided to enable the making of communications referred to in section 19 (1) (a);

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*Bail.*

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- (b) the release of accused persons from prison or any other place of custody consequent upon the grant of bail or upon the requirement for bail being dispensed with;
- (c) warrants and summonses issued under this Act;
- 5 (d) the fees to be demanded and taken in relation to any matter connected with this Act; and
- (e) the forms to be used for the purposes of this Act.

(2) A provision of a regulation may—

- 10 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person  
15 or body; or
- (d) impose a penalty not exceeding \$500 for any breach of the regulations,

or may do any combination of those things.

**70.** Rules (being rules not inconsistent with this Act) may  
20 be made under the Supreme Court Act, 1970, in connection with **Rules.**  
the powers, authorities, duties or functions of the Supreme Court  
and Court of Criminal Appeal in respect of bail.

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*Bail.*

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## SCHEDULE 1.

Sec. 68.

## SAVINGS AND TRANSITIONAL PROVISIONS.

## 1. In this Schedule—

“authorised” means duly authorised by a court or person;

5 “bail” means bail that was authorised or granted before the commencement of this Schedule, so far as it could not have been so authorised or granted if this Act had then been in force;

10 “law” means any law, but does not include the Justices Act, 1902, the Crimes Act, 1900, the Child Welfare Act, 1939, the Criminal Appeal Act, 1912, or the Supreme Court (Summary Jurisdiction) Act, 1967;

15 “recognizance of bail” means a recognizance that was authorised or entered into before the commencement of this Schedule, so far as it could not have been so authorised or entered into if this Act had then been in force.

2. This Act does not affect bail authorised or granted, or a recognizance of bail authorised or entered into, under a law before the commencement of this Schedule in relation to an accused person, and for the purposes of or for purposes connected with any such bail or recognizance this Act shall be  
20 deemed not to have been enacted.

3. Nothing in clause 2 prevents the making of a decision under this Act, or the exercise or performance of a power, authority, duty or function thereunder, in respect of an offence or other matter (or any proceedings in connection therewith) to or with which the bail or recognizance of bail referred  
25 to in that clause relates or is connected.

4. The regulations or the rules referred to in section 70 may make other provisions of a savings or transitional nature consequent upon the enactment of this Act in connection with any law, and those provisions may, but need not, operate by reference to any provision of this Act and shall have effect  
30 notwithstanding anything in clause 2 or 3.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978

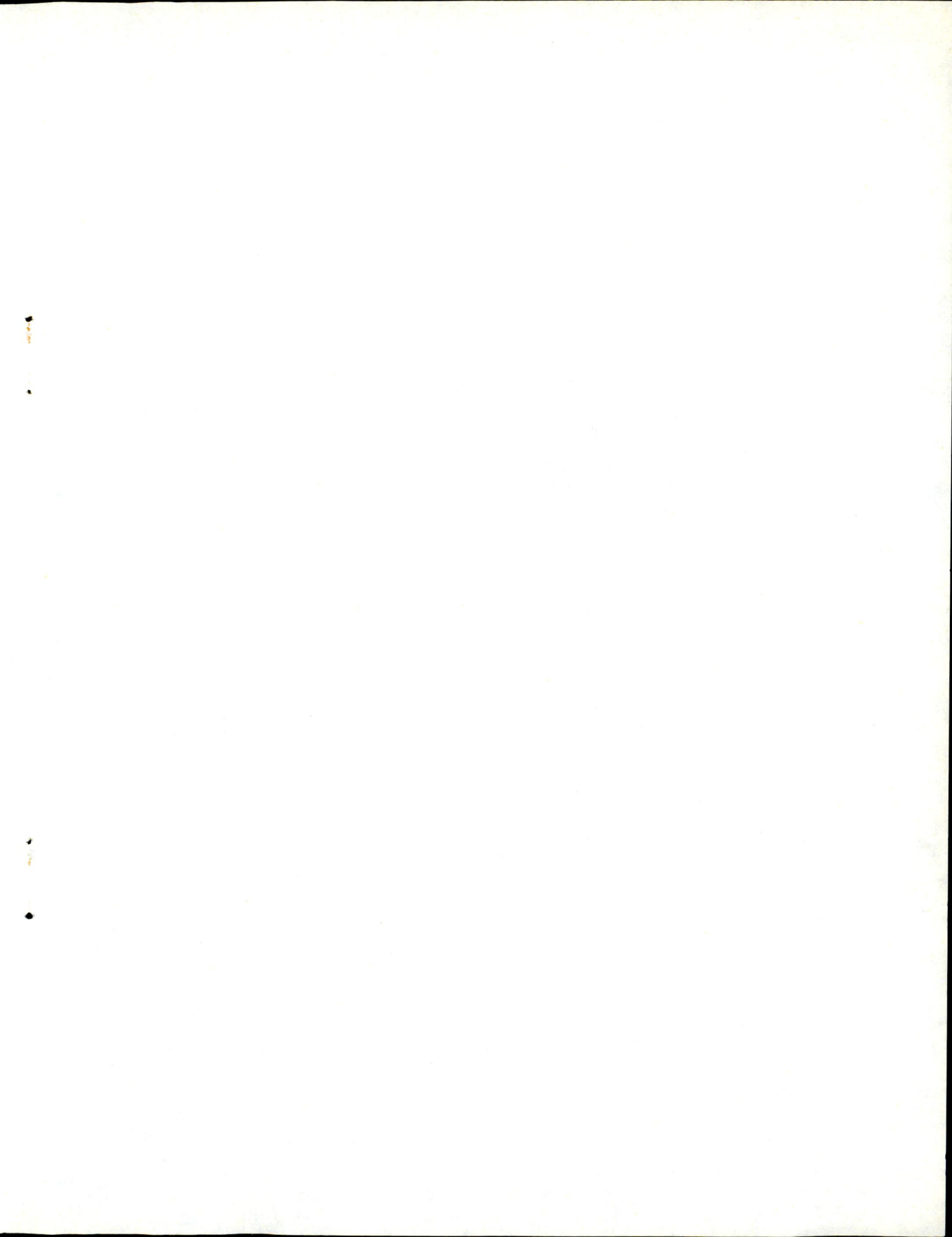
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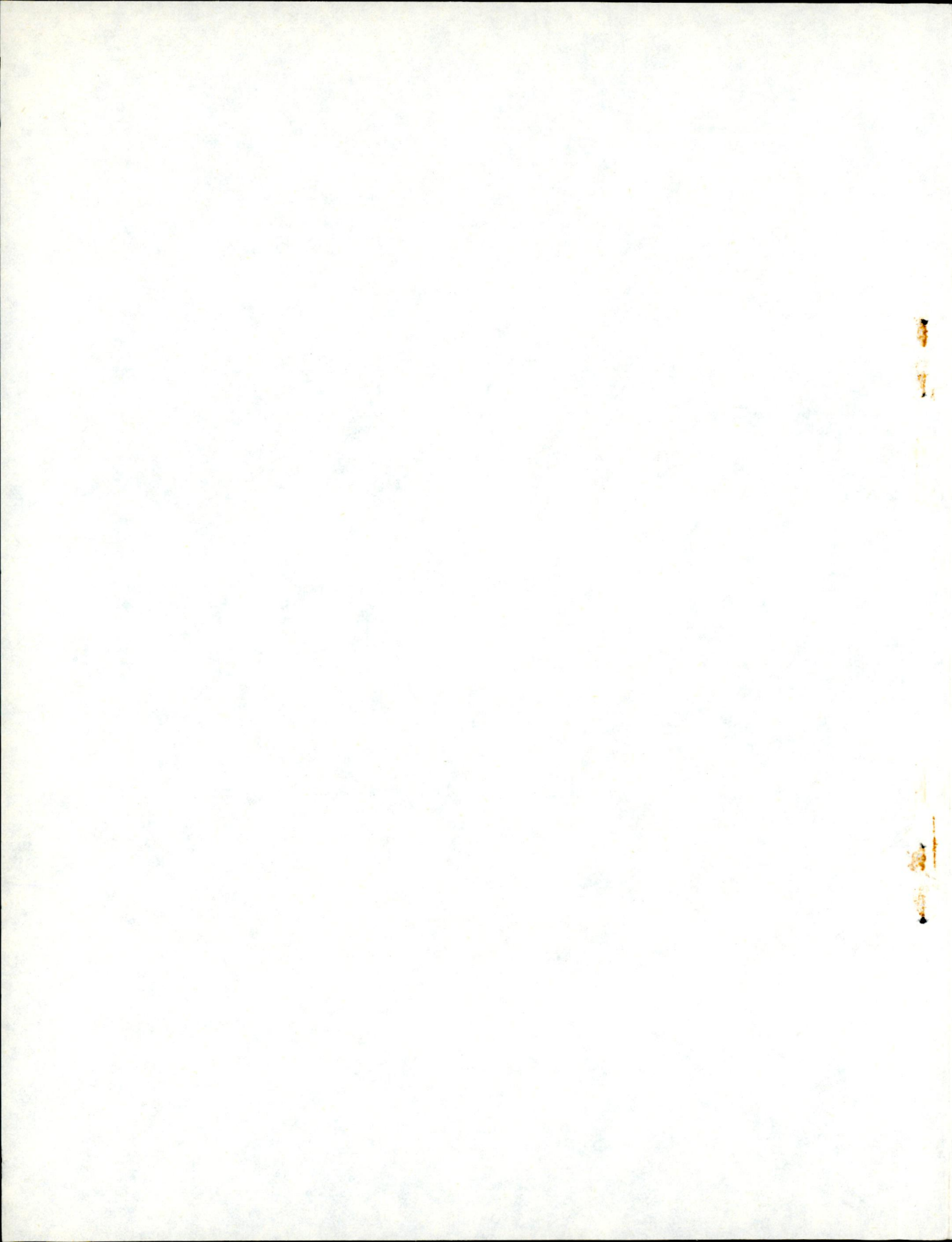
The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The goal is to ensure that the information is both reliable and up-to-date.

The third part of the document focuses on the results of the analysis. It shows that there has been a significant increase in certain areas, while other areas have remained relatively stable. These findings are crucial for understanding the overall performance and identifying areas for improvement.

Finally, the document concludes with a series of recommendations. These are based on the data and are designed to help the organization achieve its long-term goals. The author stresses the importance of consistent monitoring and reporting to ensure that these recommendations are effectively implemented.







**BAIL ACT, 1978, No. 161**

**New South Wales**



ANNO VICESIMO SEPTIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 161, 1978.**

An Act relating to bail for accused persons in or in connection with criminal proceedings. [Assented to, 29th December, 1978.]

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See also Justices (Bail) Amendment Act, 1978; Child Welfare (Bail) Amendment Act, 1978; Supreme Court (Summary Jurisdiction) Bail (Amendment) Act, 1978; Criminal Appeal (Bail) Amendment Act, 1978; Crimes (Bail) Amendment Act, 1978; Fines and Forfeited Recognizances (Bail) Amendment Act, 1978.

*Bail.*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

## PART I.

## PRELIMINARY.

- Short title.     1. This Act may be cited as the "Bail Act, 1978".
- Commence-     2. (1) This section and section 1 shall commence on the date  
ment.     of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- Arrange-     3. This Act is divided as follows :—  
ment.
- PART I.—PRELIMINARY—ss. 1-5.
- PART II.—GENERAL PROVISIONS RESPECTING BAIL—ss. 6-16.
- DIVISION 1.—*Bail generally*—ss. 6, 7.
- DIVISION 2.—*Right to release for certain offences*—s. 8.
- DIVISION 3.—*Presumption in favour of bail for certain offences*—s. 9.
- DIVISION 4.—*Dispensing with bail*—ss. 10-12.
- DIVISION 5.—*Miscellaneous provisions*—ss. 13-16.
- PART III.—POLICE BAIL—ss. 17-21.

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*Bail.*

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PART IV.—COURT BAIL—*ss.* 22–30.

DIVISION 1.—*Bail applications—s.* 22.

DIVISION 2.—*Magistrates and justices—ss.* 23–25.

DIVISION 3.—*District Court—ss.* 26, 27.

DIVISION 4.—*Supreme Court—ss.* 28, 29.

DIVISION 5.—*Court of Criminal Appeal—s.* 30.

PART V.—PROVISIONS APPLYING TO BOTH POLICE AND COURT BAIL—*ss.* 31–43.

DIVISION 1.—*Criteria to be considered in bail applications—ss.* 31–33.

DIVISION 2.—*Bail undertakings—ss.* 34, 35.

DIVISION 3.—*Bail conditions—ss.* 36–42.

DIVISION 4.—*Continuation of bail—s.* 43.

PART VI.—REVIEW OF BAIL DECISIONS—*ss.* 44–49.

PART VII.—NON-COMPLIANCE WITH UNDERTAKINGS AND CONDITIONS—*ss.* 50–53.

PART VIII.—MISCELLANEOUS—*ss.* 54–70.

SCHEDULE 1.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“appeal” includes an application for leave to appeal and a proceeding by way of appeal;

“authorised officer”, in relation to a person in custody, means a police officer who may grant bail to the person under Part III;

“bail” means authorisation to be at liberty under this Act, instead of in custody;

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*Bail.*

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“bail condition” means a condition under section 36;

“bail undertaking” means an undertaking under section 34;

“conviction” includes a finding of guilt and (without limiting the generality of the foregoing provisions of this definition) the making of an order under section 556A of the Crimes Act, 1900, or section 83 (3) of the Child Welfare Act, 1939;

“court” means—

- (a) the Supreme Court;
- (b) the Court of Criminal Appeal;
- (c) the District Court; or
- (d) a court of petty sessions,

and includes a Judge, magistrate or justice not sitting as a court;

“Court of Criminal Appeal” includes a Judge of that Court;

“court of petty sessions” includes a licensing court under the Liquor Act, 1912, a children’s court under the Child Welfare Act, 1939, and a court constituted by an industrial magistrate under the Industrial Arbitration Act, 1940;

“District Court” means the District Court of New South Wales in its criminal and special jurisdiction, and includes a Judge of that Court;

“Judge” means a Judge of the Supreme Court, Court of Criminal Appeal or District Court;

“justice” means a justice of the peace, but does not include a police officer, a magistrate or a Judge;

“lawyer” means a barrister or solicitor of the Supreme Court;

“magistrate” means a stipendiary magistrate, a licensing magistrate under the Liquor Act, 1912, a special magistrate under the Child Welfare Act, 1939, or an industrial magistrate under the Industrial Arbitration Act, 1940;

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*Bail.*

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- “offence” includes an alleged offence;
- “police officer” means any member of the Police Force;
- “regulations” means regulations made under this Act;
- “sentence of imprisonment” includes a sentence of penal servitude;
- “Supreme Court” means the Supreme Court of New South Wales, and includes a Judge of that Court.

(2) A reference in this Act to an accused person, or a person accused of an offence, includes a reference to—

- (a) a person charged with, convicted of or found guilty of an offence;
- (b) a person whose conviction for an offence is stayed;
- (c) a person in respect of whom an appeal (including an appeal to the High Court) relating to an offence is pending; and
- (d) a person in respect of whom a new trial has been ordered to be held for an offence.

(3) A reference in this Act to entering into a bail condition is a reference, if the condition is imposed under—

- (a) section 36 (2) (a), (c) or (d)—to entering into the agreement or agreements;
- (b) section 36 (2) (b)—to making and signing the acknowledgment;
- (c) section 36 (2) (e) or (f)—to entering into the agreement or agreements and depositing the security; or
- (d) section 36 (2) (g) or (h)—to entering into the agreement or agreements and depositing the amount or amounts of money,

in accordance with the condition.

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*Bail.*

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(4) A reference in this Act to an offence punishable summarily includes a reference to an indictable offence that is punishable summarily, whether with or without the consent of the accused person, and whether or not it is in fact dealt with summarily.

(5) A reference (however expressed) in this Act (other than section 32) to the grant of bail includes a reference to the continuation of bail under section 43.

(6) A reference in this Act to a prison includes, in the case of a child or young person (within the meaning of the Child Welfare Act, 1939), a reference to a shelter or institution (within the meaning of that Act).

**Application  
of Act.**

5. This Act applies to a person whether or not he has attained the age of 18 years.

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**PART II.**

GENERAL PROVISIONS RESPECTING BAIL.

DIVISION 1.—*Bail generally.*

**Grant of  
bail for  
certain  
periods.**

6. Bail may be granted in accordance with this Act to an accused person in respect of any one or more of the following periods (so far as they relate to the offence of which the person is accused) :—

- (a) the period between his being charged with the offence and his first appearance before a court in or in connection with proceedings for the offence;

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*Bail.*

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- (b) the period between committal for trial or sentence and his being brought before the Supreme Court or District Court consequent on the committal;
- (c) the period of any adjournment or adjournments, including—
  - (i) any adjournment or adjournments during the course of a trial; and
  - (ii) any period deemed by section 16 to be the period of an adjournment;
- (d) the period of a stay of execution of a conviction;
- (e) the period between the lodging of an appeal and its determination, being an appeal against a conviction or order or against the severity of his sentence;
- (f) the period between his entering into a recognizance to prosecute proceedings in respect of a stated case and—
  - (i) his appearance to abide the decision in those proceedings; or
  - (ii) his appearance before the Judge, magistrate or justice to whom the matter is remitted;
- (g) the period between the determination of an appeal and—
  - (i) his appearance before a court to abide the decision on the appeal; or
  - (ii) the commencement of a new trial ordered on the appeal; and
- (h) any other period prescribed by the regulations.

7. (1) When—

- (a) bail is granted to an accused person in respect of an offence;
- (b) he enters into the bail undertaking; and
- (c) if a bail condition or bail conditions are imposed, it or they are entered into,

Rights  
following  
grant of  
bail.

*Bail.*

he is, subject to this Act, entitled to be released (if in custody) and to remain at liberty in respect of the offence, until he is required to appear before a court in accordance with his undertaking.

(2) Nothing in this section applies to an accused person while he is in custody also for some other offence or reason, in respect of which he is not entitled to be at liberty, whether under this Act or otherwise.

*DIVISION 2.—Right to release for certain offences.*

Right to  
release  
on bail  
for minor  
offences.

8. (1) This section applies to—

- (a) all offences not punishable by a sentence of imprisonment (except in default of payment of a fine); and
- (b) all offences punishable summarily that are of a class or description prescribed by the regulations for the purposes of this section,

except offences against section 51.

(2) A person accused of an offence to which this section applies—

- (a) is entitled to be granted bail in accordance with this Act unless—
  - (i) the person has previously failed to comply with a bail undertaking given or bail condition imposed in respect of the offence;
  - (ii) the person is, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection;
  - (iii) the person stands convicted of the offence or his conviction for the offence is stayed; or
  - (iv) the requirement for bail is dispensed with, as referred to in section 10; and
- (b) is entitled to be so granted bail either—
  - (i) unconditionally; or



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*Bail.*


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(ii) subject to such bail condition or bail conditions imposed on the grant of bail to him as, in the opinion of the authorised officer or court, is or are reasonably and readily able to be entered into, to the intent that he shall be, subject to section 7, released (if in custody) as soon as possible after he gives the bail undertaking.

(3) Subject to subsection (4), a person is entitled under this section to be granted bail in respect of an offence to which this section applies, notwithstanding that he is in custody also for some other offence or reason, in respect of which he is not entitled to be granted bail.

(4) A person is not entitled under this section to be granted bail in respect of an offence to which this section applies, if—

- (a) he is in custody serving a sentence of imprisonment in connection with some other offence; and
- (b) the authorised officer or court is satisfied that the person is likely to remain in custody in connection with that other offence for a longer period than that for which bail in connection with the firstmentioned offence would be granted.

*DIVISION 3.—Presumption in favour of bail for certain offences.*

9. (1) This section applies to all offences, except—

- (a) offences referred to in section 8 (1);
- (b) offences against section 51; and
- (c) offences under section 95, 96, 97 or 98 of the Crimes Act, 1900.

Presump-  
tion in  
favour of  
grant of  
bail for  
certain  
other  
offences.

(2) A person accused of an offence to which this section applies is entitled to be granted bail in accordance with this Act unless—

- (a) the authorised officer or court is satisfied that he or it is, pursuant to a consideration of the matters referred to in section 32, justified in refusing bail;

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*Bail.*

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- (b) the person stands convicted of the offence or his conviction for the offence is stayed; or
- (c) the requirement for bail is dispensed with, as referred to in section 10.

(3) Subject to subsection (4), a person is entitled under this section to be granted bail in respect of an offence to which this section applies, notwithstanding that he is in custody also for some other offence or reason, in respect of which he is not entitled to be granted bail.

(4) A person is not entitled under this section to be granted bail in respect of an offence to which this section applies, if—

- (a) he is in custody serving a sentence of imprisonment in connection with some other offence; and
- (b) the authorised officer or court is satisfied that the person is likely to remain in custody in connection with that other offence for a longer period than that for which bail in connection with the firstmentioned offence would be granted.

DIVISION 4.—*Dispensing with bail.*

Dispensing with bail.

**10.** (1) A court that may grant bail to an accused person may instead dispense with the requirement for bail.

(2) Where, during an appearance by an accused person before a court, no specific order or direction is made by the court in respect of bail, the court shall be deemed to have dispensed with the requirement for bail.

Effect of dispensing with bail.

**11.** (1) While the requirement for bail is dispensed with under this Act in respect of a person accused of an offence, he is entitled to be and to remain at liberty in respect of the offence until he is required to appear before a court in respect of the offence.

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*Bail.*


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(2) Nothing in this section applies to an accused person while he is in custody also for some other offence or reason, in respect of which he is not entitled to be at liberty, whether under this Act or otherwise.

**12.** For the purposes of Part VI, where a court dispenses with, or is deemed to have dispensed with, the requirement for bail, the court shall be deemed to have made a decision to dispense with the requirement for bail.

Decision to dispense with bail.

*DIVISION 5.—Miscellaneous provisions.*

**13.** An accused person not entitled under section 8 or 9 to be granted bail may nevertheless be granted bail.

Eligibility for bail despite no entitlement.

**14.** A power conferred by this Act to grant bail shall, subject to this Act, be deemed to include a power to refuse bail, but the power to refuse bail may only be exercised in conformity with this Act.

Power to refuse bail.

**15.** (1) An accused person may be granted or refused bail in accordance with this Act, notwithstanding that he is not in custody.

Grant of bail when not in custody.

(2) Nothing in this Act requires the grant of bail to an accused person who is not in custody.

**16.** For the purposes of section 6 (c) (ii), each of the following periods shall be deemed to be the period of an adjournment :—

Extension of meaning of adjournment in sec. 6.

- (a) the period during which a defendant is excused, pursuant to section 41 (1B) of the Justices Act, 1902, from attendance during the taking of any evidence;

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*Bail.*

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- (b) the period between the making of an order under section 51A (1) (d) (i) of the Justices Act, 1902, and the continuation of the proceedings (as referred to in section 51A (3) of that Act) consequent on the making of the order;
  - (c) the period between the apprehension of an accused person under a bench warrant (as referred to in section 153A of the Justices Act, 1902) and his next appearance in the court out of which the bench warrant issued;
  - (d) the period between the making of an order under section 87 (2) (a) of the Child Welfare Act, 1939, and the bringing of the offender before the children's court consequent on the making of the order;
  - (e) the period between the making of an order under section 365 of the Crimes Act, 1900, for a separate trial, or for the postponement of a trial, and the commencement of the separate or postponed trial;
  - (f) the period between the bringing up by a writ of habeas corpus of a person committed to prison by virtue of any summary conviction of a justice or justices or a magistrate and the final decision of the case, where the Supreme Court postpones the final decision of the case; and
  - (g) the period between the making of an order under section 8A (1) of the Criminal Appeal Act, 1912, and the continuation of the proceedings (as referred to in section 8A (2) of that Act) consequent on the making of the order.
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*Bail.*

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PART III.

POLICE BAIL.

**17.** (1) A police officer may grant bail in accordance with this Act to an accused person who is present at a police station if the officer is— Authority for police to grant bail.

- (a) of or above the rank of sergeant and present at the police station; or
- (b) for the time being in charge of the police station.

(2) A police officer may not grant bail to a person accused of an offence if—

- (a) a determination concerning bail has been made by a court under this Act; or
- (b) the requirement for bail has been dispensed with under this Act,

in respect of the offence.

**18.** (1) Where a person is charged by a police officer with an offence and the person is in custody, the proper officer shall, as soon as reasonably practicable— Determination as to bail to be made after charge laid.

- (a) give the accused person such information in writing respecting his entitlement to or eligibility for bail as is prescribed by the regulations; and
- (b) if the proper officer is—
  - (i) authorised to grant bail—determine whether or not bail should be granted to the person or bring him or cause him to be brought before a court; or
  - (ii) not authorised to grant bail—bring the person before a court or an authorised officer.

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*Bail.*


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(2) The authorised officer before whom a person is brought pursuant to subsection (1) (b) (ii) shall, as soon as reasonably practicable, determine whether or not bail should be granted to the person or bring him or cause him to be brought before a court.

(3) In this section—

(a) a reference to the proper officer is a reference to—

(i) subject to subparagraph (ii)—the police officer who laid the charge against the accused person; or

(ii) where it is not reasonably practicable for the police officer referred to in subparagraph (i) to perform the duties prescribed by subsection (1)—the police officer for the time being in charge of the police station at which the accused person is in custody or, if he is not in custody at a police station, a police officer who has custody of him; and

(b) a reference to bringing a person before a court is a reference to bringing the person before a court for the purpose of having the court exercise its powers in relation to bail or for the purpose of his being dealt with otherwise according to law.

**19.** (1) Where an authorised officer makes a determination in relation to bail, he shall forthwith—

(a) inform the accused person, or cause him to be informed, that he may communicate with a lawyer or other person of his choice in connection with bail; and

(b) subject to the regulations, provide the accused person, or cause him to be provided, if he so requests, with such facilities as are reasonable in the circumstances to enable him to make such a communication.

Procedure following determination as to bail.

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*Bail.*

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(2) An authorised officer may refrain from complying with subsection (1) if he believes on reasonable grounds that it is necessary to do so in order to prevent—

- (a) the escape of an accomplice of the accused person; or
- (b) the loss, destruction or fabrication of evidence relating to any offence.

**20.** Where an accused person is refused bail by an authorised officer or is not released on bail granted by an authorised officer—

Procedure where no release on bail.

- (a) the police officer for the time being in charge of the police station at which the person is in custody; or
- (b) if he is not in custody at a police station, a police officer who has custody of him,

shall, as soon as practicable, bring him or cause him to be brought before a court for the purpose of having the court exercise its powers in relation to bail or for the purpose of his being dealt with otherwise according to law.

**21.** Where an accused person in police custody is to be brought, for the first time in relation to the offence, before a court more than 4 hours after he came into custody—

Facilities to be provided.

- (a) the police officer for the time being in charge of the police station at which the person is in custody; or
- (b) if he is not in custody at a police station, a police officer who has custody of him,

shall, if it is reasonably practicable to do so, cause him to be provided with and allow him to use the facilities prescribed by the regulations for the purposes of this section.

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*Bail.*


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## PART IV.

## COURT BAIL.

DIVISION 1.—*Bail applications.*

General provisions as to court bail.

**22.** (1) There is no limit on the number of applications in relation to bail that may be made to a court by a person accused of an offence.

(2) All applications to a court in relation to bail shall be dealt with as soon as reasonably practicable.

(3) The regulations may make provision for or with respect to the manner of making applications to courts in relation to bail.

(4) Notwithstanding subsections (1) and (2), a court may refuse to entertain an application in relation to bail if it is satisfied that the application is frivolous or vexatious.

DIVISION 2.—*Magistrates and justices.*

Power of magistrates and justices to grant bail.

**23.** A magistrate or justice may at any time (subject to sections 24 and 29)—

- (a) grant bail to a person brought or appearing before him accused of an offence; or
- (b) except as prescribed by the regulations, grant bail to a person not brought or appearing before him, but being an appellant under Division 1 or 4 of Part V of the Justices Act, 1902.

Limitations on power of magistrates and justices.

**24.** (1) Bail may (subject to this section and sections 42 and 50) not be granted to a person under section 23 by a magistrate or justice after the person has appeared before the District Court, Supreme Court or Court of Criminal Appeal—

- (a) following his committal for trial or sentence;



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*Bail.*

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- (b) on an appeal against a conviction or order or against the severity of his sentence;
- (c) on a case signed and stated under Division 1 of Part V of the Justices Act, 1902; or
- (d) following his being brought up by a writ of habeas corpus, as referred to in section 16 (f),

in connection with the offence.

(2) Where proceedings against a person accused of an offence are continued before a magistrate or justice pursuant to section 51A (3) of the Justices Act, 1902, the magistrate or justice has such powers in relation to bail as he would have had if the person had not previously appeared before the District Court or Supreme Court, as the case may require, in connection with the offence.

(3) Where proceedings against a person accused of an offence are continued before a magistrate or justice pursuant to section 8A (2) of the Criminal Appeal Act, 1912, the magistrate or justice has such powers in relation to bail as he would have had if the person had not previously appeared before the Court of Criminal Appeal or before the District Court or Supreme Court, as the case may require, in connection with the offence.

(4) Subsection (1) does not prevent the grant of bail to a person by a magistrate or justice where the person is apprehended under a bench warrant (as referred to in section 153A of the Justices Act, 1902) notwithstanding that the person has appeared before the District Court or Supreme Court.

(5) Subsection (1) does not prevent the grant of bail to an accused person by a magistrate or justice where the person is brought before a children's court consequent on the making of an order under section 87 (2) (a) of the Child Welfare Act, 1939, notwithstanding that the person has appeared before the District Court or Supreme Court.

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*Bail.*

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Limitation  
on length  
of adjourn-  
ments by  
magistrates  
and justices  
where bail  
refused.

25. (1) Where an accused person is refused bail in respect of an offence—

- (a) an adjournment of the hearing by—
  - (i) a magistrate; or
  - (ii) a justice who is a clerk of petty sessions,  
shall be for a period not exceeding 8 clear days except with the consent of the person;
- (b) a first adjournment of the hearing by a justice who is not a clerk of petty sessions shall be for a period not exceeding 3 clear days; and
- (c) a second or subsequent adjournment of the hearing by a justice who is not a clerk of petty sessions—
  - (i) shall be for a period not exceeding 48 hours; and
  - (ii) shall be to a court constituted by a magistrate, if a magistrate is reasonably available to deal with the case.

(2) Subsection (1) does not apply to an adjournment of the hearing in connection with an offence if—

- (a) the accused person is in custody in connection with some other offence;
- (b) the magistrate or justice is satisfied that there are reasonable grounds for a longer period of adjournment; and
- (c) the accused person would be in custody in connection with the other offence for the balance of the longer period.

(3) The consent of the accused person shall not be sought or given for the purposes of subsection (1) (a) unless the magistrate or justice first advises him whether or not bail will be granted to him and, if so, on what conditions (if any) it will be granted.

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*Bail.*


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DIVISION 3.—*District Court.*

**26.** (1) The District Court may at any time (subject to sections 27, 42 and 50) grant bail to any person accused of an offence if, in connection with the offence—

Power of District Court to grant bail.

- (a) he is committed for trial or sentence in the District Court;
- (b) he is committed for trial or sentence in the Supreme Court and he is in custody at or in a place to which subsection (2) applies;
- (c) an appeal against a conviction or order or against the severity of his sentence is pending in the District Court;
- (d) an appeal against a conviction or order or against the severity of his sentence is pending in the Supreme Court or Court of Criminal Appeal and he is in custody at or in a place to which subsection (2) applies;
- (e) a new trial has been ordered to be held in the District Court;
- (f) the District Court has made an order under section 51A (1) (d) (i) of the Justices Act, 1902, for the continuation of proceedings before a magistrate or justice and the accused person is before the District Court; and
- (g) the District Court has made an order under section 87 (2) (a) of the Child Welfare Act, 1939, and he has not been brought before the children's court consequent on the making of the order.

(2) For the purposes of subsection (1), this subsection applies to a place if it is not a place prescribed by the regulations for the purposes of this section.

**27.** (1) Bail may (subject to this section) not be granted to a person under section 26 by the District Court after the person has appeared before the Supreme Court or Court of Criminal Appeal—

Limitations on power of District Court.

- (a) following his committal for trial or sentence in the Supreme Court;

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*Bail.*


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- (b) on an appeal against a conviction or order or against the severity of his sentence; or
- (c) following his being brought up by a writ of habeas corpus, as referred to in section 16 (f),

in connection with the offence.

(2) Subsection (1) does not prevent the grant of bail to a person by the District Court where a new trial has been ordered to be held in the District Court, notwithstanding that the person has appeared before the Court of Criminal Appeal.

DIVISION 4.—*Supreme Court.*

Power of Supreme Court to grant bail.

**28.** The Supreme Court may grant bail in accordance with this Act to any person accused of any offence, whether or not he has appeared before the Supreme Court in connection with the offence.

Supreme Court (Summary Jurisdiction) Act, 1967.

**29.** Where proceedings for an offence are pending under the Supreme Court (Summary Jurisdiction) Act, 1967, bail may only be granted in relation to the offence by the Supreme Court.

DIVISION 5.—*Court of Criminal Appeal.*

Power of Court of Criminal Appeal to grant bail.

**30.** The Court of Criminal Appeal may grant bail in accordance with this Act to any person accused of an offence if, in connection with the offence—

- (a) an appeal is pending in the Court;
- (b) the Court has ordered a new trial and the new trial has not commenced;
- (c) the Court has made an order under section 8A (1) of the Criminal Appeal Act, 1912, and the person is before the Court;
- (d) the Court has directed a stay of execution of a conviction and the stay is in force; or

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*Bail.*

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- (e) an appeal from the Court is pending in the High Court.
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PART V.

PROVISIONS APPLYING TO BOTH POLICE AND COURT BAIL.

DIVISION 1.—*Criteria to be considered in bail applications.*

**31.** This Division does not apply to an accused person in Application of Division. relation to an offence, if he is entitled to be granted bail under section 8 in respect of the offence.

**32.** (1) In making a determination as to the grant of bail to an accused person, an authorised officer or court shall take into consideration the following matters (so far as they can reasonably be ascertained), and the following matters only :— Criteria to be considered in bail applications.

- (a) the probability of whether or not the person will appear in court in respect of the offence for which bail is being considered, having regard only to—
- (i) the person's background and community ties, as indicated by the history and details of his residence, employment and family situations and his prior criminal record (if known);
  - (ii) any previous failure to appear in court pursuant to a bail undertaking or pursuant to a recognizance of bail entered into before the commencement of this section;
  - (iii) the circumstances of the offence (including its nature and seriousness), the strength of the evidence against the person and the severity of the penalty or probable penalty;

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*Bail.*

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- (iv) any specific evidence indicating whether or not it is probable that the person will appear in court; and
  - (v) the rating obtained in relation to the person in the test referred to in section 33;
- (b) the interests of the person, having regard only to—
- (i) the period that the person may be obliged to spend in custody if bail is refused and the conditions under which he would be held in custody;
  - (ii) the needs of the person to be free to prepare for his appearance in court or to obtain legal advice or both;
  - (iii) the needs of the person to be free for any lawful purpose not mentioned in subparagraph (ii); and
  - (iv) whether or not the person is, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection; and
- (c) the protection and welfare of the community, having regard only to—
- (i) whether or not the person has failed, or has been arrested for an anticipated failure, to observe a reasonable bail condition previously imposed in respect of the offence;
  - (ii) the likelihood of the person interfering with evidence, witnesses or jurors; and

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*Bail.*

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(iii) the likelihood that the person will or will not commit an offence while at liberty on bail,

but the authorised officer or court may only have regard to the likelihood that the person will commit such an offence if the officer or court is authorised to do so under subsection (2).

(2) The authorised officer or court may, for the purposes of subsection (1) (c) (iii), have regard to the likelihood that the person will commit an offence while at liberty on bail if the officer or court is—

- (a) satisfied that the person is likely to commit it;
- (b) satisfied that it is likely to involve violence or otherwise to be serious by reason of its likely consequences; and
- (c) satisfied that the likelihood that the person will commit it, together with the likely consequences, outweighs the person's general right to be at liberty.

(3) For the purposes of this section, the authorised officer or court may take into account any evidence or information which the officer or court considers credible or trustworthy in the circumstances.

33. The regulations may make provision for or with respect to a test to be carried out in relation to an accused person for the purpose of obtaining a rating as an indication of his background and community ties. **Bail test.**

DIVISION 2.—*Bail undertakings.*

34. (1) A person shall not be released on bail unless he undertakes, in writing, 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 him as prescribed by the regulations. **General undertaking to appear.**

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*Bail.*

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(2) A bail undertaking may be given in respect of more than one offence.

(3) A bail undertaking may include an undertaking, if bail is continued, to appear at any time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment or otherwise.

(4) An accused person who is granted bail is under a duty to appear in person before a court in accordance with his bail undertaking.

Giving of  
bail under-  
takings.

**35.** A bail undertaking may be given to any authorised officer or court.

DIVISION 3.—*Bail conditions.*

Con-  
ditions of  
bail.

**36.** (1) Bail may be granted unconditionally or subject to conditions imposed by instrument in writing.

(2) One or more of the following conditions only may be imposed on the grant of bail :—

- (a) that the accused person enter into an agreement to observe specified requirements as to his conduct while at liberty on bail, other than financial requirements (whether for the giving of security, the depositing of money, the forfeiture of money or otherwise);
- (b) that one or more than one acceptable person (other than the accused person) acknowledge that he is acquainted with the accused person and that he regards the accused person as a responsible person who is likely to comply with his bail undertaking;
- (c) that the accused person enter into an agreement, without security, to forfeit a specified amount of money if the accused person fails to comply with his bail undertaking;



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*Bail.*

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- (d) that one or more than one acceptable person (other than the accused person) enter into an agreement or agreements, without security, to forfeit a specified amount or specified amounts of money if the accused person fails to comply with his bail undertaking;
- (e) that the accused person enter into an agreement, and deposit acceptable security, to forfeit a specified amount of money if the accused person fails to comply with his bail undertaking;
- (f) that one or more than one acceptable person (other than the accused person) enter into an agreement or agreements, and deposit acceptable security, to forfeit a specified amount or specified amounts of money if the accused person fails to comply with his bail undertaking;
- (g) that the accused person deposit with an authorised officer or court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited if the accused person fails to comply with his bail undertaking;
- (h) that one or more than one acceptable person (other than the accused person) deposit with the authorised officer or court a specified amount or specified amounts of money in cash and enter into an agreement or agreements to forfeit the amount or amounts deposited if the accused person fails to comply with his bail undertaking.

## (3) The determination as to—

- (a) which person or persons, or class or description of persons, are acceptable persons for the purposes of a condition referred to in subsection (2) (b), (d), (f) or (h) and the number of acceptable persons required for those purposes; or
- (b) the nature and sufficiency of security that is acceptable security for the purposes of a condition referred to in subsection (2) (e) or (f),

shall be made by—

- (c) the authorised officer or court imposing the condition; or

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*Bail.*

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(d) in the absence of a determination by the officer or court referred to in paragraph (c)—the authorised officer or court to whom the bail undertaking is given.

(4) The regulations may require an acknowledgment under this section to contain such details, to be provided by the person making the acknowledgment, as are prescribed respecting the circumstances in which he is acquainted with the accused person.

(5) An agreement or acknowledgment under this section shall be in writing.

(6) A condition, agreement or acknowledgment under this section may be entered into or made in respect of more than one offence.

Restrictions  
on imposing  
bail  
conditions.

**37.** (1) Bail shall be granted unconditionally unless the authorised officer or court is of the opinion that one or more conditions should be imposed for the purpose of promoting effective law enforcement and the protection and welfare of the community.

(2) Conditions shall not be imposed that are any more onerous for the accused person than the nature of the offence and the circumstances of the accused person appear to the authorised officer or court to require.

(3) A condition referred to in section 36 (2) (b)–(h) shall not be imposed unless the authorised officer or court is of the opinion that any condition or combination of conditions referred to in any preceding paragraph or paragraphs of section 36 (2) is not likely to secure the purpose referred to in subsection (1) of this section.

(4) Notwithstanding subsection (3), the authorised officer or court may, at the request of the accused person, grant bail subject to any conditions referred to in section 36 (2) appropriate to secure the purpose referred to in subsection (1) of this section.

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*Bail.*

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**38.** (1) Where bail is refused by an authorised officer or court, the officer or court shall forthwith record or cause to be recorded the reasons for refusing bail. Reasons to be recorded.

(2) Where bail is granted conditionally, the authorised officer or court shall forthwith record or cause to be recorded the reasons for not granting bail unconditionally and (if a bail condition referred to in section 36 (2) (b)–(h) is imposed) for holding the opinion referred to in section 37 (1).

(3) Where the accused person requests that certain bail conditions be imposed, and other bail conditions are imposed, the authorised officer or court shall forthwith record or cause to be recorded the reasons for imposing the other conditions.

(4) The regulations may make provision for or with respect to the manner of recording reasons under this section and the manner of retaining and otherwise dealing with records made under this section.

**39.** Except as prescribed by the regulations, where an authorised officer or court imposes a bail condition under section 36 that requires— Entry into of agreement, etc.

- (a) the entering into of an agreement—the agreement may be entered into with;
- (b) the making of an acknowledgment—the acknowledgment may be made to; or
- (c) the depositing of security or an amount of money—the deposit may be made with,

the authorised officer or court to whom the bail undertaking is given.

**40.** (1) A receipt shall be given for any money or security deposited pursuant to a bail condition. Provisions respecting money or security.

(2) Any money or security deposited pursuant to a bail condition shall, subject to the provisions of any other Act, be dealt with as prescribed by the regulations.

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*Bail.*


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Substitution of cash for security.

**41.** (1) Where, for the purposes of a bail condition, a person deposits by way of security a savings bank passbook or other document for operating a bank or other account—

- (a) he is entitled thereafter to deposit in cash the amount for which the book or other document was deposited as security; and
- (b) he is, upon depositing that amount in cash, entitled to the return of the book or other document.

(2) Cash may be deposited for the purposes of subsection (1)—

- (a) with an authorised officer at the police station at which the book or other document was deposited or is currently held; or
- (b) with the court or an officer of the court at which the book or other document was deposited or is currently held,

or as prescribed by the regulations.

(3) The officer or court with whom cash is deposited under this section shall alter the bail conditions, or cause them to be altered, accordingly.

Discharge of liability of other persons.

**42.** (1) Where a person other than the accused person has entered into an agreement under section 36 (2) (d), (f) or (h), he may at any time (subject to subsection (5)) apply—

- (a) where the bail was granted by a court—
  - (i) to the court which granted the bail; or
  - (ii) to the court of appearance; or
- (b) where the bail was granted by an authorised officer—to the court of appearance,

to discharge the applicant from his liability.

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*Bail.*

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(2) On an application being made under subsection (1), a justice shall, if the accused person is not then in custody or before the court—

- (a) issue a warrant to apprehend the accused person and bring him before the court; or
- (b) issue a summons for his appearance before the court.

(3) On the appearance of the accused person before the court, the court shall, unless satisfied that it would be unjust to do so, direct that the applicant be discharged from his liability, and the applicant is, upon the direction being given, thereby discharged accordingly.

(4) If the court discharges the applicant from his liability, the court may impose further conditions on the grant of bail, and may by warrant commit the accused person to prison until he enters into the further conditions.

(5) A person may not make an application under this section if the accused person has failed to comply with his bail undertaking or an agreement entered into by the accused person pursuant to a bail condition.

(6) In this section, “court of appearance” means the court before which the accused person is required to appear in accordance with his bail undertaking.

DIVISION 4.—*Continuation of bail.*

43. (1) If a bail undertaking includes an undertaking to appear at any time and place at which proceedings in respect of the offence may be continued, whether upon an adjournment or otherwise, a court may accordingly continue bail already granted in respect of the offence, whether or not the accused person then appears in person.

Continuation of bail.

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*Bail.*

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(2) Where bail is continued, the bail undertaking and the bail conditions continue to apply, except to the extent that a condition or agreement thereunder otherwise provides or the court otherwise orders.

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**PART VI.****REVIEW OF BAIL DECISIONS.**

Power of  
justices,  
magistrates  
and  
District  
Court to  
review.

**44.** (1) Except as prescribed by the regulations and subject to this Part, a justice may review any decision made by himself in relation to bail.

(2) Except as prescribed by the regulations and subject to this Part, a magistrate may review any decision made by any authorised officer, magistrate (including himself) or justice in relation to bail.

(3) Except as prescribed by the regulations and subject to this Part, the District Court may review any decision made by the District Court (however constituted) in relation to bail.

Power of  
Supreme  
Court to  
review.

**45.** (1) Subject to this Part, the Supreme Court may review any decision of any authorised officer, magistrate or justice or of the District Court or Supreme Court (however constituted) in relation to bail.

(2) The power to review a decision pursuant to this section may be exercised whether or not any power to do so pursuant to section 44 has been, or has been sought to be, exercised.

(3) Notwithstanding subsection (1), a Judge of the Supreme Court sitting alone may not, under that subsection, review a decision of the Court of Criminal Appeal, unless the rules made under the Supreme Court Act, 1970, so provide.

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*Bail.*

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**46.** (1) Subject to this Part, the Court of Criminal Appeal may review any decision made by the Court (however constituted) in relation to bail.

Power of Court of Criminal Appeal to review.

(2) Notwithstanding subsection (1), a Judge of the Court of Criminal Appeal sitting alone may not under that subsection review a decision of the Court constituted by 3 or more Judges, unless the rules made under the Supreme Court Act, 1970, so provide.

**47.** A court may not pursuant to this Part review a decision in circumstances where, had the decision not been made, the court would be prohibited from making a decision in relation to the grant of bail.

General limitation on power to review.

**48.** (1) The power to review a decision pursuant to this Part—

Provisions respecting review of bail decisions.

(a) may only be exercised at the request of the accused person, the informant, being a police officer, or the Attorney-General; and

(b) includes the power to affirm or vary the decision or to substitute another decision.

(2) A decision as varied or substituted must be in conformity with this Act.

(3) The review of a decision shall be by way of rehearing, and evidence or information in addition to, or in substitution for, the evidence or information given or obtained on the making of the decision may be given or obtained on the review.

(4) Where, on a review of a decision pursuant to this Part, a court varies the decision, or substitutes another decision, section 38 applies to and in relation to the decision as varied or substituted as if originally made by the court.

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*Bail.*

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(5) Where, on a review of a decision pursuant to this Part, bail for an accused person is revoked, a justice may by warrant commit the person to prison.

(6) Where, on a review of a decision pursuant to this Part—

(a) bail is granted unconditionally and no bail undertaking has been given by the accused person; or

(b) a bail condition is imposed,

a justice may by warrant commit the person to prison until he gives the undertaking or enters into the condition, as the case may be.

(7) A court may refuse to entertain a request to review a decision pursuant to this Part if the court is satisfied that the request is frivolous or vexatious.

(8) The regulations may make provision for or with respect to—

(a) the manner of making a request to review a decision pursuant to this Part;

(b) the giving or sending to persons of notices relating to the proposed exercise of the power to review a decision pursuant to this Part; and

(c) prescribing the circumstances in which such a power may be exercised in the absence of the accused person or his representative as if he or his representative were present.

Applications  
for bail not  
limited by  
this Part.

**49.** Nothing in this Part limits the rights of an accused person in custody to apply for bail, and he may so apply for bail notwithstanding that the power to review a decision already made in relation to bail to him has not been, or has not been sought to be, exercised pursuant to this Part.

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*Bail.*

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PART VII.

NON-COMPLIANCE WITH UNDERTAKINGS AND CONDITIONS.

50. (1) Where a police officer believes on reasonable grounds that a person who has been released on bail has, while at liberty on bail, failed to comply with, or is, while at liberty on bail, about to fail to comply with, his bail undertaking or an agreement entered into by him pursuant to a bail condition—

Arrest for  
absconding  
or breaching  
condition.

- (a) a police officer may arrest the person without warrant and take him as soon as practicable before a court; or
- (b) a justice may—
  - (i) issue a warrant to apprehend the person and bring him before a court; or
  - (ii) issue a summons for his appearance before a court.

(2) The court before which the person is brought or appears may—

- (a) release him on his original bail; or
- (b) revoke his original bail and otherwise deal with him according to law.

(3) If the court revokes the person's original bail, the court or any other court before which he is brought or appears—

- (a) may grant bail to him in accordance with this Act; or
- (b) may (notwithstanding anything in this Act) refuse to grant bail to him and by warrant commit him to prison.

(4) Nothing in this section limits the rights of an accused person in custody to apply for bail.

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*Bail.*

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Offence of  
failing to  
appear.

**51.** (1) A person who fails without reasonable excuse (proof of which lies upon him) to appear before a court in accordance with his bail undertaking is, on summary conviction, guilty of an offence against this section.

(2) A person convicted of an offence against this section is liable to the same penalties as are by law provided for the offence in respect of which he failed to appear, but no sentence of imprisonment imposed pursuant to this section shall exceed 3 years and no fine so imposed shall exceed \$3,000.

(3) Proceedings for an offence against this section shall be dealt with—

- (a) by the court dealing with the offence in respect of which he failed to appear, constituted in the same way;
- (b) where the court referred to in paragraph (a) is the Court of Criminal Appeal, Supreme Court or District Court—by that Court constituted in any other way; or
- (c) in any case—by a court of petty sessions constituted by any stipendiary magistrate sitting alone.

(4) An offence against this section may not be dealt with by one or more justices.

(5) An offence against this section shall be disposed of—

- (a) if dealt with by a court of petty sessions—in accordance with the Justices Act, 1902;
- (b) if dealt with by the District Court—in accordance with—
  - (i) such provisions of the regulations under section 171 of the District Court Act, 1973, as are expressed to apply in relation to offences against this section; and
  - (ii) subject to subparagraph (i), the Supreme Court (Summary Jurisdiction) Act, 1967, as if references in that Act to the Supreme Court were references to the District Court, references to rules were references to regulations under section 171 of the District Court Act, 1973, and references to the Court of Appeal were references to the Court of Criminal Appeal;

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*Bail.*

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- (c) if dealt with by the Supreme Court—in accordance with the Supreme Court (Summary Jurisdiction) Act, 1967; or
- (d) if dealt with by the Court of Criminal Appeal—in accordance with—
  - (i) such rules made under the Supreme Court Act, 1970, as are expressed to apply in relation to offences against this section; and
  - (ii) subject to subparagraph (i), the Supreme Court (Summary Jurisdiction) Act, 1967, as if references in that Act to the Supreme Court or a Judge thereof were references to the Court of Criminal Appeal and as if sections 3 (2) and 18–24 of that Act had not been enacted.

(6) Proceedings for an offence against this section may be commenced at any time.

(7) A person convicted by a Judge of an offence against this section shall, for the purposes of section 5 (1) of the Criminal Appeal Act, 1912, be deemed to have been convicted of the offence on indictment.

(8) Notwithstanding anything in section 444 of the Crimes Act, 1900, the court imposing a sentence of imprisonment pursuant to this section may direct that the sentence and any other specified sentence or sentences of imprisonment then imposed on the person convicted or then being served by him be served consecutively, in which case the firstmentioned sentence shall commence at the expiration of the other sentence or sentences.

**52.** Where—

- (a) a person fails to appear before a court in accordance with his bail undertaking in relation to an offence punishable summarily; and

No penalty for failure to appear if case dealt with ex parte.

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*Bail.*


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- (b) that court or another court in his absence hears and determines the case relating to the offence in respect of which the undertaking was given,

he is not thereafter liable to be prosecuted for an offence against section 51 unless the court makes an order for the payment of money (whether by way of penalty, costs, compensation or otherwise) in relation to the offence referred to in paragraph (b) and the person fails to pay the money within 7 days or such longer period as the court allows.

**Enforcement  
of bail  
agreements.**
**53. Where—**

- (a) a person accused of an offence fails to comply with his bail undertaking; and
- (b) he or another person has entered into an agreement pursuant to a bail condition to forfeit an amount of money,

that amount may be recovered as a debt due to Her Majesty in a court of competent jurisdiction.

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**PART VIII.**
**MISCELLANEOUS.**
**Notices.**

**54.** (1) The authorised officer or court to whom a bail undertaking is given by an accused person shall forthwith give or cause to be given to the accused person—

- (a) a copy of the undertaking or a notice setting out the terms of the undertaking;
- (b) a copy of any bail conditions imposed or a notice setting out the terms of any such conditions; and

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*Bail.*

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- (c) such information in writing as is prescribed by the regulations respecting the Fines and Forfeited Recognizances Act, 1954.

(2) The authorised officer or court to or with whom a person, other than the accused person, makes an acknowledgment, agreement or deposit of security or money pursuant to a bail condition shall forthwith give or cause to be given to that other person a copy of the condition or a notice setting out the terms of the condition.

(3) Where—

- (a) a bail condition is altered under section 41; or  
(b) a bail condition is imposed or varied on a review pursuant to Part VI of a decision to grant bail,

the authorised officer or court shall forthwith give or cause to be given—

- (c) to the accused person—a copy of the condition or a notice setting out the terms of the condition; and  
(d) to any other person who makes an acknowledgment or enters into an agreement, pursuant to the condition—a copy of the condition or a notice setting out the terms of the condition.

(4) The court continuing bail on an adjournment shall forthwith give or cause to be given to the accused person a notice specifying the time and place to which the proceedings are adjourned.

(5) The authorised officer or court granting or refusing bail shall forthwith give or cause to be given to the accused person such information in writing as is prescribed by the regulations respecting the review of decisions in relation to bail and the further powers of courts in relation to bail.

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*Bail.*


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Writ of  
habeas  
corpus.

**55.** Except where expressly provided by this Act, nothing in this Act affects the powers of the Supreme Court in connection with writs of habeas corpus.

False  
state-  
ments in  
acknowledg-  
ments.

**56.** (1) A person who wilfully makes an acknowledgment under section 36 (2) (b) knowing it to be untrue in a material particular is, on summary conviction, guilty of an offence against this section.

(2) A person convicted of an offence against this section is liable to the same penalties as are by law provided for the offence in respect of which bail was sought, but no sentence of imprisonment imposed pursuant to this section shall exceed 2 years and no fine so imposed shall exceed \$2,000.

(3) Proceedings for an offence against this section shall be dealt with by any court of petty sessions constituted by a stipendiary magistrate sitting alone.

Person  
making  
acknow-  
ledgment  
under  
sec. 36  
to be  
warned of  
penalties.

**57.** (1) Before a person makes an acknowledgment under section 36 (2) (b), it is the duty of the person to whom the acknowledgment is made to warn the person that if he wilfully makes the acknowledgment knowing it to be untrue in a material particular he is guilty of an offence under section 56.

(2) Failure to give a warning in accordance with subsection (1) does not affect the operation of section 56.

Indemni-  
fication of  
agreeing  
parties.

**58.** (1) In this section, "agreeing party" means a person who enters (as an acceptable person) into an agreement under section 36.

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*Bail.*

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(2) If a person indemnifies another person, or agrees with another person to indemnify the other person, against any forfeiture which the other person may incur as an agreeing party, he and the other person are each guilty of an offence against this section and liable—

- (a) on summary conviction to a penalty not exceeding \$2,000 or imprisonment for a term not exceeding 2 years; or
- (b) on conviction on indictment to a penalty not exceeding \$3,000 or imprisonment for a term not exceeding 3 years.

(3) An offence is committed against this section—

- (a) in relation to an agreement referred to in subsection (2) —whether the agreement is made before or after the person to be indemnified becomes an agreeing party and whether or not he becomes an agreeing party; and
- (b) whether the compensation is or is to be in money or in money's worth.

(4) Summary proceedings for an offence against this section shall be dealt with by a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(5) Proceedings for an offence against this section may only be instituted with the consent of the Minister.

**59.** Where an authorised officer or court, in making a decision in relation to bail (other than a decision in proceedings for an offence committed in connection with bail), is to be or may be satisfied as to any matter, it is sufficient if the officer or court is satisfied on the balance of probabilities. Civil standard of proof for certain purposes.

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*Bail.*

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**Evidence.****60. (1) In any proceedings—**

- (a) a document purporting to be or to be a copy of a bail undertaking given by an accused person, and to be certified by an appropriate officer (as referred to in subsection (2)) to be or to be a copy of the undertaking, is admissible in evidence and shall be prima facie evidence of the giving of the undertaking by the accused person and of its terms;
- (b) a document purporting to be or to be a copy of the instrument by which a bail condition was imposed in relation to an accused person, and to be certified by an appropriate officer (as referred to in subsection (2)) to be or to be a copy of the instrument, is admissible in evidence and shall be prima facie evidence of the imposing of the condition and of its terms;
- (c) a certificate purporting to be signed by an appropriate officer (as referred to in subsection (2)) certifying that a specified bail condition—
  - (i) has not been altered or varied under this Act; or
  - (ii) has been altered or varied under this Act in a specified manner and has not otherwise been altered or varied under this Act,is admissible in evidence and shall be prima facie evidence of the matters so certified; and
- (d) a document purporting to be or to be a copy of an acknowledgment under section 36 (2) (b), and to be certified by an appropriate officer (as referred to in subsection (2)) to be or to be a copy of the acknowledgment, is admissible in evidence and shall be prima facie evidence of the making of the acknowledgment and of its terms.

(2) For the purposes of subsection (1), an appropriate officer is an officer of the court having the custody of the bail undertaking given by the accused person.



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*Bail.*

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(3) In any proceedings —

- (a) a document purporting to be a copy of a notice referred to in section 34 (1) and to be certified by a prescribed officer to be a copy of the notice is admissible in evidence and shall be prima facie evidence of the terms of the notice;
- (b) a certificate purporting to be signed by a prescribed officer certifying that a notice referred to in section 34 (1) was given or sent to the accused person in a specified manner on a specified day is admissible in evidence and shall be prima facie evidence of the matters so certified; and
- (c) a certificate purporting to be signed by a Judge, magistrate, justice or clerk of petty sessions or the Clerk or Deputy Clerk of the Peace and stating that a specified person did not appear before a specified court, at a specified place, on a specified day and at a specified time or during a specified period is admissible in evidence and shall be prima facie evidence of the matters so certified.

(4) In any document—

- (a) the words “authorised officer” after a signature shall be evidence that the person whose signature it purports to be is in fact an authorised officer within the meaning of this Act; and
- (b) the words “appropriate officer” or “prescribed officer” after a signature shall be evidence that the person whose signature it purports to be is in fact an appropriate officer or prescribed officer (as the case may be) as referred to in this section,

in connection with the matter to which the document relates.

**61.** A person who enters (as an acceptable person) into an agreement under section 36 does not, by virtue of his entering into that agreement, have the right to arrest the accused person.

Abolition  
of right  
of surety  
to arrest.

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*Bail.*


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Abolition  
of common  
law powers  
to grant  
bail.

**62.** Any power or duty that would, but for this Act, exist apart from statute to grant bail to an accused person in or in connection with criminal proceedings is abolished.

Perjury.

**63.** For the purposes of this Act—

- (a) a person in respect of whom a direction to prosecute for perjury is given under section 340 of the Crimes Act, 1900, shall be deemed to be charged with an offence; and
- (b) the alleged perjury shall be deemed to be an offence.

Contempt.

**64.** (1) Nothing in this Act affects any power or duty that a court, tribunal or person has to grant bail, or to grant relief in the nature of bail, in connection with any contempt or alleged contempt.

(2) Subsection (1) does not apply to a contempt or alleged contempt that constitutes an offence proceedings for which may be commenced by way of information or complaint.

(3) Any power or duty to which subsection (1) applies is additional to any power or duty that a court, tribunal or person may have under this Act in relation to any contempt or alleged contempt.

Provisions  
as to  
warrants or  
summonses.

**65.** Subject to the regulations, the provisions of the Justices Act, 1902, apply (with any necessary adaptations) to and in relation to a warrant or summons issued or to be issued under this Act in the same way as they apply to and in relation to a warrant or summons of a corresponding kind issued or to be issued under that Act.

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*Bail.*


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**66.** (1) Where a police officer contravenes or fails to comply with a provision of this Act that is applicable to him, the contravention or failure is not punishable as an offence (whether under this Act or otherwise) unless a penalty is expressly provided by this Act in respect of the contravention or failure.

Contraven-  
tions of  
this Act  
by police  
officers.

(2) This section does not prevent a contravention of, or failure to comply with, a provision of this Act by a police officer from—

- (a) being dealt with under the Ombudsman Act, 1974, or the Police Regulation (Allegations of Misconduct) Act, 1978, or by way of a departmental charge under the rules under the Police Regulation Act, 1899; or
- (b) constituting grounds for the institution of civil proceedings.

**67.** (1) Except where otherwise expressly provided by this Act, this Act applies in relation to the grant of bail to accused persons to the exclusion of any other law in force immediately before the date of assent to this Act so far as any other such law makes provision for or with respect to bail for accused persons.

This Act  
to prevail.

(2) Nothing in this Act shall be construed as affecting the Imperial enactment 1 William and Mary sess. 2 c. 2 (The Bill of Rights) or section 6 of the Imperial Acts Application Act, 1969, so far as it relates to that enactment.

**68.** Schedule 1 has effect.

Savings and  
transitional  
provisions.

**69.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

Regulations.

- (a) facilities to be provided to enable the making of communications referred to in section 19 (1) (a);

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*Bail.*

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- (b) the release of accused persons from prison or any other place of custody consequent upon the grant of bail or upon the requirement for bail being dispensed with;
- (c) warrants and summonses issued under this Act;
- (d) the fees to be demanded and taken in relation to any matter connected with this Act; and
- (e) the forms to be used for the purposes of this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body; or
- (d) impose a penalty not exceeding \$500 for any breach of the regulations,

or may do any combination of those things.

Rules.

**70.** Rules (being rules not inconsistent with this Act) may be made under the Supreme Court Act, 1970, in connection with the powers, authorities, duties or functions of the Supreme Court and Court of Criminal Appeal in respect of bail.

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*Bail.*

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SCHEDULE 1.

Sec. 68.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule—

“authorised” means duly authorised by a court or person;

“bail” means bail that was authorised or granted before the commencement of this Schedule, so far as it could not have been so authorised or granted if this Act had then been in force;

“law” means any law, but does not include the Justices Act, 1902, the Crimes Act, 1900, the Child Welfare Act, 1939, the Criminal Appeal Act, 1912, or the Supreme Court (Summary Jurisdiction) Act, 1967;

“recognizance of bail” means a recognizance that was authorised or entered into before the commencement of this Schedule, so far as it could not have been so authorised or entered into if this Act had then been in force.

2. This Act does not affect bail authorised or granted, or a recognizance of bail authorised or entered into, under a law before the commencement of this Schedule in relation to an accused person, and for the purposes of or for purposes connected with any such bail or recognizance this Act shall be deemed not to have been enacted.

3. Nothing in clause 2 prevents the making of a decision under this Act, or the exercise or performance of a power, authority, duty or function thereunder, in respect of an offence or other matter (or any proceedings in connection therewith) to or with which the bail or recognizance of bail referred to in that clause relates or is connected.

4. The regulations or the rules referred to in section 70 may make other provisions of a savings or transitional nature consequent upon the enactment of this Act in connection with any law, and those provisions may, but need not, operate by reference to any provision of this Act and shall have effect notwithstanding anything in clause 2 or 3.

*In the name and on behalf of Her Majesty I assent to this Act.*

A. R. CUTLER,  
*Governor.*

*Government House,  
Sydney, 29th December, 1978.*





