



TASMANIA

BAIL ACT 1994

No. 9 of 1994

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**BAIL ACT 1994**

No. 9 of 1994

AN ACT relating to bail in legal proceedings**[Royal Assent 17 March 1994]**

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

PART 1**PRELIMINARY****Short title**

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

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

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

“**appropriate officer**” means—

(a) in the case of the Supreme Court, the Registrar of the Supreme Court; or

(b) in any other case, a clerk of petty sessions;

“**contravene**” includes fail to comply with;

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

“**police officer**” means a police officer as defined by the *Police Regulation Act 1898*;

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

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

Application of this Act

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

PART 2**POLICE BAIL****Requirements for admission to police bail**

5—(1) Where a person admits another person to bail under section 34 of the *Justices Act 1959*, the person who admits him or her to bail must—

- (a) hand to the person admitted to bail on his or her release from custody a notice specifying the day on which and the time and place at which he or she is required to appear before justices; and
- (b) endorse on a copy of the notice a statement that the notice was handed to the person admitted to bail on his or her release from custody; and
- (c) sign the endorsement.

(2) It is a condition of bail under section 34 of the *Justices Act 1959*—

- (a) that the person admitted to bail must appear before justices on the day and at the time and place specified in a notice referred to in subsection (1) (a); and
- (b) that the person admitted to bail must deposit, if the person admitting him or her to bail under that section considers it desirable and so requires, a sum to be forfeited to the Crown if the person admitted to bail fails to appear before justices as required by paragraph (a).

(3) If the person admitted to bail was taken into custody to facilitate the making of an application for a restraint order under Part XA of the *Justices Act 1959*, that person must comply with any other conditions—

- (a) that the person admitting him or her to bail considers necessary or desirable to prevent him or her from acting in a manner specified in section 106B (1) of that Act; and
- (b) that are specified in a notice referred to in subsection (1) (a).

(4) A person who without reasonable cause contravenes a notice referred to in subsection (1) (a) or a condition of the notice is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units or imprisonment for a term not exceeding 3 months.

(5) Where a person admitted to bail fails to appear before justices on the day and at the time specified in a notice referred to in subsection (1) (a), the justices may issue a warrant for his or her arrest.

(6) A sum for the purposes of subsection (2) (b) is not to be more than is, in the opinion of the person admitting a person to bail under section 34 of the *Justices Act 1959*, sufficient to ensure that that person will appear before justices as specified in the notice.

(7) Money deposited under subsection (2) on the admission of a person to bail is to be paid to the clerk of petty sessions for the court held at the place specified in the notice.

PART 3

ORDERS FOR BAIL

Application of this Part

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

Conditions to which bail is subject

7—(1) In this section, “authorized person” means—

- (a) a justice; or
- (b) an associate to a judge of the Supreme Court; or
- (c) a clerk to a justice; or
- (d) a clerk of petty sessions; or
- (e) an officer of a court of petty sessions appointed in writing by a clerk of petty sessions; or
- (f) where the person admitted to bail is in prison, a person for the time being in charge of the prison; or

- (g) a person appointed by a judge of the Supreme Court in a particular case; or
- (h) such other person as the Governor may, by order, appoint.

(2) On the making of an order for bail, the person admitted to bail—

- (a) must go to such place as the judicial officer may specify and remain at that place for such time as may be necessary for that person to be provided with a document in the prescribed form specifying the terms of the order for bail; and
- (b) must not be released from custody until that person signs a document referred to in paragraph (a) in the presence of an authorized person acknowledging the terms of the order and that the person admitted to bail is bound by those terms.

(3) It is a condition of an order for bail, except an order made under section 117A (2) of the *Justices Act 1959*, that the person admitted to bail must, unless otherwise ordered by a judicial officer, appear and surrender to the order of the court at each time and place at which proceedings may be taken on the charge or application for a restraint order in respect of which that person has been admitted to bail.

(4) An order for bail may be made subject to such other conditions as the judicial officer thinks desirable in the interests of justice and any such other condition may be expressed to take effect either before or after the person admitted to bail is released from custody.

(5) Without limiting the generality of subsection (4), an order for bail may be made on condition that—

- (a) a person must deposit a specified amount of money to be forfeited to the Crown if the person admitted to bail fails to appear before a court as required by subsection (3) or fails to comply with a condition of the order for bail; or
- (b) one or more suitable persons (other than the person admitted to bail) must enter into a recognizance in the prescribed form before an authorized person to forfeit a specified amount of money if the person admitted to bail fails to appear before a court as required by subsection (3) or fails to comply with a condition of the order for bail.

(6) A recognizance referred to in subsection (5) may require a suitable person to give security in such terms or in such manner as a judicial officer may order to better secure compliance with the recognizance.

Effect of bail order

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

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

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

9—A person who has been admitted to bail and who, without reasonable cause, contravenes the requirements specified in section 7 (2) or any condition of an order for bail that has effect after the release of that person from custody is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units or imprisonment for a period not exceeding 6 months, or both.

Power of arrest on contravention of condition of bail

10—(1) Where a police officer has reasonable grounds to believe that a person—

(a) has contravened—

(i) a requirement of section 7 (2); or

(ii) the condition specified in section 7 (3); or

(iii) any condition of an order for bail that has effect after the release of that person from custody;
or

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

the police officer may arrest that person.

(2) On the arrest of a person by a police officer under subsection (1)—

- (a) the bail of the arrested person is suspended; and
- (b) it is the duty of the police officer to take the arrested person as soon as practicable before a justice.

Power of judicial officers to deal with arrested person

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

- (a) if the arrested person is subject to an order for bail made under the *Justices Act 1959*—
 - (i) revoke the order for bail and remand that person in custody pursuant to that Act; or
 - (ii) revoke the order for bail and make a fresh order for bail pursuant to that Act; or
- (b) if the arrested person is subject to an order for bail made by the Supreme Court or a judge, remand that person in custody to appear before a judge of that Court, at such time, not more than 7 days after the day on which that person was arrested, and at such place as are fixed by the justice.

(2) Where a person appears before a judge of the Supreme Court pursuant to a remand under subsection (1) (b), the judge may—

- (a) restore the order for bail; or
- (b) revoke the order for bail and remand that person in custody; or
- (c) revoke the order for bail and make a fresh order for bail for that person.

(3) The application of this Act extends to, and in relation to, a person who is admitted to bail under subsection (1) (a) (ii) or (2) (c).

Power of judge or justice to issue warrant for arrest

12—A judge of the Supreme Court or a justice may issue a warrant for the arrest of a person admitted to bail who fails to appear at a court in accordance with the order for bail.

PART 4

FORFEITURE OF BAIL MONEY AND RECOGNIZANCES

Application of Part 4

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

Deposit of money for bail

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

Procedure for repayment of bail money

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

(2) Where—

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

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

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

(c) appropriate any money so paid by that person, or so much of it as is required, to pay on behalf of that person any fine and costs payable on conviction; or

- (d) if the money deposited for bail is less than any fine or costs so payable, appropriate it in part payment of the fine or costs—

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

Procedure on non-appearance of person admitted to bail

16—(1) If a person admitted to bail does not appear in accordance with the order for bail and the judicial officer presiding in the court in which that person is required to appear orders that the money deposited for bail by any person must be forfeited to the Crown, that money is payable to the Consolidated Fund.

(2) If—

- (a) a person admitted to bail does not appear in accordance with the order for bail; and
- (b) the judicial officer does not order that the money deposited for bail by that person is to be forfeited to the Crown; and
- (c) while absent, that person is convicted of the offence or breach of duty in respect of which the money was paid—

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

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

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

Power to return money deposited for bail

17—(1) A person whose money deposited for bail is payable to the Consolidated Fund under section 16 may—

- (a) within 2 months after the failure of the person admitted to bail to appear in accordance with the order for bail; or
- (b) within such further time as may be allowed by the court before which that person failed to appear—

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

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

Procedure on order for return of money deposited for bail

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

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

and the amount of money so specified is to be paid out of the Consolidated Fund accordingly.

Forfeiture of money deposited for bail

19—(1) Where a person is convicted of an offence against section 9, the court by which that person is convicted must order—

- (a) that the full amount of money ordered to be deposited is to be forfeited to the Crown; and
- (b) that the amount is to be payable to the Crown within such period as the court may determine—

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

(2) Notwithstanding subsection (1), where—

- (a) the convicted person shows to the satisfaction of the court—
 - (i) that an order for forfeiture, or for forfeiture in full, as the case may be, would cause excessive hardship to that person or the dependants of that person; and
 - (ii) that the hardship would not be relieved by payment of the amount to be forfeited in instalments or by postponement of that payment to a specified date; or
- (b) the court is satisfied that in the circumstances of the case it is just to do so—

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

Forfeiture of recognizances

20—Where a recognizance is entered into pursuant to section 7 (5), a judge of the Supreme Court, in a case where the person in respect of whom the recognizance is given is required to appear in that Court, or a justice, in any other case, may—

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

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

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

21—(1) An amount or part of an amount ordered to be forfeited under section 19 (1) (a) or 20 is taken to be a sum of money that, under the *Justices Act 1959*, justices have adjudged to be paid by the person convicted or the person who entered into the recognizance, as the case may be, and payment of that amount or part of that amount may be enforced in the manner provided by section 80 of that Act.

(2) On making an order under section 19 (1) (a) or 20, a court may transmit a certified copy of the order to a court of petty sessions for enforcement as provided in subsection (1) of this section.

PART 5**MISCELLANEOUS****Oral application for bail**

22—(1) A person who is charged with an offence or breach of duty or in respect of whom an application for a restraint order has been made may, on any occasion when he or she appears before the Supreme Court or a justice pursuant to an order of remand, an order of adjournment or on arrest under section 10, apply orally—

(a) to be admitted to bail; or

(b) for a variation of a bail order to which he or she is subject.

(2) Subsection (1) does not entitle a person to make an application for bail before a justice if he or she is in custody as a result of an arrest under section 10 arising from a breach, or a suspected breach, of an order for bail made by the Supreme Court.

Application for bail or variation of conditions

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

(2) Where the Supreme Court orders that the hearing of a charge or application be remitted to justices, an application under subsection (1)—

- (a) if it is filed before the day on which the person charged is required to appear before the justices, must be made to the Supreme Court; or
- (b) if it is filed on or after that day, must be made to those justices.

Application to revoke bail, &c.

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

(2) In a case where the prosecutor is not the Crown, an application under subsection (1) may be made by the Crown.

(3) Where the Supreme Court orders that the hearing of a charge or application be remitted to justices, an application under subsection (1)—

- (a) if it is filed before the day on which the person charged is required to appear before the justices, must be made to the Supreme Court; or
- (b) if it is filed on or after that day, must be made to those justices.

Power of judicial officer to revoke or vary bail

25—(1) A judicial officer may, on any occasion when a person appears before the judicial officer pursuant to an order of remand, an order of adjournment or on an application under section 23 or 24 made in the prescribed manner, add, vary or revoke a condition of the order for bail for that person or revoke the order for bail.

(2) Where—

- (a) a plea of guilty has been taken from a person admitted to bail; or
- (b) a charge against any such person is found to be proved—

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

Arrest of person admitted to bail by person bound by recognizance

26—(1) A person who is bound by a recognizance under section 7 (5) and who believes on reasonable grounds that the person admitted to bail has contravened, or is about to contravene, a condition of bail may arrest that person.

(2) On the arrest of a person under subsection (1) it is the duty of the person conducting the arrest to take the arrested person as soon as practicable before a justice.

(3) Where a person is, under subsection (2), arrested and taken before a justice, the justice may restore the order for bail or may—

- (a) if the arrested person is subject to an order for bail made under the *Justices Act 1959*—
 - (i) revoke the order for bail and remand that person in custody pursuant to that Act; or
 - (ii) revoke the order for bail and make a fresh order for bail pursuant to that Act; or
- (b) if the arrested person is subject to an order for bail made by the Supreme Court or a judge, remand that person in custody to appear before a judge of that Court, at such time, not more than 7 days after the day on which that person was arrested, and at such place as are fixed by the justice.

(4) Where a person appears before a judge of the Supreme Court pursuant to a remand under subsection (3) (b), the judge may revoke the order for bail and remand that person in custody or make a fresh order for bail for that person.

(5) A police officer who is requested by a person bound by recognizance under section 7 (5) to assist that person in arresting a person under subsection (1) of this section must do so.

(6) The application of this Act extends to, and in relation to, a person who is admitted to bail under subsection (3) (a) (ii) or (4).

Power of court to release person bound by recognizance

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

Evidentiary provision

28—In any proceedings—

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

Regulations

29—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision for, or with respect to—

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

Transitional provisions

30—(1) In this section, “**commencement day**” means the day on which this Act commences.

(2) This Act applies to an appearance in court for an offence or breach of duty or in connection with an application for a restraint order—

- (a) by a person arrested on or after the commencement day; and
- (b) by a person who before that day was arrested for an offence or breach of duty or to facilitate the making of any such application if, on or after that day, he or she may be ordered to be detained in custody for that offence or breach of duty or to facilitate the making of that application.

(3) A grant or refusal of bail to a person before the commencement day for an appearance in court on or after that day is not affected by this Act, and continues to be governed, including all matters relating to, and arising directly or indirectly from, that grant or refusal, by the law in force immediately before that day but, on that appearance, this Act applies in respect of any further appearance relating to the relevant offence, breach of duty or application.

(4) Where—

- (a) an order for bail made under the *Justices Act 1959* was in force immediately before the commencement day; and
- (b) that order was subject to a condition imposed or varied by the Supreme Court—

that order for bail continues to have effect as if it had been made subject to that condition pursuant to that Act as in force on that day.

Administration of Act

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

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

[Second reading presentation speech made in:—
House of Assembly on 8 December 1993
Legislative Council on 17 February 1994]

