



TASMANIA

BAIL (MISCELLANEOUS AMENDMENTS) ACT 1994

No. 10 of 1994

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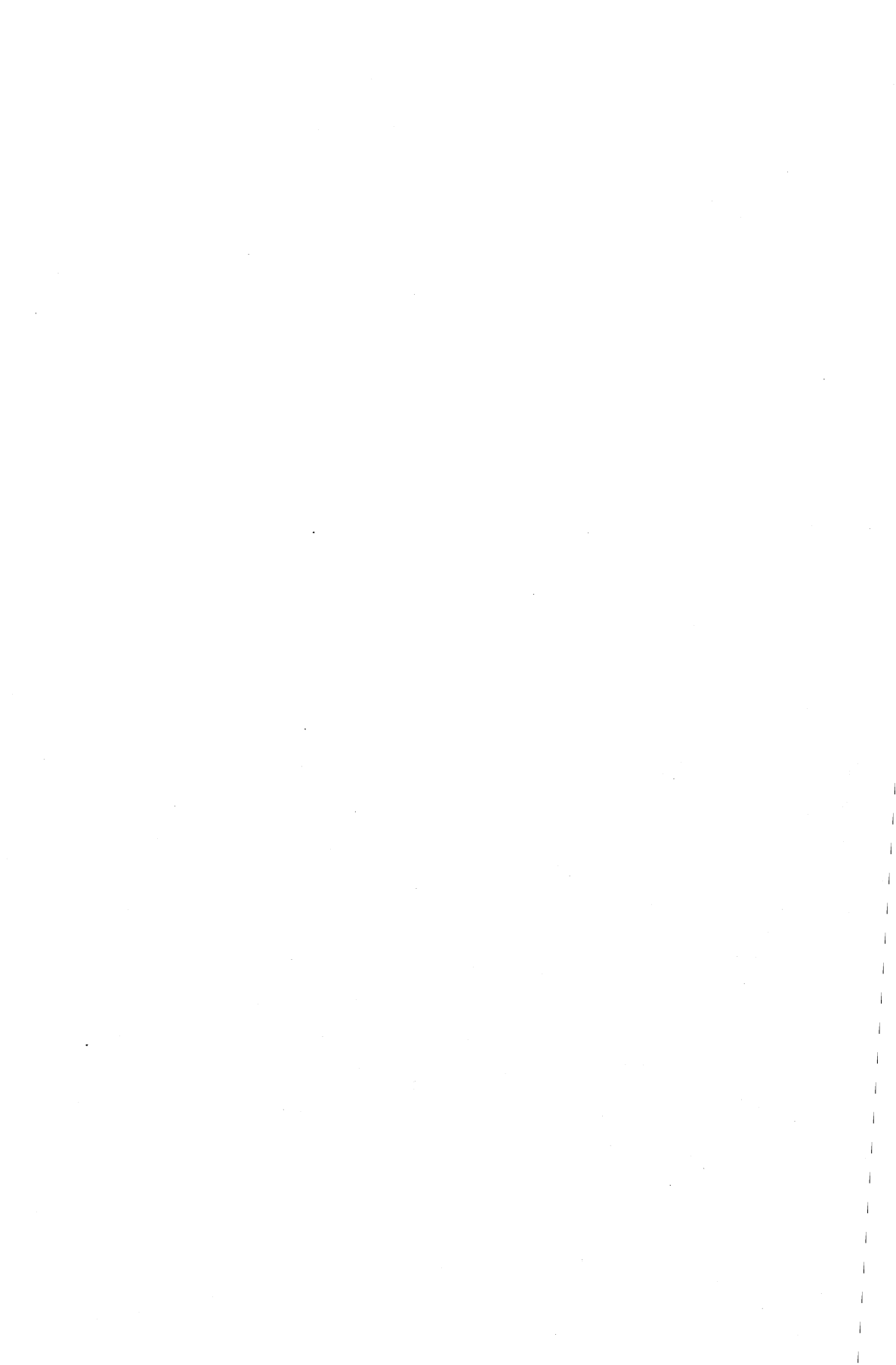
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**BAIL (MISCELLANEOUS AMENDMENTS) ACT 1994**

No. 10 of 1994

AN ACT to amend certain Acts in consequence of the *Bail Act 1993*

[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:—

Short title

1—This Act may be cited as the *Bail (Miscellaneous Amendments) Act 1994*.

Commencement

2—This Act commences on the day fixed under section 2 of the *Bail Act 1994*.

Consequential amendment to *Acts Interpretation Act 1931*

3—Section 41 (2) of the *Acts Interpretation Act 1931** is amended by omitting “upon recognizance to appear”.

Consequential amendments to *Child Welfare Act 1960*

4—Section 19 of the *Child Welfare Act 1960*† is amended as follows:—

- (a) by omitting from subsection (2) “he”, wherever occurring, and substituting “that person”;
- (b) by omitting from subsection (2) “release him on such a recognizance as is referred to in subsection (4)” and substituting “admit that person to bail”;
- (c) by omitting from subsection (3) “release him on such a recognizance as is referred to in subsection (4)” and substituting “admit that person to bail”;
- (d) by omitting subsections (4), (5) and (6).

Consequential amendments to *Coroners Act 1957*

5—Section 16 of the *Coroners Act 1957*‡ is amended as follows:—

- (a) by omitting subsections (2) and (3) and substituting the following subsection:—

(2) Where, except in the case of murder, a coroner orders the commitment of a person under subsection (1), the coroner may admit that person to bail.

- (b) by omitting from subsection (5) “accordingly as provided in subsection (2)”.

* 22 Geo. V No. 59. For this Act, as amended to 1 July 1986, see the continuing Reprint of Statutes. Subsequently amended by Nos. 88 and 92 of 1986, No. 13 of 1987, Nos. 4 and 41 of 1990, No. 43 of 1991 and Nos. 10, 20, 30 and 43 of 1992.

† No. 48 of 1960. For this Act, as amended to 1 October 1977, see the continuing Reprint of Statutes. Subsequently amended by Nos. 36, 70 and 99 of 1982, No. 29 of 1984, No. 45 of 1987, No. 5 of 1990 and No. 17 of 1993.

‡ No. 1 of 1957. For this Act, as amended to 1 March 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 22 of 1982, No. 3 of 1985, Nos. 15 and 45 of 1987, Nos. 5 and 44 of 1990 and Nos. 43 and 46 of 1991.

Consequential amendments to *Criminal Code*

6—(1) The *Criminal Code** is amended as specified in Schedule 1.

(2) Where, immediately before the commencement of this Act, a person was bound by recognizance under section 431 of the *Criminal Code* to surrender and to plead to any indictment that may be filed against that person, the application of the *Bail Act 1994* extends to that person as if he or she were bound by a document signed under section 7 (2) (a) of that Act to that effect.

Consequential amendments to *Justices Act 1959*

7—The *Justices Act 1959*† is amended as specified in Schedule 2.

* Schedule 1 to 14 Geo. V No. 69. For the *Criminal Code Act 1924* and the *Criminal Code*, as amended to 1 March 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 52 of 1981, Nos. 33 and 99 of 1982, No. 77 of 1983, No. 3 of 1984, No. 17 of 1985, Nos. 77, 86 and 93 of 1986, Nos. 26, 71, 81 and 83 of 1987, Nos. 14 and 29 of 1988, Nos. 7, 9 and 33 of 1989, No. 13 of 1990, Nos. 3, 43 and 46 of 1991, No. 21 of 1992, Nos. 9, 72 and 89 of 1993 and Nos. 4 and 7 of 1994.

† No. 77 of 1959. For this Act, as amended to 1 May 1982, see the continuing Reprint of Statutes. Subsequently amended by Nos. 33 and 51 of 1982, Nos. 45 and 75 of 1983, Nos. 29, 48 and 55 of 1984, Nos. 9, 51 and 121 of 1985, Nos. 45, 77, 93 and 115 of 1986, Nos. 45, 57 and 82 of 1987, Nos. 8 and 15 of 1988, Nos. 13 and 34 of 1989, Nos. 5 and 13 of 1990, Nos. 41, 43 and 46 of 1991, Nos. 15 and 21 of 1992 and Nos. 10, 71, 73 of 1993 and No. 8 of 1994.

SCHEDULE 1

Section 6 (1)

CONSEQUENTIAL AMENDMENTS TO CRIMINAL CODE

1—Section 304 is amended as follows:—

(a) by omitting from subsection (1) “person, or may vary, revoke or reduce the bail of any such person to whom bail has been granted.” and substituting “person.”;

(b) by omitting subsections (3) and (4).

2—Sections 305 and 306 are repealed and the following section is substituted:—

Appeal as to bail to Court of Criminal Appeal or Full Court

305—(1) An accused person who is aggrieved by—

(a) an order of a judge of the Supreme Court refusing bail; or

(b) a condition imposed by a judge of the Supreme Court to which an order for bail is subject—

may appeal to—

(c) the Court of Criminal Appeal in a case where that person is bound to appear before that Court; or

(d) the Full Court of the Supreme Court, in any other case.

(2) An appeal under subsection (1) is to be by way of a *venire de novo*.

3—Section 348 is amended by omitting “bail, or, if necessary, enlarge his bail if he has already been admitted to bail,” and substituting “bail”.

4—Section 387 is amended by omitting “take a recognizance of bail, with one or more sufficient surety or sureties, and in such sum as the judge shall think fit, conditioned” and substituting “admit the convicted person to bail in order to secure”.

5—Section 415 (2) is amended by omitting “bail, with or without sureties,” and substituting “bail”.

6—Section 431 (1) is amended by omitting “person—

(a) charged with any crime and admitted to bail upon recognizance to surrender himself and plead to any indictment that may be filed against him; or

(b) bound by recognizance to appear and give evidence, at the court named in such recognizance, or for whose appearance in either case any other person is so bound, fails to appear, or fails to appear and give evidence, as the case may be,” and substituting “person bound by recognizance to appear and give evidence at the court named in such recognizance, or for whose appearance any other person is so bound, fails to appear and give evidence”.

SCHEDULE 2

Section 7

CONSEQUENTIAL AMENDMENTS TO JUSTICES ACT 1959

1—Section 34 is repealed and the following section is substituted:—

Power of police officers, &c., to admit to bail

34—Where a person has been taken into custody for a simple offence or breach of duty or to facilitate the making of an application for a restraint order under Part XA—

- (a) an officer of police; or
- (b) a police officer who is in charge, or has for the time being the charge, of a police office or police station; or
- (c) in the case of an offence against the *Road Safety (Alcohol and Drugs) Act 1970*, an approved operator within the meaning of section 3 (6) of that Act—

must inquire into the case and must, unless there is reasonable ground for believing that such a course would not be desirable in the interests of justice, admit that person to bail.

2—Section 34A is amended by omitting subsections (1), (2) and (3) and substituting the following subsections:—

(1) Where a person has been taken into custody for an offence or breach of duty, the person must, unless he or she has been admitted to bail under section 34, be brought before a justice as soon as practicable after he or she has been taken into custody.

(2) Where a person is brought before a justice as provided in subsection (1), the justice must be satisfied that there is alleged against that person an act or omission that would constitute an offence or breach of duty and—

- (a) if there is not, the justice must release him or her; or
- (b) if there is, the justice must, except in a case to which section 67 applies, proceed as provided in section 35.

(3) Where a person has been taken into custody to facilitate the making of an application for a restraint order, the person must, unless he or she has been admitted to bail under section 34, be brought before a justice as soon as practicable after he or she has been taken into custody.

3—Sections 35, 36, 36A and 36B are repealed and the following section is substituted:—

Power of justice to admit person to bail

35—Where a person is brought before a justice under section 34A, the justice must ask the person whether he or she wishes to apply for bail and, if the person so wishes, the justice—

- (a) may make an order for bail for the person; or
- (b) may refuse bail.

4—Sections 48 and 49 are amended by omitting “defendant, witness,”, wherever occurring, and substituting “witness”.

5—Section 62 is amended as follows:—

- (a) by inserting “(1)” before “Where”;
- (b) by adding the following subsection:—

(2) If, at any time before the day to which a defendant is committed for trial in the Supreme Court, a magistrate is of opinion that he or she should be released on bail, the magistrate may admit the defendant to bail.

6—Sections 64 and 65 are repealed.

7—Section 117A (2) is amended by omitting “a period not exceeding 28 days after the date of the making of the order” and substituting “such period as appears to be desirable for the notice of review to be returnable in the Supreme Court”.

8—Section 122 (1) is amended by omitting “grant the person bail, with or without sureties for” and substituting “admit the person to bail to secure”.

9—After section 125, the following Division is inserted in Part XI:—

Division 6—Appeals relating to bail

No appeal if police bail refused

125A—An appeal does not lie from a refusal to admit a person to bail under section 34.

Appeal to magistrate

125B—A person who has been refused bail, or who is aggrieved by an order for bail made by a justice or a condition to which any such order is subject, may appeal in the prescribed manner to a magistrate.

Appeal to Supreme Court

125C—A person who is aggrieved by—

- (a) an order for bail made by a magistrate; or
- (b) a condition to which any such order for bail is subject; or
- (c) a refusal of a magistrate to make an order for bail—

may appeal in the prescribed manner to a judge of the Supreme Court.

Appeal to be by way of rehearing

125D—An appeal under this Division is to be by way of a *venire de novo*.

10—Section 144 (4) is amended by omitting paragraph (cc) and substituting the following paragraph:—

- (cc) the issue of summonses to persons who are charged with simple offences and breaches of duty requiring them to appear before justices for the taking of pleas only;

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