

Bail Amendment Bill 2000

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Western Australia

LEGISLATIVE ASSEMBLY

Bail Amendment Bill 2000

A Bill for

An Act to amend the *Bail Act 1982*, and to consequentially amend the *Justices Act 1902* and the *Supreme Court Act 1935*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Bail Amendment Act 2000*.

2. Commencement

- 5 (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Division 3 — Amendments relating to dispensing with bail

5. Section 7 amended

Section 7(5) is amended by deleting “power conferred by section 9” and inserting instead —

5 “ powers conferred by sections 7A and 9 ”.

6. Section 7A inserted

After section 7 the following section is inserted —

“

7A. Bail may be dispensed with by court

10 (1) A judicial officer referred to in subsection (1) of section 7 may, instead of discharging the duty imposed by that subsection, dispense with the requirement for bail for an appearance in court for an offence by a defendant if the judicial officer —

15 (a) has jurisdiction to do so under section 13A(1);
and

(b) may properly do so under section 13A(2).

20 (2) Where the requirement for bail is dispensed with under this section, the defendant has a right to be at liberty until the defendant is required to appear before a court for the offence, but subject to —

(a) section 59A;

(b) in the case of a child defendant —

25 (i) compliance with section 13A(3); and

(ii) the operation of section 17A;

and

(c) any requirement that the defendant be in custody for some other offence or reason.

”.

7. Section 12 amended

5 Section 12 is amended by deleting “section 11(1)” and inserting instead —

“ sections 7A(2) and 11(1) ”.

8. Heading to Part III replaced

10 The heading to Part III is deleted and the following heading is inserted instead —

“

Part III — Jurisdiction relating to bail

”.

9. Sections 13A and 13B inserted

15 After section 13 the following sections are inserted —

“

13A. Jurisdiction to dispense with bail and how jurisdiction to be exercised

20 (1) Jurisdiction to dispense with the requirement for bail under section 7A for any appearance described in the first column of clause 2 or 3 of Part A of Schedule 1 is vested, subject to Part B of that Schedule, in the judicial officer specified in the second column of that clause opposite that description; but clause 7 of that
25 Part does not apply for the purposes of this subsection.

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- (2) The jurisdiction referred to in subsection (1) is exercisable only —
- (a) in respect of an appearance in court before conviction for an offence;
 - 5 (b) if it appears to the judicial officer that bail would be granted in accordance with clause 1 or 2 of Part C of Schedule 1 but that in the circumstances the completion of bail papers is an unnecessary imposition; and
 - 10 (c) in the case of a child defendant, subject to subsection (3).
- (3) The requirement for bail for an appearance in court by a child defendant shall not be dispensed with unless the judicial officer —
- 15 (a) attaches a condition to the dispensation as mentioned in subsection (4); or
 - (b) is satisfied that the defendant comes within paragraph (a) and (b) of clause 2(4) of Part C of Schedule 1.
- 20 (4) The condition referred to in subsection (3)(a) is that a responsible person, as defined in clause 2(1) of Part C of Schedule 1, enter into an undertaking in writing to ensure that the child appears at the required time and place.
- 25 (5) Clause 2(5) of Part C of Schedule 1 applies, with all necessary modifications, to the responsible person and the undertaking referred to in subsection (4) as if they were a responsible person and an undertaking under subclause (3)(c) of that clause.

- (6) For the purposes of subsection (5) —
- (a) references in the provisions referred to in clause 2(5) of Part C of Schedule 1 to a bail undertaking shall be disregarded; and
 - 5 (b) references to compliance with the requirements of a bail undertaking shall be read as references to a requirement to appear at the time and place in respect of which bail has been dispensed with.
- 10 (7) Where a judicial officer dispenses with the requirement for bail for an appearance by a defendant the clerk or registrar of the court shall, in accordance with section 13B, give written notice to the defendant of the time and place for the appearance.
- 15 **13B. Giving and proof of notices under section 13A(7)**
- (1) A written notice to a defendant under section 13A(7), shall be —
 - (a) given to the defendant personally; or
 - (b) sent to the defendant —
 - 20 (i) by post at the defendant’s address appearing in the records of the court; or
 - (ii) in urgent cases, by facsimile.
 - (2) A person who gives a notice personally as mentioned in subsection (1) shall endorse on a file copy of the notice a certificate showing —
 - 25 (a) that the person has done so; and
 - (b) the time of doing so.
 - (3) A register shall be kept at each court showing particulars in respect of each written notice sent by post

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or facsimile under subsection (1)(b) for an appearance in that court or a court to which a defendant has been committed.

- 5 (4) If a notice is sent by post under subsection (1)(b)(i) it shall be presumed, unless the contrary is shown, to have been received and at the time when, in the ordinary course of events, the letter would have been delivered.
- 10 (5) In any proceedings —
- (a) a document purporting to be a copy of a notice referred to in subsection (1) shall be evidence of the terms of the notice;
- 15 (b) an endorsement on a copy of a notice referred to in subsection (2) purporting to be a certificate referred to in that subsection is evidence of the matters appearing in the certificate without proof of the signature of the person who made the endorsement; and
- 20 (c) an entry in a register referred to in subsection (3) shall be evidence of any matter stated in the entry without proof of the making of the entry.

”.

10. Section 14 amended

- 25 (1) Section 14(1) is amended as follows:
- (a) after paragraph (a) by deleting “and”;
- (b) after paragraph (b) by deleting the full stop and inserting instead —
- “
- 30 ; and

(c) under section 7A dispense with the requirement for bail or revoke an existing dispensation.

”.

5 (2) Section 14(2)(a) is amended by deleting “or refused” and inserting instead —

“ , refused or dispensed with ”.

11. Section 17A amended

(1) Section 17A(1)(a) is amended by inserting after “described in” —

10 “ section 13A(3) or ”.

(2) Section 17A(2)(b) is amended by inserting after “granting bail” —

“ , or dispensing with the requirement for bail, ”.

12. Section 56 repealed

15 Section 56 is repealed.

13. Sections 59A and 59B inserted

After section 59 the following sections are inserted —

“

20 **59A. Where bail dispensed with, defendant may be taken before judicial officer for reconsideration of matter**

(1) Where the requirement for bail has been dispensed with for a defendant under section 7A, a relevant officer may cause the defendant to appear before an appropriate judicial officer for reconsideration of the matter, if the relevant officer has reasonable grounds to believe that the defendant is not likely to appear at the

25

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time and place notified to the defendant under section 13A(7).

- 5
- (2) Section 54(2), (2a), (3), (4) and (5) apply with necessary modifications for the purposes of subsection (1).
- (3) The judicial officer before whom a defendant appears under subsection (1) shall consider the defendant's case afresh and may, notwithstanding section 13 —
- 10
- (a) again dispense with the requirement for bail;
 - (b) grant bail; or
 - (c) refuse to grant bail,
- in accordance with this Act, for the defendant's appearance in court.
- 15
- (4) If a police officer is satisfied that because of the urgency of the case it is not practicable for the Director of Public Prosecutions or the State Crown Solicitor to exercise powers under this section, the police officer may exercise those powers notwithstanding that —
- 20
- (a) the court before which the defendant is required to appear is a court referred to in subsection (5)(a)(i) or (ii); or
 - (b) the State Crown Solicitor will conduct the prosecution against the defendant.
- (5) In this section —
- 25
- “relevant officer”** —
- (a) where the court before which the defendant is required to appear is —
 - (i) the District Court, the Supreme Court, or the Court of Criminal Appeal; or

(ii) another court and the Director of Public Prosecutions will conduct the prosecution against the defendant in that court,

5

means —

- (iii) the Director of Public Prosecutions; or
- (iv) if subsection (4) applies, a police officer referred to in that subsection;

and

10

(b) in any other case —

- (i) means the State Crown Solicitor if that official will conduct the prosecution against the defendant; and
- (ii) otherwise means a police officer.

15

59B. Warrant for arrest of absconding defendant

Where —

20

(a) at any time after that specified in a defendant's bail undertaking for a defendant's appearance the defendant has failed to comply with the requirements of the defendant's bail undertaking mentioned in section 28(2)(a) or (b); or

25

(b) a defendant has failed to appear at the time and place specified in a notice under section 13A(7),

the court before which the defendant was required to appear may issue a warrant to arrest the defendant and bring the defendant before that court or a court of like jurisdiction.

30

”.

14. Section 60 amended

Section 60 is amended as follows:

- (a) in paragraph (a) by inserting after “bail” —

“

5 or for whom the requirement for bail has been
 dispensed with

”;

- (b) by deleting “or surety undertaking” and inserting
instead —

“

10 , surety undertaking or notice under
 section 13A(7), as the case may be,

”.

15. Schedule 1 amended

- 15 (1) Schedule 1 Part A is amended as follows:

- (a) by deleting the heading and inserting instead —

“

Part A — Jurisdiction relating to bail

”;

- 20 (b) in the heading to the First Column by deleting “*referred
to in section 13*”;

- (c) in the heading to the Second Column by inserting after
“*granted*” —

“ *or (where applicable) dispensed with* ”.

(2) Schedule 1 Part B is amended as follows:

(a) by deleting the heading and inserting instead —

“

Part B — Cessation of powers relating to bail

5

”;

(b) by deleting clause 1 and inserting the following clause instead —

“

1. Upon decision by Judge, power of other officers ceases

10

(1) After a Judge has granted or refused bail for an appearance by a defendant the power to grant bail for that appearance ceases to be vested in —

(a) any judicial officer whose jurisdiction is inferior to that of the Judge; or

15

(b) any authorized officer.

(2) After a Judge has dispensed with the requirement for bail for an appearance by a defendant the power to grant or refuse bail for that appearance ceases to be vested in any officer referred to in subclause (1)(a) or (b).

20

(3) In this clause —

“**Judge**” means a Judge of the Supreme Court, the Children’s Court or the District Court.

”;

(c) in clause 2 by inserting after “to grant” —

25

“ , refuse or dispense with ”;

(d) in clause 2 by deleting “or refused” and inserting instead —

“ , refused or dispensed with ”.

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Part 2 Amendments to Bail Act 1982

Division 4 Amendments relating to duty of judicial officer in respect of unconvicted defendants

s. 16

(3) Schedule 1 Part C is amended by deleting “Principles governing grant or refusal of bail” and inserting instead —

“ Governing principles ”.

Division 4 — Amendments relating to duty of judicial officer in respect of unconvicted defendants

16. Section 5 amended

Section 5(2) is amended by deleting “7(3)” and inserting instead —

“ 7B, 7C, 7E ”.

17. Section 6 amended

Section 6(3) is repealed and the following subsection is inserted instead —

“

(3) Where under section 16 only a justice has power to grant bail for an offence, the police officer or other person who arrests a person for an offence shall —

(a) unless, as soon as is practicable, the police officer or other person brings the defendant or causes the defendant to be brought before a court; and

(b) whether or not an application for bail is made by the defendant or on the defendant’s behalf,

bring or cause the defendant to be brought as soon as is practicable before a justice for the purpose of having the defendant’s case for bail considered by the justice acting in terms of subsection (2)(b).

”.

18. Section 7 amended

- (1) Section 7(1) is amended by deleting “subsection (2)” and inserting instead —

“ section 7B, 7C or 7E ”.

- 5 (2) Section 7(2), (3) and (4) are repealed.

19. Sections 7B, 7C and 7D inserted

After section 7A the following sections are inserted —

“

7B. Special provision for adult defendants in murder cases

10

- (1) This section applies where —
- (a) a defendant is in custody for an offence of wilful murder or murder so that under section 15 only a Judge has power to grant bail; and
 - (b) the defendant is not a child.
- (2) Where this section applies the defendant, or a person on the defendant’s behalf, may make an application to a Judge for bail at any time before conviction for the offence.
- (3) Upon a defendant’s initial appearance in court for an offence of wilful murder or murder the judicial officer who may order the defendant’s detention in custody is under a duty to inform the defendant of the right conferred by subsection (2).

15

20

25

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Division 4 Amendments relating to duty of judicial officer in respect of unconvicted defendants

s. 19

(4) Where —

(a) a defendant's case for bail has been considered by a Judge on an application under subsection (2); and

5

(b) bail has been refused,

the defendant's case for bail shall not be considered on any subsequent occasion in the same case when the defendant's continued detention may be ordered unless subsection (5) applies.

10

(5) The defendant's case for bail shall again be considered by a Judge if the defendant, or a person on the defendant's behalf, applies to a Judge and satisfies the Judge that —

15

(a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused; or

(b) the defendant failed to adequately present the defendant's case for bail on the previous occasion.

20

(6) Where —

(a) a defendant's case for bail has been considered by a Judge on an application under subsection (2); and

(b) bail has been granted,

25

on any subsequent appearance in the same case a judicial officer may order, notwithstanding section 15, that bail is to continue on the same terms and conditions.

(7) The defendant is to be taken before the Judge for the purposes of an application under this section only if the Judge so orders.

(8) In this section —
5 **“Judge”** means a Judge of the Supreme Court.

7C. Special provision for child defendants in murder cases

(1) This section applies where a child defendant is in custody for an offence of wilful murder or murder so that under section 15 only a Judge of the Children’s Court has power to grant bail.
10

(2) Where this section applies, the judicial officer referred to in section 7(1) other than a Judge of the Children’s Court, shall, whether or not an application for bail is made by the defendant or on the defendant’s behalf, cause the defendant to be taken as soon as is practicable before a Judge of the Children’s Court for the purpose of having the defendant’s case for bail considered by the Judge.
15

(3) Notwithstanding subsection (2), where —
20 (a) the duty described in that subsection has been discharged once in relation to a child defendant’s case for bail; and
 (b) bail has on that occasion been refused by a
25 Judge of the Children’s Court,

the defendant’s case for bail need not be considered on any subsequent occasion in the same case when the defendant’s continued detention may be ordered unless subsection (4) applies.

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Division 4 Amendments relating to duty of judicial officer in respect of unconvicted defendants

s. 19

(4) On a subsequent occasion the defendant may apply to the judicial officer who may order the defendant's detention for a reconsideration of the defendant's case for bail on the ground that —

- 5 (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused on the occasion mentioned in subsection (3); or
- 10 (b) the defendant failed to adequately present the defendant's case for bail on that occasion.

(5) If the judicial officer is satisfied as to one or more of those grounds the judicial officer shall cause the defendant to be taken as soon as is practicable before a Judge of the Children's Court for the purpose of having the defendant's case for bail considered by the Judge.

15

7D. Previous decision may be adopted

(1) Notwithstanding subsection (1) of section 7, after —

- 20 (a) the duty described in that subsection has been discharged once in relation to a defendant's case for bail; or
- (b) a Judge of the Children's Court has considered the case under section 15,

25 it is sufficient on any subsequent consideration of bail in the same case for a judicial officer, including a Judge of the Children's Court acting under section 15, to make inquiry of the defendant in terms of subsection (2).

(2) The inquiry to be so made is —

- 30 (a) whether any new fact has been discovered or new circumstance has arisen, or whether the

circumstances have changed, since bail was previously granted or refused; and

- 5 (b) whether the defendant considers that the defendant failed to adequately present the defendant's case for bail on a previous occasion.
- (3) Unless the judicial officer is satisfied that there is any reason of the kind mentioned in subsection (2) for not doing so, the judicial officer may adopt the decision
- 10 previously made in the case, but with power to make such variations of the terms and conditions of bail as the judicial officer thinks fit.

”.

Division 5 — Amendments relating to certificate for release from custody

15

20. Section 11 amended

Section 11(2) and (3) are repealed and the following subsections are inserted instead —

“

- 20 (2) Where the defendant is in custody in a lock-up or prison, the right conferred by subsection (1) is also subject to the person in charge of the lock-up or prison either —
- (a) signing a certificate under subsection (3); or
- 25 (b) receiving notice that a certificate has been signed by another person under that subsection.
- (3) After a defendant becomes entitled to be at liberty as provided in subsection (1), a person referred to in section 29 may sign a certificate to that effect in the
- 30 prescribed form.

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Part 2 Amendments to Bail Act 1982

Division 6 Amendments relating to the extension of section 14 to Judge of the District Court or of the Children's Court

s. 21

- (4) The person in charge of a lock-up or prison in which the defendant is in custody shall release the defendant from custody as soon as is practicable after —
- (a) the person in charge signs the certificate; or
 - (b) if the certificate is signed by a person other than the person in charge, it comes to the knowledge of the person in charge that the certificate has been signed.

”.

10 **21. Section 29 amended**

Section 29(h) is amended as follows:

- (a) by inserting after “is in” —
“ a lock-up or ”;
- (b) by inserting after “of the” —
“ lock-up or ”.

Division 6 — Amendments relating to the extension of section 14 to Judge of the District Court or of the Children's Court

20 **22. Section 3 amended**

Section 3(1) is amended in the definition of “appropriate judicial officer” as follows:

- (a) in paragraph (a) by deleting “and (c)” and inserting instead —
“ , (c) and (d) ”;

(b) by deleting paragraph (c) and inserting the following paragraphs instead —

“

5

(c) except in section 49, means a Judge of the Supreme Court or of the Children's Court, as the case may require, in any case where —

(i) under section 15 only a Judge of the Supreme Court or of the Children's Court has power to grant bail; or

10

(ii) a judicial officer has exercised the power contained in section 31(2)(d), for the appearance in question;

15

(d) except in section 49, means a Judge of the Supreme Court, of the District Court, or of the Children's Court, as the case may require, in any case where such a Judge has granted bail under section 14 for the appearance in question;

”.

20

23. Section 14 amended

(1) Section 14(1), (2), (2a) and (3) are amended by deleting “of the Supreme Court” wherever it occurs.

(2) Section 14(4) and (5) are repealed and the following subsection is inserted instead —

25

“

(4) In this section —

(a) references to “**a Judge**” are references —

30

(i) in the case of a child charged with an offence before the Children's Court, to a Judge of that Court;

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Division 7 Amendments enabling regard to be had to circumstances of offence and relating to bail in murder cases

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- 5
- (ii) in the case of a defendant committed for trial or sentence to the District Court, to a Judge of that Court; and
 - (iii) in any other case, to a Judge of the Supreme Court;
- and
- (b) references to “**any other judicial officer**” —
- 10 (i) in relation to the exercise of powers under this section by a Judge, are references to any judicial officer whose jurisdiction is inferior to that of the Judge; but
 - 15 (ii) in relation to the exercise of powers under this section by a Judge of the Supreme Court, do not include a Judge of the Children’s Court or a Judge of the District Court.

”.

20 **Division 7 — Amendments enabling regard to be had to circumstances of offence and relating to bail in murder cases**

24. Schedule 1 amended

Schedule 1 Part C is amended as follows:

- 25
- (a) in clause 1 by deleting “clause 3A” and inserting instead —
“ clauses 3A and 3C ”;
 - (b) in clause 2(3)(a) by deleting “clause 3A” and inserting instead —
“ clauses 3A and 3C ”;

(c) by inserting before clause 4 the following clause —

“

3C. Bail in murder cases

5

Bail is only to be granted to a defendant who is in custody awaiting an appearance in court on a charge of wilful murder or murder if there are exceptional reasons why the defendant should not be kept in custody.

”.

Division 8 — Amendment relating to discretion to waive deposit

10

25. Section 18 amended

(1) Section 18(2)(b) is amended by inserting before “fix an amount” —

“ subject to subsection (2a), ”.

(2) After section 18(2) the following subsection is inserted —

15

“

(2a) Notwithstanding subsection (2)(b), an authorized police officer may dispense with the requirement for bail under this section without the deposit of a security if satisfied that there is sufficient justification for doing so.

20

”.

**Division 9 — Amendments relating to procedure
under section 19**

26. Section 19 amended

- 5 (1) Section 19(2) is repealed and the following subsection is
inserted instead —
- “
- (2) If a defendant fails to appear as mentioned in
subsection (1) the following provisions apply, but
without affecting the power in subsection (3) —
- 10 (a) the defendant does not, by failing to appear,
commit an offence against section 51;
- (b) if it is satisfied that section 18(2)(a) has been
complied with in respect of an offence, the
court —
- 15 (i) may proceed to hear and determine the
proceedings for that offence;
- (ii) shall order that the deposit be applied
wholly or partly in or towards payment
of any sum of money ordered to be paid
20 in respect of the commission of the
offence; and
- (iii) shall order that so much (if any) as is
not so disposed of be paid to the Crown;
- (c) subparagraph (ii) of paragraph (b) does not
25 affect the recovery of any balance that is not
paid under that subparagraph;
- (d) paragraph (b)(iii) applies whether or not the
defendant is convicted of the offence; and
- 30 (e) the court may, instead of proceeding under
paragraph (b), adjourn the case and issue a

warrant to arrest the defendant and bring the defendant before the court or a court of like jurisdiction.

”.

- 5 (2) Section 19(3) is amended by deleting “(2)(b)” and inserting instead —

“ (2)(b)(iii) ”.

Division 10 — Amendments relating to bail undertaking

27. Section 28 amended

- 10 Section 28(2)(b) is deleted and the following paragraph is inserted instead —

“

- 15 (b) that if the defendant fails to appear at that time and place the defendant will, as soon as is practicable, appear at the court at which the defendant was required to appear, when that court is sitting;

”.

28. Various provisions amended

- 20 The provisions referred to in the Table to this section are amended by deleting “(i)” in each place where it occurs.

Table

section 35(1)
section 49(1)
section 51(2)
section 58(1)(b)
Schedule 1 Part D clause 1(2)(a) and (b)

Division 11 — Amendments relating to bail during trial

29. Section 7 amended

Section 7(1) is amended by deleting “(including detention during the period of his trial)”.

5 **30. Section 7E inserted**

After section 7D the following section is inserted —

“

7E. Bail during trial

(1) Where —

10 (a) a defendant has been refused bail for the defendant’s appearance for trial for an offence; and

(b) the trial extends beyond one day,

15 a judicial officer referred to in subsection (1) of section 7 need not comply with that subsection unless the defendant, or a person on the defendant’s behalf, applies for bail.

(2) In subsection (1) —

20 “**trial**” means that part of proceedings for an offence when evidence is being received by the court in respect of the offence and also extends to any time when —

(a) legal argument is being heard; or

25 (b) a judicial officer or a jury is deliberating.

”.

31. Section 31A inserted

After section 31 the following section is inserted —

“

31A. Amendment of conditions

- 5 (1) Where —
- (a) a defendant was granted bail for the defendant's appearance for trial for an offence; and
 - (b) the trial extends beyond one day,
- 10 a judicial officer who grants bail for the next appearance by exercising the power in section 31(2)(a) may also exercise any of the powers described in subsection (2).
- (2) The powers referred to in subsection (1) are —
- 15 (a) to add any condition to the extent that is authorized by clause 2 or 3 of Part D of Schedule 1;
 - (b) to vary a condition to that extent; or
 - (c) to cancel a condition.
- 20 (3) A judicial officer who adds, varies or cancels a condition under subsection (1) shall cause an officer of the court —
- (a) to make an appropriate endorsement on the defendant's bail undertaking; and
 - 25 (b) to certify on the undertaking that the defendant was notified,
- of the addition, variation or cancellation.

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- 5
- (4) When an endorsement is made under subsection (3) —
- (a) the bail undertaking is deemed to be amended according to the endorsement; and
 - (b) the terms and conditions of the undertaking continue to apply as so amended as if the defendant had entered into the bail undertaking in that form.
- 10
- (5) In any proceedings an endorsement and certificate on a bail undertaking purporting to have been made under subsection (3) shall be evidence of the matters appearing in the endorsement or certificate without proof of the signature of the officer of the court who made them.
- 15
- (6) In subsection (1) —
- “**trial**” means that part of proceedings for an offence when evidence is being received by the court in respect of the offence and also extends to any time when —
- (a) legal argument is being heard; or
 - (b) a judicial officer or a jury is deliberating.
- 20

”.

32. Section 44 replaced

Section 44 is repealed and the following section is inserted instead —

“

- 5 **44. When surety undertaking extends to different time etc. substituted under section 31**
- (1) A surety undertaking does not extend to the failure by the defendant to appear at a different time or a different time and place pursuant to section 31 unless —
- 10 (a) the surety undertaking contains a provision that it does so extend and, where applicable under subsection (3), the surety has received notice as mentioned in that subsection; or
- (b) subsection (2) applies.
- 15 (2) A surety undertaking extends to the failure by the defendant to appear at a different time substituted pursuant to section 31(1) during a trial if, at the option of the surety, the undertaking contains a provision that it does so extend.
- 20 (3) A surety undertaking may, at the option of the surety, also contain a provision that —
- (a) where a different time or a different time and place for the defendant’s appearance is substituted pursuant to section 31; and
- 25 (b) subsection (2) does not apply,
- the surety’s liability shall only arise if the surety is given notice, as soon as is practicable, of the different time or the different time and place.

(4) In subsection (2) —

“**trial**” means that part of proceedings for an offence when evidence is being received by the court in respect of the offence and also extends to any time when —

- (a) legal argument is being heard; or
- (b) a judicial officer or a jury is deliberating.

”.

Division 12 — Amendments relating to notices under section 31

10 **33. Section 3A inserted**

After section 3 the following section is inserted —

“

3A. Facsimile transmission of documents

(1) A reference in this Act, however expressed, to a notice being sent to a person by facsimile is a reference to the notice being sent by facsimile transmission to the person either —

- (a) directly to a facsimile address provided by the person; or
- (b) through the agency of Australia Post as described in subsection (2).

(2) A notice may be sent to a person by the sending of a facsimile transmission of the notice, showing the address of the person as appearing in the records of the court, to an office of Australia Post near to that address, and either —

- (a) the delivery of a facsimile copy of the notice by Australia Post to the person at that address; or

- (b) the collection of a facsimile copy of the notice by the person from an office of Australia Post.
- (3) If a notice is sent by facsimile transmission in accordance with this section, and subsection (2)(b) does not apply, the notice shall be presumed, unless the contrary is shown, to have been received at the time when in the ordinary course of events the facsimile copy —
 - (a) would have been received; or
 - (b) would have been delivered,as the case may be.

”.

34. Section 31 amended

- (1) Section 31(2) is amended as follows:
 - (a) in paragraph (b) by deleting “give written notice thereof” and inserting instead —
“ cause written notice thereof to be given ”;
 - (b) in paragraphs (c) and (d) by deleting “give written notice” in both places where it occurs and inserting instead —
“ cause written notice to be given ”;
 - (c) in paragraph (e) by deleting “give written notice thereof” and inserting instead —
“ cause written notice thereof to be given ”;
 - (d) in paragraph (f) by inserting after “of the court” —
“ , or an officer authorized under subsection (5), ”;
 - (e) in paragraph (f) by deleting “giving written notice thereof” and substituting the following —
“ causing written notice thereof to be given ”.

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Division 12 Amendments relating to notices under section 31

s. 35

(2) After section 31(4) the following subsection is inserted —

“

(5) The Chief Justice in respect of committals to the Supreme Court, and the Chief Judge of the District Court in respect of committals to that court, may authorize a person or persons by name or office to perform the functions referred to in subsection (2)(f).

”

35. Section 32 amended

(1) Section 32(1), (2) and (3) are repealed and the following subsections are inserted instead —

“

(1) A written notice to a defendant under section 31(2) shall be —

(a) given to the defendant personally; or

(b) sent to the defendant —

(i) by post at the defendant's address appearing in the records of the court; or

(ii) in urgent cases, by facsimile.

(2) A person who gives a notice personally as mentioned in subsection (1)(a) shall endorse on a file copy of the notice a certificate showing —

(a) that the person has done so; and

(b) the time of doing so.

(3) A register shall be kept at each court showing particulars in respect of each written notice sent by post or facsimile under subsection (1)(b) for an appearance in that court or a court to which a defendant has been committed.

5 (3a) If a notice is sent by post under subsection (1)(b)(i) it shall be presumed, unless the contrary is shown, to have been received and at the time when, in the ordinary course of events, the letter would have been delivered.

”.

(2) Section 32(4) is amended as follows:

- 10 (a) by deleting “endorse” and inserting instead —
“ cause to be endorsed ”;
- (b) by deleting “he notified the defendant” and inserting instead —
“ the defendant was notified ”.

(3) Section 32(5)(b) is deleted and the following paragraphs are inserted instead —

- 15 “
- (b) an endorsement —
- (i) on a copy of a notice referred to in subsection (2); or
- (ii) on a bail undertaking,
- 20 purporting to be a certificate referred to in subsection (2) or (4) is evidence of the matters appearing in the certificate without proof of the signature of the person who made the endorsement; and
- 25 (c) an entry in a register referred to in subsection (3) shall be evidence of any matter stated in the entry without proof of the making of the entry.

”.

Division 13 — Amendment relating to authority to approve sureties

36. Section 36 replaced

Section 36 is repealed and the following section is inserted instead —

“

36. Authority to approve sureties

(1) The decision whether an applicant should be approved as a surety in any case shall be made —

- (a) by any person referred to in section 29(a) to (g);
- (b) by any person for the time being in charge of a prison; or
- (c) where the defendant to whom bail has been granted is a child, by any authorized community services officer.

(2) A judicial officer when granting bail to a defendant subject to a requirement for a surety or sureties may make an order as to —

- (a) the giving of notice to the prosecutor of an application for approval of any surety; or
- (b) the person or persons who are to, or may, approve any surety,

and subsection (1) shall have effect subject to any such order.

”.

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Division 14 Amendments relating to giving of notices under section 44

s. 37

have been received and at the time when, in the ordinary course of events, the letter would have been delivered.

”.

5 (3) Section 45(3) is amended as follows:

(a) by deleting “endorse” and inserting instead —

“ cause to be endorsed ”;

(b) by deleting “he notified the surety” and inserting instead —

10 “ the surety was notified ”.

(4) Section 45(4) is amended as follows:

(a) by deleting “44(2)” and inserting instead —

“ 44(3) ”;

(b) by deleting paragraph (b) and inserting instead —

15 “

(b) an endorsement —

(i) on a copy of a notice referred to in subsection (2); or

(ii) on a surety undertaking,

20 purporting to be a certificate referred to in subsection (2) or (3) is evidence of the matters appearing in the certificate without proof of the signature of the person who made the endorsement; and

25 (c) an entry in a register referred to in subsection (2a) shall be evidence of any matter stated in the entry without proof of the making of the entry.

”.

(5) After section 45(4) the following subsection is inserted —

“

(5) The clerk or registrar of the court is an authorized person for the purposes of subsection (1)(c) and in addition —

(a) in respect of committals to the Supreme Court, the Chief Justice; and

(b) in respect of committals to the District Court, the Chief Judge,

may authorize a person, by name or office, to perform the function referred to in subsection (1)(c).

”.

Division 15 — Amendments relating to enforcement of surety’s undertaking

38. Section 49 amended

Section 49(1) is amended as follows:

(a) by deleting paragraph (a) and inserting instead —

“

(a) an application for payment may be made to an appropriate judicial officer by motion or complaint, as the case may require —

(i) by the Director of Public Prosecutions where the court before which the defendant failed to appear was —

(I) the District Court, the Supreme Court, the Full Court of the Supreme Court or the Court of Criminal Appeal; or

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Division 16 Amendments relating to the prosecution of offences against section 51

s. 39

- 5 (II) another court, if the Director of Public Prosecutions is prosecutor in that court of the case against the defendant;
- or
- (ii) in other cases, by the clerk or registrar of the court before which the defendant failed to appear;
- 10 (b) in paragraph (b) by deleting “that judicial officer shall summon the surety” and inserting instead —
- “
- the appropriate judicial officer shall summon the surety, or cause the surety to be summoned,
- 15 ”.

Division 16 — Amendments relating to the prosecution of offences against section 51

39. Section 51A inserted

After section 51 the following section is inserted —

- 20 “
- 51A. Proceedings before courts of summary jurisdiction for an offence against section 51**
- (1) This section applies to an offence against section 51(1) or (2) where the court before which the defendant is bound to appear at the time when the defendant fails to comply with the defendant’s bail undertaking (“**the court of hearing**”) is a court of petty sessions or the Children’s Court.
- 25

- (2) Where this section applies to an offence —
- (a) proceedings for the offence shall be commenced by complaint made in writing to a justice by the clerk of the court of hearing; and
 - (b) that clerk shall issue to the Commissioner of Police a certificate under section 64 as to the defendant's failure to appear.
- (3) Proceedings that have been commenced under subsection (2) shall be prosecuted —
- (a) by the Director of Public Prosecutions, if that official is the prosecutor of the case in the court of hearing; and
 - (b) otherwise, by a police officer.

40. Section 52 amended

- (1) Section 52(3) is amended by inserting after “a justice” —
- “
- by the registrar of the court before which the defendant failed to appear
- ”.
- (2) After section 52(3) the following subsections are inserted —
- “
- (3a) A registrar who lodges a complaint under subsection (3) shall issue to the relevant official a certificate under section 64 as to the defendant's failure to appear.
 - (3b) The prosecution of proceedings that have been commenced under subsection (3) shall be conducted by the relevant official.
- ”.

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Division 17 Amendments relating to the official who may take action under section 54 and the judicial officer who has jurisdiction under section 55

s. 41

(3) After section 52(5) the following subsection is inserted —

“

(6) In this section —

“relevant official” —

- 5 (a) means the State Crown Solicitor if that official was acting for the other party in the proceedings in which the defendant failed to appear; and
- 10 (b) otherwise means the Director of Public Prosecutions.

”.

Division 17 — Amendments relating to the official who may take action under section 54 and the judicial officer who has jurisdiction under section 55

15 **41. Section 46 amended**

Section 46(1)(b) is amended by deleting “police” and inserting instead —

“ relevant ”.

42. Section 54 amended

20 (1) Section 54(1) is amended as follows:

- (a) by deleting “A police officer may cause a defendant who has been released on bail” and inserting instead —

“

25 Where a defendant has been released on bail a relevant officer may cause the defendant

”;

(b) by deleting “the police officer” and inserting instead —
“ the officer ”.

(2) Section 54(2) is repealed and the following subsections are
inserted instead —

5

“

(2) For the purpose of causing a defendant to appear before
an appropriate judicial officer as provided in
subsection (1) a police officer may —

(a) arrest the defendant without warrant; and

10

(b) bring the defendant before an appropriate
judicial officer,

but where the relevant officer is the Director of Public
Prosecutions or the State Crown Solicitor a police
officer may only do so at the request in writing of that
official.

15

(2a) Instead of invoking the power conferred by
subsection (2) a relevant officer may make a complaint
to an appropriate judicial officer as to any ground
specified in subsection (1).

20

”.

(3) Section 54(3) is amended by deleting “(2)(b)” and inserting
instead —

“ (2a) ”.

(4) After section 54(5) the following subsections are inserted —

25

“

(6) If a police officer is satisfied that because of the
urgency of the case it is not practicable for the Director
of Public Prosecutions or the State Crown Solicitor to

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Division 17 Amendments relating to the official who may take action under section 54 and the judicial officer who has jurisdiction under section 55

s. 42

exercise powers under this section, the police officer may exercise those powers notwithstanding that —

- 5
- (a) the court before which the defendant is required to appear is a court referred to in subsection (7)(a)(i) or (ii); or
 - (b) the State Crown Solicitor will conduct the prosecution against the defendant.

(7) In this section —

“relevant officer” —

- 10
- (a) where the court before which the defendant is required to appear is —
 - 15 (i) the District Court, the Supreme Court, the Full Court of the Supreme Court or the Court of Criminal Appeal; or
 - (ii) another court and the Director of Public Prosecutions will conduct the prosecution against the defendant in that court,
means —
 - 20 (iii) the Director of Public Prosecutions; or
 - (iv) if subsection (6) applies, a police officer referred to in that subsection;
 - and
 - (b) in any other case —
 - 25 (i) means the State Crown Solicitor if that official will conduct the prosecution against the defendant; and
 - (ii) otherwise means a police officer.

”.

43. Section 54A inserted

After section 54 the following section is inserted —

“

**54A. Defendant on committal may be taken before court
by which committed**

5

(1) This section applies to a defendant —

10

(a) who has been released on bail following the
defendant’s committal to the District Court or
the Supreme Court to be tried (otherwise than
for wilful murder or murder) or sentenced or
otherwise dealt with;

(b) who has not made an appearance in that court
on the committal; and

15

(c) who in the opinion of the relevant officer under
section 54 should be made to show cause in
terms of subsection (1) of that section.

20

(2) The relevant officer may, under section 54, cause a
defendant to whom this section applies to appear
before a judicial officer who is empowered to exercise
jurisdiction in the court in which the committal order
was made, instead of before an appropriate judicial
officer as defined in section 3(1).

25

(3) A judicial officer before whom a defendant so appears
shall be deemed to be an appropriate judicial officer for
purposes of section 54(2).

(4) A judicial officer before whom a defendant appears
under section 54 as modified by this section is not
obliged to exercise any power conferred by section 55
but may refuse to do so and direct the relevant officer

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Division 18 Amendment relating to “bail-shopping”

s. 44

to cause the defendant to appear before an appropriate judicial officer as defined in section 3(1).

- (5) A relevant officer shall comply with a direction given to that officer under subsection (4).

5

”.

Division 18 — Amendment relating to “bail-shopping”

44. Schedule 1 amended

Schedule 1 Part B is amended by deleting clause 3 and inserting the following clause instead —

10

“

3. Cessation of power upon refusal of bail for initial appearance

15

- (1) After an authorized officer has refused bail for an initial appearance by a defendant, the power to grant bail for that appearance ceases to be vested in another authorized officer, but a justice or a member of the Children’s Court may nevertheless grant bail for that appearance.

20

- (2) After a justice or a member of the Children’s Court has refused bail for an initial appearance by a defendant, the power to grant bail for that appearance ceases to be vested in an authorized officer or another justice or another member of the Children’s Court.

”.

**Division 19 — Amendment to correct an omission and relating
to length of bail for initial appearance**

45. Schedule 1 amended

Schedule 1 Part C is amended in clause 7 as follows:

- 5 (a) by inserting after “a justice” —
“ , a member of the Children’s Court ”;
- (b) by deleting “7” and inserting instead —
“ 30 ”.

**Division 20 — Amendments relating to appeal to Court of
Criminal Appeal**

46. Section 3 amended

Section 3(1) is amended in the definition of “judicial officer” by
inserting after “Children’s Court” —

- 15 “
and, where the context so requires, includes the Full
Court of the Supreme Court or the Court of Criminal
Appeal exercising jurisdiction under this Act
”.

47. Sections 15A, 15B and 15C inserted

20 After section 15 the following sections are inserted —

“

15A. Appeal from decision of Judge

- 25 (1) The prosecutor or the defendant may appeal to the
Court of Criminal Appeal against a bail decision of a
Judge of —
- (a) the District Court;

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Division 20 Amendments relating to appeal to Court of Criminal Appeal

s. 47

(b) the Children’s Court; or

(c) the Supreme Court.

(2) In subsection (1) —

“**bail decision**” means a decision —

5

(a) to grant or refuse bail;

(b) to revoke or vary bail;

(c) to dispense with the requirement for bail; or

(d) to impose any condition on a grant of bail,

and includes a decision under section 55 or

10

59A(3).

(3) An appeal under this section shall be filed in the office of the Supreme Court at Perth not later than 21 days after the day on which the bail decision in question was made.

15

(4) A party to an appeal under this section who is in custody is entitled to be present at the hearing of the appeal if that party so requests, and any official responsible for that custody who is informed of such a request shall do what is necessary to give effect to it.

20

15B. Determination of appeal under section 15A, and related provisions

(1) The Court of Criminal Appeal (“**the Court**”) has jurisdiction to hear and determine an appeal under section 15A.

25

(2) Section 687(2) and (7) of *The Criminal Code* apply to an appeal under section 15A as if it were an appeal under Chapter LXIX of that Code.

- 5
- 10
- 15
- (3) The Court shall determine an appeal on the information that was before the Judge whose decision is the subject of the appeal.
- (4) Any decision of the Court in relation to bail shall be made in accordance with the relevant provisions of sections 13A and 17 and Schedule 1.
- (5) Where in determining an appeal the Court revokes the bail of a defendant who is at liberty, it may order that the defendant be returned to custody to await the appearance for which the bail was granted.
- (6) Where in determining an appeal the Court varies the bail of a defendant who is at liberty, it may order that the defendant be returned to custody until the defendant becomes entitled to be again at liberty pursuant to section 11.
- (7) A Judge of the Supreme Court may issue any warrant that may be necessary to carry into effect an order under subsection (5) or (6).

15C. Further appeal only by leave

- 20
- 25
- (1) This section applies where there has been a determination of an appeal under section 15B in relation to an appearance by a defendant in proceedings for an offence or a group of offences.
- (2) The defendant cannot bring a further appeal under section 15A in relation to another appearance in proceedings for the same offence or group of offences unless the defendant obtains leave to do so from a Judge of the Supreme Court.

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Division 20 Amendments relating to appeal to Court of Criminal Appeal

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- (3) A Judge shall not grant leave under subsection (2) unless the defendant satisfies the Judge that —
- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since the determination of the appeal referred to in subsection (1); or
 - (b) the defendant failed to adequately present the defendant's case on that appeal.

”.

10 **48. Schedule 1 amended**

Schedule 1 Part B is amended by inserting after clause 1 the following clause —

“

15 **1A. Upon decision by Court of Criminal Appeal, other powers cease**

After the Court of Criminal Appeal acting under sections 15A and 15B —

- (a) has granted or refused bail for an appearance by a defendant, the power to grant bail for that appearance; or
- (b) has dispensed with the requirement for bail for an appearance by a defendant, the power to grant or refuse bail for that appearance,

ceases to be vested in any judicial officer or in any authorized officer.

”.

Division 21 — Amendments relating to prescription of forms

49. Section 3 amended

Section 3(1) is amended by inserting after the definition of “appropriate judicial officer” the following definition —

5

“

“approved” in relation to a form means approved by the CEO (Justice);

”.

50. Various provisions amended

10

- (1) The provisions referred to in the Table to this subsection are amended by deleting “a prescribed” in each place where it occurs and inserting instead —

“ an approved ”.

Table

section 8(1)(b)
section 26(4)(b)

15

- (2) The provisions referred to in the Table to this subsection are amended by deleting “prescribed” in each place where it occurs and inserting instead —

“ approved ”.

Table

section 24(1)(a)
section 45(1)(b)
Schedule 1 Part C clause 2(3)(c)

Division 22 — Miscellaneous amendments

51. Section 3 amended

Section 3(1) is amended by inserting in their appropriate alphabetical positions the following definitions —

5

“

“Director of Public Prosecutions” means —

(a) the Director of Public Prosecutions for the State; or

10

(b) the officer in charge in the State of the Commonwealth Office of the Director of Public Prosecutions,

as the case may require;

“registrar” —

15

(a) in relation to the Supreme Court or the District Court, includes the Principal Registrar of that court; and

(b) in relation to any court includes a deputy registrar;

”.

20

52. Section 7A amended

(1) Section 7A is amended by deleting the section designation “7A.” and inserting instead —

“ 7F. ”.

- (2) Section 7A(2) is repealed and the following subsection is inserted instead —

“

- 5 (2) Bail shall not be granted to an applicant for bail under subsection (1) until —
- (a) the applicant has given notice of the application for bail to —
- (i) the Director of Public Prosecutions; or
- (ii) the State Crown Solicitor,
- 10 as the case may require; and
- (b) that official has been given an opportunity to be heard on the application.

”.

53. Section 8 amended

- 15 Section 8(5) is amended by deleting “7A” and inserting instead —

“ 7F ”.

54. Section 9 amended

- Section 9(1)(b) is amended by inserting after “24(1)” —

20 “ or 24A(1) or (2) ”.

55. Section 11 amended

- Section 11(1)(e) is amended by inserting after “46,” —

“ 50F, ”.

56. Section 21 amended

Section 21(2)(b) is deleted and the following paragraph is inserted instead —

“

- 5 (b) the Director of Public Prosecutions or the State
Crown Solicitor to receive notice and be heard
under section 7F(2);

”.

57. Section 31 amended

10 Section 31(2)(c) is amended by inserting immediately before
“notifying the defendant” —

“

15 or a Judge of the Children’s Court, as the case
may require,

”.

Division 23 — Reprinting of *Bail Act 1982*

58. Reprinting authorized

20 The *Bail Act 1982* as amended by this Act may be reprinted
before this Act comes into operation, and for the purposes of the
Reprints Act 1984 the *Bail Act 1982* as so amended is to be
regarded as a written law.

Part 3 — Consequential amendments to other Acts

59. *Justices Act 1902* amended

Section 4A of the *Justices Act 1902** is amended by inserting after “section 4” —

5 “ or 4A ”.

[* *Reprinted as at 2 October 1999.*

For subsequent amendments see Act No. 47 of 1999.]

60. *Supreme Court Act 1935* amended

10 (1) The amendments in this section are to the *Supreme Court Act 1935**.

[* *Reprinted as at 23 July 1999.*]

(2) Section 58(1)(b) is amended by inserting before “appeals” the following —

“ subject to subsection (1a), ”.

15 (3) After section 58(1) the following subsection is inserted —

“

(1a) An appeal does not lie to the Full Court under subsection (1)(b) against a bail decision as defined in section 15A(2) of the *Bail Act 1982*.

20

”.

Part 4 — Transitional provisions

61. Definitions

In this Part unless the contrary intention appears —

5 “**commencement day**” means the day on which this Act, or a relevant provision of this Act, comes into operation;

“**new**”, in relation to a section, subsection or clause, means —

- (a) a section inserted in the principal Act;
- (b) a subsection inserted in a section of the principal Act;
or
- 10 (c) a clause inserted in a Part of Schedule 1 to the principal Act,
by this Act;

“**new provision**” means —

- (a) a new section, a new subsection or a new clause; or
- 15 (b) a provision of the principal Act as amended by this Act;

“**principal Act**” means the *Bail Act 1982*.

62. Interpretation Act 1984 not affected

20 Nothing in this Part limits the operation of the *Interpretation Act 1984*.

63. Amendment made by section 4

The new provision made by section 4 applies to appearances in court referred to in new section 4A(1)(a) that occur on or after the commencement day.

64. Amendments made by Division 3 of Part 2

The new provisions made by Division 3 of Part 2 apply to appearances in court coming within section 7(1) of the principal Act that occur on or after the commencement day.

5 **65. Amendments made by section 19**

The new provisions made by section 19 apply as follows:

- 10 (a) subsection (2) of new section 7B applies so as to enable a defendant who is detained in custody on or after the commencement day to make an application allowed for by that subsection;
- (b) subsection (3) of new section 7B and subsection (2) of new section 7C apply to appearances in court coming within those subsections respectively that occur on or after the commencement day;
- 15 (c) new section 7D applies to any subsequent consideration of bail within the meaning in that section that occurs on or after the commencement day.

66. Amendments made by section 20

20 A certificate under section 11(2) of the principal Act that has not been fully acted upon before the commencement day is to be treated on and after that day as a certificate under new subsection (3) as inserted in that section by section 20.

67. Amendment made by section 23

25 New subsection (4) inserted in section 14 of the principal Act by section 23(2) applies as follows:

- (a) new subsection (4)(a)(i) applies in respect of children charged with an offence on or after the commencement day;

- (b) new subsection (4)(a)(ii) applies in respect of defendants committed to the District Court on or after the commencement day for trial or sentence;
- 5 (c) paragraph (b) of new subsection (4) applies in respect of any power referred to in section 14(1) of the principal Act that is exercised, or could be exercised, on or after the commencement day by “any other judicial officer” as defined in that paragraph.

68. Amendment made by section 24

10 The new provision made by section 24(c) applies to persons arrested for murder or wilful murder on or after the commencement day.

69. Amendment made by section 25

15 The new provision made by section 25(2) applies to persons arrested for a prescribed simple offence, as mentioned in section 18(1) of the principal Act, on or after the commencement day.

70. Amendment made by section 26

20 The new provision made by section 26(1) applies to any failure to appear, as mentioned in section 19(1) of the principal Act, that occurs on or after the commencement day.

71. Amendments made by sections 27 and 28

25 (1) A bail undertaking that is in force on or after the commencement day is a bail undertaking described in subsection (2) of section 28 of the principal Act despite the fact that it is not expressed in terms of that subsection as amended by section 27.

- 5 (2) A surety undertaking that is in force on or after the commencement day is a surety undertaking within the meaning in section 35 of the principal Act despite the fact that it is not expressed in terms of section 35(1) of the principal Act as amended by section 28.

72. Amendments made by sections 30 and 31

The new provisions made by sections 30 and 31 apply to any trial as defined in new section 7E(2), or part of a trial, that takes place on or after the commencement day.

10 **73. Amendment made by section 32**

The new provision made by section 32 applies to a surety undertaking entered into on or after the commencement day.

74. Amendments made by section 34

15 The new provisions made by section 34 apply to any adjournment or committal referred to in section 31 of the principal Act that occurs on or after the commencement day.

75. Amendments made by section 35

20 The new provisions made by section 35 apply to oral notifications given, and written notices given or sent, under section 32 of the principal Act on or after the commencement day.

76. Amendment made by section 36

The new provision made by section 36 applies as follows:

- 25 (a) subsection (1) of new section 36 applies to any decision required to be made under that subsection on or after the commencement day;

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- (b) subsection (2) of new section 36 applies to any grant of bail that occurs on or after the commencement day.

77. Amendments made by section 37

5 The new provisions made by section 37 apply to oral notifications given, and written notices given or sent, for the purposes of section 44(3) of the principal Act on or after the commencement day.

78. Amendments made by section 38

- 10 (1) The new provisions made by section 38 apply to any failure by a defendant to comply with any requirement of the defendant's bail undertaking that occurs on or after the commencement day.
- (2) Any proceedings under section 49 of the principal Act in progress immediately before the commencement day may be continued after that day as if section 38 had not come into operation.
- 15

79. Amendment made by section 39

The new provision made by section 39 applies to offences described in section 51A of the principal Act committed on or after the commencement day.

20 **80. Amendments made by section 40**

- (1) The new provisions made by section 40 apply to offences described in section 52(1) of the principal Act committed on or after the commencement day.
- (2) Any proceedings under section 52 of the principal Act in progress immediately before the commencement day may be continued after that day as if section 40 had not come into operation.
- 25

81. Amendments made by sections 42 and 43

- 5 (1) Subject to subsection (2), the new provisions made by sections 42 and 43 apply where, on or after the commencement day, it is desired to cause a defendant to appear before an appropriate judicial officer as provided for in section 54 of the principal Act.
- (2) Section 54 of the principal Act applies where before the commencement day —
- 10 (a) a defendant was arrested under subsection (2)(a); or
- (b) a complaint was made under subsection (2)(b),
- of that section, as if section 42 had not come into operation.

82. Amendment made by section 44

15 The new provision made by section 44 applies to a refusal of bail coming within new clause 3 of Part B of Schedule 1 to the principal Act that occurs on or after the commencement day.

83. Amendments made by section 45

The new provisions made by section 45 apply to a grant of bail that occurs on or after the commencement day.

84. Amendments made by sections 46 and 47

20 The new provisions made by sections 46 and 47 apply to a bail decision, as defined in subsection (2) of new section 15A, made by a Judge referred to in subsection (1) of that section on or after the commencement day.

85. Amendment made by section 48

25 The new provision made by section 48 applies in respect of —

(a) a grant or refusal of bail; or

(b) a dispensation from the requirement for bail,
coming within new clause 1A of Part B of Schedule 1 to the
principal Act that occurs on or after the commencement day.

86. Amendment made by section 52

5 The new provision made by section 52(2) applies to applications
for bail under section 7F of the principal Act made on or after
the commencement day.

87. Amendment made by section 54

10 The new provision made by section 54 applies to any
consideration of the case for bail that occurs on or after the
commencement day.

88. Amendment made by section 60

15 (1) Subsection (1a) inserted in section 58 of the *Supreme Court
Act 1935* by section 60(3) applies to a bail decision coming
within that subsection made on or after the commencement day.

(2) An appeal under section 58(1)(b) of the *Supreme Court
Act 1935* against a bail decision made before the
commencement day may be commenced or continued and
determined as if section 60(3) had not come into operation.

20 **89. Powers in relation to transitional provisions**

(1) If there is no sufficient provision in this Part for any matter or
thing necessary or convenient to give effect to the transition to
the new provisions, the Governor may make that provision by
order published in the *Gazette*.

- (2) If in the opinion of the Minister an anomaly arises in the carrying out of the provisions of this Part the Governor may by order published in the *Gazette* —
- 5 (a) modify those provisions to remove the anomaly; and
- (b) make such provision as is necessary or expedient to carry out the intention of those provisions.
- (3) An order under this section may be made so as to have effect on and from the commencement day.
- 10 (4) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as to prejudicially affect the rights of a person existing before that day.

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