Examinable excerpts of

Bail Act 1977

as at 10 April 2018

PART 1—PRELIMINARY

3A Determination in relation to an Aboriginal person

In making a determination under this Act in relation to an Aboriginal person, a court must take into account (in addition to any other requirements of this Act) any issues that arise due to the person's Aboriginality, including—

(a) the person's cultural background, including the person's ties to extended family or place; and

(b) any other relevant cultural issue or obligation.

PART 2—GRANTING OF BAIL AND ADMISSION TO BAIL

4 Accused held in custody entitled to bail

(1) Any person accused of an offence and being held in custody in relation to that offence shall be granted bail—

(a) if it is not practicable to bring him before a bail justice or the Magistrates' Court within 24 hours after he is taken into custody;

(b) during any postponement of the hearing of a charge for the offence or whilst he is awaiting trial; or

(c) where his case is adjourned by a court for inquiries or a report or whilst he is awaiting sentence except where the court is satisfied that it would not be desirable in the public interest to release the accused pending completion of the inquiries or receipt of the report or pending sentence.

(2) Notwithstanding the generality of the provisions of subsection (1) a court shall refuse bail—

(a) in the case of a person charged with treason or murder except in accordance with section 13;

(aa) in the case of a person charged with—

(i) an offence under section 71, 71AA, 72 or 72A of the **Drugs, Poisons and Controlled Substances Act 1981** or an offence of conspiring to commit any of those offences under section 79(1) of that Act; or

(ia) an offence of trafficking in relation to a commercial quantity of a drug of dependence under section 71 of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** or an offence of cultivating a narcotic plant under section 72 of that Act in circumstances where the offence is committed in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that narcotic plant or an offence of conspiring to commit either of those offences under section 79(1) of that Act; or

(ii) an offence under section 231(1), 233A or 233B(1) of the Customs Act 1901 of the Commonwealth as in force immediately before the commencement of the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 of the Commonwealth in circumstances where the offence is committed in relation to narcotic goods within the meaning of that Act in respect of a quantity that is not less than the commercial quantity (as defined in section 70(1) of the **Drugs, Poisons and Controlled Substances Act 1981**) applicable to the drug of dependence constituted by those narcotic goods; or

(iii) an offence under section 307.1, 307.2, 307.5, 307.6, 307.8 or 307.9 of the Criminal Code of the Commonwealth in circumstances where the offence is committed in relation to a substance in respect of a quantity that is not less than the commercial quantity (as defined in section 70(1) of the **Drugs, Poisons and Controlled Substances Act 1981**) applicable to the drug of dependence as defined in that Act constituted by that substance—

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unless the court is satisfied that exceptional circumstances exist which justify the grant of bail;

(b) in the case of a person charged with an offence under section 4B(1) or 21W of the **Terrorism (Community Protection) Act 2003** unless the court is satisfied that exceptional circumstances exist which justify the grant of bail;

* * * * *

(d) if the court is satisfied—

(i) that there is an unacceptable risk that the accused if released on bail would—

fail to surrender himself into custody in answer to his bail;

commit an offence whilst on bail;

endanger the safety or welfare of members of the public; or

interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;

* * * * *

(iii) that it has not been practicable to obtain sufficient information for the purpose of deciding any question referred to in this subsection for want of time since the institution of the proceedings against him.

(2A) A court is not required to refuse bail in the case of an accused who is serving a sentence of imprisonment for some other cause but any bail granted must be subject to the condition that the person will not be released on bail before he or she is entitled to be released under a parole order made, or which may be made, in respect of him or her;

(3) In assessing in relation to any event mentioned in subsection (2)(d)(i) whether the circumstances constitute an unacceptable risk the court shall have regard to all matters appearing to be relevant and in particular, without in any way limiting the generality of the foregoing, to such of the following considerations as appear to be relevant, that is to say—

(a) the nature and seriousness of the offence;

(b) the character, antecedents, associations, home environment and background of the accused;

(ba) whether the accused has expressed publicly support for—

(i) a terrorist act or a terrorist organisation; or

(ii) the provision of resources to a terrorist organisation;

(c) the history of any previous grants of bail to the accused;

(d) the strength of the evidence against the accused;

(e) the attitude, if expressed to the court, of the alleged victim of the offence to the grant of bail;

(f) any conditions that may be imposed to address the circumstances which may constitute an unacceptable risk.

(4) Where the accused is charged—

(a) with an indictable offence that is alleged to have been committed while he was at large awaiting trial for another indictable offence;

(ab) with a serious offence and the accused, as an adult, has within the preceding 5 years been convicted or found guilty of an offence against section 30(1); or

(b) with an offence against section 21A(1) of the **Crimes Act 1958** (stalking) and—

(i) the accused has within the preceding 10 years been convicted or found guilty of an offence against that section in relation to any person or an offence in the course of committing which he or she used or threatened to use violence against any person; or

(ii) the court is satisfied that the accused on a separate occasion used or threatened to use violence against the person whom he or she is alleged to have stalked, whether or not the accused has been convicted or found guilty of, or charged with, an offence in connection with that use or threatened use of violence; or

(ba) with an offence against section 37, 37A, 123, 123A or 125A of the **Family Violence Protection Act 2008** of contravening a family violence intervention order or family violence safety notice (as the case requires) in the course of committing which the accused is alleged to have used or threatened to use violence and—

(i) the accused has within the preceding 10 years been convicted or found guilty of an offence in the course of committing which he or she used or threatened to use violence against any person; or

(ii) the court is satisfied that the accused on a separate occasion used or threatened to use violence against the person who is the subject of the order, whether or not the accused has been convicted or found guilty of, or charged with, an offence in connection with that use or threatened use of violence; or

(bb) with an offence against section 100 of the **Personal Safety Intervention Orders Act 2010** of contravening an order in the course of committing which the accused is alleged to have used or threatened to use violence and—

(i) the accused has within the preceding 10 years been convicted or found guilty of an offence in the course of committing which he or she used or threatened to use violence against any person; or

(ii) the court is satisfied that the accused on a separate occasion used or threatened to use violence against the person who is the subject of the order, whether or not the accused has been convicted or found guilty of, or charged with, an offence in connection with that use or threatened use of violence; or

(bc) with an offence of aggravated burglary under section 77 of the **Crimes Act 1958**, an offence of home invasion under section 77A of that Act, an offence of aggravated home invasion under section 77B of that Act or an offence of aggravated carjacking under section 79A of that Act; or

(bd) with an offence against section 317AC, 317AD, 317AE, 317AF or 317AG of the Crimes Act 1958; or

(c) with any indictable offence in the course of committing which the accused or any person who is involved in the commission of the offence is alleged to have used or threatened to use a firearm, offensive weapon, or explosive within the meaning of section 77 of the **Crimes Act 1958**; or

Note

Subdivision (1) of Division 1 of Part II of the **Crimes Act 1958** deals with complicity in commission of offences.

(caa) with an offence of arson causing death under section 197A of the **Crimes Act 1958**; or

(ca) with an offence under section 71AB, 71AC or 72B of the **Drugs, Poisons and Controlled Substances Act 1981** or an offence of conspiring to commit any of those offences under section 79(1) of that Act;

(cab) subject to subsection (2)(aa), with an offence of trafficking in a drug of dependence under section 71 of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** or an offence of cultivating a narcotic plant under section 72 of that Act or an offence of conspiring to commit either of those offences under section 79(1) of that Act;

(cb) subject to subsection (2)(aa), with an offence under section 231(1), 233A or 233B(1) of the Customs Act 1901 of the Commonwealth, as in force immediately before the commencement of the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 of the Commonwealth, in relation to a commercial or trafficable quantity of narcotic goods within the meaning of that Act; or

(cc) subject to subsection (2)(aa), with an offence under section 307.1, 307.2, 307.5, 307.6, 307.8 or 307.9 of the Criminal Code of the Commonwealth; or

(cd) with an indictable offence that is alleged to have been committed while the accused is the subject of a supervision order, or interim supervision order, within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**; or

(ce) with an indictable offence, and the accused, at any time during the proceeding with respect to bail, is the subject of a supervision order, or interim supervision order, within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**; or

(d) with an offence against this Act—

the court shall refuse bail unless the accused shows cause why his detention in custody is not justified and in any such case where the court grants bail the court—

(i) if constituted by a judge or magistrate, shall include in the order a statement of reasons for making the order; or

(ii) in any other case, shall, as prescribed by regulations, record and transmit a statement of reasons for making the order.

(5) In granting bail a court may impose conditions in accordance with section 5.

5 Conditions of bail

(1) A court considering the release of an accused on bail must impose a condition that the accused will surrender into custody at the time and place of the hearing or trial and then will not depart without leave of the court and, if leave is given, will return at the time specified by the court and again surrender into custody.

(2) A court considering the release of an accused on bail must consider the conditions for release in the following order—

(a) release of the accused on his or her own undertaking without any other condition;

(b) release of the accused on his or her own undertaking with conditions about the conduct of the accused;

(c) release of the accused with a surety of stated value or a deposit of money of stated amount, with or without conditions about the conduct of the accused.

(2A) Without limiting subsection (2), a court may impose all or any of the following conditions about the conduct of an accused—

(a) reporting to a police station;

(b) residing at a particular address;

(c) subject to subsection (2B), a curfew imposing times at which the accused must be at his or her place of residence;

(d) that the accused is not to contact specified persons or classes of person;

Example

Witnesses, alleged victims or co-accused.

(e) surrender of the accused's passport;

(f) geographical exclusion zones, being places or areas the accused must not visit or may only visit at specified times;

Example

Not attending a gaming venue, a venue that sells alcohol or a point of international departure.

(g) attendance and participation in a bail support service;

(h) that the accused not drive a motor vehicle or carry passengers when driving a motor vehicle;

(i) that the accused not consume alcohol or use a drug of dependence within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981** without lawful authorisation under that Act;

(j) that the accused comply with any existing intervention orders;

(k) any other condition that the court considers appropriate to impose in relation to the conduct of the accused.

(2B) If a court imposes a curfew on an accused as a conduct condition, the period of curfew imposed must not exceed 12 hours within a 24 hour period.

(3) A court considering the release of an accused on bail may only impose a condition in order to reduce the likelihood that the accused may—

(a) fail to attend in accordance with his or her bail and surrender into custody at the time and place of the hearing or trial; or

(b) commit an offence while on bail; or

(c) endanger the safety or welfare of members of the public; or

(d) interfere with witnesses or otherwise obstruct the course of justice in any matter before the court.

(4) If a court imposes one or more conditions, each condition and the number of conditions—

(a) must be no more onerous than is required to achieve the purposes of subsection (3); and

(b) must be reasonable, having regard to the nature of the alleged offence and the circumstances of the accused.

(5) If a court is considering imposing a condition that requires a deposit of money of stated amount, the court must have regard to the means of the accused in determining—

(a) whether to impose the condition; and

(b) the amount of money to be deposited.

(6) If a court is satisfied under subsection (5) that the accused does not have sufficient means to satisfy a condition requiring a deposit of money of stated amount, the court must consider whether any other condition would achieve the purposes of subsection (3).

(7) If a court is considering imposing a condition that requires a surety of stated value, the court must have regard to the means of a proposed surety in determining—

(a) whether to impose the condition; and

(b) the value of the surety.

(8) If a court is satisfied under subsection (7) that the accused is unable to provide a surety with sufficient means, the court must consider whether any other condition would achieve the purposes of subsection (3).

Note

Sections 12 and 21 of the Charter of Human Rights and Responsibilities set out a right of freedom of movement and a right to liberty and security of the person.

Sections 23 and 25 of the Charter of Human Rights and Responsibilities set out the rights of children in the criminal process and the rights of an adult in criminal proceedings.

Section 7(2) of the Charter of Human Rights and Responsibilities sets out how a human right may be limited after taking into account all relevant factors, including any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

…

6 Person bailed to surrender himself into custody

An accused who is granted bail is under a duty to attend in accordance with his bail and surrender himself into custody.

7 Opposing bail

(1) Where the informant or prosecutor or any person appearing on behalf of the Crown intends to oppose the grant of bail to any person he shall so state to the court and the court may, before or at any time during the course of the application for bail, make an order directing that the evidence taken, the information given, and the representations made and the reasons (if any) given or to be given by the court shall not be published by any means—

(a) if a committal proceeding is held—before the accused in respect of whom the application is made is discharged; or

(b) if the accused in respect of whom the application is made is tried or committed for trial—before the trial is ended.

(2) Any person who fails without lawful excuse, the proof of which lies upon him, to comply with an order made under subsection (1) shall be guilty of an offence against this Act.

Penalty: 15 penalty units or imprisonment for three months.

8 Application for bail

(1) In any proceedings with respect to bail—

(a) the court may, subject to paragraph (b), make such inquiries on oath or otherwise of and concerning the accused as the court considers desirable;

(b) the accused shall not be examined or cross-examined by the court or any other person as to the offence with which he is charged and no inquiry shall be made of him as to that offence;

(c) the informant or prosecutor or any person appearing on behalf of the Crown may, in addition to any other relevant evidence, submit evidence, whether by affidavit or otherwise—

(i) to prove that the accused has previously been convicted of a criminal offence;

(ii) to prove that the accused has been charged with and is awaiting trial on another criminal offence;

(iii) to prove that the accused has previously failed to surrender himself into custody in answer to bail; or

(iv) to show the circumstances of the alleged offence, particularly as they relate to the probability of conviction of the accused;

(d) the court may take into consideration any relevant matters agreed upon by the informant or prosecutor and the accused or his or her legal practitioner; and

(e) the court may receive and take into account any evidence which it considers credible or trustworthy in the circumstances.

(2) Nothing in subsection (1)(a) prevents the application of Part 3.10 of the **Evidence Act 2008**.

9 Surety for bail

(1) Every surety to an undertaking of bail shall be a person who has attained the age of eighteen years who is not under any disability in law and is worth not less than the amount of the bail in real or personal property or both.

(2) Where an accused is required to provide a surety or sureties regard may be had in considering the suitability of a proposed surety to the following in addition to any other relevant matters—

(a) the surety's financial resources;

(b) his character and any previous convictions; and

(c) his proximity (whether in point of kinship place of residence or otherwise) to the person for whom he is to be surety.

(2A) If an objection to a proposed surety is raised, the suitability of the proposed surety is to be determined by a magistrate or judge.

(3) Before admitting an accused to bail with a surety or sureties the court or other person authorized by section 27 shall—

(a) be satisfied of the sufficiency of the means of the surety or sureties and for this purpose may require the surety or sureties (as the case may be) to—

(i) lodge in cash the amount of the bail; or

(ii) lodge a document that is evidence of the ownership and the value of property or any other asset to the amount of the bail; and

Note

Examples of documents that may be required are a copy of a certificate of title for the property or a search of the title of the land, a current rate notice that includes a valuation of the property, an independent valuation of the property or a bank statement of a mortgage account in relation to the property.

(b) require the surety or sureties to make before it or him (as the case may be) an affidavit of justification for bail; and

(c) require the surety or sureties to sign the undertaking of bail.

(3A) For the purposes of this section—

(a) a surety may appear before a court within the meaning of section 3(1) of the **Evidence (Miscellaneous Provisions) Act 1958** by audio visual link or audio link in accordance with Part IIA of that Act; or

(b) a surety may give information to any other person authorised by section 27 by audio visual link or audio link within the meaning of section 42C of that Act.

(3B) If an audio visual link or an audio link is used as provided in subsection (3A)—

(a) the undertaking of bail may be constituted by—

(i) the undertaking signed by the accused; and

(ii) a copy of the undertaking signed by the accused which is transmitted to the surety by any means and signed by the surety; and

(iii) a copy of the document referred to in subparagraph (ii) which is transmitted back to the court or other person authorised by section 27 who is admitting the accused to bail;

(b) the affidavit of justification for bail may be constituted by—

(i) the affidavit of the surety sworn before any person authorised by Part IV of the **Evidence (Miscellaneous Provisions) Act 1958** to take affidavits; and

(ii) a copy of that sworn affidavit which is transmitted to the court or other person authorised by section 27 who is admitting the accused to bail.

(3C) The court or other person authorised by section 27 may act on a copy of a document which is transmitted in accordance with subsection (3B).

(3D) A surety who under subsection (3B)—

(a) signs a copy of an undertaking of bail; or

(b) transmits a copy of a sworn affidavit of justification for bail—

without delay must send the signed copy of the undertaking or the original sworn affidavit (as the case may be) to the court or other person authorised by section 27 who admitted the accused to bail.

(4) Where a surety desires so to do he may make a declaration of justification instead of an affidavit of justification.

(5) A court or other person—

(a) before which or whom an affidavit of justification is made may administer an oath to the deponent and shall ask any questions which are required by any Act or law to be asked in the circumstances or which appear to it or him to be necessary; or

(b) before which or whom a declaration of justification is made may take the declaration and shall ask any questions which are required by any Act or law to be asked in the circumstances or which appear to it or him to be necessary.

(6) Where it appears to a court that a surety for bail has sworn an affidavit of justification or made a declaration of justification which he knew to be false in a material particular the court may declare the bail to be forfeited and issue its warrant for the apprehension of the accused.

(7) If a surety has lodged a document that is evidence of ownership of property or any other asset under subsection (3), the surety may lodge in cash the amount of the bail and receive the document in return.

(7A) If a surety lodges cash under subsection (7), the affidavit of justification of bail made by the surety must be endorsed to the effect that the type of security has been changed.

(8) Where a surety has pursuant to this section lodged in cash the amount of the bail the court or person with whom the cash is lodged shall issue a receipt for the money.

10 Where impracticable to bring person arrested before court

(1) Where a person is arrested and it is not practicable to bring him before a court forthwith after he is taken into custody a police officer of or above the rank of sergeant or for the time being in charge of a police station—

(a) shall inquire into the case; and

(b) may, and if it is not practicable to bring the person arrested before a court within 24 hours after he is taken into custody, shall, unless the provisions of this Act otherwise require, discharge the person on bail in accordance with the Act.

…

12 Court or bail justice to grant or refuse bail

(1) Where a person is apprehended, whether by virtue of a warrant or otherwise, and brought before a court or bail justice and application is made by or on behalf of the informant to remand the person in custody the court or bail justice before which he is first brought shall either grant bail for the attendance of the person on the day to which he is remanded or shall refuse bail and shall certify on the remand warrant—

(a) where bail is granted—consent to the person being bailed, stating also the amount of any surety or sureties to be required, and any conditions applicable to the release of that person; or

(b) where bail is refused—a statement of such refusal and of the grounds for refusal.

…

(1A) If a bail justice refuses bail to a person referred to in subsection (1), the bail justice must remand the person in custody to appear before a court—

(a) on the next working day; or

(b) if the next working day is not practicable, within 2 working days.

(2) Where a person charged with an indictable offence is committed for trial for the offence the magistrate committing him shall either grant bail for the attendance of the person upon his trial or on a date before trial fixed by the magistrate or shall refuse bail and shall certify on the remand warrant—

(a) where the magistrate grants bail—his or her consent to the person being bailed, stating also the amount of any surety or sureties to be required, and any conditions applicable to the release of that person; or

(b) where the magistrate refuses bail—a statement of such refusal and of the grounds for refusal.

…

13 Court may grant bail

(1) Subject to subsection (2), a court may grant bail to an accused, whether or not that person has attained the age of 21 years.

(2) Bail shall not be granted to a person charged with treason or murder unless—

(a) in the case of a person charged with treason—the Supreme Court or a Judge of the Supreme Court; or

(b) in the case of a person charged with murder—

(i) the Supreme Court;

(ii) a judge of the Supreme Court; or

(iii) the magistrate who commits the person for trial for murder—

is satisfied that exceptional circumstances exist which justify the making of such an order.

…

17 Written notice of conditions of bail

(1) A court admitting an accused to bail shall cause to be given to the accused a notice in writing setting forth the obligations of the accused concerning the conditions of his bail and the consequences of his failure to comply with those conditions and shall be satisfied before releasing

the accused that he understands the nature and extent of the conditions of his bail and the consequences of failure to comply with them.

(2) A court admitting an accused to bail with a surety or sureties for his attendance and surrender into custody shall cause to be given to the surety or sureties notice in writing of the obligations of the accused concerning the conditions of his bail and the consequences of his failure to comply with those conditions and shall be satisfied before releasing the accused that the surety or each of the sureties (as the case requires) understands the nature and extent of the obligations of the accused under the conditions of his bail and the consequences of his failure to comply with them.

PART 5—MISCELLANEOUS

30 Failure to answer bail

(1) Any person released on bail who fails without reasonable cause, the proof whereof lies upon him, to attend in accordance with his undertaking of bail and surrender himself into custody shall be guilty of an offence against this Act.

Penalty: Level 7 imprisonment (2 years maximum).

…

30A Offence to contravene certain conduct conditions

(1) Subject to subsection (2) and (3), an accused on bail in respect of whom any conduct condition is imposed must not, without reasonable excuse, contravene any conduct condition imposed on him or her.

Penalty: 30 penalty units or 3 months imprisonment.

(2) Subsection (1) does not apply to contravention of a conduct condition requiring the accused to attend and participate in bail support services.

…

30B Offence to commit indictable offence whilst on bail

An accused on bail must not commit an indictable offence whilst on bail.

Penalty: 30 penalty units or 3 months imprisonment.

…