

Examinable excerpts of

Bail Act 1977

as at 2 October 2019

PART 1—PRELIMINARY

1A Purpose

The purpose of this Act is to provide a legislative framework for the making of decisions as to whether a person accused of an offence should be granted bail, with or without conditions, or remanded in custody.

1B Guiding principles

- (1) The Parliament recognises the importance of—
 - (a) maximising the safety of the community and persons affected by crime to the greatest extent possible; and
 - (b) taking account of the presumption of innocence and the right to liberty; and
 - (c) promoting fairness, transparency and consistency in bail decision making; and
 - (d) promoting public understanding of bail practices and procedures.
- (2) It is the intention of the Parliament that this Act is to be applied and interpreted having regard to the matters set out in subsection (1).

3 Definitions

In this Act unless inconsistent with the context or subject-matter—

Aboriginal person means a person who—

- (a) is descended from an Aborigine or Torres Strait Islander; and
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Island community;

bail decision maker means any of the following empowered under this Act to grant bail, extend bail, vary the amount of bail or the conditions of bail or revoke bail—

- (a) a court;
- (b) a bail justice;

- (c) a police officer;
- (d) the sheriff or a person authorised under section 115(5) of the **Fines Reform Act 2014**;

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bail support service means a service provided to assist an accused to comply with his or her bail undertaking (whether or not that type of service is also provided to persons other than an accused on bail) including, but not limited to—

- (a) bail support programs;
- (b) medical treatment;
- (c) counselling services or treatment services for substance abuse or other behaviour which may lead to commission of offences;
- (d) counselling, treatment, support or assistance services for one or more of the following—
 - (i) a mental illness;
 - (ii) an intellectual disability;
 - (iii) an acquired brain injury;
 - (iv) autism spectrum disorder;
 - (v) a neurological impairment, including, but not limited to, dementia;
- (e) services to help resolve homelessness;

child has the same meaning as in the **Children, Youth and Families Act 2005**;

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conduct condition means a condition of bail imposed under section 5AAA(4);

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drug of dependence has the same meaning as in the **Drugs, Poisons and Controlled Substances Act 1981**;

family violence has the same meaning as in the **Family Violence Protection Act 2008**;

family violence intervention order has the same meaning as in the **Family Violence Protection Act 2008**;

family violence offence means—

- (a) an offence against section 37(2), 37A(2), 123(2), 123A(2) or 125A(1) of the **Family Violence Protection Act 2008**; or
- (b) an offence where the conduct of the accused is family violence;

family violence safety notice has the same meaning as in the **Family Violence Protection Act 2008**;

legal practitioner means an Australian legal practitioner;

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parent has the same meaning as in the **Children, Youth and Families Act 2005**;

police officer has the same meaning as in the **Victoria Police Act 2013**;

prison includes remand centre or youth justice centre under the **Children, Youth and Families Act 2005** and any other place where persons may be detained in legal custody and *imprisonment* has a corresponding interpretation;

prosecutor, in relation to an application under this Act, includes the informant, a police prosecutor and any other person appearing on behalf of the Crown;

recognised DVO has the same meaning as in the **Family Violence Protection Act 2008**;

Schedule 1 offence means an offence specified in Schedule 1 and, if circumstances are specified in Schedule 1 in relation to that offence, means an offence committed in those circumstances;

Schedule 2 offence means an offence specified in Schedule 2 and, if circumstances are specified in Schedule 2 in relation to that offence, means an offence committed in those circumstances;

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surrounding circumstances—see section 3AAA;

terrorist act has the same meaning as in the **Terrorism (Community Protection) Act 2003**;

terrorist organisation means an organisation that is directly or indirectly—

- (a) engaged in; or
- (b) preparing for; or
- (c) planning; or
- (d) assisting in; or
- (e) fostering—

the doing of a terrorist act;

unacceptable risk test—see section 4E;

undertaking—see section 5;

vulnerable adult—see section 3AAAA.

3AAAA Meaning of *vulnerable adult*

- (1) For the purposes of this Act, a person is a ***vulnerable adult*** if the person is 18 years of age or more and has a cognitive, physical or mental health impairment that causes the person to have difficulty in—
 - (a) understanding their rights; or
 - (b) making a decision; or
 - (c) communicating a decision.
- (2) A bail decision maker may consider a person to be a vulnerable adult even if the bail decision maker cannot identify the particular impairment referred to in subsection (1).

3AAA Surrounding circumstances

If this Act provides, in relation to a matter, that a bail decision maker must take into account the surrounding circumstances, the bail decision maker must take into account all the circumstances that are relevant to the matter including, but not limited to, the following—

- (a) the nature and seriousness of the alleged offending, including whether it is a serious example of the offence;
- (b) the strength of the prosecution case;
- (c) the accused's criminal history;
- (d) the extent to which the accused has complied with the conditions of any earlier grant of bail;
- (e) whether, at the time of the alleged offending, the accused—
 - (i) was on bail for another offence; or

- (ii) was subject to a summons to answer to a charge for another offence; or
- (iii) was at large awaiting trial for another offence; or
- (iv) was released under a parole order; or
- (v) was subject to a community correction order made in respect of, or was otherwise serving a sentence for, another offence;
- (f) whether there is in force—
 - (i) a family violence intervention order made against the accused; or
 - (ii) a family violence safety notice issued against the accused; or
 - (iii) a recognised DVO made against the accused;
- (g) the accused's personal circumstances, associations, home environment and background;
- (h) any special vulnerability of the accused, including being a child or an Aboriginal person, being in ill health or having a cognitive impairment, an intellectual disability or a mental illness;

Notes

- 1 Section 3A sets out matters to be taken into account by a bail decision maker in making a determination in relation to an Aboriginal person.
 - 2 Section 3B sets out matters to be taken into account by a bail decision maker in making a determination in relation to a child.
- (i) the availability of treatment or bail support services;
 - (j) any known view or likely view of an alleged victim of the offending on the grant of bail, the amount of bail or the conditions of bail;
 - (k) the length of time the accused is likely to spend in custody if bail is refused;
 - (l) the likely sentence to be imposed should the accused be found guilty of the offence with which the accused is charged;
 - (m) whether the accused has expressed support for—
 - (i) the doing of a terrorist act; or
 - (ii) a terrorist organisation; or
 - (iii) the provision of resources to a terrorist organisation;
 - (n) subject to subsection (2), whether the accused has, or has had, an association with—
 - (i) another person or a group that has expressed support of the kind referred to in paragraph (m); or
 - (ii) another person or a group that is directly or indirectly engaged in, preparing for, planning, assisting in or fostering the doing of a terrorist act; or

- (iii) a terrorist organisation.
- (2) A bail decision maker must not take into account the accused having, or having had, an association referred to in subsection (1)(n)(i), (ii) or (iii) unless the bail decision maker is satisfied that the accused knew—
 - (a) that the person or group had expressed support for—
 - (i) the doing of a terrorist act; or
 - (ii) a terrorist organisation; or
 - (iii) the provision of resources to a terrorist organisation; or
 - (b) that the person or group was directly or indirectly engaged in, preparing for, planning, assisting in or fostering the doing of a terrorist act; or
 - (c) that the group was a terrorist organisation.

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3AA Offence that is both a Schedule 1 and a Schedule 2 offence

For the purposes of this Act, an offence that is both a Schedule 1 offence and a Schedule 2 offence must be taken to be a Schedule 1 offence.

3A Determination in relation to an Aboriginal person

In making a determination under this Act in relation to an Aboriginal person, a bail decision maker 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.

Note

When considering bail for an Aboriginal person charged with a Commonwealth offence, a bail decision maker must have regard to section 15AB(1)(b) of the Crimes Act 1914 of the Commonwealth.

3B Determination in relation to a child

- (1) In making a determination under this Act in relation to a child, a bail decision maker must take into account (in addition to any other requirements of this Act)—
 - (a) the need to consider all other options before remanding the child in custody; and
 - (b) the need to strengthen and preserve the relationship between the child and the child's family, guardians or carers; and
 - (c) the desirability of allowing the living arrangements of the child to continue without interruption or disturbance; and
 - (d) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and

- (e) the need to minimise the stigma to the child resulting from being remanded in custody; and
 - (f) the likely sentence should the child be found guilty of the offence charged; and
 - (g) the need to ensure that the conditions of bail are no more onerous than are necessary and do not constitute unfair management of the child.
- (2) In making a determination under this Act in relation to a child, a bail decision maker may take into account any recommendation or information contained in a report provided by a bail support service.
- (3) Bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation.

3C Determination in relation to a person of or over the age of 18 years in a remand centre

If—

- (a) the accused in a criminal proceeding in any court is of or over the age of 18 years and is in a remand centre (within the meaning of the **Children, Youth and Families Act 2005**), pursuant to a remand warrant issued when the accused was aged under 18; and
- (b) the criminal proceeding relates to one or more offences alleged to have been committed when the accused was of or over the age of 18 years—

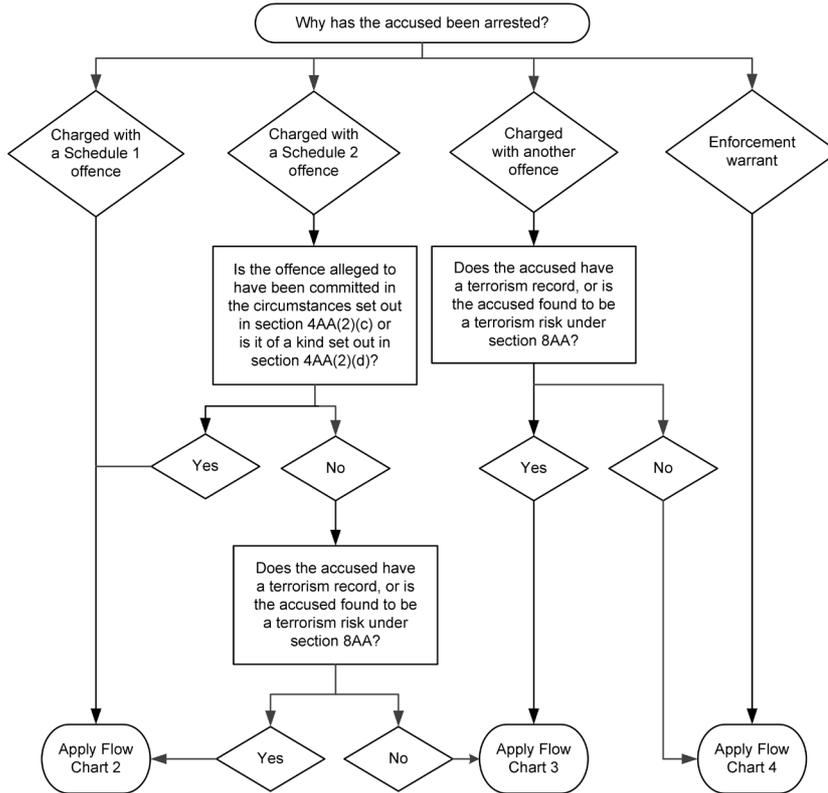
in making a determination under this Act in relation to the accused, a bail decision maker must take into account (in addition to any other requirements of this Act)—

- (c) whether the accused has engaged in conduct that threatens the good order and safe operation of the youth remand centre; and
- (d) whether the accused can be properly controlled in the youth remand centre.

3D Flow charts

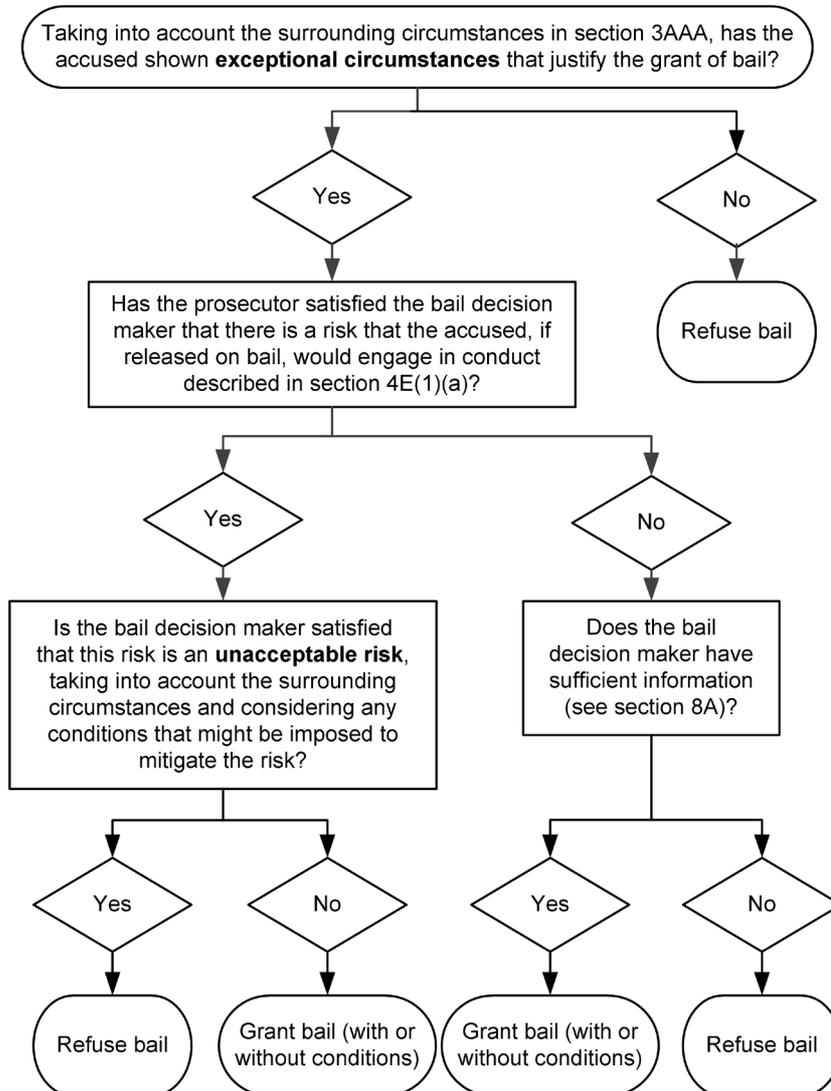
- (1) A flow chart in this section illustrates the key features of the decision making process to which it relates. It is intended only as a guide to the reader.
- (2) Flow Chart 1 shows the process for determining which tests are to be applied in deciding whether to grant bail to a person.

Flow Chart 1—Which tests apply?



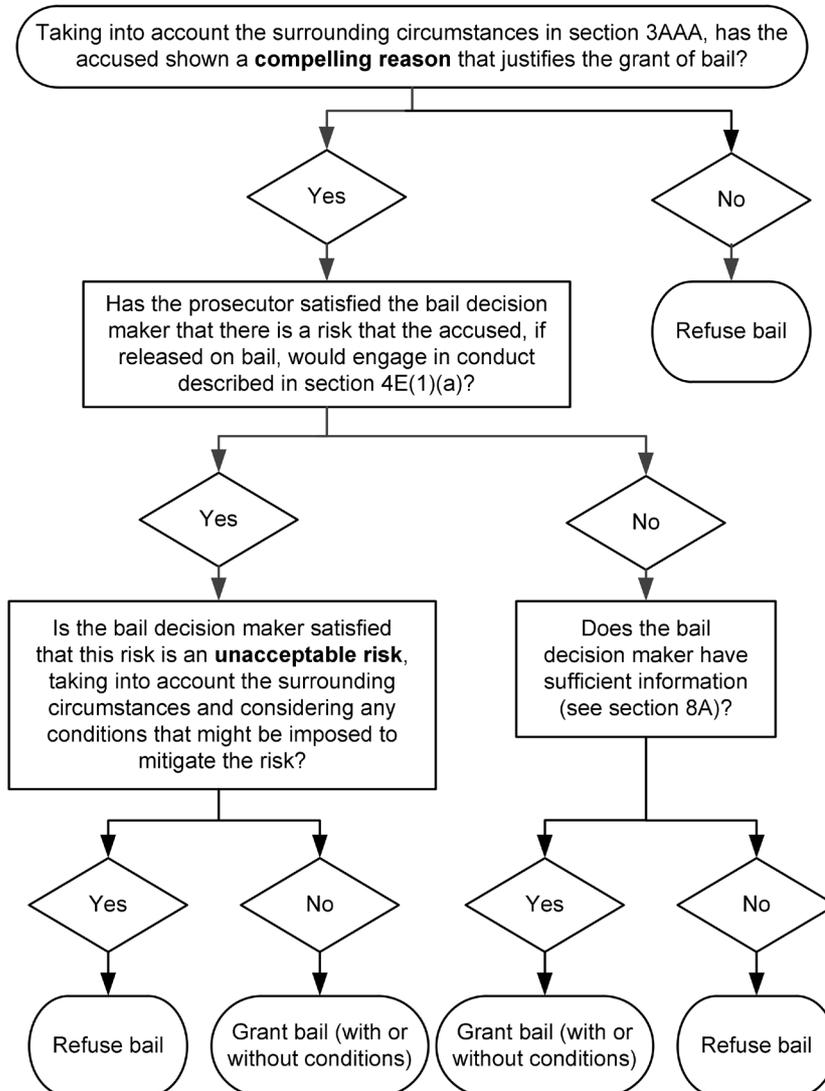
(3) Flow Chart 2 shows the process for applying the step 1—exceptional circumstances test and then the step 2—unacceptable risk test.

Flow Chart 2—Exceptional circumstances and unacceptable risk tests



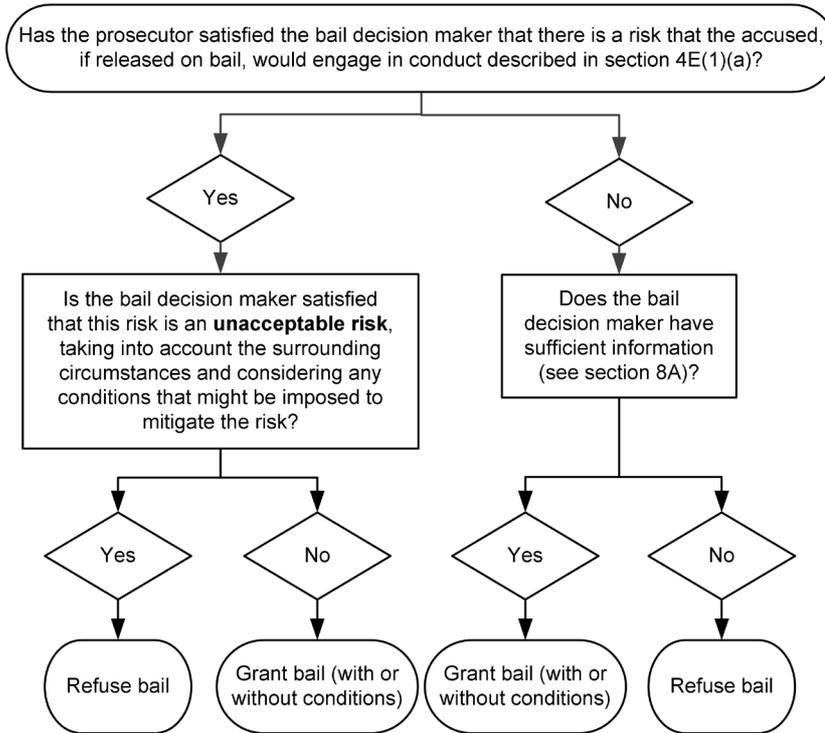
- (4) Flow Chart 3 shows the process for applying the step 1—show compelling reason test and then the step 2—unacceptable risk test.

Flow Chart 3—Show compelling reason and unacceptable risk tests



(5) Flow Chart 4 shows the process for applying the unacceptable risk test alone.

Flow Chart 4—Unacceptable risk test



PART 2—GRANTING OF BAIL AND ADMISSION TO BAIL

4 Entitlement to bail

A person accused of an offence, and being held in custody in relation to that offence, is entitled to be granted bail unless the bail decision maker is required to refuse bail by this Act.

4AA When 2 step tests apply

- (1) The step 1—exceptional circumstances test applies to a decision of whether to grant bail to a person accused of a Schedule 1 offence.
- (2) The step 1—exceptional circumstances test also applies to a decision of whether to grant bail to a person accused of a Schedule 2 offence if—
 - (a) the person has a terrorism record; or
 - (b) the court considering whether to grant bail determines under section 8AA that there is a risk that the person will commit a terrorism or foreign incursion offence; or
 - (c) the offence is alleged to have been committed—
 - (i) while the accused was on bail for any Schedule 1 offence or Schedule 2 offence; or
 - (ii) while the accused was subject to a summons to answer to a charge for any Schedule 1 offence or Schedule 2 offence; or
 - (iii) while the accused was at large awaiting trial for any Schedule 1 offence or Schedule 2 offence; or
 - (iv) during the period of a community correction order made in respect of the accused for any Schedule 1 offence or Schedule 2 offence; or
 - (v) while the accused was otherwise serving a sentence for any Schedule 1 offence or Schedule 2 offence; or
 - (vi) while the accused was released under a parole order made in respect of any Schedule 1 offence or Schedule 2 offence; or
 - (d) the offence is an offence of conspiracy to commit, incitement to commit or attempting to commit an offence in a circumstance set out in paragraph (c).
- (3) The step 1—show compelling reason test applies to a decision of whether to grant bail to a person accused of a Schedule 2 offence if subsection (2) does not apply.

- (4) The step 1—show compelling reason test also applies to a decision of whether to grant bail to a person accused of an offence that is neither a Schedule 1 offence nor a Schedule 2 offence if—
 - (a) the person has a terrorism record; or
 - (b) the court considering whether to grant bail determines under section 8AA that there is a risk that the person will commit a terrorism or foreign incursion offence.

Note

Section 4E sets out the unacceptable risk test. In circumstances where a step 1 test applies, section 4D provides that the unacceptable risk test will apply as a step 2 test. However, under section 4E, the unacceptable risk test applies even in circumstances where no step 1 test applies.

4A Step 1—exceptional circumstances test

- (1) This section applies if, under section 4AA(1) or (2), the step 1—exceptional circumstances test applies to a decision of whether to grant bail.
 - (1A) The bail decision maker must refuse bail unless satisfied that exceptional circumstances exist that justify the grant of bail.
 - (2) The accused bears the burden of satisfying the bail decision maker as to the existence of exceptional circumstances.
 - (3) In considering whether exceptional circumstances exist, the bail decision maker must take into account the surrounding circumstances.

Note

The term *surrounding circumstances* is defined in section 3. Also the bail decision maker is required to take into account other matters if the accused is an Aboriginal person or a child. See sections 3A and 3B.

- (4) If the bail decision maker is satisfied that exceptional circumstances exist that justify the grant of bail, the bail decision maker must then move to step 2—unacceptable risk test.

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4C Step 1—show compelling reason test

- (1) This section applies if, under section 4AA(3) or (4), the step 1—show compelling reason test applies to a decision of whether to grant bail.
 - (1A) The bail decision maker must refuse bail unless satisfied that a compelling reason exists that justifies the grant of bail.
 - (2) The accused bears the burden of satisfying the bail decision maker as to the existence of a compelling reason.
 - (3) In considering whether a compelling reason exists, the bail decision maker must take into account the surrounding circumstances.

Note

The term *surrounding circumstances* is defined in section 3. Also the bail decision maker is required to take into account other matters if the accused is an Aboriginal person or a child. See sections 3A and 3B.

- (4) If the bail decision maker is satisfied that a compelling reason exists that justifies the grant of bail, the bail decision maker must then move to step 2—unacceptable risk test.

4D Step 2—unacceptable risk test

- (1) A bail decision maker must apply the unacceptable risk test if—
 - (a) at step 1 (section 4A) the bail decision maker is satisfied that exceptional circumstances exist that justify the grant of bail for a person; or
 - (b) at step 1 (section 4C) the bail decision maker is satisfied that a compelling reason exists that justifies the grant of bail for a person.
- (2) For the application of the unacceptable risk test, the prosecutor bears the burden of satisfying the bail decision maker—
 - (a) as to the existence of a risk of a kind mentioned in section 4E(1)(a); and
 - (b) that the risk is an unacceptable risk.
- (3) On applying the unacceptable risk test, the bail decision maker must refuse bail if required to do so by section 4E.

4E All offences—unacceptable risk test

- (1) A bail decision maker must refuse bail for a person accused of any offence if the bail decision maker is satisfied that—
 - (a) there is a risk that the accused would, if released on bail—
 - (i) endanger the safety or welfare of any person; or
 - (ii) commit an offence while on bail; or
 - (iii) interfere with a witness or otherwise obstruct the course of justice in any matter; or
 - (iv) fail to surrender into custody in accordance with the conditions of bail; and
 - (b) the risk is an unacceptable risk.

Example

An unacceptable risk that the accused, if released on bail, would commit a family violence offence.

- (2) The prosecutor bears the burden of satisfying the bail decision maker—
 - (a) as to the existence of a risk of a kind mentioned in subsection (1)(a); and
 - (b) that the risk is an unacceptable risk.

- (3) In considering whether a risk mentioned in subsection (1)(a) is an unacceptable risk, the bail decision maker must—
- (a) take into account the surrounding circumstances; and

Note

The term *surrounding circumstances* is defined in section 3. Also the bail decision maker is required to take into account other matters if the accused is an Aboriginal person or a child. See sections 3A and 3B.

- (b) consider whether there are any conditions of bail that may be imposed to mitigate the risk so that it is not an unacceptable risk.

5 Bail undertaking

- (1) A grant of bail must require the accused to enter into a written undertaking to surrender into custody at the time and place of the hearing or trial specified in the undertaking and not to depart without leave of the court and, if leave is given, to return at the time specified by the court and again surrender into custody.
- (1A) An accused who enters into an undertaking is under a duty to attend court for the hearing or trial specified in the undertaking and surrender into custody on so attending.
- (2) A bail decision maker, on granting bail, may release the accused—
- (a) on their own undertaking without any other condition; or
- (b) on their own undertaking with conduct conditions; or
- (c) with a surety or sureties for a specified amount or a deposit of money of a specified amount, with or without conduct conditions.
- (3) Any surety that is required must also enter into an undertaking to pay the specified amount if the accused fails to comply with the undertaking entered into by them.

Notes

- 1 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.
- 2 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.
- 3 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.

5AAAA Family violence risks

- (1) A bail decision maker considering the release on bail of an accused must make inquiries of the prosecutor as to whether there is in force—
- (a) a family violence intervention order made against the accused; or
- (b) a family violence safety notice issued against the accused; or
- (c) a recognised DVO made against the accused.

- (2) A bail decision maker considering the release on bail of an accused charged with a family violence offence must consider—
 - (a) whether, if the accused were released on bail, there would be a risk that the accused would commit family violence; and
 - (b) whether that risk could be mitigated by—
 - (i) the imposition of a condition; or
 - (ii) the making of a family violence intervention order.

5AAA Conduct conditions

- (1) A bail decision maker considering the release of an accused on bail must impose any condition that, in the opinion of the bail decision maker, will reduce the likelihood that the accused may—
 - (a) endanger the safety or welfare of any person; or
 - (b) commit an offence while on bail; or
 - (c) interfere with a witness or otherwise obstruct the course of justice in any matter; or
 - (d) fail to surrender into custody in accordance with the conditions of bail.

Example

A bail decision maker may impose a condition in order to reduce the likelihood that the accused may commit a family violence offence.

- (2) If a bail decision maker imposes one or more conditions, each condition and the number of conditions—
 - (a) must be no more onerous than is required to reduce the likelihood that the accused may do a thing mentioned in subsection (1)(a) to (d); and
 - (b) must be reasonable, having regard to the nature of the alleged offence and the circumstances of the accused; and
 - (c) subject to subsection (3), must be consistent with each condition of each family violence intervention order, family violence safety notice or recognised DVO to which the accused is subject.
- (3) A bail decision maker may impose a condition that is inconsistent with a condition of a family violence intervention order, family violence safety notice or recognised DVO if the bail decision maker is satisfied that the proposed condition will better protect the safety or welfare of—
 - (a) an alleged victim of the offence with which the accused is charged; or
 - (b) a protected person (within the meaning of the **Family Violence Protection Act 2008**).

Note

Sections 175AA, 175AB and 175AC of the **Family Violence Protection Act 2008** provide that if it is not possible to comply with both a bail condition and a family violence safety notice, a family violence intervention order or a recognised DVO, the

safety notice, intervention order or recognised DVO prevails to the extent of the inconsistency.

(4) Without limiting section 4(5) or 5(2), a bail decision maker 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 (5), a curfew imposing times at which the accused must be at their 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 bail decision maker considers appropriate to impose in relation to the conduct of the accused.

(5) If a bail decision maker 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.

(6) A condition imposed by a bail decision maker continues to be binding on the accused until it is varied or revoked or the matter in relation to which it was imposed is finally determined by a court.

5AAB Sureties

(1) If a bail decision maker is considering, in accordance with section 5(2)(c), imposing a condition that requires a deposit of money of a specified amount, the bail decision maker 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.

- (2) If a bail decision maker is satisfied under subsection (1) that the accused does not have sufficient means to satisfy a condition requiring a deposit of money of a specified amount, the bail decision maker must consider whether any other condition would reduce the likelihood that the accused may do a thing mentioned in section 5AAA(1)(a) to (d).
- (3) If a bail decision maker is considering imposing a condition that requires a surety for a specified amount, the bail decision maker must have regard to the means of a proposed surety in determining—
 - (a) whether to impose the condition; and
 - (b) the amount of the surety.
- (4) If a bail decision maker is satisfied under subsection (3) that the accused is unable to provide a surety with sufficient means, the bail decision maker must consider whether any other condition would reduce the likelihood that the accused may do a thing mentioned in section 5AAA(1)(a) to (d).

5AA Conditions of bail granted to a child in certain circumstances

- (1) This section applies if an accused who is a child is granted bail by a bail justice, police officer, the sheriff or a person authorised under section 115(5) of the **Fines Reform Act 2014**.
- (2) The court, at the first hearing following the grant of bail at which the child is present, must ensure that the conditions of bail imposed by the bail justice, police officer, sheriff or person authorised under section 115(5) of the **Fines Reform Act 2014** comply with the requirements of section 5AAA(2).
- (3) The court may make any variations to the conditions of bail that are necessary for the purposes of subsection (2).

5A Power to return accused to youth justice centre

- (1) Despite anything in this Act, if—
 - (a) the accused in a criminal proceeding in the Supreme Court or the County Court is a person undergoing a sentence of detention in a youth justice centre; and
 - (b) the Supreme Court or the County Court, as the case may be, adjourns the proceeding—

the Supreme Court or the County Court may, subject to subsection (3), instead of remanding the accused in custody—

 - (c) direct that the accused be returned to the custody of the Secretary to the Department of Human Services until the end of the sentence of detention or the resumption of the hearing, whichever is the sooner; and
 - (d) either—
 - (i) grant the accused bail on a condition that bail is not to be entered until the end of the sentence of detention; or

- (ii) refuse bail and direct that the accused be brought before the Supreme Court or the County Court, as the case may be, at a later date for it to consider the granting of bail.
- (2) In this section, *the end of the sentence of detention* means the time when the accused is released from custody, whether on parole or otherwise.
- (3) If the Secretary to the Department of Justice and Regulation objects to the accused being returned to a youth justice centre under subsection (1), the Supreme Court or the County Court may only order that the accused is to be returned to a youth justice centre under that subsection if the Supreme Court or the County Court has considered—
 - (a) the antecedents and behaviour of the accused; and
 - (b) the age and maturity of the accused; and
 - (c) any evidence of the behaviour of the accused in custody; and
 - (d) whether an application has been made to the Youth Parole Board regarding the custody of the accused; and
 - (e) any other relevant factor.

Note

See also section 333 of the **Criminal Procedure Act 2009**.

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7 Opposing bail

- (1) Where the prosecutor intends to oppose the grant of bail to any person he shall so state to the bail decision maker and the bail decision maker 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 bail decision maker 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 bail decision maker may, subject to paragraph (b), make such inquiries on oath or by affirmation or otherwise of and concerning the accused as the bail decision maker considers desirable;

- (b) the accused shall not be examined or cross-examined by the bail decision maker 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 prosecutor 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;
 - (iia) to show that there is a risk that the accused may subject another person to family violence;
 - (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 bail decision maker 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 bail decision maker may receive and take into account any evidence which the bail decision maker 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**.
 - (3) A bail decision maker may adjourn the hearing of a proceeding with respect to bail for up to 4 hours if satisfied that the accused appears to be seriously affected by alcohol or another drug or a combination of drugs.
 - (4) On adjourning a hearing under subsection (3), the bail decision maker may remand the accused in custody until the further hearing of the matter.
 - (5) Subsection (6) applies if, on the first further hearing of a matter adjourned under subsection (3), the bail decision maker is satisfied that the accused still appears to be seriously affected by alcohol or another drug or a combination of drugs.
 - (6) The bail decision maker may adjourn the hearing of the matter for one further period of up to 4 hours and remand the accused in custody until the next hearing of the matter.

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8A Refusal of bail—any offence—insufficient information

A bail decision maker may refuse bail for a person accused of any offence if satisfied that it has not been practicable to obtain sufficient information for the purpose of deciding the matter because of the

shortness of the period since the commencement of the proceeding for the offence.

8B Refusal of bail—offence involving serious injury—uncertainty as to death or recovery

- (1) This section applies in relation to an application for bail made by or on behalf of a person accused of an offence of causing injury to another person.
- (2) A bail decision maker may refuse bail if at the time of deciding the application it is uncertain whether the person injured will die or recover from the injury.

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 bail decision maker 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 bail decision maker or to a 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 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 or affirmed before an authorised affidavit taker within the meaning of the **Oaths and Affirmations Act 2018**; and
 - (ii) a copy of that sworn or affirmed affidavit which is transmitted to the court or other person who is admitting the accused to bail.

(3C) The court or other person 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 or affirmed affidavit of justification for bail—

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

* * * * *

(5) A court or other person—

- (a) before which or whom an affidavit of justification is made may administer an oath or affirmation 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.

* * * * *

- (6) Where it appears to a court that a surety for bail has sworn or affirmed an affidavit 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 Power of police officer, sheriff or authorised person to grant or refuse bail

- (1) This section applies if a person is arrested and it is not practicable to bring the person before a court immediately after the person is taken into custody or, if questioning or investigation under section 464A(2) of the **Crimes Act 1958** has commenced, immediately on the expiration of the reasonable time referred to in section 464A(1) of that Act.
- (2) A police officer of or above the rank of sergeant or for the time being in charge of a police station, the sheriff or a person authorised under section 115(5) of the **Fines Reform Act 2014** (as the case requires) must, without delay, consider whether to grant bail to the person in accordance with this Act.
- (3) If the person is a child, the bail decision maker must ensure that a parent or guardian of the child, or an independent person, is present during the proceeding in relation to bail.

Note

See also section 5AA (conditions of bail granted to a child in certain circumstances).

- (4) An independent person present in accordance with subsection (3) may take steps to facilitate the granting of bail, for example, by arranging accommodation.
- (5) The police officer, the sheriff or person authorised under section 115(5) of the **Fines Reform Act 2014**, in accordance with this Act, may grant or refuse bail.

Note

Sections 13, 13AA and 13A specify circumstances in which only a court may grant bail. These circumstances relate to—

- certain instances in which the step 1—exceptional circumstances test applies;
- certain terrorism or foreign incursion offences;
- accused persons who have a terrorism record;

- persons accused of certain Schedule 2 offences who are already on 2 or more undertakings of bail in relation to other indictable offences.
- (5A) If the bail decision maker is prohibited by section 13 or 13A from granting bail to the arrested person, the bail decision maker must—
- (a) refuse to consider whether to grant or refuse bail; and
 - (b) bring the person before a court as soon as practicable.
- (5B) Subsection (5C) applies if a bail decision maker who is the sheriff or a person authorised under section 115(5) of the **Fines Reform Act 2014** decides to grant bail but the person refuses to enter into an undertaking.
- (5C) Despite subsection (2), the bail decision maker may take and safely convey the person to a bail decision maker who is a police officer for their consideration.
- (6) If bail is refused under subsection (5) and the arrested person is not a person to whom section 10AA applies, the bail decision maker must—
- (a) endorse on the warrant, file or other papers relating to the arrested person or in any register or record of persons in custody the reasons for refusing bail; and
 - (b) if it is then within ordinary court sitting hours, cause the arrested person to be brought before a court as soon as practicable and advise the arrested person that they are entitled, should they so wish, to apply for bail when they appear before the court; and
 - (c) if it is then outside ordinary court sitting hours, advise the arrested person that they are entitled, should they so wish, to apply to a bail justice for bail and—
 - (i) if the arrested person wishes to so apply for bail, cause the arrested person to be brought before a bail justice as soon as practicable; or
 - (ii) if the arrested person does not wish to so apply for bail, cause the arrested person to be brought before a court as soon as practicable and advise the arrested person that they are entitled, should they so wish, to apply for bail when they appear before the court; and
 - (d) cause to be produced before the court or bail justice a copy of the endorsement mentioned in paragraph (a); and
 - (e) give the person a written statement setting out the provisions of this subsection and of subsection (5).
- (6A) If bail is granted but the arrested person objects to the amount fixed for bail or any condition of bail, the bail decision maker must—
- (a) advise the arrested person that they are entitled, should they so wish, to apply to a court or, if it is then outside ordinary court sitting hours, to a bail justice for variation of the amount of bail or conditions of bail; and

- (b) give the person a written statement setting out the provisions of this subsection and of subsections (5), (7) and (8).
- (6B) Subsection (6A) does not apply to a person arrested on an enforcement warrant issued under the **Fines Reform Act 2014**.
- (7) Subsection (8) applies if the arrested person elects under subsection (6A) to apply for variation of the amount of bail or conditions of bail.
- (8) The bail decision maker must cause the arrested person to be brought before a court as soon as practicable or, if it is then outside ordinary court sitting hours, before a bail justice.

10AA Police remand

- (1) Subject to subsection (2), this section applies to any arrested person mentioned in section 10(1) and for whom bail is refused under section 10(5) by a bail decision maker who is a police officer of or above the rank of sergeant or for the time being in charge of a police station.
- (2) This section does not apply to an arrested person who is—
 - (a) a child; or
 - (b) a vulnerable adult; or
 - (c) an Aboriginal person; or
 - (d) a person arrested on an enforcement warrant issued under the **Fines Reform Act 2014**.
- (3) For the purposes of this section—
 - (a) a person may be considered to be a vulnerable adult or an Aboriginal person if the police officer is of the opinion that the person is such a person; and
 - (b) a police officer, in considering whether an arrested person is an Aboriginal person, must have regard to any statement made by the arrested person (whether or not in response to a question asked by the police officer) as to whether they are an Aboriginal person.
- (4) If bail is refused under section 10(5) for a person to whom this section applies, the police officer must—
 - (a) endorse on the warrant, file or other papers relating to the arrested person or in any register or record of persons in custody the reasons for refusing bail; and
 - (b) remand the person in custody to appear before a court as soon as practicable within the period of 48 hours after being so remanded; and
 - (c) cause to be produced before the court a copy of the endorsement mentioned in paragraph (a); and
 - (d) advise the arrested person that they are entitled, should they so wish, to apply for bail when they appear before the court; and
 - (e) give the person a written statement setting out the provisions of this section and of section 10(5).

- (5) The police officer must not remand the person in custody under subsection (4)(b) if the police officer considers that it is not practicable for the person to be brought before a court within the next 48 hours (including appearing before it by audio visual link).
- (6) In the circumstances mentioned in subsection (5) the person must be brought before a bail justice as soon as practicable.
- (7) If a person remanded in custody under subsection (4)(b) is not brought before a court within 48 hours after being so remanded, the person must be brought before a bail justice as soon as practicable after the expiry of that period of 48 hours.

10A Power of bail justice to grant or refuse bail

- (1) This section applies if a person in custody is brought before a bail justice, whether as a result of being brought before the bail justice in accordance with section 10(6) or (8) or 10AA(6) or (7) of this Act or section 64(2)(a) or 78(2)(a) of the **Magistrates' Court Act 1989** or being otherwise before the bail justice.
- (2) The bail justice must hear and determine any application made for bail or for variation of the amount of bail or conditions of bail, or for remand in custody, in respect of the person.
- (2A) If the person is brought before the bail justice because a police officer, on refusing bail for the person under section 10(5), was of the opinion that the person was an Aboriginal person or a vulnerable adult, the bail justice is not required to consider whether the person is such a person but may rely on the opinion of the police officer.
- (3) If the person is a child, the bail justice must ensure that a parent or guardian of the child, or an independent person, is present during the hearing of the application.

Note

See also section 5AA (conditions of bail granted to a child in certain circumstances).

- (4) An independent person present in accordance with subsection (3) may take steps to facilitate the granting of bail, for example, by arranging accommodation.
- (5) The bail justice, in accordance with this Act, may grant or refuse bail.

Notes

- 1 Only a court may grant bail to a person accused of a Schedule 1 offence. See section 13.
- 2 Section 13A imposes restrictions on who may grant bail to certain persons accused of certain Schedule 2 offences who are already on 2 or more undertakings of bail in relation to other indictable offences.

- (5A) A bail justice who grants bail must certify on the remand warrant—
 - (a) consent to the person being bailed; and
 - (b) the amount of any surety or sureties; and
 - (c) any conditions of bail.

- (6) A bail justice who refuses bail must remand the person in custody to appear before a court—
 - (a) on the next working day; or
 - (b) within 2 working days if—
 - (i) the next working day is not practicable; or
 - (ii) the person is a child and the proper venue of the Children's Court is in a region of the State prescribed under the **Children, Youth and Families Act 2005**.
- (7) On remanding the person in custody under subsection (6), the bail justice must certify on the remand warrant a statement of the refusal of bail and of the grounds for it.

11 Cash deposit as security for penalty

- (1) Where a person is apprehended for an offence against any of the provisions of sections 13, 14, 16 and 17 of the **Summary Offences Act 1966** a police officer of or above the rank of sergeant or for the time being in charge of a police station shall in addition to any power he may have to release such person on bail have power to release him on his making a deposit of such amount not exceeding \$50 as the police officer thinks reasonable as security for the payment of any penalty that may be imposed as punishment for his offence.
- (2) Upon releasing a person under this section the police officer shall notify him that he is required to appear before a court at a certain time and place and that if he fails to appear accordingly the charge against him may be heard in his absence and that the deposit will be appropriated to the payment or part payment of any fine that may be imposed by the court and that any surplus thereof will be paid into the Consolidated Fund but that if he appears to answer to the charge any surplus will be refunded to him.
- (3) Notwithstanding anything to the contrary in any Act or law, where any person who is released in accordance with the provisions of this section fails to appear at the time and place notified to him the charge against him may be heard and determined in his absence and the deposit lodged by him shall be appropriated to the payment or part payment of any fine that may be imposed by the court and any surplus thereof shall be paid into the Consolidated Fund.
- (4) Where a person who is released in accordance with the provisions of this section appears to answer to the charge against him any surplus shall be refunded to him.
- (5) A statement in the prescribed form purporting to be signed by the police officer who released a person under this section shall be prima facie evidence that the accused was released and notified in accordance with the provisions of subsections (1) and (2).

12 Power of court to grant or refuse bail

- (1) This section applies if a person in custody is before a court, whether as a result of being brought before it in accordance with section 10(6) or (8), 10AA(4) or 10A(6) of this Act or section 64(2)(a) of the **Magistrates' Court Act 1989** or being otherwise before it.
- (2) The court must hear and determine any application made for bail or for variation of the amount of bail or conditions of bail, or for remand in custody, in respect of the person.
- (3) The court, in accordance with this Act, may grant or refuse bail.

Note

Only a court may grant bail to a person accused of a Schedule 1 offence. See section 13.

- (3A) A court that grants bail for a person accused of an offence must—
 - (a) for a Schedule 1 offence, include in the order a statement of reasons for granting bail; and

Note

Only a court may grant bail to a person accused of a Schedule 1 offence. See section 13.
 - (b) in any case, record on the remand warrant, file or other papers—
 - (i) consent to the person being bailed; and
 - (ii) the amount of any surety or sureties; and
 - (iii) any conditions of bail.
- (4) If the court refuses bail, it must—
 - (a) remand the person in custody to appear before a court at a later date, which must not be for a period longer than 21 clear days in the case of a child; and
 - (b) certify on the remand warrant a statement of the refusal and of the grounds for it.
- (5) If a child is brought before a court on the expiry of a period of remand in custody, the court must not remand the child in custody for a further period longer than 21 clear days.

12A Statement of reasons for Schedule 2 offence

A bail decision maker who grants bail for a person accused of a Schedule 2 offence must—

- (a) if a court, include in the order a statement of reasons for granting bail; or
- (b) in any other case, record and transmit a statement of reasons as required by the regulations.

12B Persons subject to a summons to answer to a charge

- (1) This section applies if—

- (a) a person subject to a summons to answer to a charge for an offence is before a court (other than the Children's Court) on a hearing in the criminal proceeding relating to the charge; and
 - (b) the hearing of the criminal proceeding is to be adjourned.
- (2) The court may, on an application made by the prosecutor or on its own initiative—
- (a) remand the accused in custody to appear before the court on the resumption of the hearing; or
 - (b) in accordance with this Act, grant the accused bail.
- (3) Nothing in this section—
- (a) affects the operation of section 331 of the **Criminal Procedure Act 2009**; or
 - (b) prevents the court allowing the accused to go at large, including on refusing an application made by the prosecutor under subsection (2).

13 Treason, murder and other Schedule 1 offences

- (1) Only the Supreme Court may grant bail to a person accused of treason.
- (2) Only the Supreme Court, or a court on committing the person for trial, may grant bail to a person accused of murder.
- (3) Subject to subsection (4), only a court may grant bail to a person accused of any other offence to which the step 1—exceptional circumstances test applies under section 4AA(1) or (2).
- (4) Subsection (3) does not apply if the step 1—exceptional circumstances test applies only because of section 4AA(2)(c) or (d) and—
 - (a) the accused person is a child, a vulnerable adult or an Aboriginal person; or
 - (b) the offence to which section 4AA(2)(c) or (d) relates is—
 - (i) an offence that is referred to in item 1 or 30 of Schedule 2 (and not referred to in any other item of Schedule 2); or
 - (ii) an offence of conspiracy to commit, incitement to commit, or attempting to commit an offence referred to in subparagraph (i).
- (5) Only a court may grant bail to a person accused of an offence against—
 - (a) a provision of Subdivision A of Division 72 of Chapter 4 of the Criminal Code of the Commonwealth; or
 - (b) a provision of Part 5.3 or 5.5 of the Criminal Code of the Commonwealth.

Note

Section 15AA of the Crimes Act 1914 of the Commonwealth contains restrictions on the granting of bail for certain Commonwealth offences.

13A Accused on 2 or more undertakings of bail

- (1) This section applies to a person (other than a child, a vulnerable adult or an Aboriginal person) who is accused of a relevant Schedule 2 offence and who is already on 2 or more undertakings of bail in relation to other indictable offences.
- (2) Only a court may grant bail to the person.
- (3) For the purposes of this section, a *relevant Schedule 2 offence* is any Schedule 2 offence other than—
 - (a) an offence referred to in item 1 of Schedule 2 (and not referred to in any other item of that Schedule); or
 - (b) an offence referred to in item 30 of Schedule 2; or
 - (c) in relation to an offence referred to in item 1 of Schedule 2 (and not referred to in any other item of that Schedule), an offence referred to in item 31 of that Schedule; or
 - (d) in relation to an offence referred to in item 30 of Schedule 2, an offence referred to in item 31 of that Schedule.

* * * * *

16 Extension of bail

- (1) Every undertaking may with the consent of any person or persons offering himself or themselves as surety or sureties contain a provision for its extension without any further consent of the surety or sureties upon such postponements or adjournments of the hearing as are from time to time directed, but nothing in this subsection shall prejudice in any way the right of any person offering himself as surety to elect to be bound with respect to an undertaking which may be extended only with his consent given at the time of the extension and no bail decision maker shall refuse to admit a person to bail on the ground only that a person offering himself as surety has so elected.
- (2) Where a hearing is adjourned or postponed the time and place for the commencement of the sitting to which the hearing is adjourned or postponed shall be stated openly by the court, and the court—
 - (a) with the consent of the sureties; or
 - (b) where the undertaking of bail so provides—without the consent of the sureties—

may extend the bail of the person charged, and thereupon the person charged shall be bound to attend at that time and place without entering into a fresh undertaking and the sureties shall be bound accordingly, or the court may make such order as to bail and as to the remand of the person charged in custody until bail is forthcoming as the court thinks fit.
- (3) Where a person charged with an offence or apprehended under a warrant is remanded in custody or committed to safe custody during an adjournment or released on bail and a court is satisfied—

- (a) if the accused is remanded in custody or committed to safe custody, the accused is by reason of illness, accident or other sufficient cause unable to attend personally; or
- (b) if the accused is released on bail, the accused is not present for sufficient cause—

on the day on which he is required to attend the court may, in the absence of the accused, order him to be further remanded for such time or committed to safe custody for such time as the court thinks fit and may order any undertaking to be extended so as to require the attendance of the accused at every time and place to which the accused is remanded or the hearing is adjourned.

- (4) An endorsement on an undertaking to the effect that it has been extended by a court pursuant to the provisions of this section and stating the time and place at which the person charged is bound to attend and purporting to be signed by the person constituting the court shall be proof until the contrary is shown that the bail was so extended.

16A Written notice of extension of bail

A court extending bail must cause to be given to the accused and the surety or sureties, if any, for the attendance of the accused notice in writing stating that—

- (a) bail has been extended by the court in the absence of the accused and the surety; and
- (b) the date, time and place at which the accused is bound to attend; and
- (c) the consequences of failure to attend at that time and place.

16B Capacity of child to enter into undertaking

If, in the opinion of a bail decision maker granting bail to a child, the child does not have the capacity or understanding to enter into an undertaking, the child may be released on bail if the child's parent or some other person enters into an undertaking, in any amount which the bail decision maker thinks fit, to produce the child at the venue of the court to which the hearing of the charge is adjourned or the court to which the child is committed for trial.

17 Written notice of conditions of bail

- (1) A bail decision maker 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 bail decision maker 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 3—Further application for bail, variation of bail conditions, revocation of bail

18 Further application for bail where bail refused or revoked

- (1) An accused who has been refused bail and is in custody pending the hearing or trial of a charge may make a further application for bail.
- (2) A person whose bail has been revoked under section 18AE or 24(3) may make a further application for bail.
- (3) Subject to section 144(2)(c) of the **Criminal Procedure Act 2009**, an application under subsection (1) or (2) is to be made—
 - (a) in the case of a person charged with treason or murder, to the Supreme Court;
 - (b) in any other case, to the court to which the person is remanded to appear.
- (4) Without limiting subsection (3), if it is reasonably practicable to do so, an application under this section is to be heard by a court constituted by the same judge or magistrate who heard the previous application for bail.

18AA Certain circumstances required before application may be heard

- (1) A court must not hear an application under section 18 unless—
 - (a) the applicant satisfies the court that new facts or circumstances have arisen since the refusal or revocation of bail; or
 - (b) the applicant was not represented by a legal practitioner when bail was refused or revoked; or
 - (c) the order refusing or revoking bail was made by a bail justice.
- (2) Nothing in this section derogates from the right of a person in custody to apply to the Supreme Court for bail.

18AB Hearing and determination of further application for bail

An application under section 18 must be conducted as a fresh hearing and determined in accordance with section 4.

18AC Application for variation of bail conditions

- (1) A person who has been granted bail, whether or not the person is in custody, may apply for variation of the amount of bail or the conditions of bail.
- (2) The informant or the Director of Public Prosecutions may apply for—
 - (a) variation of the amount of bail or the conditions of bail; or
 - (b) the imposition of conditions in respect of bail which has been granted unconditionally.
- (3) An application under subsection (1) or (2) is to be made—
 - (a) in the case of a person charged with treason or murder, to the Supreme Court;
 - (b) in any other case, to the court to which the person is required to surrender under his or her conditions of bail.
- (4) A person may apply for variation of the amount of bail or the conditions of bail if—
 - (a) the person has been granted bail by a bail justice or the Magistrates' Court; and
 - (b) within 24 hours after the grant of bail, the person is unable to meet the conditions of bail.
- (5) An application under subsection (4) is to be made to the bail justice who granted the bail or to the Magistrates' Court.

18AD Determination of application for variation of the amount of bail or bail conditions

On an application under section 18AC, the bail decision maker must take into account the surrounding circumstances and may—

- (a) vary the amount of bail or conditions of bail if it appears to the bail decision maker that it is reasonable to do so having regard to those circumstances; or
- (b) in any other case, dismiss the application.

Note

Section 5 provides for the imposition of conditions of bail.

18AE Application for revocation of bail

- (1) The informant or the Director of Public Prosecutions may apply for revocation of bail granted to a person.
- (2) An application under subsection (1) is to be made—
 - (a) in the case of a person charged with treason or murder, to the Supreme Court;
 - (b) in any other case, to the court to which the person is required to surrender under his or her conditions of bail.

18AF Determination of application for revocation of bail

On an application under section 18AE, the court may either—

- (a) revoke bail; or
- (b) dismiss the application.

18AG Appeal against refusal to revoke bail

The Director of Public Prosecutions may appeal to the Supreme Court in the same manner as is provided in section 18A against a refusal to revoke bail if the Director is satisfied that an appeal should be brought in the public interest.

18AH Preservation of the right of application or appeal to the Supreme Court or County Court

- (1) Nothing in section 18, 18AA, 18AC or 18AE derogates from any other right of application or appeal to the Supreme Court or the County Court.
- (2) Section 18AI applies to an application to the Supreme Court or the County Court made other than under this Act by an accused for an order to vary the amount of bail or a condition of bail.
- (3) Section 18AK applies to the following applications to the Supreme Court or the County Court made other than under this Act by an accused—
 - (a) a further application for bail;
 - (b) an application for variation of the amount of bail or the conditions of bail.

18AI Notice of application for variation to be given to sureties

- (1) If an accused who has been admitted to bail with a surety or sureties applies for variation of the amount of bail or the conditions of bail, the accused must give written notice of the application to each surety.
- (2) Notice under subsection (1) must be—
 - (a) in the prescribed form; and
 - (b) given a reasonable time before the hearing of the application; and
 - (c) given personally or by post or by causing the notice to be delivered at the place of residence of the surety shown in the affidavit of justification for bail.

18AJ Surety entitled to attend on application for variation

- (1) A surety for a person admitted to bail is entitled to attend and give evidence at the hearing of an application made by that person for variation of the amount of bail or the conditions of bail.
- (2) The court may adjourn the hearing of an application referred to in subsection (1) to enable a surety to attend.

18AK Notice of application to be given to informant and either DPP or prosecutor

- (1) Subject to subsections (2) and (3), an accused must give notice in the prescribed form of an application under section 18 or an application under section 18AC to—
 - (a) the informant; and
 - (b) the Director of Public Prosecutions or the prosecutor, as the case requires.
- (2) Notice under subsection (1) must be given at least 3 days before the hearing of the application unless—
 - (a) the court is satisfied that—
 - (i) the circumstances of the case justify the application being heard sooner; and
 - (ii) the court will be able to hear and determine the matter adequately despite the limited notice or lack of notice to other parties; or
 - (b) all the parties agree that the period of 3 days be waived.
- (3) Notice under subsection (1) may be dispensed with by the court in the circumstances referred to in subsection (2)(a).

Part 4—Appeals

18A Appeal by Director of Public Prosecutions against insufficiency of bail etc.

- (1) If a person is granted bail, the Director of Public Prosecutions may appeal to the Supreme Court against the order granting bail if—
 - (a) the Director is satisfied that—
 - (i) the conditions of bail are insufficient; or
 - (ii) the decision to grant bail contravenes this Act; and
 - (b) the Director is satisfied that it is in the public interest to do so.
- (2) Where the Director of Public Prosecutions desires to appeal to the Court under subsection (1) he shall cause notice of appeal setting forth the grounds thereof to be given to the person granted bail (hereafter in this section called the *respondent*) and to each of the sureties (if any).
- (3) A notice required to be given to a surety under subsection (2) may be given personally or by post or by causing the notice to be delivered at the place of residence of the respondent or surety (as the case requires) shown in the affidavit of justification for bail.
- (4) Notice of appeal shall not be given under subsection (1) more than one month after the bail is granted without first obtaining the leave of the Supreme Court.
- (5) The Director of Public Prosecutions or a legal practitioner on his behalf may appear on behalf of Her Majesty on any appeal under this section

and any respondent or surety to whom notice is given under subsection (3) may appear by himself or by a legal practitioner on his behalf.

- (6) On an appeal under this section, if the Supreme Court thinks that a different order should have been made, the Supreme Court must set aside the order that is the subject of the appeal and, without limiting the powers of the Supreme Court with respect to bail, conduct a fresh hearing in relation to the grant of bail to the respondent.
- (7) If the respondent is not present in Court when an order granting bail is revoked or varied under this section the Court shall cause a warrant to be issued for apprehending the respondent and bringing him before the Court.
- (8) If the Court revokes an order granting the respondent bail the Court shall remand the respondent in custody to await his trial.
- (9) If the Court makes an order varying the amount or conditions of bail the Court shall require the respondent to find further or other surety or securities for the attendance of the respondent and may remand him in custody until further or other surety or security is provided.
- (10) On the hearing and determination of an appeal under this section no costs shall be allowed on either side.
- (11) A respondent if he so desires is entitled to be present on the hearing of an appeal under this section notwithstanding that he may be in custody but the Court may make any order under this section where the respondent is for any reason not present.
- (12) The respondent or the Director of Public Prosecutions may appeal to the Court of Appeal from a decision of a single judge of the Supreme Court made under this section.

Note

Sections 18AG and 24(4) also provide for certain appeals.

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.

...

Schedule 1—Offences—exceptional circumstances

1. Treason.
2. Murder.
3. A Schedule 2 offence that is alleged to have been committed by the accused—
 - (a) while on bail for any Schedule 1 offence or Schedule 2 offence; or
 - (b) while subject to a summons to answer to a charge for any Schedule 1 offence or Schedule 2 offence; or
 - (c) while at large awaiting trial for any Schedule 1 offence or Schedule 2 offence; or
 - (d) during the period of a community correction order made in respect of the accused for any Schedule 1 offence or Schedule 2 offence or while otherwise serving a sentence for any such offence; or
 - (e) while released under a parole order made in respect of any Schedule 1 offence or Schedule 2 offence.

4. An offence against section 77B of the **Crimes Act 1958** (aggravated home invasion).
5. An offence against section 79A of the **Crimes Act 1958** (aggravated carjacking).
6. An offence against any of the following provisions of the **Drugs, Poisons and Controlled Substances Act 1981**—
 - (a) section 71 (trafficking in a quantity of a drug or drugs of dependence that is not less than the large commercial quantity applicable to that drug or those drugs);
 - (b) section 71AA(1) (trafficking in a quantity of a drug or drugs of dependence that is not less than the commercial quantity applicable to that drug or those drugs);
 - (ba) section 71AA(2) (trafficking in a quantity of a drug or drugs of dependence that is not less than the commercial quantity applicable to that drug or those drugs for the benefit of or at the direction of a criminal organisation);
 - (c) section 72 (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the large commercial quantity applicable to that narcotic plant);
 - (d) section 72A (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant);
 - (e) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a), (b), (ba), (c) or (d).
7. An offence against any of the following provisions 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**)—
 - (a) section 71(1) (trafficking in a drug of dependence) 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 drug of dependence;
 - (b) section 72(1) (cultivation of narcotic plants) in circumstances where the offence is committed in relation to a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant;
 - (c) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a) or (b).
8. An offence against section 302.2, 302.3, 303.4, 303.5, 304.1, 304.2, 305.3 or 305.4 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.
9. An offence against 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.

10. 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 as defined in that Act constituted by those narcotic goods.
11. An offence against section 4B(1) or 21W of the **Terrorism (Community Protection) Act 2003**.
12. An offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in any other item of this Schedule.

Schedule 2—Offences—show compelling reason

1. An indictable offence that is alleged to have been committed by the accused—
 - (a) while on bail for another indictable offence; or
 - (b) while subject to a summons to answer to a charge for another indictable offence; or
 - (c) while at large awaiting trial for another indictable offence; or
 - (d) during the period of a community correction order made in respect of the accused for another indictable offence or while otherwise serving a sentence for another indictable offence; or
 - (e) while released under a parole order.
2. Manslaughter.
3. Child homicide.
4. An offence against section 15A(1) of the **Crimes Act 1958** (causing serious injury intentionally in circumstances of gross violence).
5. An offence against section 15B(1) of the **Crimes Act 1958** (causing serious injury recklessly in circumstances of gross violence).
6. An offence against section 16 of the **Crimes Act 1958** (causing serious injury intentionally).
7. An offence against section 20 of the **Crimes Act 1958** (threats to kill) that is also a family violence offence.
8. An offence against section 21A(1) of the **Crimes Act 1958** (stalking) and—
 - (a) 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 the accused used or threatened to use violence against any person; or
 - (b) the bail decision maker is satisfied that the accused on a separate occasion used or threatened to use violence against the person whom the accused 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.
9. An offence against section 38(1) of the **Crimes Act 1958** (rape).
10. An offence against section 39(1) of the **Crimes Act 1958** (rape by compelling sexual penetration).

11. An offence against section 42(1) of the **Crimes Act 1958** (assault with intent to commit a sexual offence).
12. An offence against section 47(1) of the **Crimes Act 1958** (abduction or detention for a sexual purpose).
13. An offence against section 49A(1) of the **Crimes Act 1958** (sexual penetration of a child under the age of 12).
14. An offence against section 49B(1) of the **Crimes Act 1958** (sexual penetration of a child under the age of 16) in circumstances other than where at the time of the alleged offence the child was 12 years of age or more and the accused was not more than 2 years older than the child.
15. An offence against section 49J(1) of the **Crimes Act 1958** (persistent sexual abuse of a child under the age of 16).
16. An offence against section 49P(1) of the **Crimes Act 1958** (abduction or detention of a child under the age of 16 for a sexual purpose).
17. An offence against any of the following provisions of Subdivision (8C) of Division 1 of Part I of the **Crimes Act 1958** (incest) in circumstances other than where both people are aged 18 or older—
 - (a) section 50C(1) (sexual penetration of a child or lineal descendant);
 - (b) section 50D(1) (sexual penetration of a step-child);
 - (c) section 50E(1) (sexual penetration of a parent, lineal ancestor or step-parent);
 - (d) section 50F(1) (sexual penetration of a sibling or half-sibling).
18. An offence against section 37, 37A, 123 or 123A 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—
 - (a) the accused has within the preceding 10 years been convicted or found guilty of an offence in the course of committing which the accused used or threatened to use violence against any person; or
 - (b) the bail decision maker 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 or notice, 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.
19. An offence against section 125A(1) of the **Family Violence Protection Act 2008** (persistent contravention of notices and orders).
20. 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—
 - (a) the accused has within the preceding 10 years been convicted or found guilty of an offence in the course of committing which the accused used or threatened to use violence against any person; or
 - (b) the bail decision maker 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.
21. An offence against section 63A of the **Crimes Act 1958** (kidnapping).
22. An offence against any of the following provisions of the **Crimes Act 1958**—

- (aa) section 31C (discharging a firearm reckless to safety of a police officer or a protective services officer) in circumstances where the offender's conduct is alleged to have created a risk to the physical safety of the victim or to any member of the public;
 - (a) section 75A(1) (armed robbery);
 - (b) section 77 (aggravated burglary);
 - (c) section 77A (home invasion);
 - (d) section 79 (carjacking);
 - (e) section 197A (arson causing death);
 - (ea) section 317AC (intentionally exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving);
 - (eb) section 317AD (aggravated offence of intentionally exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving);
 - (ec) section 317AE (recklessly exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving);
 - (ed) section 317AF (aggravated offence of recklessly exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving);
 - (ee) section 317AG (damaging an emergency service vehicle);
 - (f) section 318(1) (culpable driving causing death);
 - (g) section 319(1) or (1A) (dangerous driving causing death or serious injury);
 - (h) section 319AA(1) (dangerous or negligent driving while pursued by police).
23. Any indictable offence in the course of committing which the accused, or any person involved in the commission of the offence, is alleged to have used or threatened to use a firearm, offensive weapon, or explosive as defined by section 77 of the **Crimes Act 1958**.
- 23A. An offence of common assault that is alleged to have been committed in the circumstances referred to in section 320A(1) or (2) of the **Crimes Act 1958** and it is alleged that the assault consisted of or included the direct application of force within the meaning of the definition of *assault* in section 31(2) of that Act.
24. An offence against any of the following provisions of the **Drugs, Poisons and Controlled Substances Act 1981**—
- (a) section 71AB (trafficking in a drug or drugs of dependence to a child);
 - (b) section 71AC (trafficking in a drug of dependence);
 - (c) section 72B (cultivation of narcotic plants);
 - (d) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a), (b) or (c).
25. An offence against any of the following provisions 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**)—
- (a) section 71(1) (trafficking in a drug of dependence);
 - (b) section 72(1) (cultivation of narcotic plants);
 - (c) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a) or (b).

26. An offence against section 302.2, 302.3, 303.4, 303.5, 304.1, 304.2, 305.3, 305.4, 306.2, 307.1, 307.2, 307.5, 307.6, 307.8, 307.9, 307.11, 309.3, 309.4, 309.7, 309.8, 309.10, 309.11, 309.12, 309.13, 309.14 or 309.15 of the Criminal Code of the Commonwealth.
27. 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 a commercial or trafficable quantity of narcotic goods within the meaning of that Act.
28. 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 Offenders Act 2018**.
29. 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 Offenders Act 2018**.
30. An offence against this Act.
31. An offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in any other item of this Schedule.