



BAIL ACT, 1985

No. 5 of 1985

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ANNO TRICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1985

No. 5 of 1985

An Act to regulate the granting of bail.

[Assented to 7 March 1985]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

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|-----------------|--|
| Short title. | 1. This Act may be cited as the "Bail Act, 1985". |
| Commencement. | 2. This Act shall come into operation on a day to be fixed by proclamation. |
| Interpretation. | <p>3. In this Act, unless the contrary intention appears—</p> <p>“bail authority” means a court or person constituted as a bail authority by or under section 5:</p> <p>“eligible person” means a person who is eligible to apply for release on bail under section 4:</p> <p>“financial condition”, in relation to bail, means a condition requiring an applicant for bail to provide security or obtain guarantees, or requiring a guarantor to provide security, and “non-financial condition” has a correlative meaning:</p> <p>“guarantee” means an agreement under section 7:</p> <p>“guarantor” means a person who enters into a guarantee:</p> <p>“telephone” includes any telecommunication device for the transmission of speech:</p> <p>“victim”, in relation to an offence, means a person who suffers injury in consequence of the commission of the offence:</p> <p>“working day” means any day except a Sunday or other public holiday.</p> |

4. The following persons are eligible for release on bail under this Act— Eligibility for bail.

- (a) a person who has been taken into custody on a charge of an offence but has not been convicted of that offence;
- (b) a person who has been convicted of an offence but has not been sentenced for that offence;
- (c) a person who has been convicted of, and sentenced for, an offence but has not exhausted all his rights of appeal against the conviction or sentence, or to have it reviewed.

5. (1) The following are constituted as bail authorities for the purposes of this Act: Bail authorities.

- (a) the Supreme Court;
- (b) a court before which the eligible person has been charged with the offence in respect of which he has been taken into custody;
- (c) a court to which the eligible person has been committed for trial or sentence;
- (d) where the eligible person—
 - (i) is charged with a summary offence only;
 - or
 - (ii) is charged with an indictable offence but has not been committed for trial or sentence,
 —any justice;
- (e) where the eligible person has not appeared before a justice charged with the offence in respect of which he has been taken into custody—any member of the police force who is of or above the rank of sergeant or who is in charge of a police station;
- (f) a person authorized or required to release the eligible person on bail under subsection (2).

(2) Where a warrant for the arrest of any person is issued, the court or justice issuing the warrant may, by endorsement on the warrant, authorize or require a specified person, or a person of a specified class, to release the arrested person on bail.

PART II

BAIL AGREEMENTS AND GUARANTEES

6. (1) A bail agreement is an agreement under which a person who has been charged with, or convicted of, an offence makes an undertaking to the Crown— Nature of bail agreement.

- (a) to be present throughout all proceedings (not being of an interlocutory nature)—
 - (i) where he has not been convicted of the offence—relating to any preliminary examination of the charge and to the hearing and determination of the charge;

(ii) where he is convicted of the offence—relating to sentencing and to any appeal from, or review of, the conviction or his sentence;

(b) to comply with any conditions as to his conduct while on bail stipulated in the agreement;

and

(c) if the agreement so provides—to forfeit to the Crown a sum stipulated in the agreement if he fails, without proper excuse, to comply with a term or condition of the agreement.

(2) A bail agreement must be in the prescribed form.

(3) Notwithstanding the provisions of any other Act, the Supreme Court, or a court or justice before which a person released in pursuance of a bail agreement is bound to appear, may for any sufficient reason, on the application of such a person or the Crown, or of its own motion, vary the conditions of a bail agreement or revoke a bail agreement.

(4) Where a court or justice revokes a bail agreement pursuant to subsection (3), the court or justice may, if it is necessary to do so, issue a warrant for the arrest of the person who was released under the agreement.

Guarantee of bail.

7. (1) A guarantee of bail is an agreement with the Crown under which a person—

(a) guarantees that a person released under a bail agreement will comply with—

(i) all the terms and conditions of the agreement;

or

(ii) such of the terms and conditions of the agreement as are specified in the guarantee;

and

(b) undertakes that, if that person fails to comply with a term or condition of the bail agreement to which the guarantee relates, he (the guarantor) will forfeit to the Crown the sum (if any) specified in the guarantee.

(2) A guarantee of bail must be in the prescribed form.

(3) The Supreme Court, or a court or justice before which a person released in pursuance of a bail agreement is bound to appear, may for any sufficient reason, on the application of a guarantor, vary the terms of a guarantee or revoke a guarantee.

(4) Where a court or justice varies the terms of a guarantee or revokes a guarantee under subsection (3), the court or justice may make such consequential orders in relation to the bail agreement to which the guarantee relates as appear appropriate in the circumstances.

PART III

APPLICATIONS FOR RELEASE ON BAIL

DIVISION I—APPLICATIONS GENERALLY

Form of application.

8. (1) Unless a bail authority otherwise directs, an application of a person for release on bail in respect of a particular offence must be made in writing and must contain the prescribed information.

(2) A person who has the custody of an eligible person shall, at the request of that person—

(a) afford such assistance as that person reasonably requires to complete a written application for release on bail;

and

(b) if the custodian is not himself a bail authority—transmit the application as soon as practicable to a bail authority.

(3) Where a written application for release on bail comes before a bail authority for determination, the bail authority shall proceed to consider and determine the application notwithstanding that the application was made in the first instance to some other bail authority.

9. (1) Subject to this section, a bail authority to which an application for release on bail is made—

Power of bail authority to make inquiries and to hear evidence.

(a) may make inquiries, or direct that inquiries be made, of the applicant and other persons who may be able to furnish information relevant to the determination of the application;

and

(b) if the authority (not being a member of the police force) thinks fit—may take evidence on oath from the applicant or any other person who may be able to furnish information relevant to the determination of the application.

(2) Where a bail authority takes evidence, or proposes to take evidence, on oath under subsection (1) (b), it shall at the request of the applicant or the Crown permit such examination, cross-examination or re-examination of the witness as may be appropriate in the circumstances.

10. (1) Where an application for bail is made to a bail authority by an eligible person (not being a person who has been convicted of the offence in respect of which he has been taken into custody), the bail authority should, subject to this Act, release the applicant on bail unless, having regard to—

Discretion exercisable by bail authority.

(a) the gravity of the offence in respect of which the applicant has been taken into custody;

(b) the likelihood (if any) that the applicant would, if released—

(i) abscond;

(ii) offend again;

(iii) interfere with evidence, intimidate or suborn witnesses, or hinder police inquiries;

(c) where there is a victim of the offence—any need that the victim may have, or perceive, for physical protection from the applicant;

(d) any need that the applicant may have for physical protection;

(e) any medical or other care that the applicant may require;

(f) any previous occasions on which the applicant may have contravened or failed to comply with a term or condition of a bail agreement;

(g) any other relevant matter,

the bail authority considers that the applicant should not be released on bail.

(2) Where the applicant has been convicted of the offence in respect of which he has been taken into custody, the bail authority has, subject to this Act, an unfettered discretion as to whether the applicant should be released on bail.

Conditions of
bail.

11. (1) Subject to this section, a bail authority may impose one or more of the conditions referred to in subsection (2).

(2) The conditions that may be imposed in relation to the grant of bail are as follows:

(a) that the applicant agree—

(i) to reside at a specified address;

(ii) where there is a victim of offence in respect of which the applicant has been charged—to comply with such conditions relating to the physical protection of the victim that the authority considers should apply to him while he is on bail;

(iii) to place himself under the supervision of an officer of the Department of Correctional Services and to obey the lawful directions of that officer;

(iv) to report to the police at a specified place and at specified times;

(v) to surrender any passport that he may possess;

or

(vi) to comply with any other condition as to his conduct that the authority considers should apply while he is on bail;

(b) that the applicant provide the bail authority with written assurances from a stipulated number of persons, who are acceptable to the bail authority, that they are acquainted with the applicant and are confident that he will comply with the terms and conditions of a bail agreement;

(c) that the applicant agree to forfeit to the Crown a sum of money (to be stipulated in the bail agreement) if he fails, without proper excuse, to comply with a term or condition of the bail agreement;

(d) that the applicant provide security of a specified amount or value to secure payment of a monetary forfeiture agreed to under paragraph (c);

(e) that the applicant obtain specified guarantees, or guarantees of a specified nature;

(f) that a guarantor provide security of a specified amount or value to secure payment of a stipulated monetary forfeiture.

(3) A bail authority shall not impose a condition referred to in subsection (2) (a) requiring an applicant for bail to place himself under the supervision of an officer of the Department of Correctional Services and to obey his lawful instructions except on the application, or with the consent, of the Crown.

(4) A condition (other than a condition as to the conduct of the applicant while on bail) shall not be imposed under this section unless the condition is, in the opinion of the bail authority, reasonably necessary to ensure that the applicant complies with the bail agreement.

(5) A financial condition shall not be imposed under this section unless the bail authority is of the opinion that the object of ensuring that the applicant complies with the bail agreement cannot be properly secured by a non-financial condition or combination of non-financial conditions.

(6) It shall be a condition of every bail agreement that the person released in pursuance of the agreement will not leave the State for any reason without the permission of the court or justice before which the person is bound to appear.

(7) A condition imposed under this section shall be stipulated in the bail agreement.

(8) Where it is a condition of a bail agreement that the person released in pursuance of this agreement will place himself under the supervision of an officer of the Department of Correctional Services and obey the lawful directions of that officer, the officer to whom the person is assigned for supervision may give reasonable directions—

(a) requiring that person to report to him on a regular basis;

(b) requiring that person to notify him of any change in his place of residence, or in his employment;

or

(c) on any other matter stipulated by the bail authority.

12. (1) Where a bail authority decides to refuse an application for release on bail, the bail authority shall make a written record of the reasons for its decision. Refusal of application.

(2) The refusal of an application for release on bail does not preclude further applications.

DIVISION II—PROCEDURE ON ARREST

13. (1) Where a member of the police force arrests any person who is, upon arrest, eligible to apply for release on bail, the member of the police force— Procedure on arrest.

(a) shall, as soon as reasonably practicable after delivering the arrested person to a police station after making the arrest, take reasonable steps to ensure that the arrested person understands that he is entitled to apply for release on bail under this Act;

and

(b) shall ensure that the arrested person receives—

(i) a written statement, in the prescribed form, explaining how, and to what authorities, an application for release on bail may be made under this Act;

and

(ii) the appropriate form for making an application for release on bail.

(2) An eligible person who applies unsuccessfully to a member of the police force for release on bail shall, if he so requests, be brought as soon as practicable before a justice for the purpose of making an application for release on bail.

(3) An eligible person shall, if not released beforehand, be brought before a justice on the charge in relation to which he was arrested as soon as reasonably practicable on the next working day following the day of his arrest but in any event not later than 12 noon on that day.

(4) A justice before whom a person is brought under subsection (3) shall inquire whether that person desires to apply to him for release on bail and, if the person to whom the inquiry is directed answers affirmatively, the justice shall afford him a reasonable opportunity to apply for release on bail.

PART IV

REVIEW OF DECISIONS OF BAIL AUTHORITIES

Review of
decisions of bail
authorities.

14. (1) A decision of a bail authority (not being the Supreme Court) is subject to review under this section.

(2) A review may be carried out under this section on the application of the Crown or the person applying for release on bail—

(a) by the Supreme Court;

or

(b) where the decision subject to review is a decision of a member of the police force or a justice (not being a magistrate)—by a magistrate.

(3) On a review, the reviewing authority shall reconsider the application for release on bail and may make any decision on that application that should, in the opinion of the reviewing authority, have been made in the first instance.

(4) Where an application for review of a decision of a bail authority is made, the bail authority shall furnish the reviewing authority with any documentary or other material in its possession that may be relevant to the review.

(5) The reviewing authority shall hear and determine an application under this section as expeditiously as possible.

Telephone review.

15. (1) Subject to this section, where—

(a) an application for release on bail is made to a member of the police force or a justice (not being a magistrate);

(b) the applicant is dissatisfied with the decision made on the application;

and

(c) there is no magistrate in the vicinity immediately available to review the decision,

the member of the police force or the justice who made the decision shall, on the written application of the applicant, contact a magistrate by telephone for the purpose of having the decision reviewed.

(2) Where a magistrate is contacted under subsection (1), the following provisions apply:

- (a) the magistrate shall make such enquiries as he thinks necessary to satisfy himself of the genuineness of the application for review;
 - (b) the member of the police force or justice who made the decision shall explain to the magistrate—
 - (i) the circumstances of the application for bail;
 - (ii) the nature of the decision made on the application;and
 - (iii) the reasons for that decision;
 - (c) the magistrate shall then speak with the person who applied for the bail or any legal practitioner representing or assisting him, and any other person who may be present and who may, in the opinion of the magistrate, assist in explaining the circumstances of the particular case, for the purpose of ensuring that he is fully informed—
 - (i) of the grounds and circumstances of the application for bail;and
 - (ii) of the reasons for the applicant's dissatisfaction with the decision taken on the application;
 - (d) if the decision that is the subject of the review was made by a justice—the magistrate shall then speak with the member of the police force who appeared before the justice and opposed the application for bail (if he is present and if he wishes to speak in relation to the application for review);
- and
- (e) the magistrate shall then speak again with the member of the police force or justice who made the decision, informing him of his decision on the review, and bail shall then be granted or refused in accordance with that decision.

(3) This section shall not apply in relation to a decision made on application to a member of the police force upon arrest where the arrested person can be brought before a justice not later than 12 noon on the next day following the day of his arrest.

16. Notwithstanding any other provision of this Act, where a bail authority decides to release a person on bail and a member of the police force or counsel appearing on behalf of the Crown at the hearing indicates that an application for review of the decision will be made under this Part, the release shall be deferred until—

- (a) the review is completed;
- or
- (b) a period of seventy-two hours elapses,

whichever first occurs.

Stay of release on an application for review.

PART V

ENFORCEMENT AND TERMINATION OF BAIL

Non-compliance with bail agreement constitutes offence.

17. (1) A person who, without reasonable excuse, contravenes or fails to comply with a term or condition of a bail agreement shall be guilty of an offence.

(2) A person convicted of an offence against subsection (1) is liable to the same penalties as are prescribed for the principal offence but no sentence of imprisonment awarded under this section shall exceed three years.

(3) A penalty imposed under subsection (2) is in addition to any pecuniary forfeiture that the convicted person suffers or may suffer in consequence of the offence.

(4) A reference in this section to the principal offence is a reference to—

(a) the offence with which the person released on bail was charged;

or

(b) where that person was charged with a number of offences—that one of the offences that attracts the highest penalty.

Arrest of eligible person on non-compliance with bail agreement.

18. (1) Where it appears to a court or justice that a person released on bail has contravened or failed to comply with a term or condition of a bail agreement, it may—

(a) cancel the right of that person to be at liberty in pursuance of the agreement;

and

(b) if it appears necessary or desirable to do so—issue a warrant for his arrest.

(2) A member of the police force may arrest without warrant a person released on bail if he has reasonable grounds for believing that the person—

(a) intends to abscond;

(b) is contravening or failing to comply with a bail agreement;

or

(c) has contravened or failed to comply with a bail agreement.

Estreatment.

19. (1) Where a person who has been released in pursuance of a bail agreement contravenes or fails to comply with a term or condition of the agreement—

(a) the court or justice before which that person is bound to appear;

or

(b) any court of summary jurisdiction,

may on the application of the Crown, or on its own motion, order that a pecuniary forfeiture stipulated in a bail agreement or a guarantee be carried into effect.

(2) An application may be made under this section on behalf of the Crown by any member of the police force.

(3) Where a court or justice makes an order under this section, the court or justice may at any time for any sufficient reason on the application of the person in relation to whom the order is made, or of its own motion—

(a) reduce the amount of the forfeiture as stipulated in the bail agreement or guarantee;

or

(b) rescind its order.

(4) The amount of a pecuniary forfeiture that is carried into effect pursuant to an order under this section may be recovered as a fine.

20. (1) Subject to subsection (2), where—

(a) a person charged with an offence is released on bail;

and

(b) that person is subsequently convicted of the offence,

the conviction terminates the bail agreement and guarantees (if any).

(2) Where the court is of the opinion that a sentence of imprisonment will not be, or is unlikely to be, imposed, the court may direct that the bail agreement and guarantees (if any) are to continue and such a direction shall have effect according to its terms.

(3) The termination of a bail agreement under this section does not preclude or prejudice a subsequent application for release on bail by an eligible person.

Termination of
bail by
conviction.

PART VI

MISCELLANEOUS

21. An apparently genuine document purporting to be a bail agreement or guarantee, or a copy of a bail agreement or guarantee, shall be accepted by any court or justice as evidence of the bail agreement or guarantee and of its terms and conditions.

Evidence.

22. A person who provides false information in an application for release on bail knowing it to be false shall be guilty of an offence.

False information
on bail
applications.

Penalty: One thousand dollars.

23. Proceedings in respect of an offence against this Act may be disposed of summarily.

Proceedings for
offences.

24. Nothing in this Act affects the operation of—

(a) Division VII of Part IV of the Justices Act, 1921;

or

(b) the Children's Protection and Young Offenders Act, 1979.

This Act not to
affect provisions
of Justices Act
relating to
domestic violence
or the provisions
of the Children's
Protection and
Young Offenders
Act, 1979.

25. The Act of the Imperial Parliament 48 Geo. III c. 58 has no further force or effect in this State.

Non-application
of 48 Geo. III
c. 58 in this State.

Regulations.

26. The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor