



ANNO TRICESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1987

No. 32 of 1987

An Act to amend the Bail Act, 1985.

[Assented to 23 April 1987]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the "Bail Act Amendment Act, 1987". Short title.

(2) The Bail Act, 1985, is in this Act referred to as "the principal Act".

2. (1) This Act will come into operation on a day to be fixed by proclamation. Commencement.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 3 of the principal Act is amended by inserting in the definition of "victim" the word "allegedly" after the word "who". Amendment of s. 3—
Interpretation.

4. Section 4 of the principal Act is amended—

(a) by striking out paragraphs (aa) and (a) and substituting the following paragraphs: Amendment of s. 4—
Eligibility for bail.

(a) a person who is appearing before a court in answer to a summons;

(ab) a person who has been taken into custody—

(i) on a charge of an offence;

or

(ii) in the case of a child—on suspicion of having committed an offence;;

(b) by inserting after paragraph (c) the following paragraph:

(d) a person who is appearing before a court for allegedly failing to observe a condition of a recognizance.;

and

(c) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) Where a person who has been arrested is being detained pursuant to the Summary Offences Act, 1953, for a purpose related to the investigation of an offence, the person is not eligible for release on bail until the end of that detention.

Amendment of
s. 5—
Bail authorities.

5. Section 5 of the principal Act is amended—

(a) by striking out paragraph (c) of subsection (1) and substituting the following paragraph:

(c) a court before which the eligible person has appeared for trial or sentencing;;

(b) by striking out subparagraph (ii) of paragraph (d) of subsection (1) and substituting the following subparagraph:

(ii) is charged with an indictable offence but has not appeared before a court for trial or sentencing;

and

(c) by inserting after paragraph (e) of subsection (1) the following paragraph:

(ea) where the eligible person is appearing before a court in answer to a summons or for allegedly failing to observe a condition of a recognizance—that court;

Amendment of
s. 6—
Nature of bail
agreement.

6. Section 6 of the principal Act is amended by striking out subsections (3) and (4) and substituting the following subsections:

(3) Where a bail authority decides to release a person on bail, the bail agreement may be entered into before the bail authority or, unless the bail authority otherwise directs, before—

(a) a justice;

(b) a member of the police force of or above the rank of sergeant or in charge of a police station;

(c) if the person is in prison—the person who is in charge of the prison;

or

(d) any other person specified by the bail authority or any other person of a class specified by the bail authority.

(4) Notwithstanding the provisions of any other Act, a bail authority may for any sufficient reason, on the application of a person on bail or the Crown, or of its own motion, vary the conditions of a bail agreement or revoke a bail agreement.

(5) Where a bail authority revokes a bail agreement, the bail authority (not being a member of the police force) may, if it is necessary to do so, issue a warrant for the arrest of the person who was released under the agreement.

7. Section 7 of the principal Act is amended by striking out subsections (3) and (4) and substituting the following subsections:

Amendment of
s. 7—
Guarantee of bail.

(3) A guarantee of bail may be entered into before the bail authority granting bail or, unless the bail authority otherwise directs, before—

(a) a justice;

(b) a member of the police force of or above the rank of sergeant or in charge of a police station;

(c) if the person who is to be released on bail is in prison—the person who is in charge of the prison;

or

(d) any other person specified by the bail authority or any other person of a class specified by the bail authority.

(4) A bail authority may for any sufficient reason, on the application of a guarantor, vary the terms of the guarantee or revoke the guarantee.

(5) Where a bail authority varies or revokes a guarantee, the bail authority may make such consequential variation of the terms of the bail agreement, or revoke the bail agreement, as appears appropriate in the circumstances.

(6) A guarantor of bail must be of or above the age of 18 years.

8. Section 8 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

Amendment of
s. 8—
Form of
application.

(1) Subject to subsection (1a), an application of a person for release on bail—

(a) must be in the prescribed form;

(b) must contain the prescribed information;

and

(c) must be made in accordance with any procedure prescribed by the regulations.

(1a) An application for release on bail need not be made in accordance with subsection (1)—

(a) if the bail authority is satisfied that a less formal application should be permitted in view of the applicant's illiteracy, imperfect command of the English language, intellectual limitations or for any other proper reasons;

or

(b) if the bail authority has access to an application previously made by the applicant and considers that a further written application is unnecessary.

9. Section 11 of the principal Act is amended—

Amendment of
s. 11—
Conditions of
bail.

(a) by inserting after subparagraph (i) of paragraph (a) of subsection (2) the following subparagraph:

(ia) to reside at a specified address and to remain at that place of residence while on bail, not leaving it except for one of the following purposes:

- (A) remunerated employment;
- (B) necessary medical or dental treatment for the applicant;
- (C) averting or minimizing a serious risk of death or injury (whether to the applicant or some other person);

or

- (D) any other purpose approved by an officer of the Department of Correctional Services or, in the case of a child, an officer of the Department of Community Welfare;;

(b) by striking out subsection (3) and substituting the following subsections:

(2a) In deciding on the conditions to be imposed in relation to a grant of bail, a bail authority should give special consideration to any submissions made by the Crown on behalf of a victim of the alleged offence.

(3) A bail authority should not impose a condition under subsection (2) (ia) or (iii) except on the application, or with the consent, of the Crown.

(3a) A bail authority should not impose a condition under subsection (2) (ia) without first obtaining a report (whether oral or in writing) from the Crown on the appropriateness of such a condition being imposed in the applicant's case.;

(c) by striking out subsection (6) and substituting the following subsection:

(6) It is a condition of every bail agreement that the person released in pursuance of the agreement will not leave the State for any reason—

- (a) if the person is under the supervision of an officer of the Department of Correctional Services—without the permission of the Executive Director of the Department of Correctional Services, or his or her nominee;
- (b) if the person is under the supervision of an officer of the Department of Community Welfare—without the permission of the Director-General of the Department of Community Welfare, or his or her nominee;
- (c) in any other case—without the permission of—
 - (i) a judge or justice;
 - or
 - (ii) a member of the police force of or above the rank of sergeant or in charge of a police station.;

(d) by inserting after subsection (7) the following subsections:

(7a) Where it is a condition of a bail agreement that the person released in pursuance of the agreement will remain at a particular place of residence, a member of the police force or an officer of the Department of Correctional Services or the Department of Community Welfare authorized by the Minister for the purpose may enter the residence at any time for the purpose of ascertaining whether or not the person is complying with the condition.

(7b) A person shall not hinder a person referred to in subsection (7a) in the exercise of powers under that subsection.

Penalty: \$2 000.;

and

(e) by inserting after subsection (8) the following subsections:

(9) Where—

(a) a bail authority imposes a condition under this section;

but

(b) the applicant remains in custody because the condition is not fulfilled,

the applicant must, not more than five working days after the condition is imposed (if he or she is not sooner released), be brought back before a bail authority for a review of the condition.

(10) A bail authority may, on a review of a condition under subsection (9)—

(a) confirm the condition;

(b) vary the condition;

(c) revoke the condition;

(d) impose any other condition under this section that the bail authority thinks fit.

(11) Where a bail authority imposes a condition requiring a person to remain at a particular place of residence while on bail, the bail authority must ensure that a copy of the bail agreement is furnished to the Minister responsible for the Department of Correctional Services or, if the person is a child, the Minister responsible for the Department of Community Welfare.

(12) Where a bail authority imposes a condition requiring a person to be under the supervision of an officer of the Department of Correctional Services or the Department of Community Welfare, the bail authority must ensure that a copy of the bail agreement is furnished to the Minister responsible for the relevant Department.

10. The following section is inserted after section 15 of the principal Act:

Insertion of new
s. 15a.

Review of
magistrate's
decision by
Supreme Court.

15a. (1) Subject to this section, a decision of a magistrate on a review of a decision of a bail authority is subject to review by the Supreme Court.

(2) A review may be carried out under this section on the application of the Crown, the person applying for release on bail or, where the person applying for release on bail is a child, the child or a guardian of the child.

(3) A review under this section may only occur with leave of the Supreme Court (which should only be granted where it appears that there may have been some error of law or fact).

Repeal of s. 16
and substitution
of new section.

11. Section 16 of the principal Act is repealed and the following section is substituted:

Stay of release on
application for
review.

16. (1) Notwithstanding any other provision of this Act, where—

(a) (i) a bail authority decides to release a person on bail;

or

(ii) on a review by a magistrate of a decision to release a person on bail the magistrate decides to release the person on bail;

and

(b) a member of the police force or counsel appearing on behalf of the Crown immediately indicates that an application for review of the decision will be made under this Part,

the release must be deferred.

(2) The period of deferral ends when—

(a) the review is completed;

(b) a member of the police force or some other person acting on behalf of the Crown files with the bail authority a notice that the Crown does not desire to proceed with the review;

or

(c) 72 hours elapse,

whichever first occurs.

(3) If a person is released pursuant to subsection (2) (b) or (c), the conditions of bail are those that would have applied had the person's release not been deferred.

Amendment of
s. 17—
Non-compliance
with bail
agreement
constitutes
offence.

12. Section 17 of the principal Act is amended by inserting after subsection (3) the following subsections:

(3a) Proceedings for an offence against this section should not be heard and determined until after the proceedings for the principal offence have been determined unless—

(a) a court otherwise orders;

or

(b) the alleged offender elects to have the proceedings dealt with at an earlier time.

13. The following section is inserted after section 17 of the principal Act:

Insertion of new s. 17a.

17a. Where a guarantor knows, or has reasonable cause to suspect, that the person released under the bail agreement has failed to comply with a term or condition of the agreement in relation to which his or her guarantee has been given, the guarantor shall take reasonable steps to inform a member of the police force that the failure has, or may have, occurred.

Guarantor must inform a member of the police force if the person fails to comply with the bail agreement.

Penalty: \$1 000.

14. Section 18 of the principal Act is amended by inserting after subsection (2) the following subsection:

Amendment of s. 18—
Arrest of eligible person on non-compliance with bail agreement.

(3) A person who is arrested without warrant pursuant to subsection (2) must, after being delivered into custody at a police station, be brought as soon as practicable before—

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

or

(b) any court of summary jurisdiction.

15. Section 19 of the principal Act is amended—

Amendment of s. 19—
Estreatment.

(a) by striking out subsection (2) and substituting the following subsection:

(2) An order for pecuniary forfeiture under subsection (1) may provide that the order is not to be carried into effect until a subsequent day to be fixed by the court or justice making the order.;

and

(b) by inserting after subsection (3) the following subsection:

(3a) A court or justice that makes an order under this section may allow the person in relation to whom the order is made time to pay the amount forfeited.

16. Section 20 of the principal Act is repealed and the following section is substituted:

Repeal of s. 20 and substitution of new section.

20. When a person who is on bail is sentenced, or discharged without sentence, the bail agreement and guarantees (if any) terminate.

Termination of bail agreement.

17. The following section is inserted after section 21 of the principal Act:

Insertion of new s. 21a.

21a. An application may be made or a consent given under this Act on behalf of the Crown by—

Applications on behalf of the Crown.

(a) a person acting on the instructions of the Crown;

or

(b) any member of the police force.

Amendment of
s. 23—
Proceedings for
offences.

18. Section 23 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Proceedings in respect of an offence against this Act must be commenced within 12 months after the date on which the offence is alleged to have been committed.

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

D. B. DUNSTAN, Governor