

The Bail Act 1980

Report No. 43

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The Bail Act, Queensland Law Reform Commission, Working Paper No. 41, February, 1993

(ii)

To: **The Hon Mr Dean Wells, M.L.A.**
Attorney-General of Queensland

In accordance with the provisions of section 15 of the *Law Reform Commission Act 1968*, I am pleased to present the Commission's report on the *Bail Act 1980*.

Yours faithfully,

The Honourable Mr Justice R E Cooper (Chairman)



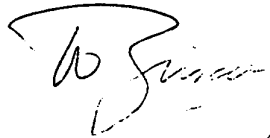
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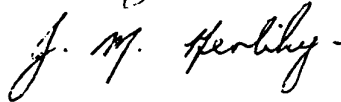
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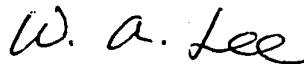
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28 June 1993

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INTRODUCTION

The Attorney-General requested the Queensland Law Reform Commission to review the *Bail Act 1980*

with a view to advising me on the desirability of amendments to provide that an accused person has a right to bail.

The Attorney-General also requested that, in conducting its review of the *Bail Act 1980*, the Commission take into consideration the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

In addition, the Attorney-General asked that the Commission's review of the law relating to bail include reference to the question of bail for people who commit offences of domestic violence.

Bail is a procedure which allows a person who has been arrested on a charge of a criminal offence to be released from custody until he or she stands trial. A grant of bail ensures that an accused person does not suffer unnecessary or unlawful deprivation of liberty before trial. The bail process is consistent with the general principle of the presumption of innocence. The presumption of innocence means that it is the task of the prosecution in a criminal trial to prove beyond reasonable doubt that the accused person is guilty of the offence charged and that, until the prosecution so proves, the accused must be presumed to be innocent of the offence charged.

The right to bail is not unqualified. A delicate balance exists, in a consideration of a bail application, between the recognition of the presumption of innocence, on the one hand, and the need for the community's interests to be protected, on the other. As Mason C.J. said in *South Australia v O'Shea* (1987) 163 CLR 378 at 385:

There is of course an obvious tension between protection of individual liberty, which is deeply rooted in common law tradition and democratic ideals, and the need to protect the community from offenders.

In February, 1993, the Commission released a Working Paper containing a review of bail legislation in Queensland. Most of the views expressed in the Working Paper are reflected in this Report. In some areas, views have been modified as a result of consultations held and submissions received since the release of the Working Paper.

This Report deals with the prima facie right to bail, and with the criteria which qualify that right in the public interest. It therefore considers what test should apply in determining when bail should be denied; what particularised criteria are to be taken into account in the application of the basic test; and whether there should be a reversal of onus for certain serious offences.

It also considers review of a refusal of bail, continuation of the practice of granting cash bail, the consequences of failure to answer bail, and the nature of bail conditions.

In conducting its review and framing its recommendations, the Commission has been guided by the following principles:

- . a person charged, but not convicted, of an offence is innocent in the eyes of the law;
- . the law should also protect members of the public from harmful behaviour;
- . the law should protect people from unlawful or unnecessary deprivation of liberty; and
- . the administration of the criminal justice system requires that people accused of an offence are tried and (if appropriate) punished.

The Commission wishes to thank those persons and bodies who made valuable submissions to the Working Paper. It also wishes to record its sincere thanks to Mr R.G. Kenny of the Faculty of Law, University of Queensland who acted as Consultant to the Commission on this reference and to Mr R. McDowall, a Consultant to the Office of Parliamentary Counsel, for his work in preparing the Draft Bill, which is Appendix B to this Report.

CHAPTER 1

Bail - The Present Law

1. *The Importance of Bail*

Historically, bail was a process to ensure that people who were charged with a criminal offence (defendants) appeared at court both for the hearing of their charge and the imposition of an appropriate punishment. Those who are refused bail are kept in police watch-houses, lock-ups and jails until trial.

Today, however, bail attempts to serve additional functions for the protection of the community.

The ramifications for the community of releasing defendants charged with violent offences before their trial cannot be ignored. For the victim of a violent offence, the release of a defendant charged with such an offence may cause fear and other psychological harm. For the community, there is a risk that offenders with a history of violence may commit further violent offences before their trial.

However, the consequences of a refusal of bail cannot be understated. It involves the loss of a person's liberty.

In Australia's system of criminal law, a defendant is presumed innocent until found guilty by a court. An allegation of wrongdoing must be proved by the accuser. Until that occurs, an accused person ought not to be assumed to have committed the crime charged.

If a person is detained in a jail, watch-house or a police lock-up during a period before trial (remanded in custody), that period is served before the court has determined -

- * whether the person is guilty of any charge; and
- * if guilty of any charge, whether imprisonment is an appropriate punishment (some lesser penalty, such as probation, a fine or a community service order may be more appropriate).

As a consequence of incarceration before trial, non-convicted people may lose their employment, suffer damage to reputation, and face disruption to existing family relationships. A proportion of these people will not be convicted of any offence.

Because of such detriments, a defendant whose incarceration before trial is likely to be lengthy may be induced to plead guilty simply to get an earlier hearing date.

A person who is kept in jail before trial is restricted in preparing evidence for the defence case.

The uncertainty of a release date from jail may weaken the will of some defendants to present their best case at trial. One submission to the Commission by a legal practitioner with wide experience in bail cases explained -

"It is the moral sapping, debilitating effect of incarceration on remand that contributes to the potentially permanent effects of refusal of bail. In the despondent state that overcomes many people immediately they are imprisoned, clear and definite instructions may be more difficult for a legal representative to obtain. Many prisoners seem to give up hope."¹

Finally, a period of imprisonment before trial may decrease the chances of successfully arguing against a jail sentence if the defendant is convicted of the charge. When considering whether or not to impose short periods of imprisonment for a particular offence, judicial officers will take into account the employment and stability of a defendant and the ties and responsibilities a defendant has in the community. The greater a defendant's individual and community responsibilities, the greater the pressure on judicial officers not to impose a jail sentence, or a sentence that restricts the defendant from performing existing responsibilities. If a defendant has been jailed before trial, the normal links forged by a person within the community are less likely to be present. The defendant is unlikely to have employment, and existing ties within the community will have been loosened during the period spent by the defendant in jail.

In its review of the operation of present bail legislation, the Commission has been aware of the need to balance these two often competing principles - the need to preserve the freedom of the defendant, consistent with the presumption of innocence, weighed against the need to protect the community from a re-offending or potentially violent defendant. The recommendations of the Commission are made within this context.

2. The Current Law

After being arrested and charged with an offence, and before the matter is finally resolved by conviction or acquittal in the appropriate court, a person (the defendant) may be remanded in custody or may be released from custody in the intervening period through a grant of bail.

Bail is a procedure which allows a person who has been accused of a criminal offence, and arrested, to be released from custody until he or she stands trial. The bail process is consistent with the general principle of the presumption of innocence - that is, that it is the task of the prosecution in a criminal trial to prove beyond reasonable doubt that the defendant is guilty of the offence with which he

¹ Submission by Michael Barnes, Solicitor, Brisbane.

or she is charged and that, until the prosecution so proves, the defendant must be presumed to be innocent of the offence charged.² It recognises that the liberty of a person who has not been convicted of an offence should not be restricted unless it is necessary in the interests of the community that the person be detained.

Where bail is refused, the defendant is remanded in custody. This means that he or she is detained in a police watch-house or jail. During that time, the costs of that detention must be borne by the State and the defendant does not have the advantage of normal contact with family or friends, or of being able to engage in employment. Obviously, those benefits are available to a defendant who is released on bail.

In Queensland, matters relating to bail are dealt with under the *Bail Act 1980*. To the extent that any other Queensland Acts (for example, the *Justices Act 1886* section 222(2)(iv)) refer to release on bail or on recognisance, they should be altered to specifically refer to the criteria for the refusal of bail in the *Bail Act 1980*.

Watch-house bail

Under the *Bail Act 1980*, a defendant is eligible to be considered for bail at any stage of the criminal law process. Except for serious offences such as murder,³ a police officer in charge of a watch-house is empowered to grant bail.⁴ This is known as 'watch-house bail'.

There is no right for a defendant to be granted bail at the watch-house. However, there is a duty on the police officer to investigate the question of whether or not bail should be granted. Bail may be refused if the police officer is of the opinion that there would be an unacceptable risk that the defendant, if released on bail, would fail to appear and surrender into custody when required, or would, whilst on bail, commit an offence, endanger the safety or welfare of the members of the public or interfere with witnesses or otherwise obstruct the course of justice.⁵

Bail by court

A defendant who is not granted watch-house bail may apply to a court for bail. Generally speaking, a court has power to grant bail to a person held in custody on a charge of an offence if the defendant is awaiting proceedings in that court in relation to that offence. A Magistrates Court may also grant bail to a defendant who has been committed in that jurisdiction for trial in the District Court or the

² See for example *Woolmington v DPP* [1935] AC 462 at 481-2; *Mancini v DPP* [1942] AC 1 at 11; *R v Mullen* (1938) 59 CLR 124 at 136.

³ *Bail Act 1980* section 13.

⁴ *Bail Act 1980* section 7.

⁵ *Bail Act 1980* section 16.

Supreme Court.⁶ The Supreme Court has an overriding authority to determine bail applications, whether or not the defendant has appeared before the Supreme Court in relation to a charge for the offence for which bail is sought.⁷ There are some offences for which, at present, bail can be granted only by a Judge of the Supreme Court.⁸ These offences include murder, treason, piracy and demands with menaces upon agencies of government, all of which carry a mandatory sentence of life imprisonment.

Unlike the position with respect to watch-house bail, a defendant who appears before a court which has power to grant bail has, subject to some exceptions, a right to be granted bail for the offence with which he or she is charged.⁹ Where a court is able to grant bail, there can be a refusal to do so on the same grounds as may be found by a police officer.¹⁰

Release on bail

When a defendant is released on bail by a police officer or by a court, the release is usually made subject to certain conditions which are designed to ensure that the defendant will appear before a court in the future to answer the charge which has been made.¹¹ In the usual case of a grant of bail, the defendant signs a document known as an 'undertaking', which is a promise in writing to appear in court when required.¹²

However, for relatively minor offences, the defendant may be released without an undertaking. If this happens, the defendant will be required to make a deposit of money as security for his or her appearance. This is referred to as 'cash bail'. Cash bail may be granted by a police officer or a Magistrate. It is not available for indictable offences, or for offences specified in the Second Schedule to the *Bail Act 1980*.¹³ The principal offence in that Schedule is that created by section 16 of the *Traffic Act 1949* (the drink driving offence). A defendant cannot be released on

⁶ *Bail Act 1980* section 8(1)(a). Committal proceedings are a preliminary hearing in the Magistrates Court of more serious charges to determine whether there is sufficient evidence to establish a case against the defendant for trial in the District Court or the Supreme Court.

⁷ *Bail Act 1980* section 10.

⁸ *Bail Act 1980* section 13.

⁹ *Bail Act 1980* section 9.

¹⁰ *Bail Act 1980* section 16.

¹¹ *Bail Act 1980* section 11.

¹² *Bail Act 1980* section 20.

¹³ Sections 14 and 14A.

cash bail if he or she is not carrying, at the time of arrest, sufficient money to pay the amount of cash bail set.

When cash bail is granted, a failure to appear in court as required will result in the forfeiture of the monies paid. Usually, no conviction will be recorded against the defendant. Although there is a power in the *Bail Act 1980* to issue a warrant for the arrest of a person who fails to answer cash bail, this is rarely used.

Where bail other than 'cash bail' is granted, the defendant signs an undertaking, promising to appear in court when required to do so. Failure to appear in accordance with an undertaking is an offence under the *Bail Act 1980* and, usually, a warrant will be issued for the arrest of the defendant.¹⁴

In addition to the requirement of an undertaking, the *Bail Act 1980* enables the police officer or court to impose further conditions of bail.¹⁵ These are arranged in the Act in an increasing hierarchy of severity but the Act requires that the conditions for the grant of bail not be more onerous than is necessary, having regard to the nature of the offence involved, the particular circumstances of the defendant and the public interest. Thus, the defendant may be released on his or her own undertaking, alone. If that is not sufficient, the defendant may be released on his or her own undertaking with, additionally, a requirement that he or she make a deposit of money or of some other security of stated value. In the event that this is not sufficient, the person may be released on his or her own undertaking with the additional requirement that another person, known as a surety, also signs an undertaking. In that undertaking, the surety promises to make payment of a stated sum of money in the event that the defendant does not appear in accordance with the defendant's own undertaking. Finally, the defendant may be released on his or her own undertaking, along with a deposit of money or other security of stated value, together with the requirement of a surety.

The Act also enables more specific bail conditions to be imposed. For example, the defendant may be required to report to a nominated police station periodically, or to surrender a passport. In each case, the condition is designed to enable the defendant to be released from custody but, at the same time, to ensure that the defendant will appear in court as required and that no public detriment will occur as a result of his or her release.

Entering into an undertaking is a serious matter. In the event that the defendant does not appear in court, in addition to the commission of an offence under the *Bail Act 1980* by the defendant, the defendant and surety, if any, are liable to forfeiture of the amount of money stated in the undertaking.

¹⁴ *Bail Act 1980* section 33.

¹⁵ *Bail Act 1980* section 11.

CHAPTER 2

The Recommendations Made in the Working Paper

In its Working Paper,¹⁶ the Commission made a number of recommendations to change the *Bail Act 1980*. Those recommendations are set out in this chapter in order of their appearance in the Working Paper.

Recommendations in the Working Paper

Recommendation 1 (Abolition of limitation on the power of police officers and watch-house keepers to grant bail for serious offences)

"The Commission is of the view that the present limitation on the power of police officers and watch-house keepers to grant bail for some serious offences need not be retained."¹⁷

Recommendation 2 (The Magistrates Court should be empowered to deal with bail applications in all cases)

"The Commission is of the view that the power of the Magistrates Court to grant bail should also be extended. In the light of the fact that magistrates decide whether or not defendants should stand trial for serious offences such as murder, and are able to hear most charges arising under the *Drugs Misuse Act*,¹⁸ the Commission considers that magistrates should be empowered to deal with bail applications in all cases."¹⁹

¹⁶ *The Bail Act Queensland Law Reform Commission, Working Paper No. 41, February, 1993. (Hereinafter referred to as 'the Working Paper').*

¹⁷ The Working Paper at page 6.

¹⁸ *Drugs Misuse Act 1989* section 13. Since the Working Paper was published a Bill to amend section 13 of the *Bail Act 1980* has been introduced into Parliament to delete reference to offences against the *Drugs Misuse Act 1989*.

¹⁹ The Working Paper at page 6.

Recommendation 3 (Power to be given to the District Court to grant bail to a defendant charged with a simple offence, an indictable offence that can be heard summarily, or an indictable offence triable in the District Court after an application has been heard in the Magistrates Court)

"The Commission therefore recommends that the District Court should have power to grant bail to a defendant charged with a simple offence, an indictable offence triable in the Magistrates Court, or an indictable offence triable in the District Court.

However, a defendant should be able to bring a bail application in the District Court only after bail has been refused by a magistrate or granted on conditions which are unacceptable to the defendant."²⁰

Recommendation 4 (The overriding power of the Supreme Court to grant bail should be retained)

"The Commission recommends that the overriding power of the Supreme Court to grant bail whether or not the defendant has appeared before that court should be retained. This power derives from the Supreme Court's inherent jurisdiction and serves as a safeguard for the defendant.

However, application to the Supreme Court should be available only after an application has been made to the Magistrates Court. If a magistrate refuses bail, or grants bail on conditions which are unacceptable to a defendant charged with an offence which must be heard in the Supreme Court, the defendant should be able to apply to the Supreme Court for bail. If the offence is a simple offence, an indictable offence triable in the Magistrates Court, or an indictable offence which is triable in the District Court, a further application should be made to the District Court before the Supreme Court is approached."²¹

Recommendation 5 (Amendment of section 7 of the Bail Act 1980 to impose a duty on a police officer or watch-house keeper to grant bail)

"The Commission is of the view that bail legislation in Queensland should enshrine a presumption of the right to bail in all cases except following conviction.

²⁰ The Working Paper at page 7.

²¹ The Working Paper at pages 7-8.

The Commission therefore recommends that section 7 of the *Bail Act* should be amended to impose a duty on a member of the police service or a watch-house keeper to grant bail in accordance with the Act.²²

...

Thus, the Commission considers that, except upon conviction, a defendant should be entitled to be granted bail in accordance with the Act unless the granting authority is satisfied that, pursuant to a consideration of the matters proposed by the Commission,²³ the refusal of bail is justified.²⁴

Recommendation 6 (Imposition of duties on members of the police service and watch-house keepers to inform defendants of various rights concerning the granting of bail)

The first of the obligations which the Commission recommends should be imposed upon members of the police service and watch-house keepers in addition to the duty to grant bail in accordance with the Act "is that a person who has been taken into custody should be informed that, subject to certain provisions of the *Bail Act* relating to circumstances in which bail may be refused²⁵ and to conditions of bail,²⁶ he or she is entitled to be released from custody on bail.

If the person does not speak or understand English, he or she should be entitled to communicate with an interpreter to assist the person to communicate with members of the police service.

Where bail is refused, there should be a further duty to give reasons for the decision and to inform the defendant of the right to have the decision of the police officer or watch-house keeper reviewed.²⁷

The Commission also recommends that a defendant who is refused bail should be entitled to communicate with an interpreter, a legal practitioner or any other person who might be able to assist the defendant in making an application for review of the decision to refuse bail.

²² The Working Paper at page 12.

²³ See Chapter 5 of the Working Paper.

²⁴ The Working Paper at page 12.

²⁵ See Chapter 5 of the Working Paper.

²⁶ See Chapter 10 of the Working Paper.

²⁷ See Chapter 7 of the Working Paper.

The member of the police service or watch-house keeper should be under a duty to inform the defendant of these rights and, where the defendant requests that such facilities be made available, to provide reasonable facilities to enable the communication to take place.²⁸ ...

...

The Commission ... recommends that the duty to provide facilities should not apply if there are reasonable grounds for believing that refusal of the facilities is necessary to prevent the escape of the defendant, the escape of an accomplice of the defendant, or the loss or destruction of evidence.²⁹

Where there is an obligation on a member of the police service or watch-house keeper to inform a defendant of his or her rights, notification should be given in such a way that the defendant is able to understand it. It should be in clear, simple language. The information should be provided in writing and it should also be read to the defendant. A multi-lingual notification form should be available. The notification form should be endorsed with the date and time of reading, and signed by the police officer or watch-house keeper. The original signed copy of the notification should be attached to the charge sheet and a copy given to the defendant.

At present, because the duty on members of the police service or watch-house keepers is merely to consider whether to grant bail, there is a requirement that a defendant who is not brought before a court within twenty-four hours must be released on bail.³⁰ A general duty to grant bail would override this situation. However, the Commission believes that a time limit should be retained for a defendant who, having been refused bail, does not make an application to have the decision reviewed or makes an application for review which is unsuccessful. Retaining the time-limit would ensure that bail would be granted in any event if the defendant was not brought before a court within that limit.³¹

²⁸ See *Bail Act (ACT) 1992* section 13; *Bail Act (NSW) 1978* section 19. In New South Wales, interpreters are provided by the Community Interpreter Service (Department of Ethnic Affairs). There are regional offices of the service in Newcastle and Wollongong. Interpreters are flown to remote areas. There is provision for emergency contact by police for bail applications at any time. The cost of providing the service is the responsibility of the Police Service. The Commission understands that the service is not widely used. In part, infrequency of use may be attributed to resourcing implications. Other reasons for not using the service may relate to the availability and quality of interpreters. See Chan, *Police Services for Immigrants: A New South Wales Study*.

²⁹ See *Bail Act (NSW) 1978* section 19; *Bail Act (NT) 1982* section 16.

³⁰ *Bail Act 1980* section 7(1)(b).

³¹ The Working Paper at pages 13-14.

Recommendation 7 (Abolition of the reference to "unacceptable risk" as the basic test for determining a bail application and the introduction of the three categories used in New South Wales, the Australian Capital Territory and the Northern Territory. These are: 1. The probability of the person appearing in court; 2. The interests of the person charged; and 3. The protection of the community)

"The Commission is of the view that the reference in the Queensland Act to 'unacceptable risk' as the basic test for determining a bail application should be abandoned and that, instead, the three categories³² used in New South Wales, the Australian Capital Territory and the Northern Territory should be adopted as the criteria for deciding whether the accused person's right to bail should be displaced."³³ Specific factors should be set out in the Act for use in determining whether the *prima facie* right to bail should be displaced.³⁴

Recommendation 8 (The legislation should follow the Northern Territory model and refer specifically to offences involving domestic violence using the definition used in the Domestic Violence (Family Protection) Act 1989. The Commission also recommends the introduction of a notification procedure to the victim of the violence if a person is granted bail after being charged with a domestic violence offence)

"It is the view of the Commission that, in light of the incidence of domestic violence, which has resulted in the enactment of domestic violence legislation in Queensland, Queensland bail legislation should follow the Northern Territory model³⁵ and refer specifically to offences of that nature. The Commission recommends that the definition of 'domestic violence' in the *Domestic Violence (Family Protection) Act 1989*³⁶ should be incorporated

³² The categories in the Australian Capital Territory *Bail Act 1992* in section 22 are:

1. The probability of the person appearing in court;
2. The interests of the person charged; and
3. The protection of the community.

The New South Wales' *Bail Act 1978* is in similar terms in section 32 with more detail being provided with respect to the defendant's potential for violence and the Northern Territory Act uses the same categories and, in addition, refers to a specific category of domestic violence offence in section 24(1)(d) of the *Bail Act 1982* and Division 8 of Part IV of the *Justices Act 1928*.

³³ The Working Paper at page 18.

³⁴ The Working Paper at pages 21-26.

³⁵ The Northern Territory model has been discussed in footnote 32.

³⁶ Domestic violence is defined in section 3G of the *Domestic Violence (Family Protection) Act 1989* to mean 'any of the following acts that a person has committed against his or her spouse -

- (a) wilful injury;
- (b) wilful damage to the spouse's property;
- (c) intimidation or harassment of the spouse;

into the *Bail Act* by an amendment to the definition section³⁷ of the *Bail Act*.

...

The Commission is of the view that, while there should not be automatic refusal of bail in these circumstances, breach of a protection order is a criterion which should be taken into account in determining whether to refuse bail.

The Commission also recommends the adoption of the approach found in the Australian Capital Territory *Bail Act* which requires that, if bail is granted to a person charged with a domestic violence offence, notification must be given to the victim of the violence.³⁸ However, the Commission considers that Queensland legislation should extend the requirement which, in the Australian Capital Territory, does not apply when bail is granted by a court. The Commission is of the view that, in all cases where bail is granted to a person charged with an offence involving domestic violence, the victim should be notified. If bail is granted by a court, the prosecution should have a duty to effect such notification.³⁹

Recommendation 9 (Provision of facilities for washing and change of clothing)

"The New South Wales and the Australian Capital Territory legislation contain provisions which require certain facilities to be provided to accused persons.⁴⁰ These provisions relate to a person who has been kept in police custody and require, where it is reasonably practical to do so, for a person to be provided with facilities for washing and for a change of clothing.

(d) indecent behaviour to the spouse without consent;

(e) a threat to commit an act mentioned in paragraphs (a) to (d).

Examples of the types of conduct which this definition encompasses are set out in the section.

³⁷ *Bail Act 1980* section 6.

³⁸ *Bail Act (ACT) 1992* section 16(3).

³⁹ The Working Paper at pages 18-19 and 21-25.

⁴⁰ *Bail Act (NSW) 1978* section 21 and regulation 5; *Bail Act (ACT) 1992* section 18.

The Commission is of the view that a similar requirement should be introduced into the Queensland *Bail Act*. The provision of such facilities may improve a person's capacity to obtain bail in a subsequent court proceeding because of the person's enhanced physical presentation before the court, probably a Magistrates Court, and may also enhance the person's psychological capacity to deal with such a procedure."⁴¹

Recommendation 10 (The words "in certain circumstances" be deleted in the heading to section 9 of the Bail Act 1980)

"The Commission's recommendations in relation to a presumption in favour of bail and to the removal of the reverse onus provision mean that there would be a general duty on a court determining a bail application to grant bail, subject only to the criteria specified in Chapter 5 (of the Working Paper). The Commission therefore recommends that the words 'in certain cases' in the heading to section 9 be deleted."⁴²

Recommendation 11 (Review of a decision by a police officer to refuse bail should be conducted by an Inspector in the particular police district within a period no longer than four hours after the initial decision)

Some Australian jurisdictions make provision for interim review of a decision by a member of the police service to refuse bail prior to the accused's first court appearance⁴³ "and, arguably, the terms of the Act in Queensland are broad enough to encompass the situation. However, specific provision should be made for it.

...

For example, there could be a requirement that where a defendant seeks a review of a decision by a member of the police service to refuse bail, the review should be conducted within a period of no longer than four hours after the original decision.

...

At present an apparent protection for the defendant arises through section 7(1)(b) of the Act which requires the defendant to be released from custody if it is not practicable to bring him or her before a court within 24 hours.

⁴¹ The Working Paper at pages 25-31.

⁴² The Working Paper at pages 32-33.

⁴³ *Bail Act (ACT) 1992* section 38; *Bail Act (NT) 1982* section 33.

The Commission has recommended the retention of a time limit for bringing a defendant before a court.⁴⁴ However, in addition to this requirement, there could be a specific review procedure available to the defendant in respect of a refusal of bail.

...

The Commission is of the view that the preferable alternative would be for the review to be conducted by⁴⁵ an officer of the rank of Inspector in the relevant region.

Recommendation 12 (At the first appearance by a defendant before a Magistrate there should be a mandatory requirement that the question of a defendant's bail be considered)

"The Commission is of the view that, at the first appearance by the defendant before a magistrate, there should be a mandatory requirement that the question of the defendant's bail be considered. It should not be left to the defendant to initiate the application. The prosecution should be required to state by statutory declaration or on affidavit the reasons why bail should be refused.

Provision should be made to require the magistrate to consider bail in every case and to state the specific grounds for any refusal to grant bail.

...

Such a mandatory requirement for the magistrate to consider bail has the effect that any subsequent deprivation of liberty pending trial has at least been sanctioned by the court with reasons having been given.⁴⁶

Recommendation 13 (An application which is shown to be frivolous or vexatious may be refused by the court)

A court may refuse to entertain further applications if it is satisfied that a particular application is 'frivolous or vexatious'. The Commission recommends that a similar limitation should be introduced in Queensland.⁴⁷

⁴⁴ The Working Paper at page 14.

⁴⁵ The Working Paper at pages 34-35.

⁴⁶ The Working Paper at page 37.

⁴⁷ The Working Paper at page 38.

Recommendation 14 (Section 8 of the Bail Act 1980 should be amended so that it is clear that a further application for bail can be made following a Magistrate's refusal to grant bail to a defendant charged with an indictable offence which is triable in the District Court)

Currently, "it is not clear whether a judge of the District Court would have power to grant bail following refusal by a magistrate to do so."⁴⁸

Arguably, this may be covered by the terms of section 8(1)(a)(i) as it now stands. However, the Commission recommends amendment of this provision to make it clear that this avenue is available even where committal proceedings have not been held. The terms of section 8 should be broadened to allow a further application to be made following a magistrate's refusal to grant bail to a defendant charged with an indictable offence which is triable in the District Court."⁴⁹

Recommendation 15 (Application to the Supreme Court in section 10 of the Bail Act 1980 should be retained with the limitation that the application can only be made after the question has been considered by a Magistrate and a Judge of the District Court)

"At present, section 10 of the *Bail Act* enables a Supreme Court judge to hear a bail application for any offence. The Commission considers that this jurisdiction of the Supreme Court should be retained. However, application to the Supreme Court should be available only as a last resort after the question of bail has been considered by a magistrate and, in the case of a simple offence or an indictable offence triable in the Magistrates Court or an indictable offence triable in the District Court, has been further considered by a judge of the District Court."⁵⁰

Recommendation 16 (A system of automatic review after 14 days should be introduced)

"In the Discussion Paper, the Commission proposed a system of automatic review of the bail status of a defendant granted bail but retained in custody.⁵¹ The Commission's initial suggestion was that a defendant should be brought back before a court for a review of his or her bail status, if he or she were still in custody four days after bail had been granted.

⁴⁸ A Judge of the Supreme Court would be authorised to grant bail by the overriding powers contained in section 10 of the *Bail Act 1980*.

⁴⁹ The Working Paper at pages 38-39.

⁵⁰ The Working Paper at page 39.

⁵¹ *To bail or nor to bail - a review of Queensland's bail law*, Queensland law Reform Commission Discussion Paper No. 35, March, 1991 at pages 53, 54.

While the Commission is still in favour of a system of automatic review, it is of the view that the proposed time-frame may have been insufficient. Such a short period may, in fact, prove a disincentive for a defendant to comply with the financial commitment imposed. The Commission therefore recommends that the review period should be fourteen days.⁵²

Recommendation 17 (Where a defendant is charged with an offence for which cash bail is available the defendant should be able to elect whether to pay the amount or to appear in the Magistrates Court to answer the charge. This is in effect the introduction of an "on the spot" fine)

"The Commission recommends that the *Bail Act* should be amended to allow a defendant who is charged with an offence for which cash bail is available to elect to pay an amount of money in full answer to the charge. Where the defendant so elects, there would be no power to arrest the defendant for failure to answer bail.

The effect of the Commission's recommendation would be to formally change the character of the sum of money paid from a security for the defendant's appearance to an 'on the spot' fine. The Commission recognises that an 'on the spot' fine is, in effect, a form of penalty, and that the *Bail Act* is not the appropriate legislative vehicle for a provision relating to penalties. The Commission recommends that a provision be included in the *Penalties and Sentences Act* to the following effect:

*A person charged with an offence for which cash bail is available is entitled to elect not to contest the charge but to pay 'the prescribed amount' and to be relieved of any further liability.*⁵³

Recommendation 18 (Cash bail should be available for an offence for which the maximum fine does not exceed four penalty units)

"The Commission has considered a range of offences - such as using obscene language, offensive or disorderly behaviour and resisting arrest - for which cash bail is commonly granted, together with the maximum penalties which may be imposed for such an offence. The Commission recommends that cash bail should be available for an offence for which the maximum fine which may be imposed does not exceed four penalty units or its monetary equivalent."⁵⁴

⁵² The Working Paper at page 40.

⁵³ The Working Paper at pages 42-43.

⁵⁴ The present equivalent of one penalty unit is sixty dollars: *Penalties and Sentences Act 1992* section 5; The Working Paper at page 43.

Recommendation 19 (The nexus between failure to surrender into custody and apprehension under a warrant under section 33 of the Bail Act 1980 should be removed)

"The existing legislation requires that, for the offence (of failing to answer bail) to be committed, two elements must be present. First, the person must fail to surrender into custody in accordance with an undertaking. Second, the person must be apprehended under a warrant issued for failure to appear in court as required.⁵⁵

The Commission is of the view that this nexus between failure to surrender into custody in accordance with an undertaking and apprehension under a warrant should be removed. Whether or not an offence has been committed should not depend on the person's apprehension. No other Australian jurisdiction has introduced legislation making apprehension an element of the offence."⁵⁶

Recommendation 20 (The requirement that a person be dealt with immediately when arrested for failing to answer bail should be removed)

"Section 33 of the *Bail Act* provides for proceedings for an offence against that section to be instituted and taken without the usual procedure of laying a complaint. The warrant for failing to appear under which the person was apprehended is to be produced to the court and, on production of the warrant, the court then and there calls on the person to prove why he or she should not be convicted of the offence.⁵⁷

The Commission is of the view that the requirement that the person be dealt with 'then and there' is unjust and unnecessarily harsh. The defendant may not be legally represented and may not have had an opportunity to prepare an answer to the charge of failing to appear.

The Commission is of the view that the requirement that the person be dealt with 'then and there' should not be retained. It should be replaced by a provision requiring that the matter be dealt with in accordance with the *Justices Act 1886*.⁵⁸

⁵⁵ *Bail Act 1980* section 33(1).

⁵⁶ The Working Paper at page 45.

⁵⁷ *Bail Act 1980* section 33(3).

⁵⁸ The Working Paper at page 47.

Recommendation 21 *(The ordinary onus of proof rules should apply to an offence under section 33 of the Bail Act. If a defendant raised some evidence of reasonable excuse for the failure to answer bail the prosecution would have to negative that evidence in order to gain a conviction)*

"The Commission is mindful of the provisions of the *Legislative Standards Act 1992* dealing with the reversal of onus of proof,⁵⁹ and recommends that the ordinary onus of proof rules should apply to the offence under section 33 of the Act. The effect of this would be that, if a defendant raised evidence of reasonable excuse for the failure to answer bail, the prosecution would have to negative that evidence in order to obtain a conviction."⁶⁰

Recommendation 22 *(A surety should be given a verbal explanation as well as a standard form setting out his or her rights and obligations)*

"The *Bail Act* at present contains a number of provisions relating to notification of a surety of his or her rights and obligations.⁶¹ The Commission is of the view that the surety should be given a verbal explanation as well as a standard form. In addition, the standard forms should be up-dated and expressed in plain English. Multi-lingual forms should also be available."⁶²

Recommendation 23 *(The power of a surety to apprehend a defendant should be removed)*

"The Commission sees no justification for retaining the power of a surety, with or without the assistance of the police, to apprehend a defendant."⁶³

⁵⁹ Section 4(3) of the *Legislative Standards Act 1992* provides that:
Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation -
(d) *does not reverse the onus of proof in criminal proceedings without adequate justification.*

⁶⁰ The Working Paper at pages 47-48.

⁶¹ *Bail Act 1980* section 20(5), Forms 7 and 8.

⁶² The Working Paper at page 53.

⁶³ The Working Paper at page 53.

Recommendation 24 (A specific provision should be included to provide that in the determination of the level of security required, the financial means of the defendant be taken into account)

"The Commission ... considers that the *Bail Act* should be amended to include a specific provision that, in the determination of the level of security required, the financial means of the defendant be taken into account."⁶⁴

Recommendation 25 (That the kinds of conditions which may be imposed by a bail-granting authority should be more clearly spelled out)

"The Commission is of the view that, without limiting the generality of the power to impose conditions, the kinds of conditions which may be imposed should be more clearly spelled out."⁶⁵

Recommendation 26 (An appointment of a surety who is not a resident of Queensland should be permitted)

"A provision should be inserted into the *Bail Act* to allow the appointment of a surety who is not resident in Queensland where, in the opinion of the court, it is appropriate to do so."⁶⁶

Recommendation 27 (That recommendation 90 of the Royal Commission into Aboriginal Deaths in Custody should be incorporated in the *Bail Act* 1980. i.e. Where police bail is denied to an Aboriginal person or granted on terms that cannot be met, the Aboriginal Legal Service should be notified and an officer of the Service be granted access to the person)

The Commission considered Recommendation 90 of the proposals outlined by the Royal Commission into Aboriginal Deaths in Custody and recommended its incorporation into the *Bail Act*.

"a. *Where police bail is denied to an Aboriginal person or granted on terms the person cannot meet, the Aboriginal Legal Service, or a person nominated by the Service, be notified of that fact.*

⁶⁴ The Working Paper at page 54.

⁶⁵ The Working Paper at page 55. The examples listed by the Commission in this recommendation will be placed in the legislation.

⁶⁶ The Working Paper at page 56.

- b. *An officer of the Aboriginal Legal Service or such other person as is nominated by the Service, be granted access to a person held in custody without bail.*⁶⁷

Recommendation 28 (Where it is not practicable for a police officer to deliver a person to a police station or watch-house, the officer may release the person at or near the place of arrest)

"The Commission ... recommends that section 7 of the *Bail Act* could be further amended to provide that, where it is not practicable for a member of the police service to deliver an arrested person to a police station or watch-house, the member of the police service may release the person on bail at or near the place of arrest."⁶⁸

Recommendation 29 (A provision should be inserted directed specifically to the duty to grant bail to young offenders. The provision should include a requirement that when bail is refused only on the ground of the welfare of the child, notification of the refusal should be given to the child's parents. Notification should also be given to the Department of Family Services and Aboriginal and Islander Affairs)

"The Commission ... recommends the insertion in the *Bail Act* of a provision directed specifically to the duty to grant bail to young offenders. The provision should include a requirement that, when bail is refused only on the ground of the welfare of a child, notification of the refusal should be given, where reasonably possible, to the child's parents. Because of the wide range of family situations which exists in the community, the definition section of the *Bail Act* should be amended by the insertion of the definition of 'parent' contained in the *Juvenile Justice Act*.⁶⁹ This definition includes a person who has custody of the child or looks after the child on a day to day basis. Notification should also be given to the Department of Family Services and Aboriginal and Islander Affairs."⁷⁰

⁶⁷ The Working Paper at page 59.

⁶⁸ The Working Paper at page 63.

⁶⁹ Section 5 of the *Juvenile Justice Act 1992* defines 'parent' to mean -

- (a) a parent or guardian of a child; or
- (b) a person who has lawful custody of a child other than because of the child's detention for an offence or pending a proceeding for an offence; or
- (c) a person who has the day-to-day care and control of a child.

⁷⁰ The Working Paper at page 65.

Recommendation 30 (A provision empowering courts to grant bail to a convicted person in special or exceptional circumstances pending an appeal should be introduced)

"The Commission recommends that a provision empowering courts to grant bail to a convicted person in special or exceptional circumstances pending an appeal should be introduced into the Queensland *Bail Act*.

...

A provision could also be included to allow bail to be granted to a person who has been convicted but not sentenced if there is a strong likelihood that a non-custodial sentence will be imposed."⁷¹

Recommendation 31 (The present provision in section 10 of the Bail Act 1980 about the finality of the trial judge's refusal of bail during a trial should be deleted and there should be a right to bring a fresh application to a Judge of the Supreme Court)

"The Commission ... recommends that the present provision about the finality of the trial judge's refusal of bail should be deleted, and that there should be a right to bring a fresh application to a judge of the Supreme Court."⁷²

Recommendation 32 (That there should be no provision for compensation to defendants who have been refused bail but who are ultimately not convicted)

"In the Discussion Paper,⁷³ the Commission expressed concern at the length of time spent in prison by some defendants who have been refused bail but who are ultimately not convicted. The issue of providing in bail legislation for compensation of such people was raised.

After further consideration, the Commission is of the view that there should be no provision for compensation."⁷⁴

⁷¹ The Working Paper at page 71.

⁷² The Working Paper at page 73.

⁷³ The Working Paper at page 58.

⁷⁴ The Working Paper at page 74.

Recommendation 33 (The present requirement of providing an address within 25 kilometres of the court should be replaced by a discretion to decide whether the defendant's usual place of residence is sufficient)

"The Commission ... is of the view that the present requirement (of providing an address within 25 km of the court) should be replaced by a discretion conferred upon the court to decide, in any particular case, whether the problems faced by the prosecution are sufficient to justify the imposition of an obligation to provide an address for service other than the defendant's usual residential address."⁷⁵

Recommendation 34 (That section 12 should be amended to remove the requirement that the bail application must be opposed before the court can make an order restricting publication and that the reversal of onus in section 12(2) should be removed)

"The Commission ... recommends that section 12 be amended to remove the requirement that the bail application must be opposed before the court can make an order restricting publication.

...

The Commission further recommends that the reversal of onus in subsection 12(2) should be removed."⁷⁶

⁷⁵ The Working Paper at page 75.

⁷⁶ The Working Paper at page 76.

CHAPTER 3

Public Submissions

A list of persons or organisations who made submissions or observations on the recommendations contained in the Commission's Working Paper is appended to this Report, Appendix A.

Unopposed recommendations

The Commission's recommendations were generally well received. This, no doubt, reflects the widespread and detailed submissions received and consultations conducted before the publication of the Working Paper and the Commission wishes to thank all those who have contributed.

The following recommendations were unopposed by the respondents to the Working Paper:

- * Recommendations 2, 4, 6, 9, 10, 13, 19, 20, 22, 24, 26, 28 and 33.

The Commission stands by those recommendations in this Report, and adds the following comments:

Recommendation 2

The Commission notes that a *Bail Act Amendment Bill 1993* has been introduced into Parliament which will repeal the present section 13 (bail in cases of charges of serious offences) and replace it with a section which allows only the Supreme Court to grant bail where, on conviction, the sentencing court has to decide **which of the following sentences to impose on the person:**

- (a) imprisonment for life, which cannot be mitigated or varied under the *Criminal Code* or any other law;
- (b) an indefinite sentence under Part 10 of the *Penalties and Sentences Act 1992*.

The effect of the new section will be that only the Supreme Court can grant bail for offences which carry mandatory life imprisonment as their punishment. If the offence does not carry a mandatory life sentence then the Magistrates Court or a police officer in charge of the watch-house will be able to grant bail.

The new section 13 will partially implement the Commission's recommendation in its Working Paper.⁷⁷ The Commission can see no logical basis for the arbitrary distinction existing between offences which carry mandatory life imprisonment (eg. murder) being bailable only in the Supreme Court and those carrying a maximum life sentence (eg. rape, manslaughter and armed robbery) being bailable in the Magistrates Court or at the watch-house.

Access to bail for all offences should be made available at the earliest possible opportunity.

Recommendation 26

One respondent to the Commission's Working Paper addressed recommendation 26 which relates to the appointment of a surety who is not a resident of Queensland, if the court considers that to be appropriate. The respondent pointed out that when bail is granted and a surety is required, considerable delays and unnecessary inconvenience are being caused by either the necessity of the surety to come to Queensland to complete the necessary paperwork or the inability to find an appropriately qualified and acceptable Queensland Justice of the Peace interstate to process the bail application. The respondent agreed with recommendation 26 but asked that the Commission consider recommending that interstate Justices of the Peace, attached to jails or courts, be able to process the surety requirements in respect of Queensland bail applications. The Commission agrees with the suggestion that Justices of the Peace attached to interstate courts be able to process the surety requirements in respect of Queensland bail applications and recommendation 26 will be amended to reflect this suggestion.

Recommendations opposed

Set out below is an analysis of submissions which opposed recommendations made in the Working Paper.

Recommendation 1 (Abolition of limitation on the power of police officers and watch-house keepers to grant bail for serious offences)

One respondent to the Working Paper argued that junior police officers should not be given the responsibility of determining bail questions in respect of serious offences. The submission argued that, often, the information necessary to fully consider the question of bail is not available to the police officer in question. There was concern that, if an officer released a person charged with a serious offence and that person failed to appear, or committed a further offence whilst on bail, the officer may be held accountable for dereliction of duty.

⁷⁷ The Working Paper at pages 6 and 7. This was Recommendation number 2.

Another respondent argued that police officers should not have the power to grant bail for serious offences. This submission overlooks the fact that, under section 7 of the *Bail Act 1980*, a police officer in charge of a watch-house or lock-up can grant bail for offences such as manslaughter, rape or armed robbery which are punishable by a maximum term of life imprisonment. The Commission can see no logical basis for the arbitrary distinction which presently exists when members of the police service are able to grant bail for such offences as manslaughter, rape and armed robbery but they are not able to grant bail for an offence of murder which carries a mandatory life sentence. The criteria proposed as grounds for the refusal of bail in the new clause 16 are sufficient to ensure that bail is not granted in an inappropriate situation.

The Commission has been provided with figures by the Criminal Justice Commission which show that some 66 per cent of members of the police service are of senior constable rank and below. A number of people are arrested in areas of Queensland where there are only small police establishments, some headed by a junior officer. Accused persons arrested in country areas would be unfairly discriminated against in their ability to apply for bail at the earliest possible opportunity in the criminal process if only those above the rank of senior constable were able to grant bail.

Members of the police service of senior constable rank and below can be given proper training to fulfil their statutory obligations in relation to bail. Police officers of any rank with appropriate training should have no difficulty in applying the criteria for the refusal of bail under the proposed clause 16 to be inserted in the *Bail Act 1980*. An officer who honestly and diligently applies his or her mind to the refusal of bail criteria, should be in a no more difficult position than an officer who makes an arrest of a suspect based upon the reasonable suspicion held by the officer.

No adverse result to the officer should follow if it is shown that the officer is performing his or her duty according to law. No disciplinary process or civil action should follow upon an honest and diligent application of the law.

Recommendation 1 should stand.

Recommendation 3 (Power to be given to the District Court to grant bail to a defendant charged with a simple offence, an indictable offence that can be heard summarily, or an indictable offence triable in the District Court after an application has been heard in the Magistrates Court)

Only one respondent disagreed with the proposal to make the District Court the main court of review for bail applications. They argued that if the District Court was to become the main court of review for bail applications there would be a logistical problem in that it would be likely that bail applications would then be listed to be dealt with at 10 a.m. in both the District Court and Supreme Court.

The Commission notes that, in the submission made by the Director of Prosecutions, no question of logistical burdens on his office was raised. If the Commission's proposal regarding the increase of power of police officers to grant bail is put into effect, there will be fewer applications for bail made to the courts, so freeing up resources in the office of the Director of Prosecutions.

The Commission reiterates the point made in the Working Paper⁷⁸ that the District Court sits in many more places in Queensland than does the Supreme Court. Recommendation 14 *infra* also provides that the defendant may approach a Circuit Court of the Supreme Court rather than a District Court if it is more convenient to do so.

Recommendation 2 should stand.

Recommendation 5 (Amendment of section 7 of the Bail Act 1980 to impose a duty on a police officer or watch-house keeper to grant bail)

One respondent to the Working Paper opposed this proposal. It was argued that the police officer should merely consider the question of bail, as at present. The submission stated that the Working Paper did not give adequate consideration to the police officer's duty to ensure that inappropriate people are not released on bail.

However, the proposed clause 16 of the Act⁷⁹ will provide adequate guidance to any bail-granting authority on the question of whether bail should be granted or not. It is to be noted that the Commission's reference from the Attorney-General⁸⁰ directs the Commission to make practical suggestions which will facilitate the granting of bail to an accused person.

The presumption in favour of bail can be displaced by the prosecuting authorities upon proof that one or other of the proposed clause 16 factors is present in the case.

Therefore, recommendation 5 should stand.

⁷⁸ The Working Paper at page 7.

⁷⁹ Clause 16 is set out on pages 19-20 of the Working Paper and is contained in the Draft Bill which is appended to this Report, Appendix B.

⁸⁰ See the Introduction to this Report.

Recommendation 7 (Abolition of the reference to "unacceptable risk" as the basic test for determining a bail application and the introduction of the three categories used in New South Wales, the Australian Capital Territory and the Northern Territory. These are: 1. The probability of the person appearing in court; 2. The interests of the person charged; and 3. The protection of the community)

One respondent argued that the criteria for refusing bail which appear in clause 16(1)(a)(iii)⁸¹ would be better placed in clause 16(1)(c) which deals with the criterion of the protection and welfare of the community.

The Commission points out that clauses 16(1)(c)(i) and 16(1)(a)(iii) deal with matter of the same type, namely, the "nature and seriousness of the alleged offence". Both clauses direct a bail-granting authority to relevant matters pertaining to a refusal of bail.

The "nature and seriousness of the offence" is relevant both to the probability of the person failing to appear to answer a charge, and to the protection and welfare of the community.

Another respondent queried the lack of specificity appearing in the proposed clause 16, particularly clause 16(1)(a)(iv).⁸² However, this clause actually narrows the information that can be presented to the bail-granting authority because it must be information which is relevant to the probability of the person failing to appear in court in respect of the offence.

The Commission did not specify the matters relevant to the likelihood of a defendant failing to answer bail which would have to be addressed in every case. Such a list of matters could lead to inflexibility in the approach of bail-granting authorities to the question of refusing bail to a defendant.

⁸¹ Clause 16(1)(a)(iii) provides that in making a determination regarding the refusal of bail, the bail-granting authority must consider:

the circumstances in which the offence is alleged to have been committed, the nature and seriousness of the alleged offence, the strength of the evidence against the person and the severity of the sentence likely to be imposed on the person.

⁸² Clause 16(1)(a)(iv) provides that in making a determination regarding the refusal of bail, the bail-granting authority must consider:

any other information relevant to the likelihood of the person failing to appear.

The respondent further objected to the welfare of the community ground for the refusal of bail in clause 16(1)(c).⁸³ They stated that agencies other than the police service should deal with people who pose a threat to the community's welfare.

The Commission points out that clause 16(1)(c) refers to the **protection and welfare** of the community. The need to protect the community as well as considerations of the welfare of the community need to be considered by the bail-granting authority under this criterion because of the need to strike a balance between competing considerations set out in Chapter 1 of this Report.

The respondent also suggested that clauses 16(1)(c)(iii) and (iv) should include a test of reasonableness to make them more specific in nature. However, the word "likelihood" includes the notion of reasonableness. The concept of the "likelihood" of a happening means that the happening is more than a possibility, but less than a certainty.

The respondent also queried the ground for refusal of bail based on a person's need for protection. In particular, the need to include the words "from other causes" in clause 16(1)(b)(iii) was disputed.⁸⁴ The respondent suggested that the need for protection should be linked with the provision of medical assessment and treatment. However, the need of a person for physical protection may not be linked to a medical condition but could arise from other factors such as a "lynch mob" outside a watch-house wanting "to get their hands" on the accused.

Some respondents recommended that the rating system as operating in New South Wales should be considered for adoption in this State. The New South Wales *Bail Regulations* made pursuant to the *Bail Act 1978* contain a standard form test which allocates points for itemised answers to questions concerning background, associates and community ties. An accused person is assessed as a good or poor risk for release on bail according to the points attained.

⁸³ Clause 16(1)(c) provides that in making a determination regarding the refusal of bail, the bail-granting authority must consider:

the protection and welfare of the community, having regard only to -

- (i) *the nature and seriousness of the alleged offence, and in particular whether the offence is of a sexual or violent nature, including domestic violence;*
- (ii) *whether or not the person has failed to observe a reasonable bail condition previously imposed in respect of the alleged offence, or has failed to comply with an order made under section 4(1) of the Domestic Violence (Family Protection) Act 1989 as amended or an injunction granted under section 114 of the Family Law Act;*
- (iii) *the likelihood of the person interfering with evidence, intimidating witnesses or jurors or otherwise obstructing the course of justice whether in relation to himself or herself or any other person; and*
- (iv) *the likelihood that the person will or will not commit an indictable offence while released on bail.*

⁸⁴ Clause 16(1)(b)(iii) provides that in making a determination regarding the refusal of bail, the bail-granting authority must consider:

the need of the person for physical protection, whether the need arises because the person is incapacitated by intoxication, injury or use of drugs, or arises from other causes.

In its Working Paper⁸⁵ the Commission discussed this matter and came to the conclusion that the rating system is not appropriate for introduction, on the basis of its potential for discriminating against those defendants already disadvantaged by lack of accommodation, employment, and a social support network. The Commission adheres to that conclusion.

The Commission therefore believes that recommendation 7 should stand.

Recommendation 8 (The legislation should follow the Northern Territory model and refer specifically to offences involving domestic violence using the definition used in the Domestic Violence (Family Protection) Act 1989. The Commission also recommends the introduction of a notification procedure to the victim of the violence if a person is granted bail after being charged with a domestic violence offence)

One respondent made a submission relating solely to the issue of domestic violence on the question of whether bail should be granted or not. The submission argued that there should be no presumption of bail in the circumstances anticipated by the proposed clause 16(1)(c)(ii).⁸⁶

The Commission is sensitive to community concerns about the incidence of domestic violence in our society which has resulted in the enactment of domestic violence legislation in Queensland. The Commission believes that the criteria for refusal of bail proposed in the new clause 16 in the Working Paper could be strengthened in two areas to direct the bail-granting authority's mind to the seriousness of domestic violence.

Clause 16(1)(c)(ii) should be strengthened by adding after the word "failed" in lines one and three, the words "or appears likely to fail". The inclusion of these words will allow the bail-granting authority to address the probability of any future breach of a reasonable bail condition or future breach of a protection order. In the domestic violence context this will mean that evidence of conduct pointing towards a likely future breach of a protection order will be able to be considered by the bail-granting authority and will be a reason to refuse bail. The clause should also refer to a person who has failed or appears likely to fail to comply with an order made under section 6 of the *Peace and Good Behaviour Act 1982*. This Act covers conduct in the broader context of domestic violence in that it covers disputes between neighbours.

⁸⁵ The Working Paper at pages 21-22.

⁸⁶ Clause 16(1)(c)(ii) provides that in making a determination whether to refuse the grant of bail, the bail-granting authority must consider:
whether or not the person has failed to observe a reasonable bail condition previously imposed in respect of the alleged offence, or has failed to comply with an order made under section 4(1) of the Domestic Violence (Family Protection) Act 1989 as amended or an injunction granted under section 114 of the Family Law Act.

The respondent then suggested that it is a mistake to relate clause 16(1)(c)(ii) to the definition of "domestic violence" in section 3 of the *Domestic Violence (Family Protection) Act 1989*. That definition establishes the type of conduct sufficient to found an application for a protection order under the *Domestic Violence (Family Protection) Act 1989*. It includes conduct which may not form the basis of a criminal offence. The *Domestic Violence (Family Protection) Act 1989* has since been amended by Act Number 46 of 1992 but, in the amended Act, the definition of "domestic violence" as set out in section 11(1) is similar in content to the previous sections 3 and 4(1) and is still limited to behaviour between spouses. The respondent suggested that the definition of a domestic violence offence for the purpose of the *Bail Act 1980* should be similar to that in section 4 of the *Crimes Act 1900 (N.S.W.)*,⁸⁷ with modifications made to reflect the various personal violence offences under the Queensland *Criminal Code*.

The Commission agrees that the definition of "domestic violence offence" proposed by the Commission in its Working Paper⁸⁸ should be changed to refer to the same type of offences as are referred to in section 4 of the *Crimes Act 1900 (N.S.W.)* committed by the same categories of persons as in that New South Wales section and recommends accordingly.

The respondent further suggested that, in determining bail for such offences, evidence of previous domestic violence should be admissible. Under section 15 of the *Bail Act 1980* evidence of previous convictions of indictable offences is already admissible on a bail hearing.

This will cover a previous domestic violence offence such as an assault committed in the domestic environment.

⁸⁷ Section 4 of the New South Wales *Crimes Act 1900* provides that:

"Domestic violence offence" means a personal violence offence committed against:

- (a) a person who is or has been married to the person who commits the offence; or
- (b) a person who is living with or has lived with the person who commits the offence as his wife or her husband, as the case may be, on a bona fide domestic basis although not married to him or her, as the case may be; or
- (c) a person who is living with or has lived ordinarily in the same household as the person who commits the offence (otherwise than merely as a tenant or boarder); or
- (d) a person who is or has been a relative (within the meaning of subsection (6)) of the person who commits the offence; or
- (e) a person who has or has had an intimate personal relationship with the person who commits the offence.

Subsection (6) provides that "a relative" is:

- (a) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law; or
- (b) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in-law or daughter-in-law; or
- (c) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law; or
- (d) an uncle, aunt, uncle-in-law or aunt-in-law; or
- (e) a nephew or niece; or
- (f) a cousin

and includes, in the case of de-facto partners, a person who would be such a relative if the de-facto partners were married.

⁸⁸ The Working Paper at page 21.

The respondent also suggested that the proposed clause 16A dealing with notification requirements should be widened to include the notification of persons who are not the spouse of the accused, but who are relatives or associates of the spouse. The Commission agrees with this suggestion. The Commission's recommendation on this matter will refer to section 3K of the *Domestic Violence (Family Protection) Act 1989* which lists the relatives or associates of the aggrieved spouse who may be protected by a domestic violence order.

The respondent made the further submission that the complainant in a domestic violence offence should be given the right to request a review of a decision to grant bail and/or the conditions on which bail has been granted.

Section 29 of the *Bail Act 1980* is sufficient to protect the interests of the victim of such an offence, in that it allows the victim to alert a police officer who, in the circumstances outlined in the section, may arrest the defendant without a warrant. The provisions of the *Bail Act 1980* do not give the Crown any right to seek review of a decision to grant bail. It would be an unwise extension of the right of review to grant the right to a complainant in only one type of offence.

The respondent also suggested that, where bail is granted on a charge of a domestic violence offence, there should be a mandatory condition requiring surrender of firearms and revoking any firearms licence presently held by the accused. In the Working Paper,⁸⁹ the Commission recommended a list of conditions which could be imposed by a bail-granting authority when bail is granted. Condition (f) states that "a requirement that a defendant not possess a weapon while on bail" can be imposed when bail is granted.

It is the Commission's belief that such a condition should not be made mandatory for one type of offence only but, rather, it should be a condition which could be imposed in any case at the discretion of the bail-granting authority after having heard any argument on the matter. It would be appropriate to add a further condition to the list of conditions in the Working Paper to the effect that a bail-granting authority could require a defendant to surrender a firearm licence held under section 2.1 of the *Weapons Act 1990* and deliver up any firearm held.

The final submission made by this respondent was that a process be established to collect and analyse data to enable changes to the *Bail Act 1980* to be made as and when required. In view of the fact that the Commission has recommended that the duty of police officers to grant bail for offences be extended, there should be a statutory obligation requiring the police to collect statistics and data concerning the operation of the new clause 7 proposed by the Commission.

Recommendation 8 should be amended in the manner referred to in the above paragraphs.

⁸⁹ The Working Paper at page 55.

The Commission believes that if these measures are introduced, it will be unnecessary for the *Bail Act 1980* to provide for automatic refusal of bail on a charge of any offence.

Recommendation 11 (Review of a decision by a police officer to refuse bail should be conducted by an Inspector in the particular police district within a period no longer than four hours after the initial decision)

One respondent suggested that giving power to a police officer of higher rank than the original officer who considered bail, to carry out the bail review leaves the system open to allegations of bias and abuse. The submission suggested that the review should be conducted by a Magistrate.

The police service is currently being reorganised in light of the Fitzgerald Report and the reforms mentioned therein. The Commission believes that any person aggrieved by an Inspector's decision which is allegedly tainted by bias could approach the Criminal Justice Commission and cause an investigation to be made into the matter.

A system of internal review has the advantage that the review is carried out by someone who not only is in a position of authority over the member of the police service who made the decision to refuse bail, but who also has practical experience in the field. The Royal Commission into Aboriginal Deaths in Custody recommended that a police officer's refusal of bail should be reviewed by the same or a higher ranked officer.⁹⁰ The Commission does not agree with the proposal that the review should be conducted by the officer who refused bail. The view of the Commission is that the review should be independent of the original decision. Further, it may be that the decision to refuse bail is made by the arresting officer. The Commission considers that the review should be conducted by someone removed from the arrest situation.

The Commission further recommended that, if this proposal is implemented, a review of its operation should be carried out after three years.

Another respondent pointed out that an Inspector may not be available in a particular police district to review a decision within the period of four hours and suggested that the use of telephone, telex and radio facilities should receive statutory recognition. The Commission agrees with this proposal.

The Commission believes that recommendation 11, as amended, should stand.

⁹⁰ See pages 58, 60-61 of the *Royal Commission into Aboriginal Deaths in Custody, Report Vol. 3*. Canberra, Australian Government Publishing Service, 1991.

Recommendation 12 (At the first appearance by a defendant before a Magistrate there should be a mandatory requirement that the question of a defendant's bail be considered)

One respondent said that such a requirement should not apply if the person is legally represented at the first appearance before a Magistrate and if no application is made for bail.

An application for bail may not be made for reasons other than the belief that it will fail. For example, the person may not be entitled to Legal Aid for the purpose of making such an application. However, the presiding Magistrate should nevertheless consider the question of the defendant's bail status in such a case.

Legal representation is not the factor of importance in this matter, but rather that a Magistrate puts his or her mind to the question of bail, which impacts directly on the liberty of the citizen.

Another respondent who generally agreed with this proposal queried why the arguments against the grant of bail should be put before the Magistrate only by way of affidavit or statutory declaration. It should be noted that, under section 15 of the *Bail Act 1980*, it is open to either party to require sworn oral evidence by the other party to be given in addition to, or instead of, any affidavit evidence put before the court, and it is intended that this should remain the case.

Recommendation 12 should stand.

Recommendation 14 (Section 8 of the Bail Act 1980 should be amended so that it is clear that a further application for bail can be made following a Magistrate's refusal to grant bail to a defendant charged with an indictable offence which is triable in the District Court)

One respondent who generally agreed with the proposal pointed out that there will be cases where a Supreme Court Judge is on circuit (within the terms of section 30 of the *Supreme Court Act 1867*, and sections 6 and 7 of the *Supreme Court Act 1921*) and the administration of justice might be more swiftly served by allowing an application to be made to that Judge without an application having to be made first to a District Court Judge. Such an application might be less expensive and it would be heard more promptly.

The Commission agrees with this observation and its final recommendation on the matter will take it into account.

The same respondent strongly recommended that a right to review a Magistrate's decision to grant bail should be extended to the prosecution because it is not beyond bounds that a Magistrate might be corrupted and grant bail when he or she should not have so acted.

Corruption of a judicial officer should be dealt with under the provisions of the *Criminal Justice Act 1989* dealing with official misconduct, and the *Criminal Code*. Section 29 of the *Bail Act 1980* could be utilised if a police officer believes on reasonable grounds that a defendant is likely to break any bail condition which has been imposed by the Magistrates Court.

It is the Commission's belief that recommendation 14 should stand as amended.

Recommendation 15 (Application to the Supreme Court in section 10 of the Bail Act 1980 should be retained with the limitation that the application can only be made after the question has been considered by a Magistrate and a Judge of the District Court)

One respondent objected to the imposition of a further layer of review by the District Court in the present review process. It was argued that logistical problems will occur if the Commission's recommendation is passed into law. However, the Director of Prosecutions did not raise any question of logistical burdens on his office in his submission.

Recommendation 15 is consistent with the other recommendations contained in this Report and should stand.

Recommendation 16 (A system of automatic review after 14 days should be introduced)

Three respondents argued that the period of fourteen days is too long. The Commission believes that a system of automatic review of bail status is essential and we are persuaded that the proposed time-frame should be consistent with the *Justices Act 1886*. That is, it should not exceed eight days.⁹¹

The Commission's final recommendation will reflect that period.

Recommendation 17 (Where a defendant is charged with an offence for which cash bail is available the defendant should be able to elect whether to pay the amount or to appear in the Magistrates Court to answer the charge. This is in effect the introduction of an "on the spot" fine)

One respondent supported the above recommendation provided that time was made available to pay the cash bail. The Commission discussed this matter in its Working Paper⁹² and considered that a procedure of allowing time to pay would involve costly administrative difficulties. The Commission is not persuaded to change its view from that expressed in the Working Paper. We still believe that the

⁹¹ Section 84 of the *Justices Act 1886* dealing with the first remand of a defendant charged with an indictable offence.

⁹² At page 42.

provision of reasonable facilities to a person in a watch-house or police lock-up to communicate with a person who could assist the defendant to obtain bail is satisfactory to raise the amount of cash necessary for cash bail without the burden of the administrative problems mentioned above.

The Commission adheres to its recommendation but will refer to the *Bail Act 1980* as well as the *Penalties and Sentences Act 1992* so that the more appropriate statute can be utilised.

Recommendation 18 (Cash bail should be available for an offence for which the maximum fine does not exceed four penalty units)

One respondent pointed out that persons charged under section 7 of the *Vagrants, Gaming and Other Offences Act 1931* are subject to a maximum fine of two penalty units only and therefore would be eligible for cash bail under the Commission's proposal even though, in his view, the offence under section 7 of the *Vagrants, Gaming and Other Offences Act 1931* is a serious one.

The Commission is of the view that the offence under this section is not viewed as a serious offence by the Parliament, since it is a simple offence only, and punishable by a small monetary fine or a short imprisonment term. The Commission has recommended that the offences for which cash bail is available be those for which Parliament has determined a low monetary penalty. The Commission proposes to adhere to its recommendation.

Recommendation 21 (The ordinary onus of proof rules should apply to an offence under section 33 of the Bail Act. If a defendant raises evidence of reasonable excuse for the failure to answer bail the prosecution would have to negate that evidence in order to gain a conviction)

Two respondents were concerned about the removal of the requirement that a defendant who has failed to surrender into custody in accordance with his or her undertaking bear the onus of proof to show that he or she had a reasonable excuse. The respondents stated that whether the defendant had reasonable excuse will ordinarily be only within his or her own knowledge.

One respondent pointed out that if the defendant does not disclose his or her account before the end of the prosecution case, there will be no account to rebut by the prosecution, "nothing to disprove". The respondent indicated that "the prosecution and the court will hear from the defendant for the first time the reasons why the defendant failed to appear when he or she goes into the witness box". The respondent pointed out that the prosecution would find it very difficult to have inquiries carried out to gather evidence which could prove beyond reasonable doubt that the account given by the defendant was untrue.

The respondent suggested that, in this case, there was adequate justification for retaining the reverse onus of proof provision within the terms of the *Legislative Standards Act 1992* section 4(3).⁹³

⁹³ See footnote 59 *supra*.

The real purpose of casting burdens of proof of matters onto the defence in criminal cases is to prevent the defendant in a case where his or her proved conduct calls, as a matter of common sense, for an explanation from submitting at the end of evidence for the prosecution that he or she had no case to answer because the prosecution had not adduced evidence to negative the possibility of an innocent explanation.

The burden on the defendant does not have to be a persuasive burden as is the case if the defence of insanity is raised. It only needs to be an evidential burden. That is, the defendant does not have to prove that he or she had reasonable cause not to answer bail on the balance of probabilities. Rather, the defendant must put before the court some evidence that he or she had reasonable cause not to answer bail, and then the prosecution must negative that evidence in order to obtain a conviction. It is in this context that the Commission has recommended that section 33 of the *Bail Act 1980* be amended to delete the requirement of a persuasive burden of proof being on the defendant and replace it with an evidential burden only.⁹⁴

The Commission therefore, does not accept that the defendant should have a persuasive burden of proof placed upon him or her under section 33 of the *Bail Act 1980*. The Commission adheres to recommendation 21.

Recommendation 23 (The power of a surety to apprehend a defendant should be removed)

One respondent believed that a surety should be provided with the authority to apprehend a defendant should his or her faith in the defendant as a trustworthy person dissipate.

The Commission remains of the view that the ability of the surety to inform the police that the defendant is planning to abscond and the ability of the surety to apply for a discharge, provides sufficient protection for a surety and that to do otherwise may lead to violent confrontation between the defendant and the surety.⁹⁵

Recommendation 23 should stand.

⁹⁴ On the difference between a persuasive burden or an evidential burden being placed on a defendant see *R v Lobell* [1957] 1 QB 547 at 551 per Lord Goddard C.J. 'It must, however, be understood that maintaining the rule that the onus always remains on the prosecution does not mean that the Crown must give evidence-in-chief to rebut a suggestion of self-defence before that issue is raised, or indeed need give any evidence on the subject at all. If an issue relating to self-defence is to be left to the jury there must be some evidence from which a jury would be entitled to find that issue in favour of the accused, and ordinarily no doubt such evidence would be given by the defence. But there is a difference between leading evidence which would enable a jury to find an issue in favour of a defendant and in putting the onus upon him.' See also *Bullard v. The Queen* [1957] AC 635.

⁹⁵ The Working Paper at pages 53 and 54.

Recommendation 25 (That the kinds of conditions which may be imposed by a bail-granting authority should be more clearly spelled out)

A number of respondents drew attention to conditions (c) and (d) mentioned in the Working Paper⁹⁶ and pointed out that those conditions are at variance with the presumption of innocence.

The Commission agrees that condition (d) should be removed from the list of conditions set out in the Working Paper⁹⁷ as it does infringe the presumption of innocence.

With regard to condition (c), the Commission points out that this condition is an enabling one, which allows bail to be granted to a person who would otherwise be refused. The condition permits the bail-granting authority to have a person's behaviour monitored by a medical practitioner. If such a condition is imposed on a person it will be subject to review under the ordinary review processes in the *Bail Act 1980*.

The Commission believes that condition (c) should be amended to read "a requirement that the defendant undergo or continue to undergo psychiatric treatment or other medical treatment". This new wording will emphasise the fact that the condition is an enabling one, to benefit a defendant who otherwise would have difficulty in obtaining bail.

Recommendation 25 as amended should stand.

Recommendation 27 (That recommendation 90 of the Royal Commission into Aboriginal Deaths in Custody should be incorporated in the Bail Act 1980. i.e. Where police bail is denied to an Aboriginal person or granted on terms that cannot be met, the Aboriginal Legal Service should be notified and an officer of the Service be granted access to the person)

One respondent questioned why this right should be granted to Aboriginal persons only and not to members of the community in general.

As noted in the Working Paper,⁹⁸ and recognised by the Royal Commission into Aboriginal Deaths in Custody, Aboriginal defendants are under special disabilities within the criminal justice system and care must be taken to ensure that they are not needlessly detained in police custody.

⁹⁶ The Working Paper at page 55. Conditions (c) and (d) are as follows:
 (c) a requirement that the defendant undergo psychiatric treatment or other medical treatment;
 (d) a requirement that the defendant participate in a program of personal development, training or rehabilitation.

⁹⁷ The Working Paper at page 55.

⁹⁸ The Working Paper at page 57.

All persons are to be given the rights mentioned in the proposed clause 7 of the *Bail Act 1980*.⁹⁹ The Royal Commission into Aboriginal Deaths in Custody¹⁰⁰ has suggested, and the Commission has accepted, that Aboriginal defendants be given additional assistance in the process of obtaining bail. It is for this reason that the Commission intends to retain this recommendation.

Another respondent drew attention to the fact that the recommendation of the Commission referred to Aboriginal persons and not to Torres Strait Islander people. It is the Commission's intention to amend the recommendation to afford the same rights to Torres Strait Islanders for the same reason that Aboriginal defendants need additional consideration.

Both the terms "Aboriginal people" and "Torres Strait Islander" are defined in section 36 of the *Acts Interpretation Act 1954*. Those definitions will apply to the terms as used in the *Bail Act 1980* when it is amended.

Recommendation 27 as amended should stand.

Recommendation 29 (A provision should be inserted directed specifically to the duty to grant bail to young offenders. The provision should include a requirement that, when bail is refused only on the ground of the welfare of the child, notification of the refusal should be given to the child's parents. Notification should also be given to the Department of Family Services and Aboriginal and Islander Affairs)

One respondent strongly opposed the proposal contained in recommendation 29. It was pointed out that a deliberate policy decision was recently made by Government and endorsed by Parliament by the enactment of the *Juvenile Justice Act 1992* to remove the provision under the previous section 16(1)(b) of the *Bail Act 1980* for refusal of bail to children on welfare grounds.

The respondent asserted that it would be premature to advocate a reversal of this decision before the *Juvenile Justice Act 1992* was proclaimed and had its provisions tested. The respondent stated that the *Juvenile Justice Act 1992* provides an adequate framework for dealing with children arrested for offences and does this without directly legitimising the detention of children in watch-houses or lock-ups under any circumstances.

⁹⁹ The Working Paper at pages 14-16.

¹⁰⁰ *Royal Commission into Aboriginal Deaths in Custody, Report Vol. 3.* Canberra, Australian Government Publishing Service, 1991.

In short, the respondent suggested that the proposed clause 16A not be proceeded with because:

1. It is inconsistent both with the policy framework and with the specific provisions of the *Juvenile Justice Act 1992*;
2. Concerns about vulnerable young people could be addressed in ways such as giving money to children so that they could be transported home, referring them to an agency which provides assistance to children or directly providing police transport to take such children to their home; and
3. The inclusion of such a clause which explicitly endorses the holding of young people in watch-houses and lock-ups in certain circumstances is undesirable.

The respondent also suggested that any amendment to bail procedures that are specific to children should be drafted as amendments to the *Juvenile Justice Act 1992*, which has the status of a "Code" for dealing with children in conflict with the law, rather than being included in the *Bail Act 1980*.

The Commission has given earnest consideration to all of the matters raised by this respondent and has come to the conclusion that bail procedures that are specific to children should be drafted as amendments to the *Juvenile Justice Act 1992* and not be included in the *Bail Act 1980*.

The Commission points out that, when it suggested recommendation 29 in its Working Paper, it did so because of its concern that it is undesirable and could be dangerous for children to be released "onto the streets", perhaps in the early hours of the morning, with no adequate support network. The Commission has been informed that the Department of Family Services and Aboriginal and Islander Affairs is developing an "approved accommodation centre" program. That is, a family in a city, suburb or town will be approved as able to receive a child who is released on bail.

Until such time as the *Juvenile Justice Act 1992* is amended to provide specifically for the release of children on bail to "approved accommodation centres", it is the Commission's intention that recommendation 29 should be given effect by an amendment being inserted into the *Bail Act 1980*.

Recommendation 30 (A provision empowering courts to grant bail to a convicted person in special or exceptional circumstances pending an appeal should be introduced)

One respondent opposed this recommendation and said that the fact that a person has been convicted by a tribunal of fact should not negate the presumption of innocence unless it can clearly be shown to impact on the person's likelihood to appear in court for sentence or that the person's release would pose a risk to the community.

The Commission cannot accept the view that the presumption of innocence is not negated by the verdict of guilty by a tribunal of fact. A person who has been lawfully tried and who has been found guilty is no longer entitled to the presumption of innocence.¹⁰¹

The Commission therefore proposes to adhere to recommendation 30.

Recommendation 31 (The present provision in section 10 of the Bail Act 1980 about the finality of the trial judge's refusal of bail during a trial should be deleted and there should be a right to bring a fresh application to a Judge of the Supreme Court)

Two respondents strongly opposed this recommendation pointing out that it intrudes into the trial judge's ability to control the course of any particular trial. Such a provision could lead to trials being frivolously extended by the accused embarking on a series of applications for bail before different judges.

The Commission agrees and now proposes to leave section 10 of the *Bail Act 1980* as it presently stands making the trial judge's decision final. A disparity in the practice of trial judges, in granting bail during the course of a trial, was identified to the Commission. It was stated that some trial judges more readily grant bail than others. To address the problem of disparity in practice referred to in submissions made to the Commission, a provision should be inserted into the section to reflect the present preferred practice whereby if bail has been granted before or at the beginning of a trial, it shall continue until the jury retires or the summary hearing is complete, or until it is revoked by the trial judge or Magistrate on application made by the prosecution, for example, because of a breach of a bail condition justifying revocation, or because of changed circumstances justifying revocation under the new clause 16.

Recommendation 32 (That there should be no provision for compensation to defendants who have been refused bail but who are ultimately not convicted)

One respondent suggested that the *Bail Act 1980* should be amended to provide for compensation to defendants in cases where the defendant has been refused bail and ultimately has not been convicted.

Any decision to refuse bail is made on the basis of criteria specified in the *Bail Act 1980*. One of the factors to be taken into account is the strength of the evidence against the defendant. Any shortfall in the prosecution's case at trial does not necessarily mean that the decision to refuse bail was incorrect, particularly given the burden of proof which falls upon the prosecution.¹⁰²

¹⁰¹ *R v Darby* (1982) 148 CLR 668 at 682-683 per Murphy J. See also *Chamberlain v R (No.1)* (1983) 153 CLR 514.

¹⁰² The Working Paper at page 74.

The Commission believes that the *Bail Act 1980* is not the appropriate legislation to address issues of compensation and, therefore, it proposes to adhere to recommendation 32.

Recommendation 34 (That section 12 should be amended to remove the requirement that the bail application must be opposed before the court can make an order restricting publication and that the reversal of onus in section 12(2) should be removed)

One respondent questioned the removal of the reverse onus provision.

The Commission's approach to the reversal of onus of proof has been detailed above.¹⁰³ The Commission does not accept that the defendant should have a persuasive burden of proof placed upon him or her under section 12(2) of the *Bail Act 1980*.

New Matters

Section 32 of the Bail Act 1980

One respondent referred to section 32(1) of the *Bail Act 1980* which provides:

Where an undertaking that has been declared forfeited because of the failure of the person released on bail to appear in accordance with the undertaking contains as a condition of bail the making of a deposit of money or other security, the court that declares the forfeiture may order that the deposit or other security so made be forfeited and paid to Her Majesty.

The court shall endorse or cause to be endorsed on the undertaking particulars of every order made pursuant to this section.

The respondent drew attention to the fact that over a number of years some courts have not made the orders referred to in section 32 and, as a consequence, proceedings cannot be instituted for the forfeiture of moneys or other securities. This has resulted in a number of deposits lying idle in the Suspense Accounts of some court offices.

The respondent suggested that section 32 of the *Bail Act 1980* be amended authorising the disposal of moneys or securities on the declaration forfeiting an undertaking without the necessity of a specific order by the court.

The Commission agrees with this suggestion and will reflect this in its final recommendations in this Report.

¹⁰³ See pages 37-38 of this Report.

Section 22 of the Bail Act 1980

Another respondent said that it should be provided in the *Bail Act 1980* that it is sufficient for the Justice of the Peace signing the undertaking of the defendant to be satisfied that a surety has been entered into by receiving a facsimile copy of the surety and that it should not be necessary to wait until the original copy of the signed surety is received by the relevant Justice of the Peace.

The Commission finds this suggestion to be eminently sensible and will recommend that section 22 of the *Bail Act 1980* be amended to reflect the suggestion.

"Perfecting" bail orders

Another respondent suggested that the District Court (and the Supreme Court for that matter) should be obliged to perfect (to register in the proper way) a bail order immediately rather than retaining the current requirement that such orders should be perfected by the defendant's solicitors, or by the registry staff if the defendant does not have legal representation, in accordance with the normal practice applying to civil procedure in the Supreme Court and District Court.

In response to this suggestion the Commission recommends the introduction of a standard form for applications for bail and the granting of bail. A form could be designed having the application in "Part A" at the top of the document, and a "Part B" at the bottom of the document where the bail-granting authority could record its decision on the bail application. The introduction of such a standard form would make the need for perfecting orders unnecessary.

Crown Proceedings Act 1980

One final matter should be mentioned. In the course of this reference, the Commission had sections 13 to 18 of the *Crown Proceedings Act 1980* drawn to its attention. These sections refer to civil proceedings to be taken by the Crown when a bail undertaking has been forfeited under the *Bail Act 1980*. Although it is not strictly within the terms of reference given to the Commission by the Attorney-General, it is the Commission's view that consideration should be given to incorporating the sections into the *Bail Act 1980*. The provisions would appear "to sit" more comfortably in a law relating to bail rather than in a general law concerning proceedings taken by or against the Crown. The final recommendations of the Commission will reflect this view.

CHAPTER 4

Final Recommendations of the Commission

In this chapter the Commission will list its final recommendations on amendments to be made to the *Bail Act 1980*. The final recommendations are reflected in the Draft Bill to amend the *Bail Act 1980* which is Appendix B to this Report. Where it is appropriate, references to the amending clauses are made in the footnotes to each recommendation. The reasons for these amendments will be found at relevant pages in the Working Paper or in Chapter 3 of this Report.

Recommendation 1

The present limitation on the power of police officers and watch-house keepers to grant bail for some serious offences should not be retained.¹⁰⁴

Recommendation 2

The power of the Magistrates Court to grant bail should be extended to all offences.¹⁰⁵

Recommendation 3

The District Court should have power to grant bail to a defendant charged with a simple offence, an indictable offence able to be heard in the Magistrates Court or an indictable offence triable in the District Court. A defendant should be able to bring a bail application in the District Court only after bail has been refused by a Magistrate or granted on conditions which are unacceptable to the defendant.¹⁰⁶

Recommendation 4

The overriding power of the Supreme Court to grant bail whether or not the defendant has appeared before that court should be retained. Application to the Supreme Court should be available only after an application has been made to the Magistrates Court. If a Magistrate refuses bail, or grants bail on conditions which are unacceptable to a defendant charged with an offence which must be heard in the Supreme Court, the defendant should be able to apply to the Supreme Court for bail. If the offence is a simple offence, an indictable offence able to be heard in

¹⁰⁴ See page 6 of the Working Paper and pages 26-27 of this Report. See also clauses 5 and 6 of the Draft Bill, which insert sections 7-7N.

¹⁰⁵ See page 6 of the Working Paper. See also the schedule to the Draft Bill, which amends section 9.

¹⁰⁶ See page 7 of the Working Paper and pages 27-28 of this Report. See also clause 14 of the Draft Bill, which inserts section 19A.

the Magistrates Court, or an indictable offence which is triable in the District Court, the further application should be made to the District Court before the Supreme Court is approached,¹⁰⁷ unless it is more convenient to approach a Circuit Court of the Supreme Court.

Recommendation 5

Bail legislation in Queensland should enshrine a presumption of the right to bail in all cases except following upon conviction. Therefore, section 7 of the *Bail Act 1980* should be amended to impose a duty on members of the police service or watch-house keepers to grant bail in accordance with the Act. Sections 8 and 9 should be amended to provide that, except upon conviction, (see recommendation 30 of this Report) a defendant should be entitled to be granted bail in accordance with the Act.¹⁰⁸

Recommendation 6

The obligations which should be imposed upon members of the police service and watch-house keepers should be:

- (a) the obligation to grant bail in accordance with the Act;
- (b) to inform a person taken into custody that, subject to the proposed clause 16, he or she is entitled to be released from custody on bail;
- (c) if the person does not speak or understand English, to inform the person of the right to an interpreter and to provide an interpreter if one is requested, and it is reasonably practicable to do so, to assist the person to communicate with members of the police service;
- (d) where bail is refused, to give reasons for the decision and to inform the defendant of the right to have the decision of the police officer or watch-house keeper reviewed;
- (e) where bail is refused, to allow the person to communicate with an interpreter, a legal practitioner or any other person who might be able to assist the defendant in making an application for review of the decision to refuse bail.

The obligation to provide the facilities mentioned in paragraphs (c) and (e) should not apply if there are reasonable grounds for believing that refusal of the facilities is necessary to prevent the escape of the defendant, the escape of an accomplice of

¹⁰⁷ See pages 7-8 of the Working Paper. See also the schedule to the Draft Bill, which amends section 10.

¹⁰⁸ See Chapter 5 of the Working Paper and page 28 of this Report. See also clause 6 of the Draft Bill, which inserts section 7A and the schedule to the Draft Bill, which amends section 8(1)(a)(f) and section 9.

a defendant or the loss or destruction of evidence.

The information required to be given to a defendant under paragraphs (b) and (d) should be in clear and simple language. The information should be provided in writing and it should also be read to the defendant. A multi-lingual notification form should be available and the notification form should be endorsed with the date and time of reading it to the defendant and signed by the police officer or watch-house keeper. The original signed copy of the notification form should be attached to the charge sheet and a copy given to the defendant.¹⁰⁹

The present 24 hour time limit provided in section 7(1)(b) of the *Bail Act 1980* should remain.

Recommendation 7

That section 16 of the *Bail Act 1980* should be repealed and replaced with a clause adopting the three categories used in New South Wales, the Australian Capital Territory and the Northern Territory as the criteria for deciding whether the defendant's right to bail should be displaced. The three categories are:

1. the probability of the person appearing in court;
2. the interests of the person charged; and
3. the protection of the community.¹¹⁰

Factors which relate to how each of these three criteria will be made out should be specified in the legislation.¹¹¹

Recommendation 8

That clause 16(1)(c)(iii) of the *Bail Act 1980* should refer specifically to the granting of bail to defendants charged with domestic violence offences. The definition of "domestic violence offence" should be modelled upon that contained in section 4 of the *Crimes Act 1900 (N.S.W.)* with modifications made to reflect the various personal violence offences under the Queensland *Criminal Code*.

In all cases where bail is granted to a person charged with a domestic violence offence, the persons referred to in section 3K of the *Domestic Violence (Family Protection) Act 1989* should be notified. Notification should also be given to persons who have obtained an order against the defendant to keep the peace and be of good behaviour under section 6 of the *Peace and Good Behaviour Act 1982*.

¹⁰⁹ See Chapters 7 and 10 and pages 13-14 of the Working Paper. See also clauses 5 and 6 of the Draft Bill, which insert sections 7-7N.

¹¹⁰ The proposed clause 16 is Appendix B to this Report. See page 18 of the Working Paper and pages 29-31 of this Report. See also clause 13 of the Draft Bill, which inserts section 16.

¹¹¹ See clause 13 of the Draft Bill, which inserts section 16.

That section 11 of the *Bail Act 1980* should be amended to allow a bail-granting authority to impose a condition that would require a defendant to surrender a licence held under the *Weapons Act 1990* and to deliver up any firearm held.

That a provision be inserted in the *Bail Act 1980* requiring the police service to collect statistics and data concerning the operation of the amended section 7.¹¹²

Recommendation 9

That a provision be inserted in the *Bail Act 1980* stipulating that a person who has been kept in police custody is to be provided with facilities for washing and for a change of clothing before their first court appearance where it is reasonably practicable to do so.¹¹³

Recommendation 10

That the words "in certain cases" in the heading to section 9 of the *Bail Act 1980* be deleted.¹¹⁴

Recommendation 11

That a specific provision be inserted in the *Bail Act 1980* providing for a review of a police officer's decision to refuse bail prior to the accused's first court appearance.

That the review should be conducted by a police officer of the rank of Inspector or above within a period of no longer than four (4) hours after the original decision and that the use of telephone, telex, facsimile and radio facilities to conduct the review receive statutory recognition in the *Bail Act 1980*.¹¹⁵

That this review should be in addition to the review by a Magistrate currently provided for in the Act.

¹¹² See pages 18, 19, 21 and 25 of the Working Paper and pages 31-34 of this Report. See also clauses 3 and 4 of the Draft Bill, which amend and insert sections 6 and 6A respectively, and also clause 13 of the Draft Bill, which inserts section 16(1)(c)(iii), clause 9 of the Draft Bill, which inserts section 11(2A)(e) and (f), clause 10 of the Draft Bill, which inserts section 13A and clause 13 of the Draft Bill, which inserts section 16A.

¹¹³ See pages 25-31 of the Working Paper. See also clause 6 of the Draft Bill, which inserts sections 7I and 7J.

¹¹⁴ See pages 32-33 of the Working Paper. See also the schedule to the Draft Bill, which amends section 9.

¹¹⁵ See pages 34-35 of the Working Paper and page 34 of this Report. See also clause 6 of the Draft Bill, which inserts sections 7B, 7L and 7M.

Recommendation 12

That the *Bail Act 1980* be amended to provide a mandatory requirement that the question of the defendant's bail status be considered at his or her first appearance before a Magistrates Court without the defendant having to make a specific application.¹¹⁶

Recommendation 13

That section 8 of the *Bail Act 1980* be amended to provide that a court may refuse to entertain a further application for bail if it is satisfied that the application is frivolous or vexatious.¹¹⁷

Recommendation 14

That section 8 of the *Bail Act 1980* be amended to provide that a Judge of the District Court has power to grant bail following a refusal by a Magistrate in relation to simple offences and indictable offences able to be heard in the Magistrates Court and indictable offences triable in the District Court.

The section should also provide that, if the Supreme Court is sitting in a place as a Circuit Court within the terms of section 30 of the *Supreme Court Act 1867* and sections 6 and 7 of the *Supreme Court Act 1921*, the application can be made to that court rather than the District Court.¹¹⁸

Recommendation 15

That section 10 of the *Bail Act 1980* be amended to provide that an application for bail can only be made to the Supreme Court after the question of bail has been considered by a Magistrate and, in the case of a simple offence or an indictable offence able to be heard in the Magistrates Court or an indictable offence triable in the District Court, has been further considered by a Judge of the District Court or, a Circuit Court of the Supreme Court.¹¹⁹

¹¹⁶ See page 37 of the Working Paper and page 35 of this Report. See also clause 6 of the Draft Bill, which inserts section 7N.

¹¹⁷ See page 38 of the Working Paper. See also the schedule to the Draft Bill, which inserts section 19(5).

¹¹⁸ See pages 38-39 of the Working Paper and pages 35-36 of this Report. See also clause 14 of the Draft Bill, which inserts section 19A and the schedule to the Draft Bill, which amends section 8.

¹¹⁹ See page 39 of the Working Paper and page 36 of this Report. See also the schedule to the Draft Bill, which amends section 10.

Recommendation 16

That a new provision be inserted in the *Bail Act 1980* providing for a system of automatic review by the Magistrates Court of a defendant's bail status if the defendant is still in custody after a period of eight (8) days from the date of the grant of bail by a Magistrate.¹²⁰

Recommendation 17

That a provision be included in the *Penalties and Sentences Act 1992* or the *Bail Act 1980* to the following effect:

*A person charged with an offence for which cash bail is available [under the Bail Act 1980] is entitled to elect not to contest the charge but to pay the "prescribed amount" [pursuant to the Bail Act 1980] and to be relieved of any further liability.*¹²¹

The "prescribed amount" of cash bail should be set by a Regulation made under the *Bail Act 1980*. The prescribed amount of cash bail should be the maximum cash payment that can be set for each offence.

Recommendation 18

That sections 14 and 14A of the *Bail Act 1980* be amended to provide that cash bail is only available for offences for which the maximum fine which may be imposed does not exceed four (4) penalty units or its monetary equivalent.¹²²

Recommendation 19

That section 33(1) of the *Bail Act 1980* be amended by deleting paragraph (b) of the subsection.¹²³

¹²⁰ See page 40 of the Working Paper and page 36 of this Report. See also clause 15 of the Draft Bill, which inserts section 26A.

¹²¹ See pages 42-43 of the Working Paper and pages 36-37 of this Report. See also clauses 11 and 12 of the Draft Bill, which insert sections 14B and 14C, and also the schedule to the Draft Bill, which amends sections 14(1) and 14A(1).

¹²² See page 43 of the Working Paper and page 37 of this Report. See also the schedule to the Draft Bill, which amends sections 14 and 14A.

¹²³ See page 45 of the Working Paper. See also the schedule to the Draft Bill, which amends section 33(1).

Recommendation 20

That section 33(3)(a) should be amended by deleting the words "without the laying of a complaint" and inserting the words "in accordance with the *Justices Act 1886*" and that section 33(3) of the *Bail Act 1980* be amended by deleting the requirement that the court shall "then and there call upon the defendant ...".¹²⁴

Recommendation 21

That section 33(3) of the *Bail Act 1980* be amended by deleting the words "to prove why he should not be convicted of an offence against this section".¹²⁵

Recommendation 22

That section 20(5) of the *Bail Act 1980* be amended to provide that the surety should be given a verbal explanation of the obligations of the defendant under the conditions of his or her bail and the consequences of his or her failure to comply with them. In addition, standard forms should be developed outlining the obligations, in plain English. Multi-lingual forms should also be available.¹²⁶

Recommendation 23

That section 24 of the *Bail Act 1980* be repealed.¹²⁷

Recommendation 24

That section 11(1) of the *Bail Act 1980* should be amended to include a specific provision that, in the determination of the level of security required, the financial means of the defendant must be taken into account.¹²⁸

¹²⁴ See page 45 of the Working Paper. See also the schedule to the Draft Bill, which amends section 33(3)(a).

¹²⁵ See pages 47-48 of the Working Paper and pages 37-38 of this Report. See also the schedule to the Draft Bill, which amends section 33(3).

¹²⁶ See page 53 of the Working Paper. See also the schedule to the Draft Bill, which amends section 20(5).

¹²⁷ See page 53 of the Working Paper and page 38 of this Report. See also the schedule to the Draft Bill, which repeals section 24.

¹²⁸ See page 53 of the Working Paper. See also the schedule to the Draft Bill, which amends section 11.

Recommendation 25

That section 11(2) of the *Bail Act 1980* be amended to indicate, by the use of examples, the types of conditions which may be imposed by a bail-granting authority. Condition (c) recommended by the Commission in the Working Paper¹²⁹ should be amended to read "a requirement that a defendant undergo or continue to undergo psychiatric treatment or other medical treatment". Condition (d)¹³⁰ should not be included as a condition in section 11(2).¹³¹

The final set of conditions recommended by the Commission are:

- (a) a requirement that the defendant report periodically, or at specified times, at a specified place;
- (b) a requirement that the defendant reside at a specified place;
- (c) a requirement that the defendant undergo or continue to undergo psychiatric treatment or other medical treatment;
- (d) a requirement that the defendant not commit any act which would constitute domestic violence within the meaning of the *Domestic Violence (Family Protection) Act 1989* (as amended);
- (e) a requirement that the defendant not possess a weapon while on bail;
- (f) a requirement that the defendant surrender a firearm licence under section 2.1 of the *Weapons Act 1990* and deliver up any firearm so held;
- (g) a requirement that the defendant not contact a specified person;
- (h) a requirement that the defendant not harass or molest, or cause another person to harass or molest, a specified person;
- (i) a requirement that the defendant not be in or on premises in or on which a specified person resides or works;
- (j) a requirement that the defendant not be in, on or near premises frequented by a specified person;

¹²⁹ See footnote 83 at page 30 of this Report.

¹³⁰ See footnote 96 at page 39 of this Report.

¹³¹ See page 55 of the Working Paper and page 39 of this Report. See also clause 9 of the Draft Bill, which inserts section 11(2A).

- (k) a requirement that the defendant not be in a locality in which are situated premises in or on which a specified person resides or works;
- (l) a requirement that the defendant not approach within a specified distance of a specified person;
- (m) where the defendant resides with another person - a requirement that the defendant not enter or remain in the place of residence while under the influence of liquor or a drug; and
- (n) a requirement that the defendant refrain from making an application for a passport and that the defendant surrender any current passport.

Recommendation 26

That section 21 of the *Bail Act 1980* be amended to allow the appointment of a surety who is not a resident in Queensland where, in the opinion of the court, it is appropriate to do so and that subsections (4) and (5) of section 21 of the *Bail Act 1980* be amended to provide that an interstate Justice of the Peace attached to a court may perform the duties imposed by those subsections.

Section 22 of the *Bail Act 1980* should also be amended to provide that it is sufficient for the Justice of the Peace signing the undertaking of the defendant to be satisfied that a surety has been entered into by receiving a facsimile copy of the surety and that it should not be necessary to await the original copy of the signed surety.¹³²

Recommendation 27

That section 7 of the *Bail Act 1980* be further amended by incorporating recommendation 90 of the Royal Commission into Aboriginal Deaths in Custody, with the inclusion of Torres Strait Islander people as well as Aboriginal people.¹³³

Recommendation 28

That section 7 of the *Bail Act 1980* be further amended to provide that, where it is more appropriate to do so or where it is not practicable for a member of the police service to deliver an arrested person to a police station or watch-house, the member of the police service may release the person on bail at or near the place of arrest.¹³⁴

¹³² See page 56 of the Working Paper and page 44 of this Report. See also the schedule to the Draft Bill, which amends sections 20, 21 and 22.

¹³³ See page 59 of the Working Paper and pages 39-40 of this Report. See also clause 6 of the Draft Bill, which inserts section 7K.

¹³⁴ See page 63 of the Working Paper. See also clause 10 of the Draft Bill, which inserts sections 13, 13A and 13B.

Recommendation 29

That the *Juvenile Justice Act 1992* should be a Code in relation to young people who come into conflict with the law. However, until a provision is inserted in that Act dealing specifically with the question of bail for young offenders, a provision directed specifically to the duty to grant bail to young offenders should be inserted in the *Bail Act 1980*, after new clause 16. The provision should include a requirement that, when the only ground for refusal of bail is the welfare of the child, notification of the refusal should be given, where reasonably practicable, to the child's parents. The definition of "parent" contained in the *Juvenile Justice Act 1992* should be inserted into the *Bail Act 1980*. The new provision should also provide for notification to be given to the Department of Family Services and Aboriginal and Islander Affairs where appropriate.¹³⁵

Recommendation 30

That a new provision be inserted in the *Bail Act 1980* empowering courts to grant bail to a convicted person in only special or exceptional circumstances. A provision should also be included in the Act allowing bail to be granted to a person who has been convicted, but not sentenced, where there is a strong likelihood that a non-custodial sentence will be imposed.¹³⁶

Recommendation 31

That a new subsection be added to section 10 of the *Bail Act 1980* to provide that, if bail is granted before or at the beginning of a trial of an indictable offence, or at the commencement of a summary hearing; it shall continue until the jury retires to consider its verdict or the summary hearing is complete or until it is revoked by the trial judge or the presiding Magistrate on application made by the prosecution.¹³⁷

Recommendation 32

That there should be no amendment to the *Bail Act 1980* for compensation to be paid to persons who have been refused bail but who are ultimately not convicted of an offence.¹³⁸

¹³⁵ See page 65 of the Working Paper and pages 40-41 of this Report. See also clause 13 of the Draft Bill, which inserts section 16B.

¹³⁶ See page 71 of the Working Paper and pages 41-42 of this Report. See also clause 8 of the Draft Bill, which inserts section 10B.

¹³⁷ See page 42 of this Report. See also clause 7 of the Draft Bill, which inserts sections 9A, 9B and 9C.

¹³⁸ See page 74 of the Working Paper and pages 42-43 of this Report.

Recommendation 33

That section 20(2) of the *Bail Act 1980* be amended by deleting the words "an address for service of notices within 25 kilometres of the court before which he is required to appear" and inserting the words "any other address the court may order".¹³⁹

Recommendation 34

That section 12 of the *Bail Act 1980* be amended to remove the requirement that the bail application must be opposed before the court can make an order restricting publication, and also removing the reversal of onus provision in section 12(2) of the Act.¹⁴⁰

Recommendation 35

That section 32(1) of the *Bail Act 1980* be amended to authorise the disposal of moneys or securities on the declaration forfeiting an undertaking without the necessity of a specific order by the court.¹⁴¹

Recommendation 36

That a standard form for applying for bail and noting whether bail is granted or not should be developed for use under the *Bail Act 1980*.¹⁴²

Recommendation 37

That the *Crown Proceedings Act 1980* should be reviewed with a view to transferring sections 13 to 18 into the *Bail Act 1980*.¹⁴³

¹³⁹ See page 75 of the Working Paper. See also the schedule to the Draft Bill, which amends section 20.

¹⁴⁰ See page 76 of the Working Paper and page 43 of this Report. See also the schedule to the Draft Bill, which amends section 12.

¹⁴¹ See page 43 of this Report. See also the schedule to the Draft Bill, which amends section 32.

¹⁴² See page 44 of this Report.

¹⁴³ See page 44 of this Report.

APPENDIX A

**LIST OF PERSONS OR BODIES WHO MADE SUBMISSIONS
ON THE BAIL WORKING PAPER IN ORDER OF THEIR RECEIPT**

- * His Honour Judge P.D. Robin, Q.C.
- * Mr M.W.D. White, Q.C.
- * Mr B.J. Blades, S.M.
- * Queensland Law Society Inc.
- * Mr R.N. Miller, Q.C., Director of Prosecutions.
- * Mr A.M. West, Barrister-at-Law.
- * Queensland Council for Civil Liberties.
- * Caxton Legal Centre.
- * Criminal Justice Commission.
- * Women's Legal Service.
- * Department of Family Services and Aboriginal and Islander Affairs.
- * Queensland Police Service.
- * Supplementary Submission from the Queensland Council for Civil Liberties.

APPENDIX B

BAIL AMENDMENT BILL 1993 (NO.2)

Queensland



BAIL AMENDMENT BILL 1993 (No. 2)

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12	Insertion of new s.14C	16
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13	Replacement of s.16 (Refusal of bail)	17
	16 Reasons for refusing bail	17
	16A Notification of grant of bail to be given	18
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14	Insertion of new s.19A	20
	19A Application to District Court in relation to refusal or conditions of bail under section 8, 9 or 19	20
15	Insertion of new s.26A	21
	26A Grant of bail to be reviewed	21
	SCHEDULE	22

MINOR AND CONSEQUENTIAL AMENDMENTS

1993

A BILL

FOR

An Act to amend the Bail Act 1980

The Parliament of Queensland enacts—	1
Short title	2
1. This Act may be cited as the <i>Bail Amendment Act 1993 (No. 2)</i> .	3
Amended Act	4
2. The <i>Bail Act 1980</i> is amended as set out in this Act.	5
Amendment of s.6 (Interpretation)	6
3. Section 6—	7
<i>insert—</i>	8
‘ “domestic violence offence” has the meaning given by section 6A;	9
“officer in charge” means the police officer who is in charge of a police station, watchhouse or lockup;	10 11
“parent” means—	12
(a) a parent or guardian of a child; or	13
(b) a person who has lawful custody of a child other than because of the child’s detention for an offence or pending a proceeding for an offence; or	14 15 16
(c) a person who has the day to day care and control of a child;	17
“reviewing officer” means a police officer for the police region concerned who is of the rank of inspector or above;’.	18 19
Insertion of new s.6A	20
4. After section 6—	21
<i>insert—</i>	22

‘Meaning of “domestic violence offence”	1
‘6A.(1) “Domestic violence offence” means a personal violence offence committed against—	2 3
(a) a person who is, or has been, married to the defendant who commits the offence; or	4 5
(b) a person who is, or has been, the de facto partner of the defendant who commits the offence; or	6 7
(c) a person who is living with, or has lived ordinarily in the same household as, the defendant who commits the offence (other than as a tenant or boarder); or	8 9 10
(d) a person who is, or has been, a relative of the defendant who commits the offence; or	11 12
(e) a person who has, or has had, an intimate personal relationship with the defendant who commits the offence.	13 14
‘(2) For the purposes of this section—	15
“de facto partner” means a person who lives with another person as the other person’s spouse on a genuine domestic basis although not married to the other person;	16 17 18
“personal violence offence” means an offence mentioned in Part 5 of the Criminal Code that involves an assault on, or personal violence to, a person.	19 20 21
“relative” is—	22
(a) a father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or	23 24
(b) a son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or	25 26
(c) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law; or	27 28
(d) an uncle, aunt, uncle-in-law or aunt-in-law; or	29
(e) a nephew or niece; or	30
(f) a cousin;	31

and includes, in the case of de facto partners, a person who would be a relative if the de facto partners were married.’	1 2
Replacement of s.7 (Power of member of police force to grant bail)	3
5. Section 7—	4
<i>omit, insert—</i>	5
‘Duty of officer in charge to advise and provide facilities	6
‘7.(1) An officer in charge must act under this section if it is not practicable to immediately bring before a court a defendant who is—	7 8
(a) arrested on a charge of an offence; and	9
(b) delivered into the custody of the officer in charge.	10
‘(2) If the defendant cannot speak or understand the English language, the officer in charge must cause the defendant to be informed, in so far as the officer in charge alone, or with the assistance of others, is reasonably able to do so, that the defendant is entitled to be provided with reasonable facilities to enable the defendant to make contact with an interpreter, or another person, who may reasonably be expected to help the defendant to communicate with a police officer.	11 12 13 14 15 16 17
‘(3) If the defendant asks for reasonable facilities the officer in charge must provide the facilities.	18 19
‘(4) The officer in charge must cause the defendant to be informed of—	20
(a) the matters specified in section 16; and	21
(b) the conditions on which the defendant may be released on bail.’.	22
Insertion of new ss.7A–7N	23
6. After section 7—	24
<i>insert—</i>	25
‘Bail must be granted	26
‘7A. Subject to the Act, the officer in charge must grant bail to the defendant.	27 28

(b) the loss, destruction or falsification of evidence relating to an offence.	1 2
‘Officer in charge to prepare notice	3
‘7D.(1) For the purpose of informing the defendant as mentioned in section 7(2) or 7B(1), the officer in charge must—	4 5
(a) cause a notice to be prepared that specifies—	6
(i) in a language likely to be understood by the defendant—the rights of the defendant as mentioned in section 7B(1)(c); and	7 8
(ii) in the English language—the reasons for the refusal to grant bail; and	9 10
(b) read, or cause to be read, the notice to the defendant; and	11
(c) make a note on the notice of the day and time it was read; and	12
(d) sign the original of the notice; and	13
(e) attach a copy of the notice to the charge sheet; and	14
(f) give a copy of the notice to the defendant.	15
(2) It is sufficient compliance with subsection (1)(b) if the defendant cannot speak or understand the English language, if the officer in charge reads, or causes to be read, in so far as it is reasonably practicable to do so, the notice in the English language.	16 17 18 19
‘Refusal of bail—reasons to be noted	20
‘7E.(1) If the officer in charge refuses to grant bail, the officer in charge must—	21 22
(a) write the reasons for the refusal—	23
(i) on the papers, or warrant, relating to the person; or	24
(ii) in a register or record of defendants held in custody; and	25
(b) give a copy of the written reasons to the defendant.	26
(2) Failure to make the note mentioned in subsection (1) does not make the custody unlawful.	27 28

‘How defendant to be released	1
‘7F. A defendant granted bail and released from custody must be released—	2 3
(a) under section 14; or	4
(b) on conditions for the defendant’s release made by the officer in charge under section 11.	5 6
‘Duty discharged	7
‘7G. The duty to take the defendant before a justice to be dealt with according to law is discharged by the defendant being granted bail and released from custody.	8 9 10
‘Court may enlarge, amend or revoke bail	11
‘7H. A court before which a defendant who is granted bail appears may enlarge, amend or revoke the bail.	12 13
‘Facilities to be provided to defendants	14
‘7I.(1) An officer in charge who has custody of a defendant must cause the defendant to be provided with facilities to enable the defendant to wash, shower or bathe, shave (if appropriate) and change the defendant’s clothes if—	15 16 17 18
(a) it is reasonably practicable to do so; and	19
(b) the defendant is to be brought before a court more than 4 hours after the defendant was delivered into custody.	20 21
‘(2) The officer in charge is not required under subsection (1) to provide clothing to the defendant.	22 23
‘(3) However, if clothing is brought to the police station, watchhouse or lockup, the officer in charge must cause the defendant to be provided with the clothing.	24 25 26

‘Defendant to be allowed to use facilities	1
‘7J. The defendant must be allowed to use the facilities that are provided under section 7I.	2 3
‘Aboriginals and Torres Strait Islanders	4
‘7K. If the defendant is an Aboriginal or Torres Strait Islander the officer in charge must cause the Aboriginal and Torres Strait Islanders Corporation for Legal Services to be advised that the defendant is in custody.	5 6 7
‘Bail refused—reviewing officer to review	8
‘7L.(1) If an officer in charge—	9
(a) decides to refuse to grant bail to the defendant; or	10
(b) fails to decide whether or not to grant bail to the defendant within 4 hours after the defendant is delivered into custody; or	11 12
(c) decides to grant bail to the defendant subject to conditions (other than an undertaking) that the defendant is unable or unwilling—	13 14
(i) to comply with; or	15
(ii) arrange for another person to comply with;	16
the defendant may apply to a reviewing officer to review the decision or failure.	17 18
‘(2) If the defendant indicates to a police officer that the defendant wishes to make an application under subsection (1), the police officer, as soon as practicable after being given the indication, must—	19 20 21
(a) bring, or arrange for the defendant to be brought, before a reviewing officer; or	22 23
(b) arrange for the defendant to make the application by telephone, telex, radio, facsimile or other similar facility.’	24 25
‘Review by reviewing officer	26
‘7M.(1) On the review of the application mentioned in section 7L by a reviewing officer submissions may be made by—	27 28

-
- (a) the applicant or a legal practitioner representing the applicant; and 1
 (b) the officer in charge. 2
- ‘(2) The reviewing officer— 3
- (a) may— 4
- (i) grant or refuse to grant bail to the defendant; or 5
 (ii) amend or revoke a condition to which the grant of bail is 6
 subject; and 7
- (b) may make another order that the reviewing officer thinks proper. 8
- ‘(3) If the reviewing officer refuses to grant bail the reviewing officer 9
 must— 10
- (a) give written reasons for the refusal; and 11
 (b) give a copy of the written reasons to the applicant; and 12
 (c) keep a record of the reasons for the refusal. 13
- ‘Defendant’s first court appearance 14**
- ‘7N.(1) The court before which a defendant who is arrested on a charge 15
 of an offence first appears after arrest must inform the defendant of— 16
- (a) the matters specified in section 16; and 17
 (b) the conditions on which the defendant may be released on bail. 18
- ‘(2) Attached to the charge sheet there must be a statutory declaration by 19
 the officer in charge stating why the defendant was not granted bail. 20
- ‘(3) The court must— 21
- (a) ask the defendant if he or she is applying for bail; and 22
 (b) whether or not the defendant applies for bail, or if the defendant 23
 says that he or she does not want bail—the court must consider 24
 whether bail should be granted to the defendant. 25
- ‘(4) Whether or not a defendant makes application for bail, if the court 26
 refuses to grant bail to the defendant it must give written reasons for the 27
 refusal.’. 28

Insertion of new ss.9A to 9C	1
7. After section 9—	2
<i>insert—</i>	3
‘Continuation of bail—Magistrates Court or justice	4
‘9A.(1) Bail granted to a defendant by a Magistrates Court on the hearing	5
of a charge that may be heard and determined by the court continues until	6
the end of the hearing unless the grant of bail is amended or revoked by the	7
court.	8
‘(2) Bail granted to a defendant by a justice conducting an examination of	9
witnesses in relation to an indictable offence continues until the end of the	10
examination unless the grant of bail is amended or revoked by the justice.	11
‘Continuation of bail—hearing of indictable offence	12
‘9B. Bail granted to a defendant on committal for—	13
(a) trial continues until the jury retires to consider its verdict; or	14
(b) sentence continues until the defendant is sentenced;	15
unless amended or revoked by the trial judge.	16
‘Application for amendment or revocation	17
‘9C. Application for—	18
(a) an amendment under section 9A or 9B may be made by the	19
defendant or prosecutor; or	20
(b) a revocation under section 9A or 9B may be made by the	21
prosecutor.’.	22
Insertion of new s.10B	23
8. After section 10A—	24
<i>insert—</i>	25

‘Limitation on power to grant bail	1
‘10B.(1) Despite anything in the Act, if—	2
(a) an appeal is pending in the Court of Appeal against—	3
(i) a conviction on indictment; or	4
(ii) a sentence imposed on conviction on indictment; or	5
(b) an appeal from the Court of Appeal is pending in the High Court in relation to an appeal mentioned in paragraph (a);	6
	7
bail must not be granted by the Court of Appeal or another court unless it is established that special or exceptional circumstances exist that justify the granting of bail.	8
	9
	10
‘(2) In subsection (1)—	11
“special or exceptional circumstances” includes—	12
(a) the risk that a significant part of the sentence will be served before the appeal is heard; and	13
	14
(b) if the defendant has been convicted but not sentenced—the strong likelihood that a non-custodial sentence will be imposed’.	15
	16
 Amendment of s.11 (Conditions of release on bail)	17
9. After section 11(2)—	18
<i>insert—</i>	19
‘(2A) In addition to conditions imposed under subsection (1) or (2) there may be imposed on a grant of bail 1 or more of the following conditions—	20
	21
(a) that the defendant report periodically, or at times specified in the undertaking;	22
	23
(b) that the defendant reside at the address specified in the undertaking;	24
	25
(c) that the defendant undergo, or continue to undergo, psychiatric or other medical treatment;	26
	27
(d) that the defendant must not commit an act that constitutes domestic violence within the meaning of section 3G of the <i>Domestic Violence (Family Protection) Act 1989</i> ;	28
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|---|----------------|
| (e) that the defendant while on bail must not possess a weapon within the meaning of section 3N of the <i>Domestic Violence (Family Protection) Act 1989</i> ; | 1
2
3 |
| (f) that, if the defendant is the holder of a weapons licence the defendant must surrender the licence and deliver up a weapon in the defendant's possession under the section; | 4
5
6 |
| (g) that the defendant must not contact a person specified in the undertaking; | 7
8 |
| (h) that the defendant must not harass or molest, or cause another person to harass or molest, a person specified in the undertaking; | 9
10 |
| (i) that the defendant must not be in, or on, premises in, or on, which a person specified in the undertaking resides or works; | 11
12 |
| (j) that the defendant must not be in, on, or near premises frequented by persons, or a class of person, specified in the undertaking; | 13
14 |
| (k) that the defendant must not be in a locality in which there are premises in, or on, which a person specified in the undertaking resides or works; | 15
16
17 |
| (l) that the defendant must not be within a distance of a person, which distance and person are specified in the undertaking; | 18
19 |
| (m) that, if the defendant resides with another person, the defendant must not enter or remain in the place of residence while under the influence of liquor or a drug; | 20
21
22 |
| (n) that the defendant— | 23 |
| (i) must not apply for a passport; and | 24 |
| (ii) must surrender a current passport. | 25 |
| ‘(2B) In subsection (2A)(f)— | 26 |
| “weapons licence” means— | 27 |
| (a) a licence within the meaning of the <i>Weapons Act 1990</i> , that is issued in the name of the defendant; or | 28
29 |
| (b) a licence on which the name of the defendant is endorsed as the representative of a body corporate or firm under section 2.2 of the <i>Weapons Act 1990</i> .’ | 30
31
32 |

Insertion of new sections 13 to 13B	1
10. After section 12—	2
<i>insert—</i>	3
‘Arresting police officer may grant bail	4
‘13.(1) A police officer who arrests a defendant on a charge of an offence for which the maximum penalty is 4 penalty units may, without taking the defendant to a place that is a police station, watchhouse or lockup, grant bail to the defendant if the police officer is of the opinion that it is not appropriate or practicable to take the defendant to the place.	5 6 7 8 9
‘(2) The police officer must release the defendant from custody—	10
(a) at or near the place where the defendant was arrested; and	11
(b) on the defendant paying to the police officer a deposit of money as security for the defendant’s appearance before a court or justice at the place and time directed by the police officer.	12 13 14
‘(3) The police officer must issue to the defendant a notice that contains—	15 16
(a) details of the offence charged; and	17
(b) the amount deposited; and	18
(c) where and when the defendant is directed to appear.	19
‘(4) The police officer must, as soon as practicable, give to an officer in charge—	20 21
(a) the deposit of money; and	22
(b) a copy of the notice issued under subsection (3).	23
‘Records to be kept and forwarded	24
‘13A.(1) An officer in charge must keep records that are directed by the Commissioner of the Police Service in relation to—	25 26
(a) the number of defendants that are delivered into the custody of the officer in charge; and	27 28
(b) the number of applications for bail made by the defendants; and	29

(c) how many of the defendants were granted bail.	1
‘(2) A police officer must keep records that are directed by the Commissioner of the Police Service in relation to defendants released under section 13.	2 3 4
‘(3) Records mentioned in subsections (1) and (2) must be forwarded to the Commissioner of the Police Service when requested.	5 6
‘Application of s.14(5) to (10)	7
‘13B. Section 14(5) to (10) applies to a deposit of money accepted by a police officer under section 13, subject to—	8 9
(a) the modifications that are necessary for the application; and	10
(b) the insertion of—	11
‘(4) The police officer who issues a notice under section 13 at a place other than a place for holding Magistrates Courts must cause—	12 13
(a) a bench charge sheet mentioned in subsection (2) to be completed; and	14 15
(b) the bench charge sheet to be forwarded to the clerk of the court at the place where the defendant is required to appear.’.	16 17
Replacement of s.14B (Release of persons apprehended for drunkenness on making deposit of money as security for appearance)	18 19
11. Section 14B—	20
<i>omit, insert—</i>	21
‘Cash bail forfeited—no further action to be taken	22
‘14B. On the forfeiture under section 14 or 14A of money deposited as security, no further action can be taken against the defendant for the offence in relation to which the money was deposited.’.	23 24 25
Insertion of new s.14C	26
12. After section 14B—	27
<i>insert—</i>	28

‘Maximum amount of bail	1
‘14C. The maximum amount that may be fixed under section 13 or 14 as a deposit of money is the amount that is prescribed by regulation for the offence with which the defendant is charged.’	2 3 4
Replacement of s.16 (Refusal of bail)	5
13. Section 16—	6
<i>omit, insert—</i>	7
‘Reasons for refusing bail	8
‘16.(1) In deciding whether to grant bail to a defendant only the following matters, so far as they can reasonably be found out, must be considered—	9 10 11
(a) the probability that the defendant will fail to appear in court in relation to the offence for which bail is being considered, having regard only to—	12 13 14
(i) the background and community ties of the defendant; and	15
(ii) the history of previous grants of bail to the defendant; and	16
(iii) the circumstances in which the offence is alleged to have been committed; and	17 18
(iv) the nature and seriousness of the offence; and	19
(v) the strength of the evidence against the defendant; and	20
(vi) the severity of the sentence that is likely to be imposed, if the defendant is convicted; and	21 22
(vii) other information relevant to the likelihood that the defendant will fail to appear; and	23 24
(b) the interests of the defendant, having regard only to—	25
(i) the time that the defendant may be held in custody; and	26
(ii) the conditions under which the defendant would be held in custody; and	27 28
(iii) the need for the defendant to be free so that the defendant may prepare for his or her appearance before a court,	29 30

obtaining legal advice or for other reasons; and	1
(iv) the need for the defendant to be physically protected—	2
whether the need arises because the defendant is	3
incapacitated by intoxication, injury or use of drugs, or arises	4
from other causes; and	5
(c) the protection and welfare of the community, having regard only	6
to—	7
(i) the nature and seriousness of the alleged offence, and in	8
particular whether the offence is a domestic violence offence	9
or is of a sexual or violent nature; and	10
(ii) whether or not the defendant has failed, or appears likely to	11
fail, to observe a reasonable bail condition previously	12
imposed in relation to the alleged offence; and	13
(iii) whether or not the defendant has failed, or appears likely to	14
fail, to comply with an order made under section 4(1) of the	15
<i>Domestic Violence (Family Protection) Act 1989</i> , section 6	16
of the <i>Peace and good Behaviour Act 1982</i> or an injunction	17
granted under section 114 of the <i>Family Law Act 1975</i> of the	18
Commonwealth; and	19
(iv) the likelihood that the defendant will interfere with evidence,	20
intimidate witnesses or jurors or otherwise obstruct the	21
course of justice, whether in relation to the defendant or	22
another person; and	23
(v) the likelihood that the defendant will, or will not, commit an	24
indictable offence while released on bail.	25
‘(2) In subsection (1)(c)(i)—	26
“violent nature” includes domestic violence as defined in section 3G(1) of	27
the <i>Domestic Violence (Family Protection) Act 1989</i> .	28
‘Notification of grant of bail to be given	29
‘16A.(1) If a decision is made to grant bail to a defendant charged with a	30
domestic violence offence all reasonable steps must be taken to inform the	31
persons mentioned in subsection (2) of—	32

(a) the decision; and	1
(b) if the bail is granted subject to conditions—details of the conditions.	2 3
‘(2) The persons are—	4
(a) if a child is the victim of the domestic violence offence—the parent of the child; or	5 6
(b) if an adult is the victim of the domestic violence offence—the adult; or	7 8
(c) a person who has obtained an order against the defendant under section 6 of the <i>Peace and Good Behaviour Act 1982</i> .	9 10
‘(3) The reasonable steps mentioned in subsection (1) must be taken by—	11 12
(a) the officer in charge who made the decision; or	13
(b) if the decision is made by—	14
(i) the Supreme Court or a District Court—the Director of Prosecutions; or	15 16
(ii) a Magistrates Court—the prosecutor.	17
‘Child—refusal of bail	18
‘16B.(1) In making a determination regarding the grant of bail to a child, regard must be had only to the matters mentioned in section 16.	19 20
‘(2) If a child is refused bail only because of section 16(1)(b)(iv)—	21
(a) the court or officer in charge that refuses bail must immediately give notice of the refusal to—	22 23
(i) a parent of the child, unless a parent cannot be found after reasonable inquiry; and	24 25
(ii) the chief executive of the department of the government of Queensland responsible for child welfare, or a person who holds an office in the department who is nominated by the chief executive of the department for the purpose; and	26 27 28 29
(b) if the bail is refused by a court, the court must remand the child in	30

custody under section 43 of the <i>Juvenile Justice Act 1992</i> ; and	1
(c) if the bail is refused by an officer in charge, the officer in charge, despite section 41 of the <i>Juvenile Justice Act 1992</i> , must—	2 3
(i) release the child into the custody of a parent or other responsible adult nominated by a parent of the child; or	4 5
(ii) if it is not reasonably practicable to release the child as mentioned in subparagraph (i)—release the child into the custody of an officer of the department of the government of Queensland responsible for child welfare who is nominated by the chief executive of the department for the purpose; or	6 7 8 9 10
(iii) if it is not reasonably possible to release the child under subparagraph (i) or (ii)— detain the child at the police station, watchhouse or lockup.	11 12 13
‘(3) If a child is detained, or released into custody, under subsection (2)(c), the detention or custody must not be longer than is reasonably necessary to protect the child’s welfare.’	14 15 16
Insertion of new s.19A	17
14. After section 19—	18
<i>insert—</i>	19
‘ Application to District Court in relation to refusal or conditions of bail under section 8, 9 or 19	20 21
‘ 19A.(1) A defendant may make an application under subsection (2) if—	22
(a) the defendant makes an application for bail under section 8, 9 or 19 to a Magistrates Court in relation to a simple offence or an indictable offence that may be heard and determined by a Magistrates Court or tried before a District Court; and	23 24 25 26
(b) the Magistrates Court—	27
(i) refuses to grant bail; or	28
(ii) grants bail and the defendant feels aggrieved by the amount fixed or a condition imposed for the defendant’s release from custody.	29 30 31

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‘(2) The defendant may apply for an order granting or varying the bail to—	1
	2
(a) the District Court nearest to where the Magistrates Court is located; or	3
	4
(b) a Circuit Court of the Supreme Court, if the court is sitting at the time and the District Court mentioned in paragraph (a) is not sitting.	5
	6
	7
‘(3) On the hearing of the application, the District Court or Circuit Court, subject to the Act, may—	8
	9
(a) grant bail to the defendant; or	10
(b) vary the bail granted by the Magistrates Court; or	11
(c) refuse the application.’	12
Insertion of new s.26A	13
15. In Part 4 before section 27—	14
<i>insert—</i>	15
‘Grant of bail to be reviewed	16
‘26A. A court that grants bail to a defendant must review the grant of bail at the end of 8 days from the grant if the defendant is still in custody in relation to the charge of the offence for which the bail was granted and for no other reason.’	17
	18
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SCHEDULE	1
MINOR AND CONSEQUENTIAL AMENDMENTS	2
1. Section 8(1)(a)(i)—	3
<i>omit</i> ‘awaiting a’, <i>insert</i> ‘waiting for committal proceedings or another’.	4
2. Section 9 (heading)—	5
<i>omit</i> ‘in certain cases’.	6
3. Section 9 (at the end)—	7
<i>insert—</i>	8
‘(2) Subject to section 16 a defendant may be granted bail in relation to a time when the defendant is not required to attend court in relation to the offence with which the defendant is charged.’.	9 10 11
4. Section 10 (at the end)—	12
<i>insert—</i>	13
‘(3) Application for bail to be granted under subsection (1) may only be made in relation to a simple offence or an indictable offence that may be heard and determined by a Magistrates Court or tried before a District Court after the defendant has made application under section 19A(2) to a District Court or a Circuit Court of the Supreme Court and the Court—	14 15 16 17 18
(a) refuses the application; or	19
(b) varies or grants bail and the defendant feels aggrieved by the amount or a condition imposed for the defendant’s release from custody.’.	20 21 22
5. Section 10A (after ‘of the Court’)—	23
<i>insert</i> ‘or to a District Court’.	24

6. Section 11(1) (after ‘circumstances of the defendant’)—	1
<i>insert</i> ‘(which must specifically include the financial circumstances of the defendant)’.	2 3
7. Section 11(2) (2nd paragraph) (after ‘circumstances of the defendant’)—	4 5
<i>insert</i> ‘(which must specifically include the financial circumstances of the defendant)’.	6 7
8. Section 12—	8
<i>omit</i> ‘Where the complainant or prosecutor or a person appearing on behalf of the Crown opposes the grant of bail to a defendant, the Court at any time during the hearing of the application for bail’,	9 10 11
<i>insert</i> ‘At any time during the hearing of an application for bail before a court, the court’.	12 13
9. After section 12(1)—	14
<i>insert</i> —	15
‘(1A) Application for an order under subsection (1) may be made by the prosecution or the defendant.’.	16 17
10. Section 12(2)—	18
<i>omit</i> ‘lawful excuse, the proof of which lies upon him’,	19
<i>insert</i> ‘reasonable excuse’.	20
11. Section 14(1)—	21
<i>omit</i> ‘specified in the Schedule’,	22
<i>insert</i> ‘for which the maximum penalty is 4 penalty units’.	23

12. Section 14A(1)—	1
<i>omit</i> ‘specified in the Schedule’,	2
<i>insert</i> ‘for which the maximum penalty is 4 penalty units’.	3
13. Section 19(2) (at the end)—	4
<i>insert—</i>	5
‘(3) There is no limit on the number of applications in relation to bail that a defendant may make to a court.	6
	7
‘(4) All applications to a court in relation to bail must be dealt with as soon as reasonably practicable.	8
	9
‘(5) Despite subsections (3) and (4), a court may refuse to consider an application in relation to bail if it considers that the application is frivolous or vexatious.’.	10
	11
	12
14. Section 20(1)—	13
<i>omit</i> ‘an address for service of notices within 25 kilometres of the court before which he is required to appear’,	14
	15
<i>insert</i> ‘if the court thinks fit, an address for service of notices’.	16
15. Section 20(3B)—	17
<i>omit.</i>	18
16. Section 20(3C)—	19
<i>omit</i> ‘(3), (3A) or (3B)’, <i>insert</i> ‘(3) or (3A)’.	20
17. After section 20(5)—	21
<i>insert—</i>	22
‘(5A) A person mentioned in subsection (6), in carrying out duties imposed by subsection (5)—	23
	24

(a) must verbally explain to the surety or sureties what the duties of a surety are; and	1 2
(b) must not accept a proposed surety as surety if the person considers that the proposed surety does not fully understand the duties; and	3 4 5
(c) must, if the person accepts the proposed surety as a surety, verbally explain to the surety what his or her rights are as a surety.’.	6 7 8
18. Section 21 (at the end)—	9
<i>insert—</i>	10
‘(8) In this section—	11
“justice” includes a person who is a justice of the peace and an officer in the registry of a court in another State or a Territory.’.	12 13
19. Section 21(1) (after ‘must be a person’)—	14
<i>insert</i> ‘who has a permanent residential address in Australia and’.	15
20. Section 21(3)(a)—	16
<i>omit, insert—</i>	17
‘(a) the person’s financial circumstances, and, in particular, what calls there are on his or her finances;’.	18 19
21. After section 21(5)—	20
<i>insert—</i>	21
‘(5A) A justice in carrying out the duties imposed by subsections (4) and (5)—	22 23
(a) must verbally explain to the person what the duties of a surety are; and	24 25
(b) must not accept the person as a surety if the justice considers that the person does not fully understand the duties; and	26 27

(c) must, if the justice accepts the person as a surety, verbally explain to the surety what his or her rights are as a surety.?	1 2
22. Section 22 (at the end)—	3
<i>insert—</i>	4
‘(3) In this section—	5
“ duplicate ” includes a facsimile of a duplicate of a certificate endorsed on papers or warrant under section 18;	6 7
“ proper officer ” includes a justice defined in section 21(8);	8
“ undertaking ” includes a facsimile of an undertaking.’.	9
23. Section 24—	10
<i>omit.</i>	11
24. Section 28(2)(a)(i)—	12
<i>omit</i> ‘for the time being appointed’, <i>insert</i> ‘nominated’.	13
25. Section 28A(1)(b)—	14
<i>omit.</i>	15
26. Section 29(1)(b)—	16
<i>omit, insert—</i>	17
‘(b) if the member is notified in writing by a surety for the defendant that—	18 19
(i) the surety believes that the defendant is likely to break the condition for the defendant’s appearance and for that reason the surety wishes to be relieved of the surety’s obligations as a surety; or	20 21 22 23
(ii) the surety is no longer prepared to be a surety for the defendant.’.	24 25

27. Section 32(1)—	1
<i>omit</i> ‘the court that declares the forfeiture may order that the deposit or other security so made be forfeited and paid to Her Majesty.’,	2
<i>insert</i> ‘the declaration also forfeits the deposit or other security which must be paid or given to the Crown’.	3
	4
	5
28. Section 32(1) (2nd paragraph)—	6
<i>omit.</i>	7
29. Section 33(1)—	8
<i>omit, insert—</i>	9
‘(1) A defendant who fails without reasonable excuse to surrender into custody in accordance with the defendant’s undertaking, commits an offence against this Act.’.	10
	11
	12
30. Section 33(2)—	13
<i>omit.</i>	14
31. Section 33(3)(a)—	15
<i>omit</i> ‘taken.’, <i>insert</i> ‘taken under the <i>Justices Act 1886 but</i> ’.	16
32. Section 33(3)(b)(i)—	17
<i>omit, insert—</i>	18
(i) production to the court before which a defendant apprehended under a warrant issued under section 28 or 28A(1)(a) is brought of the warrant is evidence that the issue of the warrant was authorised by the decision or order of the court that issued the warrant; and	19
	20
	21
	22
	23
(ia) statements contained in the warrant that the undertaking was entered into and that the defendant failed to surrender into custody are evidence of those facts; and’.	24
	25
	26

33. Section 33(3) (2nd paragraph)—	1
<i>omit.</i>	2
34. Section 33(4)—	3
<i>omit.</i>	4
35. Section 33B(1)—	5
<i>omit</i> ‘referred to in section 33(1)(b)’, <i>insert</i> ‘under section 28’.	6
36. Section 33B(2)—	7
<i>omit</i> ‘referred to in section 33(1)(b)’, <i>insert</i> ‘under section 28’.	8
37. Schedule—	9
<i>omit.</i>	10
	11