

QUEENSLAND LAW REFORM COMMISSION

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THE LAW RELATING TO BAIL IN IN CRIMINAL PROCEEDINGS

REPORT NO. 25

10 August 1978

A Report of the Queensland Law Reform Commission

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QUEENSLAND

A REPORT OF THE LAW REFORM COMMISSION

ON THE LAW RELATING TO BAIL
IN CRIMINAL PROCEEDINGS

Q.L.R.C. 25

REPORT OF THE LAW REFORM COMMISSION

ON A BILL TO AMEND THE LAW IN RELATION

TO BAIL

To the Honourable W.D. Lickiss, M.L.A.,
Minister for Justice and Attorney-General,
BRISBANE.

At your request, the Law Reform Commission has examined the present system of granting bail in criminal proceedings.

The Commission forwards herewith its report comprising a draft bill and commentary which contains the recommendations of the Commission on this subject.

The working paper which preceded this report was widely circulated and many comments, criticisms and suggestions were received from interested persons and institutions concerning the matters it contained. Where appropriate the original draft bill has been amended in the light of these comments and the commentary adjusted accordingly.

Not all institutions, including some institutions from whom a reply is normally expected, have yet submitted comments concerning the paper. If the submission subsequently received is found to contain matter which warrants amendment to the recommendations herein contained, these will be passed on at a later date.

In presenting this report the Commission wishes to acknowledge its indebtedness to Mr. V.F. Haupt, Chief Stipendiary Magistrate, who had been seconded to the Commission for special

duty and whose knowledge and practical knowledge have been invaluable.

Signed: The Hon. D.G. Andrews
(Chairman)

Signed: Mr. B.H. McPherson, Q.C.
(Member)

Signed: Dr. J.M. Morris
(Member)

Signed: Mr. G.N. Williams
(Member)

Signed: Mr. J.J. Rowell
(Member)

Signed: Mr. J.R. Nosworthy
(Member)

Brisbane. 10th August, 1978

BAIL BILL

COMMENTARY

Provisions as to bail in criminal proceedings are at present set out in a number of Queensland Statutes. The draft Bill, if enacted, would set out such provisions in the one Act. It introduces the new concept of "right to bail" and imposes on certain police officers and on courts (cl.7 and 9) a duty to grant bail to persons in custody subject to specified grounds on which bail must be refused (cl.14). It provides guide-lines as to the type of bail that may be granted (cl.12) and as to the conditions that may be attached to bail (cl.13). The recognizance system, which has proved to be ineffective, is replaced in the draft Bill by the "undertaking" (cl.19) to be entered into by the defendant and his sureties (if any) requiring the defendant to appear at the appointed time and place and surrender himself into custody. Failure to appear will be a criminal offence on the part of the defendant (though not of the sureties) punishable by imprisonment for two years (cl.21).

Under present legislation a grant of bail, followed by release of the defendant, can be reviewed only on a further appearance of the defendant or on his arrest by his surety. The draft Bill provides (cl.31) that the Crown or the complainant may apply to the court which granted bail, or to the Supreme Court or a judge thereof, to revoke or vary the bail and the court or judge if satisfied that the bail should be revoked or varied may issue a warrant of apprehension to bring the defendant before the court or judge in order to determine the application.

The draft Bill extends the jurisdiction of courts to grant bail and specifically gives this right (cl.8(4)) to any judge of the Supreme Court in respect of appeals to the Court of Criminal Appeal including applications for leave to appeal (definition cl.5). It continues the right of a surety to arrest the principal if he has reasonable cause to believe that the principal will not appear to answer the charge (cl.29), but it also gives to members of the police force power to arrest a principal without warrant in the circumstances set out in cl.30.

The draft Bill provides that any court before which a defendant is required to appear may extend bail already granted to him (cl.8). This means that bail granted to a defendant to ensure his appearance before a court may be extended throughout the whole criminal proceedings in that court. Bail granted upon committal for trial may be extended until the defendant is finally sentenced or discharged. When bail is extended under this provision, there will be no necessity for attendance of sureties for completion of new bail documents unless the sureties have specifically elected not to be bound in respect of any extension.

At present upon committal for trial or sentence a defendant signs a recognizance requiring his appearance at the Criminal Sittings of the Supreme (or a District) Court at a specific place commencing on a specified date. To comply with the recognizance he should attend every day of the Sittings until his trial is commenced. However, in practice he is usually notified by the police, on advice from the Crown Prosecutor, of the day his trial will commence and he does not attend until that date. The draft Bill provides in cl.20 that an undertaking of bail in committal cases will require the defendant to appear at a Sittings at a day, time and place to be notified to him and his sureties (if any) by the Crown Solicitor. The omission of "specific" Sittings is intended to cover the instances when a trial may not be possible at the first Sittings after committal and is postponed to a later Sittings.

Clause 10 will replace s.555 of The Criminal Code. Unlike s.555, however, it extends to all offences, not only indictable offences and gives to the Supreme Court or a judge thereof the additional power to revoke or vary bail.

Allegations made on an application for bail are often given considerable publicity which might prejudice the fair trial of a defendant. Clause 16 provides that the court may prohibit publication of evidence taken, information given or representations made in the course of a bail proceeding. Breach of any such order is an offence.

Clause 12 sets out the nature of bail and the sequence in which the granting of bail should be considered by a court or an authorised member of the police force. It provides for bail on a defendant's own undertaking, either with or without a deposit of money or other security of stated value, bail with sureties, or bail with both security deposit and sureties. The "security" is quite distinct from "surety", and might be considered appropriate in cases, for example, where a defendant's place of residence is remote from where he was arrested, or where he resides outside the State or is required to travel outside the State. Before a person is accepted as a surety (cl.23), he must satisfy the justice as to the sufficiency of his means and (subcl.7) may deposit in the office of the clerk or registrar of the court the amount of his surety in cash. If the undertaking is subsequently forfeited, the amount so deposited is to be applied in satisfaction of his obligation. There is no such provision in existing legislation.

At present when a defendant fails to appear as required by a recognizance, the recognizance is forfeited. The court has no power to make an order that the forfeiture shall apply to part only of the sum bound or to remit the full amount, as is provided by statute in the United Kingdom, New Zealand and Tasmania. Clause 34 gives this power to the court before which the defendant is required to appear. Clause 35 gives a similar power to the court in respect of any deposit of money or other security made as a requirement of bail.

The system of "cash bail" provided by s.69A of the Justices Act should be continued. Provision is made in cl.32 for cash bail, and by cl. 6 nothing in Part II of the draft Bill shall affect the grant of cash bail under cl.32. A person released on cash bail will not commit an offence by failing to appear, but his cash bail will be forfeited.

The subject of bail in criminal proceedings has been investigated and reported upon by various committees and working parties in the Australian States and overseas in recent years.

The historical background of bail can be found in Stephen's History of the Criminal Law and in Holdsworth's History of English Law. The concept of bail is of considerable antiquity with roots in the legal system of Anglo-Saxon times. A person granted bail was considered not to be at liberty but to be entrusted to the custody of his sureties and, if he absconded, the sureties were liable to the penalties appropriate to the offence with which the principal was charged. With modifications the practice continued through Norman times. The sheriffs were entrusted with the power to grant or refuse bail, and the factors they were expected to take into consideration in the exercise of their wide discretion are still recognisable today. In the thirteenth century Bracton defined these factors as the importance of the charge, the character of the person and the gravity of the evidence against him.

The first statutory provisions about bail were contained in the Statute of Westminster of 1275, which remained the principal Act on the subject for 550 years. It laid down the classes of persons who were and were not bailable.

By the fifteenth century the power to grant bail had passed largely to justices of the peace, and a statute of 1487 (3 Hen.VII.c.3) provided that this power should not be exercised except by at least two justices. In 1688 the Bill of Rights laid down that "excessive bail ought not to be required", which provision was later incorporated in the United States Constitution. Further provisions as to bail were set out in the English Acts of 1826 and 1835. The Indictable Offences Act 1848 was noteworthy so far as present practice is concerned in that it enabled sureties to be dispensed with in certain circumstances. This power was extended by the English Bail Act 1898.

This is a very brief summary of the historical background of bail, leading up to provisions and practice which exist today. In Queensland today provisions as to bail are not only to be found in the Justices Act 1886 - 1978, but also in The Criminal Code and other legislation.

The importance of bail cannot be overstated. Addressing the Gloucestershire Magistrates in 1971 Lord Hailsham said -

"Bail is important ... because it affects the liberty of the subject ... it is the only example in peacetime where a man can be kept in confinement for an appreciable period of time without a proper sentence following on conviction after a proper trial. It is therefore the solitary exception to Magna Carta."

At every stage of the often slow progress from arrest to trial and sentence, someone must decide whether the accused will be allowed to continue his normal life while awaiting the next step, or whether he must be held in custody. Every decision involves balancing the right to liberty of someone who is legally presumed to be innocent against the need of society to ensure that accused people are brought to trial. The test to govern the discretion of the court on an application for bail has been stated as far back as 1854 as being the probability of the accused appearing to take his trial. In *R. v. Lythgoe* [1959] St.R.Qd.5;45Q.J.P.R.34, Mansfield S.P.J. summarised the three main tests of the probability of a prisoner appearing to take his trial as being: (a) the nature of the offence charged; (b) the probability of a conviction; and (c) the severity of the punishment which may be imposed. The learned judge also listed a number of other circumstances which are relevant to consider in appropriate cases, but which do not outweigh the general principles enunciated.

In December, 1976 the Australian Institute of Criminology published a study entitled Bail Issues and Prospects by W. Clifford and L.T. Wilkins. This expanded study followed an earlier Administrative Report of the Institute, and an examination of the Report of the New South Wales Bail Review Committee (August, 1976), of the Report of Victorian Statute Law Revision Committee (February, 1975), and of the Report of the United Kingdom Working Party (November, 1973). The Victorian Committee travelled to the United States of America and to Canada to hold discussions and to examine legislation and procedures. All reports more or less agreed on the principles to be applied in considering bail - that in case of minor charges there should be a right to release and in most other cases there should be a presumption in favour of release on bail - and concluded that many persons held in custody awaiting trial should have been allowed bail.

Bail should be fair to accused and to the public

Bail, to be a useful and just method of providing for the adjournments and delays that are often necessary, has to be fair to both the accused and the public; it has to be administered with an even hand and, in justice, not offered to some but not to others without the reasons being clear and declared. At the same time it must have the effective sanctions necessary to ensure the appearance of the accused at his trial, to discourage absconding and to protect the public. The threat of forfeiture of one's goods as a deterrent against breaking the conditions of release proceeds on the assumption that an accused has property. This poses the question whether an indigent can be denied freedom (where a wealthy man would not) because he does not happen to have enough property to pledge for his liberty. Similar considerations would apply to grant of money bail. Surveys in New South Wales and Victoria have shown quite a large proportion of persons held in custody awaiting trial had been granted bail but had not been able to obtain the sureties required. A similar situation undoubtedly exists in Queensland. This demonstrates clearly that a person who is not in a socially advantageous position has greater difficulty in meeting the requirements for bail, so that the operation of the present system discriminates against those who are least favoured economically or socially in the community.

We believe there is need for reform in relation to bail. Only a very small proportion of persons released on their own recognizance have sufficient property or assets on which the amount of the recognizance, if estreated, could be levied. A person with such assets is unlikely to abscond and self bail could therefore be said to be effective in his case, but it is no deterrent whatever to a person without assets. If the latter decides to abscond it would not make the slightest difference to him whether he is bound in the sum of \$10 or \$10,000. The surety system as it now operates is not entirely satisfactory. The traditional role of the surety has little practical application today. It was feasible during the early years of Queensland when the mobility of the work force was very limited, when there was little travel across state and international boundaries, and when employers, family and community members could reasonably be expected to exercise some practical supervision over an accused for whom they acted as surety. These conditions ceased to exist at least fifty years ago. A person accepted as a surety executes a recognizance for a certain sum which he acknowledges as a debt to Her Majesty if the accused fails to appear. In the majority of cases the surety lodges the amount of money with the Clerk of the Court as security. Upon the due appearance of the accused at all times required by the recognizance the money deposited is returned to the surety, but if the accused fails to appear the recognizance is forfeited and the court orders that it be estreated. The principal and/or the surety may apply to the Attorney-General to waive the estreat, and it appears reasonable that such application should be granted where the default is due to mistake of date or place or to illness.

It has been suggested by writers that the forfeiture of an often substantial sum of money is too harsh and unjustly penalises a surety for the default of a principal. However on entering into a recognizance the surety freely accepts the obligation and is made fully aware of the penalty to which he is liable in case of default. Moreover, section 94A of the Justices Act (inserted by the Act of 1949) provides -

"No person shall be accepted as a surety if it appears on the administering of an oath to such person that it would be ruinous or injurious to such person or his family should the recognizance be forfeited for any non-compliance with any of the conditions therein."

Statistics

The report of the New South Wales Bail Review Committee included statistics on bail absconding from the superior courts published by the Australian Bureau of Statistics. This showed the number of absconders in 1968 was 1.2% of the total committals. The percentage increased to 3.6% in 1972 and to 6.02% in 1974. The Committee undertook a study to obtain information on people in custody in New South Wales because of refusal of bail or inability to pay the amount set. This was done by a census conducted simultaneously in gaols, police stations and lockups, and child welfare establishments at 10.00 a.m. on Sunday 22nd August, 1976 covering all unconvicted people in custody who had been charged with an offence, and all convicted defendants awaiting appeal.

The census was conducted by the New South Wales Bureau of Crime Statistics and Research and the results published in May, 1977 in Research Report 1. A total of 738 cases were included in the study comprising 443 held in gaols, 103 in police stations and 192 in child welfare establishments. Of these 131 (29.7%), 84 (81.6%) and 14 (7.3%) respectively had had bail set but had not been able to meet the bail requirements. In 54 cases (24.1%) the bail was in the range \$1 - \$50, in 64 cases (28.6%) \$100 - \$200, in 67 cases (29.9%) \$250 - \$500, and in the remaining cases in excess of \$550.

Over 80% of the 229 held in custody because they could not meet the bail were low income earners, i.e. they either had no income or an income not exceeding \$100 per week.

The Committee conducted a further survey in respect of the Court of Petty Sessions at the principal cities in New South Wales. The Clerk of Petty Sessions at each court furnished a return in respect of each defendant as to whom a bail decision had been made on his first appearance at court after arrest and whose case was completed in November, 1975 and May, 1976. The cases included children appearing in children's courts - those ordered to remain in a shelter or place of safety were treated as refused bail, and those allowed home were treated as allowed at large. Data available at time of publication was as follows:-

Bail decisions	<u>1527</u>
Allowed at large	579
Self bail, no cash deposit	284
Self bail, cash deposit in lieu of surety	75
Surety required	356
Bail refused	<u>233</u>
TOTAL	<u>1527</u>

In 56.5% of cases defendant allowed at large or on self bail without lodging cash

In 15.3% of cases bail refused

In only one (1) case of 75 where self bail with cash deposit did defendant fail to enter bail at court

In 32.9% of cases where surety or cash deposit in lieu of surety required (142/431) the defendant failed to enter bail that day at court

In 39.6% of cases where a surety was required (141/356) the defendant failed to enter bail that day at court

Of the defendants in respect of whom a bail decision was made, 1 in 4 left the court in custody (375/1527)

Outcome of case after bail refusal

Of the 233 refused bail in the above sample, 4 were later committed for trial and 2 were extradited to other States. Of the remaining 227 finally dealt with at Magistrates' Courts:

- 66 (29%) received a custodial sentence
- 31 (13.7%) were committed to Hospital under the Inebriates Act
- 130 (57.3%) did not receive any kind of custodial sentence

Of the 233 refused bail, 24.2% were legally represented and 75.8% were not legally represented. Of the types of offences charged against those refused bail, the largest group was "Offences against property" 27.8%, followed by "Offensive behaviour and like offences" 25.8%, "Neglected/uncontrollable child" 17.2%, "Drug offences" 7.7%, "Driving offences" 6.9%, "Offences against enforcement of order" 5.6%, and "Fraud" 4.3%.

The Victorian Statute Law Revision Committee reported that a survey was carried out at its request by a research officer of the Social Welfare Department, who interviewed 95 men held in the Remand Section at Pentridge on 28th October, 1974. This number represented 76% of all prisoners awaiting court hearing, the other 24% had to attend court on that day and could not be interviewed. The result showed 7 (7.4%) had not requested bail, 38 (40.0%) had been refused bail, and 50 (52.6%) had bail set. Of the 50, there were 43 who could not raise the bail, 5 who claimed they could raise the bail but had not been able to contact the relevant person, and 2 who claimed it was not worth being out on bail because their court case was soon. Of the total number, 32 men (33.7%) were legally represented at their preliminary remand hearing. This number comprised 18 who had bail set, 13 who had been refused bail and 1 who had not requested bail.

A study conducted by the Planning and Research Branch of the Queensland Police Department into persons delivered into custody at the Brisbane City Watchhouse over a three month period in mid-1977 shows that out of a total of 2636 (excluding drunkenness charges) police bail was granted by recognizance in 896 cases (34%), cash bail was allowed in 336 cases (12.7%) and bail was not granted in 1404 cases (53.3%). The reason why bail was not granted at the Watchhouse is shown in the following table -

REASON FOR NO BAIL	NUMBER HELD	PERCENTAGE OF TOTAL (%)
Direct to Court	582	41.4
Address not verified	92	6.6
No fixed place of abode	121	8.6
Unemployed/No ties	22	1.6
Previous convictions	70	5.0
Warrant of Commitment unpaid	53	3.8
No power to grant bail	23	1.6
No cash for bail	124	8.8
Declined to accept bail	35	2.5
Further charges	98	7.0
Warrant Apprehension/Mesne warrant	24	1.7
Extradited from Interstate	6	.4

Cont...		
Seriousness of offence	86	6.1
Arrest by appointment	5	.4
Wanted for further questioning	6	.4
Taken into Custody (usually juveniles to Wilson Youth Hospital)	57	4.1
TOTAL	1,404	100.0

Of the 1404 not granted watchhouse bail, 861 were finally dealt with on their appearance in court, 538 were granted bail by the court on their first appearance and only 5 were refused bail (2 being charged with murder and 3 with other serious offences).

The most common offences included in this three month study were -

OFFENCE	PERCENTAGE OF TOTAL (%)
UIL drive Motor Vehicle	29.7
Stealing	15.4
Drug Related Offences	8.4
Obscene Language	6.6
Break and Enter and Steal	4.1
False Pretences	3.3
Unlicensed Driver	2.6
Unlawful Use of Motor Vehicle	2.5
Wilful Destruction	2.5
Vagrancy	2.2
TOTAL	77.3

Absconding an offence

The purpose of bail being to ensure the appearance of a defendant upon adjournment, remand or committal, we do not consider that a recognizance binding him in a particular sum provides an effective sanction. This has obviously been recognised also by the courts for many years, hence the requirement of sureties in the majority of bail approvals. As has been pointed out earlier the present surety system discriminates against the less affluent section of the community. This is clearly shown by the figures in the New South Wales and Victorian surveys of the number of prisoners unable to raise the necessary sureties.

Both the American and Canadian bail systems adopt the principle that a person charged with an offence is prima facie entitled to be released on his personal recognizance pending trial. The Bail Act 1976 (England) provides in s.6 that if a person released on bail fails to appear he shall be guilty of an offence. The Victorian Committee recommended that if an accused fails to appear in court, his failure to appear after being released on bail should be treated as a separate offence. The New South Wales Committee recommended similarly. The Victorian recommendation was adopted in the Bail Act 1977 passed on 10th May, 1977.

We consider that legislation should be enacted in Queensland to provide that failure to appear as required after release on bail is a separate offence. We accept the principle of prima facie right to release on bail and believe that a provision that failure to appear shall be a separate offence punishable by imprisonment would be a more effective sanction than a recognizance in a sum of money.

Cash bail

Section 69A of the Justices Act empowers a police officer during his attendance at a police station to take bail in respect of a person taken into custody for a simple offence and delivered into his custody. The most common form of bail is by deposit of a sum of money - in other words "cash bail" - and in a majority of cases the person charged does not appear and the court orders that the amount of bail be forfeited. Rarely is a warrant applied for, nor is subsequent action taken by way of complaint and summons. The amount of the cash bail becomes a type of penalty in a similar manner to "on the spot" tickets for traffic and like offences. The accused is generally happy to forfeit his bail and avoid the inconvenience of a court appearance and the risk of a conviction. This practice has existed for many years and there appears to be no persuasive argument against it. The purpose of bail is to ensure the appearance of the accused to answer the charge, but in the case of what has become known as "watchhouse" or "cash" bail this is not so. This system of "watchhouse bail" by deposit of a sum of money should be retained, and should be an exception from provisions that failure to appear shall be an offence. The system operates satisfactorily, it is not contrary to any principle of justice, it is of advantage to a person charged with a minor type of offence whilst not depriving him of any right to a hearing, and it has an added advantage of reducing time occupied in the Magistrates Courts and by the police. An extreme example of the chaos that would result from requiring attendance of all persons charged with any minor offence is the figure of 2609 persons arrested on a charge of being found drunk in a public place and released on a nominal cash bail during the three month period referred to earlier. The statement in writing, similar to the statement required under s.69A(5) of the Justices Act to be given to defendant, should set out clearly that if he fails to appear at the time and place shown therein the amount of cash deposited will be forfeited but that he will not commit a further offence by not appearing. Police officers in charge of a watchhouse or lockup should be instructed not to use the cash bail system in any case where the appearance of the defendant is required or necessary under any Act e.g. s.1. of the Gaming Act, s.16 of the Traffic Act, and s.106, 108 and 110 of the Racing and Betting Act or where he considers or the arresting officer intimates that the charge is one that should be heard and determined by the court. In any such case, and in the case of any charge of an indictable offence, if the authorised police officer is satisfied that the defendant should be bailed, he should release him on his signing an undertaking to appear at the time and place set out therein.

Right to bail

In most sections in the Justices Act referring to bail it is provided that justices may order the discharge of a defendant upon recognizance. The onus is on the defendant to ask for bail and some authors claim that many persons are held in custody because they were unaware of this onus. This criticism appears to be largely unjustified in Queensland because in most cases the justices will ask an unrepresented defendant if he applies for bail. Any problem which might exist would be overcome by enactment of a general right to bail; statutory exceptions would be those cases as set out in s.114 of the Justices Act, and other exceptions should be defined as has been done by the English Bail Act 1976 in Schedule 1, which provides as follows -

" Exceptions to right of bail

2. The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would -

- (a) fail to surrender to custody, or
- (b) commit an offence while on bail, or
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

3. The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

4. The defendant need not be granted bail if he is in custody in pursuance of the sentence of a court or of any authority acting under any of the Services Acts.

5. The defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part of this Schedule for want of time since the institution of the proceedings against him.

6. The defendant need not be granted bail if, having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act."

Apart from enacting the right to bail these provisions do little more than provide legislative backing for what has become accepted practice in our courts, which itself is desirable.

Bail information sheets

We are still left with the problem of how sufficient information can be put before the courts to enable a bail determination to be reached. The factors generally relevant are (1) the probability of appearance, (2) the interests of the accused, and (3) the interests of the community.

1. Probability of appearance:- This is the major factor as the whole object of bail is to ensure attendance at trial. Reliable information is necessary, including defendant's character, employment, history, residential stability, family ties and the strength of any community links. Against this information must be balanced the extent of incentives to avoid trial, including nature and seriousness of the charge, the length of a possible sentence and (on committal) the strength of the prosecution case.

2. Interests of the accused:- The period the defendant would be held in custody, and the conditions under which he would be held are relevant, as also is his need to be free to consult legal advisers and to assist in the preparation of his defence.

3. Interests of the community:- Considerations under this heading include the likelihood of the defendant interfering with evidence or intimidating witnesses, the possibility that he may commit further offences if released on bail, and the fact that he has been arrested on the present charge whilst on bail in respect of an earlier charge.

Often the court is entirely dependent on the police to supply such information, particularly in the case of unrepresented defendants. Quite frequently the information available to the prosecutor is inadequate. When a court appearance is only hours after apprehension there may not have been sufficient time to verify information supplied or the defendant may have declined to give information to the police.

The United Kingdom Working Party rejected many alternatives for presenting information as impractical and recommended that court staff fill in a standard form for every defendant brought into court from custody. This form would be handed to the magistrate in remand cases and from it the Working Party believed he could have the basic information in far less time than would be occupied questioning the defendant in court. In more than 120 courts in various American States the procedure known as the "Manhattan Bail Project" has been adopted with apparent success. This procedure devised by the Vera Institute depends on a score to provide an objective test for identifying people who can safely be released. Its preparation by a separate agency, independent of the police and the courts, would suggest that justice would be seen to be done. However with the number of courts scattered throughout Queensland it would be impractical here. Use of the Probation and Parole Service to collect and verify bail information is possible only in the major centres. The work is essentially administrative and it appears that if a standard bail information sheet is to be introduced its preparation should be the responsibility of the clerk of the court and his staff.

If the prosecutor objects to bail or disputes the correctness of any information so supplied, or if the defendant disputes any information brought forward by the prosecutor in support of his objection to bail, the court should remand the defendant in custody (preferably for a maximum of two days) to allow for verification of any relevant information in dispute. On the information supplied, as verified or accepted, the court would consider if there is any reason why the defendant should not be released on his own undertaking to appear on the adjourned date. The court might approve bail but consider that certain conditions or sureties should be required.

Conditions of bail

The Justices Act 1974 (Tasmania) summarises "conditions" in these words in the new section 35 -

"(3) Without limiting the generality of subsection (2), the orders that a justice may make under that subsection include orders (e) controlling the conduct of the defendant, requiring him to report at specified places at specified times, and limiting his movements and social intercourse."

(Section 35 relates to persons taken into custody without warrant, for a simple offence and brought before a justice for consideration of bail.)

The Australian Law Reform Commission's proposal as to conditions is set out in paragraph 184 of the 1975 "Criminal Investigation" report as follows -

"184. The different kinds of general conditions which might be imposed should be set out in systematic form in the legislation. As we foreshadowed above the conditions should be set out in the form of a priority list laid out in an increasing order of stringency. Everyone in respect of whom a decision to release on bail is made should be required to sign a simple form of 'undertaking to appear'. Thereafter, any additional conditions that might be imposed will depend on the responsible officer's assessment of what is necessary to ensure the appearance of the defendant, prevent him intimidating witnesses, or to satisfy any of the other criteria upon which bail might be granted. He should consider each of the following options in the order stated:

- (a) unconditional release;
- (b) release conditional on the defendant's signed agreement to observe any non-financial conditions as to his conduct reasonably imposed by the responsible officer;
- (c) release conditional on the signed acknowledgement from a third party, acceptable to the responsible officer, that he is acquainted with the defendant and regards him as a responsible person likely to appear as instructed if released;
- (d) release conditional on the unsecured agreement of the defendant, or any other person acceptable to the responsible officer, to forfeit a specified sum of money if the defendant fails to appear as instructed;
- (e) release conditional on the secured agreement of the defendant, or any other person acceptable to the responsible officer, to forfeit a specified sum of money if the defendant fails to appear as instructed; and
- (f) release conditional on the payment by the defendant or any other person acceptable to the responsible officer of a specified sum of money to be forfeited if the defendant fails to appear as instructed.

Notwithstanding the above order of dealing with the bail question an arrested defendant should have the right to request release on any terms acceptable to the responsible officer regardless of the priority listing."

Option (c) moves away from the traditional view of the surety's role, namely that of being personally financially responsible for the defendant's failure to appear. What is retained is the notion of the value of the surety being his good opinion of the defendant; the good opinion, that is, of a person who appears to the bail decision maker to be trustworthy. The concept of the financial responsibility of the surety has long been criticised by authors and in the reports of the various committees, as has been set out earlier in this report. However, we do not consider that option (c) would provide a satisfactory alternative. The testimony of such a third party at the hearing of a bail application might assist or influence a court in making a decision as to bail, but that would be the only practical value of any such opinion.

The Commission points out that so far as the money bail provisions (d), (e) and (f) of their proposals are concerned, which graduate from an unsecured promise to pay, through a secured promise, to a cash deposit, it is not intended that the alternative here allowed of payment by an acceptable third person be simply an old-fashioned surety provision. Payment by a third person should not be required under any circumstances as a form of guarantee, but should be permissible as a means of assisting the defendant if he cannot raise the cash or security himself.

Tasmanian report

Following the distribution of a Working Paper, the Law Reform Commission of Tasmania on 22nd December, 1976 presented to the Attorney-General a "Report on Powers of Arrest, Search and Bail". After giving consideration to the Australian Law Reform Commission Report No.2 "Criminal Investigation", the Commission reported as follows in relation to bail -

"6. BAIL. Sections 34 to 36A of the Justices Act, which come into force in June, 1976, provide a new code for bail in this State. However, such provisions do not go as far as the recommendations of the Australian Law Reform Commission. Such Commission has recommended that there should be detailed legislative provisions governing the release of persons on police bail and that as far as possible the principles should be the same for police bail as for court bail. Such Commission also recommended that the conditions on which a person could be released on bail should be more flexible with provision for non-monetary conditions. It also considered that there should be a right of immediate appeal to a magistrate (by telephone if necessary) if bail was refused or if the conditions were considered to be too stringent.

There is a diversity of opinion as to whether legislation should spell out the criteria upon which bail should be granted. These are well known to lawyers. See, for example, The Queen v. Light (1954) 61 A.L.R. 1145. Our attention has been drawn to a Bail Bill which is about to be introduced into the United Kingdom Parliament, following upon certain recommendations made by a Home Office Working Party in 1975. Amongst other reforms, the Bill creates a statutory presumption in favour of the granting of bail to unconvicted defendants and requires that where a remand is necessary, and whether or not the defendant applies for bail, the court must remand him on bail unless it is satisfied that he would be likely to abscond, commit offences or otherwise interfere with the course of justice. These provisions merely seem to be an abridged version of the principles which should at present be judicially applied in respect of bail applications. We think that it is unwise to fetter any judicial discretion, although it is desirable that lay justices should be properly instructed in this respect. However, different considerations may be thought to apply in the case of police officers exercising a discretion under section 34 of the Justices Act. They are really exercising an administrative discretion. On balance, we feel that, provided that there is an appropriate administrative direction given to police officers and provided that there is an immediate right of appeal from such an officer's decision regarding bail, it is not necessary to legislate concerning the principles to be applied when exercising a discretion whether or not to grant bail. (We use the expression 'bail' when referring to section 34, for the sake of simplicity, although the section refers to the release of a person upon his undertaking to appear.)

We think that there is merit in permitting an appeal to a magistrate (by telephone if really necessary) against a decision made by a police officer not to release a person or which requires payment of an excessive sum of money as a condition of his release. Such an appeal should not be permitted unless certain conditions are satisfied. We spell these out in Appendix B."

Conclusion

All Committees and researchers who have reviewed the bail systems have questioned the efficacy of, and have drawn attention to the discriminatory nature of, the present system of sureties. The New South Wales Committee summarised its conclusion by saying:-

"The system's present operation tends to act as a substitute for the court making an informed judgment about the defendant's reliability. The courts can abdicate their responsibility to do this by requiring a surety in a large sum, on the basis that if the defendant can find someone to vouch for him to this extent, he must be reliable. This short-cutting of the bail decision is undesirable and unwarranted."

This statement may be applicable to the present practice relating to bail in Queensland. In possibly the majority of applications the police prosecutor is heard to say "we do not object to bail provided substantial sureties are imposed". Whilst recognising the discriminatory nature of the surety system we feel, as has obviously been decided in the new English and Victorian legislation, that the system cannot be entirely abandoned. Where a court or justice after proper consideration is not prepared to grant bail under any of the other options, it is preferable that bail be granted with sureties rather than be refused. We stress that this should be the final consideration after all other available options have been exhausted. It is desirable that a priority list of bail options should be set out as guide lines in new legislation.

The English Bail Act 1976 (15th November, 1976) and the Victorian Bail Act 1977 (10th May, 1977) are the two most recent examples of separate legislation to make provision in relation to bail in criminal proceedings. We consider that a separate Act should be enacted in Queensland.

PROVISIONS OF THE DRAFT BILL

The draft Bill is arranged in seven Parts, as follows -

PART I - PRELIMINARY

1 - 5 The five clauses in this Part - Short title, Commencement, Arrangement, Repeal and savings and Meaning of terms - do not require any comment.

PART II - GRANT OR EXTENSION OF BAIL

6. Clause 6 excludes from the provisions of this Part "cash bail" for simple offences granted by a member of the police force under cl.32.

7. Clause 7 provides for the grant of bail by the officer in charge of a police watchhouse. It imposes a duty to grant bail when the person arrested cannot be taken before a court within twenty-four hours, and requires that the police officer endorse on the relevant papers his reason for refusal to grant bail.

A failure by a police officer to endorse his reason shall not render the custody unlawful. We feel this protection is necessary in the event of a failure by oversight or pressure of work in relation to endorsement.

8 - 9 Clause 8 authorises a court to grant, extend or vary bail and also to allow a person charged for a simple offence to go at large without bail. Clause 9 imposes a duty on the court to grant bail, subject to the provisions of the Bill.

10. Clause 10 is intended to replace the provisions of s.555 of The Criminal Code. In the working paper we had recommended that s.555 be left untouched and that cl.18 of the draft Bill provide that the provisions of Part II of the draft Bill should not derogate from any right of application to the Supreme Court which any person might have apart from the provisions of that Part. However we now think that for convenience the provisions of s.555 should be inserted into this draft Bill and that the original cl.18 be deleted. We have extended the provision to cover all offences.

11. Clause 11 repeats the provisions of s.114 of the Justices Act and reserves to the Supreme Court or a Judge thereof the sole power to grant bail in respect of the crimes set out. It has been represented to us that these crimes should include serious drug offences. However we have viewed the matter in the context of a general bail Act and, for this reason, have kept to the traditional formula. The crimes set out in cl.11 are all punishable by mandatory life imprisonment. They were previously capital offences.

12. The purpose of the draft Bill being to ensure that proper and uniform consideration will be given to bail applications and that conditions imposed will not be made more onerous than the particular circumstances require, cl.12 sets out the sequence in which a court should consider the nature of bail appropriate to the case, commencing from release on an undertaking without sureties or security through to release on an undertaking with a security deposit and with sureties. Sub-clause (2)(b) would meet the circumstance where an accused resides at a place remote from where he is charged and is not able to provide a surety, and the court is not satisfied to grant him bail on his own undertaking. Should he fail to appear, the security becomes forfeited under cl.35.

13. On consideration of bail the court must have regard to the various matters in respect of which objection to bail may be taken and may impose such conditions of bail as appear necessary. Sub-cl. (2) provides for attendance for medical examination as a condition of bail. Sub-clause (2) of cl.11 of the original draft was too widely drawn and we now consider that such provision should be limited to an examination which could have been made pursuant to s.259 of The Criminal Code if the defendant had been kept in custody.

14. This clause provides general criteria to be applied in determining bail applications. The presumption of bail necessitates the specification of an exhaustive list of clearly defined criteria on which bail may be refused. Sub-clause (2) provides guidelines as to considerations to be taken into account in assessing whether in relation to any event mentioned in sub-cl. (1)(a) the circumstances constitute an unacceptable risk.

15. The procedure on application for bail outlined here merely puts into legislative form the general procedure at present followed.

16. A great deal of publicity of a sensational nature is often given by the media to allegations outlined by a prosecutor when opposing bail and frequently also to counter-allegations made by the legal representative of an accused person. We consider that in some cases such publicity could prejudice the fair trial of a person and that therefore a court should be given the power to prohibit the publication of any part of bail proceedings, including reasons which might be given for refusing bail.

17. It is required by cl.7(2) that a police officer endorse on the relevant papers his reasons for refusing to release a person on bail. This clause imposes a similar duty on a court, and also requires that consent to bail be endorsed on the record and on any warrant issued. Section 116 of the Justices Act already provides that in the case of a charge of an indictable offence the justices shall certify on the back of the warrant of commitment their consent to bail, and s.118 provides for the issue of a duplicate of a certificate of consent to bail.

18. This clause makes legislative provision for what has been general practice in relation to renewed applications for bail. It provides that any court empowered by cl.8 to grant bail may hear any renewed application and may make any such order as it thinks fit. A renewed application is not an appeal against an earlier order as to bail.

PART III - UNDERTAKINGS

19. No longer will a person bailed be required to enter a recognizance whereby he is liable to pay the amount of money specified therein upon forfeiture. Instead, to be released on bail, he will be required to sign an undertaking to appear and surrender himself to the court. Failure to appear will be an offence punishable by imprisonment for a maximum of two years. Under the Bail Act 1976 (Eng.) a defendant is released on his oral promise to appear, but we prefer the provision in the Victorian Bail Act 1977 for an undertaking in writing. Appearance and surrender to custody is the basis of every undertaking. Any other conditions of bail imposed become conditions of the undertaking. At present a person granted bail on more than one charge enters a separate recognizance in respect of each charge. Sub-clause (3)

provides that a single undertaking may be entered in respect of two or more charges when the adjournment or remand is to a common date.

20. The purpose of this clause is to make provision for notification to a defendant and his sureties (if any) of the actual date for his appearance for trial. Upon committal the undertaking which a defendant enters will be for his appearance and surrender at a sittings of a court at a day, time and place to be notified to him and his sureties by the Crown Solicitor. Notification is deemed to be properly effected if sent by post or telegram or delivered by hand to the respective addresses appearing in the undertaking or to a new address subsequently notified by the person concerned to the Crown Solicitor (Sub-cl.(3)). It shall be an offence to fail to notify any change of address from that shown in the undertaking.

We envisage that the Crown Solicitor will only give notice requiring the defendant to attend at a particular day, time and place when he is reasonably certain that the trial will commence on that occasion. He would not give notice requiring the defendant to attend at formal adjournments. If there is a last-minute hitch and the trial does not commence on the date for which it is fixed, the undertaking of the defendant and the sureties (if any) could then be extended in accordance with the provisions of cl.22.

21. The liability to pay a sum of money which becomes due upon forfeiture and estreat of a recognizance has proved ineffectual as a sanction against absconding from bail. The failure of the system is amply illustrated by figures compiled within the Department of Justice which show an annual recovery rate of less than 2% of the total value of estreated recognizances, whereas costs incurred in collection are approximately five times the amount recovered. This clause provides that failure to appear as required by an undertaking of bail shall be a criminal offence punishable by mandatory imprisonment for a maximum of two years, cumulative with any sentence imposed or which the defendant may be undergoing at the time. The necessary facilities for proof provided in sub-cll. (3) and (4) of the draft Bill in the working paper will now be provided in a general clause for facilitation of proof (cl.37).

22. In the case of any further adjournment or remand the court may extend an undertaking of bail and shall endorse particulars of the extension on the undertaking. Upon entering an undertaking a surety may elect to bound only in respect of the original date set out therein, and if he has so elected the undertaking may be extended only with his consent. However if the undertaking provides for its extension without his consent he need not appear to consent to any extension.

PART IV - SURETIES

23. It is recognised that in an appreciable number of cases a court would not grant bail to a defendant without sureties for his compliance with the conditions of bail. The surety undertakes to pay the amount specified if the defendant fails to comply with the conditions of the undertaking. A justice, before accepting a person as a surety, must satisfy himself that the person is at least eighteen years of age and of sufficient means, and will require him to make an affidavit (or declaration) of justification. No doubt in a majority of cases, as at present, the surety will deposit in cash the amount of the bail with proof that it is his own property. Provision for the acceptance of a cash deposit from

a surety and for the application of such deposit in satisfaction of the obligation of the surety upon the undertaking being forfeited is made in sub-cl.(7). Sub-clause (7) also provides, as does s.94A of the Justices Act, that a person shall not be accepted as a surety if it appears that forfeiture of the undertaking will be ruinous or injurious to him or his family.

24. The purpose of this clause is to provide for the cases where the surety cannot meet with the defendant to enter the undertaking.

25. Indemnifying a surety will be an offence for which a substantial penalty is provided.

26. The estate of a surety who dies before an order forfeiting an undertaking is made will not be subject to liability in respect thereof. If the circumstance of death is known before the date the defendant is required to appear, he may be required to find another surety.

27. At any date before the defendant is required to appear, a surety may apprehend him and bring him before a court. He may obtain assistance from any member of the police force if necessary.

28. Instead of apprehending the defendant, a surety may apply to the court which granted the bail to be discharged from his liability. Sub-clauses (2), (3) and (4) are machinery provisions.

PART V - ARREST OF PERSON ON BAIL

29. The issue of a warrant for the apprehension of an absconder does not prejudice any right of action for breach of an undertaking. Where the warrant was issued by a judge of the Supreme Court or of a District Court, the provisions of s.101 of the Justices Act, 1886 - 1978 apply upon the apprehension of an absconder. It appears that in a majority of cases a charge under cl.21 will follow apprehension under such a warrant.

30. We consider it is desirable that members of the police force should have power to arrest without warrant in defined circumstances. The delay which would occur in having to apply to a court for a warrant after a reasonable belief or cause for suspicion arose might well allow a person on bail to abscond and make his apprehension more difficult.

31. The power of arrest without warrant under the previous clause will probably be exercised only in what might be described as circumstances of emergency. Upon application, if a court is of opinion that it is necessary or advisable in the interests of justice that bail should be revoked or varied, the court may issue a warrant of apprehension. Sub-clause (1) of cl.31 gives to the court which admitted a person to bail and to the Supreme Court or a judge thereof the power to issue a warrant of apprehension if it is of opinion that the bail should be revoked or varied. Application in this regard can be made by the Crown or by the complainant. It is intended that this clause will also facilitate the obtaining of a warrant in the case of a defendant who has fled the State with an apparent intention of absconding from bail.

PART VI - CASH BAIL

32. The release of persons arrested for minor offences on what is commonly referred to as watchhouse or cash bail by the keeper of a police watchhouse has become such an integral part of our legal system that we consider it must be retained as distinct from the provisions of Part II. The statistics of a study conducted at the Brisbane City Watchhouse for the months of June, July and August 1977 are set out in the General Introduction to this paper and require no further comment here. This clause embodies the provisions of s.69A of the Justices Act, which it will replace, with the requirement in sub-cl.(6) of additional particulars to be included in the statement given to the defendant, and a further provision in sub-cl.(9) that failure to appear on cash bail will not constitute an offence under cl. 21. This clause authorises the release on cash bail in respect of "any offence that is neither an indictable offence nor an offence listed in the Third Schedule". As the police officers will be exercising an administrative function they will quite obviously follow directions from their Commissioner as to the simple offences in respect of which they use this discretionary power. The Third Schedule will comprise a list of the simple offences in relation to which there is a statutory requirement for the personal appearance of a defendant.

PART VI - MISCELLANEOUS

33. This clause makes provision for the cases where a person on bail is arrested on another charge. It does not affect the discretion of a court to grant bail on the new charge, but if bail is refused and the defendant is committed to prison the obligations of the surety are suspended whilst the defendant remains in custody. In Brisbane during the 12 months to 30th June, 1977 a total of 142 persons committed further offences whilst on remand on bail.

34. A recognizance of bail may be forfeited when a defendant fails to appear. Doubt must exist in the minds of many justices as to whether they have a discretion in relation to forfeiture, the Justices Act being strangely silent on this point. Section 95 provides that any justice "-----may certify upon the back of the recognizance in what respect the conditions have not been observed, ----- and such certificate shall be deemed sufficient prima facie evidence of the recognizance having been forfeited." The certificate provided in Form 22 is as follows: "I hereby certify that the said A.B. did not appear at the time and place in the condition of the within-written recognizance mentioned." It is perhaps significant that the Notice of Recognizance (Form 21) to be given to the defendant and his surety ends with the words "----- and unless you appear accordingly, the recognizance entered into by you A.B. and by L.M. as your surety will forthwith be put in suit and enforced against you and him." It appears that forfeiture is automatic, but that justices have a discretion whether to endorse a certificate on the recognizance together with the further endorsement required under s.4 of the Crown Remedies Act 1894 - 1976. The Justices Act does not specifically give any right to a surety to be heard prior to forfeiture nor any discretion to a court to order forfeiture in respect of a lesser amount of money than is secured by the recognizance. It is noted that s.96(3) of the English Magistrates Courts Act specifically provides that the court may in its discretion require a surety to forfeit part only of the bail money. Relevant considerations are enunciated in R.

v Southampton Justices (1976) I Q.B.11 and in R. v Horseferry Road Stipendiary Magistrate (1976) I W.L.R.511, and also in Yelash v The Queen (1971) N.Z.L.R.447 and R. v Jordan (1966) Tas.L.R.178.

Clause 34 will confer upon the court forfeiting the undertaking a discretion to adjudge that a surety pay part only of the sum in which he is bound under the undertaking. We feel that such a discretion, which does not exist at the present time, is desirable. It may be exercised only at the time of the forfeiture. If it is felt desirable to confer further rights on a surety to have his obligation reduced, the necessary provisions could be placed in a Crown Proceedings Act upon which the Law Reform Commission has issued a separate report. See Q.L.R.C.24.

35. This clause gives power to a court to make a similar order in relation to forfeiture of money or other security deposited by or on behalf of a defendant for his release on bail under cl.12(2)(b) or cl.12(2)(d).

36. Offences against cll.16, 20 and 25 may be prosecuted in a summary way under the Justices Act within twelve months after the commission of the offence.

When a person is brought or appears before the court that has issued a warrant of apprehension under cl.29, or a court of like jurisdiction, he shall be charged with an offence against cl.21 and that court shall have jurisdiction to deal summarily with the charge. The limitation of twelve months will not apply to such charge.

An appeal shall lie from an order or decision made by such court.

37. This clause contains evidentiary provisions only.

38. Regulations will be necessary to provide Forms and for other purposes of the Bill. We have provided in the Second Schedule for certain Forms. This was felt necessary for the purposes of the working paper to facilitate an understanding of the proposed system of Undertaking of Bail. We recognise that it may be considered desirable that all Forms be provided by Regulation.

DRAFT BILL

BAIL

A Bill to amend and consolidate the law of bail in criminal proceedings.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

1. Short title. This Act may be cited as the Bail Act 197 .
2. Commencement. This Act shall commence on a day to be fixed by Proclamation.

3. Arrangement. This Act is arranged as follows :-

PART I - PRELIMINARY, ss.1-5;
PART II - GRANT OR EXTENSION OF BAIL, ss.6-18;
PART III - UNDERTAKINGS, ss.19-22;
PART IV - SURETIES, ss.23-28;
PART V - ARREST OF PERSON ON BAIL, ss.29-31;
PART VI - CASH BAIL, s.32;
PART VII - MISCELLANEOUS, ss.33-38;
SCHEDULES

4. Repeals, amendments and savings. (1) The Acts mentioned in the First Schedule to the extent thereby expressed to be repealed or amended are hereby repealed and amended accordingly.

(2) Without limiting the operation of the Acts Interpretation Act 1954 - 1977 -

- (a) all persons things and circumstances appointed existing or continuing under any such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed or amended;
- (b) in particular and without affecting the generality of the foregoing paragraph, such repeal or amendment shall not disturb the continuity of status operation or effect of any application bail determination order warrant recognizance affidavit declaration certificate liability or right made effected issued granted given entered into fixed accrued incurred acquired or existing or continuing by or under such Acts before the commencement of this Act.

5. Meaning of terms. In this Act unless the contrary intention appears -

"adjournment" includes postponement;

"appeal" includes application for leave to appeal;

- "committal for trial" includes committal for sentence;
- "convicted" includes found not guilty on account of unsoundness of mind;
- "court" means court judge or justice whether sitting in court or chambers or acting in any other manner whatsoever, and includes justices taking an examination of witnesses in relation to an indictable offence;
- "criminal proceeding" means a hearing, trial or appeal in relation to an offence;
- "defendant" means a person accused or convicted of an offence and includes any such person who is a party to a criminal appeal;
- "hearing" means a proceeding before a court, judge or justices dealing summarily with any offence or an examination of witnesses in relation to an indictable offence;
- "offence" includes an alleged offence;
- "prison" includes remand centre or training centre under the Children's Services Act 1965 - 1974 and any other place where persons may be detained in legal custody and "imprisonment" has a corresponding meaning;
- "simple offence" means an offence (indictable or not) punishable on summary conviction before a Magistrates Court by fine, imprisonment or otherwise;
- "trial" means a proceeding wherein a person is charged upon indictment with an offence and includes a proceeding wherein a person is to be sentenced for an offence so charged.

PART II - GRANT OR EXTENSION OF BAIL

6. No application to cash bail. Nothing in this Part shall affect the grant of cash bail by a member of the police force under section 32.
7. Police to grant bail. (1) Where a person who has been arrested for an offence is brought to a police lock-up or watchhouse and it is not then practicable to take him before a court forthwith, the member of the police force who takes custody of him at the lock-up or watchhouse -
- (a) shall inquire into the case; and
 - (b) may, and if it is not practicable to bring the person arrested before a court within 24 hours after he is taken into custody shall, unless the provision of this Act otherwise require, grant the person bail in accordance with this Act.
- (2) A member of the police force who refuses bail under this section shall endorse on the warrant, file or papers relating to that person or in any register or record of persons in custody his reason for refusal.

A failure by a member of the police force to so endorse his reason for refusing bail shall not render the custody unlawful.

8. Jurisdiction of courts to grant bail. (1) A court may, subject to this Act, grant bail to a person held in custody for an offence or extend vary or revoke any bail granted to a person in relation to an offence if -

- (a) the person is awaiting a criminal proceeding to be held by that court for the offence;
- (b) the court has adjourned such a proceeding; or
- (c) the court has committed or remanded the person for a criminal proceeding to be held by that or another court for the offence.

(2) Where a person held in custody for an offence is not granted bail, he shall be remanded in custody unless he has been sentenced for the offence.

(3) Notwithstanding the provisions of subsection (2), a court may allow a person held in custody for a simple offence to go at large without bail during any adjournment of the criminal proceeding for that offence.

For the purposes of section 9, a court that has so allowed a person to go at large is deemed to have granted him bail.

(4) The powers of the Court of Criminal Appeal to grant, extend or vary bail under subsection (1) may be exercised by any judge of the Supreme Court in the same manner as they may be exercised by the Court of Criminal Appeal; but if the judge refuses an application for bail or an extension or variation thereof, the person making the application shall be entitled to have the application determined by the Court of Criminal Appeal.

(5) Where a charge against a person relates to more than one offence, a single grant of bail may be made in respect of all or any of the offences so charged.

(6) Notwithstanding that a person has been granted bail in relation to an offence, he shall not be released on that bail while for any other reason he is lawfully held in custody.

9. Duty of court to grant bail. Where a person held in custody for an offence of which he has not been convicted is before a court empowered by section 8 to grant him bail in relation to that offence, the court shall, subject to this Act, grant bail to such person or extend the bail already granted to him in relation to that offence.

10. Bail by Supreme Court. The Supreme Court or a judge thereof may, subject to this Act, grant bail to a person held in custody for any offence or extend, vary or revoke any bail granted to a person in relation to an offence.

11. Bail in cases of murder etc. Notwithstanding the provisions of sections 7 and 8, no person charged with the crime of treason or murder or any of the crimes defined in the second paragraph of section 81 or in section 82 of The Criminal Code shall be granted bail except by order of the Supreme Court or a judge thereof.

12. Nature of bail granted. (1) Where bail is granted under this Part to a person in relation to an offence, the bail shall be granted subject to an undertaking being entered into by the person.

The conditions of the bail, other than any requirement that money or other security be deposited, shall be made conditions of the undertaking to be entered into by the person to whom the bail is granted.

(2) A court or member of the police force authorised by section 7 considering the release of a person on bail under this Part shall consider the grant of bail in the following sequence, namely -

- (a) the release of the person on his own undertaking without sureties and without deposit of money or security;
- (b) the release of the person on his own undertaking with a deposit of money or other security of stated value;
- (c) the release of the person on his own undertaking with a surety or sureties of stated value;
- (d) the release of the person on his own undertaking with a deposit of money or other security of stated value and a surety or sureties of stated value

and shall grant or refuse bail accordingly.

The court or such member of the police force shall not make the bail any more onerous than appears necessary in the public interest.

13. Conditions of bail. (1) Where bail is granted under this Part to a person in relation to an offence, the court or member of the police force granting the bail may impose such conditions of bail as are necessary to ensure that the person -

- (a) appears in accordance with his bail and surrenders himself into custody;
- (b) does not commit an offence whilst on bail;
- (c) does not endanger the safety or welfare of any person or persons whilst on bail; and
- (d) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person whilst on bail,

but shall not impose conditions of bail that are any more onerous than appear necessary in the public interest.

(2) A court may grant bail subject to a condition that the person to whom the bail is granted undergo an examination at a specified time and place of such a kind that if the person had remained in custody the examination could lawfully have been made upon him pursuant to s.259 of The Criminal Code.

14. Grounds for refusing bail. (1) Notwithstanding the provisions of sections 7, 8, 9 and 10 a court or, as the case may be, a member of the police force authorised by section 7 shall refuse bail to a person if satisfied -

- (a) that there is an unacceptable risk that the person if released on bail would -
 - (i) fail to appear and surrender himself into custody in answer to his bail;
 - (ii) commit an offence whilst on bail;
 - (iii) endanger the safety or welfare of any person or persons whilst on bail; or
 - (iv) interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person whilst on bail;
- (b) that the person should remain in custody for his own protection or, if he is a child within the meaning of the Children's Services Act 1965 - 1974, for his own welfare; or
- (c) that it has not been practicable to obtain sufficient information for the purpose of deciding any question referred to in this subsection for want of time since the institution of the proceedings against him.

(2) In assessing in relation to any event mentioned in subsection (1)(a) whether there is an unacceptable risk the court or such member of the police force shall have regard to all matters appearing to be relevant and in particular, without in any way limiting the generality of the foregoing, to such of the following considerations as appear to be relevant, that is to say -

- (a) the nature and seriousness of the offence in relation to which the bail is sought;
- (b) the character, antecedents, associations, home environment, background and place of residence of the person;
- (c) the history of any previous grants of bail to the person; and
- (d) the strength of the evidence against the person.

15. Procedure on application for bail. In any proceeding with respect to bail of a person -

- (a) the court may, subject to paragraph (b), make such inquiries on oath or otherwise of and concerning the person as the court considers desirable;
- (b) the person shall not be examined or cross-examined by the court or any other person as to any offence with which he is charged and no inquiry shall be made of him as to any such offence;
- (c) the court may take into consideration any relevant matters agreed upon by the complainant or prosecutor and the accused or his counsel or solicitor.

16. Restriction on publication of bail proceeding. (1) Where the complainant or prosecutor or any person appearing on behalf of the Crown opposes the grant of bail to any person the court may make an order directing that the evidence taken, the information given or the representations made by either party, or any reasons given by the court or any part of such evidence, information, representations or reasons shall not be published by any means -

- (a) if a preliminary inquiry is held - before the person in respect of whom the application is made is discharged; or
- (b) if the person in respect of whom the application is made is tried or committed for trial - before the trial is ended.

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

Penalty : \$500 or imprisonment for six months.

17. Court to endorse bail decision on record of proceedings and on warrants. Where a court grants bail or refuses bail the court shall cause to be endorsed its decision as to bail on the record of the proceeding and also on the warrant of remand or committal (if any), certifying -

- (a) where bail is granted - consent to the person being bailed, and also the amount of any money or security to be deposited, the amount of any surety or sureties required, and the conditions of bail; or
- (b) where bail is refused - refusal of bail and the grounds for refusal.

18. Renewed applications for bail. Any person being held in custody in relation to an offence who has been refused bail or, having been granted bail, objects to some amount fixed or requirement or condition imposed for his discharge from custody may make application to a court empowered by section 8 to grant bail or vary the bail granted.

Upon such an application the court may make such order as it thinks fit.

PART III - UNDERTAKINGS

19. Form of undertaking. (1) For the purposes of this Act "undertaking" means an undertaking of bail in writing in the form set out in the Second Schedule or to the like effect signed by a defendant or by a defendant and his surety or sureties that the defendant will comply with the conditions of the undertaking.

(2) Subject to this Act, it shall be a condition of an undertaking that the defendant shall -

- (a) appear before a court at the time and place specified in the undertaking and surrender himself into custody; and

- (b) not depart without leave of the court and will as often as leave is given return at the time appointed by the court and again surrender himself into custody.

An undertaking shall contain such further conditions as are imposed as conditions of the bail.

(3) Where more than one charge is made against a person, a single undertaking may be entered into in respect of all or any of the charges so made.

(4) The justice, or the keeper of a prison, before whom a defendant and his surety or sureties (if any) sign an undertaking -

- (a) shall satisfy himself that the defendant and the surety or sureties (if any) understand the nature and extent of the obligations of the defendant under the conditions of his bail and the consequences of his failure to comply with them; and
- (b) shall give to the defendant and to each of the sureties (if any) a notice of the undertaking of bail in the form set out in the Second Schedule or to the like effect.

20. Notice of time and place of trial. (1) Notwithstanding the provisions of section 19(2), it may be a condition of an undertaking that the defendant shall appear before a court and surrender himself into custody at a sittings of the court at a day, time and place to be notified to him and his sureties (if any) by the Crown Solicitor by notice in writing sent by post or by telegram or delivered by hand.

(2) The sending or delivery of a notice in accordance with an undertaking conditioned as provided by subsection (1) shall be deemed to be properly effected if the notice is sent or delivered addressed to the defendant and to the sureties (if any) at the respective addresses appearing in the undertaking or notified under subsection (3).

(3) A defendant who has entered into an undertaking conditioned as provided by subsection (1) and any surety to the undertaking shall, if he changes his place of residence or business from the place appearing in the undertaking as his address, forthwith notify the change of address to the Crown Solicitor by notice in writing sent by post or by telegram or delivered by hand.

(4) The sending or delivery of a notice pursuant to subsection (3) shall be deemed to be properly effected if the notice is sent or delivered addressed to the Crown Solicitor at his address. For the purposes of this subsection the address of the Crown Solicitor is Comalco House, George Street, Brisbane or such other address as is for the time being prescribed for the purposes of this subsection.

(5) For the purposes of this section, the term "Crown Solicitor" includes any person authorised as prescribed to act for the Crown Solicitor.

(6) Any person who fails to comply with the provisions of subsection (3) is guilty of an offence.

Penalty : \$500 or imprisonment for six months.

21. Failure to appear an offence. (1) Any person released on bail -

- (a) who fails without reasonable cause, the proof of which lies on him, to appear in accordance with his undertaking and surrender himself into custody; or
- (b) having reasonable cause therefor has failed to appear in accordance with his undertaking, fails to appear and surrender himself into custody at the appointed place as soon after the appointed time as is reasonably practicable,

is guilty of an offence.

Penalty : Imprisonment for two years. The court shall upon conviction impose imprisonment.

(2) Where a person is charged with an offence under either subparagraph (a) or subparagraph (b) of subsection (1), he may be convicted of the other of those offences if such other offence is established by the evidence.

(3) The court shall order that a term of imprisonment imposed on a defendant upon a conviction for an offence against this section shall be cumulative and not concurrent with any other term of imprisonment that the defendant is undergoing at the time, or is imposed at the same time as, the firstmentioned term of imprisonment is imposed.

A sentence of imprisonment ordered to be served in default of payment of a penalty or sum of money under this or any other Act shall be deemed to be a term of imprisonment for the purposes of this subsection.

22. Extension of undertaking. (1) Where the bail granted to a defendant is extended under section 8 or otherwise, the court -

- (a) with the consent of the sureties; or
- (b) where the undertaking so provides -
without the consent of the sureties,

may extend any undertaking entered into by the defendant in relation to the bail, and thereupon the defendant shall be bound to appear before a court and surrender himself into custody and otherwise to comply with the conditions of the undertaking according to the terms of the undertaking so extended without entering a fresh undertaking and the sureties shall be bound accordingly, or the court may make such other order as to bail as it thinks fit.

(2) An undertaking may be extended pursuant to subsection (1) if any condition of the undertaking remains to be fulfilled notwithstanding that the defendant has surrendered himself into custody in compliance with the undertaking.

(3) Every undertaking may with the consent of any person or persons offering himself or themselves as surety or sureties contain a provision for its extension without any further consent of the surety or sureties upon such adjournments of the criminal proceeding or upon such remands as are from time to time directed, but nothing in this subsection shall prejudice in any way the right of any person offering himself as surety to elect to be bound with respect to an undertaking which may be extended only with his consent given at the time of the extension.

(4) Where an undertaking is extended by a court pursuant to subsection (1) the court shall cause to be endorsed on the undertaking the time and place at which the defendant shall appear before a court and surrender himself into custody according to the undertaking so extended. The court may cause to be endorsed on the undertaking a condition in terms of the provisions of section 20(1), and thereupon the provisions of section 20 shall apply as though the original undertaking contained that condition.

PART IV - SURETIES

23. Sureties. (1) For the purposes of this Act "surety" means a surety to bail who has signed an undertaking. By signing an undertaking, a surety enters into the undertaking and becomes bound in the sum of money stated in the undertaking to ensure that the defendant complies with the condition or conditions thereof.

(2) Every surety shall be a person who has attained the age of 18 years, who is not under any disability in law, and is worth not less than the amount of the bail in real or personal property or both.

(3) Where a defendant is required to provide a surety or sureties regard may be had in considering the suitability of a proposed surety to the following in addition to any other relevant matters :-

- (a) the proposed surety's financial resources;
- (b) his character and any previous convictions; and
- (c) his proximity (whether in point of kinship, place of residence or otherwise) to the defendant.

(4) Before accepting any person as a surety a justice shall satisfy himself of the sufficiency of the means of the proposed surety and shall require the proposed surety to make before him an affidavit of justification for bail.

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

(6) A justice -

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

(7) A proposed surety, in order to satisfy the justice as to the sufficiency of his means, may deposit in the office of the clerk or the registrar of the court the amount of his surety in cash. If the undertaking is subsequently forfeited by a court the amount so deposited shall be applied in satisfaction of the obligation of the surety. No person shall be accepted as a surety if it appears on the administering of an oath to or the taking of the declaration of such person that it would be ruinous or materially injurious to

him or his family should the undertaking be forfeited for any non-compliance with any of the conditions therein.

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

24. Undertakings out of court. Where a certificate of bail is endorsed on a warrant pursuant to section 17 and it is inconvenient for the proposed sureties to attend at the prison at which the defendant is kept to sign the undertaking, the clerk of the court or the registrar (as the case may be) may make a duplicate of the certificate and upon the certificate being produced to some justice, that justice if satisfied as to his suitability in accordance with section 23 may witness the signature of the surety or the signatures of the sureties on an undertaking in conformity with the certificate. Upon the undertaking so signed being transmitted to the keeper of the prison, the justice or keeper may thereupon witness the signature of the defendant on an undertaking and may order him to be released from custody accordingly.

25. Indemnifying surety an offence. Where any person indemnifies another person or agrees with another person to indemnify that other person against any liability which that other person may incur as a surety, he and that other person shall be guilty of an offence.

Penalty : \$1000 or imprisonment for twelve months.

26. Estate of surety not liable. Where a surety to an undertaking dies before the undertaking is forfeited, his estate shall not be subject to any liability in respect of the undertaking but the defendant may be required to find another surety.

27. Surety may apprehend defendant. (1) Where a defendant has entered an undertaking to appear before a court and surrender himself into custody, if a surety to the undertaking has reasonable ground for suspecting that the defendant will not voluntarily surrender himself, he may before the time appointed for such appearance and surrender into custody apprehend the defendant and bring him before a court that has jurisdiction to grant bail or a justice and all members of the police force shall, if required by the surety, assist him in the apprehension.

(2) The court or the justice may direct that the liability of the surety be discharged and may call upon the defendant to find another surety and, if he fails to do so, shall remand him in custody.

28. Surety may apply for discharge. (1) A surety to an undertaking entered into by a defendant released on bail may at any time apply to a court that has jurisdiction to grant bail to discharge the applicant from his liability with respect to the undertaking.

(2) Upon an application under subsection (1) the court may issue a warrant for apprehending the defendant and bringing him before the court.

(3) On the appearance of the defendant before the court, the court may direct the liability of the applicant be discharged and

may call upon the defendant to find another surety and, if he fails to do so, shall remand him in custody.

PART V - ARREST OF PERSON ON BAIL

29. Warrant for arrest of absconder. Where a person has entered into an undertaking conditioned for his appearance before a court and, in breach of the undertaking, fails to appear the court may, without prejudice to any right of action arising out of the undertaking, issue a warrant for his apprehension.

30. Powers of police officer to arrest. (1) Any member of the police force may without warrant arrest any person who has been released on bail -

- (a) if the member of the police force has reasonable grounds for believing that the person is likely to break the condition for his appearance or any other condition of his undertaking, or has reasonable cause to suspect that the person is breaking or has broken any such other condition;
- (b) if the member of the police force is notified in writing by any surety for the person that the surety believes that the person is likely to break the condition for his appearance and for that reason the surety wishes to be relieved of his obligations as a surety; or
- (c) if the member of the police force has reasonable grounds for believing that any surety is dead, or that for any other reason the security is no longer sufficient.

(2) A person arrested under subsection (1) -

- (a) shall, subject to paragraph (b), be taken forthwith before a justice; or
- (b) where he is arrested within 24 hours before the time at which he is bound by a condition of his undertaking to appear before a court - may be taken before that court at that time.

(3) Where a person is taken before a justice pursuant to the provisions of subsection (2) the justice -

- (a) if he is of opinion that the person has broken or is likely to break a condition of the undertaking - may revoke the bail and commit him to prison with a direction to the keeper thereof that he be brought before the court at the time when he is required by the undertaking to appear or release him on his original bail; or
- (b) if he is not of that opinion - shall release the person on his original bail.

31. Warrant of apprehension to revoke bail. (1) Where the court that has granted bail to a defendant or the Supreme Court or a judge thereof is of opinion that the bail should be revoked or varied, the court or judge on application by or on behalf of the complainant or the Crown may issue a warrant for the apprehension of the defendant.

(2) On the appearance of the defendant before the court or judge, the court or judge may revoke or vary the bail as it or he thinks fit.

PART VI - CASH BAIL

32. Cash Bail. (1) Where a person taken into custody for any offence that is neither an indictable offence nor an offence listed in the Third Schedule is delivered into the custody of a member of the police force during that member's attendance at a police lock-up or watchhouse, and at that time has not appeared before a justice in relation to that offence, that member of the police force may, if he is satisfied that the person cannot be taken forthwith before a justice to be dealt with according to law and if he thinks it prudent so to do, admit that person to bail and release him from custody in accordance with the provisions of this section.

(2) A person may be admitted to bail and released from custody in accordance with the provisions of this section upon his depositing such sum of money as the member of the police force thinks sufficient as security for that person's appearance in accordance with this section before a justice to be dealt with according to law.

(3) Every deposit of money accepted under this section shall be a security for the appearance of the person admitted to bail before a justice at the date, time and place appointed for such appearance and entered pursuant to subsection (4) by the member of the police force accepting such deposit of money in the book to be kept for that purpose at the police lock-up or watchhouse.

(4) The member of the police force accepting such deposit of money shall enter in the book kept for that purpose at the police lock-up or watchhouse -

- (a) the name address and occupation of the person admitted to bail;
- (b) a short statement of the offence; and
- (c) the amount of money deposited and the day time and place appointed for the appearance before a justice of the person admitted to bail.

(5) If the person bailed does not appear at the day time and place when and where he is required to appear and application is made for the issue of a warrant, the said book shall, except in a case provided in subsection (7), be produced to the justice then present.

(6) The member of the police force accepting a deposit of money shall give to the person admitted to bail a statement in writing of -

- (a) the particulars entered by him as prescribed by subsection (4);
- (b) the provisions of subsections (2) and (3) of section 93 of the Justices Act 1886 - 1978; and
- (c) the provisions of subsection (9) of this section.

(7) Where a deposit of money is accepted at a place other than a place appointed for holding Magistrates Courts, the member of the police force accepting such deposit shall cause to be communicated to the watchhouse keeper at the police lock-up or watchhouse at the place where the person admitted to bail is required to appear the particulars entered by him as prescribed by subsection (4) and full particulars of the charge.

Such watchhouse keeper shall cause the particulars communicated to him to be entered in the book kept for the purposes of this section at the police lock-up or watchhouse at which he is watchhouse keeper. If the person bailed does not appear at the day time and place when and where he is required to appear and application is made for the issue of a warrant, the said book shall be produced to the justice then present.

(8) A book purporting to be a book referred to in subsections (4) and (7) shall upon its production, and without further proof, be admitted before any court or justice as evidence, and in the absence of evidence to the contrary conclusive evidence, of all matters recorded or stated therein which are relevant to the proceedings before such court or justice.

(9) The failure of a person admitted to bail and released from custody under this section to appear at the day, time and place appointed shall not constitute an offence under section 21 or any other offence but the amount of money so deposited shall be forfeited.

Nothing in this subsection shall affect the power of a justice or justices to adjourn the hearing or to issue a warrant of apprehension.

PART VII - MISCELLANEOUS

33. Effect of arrest on another charge. (1) Where a defendant is on bail to appear before a court, his arrest on another charge shall not vacate the undertaking entered into by him which shall continue to bind him and his sureties (if any) until he is discharged or sentenced in respect of the offence to which the bail relates.

(2) Notwithstanding anything to the contrary in subsection (1), where a person on bail to appear for an offence is arrested on a charge for another offence, the court may remand him in custody or grant him bail for that other offence.

If the court refuses bail and remands the person in custody, the sureties (if any) in relation to the existing bail are not under any obligation with respect to that bail while he so remains in custody.

34. Forfeiture of undertaking. (1) Where a court before which a defendant is obliged by his undertaking to appear is satisfied that the defendant has failed to comply with an undertaking, the court shall, subject to subsection (2), declare the undertaking to be forfeited and adjudge the sureties (if any) to pay the sum in which they are respectively bound.

(2) The court may, instead of adjudging any surety to pay the whole sum in which he is bound pursuant to the undertaking, adjudge him to pay part only of the sum or remit the sum.

(3) The court shall cause to be certified on the undertaking in what respects the undertaking has not been complied with and any declaration of forfeiture and order made by the court under this section.

(4) An undertaking forfeited in accordance with subsection (1) shall be transmitted to the proper officer to be proceeded upon according to law.

35. Forfeiture of security. (1) Where a deposit of money or other security has been made a requirement of bail declared by a court to be forfeited under section 34, the court shall, subject to subsection (2), adjudge the deposit of money or security to be forfeited.

(2) The court may, instead of adjudging the whole deposit of money or security to be forfeited, adjudge that part only of the deposit of money or security is forfeited or that the deposit of money or security may be redeemed by the payment of a sum of money of less value than the money or security deposited or that the money or security be returned without any such payment.

(3) The court shall cause to be certified on the undertaking any order made by the court under this section.

36. Proceedings for offences. (1) Subject to subsection (2), all offences against this Act may be prosecuted in a summary way under the Justices Act 1886 - 1978.

Proceedings for an offence so prosecuted shall be instituted within twelve months after the commission of the offence.

(2) Where a person who has been apprehended by virtue of a warrant issued under section 29 is brought or appears before the court that issued the warrant or a court of like jurisdiction, he shall be charged before that court with an offence against section 21.

In the Supreme Court or a District Court the charge shall be in the form prescribed.

The court before which a person is charged under this subsection shall have jurisdiction to deal summarily with the charge. Rules of law and practice applicable to such court in the exercise of its ordinary criminal jurisdiction shall apply, with all necessary adaptations, to such court in the exercise of its jurisdiction under this subsection.

An appeal shall lie from an order or decision made by such court in the exercise of its jurisdiction under this subsection as though the order or decision were made in its ordinary criminal jurisdiction.

(3) A court may deal summarily with an offence pursuant to subsection (2) notwithstanding that more than twelve months has elapsed since the commission of the offence.

37. Evidentiary provisions. In any proceeding under or for the purposes of this Act -

- (a) any certificate purporting to be under the hand of the Crown Solicitor, or a person authorised as prescribed to act for the Crown Solicitor, doing

all or any of the following things, that is to say -

- (i) stating that a notice in writing has been sent by post or by telegram or delivered by hand to a person or addressed to a person at a specified address;
- (ii) stating the contents of such notice;
- (iii) stating that a notice has been sent or delivered to the Crown Solicitor by a person pursuant to section 20(4);
- (iv) stating the contents of such notice;
- (v) stating that no notice has been sent or delivered to the Crown Solicitor by a specified person pursuant to section 20(4),

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;

- (b) a document purporting to be the original or a copy of an undertaking entered into by a defendant and to be certified by an officer of the court having the custody of the document to be the undertaking or a copy of the undertaking with which it is alleged in the proceeding that the defendant has failed to comply shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the entry of the defendant into the undertaking and of the terms thereof;

- (c) a document purporting to be the original or a copy of -

- (i) a declaration of forfeiture made by a court of an undertaking entered into by a defendant; or
- (ii) a certificate of the respects in which such an undertaking has not been complied with,

and purporting to be certified by an officer of the court having the custody of the document to relate to the undertaking with which it is alleged in the proceeding that the defendant has failed to comply shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;

- (d) a document purporting to be the original or a copy of an extension of an undertaking and purporting to be certified by an officer of the court having the custody of the document to relate to the undertaking with which it is alleged in the proceeding that the defendant has failed to comply shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;

- (e) a document purporting to be the original or a copy of -
 - (i) a declaration of forfeiture made by a court of an undertaking; or
 - (ii) an order made in consequence of such forfeiture with respect to a surety, deposit of money or security,shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of matters contained therein;
- (f) it shall not be necessary to prove the appointment of the Crown Solicitor or a person authorised as prescribed to act for the Crown Solicitor;
- (g) a signature purporting to be that of the Crown Solicitor or a person authorised as prescribed to act for the Crown Solicitor shall be taken to be the signature it purports to be until the contrary is proved.

38. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or with respect to -

- (a) forms for the purposes of this Act and the particulars required to be given thereon;
- (b) the procedures to be followed in granting bail and admitting a defendant to bail and upon applications or other proceedings under this Act;
- (c) the information to be given to defendants and sureties of any of the requirements of this Act and the giving of such information;
- (d) the authorisation of persons to act for the Crown Solicitor for the purposes of this Act; and
- (e) generally, all matters required or permitted by this Act to be prescribed and all matters that are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.

SCHEDULES

FIRST SCHEDULE

[Section 4(1)]

[List of statutory provisions to be repealed or amended]

SECOND SCHEDULE

[Section 19(1)]

Undertaking of Bail	Form 1
Notice of Undertaking of Bail (Defendant)	Form 1A
Notice of Undertaking of Bail (First Surety)	Form 1B
Notice of Undertaking of Bail (Second Surety)	Form 1C
Undertaking of Bail for Appearance at Trial	Form 2
Notice of Undertaking of Bail for Appearance at Trial (Accused)	Form 2A
Notice of Undertaking of Bail for Appearance at Trial (First Surety)	Form 2B
Notice of Undertaking of Bail for Appearance at Trial (Second Surety)	Form 2C

UNDERTAKING OF BAIL

Note-Complete this side before detaching the form
and completing the reverse side

NATURE OF CHARGE

1. The conditions of this undertaking are that the defendant shall -
 - (a) appear on the _____ day of _____ 19____
at *a.m./p.m. before the _____ Court
or such Justices or Justice as may then be
there and will then surrender himself,
 - (b) not depart without leave of the Court, Justices
or Justice and will as often as leave is given
return at the time appointed by the Court,
Justices or Justice and again surrender *himself
herself,
 - (c) (1)

(1) Insert any other conditions imposed.

*Delete if inapplicable

+2. If the hearing or examination is postponed or adjourned, the Court or Justices or Justice so postponing or adjourning the hearing or examination may extend this undertaking without any further consent of the surety or sureties, *he/she/they having consented to the inclusion of this provision in the undertaking.

I enter this undertaking of bail and acknowledge receipt of a notice setting forth my obligations concerning the conditions of my bail and the consequences of my failure to comply with those conditions.

Signature of Defendant

I enter this undertaking of bail and acknowledge receipt of a notice setting forth the obligations of the defendant concerning the conditions of his bail and the consequences of his failure to comply with those conditions. I further acknowledge that I shall be liable to Her Majesty for the amount of the bail specified on the back of this form, in the event that the defendant fails to observe a condition of bail.

Signature of First Surety

I enter this undertaking of bail and acknowledge receipt of a notice setting forth the obligations of the defendant concerning the conditions of his bail and the consequences of his failure to comply with these conditions. I further acknowledge that I shall be liable to Her Majesty for the amount of the bail specified on the back of this form, in the event that the defendant fails to observe a condition of bail.

Signature of Second Surety

+NOTE - Each surety should be advised that the effect of this undertaking being extended without any further consent by him is that he remains bound by this undertaking until the subsequent hearing has been completed. If any surety is unwilling to be so bound paragraph 2 MUST be struck out and initialled by the person taking the undertaking. (Detach this form before doing so and strike out the paragraph on the sureties' notices separately.)

UNDERTAKING OF BAIL

Court
Complainant
Defendant
Nature of Charge (State briefly)

The under-mentioned defendant this day came before me and signed this undertaking of bail:

Defendant
Address
Occupation
*Deposit *Other Security

*The under-mentioned person(s) came this day before me and signed this undertaking of bail and acknowledged liability to pay to Her Majesty the Queen the following amount(s) if the defendant fails to comply with the condition(s) overleaf:

First Surety	
Address	The amount of \$
Second Surety	
Address	The amount of \$

I satisfied myself before releasing the defendant that *he/she *and the surety/*sureties understood the nature and extent of the obligations of the defendant under the conditions of *his/her bail and the consequences of *his/her failure to comply with them.

Undertaking(s) entered on / /19 at
in the State of Queensland, before me -

*Delete if inapplicable

*Justice of the Peace

*Keeper of the Prison at

NOTICE OF UNDERTAKING OF BAIL

(To be given to the defendant)

NATURE OF CHARGE

1. The conditions of your undertaking are that you shall -
 - (a) appear on the _____ day of _____ 19 ____ at
 a.m./p.m. before the _____ Court at
 or such Justices or Justice as may then
 be there and will then surrender yourself,
 - (b) not depart without leave of the Court, Justices
 or Justice and will as often as leave is given
 return at the time appointed by the Court, Justices
 or Justice and again surrender yourself,

(1) Insert any other conditions imposed.

(c) (1)

+2. That if the hearing or examination is postponed or adjourned, the Court or Justice so postponing or adjourning the hearing or examination may extend this undertaking without any further consent of the surety or sureties, *he/she/they having consented to the inclusion of this provision in the undertaking.

TAKE NOTICE

1. If you fail without reasonable cause, the proof whereof lies upon you, to appear in accordance with your undertaking of bail and surrender yourself into custody you shall be guilty of an offence punishable by imprisonment not exceeding two years.

2. Where a Court is satisfied that you have failed to observe a condition of bail the Court shall order that the undertaking be forfeited. If forfeiture is ordered, the sureties may be required to pay the amount of money for which they are bound by the undertaking.

3. Where a deposit of money or other security is made as a requirement of bail declared to be forfeited because of your failure to appear in accordance with your undertaking, the deposit becomes forfeited to Her Majesty.

Dated at _____ the _____ day of _____ 19 ____ .

*Justice of the Peace

*Keeper of the Prison at

* Delete if inapplicable.

+ This paragraph must be struck out and initialled by the person taking the undertaking if this provision has been struck out of the undertaking form.

NOTICE OF UNDERTAKING OF BAIL

(To be given to the First Surety)

The defendant has been charged with

1. You and the defendant have signed an undertaking the conditions of the undertaking being that the defendant shall -

- (a) appear on the _____ day of _____ 19 ____ at _____ a.m./p.m. before the _____ Court at _____ or such Justices or Justice as may then be there and will then surrender *himself/herself,
- (b) not depart without leave of the Court, Justices or Justice and will as often as leave is given return at the time appointed by the Court, Justices or Justice and again surrender *himself/herself,

(1) Insert any other conditions imposed

(c) (1)

+2. That if the hearing or examination is postponed or adjourned, the Court or Justice so postponing or adjourning the hearing or examination may extend this undertaking without any further consent of the surety or sureties, *he/she/they having consented to the inclusion of this provision in the undertaking.

TAKE NOTICE

1. Any person released on bail who fails without reasonable cause, the proof whereof lies upon him, to appear in accordance with his undertaking of bail and surrender himself into custody, shall be guilty of an offence punishable by imprisonment not exceeding two years.

2. Where a court is satisfied that a person has failed to observe a condition of bail the Court shall order that the undertaking be forfeited. If forfeiture is ordered, you may be required to pay the amount of money for which you are bound by the undertaking.

3. Where a deposit of money or other security is made as a requirement of bail declared to be forfeited because of the failure of the person released to appear in accordance with his undertaking, the deposit becomes forfeited to Her Majesty.

Dated at _____ the _____ day of _____ 19 ____ .

*Justice of the Peace
*Keeper of the Prison at

*Delete if inapplicable

+This paragraph must be struck out and initialled by the person taking the undertaking if this provision has been struck out of the undertaking form.

NOTICE OF UNDERTAKING OF BAIL

(To be given to the Second Surety)

The defendant has been charged with

1. You and the defendant have signed an undertaking the conditions of the undertaking being that the defendant shall -

(a) appear on the _____ day of _____ 19 ____ at _____ a.m./p.m. before the _____ Court at _____ or such Justices or Justice as may then be there and will then surrender *himself/herself,

(b) not depart without leave of the Court, Justices or Justice and will as often as leave is given return at the time appointed by the Court, Justices or Justice and again surrender *himself/herself,

(1) Insert any other conditions imposed

(c) (1)

+2. That if the hearing or examination is postponed or adjourned, the Court or Justice so postponing or adjourning the hearing or examination may extend this undertaking without any further consent of the surety or sureties, *he/she/they having consented to the inclusion of this provision in the undertaking.

TAKE NOTICE

1. Any person released on bail who fails without reasonable cause, the proof whereof lies upon him, to appear in accordance with his undertaking of bail and surrender himself into custody, shall be guilty of an offence punishable by imprisonment not exceeding two years.

2. Where a court is satisfied that a person has failed to observe a condition of bail the Court shall order that the undertaking be forfeited. If forfeiture is ordered, you may be required to pay the amount of money for which you are bound by the undertaking.

3. Where a deposit of money or other security is made as a requirement of bail declared to be forfeited because of the failure of the person released to appear in accordance with his undertaking, the deposit becomes forfeited to Her Majesty.

Dated at _____ the _____ day of _____ 19 ____ .

*Justice of the Peace
*Keeper of the Prison at

*Delete if inapplicable

+This paragraph must be struck out and initialled by the person taking the undertaking if this provision has been struck out of the undertaking form.

Note - Complete this side before detaching the form and completing reverse side.

(1) Insert name of accused

WHEREAS on the _____ day of _____ 19____, (1) _____ (hereinafter called the accused) was directed to be tried at a sittings of the *Supreme/District Court at _____

AND WHEREAS the accused has been granted bail for appearance at such trial.

1. THE CONDITIONS OF THIS UNDERTAKING ARE that the accused shall -

- (a) appear at such sittings as is fixed for the trial, at a day time and place notified to *him/her and *his/her *surety/sureties by the Crown Solicitor by notice in writing sent by post or by telegram or delivered by hand and will then surrender *himself/herself,
- (b) not depart without leave of the Court and will as often as leave is given return at the time appointed by the Court on granting leave and again surrender *himself/herself,
- (c) (2)

(2) Insert any other conditions imposed.

*Delete if inapplicable

+2. If the hearing is postponed or adjourned, the Court so postponing or adjourning may extend this undertaking without further consent of the surety or sureties, *he/she/they having consented to the inclusion of this provision in the undertaking.

3. The accused and any surety for the appearance of the accused at the trial shall, if he changes his place of residence or business from the place appearing in this undertaking as his address, forthwith notify the Crown Solicitor at Comalco House, George Street, Brisbane, in writing of the change of address.

I enter this undertaking and acknowledge receipt of a notice setting forth my obligations concerning the conditions of my bail and the consequences of my failure to comply with those conditions.

Signature of Accused

I enter this undertaking and acknowledge receipt of a notice setting forth the obligations of the accused person concerning the conditions of his bail and the consequences of his failure to comply with those conditions. I further acknowledge that I shall be liable to Her Majesty for the amount of the bail specified on the back of this form in the event that the accused fails to observe a condition of bail.

Signature of First Surety

I enter this undertaking and acknowledge receipt of a notice setting forth the obligations of the accused person concerning the conditions of his bail and the consequences of his failure to comply with those conditions. I further acknowledge that I shall be liable to Her Majesty for the amount of the bail specified on the back of this form, in the event that the accused fails to observe a condition of bail.

Signature of Second Surety

*NOTE-Each surety should be advised that the effect of this undertaking being extended without any further consent by him is that he remains bound by this undertaking until the subsequent hearing has been completed. If any surety is unwilling to be so bound paragraph 2 MUST be struck out and initialled by the person taking the undertaking. (Detach this form before doing so and strike out the paragraph on the sureties' notices separately.)

UNDERTAKING OF BAIL

*Supreme Court *District
Complainant
Accused
Nature of Charge (State briefly)

The under-mentioned defendant this day came before me and signed this undertaking of bail :

Accused
Address
Occupation
*Deposit *Other Security

*The under-mentioned person(s) came this day before me and signed this undertaking of bail and acknowledged liability to pay to Her Majesty the Queen the following amount(s) if the accused fails to comply with the condition(s) overleaf :

First Surety	
Address	The amount of \$
Second Surety	
Address	The amount of \$

I satisfied myself before releasing the accused that *he/she *and the surety/*sureties understood the nature and extent of the obligations of the accused under the conditions of *his/her bail and the consequences of *his/her failure to comply with them.

Undertaking(s) entered on / /19 at in
the State of Queensland, before me -

*Delete if inapplicable.

*Justice of the Peace
*Keeper of the Prison at

(To be given to Accused)

WHEREAS on the _____ day of _____ 19 .
_____ hereinafter called the accused) was
directed to be tried for the offence(s) of _____
at a sittings of the *Supreme/District Court at _____

AND WHEREAS the accused has been granted bail for appearance at such trial.

1. THE CONDITIONS OF YOUR UNDERTAKING ARE that you shall -

- (a) appear at such sittings as is fixed for the trial, at a day time and place notified to you and your *surety/sureties by the Crown Solicitor by notice in writing sent by post or by telegram or delivered by hand and will then surrender yourself,
- (b) not depart without leave of the Court and will as often as leave is given return at the time appointed by the Court on granting leave and again surrender yourself,

(1) Insert any other conditions imposed. (c) (1)

+2. If the hearing is postponed or adjourned, the Court so postponing or adjourning may extend this undertaking without further consent of the surety or sureties, *he/she/they having consented to the inclusion of this provision in the undertaking.

3. You shall, if you change your place of residence or business from the place appearing in the undertaking as your address, forthwith notify the Crown Solicitor at Comalco House, George Street, Brisbane, in writing of the change of address.

TAKE NOTICE -

1. If you fail without reasonable cause, the proof thereof lies upon you, to appear in accordance with your undertaking of bail and surrender yourself into custody you shall be guilty of an offence punishable by imprisonment not exceeding two years.

2. Where a court is satisfied that you have failed to observe a condition of bail the Court shall order that the undertaking be forfeited. If forfeiture is ordered, the sureties may be required to pay the amount of money for which they are bound by the undertaking.

3. Where a deposit of money or other security is made as a requirement of bail, declared to be forfeited because of your failure to appear in accordance with your undertaking, the deposit becomes forfeited to Her Majesty.

4. If you fail to notify the Crown Solicitor of a change of your place of residence or business from that appearing in the undertaking you shall be guilty of an offence punishable by a penalty not exceeding \$500 or imprisonment for three months.

DATED at _____ the _____ day of _____ 19 .

*Delete if inapplicable. *Justice of the Peace
+This paragraph must be struck out and initialled by the person taking the undertaking if this provision has been struck out of the undertaking. *Keeper of the prison at

(To be given to the First Surety)

WHEREAS on the _____ day of _____ 19____, (hereinafter called the accused) was directed to be tried for the offence(s) of _____ at a sittings of the *Supreme/District Court at _____

AND WHEREAS the accused has been granted bail for appearance at trial.

1. You and the accused have signed an undertaking the conditions of the undertaking being that the accused shall -

- (a) appear at such sittings as is fixed for the trial, at a day time and place _____ notified to *him/her and yourself as surety by the Crown Solicitor by notice in writing sent by post or by telegram or delivered by hand and will then surrender *himself/herself,
- (b) not depart without leave of the Court and will as often as leave is given return at the time appointed by the Court on granting leave and again surrender *himself/herself,
- (c) (1)

(1) Insert any other conditions imposed

*Delete if inapplicable

+2. If the hearing is postponed or adjourned, the Court so postponing or adjourning may extend this undertaking without further consent of the surety or sureties, *he/she/they having consented to the inclusion of this provision in the undertaking.

3. You as surety for the appearance of the accused at trial shall, if you change your place of residence or business from the place appearing in the undertaking as your address, forthwith notify the Crown Solicitor at Comalco House, George Street, Brisbane in writing of the change of address.

TAKE NOTICE -

1. Any person released on bail who fails without reasonable cause, the proof whereof lies upon him, to appear in accordance with his undertaking of bail and surrender himself into custody, shall be guilty of an offence punishable by imprisonment not exceeding two years.

2. Where a Court is satisfied that a person has failed to observe a condition of bail the Court shall order that the undertaking be forfeited. If forfeiture is ordered, you may be required to pay the amount of money for which you are bound by the undertaking.

3. Where a deposit of money or other security is made as a requirement of bail declared to be forfeited because of the failure of the person released to appear in accordance with his undertaking, the deposit becomes forfeited to Her Majesty.

4. If you fail to notify the Crown Solicitor of a change of your place of residence or business from that appearing in the undertaking you shall be guilty of an offence punishable by a penalty not exceeding \$500 or imprisonment for three months.

DATED at _____ the _____ day of _____ 19____ .

*Justice of the Peace
*Keeper of the Prison at _____

+This paragraph must be struck out and initialled by the person taking the undertaking if this provision has been struck out of the undertaking form.

(To be given to the Second Surety)

WHEREAS on the _____ day of _____ 19 _____, (hereinafter called the accused) was directed to be tried for the offence(s) of _____ at a sittings of the *Supreme/District Court at _____

AND WHEREAS the accused has been granted bail for appearance at trial.

1. You and the accused have signed an undertaking the conditions of the undertaking being that the accused shall -

- (a) appear at such sittings as is fixed for the trial, at a day time and place notified to *him/her and yourself as surety by the Crown Solicitor by notice in writing sent by post or by telegram or delivered by hand and will then surrender *himself/herself,
- (b) not depart without leave of the Court and will as often as leave is given return at the time appointed by the Court on granting leave and again surrencer *himself/herself,

(1) Insert any other conditions imposed.

(c) (1)

+2. If the hearing is postponed or adjourned, the Court so postponing or adjourning may extend this undertaking without further consent of the surety or sureties, *he/she/they having consented to the inclusion of this provision in the undertaking.

3. You as surety for the appearance of the accused at trial shall, if you change your place of residence or business from the place appearing in the undertaking as your address, forthwith notify the Crown Solicitor at Comalco House, George Street, Brisbane, in writing of the change of address.

TAKE NOTICE -

1. Any person released on bail who fails without reasonable cause, the proof whereof lies upon him, to appear in accordance with his undertaking of bail and surrender himself into custody, shall be guilty of an offence punishable by imprisonment not exceeding two years.

2. Where a Court is satisfied that a person has failed to observe a condition of bail the Court shall order that the undertaking be forfeited. If forfeiture is ordered, you may be required to pay the amount of money for which you are bound by the undertaking.

3. Where a deposit of money or other security is made as a requirement of bail declared to be forfeited because of the failure of the person released to appear in accordance with his undertaking the deposit becomes forfeited to Her Majesty.

4. If you fail to notify the Crown Solicitor of a change of your place of residence or business from that appearing in the undertaking you shall be guilty of an offence punishable by a penalty not exceeding \$500 or imprisonment for three months.

DATED at _____ the _____ day of _____ 19 _____.

*Justice of the Peace.
*Keeper of the Prison at

+This paragrph must be struck out and initialled by the person taking the undertaking if this provision has been struck out of the undertaking.

THIRD SCHEDULE

[Section 32(1)]

[List of simple offences to which clause 32 is not to apply]