

## KEY AMENDMENTS TO THE BAIL ACT 1977 BY THE BAIL AMENDMENT ACT 2023

Reference	Provision	Commentary
Part 1 – Preliminary		
Section 3 Definitions	<p><b>Aboriginal bail support service</b> means a bail support service that is provided by an entity that—</p> <p>(a) is managed by Aboriginal people; or</p> <p>(b) operates for the benefit of Aboriginal people;</p> <p><b>Aboriginal person</b> means a person who—</p> <p>(a) is descended from an <b>Aboriginal</b> or Torres Strait Islander; and</p> <p>(b) identifies as an <b>Aboriginal</b> or Torres Strait Islander; and</p> <p>(c) is accepted as an <b>Aboriginal</b> or Torres Strait Islander by an Aboriginal or Torres Strait Island community;</p> <p>.....</p> <p><b>bail guarantee</b> means an undertaking, given by one or more persons, to pay a specified amount if there is—</p> <p>(a) a failure to comply with a bail undertaking or an undertaking given under section 16B (as the case requires); or</p> <p>(b) a failure to comply with a condition of the grant of bail in respect of which the undertaking referred to in paragraph (a) was given;</p> <p><b>bail guarantor</b> means a person who gives a bail guarantee;</p> <p>.....</p> <p><b>bail undertaking</b> means an undertaking given under section 5(1);</p> <p>.....</p> <p><b>step 1—exceptional circumstances test</b>—see section 4A;</p> <p><b>step 1—show compelling reason test</b>—see section 4B;</p> <p><b>step 1 test</b> means—</p> <p>(a) the step 1—exceptional circumstances test; or</p> <p>(b) the step 1—show compelling reason test;</p> <p><b>step 2—unacceptable risk test</b>—see section 4D;</p> <p>.....</p>	<p>Section 3 has been <b>amended</b>. Key amendments to section 3 are:</p> <ul style="list-style-type: none"><li>• <b>Addition:</b> Aboriginal Support Service – referenced in the rewritten section 3A</li><li>• <b>Clarification:</b> Aboriginal person – change from aborigine to Aboriginal person after consultation with appropriate groups.</li><li>• <b>Addition and Substitution:</b> Bail Guarantee- (replacing term Surety/Sureties) All references to surety/sureties to have been replaced by either bail guarantee or bail guarantor as appropriate across the Act.</li><li>• <b>Addition and Substitution:</b> Bail Guarantor- (replacing term Surety) All references to surety/sureties to have been replaced by either bail guarantee or bail guarantor as appropriate across the Act.</li><li>• <b>Addition and Substitution:</b> Bail undertaking (replacing use of “undertaking of bail” or just “undertaking”) as the undertaking given under section 5(1)).</li><li>• To assist in clarifying the structure of the bail tests further definitions have been inserted:<ul style="list-style-type: none"><li>○ <b>Addition:</b> step 1—exceptional circumstances test— as outlined in section 4A;</li><li>○ <b>Addition:</b> step 1—show compelling reason test— as outlined in section 4B;</li><li>○ <b>Addition:</b> step 1 test means either the exceptional circumstances test or the show compelling reasons test depending on what test the offending places the accused.</li><li>○ <b>Addition:</b> step 2—unacceptable risk test— as outlined in section 4D;</li></ul></li></ul>
Section 3AAA Surrounding Circumstances	<p>(1) If this Act provides, in relation to a matter, that a bail decision maker must take into account the surrounding circumstances, the bail decision maker must take into account all the circumstances that are relevant to the matter including, but not limited to, the following—</p> <p>(aa) whether, if the accused were found guilty of the offence with which the accused is charged, it is likely—</p> <p>(i) that the accused would be sentenced to a term of imprisonment; and</p> <p>(ii) if so, that the time the accused would spend remanded in custody if bail is refused would exceed that term of imprisonment;</p> <p>(a) the nature and seriousness of the alleged offending, including whether it is a serious example of the offence;</p> <p>(b) the strength of the prosecution case;</p> <p>(c) the accused's criminal history;</p> <p>(d) the extent to which the accused has complied with the conditions of any earlier grant of bail;</p> <p>(e) whether, at the time of the alleged offending, the accused—</p> <p>(i) was on bail for another offence; or</p> <p>(ii) was subject to a summons to answer to a charge for another offence; or</p> <p>(iii) was at large awaiting trial for another offence; or</p> <p>(iiia) was on remand for another offence; or</p> <p>(iiib) was at large awaiting sentence for another offence; or</p> <p>(iv) was released under a parole order; or</p> <p>(v) was subject to a community correction order made in respect of, or was otherwise serving a sentence for, another offence;</p>	<p>Section 3AAA has been <b>amended</b>. There are three Key Amendments to Section 3AAA of the Bail Act:</p> <ul style="list-style-type: none"><li>• <b>Addition:</b> section 3AAA(1)(aa) to require decision makers to consider whether the accused, if found guilty, is likely to be sentenced to imprisonment and if so, if the time on remand will exceed the likely sentence.</li><li>• <b>Expansion:</b> section 3AAA(1)(e) to require decision maker to consider if the accused, at the time of the alleged offending, was<ul style="list-style-type: none"><li>○ (iiia) on remand, awaiting sentence or</li><li>○ (iiib) subject to an undertaking.</li></ul></li><li>• <b>Restructure and expansion:</b> Definition of ‘Special Vulnerabilities’ under s.3AAA(1)(h) to:<ul style="list-style-type: none"><li>○ being an Aboriginal person</li><li>○ or a child</li><li>○ experiencing ill health, including mental illness</li></ul></li></ul>

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	<p>(f) whether there is in force—</p> <ul style="list-style-type: none"><li>(i) a family violence intervention order made against the accused; or</li><li>(ii) a family violence safety notice issued against the accused; or</li><li>(iii) a recognised DVO made against the accused;</li></ul> <p>(g) the accused's personal circumstances, associations, home environment and background;</p> <p>(h) any special vulnerability of the accused, including—</p> <ul style="list-style-type: none"><li>(i) being an Aboriginal person; or</li><li>(ii) being a child; or</li><li>(iii) experiencing any ill health, including mental illness; or</li><li>(iv) having a disability, including physical disability, intellectual disability and cognitive impairment;</li></ul> <p><b>Note:</b> The bail decision maker is required to take certain issues into account if the accused is an Aboriginal person—see section 3A. Further, the bail decision maker is required to take certain issues into account if the accused is a child—see section 3B. The bail decision maker is required to take all these issues into account if the accused is both an Aboriginal person and a child.</p> <p>(i) the availability of treatment or bail support services;</p> <p><b>Note :</b>If the accused is an Aboriginal person, see also section 5AAA(4A).</p> <p>(j) any known view or likely view of an alleged victim of the offending on the grant of bail, the amount of bail or the conditions of bail;</p> <p>(k) the length of time the accused is likely to spend in custody if bail is refused;</p> <p>(l) the likely sentence to be imposed should the accused be found guilty of the offence with which the accused is charged;</p> <p>(m) whether the accused has expressed support for—</p> <ul style="list-style-type: none"><li>(i) the doing of a terrorist act; or</li><li>(ii) a terrorist organisation; or</li><li>(iii) the provision of resources to a terrorist organisation;</li></ul> <p>(n) subject to subsection (2), whether the accused has, or has had, an association with—</p> <ul style="list-style-type: none"><li>(i) another person or a group that has expressed support of the kind referred to in paragraph (m); or</li><li>(ii) another person or a group that is directly or indirectly engaged in, preparing for, planning, assisting in or fostering the doing of a terrorist act; or</li><li>(iii) a terrorist organisation</li></ul> <p>(2) A bail decision maker must not take into account the accused having, or having had, an association referred to in subsection (1)(n)(i), (ii) or (iii) unless the bail decision maker is satisfied that the accused knew—</p> <ul style="list-style-type: none"><li>(a) that the person or group had expressed support for—</li><li><ul style="list-style-type: none"><li>(i) the doing of a terrorist act; or</li><li>(ii) a terrorist organisation; or</li><li>(iii) the provision of resources to a terrorist organisation; or</li></ul></li><li>(b) that the person or group was directly or indirectly engaged in, preparing for, planning, assisting in or fostering the doing of a terrorist act; or</li><li>(c) that the group was a terrorist organisation.</li></ul>	<ul style="list-style-type: none"><li>○ Having a disability (recognising that disabilities can be physical, intellectual, or cognitive impairments)</li></ul> <p>Section 3AAA can be summarised as follows:</p> <ul style="list-style-type: none"><li>• <b>s. 3AAA(1) Surrounding Circumstances that a bail decision maker must take into account:</b><ul style="list-style-type: none"><li>○ <b>s.3AAA(1)(aa) Consideration of imprisonment:</b> whether a conviction would likely result in imprisonment for the accused and whether the duration of potential remand would surpass the expected sentence if bail is denied.</li><li>○ <b>s.3AAA(1)(a) Offence Nature/Seriousness:</b> The gravity and severity of the alleged offence.</li><li>○ <b>s.3AAA(1)(b). Prosecution Case:</b> The strength of the evidence against the accused.</li><li>○ <b>s.3AAA(1)(c) Criminal History:</b> The accused's previous criminal record.</li><li>○ <b>s.3AAA(1)(d) Bail Compliance:</b> Past adherence to bail conditions.</li><li>○ <b>s.3AAA(1)(e) Status During Offence:</b> The accused's custodial status at the time of the alleged offence (on bail, under summons, at large, on remand, awaiting sentence, under parole, or serving a sentence).</li><li>○ <b>s.3AAA(1)(f) Current Orders:</b> Existence of any active family violence orders against the accused.</li><li>○ <b>s.3AAA(1)(g) Personal Background:</b> The accused's personal situation, community ties, and background.</li><li>○ <b>s.3AAA(1)(h) Vulnerabilities:</b> Any particular vulnerabilities of the accused, such as being an Aboriginal person, a child, suffering from ill health or disability.</li><li>○ <b>s.3AAA(1)(i) Support Services:</b> Availability of treatment or bail support services for the accused.</li><li>○ <b>s.3AAA(1)(j) Victim's position on bail:</b> The victim's opinion regarding the granting of bail.</li><li>○ <b>s.3AAA(1)(k) Time in Custody:</b> Potential duration of custody if bail is refused.</li><li>○ <b>s.3AAA(1)(l) Expected Sentence:</b> Likely sentence if found guilty.</li><li>○ <b>s.3AAA(1)(m) Support for Terrorism:</b> Any support the accused may have shown for terrorist acts or organizations.</li><li>○ <b>s.3AAA(1)(n) Terrorism Associations:</b> Any associations the accused may have had with others supportive of, or involved in, terrorism, considering the accused's knowledge of these associations.</li></ul></li><li>• <b>s.3AAA(2) considerations relating to the Accused knowledge under subsection (1)(n):</b><ul style="list-style-type: none"><li>○ <b>s.3AAA(2)(a) Expressed support:</b> The decision maker must be convinced of the accused's knowledge that the person or group supported: terrorist acts, a terrorist organization, or the provision of resources to a terrorist organisation. Activity of the person or group</li><li>○ <b>s.3AAA(2)(b) Active engagement:</b> The accused must have known that the person or group was actively involved in or promoting terrorist activities.</li></ul></li></ul>
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<b>3A Determination in relation to an Aboriginal Person</b>	<p><b>3A Determination in relation to an Aboriginal person</b></p> <p>(1) In making a determination under this Act in relation to an Aboriginal person, a bail decision maker must take into account (in addition to any other requirements of this Act) any issues that arise due to the person's Aboriginality, including the following—</p> <ul style="list-style-type: none"><li>(a) the historical and ongoing discriminatory systemic factors that have resulted in Aboriginal people being over-represented in the criminal justice system, including in the remand population;</li><li>(b) the risk of harm and trauma that being in custody poses to Aboriginal people;</li><li>(c) the importance of maintaining and supporting the development of the person's connection to culture, kinship, family, Elders, country and community;</li><li>(d) any issues that arise in relation to the person's history, culture or circumstances, including the following—<ul style="list-style-type: none"><li>(i) the impact of any experience of trauma and intergenerational trauma, including abuse, neglect, loss and family violence;</li><li>(ii) any experience of out of home care, including foster care and residential care;</li><li>(iii) any experience of social or economic disadvantage, including homelessness and unstable housing;</li><li>(iv) any ill health the person experiences, including mental illness;</li><li>(v) any disability the person has, including physical disability, intellectual disability and cognitive impairment;</li><li>(vi) any caring responsibilities the person has, including as the sole or primary parent of an Aboriginal child;</li></ul></li><li>(e) any other relevant cultural issue or obligation.</li></ul> <p><b>Note:</b> If the Aboriginal person is also a child, the bail decision maker must also take into account the issues set out in section 3B(1).</p> <p>(2) The bail decision maker is to take account of an issue set out in subsection (1) by reference to the evidence and information that is reasonably available to the bail decision maker at the time, including information provided by—</p> <ul style="list-style-type: none"><li>(a) the Aboriginal person's family and community; and</li><li>(b) providers of Aboriginal bail support services.</li></ul> <p>(3) Despite subsection (2), the bail decision maker is to take account of the issues set out in subsection (1)(a) to (c) whether or not any evidence or information is before the bail decision maker in respect of those issues.</p> <p>(4) The requirement to take an issue set out in subsection (1) into account applies regardless of—</p> <ul style="list-style-type: none"><li>(a) whether the person's connection to their Aboriginality and culture has been intermittent throughout their life; and</li><li>(b) whether the person has only recently connected to or discovered their culture or heritage; and</li><li>(c) when the person first discloses that they are an Aboriginal person.</li></ul> <p>(5) If a bail decision maker refuses bail to an Aboriginal person, the bail decision maker must—</p> <ul style="list-style-type: none"><li>(a) identify the matters the bail decision maker had regard to in taking into account the issues set out in subsection (1); and</li><li>(b) either—<ul style="list-style-type: none"><li>(i) state those matters orally when refusing bail and ensure that an audio visual recording, or an audio recording, is made of that statement; or</li><li>(ii) record those matters in writing in a form that the bail decision maker considers appropriate.</li></ul></li></ul> <p><b>Notes</b></p> <p>1 Section 19(2) of the Charter of Human Rights and Responsibilities provides that Aboriginal persons hold distinct cultural rights and must not be denied the various rights referred to in that provision.</p> <p>2 When considering bail for an Aboriginal person charged with a Commonwealth offence, a bail decision maker must comply with section 15AB(1)(b) of the Crimes Act 1914 of the Commonwealth.</p>	<p><b>Substitution:</b> The new section 3A is a <b>complete rewrite</b> of the previous section. The new section can be summarised as follows:</p> <ul style="list-style-type: none"><li>• <b>s.3A(1) Consideration of Aboriginality:</b><ul style="list-style-type: none"><li>○ Bail decision-makers must factor in issues related to the person's Aboriginality. This includes historical and ongoing discrimination, the overrepresentation in the criminal justice system, and the specific risks and trauma associated with custody for Aboriginal people.</li></ul></li><li>• <b>s.3A(2) Evidence and Information:</b><ul style="list-style-type: none"><li>○ Decision-makers should base their considerations on evidence and information reasonably available at the time, including input from the person's family, community, and Aboriginal bail support service providers.</li></ul></li><li>• <b>s.3A(3) Mandatory Consideration of issues in s.3A(1)(a) to (c):</b><ul style="list-style-type: none"><li>○ Certain issues such as discrimination, risks of custody, and connection to culture must be considered regardless of the availability of specific evidence or information.</li></ul></li><li>• <b>s.3A(4) Inclusive Consideration:</b><ul style="list-style-type: none"><li>○ The requirement to consider issues related to Aboriginality applies irrespective of the continuity of the person's connection to their culture or when they first disclosed their Aboriginality.</li></ul></li><li>• <b>s.3A(5) Documentation of reasons for refusal of bail:</b><ul style="list-style-type: none"><li>○ If bail is refused, the decision-maker must document the considerations related to Aboriginality and either state them orally, ensuring an audio or audio-visual recording, or record them in written form as deemed appropriate.</li></ul></li></ul>
<b>3B Determination in relation to a child</b>	<p>(1) In making a determination under this Act in relation to a child, a bail decision maker must take into account (in addition to any other requirements of this Act) the following issues—</p> <ul style="list-style-type: none"><li>(a) the child's age, maturity and stage of development at the time of the alleged offence;</li><li>(b) the need to impose on the child the minimum intervention required in the circumstances, with the remand of the child being a last resort;</li><li>(c) the presumption at common law that a child who is 10 years of age or over but under 14 years of age cannot commit an offence;</li><li>(d) the need to preserve and strengthen the child's relationships with—<ul style="list-style-type: none"><li>(i) the child's parents, guardian and carers; and</li><li>(ii) other significant persons in the child's life;</li></ul></li><li>(e) the importance of supporting the child to live at home or in safe, stable and secure living arrangements in the community;</li><li>(f) the importance—<ul style="list-style-type: none"><li>(i) of supporting the child to engage in education, or in training or work; and</li><li>(ii) of that engagement being subject only to minimal interruption or disturbance;</li></ul></li><li>(g) the need to minimise the stigma to the child resulting from being remanded;</li><li>(h) the fact that time in custody has been shown to pose criminogenic and other risks for children, including—<ul style="list-style-type: none"><li>(i) a risk that the child will become further involved in the criminal justice system; and</li></ul></li></ul>	<p><b>Substitution:</b> The new section 3B is a <b>complete rewrite</b> of the previous section. The new section can be summarised as follows:</p> <ul style="list-style-type: none"><li>• <b>s.3B(1)(a) Child's Development:</b> Consider the child's age, maturity, and developmental stage at the time of the alleged offence.</li><li>• <b>s.3B(1)(b) Minimal Intervention:</b> Ensure that intervention is minimal and remand is a last resort.</li><li>• <b>s.3B(1)(c) Doli Incapax:</b> Acknowledge the common law presumption that children between 10 and 14 years of age are incapable of committing an offence.</li><li>• <b>s.3B(1)(d) Family Relationships:</b> Preserve and strengthen the child's relationships with parents, guardians, carers, and other significant individuals.</li></ul>



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	<div><div><div><div><div><div>(ii) a risk of harm;</div></div></div><div><div><div>(i) the need to ensure that the conditions of bail—</div><div><div>(i) are no more onerous than is necessary; and</div><div>(ii) do not constitute unfair management of the child;</div></div></div></div></div><div><div><div>(j) the fact that some cohorts of children, including the following cohorts, experience discrimination resulting in that cohort's over-representation in the criminal justice system—</div><div><div>(i) Aboriginal children;</div><div>(ii) children involved in the child protection system;</div><div>(iii) children from culturally and linguistically diverse backgrounds;</div></div></div></div><div><div><div>(k) whether, if the child were found guilty of the offence charged, it is likely—</div><div><div>(i) that the child would be sentenced to a term of imprisonment; and</div><div>(ii) if so, that the time the child would spend remanded in custody if bail is refused would exceed that term of imprisonment;</div></div></div></div><div><div><div>(l) any of the following issues that arise—</div><div><div>(i) any ill health the child experiences, including mental illness;</div><div>(ii) any disability the child has, including physical disability, intellectual disability, cognitive impairment and developmental delay;</div><div>(iii) the impact on the child, and on the child's behaviour, of any experience of abuse, trauma, neglect, loss, family violence or child protection involvement, including removal from family or placement in out of home care;</div></div></div></div><div><div>(m) any other relevant factor or characteristic.</div></div><div><div>(1A) The bail decision maker is to take account of an issue set out in subsection (1) by reference to the evidence and information that is reasonably available to the bail decision maker at the time.</div><div>(1B) Despite subsection (1A), the bail decision maker is to take account of the issues set out in subsection (1)(b) to (j) whether or not any evidence or information is before the bail decision maker in respect of those issues.</div></div></div></div>	<div><div><div>• <b>s.3B(1)(e) Stable Living:</b> Support the child in maintaining a stable and secure home life or living situation.</div><div>• <b>s.3B(1)(f) Education and Work:</b> Encourage the child's involvement in education or employment with minimal disruption.</div><div>• <b>s.3B(1)(g) Stigma Minimization:</b> Minimize the stigma associated with the child being remanded.</div><div>• <b>s.3B(1)(h) Risks of Custody:</b> Recognize the risks of custody, including the potential for further criminal involvement and harm.</div><div>• <b>s.3B(1)(i) Bail Conditions:</b> Ensure bail conditions are not overly restrictive and are fair to the child.</div><div>• <b>s.3B(1)(j) Awareness:</b> Be aware of over-representation and discrimination in the criminal justice system, particularly among Aboriginal children, those in child protection, and those from diverse cultural backgrounds.</div><div>• <b>s.3B(1)(k) Sentence Consideration:</b> Assess the likelihood and appropriateness of a potential prison sentence relative to possible remand time.</div><div>• <b>s.3B(1)(l) Health and Trauma:</b> Consider the child's health, disabilities, and experiences of abuse, trauma, loss, and involvement with the child protection system.</div><div>• <b>s.3B(1)(m) Other Relevant Factors:</b> Take into account any other factors that are pertinent to the child's situation.</div></div></div>
3D Flow Charts	All flow charts have been updated to reflect the changes in the legislation	
Part 2 – Granting of bail and admission to bail		
Section 4AAA Offences in respect of which bail must not be refused	<div>4AAA Offences in respect of which bail must not be refused</div> <div>(1) Despite anything to the contrary in any other provision of this Act, a bail decision maker who is deciding whether to grant bail to a person accused of an offence must not refuse bail if—<div><div>(a) the person is accused only of offences against the <b>Summary Offences Act 1966</b> that are not referred to in Schedule 3; and</div><div>(b) the person does not have a terrorism record; and</div><div>(c) if the bail decision maker is a court, no exception under subsection (2) applies.</div></div></div> <div>(2) An exception applies for the purposes of subsection (1)(c) if—<div><div>(a) the court has determined under section 8AA that there is a risk that the person will commit a terrorism or foreign incursion offence; or</div><div>(b) the person was previously granted bail in respect of any of the offences of which the person is accused and that bail was subsequently revoked.</div></div></div> <div>(3) A reference in this Act to a bail decision maker considering, deciding or determining whether to grant bail (however described) includes a reference to a bail decision maker who is prohibited from refusing bail by subsection (1).</div> <div>(4) Nothing in this section limits the power of a court to revoke bail.</div>	<div>Addition: section 4AAA Is a <b>new addition to the Act</b>. The new section can be summarised as follows:<div><div>• <b>s.4AAA(1) Clarification of offences where bail must not be refused:</b> Bail cannot be refused if the accused is only charged with non-Schedule 3 offences under the Summary Offences Act 1966, does not have a terrorism record, and no court-specific exceptions apply.</div><div>• <b>s.4AAA(2) Court Exceptions:</b> Exceptions for a court to refuse bail include if the person is determined to be a risk of committing terrorism or foreign incursion offences, or if their previously granted bail was revoked.</div><div>• <b>s.4AAA(3) Clarification of definition of bail decision maker:</b> References to a bail decision maker's considerations or decisions on bail within the Act include those who are prohibited from refusing bail by the aforementioned mandate.</div><div>• <b>s.4AAA(4) Revocation of Bail:</b> The section does not restrict the court's authority to revoke bail already granted.</div></div></div>
Section 4AA When 2 step tests apply	<div>(1) The step 1—exceptional circumstances test applies to a decision of whether to grant bail to the accused of a Schedule 1 offence.</div> <div>(2) The step 1—exceptional circumstances test also applies to a decision of whether to grant bail to the accused of a Schedule 2 offence if—<div><div>(a) the accused has a terrorism record; or</div><div>(b) the court considering whether to grant bail determines under section 8AA that there is a risk that t the accused will commit a terrorism or foreign incursion offence; or</div><div>(c) the offence is alleged to have been committed—<div><div>(i) while the accused was on bail for any Schedule 1 offence or Schedule 2 offence; or</div><div>(ii) while the accused was subject to a summons to answer to a charge for any Schedule 1 offence or Schedule 2 offence; or</div><div>(iii) while the accused was at large awaiting trial for any Schedule 1 offence or Schedule 2 offence; or</div></div></div></div></div>	<div>Section 4AA has been <b>amended</b>. The key amendments are:<div><div>• <b>addition:</b> s.4AA(2)(iia)and (iib): This expands the double uplift provision so that the “exceptional circumstances” test now also apply to an accused that is alleged to have committed an offence on remand and those awaiting sentence.</div><div>• <b>addition:</b> of the new s.4AA(5): Clarifies an exception for people on adjourned undertakings.</div></div></div> <div>The section can be summarised as follows:</div>

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	<p>(iiia) while the adult was on remand for a Schedule 1 offence or a Schedule 2 offence; or</p> <p>(iiib) while the adult was at large awaiting sentence for a Schedule 1 offence or a Schedule 2 offence; or</p> <p><b>Note</b> See subsection (5).</p> <p>(iv) during the period of a community correction order made in respect of the accused for any Schedule 1 offence or Schedule 2 offence; or</p> <p>(v) while the accused was otherwise serving a sentence for any Schedule 1 offence or Schedule 2 offence; or</p> <p><b>Note</b> See subsection (5).</p> <p>(vi) while the accused was released under a parole order made in respect of any Schedule 1 offence or Schedule 2 offence; or</p> <p>(d) the offence is an offence of conspiracy to commit, incitement to commit or attempting to commit an offence in a circumstance set out in paragraph (c).</p> <p>(3) The step 1—show compelling reason test applies to a decision of whether to grant bail to the accused of a Schedule 2 offence if subsection (2) does not apply.</p> <p>(4) The step 1—show compelling reason test also applies to a decision of whether to grant bail to the accused of an offence that is neither a Schedule 1 offence nor a Schedule 2 offence if—</p> <p>(a) an accused has a terrorism record; or</p> <p>(b) the court considering whether to grant bail determines under section 8AA that there is a risk that the accused will commit a terrorism or foreign incursion offence.</p> <p>(5) For the purposes of subsection (2)(c)(iiib) and (v)—</p> <p>(a) an accused who is released on an undertaking under section 72 of the Sentencing Act 1991 following the court convicting the accused of an offence—</p> <p>(i) is not at large awaiting sentence for that offence; and</p> <p>(ii) is not serving a sentence for that offence; and</p> <p>(b) an accused who is released on an undertaking under section 75 of the Sentencing Act 1991 following the court being satisfied that the accused is guilty of an offence—</p> <p>(i) is not at large awaiting sentence for that offence; and</p> <p>(ii) is not serving a sentence for that offence.</p>	<ul style="list-style-type: none"><li>• <b>s.4AA(1) Exceptional Circumstances for Schedule 1 Offences:</b> Bail for an accused of a Schedule 1 offence requires passing an exceptional circumstances test.</li><li>• <b>s.4AA(2) Exceptional Circumstances for Schedule 2 Offences:</b> This test is also needed for a Schedule 2 offence if the accused has a terrorism record, is deemed at risk of committing a terrorism or foreign incursion offence, or committed the offence while on bail, under a summons, at large awaiting trial or sentence, on remand, during a community correction order, serving a sentence, or released under a parole order for Schedule 1 or 2 offences, or if the offence involves conspiracy, incitement, or attempt under these conditions.</li><li>• <b>s.4AA(3) Compelling Reason for Schedule 2 Offences:</b> If the above does not apply, a show compelling reason test is required to grant bail for a Schedule 2 offence.</li><li>• <b>s.4AA(4) Compelling Reason for Non-Schedule Offences:</b> The show compelling reason test applies to offences not categorized as Schedule 1 or 2 if the adult has a terrorism record or is considered at risk of terrorism or foreign incursion offences.</li><li>• <b>s.4AA(5) Clarification of 'At Large' and 'Serving a Sentence':</b> the accused released on an undertaking after conviction or when found guilty are not considered to be at large awaiting sentence or serving a sentence for that offence.</li></ul>
<b>Section 4D</b> <b>When</b> <b>unacceptable</b> <b>risk test applies</b>	<p>A bail decision maker must apply the unacceptable risk test—</p> <p>(a) on section 4A(4) or 4C(4) requiring the bail decision maker to move to the step 2— unacceptable risk test; or</p> <p>(b) on a decision of whether to grant bail to which, under whichever of section 4AA or 4AAB applies, neither the step 1—exceptional circumstances test nor the step 1—show compelling reason test applies.</p>	<p><b>Substitution:</b> The new section 4D is a <b>complete rewrite</b> of the previous section. The new section can be summarised as follows:</p> <ul style="list-style-type: none"><li>• <b>s.4D(a) Following Step 1 Tests:</b> The unacceptable risk test must be applied after completing either the exceptional circumstances or show compelling reason test as dictated by sections 4A(4) or 4C(4).</li><li>• <b>s.4D(b) Absence of Step 1 Tests:</b> The unacceptable risk test is also used when neither the exceptional circumstances test nor the show compelling reason test is required for a bail decision under sections 4AA or 4AAB.</li></ul>
<b>Section 4E All</b> <b>offences –</b> <b>unacceptable</b> <b>risk test</b>	<p>(1) A bail decision maker must refuse bail for a person accused of any offence if the bail decision maker is satisfied that—</p> <p>(a) there is a risk that the accused would, if released on bail—</p> <p>(i) endanger the safety or welfare of any other person, whether by committing an offence that has that effect or by any other means; or</p> <p>(iii) interfere with a witness or otherwise obstruct the course of justice in any matter; or</p> <p>(iv) fail to surrender into custody in accordance with the conditions of bail; and</p> <p>(b) the risk is an unacceptable risk.</p> <p>(2) The prosecutor bears the burden of satisfying the bail decision maker—</p> <p>(a) as to the existence of a risk of a kind mentioned in subsection (1)(a); and</p> <p>(b) that the risk is an unacceptable risk.</p> <p>(3) In considering whether a risk mentioned in subsection (1)(a) is an unacceptable risk, the bail decision maker must—</p> <p>(a) take into account the surrounding circumstances; and</p> <p><b>Note</b> The term <b>surrounding circumstances</b> is defined in section 3. Also the bail decision maker is required to take into account other matters if the accused is an Aboriginal person or a child. See sections 3A and 3B.</p> <p>(b) consider whether there are any conditions of bail that may be imposed to mitigate the risk so that it is not an unacceptable risk.</p>	<p>Section 4E has been <b>amended</b>. The key amendments are:</p> <ul style="list-style-type: none"><li>• <b>Addition:</b> the unacceptable risk test in Section 4E(1)(a)(i) incorporates the wording of the previous s.4E(1)(a)(ii) so that the prosecution must show that there is an unacceptable risk that the person will: endanger the safety or welfare of any other person, whether by committing an offence that has that effect, or by any other means</li><li>• <b>Removal:</b> The amendments repeal the existing second limb of the unacceptable risk test in section 4E(1)(a)(ii) which refers to committing an offence while on bail.</li></ul> <p>The section can be summarised as follows:</p> <ul style="list-style-type: none"><li>• <b>s.4E(1): Bail refusal considerations:</b> Bail is required to be refused if the accused presents an unacceptable risk which could lead to endangering the safety or welfare of any person, either through committing an offence or via other actions; interfering with a witness or obstructing justice; or failing to comply with the obligation to surrender into custody as ordered by bail conditions.</li></ul>

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		<ul style="list-style-type: none"><li>• <b>s.4E(2) Prosecution's Burden:</b> The prosecutor bears the burden of satisfying the bail decision maker of both the existence and unacceptability of the risk.</li><li>• <b>s.4E(3) Assessing Unacceptable Risk:</b> The bail decision maker evaluates whether the identified risk is unacceptable by reviewing all surrounding circumstances consider if imposing certain bail conditions could mitigate the risk, rendering it acceptable.</li></ul>
<b>Section 5AAA Conduct Conditions</b>	(1) A bail decision maker considering the release of an accused on bail must impose any condition that, in the opinion of the bail decision maker, will reduce the likelihood that the accused may— (a) endanger the safety or welfare of any other person, whether by committing an offence that has that effect or by any other means; or (c) interfere with a witness or otherwise obstruct the course of justice in any matter; or (d) fail to surrender into custody in accordance with the <b>bail undertaking</b> . (4A) If a bail decision maker is imposing a condition referred to in subsection (4)(g), ( <b>NOTE: 4(g) attendance and participation in a bail support service</b> ) and the accused is an Aboriginal person, the bail decision maker must take into account that it is important for the bail support services that Aboriginal people attend and participate in to be Aboriginal bail support services where that is appropriate, and where such services are available.	Section 5AAA has been <b>amended</b> . The key amendments are: <ul style="list-style-type: none"><li>• <b>Addition: s.5AAA(1)(a)</b> is amended to reflect the changes in section 4E</li><li>• <b>Addition: s.5AAA(4A) (4A)</b> When a bail decision maker is setting a bail condition under subsection (4)(g) for an Aboriginal accused, they must consider the importance of the accused attending Aboriginal bail support services, if such services are suitable and available.</li></ul>
<b>Section 8 Application for Bail</b>	(1) In any proceedings with respect to bail— (aa) the bail decision maker is not bound by the rules of evidence;	Section 8 has been <b>amended</b> . The key amendment is: <ul style="list-style-type: none"><li>• <b>Addition: s. 8(1)(aa)</b> clarifies that the bail decision maker is not bound by the rules of evidence</li></ul>
<b>Section 12 Power of the Court to refuse bail</b>	..... (3AA) Additionally, the court may allow the person to go at large if— (a) the court considers it appropriate to do so; and (b) the court is not required to refuse bail. .....	Section 12 has been <b>amended</b> . The key amendment is: <ul style="list-style-type: none"><li>• <b>Addition: s.12(3AA)</b> has been inserted to clarify the Court's inherent power to dispense with bail, where:<ul style="list-style-type: none"><li>○ the court considers it appropriate to do so, and</li><li>○ the court is not required to refuse bail</li></ul></li></ul>
<b>12B Persons subject to a summons to answer to a charge</b>	(1) This section applies if— (a) a person subject to a summons to answer to a charge for an offence is before a court (other than the Children's Court) on a hearing in the criminal proceeding relating to the charge; and (b) the hearing of the criminal proceeding is to be adjourned. (2) <b>Subject to subsection (2A), the court</b> may, on an application made by the prosecutor or on its own initiative— (a) remand the <b>person</b> in custody to appear before the court on the resumption of the hearing; or (b) in accordance with this Act, grant the <b>person</b> bail. (2A) <b>The court must not refuse bail if—</b> (a) the person is accused only of offences against the Summary Offences Act 1966 that are not referred to in Schedule 3; and (b) the person does not have a terrorism record; and (c) no exception under subsection (2B) applies. (2B) <b>An exception applies for the purposes of subsection (2A)(c) if—</b> (a) the court has determined under section 8AA that there is a risk that the person will commit a terrorism or foreign incursion offence; or (b) the person was previously granted bail in respect of any of the offences of which the person is accused and that bail was subsequently revoked. (2C) <b>If, under subsection (2A), the court must not remand the person, the court must instead either—</b> (a) grant the person bail; or (b) allow the person to go at large. (3) Nothing in this section— (a) affects the operation of section 331 of the Criminal Procedure Act 2009; or (b) prevents the court allowing <b>the person</b> to go at large, including on refusing an application made by the prosecutor under subsection (2).	Section 12D has been <b>amended</b> and the amendments mirror those of the new section 4AAA. Key amendments are: <ul style="list-style-type: none"><li>• <b>Addition: s.12B(2A)</b></li><li>• <b>Addition s.12B(2B)</b></li><li>• <b>Addition s.12B(2C)</b></li></ul> The section can be summarised as follows: <ul style="list-style-type: none"><li>• <b>s.12D(1) Application of Section:</b> This section is relevant when a person is summoned to court (excluding the Children's Court) for an offence, and the proceeding is adjourned.</li><li>• <b>s.12D(2) Court's Discretion on Remand or Bail:</b> The court may, on the prosecutor's application or its own initiative, either remand the person in custody or grant bail, unless restricted by subsection (2A).</li><li>• <b>s.12D(2A) Mandatory Bail Granting Criteria:</b> The court cannot refuse bail if the person is only accused of non-Schedule 3 offences under the Summary Offences Act 1966, lacks a terrorism record, and no exceptions in subsection (2B) apply.</li><li>• <b>s.12D(2B) Exceptions to Mandatory Bail:</b> Bail must not be granted if the court finds a risk of terrorism or foreign incursion offences, or if previously granted bail for any current charge was revoked.</li><li>• <b>s.12D(2C) Alternatives to Remand:</b> If the court is obliged not to remand the person under subsection (2A), it must either grant bail or allow the person to go at large.</li></ul>



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		<ul style="list-style-type: none"> <li><b>s.12D(3) Section's Limitations:</b> Nothing in this section impacts the functioning of section 331 of the Criminal Procedure Act 2009 or restricts the court from allowing the person to go at large, even when the prosecutor has applied for remand under subsection (2).</li> </ul>
<b>Section 13 Treason, murder, certain other offences</b>	<p>(1) Only the Supreme Court may grant bail to a person accused of treason.</p> <p>(2) Only the Supreme Court, or a court on committing the person for trial, may grant bail to a person accused of murder.</p> <p><b>(3) Only a court may grant bail—</b>            (a) to a person accused of a Schedule 1 offence; or            (b) subject to subsection (4), on any other decision to which, under section 4AA or 4AAB, the step 1—exceptional circumstances test applies.</p> <p>(4) Subsection (3) does not apply if the step 1—exceptional circumstances test applies only because of section 4AA(2)(c) or (d) and—            (a) the accused person is a vulnerable adult or an Aboriginal person.</p> <p>(5) Only a court may grant bail to a person accused of an offence against—            (a) a provision of Subdivision A of Division 72 of Chapter 4 of the Criminal Code of the Commonwealth; or            (b) a provision of Part 5.3 or 5.5 of the Criminal Code of the Commonwealth.</p>	<p>Section 13 has been <b>amended</b>. The key amendment is:</p> <ul style="list-style-type: none"> <li><b>Clarification: Section 13(3)</b> when only the court may grant bail.</li> </ul> <p>The section can be summarised as follows:</p> <ul style="list-style-type: none"> <li><b>s.13(1) For Treason charges:</b> Only the Supreme Court can grant bail.</li> <li><b>s.13(2) For Murder charges:</b> Only the Supreme Court or the court committing a person for trial can grant bail</li> <li><b>s.13(3) When only a court can grant bail:</b> Only a court can grant bail, for schedule 1 offences or in those where the exceptional circumstances test applies .</li> <li><b>s.13(4) Exception:</b> The exceptional circumstances test does not prevent bail if the accused is a vulnerable adult or an Aboriginal person, specifically due to section 4AA(2)(c) or (d).</li> <li><b>s.13(5) Commonwealth Matters:</b> Only a court can grant bail for offenses under Subdivision A of Division 72 of Chapter 4, or under Part 5.3 or 5.5 of the Commonwealth Criminal Code.</li> </ul>
<b>Part 3 – Further application for bail, variation of bail conditions, revocation of bail</b>		
<b>Section 18AA Certain Circumstances required before application may be heard</b>	<p>(1) A court must not hear an application under section 18 unless—            (aa) the application is the first or second instance of the applicant applying to a court for bail (whether under section 18 or otherwise) since being taken into custody; or            (a) the applicant satisfies the court that new facts or circumstances have arisen since the refusal or revocation of bail.</p> <p>(2) Nothing in this section derogates from the right of a person in custody to apply to the Supreme Court for bail.</p>	<p>Section 18AA has been <b>amended</b>. The key amendment is:</p> <ul style="list-style-type: none"> <li><b>Addition s.18AA(1)(aa)</b> all accused persons, including those who have had bail refused by a bail justice, may make two bail applications before a court without showing new facts or circumstances.</li> </ul>
<b>Part 4 – Appeals</b>		
<ul style="list-style-type: none"> <li>No substantive changes</li> </ul>		
<b>Part 5 – Miscellaneous</b>		
<b>Section 28 One bail undertaking may be given in respect to multiple charges</b>	If a bail decision maker is to grant bail to an accused who is held in custody in relation to charges for 2 or more offences, the bail decision maker may allow the accused to give a single bail undertaking in respect of all the charges	<p><b>Substitution:</b> The new section 28 is a complete <b>rewrite</b> of the previous section. The new section can be summarised as follows:</p> <ul style="list-style-type: none"> <li>Where an accused is taken into custody upon charges for two or more offences he may be admitted to bail upon his entering together with his sureties (if any) into one undertaking for his attendance at a stated time and place upon all the charges.</li> </ul>
<b>Section 30A Offence to contravene certain conduct</b>	Section 30A has been removed from the Act	<p><b>Repealed:</b> Section 30A has been <b>removed</b> from the Act.</p> <ul style="list-style-type: none"> <li>With section 30A being removed from the Act it is no longer a standalone offence to a breach a condition of a bail agreement.</li> </ul>
<b>Section 30B Offence to commit Indictable</b>	Section 30B has been removed from the Act	<p><b>Repealed:</b> Section 30B has been <b>removed</b> from the Act.</p> <p>With the removal of Section 30B it is no longer a standalone offence to commit an indictable offence whilst on bail.</p>

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Offence whilst on bail		
<b>Section 31 Indemnifying bail guarantor</b>	<p>(1) A person must not agree with another person to indemnify that other person against any liability which that other person may incur as a bail guarantor. Penalty: 15 penalty units or imprisonment for 3 months.</p> <p>(1A) A person must not indemnify another person against any liability which that other person may incur as a bail guarantor. Penalty: 15 penalty units or imprisonment for 3 months.</p> <p>(1B) A person must not agree to be indemnified against any liability which the person may incur as a bail guarantor. Penalty: 15 penalty units or imprisonment for 3 months.</p> <p>(2) An offence is committed against subsection (1) or (1B) whether the agreement is made before or after the person to be indemnified becomes a bail guarantor and whether or not the person becomes a bail guarantor and whether the agreement contemplates compensation in money or money's worth.</p>	<p>Section 31 has been <b>amended</b> for clarification.</p> <p>The section can be summarised as follows:</p> <ul style="list-style-type: none"><li>• <b>s.31(1) Agree to provision of indemnity:</b> It's illegal for someone to provide indemnity or to agree to provide indemnity to another person for any liability that person may face as a surety for someone's bail. The penalty for this offence is either 15 penalty units or up to three months in jail.</li><li>• <b>s.31(1A). Provision of indemnity:</b> It's illegal for someone to actually indemnify another person for any liabilities they may face as a bail guarantor. The penalty is the same as in subsection 1.</li><li>• <b>s.31(1B). Agree to be indemnified:</b> It's illegal for someone to agree to receive indemnity for any liabilities they may incur as a bail guarantor. Again, the penalty is 15 penalty units or up to three months in jail.</li><li>• <b>s.31(2) When the prohibition applies:</b> The prohibition in subsections 1 and 1B applies regardless of when the indemnity agreement is made (before or after the person becomes a bail guarantor), whether the person ever actually becomes a bail guarantor, and whether the agreement involves money or something else of value.</li></ul>
<b>Section 32A Infringement notice and infringement penalties</b>	Section 32A has been removed from the Act	<p><b>Repealed:</b> Section 32A has been <b>removed</b> from the Act.</p> <ul style="list-style-type: none"><li>• With the removal of Section 32A, a police officer can no longer issue an infringement notice against an offence under s.30A (the infringement penalty was 1 penalty unit).</li></ul>
<b>Schedule 1- Schedule 1 Offences</b>		
..... 13. Any other offence the necessary elements of which consist of elements that constitute an offence referred to in any other item of this Schedule.		<p>Schedule 1 has been <b>amended</b>. The key amendment is:</p> <ul style="list-style-type: none"><li>• <b>Addition: item 13:</b> Historical offences corresponding to Schedule 1 offences- Schedule 1 provides that any historical offence which consist of elements that constitute an offence under Schedule 1 is an offence under schedule 1.</li></ul>
<b>Schedule 2 – Schedule 2 Offences</b>		
[REMOVAL OF ITEM 1] ..... [REMOVAL OF ITEM 30] ..... 32. Any other offence the necessary elements of which consist of elements that constitute an offence referred to in any other item of this Schedule.		<p>Schedule 2 has been <b>amended</b>. The key amendments are:</p> <ul style="list-style-type: none"><li>• <b>Removal: Item 1 and Item 30: removed</b> to narrow the scope of the reverse onus provisions for multiple minor offending.</li><li>• <b>Addition: item 32:</b> Historical offences corresponding to Schedule 2 offences- Schedule 2 provides that any historical offence which consist of elements that constitute an offence under Schedule 2 is an offence under schedule 2.</li></ul>
<b>Schedule 3 – Exceptions to prohibitions on refusing bail</b>		
<b>Notes</b> 1 Section 4AAA(1) prohibits a bail decision maker from refusing a person bail in certain circumstances. One of those circumstances is that every offence of which the person is accused is an offence against the <b>Summary Offences Act 1966</b> that is not listed in this Schedule.		<p><b>Addition:</b> Schedule 3 is new to the Act. <b>Schedule 3</b> is a list of offences that are carved out from the offences for which bail must not be refused (section 4AAA and section 12B)</p>



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2. Section 12B(2A) prohibits a court from remanding a person in custody where that person is subject to a summons to answer to a charge for an offence, and the person has come before the court and the hearing of the criminal proceeding is to be adjourned. The prohibition applies in certain circumstances. One of those circumstances is that every offence of which the person is accused is an offence against the **Summary Offences Act 1966** that is not listed in this Schedule.
1. An offence against section 19(1) of the **Summary Offences Act 1966** (sexual exposure).  
2. An offence against section 23 of the **Summary Offences Act 1966** (common assault).  
3. An offence referred to in section 24(1) or (2) of the **Summary Offences Act 1966** (aggravated assault).  
4. An offence against section 41A of the **Summary Offences Act 1966** (observation of genital or anal region).  
5. An offence against section 41B of the **Summary Offences Act 1966** (visually capturing genital or anal region) as in force before its repeal.  
6. An offence against section 41C of the **Summary Offences Act 1966** (distribution of image of genital or anal region) as in force before its repeal.  
7. An offence against section 41DA(1) of the **Summary Offences Act 1966** (distribution of intimate image) as in force before its repeal.  
8. An offence against section 41DB(1) of the **Summary Offences Act 1966** (threat to distribute intimate image) as in force before its repeal.  
9. An offence against section 41H(2) of the **Summary Offences Act 1966** (food or drink spiking).  
10. An offence against section 41K(1) of the **Summary Offences Act 1966** (public display of Nazi symbols).  
11. An offence against section 51(2), (3) or (4) of the **Summary Offences Act 1966** (assaulting, etc. emergency workers, custodial officers, youth justice custodial workers or local authority staff on duty).  
12. An offence against section 51A(1) or (2) of the **Summary Offences Act 1966** (assaulting registered health practitioners).  
13. An offence against section 52A of the **Summary Offences Act 1966** (offence to harass witness etc.).