

Chapter 340.
Bail Act 1977.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 340.

Bail Act 1977.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Bail Act 1977,

Being an Act—

- (a) to provide for bail to be granted more readily; and
 - (b) to abolish certain rules of common law,
- and for other related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

“**bail**” means approval, whether or not subject to conditions, for the release of a person from custody;

“**bail authority**” means a person or court empowered or required under this Act or any other law to grant bail;

“**bail certificate**” means a certificate issued under Section 15;

“**bail obligations**”, in relation to a person granted bail, means the obligations imposed on the person under Section 17;

“**court**” means any court, other than a Village Court, and includes a Judge or Magistrate of any court, other than of a Village Court;

“**guarantor**” means a person who undertakes to see that a person granted bail complies with his bail obligations;

“**officer-in-charge**”, in relation to a police station at a particular time, means the policeman who is in charge of the police station at that time;

“**place of confinement**” means a corrective institution, rural lock-up or police lock-up;

“policeman” means a member of the Police Force.

(2) For the purposes of this Act—

- (a) The Supreme Court shall be deemed to have jurisdiction higher than the jurisdiction of any other court; and
- (b) a Judge of the National Court shall be deemed to have jurisdiction equal to the jurisdiction of every other Judge of the National Court; and
- (c) the National Court and a Judge of the National Court shall be deemed to have jurisdiction higher than the jurisdiction of a court or Magistrate referred to in Paragraph (d); and
- (d) a District Court and a Magistrate of a District Court shall be deemed to have jurisdiction equal to the jurisdiction of every other District Court and Magistrate of a District Court.

(3) For the purposes of this Act a person believes something on reasonable grounds if—

- (a) he personally has that belief; and
- (b) there are reasonable grounds for that belief.

2. APPLICATION.

Notwithstanding any other law, this Act applies to and in relation to a person arrested or detained for an offence.

PART II. – GRANT OF BAIL BEFORE ACQUITTAL OR CONVICTION.

Division 1.

General.

3. OBJECT OF PART II.

The object of this Part is to give effect to Section 42(6) (*liberty of the person*) of the *Constitution* which provides that a person arrested or detained for an offence (other than treason or wilful murder as defined by an Act of the Parliament) is entitled to bail at all times from arrest or detention and to acquittal or conviction unless the interests of justice otherwise require.

4. ONLY NATIONAL OR SUPREME COURT MAY GRANT BAIL IN CERTAIN CASES.

¹(1) A person—

- (a) charged with wilful murder, murder or an offence punishable by death; or
- (b) charged with rape, abduction, piracy, burglary, stealing with violence or robbery, kidnapping, assault with intent to steal, or breaking and entering a building or dwelling-house, and in which a firearm is involved, irrespective of whether or not the firearm was actually used in the commission of the alleged offence,

shall not be granted bail except by the National Court or the Supreme Court.

(2) For the purposes of Subsection (1), “firearm” includes imitation firearm whether or not it is capable of projecting any kind of shot, bullet or missile.

Division 2.

Circumstances when Bail to be Considered.

5. BAIL TO BE GRANTED BY POLICE IN CERTAIN CASES.

Subject to Section 4, where—

- (a) a person has been arrested for an offence and is held in custody at a police station or in the custody of a policeman; and
- (b) in the opinion of—
 - (i) the officer-in-charge of that police station; or
 - (ii) a commissioned officer of the Police Force,

it is not practicable to bring the person before a court within a reasonable time,

¹ Section 4 repealed and replaced by the *Bail (Amendment) Act 1993* (No. 11 of 1993).

the officer, at the time he forms that opinion, shall consider and accordingly grant or refuse bail to that person in accordance with Section 9.

6. APPLICATION FOR BAIL MAY BE MADE AT ANY TIME.

(1) An application for bail may be made to a court at any time after a person has been arrested or detained or at any stage of a proceeding.

(2) A court shall consider an application for bail at the time it is made unless it is satisfied that no steps that were reasonable in the circumstances have been taken to advise the informant that the application would be made.

(3) Subject to Section 4, the court shall grant or refuse bail in accordance with Section 9.

7. BAIL ON ADJOURNMENT.

Subject to Section 4, where a person is in custody in connection with any proceedings, including proceedings for committal for trial or sentence in the National Court, the court shall, on each occasion that it adjourns the proceedings before conviction, consider and accordingly grant or refuse bail to that person in accordance with Section 9.

8. BAIL AFTER COMMITTAL FOR TRIAL OR SENTENCE.

Subject to Section 4, where a court commits a person who is in custody for trial or sentence in the National Court, the court shall consider and accordingly grant or refuse bail to that person in accordance with Section 9.

Division 3.

Considerations Affecting Decision on Bail Matters.

9. BAIL NOT TO BE REFUSED EXCEPT ON CERTAIN GROUNDS.

²(1) Where a bail authority is considering the question of granting or refusing bail under this Part, it shall not refuse bail unless satisfied on reasonable grounds as to one or more of the following considerations:—

- (a) that the person in custody is unlikely to appear at his trial if granted bail;
- (b) that the offence with which the person has been charged was committed whilst the person was on bail;
- (c) that the alleged act or any of the alleged acts constituting the offence in respect of which the person is in custody consists or consist of—
 - (i) a serious assault; or
 - (ii) a threat of violence to another person; or

² Section 9 amended by No. 11 of 1982, s1.

- (iii) having or possessing a firearm, imitation firearm, other offensive weapon or explosive;
- (d) that the person is likely to commit an indictable offence if he is not in custody;
- (e) it is necessary for the person's own protection for him to be in custody;
- (f) that the person is likely to interfere with witnesses or the person who instituted the proceedings;
- (g) that the alleged offence involves property of substantial value that has not been recovered and the person if released would make efforts to conceal or otherwise deal with the property;
- (h) that there are, in progress or pending, extradition proceedings made under the *Extradition Act 1975* against the person in custody;
- (i) that the alleged offence involves the possession, importation or exportation of a narcotic drug other than for the personal medical use under prescription only of the person in custody;
- (j)³ that the alleged offence is one of breach of parole.

(2) In considering a matter under this section a court is not bound to apply the technical rules of evidence but may act on such information as is available to it.

(3) For the purposes of Subsection (1)(i), "narcotic drug" has the meaning given to it in the *Customs Act 1951*.

³ Section 9(j) added by the *Bail (Consequential Amendment) Act 1991* (No. 34 of 1991).

PART III. – GRANT OF BAIL AFTER CONVICTION.

10. BAIL AFTER CONVICTION AND BEFORE SENTENCE.

Where a court convicts a person but adjourns the proceeding before passing sentence, it may, in its discretion, grant the person bail.

11. BAIL AFTER LODGING APPEAL.

Where a person lodges an appeal against his conviction or sentence or both—

- (a) the court which convicted him; or
- (b) a court of equal jurisdiction; or
- (c) a court of higher jurisdiction,

may, in its discretion, on application by or on behalf of the appellant, grant bail pending the hearing of the appeal.

12. BAIL DURING HEARING OF APPEAL.

Where a court hearing an appeal adjourns proceedings, it may, in its discretion, grant bail to the appellant on application by or on behalf of the appellant.

PART IV. – PROCEDURE ON REFUSAL OF BAIL.

13. FURTHER APPLICATION MAY BE MADE AFTER REFUSAL.

(1) Where a person is refused bail by a Magistrate he is entitled to apply for bail, immediately if he so desires, to a Judge of the National Court.

(2) Where a person is refused bail by a Judge of the National Court he is entitled to apply for bail, immediately if he so desires, to the Supreme Court.

(3) Where an application is made under Subsection (1) or (2), the applicant shall produce a copy of the reasons given under Section 16.

(4) An application may be made under Subsection (1) or (2) whether or not bail was refused—

- (a) under this Act (including this section) or under any other law; or
- (b) on an application.

PART V. – PROCEDURE ON GRANT OR REFUSAL OF BAIL.**14. PERSON GRANTED BAIL NEED NOT BE PRESENT.**

Bail may be granted notwithstanding that the person to be granted bail is not in the presence of the bail authority.

15. BAIL CERTIFICATE.

(1) Subject to Subsection (3), at the time of granting bail to a person the bail authority shall issue to him a certificate—

- (a) stating that he is entitled to bail; and
- (b) specifying conditions (if any) of bail; and
- (c) containing such other particulars as are prescribed.

(2) Unless required by his legal representative or other agent, a person granted bail shall retain in his possession at all times until his bail obligations are discharged, a copy of the bail certificate.

(3) Where a person is granted bail on his committal for trial or sentence in the National Court, the Clerk of the Court which commits him shall, as soon as possible, forward a copy of the bail certificate to—

- (a) the Public Prosecutor; and
- (b) the Public Solicitor.

(4) Where a person is granted bail but is committed to a place of confinement until a condition is complied with, a copy of the bail certificate shall be attached to the warrant of commitment.

(5) Where a court issues a certificate under Subsection (1) in respect of a person and that person is not in the presence of the bail authority at the time, the Registrar or Clerk of the Court, as the case may be, shall, as soon as possible, forward the certificate to the person holding the person in custody who shall ensure that a copy of the certificate is handed to that person as soon as possible.

16. REASONS FOR REFUSING BAIL TO BE GIVEN AND RECORDED.

(1) Where bail is refused the bail authority shall at that time give the reasons in writing for its decision to the person in custody or his legal representative.

(2) Where the bail authority refuses to grant bail, whether or not application has been made, the bail authority shall ensure that the reasons for its decision are recorded—

- (a) if the bail authority is the officer-in-charge of a police station or a commissioned officer of the Police Force—in the register of arrests at the police station where the person is held in custody; and

- (b) if the bail authority is a court—in the court papers relating to the charge against the person.

PART VI. – OBLIGATIONS AND CONDITIONS RELATING TO BAIL.**17. OBLIGATIONS OF PERSON GRANTED BAIL.**

A person granted bail–

- (a) shall appear at the time and place specified by the bail authority and at every time and place to which, during the course of the proceeding the hearing may be from time to time adjourned; and
- (b) shall comply with all conditions of bail fixed under Section 18.

18. BAIL MAY BE GRANTED SUBJECT TO CONDITIONS.

(1) Subject to this section, a bail authority may grant bail to a person subject to conditions, including conditions to be complied with before release from custody, but in fixing conditions under this section the bail authority shall satisfy itself that the bail conditions–

- (a) will not cause undue interference with the person's domestic life; and
- (b) will not interfere with the person's legitimate means of earning a living or making himself available for work; and
- (c) will not interfere with the person's rights to political freedom of action or movement except insofar as it is necessary to ensure that he appears at court when required; and
- (d) will not cause the person financial hardship; and
- (e) are not unreasonable in all the circumstances.

(2) Where a bail authority fixes a condition to be complied with before release from custody, it shall, in the bail certificate, stipulate the person or class of persons to verify compliance with that condition.

(3) Any person may, unless the contrary intention appears in the bail certificate, perform on behalf of the person granted bail, any condition to be complied with before release from custody.

19. GUARANTORS.

(1) A bail authority may require as a condition of bail that no more than two guarantors approved by it undertake to see that the person granted bail appears at the time and place set for his trial and complies with the condition (if any) of his bail.

(2) A bail authority shall not require any guarantor to give any undertaking under Subsection (1) unless it is of the opinion that the person granted bail will not appear at his trial or will not comply with the conditions (if any) of his bail unless a guarantor is approved.

(3) If the bail authority is a court it may authorize a commissioned officer of the Police Force or an officer-in-charge of a police station to approve a guarantor.

(4) A bail authority or an officer authorized under Subsection (3) may not refuse to approve a person as a guarantor unless it or he is satisfied on reasonable grounds that the proposed guarantor will not honour the undertaking required of him under Subsection (1).

(5) A bail authority may require a guarantor—

- (a) to lodge an amount of money in support of his undertaking; or
- (b) to undertake to pay the State an amount of money if the person granted bail fails to appear at the time and place set for his trial or comply with the conditions of his bail.

(6) In fixing the amounts of money referred to in Subsection (5) the bail authority shall take into account the financial means of the guarantor.

(7) If the person granted bail fails to appear at the time and place set for his trial or fails to comply with the conditions (if any) of his bail the court dealing with his matter may order—

- (a) that the sum of money or part of it lodged by the guarantor be paid to the State; or
- (b) that the guarantor pay to the State the amount or part of the amount he undertook to pay under Subsection (5).

(8) A guarantor who is affected by an order under Subsection (7) may, within 14 days after the making of the order, apply to the court making the order for variation or revocation of the order.

(9) The court after hearing an application under Subsection (8) may make any order it considers just in the circumstances.

PART VII. – VARIATION, REVOCATION, ETC., OF BAIL.**20. VARIATION OF BAIL.**

(1) Subject to Subsection (2), a person granted bail in relation to a proceeding or the other party to the proceeding may apply to a court at any time, after reasonable notice to the other party, for a variation of the terms and conditions of bail.

(2) An application under Subsection (1) shall be made to a court which has jurisdiction not lower than the jurisdiction of the court which granted bail.

21. REVOCATION OF BAIL.

(1) Where it is alleged that there are reasonable grounds for revoking bail granted to a person and the person appears or is brought before a court, the court shall consider whether the bail should be revoked.

(2) If, after hearing all the evidence including that of the person granted bail and his witnesses (if any), the court is satisfied that the circumstances so require, it may—

- (a) revoke the bail, discharge the person from his bail obligations and commit the person to a place of confinement; or
- (b) subject to Subsection (3), vary the conditions of the bail.

(3) Where there is a guarantor for the person granted bail, a court shall not impose conditions of bail more onerous on the guarantor than the existing conditions of bail without first obtaining the consent of the guarantor.

22. FORFEITURE OF SECURITY.

(1) Where a person granted bail contravenes or fails to comply with his bail obligations, a court may make an order forfeiting the whole or part of the security given by him to secure his bail obligations.

(2) Subject to Subsection (3), where an order is made under Subsection (1), the order—

- (a) in the case of money undertaken to be paid in the event of a breach or contravention of the bail obligation—shall be deemed to be a judgement of the court that the person pay to the State a sum not exceeding the sum undertaken to be paid; and
- (b) in the case of a deposit—may authorize payment of the whole or part of the deposit into the Consolidated Revenue Fund.

(3) A person who is affected by an order under Subsection (1) may, within 14 days after the making of the order, apply to the court making the order for variation or revocation of the order.

(4) The court after hearing an application under Subsection (3) may make any order it considers just in the circumstances.

PART VIII. – MISCELLANEOUS.**23. PERMISSION TO LEAVE THE COUNTRY IN CERTAIN CASES.**

(1) Where for urgent personal reasons or by reason of his occupation a person granted bail in relation to a proceeding wishes to leave the country for a temporary period before the commencement or conclusion of that proceeding, he may, after reasonable notice to the other party, apply to the National Court or Supreme Court for permission to do so.

(2) Permission shall not be granted under Subsection (1) unless the court is satisfied that the person will return to Papua New Guinea for the proceeding.

(3) A permission granted under this section may be subject to conditions.

(4) A person may apply for permission under this section at the same time that he applies for bail.

(5) Where permission is granted under this section, a note to that effect shall be endorsed on the copy of the bail certificate held by the person granted bail.

24. GRANT OF BAIL UNDER OTHER LAWS.

The provisions of this Act which specify the circumstances in which a person may be granted bail are in addition to and not in derogation of any other Act or subordinate enactment that provides for the granting of bail.

25. CIVIL REMEDY FOR WRONGFUL REFUSAL TO GRANT BAIL.

(1) A policeman who—

(a) wrongfully refuses to grant bail to a person under Section 5; or

(b) imposes conditions on bail to a person under Section 18 contrary to the requirements of that section; or

(c) wrongfully refuses to approve a guarantor for a person under Section 19,

may be liable in damages to that person.

(2) An action under Subsection (1) may be brought—

(a) in the National Court; or

(b) in a District Court,

and in the case of a District Court the court has jurisdiction within the limits prescribed by Section 21 of the *District Courts Act 1963*.

(3) In an action under Subsection (1), a court may award exemplary damages.

(4) The provisions of this section are in addition to and not in derogation of the provisions of the *Constitution* or any other law dealing with the enforcement of any constitutional right, power, duty, restriction or prohibition.

26. ABOLITION OF CERTAIN COMMON LAW POWERS AND DUTIES.

All powers, functions, duties and responsibilities conferred or imposed by the common law in relation to bail are abolished.

27. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

28. OFFENCES.

⁴A person who—

- (a) is alleged to have committed an offence the penalty for which is or includes imprisonment for a term exceeding 12 months; and
- (b) has been granted bail; and
- (c) contravenes or fails to comply with his bail obligations,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 12 months.

Office of Legislative Counsel, PNG

⁴ Section 28 added by No. 11 of 1982, s2.