

Issue	Commentary	Bail Act 1992 provision
Authority to make a bail decision	<ul style="list-style-type: none"> • Authorised officers (Chief Police Officer, Superintendent/Sergeant, person authorised by Chief Police Officer) – where the person is present at a police station, a decision about bail for the offence has not been made by a court and the offence is not a family violence offence of murder. • Magistrates Court – where the person charged is before the court; or the matter is before the Supreme Court and the person has been arrested for breach of bail and the Supreme Court is not sitting. • Supreme Court – where the person charged is before the court or the court is reviewing bail 	<ul style="list-style-type: none"> • s14 • s20 • s20B
Entitlement and presumptions	<ul style="list-style-type: none"> • Minor offence, - person is entitled to bail • Other offences – person is entitled to bail unless refusal is justified under the listed criteria in s22 (and subject to presumptions. • No presumption for bail (neutral presumption) for Schedule 1 offences or person has been found guilty of listed offences of violence in the previous 10 years • Schedule 1 offences include specified offences of violence (e.g. manslaughter, intentional grievous bodily harm), sexual offences (e.g. sexual assault), and trafficking, manufacturing and supply of drugs. • Presumption against bail: <ul style="list-style-type: none"> ○ Murder and serious drug offences ○ Serious offence committed while charge for another serious offence is pending or outstanding ○ Person sentenced to imprisonment ○ Family violence offence – when bail being considered by authorised officer, unless the person poses no danger to a protected person • Special or exceptional circumstances – bail may still be granted if special or exceptional circumstances apply which favour the grant of bail. 	<ul style="list-style-type: none"> • s8 • s9A • s9B • Sch 1 • s9C • s9D • s9E • s9F • ss9C-E
Criteria for granting bail (adults)	<p>Court or authorised officer must consider:</p> <ul style="list-style-type: none"> • The likelihood of the person appearing in court • The likelihood of the person: committing an offence on bail; harassing or endangering the safety or welfare of anyone; or interfering with evidence; intimidating a witness, or otherwise obstructing the course of justice in relation to the person or anyone else • The interests of the person. • Post- conviction – the likelihood of a sentence of imprisonment. 	<ul style="list-style-type: none"> • s22

	<p>In considering those matters the court or authorised officer may have regard to any relevant matter including:</p> <ul style="list-style-type: none"> • The nature and seriousness of the offence • The person’s character, background and community ties • The likely effect of a refusal of bail on the person’s family or dependants • Any previous grants of bail • The strength of the evidence. 	
Criteria for granting bail (children)	The approach is similar that for adults, but the primary consideration is the best interests of the child.	<ul style="list-style-type: none"> • s23
Conditions of bail	<ul style="list-style-type: none"> • a wide range of conditions may be imposed on adults provided the condition(s) is necessary to secure attendance, protection others from harm, prevent commission of further offences or to prevent interference with evidence, intimidating witnesses or obstructing the course of justice. • For children there is an additional requirement for youth justice principles to be considered as well as the best interests of the child. • Bail (with or without conditions) is subject to a undertaking to appear at a stated place at a stated time. 	<ul style="list-style-type: none"> • s25 • s26 • s28
Review of bail decisions	<ul style="list-style-type: none"> • Part 6 contains provisions which allow for the review of all bail decisions, including a decision to impose conditions. • There is a prosecution right of review in relation to a decision relating to a family violence or serious offence. 	<ul style="list-style-type: none"> • Part 6 • s44
Repeat applications for bail	<ul style="list-style-type: none"> • An accused has two bail applications as of right in the Magistrates Court, a third application requires a change of circumstances or fresh information of relevance to the granting of bail. • An application for bail as of right may be made in the Supreme Court once the matter is before that court unless they have already had either 2 applications in the Magistrates Court or 1 in the Supreme Court. In either of those circumstances a further application may only be heard if there is a change of circumstances or fresh information of relevance to the granting of bail. 	<ul style="list-style-type: none"> • S20A • S2
Offences	<ul style="list-style-type: none"> • It is an offence to fail to answer bail and a warrant may be issued for the person’s arrest. • Breach of bail is not a criminal offence but is the basis for an arrest without warrant and production before a court. • When a person is brought before the court either on a warrant for failing to answer bail or without warrant for a breach of bail, the relevant court will consider bail in accordance with the provisions of the Bail Act. 	<ul style="list-style-type: none"> • s49 • s56A & s56AD

ACT - BAIL ACT 1992

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Link to *Bail Act 1992* - <https://www.legislation.act.gov.au/View/a/1992-8/current/html/1992-8.html>

A concise explanation of bail in the ACT is available at: [Bail - ACT Courts](#)