

House of Representatives
Supplementary Order Paper

Tuesday, 2 July 2013

**Administration of Community Sentences and
Orders Bill**

Proposed amendments

Hon Anne Tolley, in Committee, to move the following amendments:

Part 1A replaced

Replace *Part 1A* (line 8 on page 9 to line 25 on page 12) with:

Part 1A
**Amendments to Bail Act 2000 (as amended by Bail
Amendment Act 2011)**

7A Principal Act amended

This **Part** amends the Bail Act 2000 (as amended by the Bail Amendment Act 2011).

**7B Granting of bail to appellant in custody pending appeal
to District Court presided over by District Court Judge**

- (1) The heading to section 53 is amended by inserting “**or on home detention**” after “**custody**”.
- (2) Section 53 is amended by repealing subsection (1) and substituting the following subsection:
 - “(1) This section applies if a person—
 - “(a) is in custody under a conviction or sentence, or is subject to a sentence of home detention; and
 - “(b) is appealing the conviction or sentence, or both, to a District Court presided over by a District Court Judge.”
- (3) Section 53(2) is amended by inserting “, or is subject to a sentence of home detention,” after “custody”.
- (4) Section 53(4) is amended by omitting “34” and substituting “35”.

- (5) Section 53 is amended by repealing subsection (6) and substituting the following subsection:
- “(6) For the purposes of this section,—
- “(a) an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given under section 83 of the Sentencing Act 2002 that another sentence or term of imprisonment is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed; and
- “(b) an appellant is not deemed to be subject to a sentence of home detention only under the conviction to which the appeal relates if a direction has been given under section 80B of the Sentencing Act 2002 that another sentence of home detention is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence was imposed.”

7C Granting of bail to appellant in custody pending appeal to High Court

- (1) The heading to section 54 is amended by inserting “**or on home detention**” after “**custody**”.
- (2) Section 54 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies if a person—
- “(a) is in custody under a conviction or is subject to a sentence of home detention; and
- “(b) is appealing the conviction or sentence, or both, to the High Court.”
- (3) Section 54(2) is amended by inserting “, or is subject to a sentence of home detention,” after “custody”.
- (4) Section 54 is amended by repealing subsection (6) and substituting the following subsection:
- “(6) **Section 53(6)** applies for the purposes of this section.”

7D Granting of bail to appellant in custody pending appeal to Court of Appeal or Supreme Court

- (1) The heading to section 55 is amended by inserting “**or on home detention**” after “**custody**”.
- (2) Section 55 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies if a person—
- “(a) is in custody under a conviction or is subject to a sentence of home detention; and

- “(b) is appealing the conviction or sentence, or both, to the Court of Appeal or the Supreme Court.”
- (3) Section 55(2) is amended by inserting “, or is subject to a sentence of home detention,” after “custody”.
- (4) Section 55 is amended by repealing subsection (4) and substituting the following subsection:
- “(4) **Section 53(6)** applies for the purposes of this section.”

7E New section 58 substituted

Section 58 is repealed and the following section substituted:

“58 Time on bail pending appeal not to be taken as time served

- “(1) Section 95 of the Parole Act 2002 applies if an appellant is released on bail pending an appeal.
- “(2) For the purpose of calculating how much time an offender who is subject to a sentence of home detention has served, time ceases to run on the sentence during any period in which the offender is released on bail pending an appeal.”

7F Surrender of appellant released on bail

- (1) The heading to section 59 is amended by adding “**from sentence of imprisonment**”.
- (2) Section 59(1) is amended by omitting “defendant” and substituting “appellant”.
- (3) Section 59(2) is amended by omitting “a defendant” and substituting “an appellant”.

7G New section 60 inserted

The following section is inserted after section 59:

“60 Surrender of appellant released on bail from sentence of home detention

- “(1) An appellant who has been released from a sentence of home detention on bail pending the hearing of an appeal may surrender himself or herself and apply to a District Court Judge for the discharge of bail, and the District Court Judge may order that the appellant resume serving the sentence of home detention.
- “(2) If an appellant applies for the discharge of bail under **subsection (1)**, the District Court Judge may,—
- “(a) if the appellant has been on bail for longer than 2 months, adjourn the matter to enable a probation officer to obtain the information required under **subsection (3)**; and
- “(b) either—
- “(i) remand the appellant in custody; or

- “(ii) grant the appellant bail for the period of the adjournment.
- “(3) Before ordering that an appellant resume serving a sentence of home detention under **subsection (1)**, the District Court Judge must, if the appellant has been on bail for longer than 2 months, consider information from a probation officer on—
 - “(a) whether the home detention residence is still available and suitable; and
 - “(b) whether every relevant occupant (as defined in section 26A(4)(a) of the Sentencing Act 2002) of the home detention residence consents, in accordance with section 26A(3)(d) of the Sentencing Act 2002, to the appellant resuming the sentence at the home detention residence.
- “(4) If a District Court Judge orders that the appellant resume serving the sentence of home detention,—
 - “(a) the appellant must go to and remain at the home detention residence unless absent in accordance with section 80C(3)(a) or (b) of the Sentencing Act 2002; and
 - “(b) the sentence of home detention resumes when the appellant has arrived at the home detention residence under **paragraph (a)**.”

Clause 22A: new section 69JA

In *clause 22A, new section 69JA(3)(b)*, replace “section 80F(4)” (line 9 on page 21) with “section 69I(3)”.

In *clause 22A, new section 69JA(4)(a)*, replace “section 80F(4)” (line 18 on page 21) with “section 69I(3)”.

Clause 28

Replace *clause 28(2)* (lines 6 to 12 on page 25) with:

- (2) Section 80N is amended by adding the following subsection:
 - “(6) If the court imposes a home detention sentence cumulatively on an existing sentence, or imposes a concurrent sentence of home detention, any post-detention conditions imposed with the first home detention sentence commence only after both sentences have been completed.”

Clause 32: new section 80ZG

In *clause 32, new section 80ZG(1)(b)*, replace “each” (line 20 on page 26) with “the total”.

Clause 32: new section 80ZGA

In *clause 32, new section 80ZGA(1)(c)*, replace “each” (line 14 on page 28) with “the total”.

Clause 32: new section 80ZGD

In *clause 32, new section 80ZGD(1B)(b)*, delete “or curfew address” (line 10 on page 30).

New clause 46A inserted

After *clause 46* (line 22 on page 35), insert:

46A Amendment to Criminal Procedure Act 2011

- (1) This section amends the Criminal Procedure Act 2011.
- (2) The following section is inserted after section 403:

“403A Transitional provision regarding effect of appeal on sentence of home detention

If, in any proceeding to which section 397 applies, a person is convicted and sentenced to home detention and on or after the date that this section comes into force either party appeals a determination to which the sentence relates, section 397(2) has effect subject to the following:

- “(a) the sentence of home detention is not suspended just because a notice of appeal or application for leave to appeal has been given unless the appeal court expressly directs that the sentence be suspended; and
- “(b) section 399 of the Crimes Act 1961 and section 124 of the Summary Proceedings Act 1957 (as each of those provisions read before the commencement date) do not apply; and
- “(c) the person sentenced to home detention may apply for bail and the provisions of the Bail Act 2000 (as those provisions read before the commencement date) apply except that sections 54, 55, 58 and 59A of the Bail Act (as those provisions read at the time of the appeal) apply with any necessary modifications.”

Explanatory note

This Supplementary Order Paper sets out amendments to the Administration of Community Sentences and Orders Bill (the **Bill**). The amendments—

- correct minor errors in *Part 2* of the Bill, which amends the Sentencing Act 2002; and
- replace *Part 1A* of the Bill (which amends the Bail Amendment Act 2011) with a new Part that directly amends the Bail Act 2000 (the amendments made by the Bail Amendment Act 2011 were incorporated into the Bail Act 2000 on 1 July 2013, and therefore it is necessary to ensure that the amendments proposed in this Bill are not spent); and
- provides a transitional provision in the Criminal Procedure Act 2011 to ensure that any appeal against a sentence of home detention does not op-

erate to suspend that sentence and to provide that a person who makes such an appeal may apply for bail in accordance with the Bail Act 2000.
