

Schedule

[reg. 3(1)]

Form 1

Bail Act 1982

Section 8(1)(a)

INFORMATION FOR DEFENDANT

NOTE: If a defendant has difficulty with reading English he may require that this form be translated for him.

1. Summary

This form contains a summary of the main provisions of the *Bail Act 1982* relating to your bail rights. Only the general effect of those provisions is stated.

2. Bail information form

You must be given a form (Form 2) which can be filled in by you to let the officer or court have sufficient information to make a decision on bail. In straightforward cases where bail is likely to be granted and sufficient information is held, the court or officer may advise you that you need not fill in the form.

You do not have to complete any form or supply any information to an officer or court that is considering bail. However, if you do not do so, the decision may be delayed.

Information supplied cannot be used against you at your trial.

3. At time of arrest

Upon your arrest, unless you are to be detained in custody for some other offence or reason, bail must be considered as soon as is reasonably practicable whether or not you apply for bail. If you are not released on bail, you must be taken before a court as soon as is reasonably practicable.

Certain police officers and, for children only, certain community services officers, may deal with bail at this stage, except —

- (a) for the offence of murder or wilful murder;
- (b) where the arrest is made under a warrant;
- (c) where the arrest is made in an urban area (as defined) for a serious offence (as defined) alleged to have been committed while you were —

- (i) on bail for another serious offence; or
- (ii) at liberty under an early release order in respect of another serious offence;

or

- (d) for an offence that involves breach of a violence restraining order.

A Justice of the Peace may also deal with bail at this stage except —

- (a) for the offence of murder or wilful murder;
- (b) where the arrest is made in an urban area (as defined) for a serious offence (as defined) alleged to have been committed while you were —
 - (i) on bail for another serious offence; or
 - (ii) at liberty under an early release order in respect of another serious offence;

or

- (c) for an offence that involves breach of a violence restraining order.

4. On appearance in court

For every later appearance in court unless you are to be detained in custody for some other offence or reason, bail must be considered afresh whether or not you apply for bail. However, this does not apply if you are charged with murder or wilful murder and have been refused bail by a Supreme Court Judge unless —

- (a) there has been a change of circumstances; or
- (b) you did not present your case properly at the time when bail was refused.

5. Warrant cases

If you have been arrested under a warrant you must as soon as is practicable be taken either before a Justice of the Peace to consider bail or before the court which issued the warrant.

6. Where charge is murder or wilful murder

If you are charged with murder or wilful murder, you must as soon as is practicable be taken before a Supreme Court Judge, or before a Court which will refer you to a Supreme Court Judge, so that he can consider bail.

7. Decision may be delayed

A decision on bail may be delayed for up to 30 days if information has to be obtained or checked, but, on arrest, you must still be taken before the court as soon as is practicable.

8. How decision to be made — adult

Bail for an adult defendant, before conviction, is at the discretion of the court or officer who must take into account the points set out in paragraph 9(a) and (b) below.

However bail must be refused if the case comes within paragraph 8B below.

8A. How decision to be made — child

A child cannot be released on bail unless a responsible person gives a written undertaking to see that the child does what is required by the bail undertaking. The only exception to this is where the child is over 17 and is able to live independently without supervision.

A child, before conviction, has a right to bail unless —

- (a) no such undertaking is entered into by a responsible person; or
- (b) the points in paragraph 9(a) and (b) below disclose a reason why bail should be refused; or
- (c) the case comes within paragraph 8B below.

8B. Where serious offence committed while on bail for another serious offence

In Schedule 2 to the Bail Act there is a list of serious offences. You cannot be granted bail for one of these offences if it is alleged to have been committed while you were on bail for another serious offence, unless there are exceptional reasons why you should not be kept in custody.

9. Points to be considered

The main points to be taken into account in the bail decision are —

- (a) Before trial
 - (i) Whether you might fail to appear in court, or whether you might commit an offence, or endanger persons or property or interfere with witnesses.
 - (ii) Whether you need to be kept in custody for your own protection.

- (iii) In the case of an adult, whether the prosecutor has put forward reasons for refusing bail.

In considering the points in (i) above the main factors to be taken into account are the seriousness of the offence, the strength of the prosecution case, your personal background and circumstances and whether you have failed to answer bail in the past.

- (b) During trial

Whether, in addition to the above, there is reason to believe that the trial may be adversely affected if you are not kept in custody.

- (c) After conviction

If you have been imprisoned, bail may be granted for an appeal from a decision of a Court of Petty Sessions or the Children's Court or, in exceptional circumstances, from a decision of a superior court.

If you are awaiting sentence, bail is to be granted only in exceptional cases or where there is a strong likelihood that the sentence will not be one of imprisonment.

In either case the criteria in (a) above must be considered.

10. Conditions

Bail conditions must be fair and reasonable in the circumstances of each case. The most common conditions are that there be an approved surety or sureties, and that the defendant and any surety pay an amount of money to the Crown if the defendant does not answer bail.

In the case of a child, it is always a condition of bail that a responsible person give a written undertaking to see that the child does what is required by the bail undertaking. The only exception is where the child is over 17 and is able to live independently without supervision.

11. Defendant to receive copy of bail decision form or court record

If your case for bail has been considered by a Justice of the Peace, a police officer, or a community services officer and —

- (a) you have been refused bail;
- (b) you have been granted bail after having previously been refused; or
- (c) you notify the decision-maker that you are dissatisfied with any condition that has been imposed,

a bail record form will be completed and you must, upon request, be given a copy of the form as soon as is reasonably practicable.

If your case for bail has been considered by a Magistrate or a Judge you must, upon request, be given a copy of the court record showing the decision made and the reasons.

12. Bail undertaking

Before you are released on bail you must sign an undertaking to appear in court at the required time and to comply with other conditions which may be imposed; and, where applicable, must agree to pay the amount fixed by the authorised officer, Justice or court if you do not appear.

You must be given a copy of your bail undertaking and a form setting out your obligations and the consequences of a failure to comply with them. You may require that those documents be read or translated to you.

13. Release from custody

As soon as all papers have been completed and pre release conditions complied with, you must be released, but this can be delayed, if necessary, for such things as the taking of fingerprints or photographs.

14. Reconsideration of decision

There is no appeal as such against a bail decision, but —

- (a) after arrest, if a police officer (or in the case of a child, a community services officer) refuses bail, you can ask another officer or a Justice of the Peace to consider bail; and
- (b) you may re-apply for bail if you think that new facts have arisen, or circumstances have changed or that you did not present your case properly.

15. Application to Judge

Either you or the prosecutor may at any time apply to a Supreme Court Judge for bail to be considered or to have a bail decision changed. However once you have made such an application you cannot make another unless —

- (a) there has been a change of circumstances; or
- (b) you did not present your case properly on the first application.

16. Sureties

There is a form which a person must complete before he can be approved as a surety.

Each surety must also sign an undertaking which sets out his liabilities.

17. False information

If you knowingly or recklessly give false information in connection with bail, you are liable to a fine of up to \$1 000 or imprisonment for up to 12 months, or both.

18. Offence to compensate surety

It is an offence for you or any other person to compensate, or agree to compensate, a surety or a proposed surety for any liability which falls, or may fall on him, under the *Bail Act 1982*. The surety or the proposed surety and any person who is a party to the agreement also commits an offence. The penalty is a fine of up to \$1 000, or imprisonment for up to 12 months, or both.

Form 2

Bail Act 1982

Section 8(1)(b)

INFORMATION GIVEN BY DEFENDANT

NOTE FOR DEFENDANT: If you have difficulty with reading, speaking or writing English you must be given the help necessary to understand and complete this form.

Name of defendant:

.....
Surname Other names

Charge(s)/appeal/proceedings ⁽¹⁾:
.....
.....
.....

(1) Insert brief particulars.

Court and charge nos.:

.....

- (a) I HAVE RECEIVED A COPY OF FORM 1 (INFORMATION FOR DEFENDANT)
- (b) I DO NOT WISH TO COMPLETE ANY PART OF THIS FORM ⁽²⁾

(2) Delete if not applicable.

Signature of Defendant

Date

NOTES FOR DEFENDANT

If you do not wish to answer any particular question on this form you should write "decline" next to it.

If you knowingly or recklessly give false information in connection with bail you are liable to a fine of up to \$1 000 or imprisonment for up to 12 months, or both.

PARTICULARS OF DEFENDANT

- A. Date of birth
- B. 1. Nationality
- 2. Holder of.....passport (or application for passport (country) made to.....but passport not yet received).

(name of office)

C. Address:

1. Present Address
No..... Street.....
.....
Suburb.....
.....Postcode.....
Telephone no.....
2. Description of present address
(tick one)
 Own house
 Parents' home
 Boarding house
 Hostel
 Foster home
 Rented Accommodation
 Other (describe)
.....
3. For child, address of parent(s).....
.....Telephone No.....
4. Intended address if granted bail:
No..... Street.....
.....
Suburb.....
.....Postcode.....
Telephone no.....
5. Description of bail address (if
different from above address)
(tick one)
 Own house
 Parents' home
 Boarding house
 Hostel
 Foster home
 Rented Accommodation
 Other (describe)
.....
6. During the past 5 years, how long have you been resident in Western
Australia?years
7. For child at school, name of school.....

D. Family circumstances:

1. Marital status (tick where applicable)
Single
Married
Separated
De Facto
Divorced
2. Dependants
(a) Children, number.....
(b) Others, number.....
(c) Relationship of those in
(b) to you.....
.....
(d) Children living with you,
number.....
3. Nearest relative:
Name.....
Address.....
.....Relationship.....
Telephone No.....

E. Employment:

1. Present occupation.....
2. Present employer.....Business Address.....Period Employed
.....
3. Employment during the past 5 years:
Employer's name.....Business Address.....Period employed
.....
.....
.....
4. If refused bail would present employment be lost? (tick where applicable)
 Yes No Not Known
5. Have you any intention of leaving your present employment? (tick where applicable)
 Yes No

F. Financial position:

1. Weekly income
 - (i) wages or salary after tax
\$.....
 - (ii) other income (state source)
\$..........
2. Main assets
(house, contents, land,
motor car, bank account,
etc.)

Asset	Approx. value	To whom owed	Approx. amount
.....
.....
.....
.....
3. Main debts
(mortgages, hire purchase,
credit cards, fines, etc.)
4. Any other financial commitments? (show details)
.....
.....
.....
.....

G. Background: (tick appropriate boxes)

1. Are you on bail in another case?

Yes No

If yes, give details.....

.....

.....

2. Have you ever failed to answer bail?

Yes No

If yes, give details.....

.....

.....

3. Have you any previous convictions?

Yes No

If yes, give details.....

.....

.....

4. Are you on probation or parole?

Yes No

If yes, give details.....

.....

.....

5. Are there any proceedings against you pending in a civil court?

Yes No

If yes, give details.....

.....

.....

H. Possible sureties:

Name	Address	Phone No.	Relationship
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I. Special reasons for wanting bail:

Outline special factors to be taken into account (e.g. illness, physical condition, employment, domestic difficulties, etc.).

.....
.....
.....
.....

THE ABOVE PARTICULARS ARE TRUE.

Signature of Defendant.....

Date.....

REVISION OF ABOVE PARTICULARS [See section 8(2) and (4) of Act]

1st revision:

No change/revised as follows —

Signature of Judicial Officer/Authorised Officer.....

Date.....

2nd and subsequent revisions:

(Judicial Officer or Authorised Officer to record position as per the preceding section, adding a new page if necessary.)

Signature of Judicial Officer/Authorised Officer.....

Date.....

Form 3

Bail Act 1982

Section 18(2)(a)

*** NOTICE TO APPEAR WHERE BAIL DISPENSED WITH BY POLICE OFFICER**

*N.B. Applies only to a person charged with a prescribed offence (See over)

To:.....
Surname Other names

Address

1. You are required to appear at the Court of Petty Sessions/Children's Court at.....onday the.....day of.....20.....ata.m./p.m. to be dealt with for the alleged offence(s) of

2. Bail for that appearance is dispensed with.

* The amount cannot exceed \$300

3. I have fixed \$as the (the amount in words and figures) amount to be deposited as security for your appearance, AND I ACKNOWLEDGE THAT PAYMENT OF THAT SUM HAS BEEN MADE.

4. If you appear as required and the case is dealt with, the court may order that your deposit be applied towards paying any sum of money you are ordered to pay; and any balance would be refunded to you. If the court does not so order, you will be entitled to a full refund of the deposit.

5. If you do not appear as required the following applies:

- (a) The case may be dealt with in your absence. Your deposit may be applied towards paying any sum of money you are ordered to pay, and any balance will be forfeited to the Crown. If the deposit is not sufficient to meet the amount so ordered, the balance must be paid by you.
- (b) The court may decline to deal with the matter and issue a warrant to bring you before the court, in which case the deposit will be forfeited to the Crown.

6. Whether you appear or not, the case may be adjourned and the court may further dispense with bail, in which case notice will be issued to you of the time and place when you must again appear, and your deposit will be retained as security for your further appearance.

Date

ACKNOWLEDGEMENT BY DEFENDANT

I, the above-named defendant, acknowledge that I have been given the notice of which the above is a copy.

Signature.....

Date.....

REVERSE OF FORM 3

Regulation 4 of the *Bail Regulations 1988* provides as follows —

Offences prescribed for section 18(1) of the Act

- 4. The simple offences created by the provisions specified in the following table of are prescribed for the purposes of section 18(1) of the Act —

Table

Act	Section and brief description
<i>Police Act 1892</i>	Section 50 (failure to give correct name or address to police officer); Section 53 (drunk in a public place, etc.); Section 54 (disorderly conduct); Section 59 (obscenity, soliciting or loitering for prostitution, threatening behaviour, extinguishing public light etc.); and
<i>Liquor Act 1970</i> ²	Section 66(11) (wilful and obscene exposure). Section 46(1) (consumption of liquor on unlicensed premises etc.); Section 46(2) (occupier etc. permitting person to have liquor in certain unlicensed premises); and Section 129(1a) (failure by drunken, violent, quarrelsome or disorderly person to leave, or remain away from, licensed premises when requested).

Form 4

Bail Act 1982

Sections 18(2)(a) and 19(3)

NOTICE TO APPEAR WHERE BAIL DISPENSED WITH BY COURT

To:
Surname Other names

.....
Address

1. You are required to appear at the Court of Petty Sessions/Children's Court at.....on.....day the.....day of..... 20.....at.....a.m./p.m. to be dealt with for the alleged offence(s) of.....
2. Bail for that appearance is dispensed with.
3. The sum of \$.....previously deposited as security for your appearance in court will be retained as security for the further appearance specified above.
4. If you appear as required and the case is dealt with, the court may order that your deposit be applied towards paying any sum of money you are ordered to pay; any balance would be refunded to you. If the court does not so order, you will be entitled to a full refund of the deposit.
5. If you do not appear as required the following applies:
 - (a) The case may be dealt with in your absence. Your deposit may be applied towards paying any sum of money you are ordered to pay, and any balance will be forfeited to the Crown. If the deposit is not sufficient to meet the amount so ordered, the balance must be paid by you.
 - (b) The court may decline to deal with the matter and issue a warrant to bring you before the court, in which case the deposit will be forfeited to the Crown.
6. Whether you appear or not, the case may be further adjourned and the court may further dispense with bail, in which case notice will be issued to you of the time and place when you must again appear, and your deposit will be retained as security for your further appearance.

.....
Magistrate/Justice(s) of the Peace.
Date

|

ACKNOWLEDGEMENT BY DEFENDANT *

* Not applicable
where notice sent by
unregistered post
under section 19(4) of
the Act.

I,.....
(Full name)

the above-named defendant, acknowledge that I have been
given the notice of which the above is a copy.

Signature.....
Date.....

|

Form 5

Bail Act 1982

Section 26(4)(b)

BAIL RECORD FORM

1. NAME AND ADDRESS OF DEFENDANT

.....

Surname	Other Names
Address	

.....

2. CHARGE(S)/APPEAL/PROCEEDINGS (insert brief particulars)

.....

.....

3. COURT AND CHARGE NOS.....

4. DATE OF APPEARANCE FOR WHICH BAIL CONSIDERED.....

BAIL REFUSED — GENERAL

(Tick Appropriate Box)

5. (i) Adult

Bail is refused. There is no condition which I could reasonably impose which would overcome the ground(s) which influenced my decision to refuse bail. In exercising my discretion I have had regard to —

(ii) Child

Bail is refused. There is no condition which I could reasonably impose which would overcome the ground(s) which negate(s) any right of the defendant to be released on bail. I consider that a right to be released on bail is negated by the following factor(s) —

(Tick Appropriate Box)

(1) If the defendant is not kept in custody he/she may —

- (a) fail to appear in court in accordance with his/her bail undertaking:
- (b) commit an offence:
- (c) endanger the safety, welfare or property of a person:
- (d) interfere with witnesses or otherwise obstruct the course of justice.

(2) The need of the defendant to be held in

custody for his/her own protection.

- (3) The grounds for opposing the grant of bail put forward by the prosecutor namely: —
.....
- (4) The possibility that if the defendant is not kept in custody the proper conduct of the trial may be prejudiced.
- (5) Any other ground (specify).....

Reasons why above ground(s) apply (mention also any relevant factor referred to in the note below)

.....
.....
.....

Date.....Signature.....

(Authorised Officer/Justice/Justices
Member of the Children’s Court)

Note: In considering (1) above regard shall be had to the following factors —

- (a) the nature and seriousness of the offence(s) including any other offence for which the defendant is awaiting trial and the probable method of dealing with the defendant for it/them if convicted;
- (b) the defendant’s character, previous convictions, antecedents, associations, home environment, background, place of residence and financial position;
- (c) the history of previous grant(s) of bail to the defendant.
- (d) the strength of evidence against him/her.

BAIL REFUSED — PARTICULAR GROUNDS

(Tick Box if applicable)

5A. Bail is refused because —

- (a) the defendant is charged with a serious offence (as defined) committed while —
 - (i) on bail for another serious offence; or
 - (ii) at liberty under an early release order in respect of another serious offence;
- and
- (b) there are no exceptional reasons why the defendant should not be kept in custody.

[5B. deleted]

BAIL GRANTED

Note (1): Section 6 need only be completed —

- (a) if bail is being granted for an initial appearance in court after one or more authorised officers have previously refused bail for that appearance; or
- (b) if it appears to the bail decision maker that the defendant is dissatisfied with any condition imposed (not including a condition under clause 2(3)(c) of Part C of Schedule 1 to the Act).

Note (2): In the case of a child it is mandatory for consideration to be given to the conditions referred to in clause 2(1a) of Part D of Schedule 1 to the Act.

(Tick Appropriate Boxes)

6. (a) Adult

(i) Bail is granted solely on the undertaking of the defendant

OR

(ii) Bail is granted on the undertaking of the defendant and on the following conditions

.....

(b) Child

Bail is granted on the undertaking of the defendant and on the following conditions —

(i)* that before the release of the defendant

.....
 (name of responsible person)
 enter into an undertaking under cl. 2(3)(c) of Part C of Schedule 1 to the Act; and

(ii)
 (specify other conditions)

.....

* Appropriate amendments to be made if the discretion in cl.2(4) of Part C of Schedule 1 to the Act is exercised

Reasons for grant/conditions of grant —

.....

Date Signature

(Authorised Officer/Justice/Justices/
 Member of the Children’s Court)

REVERSE OF FORM 5

7. FURTHER REFUSAL(S) OF BAIL OR GRANT(S) OF BAIL ON
CONDITION WITH WHICH DEFENDANT DISSATISFIED

[Show date of appearance for which bail refused/granted.

Indicate whether grounds and reasons for refusal/grant as recorded
continue to apply or note any alterations. If necessary, complete new
form.]

.....
.....
.....
.....

Signature.....

.....

Justice(s)/Member of the
Children's Court.

Date.....

Form 6

Bail Act 1982

Section 28(2)

BAIL UNDERTAKING

Name and address of defendant:

Surname:.....Other names:.....

Address:.....

2. Charge(s)/appeal/proceedings:

.....
.....

Charges Nos.

.....

Time and place of appearance:

.....

(name and location of court)

on.....day the.....day of..... 20.....ata.m./p.m.

Conditions to be observed during bail:

.....
.....
.....

UNDERTAKING

I, the abovenamed defendant —

UNDERTAKE —

- (a) to appear at the time and place and to comply with the conditions set out above;
- (b) that if I am notified by a judicial officer or court official of a different time, or a different time and place, for my appearance, I will appear at the time, or at the time and place, so notified;
- (c) that if I fail to appear in court as required I will as soon as is practicable;
 - (i) notify the clerk or registrar of the court of the reason; and
 - (ii) appear at the court when it is sitting;

(1) Strike out if not applicable

(1) AGREE to forfeit \$.....to the Crown if I am convicted of

the offence of failing to appear as required.

.....
DEFENDANT

CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

The above undertaking was entered into by the defendant before me after I had ⁽²⁾ been informed by him that he had read the undertaking/read the undertaking to him/had the undertaking translated to him.

Signature: Official Designation:

Date:.....

I acknowledge that I have been given a copy of the above bail undertaking and of form 7 on the reverse of that copy.

.....
DEFENDANT

Form 6

Bail Act 1982

Section 28(2)

BAIL UNDERTAKING

Name and address of defendant:

Surname:..... Other names:.....

Address:.....

2. Charge(s)/appeal/proceedings:

.....

.....

Charges Nos.

.....

Time and place of appearance:

.....

(name and location of court)

on.....day the.....day of..... 20.....ata.m./p.m.

Conditions to be observed during bail:

.....

.....

.....

UNDERTAKING

I, the abovenamed defendant —

UNDERTAKE —

- (a) to appear at the time and place and to comply with the conditions set out above;
- (b) that if I am notified by a judicial officer or court official of a different time, or a different time and place, for my appearance, I will appear at the time, or at the time and place, so notified;
- (c) that if I fail to appear in court as required I will as soon as is practicable
 - (i) notify the clerk or registrar of the court of the reason; and
 - (ii) appear at the court when it is sitting;

(1) Strike out if not applicable

(1) AGREE to forfeit \$.....to the Crown if I am convicted of the offence of failing to appear as required.

.....

DEFENDANT

CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

The above undertaking was entered into by the defendant before me after I had ⁽²⁾ been informed by him that he had read the undertaking/read the undertaking to him/had the undertaking translated to him.

Signature: Official Designation:

Date:.....

I acknowledge that I have been given a copy of the above bail undertaking and of form 7 on the reverse of that copy.

.....

DEFENDANT

CERTIFICATE TO AUTHORISE RELEASE

I certify for the purposes of section 11(2) of the Act that the defendant is entitled to be at liberty on bail as provided in subsection (1) of that section.

Signature:Official Designation:

Form 6

Bail Act 1982

Section 28(2)

BAIL UNDERTAKING

Name and address of defendant:

Surname:.....Other names:.....

Address:.....

2. Charge(s)/appeal/proceedings:

.....

.....

Charges Nos.

.....

Time and place of appearance:

.....

(name and location of court)

on.....day the.....day of..... 20.....ata.m./p.m.

Conditions to be observed during bail:

.....

.....

.....

UNDERTAKING

I, the abovenamed defendant —

UNDERTAKE —

- (a) to appear at the time and place and to comply with the conditions set out above;
- (b) that if I am notified by a judicial officer or court official of a different time, or a different time and place, for my appearance, I will appear at the time, or at the time and place, so notified;
- (c) that if I fail to appear in court as required I will as soon as is practicable
 - (i) notify the clerk or registrar of the court of the reason; and
 - (ii) appear at the court when it is sitting;

(1) Strike out if not applicable

(1) AGREE to forfeit \$.....to the Crown if I am convicted of the offence of failing to appear as required.

.....

DEFENDANT

CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

The above undertaking was entered into by the defendant before me after I had ⁽²⁾ been informed by him that he had read the undertaking/read the undertaking to him/had the undertaking translated to him.

Signature: Official Designation:

Date:.....

I acknowledge that I have been given a copy of the above bail undertaking and of form 7 on the reverse of that copy.

.....

DEFENDANT

TO THE DEFENDANT

THE NOTICE ON THE REVERSE OF THIS FORM SETS OUT YOUR OBLIGATIONS AND THE CONSEQUENCES OF YOUR FAILURE TO COMPLY WITH THEM. YOU SHOULD READ THE NOTICE OR REQUIRE THE PERSON WHO TAKES YOUR BAIL UNDERTAKING TO READ IT TO YOU OR HAVE IT TRANSLATED TO YOU.

Form 7

Bail Act 1982

Section 30(2)(b)

NOTICE TO DEFENDANT

1. Appearance in court

You must appear at the time and place mentioned in your undertaking and surrender yourself into the custody of the court. You must then remain in custody until you are entitled to be released.

2. Bail conditions

While you are on bail you must also observe the conditions set out in your undertaking.

If you fail to comply with a condition set out in your undertaking imposed for the purposes mentioned in clause 2(2)(c) or (d) of Part D of Schedule 1 to the Act you commit an offence. The penalty for the offence is a fine of up to \$10 000 or imprisonment for up to 3 years, or both.

3. Notification of later time/place

If you are notified either by a judicial officer or by a court official of a different time, or a different time and place, for your appearance, then you must appear at the time, or at the time and place, so notified. Such notification may be given to you by a judicial officer at a hearing. If a notification is given to you by a court official it must be in writing handed to you personally, or sent to you by registered post or telegram.

4. Failure to attend

Should you fail to appear in court as required you must as soon as is practicable —

- (a) notify the clerk or registrar of the court of the reason; and
- (b) appear at the court when it is sitting.

5. Consequences of non-appearance

If, without reasonable cause, you do not appear in court as mentioned in paragraph 1 or 3 above, you commit an offence. If you do not appear as mentioned in paragraph 4 above you commit a further offence. The penalty for each offence is a fine of up to \$10 000 or imprisonment for up to 3 years, or both.

You will also be liable to an order to pay the amount of money, if any, referred to in your bail undertaking.

If your non-appearance continues for more than 1 year that amount will be automatically forfeited.

You may also be ordered to pay some or all of the cost of your return to custody.

In addition, any surety will be liable to an order to pay the amount of money referred to in his surety undertaking.

6. Change of address etc.

You must, in writing, notify the court at which you are to appear of any change of residence, employment or business. It is an offence not to do so, without reasonable cause. The maximum penalty for the offence is a fine of up to \$500, or imprisonment for up to 6 months, or both.

When court may reconsider bail

Your bail may be interrupted and you may be brought before the court for reconsideration of bail in the following situations —

- (a) if your surety or a police officer reasonably believes that —
 - (i) you are not likely to appear in court as required; or
 - (ii) a bail condition is being, has been or is likely to be broken by you.
- (b) if a police officer reasonably believes that the court should reconsider your surety, or the security (if applicable).
- (c) if your bail is for an appeal and a police officer reasonably believes that you have been guilty of delaying the hearing of the appeal, or
- (d) if your surety applies to the court for cancellation of his surety undertaking.

In case of urgency where your surety reasonably believes that you are not likely to appear in court as required or that you have broken any bail condition, he may arrest you and hand you over to a police officer to be taken before the court for reconsideration of bail.

In the case of a defendant who is a child, the references to “surety” in this part of the form include the responsible person*.

Interruption of bail on application by responsible person*.

If you are a child and the responsible person* wants to have his or her undertaking cancelled, you may be taken into custody until the application is dealt with by a police officer and another responsible person* takes over.

* footnote: a responsible person is a person who gives an undertaking under clause 2(3)(c) of Part C of Schedule 1 to ensure that a child does what is required by his/her bail undertaking.

Form 8

Bail Act 1982

Sections 35 and 37(1)(a) & (c)

PART A — NOTICE TO SURETY AS TO TERMS OF BAIL

1. NAME AND ADDRESS OF DEFENDANT

.....

Surname	Other Names
---------	-------------

.....

Address

.....

2. CHARGE(S)/APPEAL/PROCEEDINGS

.....

.....

.....

3. COURT AND CHARGE NOS.

.....

4. WHERE AND WHEN DEFENDANT REQUIRED TO APPEAR

.....

Name and location of court

ON.....DAY THE.....DAY OF.....20.....AT.....AM/PM

5. BAIL HAS BEEN GRANTED TO THE DEFENDANT TO APPEAR AS ABOVEMENTIONED, ON THE FOLLOWING TERMS AND CONDITIONS.

.....

.....

.....

.....

.....

JUDICIAL OFFICER/AUTHORISED OFFICER/OFFICER AUTHORISED
UNDER SEC 36(2) OF THE ACT.

PART B — DECLARATION BY PROPOSED SURETY

Warning

It is an offence punishable by a fine of up to \$1 000 or imprisonment for up to 12 months, or both, to knowingly or recklessly give false information for the purpose of obtaining approval as a surety.

1. PROPOSED SURETY 2. Age

Surname Other names

3. Occupation.....

4. Address.....

Telephone: Home..... Work.....

5. (a) Relationship ⁽¹⁾ to defendant

(1) e.g. parent, friend, employer.

(b) Period for which known defendant

6. Financial position

(a) Assets

Description of asset (e.g. house, contents, land, car, bank account etc.)	approx. value
.....
.....
.....

(b) Main Debts

Description of debt (e.g. mortgage, hire purchase, credit cards, etc.)	approx. amount
.....
.....
.....

(See reverse.)

7. Character

- (a) Do you have any convictions, or are any criminal proceedings pending against you? (tick appropriate box)

YES NO

If yes, give details.....

8. (a) Have you been, or are you at present, a surety for any person? (tick appropriate box)

YES NO

If yes, give details.....

9. I,hereby apply for approval of myself as a surety. (full name)

I DECLARE THAT —

- (a) the above particulars relating to me are true;
(b) I have not received any money or other compensation, or promise of money or other compensation, to cover any liability I may incur as a surety.

I ACKNOWLEDGE that I have been given —

- (a) Part A of Form 8 (Notice to Surety as to Terms of Bail) duly completed; and
(b) Form 9 (Information for Proposed Surety).

I STATE that —

- (a) I do/do not * agree to my obligations as a surety being extended to any time, or time and place, appointed for the defendant's appearance which is different from that shown in paragraph 4 of the notice.
(b) I do/do not * require notice to be given to me of any such different time or time and place.

* show which

Signature of applicant.....

Date.....

NOTICE TO PROSECUTOR

Prosecutor notified of application orally/in writing

Date.....Time.....Name of person notified.....

Signature.....

Designation.....

Response by prosecutor (if any):

.....
.....
.....

DECISION

Applicant approved/not approved

Reasons for refusal to approve:

.....
.....
.....

Applicant informed of reasons:

.....
.....

.....
Judicial Officer
Authorised Officer
Officer authorised under
section 36(2) of the Act.

(1) For an explanation see Form 9.

(2) delete (b) if surety's obligations are not to cover this.

(3) Delete words in brackets if notice is not required.

(4) Delete as appropriate.

PART C
SURETY UNDERTAKING

I,of.....
undertake and agree, to forfeit \$.....to the Crown, in
terms of section 49 of the *Bail Act 1982* ⁽¹⁾, if the abovenamed
defendant.

- (a) fails to appear at the time and place specified in Part A above; or
- (b) ⁽²⁾ fails to appear at a different time, or time and place, at which he is duly required to appear (provided that I have been notified of such time, or time and place) ⁽³⁾; or
- (c) upon a failure to so appear, also fails to appear as soon as is practicable thereafter at the court when it is sitting.

I acknowledge that before entering into this undertaking ⁽⁴⁾ I read/had read to me/had translated to me Part A of this form duly completed, Form 9, and this undertaking.

Signature of Surety.....

The above undertaking was entered into by the abovenamed, before me after I had ⁽⁴⁾ been informed by him that he had read/read to him/had translated to him Part A of this form duly completed, Form 9 and this undertaking; and after I had ensured that he had complied with all conditions imposed on him.

Signature.....

Official Designation.....

Date.....

I acknowledge that I have been given a copy of the above undertaking as completed

Signature of Surety.....

Date.....

ENDORSEMENT UNDER SECTION 45(3)

I certify that on.....I required the defendant to appear aton day the.....day of20 at.....a.m./p.m. and that, under section 45(1)(a) of the Act, I orally notified the surety thereof.

Signature.....

Official Designation.....

Date.....

Authorised Officer who is to issue certificate under section 11(2) of the Act advised (show date, time, place and name of person advised).

.....

.....

Signature

Form 9

Bail Act 1982

Section 37(1)(b)

INFORMATION FOR PROPOSED SURETY

NOTE: If a proposed surety has difficulty with reading English he may ask to have this form translated to him.

1. Contents of this Form

This form contains a summary of the main provisions of the *Bail Act 1982* which relate to sureties for bail. Only the general effect of those provisions is stated.

2. Meaning and Function of Surety

A surety, or a number of sureties, may be required as a condition of the release of a defendant on bail.

The intention is to have someone to make sure that the defendant appears in court when required.

It is the duty of a surety to do this.

A person becomes a surety by agreeing in writing to pay an amount of money to the Crown if the defendant does not appear. This agreement is called a surety undertaking (see Part C of Form 8).

It may also be a bail condition that a surety deposit cash or other security to cover the amount referred to.

3. Information to be given to Surety

As well as this form, a proposed surety must be given a form (Part A of Form 8) showing details of the defendant's bail. The proposed surety must read the forms or have them read to him.

4. Application for Approval

A proposed surety must apply for approval and be approved by an authorised official. He must complete a form (Part B of Form 8) for this purpose.

5. Disqualified Persons

A person cannot be approved as a surety if —

- (a) he is under 18 years of age; or

- (b) his net financial worth is less than the amount he would have to pay if the defendant were to default, except where security is provided; or
- (c) it appears that the defendant or some other person will be compensating the surety for any loss he incurs.

6. Points to be Considered

Whether a person is suitable to be a surety depends mainly on —

- (a) his character and past history;
- (b) his connection with the defendant;
- (c) his ability to pay, without severe hardship, if the defendant were to default.

Reasons for not approving a proposed surety must be given by the official concerned.

7. Reconsideration

A person may re-apply for approval of himself as a surety to the officer who made the decision, or someone acting in his stead, only if he thinks that circumstances have changed or that he did not put his case properly.

8. Copy of Surety Undertaking

A surety must be given a copy of his surety undertaking.

9. Remand etc. of Defendant to Later Date

A surety undertaking will refer to the time and place of the defendant's appearance. If his case is to be dealt with at a different time, or a different time and place, the surety will not be liable for the defendant's non-appearance at such time and place unless the surety undertaking expressly says so. In that event, the surety may insist on being notified of the different time, or time and place.

10. Change of Address, etc.

A surety must, in writing, notify the court where the defendant is to appear of any change of the surety's place of residence, employment or business. It is an offence not to do so without reasonable cause. The penalty is a fine of up to \$500 or imprisonment for up to 6 months, or both.

11. Action by Surety where Defendant likely to Default

A surety who reasonably believes that —

- (a) the defendant is not likely to appear in court; or

(b) a bail condition is being, has been or is likely to be broken, should notify a police officer in writing and the police officer may have the defendant brought before the court. However the surety's obligations continue until the defendant is brought before the court.

In cases of urgency where the surety reasonably believes that the defendant is not likely to appear in court or that he has broken any bail condition, he has the power to arrest the defendant. The surety must hand him over as soon as is practicable to a police officer who is required to take the defendant before the court.

Once the defendant has been so taken before the court the surety undertaking will not be continued in force without the surety's consent.

12. Cancellation of Surety Undertaking

A surety may apply to an appropriate judicial officer for cancellation of his surety undertaking. The application must be made before the time for the defendant's appearance. However the surety's obligations continue until the defendant is brought before the court and an order is made cancelling the surety undertaking.

13. Enforcing Payment by Surety

Where a defendant fails to appear in court, a surety will be summoned before the court and an order for payment of the amount of his undertaking will be made against him unless he shows that the defendant had a reasonable cause for failing to appear.

If such an order is made, but at a later date the surety learns that there was a reasonable cause for the defendant's failure, he may apply to the Governor for a refund.

14. Cases of Hardship

If excessive hardship would result from ordering payment by a surety, and it would not be removed by allowing time to pay or meeting payment from a security given by the surety, the court may decline to order payment by the surety or may reduce the amount to be paid. However, the hardship must be due to a change of circumstances since the surety undertaking was entered into.

15. Surety becoming Unsuitable

A police officer may have the defendant brought before the court and apply to have bail cancelled or changed if he reasonably believes (among other things) that a surety is no longer suitable or security given by a surety is no longer sufficient.

16. Offence to Compensate Surety

It is an offence for a person to compensate, or agree to compensate, a surety or a proposed surety for any liability which he incurs, or may incur, under the *Bail Act 1982*. The surety or the proposed surety and any person who is a party to the agreement also commits an offence. The penalty is a fine of up to \$1 000 or imprisonment for up to 12 months, or both.

Form 10

Bail Act 1982

Section 45(1)(b) and (c)

NOTICE TO SURETY OF DIFFERENT TIME/PLACE FOR APPEARANCE

TO:
Surname Other names

.....
Address

Name of defendant:

.....
Surname Other names

Charge(s)/Appeal/Proceedings:
.....
.....
.....

Court and charge nos.:
.....

YOU ARE HEREBY NOTIFIED, under section 44(2) of the *Bail Act 1982*, and in terms of your surety undertaking dated..... that the above-named defendant, for whose appearance in court you are a surety, is now required to appear at.....on.....day theday of.....20.....at.....a.m./p.m.

On receipt of this notice, your liability as a surety is extended to the defendant's obligation to appear at that time and place.

.....
Judicial Officer
Clerk of Petty Sessions/Children's Court
Registrar of Supreme/District Court
Date.....

OFFICE COPY

Surety given this Notice * —
personally/by telegram/by posting a copy by registered post to.....

* show which
Signature.....
Designation.....

Form 11

Bail Act 1982

[section 50F(5)]

WARRANT TO ARREST DEFENDANT WHOSE BAIL SUBJECT TO A HOME DETENTION CONDITION HAS BEEN REVOKED

To: — all members of the Police Force in the State of Western Australia;
— [name any other officer]

On [date] [name of defendant] “the defendant” of [address of defendant] appeared in the [court] at [place] charged with [describe offence(s)] and was granted bail subject to a home detention condition.

On [date] the chief executive officer of corrective services revoked the bail granted to the defendant.

This warrant commands anyone to whom it is directed to apprehend the defendant and to take him before an appropriate judicial officer.

Dated: [date].

Signed: [signature and designation of chief executive officer of corrective services or delegate].

[Prisoner’s date of birth.....].

Form 12

Bail Act 1982

Schedule 1, Part C, clause 2(3)(c)

UNDERTAKING BY RESPONSIBLE PERSON

Name and address of defendant:

Surname:..... Other names:.....

Address:.....

Charge(s)/appeal/proceedings:

.....
.....

Charge Nos.

.....

Time and place of appearance:

.....
(name and location of court)

on.....day the.....day of.....20.....at.....a.m./p.m.

Conditions to be observed during bail:

.....
.....
.....

UNDERTAKING

I.....of
.....

give the following undertakings —

- (a) I WILL ENSURE that the defendant appears at the time and place specified above.
- (b) If, under section 31(3) of the Act, the defendant is required to appear at a different time, or a different time and place, I WILL ENSURE that he/she appears at that time and place if I have been notified in writing of the different requirement.
- (c) If the defendant fails to appear as required I WILL ENSURE that he/she, as soon as is practicable —
 - (i) notifies the clerk or registrar of the court of the reason; and
 - (ii) appears at the court when it is sitting.
- (d) I WILL ENSURE that the defendant complies with the bail conditions set out above.

.....

Responsible Person

CERTIFICATE AS TO UNDERTAKING

* delete as appropriate

The above undertaking was entered into by the responsible person before me after I had* been informed by him/her that he/she had read the undertaking/read the undertaking to him/her had the undertaking translated to him/her.

Signature: Official Designation:

Date:

I acknowledge that I have been given a copy of the above undertaking.

.....

Responsible Person

*[Schedule amended in Gazette 22 March 1991 pp.1212-3;
28 February 1992 p.994; 4 March 1994 pp.853-7; 1 August 1997
p.4394; 7 November 1997 p.6136; 7 March 2000 pp.1040-1;
22 August 2000 p.4849.]*

