

JM301

BAIL ACT 1982

BAIL AMENDMENT REGULATIONS 1994

Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Bail Amendment Regulations 1994*.

Principal regulations

2. In these regulations the *Bail Regulations 1988** are referred to as the principal regulations.

[* *Published in Gazette of 30 December 1988 at pp. 5043-80.*
For amendments to 11 February 1994 see 1992 Index to
Legislation of Western Australia, Table 4, p. 21.]

Regulation 6 amended

3. Regulation 6 of the principal regulations is amended in the table at the end of the regulation —

(a) in the heading to the first column, by deleting "Section" and substituting the following —

" Provision "; and

(b) by adding the following item at the end of the table —

<p>"</p> <p>Schedule 1</p> <p>Part C, clause 2 (3) (c)</p>	<p>Form 12 —</p> <p>Undertaking by</p> <p>responsible</p> <p>person.</p> <p>"</p>
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Regulation 10 inserted

4. After regulation 9 of the principal regulations the following regulation is inserted —

"

Formalities for undertaking under clause 2 (3) (c) of Part C of Schedule 1

10. (1) An undertaking by a responsible person under clause 2 (3) (c) of Part C of Schedule 1 of the Act shall be entered into before a person referred to in section 29 of the Act.

(2) The person before whom the undertaking is to be entered into shall before it is entered into —

- (a) read the undertaking to the responsible person; or
- (b) be informed by the responsible person that he or she has read it; or
- (c) if necessary, have the undertaking translated to the responsible person.

(3) The person before whom the undertaking is entered into shall give a copy of the undertaking, as duly completed, to the responsible person, or cause such a copy to be given to him or her.

"

Schedule amended

5. (1) The Schedule to the principal regulations is amended in Form 1 —

- (a) by deleting paragraph 8 and substituting the following paragraphs —

“

How decision to be made — adult

8. 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.

How decision to be made — child

8A. 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.

Where serious offence committed while on bail for another serious offence

8B. 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.

and

- (b) by deleting paragraph 10 and substituting the following paragraph —

“

Conditions

10. 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.

(2) The Schedule to the principal regulations is amended, in Form 5 —

- (a) by deleting the heading "BAIL REFUSED" and substituting the following —

" BAIL REFUSED — GENERAL ";

- (b) by inserting immediately before the heading "BAIL GRANTED" the following —

"

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 on bail awaiting trial for another serious offence; and
- (b) there are no exceptional reasons why the defendant should not be kept in custody.

(Tick Box if applicable)

5B. ☐ Bail is refused because —

- (a) the defendant is a child; and
- (b) no responsible person is willing to enter into an undertaking required by clause 2 (3) (c) of Part C of Schedule 1; and
- (c) the defendant is not —
- (i) over 17; or
- (ii) of sufficient maturity to live independently without the guidance or control of a parent or guardian.

(3) The Schedule to the principal regulations is amended in Form 5 by deleting the part of the form from "BAIL GRANTED" to the end of section 6 of the form and substituting the following —

"

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 authorized 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 ☐

(b) Child ☐

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

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

OR

(ii) 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

(Authorized Officer/Justice/
Justices/Member of the Children's Court)

(4) The Schedule to the principal regulations is amended, in Form 7, by inserting, at the end of the form, the following —

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.

(5) The Schedule to the principal regulations is amended by inserting after Form 11 the following Form —

Form 12

[reg. 6]

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 19
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

By His Excellency's Command,

D. G. BLIGHT, Clerk of the Council.