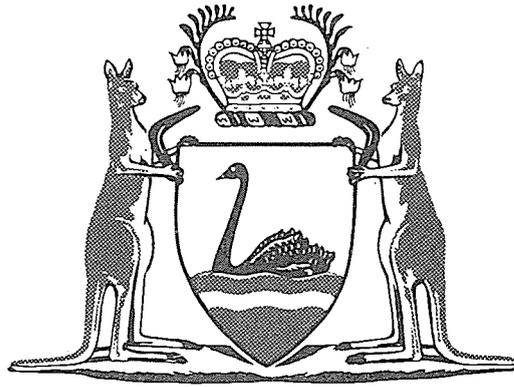


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[1988

BAIL ACT 1982

BAIL REGULATIONS 1988

1

BAIL ACT 1982

BAIL REGULATIONS 1988

MADE by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Bail Regulations 1988*.

Commencement

2. These regulations shall come into operation on the day on which the *Bail Act 1982* comes into operation.

Information prescribed for section 8 (1) (a) and 37 (1) (b) of Act

3. (1) The information set out in Form 1 in the Schedule is prescribed for the purposes of section 8 (1) (a) of the Act.

(2) The information set out in Form 9 in the Schedule is prescribed for the purposes of section 37 (1) (b) of the Act.

Offences prescribed for section 18 (1) of the Act

4. The simple offences created by the provisions specified in the following table 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 Section 66 (11) (wilful and obscene exposure).
<i>Liquor Act 1970</i>	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).

Amount prescribed for section 18 (2) (b) of the Act

5. The amount of \$300 is prescribed for the purposes of subsection (2) (b) of section 18 of the Act for an offence to which subsection (1) of that section applies.

Forms prescribed

6. (1) A form referred to in the second column of the table at the foot of this regulation is prescribed for the purposes of the provision or provisions of the Act specified opposite thereto in the first column of the table.

(2) The forms so prescribed are set out in the Schedule.

(3) Form 6 shall consist of an original, a duplicate and a triplicate as appearing in the Schedule.

(4) Form 7 may be printed on the reverse of the triplicate of Form 6.

TABLE

Section of Act	Description of Form
8 (1) (b)	Form 2— Information Given by Defendant.
11 (2)	The form of "Certificate to authorize release" at the foot of the duplicate of Form 6.
18 (2) (a)	Form 3— Notice to Appear Where Bail Dispensed with by Police Officer.
18 (2) (a) and 19 (3)	Form 4— Notice to Appear Where Bail Dispensed with by Court.
26 (4) (b)	Form 5— Bail Record Form.
28 (2)	Form 6— Bail Undertaking.
30 (2) (b)	Form 7— Notice to Defendant.
37 (1) (a)	Form 8—Part A Notice to Surety as to Terms of Bail.
37 (1) (c)	Form 8—Part B. Declaration by Proposed Surety.
45 (1) (b) and (c)	Form 10— Notice to Surety of Different Time/Place for Appearance.

Relevant papers to be transmitted to court

7. (1) For the purposes of section 27 of the Act, where the following papers are not completed at the court before which the defendant is required to appear they shall be sent, duly completed, to that court by the officer or person specified in relation thereto—

- (a) in the case of an authorised officer or judicial officer who considered the defendant's case for bail—
 - (i) Form 2; and
 - (ii) where section 26 (1) applies, Form 5;
 - (b) in the case of the person before whom any bail undertaking has been entered into—
 - (i) the bail undertaking entered into; and
 - (ii) any passbook or document deposited and any document completed by the defendant pursuant to a condition imposed under clause 1 (2) (d) or (e) of Part D of the Schedule to the Act;
 - (c) in the case of the person before whom any surety undertaking has been entered into—
 - (i) Form 8, in relation to the surety; and
 - (ii) any passbook or document deposited and any document completed by the surety pursuant to a condition imposed under clause 1 (2) (d) or (e) of Part D of the Schedule to the Act;
- and
- (d) in the case of an authorized police officer who dispenses with bail under section 18 of the Act—
 - (i) a copy of Form 3; and
 - (ii) the acknowledgement given by the defendant under subsection (2) (c) of that section.

(2) A duty imposed by subregulation (1) does not apply where, upon a committal to the Supreme Court or District Court or a change of venue of any proceedings, the papers are in the custody of the court from which the committal is made or the venue is changed.

Notification to prosecutor of application for approval as surety

8. (1) For the purposes of subsection (1) of section 36 of the Act, whenever an officer referred to in that subsection (in this regulation referred to as "the approving officer") is called upon to decide whether an applicant should be approved as a surety he shall notify, or cause to be notified, or satisfy himself that there has been notification to, the prosecutor of the name, address, and occupation of the applicant, for the purpose of allowing the prosecutor a reasonable opportunity to make representations as to the suitability of the applicant to be a surety.

(2) The prosecutor shall respond to a notification under subregulation (1) as soon as possible, but in no case shall the period allowed to the prosecutor to make representations exceed 24 hours from the time of notification.

(3) It is sufficient compliance with subregulation (1) if the notification—

- (a) is given to an officer of the Crown Law Department employed in the Prosecutions Section of the Crown Law Department, where the prosecutor is the Crown Prosecutor or an officer of that Department; or

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(b) where the prosecutor is a police officer, is given to a police officer having knowledge of the defendant's case or the officer in charge of the police station or lock-up nearest to the place at which the approving officer performs his duties.

(4) the notification under subregulation (1) and any representations resulting therefrom shall be made orally (which includes by telephone), unless there is a special reason for the same being made in writing.

Approved by His Excellency the Governor in Executive Council,
G. PEARCE,
Clerk of Council.

Schedule

Form 1

[reg. 3 (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. 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.

Bail Information Form

2. 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.

At Time of Arrest

3. 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 where the arrest is made under a warrant or for the offence of murder or wilful murder.

A Justice of the Peace may also deal with bail at this stage except for the offence of murder or wilful murder.

On Appearance in Court

4. 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.

Warrant Cases

5. 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.

Where charge is murder or wilful murder

6. 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.

Decision May be Delayed

7. 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.

How Decision to be Made

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 paragraphs 9(a) and (b).

A child, before conviction, has a right to bail unless a consideration of those points discloses a reason why bail should be refused.

Points to be Considered

9. 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.

Conditions

10. Bail may be granted subject to conditions. They 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.

Defendant to Receive Copy of Bail Decision Form or Court Record

11. 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.

Bail Undertaking

12. 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 authorized 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.

Release from Custody

13. 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.

Reconsideration of Decision

14. 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.

Application to Judge

15. 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.

Sureties

16. 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.

False Information

17. 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.

Offence to Compensate Surety

18. 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.

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Form 2

[reg. 6]

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 made (country) 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 employerBusiness AddressPeriod 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

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

3. Main debts (mortgages, hire purchase, credit cards, fines, etc.)

To whom owed Approx. amount

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

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

1. 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/Authorized Officer.....

Date.....

2nd and subsequent revisions:

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

Signature of Judicial Officer/Authorized Officer.....

Date.....

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Form 3

[reg. 6]

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.....
on day the day of 19..... at a.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.....
.....
Authorized police officer

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 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 Section 66 (11) (wilful and obscene exposure).
<i>Liquor Act 1970</i>	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).

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Form 4

[reg. 6]

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 19..... 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 registered 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.....

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Form 5

BAIL ACT 1982

Section 26 (4) (b)

[reg. 6]

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

(Tick Appropriate Box)

- | | |
|--|--|
| <p>5. (i) Adult <input type="checkbox"/></p> <p>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—</p> | <p>(ii) Child <input type="checkbox"/></p> <p>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)—</p> |
|--|--|

- (1) If the defendant is not kept in custody he/she (Tick Appropriate Box) may—
- | | |
|---|--------------------------|
| (a) fail to appear in court in accordance with his/her bail undertaking: | <input type="checkbox"/> |
| (b) commit an offence: | <input type="checkbox"/> |
| (c) endanger the safety, welfare or property of a person: | <input type="checkbox"/> |
| (d) interfere with witnesses or otherwise obstruct the course of justice. | <input type="checkbox"/> |
- (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.....
(Authorized 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 GRANTED

Note: 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.

(Tick Appropriate Box)

6. (a) Bail is granted solely on the undertaking of the defendant OR (b) Bail is granted on the undertaking of the defendant and on the following conditions

.....
.....

Reasons for grant/conditions of grant—

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

Date Signature

*For further Bail decisions see reverse

(Authorized 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.....

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Form 6
BAIL ACT 1982
Section 28 (2)

[reg. 6]
ORIGINAL

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 19.....at.....a.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

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Form 6

[reg. 6]
DUPLICATE

BAIL ACT 1982

Section 28 (2)

BAIL UNDERTAKING

Name and address of defendant:

Surname: Other names:

Address:

2. 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, 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 AUTHORIZE RELEASE

I certify for the purposes of subsection (2) of section 11 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:.....

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Form 6

[reg. 6]
TRIPLICATE

BAIL ACT 1982

Section 28 (2)

BAIL UNDERTAKING

Name and address of defendant:

Surname: Other names:

Address:

2. 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, 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.

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Form 7

[reg. 6]

BAIL ACT 1982

Section 30 (2) (b)

NOTICE TO DEFENDANT

Appearance in court

1. 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.

Bail conditions

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

Notification of later time/place

3. 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.

Failure to attend

4. 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.

Consequences of non-appearance

5. 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 \$3 000 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.

Change of address etc.

6. 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.

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Form 8

[reg. 6]

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.....19.....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
Authorized Officer
Officer authorized under
section 36 (2) of the Act.

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Form 8

[reg. 6]

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.....19.....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 C
SURETY UNDERTAKING

(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.

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 at on day the day of 19..... ata.m./p.m. and that, under Section 45 (1) (a) of the Act, I orally notified the surety thereof.

Signature.....

Official Designation.....

Date.....

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

Signature.....

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Form 9

[reg. 3 (2)]

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.

Contents of this Form

1. 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.

Meaning and Function of Surety

2. 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.

Information to be given to Surety

3. 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.

Application for Approval

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

Disqualified Persons

5. 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.

Points to be Considered

6. 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.

Reconsideration

7. 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.

Copy of Surety Undertaking

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

Remand etc. of Defendant to Later Date

9. 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.

Change of Address, etc.

10. 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.

Action by Surety where Defendant likely to Default

11. 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.

Cancellation of Surety Undertaking

12. 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.

Enforcing Payment by Surety

13. 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.

Cases of Hardship

14. 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.

Surety becoming Unsuitable

15. 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.

Offence to Compensate Surety

16. 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.

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Form 10

[reg. 6]

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 the..... day of..... 19..... 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.....

CRIMINAL CODE ACT 1913

THE *Criminal Practice Amendment Rules 1985*, made by the Judges of the Supreme Court under *The Criminal Code*, the *Supreme Court Act 1935* and other enabling powers, are revoked.

Dated the 2nd day of November 1988.

DAVID K. MALCOLM.
P. F. BRINSDEN.
G. A. KENNEDY.
W. P. PIDGEON.
B. W. ROWLAND.
E. M. FRANKLYN.
PAUL SEAMAN.
R. D. NICHOLSON.
TERENCE A. WALSH.

CRIMINAL CODE ACT 1913

CRIMINAL PRACTICE AMENDMENT RULES (No. 2) 1988

MADE by the judges of the Supreme Court under *The Criminal Code* and the *Supreme Court Act 1935*.

Citation and reference to principal rules

1. (1) These rules may be cited as the *Criminal Practice Amendment Rules (No. 2) 1988*.

(2) In these rules the *Criminal Practice Rules** are referred to as the principal rules.

[*Reprinted in the *Government Gazette* on 18 September 1969 at p. 2639-826. For amendments to 19 October 1988 see p. 213 of 1987 *Index to Legislation of Western Australia*.]

Commencement

2. These rules shall come into operation on the commencement of the *Bail Act 1982*.

Order VI amended

3. Order VI of the principal rules is amended—

- (a) in the heading, by deleting "BAIL AND";
- (b) by repealing rules 1, 2 and 3;
- (c) in rule 4, by deleting "to appear and answer an indictment or information or";
and
- (d) by repealing rules 5 and 6, and 9 to 16 both inclusive.

Schedule of Forms amended

4. The Schedule of Forms in the principal rules is amended in Part III—
- (a) in the heading, by deleting "BAIL AND";
 - (b) by deleting Forms Nos. 1, 2 and 3;
 - (c) by deleting the heading and note relating to Form No. 4; and
 - (d) by deleting Forms Nos. 6, 7, 11, 12, 15, 16, 17, 20, 21 and 22.

Dated the 2nd day of November 1988.

DAVID K. MALCOLM.
P. F. BRINSDEN.
G. A. KENNEDY.
W. P. PIDGEON.
B. W. ROWLAND.
E. M. FRANKLYN.
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