



Western Australia

## **Bail Act 1982**

Compare between:

[15 Aug 2010, 07-e0-02] and [01 Oct 2010, 07-f0-02]



Western Australia

## **Bail Act 1982**

**An Act to make better provision for bail in criminal proceedings.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Bail Act 1982* <sup>1</sup>.

### **2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation <sup>1</sup>.

### **3. Terms used**

(1) In this Act, unless a contrary intention appears —

*accused* includes —

- (a) a person charged with, convicted of, or found guilty of an offence;
- (b) a person whose conviction for an offence is stayed;
- (c) a person in respect of whom an appeal relating to an offence is pending;
- (d) a person in respect of whom a new trial for an offence has been ordered;

*adjournment* —

- (a) means any order of a court by which proceedings for an offence are postponed or interrupted or are to be held at a different time or place before the same court; and
- (b) is deemed to include any order of a court, other than a committal to the Supreme Court or District Court, by which the venue of any proceedings for an offence is changed to another court or a court at another place whether by way of a remand, referral, or recommittal of the accused or otherwise;

*appeal* includes an application for leave to appeal;

*appropriate judicial officer* means —

- (a) subject to paragraphs (b), (c) and (d), a judicial officer who is empowered to exercise jurisdiction in the court before which the accused is required to appear pursuant to his bail undertaking; or
- (b) if the court is the Court of Appeal, a judge of appeal; or
- (c) except in section 49, a judge of the Supreme Court or of the Children's Court, as the case may require, in any case where —
  - (i) under section 15 only a judge of the Supreme Court or of the Children's Court has power to grant bail; or
  - (ii) a judicial officer has exercised the power contained in section 31(2)(d),  
for the appearance in question; or
- (d) except in section 49, a judge of the Supreme Court, of the District Court, or of the Children's Court, as the case may require, in any case where such a judge has granted bail under section 14 for the appearance in question;

***approved***, in relation to a form, means approved by the chief executive officer of the department of the Public Service principally assisting in the administration of this Act;

***as soon as is practicable*** means as soon as is reasonably practicable;

***authorised community services officer*** means any of the following persons —

- (a) the CEO (corrections) or a delegate of the CEO (corrections) under subsection (5);
- (b) a registrar of the Children's Court;
- (c) a superintendent of a detention centre under the *Young Offenders Act 1994*;

- (d) the officer for the time being in charge of any detention centre under the *Young Offenders Act 1994*;

**authorised officer** means an authorised police officer or an authorised community services officer;

**authorised police officer** means —

- (a) a police officer who holds the rank of sergeant, or a higher rank;
- (b) the police officer who is for the time being in charge of a police station;
- (c) whichever of these officers is for the time being in charge of a lock-up —
- (i) a police officer;
- (ii) a special constable appointed under the *Police Act 1892* Part III whose powers, duties and obligations are or include those of an authorised police officer under this Act;
- (iii) a police auxiliary officer appointed under the *Police Act 1892* Part IIIB whose powers, duties and obligations are or include those of an authorised police officer under this Act;

**bail undertaking** means an undertaking described in section 28(2);

**CEO (corrections)** means the chief executive officer of the Public Sector agency principally assisting the Minister administering Part 8 of the *Sentence Administration Act 2003* in its administration;

**Chief Judge** means the Chief Judge of the District Court;

**Chief Justice** means the Chief Justice of Western Australia;

**child** has the same meaning as “young person” has in the *Young Offenders Act 1994*;

**community corrections officer** has the same meaning as in the *Sentence Administration Act 2003*;

**court** means each of the following —

- (a) the Magistrates Court;
- (b) the Children’s Court;
- (c) the Coroner’s Court of Western Australia;
- (d) the District Court;
- (e) the Supreme Court;
- (f) the Court of Appeal;

**court custody centre** has the meaning given in the *Court Security and Custodial Services Act 1999* section 3;

**Director of Public Prosecutions** means —

- (a) the Director of Public Prosecutions for the State; or
- (b) the officer in charge in the State of the Commonwealth Office of the Director of Public Prosecutions,

as the case requires;

**early release order** means an early release order made under the *Sentence Administration Act 1995*<sup>2</sup> or *Sentence Administration Act 2003*;

**electronic address** means a facsimile number, email address or other electronic address, as the case requires;

**electronic communication** means facsimile transmission, email or other form of electronic communication as defined in the *Electronic Transactions Act 2003* section 5;

**home detention condition** means a home detention condition imposed under clause 3 of Part D of Schedule 1;

**judge of appeal** has the meaning given in the *Supreme Court Act 1935* section 4(1);

**judicial officer** means any person empowered to exercise jurisdiction in a court whether or not he is sitting as a court, and includes a single justice and, where the context so requires, the Court of Appeal exercising jurisdiction under this Act;

**lock-up** includes a place prescribed as a lock-up for the purposes of the *Court Security and Custodial Services Act 1999*;

**offence** means any act, omission or conduct which renders the person doing the act, making the omission or engaging in the conduct liable to any punishment, and includes an alleged offence; but nothing in this definition shall limit the operation of subsection (4);

**prosecutor** includes —

- (a) in the case of an offence charged in a prosecution notice, the prosecutor;
- (b) in the case of an offence charged in an indictment, the State or the Commonwealth, as the case may be;

**registrar** of a court means —

- (a) for a court other than the Coroner's Court of Western Australia, the principal registrar, a registrar or a deputy registrar of the court; or
- (b) for the Coroner's Court of Western Australia, a coroner's registrar as defined in the *Coroners Act 1996* section 3;

**serious offence** means —

- (a) an offence against section 51(2a); and
- (b) an offence described in Schedule 2;

**surety** and **surety undertaking** have the meanings assigned to them by section 35;

**surety approval officer** means a person who is authorised by section 36 to decide whether an applicant should be approved as a surety;

**trial** means all proceedings for an offence between —

- (a) the time when the accused is called upon to plead to the prosecution notice or the indictment; and
- (b) the time when the accused is found not guilty or is sentenced.



- (2) A reference in this Act —
- (a) to a power to grant bail includes a reference to a power to refuse bail;
  - (b) to a grant of bail includes a reference to a grant of bail by the exercise of a power in section 31(2).
- (3) Where in this Act there is a reference to a requirement that an accused appear in court, the reference is to a requirement, unless a contrary intention appears, that the accused —
- (a) surrender himself into the custody of the court or, in the case of a bail undertaking, of the court specified therein, or of such person as the court may direct, to be dealt with according to law;
  - (b) submit himself to a search of his person and any property then in his possession (which is hereby authorised) and allow to be taken from him, to be dealt with according to the relevant law and procedures, anything so found; and
  - (c) remain in custody until authorised to be released therefrom.
- (4) If a person is arrested under a warrant issued —
- (a) under section 50, 79, 84E or 129 of the *Sentencing Act 1995* in connection with a possible breach of a conditional release order, a sentence of suspended imprisonment or conditional suspended imprisonment, or a community order imposed under that Act; or
  - (b) under section 43 of the *Young Offenders Act 1994* in respect of an alleged breach of a youth community based order, an intensive youth supervision order or a conditional release order made under that Act,
- then —
- (c) the person is to be taken as having been arrested and to be in custody awaiting an appearance in court for the offence for which the sentence was imposed;

**s. 3A**

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- (d) the first appearance in court after the arrest is to be taken, for the purposes of sections 5(1) and 8(1) and clause 1 of Part A and clause 7 of Part C of Schedule 1, to be the initial appearance for that offence; and
  - (e) the proceedings following the arrest are to be taken to be proceedings for that offence and to be a trial for the purpose of the definition in subsection (1) of “trial”.
- (5) The CEO (corrections) may by writing signed by him delegate to any officer of the department of which he is the chief executive officer any function he has under this Act as an authorised community services officer.

*[Section 3 amended by No. 74 of 1984 s. 3; No. 15 of 1988 s. 4; No. 49 of 1988 s. 78; No. 61 of 1990 s. 4; No. 31 of 1993 s. 6; No. 45 of 1993 s. 4 and 12; No. 78 of 1995 s. 7; No. 57 of 1997 s. 21(1); No. 54 of 1998 s. 4 and 14; No. 47 of 1999 s. 7; No. 50 of 2003 s. 29(3); No. 65 of 2003 s. 121(2); No. 27 of 2004 s. 13(2); No. 34 of 2004 s. 251; No. 45 of 2004 s. 28(4); No. 59 of 2004 s. 141; No. 84 of 2004 s. 11, 82 and 83(2); No. 65 of 2006 s. 51 and 53; No. 6 of 2008 s. 4 and 24(2).]*

*[Section 3. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M; amended by No. 42 of 2009 s. 12.]*

**3A. Sending notices by electronic communication**

- (1) A reference in this Act, however expressed, to a notice being sent to a person (the *addressee*) by electronic communication is a reference to the notice being sent by electronic communication —
- (a) to an electronic address provided by the addressee for the purpose of being served with the notice; and
  - (b) in an electronic format that enables it to be printed or otherwise generated by the addressee.

- (2) If a notice is sent in accordance with subsection (1), the notice is to be presumed, unless the contrary is shown, to have been received at the time when, in the ordinary course of events, the electronic communication would have entered the information system, as defined in the *Electronic Transactions Act 2003* section 5, of the addressee.

*[Section 3A inserted by No. 6 of 2008 s. 5.]*

#### **4. Application of this Act**

The operation of this Act extends to any appearance in a court for an offence —

- (a) except to the extent that in this Act, or in the law creating the offence or applicable thereto, express provision is made excluding or limiting the operation of this Act in respect of that appearance;
- (b) whether or not that law contains a reference to the granting of bail;
- (c) however any reference in that law to the granting of bail may be expressed; and
- (d) as if any reference therein to the taking of a recognizance were to a requirement that, except where bail is dispensed with under this Act, the accused enter into a bail undertaking.

*[Section 4 amended by No. 84 of 2004 s. 82.]*

*[4AA.<sup>1M</sup> Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.]*

#### **4A. Detention and bail where accused appears in response to summons or court hearing notice**

- (1) Where —

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(a) an accused has appeared in court for an offence pursuant to a summons or court hearing notice issued under the *Criminal Procedure Act 2004*; and

(b) a judicial officer adjourns the proceedings,

the accused is not to be detained in custody to further appear before the court for that offence unless the judicial officer so orders.

(2) If an order is made under subsection (1), the duty described in section 7(1) applies.

(3) On any appearance in court by the accused a judicial officer to whom section 7(1) applies may revoke an order made under subsection (1).

*[Section 4A inserted by No. 6 of 2008 s. 6(1).]*

## Part II — Rights of accused in relation to bail

[Heading amended by No. 84 of 2004 s. 82.]

### 5. Right of accused to have bail considered under this Act

- (1) An accused who is in custody for an offence awaiting his initial appearance in court therefor is entitled —
  - (a) subject to sections 9, 10, 12 and 16(2), to have his case for bail for that appearance considered under and in accordance with this Act as soon as is practicable;
  - (b) if his case is not so considered, or if he is refused bail or is not released on bail, to be brought before a court as soon as is practicable.
- (2) An accused who is in custody awaiting any appearance in court for an offence, other than an initial appearance, is entitled, subject to sections 7B, 7C, 7E, 9 and 10, to have his case for bail for that appearance considered under and in accordance with this Act.

[Section 5 amended by No. 74 of 1984 s. 4; No. 84 of 2004 s. 82; No. 6 of 2008 s. 7.]

### 6. Duty on arresting officer and others to consider bail

- (1) This section applies to a police officer or other person (the *arrestor*) who —
  - (a) charges a person who is under arrest (the *accused*) with an offence; and
  - (b) does not release the accused unconditionally under section 142 of the *Criminal Investigation Act 2006*,or who arrests a person under a warrant.
- (2) This section is subject to —
  - (a) the exercise of the power conferred by section 9; and

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- (b) sections 10, 12 and 16 and clause 3A of Part C of Schedule 1.
- (3) The duties in this section shall be performed whether or not an application for bail is made by or on behalf of the accused.
- (4) As soon as is practicable after the accused is charged, or arrested under a warrant, as the case may be, the arrester shall either —
  - (a) bring the accused or cause the accused to be brought before a court; or
  - (b) perform the other duties of the arrester under this section.
- (5) If the arrester has power to grant the accused bail, the arrester shall consider the accused's case for bail.
- (6) If the arrester does not have power to grant the accused bail, the arrester shall, unless subsection (8), (9) or (10) applies, bring or cause the accused to be brought before an authorised police officer or a justice or, in the case of a child, any authorised officer or a justice, who shall consider the accused's case for bail as soon as is practicable.
- (7) Even if the arrester has power to grant the accused bail, the arrester may, instead of complying with subsection (5), comply with subsection (6) as if the arrester did not.
- (8) If under section 15 only a judge of the Supreme Court or a judge of the Children's Court has power to grant the accused bail, the arrester shall bring the accused or cause the accused to be brought before a judge of the Supreme Court or a judge of the Children's Court, as the case requires, who shall consider the accused's case for bail as soon as is practicable.
- (9) If under section 16 only a justice has power to grant the accused bail, the arrester shall bring the accused or cause the accused to be brought before a justice, who shall consider the accused's case for bail as soon as is practicable.

- (10) If section 16A applies, the arrester shall bring the accused or cause the accused to be brought before a court or judge referred to in section 16A(1), who shall consider the accused's case for bail as soon as is practicable.

*[Section 6 inserted by No. 59 of 2006 s. 4(1).]*

**6A. Whether custody justified to be considered in certain cases**

- (1) In this section —

*accused* means an accused who is under arrest, other than pursuant to a warrant;

*released* means released from custody without being required to enter into, or without having entered into, a bail undertaking;

*serious offence* means an indictable offence the penalty specified by a written law for which is or includes imprisonment for 5 years or more or life;

*summary court* means the Magistrates Court or the Children's Court.

- (2) An authorised officer or justice who is considering an accused's case for bail for an initial appearance in a summary court on a charge of an indictable offence that is not a serious offence may order that the accused be served with a summons under the *Criminal Procedure Act 2004*, and released, in respect of the charge unless satisfied —
- (a) that there are reasonable grounds to suspect the accused would not obey the summons if served with it; or
  - (b) that not releasing the accused is justified under subsection (4) or for any other reason.
- (3) An authorised officer or justice who is considering an accused's case for bail for an initial appearance in a summary court on a charge of a simple offence must order that the accused be served with a court hearing notice under the *Criminal Procedure Act 2004*, and released, in respect of the charge unless satisfied —

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- (a) that the presence of the accused when the charge is dealt with is likely to be necessary for any reason or for sentencing purposes; or
  - (b) that not releasing the accused is justified under subsection (4) or for any other reason.
- (4) Not releasing an accused is justified if there are reasonable grounds to suspect that if the accused were released —
- (a) the accused —
    - (i) would commit an offence;
    - (ii) would continue or repeat an offence with which he or she is charged;
    - (iii) would endanger another person's safety or property; or
    - (iv) would interfere with witnesses or otherwise obstruct the course of justice, whether in relation to the accused or any other person;
  - or
  - (b) the accused's safety would be endangered.
- (5) This section does not affect the operation of section 28 or 30 of the *Criminal Procedure Act 2004*.

*[Section 6A inserted by No. 59 of 2006 s. 5.]*

**7. Duty imposed on judicial officers in respect of unconvicted accused**

- (1) Upon and following an accused's initial appearance in court for an offence every judicial officer who may thereafter order his detention or continued detention in custody before conviction for the offence is under a duty, unless section 7B, 7C or 7E applies, to consider the accused's case for bail, whether or not an application for bail is made by the accused or on his behalf.

*[(2)-(4) deleted]*



- (5) The operation of this section is subject to the exercise of the powers conferred by sections 7A and 9 and to the provisions of sections 10, 12 and 16(2) and clause 3A of Part C of Schedule 1.

*[Section 7 amended by No. 74 of 1984 s. 5; No. 49 of 1988 s. 80; No. 45 of 1993 s. 6; No. 84 of 2004 s. 82; No. 59 of 2006 s. 4(2); No. 6 of 2008 s. 8.]*

**7A. Bail may be dispensed with by court**

- (1) A judicial officer referred to in section 7(1) may, instead of discharging the duty imposed by that subsection, dispense with the requirement for bail for an appearance in court for an offence by an accused if the judicial officer —
- (a) has jurisdiction to do so under section 13A(1); and
  - (b) may properly do so under section 13A(2).
- (2) Where the requirement for bail is dispensed with under this section, the accused has a right to be at liberty until the accused is required to appear before a court for the offence, but subject to —
- (a) section 59A; and
  - (b) any requirement that the accused be in custody for some other offence or reason.

*[Section 7A inserted by No. 6 of 2008 s. 9(1).]*

**7B. Special provision for adult accused in murder cases**

- (1) In this section —  
*judge* means a judge of the Supreme Court.
- (2) This section applies where —
- (a) an accused is in custody for an offence of murder so that under section 15 only a judge has power to grant bail; and
  - (b) the accused is not a child.

**s. 7B**

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- (3) Where this section applies the accused, or a person on the accused's behalf, may make an application to a judge for bail at any time before conviction for the offence.
- (4) Upon an accused's initial appearance in court for an offence of murder, the judicial officer who may order the accused's detention in custody is under a duty to inform the accused of the right conferred by subsection (3).
- (5) Where —
- (a) an accused's case for bail has been considered by a judge on an application under subsection (3); and
  - (b) bail has been refused,
- the accused's case for bail shall not be considered on any subsequent occasion in the same case when the accused's continued detention may be ordered unless subsection (6) applies.
- (6) The accused's case for bail shall again be considered by a judge if the accused, or a person on the accused's behalf, applies to a judge and satisfies the judge that —
- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused; or
  - (b) the accused failed to adequately present the accused's case for bail on the previous occasion.
- (7) Where —
- (a) an accused's case for bail has been considered by a judge on an application under subsection (3); and
  - (b) bail has been granted,
- on any subsequent appearance in the same case a judicial officer may order, notwithstanding section 15, that bail is to continue on the same terms and conditions.

- (8) The accused is to be taken before a judge for the purposes of an application under this section only if the judge so orders.

*[Section 7B inserted by No. 6 of 2008 s. 9(1); amended by No. 29 of 2008 s. 24(2) and (3).]*

**7C. Special provision for child accused in murder cases**

- (1) This section applies where a child accused is in custody for an offence of murder so that under section 15 only a judge of the Children's Court has power to grant bail.
- (2) Where this section applies, the judicial officer referred to in section 7(1) other than a judge of the Children's Court, shall, whether or not an application for bail is made by the accused or on the accused's behalf, cause the accused to be taken as soon as is practicable before a judge of the Children's Court for the purpose of having the accused's case for bail considered by the judge.
- (3) Notwithstanding subsection (2), where —
- (a) the duty described in that subsection has been discharged once in relation to a child accused's case for bail; and
  - (b) bail has on that occasion been refused by a judge of the Children's Court,

the accused's case for bail need not be considered on any subsequent occasion in the same case when the accused's continued detention may be ordered unless subsection (4) applies.

- (4) On a subsequent occasion the accused may apply to the judicial officer who may order the accused's continued detention for a reconsideration of the accused's case for bail on the ground that —
- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail

**s. 7D**

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was refused on the occasion mentioned in subsection (3); or

- (b) the accused failed to adequately present the accused's case for bail on that occasion.
- (5) If the judicial officer is satisfied as to one or more of those grounds the judicial officer shall cause the accused to be taken as soon as is practicable before a judge of the Children's Court for the purpose of having the accused's case for bail considered by the judge.

*[Section 7C inserted by No. 6 of 2008 s. 9(1); amended by No. 29 of 2008 s. 24(4).]*

**7D. Previous decision may be adopted**

- (1) Notwithstanding section 7(1), after —
- (a) the duty described in that subsection has been discharged once in relation to an accused's case for bail; or
  - (b) a judge of the Children's Court has considered the case under section 15,

it is sufficient on any subsequent consideration of bail in the same case for a judicial officer, including a judge of the Children's Court acting under section 15, to make inquiry of the accused in terms of subsection (2).

- (2) The inquiry to be so made is —
- (a) whether any new fact has been discovered or new circumstance has arisen, or whether the circumstances have changed, since bail was previously granted or refused; and
  - (b) whether the accused considers that the accused failed to adequately present the accused's case for bail on a previous occasion.

- (3) Unless the judicial officer is satisfied that there is any reason of the kind mentioned in subsection (2) for not doing so, the judicial officer may adopt the decision previously made in the case, but with power to make such variations of the terms and conditions of bail as the judicial officer thinks fit.

*[Section 7D inserted by No. 6 of 2008 s. 9(1).]*

**7E. Bail during trial**

- (1) Where —

- (a) an accused has been refused bail for the accused's appearance for trial for an offence; and
- (b) the trial extends beyond one day,

a judicial officer referred to in section 7(1) need not comply with that subsection unless the accused, or a person on the accused's behalf, applies for bail.

- (2) In subsection (1) —

*trial* means that part of proceedings for an offence when evidence is being received by the court in respect of the offence and also extends to any time when —

- (a) legal argument is being heard; or
- (b) a judicial officer or a jury is deliberating.

*[Section 7E inserted by No. 6 of 2008 s. 9(1).]*

**7F. Bail for appeal from courts of summary jurisdiction**

- (1) If a person is in custody and an appeal has been commenced under the *Criminal Appeals Act 2004* Part 2 in connection with the decision by virtue of which the person is in custody, the person may apply for bail —

- (a) if the appeal is to be heard and determined by the Court of Appeal or if an application has been made to the Court of Appeal for leave to appeal to the Court of Appeal — to a judge of appeal; or

- (b) in any other case — to a judge of the Supreme Court.
- (2) Bail shall not be granted to an applicant for bail under subsection (1) unless —
  - (a) the applicant has given notice of the application for bail to —
    - (i) the Director of Public Prosecutions; or
    - (ii) the State Solicitor,as the case may require; and
  - (b) that official has been given an opportunity to be heard on the application.

*[Section 7F inserted by No. 6 of 2008 s. 9(1).]*

**8. Accused to be given information and approved forms**

- (1) Subject to subsection (4), a judicial officer or authorised officer who is called upon to consider an accused's case for bail, on the first occasion when it arises in relation to an offence or group of offences for which an accused is required to appear, shall ensure that the accused is, or has been, given —
  - (a) such information in writing as to the effect of this Act as is prescribed for the purposes of this paragraph;
  - (b) an approved form for completion, designed to disclose to the judicial officer or authorised officer all information relevant to the decision; and
  - (c) where the accused is unable or insufficiently able, to read, speak or write English, such assistance as he may reasonably require in order to have communicated to him the information mentioned in paragraph (a) and complete the form referred to in paragraph (b).
- (2) After an accused case for bail has been considered once, a judicial officer or authorised officer on any subsequent consideration of bail in the same case shall —
  - (a) comply with subsection (1)(a); and

- (b) either comply with subsection (1)(b) or obtain the form previously completed for the purposes of that paragraph, if any, and ensure that —
  - (i) the form is revised in order to show any changes which he is informed have occurred since it was completed; and
  - (ii) any assistance, of the kind referred to in subsection (1)(c) is given to the accused for the purpose of completing or revising the form, as the case may be.
- (3) Nothing in this section shall be read as limiting section 23.
- (3a) Notwithstanding subsection (1)(a) or (2)(a) a judicial officer or authorised officer need not comply with that paragraph if it appears to him that the accused's case for bail is such that bail is likely to be granted to him in accordance with this Act; but if it subsequently appears to him that bail will not be granted or that the accused is dissatisfied with any condition imposed on the grant of bail he shall then comply with that paragraph.
- (4) Notwithstanding subsection (1)(b) or (2)(b), a judicial officer or an authorised officer may dispense with completion or revision of the form referred to in those paragraphs if it appears to him that —
  - (a) the accused's case for bail is such that bail is likely to be granted to him in accordance with this Act; and
  - (b) the information in the possession of the judicial officer or authorised officer is sufficient for his consideration of the case.
- (5) Where a person has applied for bail for an appeal as mentioned in section 7F(1), this section applies as if the consideration of bail for the appeal were a first consideration of bail for an offence.

*[Section 8 amended by No. 74 of 1984 s. 6; No. 15 of 1988 s. 6; No. 33 of 1989 s. 18; No. 84 of 2004 s. 82; No. 6 of 2008 s. 9(2) and 43(1).]*

**9. Bail decision may be deferred until further information obtained**

- (1) Subject to section 26(2) of the *Young Offenders Act 1994*, a judicial officer or authorised officer who is called upon to consider a case for bail may defer consideration of the case for a period not exceeding 30 days if he thinks it is necessary —
  - (a) to obtain more information for the purpose of making a decision in accordance with this Act; or
  - (b) to take any step authorised by section 24(1) or 24A(1) or (2).
- (2) Nothing in this section shall be taken to limit the right of an accused to be brought before a court as soon as is practicable if he is not released on bail.

*[Section 9 amended by No. 57 of 1997 s. 21(2); No. 84 of 2004 s. 82; No. 6 of 2008 s. 10(1).]*

**10. Sections 5, 6 and 7 do not apply where accused imprisoned for other cause**

Notwithstanding sections 5, 6 and 7, the rights conferred on an accused and the duties imposed on police officers, authorised officers and judicial officers by those sections in respect of an appearance in court for an offence do not arise where —

- (a) the accused is in custody for some other offence or reason (including the non-payment of a sum of money); and
- (b) the police officer, authorised officer or judicial officer is satisfied that the accused is likely to remain in custody for that other offence or reason until or beyond the time for the appearance for the first-mentioned offence.



*[Section 10 amended by No. 84 of 2004 s. 82.]*

**11. Rights following grant of bail**

(1) When —

- (a) bail has been granted to an accused for an appearance in court;
- (b) all conditions which are to be complied with before the release of the accused have been complied with; and
- (c) he has entered into a bail undertaking for that appearance or his bail undertaking is deemed to be amended under section 31(3),

the accused has a right to be at liberty until he is required to appear, or to next appear, before a court, but subject to —

- (d) any requirement that he be in custody for some other reason;
- (e) the exercise of the powers in sections 14(3), 17A, 46, 50F, 54 and 55; and
- (f) the limitation mentioned in section 12.

(2) Where the accused is in custody in a lock-up, court custody centre or prison, the right conferred by subsection (1) is also subject to the person in charge of the lock-up, court custody centre or prison either —

- (a) signing a certificate under subsection (3); or
- (b) receiving notice that a certificate has been signed by another person under that subsection.

(3) After an accused becomes entitled to be at liberty as provided in subsection (1), a person referred to in section 29 may sign a certificate to that effect in the prescribed form.

(4) The person in charge of a lock-up, court custody centre or prison in which the accused is in custody shall release the accused from custody as soon as is practicable after —

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- (a) the person in charge signs the certificate; or
- (b) if the certificate is signed by a person other than the person in charge, the person in charge receives notice as described in subsection (2)(b).

*[Section 11 amended by No. 74 of 1984 s. 7; No. 15 of 1988 s. 7; No. 49 of 1988 s. 81; No. 45 of 1993 s. 7; No. 47 of 1999 s. 8; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82; No. 6 of 2008 s. 11(1) and (2).]*

**12. Further limitation on rights in s. 7A(2) and 11**

The right of an accused to have his case for bail considered as soon as is practicable, his right to be at liberty as mentioned in sections 7A(2) and 11(1), and the corresponding duties created by this Part, are limited so far as is reasonably necessary for the exercise or performance by a person of any statutory power or function vested in him which requires or permits the continued custody of the accused, including the exercise of the powers set out in Part 12 of the *Criminal Investigation Act 2006* and Parts 6 and 7 of the *Criminal Investigation (Identifying People) Act 2002*.

*[Section 12 amended by No. 6 of 2002 s. 96; No. 84 of 2004 s. 82; No. 59 of 2006 s. 6; No. 6 of 2008 s. 12.]*

### **Part III — Jurisdiction relating to bail**

*[Heading inserted by No. 6 of 2008 s. 13.]*

#### **13. Jurisdiction to grant bail**

- (1) Jurisdiction to grant bail for any appearance described in the first column of Part A of Schedule 1 is vested in the judicial officer or authorised officer specified in the second column of that Part opposite thereto and shall be exercised subject to and in accordance with this Part and the further provisions in Parts B, C and D of Schedule 1.
- (2) A home detention condition shall not be imposed as a condition of bail except by a judicial officer.

*[Section 13 amended by No. 61 of 1990 s. 5; No. 45 of 1993 s. 12.]*

#### **13A. Jurisdiction to dispense with bail and how jurisdiction to be exercised**

- (1) Jurisdiction to dispense with the requirement for bail under section 7A for any appearance described in the first column of Schedule 1 Part A clause 2 or 3 is vested, subject to Schedule 1 Part B, in the judicial officer specified in the second column of that clause opposite that description, but Schedule 1 Part A clause 7 does not apply for the purposes of this subsection.
- (2) The jurisdiction referred to in subsection (1) is exercisable only —
  - (a) in respect of an appearance in court before conviction for an offence; and
  - (b) if it appears to the judicial officer that bail would be granted in accordance with Schedule 1 Part C clause 1 or 2 but that in the circumstances the completion of bail papers is an unnecessary imposition.
- (3) Where a judicial officer dispenses with the requirement for bail for an appearance by an accused the registrar of the court shall,

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in accordance with section 13B, give written notice to the accused of the time and place for the appearance.

*[Section 13A inserted by No. 6 of 2008 s. 14.]*

**13B. Giving and proof of notices under s. 13A(3)**

- (1) A written notice to an accused under section 13A(3) shall be —
  - (a) given to the accused personally; or
  - (b) sent to the accused —
    - (i) by post to the accused's address appearing in the records of the court; or
    - (ii) in urgent cases or with the accused's consent, by electronic communication.
- (2) A person who gives or sends a notice in accordance with subsection (1) shall endorse on a file copy of the notice a certificate showing —
  - (a) that the person has done so; and
  - (b) the time of doing so.
- (3) If a notice is sent by post under subsection (1)(b)(i), the notice is to be presumed, unless the contrary is shown, to have been received at the time when, in the ordinary course of events, it would have been delivered.
- (4) In any proceedings —
  - (a) a document purporting to be a copy of a notice referred to in subsection (1) is evidence of the terms of the notice; and
  - (b) an endorsement on a copy of a notice referred to in subsection (2) purporting to be a certificate referred to in that subsection is evidence of the matters appearing in the certificate without proof of the signature of the person who made the endorsement.

*[Section 13B inserted by No. 6 of 2008 s. 14.]*

**14. Extent of judge's jurisdiction**

- (1) A judge may, in accordance with this Act —
  - (a) exercise a power to grant bail which is conferred upon any other judicial officer or any authorised officer by this Act; and
  - (b) revoke or vary any bail previously granted by any other such officer; and
  - (c) under section 7A dispense with the requirement for bail or revoke an existing dispensation.
- (2) Subject to subsection (2a), the jurisdiction of a judge under subsection (1) in respect of an appearance by an accused may be invoked by application made by either the prosecutor or the accused, and whether or not any other judicial officer has —
  - (a) previously granted, refused or dispensed with bail; or
  - (b) exercised any power conferred on him by section 55,in respect of that appearance.
- (2a) After the jurisdiction under subsection (1) has been invoked once by an accused in relation to an offence or group of offences for which he is required to appear, it may not be further invoked by that accused in relation to that offence or group of offences unless the accused satisfies a judge that —
  - (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since the occasion when the jurisdiction was invoked; or
  - (b) he failed to adequately present his case for bail on that occasion.
- (3) Where under subsection (1) a judge —
  - (a) revokes the bail of an accused who is at liberty, he may order that the accused be returned to custody to await the appearance for which the bail was granted;

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- (b) varies the bail of such an accused, he may order that the accused be returned to custody until he becomes entitled to be at liberty pursuant to section 11,

and the judge may issue any warrant which may be necessary to carry such an order into effect.

- (4) In this section —

- (a) references to a judge are references —

- (i) in the case of a child charged with an offence before the Children's Court, to a judge of that Court; and
- (ii) in the case of an accused committed for trial or sentence to the District Court, to a judge of that Court; and
- (iii) in any other case, to a judge of the Supreme Court;

and

- (b) references to any other judicial officer —

- (i) in relation to the exercise of powers under this section by a judge, are references to any judicial officer whose jurisdiction is inferior to that of the judge; but
- (ii) in relation to the exercise of powers under this section by a judge of the Supreme Court, do not include a judge of the Children's Court or a judge of the District Court.

*[Section 14 amended by No. 74 of 1984 s. 8; No. 49 of 1988 s. 82; No. 84 of 2004 s. 82; No. 6 of 2008 s. 15(1)-(4).]*

**15. Exclusive jurisdiction of Supreme Court judge in murder cases**

- (1) Where an accused is in custody for murder, the power to grant bail shall be exercised only by a judge of the Supreme Court, or

in the case of an accused who is a child by a judge of the Children's Court, except —

- (a) where section 31(2)(d) applies; or
- (b) to the extent that the Court of Appeal exercises its powers under Part A of Schedule 1.

[(2) *deleted*]

*[Section 15 amended by No. 52 of 1984 s. 35; No. 74 of 1984 s. 9; No. 49 of 1988 s. 83; No. 70 of 1988 s. 45; No. 45 of 1993 s. 12; No. 45 of 2004 s. 28(4); No. 84 of 2004 s. 82; No. 29 of 2008 s. 24(5).]*

**15A. Appeal from decision of judge**

(1) In this section —

***bail decision*** means a decision —

- (a) to grant or refuse bail; or
  - (b) to vary or revoke bail; or
  - (c) to dispense with the requirement for bail; or
  - (d) to impose any condition on a grant of bail,
- and includes a decision under section 55 or 59A(4).

(2) The prosecutor or the accused may appeal to the Court of Appeal against a bail decision of —

- (a) a judge of the Children's Court; or
- (b) a judge of the District Court; or
- (c) a judge of the Supreme Court.

(3) The leave of the Court of Appeal is required for each ground of appeal in an appeal under this section.

(4) The *Criminal Appeals Act 2004* section 27(2), (3) and (4) apply, with necessary modifications, as if an appeal under this section were an appeal under Part 3 of that Act.

**s. 15B**

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- (5) An appeal under this section shall be commenced and conducted in accordance with this section, section 15B and rules of court made by the Supreme Court.
- (6) An appeal under this section shall be commenced by lodging with the Court of Appeal an application for leave to appeal that sets out the grounds of the appeal.
- (7) An appeal under this section cannot be commenced later than 21 days after the date of the bail decision unless the Court of Appeal orders otherwise.
- (8) An accused who is a party to an appeal under this section and who is in custody is entitled to be present at the hearing of the appeal if the accused so requests, and any official responsible for that custody who is informed of such a request shall do what is necessary to give effect to it.
- (9) For the purposes of giving effect to a request referred to in subsection (8), arrangements may be made for the accused to appear before the Court of Appeal by means of a video link or an audio link in accordance with section 66B, unless the Court of Appeal has ordered that the accused appear before it in person.

*[Section 15A inserted by No. 6 of 2008 s. 16(1).]*

**15B. Determination of appeal under s. 15A and related provisions**

- (1) The Court of Appeal has jurisdiction to hear and determine an appeal under section 15A.
- (2) The Court of Appeal shall determine an appeal on the material and evidence that was before the judge whose decision is the subject of the appeal.
- (3) Any decision of the Court of Appeal in relation to bail shall be made in accordance with the relevant provisions of sections 13A and 17 and Schedule 1.



- (4) Where in determining an appeal the Court of Appeal revokes the bail of an accused who is at liberty, it may order that the accused be returned to custody to await the appearance for which the bail was granted.
- (5) Where in determining an appeal the Court of Appeal varies the bail of an accused who is at liberty, it may order that the accused be returned to custody until the accused becomes entitled to be again at liberty pursuant to section 11.
- (6) A judge of appeal may issue any warrant that may be necessary to carry into effect an order under subsection (4) or (5).

*[Section 15B inserted by No. 6 of 2008 s. 16(1).]*

#### **16. Bail of person arrested on warrant**

- (1) Subject to sections 14 and 15 where the arrest of an accused for an offence is made pursuant to a warrant he shall not be granted bail before he is brought before a court or judicial officer as commanded by the warrant, except by a justice acting in terms of section 6(9).
- (2) Notwithstanding subsection (1) or any other provision of this Act, an accused who has been arrested pursuant to a warrant —
  - (a) issued under section 59B; or
  - (b) issued under the *Criminal Procedure Act 2004* for an offence against section 51(1) or (2),

shall not have a right to have his case for bail considered, and shall not be granted bail, before he is brought before the court as commanded by the warrant.

*[Section 16 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82; No. 59 of 2006 s. 4(3); No. 6 of 2008 s. 36(2).]*

**s. 16A**

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**16A. Restrictions on powers of authorised officers and justices in certain cases**

- (1) Where this section applies to a person who has been arrested for an offence jurisdiction does not arise under section 13 until the person is brought before —
  - (a) a court constituted by or so as to include a magistrate; or
  - (b) where section 15 applies, a judge of the Supreme Court or a judge of the Children’s Court as the case may require.
- (2) This section applies where —
  - (a) a person has been arrested in an urban area for a serious offence; and
  - (b) the serious offence is alleged to have been committed while the accused was —
    - (i) on bail for; or
    - (ii) at liberty under an early release order made in respect of,  
another serious offence.
- (3) This section also applies where a person has been arrested in an urban area for an offence against section 61(1) of the *Restraining Orders Act 1997* (which creates offences for breaches of violence restraining orders).
- (4) In this section —

**urban area** means —

  - (a) the metropolitan region as defined in the *Planning and Development Act 2005* and any prescribed area that adjoins that region; and
  - (b) any other prescribed area of the State, being the whole or part of, or an area adjoining, a local government district under the *Local Government Act 1995* that is designated under that Act as a city or a town.

*[Section 16A inserted by No. 54 of 1998 s. 6(1); amended by No. 38 of 2004 s. 59; No. 84 of 2004 s. 82; No. 38 of 2005 s. 15.]*

**17. Conditions which may be imposed**

- (1) A judicial officer or authorised officer may impose conditions on a grant of bail only to the extent that he is authorised to do so by clause 2(3)(c) of Part C and Part D of Schedule 1.
- (2) Conditions imposed on a grant of bail shall not be any more onerous on the accused than the judicial officer or authorised officer considers is required in the public interest having regard to the nature of the offence for which the accused is in custody and the circumstances of the accused.

*[Section 17 amended by No. 45 of 1993 s. 8 and 12; No. 84 of 2004 s. 82.]*

**17A. Further provisions as to responsible person's undertaking (Schedule 1 Part C clause 2)**

- (1) Where this section applies, an authorised police officer may —
  - (a) cancel an undertaking of the kind described in clause 2(3)(c) of Part C of Schedule 1;
  - (b) approve of another person as a responsible person within the meaning in that clause; and
  - (c) detain the accused or order his detention until the person so approved enters into an undertaking of the kind mentioned in paragraph (a).
- (2) Subsection (1) applies where —
  - (a) a person has entered into an undertaking referred to in paragraph (a) of that subsection;
  - (b) a judicial officer when granting bail ordered that the person may under this section be released from the undertaking by an authorised police officer; and
  - (c) the person wishes to be so released.

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- (3) A police officer may, for the purpose of the exercise of the powers in subsection (1), take into custody a child accused who has been released on bail.
- (4) If the police officer is not an authorised police officer he shall, as soon as is practicable, bring the accused before an authorised police officer for the purpose referred to in subsection (3).
- (5) After an undertaking has been entered into as mentioned in subsection (1)(c), the accused, subject to this Act, has a right to be at liberty until he is required to appear before a court.

*[Section 17A inserted by No. 45 of 1993 s. 9; amended by No. 84 of 2004 s. 82.]*

*[18-19. Deleted by No. 59 of 2006 s. 7(1).]*

## Part IV — Hearing of case for bail, parties, and evidence

### 20. Power to consider bail *in camera* and to prohibit publication

- (1) On the consideration by a judicial officer of a case for bail of an accused who is charged with an offence triable by jury, the judicial officer may, to avoid prejudice to either party, exercise the powers described in subsection (2), but shall only exercise the power in paragraph (b) thereof if he considers that the exercise of the power in paragraph (a) is not, on its own, likely to be sufficient to avoid prejudice.
- (2) The powers referred to in subsection (1) are to order —
  - (a) that no report, or summary, of any statement, or of any specified statement, made or furnished at the hearing shall be published by any means;
  - (b) that the bail application be heard *in camera*.
- (3) Where an order is made under subsection (2)(a), no report, or summary, of any statement referred to in that paragraph shall be published by any means —
  - (a) if the offence is one that may be tried on indictment, before a court decides that it is to be tried on indictment;
  - (b) if the accused is discharged from further proceedings upon the prosecution notice or indictment brought against him for the offence, before he is so discharged; or
  - (c) if the accused is tried on indictment for the offence, before the trial is ended.
- (4) A person who, except with lawful excuse, fails to comply with an order made under this section commits an offence.

Penalty: \$1 000.

[Section 20 amended by No. 50 of 2003 s. 37(2); No. 4 of 2004 s. 58; No. 84 of 2004 s. 11 and 82.]

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**21. Parties**

- (1) The parties to proceedings on a case for bail are the prosecutor and the accused and, subject to subsection (2), no other person shall be a party to, or be represented at, the proceedings.
- (2) Nothing in subsection (1) affects the right of —
  - (a) the Attorney General to apply for leave, or be an appellant, under Part 2 of the *Criminal Appeals Act 2004*; or
  - (b) the Director of Public Prosecutions or the State Solicitor to receive notice and be heard under section 7F(2); or
  - (c) an officer referred to in section 33 of the *Children's Court of Western Australia Act 1988* to be present at and participate in proceedings concerning a child under that section.

*[Section 21 amended by No. 15 of 1988 s. 9; No. 49 of 1988 s. 84; No. 33 of 1989 s. 18; No. 31 of 1993 s. 7; No. 65 of 2003 s. 88(3); No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82; No. 6 of 2008 s. 9(3).]*

**22. Evidence**

A judicial officer or authorised person may in considering any case for bail receive and take into account such information as he thinks fit whether or not the same would normally be admissible in a court of law.

**23. Accused not bound to supply information**

An accused is not obliged to complete, or furnish information for, the form referred to in section 8(1)(b), or for any revision thereof, or to furnish any information, whether on oath or otherwise, for the purpose of having his case for bail considered.

*[Section 23 amended by No. 84 of 2004 s. 82; No. 6 of 2008 s. 43(2).]*

**24. Information may be referred to police officer for verification or for report**

- (1) A judicial officer or authorised officer who is called upon to consider a case for bail may —
  - (a) request that any information placed before the judicial officer or authorised officer by the accused for the purposes of the case be verified by a police officer, and to that end may refer to a police officer the form mentioned in section 8(1)(b), after it has been completed or revised;
  - (b) request that a report on any matter mentioned in Part C of Schedule 1, so far as it applies to an accused whose case is being or to be considered, be made by a police officer.
- (2) Where a reference or request is made under subsection (1) a police officer shall, as soon as is practicable —
  - (a) make a report to the judicial officer or the authorised officer accordingly; and
  - (b) furnish a copy of the report to the accused or his solicitor or counsel.

*[Section 24 inserted by No. 61 of 1990 s. 6; amended by No. 45 of 1993 s. 12; No. 84 of 2004 s. 82; No. 6 of 2008 s. 43(2).]*

**24A. Information may be referred to community corrections officer for verification or for report**

- (1) A judicial officer who is called upon to consider a case for bail may refer to a community corrections officer any matter referred to in section 24(1) and may request a community corrections officer to do any matter referred to in that section.
- (2) A judicial officer who is called upon to consider a case for bail and who desires to impose a home detention condition as a condition on a grant of bail, shall request that a report be made

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by a community corrections officer about the suitability of the accused to be subject to a home detention condition.

- (3) Where a reference or a request is made under subsection (1) or a report is requested under subsection (2) a community corrections officer shall, as soon as is practicable, make a report to the judicial officer and, at the discretion of the judicial officer, copies may be made available to the prosecution or to the accused or his solicitor or counsel.
- (4) Where a community corrections officer makes a report that an accused is suitable to be subject to a home detention condition, the officer shall annex to the report and provide to the accused or his solicitor or counsel, a list of those conditions in rules made under section 50L that may be applied to the accused by the CEO (corrections) while the accused is subject to the home detention condition.

*[Section 24A inserted by No. 61 of 1990 s. 7; amended by No. 31 of 1993 s. 9; No. 84 of 2004 s. 82; No. 65 of 2006 s. 53.]*

**25. Protection of accused as to information given for bail purposes**

A statement made by an accused to a judicial officer or authorised officer for the purpose of a decision whether bail should be granted to him for any appearance in court for an offence shall not be admissible in evidence against him at his trial for that offence.

*[Section 25 amended by No. 84 of 2004 s. 82.]*

**26. Record of decision and reasons**

- (1) A bail record form shall be completed by an authorised officer or a justice if he —
  - (a) refuses to grant bail to an accused; or
  - (b) grants bail to an accused in the circumstances referred to in clause 3 of Part B of Schedule 1; or



- (ba) grants bail to an accused for a serious offence to which Schedule 1 Part C clause 3A applies; or
  - (c) imposes any condition on a grant of bail and it appears to him that the accused is dissatisfied with the condition.
- (2) Where a judicial officer, other than a justice —
- (a) refuses to grant bail to an accused; or
  - (aa) grants bail to an accused for a serious offence to which Schedule 1 Part C clause 3A applies; or
  - (b) imposes any condition on a grant of bail and it appears to him that the accused is dissatisfied with the condition,
- a record of the decision and of the reasons therefor shall be made.
- (3) The accused, the prosecutor or an intending prosecutor shall be entitled, upon request, to be furnished with a copy of the bail record form or, where subsection (2) applies, of the record made.
- (4) For the purposes of this section —
- (a) references to a justice do not include a magistrate or a judge of the District Court or the Supreme Court or the Children’s Court who is a justice; and
  - (b) a bail record form is an approved form designed to contain a summary of the matters relevant to the decision as to the bail of an accused, including those matters set out in Part C of Schedule 1, the decision made, and the reasons for the decision.

*[Section 26 inserted by No. 15 of 1988 s. 10; amended by No. 49 of 1988 s. 85; No. 45 of 1993 s. 12; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82; No. 6 of 2008 s. 17 and 43(1).]*

## **27. Transmission of relevant papers to court**

- (1) An authorised officer and a judicial officer who consider an accused’s case for bail for an appearance for an offence and a

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person before whom a bail undertaking or a surety undertaking is entered into shall ensure that the relevant papers are sent as soon as is practicable, to the court before which the accused is required to appear.

- (2) In subsection (1) *the relevant papers* in relation to any particular officer or person means such papers as are prescribed to be sent by that officer or person.

*[Section 27 amended by No. 84 of 2004 s. 82; No. 59 of 2006 s. 7(2).]*

**27A.      Transmission of papers to CEO (corrections)**

A judicial officer who grants bail subject to a home detention condition shall ensure that a copy of the bail record form and of the bail undertaking are sent as soon as is practicable to the CEO (corrections).

*[Section 27A inserted by No. 61 of 1990 s. 8; amended by No. 31 of 1993 s. 9; No. 65 of 2006 s. 53.]*

## **Part V — Bail undertakings**

### **28. Bail undertaking**

- (1) A person shall not be released on bail for an appearance in court unless he has entered into a bail undertaking for that appearance or is deemed to have done so under section 31(3).
- (2) A bail undertaking is an undertaking in writing by an accused in the prescribed form —
  - (a) that he will appear at a time and place specified, or deemed by section 31(3) to be specified, in the undertaking; and
  - (b) that if the accused fails to appear at that time and place the accused will, as soon as is practicable, appear at the court at which the accused was required to appear, when that court is sitting; and
  - (c) that he will comply with such conditions as may be imposed on him under clause 2 of Part D of Schedule 1; and
  - (d) that he will comply with any home detention condition which may be imposed as a condition on a grant of bail to him pursuant to clause 3 of Part D of Schedule 1,

and containing any agreement as to forfeiture of money by the accused which may be required pursuant to clause 1 of that Part.

- (3) A bail undertaking for any appearance may be entered into in respect of more than one offence.
- (4) The undertakings mentioned in subsection (2)(a) and (b) are, subject to section 34, enforceable under sections 51, 57 and 58.

*[Section 28 amended by No. 61 of 1990 s. 9; No. 45 of 1993 s. 12; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82; No. 6 of 2008 s. 18(1).]*

**29. Before whom bail undertaking may be entered into**

A bail undertaking need not be entered into before the judicial officer or authorised officer who granted bail but may be entered into before any of the following persons —

- (a) a judicial officer;
- (b) a registrar of a court, other than a deputy registrar of the Magistrates Court or the Children's Court;
- (c) an authorised police officer;
- (d) an associate of a judge of the Supreme Court, the District Court or the Children's Court;
- (e) where the accused is in a lock-up or prison, any person for the time being in charge of the lock-up or prison;
- (f) where the accused is in a court custody centre, any person for the time being in charge of the centre who is approved for the purposes of this paragraph by the chief executive officer of the department of the Public Service principally assisting in the administration of the *Court Security and Custodial Services Act 1999*;
- (g) where the accused is a child, any authorised community services officer.

*[Section 29 amended by No. 15 of 1988 s. 11; No. 49 of 1988 s. 86; No. 2 of 1996 s. 61; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82; No. 6 of 2008 s. 19.]*

**30. Duties of person before whom bail undertaking is entered into**

- (1) The person before whom a bail undertaking is to be entered into by an accused shall before it is entered into —
  - (a) either —
    - (i) read it to the accused; or
    - (ii) be informed by the accused that the accused has read it; or
    - (iii) if necessary, have it translated to the accused;

and

- (b) ensure that all conditions which are to be complied with before the release of the accused have been complied with.
- (2) The person before whom a bail undertaking is entered into by an accused shall give to him, or cause to be given to him —
- (a) a copy of the bail undertaking as duly completed; and
  - (b) a notice in writing in the approved form showing —
    - (i) his obligations pursuant to the undertaking; and
    - (ii) the consequences of his failure to comply with them.
- (3) The person before whom a bail undertaking is entered into by an accused shall enquire of the accused whether he requires the notice referred to in subsection (2)(b) to be read or translated to him and shall take such steps as are necessary to comply with any such requirement of the accused.

*[Section 30 inserted by No. 15 of 1988 s. 12; amended by No. 84 of 2004 s. 82; No. 6 of 2008 s. 20 and 43(3).]*

**31. Different time and place for appearance may be substituted**

- (1) A different time or a different time and place may be substituted in accordance with this section for the time and place for appearance specified, or deemed by this section to be specified, in a bail undertaking.
- (2) A different time, or a different time and place, for the appearance by the accused may be substituted as mentioned in subsection (1) —
  - (a) upon an adjournment of proceedings at which the accused is present, by the judicial officer, if he has power to grant bail for that appearance, fixing a time and place for the resumed proceedings and notifying the accused orally thereof;

- (b) upon an adjournment of proceedings from which the accused is absent for reasonable cause, by the judicial officer, if he has power to grant bail for that appearance, fixing a time and place for the resumed proceedings and directing the registrar of the court to cause written notice of the time and place to be given to the accused;
- (c) where —
  - (i) a judge of the Supreme Court or a judge of the Children’s Court has granted bail to an accused under section 15; and
  - (ii) a judicial officer, other than such a judge, has committed the accused to the Supreme Court, by a judge of the Supreme Court or a judge of the Children’s Court, as the case may require, notifying the accused orally, or directing the registrar of the court to cause written notice to be given to the accused of the time or time and place for the proceedings;
- (d) where —
  - (i) a judge of the Supreme Court or a judge of the Children’s Court has granted bail to an accused under section 15;
  - [(ii) deleted]*
  - (iii) the judicial officer is satisfied that there has been no material change in the facts or circumstances which applied on the grant of bail, by the judicial officer notifying the accused orally, or directing the registrar of the court to cause written notice to be given to the accused, of the time or time and place for the resumed proceedings;
- (e) upon a committal to the Supreme Court or District Court, by a judicial officer, if he has power to grant bail for that appearance, fixing a specified day in a specified sitting or session of that court and directing the registrar

of the court to cause written notice of the day to be given to the accused;

- (f) where an accused has been committed for trial in the Supreme Court or the District Court in a specified sitting or session thereof or on a specified day in a specified sitting or session thereof, by an officer of the court, or a person authorised under subsection (5), fixing a time for the trial in that sitting or session and causing written notice of the time to be given to the accused;
  - (g) if the parties agree to a different time or a different time and place for the proceedings, by an officer of the court giving written notice thereof to the accused.
- (3) Where a different time or a different time and place is notified to an accused pursuant to subsection (2) the bail undertaking shall be deemed to be amended to specify that time or that time and place for appearance, and the terms and conditions thereof shall continue to apply as so amended as if the accused had entered into the bail undertaking in that form.
- (4) Where the power in subsection (2)(b) is exercised upon an adjournment of proceedings the right of the accused to be at liberty under section 11(1) does not lapse by reason only that there is an interval between the adjournment of the proceedings and the time when he is notified of the time and place for the resumed proceedings.
- (5) The Chief Justice, in respect of committals to the Supreme Court, and the Chief Judge, in respect of committals to the District Court, may authorise a person or persons, by name or office, to perform the functions referred to in subsection (2)(f).

*[Section 31 amended by No. 15 of 1988 s. 13; No. 49 of 1988 s. 87; No. 27 of 2002 s. 21; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82; No. 6 of 2008 s. 21(1) and (2).]*

**s. 31A**

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**31A. Amendment of conditions during trial**

(1) In this section —

*amendment* means an addition, variation or cancellation under subsection (2);

*trial* means that part of proceedings for an offence when evidence is being received by the court in respect of the offence and also extends to any time when —

- (a) legal argument is being heard; or
- (b) a judicial officer or a jury is deliberating.

(2) Where —

- (a) an accused has been granted bail for the accused's appearance for trial for an offence; and
- (b) the trial extends beyond one day,

a judicial officer who grants bail for the next appearance by exercising the power in section 31(2)(a) may also do one or more of the following —

- (c) add any condition to the extent that is authorised by clause 2 or 3 of Part D of Schedule 1;
- (d) vary a condition to that extent;
- (e) cancel a condition.

(3) A judicial officer who adds, varies or cancels a condition under subsection (2) shall cause an officer of the court —

- (a) to endorse the amendment on the accused's copy of the bail undertaking or, if that copy is not available for endorsement, to give written notice of the amendment to the accused; and
- (b) to endorse on a file copy of the undertaking a certificate as to the amendment and the action taken under paragraph (a).



- (4) If the judicial officer considers that the amendment is of a minor nature, the judicial officer may, for the purposes of section 44(4), cause the officer of the court to include a statement to that effect in the endorsement or notice under subsection (3)(a) and the certificate under subsection (3)(b).
- (5) When action is taken under subsection (3)(a) —
- (a) the bail undertaking is to be regarded as having been amended as provided in the endorsement or notice, as the case requires; and
  - (b) the terms and conditions of the bail undertaking continue to apply as so amended as if the accused had entered into the bail undertaking in that form.
- (6) In any proceedings an endorsement on a copy of a bail undertaking referred to in subsection (3)(b) purporting to be a certificate referred to in that paragraph is evidence of the matters appearing in it without proof of the signature of the person who made the endorsement.

*[Section 31A inserted by No. 6 of 2008 s. 22(1).]*

### **32. Giving and proof of notices under s. 31**

- (1) A written notice to an accused under section 31(2) —
- (a) shall be given to the accused personally; or
  - (b) shall be sent to the accused by post to the accused's address appearing in the records of the court; or
  - (c) in urgent cases or with the accused's consent, shall be sent to the accused by electronic communication.
- (2) A person who gives or sends a notice in accordance with subsection (1) shall endorse on a file copy of the notice a certificate showing —
- (a) that the person has done so; and
  - (b) the time of doing so.

**s. 33**

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- (3) If a notice is sent by post under subsection (1)(b), the notice is to be presumed, unless the contrary is shown, to have been received at the time when, in the ordinary course of events, it would have been delivered.
- (4) The judicial officer who under section 31(2)(a) notifies an accused of the time and place for resumed proceedings shall cause to be endorsed on the accused's bail undertaking a certificate showing details of such time and place and that the accused has been notified of them.
- (5) In any proceedings —
  - (a) a document purporting to be a copy of a notice referred to in subsection (1) shall be evidence of the terms of the notice; and
  - (b) an endorsement —
    - (i) on a copy of a notice referred to in subsection (2); or
    - (ii) on a bail undertaking,  
purporting to be a certificate referred to in subsection (2) or (4) is evidence of the matters appearing in it without proof of the signature of the person who made the endorsement.

*[Section 32 amended by No. 74 of 1984 s. 12; No. 84 of 2004 s. 82; No. 6 of 2008 s. 23(1)-(3).]*

**33. Judicial officer may order accused to enter into bail undertaking**

- (1) Where bail is granted to an accused by a judicial officer, whether with or without any condition being attached thereto, and the accused fails or refuses to enter into a bail undertaking in terms of the grant, the judicial officer who granted bail may, subject to subsection (3), order that the accused enter into the bail undertaking within such time as he may specify.

- (2) If an accused does not comply with an order under subsection (1), the judicial officer may, subject to subsection (3), further order that a bail undertaking, in such form as the judicial officer may approve, shall be deemed to have been entered into by the accused on the date of such further order, and thereupon that undertaking shall be treated as if it had been duly entered into by the accused for the purposes of this Act.
- (3) A judicial officer shall not —
- (a) make an order under subsection (2) unless he has personally informed the accused of the terms and effect of the order made under subsection (1);
  - (b) exercise any of the powers conferred on him by this section unless he is satisfied that the accused has the capacity to enter into and comply with the undertaking.

*[Section 33 amended by No. 84 of 2004 s. 82.]*

#### **34. Cessation and suspension of bail undertaking**

A bail undertaking ceases to have effect —

- (a) upon the revocation of bail under section 55;
- (b) upon the death of the accused, but only if no order has been made under section 57;
- (c) subject to section 31, upon the appearance in court by the accused as required by his bail undertaking;
- (d) upon the discharge of the accused according to law from any further proceedings for the offence, or all of the offences, to which the bail undertaking relates;
- (e) during any period before the time at which the accused is required to appear in court when he is in custody for any other offence or reason.

*[Section 34 amended by No. 84 of 2004 s. 82.]*

## **Part VI — Sureties and surety undertakings**

### **35. Surety and surety undertaking**

- (1) A surety is a person who, as a condition of the grant of bail to an accused, enters into a surety undertaking, that is to say, undertakes in writing that he will, subject to this Act, forfeit a specified amount of money if the accused fails to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) and (b).
- (2) A surety is required to be approved under section 40.
- (3) A forfeiture of money by a surety as mentioned in subsection (1) is enforceable as provided in section 49 but not otherwise.

*[Section 35 amended by No. 84 of 2004 s. 82; No. 6 of 2008 s. 18(3).]*

### **36. Authority to approve sureties**

- (1) The decision whether an applicant should be approved as a surety in any case is to be made —
  - (a) by a person referred to in section 29(a) to (d); or
  - (b) where the accused to whom bail has been granted is in prison, by a person for the time being in charge of the prison; or
  - (c) where the accused to whom bail has been granted is a child, by an authorised community services officer.
- (2) A judicial officer when granting bail to an accused subject to a requirement for a surety or sureties may make an order as to —
  - (a) the giving of notice to the prosecutor of an application for approval of any surety; or
  - (b) the person or persons who are to, or may, approve any surety,

and subsection (1) has effect subject to any such order.

*[Section 36 inserted by No. 6 of 2008 s. 24(1).]*

**37. Proposed surety to receive certain information and prescribed form for completion**

- (1) Whenever a surety approval officer is called upon to decide whether an applicant should be approved as a surety, he shall ensure that the applicant is, or has been, given —
  - (a) a duly completed notice in the prescribed form showing details of the terms and conditions on which bail has been granted to the accused in whose case the surety is required;
  - (b) such information in writing as to the effect of this Act in relation to the rights, obligations and liabilities of sureties as is prescribed for the purposes of this paragraph; and
  - (c) a prescribed form of declaration for completion designed to disclose to the surety approval officer all information relevant to the decision.
- (2) Before he makes his decision, the surety approval officer shall ensure that the applicant furnishes to him the declaration referred to in subsection (1)(c) duly completed.
- (3) For the purposes of this section it is sufficient if —
  - (a) the notice, information and declaration referred to in subsection (1) are sent by electronic communication to an electronic address provided by the applicant; and
  - (b) the declaration referred to in subsection (1)(c) duly completed is sent by electronic communication to an electronic address provided by the surety approval officer.

*[Section 37 amended by No. 84 of 2004 s. 82; No. 6 of 2008 s. 24(4), (5) and 25.]*

**38. Persons disqualified from being sureties**

- (1) A person is not qualified to be approved as a surety if —
  - (a) he is under 18 years of age; or
  - (b) subject to subsection (2), the value of his assets, after provision is made for his debts and liabilities, is less than the amount which he might become liable to forfeit under his proposed surety undertaking; or
  - (c) there are reasonable grounds for believing that he has been, or will be, indemnified by any person against any forfeiture referred to in paragraph (b).
- (2) Subsection (1)(b) does not apply where the applicant for approval is required to give security sufficient to cover the amount which he might become liable to forfeit.

**39. Matters relevant to approval of sureties**

In determining whether an applicant is suitable to be a surety a surety approval officer shall have regard to all matters which appear to him to be relevant including, as well as any others, the following —

- (a) the character and antecedents of the applicant;
- (b) his proximity to or connection with the accused, whether by kinship, place of residence or otherwise; and
- (c) his ability to pay, or give security for, the amount which he might become liable to forfeit under his proposed surety undertaking, without excessive hardship to himself or his dependants.

*[Section 39 amended by No. 84 of 2004 s. 82; No. 6 of 2008 s. 24(4).]*

**40. Decision on application by proposed surety**

- (1) Upon receipt of the duly completed declaration referred to in section 37(1)(c), the surety approval officer shall, after making any enquiries which he thinks desirable, make a decision, as

soon as is practicable, either to approve or not to approve of the applicant as a surety in that case.

- (2) If the surety approval officer does not approve of the applicant as a surety he shall record the reasons for his doing so and inform the applicant and the accused thereof, or cause them to be so informed.

*[Section 40 amended by No. 15 of 1988 s. 15; No. 84 of 2004 s. 82; No. 6 of 2008 s. 24(5).]*

#### **41. Finality of decision to refuse approval**

- (1) A decision by a surety approval officer not to approve of the applicant as a surety is final unless the applicant becomes entitled to re-apply under subsection (2).
- (2) An applicant who is refused approval as a surety may re-apply for approval to the surety approval officer who made that decision, or if that officer is absent or unavailable to another surety approval officer, on the ground that —
- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since he was refused approval; or
  - (b) he failed to adequately present his case for approval on his previous application,

and the provisions of this Act, except section 37, shall, with necessary modifications, apply to any such further application and the decision thereon.

*[Section 41 amended by No. 6 of 2008 s. 24(3) and (4).]*

#### **42. Before whom surety undertaking may be entered into**

A surety undertaking need not be entered into before the surety approval officer who approved the surety but may be entered into before any person before whom the accused for whose appearance the surety is approved might enter into his bail undertaking under section 29.

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*[Section 42 amended by No. 84 of 2004 s. 82; No. 6 of 2008 s. 24(5).]*

**43. Duties of persons before whom surety undertaking is entered into**

A person before whom a surety undertaking is to be entered into —

- (a) shall —
  - (i) read to the surety;
  - (ii) be informed by the surety that he has read; or
  - (iii) if necessary, have translated to the surety, the documents described in section 37(1)(a) and (b), and the surety undertaking, before the surety enters into the undertaking;
- (b) shall ensure that all conditions which are to be complied with by the surety have been complied with before the surety enters into his undertaking; and
- (c) shall give to the surety a copy of his surety undertaking as duly completed.

*[Section 43 amended by No. 74 of 1984 s. 13.]*

**43A. Use of video link and electronic communication where proposed surety is interstate**

- (1) In this section —

*proposed surety* means a person who is to enter into a surety undertaking;

*relevant official* means the person before whom the surety undertaking is to be entered into or was entered into, as the case requires;

*video link* means facilities (including closed circuit television) that enable, at the same time —

- (a) the relevant official to see and hear the proposed surety; and



- (b) the proposed surety to see and hear the relevant official.
- (2) This section applies if a proposed surety is in another State or a Territory.
- (3) The relevant official may comply with section 43(a) and (b) by means of a video link.
- (4) The relevant official may send the surety undertaking to the proposed surety by electronic communication for completion.
- (5) The proposed surety may enter into the surety undertaking by sending the completed surety undertaking to the relevant official by electronic communication.
- (6) If the surety undertaking is sent by electronic communication under subsection (4) or (5), any requirement for the proposed surety or the relevant official to sign it is to be taken to have been complied with if the full name of the proposed surety or the relevant official, as the case requires, appears in the appropriate place in the undertaking.
- (7) The relevant official may comply with section 43(c) by sending a copy of the surety undertaking as duly completed to the surety by electronic communication.
- (8) A surety undertaking that is entered into in accordance with this section is to be taken to have been entered into before the relevant official.
- (9) In any proceedings a document purporting to be a copy of a surety undertaking and purporting to be certified by the relevant official to be a copy of a surety undertaking entered into in accordance with this section is evidence of the surety undertaking without proof of the signature of the relevant official.
- (10) A reference in this section to sending a surety undertaking or copy of a surety undertaking to a person by electronic communication is a reference to sending the undertaking or

copy by electronic communication to an electronic address provided by the person.

*[Section 43A inserted by No. 6 of 2008 s. 26.]*

**44. When surety undertaking extends to different time or different time and place substituted under s. 31**

- (1) A surety undertaking does not extend to the failure by the accused to appear at a different time or a different time and place substituted pursuant to section 31 unless —
  - (a) the surety undertaking contains a provision stating that it does so extend and, where applicable under subsection (5), the surety has received notice as mentioned in that subsection; or
  - (b) subsection (2) applies.
- (2) A surety undertaking extends to the failure by the accused to appear at a different time substituted pursuant to section 31 during a trial if, at the option of the surety, the undertaking contains a provision stating —
  - (a) that it does so extend; and
  - (b) the effect of subsection (4).
- (3) In subsection (2) —

**trial** means that part of proceedings for an offence when evidence is being received by the court in respect of the offence and also extends to any time when —

  - (a) legal argument is being heard; or
  - (b) a judicial officer or a jury is deliberating.
- (4) Subsection (2) applies despite any amendment as defined in section 31A(1) if the endorsement or notice under section 31A(3)(a) in respect of the amendment includes a statement referred to in section 31A(4).
- (5) A surety undertaking may, at the option of the surety, also contain a provision stating that where —

- (a) a different time or a different time and place for the accused's appearance is substituted pursuant to section 31; and
- (b) subsection (2) does not apply,

the surety's liability only arises if the surety is given notice, as soon as is practicable, of the different time or the different time and place.

- (6) Where, by operation of this section, a surety undertaking would extend to the failure by the accused to appear at a different time or a different time and place substituted pursuant to section 31, that extension is not affected by a reduction in the number of offences to which the accused's bail undertaking relates.

*[Section 44 inserted by No. 6 of 2008 s. 27(1).]*

#### **45. Giving and proof of notices under s. 44**

- (1) For the purposes of section 44(5) notice to a surety may be given —
  - (a) orally to the surety by the judicial officer when he fixes a time and place for the proceedings or the resumed proceedings; or
  - (b) in the approved form to the surety personally; or
  - (c) by a person authorised under subsection (5) sending or causing to be sent the approved form to the surety —
    - (i) by post to the surety's address appearing in the records of the court; or
    - (ii) in urgent cases or with the surety's consent, by electronic communication.
- (2) A person who gives a notice in accordance with subsection (1)(b) or (c) shall endorse on a file copy of the notice a certificate showing —
  - (a) that the person has done so; and
  - (b) the time of doing so.

**s. 45**

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- (2a) If a notice is sent by post under subsection (1)(c), the notice is to be presumed, unless the contrary is shown, to have been received at the time when, in the ordinary course of events, it would have been delivered.
- (3) A judicial officer who, under subsection (1)(a), notifies a surety of the time and place for the proceedings or the resumed proceedings shall cause to be endorsed on a file copy of the surety's undertaking a certificate showing details of such time and place and that the surety has been notified of them.
- (4) In any proceedings —
- (a) a document purporting to be a copy of a notice referred to in section 44(5) shall be evidence of the terms of the notice; and
  - (b) an endorsement —
    - (i) on a file copy of a notice given under subsection (1)(b) or (c) purporting to be a certificate referred to in subsection (2); or
    - (ii) on a file copy of a surety undertaking purporting to be a certificate referred to in subsection (3),is evidence of the matters appearing in the certificate without proof of the signature of the person who made the endorsement.
- (5) A registrar of the court, other than a deputy registrar of the Magistrates Court or the Children's Court, is an authorised person for the purposes of subsection (1)(c) and in addition —
- (a) in respect of committals to the Supreme Court, the Chief Justice; and
  - (b) in respect of committals to the District Court, the Chief Judge,
- may authorise a person or persons, by name or office, to perform the function referred to in subsection (1)(c).

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*[Section 45 amended by No. 74 of 1984 s. 15; No. 59 of 2004 s. 141; No. 6 of 2008 s. 28(1)-(5).]*

**46. Power of surety to apprehend accused**

- (1) A surety may arrest an accused for whose appearance in court he has entered into a surety undertaking if the surety has reasonable grounds to believe that —
- (a) the accused —
    - (i) is not likely to comply with the requirements of his bail undertaking mentioned in section 28(2)(a) or (b);
    - (ii) is, or has been, in breach of any condition of his bail undertaking mentioned in section 28(2)(c);  
or
    - (iii) is, or has been, in breach of a home detention condition mentioned in section 28(2)(d);
  - and
  - (b) it is not expedient to invoke the assistance of the relevant officer under section 54(1) because the delay occasioned by doing so would defeat the purpose of that section.
- (2) A surety who arrests an accused under subsection (1) shall, as soon as is practicable, deliver him into the custody of a police officer and thereafter he shall be dealt with under section 54(4) and section 55, and those provisions shall apply, as if he had been arrested by a police officer under section 54(2).

*[Section 46 amended by No. 74 of 1984 s. 16; No. 61 of 1990 s. 10; No. 84 of 2004 s. 82; No. 6 of 2008 s. 33(5).]*

**47. Cessation and suspension of surety undertaking**

A surety undertaking ceases to have effect —

- (a) upon the revocation of bail under section 55(1);

- (b) upon the release of an accused under section 55(2) if the surety does not consent to the continuance in force of his surety undertaking;
- (c) upon its being cancelled under section 48(4) (and as from the time fixed therefor) by an appropriate judicial officer;
- (d) upon the death of the surety, but only if no order under section 49(1) has been made before then;
- (e) subject to sections 31 and 44, upon the appearance in court by the accused as required by his bail undertaking;
- (f) upon the discharge of the accused according to law from any further proceedings for the offence, or all of the offences, to which the surety undertaking relates; or
- (g) during any period before the time at which the accused is required to appear in court when he is in custody for any other offence or reason.

*[Section 47 amended by No. 84 of 2004 s. 82.]*

**48. Surety may apply for cancellation of his undertaking**

- (1) A surety may apply to an appropriate judicial officer for cancellation of his undertaking.
- (2) An application under subsection (1) may be made at any time before that specified, or deemed by section 31(3) to be specified, in the accused's bail undertaking for his appearance in court.
- (3) Upon an application being made under subsection (1) an appropriate judicial officer shall cause the accused to appear before him or another such officer and may issue a warrant or summons for that purpose.
- (4) Upon the appearance of the accused before the time mentioned in subsection (2) an appropriate judicial officer shall —
  - (a) cancel the surety undertaking; and

- (b) exercise one of the powers set out in section 55(1)(d) or (e).
- (5) An application under subsection (1) must be made, and proceedings on it are to be conducted —
  - (a) in a court of summary jurisdiction — in accordance with the regulations;
  - (b) in the Supreme Court or the District Court — in accordance with rules of court.

*[Section 48 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 7 and 82; No. 6 of 2008 s. 29.]*

#### **49. Forfeiture of money under surety's undertaking**

- (1) Where an accused has failed to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b) the following provisions of this section apply for the purpose of enforcing payment to the State of any sum thereupon payable by a surety in terms of his surety undertaking —
  - (a) an application for an order that the sum be paid may be made to an appropriate judicial officer —
    - (i) by the Director of Public Prosecutions where the court before which the accused failed to appear was —
      - (I) the District Court, the Supreme Court or the Court of Appeal; or
      - (II) another court, if the Director of Public Prosecutions is the prosecutor in that court of the case against the accused;
    - or
    - (ii) in other cases, by the State Solicitor or the registrar of the court before which the accused failed to appear;

*[(b) deleted]*

- (c) on the hearing of the application and upon proof of the surety's liability in terms of his undertaking, the judicial officer shall order forfeiture of the full amount specified in the undertaking unless the surety attends at the hearing and shows to the satisfaction of the judicial officer that there was reasonable cause for the failure of the accused to comply with the requirement to which the application relates;
  - (d) notwithstanding paragraph (c), the judicial officer may decline to make an order under that paragraph or may order forfeiture in part only where the surety attends and shows to the satisfaction of the judicial officer —
    - (i) that, by reason of a change of circumstances since the undertaking was entered into, an order for forfeiture, or for forfeiture in full (as the case may be), would cause excessive hardship to the surety or his dependants; and
    - (ii) that such hardship would not be relieved by the exercise of one or more of the powers conferred by section 59;
  - (e) an order may be made under this section whether or not the accused has been convicted of an offence against section 51(1) or (2) but if, after an order has been made, the surety satisfies the Governor that new facts have been discovered or new circumstances have arisen which show that there was reasonable cause for the failure of the accused as mentioned in paragraph (c), the Governor may exercise the power in section 139 of the *Sentencing Act 1995* as if the forfeiture were one to which that section applied.
- (2) An application under subsection (1) must be made, and proceedings on it are to be conducted —
- (a) in a court of summary jurisdiction — in accordance with the regulations;



- (b) in the Supreme Court or the District Court — in accordance with rules of court.
- (3) Without prejudice to the recovery of such an amount as a civil debt due to the State, any amount to be paid under an order made under this section is to be paid, and its payment may be enforced under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, unless an order has been made under subsection (4).
- (4) If under this section the Supreme Court or the District Court makes an order requiring the payment of money, the court may make an order under section 59 of the *Sentencing Act 1995* in respect of the amount payable and for that purpose that section, with any necessary changes, applies as if the amount were a fine imposed on the surety.

*[Section 49 amended by No. 74 of 1984 s. 17; No. 92 of 1994 s. 5; No. 78 of 1995 s. 8; No. 65 of 2003 s. 121(3); No. 74 of 2003 s. 29; No. 59 of 2004 s. 141; No. 84 of 2004 s. 8, 11 and 82; No. 6 of 2008 s. 18(2) and 30(1) and (2).]*

#### **50. Offence to indemnify surety**

- (1) If a person indemnifies, or agrees to indemnify, a surety or proposed surety against any liability which the surety or proposed surety may incur under this Act (including this section) he and the surety or proposed surety and any person with whom he agrees as aforesaid each commits an offence.  
Penalty: \$1 000 or imprisonment for 12 months or both.
- (2) An offence is committed under subsection (1) —
- (a) whether the agreement is made before or after the surety undertaking is entered into and whether or not a proposed surety actually becomes a surety; and
  - (b) whether the compensation is to be in money or in money's worth.

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- (3) An offence is not committed under subsection (1) by a surety or proposed surety if he shows —
- (a) that he had no knowledge of an agreement within the meaning of subsection (1) proposed to be entered into between 2 other persons; or
  - (b) that having such knowledge he took all steps reasonably available to him to prevent the agreement being entered into.

*[Section 50 amended by No. 74 of 1984 s. 18.]*

## **Part VIA — Administration of home detention conditions**

*[Heading inserted by No. 61 of 1990 s. 11.]*

### **50A. Powers of CEO (corrections)**

The CEO (corrections) has all of the powers conferred under this Act on a community corrections officer and may review, vary, or rescind a direction given by a community corrections officer.

*[Section 50A inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 65 of 2006 s. 53.]*

*[50B. Deleted by No. 78 of 1995 s. 8.]*

### **50C. Powers and duties of community corrections officers**

- (1) A community corrections officer may give such reasonable directions to an accused subject to a home detention condition as are necessary for the proper administration of the condition and any other condition imposed on the grant of bail to the accused including, without limiting the generality of the foregoing, directions as to —
  - (a) when the accused may leave the place where he is required by the home detention condition to remain;
  - (b) the period of any authorised absence from the place where he is required by the home detention condition to remain;
  - (c) when the accused shall return to the place where he is required by the home detention condition to remain;
  - (d) the method of travel to be used by the accused during any absence from the place where he is required by the home detention condition to remain; and
  - (e) the manner in which the accused shall report his whereabouts.

**s. 50C**

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- (2) For the purpose of ascertaining whether or not an accused is complying with a home detention condition or any direction given pursuant to subsection (1), a community corrections officer may, at any time —
- (a) enter or telephone the place where the accused is required by a home detention condition to remain;
  - (b) enter or telephone the accused's place of employment or any other place where the accused is permitted or required to attend; or
  - (c) question any person at any place referred to in paragraph (a) or (b).
- (3) A person who —
- (a) hinders a person exercising powers under subsection (2); or
  - (b) fails to answer a question put pursuant to subsection (2)(c) or gives an answer that the person knows is false or misleading in a material particular,
- commits an offence.
- Penalty: \$2 000 and imprisonment for 12 months.
- (4) A community corrections officer —
- (a) shall keep such records and make such returns and reports in relation to accused persons subject to home detention conditions as the CEO (corrections) directs; and
  - (b) shall make any records relating to an accused subject to a home detention condition available on the request of the CEO (corrections) to him.

*[Section 50C inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 50 of 2003 s. 37(3); No. 84 of 2004 s. 82 and 83(3); No. 65 of 2006 s. 53; No. 2 of 2008 s. 56(2).]*

**50D. Powers of members of the Police Force**

- (1) For the purpose of ascertaining whether or not an accused is complying with a home detention condition, a member of the Police Force may —
  - (a) require the accused to produce a copy of his bail undertaking and any notice by the CEO (corrections) under section 50E(a) for inspection; and
  - (b) require the accused to explain why he is absent from the place where he is required by the home detention condition to remain.

- (2) An accused who fails to comply with subsection (1)(a) or who fails to explain when required to do so under subsection (1)(b) or who gives an explanation that the accused knows is false or misleading in a material particular, commits an offence.

Penalty: \$2 000.

*[Section 50D inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 50 of 2003 s. 37(4); No. 84 of 2004 s. 82; No. 65 of 2006 s. 53.]*

**50E. CEO (corrections) may substitute a different place of detention and apply conditions**

The CEO (corrections) may, at any time, by notice in writing given to an accused granted bail subject to a home detention condition —

- (a) substitute a different place for the place where an accused is required by a home detention condition to remain;
- (b) require the accused to comply with such of the conditions specified in the list provided to the accused under section 24A(4) as are specified in the notice.

*[Section 50E inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 84 of 2004 s. 82; No. 65 of 2006 s. 53.]*

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**50F. CEO (corrections) may revoke bail**

- (1) Where a home detention condition has been imposed as a condition on a grant of bail to an accused the CEO (corrections) may, in his absolute discretion, by instrument signed by him and if practicable, given to the accused, revoke the bail.
- (2) Without limiting the generality of subsection (1), the power to revoke bail may be exercised where the accused —
  - (a) is not likely to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b); or
  - (b) is, or has been, or is likely to be in breach of any condition of his bail undertaking mentioned in section 28(2)(c).
- (3) Subject to subsection (4), where the CEO (corrections) revokes bail he shall include a statement of his reasons for the cancellation in the instrument cancelling the bail.
- (4) Where the CEO (corrections) is of the opinion that it would be in the interest of the accused or any other person, or the public, to withhold from the accused any or all of the reasons referred to in subsection (3), the CEO (corrections) may so withhold the reason or reasons.
- (5) Where the CEO (corrections) revokes bail, he may, whenever necessary, issue a warrant directed to all members of the Police Force to have the accused arrested and brought before an appropriate judicial officer.

*[Section 50F inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 84 of 2004 s. 82; No. 65 of 2006 s. 53.]*

**50G. Procedure on arrest after revocation of bail**

- (1) An accused arrested pursuant to a warrant issued under section 50F shall be taken as soon as is practicable before an appropriate judicial officer unless he is arrested less than

24 hours before the time at which he is due to appear in accordance with his bail undertaking, in which case he shall be held in custody and brought before an appropriate judicial officer at that time.

- (2) The judicial officer before whom an accused appears under this section may —
- (a) remand the accused in custody to appear at the time and place specified, or deemed by section 31(3) to be specified, in his bail undertaking; or
  - (b) grant fresh bail to the accused in accordance with this Act, other than clause 2 of Part B of Schedule 1.

*[Section 50G inserted by No. 61 of 1990 s. 11; amended by No. 45 of 1993 s. 12; No. 84 of 2004 s. 82.]*

**50H. Exclusion of the rules of natural justice**

The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this Part by the CEO (corrections).

*[Section 50H inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 65 of 2006 s. 53.]*

**50J. Delegation by CEO (corrections)**

The CEO (corrections) may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to any person any power or duty under this Part, other than this power of delegation.

*[Section 50J inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 65 of 2006 s. 53.]*

**50K. Retrieval of monitoring equipment**

If under rules made under section 50L any device or equipment has been installed at the place where an accused is required by a

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home detention condition to remain, section 118 of the *Sentence Administration Act 2003* applies.

*[Section 50K inserted by No. 78 of 1995 s. 8; amended by No. 50 of 2003 s. 29(3); No. 84 of 2004 s. 82.]*

**50L. Rules**

- (1) The CEO (corrections) may, with the approval of the Minister, make rules for the purposes of this Part which may provide for the manner of ensuring that accused persons are complying with home detention conditions and for conditions to be applied to accused persons granted bail subject to home detention conditions including conditions —
  - (a) requiring an accused to wear any device;
  - (b) requiring an accused to permit the CEO (corrections) to install any device or equipment at the place where the accused is required by a home detention condition to remain.
- (2) Rules made under this section may confer a discretionary authority on any person or class of persons.
- (3) Sections 41 and 42 of the *Interpretation Act 1984* do not apply to rules made under this section.

*[Section 50L inserted by No. 61 of 1990 s. 11; amended by No. 31 of 1993 s. 9; No. 84 of 2004 s. 82 and 83(3); No. 65 of 2006 s. 53; No. 2 of 2008 s. 56(3) and (4).]*



## **Part VII — Enforcement of bail undertakings**

### **51. Offence to fail to comply with bail undertaking**

- (1) An accused who, without reasonable cause, fails to comply with the requirement of his bail undertaking mentioned in section 28(2)(a) commits an offence.
- (2) An accused who fails to comply with the requirement of his bail undertaking mentioned in section 28(2)(b) commits an offence.
- (2a) An accused —
  - (a) whose bail undertaking includes any condition imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D of Schedule 1; and
  - (b) who fails to comply with the condition,commits an offence.
- (3) An accused shall not be convicted in his absence of an offence against this section.
- (4) An accused who is charged with an offence against subsection (1) or (2) may be convicted of the other of those offences if that other offence is proved by the evidence.
- (5) A prosecution for an offence against subsection (1), (2) or (2a) may be brought at any time.
- (6) A person who is convicted of an offence against subsection (1), (2) or (2a) is liable to a fine not exceeding \$10 000 or imprisonment for a term not exceeding 3 years, or both.
- (7) A court which convicts an accused of an offence against this section may, in addition to any penalty which it may impose, order that the accused pay such sum as it may fix in or towards defraying the costs and expenses of and consequent upon his apprehension following the failure to comply with his bail undertaking for which he was convicted.

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- (8) An order made under subsection (7) —
- (a) shall specify to whom and in what manner the sum shall be paid; and
  - (b) may be enforced as though the sum were a penalty imposed under this section.

*[Section 51 amended by No. 54 of 1998 s. 9; No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82; No. 6 of 2008 s. 18(3).]*

**51A. Proceedings before courts of summary jurisdiction for an offence under s. 51**

- (1) This section applies for the purpose of prosecuting an offence against section 51(1), (2) or (2a) where the court before which the accused is bound to appear at the time when the accused fails to comply with the accused's bail undertaking is a court of summary jurisdiction.
- (2) Where this section applies, the prosecution shall be commenced and conducted by the person who was conducting the proceedings in which the accused failed to comply with the accused's bail undertaking or by a police officer.
- (3) Where this section applies, the registrar of the court before which the accused was bound to appear shall cause to be issued to the Commissioner of Police a certificate under section 64 as to the accused's failure to appear.

*[Section 51A inserted by No. 6 of 2008 s. 31(1).]*

**52. Provisions as to summary proceedings before superior courts for an offence under s. 51**

- (1) This section applies, notwithstanding any other Act, for the purpose of prosecuting an offence against section 51(1), (2) or (2a) where the court before which the accused is bound to appear at the time when he fails to comply with his bail undertaking is the Supreme Court or the District Court.

- (2) Where this section applies, the accused shall be dealt with summarily for the offence and shall be so dealt with —
- (a) by a judge of the Supreme Court in any case where the accused was bound to appear before the General Division of the Supreme Court;
  - (ab) by a judge of appeal in any case where the accused was bound to appear before the Court of Appeal;
  - (b) by a judge of the District Court in any case where the accused was bound to appear before that Court.
- (3) A prosecution for an offence which is to be dealt with under this section shall be commenced by the authorised officer (as defined in section 80 of the *Criminal Procedure Act 2004*) who was conducting the proceedings in which the accused failed to comply with his bail undertaking or by a police officer —
- (a) where subsection (2)(a) or (ab) applies, in the Supreme Court; and
  - (b) where subsection (2)(b) applies, in the District Court.
- (3a) Where this section applies, a person authorised under subsection (3b) shall cause to be issued to the Commissioner of Police a certificate under section 64 as to the accused's failure to appear.
- (3b) The Chief Justice, in respect of cases where the court before which the accused was bound to appear is the Supreme Court, and the Chief Judge, in respect of cases where the court before which the accused was bound to appear is the District Court, may authorise a person or persons, by name or office, to perform the function referred to in subsection (3a).
- (3c) A prosecution that has been commenced under subsection (3) by a police officer shall be conducted by the Director of Public Prosecutions.
- (4) Subject to section 51(3) and (5), a prosecution for an offence which is to be dealt with under this section is to be commenced

and conducted under the *Criminal Procedure Act 2004* as if it were a prosecution of a simple offence in a court of summary jurisdiction, but —

- (a) no fees shall be charged by the Supreme Court or District Court for or in respect of any act or proceeding that relates to the prosecution; and
  - (b) the Supreme Court or District Court cannot order a party to the prosecution to pay another party's costs of or relating to the prosecution, except under section 166(2) of the *Criminal Procedure Act 2004*.
- (5) If under section 51(6) or (7) the Supreme Court or the District Court imposes a pecuniary penalty the court may make an order under section 59 of the *Sentencing Act 1995* in respect of the amount payable.

*[Section 52 amended by No. 92 of 1994 s. 6; No. 78 of 1995 s. 8; No. 54 of 1998 s. 10; No. 45 of 2004 s. 28(2) and (4); No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82; No. 2 of 2008 s. 56(5); No. 6 of 2008 s. 32(1) and (2).]*

**53. Appeals against decisions made under s. 52**

- (1) A person who is dissatisfied with a decision (as defined in section 6 of the *Criminal Appeals Act 2004*) made under section 52 may, with the leave of the Court of Appeal, appeal against it.
- (2) For the purposes of subsection (1), Part 2 of the *Criminal Appeals Act 2004*, with any necessary changes, applies as if —
  - (a) the decision referred to in subsection (1) were a decision of a court of summary jurisdiction;
  - (b) a reference in that Part to a court of summary jurisdiction were a reference to the court that made the decision referred to in subsection (1); and
  - (c) a reference in that Part to commencing an appeal were a reference to applying for leave to appeal.

- (3) Despite section 13(1) of the *Criminal Appeals Act 2004*, the appeal is to be dealt with by the Court of Appeal.

*[Section 53 inserted by No. 45 of 2004 s. 28(3); amended by No. 84 of 2004 s. 11 and 82.]*

**54. Accused on bail may be taken before a judicial officer for variation or revocation of bail**

- (1a) In this section —

*relevant officer* means —

- (a) if the court before which the accused is required to appear is the District Court, the Supreme Court or the Court of Appeal — the prosecutor; or
- (b) in any other case — the prosecutor or a police officer.

- (1) Where an accused has been released on bail the relevant officer may cause the accused to appear before an appropriate judicial officer to show cause why the accused's bail should not be varied or revoked if the relevant officer —

- (a) has reasonable grounds to believe, or is notified in writing by a surety for the accused that the surety has reasonable grounds to believe, that the accused —
  - (i) is not likely to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b);
  - (ii) is, or has been, or is likely to be in breach of any condition of his bail undertaking mentioned in section 28(2)(c); or
  - (iii) is, or has been, in breach of a home detention condition mentioned in section 28(2)(d);
- (b) has reasonable grounds to believe that —
  - (i) any surety for the accused's appearance is no longer suitable under section 39 to be a surety, or is dead;

- (ii) for any reason any security required under Part D of Schedule 1 is no longer sufficient; or
  - (iii) in a case where the accused has been granted bail for the purposes of an appeal, the accused has discontinued the appeal or has not prosecuted it with all due diligence.
- (2) For the purposes of causing an accused to appear before an appropriate judicial officer as provided in subsection (1) —
  - (a) a police officer may arrest the accused without warrant and bring the accused before an appropriate judicial officer; or
  - (b) the relevant officer may apply to an appropriate judicial officer for a summons or warrant on any ground specified in subsection (1).
- (2a) A police officer shall not exercise the power conferred by subsection (2)(a) unless the police officer is the relevant officer or is requested in writing to do so by the relevant officer.
- (3) An application under subsection (2)(b) must be made, and proceedings on it are to be conducted —
  - (a) in a court of summary jurisdiction — in accordance with regulations made under the *Criminal Procedure Act 2004*;
  - (b) in the Supreme Court or the District Court — in accordance with rules of court made under the *Criminal Procedure Act 2004*.
- (4) An accused arrested under this section shall be taken as soon as is practicable before an appropriate judicial officer unless he is arrested less than 24 hours before the time at which he is due to appear in accordance with his bail undertaking, in which case he shall be held in custody and brought before an appropriate judicial officer at that time.

- (5) If —
- (a) the court before which the accused is required to appear is the District Court, the Supreme Court or the Court of Appeal; and
  - (b) a police officer is satisfied that because of the urgency of the case it is not practicable for the prosecutor to exercise the power conferred by subsection (1),

the police officer may exercise that power.

- (6) If a police officer, acting under subsection (5), exercises the power conferred by subsection (1), the police officer is to be regarded as the relevant officer for the purposes of this section.

*[Section 54 amended by No. 33 of 1989 s. 18; No. 61 of 1990 s. 12; No. 45 of 1993 s. 12; No. 59 of 2004 s. 141; No. 84 of 2004 s. 9, 11 and 82; No. 6 of 2008 s. 33(1)-(4).]*

**54A. Accused on committal may be taken before court by which committed**

- (1) This section applies to an accused —
- (a) who has been released on bail following the accused's committal to the District Court or the Supreme Court to be tried (otherwise than for murder) or sentenced or otherwise dealt with; and
  - (b) who has not made an appearance in that court on the committal; and
  - (c) who, in the opinion of the relevant officer under section 54, should be made to show cause in terms of subsection (1) of that section.
- (2) The relevant officer may, under section 54, cause an accused to whom this section applies to appear before a judicial officer who is empowered to exercise jurisdiction in the court in which the committal order was made, instead of before an appropriate judicial officer.

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- (3) A judicial officer before whom an accused so appears is to be regarded as an appropriate judicial officer for the purposes of section 54(2).
- (4) A judicial officer before whom an accused so appears is not obliged to exercise any power conferred by section 55 but may refuse to do so and direct the relevant officer to cause the accused to appear before an appropriate judicial officer.
- (5) A relevant officer shall comply with a direction given to that officer under subsection (4).

*[Section 54A inserted by No. 6 of 2008 s. 34; amended by No. 29 of 2008 s. 24(6).]*

**55. Powers of judicial officer to revoke or vary bail**

- (1) If the judicial officer before whom an accused appears under section 54 is satisfied that —
  - (a) the accused is not likely to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b);
  - (b) he is, or has been, or is likely to be, in breach of any condition of his bail undertaking mentioned in section 28(2)(c);
  - (ba) he is, or has been, in breach of a home detention condition mentioned in section 28(2)(d); or
  - (c) any of the grounds set out in section 54(1)(b) has been established,he may —
  - (d) revoke the bail and remand the accused in custody to appear at the time and place specified, or deemed by section 31(3) to be specified, in his bail undertaking; or
  - (e) revoke the bail and grant fresh bail to the accused in accordance with this Act, other than clause 2 of Part B of Schedule 1.



- (2) If the judicial officer before whom the accused so appears is not satisfied as to any of the matters mentioned in subsection (1)(a), (b), or (c) he shall release the accused on his existing bail undertaking and, with the consent in writing of the surety, on any existing surety undertaking.

*[Section 55 amended by No. 61 of 1990 s. 13; No. 45 of 1993 s. 12; No. 84 of 2004 s. 82.]*

*[56. Deleted by No. 6 of 2008 s. 35.]*

**57. Forfeiture of money under bail undertaking**

- (1) Where an accused is convicted of an offence against section 51(1), (2) or (2a), the court by which he is convicted shall, whether or not an application is made therefor by the prosecutor, order that the full amount agreed to be forfeited, in the accused's bail undertaking, be forfeited to the State.
- (2) Notwithstanding subsection (1), the court may decline to make an order thereunder or may order forfeiture in part only where the accused shows to the satisfaction of the judicial officer —
- (a) that, by reason of a change of circumstances since the bail undertaking was entered into, an order for forfeiture, or for forfeiture in full (as the case may be), would cause excessive hardship to the accused or his dependants; and
  - (b) that such hardship would not be relieved by the exercise of one of the powers conferred by section 59.
- (3) Without prejudice to the recovery of such an amount as a civil debt due to the State, any amount to be paid under an order made under this section is to be paid, and its payment may be enforced under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, unless an order has been made under subsection (4).
- (4) If under this section the Supreme Court or the District Court makes an order requiring the payment of money, the court may make an order under section 59 of the *Sentencing Act 1995* in

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respect of the amount payable and for that purpose that section, with any necessary changes, applies as if the amount were a fine imposed on the accused.

*[Section 57 amended by No. 74 of 1984 s. 19; No. 92 of 1994 s. 7; No. 78 of 1995 s. 8; No. 54 of 1998 s. 11; No. 65 of 2003 s. 121(3); No. 84 of 2004 s. 82.]*

**58. Automatic forfeiture on expiration of one year after absconding**

- (1) If after the expiration of one year from the day on which the accused is required to appear in court in accordance with the requirement of his bail undertaking mentioned in section 28(2)(a) he has not —
- (a) been arrested under section 59B; or
  - (b) appeared in court in accordance with the requirement of his bail undertaking mentioned in section 28(2)(b); or
  - (c) otherwise surrendered himself or been taken into custody to be dealt with on the charge or charges for which the bail undertaking was entered into,

the full amount specified in the bail undertaking shall, on the expiration of the said period, be forfeited to the State by virtue of this section without any order of the court or other formality.

- (2) Upon the occurrence of a forfeiture under subsection (1) any security given by the accused may be resorted to by the State as if an order of forfeiture had been made under section 57(1).

*[Section 58 amended by No. 65 of 2003 s. 121(3); No. 84 of 2004 s. 82; No. 6 of 2008 s. 18(3) and 36(2).]*

## Part VIII — Miscellaneous

**59. Further power of judicial officer in relation to enforcement of undertakings**

A court or an appropriate judicial officer who makes an order for forfeiture under section 49 or 57 may, when doing so, or at any time thereafter, further order —

- (a) that payment of any sum be made by specified instalments or be postponed to a specified date;
- (b) that any security given be applied in or towards payment of the sum forfeited; or
- (c) that the accused or the surety, as the case may be, do all such things and execute all such documents as may be necessary, or as may be specified in the order, for the purpose of vesting any security in the State or enabling the State to realize the same or to resort thereto to recover the sum forfeited,

and the court or an appropriate judicial officer may at any time vary or revoke an order made under paragraph (a), (b), or (c).

*[Section 59 amended by No. 65 of 2003 s. 121(3); No. 84 of 2004 s. 82.]*

**59A. Where bail dispensed with, accused may be taken before judicial officer for reconsideration of matter**

- (1) In this section —  
*relevant officer* has the meaning given in section 54(1a).
- (2) Where the requirement for bail has been dispensed with for an accused under section 7A, the relevant officer may cause the accused to appear before an appropriate judicial officer for reconsideration of the matter, if the relevant officer has reasonable grounds to believe that the accused is not likely to appear at the time and place specified in a notice under section 13A(3).

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- (3) Section 54(2), (2a), (3) and (4) apply, with necessary modifications, for the purposes of subsection (2).
- (4) The judicial officer before whom an accused appears under subsection (2) shall reconsider the accused's case and may, notwithstanding section 13 —
  - (a) again dispense with the requirement for bail; or
  - (b) grant bail; or
  - (c) refuse to grant bail,

in accordance with this Act, for the accused's appearance in court.

- (5) If —
  - (a) the court before which the accused is required to appear is the District Court, the Supreme Court or the Court of Appeal; and
  - (b) a police officer is satisfied that because of the urgency of the case it is not practicable for the prosecutor to exercise the power conferred by subsection (2),

the police officer may exercise that power.

- (6) If a police officer, acting under subsection (5), exercises the power conferred by subsection (2), the police officer is to be regarded as the relevant officer for the purposes of this section.

*[Section 59A inserted by No. 6 of 2008 s. 36(1).]*

**59B. Warrant for arrest of absconding accused**

Where —

- (a) at any time after that specified in an accused's bail undertaking for an accused's appearance the accused has failed to comply with the requirements of the accused's bail undertaking mentioned in section 28(2)(a) or (b); or

- (b) an accused has failed to appear at the time and place specified in a notice under section 13A(3),

the court before which the accused was required to appear may issue a warrant to arrest the accused and bring the accused before that court or a court of like jurisdiction.

*[Section 59B inserted by No. 6 of 2008 s. 36(1).]*

**60. Accused and surety to notify any change of address**

Where the residential address of —

- (a) an accused who has been released on bail or for whom the requirement for bail has been dispensed with; or
- (b) a surety,

changes from that appearing on his bail undertaking, surety undertaking or notice under section 13A(3), as the case may be, he shall forthwith, in writing, notify details of the change to the registrar of the court before which, at the time when the change occurs, the accused is required to appear, and if without reasonable cause he fails to do so he commits an offence.

Penalty: \$1 000.

*[Section 60 amended by No. 50 of 2003 s. 37(5); No. 59 of 2004 s. 141; No. 84 of 2004 s. 82; No. 6 of 2008 s. 37.]*

**61. Offence of failing to bring arrested person before court or person able to grant bail**

- (1) A person to whom this section applies commits an offence if, having arrested another for an offence, he wilfully and without reasonable excuse fails to take that other person, or cause him to be taken, as soon as is practicable —
  - (a) before an authorised officer or judicial officer empowered by this Act to grant bail for that offence; or
  - (b) before a court.

Penalty: \$1 000 or imprisonment for 12 months or both.

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- (2) This section applies to a person who —
- (a) is not empowered by this Act to grant bail for the offence; or
  - (b) being so empowered, elects to act under section 6(7).

*[Section 61 amended by No. 15 of 1988 s. 17; No. 59 of 2006 s. 4(4); No. 6 of 2008 s. 38.]*

**62. Offence to give false information for bail purposes**

A person who for the purpose of obtaining —

- (a) a grant of bail for himself or a variation of the terms and conditions thereof; or
- (b) approval of himself as a surety,

makes any statement which he knows is false in a material particular, or recklessly makes any statement which is false in a material particular, commits an offence.

Penalty: \$1 000 or imprisonment for 12 months or both.

**63. Protection of persons carrying out this Act**

A person shall not be liable in civil proceedings on account of anything done, or omitted to be done, by him in good faith in the course of carrying out any provision of this Act, or purporting to be so done or omitted; but the liability (if any) of any other person (including the State or the Commonwealth) as his employer is not affected by this section and shall be determined as if it had not been passed.

*[Section 63 amended by No. 65 of 2003 s. 121(4).]*

**64. Evidence of non-appearance etc. by an accused**

Where it is required for the purposes of this Act to prove —

- (a) that an accused did not appear before a particular court, at a particular place, on a particular day, at a particular time or during a particular period; or

- (b) the day, time or period when or during which an accused did appear before a particular court at a particular place,

a certificate as to any such matter, purporting to be signed by a judicial officer or registrar of the court before which the accused was required to appear, shall be evidence of the matter so certified.

*[Section 64 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]*

**65. Bail undertakings by minors**

A bail undertaking entered into by a person who is under the age of 18 years shall bind him as if he were of full age.

**66. Abolition of other powers to grant bail**

- (1) Any power or duty that, at the commencement of this Act, exists apart from statute to grant bail to an accused awaiting an appearance in court for an offence, is abolished.
- (2) Subsection (1) has effect notwithstanding anything in section 16 of the *Supreme Court Act 1935*.
- (3) In subsection (1) *statute* means an Act of the Parliament of Western Australia, other than the *Supreme Court Act 1935*.

*[Section 66 amended by No. 84 of 2004 s. 82.]*

**66A. Delegation by registrar**

- (1) The registrar of a court may, either generally or as otherwise provided by the instrument of delegation, by instrument signed by him, delegate to an officer of that court any function conferred on him by or under this Act other than —
- (a) this power of delegation; or
  - (aa) a function conferred by section 11(3) or 36(1)(a); or
  - (b) any function that a judicial officer has required him to perform personally.

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- (2) The superintendent of a detention centre under the *Young Offenders Act 1994* may, either generally or as otherwise provided by the instrument of delegation, by instrument signed by him, delegate to an officer of the Public Sector agency principally assisting the Minister administering that Act in its administration any function conferred on him by or under this Act, other than this power of delegation.

*[Section 66A inserted by No. 15 of 1988 s. 18; amended by No. 49 of 1988 s. 89; No. 31 of 1993 s. 8; No. 59 of 2004 s. 141; No. 65 of 2006 s. 52; No. 6 of 2008 s. 39.]*

**66B. Use of video link or audio link**

- (1) In this section —

**audio link** means facilities (including telephone) that enable, at the same time, a judicial officer or authorised officer at one place to hear the accused at another place and vice versa;

**bail proceedings** means any proceedings under this Act including —

- (a) proceedings on a case for bail;
- (b) proceedings relating to the variation or revocation of bail;
- (c) proceedings on an application under section 48 or 49;
- (d) proceedings on an appeal under section 15A or 53;

**video link** means facilities (including closed circuit television) that enable, at the same time, a judicial officer or authorised officer at one place to see and hear the accused at another place and vice versa.

- (2) Bail proceedings may be conducted by means of a video link or an audio link.
- (3) Without limiting subsection (2), if a provision of this Act requires or authorises an accused to be brought before, or appear before, a court, judicial officer or authorised officer, the accused



may be brought before, or appear before, the court or officer by means of a video link or an audio link.

- (4) An audio link is not to be used under this section unless a video link is not available and cannot reasonably be made available.
- (5) Nothing in this section prevents a court, judicial officer or authorised officer from requiring that an accused be brought before, or appear before, the court or officer in person for the purposes of bail proceedings.

*[Section 66B inserted by No. 6 of 2008 s. 40(1).]*

**67. Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, prescribing such things as are required or permitted by this Act to be prescribed or as it is necessary or expedient to prescribe for the purposes thereof.
- (2) Without limiting the generality of subsection (1) regulations may —
  - (a) make provision for or with respect to the making of applications —
    - (i) for or in relation to bail;
    - (ii) for the approval of sureties;
    - (iii) for the approval of security to be given by accused persons and sureties;
    - (iv) for the cancellation of a surety undertaking;
    - (v) for an order under section 49,and for the manner in which such applications are to be made and the procedure to be followed on such applications;
  - (b) for the purposes of clause 5 of Part A of Schedule 1, prescribe the officer or officers who may grant bail for any prescribed appearance or class of appearance in court by an accused who is in custody;

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- (c) make provision for, or with respect to the management, control, supervision and good order of premises established for the accommodation of persons to whom bail has been granted.
- (3) Regulations made under this section may provide that a contravention or failure to comply with a regulation constitutes an offence and may provide for penalties not exceeding a fine of \$500 for offences against the regulations.

*[Section 67 amended by No. 45 of 1993 s. 12; No. 84 of 2004 s. 83(3); No. 2 of 2008 s. 56(6); No. 6 of 2008 s. 30(3).]*

**[68.**      *Omitted under the Reprints Act 1984 s. 7(4)(g).]*

## Schedule 1 — Jurisdiction as to bail and related matters

[s. 13, 17]

*[Heading inserted by No. 6 of 2008 s. 41(1).]*

### Part A — Jurisdiction relating to bail

*[Heading inserted by No. 6 of 2008 s. 41(2)(a).]*

<u>First Column</u> <i>Appearances in court</i>	<u>Second Column</u> <i>By whom bail may be granted or (where applicable) dispensed with</i>
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*[Heading amended by No. 6 of 2008 s. 41(2)(b) and (c).]*

#### 1. Initial appearance

- |  |   |
|--|---|
| (1) The initial appearance in a court of summary jurisdiction or the Children's Court by an accused in, or in connection with, proceedings for an offence. | In any case —<br>(a) a justice; or<br>(b) an authorised police officer; and<br>in addition, in the case of a child, an authorised community services officer. |
| (2) The initial appearance in the District Court or the Supreme Court, not being the initial appearance to which clause 3 applies.                         | A judge of the District Court or a judge of the Supreme Court, as the case requires.  |

*[Clause 1 amended by No. 15 of 1988 s. 19; No. 49 of 1988 s. 90(a)(i); No. 59 of 2004 s. 141; No. 84 of 2004 s. 10(1) and 82.]*

#### 2. Appearance after adjournment

- |   |  |
|---|--|
| Appearance in any court or before a judicial officer by an accused after any adjournment of proceedings for an offence, not being a committal under clause 3. | The judicial officer who orders the adjournment. |
|---|--|

*[Clause 2 amended by No. 84 of 2004 s. 82.]*

**First Column**

*Appearances in court*

**Second Column**

*By whom bail may be granted or (where applicable) dispensed with*

**3. Appearance on committal to Supreme Court or District Court**

The initial appearance by an accused in the Supreme Court or District Court after he has been committed thereto under any Act to be tried or sentenced or otherwise dealt with.

The judicial officer who orders the committal.

*[Clause 3 amended by No. 84 of 2004 s. 82.]*

**4. Appearance in connection with appeal etc.**

(1) Appearance in connection with an application or appeal made under the *Criminal Appeals Act 2004* or with any order made in determining the application or appeal.

If the appeal is being determined by a single judge of the Supreme Court, a single judge of the Supreme Court;

If the appeal is being determined by the Court of Appeal, the Court of Appeal or a single judge of appeal.

(2) Appearance in connection with a rehearing of proceedings ordered under section 28 of the *Children's Court of Western Australia Act 1988*.

The Children's Court.

(3) Appearance in connection with the reconsideration of an order under section 40 of the *Children's Court of Western Australia Act 1988*.

The Children's Court constituted by the President.

*[Clause 4 inserted by No. 84 of 2004 s. 10(2).]*

**First Column**

*Appearances in court*

**Second Column**

*By whom bail may be granted or (where applicable) dispensed with*

**5. Appearance prescribed by regulation**

Appearance in a court for any other purpose or following any other occurrence prescribed by regulations under this Act.      The judicial or other officer prescribed by such regulations.

**6. Appearances not otherwise provided for**

Any appearance in a court not otherwise provided for in this Part or by regulations under this Act.      The judicial officer who, or court which, orders the appearance.

**7. Term used: proceedings for an offence**

In this Part, unless the contrary intention appears —  
***proceedings for an offence*** in clause 2 (but not in clause 1) includes any of the following proceedings relating to that offence —

- (a) appeal proceedings;
- (b) proceedings on a writ of *habeas corpus*; and
- (c) proceedings on the re-appearance of an offender under section 50 of the *Sentencing Act 1995*.

*[Clause 7 inserted by No. 84 of 2004 s. 10(3).]*

**Part B — Cessation of powers relating to bail**

*[Heading inserted by No. 6 of 2008 s. 41(3)(a).]*

**1. Upon decision by judge, power of other officers ceases**

- (1) In this clause —  
***judge*** means a judge of the Supreme Court, the Children's Court or the District Court.

- (2) After a judge has granted or refused bail for an appearance by an accused the power to grant bail for that appearance ceases to be vested in —
- (a) any judicial officer whose jurisdiction is inferior to that of the judge; or
  - (b) any authorised officer.
- (3) After a judge has dispensed with the requirement for bail for an appearance by an accused the power to grant or refuse bail for that appearance ceases to be vested in any officer referred to in subclause (2)(a) or (b).

*[Clause 1 inserted by No. 6 of 2008 s. 41(3)(b).]*

**1A. Upon decision by Court of Appeal, other powers cease**

After the Court of Appeal on an appeal under section 15A —

- (a) has granted or refused bail for an appearance by an accused, the power to grant or refuse bail for that appearance; or
- (b) has dispensed with the requirement for bail for an appearance by an accused, the power to grant or refuse bail for that appearance,

ceases to be vested in any judicial officer or in any authorised officer.

*[Clause 1A inserted by No. 6 of 2008 s. 41(3)(b).]*

**2. Upon decision by judicial officer, his power and that of his peers ceases**

Except where clause 4 applies, the power to grant, refuse or dispense with bail for an appearance by an accused ceases to be vested in any judicial officer (including a judge of the Supreme Court) after he, or another judicial officer whose jurisdiction is co-extensive with his, has granted, refused or dispensed with bail for that appearance.

*[Clause 2 amended by No. 84 of 2004 s. 82; No. 6 of 2008 s. 41(3)(c) and (d).]*

**3. Cessation of power upon refusal of bail for initial appearance**

- (1) After an authorised officer has refused bail for an initial appearance by an accused, the power to grant bail for that appearance ceases to be vested in another authorised officer, but a justice may nevertheless grant bail for that appearance.
- (2) After a justice has refused bail for an initial appearance by an accused, the power to grant bail for that appearance ceases to be vested in an authorised officer or another justice.

*[Clause 3 inserted by No. 6 of 2008 s. 41(3)(e).]*

**4. Judicial officer's powers where accused proves new facts or changed circumstances**

Notwithstanding clause 2, where an accused has been refused bail for an appearance or has been granted bail therefor on terms or conditions with which he is unable or unwilling to comply, the judicial officer who granted or refused bail or another judicial officer whose jurisdiction is co-extensive with his has power to grant bail for that appearance or to vary the terms or conditions of bail previously granted therefor if the accused makes application and satisfies him that —

- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was previously granted or refused for that appearance;
- (b) he failed to adequately present his case for bail on the previous occasion when it was considered; or
- (c) where bail was granted subject to a home detention condition, he has, since the previous occasion when his case for bail was considered, complied with the home detention condition for a period of one month or more.

*[Clause 4 amended by No. 61 of 1990 s. 14; No. 84 of 2004 s. 82.]*

**Part C — Manner in which jurisdiction to be exercised**

*[Heading deleted by No. 6 of 2008 s. 41(4)(a).]*

**1. Bail before conviction to be at discretion of bail authority, except for a child**

Subject to clauses 3A and 3C, the grant or refusal of bail to an accused, other than a child, who is in custody awaiting an appearance in court before conviction for an offence shall be at the discretion of the judicial officer or authorised officer in whom jurisdiction is vested, and that discretion shall be exercised having regard to the following questions as well as to any others which he considers relevant —

- (a) whether, if the accused is not kept in custody, he may —
  - (i) fail to appear in court in accordance with his bail undertaking;
  - (ii) commit an offence;
  - (iii) endanger the safety, welfare, or property of any person; or
  - (iv) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (b) whether the accused needs to be held in custody for his own protection;
- (c) whether the prosecutor has put forward grounds for opposing the grant of bail;
- (d) whether, as regards the period when the accused is on trial, there are grounds for believing that, if he is not kept in custody, the proper conduct of the trial may be prejudiced;
- (e) whether there is any condition which could reasonably be imposed under Part D which would —
  - (i) sufficiently remove the possibility referred to in paragraphs (a) and (d);
  - (ii) obviate the need referred to in paragraph (b); or
  - (iii) remove the grounds for opposition referred to in paragraph (c);
- (f) where the accused is charged with an offence that is alleged to have been committed in respect of a child, whether a condition should be imposed under Part D requiring the



accused to reside at a place other than the place where the child resides;

- (g) whether the alleged circumstances of the offence or offences amount to wrongdoing of such a serious nature as to make a grant of bail inappropriate.

*[Clause 1 amended by No. 14 of 1992 s. 11; No. 45 of 1993 s. 10(2)(a); No. 54 of 1998 s. 8(a) and (b); No. 84 of 2004 s. 82; No. 6 of 2008 s. 41(4)(b).]*

## **2. Child to have qualified right to bail**

- (1) In this clause —

**responsible person** means a parent, relative, employer or other person who, in the opinion of the judicial officer or authorised officer, is in a position to both influence the conduct of the child and provide the child with support and direction.

- (2) Subject to subclause (3), a child accused who is in custody awaiting an appearance in court before conviction for an offence has a right to be granted bail unless —

- (a) in the opinion of the judicial officer or authorised officer in whom jurisdiction is vested —
- (i) one or more of the questions set out in clause 1(a), (b), (d) and (g) must be answered in the affirmative; and
- (ii) there is no condition which he could reasonably impose under Part D which would satisfy the relevant provision of clause 1(e);

or

- (b) there is no responsible person willing to enter into an undertaking of the kind described in subclause (3)(c),

and if the child is refused bail he shall be dealt with in accordance with section 19(2) of the *Young Offenders Act 1994*.

- (3) The right of a child accused under subclause (2) is subject to —

- (a) clauses 3A and 3C; and

*[(b) deleted]*

- (c) there being imposed as a condition on the grant of bail a requirement that before the release of the child on bail a responsible person undertakes in writing in the approved form to ensure that the child complies with any requirement of his bail undertaking mentioned in section 28(2)(a), (b), (c) and (d).
- (4) Subclauses (2)(b) and (3)(c) do not apply to a child accused if it appears to the judicial officer or authorised officer that the accused —
  - (a) is over the age of 17 years; and
  - (b) has sufficient maturity to live independently without the guidance or control of a parent or guardian.
- (5) For the purposes of this clause, the provisions of sections 46, 47, 48, 54, 55(2), 60 and 67(2)(a)(iv) apply with all necessary changes as if —
  - (a) references in those provisions to a surety and a surety undertaking were references to a responsible person and to an undertaking referred to in subclause (3)(c) respectively; and
  - (b) section 54(1)(b)(i) read as follows —
    - “
    - (i) a person who has entered into an undertaking referred to in clause 2(3)(c) of Part C of Schedule 1 should no longer be regarded as a responsible person for the purposes of that clause, or is dead;
    - ”.
- (6) Where a child accused is released on bail his right to be at liberty is subject to the exercise of the powers in section 17A.

*[Clause 2 inserted by No. 45 of 1993 s. 10(2)(b); amended by No. 57 of 1997 s. 21(3)(a); No. 54 of 1998 s. 8(c); No. 34 of 2004 s. 251; No. 84 of 2004 s. 82; No. 6 of 2008 s. 41(4)(c) and 43(4).]*

**3. Matters relevant to consideration of clause 1(a)**

In considering whether an accused may do any of the things mentioned in clause 1(a), the judicial officer or authorised officer

shall have regard to the following matters, as well as to any others which he considers relevant —

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

*[Clause 3 amended by No. 84 of 2004 s. 82.]*

**3A. Bail where serious offence committed while accused on bail for another serious offence**

- (1) Notwithstanding clause 1, 2 or 4 or any other provision of this Act, where —
  - (a) an accused is in custody —
    - (i) awaiting an appearance in court before conviction for a serious offence; or
    - (ii) waiting to be sentenced or otherwise dealt with for a serious offence of which the accused has been convicted;
  - and
  - (b) the serious offence is alleged to have been committed while the accused was —
    - (i) on bail for; or
    - (ii) at liberty under an early release order made in respect of,another serious offence,

the judicial officer or (if section 16A does not apply) the authorised officer in whom jurisdiction is vested shall refuse to grant bail for the serious offence referred to in paragraph (a) unless the judicial officer or authorised officer —

- (c) is satisfied that there are exceptional reasons why the accused should not be kept in custody and, if clause 3B applies, is so satisfied only after complying with that clause; and
  - (d) is also satisfied that bail may properly be granted having regard to the provisions of clauses 1 and 3 or, in the case of a child accused, clauses 2 and 3.
- (2) Notwithstanding section 7(1), where an accused is refused bail under subclause (1) for an appearance for a serious offence his case for bail need not be considered again under that subsection for an appearance for that offence unless he satisfies the judicial officer who may order his detention that —
- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused; or
  - (b) he failed to adequately present his case for bail on the occasion of that refusal.
- (3) Where a child accused is refused bail under subclause (1) he shall be dealt with in accordance with section 19(2) of the *Young Offenders Act 1994*.

*[Clause 3A inserted by No. 45 of 1993 s. 10(2)(c); amended by No. 57 of 1997 s. 21(3)(b); No. 54 of 1998 s. 7 and 13(1); No. 84 of 2004 s. 82; No. 6 of 2008 s. 41(4)(d).]*

**3B. Determination of exceptional reasons under clause 3A(1)**

- (1) This clause applies where it appears to the judicial officer or (if section 16A does not apply) the authorised officer that all or any of the acts alleged to constitute a serious offence referred to in clause 3A(1)(b) would, if proved in the appropriate proceedings, amount to a breach by the accused of a protective condition or order.
- (2) The judicial officer or authorised officer shall, before making a decision that there are exceptional reasons for the purposes of clause 3A(1)(c), make enquiry, or cause enquiry to be made, whether there has already been —
  - (a) any breach by the accused of the protective condition or order that has been proved in proceedings;

- (b) any alleged breach by the accused of the protective condition or order that has not been so proved, including an allegation that has not been the subject of a prosecution or any other communication to any relevant official; or
  - (c) any alleged breach by the accused of any other protective condition or order that has been the subject of a prosecution.
- (3) On becoming aware of any such alleged breach, the judicial officer or authorised officer shall give each person for whose protection a protective condition or order referred to in subclause (2) was imposed or made (a **relevant person**) a reasonable opportunity to give evidence by affidavit on matters relating to that protective condition or order.
- (4) The judicial officer or authorised officer shall in making any decision for the purposes of clause 3A(1)(c) —
- (a) give due weight to —
    - (i) any evidence given under subclause (3);
    - (ii) any adverse effect that a grant of bail to the accused would have on a relevant person; and
    - (iii) any difficulty that a relevant person might have in proving any future breach of a protective condition or order;
  - (b) consider whether it would be appropriate to refuse bail and make a hospital order under section 5 of the *Criminal Law (Mentally Impaired Accused) Act 1996*;
  - (c) in the case of a condition imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D, treat any alleged breach of the condition as a serious matter even if the conduct alleged to amount to the breach in itself appears to be trivial; and
  - (d) consider whether any alleged breach of a protective condition or order that has occurred shows that the purpose of the condition or order has not been achieved and that the accused should be kept in custody.
- (5) The provisions of this clause do not limit the matters that the judicial officer or authorised officer may take into account for the purposes of clause 3A(1)(c).
- (6) In this clause —

***protective condition or order*** means —

- (a) a condition imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D;
- (b) a violence restraining order or a police order under the *Restraining Orders Act 1997*; or
- (c) a Part VII order under the *Justices Act 1902* <sup>3</sup> —
  - (i) that under section 86 of the *Restraining Orders Act 1997* is taken to be a misconduct restraining order under that Act; and
  - (ii) that shows on the face of the order that the causing or threatening of personal injury by the accused was a ground for the making of the order.

*[Clause 3B inserted by No. 54 of 1998 s. 13(2); amended by No. 38 of 2004 s. 60; No. 59 of 2004 s. 141; No. 84 of 2004 s. 11 and 82.]*

**3C. Bail in murder cases**

Notwithstanding clause 1, 2 or 4 or any other provision of this Act, where an accused is in custody —

- (a) awaiting an appearance in court before conviction for an offence of murder; or
- (b) waiting to be sentenced or otherwise dealt with for an offence of murder of which the accused has been convicted,

the judicial officer in whom jurisdiction is vested shall refuse to grant bail for the offence unless the judicial officer is satisfied that —

- (c) there are exceptional reasons why the accused should not be kept in custody; and
- (d) bail may properly be granted having regard to the provisions of clauses 1 and 3 or, in the case of a child, clauses 2 and 3.

*[Clause 3C inserted by No. 6 of 2008 s. 41(4)(e); amended by No. 29 of 2008 s. 24(7).]*

**4. Bail after conviction: accused awaiting sentence**

- (1) Subject to clauses 3A and 3C, the grant or refusal of bail to an accused, other than a child, who is in custody waiting to be sentenced or otherwise dealt with for an offence of which the accused has been

convicted shall be at the discretion of the judicial officer in whom jurisdiction is vested, and that discretion shall be exercised having regard to the questions set out in clause 1 as well as to any others which the judicial officer considers relevant.

- (2) A child accused who is in custody waiting to be sentenced or otherwise dealt with for an offence of which the child accused has been convicted has the same right to be granted bail as a child accused referred to in clause 2(2), and the provisions of clause 2 apply accordingly.

*[Clause 4 inserted by No. 6 of 2008 s. 41(4)(f).]*

**4A. Bail after conviction: accused awaiting disposal of appeal**

In deciding whether or not to grant bail to an accused who is in custody waiting for the disposal of appeal proceedings, the judicial officer shall consider whether there are exceptional reasons why the accused should not be kept in custody, and shall only grant bail to the accused if satisfied that —

- (a) exceptional reasons exist; and
- (b) it is proper to do so having regard to the provisions of clauses 1 and 3 or, in the case of a child, clauses 2 and 3.

*[Clause 4A inserted by No. 6 of 2008 s. 41(4)(f).]*

**5. Exception for bail for an appeal under the *Criminal Appeals Act 2004* Part 2**

Clause 4A does not apply to the bail of a person who is awaiting the disposal of appeal proceedings under Part 2 of the *Criminal Appeals Act 2004*; such a person shall be deemed for the purposes of this Part to be awaiting an appearance in court before conviction for an offence.

*[Clause 5 inserted by No. 33 of 1989 s. 18; amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 11; No. 6 of 2008 s. 41(4)(g).]*

**6. Bail of people on community orders etc.**

For the purpose of determining whether clause 4 applies, a person in custody —

- (a) under section 50, 79, 84E, 128, 129 or 132 of the *Sentencing Act 1995* in connection with a possible breach of a conditional release order, a sentence of suspended imprisonment or conditional suspended imprisonment or a community order imposed under that Act; or
- (b) under section 43 of the *Young Offenders Act 1994* in respect of an alleged breach of a youth community based order, an intensive youth supervision order or a conditional release order made under that Act,

is to be taken as not having been convicted of the offence for which the sentence was imposed.

*[Clause 6 inserted by No. 78 of 1995 s. 8; amended by No. 27 of 2004 s. 13(3).]*

*[Heading deleted by No. 6 of 2008 s. 41(4)(h).]*

**7. Bail for initial appearance to be for not more than 30 days**

In fixing the terms of bail of an accused for his initial appearance in court for an offence, a justice or an authorised officer shall require him to make the appearance within the period of 30 days commencing on and including the day on which the accused was arrested for the offence.

*[Clause 7 amended by No. 84 of 2004 s. 82; No. 6 of 2008 s. 41(4)(i).]*

**8. Bail on adjournment in court of summary jurisdiction to be for not more than 30 days except by consent**

In fixing the terms of bail of an accused for an appearance in court after an adjournment of proceedings for an offence, a judicial officer sitting as a court of summary jurisdiction shall require him to make the appearance within the period of 30 days commencing on and including the day on which the proceedings are adjourned, unless the accused consents to appear on a later day.



*[Clause 8 amended by No. 49 of 1988 s. 90(c); No. 59 of 2004 s. 141;  
No. 84 of 2004 s. 82.]*

**9. Provision as to calculation of time**

The periods specified in clauses 7 and 8 shall be calculated to include any Sunday or public holiday.

**Part D — Conditions which may be imposed on a grant of bail**

**1. Conditions as to forfeiture and giving security may be imposed on the accused and sureties**

- (1) A judicial officer or authorised officer, on a grant of bail, may impose conditions under this clause if he considers that it is desirable to do so to ensure the performance of the accused's bail undertaking.
- (2) If a judicial officer or authorised officer considers that it is desirable as mentioned in subclause (1), he may in addition to releasing the accused on his bail undertaking impose any one or more of the following conditions —
  - (a) that the accused in his bail undertaking agree to forfeit a specified amount of money if he fails to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b);
  - (b) that a surety or a specified number of sureties enter into a surety undertaking or surety undertakings whereby he or they agree to forfeit a specified amount or specified amounts of money if the accused fails to comply with any requirement of his bail undertaking mentioned in section 28(2)(a) or (b);
  - (c) that any of them the accused and the surety or sureties give security of a specified value, including the deposit of a specified amount of cash, for the performance of their respective obligations;
  - (d) that any of them the accused and the surety or sureties deposit with a specified officer any specified passbook or document relating to the title to, or ownership of, any account or other asset offered as security for the performance of their respective obligations; or

- (e) that any of them the accused and the surety or sureties, at his or their own expense or otherwise, enter into such mortgage, charge, assignment or other transaction, or take such other step, as may be required, including completion of the necessary documents, to render any security effective and enforceable by the State.
- (3) The nature and sufficiency of any security, and the documentation therefor, required under subclause (2) shall be determined by the judicial officer or authorised officer who imposed the condition or, if no determination is so made —
  - (a) by the person before whom the bail undertaking is entered into, where the security is to be given by the accused; and
  - (b) where the security is to be given by a surety, by any person authorised under section 36 to approve the surety or before whom the surety undertaking is entered into.
- (4) When a bail undertaking ceases to have effect as provided in section 34(a) to (d), or upon an accused being acquitted of a charge under section 51(1) or (2) or discharged from further proceedings therefor, each of them the accused, or where section 34(b) applies his personal representative, and any surety is entitled to have returned to him any security given under subclause (2).
- (5) When a surety undertaking ceases to have effect as provided in section 47(a) to (f), a surety is entitled to have returned to him any security given under subclause (2).

*[Clause 1 amended by No. 65 of 2003 s. 121(3); No. 84 of 2004 s. 82; No. 6 of 2008 s. 18(3).]*

**2. Other conditions which may be imposed**

- (1) A judicial officer or authorised officer, on a grant of bail, may impose conditions —
  - (a) to be complied with before the accused is released on bail or while the accused is on bail;
  - (b) as to the accused's conduct while on bail; or
  - (c) as to where the accused shall reside while on bail,

if he considers that it is desirable for any purpose mentioned in subclause (2), (2b), (3) or (4).

(1a) Without limiting subclause (1), a judicial officer or authorised officer shall, on a grant of bail to a child accused, consider whether it is desirable for any purpose mentioned in subclause (2) to impose a condition as to —

- (a) any period in each day during which the child is to remain at a particular place;
- (b) any person with whom the child is not to associate or communicate;
- (c) any place that the child is not to frequent;
- (d) the attendance by the child at a school or other educational institution; or
- (e) any other matter,

and the judicial officer or authorised officer may impose any such condition.

(2) Any condition may be imposed under subclause (1) or (1a) to ensure that an accused —

- (a) appears in court in accordance with his bail undertaking;
- (b) does not while on bail commit an offence;
- (c) does not endanger the safety, welfare or property of any person;
- (d) does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or
- (e) as regards the period when the accused is on trial, does not prejudice the proper conduct of the trial.

(2a) Before imposing a condition on a grant of bail for a purpose mentioned in subclause (2)(c) or (d) a judicial officer or authorised officer is to consider whether that purpose would be better served, or could be better assisted, by a restraining order made under the *Restraining Orders Act 1997* and whether, in the case of a judicial officer, to exercise the power in section 63 of that Act or, in the case of an authorised officer, to make a telephone application under that Act.

- (2b) Where a judicial officer is of the opinion that the accused should while on bail —
- (a) be counselled for a behavioural problem; or
  - (b) attend a course or programme that may assist with such a problem,
- the judicial officer may under subclause (1) impose a condition for that purpose that requires the accused to —
- (c) attend a prescribed person to be counselled; or
  - (d) attend a prescribed course or programme,
- that is specified by the judicial officer in the condition.
- (3) Where a judicial officer who grants bail to an accused is of the opinion that the accused's physical condition ought to be examined the officer may, under subclause (1), impose any condition which the officer considers desirable for the purpose of ensuring that the accused is examined by a medical practitioner.
- (3a) Where a judicial officer who grants bail to an accused is of the opinion that the accused's mental condition ought to be examined the officer may, under subclause (1), impose any condition which the officer considers desirable for the purpose of ensuring that the accused's mental condition is examined including a condition —
- (a) that the accused be examined by a medical practitioner or an authorised mental health practitioner (as defined in the *Mental Health Act 1996*) for the purpose of deciding whether to make a referral under section 29 of that Act;
  - (b) that the accused be admitted to an authorised hospital (as defined in the *Mental Health Act 1996*);
  - (c) that the accused be examined by a psychiatrist.
- (4) Where a judicial officer is of the opinion that an accused is suffering from alcohol or drug abuse and is in need of care or treatment either on that account, or to enable him to be prepared for his trial, the judicial officer may, under subclause (1), impose any condition which he considers desirable for the purpose of ensuring that the accused receives such care or treatment, including that he lives in, or from time to time attends at, a specified institution or place in order to receive such care or treatment.

- (5) Where a judicial officer imposes a condition for a purpose mentioned in subclause (2b), (3), (3a) or (4), the judicial officer shall cause to be sent to the person who is to counsel or examine the accused, or the place at which the accused is to attend, a statement of the reasons for imposing the condition.
- (6) Where a condition is imposed under this clause that an accused shall reside in premises established for the accommodation of persons to whom bail has been granted, that condition shall be deemed to include a further condition that the accused shall comply with such rules as are for the time being laid down for the maintenance of the good order of those premises, whether such rules are made under section 67 or by the authority responsible for the good order of the premises.
- (7) In this clause —  
*medical practitioner* has the meaning given to that term in the *Medical Practitioners Act 2008* section 4; and  
*psychiatrist* has the same meaning as it has in the *Mental Health Act 1996*.

*[Clause 2 amended by No. 45 of 1993 s. 10(3); No. 69 of 1996 s. 3; No. 54 of 1998 s. 12; No. 84 of 2004 s. 82; No. 22 of 2008 Sch. 3 cl. 4.]*

*[Clause 2. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: clause altered 1 Nov 2009. See endnote 1M.]*

### **3. Home detention condition may be imposed**

- (1) A judicial officer may, subject to this clause, impose a home detention condition as a condition on a grant of bail.
- (2) A home detention condition shall not be imposed unless the accused is over the age of 17 years and the judicial officer is satisfied —
- (a) after considering a report from a community corrections officer about the accused and his circumstances, that the accused is suitable to be subject to a home detention condition;

- (b) that the place where it is proposed the accused will remain while subject to the home detention condition is a suitable place; and
  - (c) that unless a home detention condition is imposed, the accused will not be released on bail.
- (3) A home detention condition is a condition that while the accused is on bail the accused shall —
  - (a) remain at and not leave the place specified in the bail record form and in the bail undertaking (or in a notice under section 50E) until the time specified, or deemed by section 31(3) to be specified, in the bail undertaking except —
    - (i) to work in gainful employment approved by a community corrections officer;
    - (ii) with the approval of a community corrections officer, to seek gainful employment;
    - (iii) to obtain urgent medical or dental treatment for the accused;
    - (iv) for the purpose of averting or minimizing a serious risk of death or injury to the accused or to another person;
    - (v) to obey an order issued under a written law (such as a summons) requiring the accused's presence elsewhere;
    - (vi) for a purpose approved of by a community corrections officer; or
    - (vii) on the direction of a community corrections officer;
  - (b) not leave the State;
  - (c) comply with every reasonable direction of a community corrections officer;
  - (d) comply with such of the conditions specified in the list provided under section 24A(4) as may be specified in a notice given under section 50E(b); and
  - (e) when requested to do so, produce a copy of his bail undertaking and any notice by the CEO (corrections) under

section 50E for inspection by a community corrections officer  
or a member of the Police Force.

*[Clause 3 inserted by No. 61 of 1990 s. 15; amended by No. 31 of  
1993 s. 9; No. 84 of 2004 s. 82; No. 65 of 2006 s. 53.]*

*[Clause 3. Modifications to be applied in order to give effect to  
Cross-border Justice Act 2008: clause altered 1 Nov 2009. See  
endnote 1M.]*

## Schedule 2 — Serious offences

[s. 3(1)]

[Heading inserted by No. 6 of 2008 s. 42(1).]

	<i>Enactment</i>	<i>Description of offence</i>
<b>1.</b>	<b><i>The Criminal Code</i></b>	
	s. 279	Murder
	s. 280	Manslaughter
	s. 283	Attempt to murder
	s. 281	Unlawful assault causing death
	s. 292	Disabling in order to commit indictable offence
	s. 294	Acts intended to cause grievous bodily harm or to resist or prevent arrest
	s. 297	Grievous bodily harm
	s. 301	Wounding and similar acts
	s. 304(2)	Acts or omissions, with intent to harm, causing bodily harm or danger
	s. 317	Assault occasioning bodily harm
	s. 317A(a)	Assault with intent to commit or facilitate a crime
	s. 317A(b)	Assault with intent to do grievous bodily harm
	s. 318	Serious assaults
	s. 323	Indecent assault
	s. 324	Aggravated indecent assault
	s. 325	Sexual penetration without consent



<i>Enactment</i>	<i>Description of offence</i>
s. 326	Aggravated sexual penetration without consent
s. 331B	Sexual servitude
s. 331C	Conducting business involving sexual servitude
s. 331D	Deceptive recruiting for commercial sexual services
s. 332	Kidnapping
s. 333	Deprivation of liberty
s. 338E	Stalking
s. 378	Stealing a motor vehicle
s. 392	Robbery
s. 393	Assault with intent to rob
s. 401	Burglary
s. 444	Criminal damage, if the property is destroyed or damaged by fire
<b>2.</b>	<b><i>Bush Fires Act 1954</i></b>
s. 32	Wilfully lighting a fire or causing a fire to be lit under such circumstances as to be likely to injure or damage a person or property
<b>2a.</b>	<b><i>Misuse of Drugs Act 1981</i></b>
s. 6(1)	Offences concerned with prohibited drugs generally
s. 7(1)	Offences concerned with prohibited plants generally
s. 33(1)(a)	Attempting to commit an offence under section 6(1) or 7(1)

**cl. 2b**

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<i>Enactment</i>	<i>Description of offence</i>
s. 33(2)(a)	Conspiracy to commit an offence under s. 6(1) or 7(1)
<b>2b.    <i>Restraining Orders Act 1997</i></b>	
s. 61(1)	Breach of a violence restraining order
s. 61(2a)	Breach of a police order
s. 86(2)	Breach of a Part VII order under the <i>Justices Act 1902</i> <sup>3</sup> —  (a)    that under section 86 of the <i>Restraining Orders Act 1997</i> is taken to be a misconduct restraining order under that Act; and  (b)    that shows on the face of the order that the causing or threatening of personal injury by the accused was a ground for the making of the order.
<b>3.    <i>Road Traffic Act 1974</i></b>	
s. 59	Dangerous driving causing death, injury, etc.
s. 59A	Dangerous driving causing bodily harm
<i>[Schedule 2 inserted by No. 45 of 1993 s. 11; amended by No. 82 of 1994 s. 13; No. 38 of 1998 s. 4(2); No. 54 of 1998 s. 15; No. 23 of 2001 s. 10(1); No. 4 of 2004 s. 24 and 26; No. 38 of 2004 s. 61; No. 62 of 2004 s. 9(1); No. 84 of 2004 s. 82; No. 6 of 2008 s. 42(2); No. 29 of 2008 s. 24(8).]</i>	



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## Notes

- <sup>1</sup> This is a compilation of the *Bail Act 1982* and includes the amendments made by the other written laws referred to in the following table<sup>1M, 1a, 4</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Bail Act 1982</i>	86 of 1982	18 Nov 1982	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984</i> Pt. III	52 of 1984	5 Sep 1984	3 Oct 1984
<i>Bail Amendment Act 1984</i> <sup>5</sup>	74 of 1984	29 Nov 1984	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Bail Amendment Act 1988</i>	15 of 1988	6 Sep 1988	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<b>Reprint of the <i>Bail Act 1982</i> under the <i>Reprints Act 1984</i> and s. 21 of the <i>Bail Amendment Act 1988</i></b> <sup>6</sup> (includes amendments listed above)			
<i>Criminal Law Amendment Act 1988</i> Pt. 4	70 of 1988	15 Dec 1988	6 Feb 1989 (see s. 2(2)(b) and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Acts Amendment (Children's Court) Act 1988</i> Pt. 13	49 of 1988	22 Dec 1988	1 Dec 1989 (see s. 2 and <i>Gazette</i> 24 Nov 1989 p. 4327)
<i>Justices Amendment Act 1989</i> s. 18	33 of 1989	22 Dec 1989	1 Jun 1991 (see s. 2 and <i>Gazette</i> 17 May 1991 p. 2455)
<i>Community Corrections Legislation Amendment Act 1990</i> Pt. 2	61 of 1990	17 Dec 1990	3 Apr 1991 (see s. 2 and <i>Gazette</i> 22 Mar 1991 p. 1209)
<i>Child Welfare Amendment Act (No. 2) 1990</i> s. 15	83 of 1990	22 Dec 1990	1 Aug 1991 (see s. 2 and <i>Gazette</i> 1 Aug 1991 p. 3983)
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991</i> s. 21	15 of 1991	21 Jun 1991	9 Aug 1991 (see s. 2(2) and <i>Gazette</i> 9 Aug 1991 p. 4101)
<b>Reprint of the <i>Bail Act 1982</i> as at 17 Oct 1991</b> (includes amendments listed above)			

## Bail Act 1982

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Sexual Offences) Act 1992 Pt. 3</i>	14 of 1992	17 Jun 1992	1 Aug 1992 (see s. 2 and <i>Gazette</i> 28 Jul 1992 p. 3671)
<i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 3<sup>7</sup></i>	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
<i>Criminal Procedure Amendment Act 1993 Pt. 2<sup>8</sup></i>	45 of 1993	20 Dec 1993	Act other than s. 7-9 and 10(2)(b): 17 Jan 1994 (see s. 2(1)); s. 7-9 and 10(2)(b): 4 Mar 1994 (see s. 2(2) and <i>Gazette</i> 4 Mar 1994 p. 915)
<i>Criminal Law Amendment Act 1994 s. 13(1) and (2)</i>	82 of 1994	23 Dec 1994	20 Jan 1995 (see s. 2(2))
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 3</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 5</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Coroners Act 1996 s. 61</i>	2 of 1996	24 May 1996	7 Apr 1997 (see s. 2 and <i>Gazette</i> 18 Mar 1997 p. 1529)
<i>Mental Health (Consequential Provisions) Act 1996 Pt. 2</i>	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
<b>Reprint of the Bail Act 1982 as at 13 Mar 1997</b> (includes amendments listed above except those in the <i>Coroners Act 1996</i> and the <i>Mental Health (Consequential Provisions) Act 1996</i> ) (corrections in <i>Gazette</i> 25 Jul 1997 p. 3909 and 14 Nov 1997 p. 6426)			
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 21</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Criminal Law Amendment Act (No. 1) 1998 s. 4(2)</i>	38 of 1998	25 Sep 1998	23 Oct 1998

Short title	Number and year	Assent	Commencement
<i>Bail Amendment Act 1998</i> <sup>9</sup>	54 of 1998	11 Jan 1999	s. 1 and 2: 11 Jan 1999; Pt. 4 and 7: 15 May 1999 (see s. 2 and <i>Gazette</i> 11 May 1999 p. 1905); Pt. 2, 3 and 5 (other than s. 12): 8 Mar 2000 (see s. 2 and <i>Gazette</i> 7 Mar 2000 p. 1039); s. 12: 1 Sep 2000 (see s. 2 and <i>Gazette</i> 29 Aug 2000 p. 4985); Pt. 6: 4 Dec 2000 (see s. 2 and <i>Gazette</i> 4 Dec 2000 p. 6799)
<b>Reprint of the <i>Bail Act 1982</i> as at 27 Aug 1999</b> (includes amendments listed above except those in the <i>Bail Amendment Act 1998</i> Pt. 2, 3, 5 and 6)			
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999</i> Pt. 3	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
<i>Criminal Law Amendment Act 2001</i> s. 10(1)	23 of 2001	26 Nov 2001	24 Dec 2001
<i>Criminal Investigation (Identifying People) Act 2002</i> s. 96	6 of 2002	4 Jun 2002	20 Nov 2002 (see s. 2 and <i>Gazette</i> 19 Nov 2002 p. 5505)
<i>Criminal Law (Procedure) Amendment Act 2002</i> Pt. 4 Div. 1	27 of 2002	25 Sep 2002	27 Sep 2002 (see s. 2 and <i>Gazette</i> 27 Sep 2002 p. 4875)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 29(3) and 37	50 of 2003	9 Jul 2003	s. 29(3): 31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833); s. 37: 15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 88 and 121 <sup>10</sup>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 29	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004</i> s. 24, 26 and 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)

## Bail Act 1982

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Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment Act 2004</i> s. 13	27 of 2004	14 Oct 2004	31 May 2006 (see s. 2 and <i>Gazette</i> 30 May 2006 p. 1965)
<i>Children and Community Services Act 2004</i> s. 251	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Acts Amendment (Family and Domestic Violence) Act 2004</i> Pt. 3	38 of 2004	9 Nov 2004	1 Dec 2004 (see s. 2 and <i>Gazette</i> 26 Nov 2004 p. 5309)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 28	45 of 2004	9 Nov 2004	s. 28(1), (2) and (4) (other than the amendment to s. 7A(1)): 1 Feb 2005 (see. s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163); s. 28(3) and (4) (the amendment to s. 7A(1)): 2 May 2005 (see. s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 <sup>11</sup>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Misuse of Drugs Amendment Act 2004</i> s. 9(1)	62 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 10 Dec 2004 p. 5965)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> Pt. 3 and s. 82 and 83	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 5: The Bail Act 1982 as at 1 Apr 2005</b> (includes amendments listed above except those in the <i>Sentencing Legislation Amendment Act 2004</i> , the <i>Acts Amendment (Court of Appeal) Act 2004</i> s. 28(3) and (4) (the amendment to s. 7A(1)), the <i>Children and Community Services Act 2004</i> , the <i>Courts Legislation Amendment and Repeal Act 2004</i> and the <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> )			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Criminal Investigation (Consequential Provisions) Act 2006</i> Pt. 2	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2838)
<i>Prisons and Sentencing Legislation Amendment Act 2006</i> Pt. 5	65 of 2006	8 Dec 2006	4 Apr 2007 (see s. 2 and <i>Gazette</i> 3 Apr 2007 p. 1491)

**Reprint 6: The Bail Act 1982 as at 14 Sep 2007** (includes amendments listed above)

Short title	Number and year	Assent	Commencement
<i>Criminal Law and Evidence Amendment Act 2008</i> s. 56	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559)
<i>Bail Amendment Act 2008</i> Pt. 2 <sup>12</sup>	6 of 2008	31 Mar 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Medical Practitioners Act 2008</i> Sch. 3 cl. 4	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)
<i>Criminal Law Amendment (Homicide) Act 2008</i> s. 24	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
<b>Reprint 7: The Bail Act 1982 as at 6 Mar 2009</b> (includes amendments listed above)			
<i>Police Amendment Act 2009</i> s. 12	42 of 2009	3 Dec 2009	13 Mar 2010 (see s. 2(b) and <i>Gazette</i> 12 Mar 2010 p. 941)

<sup>1M</sup> Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 3 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 3 Div. 1 <sup>13</sup>	28 of 2006	26 Jun 2006	To be proclaimed (see s. 2)
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 4 <sup>15</sup>	35 of 2010	30 Aug 2010	<del>To be proclaimed</del> <a href="#">18 Oct 2010</a> (see s. 2(b)) and <a href="#">Gazette 1 Oct 2010 p. 5075-6</a>

<sup>2</sup> Repealed by the *Sentencing Legislation Amendment and Repeal Act 2003*.

<sup>3</sup> The short title of the *Justices Act 1902* was changed to the *Criminal Procedure (Summary) Act 1902* by the *Courts Legislation Amendment and Repeal Act 2004* s. 25. The Act was then repealed by the *Criminal Procedure and Appeal (Consequential and Other Provisions) Act 2004*.

<sup>4</sup> The amendment in the *Sentencing Legislation Amendment and Repeal Act 1999* s. 26 had not come into operation when it was repealed by the *Sentencing Legislation Amendment and Repeal Act 2003* s. 31.

<sup>5</sup> The *Bail Amendment Act 1984* s. 10 and 11 were repealed by the *Bail Amendment Act 1988* s. 20.

<sup>6</sup> The *Bail Act 1982* was not in operation at the time when the reprint was compiled, but the reprinting was authorised by the *Bail Amendment Act 1988* s. 21.

<sup>7</sup> The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 is a transitional provision that is of no further effect.

<sup>8</sup> The *Criminal Procedure Amendment Act 1993* s. 13 is a transitional provision that is of no further effect.

<sup>9</sup> The *Bail Amendment Act 1998* s. 6(2) is a transitional provision that is of no further effect.

<sup>10</sup> The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 97 reads as follows:

“

**97. References to Crown Solicitor**

If in a written law or other document or instrument there is a reference to the Crown Solicitor that reference may, where the context so requires, be read as if it had been amended to be a reference to the State Solicitor.

”

<sup>11</sup> The amendment in the *Courts Legislation Amendment and Repeal Act 2004* s. 141 (amending Sch. 1 Pt. A cl. 4) is not included because the clause it sought to amend had been amended by the *Acts Amendment (Court of Appeal) Act 2004* s. 28(4) before the amendment purported to come into operation.

<sup>12</sup> The *Bail Amendment Act 2008* s. 6(2), 9(4)-(11), 10(2), 11(3), 15(5)-(8), 16(2), 18(4)-(5), 21(3), 22(2), 23(4), 24(6)-(7), 27(2)-(3), 28(6), 30(4)-(5), 31(2)-(3), 32(3)-(4), 33(6), 40(2), 41(5)-(9), 42(3) and 44 read as follows:

“

**6. Section 4A inserted and transitional provision**

- (2) The *Bail Act 1982* section 4A as inserted by subsection (1) applies to appearances in court referred to in subsection (1)(a) of that section that occur after the commencement of this section.



**9. Section 7A replaced by sections 7A to 7F, related amendments to sections 8 and 21 and transitional provisions**

- (4) The *Bail Act 1982* section 7A as inserted by subsection (1) applies in relation to appearances in court coming within the *Bail Act 1982* section 7(1) that occur after the commencement of this section.
- (5) The *Bail Act 1982* section 7B(3) as inserted by subsection (1) applies so as to enable an accused who is detained in custody after the commencement of this section to make an application allowed for by that subsection.
- (6) The *Bail Act 1982* section 7B(4) as inserted by subsection (1) applies in relation to appearances in court coming within that subsection that occur after the commencement of this section.
- (7) The *Bail Act 1982* section 7B(5) as inserted by subsection (1) applies in relation to an accused who is in custody on the commencement of this section as if the reference in section 7B(5)(a) to an application under subsection (3) included a reference to an application under the *Bail Act 1982* as in force immediately before the commencement of this section.
- (8) The *Bail Act 1982* section 7C(2) as inserted by subsection (1) applies in relation to appearances in court coming within that subsection that occur after the commencement of this section.
- (9) The *Bail Act 1982* section 7D as inserted by subsection (1) applies to any subsequent consideration of bail referred to in section 7D(1) that occurs after the commencement of this section.
- (10) The *Bail Act 1982* section 7E as inserted by subsection (1) applies to any trial as defined in section 7E(2), or part of a trial, that takes place after the commencement of this section.
- (11) The *Bail Act 1982* section 7F(2) as inserted by subsection (1) applies in relation to a pending application for bail under the *Bail Act 1982* section 7A(1), as in force immediately before the commencement of this section, as if it were an application for bail under the *Bail Act 1982* section 7F(1) as inserted by subsection (1).

**10. Section 9 amended and transitional provision**

- (2) The *Bail Act 1982* section 9(1)(b) as amended by subsection (1) applies to any consideration of a case for bail that occurs after the commencement of this section.

**11. Section 11 amended and transitional provision**

- (3) A certificate under the *Bail Act 1982* section 11(2) as in force immediately before the commencement of this section that has not been fully acted upon is to be treated after that commencement as a certificate under the *Bail Act 1982* section 11(3) as inserted by subsection (2).

**15. Section 14 amended and transitional provisions**

- (5) The *Bail Act 1982* section 14(4)(a)(i) as inserted by subsection (4) applies in respect of a child charged with an offence on or after the commencement.
- (6) The *Bail Act 1982* section 14(4)(a)(ii) as inserted by subsection (4) applies in respect of an accused committed to the District Court on or after the commencement for trial or sentence.
- (7) The *Bail Act 1982* section 14(4)(b) as inserted by subsection (4) applies in respect of any power referred to in the *Bail Act 1982* section 14(1) that is exercised, or could be exercised, on or after the commencement by any other judicial officer as defined in that paragraph.
- (8) In subsections (5), (6) and (7) —  
*commencement* means the commencement of subsection (4).

**16. Sections 15A and 15B inserted and transitional provision**

- (2) The *Bail Act 1982* sections 15A and 15B as inserted by subsection (1) apply to a bail decision, as defined in section 15A(1), made after the commencement of this section by a judge referred to in section 15A(2).

**18. Section 28 amended, related amendments to sections 35, 49, 51 and 58 and Schedule 1 and transitional provisions**

- (4) A bail undertaking that has effect under the *Bail Act 1982* immediately before the commencement of this section continues to have effect, on and after that commencement, as if it were a bail undertaking described in the *Bail Act 1982* section 28(2) as amended by subsection (1).
- (5) A surety undertaking that has effect under the *Bail Act 1982* immediately before the commencement of this section continues to have effect, on and after that commencement, as if it were a surety undertaking within the meaning of the *Bail Act 1982* section 35(1) as amended by subsection (3).

**21. Section 31 amended and transitional provision**

- (3) The *Bail Act 1982* section 31 as amended by this section applies in relation to any adjournment or committal to which it refers that occurs after the commencement of this section.

**22. Section 31A inserted and transitional provision**

- (2) The *Bail Act 1982* section 31A as inserted by subsection (1) applies to any trial as defined in section 31A(1), or part of a trial, that takes place after the commencement of this section.

**23. Section 32 amended and transitional provision**

- (4) The *Bail Act 1982* section 32 as amended by this section applies in relation to oral notifications given, and written notices given or sent, after the commencement of this section.

**24. Section 36 replaced, related amendments to sections 3, 37, 39, 40, 41 and 42 and transitional provisions**

- (6) The *Bail Act 1982* section 36(1) as inserted by subsection (1) applies to any decision as to whether a person should be approved as a surety that has to be made after the commencement of this section.
- (7) The *Bail Act 1982* section 36(2) as inserted by subsection (1) applies to any grant of bail that occurs after the commencement of this section.

**27. Section 44 replaced and transitional provisions**

- (2) The *Bail Act 1982* section 44 as inserted by subsection (1) applies to a surety undertaking whether entered into before or after the commencement of this section.
- (3) For the purposes of subsection (2), if a surety undertaking entered into before the commencement of this section contains a provision of the kind referred to in the *Bail Act 1982* section 44(2) as in force before that commencement, the provision is to be taken to be a provision of the kind referred to in the *Bail Act 1982* section 44(5) as inserted by subsection (1).

**28. Section 45 amended and transitional provision**

- (6) The *Bail Act 1982* section 45 as amended by subsection (1) applies to notices given for the purposes of the *Bail Act 1982* section 44(5) after the commencement of this section.

- 30. Section 49 amended, related amendment to section 67 and transitional provisions**
- (4) Subject to subsection (5), the *Bail Act 1982* section 49 as amended by this section applies in relation to a failure by an accused to comply with any requirement of the accused's bail undertaking irrespective of when the failure occurred.
  - (5) Any proceedings under the *Bail Act 1982* section 49 in progress immediately before the commencement of this section may be continued after that commencement as if this section had not come into operation.
- 31. Section 51A inserted and transitional provisions**
- (2) Subject to subsection (3), the *Bail Act 1982* section 51A as inserted by this section applies for the purpose of prosecuting an offence described in subsection (1) of that section irrespective of when the offence occurred.
  - (3) Any prosecution for an offence referred to in subsection (2) in progress immediately before the commencement of this section may be continued after that commencement as if this section had not come into operation.
- 32. Section 52 amended and transitional provisions**
- (3) Subject to subsection (4), the *Bail Act 1982* section 52 as amended by this section applies for the purpose of prosecuting an offence described in subsection (1) of that section irrespective of when the offence occurred.
  - (4) Any prosecution for an offence referred to in subsection (3) in progress immediately before the commencement of this section may be continued after that commencement as if this section had not come into operation.
- 33. Section 54 amended, related amendment to section 46 and transitional provision**
- (6) Despite the amendments made by subsections (1) to (4), the *Bail Act 1982* section 54 as in force immediately before the commencement of this section continues to apply in relation to —
    - (a) an accused arrested under subsection (2)(a) of that section; and
    - (b) an application made under subsection (2)(b) of that section,before that commencement.

**40. Section 66B inserted and transitional provision**

- (2) The *Bail Act 1982* section 66B as inserted by subsection (1) applies in relation to any bail proceedings, as defined in section 66B, conducted after the commencement of this section irrespective of when those proceedings were initiated.

**41. Schedule 1 amended and transitional provisions**

- (5) The *Bail Act 1982* Schedule 1 Part B clause 1A as inserted by subsection (3)(b) applies in respect of —
- (a) a grant or refusal of bail; or
  - (b) a dispensation from the requirement for bail,
- coming within that clause that occurs after the commencement of subsection (3)(b).
- (6) The *Bail Act 1982* Schedule 1 Part B clause 3 as inserted by subsection (3)(e) applies in relation to a refusal of bail for an initial appearance that occurs after the commencement of subsection (3)(e).
- (7) The *Bail Act 1982* Schedule 1 Part C clause 3C as inserted by subsection (4)(e) applies to any consideration of a case for bail that occurs after the commencement of subsection (4)(e).
- (8) The *Bail Act 1982* Schedule 1 Part C clauses 4 and 4A as inserted by subsection (4)(f) apply to any consideration of a case for bail that occurs after the commencement of subsection (4)(f).
- (9) The *Bail Act 1982* Schedule 1 Part C clause 7 as amended by subsection (4)(i) applies to any grant of bail that occurs after the commencement of subsection (4)(i).

**42. Schedule 2 amended and transitional provision**

- (3) A reference in —
- (a) the *Bail Act 1982* section 16A; or
  - (b) the *Bail Act 1982* Schedule 1 Part C clause 3A or 3B,
- to a serious offence includes a reference to an offence against *The Criminal Code* section 283 committed, or alleged to have been committed, before the commencement of this section.

**44. Transitional regulations**

- (1) If this Part does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the amendments made to the *Bail Act 1982* by this Part, the Governor may make regulations (the *transitional regulations*) prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.

- (2) The transitional regulations may provide that specified provisions of the *Bail Act 1982* or this Part —
  - (a) do not apply; or
  - (b) apply with specified modifications,to or in relation to any matter.
- (3) If the transitional regulations provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the transitional regulations are published in the *Gazette* but not earlier than the commencement of this section, the transitional regulations have effect according to their terms.
- (4) In subsections (2) and (3) —  
*specified* means specified or described in the transitional regulations.
- (5) If the transitional regulations contain a provision referred to in subsection (3), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

”

<sup>13</sup> On the date as at which this reprint was prepared, the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 3 Div. 1 had not come into operation. It reads as follows:

“

### **Part 3 — Attorney General, and Justice**

#### **Division 1 — *Bail Act 1982***

##### **30. The Act amended**

The amendments in this Division are to the *Bail Act 1982*.

##### **31. Section 3 amended**

- (1) Section 3(1) is amended as follows:
  - (a) by inserting the following definitions in the appropriate alphabetical positions —

“

**CEO** means the chief executive officer of the Department;  
**Department** means the department of the Public Service principally assisting in the administration of this Act;

”.

- (b) in the definition of “authorised community services officer” in paragraph (a) by deleting “(Justice)” in both places where it occurs <sup>14</sup>;
  - (c) by deleting the definition of “CEO (Justice)” <sup>14</sup>.
- (2) Section 3(5) is amended by deleting “department of which he is the chief executive officer” and inserting instead —  
 “ Department ”.

**32. Section 66A amended** <sup>14</sup>

Section 66A(2) is amended by deleting “department of which the CEO (Justice) is the chief executive officer” and inserting instead —

“ Department ”.

**33. Various references to CEO (Justice) changed to CEO** <sup>14</sup>

Each provision listed in the Table to this section is amended by deleting “CEO (Justice)” in each place where it occurs and inserting instead —

“ CEO ”.

**Table**

s. 3(5)	s. 50E
s. 24A(4)	s. 50F(1), (3), (4) and (5)
s. 27A	s. 50H
s. 50A	s. 50J
s. 50C(4)(a) and (b)	s. 50L(1)
s. 50D(1)(a)	Sch. 1 Part D cl. 3(3)(e)

Note: The headings to sections 27A, 50A, 50E, 50F and 50J will be altered by deleting “(Justice)”.

”.

<sup>14</sup> The amendments to the *Bail Act 1982* in the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 3 Div. 1 cl. 31(1)(b) and (c), cl. 32 and 33 would conflict with amendments by the *Prisons and Sentencing Legislation Amendment Act 2006* Pt. 5.

<sup>15</sup> On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Act 2010* Pt. 5 Div. 4 had not come into operation. It reads as follows:

**Division 4 — *Bail Act 1982* amended**

**28. Act amended**

This Division amends the *Bail Act 1982*.

**29. Schedule 1 amended**

In Schedule 1 Part D clause 2(7) delete the definition of *medical practitioner* and “and” after it and insert:

*medical practitioner* means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;