

Western Australia

Bail Act 1982

Bail Regulations 1988

Bail Regulations 1988

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Western Australia

Bail Act 1982

Bail Regulations 1988

1. Citation

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

2. Commencement

These regulations shall come into operation on the day on which the *Bail Act 1982* comes into operation¹.

3. Information prescribed for sections 8(1)(a) and 37(1)(b) of Act

- (1) The information set out in Form 1 in the Schedule is prescribed for the purposes of section 8(1)(a) of the Act.
- (2) The information set out in Form 9 in the Schedule is prescribed for the purposes of section 37(1)(b) of the Act.

[4, 5. Deleted in Gazette 25 Feb 2009 p. 473.]

6. Forms prescribed

- (1) A form referred to in the second column of the table at the foot of this regulation is prescribed for the purposes of the provision or provisions of the Act specified opposite thereto in the first column of the table.
- (2) The forms so prescribed are set out in the Schedule.
- (3) Form 6 shall consist of an original, a duplicate and a triplicate as appearing in the Schedule.

r. 7A

- (4) The form referred to in section 30(2)(b) of the Act may be printed on the reverse of the triplicate of Form 6.

| Provision of Act | Table Form |
|-------------------------|--|
| s. 11(3) | The form “certificate to authorise release” at the foot of the duplicate of Form 6 |
| s. 28(2) | Form 6 (bail undertaking) |
| s. 37(1)(a) | Form 8 Part A (notice to surety as to terms of bail) |
| s. 37(1)(c) | Form 8 Part B (declaration by proposed surety) |
| s. 50F(5) | Form 11 (warrant to arrest) |

[Regulation 6 amended in Gazette 22 March 1991 p.1212; 4 March 1994 p.852; 25 Feb 2009 p. 473-4.]

7A. Notice under s. 13A(3) of the Act to be sent to court before which accused to appear

If under section 7A of the Act a judicial officer dispenses with the requirement for bail for an appearance by an accused, the judicial officer must ensure that a copy of the notice given to the accused under section 13A(3) of the Act is sent as soon as is practicable to the court before which the accused is required to appear.

[Regulation 7A inserted in Gazette 25 Feb 2009 p. 474.]

7. Relevant papers prescribed for s. 27 of the Act

- (1) For the purposes of the definition of *the relevant papers* in section 27(2) of the Act —
- (a) the following papers are to be sent by an authorised officer or a judicial officer who considers the accused’s case for bail —
 - (i) the form referred to in section 8(1)(b) of the Act;

- (ii) if section 26(1) of the Act applies — the bail record form;
 - (b) the following papers are to be sent by a person before whom a bail undertaking has been entered into —
 - (i) the bail undertaking entered into;
 - (ii) any passbook or document deposited and any document completed by the accused pursuant to a condition imposed under Schedule 1 Part D clause 1(2)(d) or (e) of the Act;
 - (c) the following papers are to be sent by a person before whom a surety undertaking is entered into —
 - (i) Form 8 in relation to the surety;
 - (ii) any passbook or document deposited and any document completed by the accused pursuant to a condition imposed under Schedule 1 Part D clause 1(2)(d) or (e) of the Act.
- (2) Subregulation (1) does not apply —
- (a) if the papers concerned are completed or deposited at the court before which the accused is required to appear; or
 - (b) in circumstances involving a committal to the Supreme Court or District Court or a change of venue of any proceedings, if the papers concerned are in the custody of the court from which the committal is made or the venue is changed.

[Regulation 7 inserted in Gazette 25 Feb 2009 p. 475-6.]

8. Notice of application for approval as a surety

- (1) This regulation applies if an order is made under section 36(2)(a) of the Act requiring notice of an application for approval as a surety to be given to the prosecutor, except to the extent that the order provides differently.

r. 9A

- (2) The surety approval officer must give, or cause to be given, to the prosecutor notice of the application including the name, date of birth, address and occupation of the applicant.
- (3) If the prosecutor wishes to make representations to the surety approval officer as to the suitability of the applicant, the prosecutor must make those representations as soon as possible and, in any event, within 24 hours after receiving notice of the application.
- (4) Notice of the application may be given, and any representations under subregulation (3) may be made, orally or in writing.
- (5) If the prosecutor is a police officer it is sufficient compliance with subregulation (2) for notice of the application to be given to —
 - (a) a police officer having knowledge of the accused's case; or
 - (b) the officer in charge of the police station or lock-up closest to the place where the surety approval officer is performing his or her duties.

[Regulation 8 inserted in Gazette 25 Feb 2009 p. 476-7.]

9A. Application for cancellation of surety undertaking — court of summary jurisdiction

- (1) This regulation applies to an application under section 48(1) of the Act for the cancellation of a surety undertaking if the application is made in a court of summary jurisdiction.
- (2) The application may be made orally unless the court orders otherwise.
- (3) If the application is not made orally —
 - (a) the application must be made in an approved form; and
 - (b) the application does not have to be supported by an affidavit, unless the court orders otherwise; and

- (c) the application and any affidavit in support of it must be served on each other party, and any other person affected by the application, as soon as practicable after they are lodged with the court and in accordance with any order of the court as to time for service.

[Regulation 9A inserted in Gazette 25 Feb 2009 p. 477.]

9B. Application for forfeiture of amount in surety undertaking — court of summary jurisdiction

- (1) This regulation applies to an application under section 49(1) of the Act for the forfeiture of the amount specified in a surety undertaking if the application is made in a court of summary jurisdiction.
- (2) The application must be made in an approved form.
- (3) The application does not have to be supported by an affidavit, unless the court orders otherwise.
- (4) The application and any affidavit in support of it must be served on each other party, and any other person affected by the application, as soon as practicable after they are lodged with the court and in any event at least 14 clear working days before the hearing date for the application, unless the court orders otherwise.

[Regulation 9B inserted in Gazette 25 Feb 2009 p. 478.]

9. Accused to be given copy of conditions applicable to home detention condition

An accused who is granted bail subject to a home detention condition shall, when entering into the bail undertaking, be provided with and acknowledge in writing that he has been provided with a list of those conditions in rules made under section 50L of the Act that may be applied to him by the CEO (corrections) while the accused is subject to the home detention condition.

*[Regulation 9 inserted in Gazette 22 March 1991 p.1212;
amended in Gazette 25 Feb 2009 p. 478.]*

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

- (1) An undertaking by a responsible person under clause 2(3)(c) of Part C of Schedule 1 of the Act shall be entered into before a person referred to in section 29 of the Act.
- (2) The person before whom the undertaking is to be entered into shall before it is entered into —
 - (a) read the undertaking to the responsible person; or
 - (b) be informed by the responsible person that he or she has read it; or
 - (c) if necessary, have the undertaking translated to the responsible person.
- (3) The person before whom the undertaking is entered into shall give a copy of the undertaking, as duly completed, to the responsible person, or cause such a copy to be given to him or her.

[Regulation 10 inserted in Gazette 4 March 1994 p.852.]

11. Persons and programmes prescribed for Schedule 1 Part D clause 2(2b)

- (1) For the purposes of clause 2(2b)(c) of Part D of Schedule 1 to the Act a person who —
 - (a) is a psychologist (as defined in the *Psychologists Act 2005*); and
 - (b) is employed in, or providing services under contract to, the department,is a prescribed person.

- (2) For the purposes of clause 2(2b)(d) of Part D of Schedule 1 to the Act each of the departmental programmes mentioned in the Table to this subregulation is a prescribed programme.

Table

Anger Management Programme (Skills Training for Aggression Control)
Domestic Violence Programme
Warminda Programme (Chance of Going Straight)

- (3) In this regulation —

department means the department of the Public Service principally assisting in the administration of the Act;

departmental programme means a programme conducted by a person employed in, or providing services under contract to, the department.

[Regulation 11 inserted in Gazette 29 August 2000 p.4986; amended in Gazette 25 Feb 2009 p. 479.]

Schedule

[reg. 3(1)]

Form 1

Bail Act 1982

Section 8(1)(a)

INFORMATION FOR ACCUSED

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

1. Summary

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

2. Bail information form

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

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

Information supplied cannot be used against you at your trial.

3. At time of arrest

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

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

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

A justice may also deal with bail at this stage except —

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

4. On appearance in court

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

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

Schedule

If you are in custody during a trial that extends beyond one day, a judicial officer need not consider your case for bail, however, you may apply for bail.

5. Warrant cases

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

6. Where charge is murder

If you are an adult charged with murder, an application for bail may be made by you or on your behalf to a judge of the Supreme Court.

If you are a child charged with murder, you are to be taken before a judge of the Children's Court as soon as is practicable for consideration of bail, whether or not an application for bail is made by you or on your behalf.

7. Decision may be delayed

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

8. How decision to be made — adult

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

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

8A. How decision to be made — child

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

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

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

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

In Schedule 2 to the *Bail Act 1982* there is a list of serious offences. You cannot be granted bail for one of these offences if it is alleged to have been committed while you were on bail for another serious offence, unless there are exceptional reasons why you should not be kept in custody.

9. Points to be considered

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

- (a) Before trial
 - (i) Whether you might fail to appear in court, or whether you might commit an offence, or endanger persons or property or interfere with witnesses.
 - (ii) Whether you need to be kept in custody for your own protection.
 - (iii) In the case of an adult, whether the prosecutor has put forward reasons for refusing bail.

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

- (b) During trial

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

If you have been imprisoned, bail may be granted for an appeal from a decision of the Magistrates Court or the

Schedule

Children's Court or, in exceptional circumstances, from a decision of a superior court.

If you are awaiting sentence, bail may be granted at the discretion of an appropriate judicial officer.

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

10. Conditions

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

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

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

If your case for bail has been considered by a justice, a police officer, or a community services officer and —

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

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

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

12. Bail undertaking

Before you are released on bail you must sign an undertaking to appear in court at the required time and to comply with other

conditions which may be imposed; and, where applicable, must agree to pay the amount fixed by the authorised officer, justice or court if you do not appear.

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

13. Release from custody

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

14. Reconsideration of decision

If, after arrest, a police officer (or, in the case of a child, a community services officer) refuses bail, you can ask a justice to consider bail. However, if a justice refuses bail before your initial appearance in court, another justice cannot grant bail.

If on or after your initial appearance in court bail is refused, you may re-apply for bail only if you think that new facts have arisen, circumstances have changed or you did not present your case adequately.

15. Application to judge

If dissatisfied with a bail decision of an authorised officer, justice or magistrate, you may make an application to a judge to exercise the power to grant bail. However once you have made such an application you cannot make another unless —

- (a) new facts have been discovered or there has been a change of circumstances; or
- (b) you failed to present your case adequately on the first application.

16. Sureties

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

Schedule

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

17. False information

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

18. Offence to compensate surety

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

[Form 1 amended in Gazette 19 Apr 2005 p. 1295; 25 Feb 2009 p. 479-83.]

[Forms 2-5 deleted in Gazette 25 Feb 2009 p. 483.]

[reg. 6]

ORIGINAL

Form 6

Bail Act 1982

Section 28(2)

BAIL UNDERTAKING

Details of accused:

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

Date of birth:

Address:

Telephone No: Fax No:

Email address:

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

Charges Nos.
.....

Time and place of appearance:
.....

(name and location of court)

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

Conditions to be observed during bail:
.....
.....
.....

UNDERTAKING

I, the abovenamed accused —

UNDERTAKE —

- (a) to appear at the time and place and to comply with the conditions set out above;

Schedule

- (b) that if I am notified by a judicial officer or court official of a different time, or a different time and place, for my appearance, I will appear at the time, or at the time and place, so notified;
- (c) that if I fail to appear in court as required I will as soon as is practicable appear at the court when it is sitting;

(1) Strike out if not applicable

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

.....
ACCUSED

CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

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

Signature: Official Designation:

Date:.....

I acknowledge that I have been given a copy of the above bail undertaking and the form *Notice to Accused* on the reverse of that copy.

.....
ACCUSED

[reg. 6]

DUPLICATE

Form 6

Bail Act 1982

Section 28(2)

BAIL UNDERTAKING

Details of accused:

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

Date of birth:

Address:

Telephone No: Fax No:

Email address:

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

Charges Nos.
.....

Time and place of appearance:
.....

(name and location of court)

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

Conditions to be observed during bail:
.....
.....
.....

UNDERTAKING

I, the abovenamed accused —

UNDERTAKE —

- (a) to appear at the time and place and to comply with the conditions set out above;
- (b) that if I am notified by a judicial officer or court official of a different time, or a different time and place, for my

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appearance, I will appear at the time, or at the time and place, so notified;

- (c) that if I fail to appear in court as required I will as soon as is practicable appear at the court when it is sitting;

(1) Strike out if not applicable

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

.....
ACCUSED

CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

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

Signature: Official Designation:

Date:.....

I acknowledge that I have been given a copy of the above bail undertaking and the form *Notice to Accused* on the reverse of that copy.

.....
ACCUSED

CERTIFICATE TO AUTHORISE RELEASE

I certify for the purposes of section 11(3)of the Act that the accused is entitled to be at liberty on bail as provided in section 11(1) of the Act.

Signature:Official Designation:

[reg. 6]

TRIPLICATE

Form 6

Bail Act 1982

Section 28(2)

BAIL UNDERTAKING

Details of accused:

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

Date of birth:

Address:

Telephone No: Fax No:

Email address:

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

Charges Nos.
.....

Time and place of appearance:
.....

(name and location of court)

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

Conditions to be observed during bail:
.....
.....
.....

UNDERTAKING

I, the abovenamed accused —

UNDERTAKE —

- (a) to appear at the time and place and to comply with the conditions set out above;
- (b) that if I am notified by a judicial officer or court official of a different time, or a different time and place, for my

Schedule

appearance, I will appear at the time, or at the time and place, so notified;

- (c) that if I fail to appear in court as required I will as soon as is practicable appear at the court when it is sitting;

(1) Strike out if not applicable

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

.....
ACCUSED

CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

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

Signature: Official Designation:

Date:.....

I acknowledge that I have been given a copy of the above bail undertaking and the form *Notice to Accused* on the reverse of that copy.

.....
ACCUSED

TO THE ACCUSED

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

[Form 6 amended in Gazette 19 Apr 2005 p. 1295; 25 Feb 2009 p. 483-5.]

[Form 7 deleted in Gazette 25 Feb 2009 p. 485.]

[reg. 6]

Form 8

Bail Act 1982

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

PART A — NOTICE TO SURETY AS TO TERMS OF BAIL

1. NAME AND ADDRESS OF ACCUSED

.....
Surname Other Names
.....
Address

2. CHARGE(S)/APPEAL/PROCEEDINGS

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

3. COURT AND CHARGE NOS.

.....

4. WHERE AND WHEN ACCUSED REQUIRED TO APPEAR

.....
Name and location of court
ON.....DAY THE.....DAY OF.....20.....AT.....AM/PM

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

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

.....
SIGNATURE AND DESIGNATION OF SURETY APPROVAL OFFICER

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PART B — DECLARATION BY PROPOSED SURETY

Warning

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

1. Proposed surety
.....
Surname Other names
2. Date of birth
3. Occupation
- Employer details
4. Address
- Telephone No Fax No.....
- Email address
5. (a) Relationship ⁽¹⁾ to accused
.....
(1) e.g. parent, friend, employer.
- (b) Period for which known accused
.....
6. Financial position

| <i>Assets</i> | <i>Value (\$)</i> |
|--|-------------------|
| Real estate (address) | |
| | |
| | |
| Vehicle(s) (make, model and reg. no.) | |
| | |
| | |
| Electrical equipment (TV, stereo, DVD, etc.) | |
| | |
| | |
| Furniture (excluding white goods) | |
| | |
| | |
| Bank accounts | |

Schedule

| | |
|--|-------------------|
| | |
| | |
| Shares | |
| | |
| | |
| Other (please state) | |
| | |
| | |
| <i>Liabilities</i> | <i>Value (\$)</i> |
| Mortgage(s) (specify financial institution) | |
| | |
| | |
| Fines (including fines registered with the Fines Enforcement Registry) | |
| | |
| | |
| Credit cards | |
| | |
| | |
| Loans | |
| | |
| | |
| Other (please state) | |
| | |
| | |

Schedule

7. Character

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

YES NO

If yes, give details.....

.....

.....

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

YES NO

If yes, give details.....

.....

.....

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

I DECLARE THAT —

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

I ACKNOWLEDGE that I have been given —

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

I STATE that —

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

* show which

Signature of applicant.....

Schedule

Date.....

NOTICE TO PROSECUTOR

Prosecutor notified of application orally/in writing

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

Signature.....

Designation.....

Response by prosecutor (if any):

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

DECISION

Applicant approved/not approved

Reasons for refusal to approve:

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

Applicant informed of reasons:

.....

.....
Signature and
designation of surety
approval officer

Schedule

(1) For an explanation see Form 9.

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

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

(3A) Delete (d) if surety's obligations are not to cover this

(4) Delete as appropriate.

**PART C
SURETY UNDERTAKING**

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

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

Under section 44(4) of the Act the undertaking in (d) applies despite an amendment to the bail conditions if a statement that the amendment is of a minor nature has been made under section 31A(4) of the Act.

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

Signature of Surety.....

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

Signature.....

Official Designation.....

Date.....

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

Signature of Surety.....
Date.....

ENDORSEMENT UNDER SECTION 45(3)

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

Signature.....
Official Designation.....
Date.....

Authorised Officer who is to issue certificate under
section 11(3) of the Act advised (show date, time, place and
name of person advised).

.....
.....
Signature

*[Form 8 amended in Gazette 19 Apr 2005 p. 1295; 25 Feb 2009
p. 485-8.]*

[reg. 3(2)]

Form 9

Bail Act 1982

Section 37(1)(b)

INFORMATION FOR PROPOSED SURETY

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

1. Contents of this Form

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

2. Meaning and Function of Surety

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

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

It is the duty of a surety to do this.

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

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

3. Information to be given to Surety

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

4. Application for Approval

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

5. Disqualified Persons

A person cannot be approved as a surety if —

- (a) he is under 18 years of age; or
- (b) his net financial worth is less than the amount he would have to pay if the accused were to default, except where security is provided; or
- (c) it appears that the accused or some other person will be compensating the surety for any loss he incurs.

6. Points to be Considered

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

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

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

7. Reconsideration

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

8. Copy of Surety Undertaking

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

9. Remand etc. of Accused to Later Date

A surety undertaking will refer to the time and place of the accused's appearance. If his case is to be dealt with at a different time, or a

Schedule

different time and place, the surety will not be liable for the accused's non-appearance at such time and place unless the surety undertaking expressly says so. In that event, the surety may insist on being notified of the different time, or time and place.

10. Change of Address

A surety must, in writing, notify the court where the accused is to appear of any change to the surety's residential address. It is an offence not to do so without reasonable cause. The penalty is a fine of up to \$1 000.

11. Action by Surety where Accused likely to Default

A surety who reasonably believes that —

- (a) the accused is not likely to appear in court; or
- (b) a bail condition is being, has been or is likely to be broken,

should notify the prosecutor or a police officer in writing and that person may have the accused brought before the court. However the surety's obligations continue until the accused is brought before the court.

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

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

12. Cancellation of Surety Undertaking

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

13. Enforcing Payment by Surety

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

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

14. Cases of Hardship

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

15. Surety becoming Unsuitable

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

16. Offence to Compensate Surety

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

[Form 9 amended in Gazette 14 May 2004 p. 1446; 19 Apr 2005 p. 1295; 25 Feb 2009 p. 488-90.]

[Form 10 deleted in Gazette 25 Feb 2009 p. 490.]

Schedule

[reg. 6]

Form 11

Bail Act 1982

[section 50F(5)]

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

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

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

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

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

Dated: [date].

Signed: [signature and designation of CEO (corrections) or delegate].

[Prisoner’s date of birth.....].

[Form 11 amended in Gazette 25 Feb 2009 p. 490.]

[Form 12 deleted in Gazette 25 Feb 2009 p. 490.]

*[Schedule amended in Gazette 22 March 1991 pp.1212-3;
28 February 1992 p.994; 4 March 1994 pp.853-7; 1 August 1997
p.4394; 7 November 1997 p.6136; 7 March 2000 pp.1040-1;
22 August 2000 p.4849; 30 June 2003 p.2593; 14 May 2004 p. 1446;
25 Feb 2009 p. 479-90.]*

Notes

¹ This is a compilation of the *Bail Regulations 1988* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

| Citation | Gazettal | Commencement |
|---|----------------------------|--|
| <i>Bail Regulations 1988</i> | 30 Dec 1988 p. 5043-80 | 6 Feb 1982 (see r. 2 and <i>Gazette</i> 27 Jan 1989 p. 263) |
| <i>Bail Amendment Regulations 1991</i> | 22 Mar 1991 p. 1212-3 | 3 Apr 1991 (see r. 2 and <i>Gazette</i> 22 Mar 1991 p. 1209) |
| <i>Bail Amendment Regulations 1992</i> | 28 Feb 1992 p. 994 | 28 Feb 1992 |
| <i>Bail Amendment Regulations 1994</i> | 4 Mar 1994 p. 852-7 | 4 Mar 1994 |
| <i>Bail Amendment Regulations 1997</i> | 1 Aug 1997 p. 4394 | 1 Aug 1997 |
| <i>Bail Amendment Regulations (No. 2) 1997</i> | 7 Nov 1997 p. 6136-7 | 7 Nov 1997 |
| <i>Bail Amendment Regulations 1999</i> | 7 Mar 2000 p. 1039-41 | 8 Mar 2000 (see r. 2 and <i>Gazette</i> 7 Mar 2000 p. 1039) |
| <i>Bail Amendment Regulations 2000</i> | 29 Aug 2000 p. 4985-6 | 1 Sep 2000 (see r. 2 and <i>Gazette</i> 29 Aug 2000 p. 4985) |
| <i>Bail Amendment Regulations (No. 2) 2000</i> | 22 Aug 2000 p. 4849 | 22 Aug 2000 |
| <i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 3</i> | 30 Jun 2003 p. 2581-638 | 1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579) |
| <i>Sentencing Legislation (Short Sentences) Amendment Regulations 2004 r. 5</i> | 14 May 2004 p. 1445-7 | 15 May 2004 (see r. 2 and <i>Gazette</i> 14 May 2004 p. 1445) |
| <i>Courts and Legal Practice (Consequential Amendments) Regulations 2005 r. 2</i> | 19 Apr 2005 p. 1294-302 | 19 Apr 2005 |

Bail Regulations 1988

| Citation | Gazettal | Commencement |
|--|--------------------------|--|
| <i>Bail Amendment Regulations 2009</i> | 25 Feb 2009 p. 471-90 | r. 1 and 2: 25 Feb 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Mar 2009 (see r. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511) |

² Repealed by the *Liquor Licensing Act 1988* (No. 54 of 1988).