

JU301*

Bail Act 1982

Bail Amendment Regulations 2014

Made by the Administrator in Executive Council.

1. Citation

These regulations are the *Bail Amendment Regulations 2014*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette* (*gazettal day*);
- (b) the rest of the regulations — on the day on which the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* sections 22, 23 25 and 27 to 30 come into operation.

3. Regulations amended

These regulations amend the *Bail Regulations 1988*.

4. Regulation 3A inserted

After regulation 2 insert:

3A. Terms used

In these regulations —

approved user, of the courts electronic system, has the meaning given in the *Criminal Procedure Regulations 2005* regulation 3(1);

courts electronic system means the electronic system for the management of proceedings in Western Australian courts;

working day means a day other than a Saturday, a Sunday, or a public holiday.

5. Regulation 6 amended

(1) Delete regulation 6(3) and insert:

(3) Form 6 consists of a court copy, a releasing authority's copy and an accused's copy as set out in the Schedule.

(2) In regulation 6(4) delete "triplicate" and insert:

accused's copy

(3) In regulation 6 in the Table in the item relating to section 11(3) delete "duplicate" and insert:

releasing authority's copy

6. Regulations 7AA and 7AB inserted

After regulation 6 insert:

7AA. Entering information on courts electronic system

(1) Each form in the Schedule may be completed electronically by an approved user by entering the information required to complete the form into the courts electronic system.

- (2) If a hard copy of a form in the Schedule is handed to a court, an officer of the court must enter the information contained in the form into the courts electronic system.

7AB. Providing notice under section 13A(3) of the Act electronically

- (1) For the purposes of section 13B(1)(c) of the Act, written notice to the accused under section 13A(3) of the Act may be provided to the accused by —
 - (a) faxing the notice to a fax number provided by the accused; or
 - (b) emailing the notice (whether or not as an attachment) to an email address provided by the accused; or
 - (c) sending the notice by text message to a mobile phone number provided by the accused.
- (2) For the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 11, the certificate referred to in section 13B(2) of the Act —
 - (a) may be incorporated in an electronic form of the file copy of the notice to the accused by noting the matters referred to in that subsection on the courts electronic system in respect of the notice; or
 - (b) may be associated electronically with the file copy of the notice to the accused by means of the courts electronic system.
- (3) A certificate referred to in section 13B(2) of the Act is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if —
 - (a) the certificate is produced by means of the courts electronic system; and
 - (b) the name of the person who gave, sent or provided the notice is recorded on the certificate.
- (4) If a notice is sent by electronic means in accordance with this regulation the notice is to be presumed, unless the contrary is shown, to have been received —
 - (a) if the fax, email or text message is sent before 4.00 p.m. on a working day — on that day; or
 - (b) otherwise — on the next working day after the fax, email or text message is sent.

7. Regulation 7A amended

In regulation 7A delete “sent” and insert:

made available

Note: The heading to amended regulation 7A is to read:

**Notice under s. 13A(3) of the Act to be made available to court
before which accused to appear**

8. Regulation 7 amended

- (1) In regulation 7(1) delete “sent” (each occurrence) and insert:

made available

- (2) After regulation 7(2) insert:

- (3) A relevant paper made available electronically that is required to be signed by a person is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if —
- (a) an electronic version of it that includes the signature on it is made available; or
 - (b) the electronic version that is made available states the name of the person whose signature it is at any place where a signature appears in the paper version.
- (4) A person who makes available electronically a relevant paper that is required to be signed must ensure that, subject to any order of the court, arrangements are made for the retention of a paper version of the relevant paper that was —
- (a) signed according to law; and
 - (b) held by the person at the time the paper was made available.

9. Regulations 8A and 8B inserted

After regulation 7 insert:

8A. Amending bail undertaking electronically

- (1) For the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 11, the certificate referred to in section 31A(3)(b) of the Act, including any statement referred to in section 31A(4) of the Act, may be

incorporated in an electronic form of the court copy of the bail undertaking by an officer of the court noting in the courts electronic system the relevant matters in respect of the bail undertaking.

- (2) A certificate incorporated in a bail undertaking under subregulation (1) is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if the name of the officer of the court who notes the relevant matters in the courts electronic system is stated on the electronic form of the court copy of the bail undertaking.

8B. Giving and proof of notices under section 32(1) of the Act

- (1) For the purposes of section 32(1)(c) of the Act, written notice to the accused under section 31(2) of the Act may be provided to the accused by —
 - (a) faxing the notice to a fax number provided by the accused; or
 - (b) emailing the notice (whether or not as an attachment) to an email address provided by the accused; or
 - (c) sending the notice by text message to a mobile phone number provided by the accused.
- (2) For the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 11, the certificate referred to in section 32(2) of the Act —
 - (a) may be incorporated in an electronic form of the file copy of the notice to the accused by noting the relevant matters in the courts electronic system in respect of the notice; or
 - (b) may be associated electronically with the file copy of the notice to the accused by means of the courts electronic system.
- (3) A certificate referred to in section 32(2) of the Act is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if —
 - (a) the certificate is produced by means of the courts electronic system; and
 - (b) the name of the person who gave, sent or provided the notice is recorded on the certificate.

- (4) If a notice is sent by electronic means in accordance with this regulation, the notice is to be presumed, unless the contrary is shown, to have been received —
 - (a) if the fax, email or text message is sent before 4.00 p.m. on a working day — on that day; or
 - (b) otherwise — on the next working day after the fax, email or text message is sent.
- (5) For the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 11, a certificate referred to in section 32(4) of the Act may be incorporated electronically in the accused's bail undertaking by noting the relevant matters on an electronic form of the undertaking by means of the courts electronic system.

10. Regulations 9AA to 9AC inserted

After regulation 8 insert:

9AA. Provision of information and form to surety undertaking electronically

- (1) The notice, information and declaration referred to in section 37(1) of the Act may be provided to the applicant by —
 - (a) faxing the notice, information or declaration to a fax number provided by the applicant; or
 - (b) emailing the notice, information or declaration (whether or not as an attachment) to an email address provided by the applicant.
- (2) The declaration referred to in section 37(1)(c) of the Act, duly completed, may be provided to the surety approval officer by —
 - (a) faxing the declaration to a fax number provided by the surety approval officer; or
 - (b) emailing the declaration (whether or not as an attachment) to an email address provided by the surety approval officer.

9AB. Provision of surety undertaking to proposed surety electronically

- (1) For the purpose of section 43A(4) and (7) of the Act, the relevant official may provide a surety undertaking for completion or a copy of a completed surety undertaking, as required, to a person by —
 - (a) faxing the document to a fax number provided by the person; or

- (b) emailing the document (whether or not as an attachment) to an email address provided by the person.
- (2) For the purpose of section 43A(5) of the Act, the proposed surety may provide the completed surety undertaking to the relevant official by electronic communication by —
 - (a) faxing the declaration to a fax number provided by the relevant official; or
 - (b) emailing the declaration (whether or not as an attachment) to an email address provided by the relevant official.
- (3) An electronic copy of a surety undertaking certified to be a copy of a surety undertaking entered into in accordance with section 43A of the Act is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if the electronic copy states the name of the relevant official by whom the certification is made.

9AC. Provision of notice to surety electronically

- (1) For the purpose of section 45(1)(c)(ii) of the Act, the approved form may be provided to the surety by —
 - (a) faxing the form to a fax number provided by the surety; or
 - (b) emailing an electronic version of the form (whether or not as an attachment) to an email address provided by the surety.
- (2) For the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 11, the certificate referred to in section 45(2) of the Act —
 - (a) may be incorporated in an electronic form of the file copy of the notice to the surety by noting the relevant matters in the courts electronic system in respect of the notice; or
 - (b) may be associated electronically with the file copy of the notice to the surety by means of the courts electronic system.
- (3) If an approved form is provided by electronic means in accordance with this regulation, the form is to be presumed, unless the contrary is shown, to have been received —
 - (a) if the fax or email is sent before 4.00 p.m. on a working day — on that day; or
 - (b) otherwise — on the next working day after the fax or email is sent.

- (4) An endorsement on an electronic form of a notice given under section 45(1)(b) or (c) of the Act that purports to be a certificate referred to in section 45(2) of the Act is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if the electronic version states the name of the person who made the endorsement.

11. Regulations 10A and 10B inserted

After regulation 9 insert:

10A. Notifying change of residential address

For the purposes of section 60 of the Act notice of the change of residential address of the accused or of a surety may be provided to the registrar of the court by —

- (a) sending details of the change by fax to the court's fax number; or
- (b) emailing details of the change to the court's email address.

10B. Certificate of non-appearance

- (1) A certificate referred to in section 64 of the Act is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if —
 - (a) the certificate is produced by means of the courts electronic system; and
 - (b) the name of the judicial officer or registrar of the court before whom the accused was required to appear is recorded on the certificate as the person who authorised the certificate.
- (2) For the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 12, a certificate under section 64 of the Act is issued to the Commissioner of Police for the purposes of sections 51A(3) and 52(3a) of the Act if —
 - (a) an electronic form of the certificate is sent to the Commissioner by email; or
 - (b) the certificate is made available to the Commissioner by means of the courts electronic system.

12. Regulation 10 amended

Delete regulation 10(3) and insert:

- (3) The person before whom the undertaking is entered into must make available a copy of the undertaking, as duly completed, to the responsible person, or cause such a copy to be made available to him or her.

13. Schedule amended

- (1) In the Schedule Form 6:

- (a) delete "ORIGINAL" and insert:

COURT COPY

- (b) delete "DUPLICATE" and insert:

RELEASING AUTHORITY'S COPY

- (c) delete "TRIPLICATE" and insert:

ACCUSED'S COPY

- (d) delete (each occurrence):

Telephone No: Fax No:

and insert:

Telephone No: Fax No:

Mobile No:

- (2) In the Schedule Form 8 Part B delete items 3 and 4 and insert:

3. Address
Telephone No Fax No.....
Mobile No:
Email address
4. Occupation
Employer details

N. HAGLEY, Clerk of the Executive Council.