

WESTERN AUSTRALIA

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# BAIL AMENDMENT ACT

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No. 15 of 1988

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**AN ACT to amend the *Bail Act 1982* and the *Bail Amendment Act 1984*.**

*[Assented to 6 September 1988]*

The Parliament of Western Australia enacts as follows:

## **Short title**

1. This Act may be cited as the *Bail Amendment Act 1988*.

## **Commencement**

2. This Act shall come into operation on the day fixed for the commencement of the *Bail Act 1982*.

**Principal Act**

3. In this Act the *Bail Act 1982*\* is referred to as the principal Act.

[\*Act No. 86 of 1982 as amended by Act No. 74 of 1984.]

**Section 3 amended**

4. Section 3 of the principal Act is amended—

- (a) by inserting after the definition of “appropriate judicial officer” the following definition—

“ “as soon as is practicable” means as soon as is reasonably practicable; ”;

- (b) in the definition of “authorized community welfare officer”—

- (i) by deleting “welfare” and substituting the following—

“ services ”; and

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

“ (a) the Director-General, Assistant Director-General and Directors of the Department for Community Services; ”;

- (c) in the definition of “authorized officer” by deleting “welfare” and substituting the following—

“ services ”;

- (d) in the definition of “authorized police officer” by inserting after “police station” the following—

“ or lock-up ”; and

- (e) by deleting the definitions of “clause”, “paragraph”, “Schedule”, “subsection”, “section”, “subclause”, and “subparagraph”.

**Section 6 amended**

5. Section 6 of the principal Act is amended by inserting after subsection (2) the following subsection—

- “ (2a) A police officer or other person who arrests a person for an offence may, notwithstanding that he is empowered by this Act to grant bail, instead of complying with subsection (1) comply with subsection (2) as if he were not so empowered. ”.

**Section 8 amended**

6. Section 8 of the principal Act is amended by inserting after subsection (3) the following subsection—

- “ (3a) Notwithstanding paragraph (a) of subsection (1) or (2) a judicial officer or authorized officer need not comply with that paragraph if it appears to him that the defendant'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 defendant is dissatisfied with any condition imposed on the grant of bail he shall then comply with that paragraph. ”.

**Section 11 amended**

7. Section 11 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (a), by deleting “for an offence”;
- (ii) by deleting “for the offence”; and
- (iii) in paragraph (d), by deleting “offence or”;

and

(b) in subsection (2), in paragraph (d), by inserting after “jurisdiction” the following—

“ or a Justice ”.

**Section 18 amended**

8. Section 18 of the principal Act is amended—

- (a) in subsection (1) by deleting “simple offence for which he is liable to punishment by a fine of not more than \$100 (excluding any daily penalty), or imprisonment for not more than one month, or both such punishments” and substituting the following—

“ prescribed simple offence ”; and

- (b) in subsection (2) (b) by deleting “\$100” and substituting the following—

“ the amount prescribed for that offence ”.

**Section 21 amended**

9. Section 21 of the principal Act is amended in subsection (2) (b) by deleting “Director of Community Welfare or other officer of the Department for Community Welfare” and substituting the following—

“ Director-General of the Department for Community Services or other officer of that Department ”.

**Section 26 amended**

10. Section 26 of the principal Act is repealed and the following section is substituted—

Record of decision and reasons

“ 26. (1) A bail record form shall be completed by an authorized officer or a Justice if he—

- (a) refuses to grant bail to a defendant;
- (b) grants bail to a defendant in the circumstances referred to in clause 3 of Part B of the Schedule; or
- (c) imposes any condition on a grant of bail and it appears to him that the defendant is dissatisfied with the condition.

(2) Where a judicial officer, other than a Justice—

- (a) refuses to grant bail to a defendant; or
- (b) imposes any condition on a grant of bail and it appears to him that the defendant is dissatisfied with the condition,

a record of the decision and of the reasons therefor shall be made.

(3) The defendant, 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 who is a Justice; and
- (b) a bail record form is a prescribed form designed to contain a summary of the matters relevant to the decision as to the bail of a defendant, including those matters set out in Part C of the Schedule, the decision made, and the reasons for the decision. ”.

### **Section 29 amended**

**11.** Section 29 of the principal Act is amended in paragraph (i) by deleting “welfare” and substituting the following—

“ services ”.

### **Section 30 repealed and a section substituted**

**12.** Section 30 of the principal Act is repealed and the following section is substituted—

Duties of person before whom  
bail undertaking is entered into

“ 30. (1) The person before whom a bail undertaking is to be entered into by a defendant shall before it is entered into—

- (a) (i) read the undertaking to the defendant; or
- (ii) be informed by the defendant that the defendant has read it; or

- (iii) if necessary, have the undertaking translated to the defendant; and
  - (b) ensure that all conditions which are to be complied with before the release of the defendant have been complied with.
- (2) The person before whom a bail undertaking is entered into by a defendant 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 prescribed 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 a defendant shall enquire of the defendant 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 defendant. ”.

### **Section 31 amended**

- 13.** Section 31 of the principal Act is amended in subsection (2)—
- (a) in paragraph (a), by deleting “for an offence”; and
  - (b) in paragraph (b), by deleting “for an offence”.

### **Section 36 amended**

- 14.** Section 36 of the principal Act is amended, in subsection (2) by inserting after “may authorize” the following—
- “ a Justice, ”.

### **Section 40 amended**

- 15.** Section 40 of the principal Act is amended in subsection (1) by deleting “reasonably”.

**Section 56 amended**

**16.** Section 56 of the principal Act is amended by inserting after “before that court” the following—

“ or a court of like jurisdiction ”.

**Section 61 amended**

**17.** Section 61 of the principal Act is amended—

(a) by deleting—

“ A person commits an offence who, having arrested another for an offence and not being empowered by this Act to grant bail for that offence or by reason of section 16, ”

and substituting the following—

“ (1) A person to whom this section applies commits an offence if, having arrested another for an offence, he ”;

and

(b) by inserting after subsection (1) the following subsection—

“ (2) This section applies to a person who—

(a) is not empowered by this Act to grant bail for the offence or by reason of section 16; or

(b) being so empowered, elects to act under section 6 (2a). ”.

**Section 66A inserted**

**18.** After section 66 of the principal Act, the following section is inserted—

Delegation by clerk or registrar

“ 66A. The clerk or 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
- (b) any function that a judicial officer has required him to perform personally. ”.

### **Schedule amended**

**19.** The Schedule to the principal Act is amended in Part A, in clause 1, by deleting “welfare” and substituting the following—

“ services ”.

### ***Bail Amendment Act 1984* amended**

**20.** The *Bail Amendment Act 1984*\* is amended by repealing sections 10 and 11.

[\*Act No. 74 of 1984.]

### **Reprint of principal Act**

**21.** The principal Act as amended may be reprinted before it comes into operation, and for the purposes of the *Reprints Act 1984* the principal Act as amended shall be deemed to be a written law.

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