

BAIL.

No. 74 of 1984.

AN ACT to amend the Bail Act 1982.

[Assented to 29 November 1984.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Bail Amendment Act 1984*. Short title and principal Act.
- (2) In this Act the Bail Act 1982 is referred to as the principal Act. Act No. 86 of 1982.
2. This Act shall come into operation on the day fixed for the commencement of the Bail Act 1982. Commencement.

Section 3
amended.

3. Section 3 of the principal Act is amended, in subsection (1), in the definition of "offence", by deleting "or section 15 (2)".

Section 5
amended.

4. Section 5 of the principal Act is amended, in subsection (2), by inserting after "subject to sections" the following—

" 7 (3), "

Section 7
amended.

5. Section 7 of the principal Act is amended—

(a) in subsection (1) by inserting after "for the offence" the following—

" (including detention during the period of his trial) "; and

(b) by deleting subsection (3) and substituting the following—

" (3) Notwithstanding subsection (2), where—

(a) the duty described in that subsection or in section 6 (3) has been discharged once in relation to a defendant's case for bail; and

(b) bail has on that occasion been refused by a Judge of the Supreme Court,

the defendant's case for bail need not be considered on any subsequent occasion in the same case when the defendant's continued detention may be ordered unless the defendant satisfies the judicial officer who may order his detention that—

(c) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused on the occasion mentioned in paragraph (b); or

- (d) he failed to adequately present his case for bail on that occasion,

but if the judicial officer is so satisfied he shall cause the defendant to be taken as soon as is practicable before a Judge of the Supreme Court for the purpose of having the defendant's case for bail considered by the Judge. ”.

6. Section 8 of the principal Act is amended— Section 8 amended.

- (a) in subsection (1), by deleting “subsection (2)” and substituting the following—

“ subsection (4) ”;

- (b) by deleting subsection (2) and substituting the following—

“ (2) After a defendant's case for bail has been considered once, a judicial officer or authorized officer on any subsequent consideration of bail in the same case shall—

- (a) comply with paragraph (a) of subsection (1); and

- (b) either comply with paragraph (b) of subsection (1) 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 defendant for the purpose of completing or revising the form, as the case may be. ”;

and

- (c) by inserting, after subsection (3), the following—

“ (4) Notwithstanding paragraph (b) of subsection (1) or (2), a judicial officer or an authorized officer may dispense with completion or revision of the form referred to in those paragraphs if it appears to him that—

- (a) the defendant'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 authorized officer is sufficient for his consideration of the case. ”.

Section 11
amended.

7. Section 11 of the principal Act is amended by inserting after subsection (2) the following—

“ (3) In subsection (2) (a) “authorized officer” does not include an authorized officer who is also the officer in charge of the lock-up in which the defendant is in custody. ”.

Section 14
amended.

8. Section 14 of the principal Act is amended—

- (a) in subsection (2), by deleting “The” and substituting the following—

“ Subject to subsection (2a), the ”;

- (b) by inserting after subsection (2) the following—

“ (2a) After the jurisdiction under subsection (1) has been invoked once by a defendant in relation to an offence or group of offences for which he is required to appear, it may not be further invoked by that defendant in relation to that offence or group of offences unless the defendant satisfies a Judge of the Supreme Court 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. ”.

9. Section 15 of the principal Act is amended— Section 15 amended.

- (a) in subsection (1), by deleting “Where the offence for which a defendant is in custody is punishable by imprisonment for life” and substituting the following—

“ Where a defendant is in custody for an offence to which this section applies, ”; and

- (b) by deleting subsection (2) and substituting the following—

“ (2) This section applies to the offences described in the following provisions of The Criminal Code—

(a) section 37 (relating to treason);

- (b) the second paragraph of section 78 (relating to piracy with respect to a ship and accompanied by certain acts of violence);
- (c) section 79 (relating to certain acts of violence with intent to commit piracy with respect to a ship); and
- (d) section 282 (relating to wilful murder and murder). ”.

Section 18
amended.

10. Section 18 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting “\$100” and substituting the following—

“ \$300 ”; and

- (ii) by deleting “one month” and substituting the following—

“ 3 months ”; and

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

“ \$300 ”.

Section 26
repealed
and
substituted.

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

Record of
decision
and reasons.

- “ 26. (1) An authorized officer or a Justice who considers a defendant’s case for bail shall complete a bail record form.

(2) Where a judicial officer, other than a Justice, considers a defendant’s case for bail a record of the decision made and 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 other record made.

(4) For the purposes of subsection (1), 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.

(5) In this section references to a Justice do not include a Magistrate or a Judge of the District Court or Supreme Court who is a Justice. ”.

12. Section 32 of the principal Act is amended, in subsection (2), by deleting “31 (4) of the Interpretation Act 1918” and substituting the following—

Section 32
amended.

“ 75 (2) of the Interpretation Act 1984 ”.

13. Section 43 of the principal Act is amended in paragraph (a) by deleting “, before the surety enters into his undertaking” and substituting the following—

Section 43
amended.

“ and the surety undertaking, before the surety enters into the undertaking ”.

14. Section 44 of the principal Act is amended in subsection (2) by deleting “in the prescribed form”.

Section 44
amended.

15. Section 45 of the principal Act is amended in subsection (1)—

Section 45
amended.

(a) in paragraph (b), by deleting “writing” and substituting the following—

“ the prescribed form ”; and

- (b) in paragraph (c) by deleting “it” and substituting the following—

“ the prescribed form ”.

Section 46
amended.

16. Section 46 of the principal Act is amended in subsection (1) by deleting paragraph (a) and substituting the following—

“ (a) the defendant—

(i) is not likely to comply with the requirements of his bail undertaking mentioned in section 28 (2) (a) or (b); or

(ii) is, or has been, in breach of any condition of his bail undertaking mentioned in section 28 (2) (c); and ”.

Section 49
amended.

17. Section 49 of the principal Act is amended in subsection (1)—

(a) by deleting paragraph (c) and substituting the following—

“ (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 defendant to comply with the requirement to which the complaint relates; ”; and

- (b) in paragraph (d) (i) by inserting after "that" the following—

" , by reason of a change of circumstances since the undertaking was entered into, ".

18. Section 50 of the principal Act is amended by inserting after subsection (2) the following— Section 50 amended.

" (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. ".

19. Section 57 of the principal Act is amended in subsection (2) (a) by inserting after "that" the following— Section 57 amended.

" , by reason of a change of circumstances since the bail undertaking was entered into, ".
