

BAIL ACT 1978—REGULATION

(Bail Regulation 1994)

NEW SOUTH WALES



[Published in Gazette No. 108 of 26 August 1994]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Bail Act 1978, has been pleased to make the Regulation set forth hereunder.

J. P. HANNAFORD
Attorney General.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Bail Regulation 1994.

Commencement

- 2 This Regulation commences on 1 September 1994.

Definitions

3. (1) In this Regulation:

“**bail agreement**” means an agreement entered into in accordance with the conditions imposed on the granting of bail to an accused person;

“**bail decision**”, in respect of a domestic violence offence, includes the following:

- (a) a bail decision in respect of a complaint for an apprehended domestic violence order under Part 15A of the Crimes Act 1900, if the defendant is (by section 562L of that Act) taken to be an accused person charged with an offence;

- (b) a bail decision in respect of an appeal against any such apprehended domestic violence order, if the defendant is (by section 562M of that Act) taken to be an accused person who is in custody;

“clerk of a court” includes the following:

- (a) the Registrar of the Court of Criminal Appeal;
- (b) the Clerk and Deputy Clerk of the Peace;
- (c) the Clerk of a Local Court;
- (d) the Registrar of a Children’s Court;

“domestic violence offence” means:

- (a) a domestic violence offence within the meaning of the Crimes Act 1900; or
- (b) an offence of failing to comply with a restriction or prohibition specified in an order in force under Part 15A of the Crimes Act 1900;

“governor of a prison” means the superintendent, governor, gaoler or other officer for the time being in charge of the prison;

“personal violence offence” means:

- (a) a personal violence offence within the meaning of the Crimes Act 1900 but, in the case of an offence under section 61 of that Act (Common assault prosecuted on indictment) or an offence of attempting to commit an offence under that section, only if the accused person has a domestic relationship (within the meaning of section 562A (3) of that Act) with the alleged victim of the offence; or
- (b) an offence under section 562AB of the Crimes Act 1900 of stalking or intimidating another person; or
- (c) an offence under section 5621 of the Crimes Act 1900 of contravening a prohibition or restriction specified in a domestic violence order, but only if the accused person has a domestic relationship (within the meaning of section 562A (3) of that Act) with the person for whose protection the order was made;

“the Act” means the Bail Act 1978;

“victim”, in relation to an offence under section 5621 of the Crimes Act 1900 of contravening a prohibition or restriction specified in a domestic violence order, means the person for whose protection the order was made.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

PART 2—GENERAL PROVISIONS RESPECTING BAIL**Prescribed periods in respect of grant of bail: sec. 6**

- 4. (1)** For the purposes of section 6 (h) of the Act, the period between:
- (a) the making of an application to the Supreme Court by the Attorney General under section 4 (1) of the Supreme Court (Summary Jurisdiction) Act 1967 with respect to an accused person; and
 - (b) the accused person's being brought before a Judge of the Supreme Court as a consequence of the application,

is a prescribed period.

- (2)** For the purposes of section 6 (h) of the Act, the period between:

- (a) the submission to the Court of Criminal Appeal for determination, under section 5A (1A) of the Criminal Appeal Act 1912, of a question of law arising at or in reference to proceedings before the Supreme Court in its summary jurisdiction with respect to an accused person; and
- (b) the determination of the question by the Court of Criminal Appeal,

is a prescribed period.

PART 3—POLICE BAIL**Information respecting entitlement to, or eligibility for, bail: sec. 18**

5. For the purposes of section 18 (1) (a) of the Act, the information in writing to be given to an accused person is the information contained in the following Forms:

- (a) Form 1, if the accused person is charged with an offence to which section 8 of the Act applies;
- (b) Form 2, if the accused person is charged with:
 - (i) an offence to which section 9 of the Act applies; or
 - (ii) an offence referred to in section 9 (1) (b)-(g) of the Act.

Prescribed facilities: sec. 21

6. (1) For the purposes of section 21 of the Act, the prescribed facilities are as follows:

- (a) facilities for an accused person to wash, shower or bathe and (if appropriate) to shave;
- (b) facilities for an accused person to change clothing.

(2) Nothing in this clause requires a police officer to provide clothing for an accused person unless the clothing is brought to the police station at which the person is in custody, whether by a member of the accused person's family or by some other person.

PART 4—COURT BAIL

Manner of application for bail: sec. 22

7. (1) An accused person may apply to a court for bail under section 22 of the Act in the following manner:

- (a) orally, if the person is then appearing before the court; or
- (b) in writing in Form 3, if the person is not then appearing before the court.

(2) An application for bail may be signed by the accused person or, on the accused person's behalf, by his or her solicitor, spouse (lawful or de facto), parent or guardian.

(3) A court may grant bail even if the accused person has not complied with the provisions of subclause (1) or (2).

(4) An accused person may, in one bail application, apply to a court for bail in respect of more than one alleged offence.

(5) If the accused person is in custody at a prison, the governor of the prison must forward the application, without undue delay, to the clerk of the court to which the application is made.

Prescribed places: sec. 26

8. For the purposes of section 26 (2) of the Act. the following are prescribed places:

Central Industrial Prison, Malabar
Malabar Training Centre, Malabar
Metropolitan Boys' Shelter, Sydney
Metropolitan Reception Prison, Malabar
Metropolitan Remand Centre, Malabar
Minda Remand Centre, Lidcombe
Mulawa Training and Detention Centre for Women, Silverwater
Parramatta Gaol, Parramatta
Taldree Junior Remand Centre, Parramatta
Yasmar Hostel, Haberfield

PART 5—PROVISIONS APPLYING TO BOTH POLICE AND COURT BAIL**Notice of bail decisions in cases of alleged domestic violence offences**

9. (1) The authorised officer or court granting or refusing bail in respect of a domestic violence offence must immediately give notice of the bail decision to the informant, except if the informant is a police officer.

(2) Any such notice:

- (a)** in the case of the granting of bail, must specify the conditions imposed under section 36 of the Act on the granting of bail; and
- (b)** in any case, must contain, in Form 4, the prescribed information relating to the review of bail decisions.

(3) The notice may be given personally or by post.

(4) In this clause, “**informant**” includes complainant in the case of an apprehended domestic violence order under Part 15A of the Crimes Act 1900.

Notice of bail decisions in cases of alleged personal violence offences

10. (1) As soon as practicable after a bail decision is made in respect of a personal violence offence, the informant for that offence (being a police officer) must take appropriate steps to ensure that notice of the bail decision is given to the alleged victim of the offence or (if it is alleged that the victim died as a result of the offence) to a close relative of the alleged victim of the offence.

(2) The notice may be given personally or by post.

(3) Nothing in this clause affects the duty of an authorised officer or court to notify a bail decision to an informant under clause 9.

Bail undertaking and notice of hearing: sec. 34

11. (1) If a bail undertaking relates to a requirement for the appearance of an accused person before a court, the notice requiring the accused person to so appear:

- (a)** may be included in a copy of a bail undertaking or a notice setting out the terms of the bail undertaking; and
- (b)** if it is so included, must be in Form 5 and must be given personally to the accused person immediately after the accused person has given the bail undertaking.

- (2) A notice referred to in section 34 (1) of the Act:
- (a) may be given personally or by post; or
 - (b) may be given or sent in such other manner as the court before which the person is to appear may determine.

Acknowledgment: sec. 36

12. (1) An acknowledgment under section 36 (2) (b) of the Act may be in Form 6.

(2) For the purposes of section 36 (4) of the Act, such an acknowledgment must contain the following details:

- (a) the period during which the person making the acknowledgment has been acquainted with the accused person;
- (b) the nature of that person's acquaintance with the accused person.

Determination that a person is an acceptable person: sec. 36

13. (1) An authorised officer or court may refuse to make a determination that a person is an acceptable person for the purposes of a condition referred to in section 36 (2) (b), (d), (f) or (h) of the Act until the officer or court, on such evidence as appears to the officer or court to be sufficient, is satisfied as to the person's identity and residential address.

(2) Nothing in this clause limits the powers of an authorised officer or court in relation to the making of a determination as to whether a person is an acceptable person as referred to in section 36 of the Act.

Verification of person's capacity as an acceptable person: sec. 36

14. (1) This clause applies to a person who claims:

- (a) to be an acceptable person referred to in a determination under section 36 (3) of the Act; or
- (b) to belong to a class or description of acceptable persons referred to in such a determination.

(2) Such a person must not be permitted to make an acknowledgment, enter into an agreement or deposit a security or amount of money unless the authorised officer or court before whom the person attends is satisfied:

- (a) ~~that~~ such a determination has been made; and

- (b) that the person:
 - (i) is an acceptable person referred to in that determination; or
 - (ii) belongs to a class or description of acceptable persons referred to in that determination.

Reasons for bail decisions: sec. 38

15. (1) If reasons for a bail decision by an authorised officer are required to be recorded under section 38 of the Act, the authorised officer:

- (a) must endorse the reasons on a form in Form 7; and
- (b) must immediately send the form, or a copy of the form, to the court before which the accused person is to appear.

(2) If reasons for a bail decision by a court are required to be recorded under section 38 of the Act, the court must endorse the reasons on a form in Form 8.

(3) If a bail decision is made in response to a bail application relating to more than one alleged offence, the reasons for the bail decision may be recorded on one form.

Acceptance of distant sureties: sec. 39

16. (1) This clause applies to any person who, because of distance or for any other reason, is unable readily to attend before the authorised officer or court to whom a bail undertaking is given for the purpose of entering into an agreement, making an acknowledgment or depositing security or an amount of money, as referred to in section 39 of the Act.

(2) For the purposes of section 39 of the Act, such a person:

- (a) may enter into such an agreement with; or
- (b) may make such an acknowledgment to; or
- (c) may deposit such a security or amount of money with,

any other authorised officer or court.

Money or security: sec. 40

17. (1) This clause applies to any security or amount of money that is deposited with an authorised officer or justice (otherwise than at a court) under a bail agreement.

(2) For the purposes of section 40 of the Act, the authorised officer or justice must, as soon as practicable, lodge the security or money, together with the relevant undertaking and agreement, with the clerk of a court.

Application by surety for discharge from liability in respect of bail undertaking: sec. 42

18. (1) An application under section 42 (1) of the Act for discharge of liability under a bail agreement may be in Form 9.

(2) For the purposes of section 42 (2) (a) of the Act, a warrant for the apprehension of an accused person as a consequence of an application under section 42 (1) of the Act may be in Form 10.

PART 6—REVIEW OF BAIL DECISIONS**Request to review bail decision**

19. (1) A request for a review under Part 6 of the Act of a bail decision:

- (a) if made by or on behalf of an accused person, may be made in Form 3; or
- (b) if made by the informant or the Attorney General, may be made in Form 11.

(2) A court may determine a request to review a bail decision even if the request does not comply with this clause.

(3) On receipt of a request to review a bail decision, a court must give notice of the time and place of hearing to the applicant.

(4) If an accused person does not appear at the hearing, the court, on proof of notice having been given to the person, may proceed to hear and determine the request.

(5) A court may dispense with the giving of notice:

- (a) if it is satisfied that the accused person is evading service or cannot be contacted; or
- (b) if, in its opinion, the interests of justice so demand.

(6) The Supreme Court must give notice to an applicant for review of a bail decision of its decision, under section 22A of the Act, to refuse to entertain the application.

PART 7—MISCELLANEOUS**Prescribed information respecting forfeiture of bail money: sec. 54**

20. (1) For the purposes of section 54 (1) (c) of the Act, the information in writing respecting the Fines and Forfeited Recognizances Act 1954 is to consist of the following words:

If an amount of bail money (not exceeding \$300) deposited under a bail agreement is forfeited by reason of non-compliance with a bail undertaking entered into for the appearance of a person, the person by whom the amount was deposited may, within 21 days from the date of forfeiture, lodge with the court of summary jurisdiction at or nearest the place at which the bail money was forfeited an application, in the form prescribed under the Fines and Fofeited Recognizances Act 1954, for the discharge of the fofeited bail money.

(2) For the purposes of section 54 (4) of the Act, notice of the time and place to which proceedings have been adjourned may be in Form 12.

(3) For the purposes of section 54 (5) of the Act, the prescribed information with respect to the information to accompany a notice of an accused person's failure to comply with a bail condition is the information contained in Form 4.

Notice by custodian of person in custody after grant of bail: sec. 54A

21. A notice for the purposes of section 54A of the Act may be in Form 13.

Particulars of orders in bail decisions

22. (1) If an accused person is, as a consequence of a bail decision, committed to prison by warrant, the court, Judge, magistrate, justice or other person issuing the warrant must cause the required particulars to be endorsed on the form of warrant.

(2) If an accused person is, as a consequence of a bail decision, committed to prison otherwise than by warrant, the court must cause the required particulars to be notified to the governor of the prison to which the accused person is committed.

(3) If an accused person is held in custody as a consequence of a bail decision and, as a consequence of a further bail decision, bail is granted, refused or dispensed with in respect of the offence concerned, the court must cause the required particulars to be notified to the governor of the prison at which the accused person is in custody.

(4) The required particulars are particulars of any order in the bail decision respecting:

- (a) the grant, refusal or dispensation of bail in respect of the offence concerned; and
- (b) any conditions imposed under section 36 of the Act on the grant of bail; and

- (c) any determination as to:
- (i) the person or persons, or the class or description of persons, acceptable for the purposes of a condition of bail as referred to in section 36 (2) (b), (d), (f) and (h) of the Act, and the number of acceptable persons required for those purposes; and
 - (ii) the nature and sufficiency of security that is acceptable security for the purposes of a condition of bail as referred to in section 36 (2) (e) and (f) of the Act.

Notification of bail undertaking or of compliance with bail conditions

23. (1) This clause applies:

- (a) if an accused person is in custody as a consequence of a bail decision; and
- (b) if the person subsequently gives a bail undertaking; and
- (c) if all bail conditions are complied with such that the person may be released from custody in respect of the offence.

(2) The authorised officer or court before whom or which the bail undertaking is given and bail conditions entered into must immediately notify the governor of the prison at which the accused person is detained of the person's giving of the bail undertaking and of the person's compliance with the bail conditions.

Prescribed officers: sec. 60

24. For the purposes of section 60 (3) (a) and (b) of the Act, the following are prescribed officers:

- (a) a Judge;
- (b) a Magistrate;
- (c) a justice;
- (d) a clerk of a court;
- (e) an authorised officer.

Repeal

25. (1) The Bail Regulation 1979 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Bail Regulation 1979, had effect under that Regulation is taken to have effect under this Regulation.

SCHEDULE 1—FORMS**Form 1**

(Cl. 5)

**INFORMATION AS TO RIGHT TO RELEASE ON BAIL IN RESPECT OF
MINOR OFFENCES***

(Bail Act 1978)

Entitlement to bail

1. Under section 8 of the Bail Act 1978 you are entitled to be granted bail by an authorised officer** at any time before your first appearance in a court in respect of the alleged offence UNLESS:

- (a) you are, in the opinion of the authorised officer, incapacitated by intoxication, injury or use of a drug or are otherwise in danger of physical injury or in need of physical protection; or
- (b) you are in custody serving a sentence of imprisonment and the authorised officer is satisfied you are likely to remain in custody for a longer period than the period for which bail would be granted.

Bail undertaking

2. Bail may be granted either:

- (a) unconditionally; or
- (b) subject to such condition or conditions imposed on the grant of bail as, in the opinion of the authorised officer, is or are reasonably and readily able to be entered into,

to the intent that you must be released from custody as soon as possible after you have given an undertaking to appear at a court.

Bail conditions

3. One or more of the following conditions ONLY may be imposed on a grant of bail:

- (a) that you enter into an agreement to observe specified requirements (other than financial requirements) as to your conduct while at liberty on bail;
- (b) that one or more acceptable persons acknowledge that they are acquainted with you and regard you as a responsible person who is likely to comply with your bail undertaking;
- (c) that you enter into an agreement, without security, to forfeit a specified amount of money if you fail to comply with your bail undertaking;
- (d) that one or more acceptable persons enter into an agreement or agreements, without security, to forfeit a specified amount or amounts of money if you fail to comply with your bail undertaking;

- (e) that you enter into an agreement, and deposit acceptable security, to forfeit a specified amount of money if you fail to comply with your bail undertaking;
- (f) that one or more acceptable persons enter into an agreement or agreements, and deposit acceptable security, to forfeit a specified amount or amounts of money if you fail to comply with your bail undertaking;
- (g) that you deposit with the authorised officer or court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited if you fail to comply with your bail undertaking;
- (h) that one or more acceptable persons deposit with the authorised officer or court a specified amount or amounts of money in cash and enter into an agreement or agreements to forfeit the amount or amounts deposited if you fail to comply with your bail undertaking.

You may request the authorised officer to grant bail to you subject to any one or more of the foregoing conditions.

Rights if bail refused

4. If you are refused bail or not released on bail, you are entitled to be brought as soon as practicable before a court.

Entitlement to release

5. If and when you are granted bail, you are entitled to be released in respect of the offence for which you are now in custody after you have:

- (a) given an undertaking in writing to appear in person before a court in accordance with the undertaking; and
- (b) complied with the conditions (if any) imposed for your being released from custody.

* The offences to which section 8 of the Bail Act 1978 applies are all offences not punishable by a sentence of imprisonment (except in default of payment of a fine).

** A police officer is authorised to grant bail under the Bail Act 1978 if the officer:

- (a) is of or above the rank of sergeant and is present at the police station; or
- (b) is for the time being in charge of the police station.

Form 2

(Cl. 5)

INFORMATION AS TO ENTITLEMENT TO BAIL

(Bail Act 1978)

Entitlement to bail

1. Under section 9 of the Bail Act 1978 you are entitled to be granted bail by an authorised officer* at any time before your first appearance in a court in respect of the alleged offence UNLESS:

- (a) you are in custody serving a sentence of imprisonment and the authorised officer is satisfied that you are likely for that reason to remain in custody for a longer period than the period for which bail would be granted; or
- (b) you are charged with:
 - (i) an offence to which section 8 (1) or 8A (1) of the Bail Act 1978 applies; or
 - (ii) an offence under section 51 of the Bail Act 1978 (failing to appear in accordance with a bail undertaking); or
 - (iii) an offence under section 95 (robbery with striking), 96 (robbery with wounding), 97 (robbery while armed or in company) or 98 (robbery with wounding while armed or in company) of the Crimes Act 1900; or
 - (iv) an offence under section 23 (1) (cultivation, supply or possession of prohibited plant), 24 (1) (manufacture or production of prohibited drug) or 25 (1) (supply of prohibited drug) of the Drug Misuse and Trafficking Act 1985 (but only if the plant or drug concerned is alleged to be of a quantity which is at least twice the indictable quantity applicable under that Act); or
 - (v) an offence under section 26 (conspiring to commit offence referred to in (iv) above), section 27 (aiding etc. commission of offence referred to in (iv) above) or section 28 (conspiring to commit or aiding etc. commission of offence under a law in force outside New South Wales corresponding to section 23 (1), 24 (1) or 25 (1)) of the Drug Misuse and Trafficking Act 1985 (but only if the plant or drug concerned is alleged to be of a quantity which is at least twice the indictable quantity applicable under that Act); or
 - (vi) an offence relating to narcotic goods under section 231 (1) (assembly of persons for importing, smuggling etc.), 233A (using ship or aircraft for smuggling) or 233B (offences relating to importation) of the Customs Act 1901 of the Commonwealth (but only if the narcotic goods concerned are alleged to be of a nature and quantity required for an offence referred to in (iv) or (v) above); or
 - (vii) murder; or

(viii) an offence referred to in section 9 (1) (g) of the Bail Act 1978 (a domestic violence offence or an offence of contravening an apprehended violence order where the accused person has a history of violence against anyone or there has been previous violence by the accused person against a person in respect of whom the offence so referred to is alleged to have been committed),

but if you have been charged with one or more of these offences you may nevertheless be granted bail under section 13 of the Bail Act 1978; or

(c) the authorised officer is satisfied that he or she is, after consideration of the matters referred to in section 32 of the Bail Act 1978, justified in refusing bail.

Matters to be considered in bail application under section 32 of the Bail Act 1978

2. Section 32 of the Bail Act 1978 provides that the following matters only may be taken into account in considering bail:

- (a) the probability of whether or not you will appear in court in respect of the offence for which bail is being considered, having regard only to:
 - (i) your background and community ties, as indicated by the history and details of your residence, employment and family situations and your prior criminal record (if known); and
 - (ii) any previous failure by you to appear in court pursuant to a bail undertaking or pursuant to a recognizance of bail entered into before the commencement of section 32; and
 - (iii) the circumstances of the offence (including its nature and seriousness), the strength of the evidence against you and the severity of the penalty or probable penalty; and
 - (iv) any specific evidence indicating whether or not it is probable that you will appear in court; and
- (b) your interests, having regard only to:
 - (i) the period that you may be obliged to spend in custody if bail is refused and the conditions under which you would be held in custody; and
 - (ii) your needs to be free to prepare for your appearance in court or to obtain legal advice or both; and
 - (iii) your needs to be free for any lawful purpose not mentioned in (ii) above; and
 - (iv) whether or not you are, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or are otherwise in danger of physical injury or in need of physical protection; and
- (c) the protection of
 - (i) any person against whom it is alleged that the offence concerned was committed; and
 - (ii) the close relatives of any such person; and
 - (iii) any other person the authorised officer or court considers to be in need of protection because of the circumstances of the case; and

- (d) the protection and welfare of the community, having regard only to:
- (i) whether or not you have failed, or have been arrested for an anticipated failure, to observe a reasonable bail condition previously imposed in respect of the offence; and
 - (ii) the likelihood of you interfering with evidence, witnesses or jurors; and
 - (iii) the likelihood that you will or will not commit an offence while at liberty on bail,
- but the authorised officer may only have regard to the likelihood that you will commit such an offence:
- (iv) if satisfied that you are likely to commit it; and
 - (v) if satisfied that it is likely to involve violence or otherwise to be serious by reason of its likely consequences; and
 - (vi) if satisfied that the likelihood that you will commit it, together with the likely consequences, outweighs your general right to be at liberty.

Bail undertaking

3. Bail may be granted either:
- (a) unconditionally; or
 - (b) subject to a condition or conditions.

Bail conditions

4. One or more of the following conditions **ONLY** may be imposed on a grant of bail:
- (a) that you enter into an agreement to observe specified requirements (other than financial requirements) as to your conduct while at liberty on bail;
 - (b) that one or more acceptable persons acknowledge that they are acquainted with you and regard you as a responsible person who is likely to comply with your bail undertaking;
 - (c) that you enter into an agreement, without security, to forfeit a specified amount of money if you fail to comply with your bail undertaking;
 - (d) that one or more acceptable persons enter into an agreement or agreements, without security, to forfeit a specified amount or amounts of money if you fail to comply with your bail undertaking;
 - (e) that you enter into an agreement, and deposit acceptable security, to forfeit a specified amount of money if you fail to comply with your bail undertaking;
 - (f) that one or more acceptable persons enter into an agreement or agreements, and deposit acceptable security, to forfeit a specified amount or amounts of money if you fail to comply with your bail undertaking;
 - (g) that you deposit with the authorised officer or court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited if you fail to comply with your bail undertaking;
 - (h) that one or more acceptable persons deposit with the authorised officer or court a specified amount of money in cash and enter into an agreement or agreements to forfeit the amount or amounts deposited if you fail to comply with your bail undertaking.

You may request the authorised officer to grant bail to you subject to any one or more of the foregoing conditions.

Rights of bail refund

5. If you are refused bail or not released on bail, you are entitled to be brought as soon as practicable before a court.

Entitlement to release

6. If and when you are granted bail, you are entitled to be released in respect of the offence for which you are now in custody after you have:

- (a) given an undertaking in writing to appear in person before a court in accordance with the undertaking; and
- (b) complied with the conditions (if any), imposed for your being released from custody.

* A police officer is authorised to grant bail under the Bail Act 1978 if the officer:

- (a) is of or above the rank of sergeant and is present at the police station; or
- (b) is for the time being in charge of the police station.

Form 3

(Cl. 7, 19)

**APPLICATION FOR BAIL OR FOR REVIEW OF BAIL DETERMINATION
OR FOR ALTERATION OF BAIL CONDITIONS**

(Bail Act 1978)

I. of
(name) *(address)*

being in custody at charged with
(place)

..... apply to the
(name of court)

at for:
(place)

* bail to be granted

OR

* review of bail determination

OR

* review of existing bail conditions

2. I was last

* refused bail by

OR

* granted bail conditionally by

..... at on
(name of court) *(place)* *(date)*

3. I am next to appear before
(name of court)

at on
(place) *(date)*

Signature

Date

**Strike out whichever is not applicable.*

NOTES

If you have been granted bail but remain in custody because you cannot meet one or more of your bail conditions, please state which one(s):

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

If you are making this application to the Supreme Court, and you have made earlier application to the Supreme Court in respect of the same charge, please state any special facts or circumstances that have arisen since your last application was heard:

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

Form 4

(CII. 9, 20)

NOTICE ABOUT THE REVIEW OF A BAIL DECISION

(Bail Act 1978)

Right of review

1. Part 6 of the Bail Act 1978 provides that a bail decision may be reviewed.
2. A “bail decision” includes a refusal to grant bail, a granting of bail conditionally or unconditionally and a dispensing with bail.
3. A review may be had only at the request of:
 - the accused person; or
 - the informant (being a police officer); or
 - the informant or complainant (whether or not a police officer) in the case of bail granted in respect of a domestic violence offence or a complaint for an apprehended violence order under Part 15A of the Crimes Act 1900; or
 - the Attorney General or the Director of Public Prosecutions.
4. A request for review may be made to the appropriate court as set out below:

IF A BAIL DECISION WAS
MADE BY:

IT MAY BE REVIEWED BY

an authorised officer
a Justice

a Magistrate or the Supreme Court
the Justice or a Magistrate or the Supreme
court

a Magistrate

a Magistrate or the Supreme Court

the District Court

the District Court or the Supreme Court

the Industrial Court

the Industrial Court or the Supreme Court

the Land and Environment Court

the Land and Environment Court or the
Supreme Court

the Court of Criminal Appeal

the Court of Criminal Appeal

the Supreme Court

the Supreme Court or, if:

- you are appearing before the Land and Environment Court, the Industrial Court, the District Court or a Magistrate in criminal proceedings; and
- the Land and Environment Court, the Industrial Court, the District Court or Magistrate is satisfied that special facts or special circumstances exist,

the Land and Environment Court, the Industrial Court, the District Court or Magistrate

5. A court in reviewing a bail decision may confirm or vary that decision or substitute another decision. A request for review of a bail decision must be in writing in or to the effect of Form 3 in Schedule 1 to the Bail Regulation 1994, a copy of which may be obtained from a court office or at a prison.

Special right in case of inability to meet bail conditions

6. If you have been granted bail but remain in custody because you cannot meet one or more of your bail conditions, you may apply for a bail condition review. The application must be made to the court that granted the conditional bail (or, if the bail was granted by an authorised officer or a justice, to a Magistrate).

7. The Governor of the prison or officer-in-charge of the lock-up or police station at which you are in custody is required to notify the appropriate court that you are in custody because the bail conditions have not been met but, even if this notice has not been sent, you can still apply for a review of your bail conditions.

Special right to review of reporting conditions

8. If you have been granted bail on condition you report to a police station while on bail, you may apply for a variation of that condition. You may apply for the police station to which you report or the times at or days on which you report to be varied. The application must be made to a justice employed in the Department of Courts Administration.

Second or subsequent applications to the Supreme Court

9. If you are applying to the Supreme Court about your bail, and if this is not your first application in respect of that bail, you must show that there are special facts or special circumstances that justify the making of the application, otherwise the Court may refuse to entertain your application.

- (b) notify the registrar for the proclaimed place at which the appeal is to be heard of any change in my address;
- (c) abide the judgment of the District Court on the appeal;
- (d) pay such costs as may be awarded by the District Court.

BAIL CONDITIONS

- (4) *The grant of bail is subject to the following conditions:
 - (a) that I enter into an agreement to observe specified requirements as to my conduct while at liberty on bail as set out hereunder;
 - (b) that one (or) acceptable person(s) acknowledge that he or she is (they æ) acquainted with me and regard(s) me as a responsible person who is likely to comply with my bail undertaking;
 - (c) that I enter into an agreement, without security, to forfeit an amount of money, as specified herein, if I fail to comply with my bail undertaking;
 - (d) that one (or) acceptable person(s) enter into an agreement or agreements, without security, to forfeit an amount or amounts of money, as specified herein, if I fail to comply with my bail undertaking;
 - (e) that I enter into an agreement, and deposit acceptable security, to forfeit an amount of money, æ specified herein, if I fail to comply with my bail undertaking;
 - (f) that one (or) acceptable person(s) enter into an agreement or agreements, and deposit acceptable security, to forfeit an amount or amounts of money, as specified herein, if I fail to comply with my bail undertaking;
 - (g) that I deposit an amount of money in cash, as specified herein, and enter into an agreement to forfeit the amount if I fail to comply with my bail undertaking;
 - (h) that one (or) acceptable person(s) deposit an amount or amounts of money in cash, as specified herein, and enter into an agreement or agreements, to forfeit the amount(s) if I fail to comply with my bail undertaking.

- (5) *I agree to observe æ a condition of my bail the following requirements as to my conduct while at liberty on bail:

.....

.....

.....

.....

.....

NOTE—Section 51 of the Bail Act 1978 provides that a person who fails without reasonable excuse (proof of which lies on him or her) to appear before a court in accordance with a bail undertaking is guilty of an offence. A person convicted of such an offence is liable to the same penalties as are by law provided for the offence in respect of which he or she failed to appear but no sentence of imprisonment may exceed 3 years and no fine may exceed \$3,000. A sentence so imposed may be directed to be served cumulatively on any other sentence of imprisonment or penal servitude then imposed or then being served.

If an amount of bail money, not exceeding \$300, deposited pursuant to a bail agreement, is forfeited by reason of non-compliance with a bail undertaking entered into for the appearance of a person, the person by whom the amount was deposited may, within 21 days from the date of forfeiture, lodge with the court of summary jurisdiction at or nearest the place at which the bail money was forfeited an application in or to the effect of the form prescribed under the Fines and Forfeited Recognizances Act 1954 for the discharge of the forfeited bail money.

If the accused person changes his or her address, the person must give notice in writing of his or her new address to the clerk of the court at which he or she is to appear.

Form 6

(Cl. 12)

ACKNOWLEDGMENT

(Bail Act 1978)

Name of accused:

Address:

(1) I, of
(name)

.....
(address) (occupation)

acknowledge that I have been acquainted with the abovenamed accused person for
..... years.

(2) I regard him/her as a responsible person who is likely to comply with his/her bail
undertaking.

(3) The nature of my acquaintance with the accused person is
.....
(e.g., employer; business partner; mother; father; spouse, friend)

(4) Before making this acknowledgment I have been warned that it is an offence under
section 56 of the Bail Act 1978 wilfully to make an acknowledgment under section 36
(2) (b) of that Act knowing it to be untrue in a material particular.

Signature

This acknowledgment was made before me at
..... on the day of

19 , and I did, before the acknowledgment was made, warn the person making the
acknowledgment that it is an offence under section 56 of the Bail Act 1978 wilfully to
make an acknowledgment under section 36 (2) (b) of that Act knowing it to be untrue in
a material particular.

.....
(Authorised Officer/
Justice of the Peace)

NOTE: Section 54 (2) of the Bail Act 1978 provides that an authorised officer or
court to whom or with whom a person, other than the accused person, makes an
acknowledgment under a bail condition must forthwith give or cause to be given to that
other person a copy of the condition or a notice setting out the terms of the condition.

Form 7

(Cl. 15)

REASONS FOR BAIL DECISION BY AUTHORISED OFFICER

(Bail Act 1978)

Name of accused:

Offence(s):

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

(If space is insufficient attach list)

The accused has been provided with information as to his or her eligibility or entitlement to bail, being either Form 1 or Form 2.

(Mark with an "X" if this information has been provided)

REQUEST FOR BAIL

The accused has:

- * (1) made no request for bail; or
- * (2) requested that he or she be granted bail unconditionally; or
- * (3) requested that he or she be granted bail subject to the following conditions as specified in section 36 (2) of the Act:

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

DETERMINATION

I have determined that:

- * (1) bail be granted unconditionally; or
- * (2) bail be refused; or
- * (3) bail be granted subject to one or more of the following conditions:
 - (a) that the accused person enter into an agreement to observe requirements as to his or her conduct while at liberty on bail, namely:
 -
 -
 -
 -
 -
 - (b) that one (or) acceptable person(s) acknowledge in writing that he or she is (they are) acquainted with the accused person and he or she (they) regard(s) the accused person as a responsible person who is likely to comply with his or her bail Undertaking;
 - (c) that the accused person enter into an agreement, without security, to forfeit an amount of money, namely \$ if he or she fails to comply with his or her undertaking;
 - (d) that one (or) acceptable person(s) enter into an agreement or agreements, without security, to forfeit an amount or amounts of money, namely \$ (each), if the accused person fails to comply with his or her bail undertaking;
 - (e) that the accused person enter into an agreement and deposit security, to forfeit an amount of money, namely \$ if he or she fails to comply with his or her bail undertaking;
 - (f) that one (or) acceptable person(s) enter into an agreement and deposit security, to forfeit an amount or amounts of money, namely \$ (each), if the accused person fails to comply with his or her bail undertaking;
 - (g) that the accused person deposit the sum of \$ in cash, and enter into an agreement to forfeit the amount if he or she fails to comply with his or her bail undertaking;
 - (h) that one (or) acceptable person(s) deposit the sum(s) of \$ (each) in cash, and enter into an agreement or agreements to forfeit the amount(s) if the accused person fails to comply with his or her bail undertaking.

**Strike out whichever is not applicable.*

REASONS FOR DETERMINATION

The reason(s) for my decision is/are (or is/are attached):

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

.....
Authorised Officer

Date / /

Place

NOTE: This form should be completed in duplicate in all cases where bail is:

- (i) granted conditionally; or
- (ii) refused.

The original should be forwarded to the court at which the accused is to appear and a copy should be retained.

Form 8

(Cl. 15)

REASONS FOR BAIL DECISION BY COURT

(Bail Act 1978)

Name of accused:

Offence(s):.....

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

(If space is insufficient attach list)

DETERMINATION

It is determined (in respect of each offence) that:

- *(1) bail be granted unconditionally; or
- *(2) bail be refused; or
- *(3) bail be granted subject to one or more of the following conditions:
 - (a) that the accused person enter into an agreement to observe requirements as to his or her conduct while at liberty on bail, namely:
 -
 -
 -
 -
 -
 - (b) that one (or) acceptable person(s) acknowledge in writing that he or she is (they are) acquainted with the accused person and he or she (they) regard(s) the accused person as a responsible person who is likely to comply with his or her bail undertaking;
 - (c) that the accused person enter into an agreement without security to forfeit an amount of money, namely \$ if the accused person fails to comply with his or her bail undertaking;
 - (d) that one (or) acceptable person(s) enter into an agreement or agreements, without security, to forfeit an amount or amounts of money, namely \$ (each) if the accused person fails to comply with his or her bail undertaking;
 - (e) that the accused person enter into an agreement and deposit security, to forfeit an amount of money, namely \$ if the accused person fails to comply with his or her bail undertaking;

- (f) that one (or) acceptable person(s) enter into an agreement and deposit security, to forfeit an amount or amounts of money, namely \$ (each) if the accused person fails to comply with his or her bail undertaking;
- (g) that the accused person deposit the sum of \$ in cash and enter into an agreement to forfeit such amount if the accused person fails to comply with his or her bail undertaking;
- (h) that one (or) acceptable person(s) deposit the sum(s) of \$ (each) in cash and enter into an agreement or agreements to forfeit such amount(s) if the accused person fails to comply with his or her bail undertaking.

**Strike out whichever is not applicable.*

PARTICULARS OF ANY DETERMINATION MADE UNDER SECTION 36 (3) OF THE ACT ARE:

.....

.....

.....

.....

REASONS FOR DETERMINATION

The reason(s) for the decision is/are (or is/are attached):

.....

.....

.....

.....

.....

.....

.....

.....

(Name of court)

Date / /

(Place)

Form 9

(Cl. 18)

**APPLICATION BY SURETY FOR DISCHARGE FROM LIABILITY IN
RESPECT OF A BAIL UNDERTAKING**

(Bail Act 1978)

Name of accused:

Address:.....

Offence(s):.....

.....

Name of surety:

Address:.....

..... (Telephone No.)

Application is made under section 42 of the Bail Act 1978 to the

* at
(name of court) (place)

being the Court:

* * which granted bail; or

* * before which the accused person is required to appear in accordance with his or her bail undertaking,

for the abovenamed surety to be discharged from his or her liability in respect of an agreement entered into as a condition of bail on the

day of 19 at

on the following grounds:

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

1994—No. 405

The accused has undertaken to appear before the
(name of court)
at on the day of
(place)
..... 19 (or).

.....
Surety

Date / /

**Insert* Court of Criminal Appeal, Supreme Court, Land and Environment Court.
Industrial Court District Court or Local Court.

***Strike out whichever is not applicable.*

A warrant of arrest/summons has this day been issued by me (returnable on the
day of 19).

.....
Justice of the Peace

Date / /

Form 10

(Cl. 18)

**WARRANT OF ARREST WHERE A SURETY APPLIES TO BE
DISCHARGED FROM LIABILITY IN RESPECT OF A BAIL
UNDERTAKING**

(Bail Act 1978)

TO ALL CONSTABLES OF POLICE IN THE STATE OF NEW SOUTH WALES:

WHEREAS on the day of
19, (hereinafter called the accused person)
and (hereinafter called the surety)
entered into a bail undertaking for the accused person to appear before the
..... at
(name of court) (place)

on in relation to the offence(s) of
.....

AND WHEREAS the surety has made application to the
..... at
(name of court) (place)

to be discharged from his or her liability under the bail undertaking.

YOU ARE COMMANDED to arrest the accused person and bring him or her before the
before the
(name of court)

at or before such other court as may then be sitting to be further dealt
with according to law.

This warrant. was issued by me at on the day of
..... 19 .

(SEAL)

.....
Justice of the Peace

1994—No. 405

NOTE: This warrant should not be executed after the date on which the accused person has undertaken to appear without reference first being made to the court.

Address of accused:

Address of surety:

Form 11

(Cl. 19)

**REQUEST FOR REVIEW OF BAIL DETERMINATION OR FOR
ALTERATION OF BAIL CONDITIONS**

(Bail Act 1978)

(This form is for use where the request is made by the informant or the
Attorney General)

Name of accused: (*date of birth*)

Offence(s):

(1) Request is made under Part 6 of the Bail Act 1978 to the *

.....

atfor a
(place)

**review of a bail determination made by

OR

**alteration of conditions of bail set by

.....

(name of court or authorised officer)

at

(2) Bail was on the day of 19 ...

**refused

OR

**dispensed with

OR

**granted

OR

**granted with the following conditions:

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

(3) The accused person

**is in custody at prison

OR

**has been released and resides at

.....

.....

Applicant

Date: / /

**Insert name of court.*

***Strike out whichever is not applicable.*

Form 12

(Cl. 20)

NOTICE OF CONTINUANCE OF BAIL

(Bail Act 1978)

Name of accused:

Address of accused:

Date of undertaking: / / .

TAKE NOTICE that the proceedings in respect of which you gave a bail undertaking have been adjourned:

*to the at
(name of court)

on the day of 19 at 10 am.

OR

*to such time and place as will be notified to you in a notice to be given or sent to you.

*The conditions of the bail have been varied in the following manner:

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

CERTIFICATE

*I certify that this document is a copy of the notice given to the accused for the purposes of section 34 (1) of the Bail Act 1978 and that I gave the notice to the accused person by delivering it to the person personally.

.....

Prescribed Officer

Date: / /

**Strike out whichever is not applicable.*

Form 13

(Cl. 21)

NOTICE BY CUSTODIAN CONCERNING PERSON IN CUSTODY AFTER GRANT OF BAIL

(Bail Act 1978)

TO: The Registrar,

* Court at.....

TAKE NOTICE that
(name)

of
(address)

who was granted bail by the Court on
(date)

remains in my custody, stating that he/she cannot comply with the following condition(s) of bail, namely:

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

for the following reason(s):

.....
.....

.....
(signed)

**Superintendent, prison.

OR

**Officer-in-charge,
(name of police station or lock-up)

*Insert name of court.

**Strike out whichever is not applicable.

NOTES**TABLE OF PROVISIONS****PART 1—PRELIMINARY**

1. Citation
2. Commencement
3. Definitions

PART 2—GENERAL PROVISIONS RESPECTING BAIL

4. Prescribed periods in respect of grant of bail: sec. 6

PART 3—POLICE BAIL

5. Information respecting entitlement to, or eligibility for, bail: sec. 18
6. Prescribed facilities: sec. 21

PART 4—COURT BAIL

7. Manner of application for bail: sec. 22
8. Prescribed places: sec. 26

PART 5—PROVISIONS APPLYING TO BOTH POLICE AND COURT BAIL

9. Notice of bail decisions in cases of alleged domestic violence offences
10. Notice of bail decisions in cases of alleged personal violence offences
11. Bail undertaking and notice of hearing: sec. 34
12. Acknowledgment: sec. 36
13. Determination that a person is an acceptable person: sec. 36
14. Verification of person's capacity as an acceptable person: sec. 36
15. Reasons for bail decisions: sec. 38
16. Acceptance of distant sureties: sec. 39
17. Money or security: sec. 40
18. Application by surety for discharge from liability in respect of bail undertaking: sec. 42

PART 6—REVIEW OF BAIL DECISIONS

19. Request to review bail decision

PART 7—MISCELLANEOUS

20. Prescribed information respecting forfeiture of bail money: sec. 54
21. Notice by custodian of person in custody after grant of bail: sec. 54A
22. Particulars of orders in bail decisions
23. Notification of bail undertaking or of compliance with bail conditions
24. Prescribed officers: sec. 60
25. Repeal

SCHEDULE 1—FORMS

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with minor modifications only, the provisions of the Bail Regulation 1979 under the Bail Act 1978. The new Regulation deals with the following matters:

- (a) specifying periods in respect of which bail may be granted under the Act (clause 4);
- (b) prescribing information to be given to accused persons as to their bail entitlements under the Act (clause 5);
- (c) prescribing facilities to be provided to accused persons who are held in police custody (clause 6);
- (d) prescribing the manner in which an accused person may apply for court bail (clause 7);
- (e) prescribing certain places at which accused persons held pending appeal to the Supreme Court may be granted bail by the District Court (clause 8);
- (f) requiring notice of a bail decision to be given to the informant (not being a police officer) in cases of alleged domestic violence offences (clause 9);
- (g) requiring notice of a bail decision to be given to the alleged victim in cases of alleged personal violence offences (clause 10);
- (h) enabling notices requiring court attendance and notices concerning bail undertakings to be contained on a single document and providing for the giving of notices (clause 11);
- (i) requiring a person to establish his or her identity and residential address before he or she may be recognised as an “acceptable person” for the purpose of giving surety under a bail undertaking (clause 13);
- (j) requiring certain matters to be verified before a person is allowed to take any action under a bail undertaking (clause 14);
- (k) enabling persons who are unable to attend before a particular court for the purpose of taking action under a bail undertaking to take that action before some other court (clause 16);
- (l) requiring any security or money deposited in accordance with a bail undertaking to be lodged with the clerk of the court concerned (clause 17);
- (m) prescribing certain information that must be given to a person respecting the Fines and Forfeited Recognizances Act 1954 if the person enters into a bail undertaking (clause 20);
- (n) requiring certain particulars to be given to the governor of the prison in which an accused person is held in custody with respect to bail decisions concerning that person (clauses 22 and 23);
- (o) prescribing certain persons as officers by whom certain evidentiary certificates may be signed for the purposes of the Act (clause 24);
- (p) prescribing various forms for the purposes of the Act (clauses 5, 7, 9, 11, 12, 15, 18, 19, 20 and 21);
- (q) other formal matters (clauses 1, 2, 3 and 25).

This Regulation is made under the Bail Act 1978, including section 69 (the general regulation making power) and sections 6, 18, 21, 22, 26, 34, 36, 38, 39, 40, 42, 54, 54A and 60.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
