

Bail Legislation Amendment Bill 2016

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Bail Act 1982</i> amended		
3.	Act amended	3
4.	Section 9A inserted	3
	9A. Review of decision to refuse bail by authorised officer or justice in regional area	3
5.	Section 11 amended	4
6.	Section 13A amended	4
7.	Section 13B amended	5
8.	Section 14 amended	5
9.	Section 15B amended	6
10.	Section 26 amended	6
11.	Section 28 amended	7
12.	Section 31AA inserted	7
	31AA. Varying conditions without requiring fresh bail undertaking	7
13.	Section 32 amended	8
14.	Section 39 amended	9
15.	Section 40A inserted	10
	40A. Variation or revocation of condition requiring surety undertaking	10
16.	Section 51 amended	10
17.	Section 59A amended	11
18.	Section 59B amended	11
19.	Section 60 amended	11
20.	Schedule 1 Part C clause 2 amended	11
21.	Schedule 1 Part C clause 3 amended	11
22.	Schedule 1 Part C clause 4 amended	12

Contents

23.	Schedule 1 Part C clause 5 replaced	13
	5. Exception to cl. 4A for bail in appeal under <i>Criminal Appeals Act 2004</i> Part 2	13
24.	Schedule 2 amended	13
	Part 3 — Courts and Tribunals (Electronic Processes Facilitation) Act 2013 amended	
25.	Act amended	18
26.	Section 27 deleted	18
	Part 4 — Young Offenders Act 1994 amended	
27.	Act amended	19
28.	Section 43 amended	19

Western Australia

LEGISLATIVE COUNCIL

Bail Legislation Amendment Bill 2016

A Bill for

An Act to amend the *Bail Act 1982*, the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* and the *Young Offenders Act 1994*, and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Bail Legislation Amendment Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Bail Act 1982* amended**

2 **3. Act amended**

3 This Part amends the *Bail Act 1982*.

4 **4. Section 9A inserted**

5 After section 9 insert:

6

7 **9A. Review of decision to refuse bail by authorised**
8 **officer or justice in regional area**

9 (1) In this section —

10 *court* means the Children’s Court;

11 *Perth* means the metropolitan region as defined in the
12 *Planning and Development Act 2005* section 4(1) and
13 any prescribed area that adjoins that region;

14 *regional area* means an area outside Perth.

15 (2) If an authorised officer or justice in a regional area
16 refuses to grant bail to a child accused who is in
17 custody for an offence other than murder, the
18 authorised officer or justice must ensure that the
19 decision to refuse bail is reviewed by a judge or
20 magistrate of the court (the *reviewing judicial*
21 *officer*) —

22 (a) as soon as is practicable; and

23 (b) in any event, before the accused is transported
24 from the regional area to Perth.

25 (3) The reviewing judicial officer may substitute a
26 different decision if the reviewing judicial officer
27 considers it appropriate in the circumstances.

s. 5

- 1 (4) The review is to be commenced and conducted in
2 accordance with rules of court.
3

4 **5. Section 11 amended**

5 In section 11(1)(c) delete “section 31(3),” and insert:

6
7 section 31(3) or 31AA(3),
8

9 **6. Section 13A amended**

10 Delete section 13A(2) and (3) and insert:

11

- 12 (2) The jurisdiction referred to in subsection (1) is
13 exercisable only —

14 (a) in respect of an appearance in court before
15 conviction for an offence; and

16 (b) if the judicial officer considers that in the
17 circumstances the grant or continuation of bail
18 would be an unnecessary imposition on the
19 accused.

- 20 (3) Where a judicial officer dispenses with the requirement
21 for bail for an appearance by an accused, the registrar
22 of the court must —

23 (a) in the case of a charge of a simple offence
24 before a court of summary jurisdiction, give to
25 the accused a court hearing notice under the
26 *Criminal Procedure Act 2004*; and

27 (b) in any other case, in accordance with
28 section 13B give to the accused a written notice
29 informing the accused of the next appearance
30 before the court.
31

1 **7. Section 13B amended**

2 In section 13B(1) delete “section 13A(3)” and insert:

3

4 section 13A(3)(b)

5

6 Note: The heading to amended section 13B is to read:

7 **Service and proof of notices under s. 13A(3)(b)**

8 **8. Section 14 amended**

9 Delete section 14(3) and insert:

10

11 (3) Where under subsection (1) a judge revokes the bail of
12 an accused who is at liberty, the judge may —

13 (a) order that the accused be returned to custody to
14 await the appearance for which the bail was
15 granted; and

16 (b) issue any warrant which may be necessary to
17 carry such an order into effect.

18 (3A) Where under subsection (1) a judge varies the bail of
19 an accused who is at liberty, then unless the judge
20 exercises the power conferred by section 31AA the
21 judge may —

22 (a) order that the accused be returned to custody
23 until the accused becomes entitled to be at
24 liberty pursuant to section 11; and

25 (b) issue any warrant which may be necessary to
26 carry such an order into effect.

27

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1 **9. Section 15B amended**

2 In section 15B(5) after “at liberty,” insert:

3

4 then unless it exercises the power conferred by section 31AA

5

6 **10. Section 26 amended**

7 (1) After section 26(1)(ba) insert:

8

9 (bb) grants bail to an accused on conditions imposed
10 for a purpose mentioned in Schedule 1 Part D
11 clause 2(2)(c) or (d); or

12

13 (2) After section 26(2)(aa) insert:

14

15 (ab) grants bail to an accused on conditions imposed
16 for a purpose mentioned in Schedule 1 Part D
17 clause 2(2)(c) or (d); or

18

19 (3) After section 26(2) insert:

20

21 (2A) A bail record form completed under subsection (1) in
22 the circumstances set out in subsection (1)(bb), or a
23 record made under subsection (2) in the circumstances
24 set out in subsection (2)(ab), must identify the
25 conditions of bail imposed for a purpose mentioned in
26 Schedule 1 Part D clause 2(2)(c) or (d).

27

1 **11. Section 28 amended**

2 In section 28(1) delete “section 31(3).” and insert:

3

4 section 31(3) or 31AA(3).

5

6 **12. Section 31AA inserted**

7 After section 31 insert:

8

9 **31AA. Varying conditions without requiring fresh bail**
10 **undertaking**

11 (1) This section applies if —

12 (a) a bail undertaking is in effect in respect of an
13 accused released on bail; and

14 (b) a judicial officer varies the terms and
15 conditions of bail of the accused, other than
16 under section 31A(2); and

17 (c) the accused is present at the proceedings; and

18 (d) the judicial officer is satisfied that the nature of
19 the variation is such that it is unnecessary to
20 require the accused to enter into a fresh bail
21 undertaking reflecting the variation; and

22 (e) if a surety undertaking is in effect in respect of
23 the grant of bail, the judicial officer is satisfied
24 that the surety consents to the variation.

25 (2) If this section applies, the judicial officer may —

26 (a) notify the accused orally of the variation; and

27 (b) direct the registrar of the court to cause written
28 notice of the variation to be given to —

29 (i) the accused; and

s. 13

- 1 (ii) if a surety undertaking is in effect in
2 respect of the grant of bail, the surety.
- 3 (3) If a variation of the terms and conditions of bail is
4 notified to an accused under subsection (2)(b) —
- 5 (a) the bail undertaking entered into by the accused
6 is to be taken to be amended in accordance with
7 the variation; and
- 8 (b) the terms and conditions of the bail undertaking
9 (as varied) continue to apply as if the accused
10 had entered into the bail undertaking in the
11 form; and
- 12 (c) the variation does not affect any surety's
13 liability arising under a surety undertaking
14 entered into as a condition of that grant of bail.
- 15 (4) The power conferred by subsection (2) can be
16 exercised —
- 17 (a) on more than one occasion; and
18 (b) at the same time the power in section 31 is
19 being exercised.
20

21 **13. Section 32 amended**

- 22 (1) Delete section 32(1) and insert:
23
- 24 (1) A written notice to an accused under section 31(2)
25 or 31AA(2)(b) must be —
- 26 (a) given to the accused personally; or
27 (b) sent to the accused by post to the accused's
28 address appearing in the records of the court; or
29 (c) in urgent cases or with the accused's consent,
30 provided to the accused by electronic means in
31 accordance with the regulations.

- 1 (1A) A written notice to a surety under section 31AA(2)(b)
2 must be —
3 (a) given to the surety personally; or
4 (b) sent to the surety by post to the surety’s address
5 appearing in the records of the court; or
6 (c) in urgent cases or with the surety’s consent,
7 provided to the surety by electronic means in
8 accordance with the regulations.
9

- 10 (2) In section 32(2) delete “subsection (1) shall” and insert:
11

12 subsection (1) or (1A) must
13

- 14 (3) In section 32(3) delete “subsection (1)(b),” and insert:
15

16 subsection (1)(b) or (1A)(b),
17

- 18 (4) In section 32(5)(a) delete “subsection (1) shall be” and insert:
19

20 subsection (1) or (1A) is
21

22 Note: The heading to amended section 32 is to read:

23 **Service and proof of notices under s. 31 and 31AA**

24 **14. Section 39 amended**

25 In section 39:

- 26 (a) in paragraph (c) delete “dependants.” and insert:
27

28 dependants; and
29

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(b) after paragraph (c) insert:

(d) any history, or alleged history, of violence or intimidation by the accused towards the applicant.

15. Section 40A inserted

After section 40 insert:

40A. Variation or revocation of condition requiring surety undertaking

(1) Where bail is granted subject to a condition that requires a surety undertaking, an application may be made by or on behalf of an accused to vary or revoke the condition on the grounds that it prevents the accused from being released on bail.

(2) On the application an appropriate judicial officer may, if the judicial officer considers it appropriate in the circumstances —

- (a) reduce the amount of the surety undertaking; or
- (b) revoke the condition.

16. Section 51 amended

After section 51(1) insert:

(1A) Without limiting subsection (1), an accused has reasonable cause under that subsection if the judicial officer before whom the accused is required to appear excuses the accused from that requirement.

1 **17. Section 59A amended**

2 In section 59A(2) delete “section 13A(3).” and insert:

3

4 section 13A(3)(b).

5

6 **18. Section 59B amended**

7 In section 59B(b) delete “section 13A(3),” and insert:

8

9 section 13A(3)(b),

10

11 **19. Section 60 amended**

12 In section 60 delete “section 13A(3),” and insert:

13

14 section 13A(3)(b),

15

16 **20. Schedule 1 Part C clause 2 amended**

17 In Schedule 1 Part C clause 2(5) delete “sections 46,” and insert:

18

19 sections 31AA, 46,

20

21 **21. Schedule 1 Part C clause 3 amended**

22 In Schedule 1 Part C clause 3:

23 (a) after paragraph (b) insert:

24

25 (ba) to the extent that it is practicable —

26 (i) the physical and mental health of the
27 accused; and

s. 22

- 1 (ii) any cognitive impairment or disability the
2 accused might have; and
- 3 (iii) any other difficulty the accused might have
4 in complying with the conditions of bail;
5 and
- 6 (iv) any difficulty faced by others in providing
7 support and protection to the accused or to a
8 person affected by the offence or offences
9 (including any other offence or offences for
10 which the accused is awaiting trial);
- 11 and
- 12
- 13 (b) in paragraph (d) delete “him.” and insert:
14
- 15 him; and
16
- 17 (c) after paragraph (d) insert:
18
- 19 (e) in the case of a serious offence, the views of any
20 victim of the offence or any family member of a
21 victim (if available to the authorised officer or
22 judicial officer), to the extent relevant to a concern
23 that the accused person could, if released from
24 custody, endanger the safety of victims, individuals
25 or the community.
26

27 **22. Schedule 1 Part C clause 4 amended**

28 In Schedule 1 Part C clause 4(1) delete the passage that begins
29 with “to the questions” and continues to the end of the subclause
30 and insert:
31

- 32 to —
- 33 (a) the questions set out in clause 1; and

- 1 (b) the fact of the conviction and any sentence that is
2 likely to be imposed; and
3 (c) any other matters that the judicial officer considers
4 relevant.
5

6 **23. Schedule 1 Part C clause 5 replaced**

7 Delete Schedule 1 Part C clause 5 and insert:
8

9 **5. Exception to cl. 4A for bail in appeal under *Criminal***
10 ***Appeals Act 2004* Part 2**

- 11 (1) Clause 4A does not apply to the bail of a person who is
12 awaiting the disposal of appeal proceedings under the
13 *Criminal Appeals Act 2004* Part 2.
14 (2) For the purposes of this Part the person is to be taken to be
15 an accused to whom clause 1 applies.
16 (3) In addition to the questions set out in clause 1, the judicial
17 officer in whom jurisdiction is vested must have regard to
18 the fact of—
19 (a) the conviction by a court of summary jurisdiction;
20 and
21 (b) any determination by that court that a sentence of
22 imprisonment is appropriate.
23

24 **24. Schedule 2 amended**

25 After Schedule 2 item 3 insert:
26

4. Criminal Code set out in the Schedule to the *Criminal Code*
***Act 1995* (Commonwealth)**

- | | |
|----------|---|
| s. 115.1 | Murder of an Australian citizen or
a resident of Australia |
| s. 115.2 | Manslaughter of an Australian
citizen or a resident of Australia |

s. 24

s. 115.3	Intentionally causing serious harm to an Australian citizen or a resident of Australia
s. 115.4	Recklessly causing serious harm to an Australian citizen or a resident of Australia
s. 132.2	Robbery
s. 132.3	Aggravated robbery
s. 132.4	Burglary
s. 270.5	Servitude offences
s. 270.6A	Forced labour offences
s. 270.7	Deceptive recruiting for labour or services
s. 270.7B	Forced marriage offences
s. 302.2	Trafficking commercial quantities of controlled drugs
s. 302.3	Trafficking marketable quantities of controlled drugs
s. 302.4	Trafficking controlled drugs
s. 303.5	Cultivating marketable quantities of controlled plants
s. 303.6	Cultivating controlled plants
s. 304.1	Selling commercial quantities of controlled plants
s. 304.2	Selling marketable quantities of controlled plants
s. 304.3	Selling controlled plants
s. 305.3	Manufacturing commercial quantities of controlled drugs
s. 305.4	Manufacturing marketable quantities of controlled drugs

- s. 305.5 Manufacturing controlled drugs
- s. 306.2 Pre-trafficking commercial quantities of controlled precursors
- s. 306.3 Pre-trafficking marketable quantities of controlled precursors
- s. 306.4 Pre-trafficking controlled precursors
- s. 307.1 Importing and exporting commercial quantities of border controlled drugs or border controlled plants
- s. 307.2 Importing and exporting marketable quantities of border controlled drugs or border controlled plants
- s. 307.3 Importing and exporting border controlled drugs or border controlled plants
- s. 307.4 Importing and exporting border controlled drugs or border controlled plants — no defence relating to lack of commercial intent
- s. 307.5 Possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants
- s. 307.6 Possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants
- s. 307.7 Possessing unlawfully imported border controlled drugs or border controlled plants

s. 24

- | | |
|-----------|---|
| s. 307.8 | Possessing commercial quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported |
| s. 307.9 | Possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported |
| s. 307.10 | Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported |
| s. 307.11 | Importing and exporting commercial quantities of border controlled precursors |
| s. 307.12 | Importing and exporting marketable quantities of border controlled precursors |
| s. 307.13 | Importing and exporting border controlled precursors |
| s. 308.1 | Possessing controlled drugs |
| s. 308.2 | Possessing controlled precursors |
| s. 308.3 | Possessing plant material, equipment or instructions for commercial cultivation of controlled plants |
| s. 308.4 | Possessing substance, equipment or instructions for commercial manufacture of controlled drugs |
| s. 309.2 | Supplying controlled drugs to children |

- s. 309.3 Supplying marketable quantities of controlled drugs to children for trafficking
- s. 309.4 Supplying controlled drugs to children for trafficking
- s. 309.7 Procuring children for trafficking marketable quantities of controlled drugs
- s. 309.8 Procuring children for trafficking controlled drugs
- s. 309.10 Procuring children for pre-trafficking marketable quantities of controlled precursors
- s. 309.11 Procuring children for pre-trafficking controlled precursors
- s. 309.12 Procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants
- s. 309.13 Procuring children for importing or exporting border controlled drugs or border controlled plants
- s. 309.14 Procuring children for importing or exporting marketable quantities of border controlled precursors
- s. 309.15 Procuring children for importing or exporting border controlled precursors
- s. 310.2 Danger from exposure to unlawful manufacturing
- s. 310.3 Harm from exposure to unlawful manufacturing

1 **Part 3 — *Courts and Tribunals (Electronic Processes***
2 ***Facilitation) Act 2013* amended**

3 **25. Act amended**

4 This Part amends the *Courts and Tribunals (Electronic*
5 *Processes Facilitation) Act 2013*.

6 **26. Section 27 deleted**

7 Delete section 27.

1 **Part 4 — *Young Offenders Act 1994* amended**

2 **27. Act amended**

3 This Part amends the *Young Offenders Act 1994*.

4 **28. Section 43 amended**

5 In section 43(7) after “issue” insert:

6

7 a further notice to attend court or

8

9
