

THE BAIL LEGISLATION AMENDMENT BILL 2016

EXPLANATORY MEMORANDUM

Overview of the Bill

The Bail Legislation Amendment Bill 2016 makes amendments to the *Bail Act 1982* (Bail Act), the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* and the *Young Offenders Act 1994*.

This Bill implements recommendations of the review of the Bail Act and addresses issues that flow from the Government's *Deaths in Custody and Aboriginal Overrepresentation in the Justice System* project. It seeks to provide flexibility in regard to bail for less serious offences, seeks to reduce the number of warrants of arrest issued for non-appearance for simple offences, introduces a number of amendments that provide additional safeguards for victims of domestic violence and looks to improve various aspects of the operation of the Bail Act.

Part 1: Preliminary

Clause 1 – Short title

This clause provides that the short title is the *Bail Legislation Amendment Act 2016*.

Clause 2 – Commencement

This clause provides that Part 1 of the Act will come into operation on the day the Act receives the Royal Assent, and that the rest of the Act will come into operation on a day fixed by proclamation. The clause provides that different days may be fixed for different provisions.

Part 2: The *Bail Act 1982* amended

Clause 3 – Act amended

This clause provides that this Part amends the *Bail Act 1982*.

Clause 4 – Section 10A inserted

This clause inserts a proposed new section 10A in order to provide that before a child accused is transported from a regional area to Perth for remand in custody, the decision to refuse the child's bail must be reviewed by a judge or a magistrate, except in circumstances of a charge of murder.

Proposed section 10A(2) places a duty on the justice or authorised officer (an authorised police officer or an authorised community services officer who may grant a child accused bail) to ensure that the review takes place as soon as is practicable but in any event, before the child accused is transported to Perth.

Clause 5 – Section 11 amended

The proposed amendment to section 11 is a consequence of the insertion of a proposed new section 31AA by clause 12, in terms of which the terms and conditions of bail may be varied by a judicial officer.

Clause 6 – Section 13A amended

Clause 6 deletes section 13A(2) and (3) and inserts a new section 13A(2) and (3). This proposed amendment clarifies that a judicial officer or authorised officer who has jurisdiction to dispense with bail in accordance with section 13A, has discretion to dispense with bail for simple offences, even in the situation where the accused is already on bail for another offence.

The proposed new section 13A(2)(b) also clarifies the circumstances under which the discretion to dispense with bail may be exercised by substituting reference to “the completion of bail papers” with “the grant or continuation of bail”.

The proposed new section 13A(3)(a) provides that where a court has dispensed with bail and released an accused then, in the case of a charge of a simple offence before a court of summary jurisdiction, the registrar of the court must give the accused a court hearing notice under the *Criminal Procedure Act 2004* (WA). This will enable the accused to be convicted in his/her absence if there is a failure to attend.

Clause 7 – Section 13B amended

Clause 7 amends section 13B(1) so as to delete reference to section 13A(3) and replace it with reference to section 13A(3)(b). This amendment confirms the operation of section 13B in relation to all offences but for those covered under the proposed new section 13A(3)(b).

This clause also includes a note to change the heading of section 13B to read “Service and proof of notices under s. 13A(3)(b)”.

Clause 8 – Section 14 amended

Clause 8 amends section 14 in order to provide that where a judge varies the bail of an accused who is at liberty and exercises the powers under the proposed new section 31AA, then the power to order that an accused be returned to custody does not apply.

Clause 9 – Section 15B amended

Clause 9 amends section 15B in order to provide that where the Court of Appeal, in determining an appeal, varies the bail of an accused who is at liberty and exercises the powers under the proposed new section 31AA, then the power to order that an accused be returned to custody does not apply.

Clause 10 – Section 26 amended

Clause 10 amends section 26 so as to require a decision-maker, who grants bail on protective conditions, to complete a bail record form (in the case of an authorised officer or a justice) or make a record of decision and reasons therefore (in the case of a judicial officer, other than a justice) and clearly state thereon which, if any, bail conditions are protective conditions of bail. A protective condition is one mentioned in Schedule 1 Part D clause 2(2)(c) or (d) of the Bail Act, that is, which is to ensure that an accused does not endanger the safety, welfare or property of any person; or does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

Clause 11 – Section 28 amended

This clause amends section 28 to include reference to the proposed new section 31AA(3) in terms of which a bail undertaking is taken to be amended when the terms and conditions of bail are varied in accordance with proposed new section 31AA.

Clause 12 – Section 31AA inserted

Clause 12 inserts a proposed new section 31AA.

This proposed section will give a judicial officer the ability to vary bail without requiring the accused to enter into a fresh undertaking. The proposed section sets out the circumstances under which this power may be exercised and the consequences of the variation of the terms and conditions of bail when this section is applied by the judicial officer.

Clause 13– Section 32 amended

Clause 13 amends section 32 which details the manner in which notice of a different time or different time and place for appearance shall be sent to an accused.

The proposed new section 32(1) retains reference to section 31(2) but also provides for the manner in which written notice is to be provided to an accused under the proposed new section 31AA(2)(b), i.e. when a judicial officer directs the Registrar of the Court to cause written notice of the bail variation to be given to the accused.

Clause 13(1) also proposes the inclusion of a new section 32(2A) to cover the circumstances in which a judicial officer has directed the Registrar of the Court to cause written notice of the bail variation to be given to a surety in accordance with the proposed new section 31AA(2)(b).

Clauses 13(2) – (4) propose further consequential amendments to section 32 to refer to notices to an accused under both proposed section 32(1) and notices to a surety under section 32(2A)

This clause also includes a note to change the heading of section 32 to read “Service and proof of notices under s. 31 and 31AA”.

Clause 14 – Section 39 amended

Clause 14 proposes to introduce a further factor that a surety approval officer shall have regard to when determining whether an applicant is suitable to be a surety. The proposed new section 39(d) provides that the surety approval officer shall have regard to any history, or alleged history, of violence or intimidation by the accused towards the surety applicant.

Clause 15 – Section 41A inserted

Clause 15 inserts a new proposed section 41A which provides that an application may be made by or on behalf of an accused to vary or revoke a condition that requires a surety undertaking, on the grounds that the condition prevents the accused from being released on bail.

Clause 16 – Section 51 amended

Clause 16 inserts a proposed new section 51(1A) which provides that an accused has reasonable cause for failing to appear at the time and place specified or deemed to be specified under section 28(2)(a), if the judicial officer before whom the accused is required to appear excuses the accused from that requirement. This amendment will enable Courts to excuse the appearance of an accused for a particular bail appearance.

Clause 17 – Section 59A amended

Clause 17 amends section 59A(2) by deleting reference to section 13A(3) and replacing it with reference to section 13A(3)(b). This amendment is a consequence of the amendments proposed by clause 6 and is required in order to exclude from the operation of section 59A(2) the situation where bail was dispensed with in the case of a charge of a simple offence before a Court of summary jurisdiction.

Clause 18 – Section 59B amended

Clause 18 amends section 59B(b) by deleting reference to section 13A(3) and replacing it with reference to section 13A(3)(b). This amendment is a consequence of the amendments proposed by clause 6 and is required in order to exclude from the operation of section 59B(b) the situation where bail was dispensed with in the case of a charge of a simple offence before a Court of summary jurisdiction.

Clause 19 – Section 60 amended

Clause 19 amends section 60 by deleting reference to section 13A(3) and replacing it with reference to section 13A(3)(b). This amendment is a consequence of the amendments proposed by clause 6 and is required in order to exclude from the operation of section 60 the situation where bail was dispensed with in the case of a charge of a simple offence before a Court of summary jurisdiction.

Clause 20 – Schedule 1 Part C clause 2 amended

Clause 20 amends Schedule 1 Part C clause 2(5) by including reference to the proposed new section 31AA.

Clause 21 – Schedule 1 Part C clause 3 amended

Clause 21(a) amends Schedule 1 Part C clause 3 by inserting additional factors that the judicial officer or authorised officer, when exercising discretion to grant or refuse bail, shall have regard to in considering whether an accused may do any of the things mentioned in Schedule 1 Part C clause 1(a). These additional factors include the accused's health, any difficulty the accused might have in complying with bail conditions and any difficulty faced by others in providing support and protection to the accused or to a person affected by the offence.

Clause 21(c) amends Schedule 1 Part C clause 3 by inserting additional factors that the judicial officer or authorised officer shall have regard to when exercising discretion to grant or refuse bail in the case of a serious offence. The additional factors to be taken into consideration are the views of the victim of the offence or any

family member of the victim (if available to the authorised officer or judicial officer), to the extent relevant to a concern that the accused could, if released from custody, endanger the safety of victims, individuals or the community.

Clause 22 – Schedule 1 Part C clause 4 amended

Clause 22 amends Schedule 1 Part C clause 4(1) by inserting a provision requiring a judicial officer, in exercising his/her discretion to grant or refuse bail for an accused awaiting sentence, to consider the fact of the conviction and any sentence that is likely to be imposed.

Clause 23 – Schedule 1 Part C clause 5 replaced

Clause 23 deletes clause 5 to Schedule 1 Part C and replaces it with a proposed new clause 5. The new clause 5 confirms that in the case of a person awaiting the disposal of appeal proceedings under the Criminal Appeals Act 2004 Part 2, the discretion to grant or refuse bail shall be exercised having regard to the questions and matters set out in clause 1 to Schedule 1 Part C as well as the additional consideration of the fact of the conviction by a Court of summary jurisdiction and any determination by that court that a sentence of imprisonment is appropriate.

Clause 24 – Schedule 2 amended

Clause 24 amends Schedule 2 by adding, as a proposed new item 4, a list of offences from the *Criminal Code Act 1995* (Cth) to the list of serious offences as defined in section 3(1). The offences in item 4 are substantially the *Criminal Code Act 1995* (Cth) equivalent to the *Criminal Code* (WA) offences already listed in Schedule 2 item 1.

Part 3: The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* amended

Clause 25 – Act amended

This clause provides that this Part amends the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*.

Clause 26 – Section 27 deleted

Clause 26 deletes section 27 the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*. Section 27 has amended section 32 of the *Bail Act 1982* and can be deleted.

Part 4: The *Young Offenders Act 1994* amended

Clause 27 – Act amended

This clause provides that this Part amends the *Young Offenders Act 1994*.

Clause 28 – Section 43 amended

Clause 28 amends section 43(7) to provide that, where a young person does not attend Court, the Court has (in addition to its current discretion to issue a warrant), the option of causing a further Court hearing notice to be issued.