

1990 – No. 168

BAIL ACT 1978 – REGULATION
(Relating to applications for bail and for review of bail decisions)

NEW SOUTH WALES



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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.

JOHN DOWD
Attorney General.

Commencement

1. This Regulation commences on *

Amendments

2. The Bail Regulation 1979 is amended:

(a) by omitting clause 16 and by inserting instead the following clause:

Request to review bail decision

16. (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 though the request does not comply with subclause (1).

* The Regulation commenced on 23 March 1990.

(3) Subject to subclauses (5) and (6), a court, on receipt of a request to review a bail decision, must cause notice of the time and place of hearing to be given to the applicant.

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

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

(a) it is satisfied that the accused person is evading service or cannot be contacted; or

(b) in its opinion, the interests of justice so demand.

(6) If, under section 22A of the Act, the Supreme Court refuses to entertain an application for review of a bail decision, it is required to cause notice to that effect to be given to the applicant.

(b) by inserting after clause 24 the following clause:

Notice by gaoler of person in custody after grant of bail

25. A notice for the purposes of section 54A of the Act may be given using Form 14.

(c) by omitting Form 3 from Schedule 1 and by inserting instead the following form:

Form 3

Clauses 6, 16

BAIL ACT 1978

*Application for Bail OR for Review of Bail
Determination OR for Alteration of Bail Conditions*

I, of
(name) (address)
being in custody at charged with
(place)
..... apply to the
(name of court)
at for:
(place)

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* 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 if 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:

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

(d) by omitting Form 11 from Schedule 1 and by inserting instead the following form:

Form 11

Clause 16

BAIL ACT 1978

*Request for Review of Bail Determination
OR
for Alteration of Bail Conditions*

(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 pursuant to Part 6 of the Bail Act 1978 to the *.....
at for 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 if not applicable.

(e) by omitting Form 13 from Schedule 1 and by inserting instead the following forms:

Form 13
Clause 19
BAIL ACT 1978

Notice Respecting the Review of a Bail Decision

Right of review

1. Part 6 of the Bail Act 1975 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.

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3. A review may only be had at the request of:
 - (i) the accused person;
 - (ii) the informant (being a police officer);
 - (iii) 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
 - (iv) 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 Magistrate or the Supreme Court
a Justice	the Justice or Magistrate or the Supreme Court
a Magistrate	a Magistrate or the Supreme Court
the District Court	the District Court or the Supreme Court
the Court of Criminal Appeal	the Court of Criminal Appeal
the Supreme Court	the Supreme Court

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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 1979, a copy of which may be obtained from a court office or at a prison.

Special right in case of inability to meet bail condition

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 where you are in custody is required to notify the appropriate court of your application, but if this is not done, you can still apply for the bail condition review.

Second or subsequent applications to the Supreme Court

8. 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.

Form 14

Clause 25

BAIL ACT 1978

*Notice by Custodian Concerning Person in
Custody after Grant of Bail*

TO: The Registrar,
* Court at

TAKE NOTICE that

(name)

of (111)

..... who was granted bail by the Court on (Date)

(date)

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

.....

.....

.....
for the following reason(s):

for the following reason(s).

.....
.....

(signed)

** Superintendent, prison.

OR

** Officer-in-charge,

* Insert name of court

** Strike out the inappropriate designation.

EXPLANATORY NOTE

The object of this Regulation is to amend the Bail Regulation 1979 to vary the forms used to apply for bail and for review of bail decisions and the form of notice given to persons on bail for their information. The variations are necessary as a consequence of amendments to the Bail Act 1978 which:

- (a) allow the Supreme Court to refuse to entertain a second or subsequent application for review of bail except where circumstances justify the application; and
- (b) provide special rights of review for the benefit of persons on bail who remain in custody because they are unable to meet their bail conditions.
