



New South Wales

Bail Regulation 2014

under the

Bail Act 2013

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Bail Act 2013*.

GREG SMITH, MP
Attorney General

Explanatory note

The object of this Regulation is to make provision for the following matters under the *Bail Act 2013*:

- (a) the information to be given to an accused person after bail is granted, refused or revoked,
- (b) the form and manner in which reasons for a bail decision are to be recorded,
- (c) the information that must be given to a person who is in police custody after having been charged with an offence,
- (d) the facilities to be provided by police to an accused person in custody who is not released on bail,
- (e) special notice requirements in relation to bail decisions for domestic violence offences,
- (f) the procedure for making and hearing bail applications,
- (g) requirements relating to bail conditions,
- (h) forfeiture of security under the Act, including the information required to be included in forfeiture notices,
- (i) other records to be made, notices to be given and forms to be used under the Act.

This Regulation is made under the *Bail Act 2013*, including sections 26, 27, 28, 33, 34, 38, 40, 42, 44, 46, 76, 85 and 98 (the general regulation-making power) and Schedule 2 to the Act.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Bail Regulation 2014*.

2 Commencement

This Regulation commences on the date of commencement of section 98 of the *Bail Act 2013* and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

approved means approved by the Attorney General for the purposes of the provision in which the expression occurs.

bail decision, in respect of a domestic violence offence (within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*), includes the following:

- (a) a bail decision in respect of an application for an apprehended domestic violence order, if the defendant is (by section 83 of that Act) taken to be an accused person charged with an offence,
- (b) a bail decision in respect of an appeal against an apprehended domestic violence order, if the defendant is (by section 85 of that Act) taken to be an accused person who is in custody.

general manager of a correctional centre means the general manager or other officer for the time being in charge of, or having the control or management of, the correctional centre.

registrar of a court includes the following:

- (a) a registrar of the Supreme Court,
- (b) the Registrar of the Court of Criminal Appeal,
- (c) the Registrar of the Land and Environment Court,
- (d) a registrar of the District Court,
- (e) a registrar of the Local Court,
- (f) a Children's Registrar (within the meaning of the *Children's Court Act 1987*).

the Act means the *Bail Act 2013*.

- (2) To avoid doubt, a reference in this Regulation to a bail authority includes a reference to an appropriate officer acting as, or on behalf of, a bail authority under section 95 of the Act.
- (3) Notes included in this Regulation do not form part of this Regulation.

Part 2 Making and variation of bail decisions

Division 1 General

4 Notice of hearing to be given to accused person granted bail

- (1) For the purposes of section 33 (2) (a) of the Act, a notice of the court in which a person is required to appear, and of the time, date and place of that appearance:
 - (a) may be included in a copy of the bail acknowledgment given to the person or a notice setting out the terms of the bail acknowledgment, and
 - (b) if it is so included, must be in the approved form.
- (2) In addition, a notice of the court in which a person is required to appear, and of the time, date and place of that appearance:
 - (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.
- (3) If proceedings in which an accused person granted bail is required to appear are adjourned, a notice of the court in which the person is next required to appear, and of the time, date and place of that appearance, is to be given to the accused person in an approved form.

5 Information about review or variation of decision to be given to accused person

For the purposes of sections 33 (4) (d) and 34 (1) (b) of the Act, the information to be included in a bail acknowledgment or given to the accused person is as follows:

- (a) an explanation of the meaning of “bail decision”,
- (b) information specifying the courts or persons that may make bail decisions (including the circumstances in which a decision of the Supreme Court may be varied by another court or person),
- (c) information specifying the bail applications that may be made and the persons who may make a bail application,
- (d) information about the special powers of authorised justices to vary reporting conditions, residence conditions, association conditions and curfew conditions under section 52 of the Act,
- (e) information about the special powers of courts and authorised justices to review bail conditions under section 55 of the Act if a person granted bail remains in custody because a bail condition has not been complied with,
- (f) details of the way in which an accused person may make a bail application,
- (g) information to the effect that a court to which a bail application is made may confirm or vary the decision or give a new decision.

6 Notice required if accused person granted bail remains in custody

The notice that section 42 of the Act requires if an accused person granted bail remains in custody must be given in the approved form.

7 Particulars of orders in bail decisions

- (1) If an accused person is, as a consequence of a bail decision, committed to a correctional centre by warrant, the court or 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 a correctional centre otherwise than by warrant, the court must cause the required particulars to be notified to the general manager of the correctional centre 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 general manager of the correctional centre 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 for the offence concerned, and
 - (b) any conditions imposed on the grant of bail, and
 - (c) any decision as to:
 - (i) the nature and sufficiency of security that is acceptable security for the purposes of a bail condition that imposes a security requirement, and
 - (ii) the person or persons, or the class or description of persons, who are suitable persons to enter into a bail security agreement under a security requirement, and
 - (iii) the person or persons, or the class or description of persons, acceptable for the purposes of a bail condition that requires a character acknowledgment, and the number of acceptable persons required for those purposes.

8 Notification of bail acknowledgment and compliance with bail conditions

- (1) This clause applies if:
 - (a) an accused person is in custody as a consequence of a bail decision, and
 - (b) the person subsequently gives a bail acknowledgment, and
 - (c) all bail conditions are complied with such that the person may be released from custody in respect of the offence.
- (2) The bail authority that accepts the bail acknowledgment from the accused person must immediately notify the general manager of the correctional centre at which the accused person is detained that the accused person has signed the bail acknowledgment and that bail conditions have been complied with.

9 Exercise of certain functions by court staff and police officers

- (1) The following persons are prescribed as appropriate officers under section 95 (2) (f) of the Act in relation to the bail acknowledgment functions of a bail authority:
 - (a) an officer of the Department of Attorney General and Justice who is employed in a court registry or who is authorised by the Attorney General for the purposes of this clause (if the bail decision is made by a court or authorised justice),
 - (b) a police officer (if the bail decision is made by a police officer with power to grant bail).
- (2) The following functions are the *bail acknowledgment functions* of a bail authority:
 - (a) the function of giving an accused person a bail acknowledgment or any other notice required to be given by the bail authority,
 - (b) the function of accepting a signed bail acknowledgment from the accused person.

- (3) This clause does not permit a police officer who does not have power to grant bail to exercise the following functions:
 - (a) a function of deciding whether security or a person is acceptable under section 26 (4) or 27 (3) of the Act,
 - (b) a function of deciding whether a person is a suitable person under clause 23.
- (4) Accordingly, in any case where a decision referred to in subclause (3) has to be made by the police officer to whom a bail acknowledgment is given, the function of accepting the signed bail acknowledgment (and making that decision) is to be exercised by a police officer with power to grant bail.

Division 2 Special provisions for police bail

10 Bail eligibility information

- (1) For the purposes of section 44 of the Act, the bail eligibility information required to be given to a person in police custody charged with an offence is to include the following:
 - (a) an explanation that the accused person is entitled to be granted bail for the offence, or released without bail, unless there are unacceptable risks,
 - (b) a list of the 4 types of “unacceptable risk” under the Act,
 - (c) an explanation of the bail decisions that can be made if there are unacceptable risks,
 - (d) an explanation of the bail decisions that can be made if the offence is an offence for which there is a right to release.
- (2) The information is to be given in an approved form.

11 Records verifying bail eligibility information was given

- (1) For the purposes of section 44 (2) of the Act, the prescribed form in which a record is to be kept verifying that a person in police custody charged with an offence has been given the bail eligibility information is a form that contains the following information:
 - (a) the name of the police officer who gave the person charged with the offence the bail eligibility information,
 - (b) the police station at which the bail eligibility information was given,
 - (c) the name of the person charged with the offence,
 - (d) a description of the offence with which the person is charged,
 - (e) the date on which the bail eligibility information was given.
- (2) The record may be made and kept in electronic form.

12 Record of reasons for decision

- (1) A police officer who makes a bail decision must ensure that the record of reasons for the decision is made in the approved form and endorsed in the approved manner.
- (2) The police officer must ensure that the endorsed form, or a copy of the form, is immediately sent to the court before which the accused person is required to appear.
- (3) If a bail decision is made in relation to more than one offence, the reasons for the refusal of bail may be recorded on one form.

13 Facilities to be provided by police if accused person not released

- (1) The facilities that are required by section 46 (2) of the Act to be made available to any accused person in police custody who is refused bail or not released on bail by a police officer are as follows:
 - (a) facilities for an accused person to wash, shower or bathe,
 - (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, and the person who brings the clothing consents to the clothing being searched.

Division 3 Special provisions for sexual assault and personal violence offences

14 Bail authority to notify informant of bail decision for domestic violence offence

- (1) A bail authority that grants or refuses bail for a domestic violence offence must immediately give notice of the bail decision to the informant, unless the informant is a police officer.
- (2) The notice may be given personally or by post.
- (3) The notice must contain the information referred to in clause 5.
- (4) Any notice given of a decision to grant bail must specify the bail conditions.
- (5) In this clause:

domestic violence offence means a domestic violence offence within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*.

informant includes a protected person within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*.

15 Police to give notice of bail decisions for sexual assault and personal violence offences

- (1) As soon as practicable after a bail decision is made in respect of a sexual assault offence or a personal violence offence, the informant for that offence (if 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 a bail authority to notify a bail decision to an informant under clause 14.
- (4) In this clause:

domestic relationship has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

personal violence offence has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*, but includes an offence under section 61 of the *Crimes Act 1900*, or an offence of attempting to commit an offence under that section, only if the accused person has a domestic relationship with the alleged victim of the offence.

sexual assault offence means an offence under Division 10 (other than section 79 or 80) of Part 3 of the *Crimes Act 1900* or an offence under section 344A of that Act with respect to such an offence, but it does not include any offence in the nature of an attempt (whether under section 344A or otherwise) unless the attempt involved an assault on a person.

victim in relation to an offence under section 14 of the *Crimes (Domestic and Personal Violence) Act 2007* of contravening a prohibition or restriction specified in an order, means the person for whose protection the order was made.

- (5) In the definition of ***sexual assault offence*** in subclause (4), a reference to an offence under Division 10 of Part 3 of the *Crimes Act 1900* is taken to extend to a repealed offence that was contained in that Division if a bail decision relates to such an offence.

Part 3 Bail applications

Division 1 Release applications

16 Making of release application

- (1) An accused person is to make a release application in the following manner:
 - (a) orally, if the person is at that time appearing before the court, or
 - (b) if the person is not appearing before the court, in writing in the approved form.
- (2) A written release application may be signed by the accused person or, on the accused person's behalf, by his or her lawyer, spouse, de facto partner, parent or guardian.
- (3) A court or authorised justice may make a decision on a release application even if the accused person has not complied with the provisions of subclause (1) or (2).
- (4) An accused person may, in one application, make a release application to a court or authorised justice in respect of more than one offence.
- (5) If an accused person who makes a release application is in custody at a correctional centre, the general manager of the correctional centre must forward the application, without undue delay, to the registrar of the court to which the application is made.
- (6) To avoid doubt, a prosecutor is not required to give notice to an accused person of a decision to oppose a release application made by the accused person or to oppose the application in writing.

Division 2 Detention applications

17 Making of detention application

- (1) A prosecutor is to make a detention application in writing and in the approved form.
- (2) A court or authorised justice may make a decision on a detention application even if the application does not comply with this clause.
- (3) A prosecutor may, in one detention application, make a detention application in respect of more than one offence committed or alleged to have been committed by the same person.

18 Notice of detention application

- (1) On receipt of a detention application, a court or authorised justice must give notice of the time and place of hearing to:
 - (a) the applicant, and
 - (b) the accused person.
- (2) The court or authorised justice is not required to give notice of the time and place of hearing to a person if satisfied that written notice of the time and place of hearing has already been given to the person by a police officer.
- (3) If the accused person does not appear at the hearing, the court or authorised justice, on proof of notice having been given to the person, may proceed to hear and determine the application.
- (4) A court or authorised justice may dispense with the giving of notice if satisfied that:
 - (a) the accused person is evading service or cannot be contacted, or
 - (b) the interests of justice so demand.

19 Withdrawal by Crown of detention application

For the purposes of section 40 (2) (b) of the Act, a notice that the Crown does not intend to proceed with a detention application may be filed with the Local Court.

Division 3 Variation applications

20 Making of variation application

- (1) An interested person (within the meaning of section of 51 of the Act) is to make a variation application in writing and in the approved form.
- (2) An accused person may make a variation application orally if the person is before the court.
- (3) A court or authorised justice may make a decision on a variation application even if the application does not comply with subclause (1).
- (4) An interested person may, in one variation application, make a variation application in respect of more than one offence committed or alleged to have been committed by the same person.
- (5) If an accused person who makes a variation application is in custody at a correctional centre, the general manager of the correctional centre must forward the variation application, without undue delay, to the registrar of the court to which the application is made.

21 Notice of variation application

- (1) On receipt of a variation application, a court or authorised justice must give notice of the time and place of hearing to:
 - (a) the applicant, and
 - (b) the accused person (if the accused person is not the applicant), and
 - (c) the prosecutor (if not the applicant).
- (2) The court or authorised justice is not required to give notice of the time and place of hearing to a person if satisfied that notice of the time and place of hearing has already been given to the person by a police officer.
- (3) If the accused person does not appear at the hearing, the court or authorised justice, on proof of notice having been given to the person, may proceed to hear and determine the application.
- (4) A court or authorised justice may dispense with the giving of notice if it is satisfied that:
 - (a) the accused person is evading service or cannot be contacted, or
 - (b) the interests of justice so demand.
- (5) The Supreme Court must give notice to a person who makes a variation application of a decision to refuse to entertain the application.
- (6) In this clause:
prosecutor has the same meaning as it has in section 51 of the Act.

Part 4 Bail conditions

Division 1 Security requirements

22 Bail guarantor to provide evidence of identity and address

- (1) A bail authority may refuse to accept security for the purposes of a security requirement, or enter into a bail security agreement, until the bail authority is satisfied, on such evidence as appears to the bail authority to be sufficient, as to the identity and residential address of the person who proposes to give the security or enter into the bail security agreement.
- (2) Nothing in this clause limits the powers of a bail authority to refuse to accept a security or enter into a bail security agreement.

23 Entry into bail security agreement

- (1) A person (other than the accused person) may enter into a bail security agreement only if the person is a suitable person to enter into that agreement.
- (2) A decision as to which person or persons, or class or description of persons, is a *suitable person* to enter into a bail security agreement is to be made by:
 - (a) the bail authority that imposes the bail condition that requires entry into a bail security agreement, or
 - (b) the officer or court to whom the bail acknowledgment is given (if no decision has been made under paragraph (a)).
- (3) A bail authority must not enter into a bail security agreement with a person unless the bail authority is satisfied:
 - (a) that a decision has been made as to which person, or class or description of persons, is a suitable person to enter into the bail security agreement, and
 - (b) that the person:
 - (i) is a suitable person referred to in that decision, or
 - (ii) belongs to a class or description of suitable persons referred to in that decision.

24 Deposit of security

A bail authority must not accept the deposit of security for the purposes of compliance with a security requirement of a bail condition unless the bail authority is satisfied:

- (a) that a decision has been made as to what security is acceptable security for the purposes of the security requirement, and
- (b) that the security is acceptable security under that decision.

25 Acceptance of distant sureties

A person who cannot reasonably attend (because of distance or for any other reason) before the bail authority to which the bail acknowledgment was given for the purposes of entering into a bail security agreement or depositing security required to comply with a security requirement may:

- (a) enter into an agreement with any other bail authority, or
- (b) deposit a security or amount of money with any other bail authority.

26 Dealing with money or security

For the purposes of section 82 (2) of the Act, if money or security is deposited under a security requirement of a bail condition otherwise than at a court, the bail authority that accepts the money or security must, as soon as practicable, lodge the money or security, together with the relevant bail acknowledgment and bail security agreement, with the registrar of a court.

Division 2 Character acknowledgments

27 Content and form of character acknowledgment

- (1) A character acknowledgment required by a bail condition 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.
- (2) A character acknowledgment must be in the approved form.

28 Acceptable person to provide evidence of identity and residential address

- (1) A bail authority may refuse to make a decision that a person is an acceptable person for the purposes of a bail condition that requires a character acknowledgment until the bail authority is satisfied, on such evidence as appears to the authority to be sufficient, as to the person's identity and residential address.
- (2) Nothing in this clause limits the powers of a bail authority in relation to the making of a decision as to whether a person is an acceptable person as referred to in section 27 of the Act.

29 Verification that person is acceptable person

A bail authority must not accept a character acknowledgment from a person unless the bail authority is satisfied:

- (a) that a decision has been made as to which person, or class or description of persons, is an acceptable person for the character acknowledgment, and
- (b) that the person:
 - (i) is an acceptable person referred to in that decision, or
 - (ii) belongs to a class or description of acceptable persons referred to in that decision.

30 Acceptance of distant character acknowledgments

A person who cannot reasonably attend (because of distance or for any other reason) before the bail authority to which the bail acknowledgment was given for the purposes of giving a character acknowledgment may make an acknowledgment to any other bail authority.

Division 3 Accommodation requirements

31 Information about action taken to secure accommodation for accused person

- (1) The information that the court may direct any officer of a Division of the Government Service to provide under section 28 (5) of the Act may be lodged in writing or can be provided orally in court.
- (2) The information must identify the address at which the accused person will reside while on bail, if such an address has been determined.

Part 5 General provisions about security requirements

Division 1 General

32 Application for discharge of liability

An application under section 83 of the Act for discharge of liability under a bail security agreement may be in an approved form.

33 Form of arrest warrant

A warrant issued under section 83 (3) (a) of the Act is to be in an approved form.

34 Revocation of bail if security no longer intact

- (1) For the purpose of section 85 (4) of the Act, a written notice given to a person by a court (being a notice of the court's intention to revoke the person's bail on the ground that the person's current bail security is no longer intact) must contain the following information:
 - (a) the date on which the person was granted bail, and the offence or offences to which the bail relates,
 - (b) the reason for which the court considers that the current bail security is no longer intact,
 - (c) information to the effect that the court proposes to revoke the person's bail unless the person:
 - (i) demonstrates to the court that the current bail security is still intact, or
 - (ii) arranges for the deposit of replacement or supplementary security, whether by the person by whom the current bail security was deposited or by some other person,
 - (d) the date on which the court proposes to revoke the person's bail if neither of the things referred to in paragraph (c) is done, and the procedure to be followed if the person wishes to do either of the things referred to in that paragraph.
- (2) The written notice must be accompanied by a copy of the relevant bail security agreement.

Division 2 Forfeiture of security

35 Appropriate State authorities in relation to forfeiture orders

- (1) The following persons and bodies are declared, for the purposes of the definition of *appropriate State authority* in clause 1 of Schedule 2 to the Act, to be appropriate State authorities in relation to the forfeiture orders specified:
 - (a) the Commissioner of Police—in relation to a forfeiture order relating to bail money under a bail security agreement for:
 - (i) an offence being prosecuted by a police officer, or
 - (ii) an offence being prosecuted by any other person (otherwise than on behalf of a public authority or the Director of Public Prosecutions) in the Local Court,
 - (b) the public authority concerned—in relation to a forfeiture order relating to bail money under a bail security agreement for an offence being prosecuted by or on behalf of a public authority,

- (c) the Director of Public Prosecutions—in relation to a forfeiture order relating to bail money under a bail security agreement for:
 - (i) an offence being prosecuted by or on behalf of the Director of Public Prosecutions, or
 - (ii) an offence being prosecuted by any other person (other than a police officer and otherwise than on behalf of a public authority) in any court other than the Local Court.
- (2) In this clause, *public authority* means the Crown, a Minister of the Crown or a statutory body representing the Crown, and includes a council or county council within the meaning of the *Local Government Act 1993*.

36 Forfeiture notice given to those affected by forfeiture order

- (1) The information that clause 4 of Schedule 2 to the Act requires to be contained in a forfeiture notice is the following:
 - (a) the terms of the relevant forfeiture order and the date on which it was made,
 - (b) information to the effect that a person affected by the order may object to the confirmation of the forfeiture order,
 - (c) the date on which the forfeiture order will be confirmed if no objection is made,
 - (d) the procedure to be followed if the person wishes to object to the confirmation of the forfeiture order.
- (2) The written notice must be accompanied by a copy of the relevant bail security agreement.

37 Giving of notice of objection to confirmation of forfeiture order

- (1) The manner in which the Local Court must give the notice of an objection required by clause 5 of Schedule 2 to the Act to the appropriate State authority is by means of a written notice sent to the authority.
- (2) The written notice:
 - (a) must set out the date fixed for the hearing of the objection (if such a date has been fixed), and
 - (b) must be accompanied by a copy of the objection as filed in the court.

38 Giving of notice of informal objection to confirmation of forfeiture order

- (1) The manner in which a court must give notice of an objection required by clause 8 of Schedule 2 to the Act to the appropriate State authority is by means of a written notice sent to the authority.
- (2) If a representative of the appropriate State authority is appearing before the court when the objection is made, notice of the objection may instead be given to the authority by means of an oral statement to the representative.
- (3) The notice or statement must:
 - (a) indicate the date fixed for the hearing of the objection (if such a date has been fixed), and
 - (b) include particulars of the objection.

39 Written notice concerning taking effect of forfeiture order

- (1) The information to be contained in a written notice given under clause 11 of Schedule 2 to the Act to a person affected by a forfeiture order (being a notice to the effect that the order has taken effect) is the following:
 - (a) the terms of the order and the date on which it was made,
 - (b) information to the effect that the order has taken effect,
 - (c) the person's obligations under the Act with respect to the payment of bail money forfeited by the order,
 - (d) information to the effect that the person may apply to have the order set aside,
 - (e) the procedure to be followed if the person wishes to apply to have the order set aside.
- (2) The written notice must be accompanied by a copy of the relevant bail security agreement.

Part 6 Miscellaneous

40 Requirement to appear when bail is dispensed with

If proceedings in which a person for whom bail has been dispensed with is required to appear are adjourned, a notice of the court in which the person is next required to appear, and of the time, date and place of that appearance, is to be given to the person in an approved form.

41 Facilitation of proof of failure to appear

A police officer with power to make a bail decision is prescribed as a court officer for the purposes of section 94 (1) and (2) of the Act.