

South Australia

## Bail Regulations 2015

under the *Bail Act 1985*

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### Contents

- 1 Short title
- 3 Interpretation
- 3A Definition of terrorist offence
- 4 Forms
- 5 Dealing with surrendered items
- 6 Section 13 statement

Schedule 1—Forms

Schedule 2—Section 13 statement

Legislative history

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### 1—Short title

These regulations may be cited as the *Bail Regulations 2015*.

### 3—Interpretation

- (1) In these regulations, unless the contrary intention appears—  
*Act* means the *Bail Act 1985*.
- (2) In these regulations, a reference to a form of a particular number is a reference to the form of that number set out in Schedule 1.

### 3A—Definition of terrorist offence

For the purposes of paragraph (e) of the definition of *terrorist offence* in section 3(1) of the Act, the following kinds of offences are prescribed:

- (a) an offence against section 83CA of the *Criminal Law Consolidation Act 1935*;
- (b) any offence against Part 3D of the *Criminal Law Consolidation Act 1935*;
- (c) an offence against section 37 of the *Summary Offences Act 1953*.

### 4—Forms

- (1) The forms set out in Schedule 1 are prescribed for the purposes of the Act.
- (2) Subject to these regulations, a form set out in Schedule 1 must—
  - (a) be used for the purposes specified in the Schedule; and

- (b) contain the information required by, and be completed in accordance with, the instructions contained in the forms.
- (3) The following forms are required to be used only if the bail authority providing the written reasons is a police officer:
  - (a) Form 2 (*Written record of reasons for refusal of bail application*);
  - (b) Form 10 (*Written record of reasons—section 11(1c)*);
  - (c) Form 11 (*Written record of reasons—section 11(2ad)*).
- (4) If an application for review of a decision of a bail authority is made to the Supreme Court, the application must be made in accordance with the rules of the Supreme Court, instead of using Form 6 (*Application for review of bail by magistrate*).

## 5—Dealing with surrendered items

- (1) For the purposes of section 11A(4) of the Act, the Commissioner of Police must deal with a surrendered item in accordance with this regulation.
- (2) A surrendered item that is a prohibited weapon (within the meaning of Part 3A of the *Summary Offences Act 1953*), or that is an item that cannot otherwise be lawfully possessed in this State, is, by force of this subregulation, forfeited to the Crown.
- (3) The Commissioner of Police must retain a surrendered item (other than a surrendered item forfeited under subregulation (2)) in a location determined by the Commissioner of Police until—
  - (a) the surrendered item is forfeited to the Crown under the Act or any other Act; or
  - (b) the surrendered item is returned in accordance with this regulation to the person who surrendered it; or
  - (c) the surrendered item is seized or surrendered under the provisions of another Act,whichever occurs first.
- (4) If the condition imposed under section 11(1)(a) of the Act on the grant of bail of the person who surrendered the surrendered item is revoked, or the grant of bail is terminated, the person may notify the Commissioner of Police of that fact.
- (5) Subject to this regulation, if the Commissioner of Police—
  - (a) is notified pursuant to subregulation (4); or
  - (b) otherwise becomes aware that the grant of bail of the person is no longer subject to the condition imposed under section 11(1)(a) of the Act, or the grant of bail is terminated,

the Commissioner of Police must cause the surrendered item to be returned to the person who surrendered the item.

- (6) If the Commissioner of Police is required to return a surrendered item under subregulation (5), the Commissioner of Police must give notice in writing to the person who surrendered the item setting out—
  - (a) that the surrendered items specified in the notice are to be returned to the person; and

- (b) the location at which the surrendered items may be collected; and
  - (c) that the surrendered items must be collected from the specified location within 3 months of the date specified in the notice (or such longer time as may be specified by the Commissioner of Police); and
  - (d) that the surrendered items will only be returned if the person holds any necessary authorisation under the *Firearms Act 1977* or any other Act to possess the surrendered item; and
  - (e) the effect of subregulations (7) and (8).
- (7) However, the Commissioner of Police may refuse to return a surrendered item to a person if—
- (a) the person is on conditional release that is subject to a condition prohibiting the person from possessing a firearm, ammunition or part of a firearm; or
  - (b) the person does not hold any necessary authorisation under the *Firearms Act 1977* or any other Act to possess the surrendered item, or is otherwise prohibited from possessing the surrendered item,
- and, if the Commissioner of Police does so refuse, he or she must give notice in writing to the person who surrendered the surrendered item setting out—
- (c) the reasons for the refusal; and
  - (d) in the case of a refusal contemplated by subregulation (7)(a)—the effect of subregulation (9).
- (8) If—
- (a) a surrendered item is not collected within the period specified in subregulation (6)(c); or
  - (b) the person does not, at the end of the period specified in subregulation (6)(c), hold the necessary authorisation under the *Firearms Act 1977* or any other Act to possess the surrendered item, or is otherwise prohibited from possessing the surrendered item,
- the surrendered item is, by force of this subregulation, forfeited to the Crown.
- (9) If the Commissioner of Police refuses to return a surrendered item to a person pursuant to subregulation (7)(a)—
- (a) the surrendered item will be taken to have been surrendered pursuant to a direction under the provision of the Act under which the conditional release was granted (corresponding to section 11A(1) of the Act); and
  - (b) the surrendered item must be dealt with in accordance with that Act.
- (10) The Commissioner of Police may recover from the person who surrendered the surrendered item the reasonable costs incurred in connection with the storage of the surrendered item.
- (11) This regulation is in addition to, and does not derogate from, the operation of any other Act or law.
- (12) No compensation is payable by the Crown in respect of the forfeiture of a surrendered item under this regulation.

- (13) A notice required to be given to a person under this regulation may—
- (a) be given to the person personally; or
  - (b) be posted in an envelope addressed to the person—
    - (i) at the person's last known address; or
    - (ii) at the person's address for service; or
  - (c) be left for the person at the person's last known address or address for service with someone apparently over the age of 16 years; or
  - (d) be given by means of email, text message or other electronic form of communication.

- (14) In this regulation—

**conditional release** means—

- (a) release on bail under the Act; or
- (b) a bond under the *Criminal Law (Sentencing) Act 1988* or the *Criminal Law Consolidation Act 1935*; or
- (c) release from prison on home detention or parole, under the *Correctional Services Act 1982*; or
- (d) release on licence under the *Criminal Law (Sentencing) Act 1988* or the *Criminal Law Consolidation Act 1935*; or
- (e) release on licence, or conditional release from detention, under the *Young Offenders Act 1993*;

**surrendered item** means a firearm, ammunition or any part of a firearm surrendered pursuant to a direction under section 11A(1) of the Act.

## 6—Section 13 statement

- (1) For the purposes of section 13(1)(b)(i) of the Act, a written statement explaining how, and to what authorities, an application for release on bail may be made under the Act must be in the form set out in Schedule 2.
- (2) If it appears that the native language of an applicant for bail is a language other than English, the written statement may be in the form of a translation into that other language of that form.

## Schedule 1—Forms

|        |  |
|--------|--|
| Form 1 | Application for release on bail  |
| Form 2 | Written record of reasons for refusal of bail application                                |
| Form 3 | Grant of bail  |
| Form 4 | Bail agreement   |
| Form 5 | Guarantee of bail  |
| Form 6 | Application for review of bail by magistrate   |
| Form 7 | Application to vary conditions of bail agreement<br>Application to revoke bail agreement |

|         |   |
|---------|---|
| Form 8  | Application to vary terms of guarantee of bail<br>Application to revoke guarantee of bail |
| Form 9  | Notice of withdrawal of application for review of decision of bail authority              |
| Form 10 | Written record of reasons—section 11(1c)  |
| Form 11 | Written record of reasons—section 11(2ad)   |
| Form 12 | Direction to surrender firearms and ammunition  |

## **Form 1—Application for release on bail**

*Bail Act 1985*

(section 8(1))

### **Application for release on bail**

I, *[Insert full name]* (the applicant) apply for bail.

Date of birth of applicant:

Signature of applicant:

Date of application:

Time of application:

### **Additional information if application made to a court**

Court applied to (if known):

Location of court (if known):

Court file number (if known):

Police file number (if known):

Offences in respect of which bail is applied for (if known):

Representation at hearing: YES/NO (provide details if YES):

### **Decision of bail authority (other than court)**

*Tick appropriate box*

Bail refused (The bail authority must make a written record of the reasons for its decision)

Bail granted (Form 4 *Bail Agreement* must be completed)

Bail Authority:

- If the bail authority is a police officer—the police officer's surname, rank and police identification number:
- If the bail authority is not a police officer—the full name of the bail authority:

Bail authority's signature:

Date:

Time:

## **Form 2—Written record of reasons for refusal of bail application**

*Bail Act 1985*

(section 12)

Bail applicant (insert full name):

- 1 In refusing bail, the following offences were taken into consideration:
- 2 It is likely that the applicant would abscond if released on bail for the following reasons (provide relevant details):
  - (a) history of prior breaches of bail:
  - (b) lack of fixed address:
  - (c) lack of social or other ties:
  - (d) any other reason:
- 3 It is likely that the applicant would offend again if released on bail for the following reasons (provide relevant details):
  - (a) prior offences:
  - (b) other reasons that make the applicant likely to re-offend:
- 4 There is a presumption against bail under section 10A of the *Bail Act 1985* in relation to which the applicant has not established—
  - (a) the existence of special circumstances justifying his or her release on bail (provide relevant details); or
  - (b) in the case of a serious and organised crime suspect—a lack of prior conviction for a serious and organised crime offence (including such an offence in another jurisdiction) (provide relevant details):
- 5 Other reasons for refusing bail are (eg: interference with evidence or witnesses, hindering police enquiries etc):

Bail Authority (include surname, rank and police identification number):

Bail authority's signature:

Date:

Time:

**Note—**

The applicant must be given a copy of this form

### **Acknowledgment of receipt**

I acknowledge that I have been provided with a copy of the reasons for the refusal of my application to be released on bail.

Applicant's signature:

Date:

Time:

### Form 3—Grant of bail

*Bail Act 1985*

[*Insert full name*] (the **person**) has been granted bail subject to the conditions listed below and stipulated in the bail agreement (see Form 4).

#### Conditions

(*strike out conditions that do not apply*)

- The person will reside at [*insert address*].
- The person will reside at [*insert address*] and will, subject to section 11(2)(a)(ia) of the *Bail Act 1985*<sup>1</sup>, remain at that place of residence while on bail.
- The person will not make contact with [*specify*]:
- The person will place himself/herself\* under the supervision of a community corrections officer and obey the lawful directions of the officer.
- The person will report to the police at [*specify location of police station*] between the hours of [*insert time*] each day/\*[*specify day of week*] commencing on [*insert date*].
- The person will surrender any passport that he/she\* may possess.
- The person will not possess a firearm, ammunition or any part of a firearm.<sup>2</sup>
- The person will submit to testing for gunshot residue (including testing without notice) [*specify details if any*]:<sup>2</sup>
- The person agrees to forfeit to the Crown the sum of \$[*insert amount*] if the person fails to comply with a term or condition of the bail agreement.
- The person obtains [*specify how many required*] guarantees in the sum of \$[*insert amount*] each [*see over for details of each guarantor*].
- Other condition(s):
- Other conditions required if the person is determined to be a serious and organised crime suspect<sup>3</sup>—
  - (a) the person will reside at [*insert address*] and will, subject to the *Bail Act 1985*, remain at that place of residence while on bail.
  - (b) the person will be fitted with a device of a kind approved by the Chief Executive Officer for the purpose of monitoring compliance with the condition referred to in paragraph (a) and to comply with all reasonable directions of the Chief Executive Officer in relation to the device.
  - (c) the persons will not communicate with any person other than [*specify persons or a class of persons*].
  - (d) the person will possess, or use, only the following telephone, mobile phone, computer or other telecommunication device: [*insert details*]
- Other conditions required if the person is charged with a class 1 or class 2 offence (within the meaning of the *Child Sex Offenders Registration Act 2006*)<sup>4</sup>—
  - (a) the person will not engage in child-related work; and

(b) the person will not apply for child-related work.

*\*Strike out whichever does not apply.*

Bail Authority:

- If the bail authority is a police officer—the police officer's surname, rank and police identification number:
- If the bail authority is not a police officer—the full name of the bail authority:

Signature of bail authority:

Date:

Time:

**Note—**

1 Section 11(2)(a)(ia) of the Act provides that a condition that may be imposed in relation to the grant of bail is that the applicant agrees to reside at a specified address and to remain there while on bail, not leaving it except for remunerated employment, necessary medical or dental treatment, averting or minimising a serious risk of death or injury (whether to the applicant or some other person) or any other purpose approved by an appropriate departmental officer (see alternative condition for serious and organised crime suspects in Note 3).

2 Section 11(1a) of the Act provides that a bail authority may only vary or revoke the conditions of a grant of bail under section 11(1) if the bail authority is satisfied that—

- there are cogent reasons for doing so; and
- the possession of a firearm, ammunition or part of a firearm by the person to whom the bail agreement relates does not represent an undue risk to the safety of the public.

If a bail authority varies or revokes a condition imposed by section 11(1), the bail authority must make a written record of the reasons for its decision.

3 Section 11(2aa) of the Act provides that, if the person is determined to be a serious and organised crime suspect under section 3A of the Act, the following conditions must be imposed in relation to the grant of bail—

- (a) that the person agrees to reside at a specified address and to remain there while on bail, not leaving it except for necessary medical or dental treatment, averting or minimising a serious risk of death or injury (whether to the person or some other person) or any other purpose approved by an appropriate departmental officer. The person must also agree to be fitted with a device of a kind approved by the Chief Executive Officer for the purpose of monitoring compliance with this residence condition; and
- (b) that the person agree to not communicate with any person other than specified persons, or persons of a specified class or of a class prescribed by regulation; and
- (c) that the person agree to use for communication purposes, or be in possession of, only such telephones, mobile phones, computers or other communication devices as may be specified.

4 Section 11(2ab) provides for these conditions to be imposed if the person is a class 1 or class 2 offence suspect (within the meaning of the *Child Sex Offenders Registration Act 2006*). A bail authority may only vary or revoke these conditions if satisfied that there are cogent reasons for doing so and the person engaging in child-related work will not pose a risk to the safety and well-being of children.

If a bail authority varies or revokes a condition imposed by section 11(2ab), the bail authority must make a written record of the reasons for its decision.

### **Details of guarantor(s)**

Name in full:

Address:

### **Form 4—Bail agreement**

*Bail Act 1985*

(section 6(2))

#### **Part A**

I, *[insert full name]* of *[insert address]* being charged with/convicted of/\* the following offences *[insert offences]*:

Agree to be present at *[insert name of court]* at *[insert time]* on *[insert date]*, or at any other time when called on and, subject to any direction in this agreement to the contrary, to be present throughout all proceedings relating to this matter until the matter is disposed of.

#### **Directions as to attendance at proceedings *[insert]***

I agree to comply with all of the conditions of bail listed in this agreement.

I understand that if I do not appear when required, or if I fail to comply with a condition of bail—

- I may be arrested with or without a warrant; and
- I may have to pay any money that I have agreed to pay to the Crown if I breach this agreement; and
- I may be convicted of an offence against the *Bail Act 1985* and liable to a maximum penalty of a fine of \$10 000 or 2 years imprisonment.

#### **Conditions of bail<sup>1</sup>**

*(strike out conditions that do not apply)*

- 1 I agree that I will not leave the State for any reason except as allowed under the *Bail Act 1985*<sup>2</sup>.
- 2 I agree that—
  - (a) I will reside at *[insert address]*.
  - (b) I will reside at *[insert address]* and will, subject to the *Bail Act 1985*<sup>3</sup>, remain at that place of residence while on bail.
  - (c) I will not make contact with *[insert name]*.
  - (d) I will place myself under the supervision of a community corrections officer and obey the lawful directions of the officer.

- (e) I will report to the police at *[insert address]* between the hours of *[insert time]* and *[insert time]* each day/\**[specify day of week]* commencing on *[insert date]*.
  - (f) I will surrender any passport that I possess.
  - (g) I will not possess a firearm, ammunition or any part of a firearm.<sup>4 6</sup>
  - (h) I will submit to tests (including testing without notice) for gunshot residue *[specify details as required]*.<sup>5 6</sup>
  - (i) I will forfeit to the Crown the sum of \$*[insert amount]* if I fail to comply with a term or condition of this bail agreement.
  - (j) I will obtain *[insert number of guarantees required by bail authority]* guarantees in the sum of \$*[insert amount]* each.
  - (k) Other condition(s):
- (3) Additional conditions required if the person is determined to be a serious and organised crime suspect<sup>7</sup>—I agree that—
- (a) I will reside at *[insert address]* and will, subject to the *Bail Act 1985*, remain at that place of residence while on bail.
  - (b) I agree to be fitted with a device of a kind approved by the Chief Executive Officer for the purpose of monitoring compliance with the condition referred to in paragraph (a) and to comply with all reasonable directions of the Chief Executive Officer in relation to the device.
  - (c) I agree to not communicate with any person other than *[specify persons or a class of persons]*.
  - (d) I agree to possess, or use, only the following telephone, mobile phone, computer or other telecommunication device: *[insert details]*.
- (4) Additional conditions required if the person is charged with a class 1 or class 2 offence (within the meaning of the *Child Sex Offenders Registration Act 2006*)—I agree that<sup>8</sup>—
- (a) I will not engage in child-related work; and
  - (b) I will not apply for child-related work.

Signature of person entering agreement:

Date:

Time:

Witnessed by authorised person<sup>9</sup>:

Signed:

Title, rank or other authorisation:

Date:

Time:

*\*Strike out whichever does not apply.*

Notes—

- 1 If condition 2(b), 2(d) or 2(e) applies to this agreement, a copy of the agreement must be sent to the government department of which the community corrections officer is an officer or employee, or the police station (as the case requires).
- 2 Section 11(6) of the Act provides that it is a condition of every bail agreement that the person released under the agreement will not leave the State for any reason—
  - if the person is under the supervision of an officer of a government department—without the permission of the Chief Executive Officer of the department;
  - in any other case—without the permission of a judge or magistrate, or police officer who is of or above the rank of sergeant or the responsible officer for a police station.
- 3 Section 11(2)(a)(ia) of the Act provides that one of the conditions that may be imposed in relation to the grant of bail is that the person agrees to reside at a specified address and to remain there while on bail, not leaving it except for remunerated employment, necessary medical or dental treatment, averting or minimising a serious risk of death or injury (whether to the person or some other person) or any other purpose approved by an appropriate departmental officer. This condition may not be imposed in relation to a person determined to be a serious and organised crime suspect under section 3A of the Act (see Note 7).
- 4 Section 11(1)(a) of the Act provides that it is a condition of every grant of bail that an applicant is prohibited from possessing a firearm, ammunition or any part of a firearm.
- 5 Section 11(1)(b) of the Act provides that it is a condition of every grant of bail that the applicant submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by the bail authority, or a person or class of persons or body specified by the bail authority.
- 6 Section 11(1a) of the Act provides that a bail authority may only vary or revoke the conditions of a grant of bail under section 11(1) if the bail authority is satisfied that—
  - there are cogent reasons for doing so; and
  - the possession of a firearm, ammunition or part of a firearm by the person to whom the bail agreement relates does not represent an undue risk to the safety of the public.

If a bail authority varies or revokes a condition imposed by section 11(1), the bail authority must make a written record of the reasons for its decision.
- 7 Under section 11(2aa) of the Act, if the person is determined to be a serious and organised crime suspect under section 3A of the Act, conditions that must be imposed in relation to the grant of bail are—
  - (a) that the person agrees to reside at a specified address and to remain there while on bail, not leaving it except for necessary medical or dental treatment, averting or minimising a serious risk of death or injury (whether to the person or some other person) or any other purpose approved by an appropriate departmental officer. The person must also agree to be fitted with a device of a kind approved by the Chief Executive Officer for the purpose of monitoring compliance with this residence condition; and
  - (b) that the person agree to not communicate with any person other than specified persons, or persons of a specified class or of a class prescribed by regulation; and

- (c) that the person agree to use for communication purposes, or be in possession of, only such telephones, mobile phones, computers or other communication devices as may be specified.
- 8 Section 11(2ab) requires these conditions to be imposed if the person is a class 1 or class 2 offence suspect (within the meaning of the *Child Sex Offenders Registration Act 2006*). A bail authority may only vary or revoke these conditions if satisfied that there are cogent reasons for doing so and the person engaging in child-related work will not pose a risk to the safety and well-being of children.
- If a bail authority varies or revokes a condition imposed by section 11(2ab), the bail authority must make a written record of the reasons for its decision.
- 9 The authorised person may be the bail authority, a person or person of a class specified by the bail authority, a justice, a police officer who is of or above the rank of sergeant or the responsible officer for a police station or, if the person is in prison, the person in charge of the prison.

## **Part B: To be completed by bail authority if a condition of bail is altered**

Date:

Bail Authority:

- If the bail authority is a police officer—the police officer's surname, rank and police identification number:
- If the bail authority is not a police officer—the full name of the bail authority:

Details of new condition:

Signature of bail authority:

Signature of person granted bail:

Signature of guarantor:

## **Form 5—Guarantee of bail**

*Bail Act 1985*

(section 7(2))

### **Guarantee of bail**

I, *[insert full name]*, of *[insert address]* guarantee that *[insert name of person to be released on bail]* (the **person**) will comply with—

- \* all of the terms and conditions of the person's bail agreement; OR
  - \* those terms and conditions of the person's bail agreement specified in this guarantee (*see below*).
- \* *Strike out whichever does not apply.*

I undertake that, if the person fails to comply with a term or condition of the bail agreement to which this guarantee relates, I will forfeit to the Crown the sum of *[\$[insert amount]]*.

I declare—

- (a) that I know *[insert name of the person]*; and
- (b) that I am of or above the age of 18 years; and

- (c) that I have been given a copy of the bail agreement in relation to which this guarantee is given; and
- (d) that I will ensure that the person to be released on bail will comply with the terms and conditions of the person's bail agreement in relation to which this guarantee is given.

I understand—

- (a) that if I know, or have reasonable grounds to suspect, that the person has failed to comply with a term or condition of the bail agreement in relation to which this guarantee is given, I am required to take reasonable steps to inform a police officer that the failure has, or may have, occurred and, if I fail to do so, then, in addition to the amount I have undertaken to forfeit to the Crown, I may also be liable to a fine of up to \$1 250; and
- (b) that this guarantee is in force for so long as the person is on bail, subject to the terms of this guarantee being varied or the guarantee being revoked.

Terms and conditions of bail agreement specified for the purposes of this guarantee:

Guarantor's signature:

Date:

Time:

Signature of authorised person<sup>1</sup> witness:

Title, rank or other authorisation of witness:

Date:

Time:

- 1 The authorised person who witnesses the guarantor's signature may be the bail authority, a person or person of a class specified by the bail authority, a justice, a police officer who is of or above the rank of sergeant or the responsible officer for a police station or, if the person is in prison, the person in charge of the prison.

## Form 6—Application for review of bail by magistrate

*Bail Act 1985*

(sections 14(2)(b) and 15)

**Note—**

If the Supreme Court is to review the decision of the bail authority, the appropriate application form under the rules of the Supreme Court must be completed and not this form.

### Part A—Application

*[Insert full name of person applying for release on bail] of [insert address] is charged with/has been convicted of\* [insert offence(s)].*

*I, [insert name of applicant] of [insert address] apply to [insert name of court] at [insert location] to review a decision of a bail authority, namely [insert name of bail authority and brief description of decision] made at [insert location where decision being reviewed was made] on [insert date of decision being reviewed].*

Applicant's signature:

Date:

*\*Strike out whichever does not apply.*

### **Part B—Review of bail by magistrate by telephone under section 15**

Name of magistrate contacted:

Date contact made:

Time of contact:

Result of review: Refused/Granted\* (*\*strike out whichever does not apply*)

Signature of police officer or justice who contacted the magistrate:

**Note—**

Strike out Part B if the review of bail is to be heard in court.

### **Part C—Notice of court hearing of review of bail**

To—

- \* The person applying for release on bail
- \* The police prosecutor at [*insert location of court at which review of bail will be heard*]
- \* The Director of Public Prosecutions
- \* The guarantor of bail

*\*Strike out whichever does not apply.*

The application for review of a bail authority, the details of which are set out in Part A, has been listed for hearing at the Magistrates Court/Youth Court\* sitting at [*insert location of court*] on [*insert day and date*] at [*insert time*].

*\*Strike out whichever does not apply.*

All parties to the application must attend the hearing.

Court officer's signature:

Date:

**Note—**

Strike out Part C if the review of bail is to be heard by telephone.

### **Form 7—Application to vary conditions of bail agreement or to revoke bail agreement**

*Bail Act 1985*

(section 6(4))

#### **Part A—Application**

[*Insert full name of person released on bail*] of [*insert address*] is charged with/has been convicted of\* [*insert offence(s)*] and was granted bail on [*insert date*].

I, *[insert name of applicant]* of *[insert address]* apply to *[insert name of bail authority]* at *[insert location]* to—

- \* vary the conditions of the bail agreement
- \* revoke the bail agreement

I make this application on the following grounds: *[insert grounds]*

Applicant's signature:

Date:

*\*Strike out whichever does not apply.*

### **Part B—Notice of hearing**

To—

- \* The person on bail
- \* The police prosecutor at *[insert location]*
- \* The Director of Public Prosecutions
- \* The guarantor of bail

The application to—

- \* vary the conditions of a bail agreement
- \* revoke a bail agreement,

the details of which are set out in Part A, has been listed for hearing at *[insert name of court]* on *[insert day and date]* at *[insert time]*.

All parties to the application must attend the hearing.

Court officer's signature:

Date:

*\*Strike out whichever does not apply.*

### **Form 8—Application to vary terms of guarantee of bail or to revoke guarantee of bail**

*Bail Act 1985*

(section 7(4))

#### **Part A—Application**

*[Insert full name of person released on bail]* of *[insert address]* is charged with/has been convicted of\* *[insert offence(s)]* and was granted bail on *[insert date]*.

I, *[insert name of guarantor]* of *[insert address]* apply to *[insert name of bail authority]* at *[insert location]* to—

- \* vary the terms on my guarantee of bail
- \* revoke my guarantee of bail

I make this application on the following grounds:

Guarantor's signature:

Date:

*\*Strike out whichever does not apply.*

### **Part B—Notice of hearing**

To—

- \* The guarantor
- \* The person on bail
- \* The police prosecutor at *[insert location]*
- \* The Director of Public Prosecutions

The application to—

- \* vary the terms of a guarantee of bail
- \* revoke a guarantee of bail,

the details of which are set out in Part A, has been listed for hearing at *[insert name of court]* on *[insert day and date]* at *[insert time]*.

All parties to the application must attend the hearing.

Court officer's signature:

Date:

*\*Strike out whichever does not apply.*

### **Form 9—Notice of withdrawal of application for review of decision of bail authority**

*Bail Act 1985*

(section 16(2))

The Crown advises that the application to review the decision made on *[insert date]* by *[insert name of bail authority]* to grant bail to *[insert full name of person]* of *[insert address]* is withdrawn.

Signature of person acting on behalf of Crown:

Full name of person acting on behalf of Crown:

Date:

Time:

### **Form 10—Written record of reasons—section 11(1c)**

*Bail Act 1985*

(section 11(1c))

**Bail applicant:**<sup>1</sup> *[insert full name]*

Condition of bail to be varied or revoked:

Details of variation if condition is to be varied: *[specify as required]*

The condition/s\* of bail under section 11(1) of the *Bail Act 1985*<sup>2</sup> are varied/revoked\* for the following reasons<sup>3</sup>: [*specify reasons*]

Bail Authority (include surname, rank and police identification number):

Signature of bail authority:

Date:

Time:

\**Strike out whichever does not apply.*

**Notes—**

- 1 Section 11(1) of the Act provides that every grant of bail is subject to a condition prohibiting the applicant from possessing a firearm, ammunition or any part of a firearm and a condition requiring the applicant to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by the bail authority, or a person or class of persons or body specified by the bail authority.
- 2 Section 11(1a) of the Act provides that a bail authority may only vary or revoke the conditions imposed by section 11(1) of the Act if satisfied that—
  - there are cogent reasons to do so; and
  - the possession of a firearm, ammunition or part of a firearm by the person to whom the bail agreement relates does not represent an undue risk to the safety of the public.
- 3 Section 11(1c) of the Act provides that if a bail authority varies or revokes a condition imposed by section 11(1), the bail authority must make a written record of the reasons for its decision.

**Form 11—Written record of reasons—section 11(2ad)**

*Bail Act 1985*

(section 11(2ad))

**Bail applicant:**<sup>1</sup> [*insert full name*]

Condition of bail to be varied or revoked:

Details of variation if condition is to be varied: [*specify as required*]

The condition/s\* of bail under section 11(2ab) of the *Bail Act 1985*<sup>2</sup> are varied/revoked\* for the following reasons<sup>3</sup>: [*specify reasons*]

Bail Authority (include surname, rank and police identification number):

Signature of bail authority:

Date:

Time:

\**Strike out whichever does not apply.*

**Notes—**

- 1 Section 11(2ab) of the Act provides that every grant of bail in relation to a person who is a class 1 or class 2 offence suspect is subject to a condition prohibiting the applicant from engaging in or applying for child-related work (within the meaning of the *Child Sex Offenders Registration Act 2006*).

- 2 Section 11(2ac) of the Act provides that a bail authority may only vary or revoke the conditions imposed by section 11(2ab) of the Act if satisfied that—
- there are cogent reasons to do so; and
  - the person engaging in child-related work will not pose a risk to the safety and well-being of children.
- 3 Section 11(2ad) of the Act provides that if a bail authority varies or revokes a condition imposed by section 11(1), the bail authority must make a written record of the reasons for its decision.

## **Form 12—Direction to surrender firearms and ammunition**

*Bail Act 1985*

(section 11A(1))

*[Insert full name]* has been granted bail subject to the conditions stipulated in the bail agreement (see Form 4).

Pursuant to section 11A(1) of the *Bail Act 1985*, I *[insert name of bail authority]* direct *[specify name of person who has been granted bail]* to surrender any firearm, ammunition, or part of a firearm owned by you or in your possession forthwith to *[specify location of police station]*.

Bail Authority:

- If the bail authority is a police officer—the police officer's surname, rank and police identification number:
- If the bail authority is not a police officer—the full name of the bail authority:

Signature of bail authority:

Date:

Time:

**Note—**

Section 11A(2) of the Act provides that a person who refuses or fails to comply with a direction under section 11A(1) is guilty of an offence.  
Maximum penalty: \$10 000 or imprisonment for 2 years.

## **Schedule 2—Section 13 statement**

### **Form—Section 13 statement**

*Bail Act 1985*

### **How to apply for release on bail**

#### **1—General**

The law of bail in South Australia is contained in the *Bail Act 1985*.

This pamphlet is designed to help you decide whether you are eligible to apply for bail, and to assist you in making such an application.

It will also assist people who want to "stand bail" (that is, be a guarantor) for you.

If there are things you do not understand, ask the police, telephone your lawyer, or ask the magistrate or the person who witnesses your bail documents for advice.

If you do not have a lawyer and you want help, you can ask to see the duty solicitor from the Legal Services Commission or telephone the Legal Services Commission during office hours. (Duty solicitors visit the larger courthouses during office hours—ask the police to contact the duty solicitor for you.)

## **2—What is a bail agreement?**

A bail agreement is an agreement between the Crown and a person requiring the person to be at his or her court hearings and to obey any special conditions set by the court during the period of the operation of the bail agreement in return for the person's release from custody on bail.

## **3—Can I apply for bail?**

### **Adults**

If you are aged 18 years or more, you can apply for bail in any of the following circumstances:

- you are appearing before a court in answer to a summons and you might be remanded in custody; or
- you are in custody on a charge of an offence after being arrested by the police; or
- you have been convicted of an offence but have not yet been sentenced; or
- you have been convicted of an offence and sentenced, but you have not exhausted all rights of appeal or review and you intend to appeal; or
- you are appearing in court for allegedly failing to observe a condition of a bond; or
- you have been arrested on a warrant and you are appearing, or are to appear, before a court as a witness;
- you have been arrested on a warrant issued by a court—
  - for failing to appear before that court on charges; or
  - for breach of a bond,

and the court has authorised the police officer in charge of the police station, or a person specified on the warrant, to grant bail on your arrest.

However, you cannot apply for bail after having been arrested if you are being detained under the *Summary Offences Act 1953* for a purpose related to the investigation of an offence until the end of that detention.

### **People under the age of 18 years**

If you are under the age of 18 years, you can apply for bail if you have been arrested on suspicion of having committed an offence and you have been taken into police custody.

## **4—I think I qualify for bail**

### **To whom do I apply for bail?**

There are various bail authorities under the *Bail Act 1985* that can hear and decide bail applications.

The following is a list of bail authorities for the purposes of the Act:

- the Supreme Court;
- the court before which you were charged;
- any court before which you must appear in relation to the matter;
- a justice;
- a sergeant of police;
- a police officer of a rank higher than sergeant;
- the responsible officer for a police station;
- the person specified on the warrant for your arrest.

Depending on your circumstances, you can apply to one of these bail authorities. You should check with a police officer, your lawyer or a court officer as to whom you must apply for bail.

### **How do I apply for bail?**

Your application for bail must be in writing.

Application forms are available from police stations, gaols and courts. You must answer all questions.

If you were under the age of 18 years at the time you allegedly committed the offence for which you are arrested, your parent, guardian or custodian may assist you to make your application.

If there is something you do not understand, ask a police officer, your lawyer or a court officer to explain.

### **5—On what grounds will bail be granted or refused?**

Whether or not you are granted bail will depend on many factors, including—

- the seriousness and nature of the alleged offence;
- the likelihood that you—
  - may not attend court when required; or
  - may offend again; or
  - may interfere with evidence or a witness;
- any need you, or an alleged victim, may have for physical protection;
- medical matters;
- whether you have previously breached bail conditions;
- any other relevant matter.

For some applicants (*prescribed applicants* under section 10A of the *Bail Act 1985*) there is a presumption against granting bail and the applicant must establish the existence of special circumstances justifying release on bail.

## **6—What can I do if I am refused bail?**

If your application for bail is unsuccessful, you can ask for that decision to be reviewed. (A review is a type of appeal.)

If the bail authority is a police officer or a justice, the review will be carried out by a magistrate, who can be contacted (by telephone if necessary) by the person who made the original decision. If the police officer who made the decision is not immediately available to contact a magistrate, contact must be made by another police officer of or above the rank of sergeant or the responsible officer for the police station.

Once the magistrate has been told the facts of the case and the reason why your application was refused, you have the right to put your case. The magistrate must reach a decision straight away.

If the bail authority is a magistrate or a District Court judge, the review must be carried out by a Supreme Court judge.

If you are refused bail, you will be given a copy of the written reasons for that refusal.

You may apply for bail on a later occasion.

## **7—What is meant by a bail agreement?**

When you enter into a bail agreement, you are agreeing to attend a particular court on the next date and at the time fixed for your case as well as on every other occasion when your matter is listed and, unless directed otherwise in the agreement, to be present in court each time your matter is listed until it is finished.

You are also agreeing to comply with all of the conditions set out in your bail agreement. Failure to obey any condition of a bail agreement is a criminal offence and can, in some cases, be punished by up to 2 years gaol or a fine of up to \$10 000.

In addition, any money promised to the Crown as part of your bail agreement may have to be paid and, if necessary, collected in the same way as a fine.

## **8—What are conditions of bail?**

Conditions of bail are the rules that you must obey in return for your freedom.

In all cases, except where a bail authority allows you to live interstate or gives you permission to travel interstate for a specific reason, you cannot leave South Australia while on bail.

It is a condition of bail that you must not possess a firearm, ammunition, or any part of a firearm, and that you submit to such tests (including testing without notice) for gunshot residue, as required by the bail authority. These two conditions apply to the grant of every bail, and can only be varied or revoked if the bail authority is satisfied that there are cogent reasons to do so and the possession of a firearm, ammunition or part of a firearm does not represent an undue risk to the safety of the public. The bail authority must make a written record of the reasons for its decision to vary or revoke these conditions. Once you have been granted bail, the bail authority may direct you to surrender any firearms or ammunition you own or possess.

Other restrictions can be imposed on you, including, for example, not seeing or contacting certain people, staying away from certain places, agreeing to live at a certain address, being under the supervision of a community corrections officer, submitting to electronic monitoring such as by wearing a GPS tracking device, reporting to the police on a regular basis or giving up your passport. Conditions are set by the court to suit individual cases.

In certain circumstances there are mandatory conditions of bail that must be imposed:

- If you are determined to be a serious and organised crime suspect you must reside, with electronic monitoring, at a specified address and may only leave that address in certain limited situations, people that you may contact will be restricted and you will only be able to possess and use specified communication devices;
- If you are charged with certain offences where the victim is a child, there will be a condition that you agree not to engage in, or apply for, child-related work.

You can ask a bail authority to vary the conditions imposed on you under the bail agreement.

### **9—What is a guarantor and what does a guarantor have to do?**

Your guarantor is a person who enters into a guarantee that you will, if freed on bail, obey all the conditions of bail set by the bail authority (see clause 8).

If you do not comply with a condition of your bail agreement and you breach a condition, or if the guarantor knows that you have breached a condition or that you are likely to breach a condition, the guarantor must tell the police what you have done or are likely to do. If the guarantor does not do so, the guarantor can be liable to a fine of up to \$1 250.

In addition to the possibility of having to pay a fine, if you breach a condition of your bail agreement, your guarantor may have to pay to the Crown the sum of money that the guarantor has undertaken to pay in the guarantee.

### **10—Guarantor may apply to have guarantee varied or revoked**

Your guarantor may, at any time, apply to a bail authority to have the terms of the guarantee varied or the guarantee revoked. This could happen if your guarantor is afraid you may abscond or otherwise not comply with the conditions of your bail agreement.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Bail Regulations 2015* revoked the following:

*Bail Regulations 2000*

### Principal regulations and variations

New entries appear in bold.

| Year        | No        | Reference                            | Commencement          |
|-------------|-----------|--------------------------------------|-----------------------|
| 2015        | 199       | <i>Gazette 20.8.2015 p3894</i>       | 1.9.2015: r 2         |
| 2016        | 30        | <i>Gazette 12.5.2016 p1451</i>       | 12.5.2016: r 2        |
| <b>2018</b> | <b>37</b> | <b><i>Gazette 13.2.2018 p770</i></b> | <b>26.2.2018: r 2</b> |

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision           | How varied   | Commencement     |
|---------------------|--|------------------|
| <i>r 2</i>          | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>12.5.2016</i> |
| <b>r 3A</b>         | <b>inserted by 37/2018 r 4</b>                                     | <b>26.2.2018</b> |
| r 4                 |  |                  |
| r 4(3)              | varied by 30/2016 r 4  | 12.5.2016        |
| Sch 1               |  |                  |
| Form 2              | substituted by 30/2016 r 5(1)                                      | 12.5.2016        |
| Form 10             | substituted by 30/2016 r 5(2)                                      | 12.5.2016        |
| Form 11             | substituted by 30/2016 r 5(3)                                      | 12.5.2016        |
| <i>Schs 3 and 4</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>12.5.2016</i> |

### Historical versions

12.5.2016

