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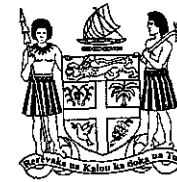
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ACT NO. 26 OF 2002



I assent.

J. I. ULUIVUDA
President

[24th October, 2002]

AN ACT

TO MAKE PROVISIONS FOR THE GRANTING OF BAIL AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands—

Part I—PRELIMINARY

Short title and commencement

1. — (1) This Act may be cited as the Bail Act 2002.

(2) This Act comes into force on a date appointed by the Minister by notice in the *Gazette*.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

“accused person” or “person accused of an offence” means a person who has been arrested for, or charged with, an offence and—

- (a) who is awaiting summary trial;
- (b) who has been committed for trial on indictment;
- (c) whose trial has been adjourned;

- (d) who has been convicted and—
- (i) who has been committed for sentence;
 - (ii) whose case has been adjourned for sentence;
 - (iii) who is appealing against conviction or sentence; or
 - (iv) whose conviction is stayed;
- (e) who is under arrest for a breach of bail; or
- (f) who has applied for a writ of habeas corpus;

“appeal” includes an application for leave to appeal and a proceeding by way of appeal;

“bail” for a person accused of an offence means authorisation for the person to be at liberty instead of in custody, on condition that the person appears for trial or for sentence, for hearing of an application or appeal relating to the offence or for an adjournment of any of those matters;

“bail condition” means a condition imposed under section 22;

“bail officer” means the officer of the court at which an accused person is to appear, and who is appointed under section 15 to receive the accused person into custody;

“bail undertaking” means an undertaking given under section 21;

“close relative” of a person means a parent, spouse, *de-facto* partner, sibling, child or grand parent of the person, or any member of the person’s family, or any other person or kin identified by the police officer or the court as a close relative;

“continued”, in relation to bail, means continued under section 29;

“conviction” includes—

- (a) a finding of guilt;
- (b) a finding that a person is not guilty by reason of insanity;
- (c) a conviction of an offence for which an order is made placing the offender on probation or discharging him or her absolutely or conditionally following a finding that the facts of the charge were proved;

“clerk of a court” means the Registrar of the High Court, the clerk of a magistrate’s court, or any other registrar or clerk so designated;

“court” includes a judge or a magistrate when not sitting as a court;

“grant of bail” includes continuation of bail under section 29;

“offence” means a cognisable offence and includes an alleged offence;

“police officer” means a police officer of the rank of sergeant or above, or, where bail is considered at a police station, the police officer in charge of the police station;

“police station” includes a police post;

“prison” includes, in the case of a person under the age of 18 years, a detention centre;

“review” means a review of a bail decision under section 30;

“serious offence” means any offence for which the maximum penalty includes imprisonment for 5 years or more;

“specially affected person” means —

- (a) a person against whom an alleged offence has been committed;
- (b) a close relative of any such person; or
- (c) any other person who in the opinion of the police officer or the court warrants special consideration because of the circumstances of the case;

“surety” means a person, other than the accused person or a person under 18 years, whom a police officer or court determines to be acceptable to provide confirmation of the accused person’s bail undertaking, or security that such undertaking will be complied with;

“surrender into custody”, in relation to a person released on bail, means the person surrendering into the custody of the court or of a police officer as the case may be, at the time and place appointed for doing so;

(2) In this Act, a reference to “the police officer” or “the court” means the police officer who or the court which has granted bail or is considering granting bail to a person under this Act

(3) In this Act, a reference to a form is a reference to the forms set out in the Schedule.

Part II—GENERAL PROVISIONS IN RESPECT OF BAIL

Entitlement to bail

3.—(1) Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted.

(2) Bail may be granted by a court or, subject to section 8(2), by a police officer.

(3) There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption.

- (4) The presumption in favour of the granting of bail is displaced where—
- the person seeking bail has previously breached a bail undertaking or bail condition; or
 - the person has been convicted and has appealed against the conviction.
- (5) Bail must be granted to an accused person under the age of 18 years, unless—
- the person has a previous criminal conviction;
 - the person has previously breached a bail undertaking or bail condition; or
 - the offence in question is a serious one.

Rights following the granting of bail

4.—(1) An accused person who is in custody for an offence and who has been granted bail is entitled to be released, upon giving a bail undertaking, and subject to section 25, to remain at liberty until required to appear before a court in accordance with the bail undertaking.

(2) This section does not apply to a person who is in custody for some other offence or reason in respect of which the person is not entitled to be at liberty, whether under this Act or otherwise.

Right to release for certain offences

- 5.—(1) This section applies to—
- any offence not punishable by a sentence of imprisonment;
 - any offence under the Minor Offences Act (Cap. 18); and
 - any offence punishable summarily that is of a class or description prescribed by the regulations for the purposes of this section.
- (2) A person accused of an offence to which this section applies—
- is entitled to be granted bail unless—
 - the person has previously breached a bail undertaking or bail condition;
 - in the opinion of the police officer or the court, as the case may be, the person is incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection;
 - the person stands convicted of the offence or the person's conviction for the offence is stayed; or
 - the requirement for bail is dispensed with, as referred to in section 6.

- is entitled to be granted bail either—
 - unconditionally; or
 - subject to any bail conditions the police officer or the court considers reasonable and appropriate.
- (3) A person is not entitled to be granted bail if the person is in custody serving a sentence of imprisonment in connection with some other offence.

Dispensing with bail

6.—(1) A court that may grant bail to an accused person may dispense with the requirements for bail.

(2) If no specific order or direction is made by a court in respect of bail during the appearance by an accused person before it, the court is deemed to have dispensed with any requirement for bail.

(3) Subsection (2) does not apply if bail is continued in accordance with section 29.

Effect of dispensing with bail

7.—(1) A person accused of an offence in respect of which bail is dispensed with is entitled to be and, subject to section 25, to remain at liberty in respect of the offence until required to appear before a court in respect of the offence.

(2) This section does not apply to a person who is in custody for some other offence or reason in respect of which the person is not entitled to be at liberty, whether under this Act or otherwise.

Part III—ADMINISTRATION OF BAIL

Authority for police to grant bail

8.—(1) Subject to subsection (2), if a person is arrested for a cognizable offence and taken to a police station, the arresting officer, or the officer in charge of the police station, may grant bail to the accused person.

- (2) A police officer must not grant bail to a person accused of an offence if—
- a determination concerning bail on the same offence has been made by a court;
 - the requirement for bail on the same offence has been dispensed with; or
 - the offence is a serious one.

Bail determination to be made after charge is laid

9. If a person has been charged by a police officer with an offence and is in custody, the police officer or the officer in charge must—

- (a) give the person information in writing in a language or any other means the person understands respecting the person's entitlement to bail;
- (b) if authorised to grant bail under section 8 - not later than 24 hours after the person has been charged, grant bail to the person or bring the person before court cause the person to be brought before a court;
- (c) if not authorised to grant bail under section 8 - bring the person before court as soon as practicable and in any event within 24 hours.

Procedure to be followed by police officers when determining bail

10. A police officer who makes a determination as to bail must—

- (a) inform the accused person, or cause the person to be informed in a language or any other means the person understands, that the person may consult (including in private) with a lawyer or other person of his or her choice in connection with the bail; and
- (b) if the person so requests, and subject to the regulations, provide the accused person, or cause the person to be provided, with reasonable facilities to enable the person to make such a consultation.

Procedure to be followed by police officers if bail is not granted

11.—(1) If an accused person is refused bail by a police officer—

- (a) the police officer in charge of the police station at which the person is in custody; or
- (b) if the person is not in custody at a police station, the police officer who has custody of the person,

must, as soon as practicable, and in any event within 24 hours, bring the person before court for a decision on bail by the court.

(2) If an accused person is detained by a police officer following the refusal to grant bail, the police officer must promptly take all reasonable steps to inform a close relative of the person about the detention and the reason for it.

Power of magistrates and judges to grant bail

12. A magistrate or a judge when not sitting as a court may at any time—

- (a) grant bail to a person brought or appearing before the magistrate or judge and accused of an offence;
- (b) grant bail to a person who is an appellant under Part X of the Criminal Procedure Code.

Bail determinations by courts

13.—(1) A court may determine an application for bail by an accused person, as defined in section 2(1).

(2) If an accused person is refused bail in respect of an offence—

- (a) the hearing of the case must not be adjourned for more than 14 days except with the person's consent;
- (b) any further adjournment must be for a period not exceeding 48 hours and must be to a court available to deal with the case.

(3) Subsection (2) does not apply to an accused person who is in custody in connection with another offence, or if the court is satisfied that there are reasonable grounds for a longer period of adjournment and that bail should continue to be refused.

(4) If a person charged for an offence has been in custody for over 2 years or more and the trial of the person has not begun, the court must release the person on bail subject to bail conditions the court thinks fit to impose.

(5) Subsection (4) does not apply where the trial of the person has begun and the court has refused to grant bail or where the person is serving a sentence for another offence.

(6) For the purpose of subsection (4), the period of 2 years does not include any period of delay caused by the fault of the person.

(7) In subsection (4), "trial" means the trial proper of the person in respect of the offence which the person has been charged with and does not include committal proceedings or the determination of any preliminary or interlocutory application.

General provisions as to court bail

14.—(1) Subject to subsection (3) an accused person may make any number of applications to a court for bail.

(2) An application to a court for bail must be dealt with as soon as reasonably practicable after it is made.

(3) A court may refuse to entertain an application for bail if it is satisfied that the application is frivolous or vexatious.

(4) An accused person is entitled to have legal aid for an application for bail, or for review of bail, subject to the provisions of the Legal Aid Act 1996.

(5) The regulations may make provision with respect to the manner of making application to court in relation to bail.

Procedure on surrender to custody

15.—(1) A bail officer must be appointed by each court.

(2) A court must grant bail for a determinate bail period ending no later than 60 days after the day on which bail was granted, or on the date of hearing, whichever comes first.

(3) If a hearing date has not been fixed within 60 days of the date of the original granting of bail, the bail officer must have the accused person brought before the court for a continuation of bail, or its reconsideration.

(4) An accused person to whom bail has been granted must surrender into the custody of the bail officer at the time, date and place designated by the court.

(5) The bail officer must receive the accused person into custody and ensure that the person remains in custody until the hearing is determined or bail is continued.

(6) The court when granting bail must advise the accused person, in a language that the person understands, of the person's obligation to surrender to the custody of the court and explain the procedures for complying with the obligation.

Evidence of residence

16.—(1) A person who is granted bail by a police officer or a court must at the time of the granting of bail provide the police, or to the court, as the case may be, details of the person's residential address.

(2) A person who is granted bail and is found to have given a false residential address is liable to be arrested on a warrant by the court and section 25 then applies.

(3) Subject to subsection (4) a person who is granted bail must reside at the address provided under subsection (1) until the hearing of the case.

(4) If the accused person wishes to reside elsewhere than at the address provided under subsection (1), the person must, in writing or in person, notify the police officer or the bail officer, as the case may be, and that officer must either make a decision or obtain the decision of the court, as the case may be, on whether the bail undertaking should be varied accordingly.

Part IV—BAIL DETERMINATION

General provisions for bail determination

17.—(1) When deciding whether to grant bail to an accused person, a police officer or court, as the case may be, must take into account the time the person may have to spend in custody before trial if bail is not granted.

(2) The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her.

(3) When a court is considering the granting of bail to a person who has appealed

against conviction or sentence the court must take into account—

- (a) the likelihood of success in the appeal;
- (b) the likely time before the appeal hearing;
- (c) the proportion of the original sentence which will have been served by the applicant when the appeal is heard.

Refusal of bail

18.—(1) A person making submissions to a court against the presumption in favour of bail must deal with—

- (a) the likelihood of the accused person surrendering to custody and appearing in court;
- (b) the interests of the accused person;
- (c) the public interest and the protection of the community.

(2) If a court decides to refuse bail, it must give a written ruling on each of the criteria in subsection (1), dealing with the submission made on each one.

(3) If a police officer refuses to grant bail to an accused person, section 11(1) applies.

(4) If a court refuses bail the court must remand the accused person in custody to re-appear before that or another court for trial or review of bail within 14 days from the date of refusal or review.

Reasons for refusing bail

19.—(1) An accused person must be granted bail unless in the opinion of the police officer or the court, as the case may be—

- (a) the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
- (b) the interests of the accused person will not be served through the granting of bail; or
- (c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.

(2) In forming the opinion required by subsection (1) a police officer or court must have regard to all the relevant circumstances and in particular—

- (a) as regards the likelihood of surrender to custody—
 - (i) the accused person's background and community ties (including residence, employment, family situation, previous criminal history);
 - (ii) any previous failure by the person to surrender to custody or to observe bail conditions;
 - (iii) the circumstances, nature and seriousness of the offence;

- (iv) the strength of the prosecution case;
 - (v) the severity of the likely penalty if the person is found guilty;
 - (vi) any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country);
- (b) as regards the interests of the accused person—
- (i) the length of time the person is likely to have to remain in custody before the case is heard;
 - (ii) the conditions of that custody;
 - (iii) the need for the person to obtain legal advice and to prepare a defence;
 - (iv) the need for the person to be at liberty for other lawful purposes (such as employment, education, care of dependants);
 - (v) whether the person is under the age of 18 years (in which case section 3(5) applies);
 - (vi) whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;
- (c) as regards the public interest and the protection of the community—
- (i) any previous failure by the accused person to surrender to custody or to observe bail conditions;
 - (ii) the likelihood of the person interfering with evidence, witnesses or assessors or any specially affected person;
 - (iii) the likelihood of the accused person committing an arrestable offence while on bail.

Reasons to be recorded

20.—(1) If bail is refused the police officer or the court, as the case may be, must record in writing the reasons for refusing bail.

(2) The written reasons must be conveyed to the accused person, in a language the person understands, as soon as practicable after the decision has been made, in any event no longer than 24 hours after it was made.

(3) If bail is refused the accused person must immediately be informed of the procedure for review of bail as provided in section 30.

Part V—BAIL CONDITIONS

Bail undertakings

21.—(1) A person must not be released on bail unless the person gives a written undertaking—

- (a) to a police officer - to surrender into the custody of the bail officer of a court specified in the undertaking and on a day and at a place so specified;

- (b) to a court - to appear before the court on a day and at a place specified in the bail undertaking;
 - (c) if bail is continued by a court - to appear at the time and place at which the proceedings in respect of the offence will be continued, as specified in the bail undertaking or a notice to be sent to the person.
- (2) A bail undertaking must be given in Form 1A or 1B as appropriate.
- (3) An accused person who is granted bail must appear in person before a court in accordance with the person's bail undertaking.

Conditions of bail

22.—(1) Bail may be granted unconditionally or subject to written conditions imposed by the police officer or the court, as the case may be.

(2) If conditions are attached to the granting of bail, they may only be one or more of the following—

- (a) that the accused person enters into an agreement to observe specified requirements as to his or her conduct while on bail;
- (b) that one or more sureties acknowledges that he or she is acquainted with the accused person and regards the accused person as a responsible person who is likely to comply with a bail undertaking;
- (c) that the accused person enters into an agreement, without security, to forfeit a specified amount of money if the accused person fails to comply with his or her bail undertaking;
- (d) that one or more sureties enters into an agreement, without security, to forfeit a specified amount of money if the accused person fails to comply with his or her bail undertaking;
- (e) that the accused person enters into an agreement, and deposits acceptable security, to forfeit a specified amount of money if the accused person fails to comply with his or her bail undertaking;
- (f) that one or more sureties enters into an agreement, and deposits acceptable security, to forfeit a specified amount of money if the accused person fails to comply with his or her bail undertaking;
- (g) that the accused person deposits with an authorised officer of the court a specified amount of money in cash and enters into an agreement to forfeit the amount deposited if the accused person fails to comply with his or her bail undertaking;
- (h) that one or more sureties deposits with an authorised officer of the court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited if the accused person fails to comply with his or her bail undertaking.

(3) If security by an accused person or surety as referred to in this section is considered necessary as a condition of bail the police officer or the court, as the case may be, must ascertain, under oath if necessary, the ability of the accused person or the surety to provide the security.

(4) If security as referred to in this section is required, it must be set with reference to the capacity of the accused person or acceptable person to meet the obligation.

(5) A requirement for security as referred to in this section must not be imposed if it amounts to an unreasonable impediment to the granting of bail.

(6) Any acknowledgement or agreement referred to in this section must be given—

- (a) if by the accused person - in the bail undertaking;
- (b) if by a surety - in Form 2.

(7) An acknowledgement or agreement under this section may be entered into in respect of more than one offence at the same time.

(8) An accused person and any person offering himself or herself as a surety may appeal to the High Court if a police officer or court refuses to accept a person as surety or any proposed security.

Restrictions on imposing bail conditions

23.—(1) Bail must be granted unconditionally unless the police officer or the court, as the case may be, considers that one or more of the conditions mentioned in section 22 should be imposed for the purpose of—

- (a) ensuring the accused person's surrender into custody and appearance in court;
- (b) protecting the welfare of the community; or
- (c) protecting the welfare of any specially affected person.

(2) Conditions must only be imposed—

- (a) to protect the welfare of the community;
- (b) to protect the welfare of any specially affected person; or
- (c) in the interests of the accused person,

and may only be imposed if required by the circumstances of the accused person.

Provisions respecting money or security

24.—(1) Any money deposited or security offered under section 22 to satisfy a condition of bail remains the property of the accused person or surety who deposits the money or offers the security, unless it is forfeited under section 27.

(2) Where money is deposited or security is offered by more than one surety jointly, the money or security remains the property of the sureties jointly and severally unless it is forfeited under section 27.

Part VI—OFFENCES AND PENALTIES

Accused person absconding or breaching conditions of bail

25.—(1) If an accused person who has been released on bail—

- (a) fails to surrender to custody;
- (b) otherwise breaches a condition of bail;
- (c) absents himself or herself from the court without the court's leave at any time after he or she has surrendered to custody; or
- (d) is found to have given a false residential address contrary to section 16(1),

the court may issue a warrant for the arrest of the accused person.

(2) A person who has been released on bail may be arrested without warrant—

- (a) if a police officer reasonably suspects that the accused person is unlikely to surrender to custody;
- (b) if a police officer reasonably believes that the person is likely to break any of the conditions of the bail, or has broken any of those conditions.

(3) A person arrested pursuant to subsection (2) must be brought as soon as practicable, and in any event within 24 hours after the arrest, before a judge or a magistrate, who may remand the person in custody or grant him or her bail subject to conditions, which may be the same as or different from those originally imposed.

Penalty for absconding

26.—(1) A person who has been released on bail and who fails without reasonable cause to surrender to custody commits an offence and is liable on conviction to a fine of \$2000 and 12 months imprisonment.

(2) The burden is on the defendant to prove that he or she had reasonable cause for failing to surrender to custody.

Forfeiture of security

27.—(1) This section applies where bail is granted subject to the provision of security pursuant to section 22.

(2) If a person who has been released on bail fails without reasonable cause to surrender into custody the court may—

- (a) order that the whole or any part of the money deposited or security given by the person be forfeited to the State;

(b) unless cause is shown to the contrary within a period the court directs, order that the whole or any part of the money deposited or security given by a surety be forfeited to the State.

(3) Any sum ordered to be paid under this section may be enforced as if it were a fine and as if the order were a sentence for an offence.

(4) A court may review a decision made under subsection (2) if it is satisfied on an application made by or on behalf of the accused person or a surety that the accused had reasonable cause of the failure to surrender to custody.

Discharge of surety

28.—(1) A person who agrees under section 22 to act as a surety for an accused person, the surety may apply—

- (a) if the bail was granted by a court—to the court or to any other court to which the accused person is bailed to appear; or
- (b) if the bail was granted by a police officer for appearance at a court—to that court,

to discharge the person from his or her liability as surety.

(2) On an application under subsection (1) the court must, if the accused person is not then in custody or before the court—

- (a) issue a warrant to apprehend the accused person and bring him or her before the court; or
- (b) issue a summons for the person's appearance before the court.

(3) On the appearance of the accused person before the court, the court must, unless satisfied that it would be unjust to do so, direct that the applicant be discharged from his or her liability, and the applicant is thereby discharged.

(4) If the court discharges the applicant from his or her liability, it may impose further conditions on the grant of bail, and may commit the accused person to prison until those conditions are complied with.

Part VII—CONTINUATION OR GRANT OF BAIL ON ADJOURNMENT ETC.

Continuation of bail

29.—(1) If a bail undertaking includes an undertaking to appear at any time and place at which proceedings in respect of the offence are continued, whether upon adjournment, committal or otherwise, a court may continue bail already granted in respect of the offence.

(2) If bail is continued under subsection (1), the bail undertaking and conditions, including any sureties and any security, continue to apply, except to the extent that a condition, or any agreement under a condition, otherwise provides or the court otherwise orders.

(3) If the accused person appears before a court in accordance with a bail undertaking referred to in subsection (1) and no specific direction is made by the court in respect of bail upon adjournment or committal, the court is taken to have continued bail on the same conditions which applied immediately before the person's appearance in court, whether a hearing, an adjournment, a committal or otherwise.

(4) If a bail undertaking does not include the undertaking mentioned in subsection (1), but the case is adjourned or the accused person is committed for trial or sentence, the court must, if bail is applied for, make a fresh bail determination.

(5) If an accused person has been convicted and is appealing against conviction or sentence, bail may be continued if subsection (1) applies, or may be granted on a fresh bail determination, if applied for, and Parts IV and V apply with necessary modifications to a decision made under this subsection.

(6) Forms 1A, 1B and 2 set out in the Schedule may be used with necessary modifications in relation to the grant of bail on an appeal or on committal for sentence.

Part VIII—REVIEW OF AND APPEALS ON BAIL DECISIONS

Power of review

30.—(1) A magistrate may review any decision made by a police officer in relation to bail.

(2) A magistrate may review a decision made by another magistrate, including a reviewing magistrate, in relation to bail.

(3) The High Court may review any decision made by a magistrate or by a police officer in relation to bail.

(4) The Court of Appeal may review any decision made by the High Court in relation to bail.

(5) The Supreme Court may review any decision of a magistrate, the High Court or the Court of Appeal, in relation to bail.

(6) A court may not review a decision under this Part if the court is prohibited from making a decision in relation to the grant of bail by any other written law.

(7) A court which has power to review a bail determination, or to hear a fresh application under section 14(1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of a fresh application, refuse to hear the review or application.

(8) The power to review a decision under this Part in relation to an accused person may be exercised only at the request of—

- (a) the accused person;

- (b) the police officer who instituted the proceedings for the offence of which the person is accused;
- (c) the Attorney General;
- (d) the Director of Public Prosecutions; or
- (e) the victim of the offence.

(9) The power to review a decision under this Part includes the power to confirm, reverse or vary the decision.

(10) The review must be by way of a rehearing, and evidence or information given or obtained on the making of the decision may be given or obtained on review.

(11) The regulations may limit the powers of review conferred by subsections (1), (2) and (3).

Appeals on bail decisions

31.—(1) All grants or refusals of bail and all orders, conditions or limitations made or imposed under this Act are appealable to the High Court upon the application either of the person granted or refused bail or of the Director of Public Prosecutions.

(2) The High Court may—

- (a) in its original jurisdiction grant or refuse bail upon such terms as it considers just;
- (b) on an appeal under subsection (1), confirm, reverse or vary the decision appealed from.

(3) This section is in addition to section 22(8) (as to the acceptance of sureties or security) and section 30 (as to review of bail decisions).

Part IX—MISCELLANEOUS

Regulations

32.—(1) The Minister may, with the approval of the Chief Justice, make regulations —

- (a) with respect to the manner of making application to a court in relation to bail;
- (b) prescribing classes or descriptions of offences punishable summarily to which section 5(1)(c) applies;
- (c) limiting the powers of review conferred by subsection (1), (2), and (3) of section 30;
- (d) generally for carrying into effect the provisions of this Act,

but such regulations may not create offences or prescribe penalties.

(2) The Minister may, by regulations, amend the Schedule.

Repeal and savings

33.—(1) Sections 108 to 118 of the Criminal Procedure Code (Cap.21) are repealed.

(2) Regulations made under the repealed provisions which could have been made under section 32 of this Act are deemed to have been made under that section and remain of full force and effect until repealed or amended under this Act.

(3) Any regulations made under the repealed provisions which could not have been made under section 32 of this Act remain in full force and effect until repealed or amended under this subsection.

(4) Any decision in respect of bail made under the repealed provisions which has not had effect before the commencement of this Act remains in force as if made under this Act.

(5) In this section “repealed provision” means any of sections 108 to 118 of the Criminal Procedure Code.

(6) The Criminal Procedure Code (Cap.21) is amended—

- (a) in section 308, by repealing subsection (6); and
- (b) in section 202(5), by deleting “15 days” and substituting “48 hours”.

(7) The Criminal Procedure Code (Forms) Rules are amended by repealing Forms 11, 32 and 34.

(8) Subsections (4) to (7) of section 13 apply to a person who has been in custody for 2 years or more at the commencement of this Act.

SCHEDULE

BAIL FORMS

FORM 1A

BAIL ACT 2002

Form 1A

(Section 21)

BAIL UNDERTAKING (POLICE BAIL)

This form sets out your obligations as an accused person. It is to ensure that you appear in the specified court on the specified date.

Under the powers conferred by section 8 of the Bail Act 2002, I _____ (name of police officer granting bail) hereby grant you _____ (name of accused person) bail to attend _____ (name of court) on _____ day of _____ 20____ at _____ (time) in relation to the offence of _____ (offence).

ADDRESS:

The address you have given me as your place of residence is _____ (accused person's address and telephone number (if any)).

CONDITIONS:

The conditions on which bail is granted are—

- (a) You must attend the _____ (court) on _____ at _____ (time) and there surrender into the custody of the bail officer.
(b) [If required - see section 29]* You must continue to appear at any time and place at which proceedings in respect of the offence are continued, whether upon adjournment, committal or otherwise.

- (c) You must reside at the above address until your case is finally disposed of. (If you wish to reside elsewhere, you must notify the bail officer of the court or the officer in charge of the _____ police station at least 24 hours beforehand).
(d) You must not at any time approach or interfere with witnesses connected with the case against you.
(e) [Others e.g. surrender of passport]*

SECURITY/SURETIES:

[Here state (a) whether any security and if so what security is required of the person accused; (b) and whether any sureties are required, and if so who they are, and whether they are required to provide security and if so what security.]

ACKNOWLEDGEMENT:

I have been made aware of the nature and conditions of my bail and I understand the obligations which they impose.

I agree to observe these conditions and acknowledge that I will face penalties for any breach of them.

[If security required]*

I further acknowledge that I will [forfeit to the Republic of the Fiji Islands the sum of \$ _____ now deposited OR owe to the Republic of the Fiji Islands the sum of _____] if I fail to comply with condition (a) [or (b)] * above.

Signed

_____ Accused
_____ Surety (if any)
_____ Police Officer granting bail

Date _____

Time _____

Police Station _____

Receipt for Passport etc. (if appropriate)

Receipt for cash deposit (if appropriate)

* Delete if not required

Form 1B

Bail Act 2002

Form 1B

(Section 21)

BAIL UNDERTAKING (COURT BAIL)

In the _____ Court

This Bail form sets out your obligations to the court as an accused person. They are intended to ensure that you appear in [this] [the specified court] court on the specified date.

You _____ [name of accused person] are hereby granted bail. The court in granting you bail requires your attendance at [this] the _____] court on _____ [date] at _____ [time] in relation to the offence of _____ [offence].

ADDRESS:

The address you have given as your place of residence is _____ [accused person's address and telephone number, (if any)]

CONDITIONS:

The conditions on which bail is granted are -

- (a) You must attend [this] [the] _____] court on _____ and there surrender into the custody of the bail officer.
- (b) [If required - see section 29.]* You must continue to appear at any time and place at which proceedings in respect of the offence are continued, whether upon adjournment, committal or otherwise.
- (c) You must reside at the above address until your case is finally disposed of. (If you wish to reside elsewhere, you must notify the bail officer at least 24 hours beforehand.
- (d) You must not at any time approach or interfere with witnesses connected with the case against you.
- (e) [Others e.g surrender of passport.]*

SECURITY/SURETY:

[Here state -

- (a) whether any security and if so what security is required of the person accused;

- (b) whether any sureties are required, and if so who they are, and whether they are required to provide security and if so what security.]

ACKNOWLEDGEMENT:

I have been made aware of the nature and conditions of my bail, and I understand the obligations which they impose.

I agree to observe these conditions and acknowledge that I will face penalties for any breach of them.

[If security required]*

I further acknowledge that I will [forfeit to the Republic of the Fiji Islands the sum of \$ _____ now deposited] OR [owe to the Republic of the Fiji Islands the sum of _____] if I fail to comply with condition (a) or (b)* above.

Signed: _____ Accused
 _____ Surety (if any)
 _____ Court officer

Date _____

Receipt for passport etc (if appropriate)

Receipt for cash deposit (if appropriate)

* Delete if not required

Form 2

BAIL ACT 2002

Form 2
(Section 22)

BAIL SURETY FORM
(to be signed by each surety)

In the _____ Court

Name of case _____

I, _____ (name) of _____ (residence)

Agree to be a surety for the performance by _____ (accused person) of the following conditions set out in a Bail Undertaking dated _____

CONDITIONS:

- (a) That _____ (accused person) will attend at [this] [the] _____ court on _____ (date), at _____ (time) and there surrender into the custody of the bail officer.
[If in the bail undertaking]*.
- (b) That the said _____ (accused person) will continue to appear at any time and place at which proceedings in respect of the offence are continued, whether upon adjournment, committal or otherwise.

ACKNOWLEDGEMENT:

I, _____ (surety) state that I have been made aware of the obligations of a bail surety and accept those obligations.

I further acknowledge that I will [forfeit to the Republic of the Fiji Islands the sum of \$ _____ now deposited OR [owe to the Republic of the Fiji Islands the sum of \$ _____] if _____ (accused person) fails to surrender into the custody of the bail officer of this [the _____] court on _____ (date) at _____ (time) [or fails to appear at any time and place at which proceedings in respect of the offence are continued].*

Signed: _____ Accused person
 _____ Surety
 _____ Court officer

Date _____

Receipt for cash deposit (if appropriate)

* Delete if required

Passed by the House of Representatives this 2nd day of October 2002.

Passed by the Senate this 16th day of October 2002.