Bail Reform in N.S.W.

N.S.W. Bureau of Crime Statistics and Research
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Preface

The Bureau of Crime Statistics and Research has been directed by the Attorney-General to evaluate a number of reforms in the area of criminal justice over the last few years. This report on bail is one of a series of evaluation studies to be completed by the Bureau, and others will follow.

The study of bail is the first area in which the Bureau has been involved in both providing research material to those formulating new legislation, and in monitoring the operation of that legislation. Both types of research are important in establishing the appropriateness and adequacy of law reform, and the Bureau has been pleased to be involved in research of such social relevance.

This is the second report by the Bureau of Crime Statistics and Research on the operation of bail in New South Wales. The first report, released in 1977, was planned and conducted in consultation with the Bail Review Committee, and was used by that Committee in formulating a report to the government recommending changes in the system of bail. This report presents the findings of an evaluation of the New South Wales Bail Act, 1978, which commenced on 17 March 1980. The report deals principally with bail determinations by police and magistrates: some data are also presented concerning applications to the Supreme Court for bail.

The project was planned, in consultation with other members of the Bureau staff, by Julie Stubbs, Social Research Officer. She was assisted in data collecting by Angela Bester, Andrew Cornish, Tiziana Trovato, Debbie Jones and Margaret Buckland. The interviews of police officers, the computer analysis of data and the writing of the report were done by Julie Stubbs, and she was assisted in the interviews of magistrates by Kris Klugman. The assistance of the Criminal Law Review Division of the Department of the Attorney General and of Justice is also acknowledged. Editorial assistance was provided by George Molnar and Arthur Travis and the report was typed by the Word Processing Section of the Department of the Attorney General and of Justice.

It would not be possible to evaluate law reform without the full co-operation of those persons and agencies involved in administering and utilizing the legislation. The assistance and co-operation of the New South Wales Police Department, the New South Wales Police Association, members of the police force, magistrates and court staff is gratefully acknowledged.

A. J. Sutton
Director

Part I

POLICE AND BAIL

1 The Bail Act, 1978

Introduction

The Bail Act, 1978, took effect in New South Wales from 17 March 1980. This legislation was based upon the recommendations of the Bail Review Committee (Anderson and Armstrong, 1977) and in response to calls by the Australian Government Commission of Inquiry into Poverty (1975) and the Australian Law Reform Commission (1975) for an urgent review of what they called a discriminatory and outmoded system.

A major concern of the legislation was to balance the rights of the accused with the community's concern for safety. This was emphasized by the Attorney-General in his speech to the Legislative Assembly on 14 December 1978:

> Although it is perfectly true that the community must be protected against dangerous offenders, one must not lose sight of the circumstances, first, that when bail is being considered, one is confronted with an alleged crime and an unconvicted accused person, and second, that the liberty of the subject is one of the most fundamental and treasured concepts in our society (Walker, 1979:9).

The Act codified all legislation with regard to bail and provided clearly specified criteria to be followed by police and the courts in the determination of bail.

As recommended by the Bail Review Committee, the N.S.W. Bureau of Crime Statistics and Research has been requested by the Attorney-General to monitor the operation of the new Act. This report presents the findings of the Bureau's study. Part I deals with police bail. Members of both the N.S.W. Police Department and the N.S.W. Police Association were actively involved in the planning of this study, and their assistance and co-operation are acknowledged.

The need for change

Prior to the introduction of the Bail Act, 1978, the bail system in N.S.W. was almost entirely based upon money bail. Police bail most often involved the deposit of money, or an agreement by the accused or surety to forfeit a sum of money. Whilst magistrates did release some defendants without even the requirement of self bail, there was no clear authority for police and courts to release defendants on non-financial conditions (Anderson and Armstrong, 1977). In addition, since the laws governing bail existed under a number of provisions and also in an unwritten form under the common law, the criteria to be considered in determining bail were not clear.

A large body of research has demonstrated the inequity of a bail system based upon purely financial conditions. Friedman (1976) summarized the literature produced in the 1960s on bail, saying that it demonstrated that the bail decision was based upon wealth, not facts.

Money bail discriminates against the poor. Those who can afford bail are free: to earn their wages and support their families, to assemble their witnesses and prepare their defences, to lead their lives. Those who cannot afford bail, on the other hand, have no alternative but to await trial from a gaol cell. For these persons poverty is, in fact, a punishable offence.

The "archaic" requirement for a defendant to produce a surety as guarantor that the accused would appear at court has also been said to be discriminatory. Armstrong (1977a) suggested that the preponderance of migrants in remand prisons may be due to the fact that they don't have friends or relatives available to act as sureties for them.

The Bureau of Crime Statistics and Research conducted two studies of bail in N.S.W. during 1975 and 1976 (1977). In a survey of court records at 11 courts of petty sessions it was found that of 1,295 defendants for whom a bail decision was made, 15.3% were refused bail and, of those granted bail, 145 (11.2%) were not released. In 142 of these 145 cases a surety was required. The Bureau's bail census study found that of those held in police custody on the day of the census 81.6% had been granted bail but could not afford it. One hundred and eleven persons (15% of the unsentenced persons in custody on that day) were being held for offences for which it was very unlikely that they would receive custodial sentences if convicted. The study also found that the young, the poor, and Aborigines were significantly over-represented in the unconvicted prisoner population.

Little regard was given under the previous bail system to the ability of the accused to meet bail, and the use of factors such as appearance, home ownership and employment status as indices of reliability also discriminated against disadvantaged groups. There was no statutory provision for accused persons to be informed of their entitlements as to bail or for special assistance to be provided for non-English-speaking defendants.

Research indicates not only that many accused were held in custody because they, or their friends and family, had insufficient financial resources to secure their release, but that those persons held in custody had quite different characteristics to those of a group of absconders. Ward found significant differences on a number of indices between a group of unconvicted prisoners and a group of persons who had absconded whilst on bail. He concluded that:

> . . . those in prison do not appear to be a group who would a priori be considered as particularly prone to be absconders (1969:33).

In addition to the discomfort of pre-trial imprisonment, the refusal of bail has been found to have other consequences. The accused is deprived of income whilst in custody, as are any dependants, and in fact may lose his or her job. He or she is taken away from friends and family, and access to legal advice becomes more difficult (Armstrong, 1977a; 1977b; Campbell and Whitmore, 1973). The accused also loses the chance to demonstrate by appearing at court that he or she is a good bail risk (King, 1974; Armstrong, 1977a; Milte. 1968).

Other research has produced evidence of a relationship between pre-trial custody and adverse outcome at trial. Oxley (1979), in her study of New Zealand magistrates' courts found no relationship between pre-trial custody and plea, but found that, controlling for seriousness of offence and legal representation, those held in custody were more likely to be convicted. In addition, having been convicted, they were more likely to receive a custodial sentence (controlling for the effects of offence seriousness, legal representation, previous convictions and plea). Milte (1968) in a study of bail decisions in Victoria found a significant

relationship between refusal of bail and a custodial sentence on conviction for both summary and indictable matters. However, he found no significant differences in the likelihood of conviction between those remanded in custody and those released on bail.

Other studies have been less convincing and a causal relationship between pre-trial custody and adverse outcome has not been established. However, there remains a large volume of research showing a relationship between refusal of bail and negative court outcome (Tomasic, 1976; Australian Institute of Criminology 1976; Armstrong, 1977a; 1977b; Caine, 1977; Wald, 1972; Zander, 1967; King, 1974; Campbell and Whitmore, 1973; Bottomley, 1978).

Further problems with the previous bail system, as listed by Anderson and Armstrong (1977), included the typically short duration of bail hearings and the lack of available information upon which to base bail decisions. In a study conducted by Armstrong and Neumann (1975-76) it was found that three-quarters of the 618 bail hearings conducted at Sydney Central Court of Petty Sessions over the three years studied took two minutes or less. In most cases no evidence about the accused was presented to the court and no attempt was made to assess any special needs for bail or the ability of the accused to meet bail. The longer the period spent discussing bail the more likely the accused was to be released.

The finding that bail decisions were frequently made with little or no information about the accused is consistent with the findings of research in the United Kingdom, the United States of America and New Zealand (Zander, 1971; Friedman, 1976; Oxley, 1979). This is despite the evidence produced during the early sixties by the VERA Foundation that the provision of systematic information about the defendants' background to the bail decision-maker was associated with a significant reduction in custodial remands, and in the rate of non-appearance by those granted bail (Botein, 1965; Sturz, 1965).

It is against the background of such research, and with regard to significant reforms in bail being achieved in other countries, that the New South Wales legislation was designed.

Significant features of the Bail Act, 1978

The new Bail Act sets out clearly the criteria to be used in determining bail, and gives juveniles the same rights to bail as adults. The legislation also provides that accused persons should be informed of their entitlements to bail under the Act.

Under the legislation, a right to bail exists for persons charged with minor offences (those not punishable by imprisonment except in default of payment of fine) subject to certain specified exceptions. These exceptions are:

(*a*) That the person has previously failed to comply with a bail undertaking or bail condition imposed in respect of the offence;
(*b*) That the person is, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection;
(*c*) That the person stands convicted of the offence or his conviction for the offence is stayed;
(*d*) That the requirement of bail is dispensed with by the court;
(*e*) That the person is in custody in respect of another offence for a period which is likely to be longer than that for which he would be on bail.

The Act establishes a presumption in favour of bail for all offences, except those of armed and otherwise violent robbery, and the newly created offence of failure to appear in accordance with a bail undertaking. Persons charged with these offences will not automatically be refused bail but will find it more difficult to secure their release.

For offences for which a presumption in favour of bail applies, the Act specifies the factors which should be considered in the determination of bail. Broadly these factors concern the probability of whether the person will appear in court, the interests of the accused person and the protection and welfare of the community. The legislation recognizes the importance of a person's background and community ties as indicators of the likelihood of that person absconding, and makes provision for an objective rating of these factors to be used in the bail determination. However there is no compulsion for the bail decision to rest on this rating; it is merely one of a set of 12 criteria which the Act specifies should, where possible, be considered in determining bail.

Another important feature of the Bail Act is that it allows for unconditional bail (in which the accused simply signs an undertaking to appear at court when required) and for bail on non-financial conditions. The use of money bail is retained under the Act but represents only one of a range of conditions which may be imposed upon an accused person. This range of conditions extends from the imposition of restrictions on the accused's conduct at one end of the spectrum, to the deposit of money by an acceptable person who agrees to forfeit that money if the accused fails to comply with the undertaking, at the more onerous end of the spectrum.

In addition, Section 37(1) of the Act stipulates that:

> Bail shall be granted unconditionally unless the authorised officer or court is of the opinion that one or more conditions should be imposed for the purpose of promoting effective law enforcement and the protection and welfare of the community.

and Section 37(2) states:

> Conditions shall not be imposed that are any more onerous for the accused person than the nature of the offence and the circumstances of the accused person appear to the authorised officer or court to require.

Where unconditional bail is not granted, the authorized officer or court is required to record the reasons for that determination.

In order to ensure that persons released on less onerous conditions do in fact comply with their bail undertakings, the Act creates in Section 51 the offence of failing to appear in accordance with a bail undertaking. This offence carries a penalty which is cumulative upon, and not to exceed, the penalty for the original offence with which the accused was charged.

Mr. Justice Roden, commenting in Donovan (1981), summarized the new legislation in the following words:

> It has long been a matter of grave concern to many that the system now replaced, with its strong emphasis on means, frequently offered to serious offenders the opportunity of purchasing a chance to abscond, whilst many persons charged with trivial offences were deprived of their liberty before trial because of their inability to find a surety in some paltry sum. The greatest achievement of the legislation, in my view, lies in the considerable down-grading of means as a relevant factor and of money or surety as a bail condition. The consequence of failure to appear is now, as it should always have been, that the absconder has committed a punishable offence (Donovan, 1981:ix-x).

He also said that the new Act "will undoubtedly have teething problems". It is with this in mind that the Bureau of Crime Statistics and Research has been

monitoring the Bail Act — to consider the way in which the Act is operating and to report upon any such problems.

Monitoring the Bail Act

It was decided to choose a sample of offenders and follow them through the criminal justice system from the point of being charged with an offence to the eventual determination of the case. In this way each bail decision made with regard to an offender could be examined, and the bail procedures laid down for use in each jurisdiction could be assessed. In order to do this it was decided to proceed in two stages with the study.

The first stage identified a group of offenders charged at a sample of police stations. The bail decisions made by the police for these persons were examined, as were the procedures laid down under the Act for bail determinations by police. Interviews were also conducted with police officers in order to gauge their reaction to the Act, and to discuss any problems which they may have experienced in implementing the legislation.

The second stage of the study involves the court bail decisions made for each of these offenders. Court officers and magistrates were interviewed in order to examine the operation of the Act in the court system and to determine what problems if any exist there with regard to bail. This stage of the study is described in Part II.

In order to facilitate an understanding of police comments about the procedures required under the Bail Act, the next section presents the steps which the police are required to follow in determining bail. This information is based in part upon the N.S.W. Police Department's on-the-job training lecture on bail (1978).

Procedures for police bail determinations

1. The accused person who is in custody at the police station is given an information form to read which sets out his or her entitlements to bail. Persons charged with minor offences are given Form 1 — "Information as to the right to release on bail in respect of minor offences" — and persons charged with other offences are given Form 2 — "Information as to entitlement to bail". Both forms are available in seven languages (copies of the bail forms are included in Appendix V).
2. The authorized officer must make a determination as to bail. For a minor offence the accused has a right to be released subject to certain specified exceptions. The officer must decide whether such exceptions apply and, if not, whether any reason exists for the accused not to be released on unconditional bail. If the decision is made to impose conditional bail the officer must consider which of the range of conditions available is sufficiently onerous to ensure that the accused would appear at court.
   For an accused charged with other than a minor offence, the authorized officer is required to consider a specified set of criteria in determining bail. This may include asking the accused to complete Form 4, a background and community ties questionnaire, although the accused is not obliged to comply with such a request. A presumption to bail applies to all offenders except those charged with armed or otherwise violent robbery, or with failing to appear in accordance with a bail undertaking. The officer must decide whether bail should be granted and, if conditional bail, what condition or conditions to impose.
3. If the officer decides to grant unconditional bail, he must complete three copies of

Form 5 — the unconditional bail undertaking. Both the authorized officer and the accused must sign each copy.

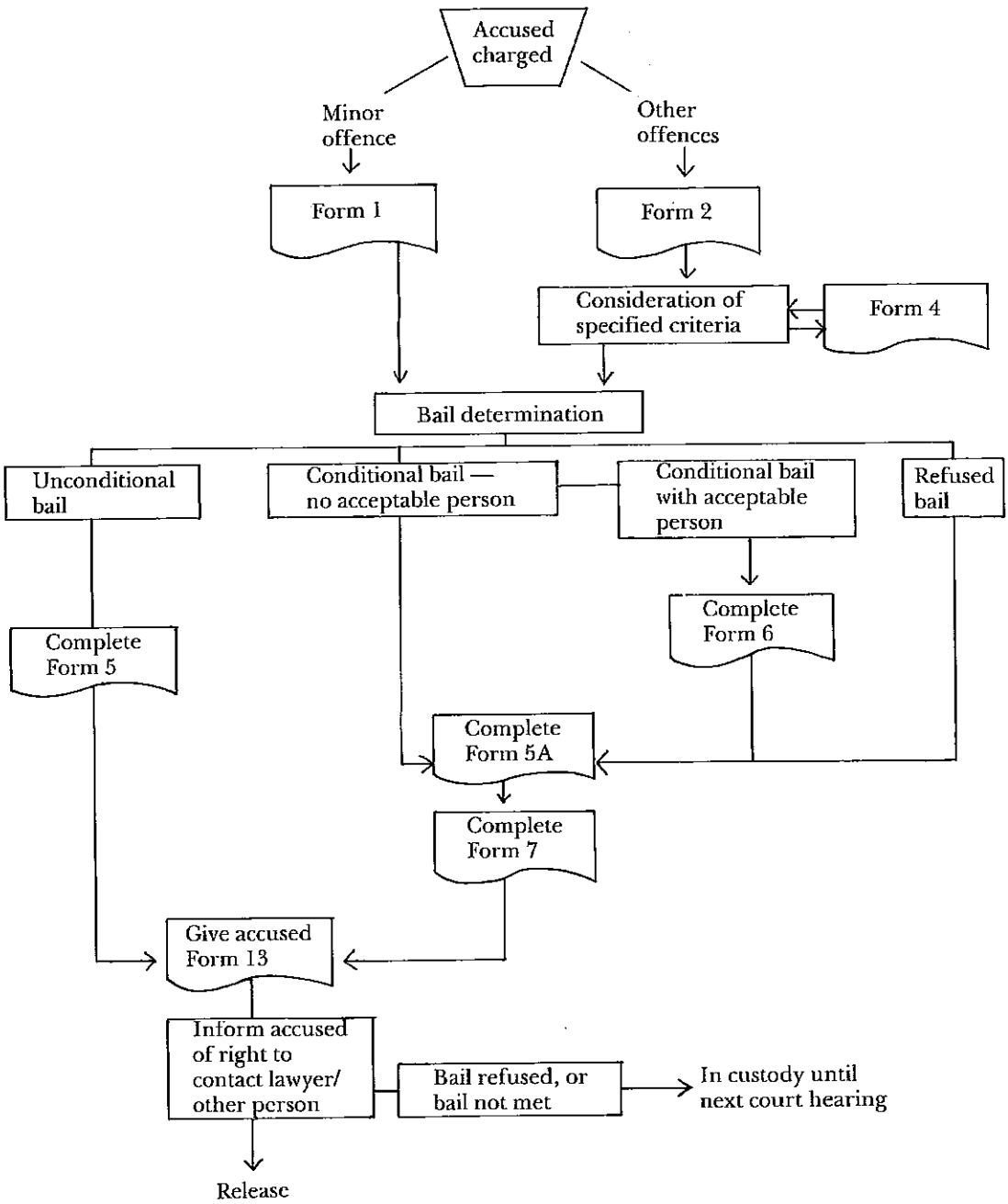
If the officer imposes conditional bail both Form 5A — the conditional bail undertaking — and Form 7 — "Reasons for bail decision by authorized officer" — must be completed in triplicate. If the condition imposed requires an "acceptable person", an additional copy of Form 5A and two copies of Form 6 — the acknowledgement — must be completed. (Under S.36(63) (a) the acceptability of a person, persons, class or description of persons is to be determined by the authorized officer or court imposing the condition, or to whom the bail undertaking is given). The originals of all forms must be sent to the court, one copy of each form must be given to the accused, a copy of Forms 5A and 6 must be given to the acceptable person, and a copy of Form 7 must be sent to the police prosecutor. Copies of Forms 5, 5A, and 7 are filed at the police station. Where Form 4 is used, the form must be sent to the court.

Where the accused is refused bail, three copies of Form 7 must be completed as above.

4. Having completed the required documentation, the authorized officer must inform the prisoner that he or she may communicate with a lawyer or other person, and provide facilities for them to do so. In cases where the officer suspects that this may result in the destruction of evidence, or in the escape of an accomplice, this requirement is waived.
5. The accused must be given a copy of Form 13 which is a notice concerning the review of a bail decision.

The above procedure is presented diagrammatically in Figure 1.

Figure 1. Flowchart showing procedure of police bail decisions



Key

Form 1: Information as to right to release on bail in respect of minor offences.
Form 2: Information as to entitlement to bail.
Form 4: Background and community ties questionnaire.
Form 5: Bail undertaking (unconditional).
Form 5A: Bail undertaking (conditional).
Form 6: Acknowledgment (by acceptable person).
Form 7: Reasons for bail decision by authorised officer.
Form 13: Notice respecting the review of a bail decision.

2 Data collection

A sample of 13 police stations in the city, suburbs and country areas were visited to collect information about police bail decisions and about the operation of the Bail Act. Members of the N.S.W. Police Department and the N.S.W. Police Association had expressed concern about the time which bail determinations might take under the Bail Act. For this reason an attempt was also made to collect data about the amount of time typically required to complete bail determinations, although it is recognized that without a baseline to compare this data to, no meaningful comparisons can be made with the previous system of bail.

Data was collected for all bail decisions made over a period of two weeks in the stations visited. The police stations included in the sample were chosen for the study on the basis of volume of charges and geographical location. Two other stations were chosen as representing areas with a significant Aboriginal population.

A coding form was devised to enable relevant information about the bail decisions to be recorded in a systematic way (see Appendix I). This information was collected from the police charge book, and from the bail forms filed at each police station.

Interviews were also conducted with members of the available staff at each police station visited. The issues raised in these interviews are discussed in Chapter 3 of Part I.

Data

A total of 730 cases where the police made a decision about bail for an accused person, whether an adult or juvenile, were included in the study, but cases where persons were held only to serve a commitment warrant were not included. Cases where the accused was charged by police and taken directly to court are analysed separately in Part II.

(a) *Bail determinations and conditions*

Table 1 shows the bail determinations which were made for the principal offence in each of the cases in the sample.

Table 1. Bail determination for principal offence

	No.	%
Unconditional	476	65.2
Conditional	198	27.1
Refused	53	7.3
Dispensed with	2	0.3
Not recorded	1	0.1
Total	730	100.0

In the majority of cases unconditional bail was granted (65.2%). Conditional bail was granted in 27.1% of cases and in a further 7.3% of cases bail was refused. The large percentage of persons released on unconditional bail is consistent with S.37 of the Bail Act, 1978 which states that:

> Bail shall be granted unconditionally unless the authorised officer or court is of the opinion that one or more conditions should be imposed for the purpose of promoting effective law enforcement and the protection and welfare of the community.

Table 1 also indicates that in two cases police dispensed with the requirement for bail. Since police do not have the power to dispense with bail under the Bail Act, although courts do, these two cases may indicate either an error in the recording of bail for those cases, or some misunderstanding of the Act on the part of the police involved in those cases.

Whilst Table 1 shows that 198 persons were granted conditional bail, 13 of these (6.6%) were unable to meet the conditions imposed and therefore spent some time in custody. These cases are examined in detail later in this chapter.

The bail determinations made for serious offenders are compared to those for less serious offenders in Table 2. Matters which are heard summarily, including those indictable matters which may also be heard in a summary jurisdiction, were grouped together and compared to purely indictable matters.

Table 2. Bail determinations for summary/summary-indictable and indictable matters

	Summary/summary indictable		Indictable		Total	
	No.	%	No.	%	No.	%
Unconditional	473	66.3	3	17.6	476	65.2
Conditional	190	26.7	8	47.1	198	27.1
Refused	47	6.6	6	35.3	53	7.3
Dispensed with	2	0.3	—	—	2	0.3
Not recorded	1	0.1	—	—	1	0.1
Total	713	100.0	17	100.0	730	100.0

Persons charged with indictable offences were much less likely to receive unconditional bail and were more likely to be refused bail than persons charged with summary and summary-indictable matters.

Table 3 shows the bail determinations which were made for persons charged with different numbers of offences.

Table 3. Bail determinations by number of charges

No. of charges		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
1	No.	359	108	31	1	499
	%	71.9	21.6	6.2	0.2	100.0
2	No.	76	44	13	1	134
	%	56.7	32.8	9.7	0.7	100.0
3	No.	22	28	1	—	51
	%	43.1	54.9	2.0	—	100.0
4	No.	12	9	1	—	22
	%	54.5	40.9	4.5	—	100.0
5-9	No.	7	7	6	—	20
	%	35.0	35.0	30.0	—	100.0
10-14	No.	—	1	1	—	2
	%	—	50.0	50.0	—	100.0
Total		476	197	53	2	728*

*In 1 case the number of charges was not recorded, and in 1 case the bail decision was not recorded.

Persons charged with one offence only were much more likely to receive unconditional bail than persons charged with multiple offences. Persons charged with more than five offences had the highest likelihood of a refusal of bail.

The bail determinations made for different types of offences are presented in Table 4 (see Appendix II for an explanation of the offence groups used).

Table 4. Bail determinations for major offence groups

		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
Against the person	No.	10	21	6	—	37
	%	27.0	56.8	16.2		100.0
Sexual	No.	3	5	2	—	10
	%	30.0	50.0	20.0		100.0
Prostitution	No.	1	1	—	—	2
	%	50.0	50.0			100.0
Robbery/extortion	No.	—	5	3	—	8
	%		62.5	37.5		100.0
Fraud	No.	9	8	1	—	18
	%	50.0	44.4	5.6		100.0
Break, enter and steal	No.	12	16	6	—	34
	%	35.3	47.1	17.6		100.0
Larceny	No.	109	46	11	1	167
	%	65.3	27.5	6.6	0.6	100.0
Unlawful possession	No.	13	4	2	—	19
	%	68.4	21.1	10.5		100.0

Table 4. Bail determinations for major offence groups *(continued)*

		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
Intent	No.	—	3	1	—	4
	%		75.0	25.0		100.0
Driving	No.	34	8	—	1	43
	%	79.1	18.6		2.3	100.0
Betting	No.	15	1	—	—	16
	%	93.8	6.3			100.0
Firearms	No.	1	1	1	—	3
	%	33.3	33.3	33.3		100.0
Damage property	No.	8	6	4	—	18
	%	44.4	33.3	22.2		100.0
Offensive and related behaviour	No.	51	10	4	—	65
	%	78.5	15.4	6.2		100.0
Drink/drive	No.	176	26	5	—	207
	%	85.0	12.6	2.4		100.0
Drugs	No.	20	32	1	—	53
	%	37.7	60.4	1.9		100.0
Other	No.	14	5	6	—	25
	%	56.0	20.0	24.0		100.0
Total		476	198	53	2	729*

* In one case the bail determination was unknown.

The table shows considerable variation in the bail determinations made for different offence groups. Persons charged with betting and gaming offences were in most cases granted unconditional bail (93.8%). Unconditional bail was also the most likely determination for persons charged with drink driving, other driving offences, offensive behaviour, unlawful possession of property, and larceny. For persons accused of robbery and extortion, drug offences, and intent to commit an offence conditional bail was the most common determination. Robbery and extortion offences had the greatest likelihood of a refusal of bail. The characteristics of those persons refused bail, and the offences with which they were charged are examined in greater detail in a later section of this chapter.

The incidence of unconditional bail determinations ranged from 90% at three police stations to only 23% at one other station. The highest incidence of conditional bail in the study was 69.6%. The refusal of bail ranged from 1.3% of cases at one police station to 42.9% at another.

It is beyond the scope of this study to determine whether the variations in bail determinations between different police stations reflect differences in the types of offenders with which the stations typically deal, or rather a differential interpretation and implementation of the Bail Act. It is probable that both factors are involved.

Table 5 shows the conditions which were most commonly imposed upon the accused persons in the sample.

Table 5. Bail conditions imposed

	No.	%
Agree to abide by conditions as to conduct whilst on bail	7	3.6
Acceptable person acknowledges accused to be a responsible person	51	25.8
Acceptable person and conditions as to conduct whilst on bail	1	0.5
Accused agrees, without security, to forfeit a specified sum of money	69	34.8
Acceptable person agrees, without security, to forfeit a specified sum of money	23	11.6
Acceptable person and accused both agree to forfeit money (without security)	1	0.5
Accused agrees, and deposits security, to forfeit a specified sum of money	1	0.5
Acceptable person agrees, and deposits security, to forfeit a specified sum of money	5	2.5
Accused deposits cash	15	7.6
Acceptable person deposits cash	23	11.6
Acceptable person and accused both deposit money	2	1.0
Total	198	100.0

The most frequently used condition was that the accused person agree, without security, to forfeit a specified sum of money should he or she fail to comply with the bail undertaking (34.8%). In a further 26% of cases the accused was required to nominate an acceptable person who would acknowledge the accused to be a responsible person likely to comply with the bail undertaking. The table shows that only a small proportion of conditional bails involved conditions as to the conduct of the accused, which is the least onerous of the allowable conditions. However, in the greatest proportion of cases (77%) the conditions imposed did not involve the deposit of cash or security. For those cases where cash bail was required, Table 6 shows the amount of money bail which was imposed.

Table 6. Amount required for cash bail

$	No.	%
50	3	8.1
100	11	29.7
200	8	21.6
300	1	2.7
400	2	5.4
500	8	21.6
1,000	4	10.8
Total	37*	100.0

* In 3 cases the amount of cash required was not clearly recorded.

In almost 60% of cases the amount of money which was required to be paid as cash bail was $200 or less. The amount of cash bail required ranged from $50 to $1,000.

Table 7. Bail conditions imposed for offence groups

Condition		Against the person	Sexual	Prosti-tution	Robbery/ extor-tion	Fraud	Break, enter & steal	Larceny	Unlawful posses-sion	Intent
Agree to abide by conditions as to conduct whilst on bail	No.	2	—	—	1	—	1	2	—	—
	%	9.5	—	—	20.0	—	6.3	4.3	—	—
Acceptable person acknowledges accused to be a responsible person	No.	2	2	—	—	1	9	20	1	—
	%	9.5	40.0	—	—	12.5	56.3	43.5	25.0	—
Acceptable person and conditions as to conduct whilst on bail	No.	—	—	—	—	—	1	—	—	—
	%	—	—	—	—	—	6.3	—	—	—
Accused agrees, without security, to forfeit a specified sum of money	No.	9	1	1	—	3	—	9	2	—
	%	42.9	20.0	100.0	—	37.5	—	19.6	50.0	—
Acceptable person agrees, without security, to forfeit a specified sum of money	No.	1	—	—	—	1	3	8	—	1
	%	4.8	—	—	—	12.5	18.8	17.4	—	33.3
Acceptable person and accused both agree to forfeit money without deposit of security	No.	—	—	—	—	—	—	1	—	—
	%	—	—	—	—	—	—	2.2	—	—
Accused agrees, and deposits security, to forfeit a specified sum of money	No.	—	—	—	—	—	1	—	—	—
	%	—	—	—	—	—	6.3	—	—	—
Acceptable person agrees, and deposits security, to forfeit a specified sum of money	No.	1	1	—	1	—	—	—	—	—
	%	4.8	20.0	—	20.0	—	—	—	—	—
Accused deposits cash	No.	1	—	—	1	2	—	2	1	—
	%	4.8	—	—	20.0	25.0	—	4.3	25.0	—
Acceptable person deposits cash	No.	5	1	—	2	1	—	4	—	2
	%	23.8	20.0	—	40.0	12.5	—	8.7	—	66.7
Accused and acceptable person both deposit cash	No.	—	—	—	—	—	1	—	—	—
	%	—	—	—	—	—	6.3	—	—	—
Total	No.	21	5	1	5	8	16	46	4	3
	%	10.6	2.5	0.5	2.5	4.0	8.1	23.2	2.0	1.5

Table 7. Bail conditions imposed for offence groups *(continued)*

Condition		Driving	Betting	Firearms	Damage property	Offensive and related behaviour	Drink driving	Drugs	Other	Total
Agree to abide by conditions as to conduct whilst on bail	No.	—	—	—	—	—	—	1	—	7
	%	—	—	—	—	—	—	3.1	—	3.5
Acceptable person acknowledges accused to be a responsible person	No.	1	—	—	2	3	4	6	—	51
	%	12.5	—	—	33.3	30.0	15.4	18.8	—	25.9
Acceptable person and conditions as to conduct whilst on bail	No.	—	—	—	—	—	—	—	—	1
	%	—	—	—	—	—	—	—	—	0.5
Accused agrees, without security, to forfeit a specified sum of money	No.	6	—	—	2	5	11	17	3	69
	%	75.0	—	—	33.3	50.0	42.3	53.1	60.0	34.8
Acceptable person agrees, without security, to forfeit a specified sum of money	No.	—	1	—	—	—	5	3	—	23
	%	—	100.0	—	—	—	19.2	9.4	—	11.6
Acceptable person and accused both agree to forfeit money without deposit of security	No.	—	—	—	—	—	—	—	—	1
	%	—	—	—	—	—	—	—	—	0.5
Accused agrees, and deposits security, to forfeit a specified sum of money	No.	—	—	—	—	—	—	—	—	1
	%	—	—	—	—	—	—	—	—	0.5
Acceptable person agrees, and deposits security, to forfeit a specified sum of money	No.	—	—	—	—	1	—	1	—	5
	%	—	—	—	—	10.0	—	3.1	—	2.5
Accused deposits cash	No.	1	—	—	—	1	4	1	1	15
	%	12.5	—	—	—	10.0	15.4	3.1	20.0	7.6
Acceptable person deposits cash	No.	—	—	1	2	—	2	3	—	23
	%	—	—	100.0	33.3	—	7.7	9.4	—	11.6
Accused and acceptable person both deposit cash	No.	—	—	—	—	—	—	—	1	2
	%	—	—	—	—	—	—	—	2.0	1.0
Total	No.	8	1	1	6	10	26	32	5	198
	%	4.0	0.5	3.0	3.0	5.1	13.1	16.2	2.5	100.0

Table 7 shows the variation in the conditions imposed for persons charged with different offence types.

For most offence groups the condition imposed in the greatest percentage of cases was that of the accused agreeing to forfeit a specified sum of money. This was not the case for the categories of break, enter and steal and of larceny where acceptable persons were required as the most common condition, nor for robbery and extortion, intent, and firearms offences where the most onerous condition of an acceptable person depositing cash was imposed in the greatest proportion of cases.

(b) *Bail and the characteristics of the accused*

The bail determinations which were made for males as compared to females are illustrated in Table 8. The small number of females in the sample (101) precludes an analysis of sex differences in bail determinations within each of the 17 offence groups.

Table 8. Bail determinations for males and females

		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
Male	No.	400	168	52	—	620
	%	64.5	27.1	8.4		
Female	No.	70	27	1	2	100
	%	70.0	27.0	1.0	2.0	
Total		470	195	53	2	720*

* For 9 cases in the sample sex was unknown, and for 1 female the bail determination was unknown.

Table 8 shows that females were more likely than males to be granted unconditional bail whilst males were more frequently refused bail than were females. This may reflect the fact that very few females were involved in more serious offences such as offences against the person (1), break enter and steal (4), possession of firearms (1) or robbery and extortion (0).

The bail determinations made for people of different ages are examined in Table 9.

Persons under 18 were least often granted unconditional bail, and were more likely than other groups to be granted conditional bail. This may indicate a reluctance on the part of the police to release juveniles on bail simply on their own undertaking and without any additional assurance that they would appear at court. This is explored more fully in Table 10, which shows the conditions which were most often imposed for different age groups. (Chapter 3, Part I also considers the question of bail for juveniles.) Table 9 also shows a high percentage of bail refusals for persons aged 60 years and over, and for those aged 18 or less. The circumstances surrounding a refusal of bail are examined in more detail in a later section of this chapter.

Table 9. Bail determination by age

		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
Less than 18 yrs	No.	63	43	14	—	120
	%	52.5	35.8	11.7		16.5
18 yrs	No.	33	13	5	—	51
	%	64.7	25.5	9.8		7.0
19 yrs	No.	29	10	2	—	41
	%	70.7	24.4	4.9		5.6
20-24 yrs	No.	129	53	6	—	188
	%	68.6	28.2	3.2		25.8
25-29 yrs	No.	71	33	8	—	112
	%	63.4	29.5	7.1		15.4
30-39 yrs	No.	76	28	8	1	113
	%	67.3	24.8	7.1	0.9	15.5
40-49 yrs	No.	41	8	4	1	54
	%	75.9	14.8	7.4	1.9	7.4
50-59 yrs	No.	24	8	3	—	35
	%	68.6	22.9	8.6		4.8
60 yrs +	No.	10	2	3	—	15
	%	66.7	13.3	20.0		2.1
		476	198	53	2	729
						100.0

* Bail determination was not recorded in 1 case.

Table 10 shows some variation in the types of conditions imposed upon persons of different ages. Over 67% of those aged under 18 who were granted conditional bail were required to produce an acceptable person — one of the less onerous of the allowable conditions — whilst only 26% of the sample as a whole were granted this condition. This may appear to indicate a more lenient treatment of juveniles. However, when considered together with the data presented in Table 9 it appears to reflect a situation where police are reluctant to grant unconditional bail to juveniles and are instead imposing the more stringent conditional bail with the requirement that another person vouch for the accused.

For all age categories ranging between 18 and 49 years the condition imposed most often was that of the accused agreeing to forfeit money in the event that he or she failed to appear in court. For the 50-59 years and 60 years plus age groups more stringent conditions were commonly required.

The bail determinations which were made for people of different racial or ethnic origins are examined in Table 11. Whilst a category is included in that table for persons of Aboriginal origin, it became clear during the study that police do not systematically record whether a person considers himself or herself to be Aboriginal. For this reason the number of Aborigines in the sample is probably underestimated.

Table 10. Conditions imposed for different age groups

Condition		Less than 18 yrs	18 yrs	19 yrs	20-24 yrs	25-29 yrs	30-39 yrs	40-49 yrs	50-59 yrs	60 years +	Total
Agree to abide by conditions as to conduct whilst on bail	No.	3	—	1	2	—	—	—	1	—	7
	%	7.0	—	10.0	3.8	—	—	—	12.5	—	3.5
Acceptable person acknowledges accused to be a responsible person	No.	29	4	3	9	3	1	1	1	—	51
	%	67.4	30.8	30.3	17.0	9.1	3.6	12.5	12.5	—	25.8
Acceptable person and conditions as to conduct whilst on bail	No.	1	—	—	—	—	—	—	—	—	1
	%	2.3	—	—	—	—	—	—	—	—	0.5
Accused agrees, without security, to forfeit a specified sum of money	No.	2	4	3	23	16	15	4	2	—	69
	%	4.7	30.8	30.3	43.4	48.5	53.6	50.0	25.0	—	34.8
Acceptable person agrees, without security, to forfeit a specified sum of money	No.	3	1	2	4	5	6	2	—	—	23
	%	7.0	7.7	20.0	7.5	15.2	21.4	25.0	—	—	11.6
Acceptable person and accused both agree to forfeit money without deposit of security	No.	—	—	—	1	—	—	—	—	—	1
	%	—	—	—	1.9	—	—	—	—	—	0.5
Accused agrees, and deposits security, to forfeit a specified sum of money	No.	—	—	—	1	—	—	—	—	—	1
	%	—	—	—	1.9	—	—	—	—	—	0.5
Acceptable person agrees, and deposits security, to forfeit a specified sum of money	No.	—	—	1	1	2	—	—	—	1	5
	%	—	—	10.0	1.9	6.1	—	—	—	50.0	2.5
Accused deposits cash	No.	—	1	—	5	5	2	1	1	—	15
	%	—	7.7	—	9.4	15.2	7.1	12.5	12.5	—	7.6
Acceptable person deposits cash	No.	5	2	—	6	2	4	—	3	1	23
	%	11.6	15.4	—	11.3	6.1	14.3	—	37.5	50.0	11.6
Accused and acceptable person both deposit cash	No.	—	1	—	1	—	—	—	—	—	2
	%	—	7.7	—	1.9	—	—	—	—	—	1.0
Total		43	13	10	53	33	28	8	8	2	198

Table 11. Country or region of birth by bail determination

		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
Australia — Non-Aboriginal	No.	356	150	34	1	541
	%	65.8	27.7	6.3	0.2	100.0
Australia — Aboriginal	No.	7	5	5	—	17
	%	41.2	29.4	29.4		100.0
New Zealand	No.	9	9	3	—	21
	%	42.9	42.9	14.2		100.0
United Kingdom	No.	23	5	1	—	29
	%	79.3	17.2	3.4		100.0
Other Europe	No.	37	12	5	1	55
	%	67.3	21.8	9.0	1.8	100.0
Middle East	No.	8	5	1	—	14
	%	57.1	35.7	7.1		100.0
North America	No.	1	1	—	—	2
	%	50.0	50.0	—	—	100.0
Africa	No.	1	—	—	—	1
	%	100.0				100.0
Asia	No.	5	2	1	—	8
	%	62.5	25.0	12.5		100.0
Other	No.	13	2	—	—	15
	%	86.7	13.3			100.0
Total		460	191	50	2	703*

* In 26 cases country or region of birth was unknown, and in 1 case the bail determination was not recorded.

Due to the small numbers in some ethnic/racial groupings it was not possible to consider bail decisions for each group for different types of offences. However, a table of offence by country or region of birth is included in Appendix III.

Table 11 shows considerable variation in the bail determinations made for different ethnic and racial groups. The most apparent feature of the table is that Aborigines were the group least often granted unconditional bail, and most often refused bail. The cases in which bail was refused will be considered in more detail later in this chapter.

Table 11 also shows that New Zealanders were less likely than most other groups to be granted unconditional bail, and that people born in the United Kingdom had both the highest rate of unconditional bail and the lowest rate of bail refusal.

(c) *Persons who could not meet bail*

Of the 198 persons in the sample who were granted conditional bail, 13 could not comply with the conditions imposed: Table 12 shows the conditions which were imposed for those persons.

Table 12. Conditions imposed for persons unable to meet bail

	No.	%
Acceptable person acknowledges accused to be a responsible person	1	7.7
Acceptable person agrees, without security, to forfeit a specified sum of money	2	15.4
Accused agrees, and deposits security, to forfeit a specified sum of money	1	7.7
Acceptable person agrees, and deposits security, to forfeit a specified sum of money	1	7.7
Acceptable person deposits cash	7	53.8
Acceptable person and accused both deposit cash	1	7.7
Total	13	100.0

It is significant that in 12 of the 13 cases in which it was recorded that the accused could not meet the conditions of bail, an acceptable person was required. In seven of these cases it was required that an acceptable person deposit sums of money ranging from $100 to $500. In one case, both the accused (an 18-year-old unemployed Aborigine charged with break, enter and steal) and an acceptable person were each required to deposit $500 in cash!

The offences with which persons unable to meet bail were charged included: break, enter and steal; steal motor vehicle; cultivate Indian hemp; indecent assault; assault and rob; deal in heroin; attempt to procure male for an indecent act; and assault with attempt to steal.

In eight of the 13 cases the accused was unemployed, and in one other case the accused was a student. In eight cases, also, the accused were charged at the same metropolitan police station. The ages of those who couldn't meet bail ranged from 16 to 30 years. Eight were Australians of non-Aboriginal origin, two were Aborigines, two were English and one was Yugoslav. One accused person remained in the police cells for 76 hours before appearing before a court. In all other cases the accused appeared at court on the same day, or on the day after arrest.

(d) *Persons refused bail*

There were 53 persons in the sample who were refused bail: 52 were male, one was female. Their ages ranged from 12 years to 63 years, and 14 were aged less than 18 years. Reference to Table 11 shows that 34 were Australians of non-Aboriginal origin, whilst five were Aborigines. As shown by Table 3, 22 of those refused bail were charged with more than one offence.

The types of offences with which persons who were refused bail were charged was considered in Table 4 grouped into broad categories. Table 13 provides more detail about the offences by giving the principal charge which was laid against the accused in each of these cases. The offences range from breaches of government railways ordinances to serious offences such as rape, attempted armed robbery and intent to murder.

Table 13. Principal charge for those refused bail

Charge	No.
Serious alarm and affront	2
Offensive behaviour on railway	1
Under the influence of alcohol on railway	1
Trespass on railway property	1
Shoplifting	3
Ride in a known stolen conveyance	1
Illegal use of a conveyance	4
Steal motor vehicle	2
Steal from person	1
Driving with prescribed concentration of alcohol	5
Navigating whilst under the influence of alcohol	1
Goods in custody	2
Malicious damage	4
Fail to appear in accordance with a bail undertaking	2
Intimidate witness	1
Attempt to escape from custody	1
Imposition upon the Commonwealth	1
Use heroin	1
Break, enter and steal	6
Possess firearm	1
Assault	2
Assault police	2
Assault female	1
Indecent assault female	1
Rape	1
Assault and rob	3
Attempted armed robbery	1
Intent to murder	1
Total	53

It can be seen from Table 13 that a number of people were refused bail for minor offences, and for offences for which it is fairly unlikely that they would have received a custodial sentence.

The offences of serious alarm or affront, offensive behaviour on the railway, under the influence of alcohol on the railway, and trespass on railway property do not carry sentences of imprisonment, yet five people were refused bail in respect of these offences. In addition, for the offences of shoplifting, driving with the prescribed concentration of alcohol, malicious damage, possess firearm and assault female, reference to the *Court Statistics 1979* shows that less than 5% of persons who appeared charged with such offences received a custodial sentence.

Table 13 shows that 19 people, 36% of those refused bail, were being held in custody for offences for which they could not be gaoled or for which it was unlikely that they would receive a custodial sentence if convicted.

The reasons which were stated by police for refusing bail are presented in Table 14.

Table 14. Reasons for the refusal of bail

Reason	No.
Seriousness of offence	13
Previous failure to appear on bail	5
Incapacitated by alcohol/physical injury	2
Prior convictions	23
Evidence that the accused would not appear	11
Lack of community ties	26
In custody for another offence	12
Possibility of further charges	1
Accused didn't want bail	6
On bail for another offence	3
For own good/shelter	1
Currently on parole	2
Wouldn't agree to abide by conditions if bailed	3
Parents requested bail be refused	3
Refused to give identity/be fingerprinted	1
Unemployed	1
Threatened to shoot police if released	1
Would be in custody for only a short period before Court	1
Overseas visitor with NFPA* in Australia	1
Acceptable person withdrawing surety for bail which accused was already on	1

* No fixed place of abode.

The reasons listed do not sum to the 53 persons refused bail since in some cases more than one reason was given.

Table 14 indicates that factors other than those which the Act specifies as appropriate to the consideration of bail were cited in many instances as reasons for a refusal of bail. The possibility of further charges being laid is specifically precluded as a criterion to be considered in the bail decision. That the accused is already on bail, or on parole are in themselves not factors to be considered in the bail decision except as indicators of the accused's previous convictions, or of the likelihood that the accused may commit offences of a serious nature whilst on bail. The fact that the accused is unemployed is not a reason for refusing bail although it does relate to the accused's background and community ties.

The refusal of the accused to be bailed or to abide by the conditions of bail, or the request by a parent not to bail a juvenile are not reasons for a refusal of bail. Rather, the police instructions state that a bail determination should be made even if that person does not want bail and/or refuses to sign a bail undertaking.

In five cases, the sole reason stated for refusing bail was not one which the Bail Act specifies as being appropriate to the determination of bail. The reasons stated in these cases were:

(*a*) The accused preferred to stay in custody because he didn't have time to go home and get back in time to appear at court;
(*b*) Parents requested that the accused be refused bail, and he would only be in custody for ten hours before appearing at court;
(*c*) Accused had been granted bail three days earlier for a similar offence;
(*d*) Accused wouldn't guarantee to abide by conditions of bail;
(*e*) Accused refused to be fingerprinted, and had no proof of identity.

The reasons which were most commonly stated for refusing bail were lack of community ties (26) and prior convictions (23).

Whilst the Bail Act applies equally to adults and juveniles, it is disconcerting that persons as young as 12 years were refused bail. Table 15 examines the offences with which persons under 18 years of age were charged, and the reasons which were given for refusing bail in those cases.

In 13 of the 14 cases the juveniles who were refused bail were charged with offences which may carry a sentence of imprisonment. The exception to this was the offence "causing serious alarm or affront", which carries a maximum penalty of a $200 fine.

In a number of cases, the reasons which were stated for refusing bail may not fall strictly within the criteria specified by Sections 8, 9 and 32 of the Bail Act. It is questionable as an interpretation of the Act whether the fact that the accused is on bail at the time of committing an offence is sufficient justification for refusing that person bail, especially when the offence concerned is of a non-violent nature, such as "ride in a known stolen conveyance". Under S.32 the likelihood that an accused will commit an offence while on bail can be considered if the authorized officer or court is (*a*) satisfied that the person is likely to commit it; (*b*) satisfied that it is likely to involve violence or otherwise to be serious by reason of its consequences; and (*c*) satisfied that the likelihood that the person will commit it, together with the likely consequences, outweighs the person's general right to be at liberty. It may also be questioned whether a request by parents to refuse bail is sufficient reason for keeping a juvenile in custody although police are reluctant to release juveniles as young as 13, say, on their own undertaking.

Some police believe that a more controlling (or, at best, protective) approach may be necessary towards juveniles, and that the Bail Act does not adequately permit this. The problem of reconciling civil liberties and individual freedom with the use of the law to protect someone "for their own good" is at its heights with juvenile behaviour. The Bail Act itself makes such a compromise with respect to adults. Children are given the same legal freedoms under the Act that apply to adults.

Table 15. Offences and reasons for refusal of bail for juveniles

Age	Offence	Reason
12	Illegal use of a conveyance	Escapee from a juvenile institution
12	Illegal use of a conveyance	Escapee from a juvenile institution
13	Break, enter and steal; and possess firearm	Fear that he may abscond; he associates with other offenders
14	Illegal use of conveyance	Escapee from a juvenile institution
14	Possess firearm for criminal purpose, stealing	Serious offences; lack of community ties; threatened to kill police
14	Break, enter and steal; possess firearm	Prior convictions; belief that he would abscond: no respect for authority
14	Break, enter and steal; receiving	On remand for other offences; no respect for authority; prior convictions
15	Break, enter and steal	Parents requested he be denied bail; would spend short time in custody only because appearing in court on that day on another charge
16	Break, enter and steal	Prior convictions; parents requested bail be refused
16	Serious alarm and affront	Accused requested to stay in custody; had absconded before
17	Ride in known stolen conveyance	Bailed 3 days before for similar offence
17	Attempted armed robbery; break, enter and steal; steal motor vehicle	Father refused to accept responsibility; already on remand on 2 charges
17	Shoplifting	On remand for other offences; parents requested bail be refused
17	Assault police; resist arrest; serious alarm and affront; trespassing	Previous failure to comply with bail undertaking; acceptable person for bail on other charges withdrawing surety

Since the highest percentage of bail refusals were for the 60 years and over age group (20%), these cases were also considered in detail. In two of the three cases where a person greater than 60 years of age was refused bail, the reason stated was that the accused had no fixed place of abode and lacked community ties; both persons were charged with offences under the Government Railways Ordinances. In the third case, the accused was charged with assault, and was refused bail because of lack of community ties and also because there was a "strong likelihood that other serious charges might be laid".

(*e*) *Time associated with bail determinations*

The periods of time between charge and release, charge and the determination of bail, and bail determination and release were calculated in all cases where this was available.

Table 16 shows the period of time which elapsed between the accused being charged and being released from custody. Cases where bail was refused, or the time period was not known are excluded. In 56% of cases, the accused was released after one hour or less. In a further 16% of cases the accused was held for one to two hours.

Table 16. Time between charge and release

		Uncondi-tional	Condi-tional	Dispensed with	Total
15 minutes or less	No.	78	2	1	81
	%	17.0	1.2	50.0	11.1
16 to 30 minutes	No.	141	10	—	151
	%	30.7	5.9	—	20.7
31 minutes to 1 hr	No.	123	52	1	176
	%	26.8	30.8	50.0	24.1
Greater than 1 hr, to 2 hrs	No.	67	51	—	118
	%	14.6	30.2	—	16.2
Greater than 2 hrs, to 3 hrs	No.	25	21	—	46
	%	5.4	12.4	—	6.3
Greater than 3 hrs, to 5 hrs	No.	8	13	—	21
	%	1.7	7.7	—	2.9
Greater than 5 hrs, to 10 hrs	No.	14	7	—	21
	%	3.1	4.1	—	2.9
Greater than 10 hrs, to 15 hrs	No.	2	7	—	9
	%	0.4	4.1	—	1.2
Greater than 15 hrs, to 24 hrs	No.	1	2	—	3
	%	0.2	1.2	—	0.4
Greater than 24 hrs, to 48 hrs	No.	—	4	—	4
	%	—	2.4	—	0.5
Greater than 48 hrs	No.	—	—	—	—
	%	—	—	—	—
Total		459	169	2	630*

* In 100 cases either bail was refused, or the values were unknown.

Table 17. Time between charge and bail determination

		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
15 minutes or less	No.	83	4	—	1	88
	%	18.1	2.4	—	50.0	13.9
16 to 30 minutes	No.	144	16	1	—	161
	%	31.4	9.5	20.0	—	25.4
31 minutes to 1 hr	No.	119	51	1	1	172
	%	25.9	30.2	20.0	50.0	27.1
Greater than 1 hr,	No.	63	50	—	—	113
to 2 hrs	%	13.7	29.6	—	—	17.8
Greater than 2 hrs,	No.	25	20	—	—	45
to 3 hrs	%	5.4	11.8	—	—	7.1
Greater than 3 hrs,	No.	8	11	—	—	19
to 5 hrs	%	1.7	6.5	—	—	3.0
Greater than 5 hrs,	No.	14	4	1	—	19
to 10 hrs	%	3.1	2.4	20.0	—	3.0
Greater than 10 hrs,	No.	2	3	—	—	5
to 15 hrs	%	0.4	1.8	—	—	0.8
Greater than 15 hrs,	No.	1	2	—	—	3
to 24 hrs	%	0.2	1.2	—	—	0.5
Greater than 24 hrs,	No.	—	8	1	—	9
to 48 hrs	%	—	4.7	20.0	—	1.4
Greater than 48 hrs	No.	—	—	1	—	1
	%	—	—	20.0	—	0.1
Total		459	169	5	2	635*

* In 95 cases the value was unknown.

Considerable differences are evident in the table in the time between charge and release for unconditional versus conditional bail determinations. Whilst 75% of unconditional bails took 1 hour or less, only 28% of conditional bails were finalized in the same period. Almost 20% of conditional bails took more than 3 hours to finalize as compared to only 5.4% of unconditional bails.

Table 17 shows the period of time which elapsed between the charge being laid and the determination of bail. In 66% of cases the bail determination was made in one hour or less: 75% of unconditional bail determinations were made in the first hour as compared to 42% of conditional bail determinations.

The time between the determination of bail and the release of the accused in the majority of cases was 15 minutes or less, as is evident in Table 18.

Table 18. Time between bail determination and release

		Uncondi-tional	Condi-tional	Dispensed with	Total
15 minutes or less	No.	454	145	2	601
	%	97.4	87.9	100.0	94.9
16 to 30 minutes	No.	8	8	—	16
	%	1.7	4.8	—	2.5
31 minutes to 1 hr	No.	4	4	—	8
	%	0.9	2.4	—	1.3

Table 18. Time between bail determination and release *(continued)*

		Uncondi-tional	Condi-tional	Dispensed with	Total
Greater than 1 hr,	No.	—	1	—	1
to 2 hrs	%	—	0.6	—	0.2
Greater than 2 hrs,	No.	—	2	—	2
to 3 hrs	%	—	1.2	—	0.3
Greater than 3 hrs,	No.	—	2	—	2
to 5 hrs	%	—	1.2	—	0.3
Greater than 5 hrs,	No.	—	3	—	3
to 10 hrs	%	—	1.8	—	0.5
Greater than 10 hrs,	No.	—	—	—	—
to 15 hrs	%	—	—	—	—
Greater than 15 hrs,	No.	—	—	—	—
to 24 hrs	%	—	—	—	—
Greater than 24 hrs,	No.	—	—	—	—
to 48 hrs	%	—	—	—	—
Greater than 48 hrs	No.	—	—	—	—
	%	—	—	—	—
Total		466	165	2	633*

* In 97 cases the value was unknown.

Whilst all unconditional bails were released within one hour of the bail determination being made, in almost 5% of conditional bails the accused was detained for more than one hour after the determination was made.

In all cases where a reason for any delay in bailing an accused was given, the reason was recorded. These reasons are presented in Table 19.

Table 19. Reasons stated for delay in bail procedures

Reason	No.
Accused was intoxicated	12
Accused refused to sign bail forms/didn't want bail	6
Bail condition were not met	13
Kept in custody to serve warrant	2
Waiting for an acceptable person to arrive	3
Weekend (station busy/short staffed)	2
Age/identity unknown	1
Held for questioning on other matters	2
Total	41

The inability of the accused to meet the conditions imposed and the intoxication of the accused were the most commonly cited reasons for delay in the bail procedures.

Comments on the time taken to complete bail determinations are also discussed in Chapter 3 of Part I.

3 Operation of the Bail Act

Police interviews

At each of the 13 police stations visited in the study an attempt was made to interview all available policemen who might have been involved in implementing the Bail Act. The interviews were conducted between May and October of 1980. A total of 46 policemen ranging in rank from senior constable to inspector were interviewed: all were male. The number of persons interviewed at each station ranged from two to eight and depended upon the availability and willingness of the police themselves.

Interviews were conducted in an informal manner in order to elicit as much information as possible about those issues regarding bail which each policeman thought were significant. Police were asked to comment about both the Bail Act *per se,* and about the implementation of the Act. A list of questions (Appendix IV) was used where necessary to direct the interview to issues of relevance to the study.

The inferences which can be drawn from the interviews are of course limited. The sample of police spoken to is not representative of the N.S.W. Police Force in general, nor even of the stations visited since in some instances only a small proportion of the total staff complement of a station was available for interview. However, the interview data are instructive of the way in which police in city, suburban and country police stations have experienced the implementation of the Bail Act in the first seven months of its operation.

General comments on the operation of the Bail Act

A great deal of variation between police stations *and* within police stations was evident in the comments which were made about the new Act. Whilst some police officers expressed extreme opposition to the Act, others were in agreement with the spirit of the legislation but found some difficulties in the procedures associated with its implementation.

Several officers said that the initial opposition by the police and the N.S.W. Police Association to the Act was unwarranted, and was based upon "the inherent conservatism of the police force" rather than upon the Act itself. Some officers felt that the new Act had introduced problems for the police; others felt that there were no problems with the new bail procedures which didn't also occur under the previous system. It was also said by a number of police that the Bail Act *per se* had not posed any substantial difficulties to police, but that it had tended to exacerbate existing problems:

> . . . the Bail Act in itself is not a great change in administration, but superimposed on staff shortages and existing problems it has a shockwave effect.

It was felt by some police interviewed that many of the problems associated with the administration of the Bail Act would be overcome as police became more accustomed to using it.

A number of police thought that procedures used under the previous bail system could have been maintained with new directions to the police about the use of non-money bail and conditional bail.

Most officers expressed approval of the attempt in the legislation to remove the emphasis from money bail. In several cases, however, police said that making accused persons pay money bail was the only way to ensure that they would appear at court.

Concern was expressed in a number of interviews that the police were not sufficiently protected by the Act. It was thought that the recording of reasons for bail decisions might lay open the way for criticism of the police. It was also claimed that the Act shifted a lot of the responsibility for bail from the courts to the police.

Many of the officers interviewed were also concerned that the Bail Act places too much responsibility on the station sergeant, especially in those stations which do not have a designated bail sergeant. The station sergeants in such stations have to deal with the same volume of work as was the case prior to the Act, but with the additional responsibility of bailing. It was also felt by some officers that the designation of special bail sergeants took valuable senior officers out of the mainstream of police work and restricted them to working chiefly inside the police stations.

Comment was also made on what some officers saw as a possible anomaly in the Act. They were concerned that whilst there is no presumption in favour of bail for the offence of armed robbery, this presumption does apply in cases of murder.

Police expressed a desire for feedback about the way in which the Act was working, and some requested guidelines about what sort of bail to give certain offenders, especially drug offenders.

Positive features

Whilst some officers saw nothing advantageous in the new system of bail, others praised a number of features of the legislation.

Unconditional bail was seen by one officer as a major step forward against discrimination. The provision for unconditional bail was also seen as having several associated advantages for police administration. Most police officers thought it speeded up the procedure. As one officer said:

> Unconditional bail is good — it lets you put P.C.A's and shoplifters through like sausages.

Without the requirement for money bail accused persons don't have to be put in the cells whilst waiting for someone to bring the bail money. This means

> You don't have to write dockets for the accused's property, put the property in the safe, then go through the motions of returning property when someone brings the bail money, and you don't have the worry of money in the safe.

Unconditional bail was thought by most of the officers interviewed to be quicker and better than the previous bail system. Some officers also felt that conditional bails were quicker, since in many cases there was now no need to wait for a surety to arrive. Many other officers did not agree however that there was any time saving associated with conditional bails.

Police also saw as a major advantage of the new Act that it allows more persons to be released from custody prior to their appearance at court, whilst at the same time providing a wide range of conditions which can be imposed upon the

accused. Several police mentioned that the flexibility of conditions which can be imposed under the Act was a great advantage to the police in enabling them to tailor the conditions to the offence, especially in dealing with domestic disputes. The Act was also said to provide plenty of scope for the police to refuse bail where required.

The provision of a further charge for failing to appear in accordance with the bail undertaking was seen as a positive feature of the Act by most of the officers interviewed. It was thought that the number of persons failing to appear was smaller under the Bail Act than had been the case previously.

> The knowledge that they can be charged with a second offence probably is a stronger incentive to appear at court than a deposit of money.

Some officers did not agree and thought that the problems they had encountered in implementing the new Act were in no way justified by having more people appear at court.

Several officers thought that the provision of guidelines for bail decisions provided protection for police against undue criticism, although other policemen were concerned that the Act did not provide them with sufficient protection from possible criticism.

Problems in the operation of the Bail Act

Most of the problems enumerated in the interviews with the police were procedural ones and were not due to anything inherent in the legislation. Many police expressed some confusion about the interpretation of the Act, and about the new procedures for bail. Whilst undoubtedly many such problems will be resolved as the police become more accustomed to using the Act, a number of issues were raised which warrant serious attention.

The problem which was most frequently mentioned by the police concerns the forms which they are required to complete.

The police officer responsible for bail may use from one to five forms depending upon the nature of the bail determination: multiple copies are required in all cases. There are also three information sheets, two of which must be given to the accused (Appendix V).

In general most police thought that there were too many forms, that they were poorly designed, cumbersome to complete and contained too much legalistic jargon. It was said that most accused persons had difficulty understanding the forms, and that valuable police time was being wasted in lengthy explanations of forms which were supposed to have been designed for the information of the accused person.

The looseleaf nature of the forms was said to create additional problems with regard to record keeping and filing, and many officers requested the return to a book of forms as was the case under the previous system. The necessity of typing on both sides of a form when multiple copies are required was seen as a problem in that rearranging the copies and carbons wasted police time. Several officers suggested the use of carbon impregnated forms so that the completion of multiple copies would be easier. Many police thought that such problems reflected insufficient consultation between the legislators and the police force in the design of the Act and its regulations.

Details about the problems being experienced with each of the bail forms and suggestions for possible changes are offered in a later section of this report.

An associated problem reported by at least some of the police interviewed was the claim that the new system of bail takes considerably longer than was the case under the previous system. However, a great deal of variation in opinion between different stations was evident on this issue.

Some suburban and country stations found that most of the accused with whom they dealt could be released upon unconditional bail. Such stations saw the new Act as saving a great deal of time since almost all officers agreed that unconditional bail was a much quicker procedure than the previous system. But in stations which tend to deal with more serious charges, and in city stations where many accused are unknown to the police and may be of an itinerant nature, a large percentage of bail determinations tended to be conditional bails (see Table 5) which police claim take up a lot of time.

Bails which require an acceptable person were said to take the longest period of time, both in terms of locating someone suitable and in completing the requisite documentation. Some officers did say that this problem is in no way different to that which occurred under the previous system when police frequently had to wait for a surety to arrive at the station.

The provision for conditional bail with the requirement that some form of security be deposited was questioned by quite a number of the police interviewed. They foresaw problems in police being required to assess the value of property tendered as security, and in storing such property. The deposit of passbooks was not seen as satisfactory security since it was claimed that the holder of the account could still operate that account if he or she signed a statutory declaration saying that the passbook had been lost. A number of officers stated that they would not specify a conditional bail which required security because of these problems.

Police also showed concern with the requirement that a bail determination be made for each charge laid against an accused. There is no explicit statement in the Act that a separate determination is required on each charge. However the N.S.W. Police Department training lecture states that

> A separate bail determination must be made for each offence, even if they are under the same section (1978:3).

The instructions also state that where possible the same form/s should be used for all the determinations. While some of the police spoken to based their opposition to this requirement on the extra time it would take to make a separate determination on each charge, other officers appeared to have misunderstood the instruction, interpreting it to mean a separate form for each charge.

Many of the police spoken to asked that this requirement be waived, saying either that bail should be determined on the most serious charge only, or that all offences should be considered in making a single determination. Other police found that this requirement caused no real problems, although it did take longer than a single determination. They also pointed out that difficulties may arise where a determination was based on one charge only and that charge was not proceeded with. They questioned whether in such a circumstance the bail undertaking would then be taken as referring to other matters with which the accused may be charged or whether a new bail undertaking would have to be made.

A number of police complained about the requirement of rating an accused person's background and community ties. Whilst few police saw no value in having this information when making a bail determination, most complaints concerned the time it took to gather the information, and the nature of the

form (Form 4) designed for recording it. Some police thought that this information was already routinely collected by the arresting police, and that the only problems to arise in this regard were due to accused persons being unable to understand or record such information on the form provided. Some officers also questioned the value of a numerical rating system which does not have a pass or fail mark.

Many of the police spoken to had not considered the background and community ties rating in terms of the value such information may have to a magistrate in any subsequent bail hearing, but had considered it only in terms of the time it took to complete and the utility it had for the police themselves.

Several police also found the bailing of juveniles to be a problem. They questioned whether a juvenile could lawfully sign a bail undertaking. Section 5 of the Bail Act states that

> . . . This Act applies to a person whether or not he has attained the age of 18 years,

and an amendment to the Child Welfare Act makes the Bail Act prevail over that Act should any inconsistency arise. However a number of the police interviewed indicated that they would not release a juvenile on his or her own undertaking, but rather would require an acceptable person to vouch for the accused and sign an acknowledgement (Form 6). When releasing a person under the condition of an acceptable person an additional bail form is required to be completed and this takes a longer time to process than the simple unconditional bail. Some police find this inconvenient and asked whether an unconditional bail could be used with a parent or guardian co-signing the form.

This reluctance on the part of some police to release juveniles on unconditional bail not only increases the time and paperwork involved in the bail determination but may also discriminate against the juvenile accused. In the first instance conditional bail is more onerous than an unconditional determination. This may be interpreted in future proceedings as an indication that the accused is not reliable. Juveniles not living with their families may also have problems in producing a person acceptable to the police to guarantee their appearance at court.

Inquiries at several children's courts indicate that a number of children are appearing off bail on their own undertaking, that is at least some police are allowing them to sign bail forms on their own behalf. The apparent confusion experienced by some officers on the question of bail for juveniles suggests that some attention should be paid to this issue in future staff training.

Police at one of the stations visited were concerned about the issue of charging persons with the offence of failing to appear in accordance with a bail undertaking. These officers thought that it may be difficult to follow up all cases in which a person failed to appear at court. It was said that police don't issue many warrants, and that the system would become unworkable if warrants were issued in all cases where an accused failed to appear.

Some criticism was also offered by a number of the police interviewed about the attitude of magistrates to charges of failure to appear, under S.51 of the Bail Act. It was claimed in one area that most such charges were dismissed, and that penalties as low as 50 cents fines were being imposed. Such criticisms were not aimed at the Bail Act *per se,* but rather at the application of the legislation in certain courts.

Other problems being experienced by police in implementing the Bail Act appear to be specific to certain areas.

In a number of police stations in the study it was reported that bailing non-

English speaking persons was a problem. This was particularly the case in the western suburbs of Sydney where a number of hostels are located for migrants new to Australia. Such problems seem to have been anticipated to a degree in the implementation of the Act in that information forms for the accused are printed in seven languages. However, there are no bail forms printed in the Vietnamese language, which is proving a problem in several areas which have a high concentration of Vietnamese people. It was also suggested that forms should be available in Maltese and in Macedonian, since many of the Yugoslav people resident in Australia speak Macedonian and not Serbo-Croatian, for which a form is available.

Although a twenty-four-hour-telephone-interpreter service is currently available to police, some police found the service difficult to use. Several police also stated that telephone interpreting was not an effective answer to the problem especially due to the large number of forms which may be involved in the bail procedure and which would need to be explained to the accused.

It is instructive also that the N.S.W. Police Department's on-the-job training lecture on bail (1978) devotes only one line to the problem of non-English speaking persons:

> If an interpreter is required,
> telephone 221-1111.

The concern evidenced by police surely indicates a need for more consideration to be given in the training of police officers to the problem of making a bail determination for non-English-speaking persons.

Special problems were also evident in police stations which have a high volume of charges. This was particularly true of the metropolitan police stations where a combination of high work load and a large proportion of serious charges was said to make the implementation of the Bail Act difficult. Police at such stations reported that the need to use conditional bails for a large number of cases slowed down the bailing procedure, especially where there were multiple offenders, and necessitated people being held in the cells awaiting bail. Delays were particularly noted on night shifts and on weekends, and it was suggested that two bail sergeants should be placed on duty at such times to remedy this situation.

Some difficulties were also reported by small stations where only a car crew was placed on roster for night duty and there was no station staff. It was reported that procedures under the new Bail Act kept car crews off the road for a longer period of time than was the case under the previous system of bail.

One possible anomaly was identified which affects the bail procedures in isolated areas. The Act specifies that where a person is refused bail or cannot meet the conditions under which bail is granted, such person should be brought before a court as soon as practicable (S.20). Section 25 goes on to state that for a person refused bail no adjournment by a magistrate, or a justice who is a clerk of petty sessions, shall exceed eight days, and no adjournment by a justice who is not a clerk of petty sessions may exceed three days.

The anomaly arises in that whilst a person refused bail by a magistrate or justice must be brought before the court within a specified time, there is no such time specified for people refused bail by the police or unable to meet the bail conditions imposed by the police or the court. Section 20 states only that the accused be brought before a court as soon as practicable. This is a particular problem in country areas where the defendant may remain in the local lock-up

for a considerable period of time before the next regular visit of the circuit magistrate.

It is probable that such problems will always exist in isolated areas where there is no resident magistrate, and it is difficult to see how this problem might be overcome.

Since a number of problems enumerated by the police are associated with the documentation required under the Act, we will examine in detail the issue of the forms themselves.

Comments on the bail forms

(a) *Form 1 and Form 2*

The Bail Act specifies that all persons must be informed in writing in respect of their entitlement to or eligibility for bail (S.18). Form 1 and Form 2 provide this information and are available in seven languages (Arabic, Greek, Italian, Serbo-Croatian, Spanish, Turkish and English). Police have also requested that these forms be made available in Vietnamese, Maltese and Macedonian.

The most common comment which police made about these forms is that "nobody ever understands them". The forms adopt the legal terminology used in the Act itself. For example, in listing the bail conditions which may be imposed upon an accused person, condition "h" states that:

> . . . one or more acceptable persons deposit with the authorised officer or court a specified amount or amounts of money in cash and enter into an agreement or agreements to forfeit the amount or amounts deposited if you fail to comply with your bail undertaking . . .

Such language is difficult for persons with no legal background to understand, and may be totally incomprehensible to less educated persons and to young offenders.

The information sheets also make reference to sections of the Act. Form 1 begins: "Pursuant to Section 8 of the Bail Act, 1978 . . ." Such references have no meaning at all to any person not conversant with the legislation. This is despite the recommendation of the Bail Review Committee (Anderson and Armstrong, 1977) that all aspects of bail should be readily understood.

The Attorney-General said in his speech in the Legislative Assembly on 14 December 1978 that

> . . . the bail review committee was of the opinion — and this Government shares that opinion — that all aspects of bail should be stated in clear and precise terms which can readily be understood by courts, police, lawyers and, most importantly, by the news media and the general public (Walker, 1979:2).

It is unfortunate that this aim does not seem to have been achieved. Indeed many police commented that much of their time was wasted in explaining these forms to defendants who, having read the forms, still had no understanding of their entitlements as to bail.

The efforts which were made to enable non-English-speaking persons to be informed of their rights have also been largely wasted in that the terminology used in the forms is not at a level which can be easily understood by most persons. The difficult nature of the language used in Forms 1 and 2 is even more striking when one considers that the Act is designed to apply equally to adults and to juveniles.

If it is truly intended that accused persons should be informed in writing of their rights

as to bail then it is a matter of great importance that Forms 1 and 2 be redesigned in simple language which avoids the use of legalistic jargon. Whilst it is recognized that any departure from the terminology used in the legislation may result in differential interpretations of the provisions which exist for bail, the greatest consideration must be given to simplifying these forms if they are to be of any value to the majority of accused persons. Perhaps all forms printed in languages other than English should also include information about the availability of interpreter services.

It was also suggested by police that Form 13 — the notice respecting a review of the bail decision — should be incorporated with Forms 1 and 2, so that all the information which the accused requires is on a single sheet.

(b) *Form 3*

This form, an application for bail by a person who is in custody, is not completed by police but rather by the accused, by his or her solicitor, lawful spouse, parent or guardian. The police therefore had no comment to make on this form.

(c) *Form 4*

Form 4 is a background and community ties questionnaire which provides a rating of the accused person in accordance with Section 33 of the Act. The form is not required to be completed in all cases but is restricted to the following situations:

1. In all cases where the court has indicated it wishes such information before it;
2. Where bail is to be opposed or where it is likely that the accused will not be released on bail; or
3. In respect of serious offences which cannot be disposed of summarily.

In addition, police instructions on bail state that the form need not be completed

> . . . where it is very likely that the case will be finally determined on the first appearance of the accused before the Court and the authorised officer does not require a Form 4 to be completed to assist him in making his bail determination. The Form 4 is not requested where bail is determined under Section 8 (N.S.W. Police Department, 1978:13).

The form is to be completed by the accused person and verified where possible by the police. The responses by the accused are allocated points in accordance with a standard scale, but no pass or fail level has been set. The accused person is under no obligation to complete the form, nor to nominate a person with whom the information on the form could be checked.

This form attracted the most vehement comments from the police. The most frequent comments are listed below.

(i) *Difficulty in completing the form*

The form was criticized as being too difficult for most accused persons to understand. For example the instructions state:

> . . . mark with an "x" one answer only in each category (A-E inclusive) if it is true, and complete the additional particulars where applicable.

Police said that they had to spend a lot of time explaining the forms to accused persons who did not understand the terminology used.

Not only are the instructions difficult for some people to follow but they are located at the end of the form rather than at the beginning.

It was reported that further difficulties were being experienced because the response categories were too similar and were expressed in a confusing manner. One example cited is in Section A where:

> I live with my immediate family AND have at least weekly contact with other immediate family members

is an alternative to

> I live with my immediate family OR have at least weekly contact with my immediate family.

Many accused persons reportedly could not differentiate between the two alternatives.

In addition, difficulties were said to have arisen because the response categories are not mutually exclusive in all sections. In the section on employment,

> I am being supported by my family or my savings

and

> I am unemployed and not receiving unemployment benefits or other form of pension

are alternatives although they may both be true. Neither are the response categories said to cater adequately for all circumstances. In some areas where there are a large number of seasonal workers who work when and where they can, it was said that the forms did not adequately allow for such situations in the responses provided. Questions were also raised about the adequacy of the responses to cater for visitors to Australia.

Associated with the difficulties mentioned above is the claim by the police that the form takes too long to complete, particularly when it is considered that the background of the accused is only one of a dozen issues which the police should consider in accordance with Section 32 of the Act. Attention to the previously mentioned problems may reduce the time required to complete the form.

(ii) *The information provided by the accused cannot be meaningfully assessed*

Police instructions state that inquiries about the information on Form 4 should be discreet and suggest that the accused should be asked to nominate a person with whom they can check the information. Police officers say that where the accused does not nominate someone, checking is made very difficult. It was said by some officers that to check the responses thoroughly would take hours, and several officers said that they didn't consider it possible truly to verify the information. One officer suggested that attempts to check the veracity of the accused's responses may constitute an invasion of privacy.

Many police also questioned the value of making any such rating of the accused's background when no pass or fail mark exists. This criticism could be answered perhaps by the argument that the use of a rating scale at least provides some objective measure against which the accused's background can be assessed.

(iii) *Accused persons refuse to complete the form*

Some officers said that they rarely used the form because accused persons

refused to complete it. Two officers said that they usually told accused persons not to complete the form if they didn't want to. It was also said that some people who chose to complete the form refused to provide details of previous convictions — some others simply did not know the required details.

Other police officers spoken to said that they had no trouble in getting accused persons to complete the form because they didn't tell them that there was no obligation to do so.

(iv) *The form is discriminatory*

Claims were made that the rating scale discriminates against young people and migrants. Persons who have been working for only a short time, who do not live with family members, and who have not lived at their present address for a long period of time, as may be the case with many young adults and migrants, rate lowly on the scale.

However, since there is no "pass" or "fail" mark specified and the rating is only one of the factors to be considered in the bail determination, it is unlikely that the rating scale will lead to systematic discrimination.

(v) *Disclosure of previous convictions to the magistrate*

Several police questioned the propriety of a form which was designed in part to provide information to magistrates, including details of previous convictions. They were concerned that the magistrate hearing a bail application at which a Form 4 was tendered, may also be the magistrate who would determine the case. In this situation the magistrate would know the accused's record before hearing the evidence presented, although a magistrate should not be given this information until after the case is determined.

This problem also existed under the previous provisions for bail where an accused person's prior record was used as evidence at the bail hearing before the same magistrate who ultimately heard the case (as happens commonly in suburban and country areas). It is difficult to see how this problem might be overcome, particularly in those courts where only one magistrate sits.

Not all police saw Form 4 as a problem. Some said that they found it very useful and, since it was only required to be used in a small proportion of cases, the time taken to complete the form did not present any real problem. Again there was a considerable difference in the comments made by the staff at busy metropolitan and suburban stations as compared to the country police stations. This seems to reflect both the workload of the station and the nature of the charges with which a given station commonly deals.

It is evident that Form 4 needs to be redesigned with the instructions and responses presented in a clear and simple manner. It should be ensured that the response categories are mutually exclusive. Ambiguities in its use in bail decisions should be removed and some consideration given to the kind of non-police professional support and training required to ensure its adequate completion by the accused.

(d) *Form 5*

Form 5 is the undertaking required to be signed by persons granted uncondi-

tional bail. The form also incorporates a warning that failure to comply with the undertaking is an offence.

This form gained almost universal approval from the police. Most thought it was simple and quick to complete. Several police officers commented that it was much quicker than under the previous system, and that there were no problems associated with its use.

One policeman commented on the layout of the form saying that it was confusing. He questioned the necessity for the line which appears between the undertaking itself and the accused's signature. Several officers suggested that the forms should be issued in a book allowing for three copies to be made, and which should be numbered to remove the problems of accounting and filing.

Although the form uses the same legal terminology used on the other forms, none of the police mentioned this as a problem.

Some police suggested that this form should be incorporated with Form 5A — the bail undertaking used for conditional bails — in a single undertaking which would specify the type of bail granted and the conditions imposed, if any. This was in fact the way in which the bail undertaking form was originally designed and the manner in which it was published in the Regulations. However prior to the implementation of the Act, the decision was taken to provide separate forms for unconditional and conditional bails.

Since most bail decisions being made under the new Act are unconditional bails (65% in the sample studied) it would seem advisable to maintain a separate form in as simple a manner as possible for unconditional bails.

Given the comments previously noted about accused persons having difficulty with legal terminology, *it may be advisable for Form 5 to be reworded in simple language* consistent with that recommended for use in all other forms.

(e) *Form 5A*

Form 5A is the form completed for all conditional determinations. The form specifies the conditions with which the accused must comply and warns of the penalties consequent upon a failure to comply with the bail undertaking. It also incorporates an agreement by the accused and surety to forfeit money in the event that the accused does not comply with bail, or to deposit money where such conditions apply.

At the time that the interviews with police officers were conducted, Form 5A existed as an open-out sheet with printing on three pages. Many police criticized this format, chiefly because the open sheet was too wide to fit into a standard carriage typewriter. This format was also said to be inefficient since half of the third page and all of the fourth page were blank. The format has now been changed to that of a single sheet with printing on both sides (Appendix V). There is no essential difference between the two formats — the newer version simply has less space for the recording of conditions as to the accused's conduct than was allowed on the earlier form.

Many police were also critical of the manner in which they are required to indicate on the form which condition applies to the accused. The form lists eight conditions and the authorized officer must strike out all conditions which do not apply. Not only is this procedure said to waste time, but in typing multiple copies with carbon paper, the copies often slip out of alignment which means that the condition which the accused must undertake to comply with may not be clear on all copies. It was suggested that other methods of indicating the

condition which applies be used — such as ticking the appropriate box, circling the condition or putting an asterisk against it.

An additional problem also associated with the need to complete multiple copies is that the form requires information to be typed on both sides. This creates difficulties in that carbons must be reversed and the copies reorganized to type the second side. Police officers claimed that a significant reduction in the time required to complete the form could be achieved if all sections requiring information to be typed in were placed on the front of the forms and all additional information was placed on the back of the form. It was suggested that the use of carbon impregnated paper for the forms may alleviate some of the problems associated with the production of multiple copies.

Whilst some police complained of the time taken to complete a conditional bail undertaking, others said that any increase in this time was more than compensated for by the reduction in time required to complete a Form 5 bail when compared to bail under the previous system. It was also said that major delays were being experienced with bails requiring an acceptable person, both in terms of locating the person and having such person attend the police station and in terms of completing the required forms. However, this was also a problem under the previous system of bail, and affected an even larger number of persons under that system since there was no provision for unconditional bail.

It is recommended that Form 5A be redesigned, in the light of the comments offered by the police, in simple language and in a form which can be quickly completed.

(f) *Form 6*

This form is the acknowledgement which an acceptable person is required to complete stating that the accused is a responsible person likely to comply with his or her bail undertaking. The form incorporates a warning to the person that making an untrue acknowledgement is an offence.

Some complaints were made about the number of forms which need to be completed for conditional bails which require an acceptable person. Criticisms of the form design were also made with suggestions being offered that Form 6 be incorporated in a single form with Form 5A.

It was suggested that some changes to Form 6 would facilitate the completion of split bails. (Split bail refers to the situation where an acceptable person "is because of distance or for any other reason unable readily to attend before the authorized officer or court" that person may make an acknowledgement at another police station or court.) It was said that if the forms were issued in accountable books it would be possible for the police or courts involved simply to exchange the relevant numbers over the phone. As the system now stands, copies of all forms involved in the procedure must be exchanged by the stations/courts involved.

(g) *Form 7*

The authorized officer must complete Form 7 for each case in which conditional bail is granted, or where bail is refused. Section 38 of the Act states that reasons should be recorded for the refusal of bail, for granting conditional rather than unconditional bail, and if conditions (b)-(h) on Form 5A are imposed reasons should be given as to why they were imposed. The officer must also record any

request a prisoner makes for bail, and where conditions imposed are other than those requested by the prisoner, the reasons for that determination.

Opinion was divided about the intention of the form. Some police questioned the need for such a form, claiming that it could only lead to police being criticized for being too harsh or too lenient in the bail decisions. Others thought that the form was good because if questions arose about a bail decision, the reasons for that decision would be clearly set down.

The form was criticized on the basis of design since like Form 5A it requires responses to be typed on both sides, creating problems in producing multiple copies.

(h) *Form 13*

Form 13 is the notice respecting the review of a bail decision which must be given to every accused person. It was suggested by some officers that this information could be included on Form 1 and Form 2 so that all the information which the accused requires about the bail decision is on one page.

It was requested that paragraph 5 of the form be reworded in simpler language. This paragraph reads

> A court in reviewing a bail decision may affirm or vary that decision or substitute another decision. A request for review of a bail decision shall be in writing in or to the effect of Form 11, in Schedule 1 to the Bail Regulation, 1979, a copy of which may be obtained from a court office or at a prison.

Summary

In summary, the main problems raised by police in using the new legislation were:

(*a*) Form design;
(*b*) Time taken to complete the bail determination and documentation;
(*c*) The conditions requiring the deposit or security: how to assess the value of the security, where and how to store it, and whether passbooks actually constitute sufficient security;
(*d*) The requirement for bail determinations to be made on each charge;
(*e*) The rating of an accused person's background and community ties;
(*f*) The bailing of juveniles;
(*g*) Concern about issuing warrants in all instances where an accused fails to appear, and the attitude of magistrates in dealing with this offence;
(*h*) Bailing non-English-speaking persons;
(*i*) High workload stations with serious offences have a large number of time-consuming conditional bails;
(*j*) Small stations with car crews only say cars spend too much time off the road completing bails;
(*k*) The time which prisoners who are refused bail or unable to meet bail may have to spend in lock-ups in isolated areas whilst waiting to appear before a circuit magistrate.

It is probable that several of the difficulties raised by the police would exist regardless of whatever system of bail was adopted. The charging and bail of non-English-speaking persons will always present difficulties. Perhaps an expansion of available interpreter services may ease such difficulties as may greater attention to the training of police officers with regard to this issue.

It is likely also that in isolated areas problems will continue to exist for persons who cannot be released on bail, and must remain in police cells until they can be

taken before a magistrate. In some cases it may be possible for prisoners to be transported to the nearest magistrate for a hearing. This will not always be possible, and it is difficult to see how this problem could be overcome given the existing manner in which the court system is organized.

Other problems raised relate either directly or indirectly to the procedures which exist under the Bail Act. *The streamlining of such procedures, especially with regard to a redesign and simplification of the forms required is strongly recommended* and should act to ameliorate the situation to a large degree. The conditions under which Form 4 is used should be reviewed, including its place in the bail decision, its relationship to other forms and the circumstances under which it is completed.

The problems of small stations and those of busy metropolitan stations appear to relate also to manpower and organizational issues and a consideration of such issues by the relevant divisions of the N.S.W. Police Force seems warranted.

4 Discussion

The data presented in Chapter 2 above together with the interviews discussed in Chapter 3 above highlight a number of both positive and negative features associated with the operation of the Bail Act.

On the positive side, unconditional bail, which accounted for the greatest percentage of bail determinations in the study (65.2%), was found to be quick and easy to complete. In over 75% of unconditional bails the accused was released from custody in one hour or less from the time of being charged.

Unconditional bail was the most common determination for persons charged with summary or summary/indictable matters: more than 50% of persons charged with larceny, unlawful possession of property, driving, betting, offensive and related behaviour, drink driving and other offences were granted unconditional bail. Persons charged with more serious offences were commonly granted conditional bail and in 7.3% of cases bail was refused. Robbery and extortion offences had the highest rate of bail refusals (37.5%).

The movement in emphasis away from money bail was also cited as a positive feature of the Bail Act. Of the 198 cases in which conditional bail was imposed, 77% didn't require the deposit of cash or security. In those cases where cash bail was required, the amounts ranged from $50 to $1,000 with $200 or less being the required amount in more than 60% of cases.

The ability to tailor conditions to suit the circumstances of individual cases was cited as an important element of the new bail provisions. The conditions most commonly imposed were those requiring the accused to agree without the deposit of security to forfeit a specified sum of money in the event that he or she should fail to comply with the bail undertaking, and the acknowledgement of an acceptable person that the accused is a responsible person likely to comply with the bail undertaking. However, in 13 cases the accused was unable to meet the conditions of bail and hence remained in custody.

Associated with the de-emphasis of money bail are a number of advantages for the police. With fewer people being held awaiting the arrival of sureties or the bail money, the police spend less time collecting and accounting for money and the prisoner's property, and in supervising prisoners.

The provision of guidelines for bail decisions was also cited as a favourable feature of the new legislation, as was the wide discretion which police have to refuse bail where necessary.

One area of concern indicated by the study was the bailing of juveniles. There was a low rate of unconditional bails and a high rate of bail refusals for juveniles, and police expressed some confusion about bailing young offenders. The large proportion of juvenile offenders granted conditional bail with the requirement that an acceptable person acknowledge the accused to be a responsible person appears to reflect a reluctance by police to release juveniles on their own bail undertaking.

It may also reflect the lack of means of young offenders in that without financial or material resources many of the other available bail conditions are inappropriate for juvenile offenders. *It is recommended that the issue of bail for young people be given further consideration.*

The high rate of bail refusals for Aborigines in the study is also an issue which warrants consideration: over 29% of Aborigines were refused bail as compared to 7.3% of the sample as a whole. It was not within the scope of this study to determine the reason for this high rate. It may reflect a greater involvement by the Aborigines in the study in more serious offences, it may reflect sample bias, or it may reflect factors such as racial discrimination in the interpretation and implementation of the Bail Act by police in towns with significant Aboriginal populations. However, it does not appear to reflect any aspect of the legislation.

Other causes for concern over the refusal of bail were the number of juveniles refused bail — 26.4% of those refused bail were aged less than 18 years — and the reasons which were stated for the refusal of bail. *In several cases it appears that the reasons which were stated for the refusal of bail did not fall within the criteria specified in the Act.* Whether this is due to a lack of understanding of the new legislation by the police, especially during the initial months of the operation of the Act, or whether it indicates a disregard by some police for the Act and the police instructions regarding the Act is unclear.

Considerable variation was evident between police stations in the bail determinations made and in the time periods associated with the determination of bail. This, together with the interviews with police officers, shows that the Bail Act is experienced and perhaps also applied very differently in different police stations.

Whilst the allegation by police that the bail procedures under the Bail Act would take longer than those under the previous system of bail could not be evaluated in this study, some inferences can be drawn from the data collected. Unconditional bail in most cases was completed quickly, and did not appear to provide any problems for police. Most police commented favourably upon the provisions for unconditional bail. Conditional bails took consistently longer to complete. Attention to the redesign of bail forms and the streamlining of procedures should reduce the time involved for all bail determinations.

It is strongly recommended that prompt attention should be paid to the redesign of the bail forms in a clear, comprehensible manner with regard also to the ease with which they can be completed by the police and, in the case of Form 4, by the accused. The information forms must be provided in simple and clear language if they are to be of any value to persons not versed in law. Attention should also be paid to the need for forms in other languages than those which are currently provided.

Other areas requiring review are those of the need to determine bail on each charge and the problems raised concerning the storage and assessment of goods offered as security for bail.

The needs of prisoners in isolated areas and the concerns over manpower in busy metropolitan stations are areas which perhaps can best be considered by police administration.

In the light of the doubt expressed by some officers that the current system for the issue of warrants for persons who fail to appear at court is adequate, it is also recommended that that system be reviewed.

The finding that over 90% of persons charged in the study period were released from custody prior to their appearance at court reflects favourably upon the legislation. Attention to procedural matters and some consideration of the needs of the young, migrants and Aborigines should act to improve the manner in which the Bail Act is, and can be, administered by the police.

Part II

COURTS AND BAIL

1 Court bail

Introduction

The second stage of the study of the Bail Act, 1978, considered the operation of the Act *in the courts*, and followed the sample of cases identified in stage one of the study through the court process. Additional data were also collected regarding Supreme Court bail applications.

In common with most bail reform projects in the United States of America and the United Kingdom, the Bail Act provides for the use of information about the background and community ties of an accused person in assessing the likelihood that the accused would appear at court. The Act and regulations provide in Form 4 an objective rating scale to be used in assessing background information regarding an accused. Whilst the rating scale itself is derived from the well-known Manhattan Bail Project which has been operating for two decades in the United States, the N.S.W. system differs substantially from that scheme.

The Manhattan Bail Project was established in 1961 by the Vera Foundation, a private organization concerned with criminal justice reform.

The philosophy underlying the Manhattan Bail Project was that for those persons with substantial background and community ties a financial bond may be unnecessary in securing their appearance at court. The scheme proposed to provide as much verified information as possible to the judge about the accused person to allow a rational decision to be made regarding bail (Botein, 1965). An objective rating scale was developed, and the defendants were interviewed by students employed by the foundation about employment, family ties, residence and previous criminal history. Depending upon the defendant's score on the rating scale, a recommendation for pre-trial release was made to judges, who were under no obligation to comply with the recommendation.

The scheme originally operated only in the courts, but on a later project, the Manhattan Summons Project, the same procedures were applied to allow release of accused persons by police (Vera Foundation, 1977). A number of evaluations of the Manhattan Bail Project have provided support for the underlying philosophy of the scheme in their findings that the provision of verified information about the accused was associated with both a higher rate of pre-trial release and a lower incidence of failure to appear at court (Zander, 1967; Sturz, 1965).

Numerous programmes based upon the Manhattan Bail Project have since been developed throughout the United States and in the United Kingdom, and a similar objective test was incorporated in the N.S.W. Bail Act following the recommendation of the Bail Review Committee. The Committee saw the value of the test in that:

> It provides an objective test for identifying people who can be safely released pending trial, and experience has shown that courts provided with such information will increasingly act upon it, releasing greater numbers of defendants without any significant rise in the level of absconding (Anderson and Armstrong, 1977:26).

The Committee also based its recommendation upon the findings of a trial of

such an objective test as predictive of failure to appear in court for a N.S.W. sample. It was found that:

> When matched samples of absconders, offenders granted bail and people held in custody were examined, it was found that the Manhattan test would have been a far more accurate identifier of the good and bad risks than the actual decision made by the judges. Almost all those defendants who absconded on bail would have failed the test and virtually all those who were successfully released on bail would have passed. Significantly, a large proportion of those held in custody pending trial would have been released on their own recognizance (Anderson and Armstrong, 1977:25).

Under the new legislation the background and community ties of an accused person represents one of 12 factors which should, where possible, be considered in the determination of bail for those cases where an accused person is charged with an offence which does not carry a right to bail. The Act provides for a questionnaire, Form 4 (see Appendix V), to be completed by accused persons as the basis for this rating, although the accused is under no obligation to complete the form. The Act does not specify which agency or agencies are responsible for administering the questionnaire, following the suggestion of the Bail Review Committee that no formal mechanism be established (Anderson and Armstrong, 1977:26). In practice this has meant that the use of the questionnaire has been left entirely to the police.

Prior to the introduction of the Bail Act, concern expressed by the N.S.W. Police Association about staffing levels and resources led to a decision that rating the background and community ties of accused persons only be required in certain specified circumstances (see Chapter 3 of Part I). This has resulted in the form being used in only a small number of cases, and in very few cases is it obvious that any attempt has been made to verify the responses provided. The use of Form 4 is discussed in some detail in Chapters 2 and 3 of Part II, where it is also noted that the current rate at which the form is used is not sufficient to allow any validation of the scale as predictive of the accused failing to appear before the court.

In addition to assessing the use of Form 4 in bail determinations, other issues central to the monitoring of the new legislation include:

(*a*) The evaluation of the use of different types of bail and particularly the relative use of "financial" bail as opposed to "non-financial" bail;
(*b*) The characteristics of accused persons granted different types of bail, or refused bail;
(*c*) The number of persons failing to appear before the courts and the issue of warrants; and
(*d*) The operation of the legislation in the courts and any problems which may exist in that regard as reflected by the comments of magistrates and court staff.

A brief description of the provisions of the Bail Act as it applies to court bail is provided below to facilitate the discussion which follows.

Provisions applying to court bail

The provisions which apply to court bail are in the most part similar to those which apply to police bail decisions. Bail may be granted with or without condition, or it may be refused. In addition the courts have the power to dispense with the requirement for bail, and in those cases where an accused has already entered an undertaking in respect of the offence or offences the bail may also be continued. The Act establishes clearly those factors relevant to the determination of bail, and makes a distinction between offences having a right

to bail and those for which a presumption to bail exists. No presumption in favour of bail exists for the offences of armed or otherwise violent robbery or the offence of failing to appear in accordance with a bail undertaking, but persons charged with these offences may nevertheless be granted bail.

Persons granted bail unconditionally are required to sign an undertaking (Form 5) to appear at court as required, whilst those granted conditional bail must sign an agreement (Form 5A) not only to appear at court but also to abide by the conditions imposed upon bail. Where a condition of bail requires an acceptable person or persons, such person or persons must also sign an agreement (Form 6). Where conditional bail is granted, or where bail is refused, the reasons for that determination must be recorded on Form 8. Any person who fails to appear in accordance with his or her bail undertaking may be subject to a further charge, that of failing to appear (S.51), which may attract a penalty equivalent to but not greater than that imposed for the principal offence.

Under the Act limits are placed upon the lengths of adjournments where bail is refused by a magistrate or justice. No adjournment by a magistrate, or by a justice who is a Clerk of Petty Sessions, may exceed eight days without the consent of the accused. No adjournment by a justice who is not a Clerk of Petty Sessions may exceed three days and any subsequent adjournment should not exceed 48 hours.

No limit is placed by the legislation on the number of applications an accused may make to a court for bail, although a court may refuse to entertain an application if it is satisfied that it is frivolous or vexatious. The Act also establishes a right of review of bail decisions — such reviews may only be exercised at the request of the accused, the informant or the Attorney-General.

2 Data collection

Design and data collection

A sample of 13 police stations throughout metropolitan, suburban and country areas of N.S.W. was chosen, from which data were collected for a two-week sample period. The data related to all charges (excluding minor traffic matters) laid during the two-week interval; details of the offence, the alleged offender and any bail determinations made by the police were recorded. The data were analysed in Part I. Additional data were also gathered from three other police stations in country areas with high Aboriginal populations.

In Part II we consider the progress of those cases from the police bail report through the courts until finalization. Also included are cases where an accused person was charged at a police station during the sample period but no police bail determination was made and the accused was taken straight to court.

It was not considered feasible to document in detail all court appearances and each occasion on which the question of bail was examined throughout the often long and complex court process. In some cases in the sample there were as many as 14 adjournments with different determinations regarding bail being made throughout the proceedings. Data collection was confined to details of the initial bail determination (which may have been by either the police or the courts), the bail determination at the first adjournment and bail on committal to a higher court or on appeal. Provision was also made for some coding of significant information regarding bail on other occasions. (Copies of the coding forms used in the study are included in Appendix I.)

Difficulties in data collection

A number of problems were encountered in collecting data regarding court bail determinations. The first of these was purely practical in that it was necessary in almost all cases to visit the courts where the accused persons in the sample appeared. Due to the travelling involved, it was not possible in most cases to visit each court on more than one occasion so that if the court papers were not available or could not be located at the first visit it was usually not possible to follow them up.

There were a number of reasons for court papers being unavailable. In some cases a breach of recognizance had occurred and the court papers had been sent to the relevant magistrate or judge to determine what action, if any, should be taken regarding the breach. In other cases appeals were pending and the court papers had been removed to be used in processing the appeal. Court papers for some district court matters were said to be in transit between regional offices and the Office of the Solicitor for Public Prosecution and Clerk of the Peace, and therefore not available, and in some other cases the matter was not yet

finalized. Incorrect dates, illegible documents, the change of venue for a hearing from one court to another and the use of aliases by accused persons are all factors which account in part for data being unavailable. In several cases in the sample, court papers for a given case were located under a different name than that in which the accused was charged by police. In one case a young adult had given an incorrect name and birthdate in attempt to have the matter heard in a children's court. In a number of cases court papers were missing for no apparent reason.

There were 46 cases (of a total of 943) in which the court papers could not be located or were not available. In a number of other cases some information was either missing from the file or was totally illegible. Prior to the introduction of sound recording in the courts, it would have been possible to extract much of the required data from the depositions. With the advent of sound recording in most courts in N.S.W., any information which is not apparent from the bench sheets and the documents on file can only be obtained by having the tapes of the proceedings transcribed, a process currently involving considerable delay. Whilst the bench sheets provide for the bail determination to be recorded for each appearance, it was found that this was not always done, or in cases of conditional bail the condition imposed upon bail was often not apparent. In those cases where the bail forms were missing from the court papers, it was usually possible to get some but not all of the required information from the bench sheets.

Another difficulty with important ramifications for the study was that it was usually not apparent from the court papers whether an accused person who was granted conditional bail had, in fact, been able to meet those conditions and thus be released from custody.

Due to the problems encountered with missing or incomplete data, the number of cases in the tables which follow varies depending upon the availability of data.

Data

The sample included 943 persons ranging in age from 10 to 76 years: 781 were male, 149 were female and in 13 cases the sex of the accused was not known. All were charged by police between May and October 1980.

(a) *Initial bail determination*

In 819 cases the initial bail determination was made by police, in a further 43 cases the initial bail determination was by a court and in 69 cases accused persons were taken directly from the police station to the court and the matter was determined at that first appearance without any requirement for bail. In two cases it was recorded that the accused person had refused to be bailed and in 11 cases the bail determination was not clearly recorded.

The initial bail determinations which were made by either the police or the courts are presented in Table 20.

Table 20. Initial bail determination by police or by court for the principal offence

	Police		Court		
	No.	%	No.	%	Total
Unconditional	542	66.2	20	17.7	562
Conditional	214	26.1	12	10.6	226
Refused	60	7.3	2	1.8	62
Dispensed with	2	0.2	9	8.0	11
Accused refused to be bailed	1	0.1	1	0.9	2
Sub-total	819	100.0	44	39.0	863
Determined at first court appearance with no requirement for bail	0	0.0	69	61.1	69
Total	819	100.0	113	100.0	932*

* Excluded from the table are 11 cases where the bail determination was not clearly recorded.

Whilst unconditional bail was granted by the police in 66.2% of cases, the most common outcome for cases taken directly to court was that the cases were determined at that first appearance with no requirement for bail (61.1%). Of those cases where an initial bail determination was made by a court, 20 of the 43 cases (46.5%) were granted unconditional bail. For the sample as a whole, 65.1% of those cases where a bail decision was made were granted unconditional bail, 26.2% were granted conditional bail and 7.2% were refused bail. Although the table indicates that the police dispensed with bail in two cases, police do not in fact have that power under the legislation.

The conditions of bail imposed at the initial bail determination by either police or courts is presented in Table 21. In the highest number of cases both police (34.0%) and courts (33.3%) imposed the requirement that the accused person agree, without security, to forfeit a specified sum of money. The deposit of cash or security was required in 25.5% of conditional bails imposed by the police and in 33.3% of conditional bails imposed by courts.

The initial bail determinations which were made for indictable matters as compared to those for summary or summary-indictable matters is shown in Table 22.

Whilst summary or summary-indictable offences were most commonly associated with unconditional bail (66.5%), indictable matters were more likely to have conditional bail imposed (40.9%) or to be refused bail (40.9%). All matters for which bail was dispensed with were summary or summary-indictable.

The bail determinations which were made for different offence groups is shown in Table 23. For most offence groups unconditional bail was imposed in the majority of cases. Betting and gaming offences (93.8%), drink driving (83.3%) and offensive behaviour (80.4%) were the offence groups with the highest percentage of unconditional bail determinations. Conditional bail was the most common bail determination for persons found with intent to commit an offence (75%) and for drug offences (65.1%). Persons charged with offences against the person and with sexual offences were also more likely to be granted conditional bail than unconditional bail, and those charged with robbery and extortion were equally likely to be granted conditional bail or to be refused bail. No person charged with robbery and extortion was granted unconditional bail.

Table 21. Conditions imposed on bail by police or court at initial bail determination for the principal offence

	Police	%	Court	%	Total
Agree to abide by conditions as to conduct whilst on bail	9	4.2	1	11.1	10
Acceptable person acknowledges accused to be a responsible person	51	24.0	0	0.0	51
Acceptable person and conditions as to conduct whilst on bail	1	0.5	0	0.0	1
Accused agrees without security to forfeit a specified sum of money	72	34.0	3	33.3	75
Acceptable person agrees without security to forfeit a specified sum of money	23	10.8	1	11.1	24
Acceptable person and accused both agree to forfeit a specified sum of money	2	0.9	1	11.1	3
Accused agrees, and deposits security to forfeit a specified sum of money	1	0.5	0	0.0	1
Acceptable person agrees, and deposits security to forfeit a specified sum of money	6	2.8	1	11.1	7
Accused deposits cash	18	8.5	1	11.1	19
Acceptable person deposits cash	25	11.8	1	11.1	26
Accused and acceptable person both deposit cash	4	1.9	0	0.0	4
Total	212	100.0	9	100.0	221*

* In 5 cases the conditions of bail imposed upon an accused person were not clearly recorded.

Table 22. Initial bail determination for indictable and for summary or summary-indictable offences

	Indictable		Summary/ summary-indictable		
	No.	%	No.	%	Total
Unconditional	4	18.2	558	66.5	562
Conditional	9	40.9	217	25.9	226
Refused	9	40.9	53	6.3	62
Dispensed with	0	0.0	11	1.3	11
Total	22	100.0	839	100.0	861*

* Excluded from this table and all subsequent tables regarding the initial bail determination are 69 cases in which the matter was determined at the first appearance before the courts with no requirement for bail, 2 cases in which the accused refused to be bailed, and 11 cases in which the initial bail determination was unknown.

Table 23. Initial bail determination by offence group

Offence group		Bail determination				Total
		Unconditional	Conditional	Refused	Dispensed with	
Against the person	No.	17	22	6	0	45
	%	37.8	48.9	13.3	0.0	
Sexual offences	No.	4	6	2	0	12
	%	33.3	50.0	16.7	0.0	
Prostitution	No.	1	1	0	0	2
	%	50.0	50.0	0.0	0.0	
Robbery and extortion	No.	0	6	6	0	12
	%	0.0	50.0	50.0	0.0	
Fraud	No.	11	10	1	1	23
	%	47.8	43.5	4.3	4.3	
Break, enter and steal	No.	18	16	6	0	40
	%	45.0	40.0	15.0	0.0	
Larceny	No.	121	49	13	4	187
	%	64.7	26.2	7.0	2.1	
Unlawful possession of property	No.	14	6	3	1	24
	%	58.3	25.0	12.5	4.2	
Found with intent	No.	0	3	1	0	4
	%	0.0	75.0	25.0	0.0	
Driving	No.	35	8	0	1	44
	%	79.5	18.2	0.0	2.3	
Betting and gaming	No.	15	1	0	0	16
	%	93.8	6.2	0.0	0.0	
Firearms	No.	2	1	1	0	4
	%	50.0	25.0	25.0	0.0	
Damage property	No.	17	7	5	0	29
	%	58.6	24.1	17.2	0.0	
Offensive behaviour	No.	78	12	4	3	97
	%	80.4	12.4	4.1	3.1	
Drink driving	No.	194	32	6	1	233
	%	83.3	13.7	2.6	0.4	
Drug offences	No.	20	41	2	0	63
	%	31.7	65.1	3.2	0.0	
Other	No.	15	5	6	0	26
	%	57.7	19.2	23.1	0.0	
Total		562	226	62	11	861

Table 24. Amount of cash bail required at the initial bail determination

$	No.	%
50	3	6.4
100	14	29.8
200	10	21.3
300	1	2.1
400	2	4.2
500	11	23.4
1,000	4	8.5
10,000	2	4.3
Total	47*	100.0

* Excluded from the table are two cases in which the amount of bail was unknown.

The amount of cash bail required at the initial bail determination is presented in Table 24. In 57.5% of cases the amount of bail required was $200 or less.

In 13 cases it was apparent that accused persons could not meet the conditions of bail imposed. These cases were examined in detail in Part I of this report. In cases of bail decisions made by the court it was not apparent from the court papers whether in fact the accused person was able to meet the conditions of bail which were imposed.

Table 25. Initial bail determination for males as compared to females

	Male	%	Female	%	Total
Unconditional	469	64.2	87	71.9	556
Conditional	194	26.5	29	24.0	223
Refused	61	8.3	1	0.8	62
Dispensed with	7	1.0	4	3.3	11
Total	731	100.0	121	100.0	852*

* Excluded from this table are nine cases in which sex was unknown.

Sex differences in the bail determinations made are evident in the data shown in Table 25. Females were more likely than males to be granted unconditional bail and were also more likely to have bail dispensed with than were males. Table A in Appendix VII shows that females were charged with less serious offences than were males: no female was charged with sexual offences, or with robbery and extortion and there was a much lower incidence of charges involving offences against the person for females (1.3%) than for males (5.9%).

The initial bail determinations made for people of different ages is shown in Table 26. The lowest percentage of unconditional bails was for persons aged less than 18 years. This age group also had the highest percentage of conditional bails and the second highest percentage of bail refusals. For all age groups unconditional bail was the most common determination. Persons aged 60 years or over had the highest percentage of bail refusals. Table 27 shows the conditions of bail which were imposed for different age groups. For all age groups from 18 to 40 years the condition most commonly imposed was that the accused agree, without security, to forfeit a specified sum of money. For persons aged less than 18 years the condition most commonly imposed was that an acceptable person acknowledge the accused to be a responsible person (65.9%). For persons aged

Table 26. Initial bail determinations for different age groups

		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
Under 18 years	No.	70	44	16	0	130
	%	53.9	33.8	12.3	0.0	100.0
18 years	No.	39	14	5	0	58
	%	67.2	24.2	8.6	0.0	100.0
19 years	No.	40	12	2	0	54
	%	74.1	22.2	3.7	0.0	100.0
20-24 years	No.	154	62	6	2	224
	%	68.7	27.7	2.7	0.9	100.0
25-29 years	No.	77	40	11	3	131
	%	58.8	30.5	8.4	2.3	100.0
30-39 years	No.	93	33	11	3	140
	%	66.4	23.6	7.9	2.1	100.0
40-49 years	No.	47	10	5	1	63
	%	74.6	15.9	7.9	1.6	100.0
50-59 years	No.	28	8	3	2	41
	%	68.3	19.5	7.3	4.9	100.0
60 years plus	No.	14	2	3	0	19
	%	73.7	10.5	15.8	0.0	100.0
Total		562	225	62	11	860*

* Excluded from the table are three cases in which age was unknown.

50-59 years the most commonly imposed bail condition was for an acceptable person to deposit cash. There were only two persons in the 60 years and over group who were granted conditional bail — in one case an acceptable person was required to deposit security and in the other case an acceptable person was required to deposit cash.

The low incidence of unconditional bails and the high incidence of conditional bails requiring that an acceptable person acknowledge the accused to be a responsible person for juveniles may reflect a reluctance by courts and authorized officers to grant unconditional bail to juveniles. Taken together with the high percentage of bail refusals, this might be said to be a reflection of a greater involvement by juveniles in more serious offences. However, reference to Table B in Appendix VII shows that whilst a higher percentage of juveniles were charged with break, enter and steal offences than were any other age group, they were not over-represented in relation to charges for any other serious offence when compared to other age groups. The most frequent charge laid against juveniles was that of larceny (49.3%).

Table 28 shows the bail determinations made for persons with different ethnic or racial backgrounds. For all groups except New Zealanders and North Americans (small sample) the most frequent bail determination was unconditional bail: New Zealanders and North Americans were equally likely to be granted conditional bail as unconditional bail. New Zealanders also had the highest incidence of bail refusal (14.3%). Whilst Aborigines had a relatively high incidence of unconditional bail (75.4%), they also had one of the higher rates of bail refusals (8.2%) and a low rate of conditional bail (16.4%). A table of offence by country of birth is included in Appendix VII (Table C). New Zealanders had a higher incidence of charges for offences against the person, and drug offences than did other groups. The number of North Americans in the sample was too

Table 27. Conditions of bail for different age groups

	Less than 18 yrs		18 yrs		19 yrs		20-24 yrs		25-29 yrs		30-39 yrs		40-49 yrs		50-59 yrs		60 yrs		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	Total
Agree to abide by conditions as to conduct whilst on bail	3	6.8	0	0.0	2	16.7	2	3.4	1	2.6	0	0.0	1	10.0	1	12.5	0	0.0	10
Acceptable person acknowledges accused to be a responsible person	29	65.9	4	28.6	3	25.0	9	15.2	3	7.9	1	3.0	1	10.0	1	12.5	0	0.0	51
Acceptable person and conditions as to conduct whilst on bail	1	2.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Accused agrees without security to forfeit a specified sum of money	2	4.5	5	35.7	4	33.3	25	42.4	16	42.1	17	51.5	4	40.0	2	25.0	0	0.0	75
Acceptable person agrees without security to forfeit a specified sum of money	3	6.8	1	7.1	2	16.7	5	8.5	5	13.2	6	18.2	2	20.0	0	0.0	0	0.0	24
Acceptable person and accused both agree without security to forfeit a specified sum of money	0	0.0	0	0.0	0	0.0	2	3.4	1	2.6	0	0.0	0	0.0	0	0.0	0	0.0	3
Accused agrees and deposits security to forfeit a specified sum of money	0	0.0	0	0.0	0	0.0	1	1.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1
Acceptable person agrees, and deposits security, to forfeit a specified sum of money	0	0.0	0	0.0	1	8.3	2	3.4	3	7.9	0	0.0	0	0.0	0	0.0	1	50.0	7
Accused deposits cash	0	0.0	1	7.1	0	0.0	5	8.5	7	18.4	4	12.1	1	10.0	1	12.5	0	0.0	19
Acceptable person deposits cash	6	13.6	2	14.3	0	0.0	7	11.9	2	5.3	4	12.1	0	0.0	3	37.5	1	50.0	25
Accused and acceptable person both deposit cash	0	0.0	1	7.1	0	0.0	1	1.7	0	0.0	1	3.0	1	10.0	0	0.0	0	0.0	4
Total	44	100.0	14	100.0	12	100.0	59	100.0	38	100.0	33	100.0	10	100.0	8	100.0	2	100.0	220*

* In 1 case the age of an accused person who was granted bail conditional upon an acceptable person depositing cash was unknown.

Table 28. Bail determination by country or region of birth

		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
Australia non-Aborigine	No.	395	169	41	8	613
	%	64.4	27.6	6.7	1.3	100.0
Australia Aborigine	No.	46	10	5	0	61
	%	75.4	16.4	8.2	0.0	100.0
New Zealand	No.	9	9	3	0	21
	%	42.9	42.9	14.3	0.0	100.0
United Kingdom	No.	23	6	1	0	30
	%	76.7	20.0	3.3	0.0	100.0
Other Europe	No.	43	14	6	2	65
	%	66.2	21.5	9.2	3.1	100.0
Middle East	No.	8	5	1	1	15
	%	53.3	33.3	6.7	6.7	100.0
North America	No.	1	1	0	0	2
	%	50.0	50.0	0.0	0.0	100.0
Africa	No.	2	0	0	0	2
	%	100.0	0.0	0.0	0.0	100.0
Asia	No.	6	2	1	0	9
	%	66.7	22.2	11.1	0.0	100.0
Other	No.	14	1	0	0	15
	%	93.3	6.7	0.0	0.0	100.0
Total		547	217	58	11	833*

* Excluded from this table are 28 cases in which country or region of birth was unknown.

small to allow any consideration of the bail determinations which were made in terms of offence. Aborigines had a higher incidence of break, enter and steal offences than did other groups which may account for the higher rate of refusals.

The bail determinations which were made for persons of different occupational status are presented in Table 29. The most apparent features of the table are the high percentages of unconditional bails (85.2%) and cases in which bail was dispensed with (11.1%) for the domestic category: all persons whose occupational status was recorded as domestic were females. These figures appear to reflect a lesser involvement by females in offences of a serious nature. Table D in Appendix VII shows that charges of larceny (mainly shoplifting), offensive behaviour and fraud account for most cases where the accused was classified as domestic. For each occupational classification unconditional bail was the most common determination. The unemployed were the least likely to be granted unconditional bail, and had the highest rate of both conditional bail and refusal of bail. Students also had a high rate of bail refusal. Table D in Appendix VII shows that a higher percentage of students were charged with break, enter and steal offences than were any other group; however, this alone does not account for the more stringent bail determinations made for students. The table does not indicate any relationship between principal offence and the high rate of bail refusals for unemployed people.

Table 29. Bail determination by occupation

		Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
Professional/ managerial	No.	1	0	0	0	1
	%	100.0	0.0	0.0	0.0	100.0
Semi-prof/middle management	No.	19	8	2	1	30
	%	63.3	26.7	6.7	3.3	100.0
Sales, small business, clerical, skilled trade	No.	167	55	8	5	235
	%	71.1	23.4	3.4	2.1	100.0
Unskilled	No.	162	46	9	0	217
	%	74.7	21.2	4.1	0.0	100.0
Student	No.	39	18	8	0	65
	%	60.0	27.7	12.3	0.0	100.0
Pensioner	No.	35	16	4	1	56
	%	62.5	28.6	7.1	1.8	100.0
Domestic	No.	23	0	1	3	27
	%	85.2	0.0	3.7	11.1	100.0
Unemployed	No.	102	65	28	1	196
	%	52.0	33.2	14.3	0.5	100.0
Total		548	208	60	11	827*

* Excluded from the table are 34 cases in which occupation was unknown.

(b) *First court appearance and bail on adjournment*

No detail was available regarding court appearances for 64 persons in the sample. In 46 cases the court papers could not be located, three cases had not been finalized at the court of petty sessions level, two were not determined at the district court level and in two cases proceedings were pending at the court of criminal appeal. In 11 other cases the court papers were said to be in transit between district courts in country centres and the metropolitan office where they were to be filed. Data for the remaining 879 cases are presented below.

Table 30 shows the number of persons who appeared before the court on the first occasion (excluding bail hearing) and the type of bail undertaking they had made

For those cases where data were available, 93.3% of persons on unconditional bail and 92.3% of those on conditional bail appeared before the courts as required. A total of 49 people, 6.2% of the cases for which information was available, failed to appear before the court without legitimate excuse. No person for whom bail was dispensed with failed to appear at court. The offences with which those persons failing to appear at court were charged are presented in Table 31. Charges of larceny, drink driving, offensive behaviour and driving offences accounted for the majority of those cases where the accused person failed to appear. Warrants were issued in most but not all cases of failure to appear. In 5 of the 30 cases where a warrant was issued, the accused subsequently reappeared and the matter was relisted for hearing.

Table 30. First court appearance and initial bail determination

	Uncondi-tional		Condi-tional		Refused		Dispensed with		
	No.	%	No.	%	No.	%	No.	%	Total
Accused appeared at court	499	93.3	179	92.3	54	100.0	11	100.0	743
No appearance	34	6.4	14	7.2	0	0.0	0	0.0	48
Ex parte	2	0.3	0	0.0	0	0.0	0	0.0	2
No appearance with legitimate excuse	0	0.0	1	0.5	0	0.0	0	0.0	1
Total	535	100.0	194	100.0	54	100.0	11	100.0	794*

* Excluded from the table are 3 cases where detail regarding the first court appearance was unknown. One person for whom no information was available regarding the initial bail determination also failed to appear at court.

Table 31. Offences with which persons who failed to appear were charged and the issue of warrants

	Warrant issued	No warrant issued	Total
Against the person	4	0	4
Fraud	1	0	1
Break, enter and steal	1	1	2
Larceny	6	8	14
Unlawful possession of property	0	1	1
Driving	3	2	5
Damage property	0	1	1
Offensive behaviour	5	2	7
Drink driving	7	2	9
Drug offences	2	0	2
Other	1	2	3
Total	30	19	49

In 430 cases the matter was determined at the first appearance (excluding the bail hearing) and there was no adjournment. Table 32 shows the bail determinations which were made for the 449 cases which were adjourned.

For those persons initially granted unconditional bail, the requirement for bail was dispensed with in 47.6% of cases, and a further 44.9% continued to be allowed unconditional bail. In 6.3% of cases the accused had conditions imposed upon bail at the adjournment and 1.2% of persons on unconditional bail were refused bail on adjournment. For those persons originally granted conditional bail, most (69%) continued on that bail at the adjournment. For 9.5% of those on conditional bail, unconditional bail was allowed at the adjournment and the requirement for bail was dispensed with in 12.9% of cases. In 8.6% of cases where an accused had been granted conditional bail initially, however, bail was refused. For 47.2% of those refused bail at the first bail determination, bail was allowed either unconditionally (11.1%) or conditionally (36.1%) on adjournment; the remaining 52.8% continued to be held in custody. All persons for whom bail was originally dispensed with were allowed to remain at large without the requirement for bail.

Table 32. Initial bail determination and bail on adjournment

Initial bail		Bail on adjournment: Unconditional	Conditional	Refused	Dispensed with	Total
Unconditional	No.	115	16	3	122	256
	%	44.9	6.3	1.2	47.6	100.0
Conditional	No.	11	80	10	15	116
	%	9.5	69.0	8.6	12.9	100.0
Refused	No.	4	13	19	0	36
	%	11.1	36.1	52.8	0.0	100.0
Dispensed with	No.	0	0	0	10	10
	%	0.0	0.0	0.0	100.0	100.0
Not recorded	No.	1	0	1	0	2
	%	50.0	0.0	50.0	0.0	100.0
Total		131	109	33	147	420*

* In 29 cases the bail determination on adjournment was unknown.

The bail determinations made at the adjournment for represented as compared to unrepresented defendants are shown in Table 33.

Table 33. Legal representation by bail on adjournment

	Represented	%	Unrepresented	%	Total
Continued	97	42.0	27	25.0	124
Unconditional	12	5.2	6	5.6	18
Conditional	24	10.4	13	12.0	37
Refused	21	9.1	3	2.8	24
Dispensed with	77	33.3	59	54.6	136
Total	231	100.0	108	100.0	339*

* Excluded from the table are 110 cases in which either legal representation or bail on adjournment was unknown.

For persons who were legally represented, the largest percentage had their bail continued (42%) or bail dispensed with (33.3%). Bail dispensed with was the most common determination for persons who did not have legal representation (54.6%). A higher percentage of persons who were legally represented (9.1%) were refused bail than persons who weren't represented (2.8%). Reference to Table E in Appendix VII shows that a higher percentage of represented defendants were charged with offences against the person, robbery and extortion, and break, enter and steal offences than were unrepresented defendants. This may account for the higher percentage of bail refusals for the represented group as compared to the unrepresented group.

(c) *The use of the background and community ties questionnaire — Form 4*

The introduction of the background and community ties questionnaire was promoted as a means of ensuring that basic information about accused persons be placed before the courts. The Attorney-General said, in introducing the legislation to Parliament, that: "the value of such a rating primarily is that it ensures that comprehensive information will be placed before the Court and presented in an objective form" (Walker, 1979:6). Consequently some consideration was given to the use of Form 4 for cases in the sample.

In 102 cases in the sample studied, a Form 4 was used: this represents 12.3% of cases for which detail about bail forms was available. The offences with which accused persons were charged in cases where a Form 4 was used are examined in Table 34.

Table 34. The use of Form 4 for different offence groups

	Form 4 used	Form 4 not used	Total	% in which Form 4 used
Against the person	10	27	37	27.0
Sexual offences	6	7	13	46.2
Prostitution	1	1	2	50.0
Robbery and extortion	4	4	8	50.0
Fraud	5	17	22	22.7
Break, enter and steal	3	33	36	8.3
Larceny	20	177	197	10.2
Unlawful possession of property	4	20	24	16.7
Found with intent	1	0	1	100.0
Driving	2	37	39	5.1
Betting and gaming	0	16	16	0.0
Firearms	1	2	3	33.3
Damage property	3	25	28	10.7
Offensive behaviour	7	96	103	6.8
Drink driving	16	200	216	7.4
Drug offences	17	40	57	29.8
Other	2	23	25	8.0
Total	102	725	827*	12.3

* Excluded from the table are 52 cases in which information was not available.

The offence groups of found with intent to commit an offence, prostitution, robbery and extortion, and sexual offences had the highest incidences of the use of Form 4, although for each of these offence groups the actual numbers were small. In terms of the actual numbers of cases in which Form 4 was used 20 (19.6%) were charged with larceny, 17 (16.7%) were charged with drug offences, 16 (15.7%) with drink driving and 10 (9.8%) with offences against the person.

Table 35 shows the initial bail determinations which were made for cases in which Form 4 was used.

Table 35. Initial bail determination for cases in which Form 4 was used

	Form 4 used	%	Form 4 not used	%	Total
Unconditional	28	28.3	489	73.5	517
Conditional	63	63.6	126	18.9	189
Refused	8	8.1	41	6.2	49
Dispensed with	0	0.0	9	1.4	9
Total	99	100.0	665	100.0	764*

* Excluded from the table are 64 cases in which the court papers could not be located, and 33 cases in which detail about the bail forms used was unknown.

The rate of unconditional bail was lower and the rate of conditional bail higher for those cases in which Form 4 was used than for those in which the form had not been used. The rate of bail refusal was also slightly higher for cases where the form was used. Since police instructions direct that the form is only required to be used in cases where the court requests it, where bail is to be opposed or it is unlikely that the accused will be released on bail, or in respect of serious offences which might proceed to a higher court (N.S.W. Police Department, 1978), it is to be expected that bail decisions for cases in which Form 4 was used would be more stringent than decisions for other cases.

Table 36. Scores on Form 4 and corrected scores by initial bail determination

	Unconditional		Conditional		Refused	
Score	Score	Corrected score	Score	Corrected score	Score	Corrected score
−1	0	0	1	0	0	1
0	0	0	1	1	0	0
1	0	0	2	3	2	0
2	1	1	2	1	0	0
3	0	0	4	6	0	2
4	1	1	8	9	2	1
5	2	5	7	2	2	0
6	9	2	5	8	0	2
7	2	1	3	7	1	1
8	1	2	5	7	0	1
9	2	3	9	6	0	0
10	1	2	1	2	0	0
11	1	2	2	3	0	0
12	1	1	4	4	0	0
13	1	2	1	1	0	0
Total*	22	22	55	60	7	8
Average score	7.09	7.86	6.34	6.5	3.86	4.5

* The discrepancy between the number of cases actually scored and those assigned corrected scores is due to 6 cases in which persons completed questionnaires but were not given scores. The discrepancy between the number of cases for which scores are provided and the number of cases in which Form 4 was said to be used is due to 12 cases in which the form was not fully completed.

An attempt was made to consider whether any relationship existed between scores on Form 4 and the type of bail which was granted. It was found, however, that the scores recorded for responses on individual items on the questionnaire did not always relate to those responses. On item 1, for example, 22 of the 94 responses were incorrectly scored. It is possible in some cases that the police, in attempting to verify the answers provided on the questionnaire, found that the answers were false. If this was the case, the discrepancy between the recorded answer and the score might be due to police scoring what they knew to be correct rather than the answer provided. However, there is a column provided on Form 4 for the authorized officer or court to use to indicate whether each of the responses have been verified. This column should have been used to indicate the reason for any discrepancy in scoring a given response, but in very few cases was this done. It is likely that, since the scale of scores for different responses is not printed on the actual questionnaire, the discrepancy was due to errors in scoring. Table 36 shows the scores which were recorded on Form 4 for those granted unconditional bail or conditional bail and for those persons who were refused bail. It also shows the scores which should have been given had the actual responses been scored according to the rating scale.

Table 37. Bail on adjournment for cases in which Form 4 was used — actual scores and corrected scores

	Unconditional		Conditional		Refused		Dispensed with	
Score	Score	Corrected score	Score	Corrected score	Score	Corrected score	Score	Corrected score
–1	0	0	0	0	0	1	0	0
0	0	0	0	0	0	0	1	0
1	1	0	2	3	1	0	0	0
2	1	2	2	0	0	0	0	0
3	2	1	1	3	0	1	0	0
4	0	1	4	3	2	1	0	1
5	2	0	0	0	2	0	0	1
6	1	2	2	1	0	2	1	0
7	0	0	1	2	1	1	0	0
8	1	1	1	2	0	1	0	0
9	0	0	1	1	1	0	1	1
10	1	0	0	1	0	0	1	1
11	0	1	1	1	0	0	1	1
12	0	0	0	0	0	0	1	1
13	0	1	0	0	0	0	0	0
Total	9	9	15	17	7	7	6	6
Average score	4.8	6.1	4.8	5.3	5.0	4.7	8.0	8.5

On both the actual scores and the corrected scores persons granted unconditional bail had higher mean scores than those granted conditional bail, and those granted conditional bail had higher mean scores than those refused bail. The bail determination made on adjournment for those cases in which Form 4 was used is shown in Table 37. Both the scores which were actually recorded and the scores which should have been recorded had the responses been scored according to the rating scale are provided.

The table shows that groups formed on the basis of the bail determination made differed to a greater degree in their corrected scores than in those scores which had been recorded for them. There was little difference in the recorded score between persons granted unconditional or conditional bail and those who were refused bail. This implies that little reliance was placed upon the scores in making the bail determination. On both recorded scores and corrected scores persons for whom the requirement for bail was dispensed with scored much more highly than each of the other groups.

(d) *Final court appearance*

There were 47 cases in which persons failed to appear at the final court appearance: this represents 5.4% of cases for which information about the final court appearance was available. In 37 cases first instance warrants were issued and in 10 cases there was no indication of any action having been taken following the failure to appear. In 25 cases the warrants issued referred to persons who failed to appear at their first court appearance. In five cases persons who failed to appear at the first date, and for whom warrants were issued, did appear at court at a later date.

Table 38 shows the types of offences with which persons who failed to appear were charged, and whether or not a first instance warrant was issued. Charges of larceny (23.4%), drink driving (21.3%) and offensive behaviour (17.0%) accounted for the majority of cases of failure to appear, and for the greatest number of warrants issued.

Table 38. Offences for which persons failed to appear

	Failed to appear — no action taken	Failed to appear — warrant	Total
Against the person	1	2	3
Sexual offences	0	1	1
Prostitution	0	1	1
Robbery and extortion	0	1	1
Fraud	0	2	2
Break, enter and steal	0	1	1
Larceny	3	8	11
Unlawful possession of property	0	0	0
Found with intent	0	0	0
Driving	0	3	3
Betting and gaming	0	0	0
Firearms	0	0	0
Damage property	1	0	1
Offensive behaviour	2	6	8
Drink driving	2	8	10
Drug offences	1	2	3
Other offences	0	2	2
Total	10	37	47

The scores recorded on Form 4 together with the corrected scores for persons who appeared in court as compared to those who failed to appear is presented in Table 39. On both scores those persons who appeared in court had a higher mean score than those who failed to appear, although the difference in scores was small. The number of cases where Form 4 was completed for persons who failed to appear was too small for any analysis of score on Form 4 as predictive of absconding. It is unlikely, however, that the small differences in mean scores between persons appearing in court and those failing to appear would be statistically significant.

Table 39. Scores on Form 4 and corrected scores for persons who failed to appear as compared to persons who appeared at court

	Persons who failed to appear		Persons who appeared at court	
	Score	Corrected score	Score	Corrected score
–1	0	0	1	1
0	0	0	1	1
1	0	0	4	3
2	1	0	2	2
3	1	1	3	7
4	1	2	10	9
5	2	1	9	6
6	2	2	12	10
7	0	2	6	7
8	1	1	5	10
9	1	0	11	9
10	0	0	2	4
11	0	0	3	5
12	0	0	5	5
13	0	1	2	2
Total*	9	10	76	81
Average score	5.3	6.3	6.5	6.7

* The discrepancy in number for those cases scored and those assigned corrected scores is due to a number of cases in which questionnaires were completed but not scored by the police.

Table 40 shows the outcome of cases classified by the initial bail determination. Fines were the most common outcome for each group, and for persons on unconditional bail fines, together with licence disqualification with or without a fine accounted for 68% of cases. There was a higher percentage of not guilty findings for persons on conditional bail than for any other group. In 11.1% of cases where an accused was refused bail at the initial bail determination, the charges were withdrawn, dismissed or the accused was found not guilty. Excluding community service orders and periodic detention from the comparison, those who were refused bail at the first bail determination received the highest percentage of custodial outcomes (24.2%). Custodial outcomes were recorded for 9.6% of persons on conditional bail and 2.1% of persons on unconditional bail: no person for whom bail was dispensed with received a custodial sentence.

Table 40. Initial bail determination by outcome

	Uncondi-tional		Condi-tional		Refused		Dispensed with		
	No.	%	No.	%	No.	%	No.	%	Total
No appearance — no action taken	8	1.5	2	1.0	0	0.0	0	0.0	10
No appearance — warrant issued	18	3.3	18	9.2	0	0.0	0	0.0	36
Not guilty	10	1.9	12	6.1	1	1.9	1	9.1	24
Withdrawn/ dismissed	15	2.8	8	4.1	5	9.2	1	9.1	29
S.556A	27	5.0	6	3.1	0	0.0	1	9.1	34
Admonished and discharged	14	2.6	4	2.0	0	0.0	0	0.0	18
Rising of the court	0	0.0	1	0.5	0	0.0	0	0.0	1
Fine	197	36.7	59	30.1	16	29.6	5	45.4	277
Recognizance with/ without probation or fine	40	7.5	30	15.3	6	11.1	1	9.1	77
Recognizance under Child Welfare Act/Juvenile probation	23	4.3	14	7.1	8	14.8	0	0.0	45
Licence disqualified with/ without recognizance or fine	168	31.3	21	10.7	5	9.2	1	9.1	195
Licence disqualification plus community service order/periodic detention	2	0.4	0	0.0	0	0.0	1	9.1	3
Community service order	1	0.2	1	0.5	0	0.0	0	0.0	2
Periodic detention	2	0.4	1	0.5	0	0.0	0	0.0	3
Juvenile — committed to institution	2	0.4	6	3.1	4	7.4	0	0.0	12
Licence disqualification plus imprisonment	4	0.7	1	0.5	0	0.0	0	0.0	5
Imprisonment up to and including 3 months	3	0.6	2	1.0	2	3.7	0	0.0	7
3 mths-6 mths	1	0.2	2	1.0	4	7.4	0	0.0	7
6 mths-1 yr	1	0.2	4	2.0	1	1.9	0	0.0	6
1 yr-2 yrs	0	0.0	2	1.0	1	1.9	0	0.0	3
2 yrs +	0	0.0	2	1.0	1	1.9	0	0.0	3
Total	536	100.0	196	100.0	54	100.0	11	100.0	797*

* Excluded from the table are 64 cases where the court files were not located and there was consequently no information available regarding outcome.

In two cases in the sample unrepresented accused persons who were charged with minor offences were held in custody for long periods before trial: one received a recognizance and the Attorney-General decided not to proceed against the other. Details of these two cases are presented in Appendix VIII.

The outcomes for persons who had been refused bail at any time from being charged to the case being finalized, including on appeal, is compared in Table 41 to outcomes for those who were not refused bail at any stage. Detail is presented for indictable offences and summary or summary/indictable offences.

Table 41. Outcomes for persons refused bail at some stage compared to those not refused bail for indictable and summary/summary-indictable offences

	Indictable		Summary/summary-indictable		
	(a)*	(b)**	(a)*	(b)**	Total
No appearance — no action taken	0	0	0	10	10
No appearance — warrant issued	0	1	1	35	37
Not guilty	0	2	1	22	25
Withdrawn/dismissed	0	1	8	20	29
S.556A	0	0	0	45	45
Admonished and discharged	0	0	0	19	19
Rising of the court	0	0	1	1	2
Fine	0	0	16	301	317
Recognizance with/without probation or fine	4	1	6	74	85
Recognizance under Child Welfare Act/juvenile probation	1	0	7	38	46
Licence disqualification with/ without recognizance or fine	0	0	5	193	198
Licence disqualification with community service order/ periodic detention	0	0	0	3	3
Community service order	0	0	0	2	2
Periodic detention	0	0	0	3	3
Juvenile committed to institution	1	0	7	4	12
Licence disqualification plus imprisonment	0	0	0	5	5
Imprisonment up to and including					
3 mths	0	0	2	6	8
3 mths-6 mths	0	0	4	4	8
6 mths-1 yr	0	1	3	3	7
1 yr-2 yrs	0	0	1	2	3
2 yrs +	1	0	1	1	3
Total	7	6	63	791	867***

* Persons who were refused bail on one or more occasion (includes on committal to higher court and on appeal).

** Persons who were not refused bail at any time.

*** Excluded from the table are 12 cases in which detail regarding bail determinations was missing.

The number of indictable offences is too small to allow any meaningful comparison of outcomes between those refused bail and those not refused bail. For the summary/summary indictable group however, some substantial differences are evident. Of those receiving not guilty outcomes, only one had been refused bail as compared to the 22 who had not: this represents 1.6% of cases in which bail was refused compared to 2.8% of those where bail wasn't refused. All persons receiving Section 556A outcomes were charged with summary or summary/indictable offences and had not been refused bail on any occasion. For persons charged with summary or summary/indictable offences 3.2% of those who had not been refused bail at any stage received custodial outcomes as compared to 28.6% of those who had been refused bail on one or more occasion. In nine cases persons who had been refused bail at some stage were either found not guilty or had the charges withdrawn or dismissed. A profile of persons who were refused bail at some stage is presented in Appendix IX.

The bail determinations made for cases on committal to a higher court, and the outcomes of those cases are presented in Table 42. Whilst nine persons (47%) were refused bail on committal to a higher court only three of these ultimately received a custodial outcome; of the remainder, one was found not guilty and five received recognizances.

In 27 cases appeals were lodged against a conviction or sentence. In two cases appellants were granted unconditional bail, in four cases conditional bail, one was refused bail, in six cases the accused were in custody and did not apply for bail and nine persons entered recognizances to prosecute the appeal (Justices Act). In five cases no information was available regarding bail on appeal. Only one of the seven appellants who were held in custody on appeal received a non-custodial outcome.

Table 42. Bail on committal to a higher court by outcome

	Uncondi-tional	Condi-tional	Refused	Dispensed with	Total
Not guilty	0	0	1	0	1
Fine	2	0	0	0	2
Recognizance with/without probation or fine	2	1	5	1	9
Periodic detention	0	1	0	0	1
Imprisonment					
3 mths-6 mths	1	0	0	0	1
1 yr-2 yrs	0	1	1	0	2
2 yrs +	0	1	2	0	3
Total	5	4	9	1	19*

* Excluded from the table are 3 cases in which it was noted that the bail was continued on committal, but the actual bail decision was not noted — all received a recognizance — and 1 case which was recorded as "the accused did not want bail" — this case also received a recognizance.

The period of time which elapsed between the charge being laid and the matter being finalized is presented in Table 43 for groups based upon the initial bail determination. Persons who had been refused bail were more likely to have had their cases finalized within the first week (35.2%) than were persons granted unconditional bail (29.3%) or conditional bail (20.9%). However, whilst 78.6% of unconditional bails were finalized within 8 weeks, 68.5% of those refused bail and 59.2% of those granted conditional bail had their cases finalized within that time.

Table 43. Time to finalization by initial bail determination

	Uncondi-tional		Condi-tional		Refused		Dispensed with		
	No.	%	No.	%	No.	%	No.	%	Total
Same day	10	1.9	6	3.1	5	9.3	0	0.0	21
1 day	42	7.9	13	6.6	6	11.1	0	0.0	61
2-7 days	104	19.5	22	11.2	8	14.8	0	0.0	134
1-2 weeks	100	18.8	28	14.3	6	11.1	2	18.2	136
2-4 weeks	77	14.4	26	13.3	5	9.2	2	18.2	110
4-8 weeks	86	16.1	21	10.7	7	13.0	1	9.1	115
8-16 weeks	42	7.9	25	12.7	8	14.8	1	9.1	76
16-24 weeks	34	6.4	18	9.2	2	3.7	2	18.2	56
24 weeks-1 yr	34	6.4	28	14.3	6	11.1	3	27.3	71
1 yr plus	4	0.7	9	4.6	1	1.9	0	0.0	14
Total	533	100.0	196	100.0	54	100.0	11	100.0	794*

* Excluded from the table are 46 cases in which the court papers were missing and 21 cases in which the date charged or date finalized were uncertain.

(e) *Summary*

Data were collected for 943 persons charged at a sample of 16 metropolitan, suburban and country police stations during a two-week sample period. In 69 cases accused persons were taken directly to court where the matter was dealt with without the requirement for bail. In those cases where a bail decision was made, 65.1% of accused persons were granted unconditional bail, 26.2% were granted conditional bail and 7.2% were refused bail. In the remaining cases the requirement for bail was dispensed with.

The bail condition imposed most frequently (33.9% of cases) was that the accused person agree, without the deposit of security, to forfeit a specified sum of money. In a further 23.1% of cases the condition imposed was that an acceptable person acknowledge the accused as a responsible person.

For summary or summary-indictable matters unconditional bail was granted in 66.5% of cases as compared to 18.2% of indictable matters. For 40.9% of indictable matters conditions were imposed upon bail, and in a further 40.9% of cases bail was refused. This compares with only 6.3% of summary or summary-indictable matters being refused bail. All matters for which bail was dispensed with were summary.

Unconditional bail was the most frequent determination for most offence groups, the exceptions being: offences against the person, sexual offences, robbery and extortion, found with intent to commit an offence, and drug offences. Charges of robbery and extortion received the highest proportion of bail refusals, and no person charged with such offences was allowed unconditional bail.

In 47 cases money bail was required. The amount of cash bail imposed ranged from $50 to $10,000 with $200 or less being the required amount in 57.5% of cases.

Females were more likely than males to be granted unconditional bail or to have the requirement for bail dispensed with, and they were less likely to be refused bail. Unconditional bail was granted to 71.9% of females as compared to 64.2% of males, 26.5% of males and 24.0% of females were granted conditional bail, bail was refused for 8.3% of males and 0.8% of females and bail was dispensed with for 1.0% of males and 3.3% of females. The pattern reflects the tendency for females to be involved in less serious offences than males.

Unconditional bail was the most common bail determination for all age groups. Juveniles, however, had the lowest incidence of unconditional bail, the highest incidence of conditional bail and the second highest rate of bail refusal. For all age groups the condition most commonly imposed was that the accused agree, without the deposit of security, to forfeit a specified sum of money. For all ethnic or racial groups with the exception of North Americans (small sample) and New Zealanders, the most common bail was unconditional bail. New Zealanders and North Americans were equally likely to be granted conditional bail as unconditional bail, and New Zealanders had the highest incidence of bail refusal (14.3%). Aborigines had a high incidence of unconditional bail (75.4%), but also had a comparatively low incidence of conditional bail (16.4%) and a high rate of bail refusal (8.2%).

Bail determinations also varied by occupational status, with the highest incidence of unconditional bail being for the domestic category (85.2%). The highest incidences of bail refusal were for students (12.3%) and unemployed persons (14.3%).

Data were available regarding the initial court appearance (not bail hearing) for 879 cases. A total of 49 people, 6.2% of cases for which data were available, failed to appear. In 6.4% of unconditional bails and 7.2% of conditional bails persons failed to appear: no person for whom bail was dispensed with failed to appear in court. Charges of larceny, drink driving, offensive behaviour and driving offences accounted for the majority of cases where the accused failed to appear. Warrants were issued in 30 of the 49 cases in which persons failed to appear; in 5 of these 30 cases the accused subsequently appeared at court and the matter was relisted.

A total of 430 cases were determined at the first court appearance and the remaining 449 were adjourned. In the majority of adjourned matters bail was either dispensed with (in 35% of cases for which data were available) or unconditional bail was allowed (31.2%): in 7.9% of cases bail was refused.

For those matters where data were available regarding bail on adjournment, 68.1% of cases had legal representation. A much higher percentage of unrepresented defendants (54.6%) had bail dispensed with on adjournment than did represented defendants (33.3%) and represented defendants also had a higher incidence of bail refusal; 9.1% as compared to 2.8% for unrepresented cases.

In 12.3% of cases for which data were available regarding the bail forms used, a Form 4 (the background and community ties questionnaire) was used. The

greatest number of these forms were used for charges of larceny, drink driving, drug offences and for offences against the person. The matters for which a Form 4 was used had a lower rate of unconditional bail (28.3%) than those in which the form was not used (73.5%) and a higher incidence of bail refusal (8.1% as compared to 6.2%), reflecting the requirement that the forms only be used for more serious matters.

It was found that the forms had been incorrectly scored in a large number of cases. Corrected scores were calculated based upon the accused person's actual responses to the questionnaire. On both the recorded scores and the corrected scores persons who had been granted unconditional bail had higher mean scores than those given conditional bail and those refused bail. There was little difference in the recorded scores between persons granted unconditional bail or conditional bail or those refused bail on adjournment.

A total of 47 persons failed to appear at the final court appearance, and warrants were issued for 37 of them. Persons who appeared in court had slightly higher mean scores (both recorded scores and corrected scores) than those persons who failed to appear, but the differences were small. Form 4 was completed in only 10 of the cases where accused persons failed to appear, and this number was far too small to allow any meaningful assessment of Form 4 as predictive of persons failing to appear at court.

The most common outcome for cases in the sample was a fine with the incidence of fines varying from 45.4% for cases in which bail had been dispensed with at the initial determination, to 29.6% for cases in which the bail had initially been refused. The incidence of custodial outcomes also varied according to the initial bail determination; no person for whom bail was dispensed with received a custodial outcome; 2.1% of unconditional bails, 9.6% of conditional bails and 24.2% of matters in which bail had been refused received a custodial sentence.

For persons charged with summary or summary-indictable offences, those cases in which bail had been refused at any stage throughout the proceedings received custodial outcomes in 28.6% of cases as compared to only 3.2% for cases in which bail was not refused at any stage. Numbers were too small to permit a similar comparison for persons charged with indictable offences.

In 47% of cases in which an accused was committed for trial or sentence in a higher court bail was refused: in only three of these seven cases was the result a custodial sentence. Of seven appellants held in custody on appeal to the district court, only one received a non-custodial sentence.

Whilst persons who had been refused bail at the initial bail determination were more likely than were other persons in the sample to have their cases finalized within one week of the charge being laid (35.2% as compared to 29.3% of unconditional determinations and 20.9% of conditional determinations), this trend did not continue over time, and at eight weeks 68.5% of persons who had been refused bail had their cases finalized as compared to 78.6% of those on unconditional bail. Those granted conditional bail (59.2%) or having the requirement for bail dispensed with (45.5%) were even less likely to have their cases finalized within eight weeks.

3 Interviews and comments

Interviews with magistrates

In consultation with the Chief Stipendiary Magistrate a sample of 18 magistrates was chosen for interview. The sample included magistrates sitting in metropolitan, suburban and country courts, and included three special magistrates sitting in children's courts. In two cases magistrates other than those originally selected in the sample were present at the interviews, making a total of 21 magistrates who offered their comments upon the legislation. (Mr Rod Blackmore S.M. provided the Bureau with an extensive written commentary about the implementation of the Bail Act, and his assistance is gratefully acknowledged.)

(a) *General comments on the Bail Act*

Almost all of the magistrates commented that the Bail Act was working well, and that it hadn't become the problem that many of them had anticipated it would be. Whilst some praised the legislation as representing a vast improvement over the previous system, several thought that the Act had made little difference to the operation of the courts and had perhaps had more effect upon police bail procedures. One magistrate commented that the previous system had been better than that existing under the Bail Act.

Those who saw the Bail Act as an improvement over the pre-existing system commented that bail procedures had been "sharpened up a lot", and that time was being saved by dispensing with bail, in giving unconditional bail and in continuing bail. Such time savings were also said to have accrued to court staff; with money being required less often for bail, the court staff were said to have experienced a reduced workload in terms of accounting and associated paperwork.

The de-emphasis upon money bail was cited by many of the magistrates as an area of significant improvement under the Bail Act, making bail easier to get for the economically disadvantaged.

The flexibility of conditions provided for under the Bail Act was also seen by some magistrates as an area of improvement:

"It has widened our discretion on the types of bail we can set."

Those magistrates who saw that the Bail Act had made little real difference to bail proceedings in courts typically commented that what the Act had in fact done was to give legislative effect to what most magistrates did in any case. It was said by some that they usually dispensed with bail prior to the introduction of the Bail Act and that security other than money bail had always been possible anyway. One magistrate said that whilst the new legislation had made little difference to the way in which he approached bail determinations, it had in fact brought some other magistrates to the realization that they had been unduly harsh in some instances in the past. He also thought that it had encouraged a more liberal approach to bail by police, something he saw as a positive feature.

Most magistrates expressed approval of the criteria laid down by the Act as

appropriate considerations in the determination of bail. Many of them expressed the view that these were the factors which had always been considered in any case and that the Act had simply formalized what was already common practice. One magistrate suggested that the accused person's wishes should also be considered when making a bail determination: she said that it was her experience that some accused persons had excellent reasons for not wanting bail.

(b) *Utility of the background and community ties questionnaire*

Only two of the magistrates interviewed said that this questionnaire was used frequently. One said he had never seen one completed at all, and most said that they were rarely used. Almost all expressed doubts about the utility of the form with the most typical comment being that this information was almost always provided from the bar table in any case, and that whilst the questionnaire might be useful where an accused did not have legal representation, the incidence of unrepresented persons appearing in court was now very small indeed. All said that whether or not the form was used was a question for the police, and that they themselves never asked for the questionnaire to be completed but, where necessary, simply asked questions about those types of matters from the bench. In fact all magistrates agreed that the matters laid out in the questionnaire were ones which they usually considered in any case, and most saw no advantage in having them put forward in writing.

Many commented that the points score was totally meaningless, and some were concerned that it may even be misleading. One magistrate was particularly concerned about the use of the questionnaire with juveniles: he considered that it was most inappropriate for juveniles and that it would be very hard for any young person to achieve a good score on the rating scale.

(c) *The requirement to enter reasons for a bail determination on Form 8*

Fifteen of the twenty-one magistrates commented in a negative fashion about the requirement that they document their reasons for a bail determination (they are required to write their reasons on Form 8). Whilst some saw it as an unavoidable nuisance, others could see no advantage to it at all and strongly objected to the requirement. Most were concerned about the time it took to complete the form, particularly in a busy court. One magistrate commented:

> "Sometimes I think that I am the only one doing any clerical work in the courtroom, particularly in these days of sound recording ... if you give anything other than the merest sketch of a reason, completing the forms can be somewhat complicated and somewhat involved, and just to sit there and have the whole court waiting while you do just that, seems to be a complete waste of time and resources ..."

Most of those who voiced concern about the time which completing the forms took also saw some advantages in having reasons documented. As one magistrate said,

> "The defendant is always entitled to know reasons, especially where bail is refused".

It was also said that in dealing with an accused person who had previously appeared before another magistrate, the reasons stated by that magistrate for his or her bail decision were useful in coming to a determination. One magistrate, however, thought that this was of dubious benefit stating that all applica-

tions should be dealt with on merit. Another said that the reasons given were often so stereotyped as to be of little use and a third considered that anything that was recorded on the form could not possibly give a fair indication of what had transpired on the question of bail.

Several of the magistrates agreed that since the advent of sound recording the only way to make the reasons for a bail determination clear and readily available was for the magistrates themselves to document it. One other magistrate suggested that perhaps the persons in charge of the sound recording in each court may be able to take down details regarding bail, and thus save the magistrate time.

Other issues which were raised regarding the use of Form 8 included concern by some magistrates that district and supreme court judges weren't also documenting their reasons for bail. Several magistrates said that they would prefer to know what factors led a judge to vary a bail decision that they had made, but that when the papers from bail applications made to higher courts were returned to the magistrates, in many cases there was no Form 8 included, and no reasons for the bail decision evident. One magistrate sitting on a remote country circuit was concerned that in most cases where a person from his jurisdiction sought a review of a bail decision, or put an application for bail to the Supreme Court, there was usually insufficient time for all the court papers including Form 8 to reach the court where the application was to be heard. He thought that any judge reviewing a bail decision should be made aware of the reason for that decision, and was concerned that in practice this wasn't possible.

(d) *The offence of failing to appear in accordance with a bail undertaking*

Most of those interviewed thought that the creation of the offence was highly desirable, particularly in the light of unconditional bail. A typical comment was that "it gives the Act some teeth".

There was some concern expressed that it was not being used greatly by the police. In the experience of a number of the magistrates, warrants were not being issued in all cases where accused persons failed to appear in court. It was also said that warrants tended to be issued for the original offence and that a charge of failing to appear may or may not be laid when the accused is apprehended. A number of magistrates admitted that they were not sure what the procedure was for the issuing of warrants for people who failed to appear in court, and they did not know how the decision was made to charge some people who failed to appear with an offence whilst not charging others. Concern was expressed in a number of the interviews that the police, rather than the courts, had discretion over these matters; two magistrates suggested that a standard procedure should be adopted such as that all persons failing to appear would be charged with the offence, and the accused could then present any legitimate excuses to the court.

> "It is up to the police really. I don't think it should be because it is not expressed to be at their discretion in the Act, and I think if it is provided that it be an offence, I think they should be charged with the offence and put to explanation ..."

One magistrate stated that he saw the chief value of the offence created in S.51 being that a conviction for failing to appear removed the presumption in favour of bail on future occasions:

> "I try to tell them ... 'If you don't appear, you can be convicted of an offence, which can remove your presumption in favour of bail on another occasion, and so that if you

don't appear not only are you likely to be arrested, but you are likely to be convicted of another offence and find that on future occasions you won't be eligible for bail'..."

Whilst the likelihood that an accused person will appear at court is one factor set down under S.32 of the Bail Act as an appropriate consideration in determining bail, and any previous failure to appear may be taken into account when assessing this likelihood, a conviction for failing to appear does not in fact remove an accused person's presumption in favour of bail, except if the failure to appear is in respect of the offence with which the accused stands charged (S.8(2)(a)(i)).

Some confusion was also expressed by two of the magistrates about their powers to hear matters *ex parte* when an accused person failed to appear: whilst S.52 of the Act provides that no penalty for failure to appear should be imposed where a matter was dealt with *ex parte,* they were unsure as to what circumstances governed the hearing of the charges *ex parte.*

Other comments about the offence of failing to appear included the concern by one magistrate that people with legitimate excuses for not appearing in court could be charged with an offence. Two others said that since very few people failed to appear the offence was not of a great deal of assistance to them, and several others said that they found it difficult to decide on an appropriate penalty for the offence.

One magistrate said that he was concerned about the provisions under S.51 being applied to juveniles as well as to adults, since in his experience the failure of a juvenile to appear in court was usually due to family circumstances, and the fault generally was not that of the child.

(e) *Number of persons failing to appear in court*

Four of the magistrates who were interviewed stated that it was their impression that slightly more people were failing to appear in court since the introduction of the Bail Act. Whilst one other felt that the number had decreased, six said that there was no perceptible change under the new legislation. All others agreed that without access to statistics it was not possible for them to make any such judgements at all. None of the magistrates felt that the incidence of people failing to appear constituted any real problem and some said that in their experience there were very few people who failed to appear in court and that those who did frequently appeared soon after with some legitimate excuse.

(f) *Positive features of the legislation*

A number of the magistrates who were interviewed for the study saw as the chief advantage of the new legislation the time it saved them. The provisions for dispensing with bail and for continuing bail on adjournment were both seen as time-saving features of the legislation. One magistrate commented that he dispensed with bail in 90% of cases, saving both himself and court staff a great deal of time and paperwork.

The removal of emphasis from money bail and the wide range of conditions available under the Act were also seen as advantages of the legislation. Many magistrates were hopeful that this feature of the legislation would result in a more equitable position for low-income earners and minority groups who had often found it difficult to get bail under the previous system. In addition, a

number of magistrates commented upon a liberalizing of the police attitudes towards bail since the introduction of the Bail Act, with bail being opposed less frequently and less strenuously in many cases; this was cited as one of the positive consequences of the new legislation. The right to bail for minor offences was also seen as a good feature of the legislation.

One magistrate said that he found the definition by the Act of those criteria appropriate to the determination of bail, and the hierarchy of conditions which could be imposed upon an accused person as advantageous and something he hoped would bring other magistrates to consider bail more fully. Another magistrate, however, considered that there were too many factors to consider under the Act and that as a consequence bail decisions were taking too long.

Other magistrates mentioned that codifying all legislation with regard to bail was an important advantage of the Act.

(g) *Negative features of the legislation*

Apart from the problems enumerated above regarding Form 8, a number of other problems associated with the legislation were raised.

The most common concern of the magistrates was with what they saw as an anomaly in the Act. No presumption in favour of bail exists for the offences of armed and otherwise violent robbery, but there is such a presumption for all other serious offences including murder and rape. Quite a number of the magistrates indicated that they could not understand that situation existing in the legislation; they thought it was an illogical distinction and one which was at variance with the community's perception of murder as a more serious offence than armed robbery. One magistrate also considered that in defining those offences for which there is a right to bail, those offences for which there is a presumption in favour of bail and those offences which do not have a presumption in favour of bail, the Act actually restricted the magistrates in their determination of bail — he preferred to have complete discretion.

Some magistrates were concerned with the provision under S.22 of the Act that no limit be placed upon the number of applications in relation to bail which may be made by an accused, subject only to the condition that a court may refuse to entertain such an application which was frivolous or vexatious (S.22(4)). It was thought that without such a limit, accused persons might "shop around" for a bail decision which was more favourable. One magistrate was concerned that such applications were being used by prisoners as justification for a day out of gaol and a consequent chance at escape from custody.

Another area of concern mentioned was that the "verbiage" under the Act, particularly with regard to the conditions of bail, was too "stylized" and not easily understood by defendants. It was said that the defendants often left the court unclear of what their obligations were. One magistrate was also concerned that the procedure for a surety to seek a discharge of his liability was cumbersome and didn't properly protect the rights of the surety. (Section 42 of the Bail Act sets out the procedure for a person other than the accused to seek the discharge of any liability. Upon the lodgement of an application — Form 9 — the matter is listed with the Clerk of the Court for hearing before the court. Section 42(3) states that the applicant shall be discharged from his liability unless the court is satisfied that to do so would be unjust. In cases where a breach of the bail undertaking by the accused had already occurred, the Fines and Forfeited Recognizances Act applies (Donovan, 1981).)

(h) *Other issues*

It was stated by two of the magistrates that the reasons given by police for the refusal of the bail were in some cases not legitimate reasons in terms of the Act (these reasons are required to be recorded on Form 7). The Bail Act sets out clearly those criteria which are appropriate to the consideration of bail, and expressly states in S.32 that only those matters set out by the Act can be considered in the determination of bail. In Part I, we have documented a disturbing incidence of bail refusals in which police gave reasons other than those specified in the legislation.

It was also said that some magistrates were citing reasons other than those set out by the Act:

> "It is interesting also to survey the reasons given by police for refusal of bail (on the prescribed form) — rarely are they reasons provided for by Section 32. The same can sometimes be said of magistrates."

The same magistrate was also concerned that bail applications were still being heard "in a fairly summary fashion". One other magistrate found it disconcerting that hearsay evidence was often included on Form 7, and that magistrates often saw this form and any other bail forms even before a plea was entered.

Some doubt was raised by one of the magistrates about whether the Act provided sufficient protection for the community. His particular concern was that the Act did not apply in cases where complaints of apprehended violence were made. The magistrate thought that the Bail Act would be a useful tool in protecting the complainant in such cases. A number of magistrates did say that they found the Act useful in allowing them to impose conditions as to the conduct of an accused person who was charged as the result of a domestic dispute. The N.S.W. Task Force on Domestic Violence considered the operation of the Bail Act, and particularly the presumption in favour of bail established by the Act. The Task Force proposed that in cases where an offender is arrested for domestic violence, bail should not be granted for 12 hours. An amendment to the Bail Act to this effect is recommended by the Task Force (Woods, 1981).

It was suggested by one of the magistrates that some feedback should be made available to the judges of the Supreme Court who hear bail applications. This magistrate was concerned that the judges were granting money bail in some cases where it was inappropriate, and that where accused persons failed to comply with their bail undertakings the judges were not being informed.

(i) *The bailing of juveniles and the children's courts*

As one magistrate commented:

> "Kids are forced through the same ritual for bail as are the adults."

Whilst most of those who commented upon the application of the Bail Act in the children's courts saw few problems apart from those which related generally to all courts, two of the special magistrates sitting in children's courts indicated a concern about the application of the legislation to juveniles.

Those who commented that the legislation was quite satisfactory for use with children and young persons said also that most were granted unconditional bail, or conditional bail with a parent or guardian acting as the acceptable person. They also said that bail was rarely refused. One magistrate sitting on a country circuit commented that because shelters were such a long distance from the area

he sometimes granted bail to juveniles with strict conditions, rather than refuse bail and have the state incur the cost of transporting the juvenile to the shelter in Sydney and then back to the country area to appear in court. One other country magistrate agreed that the distance to juvenile shelters sometimes posed problems but said that he did not think he should let such matters "cloud his judgement" in the consideration of bail.

In contrast one magistrate expressed doubts that the Bail Act was at all appropriate for juveniles, especially those less than 16 years old. He considered that, rather than the criteria laid down by the Bail Act, the primary consideration of the children's courts should be that of the welfare of the child.

One of the special children's court magistrates interviewed was concerned that the Bail Act had introduced a lot of delays in procedures for young persons and their parents. The previous informal procedure frequently used when a child or young person was charged with an offence was that of "citing to appear". The person was released into the custody of a parent or guardian upon a verbal undertaking to appear at court. This procedure is not available under the Bail Act. As this magistrate pointed out:

> The great majority of juveniles, therefore, are being detained at police stations for periods longer than hitherto for the purpose of bail documentation, which includes:
> (1) Supply to the juvenile of a document setting out his rights to bail;
> (2) Completion and assessment of a questionnaire relating to the juvenile's background and community ties;
> (3) Completion of bail undertakings;
> (4) Completion of statement of reasons for bail decision by authorized officer (where appropriate); and
> (5) Supply to juvenile of statement of right to review of bail decision.

This magistrate stated that a simple remedy to this problem of delay existed in extending to police the power which the courts have under the Act to dispense with the requirement for bail, at least in the case of juveniles.

Concern was also expressed that the introduction of the Bail Act had resulted in a more cumbersome procedure for courts. It was said that:

> "Under pre-existing law, kids were just told to come to court with their parents. They didn't have to sign forms and that, and generally speaking it worked pretty well. Now we get a whole mass of documents. With every lot of court papers you get the police reasons for either granting or refusing bail, the questionnaire in lots of cases, and the bail forms themselves which might total two or three."

This magistrate commented that whilst such documents had potential utility to the court, the reasons offered by the police for the refusal of bail frequently fell outside the criteria laid down by the Act.

Several of the magistrates agreed that an important issue which arose in dealing with juvenile offenders was what to do when the juvenile had "nowhere to go". In such cases parents or guardians of the accused were unable to care for them, they did not wish to have the juvenile in their care, or for some other reason the accused had nowhere to go.

One commented that:

> "It's a bit discriminatory having to refuse bail for kids who have nowhere to go."

In relation to this issue, the question was raised as to whether the criteria laid down by the Act allowed the consideration of this factor in the determination of bail. Whilst in Section 32(1)(b)(iv) of the Act, it is specified that the interests of the accused person in terms of the need for physical protection is a criterion appropriate to the consideration of bail, one of the magistrates questioned

whether this actually applied in those cases of juveniles with nowhere to go. He considered that the wording of that section:

> Whether or not the person is, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection,

did not envisage the kind of care and supervision which the courts would intend for juveniles without an available parent or guardian to care for them. This magistrate thought it was unfortunate that a liberal interpretation of the legislation appeared to be necessary in order to secure protective custody for children and young persons; he suggested the need for a specific provision within the legislation relating to the issue of protective custody. Concern for juveniles refused bail because they have nowhere to go, or for any other reason, was also expressed by the N.S.W. Anti-Discrimination Board. In relation to the question of bail, its report recommends that:

> "The children's legal service, when established should conduct investigations into granting or refusal of bail in children's courts, develop procedures which will allow for expeditious appeals to the appropriate court where bail is refused; and develop alternative places of non-custodial care to which a child on remand may go, where bail is likely otherwise to be refused because the child lacks accommodation or adequate supervision"; (N.S.W. Anti-Discrimination Board, 1980:57).

Some magistrates perceive another possible anomaly in the legislation. Whilst the Bail Act specifies that where bail is refused, no adjournment by a magistrate shall exceed eight clear days except with the consent of the person (S.25(1)(a)(ii)), complaints under the Child Welfare Act can attract interim orders of committal to a shelter for not more than 14 days, or to the care of a fit person for not more than 28 days. One magistrate commented:

> "If eight days is good enough for criminal matters, why not for welfare matters?"

In relation to this issue though, it was also said that adjournments of eight days under the Bail Act were insufficient to allow the preparation of reports based upon the "physical and mental survey" often requested by magistrates in children's courts: it was said that such reports usually took 14 days or more to be prepared.

Practical problems were also being experienced in one children's court where police commonly brought juveniles before the court without having made a bail determination, often in the late afternoon when the list had been completed and the duty solicitors had left. The magistrate stated that in most cases the police had no objections to bail but were not ready to proceed with the matter: he was concerned that this practice resulted in wasted court time and he expressed the opinion that the police should make a bail determination. This magistrate has begun to decline to hear such matters unless the police have formally refused bail.

One additional factor relating to bail for juveniles is that none of the bail forms mention children's courts. Courts of petty sessions, district courts, supreme courts and the Court of Criminal Appeal are all listed on the bail forms as alternative jurisdictions before which an accused can be required to appear, but children's courts are not listed. Some magistrates mentioned this as a minor annoyance.

Comments by court officers

In the process of collecting data for this study, visits were made to 13 courts of

petty sessions and three children's courts in metropolitan, suburban and country areas. At each court informal discussions were held with staff about the Bail Act and its implementation. In most cases comments about the legislation were provided by clerks of petty sessions, assistant clerks of petty sessions and chamber magistrates: some other officers also provided comments. The comments are not meant to be representative, but rather to provide a useful commentary on the implementation of the legislation.

(a) *General comments about the legislation*

In most of the courts visited the staff agreed that the new Act was working well with few problems. It was said by some officers that the legislation represented a vast improvement over the previous system which was "a nightmare". Most court staff agreed that there had been some reduction in workload since the commencement of the Bail Act, although estimates of the degree of reduction varied from "marginal" to "significant". This reduced workload was said to have resulted in part from having less money bail to handle with a consequent decrease in accounting and associated paperwork, and also from having fewer forms to complete under the Act than had been the case previously. It was said that whilst previously there had been many different forms to complete depending upon the circumstances, the procedure under the Bail Act was clearer, simpler and involved less paperwork. Only one of the court officers spoken to thought that bail under the previous system had been better, but he gave no reasons for this judgement.

(b) *The bail forms*

Whilst some of the court officers said that the bail forms were good and quite adequate, a number of others had criticisms to offer, particularly relating to form design.

Form 5, the unconditional bail undertaking, attracted some criticism. The undertaking which the accused is required to sign on that form is an agreement to appear at a specified *court of petty sessions*. Since unconditional bail can be entered into at any stage of the proceedings (including on committal and on appeal), and applies also to juveniles, the form should allow for an agreement to appear at any court including particularly district courts and children's courts.

A similar criticism was directed at Form 5A. The form lists the different jurisdictions in which the accused can be required to appear but makes no mention of children's courts. This form was also said to be confusing and difficult to complete. Several court officers suggested that the form should be redesigned so that all typing required was on one side of the form only.

Comments about Form 8 usually related to the reluctance of the magistrates to complete them. It was said that in busy courts the magistrates frequently don't have the time to complete them, and that when they did it was usually in such a manner that they were difficult to read, or too brief adequately to convey the magistrate's intentions. Some of the court officers interviewed said that they knew of magistrates who refused to complete the form, saying instead that as they announced their reasons for a bail determination in court, the reasons were recorded on sound and could be transcribed if required.

Form 12, the notice of continuance of bail, was said to be good and very quick to complete. The only concern expressed about this form was that on some

occasions the police neglected to take the accused back to the office to collect it. It was also suggested that, in cases where bail is dispensed with by the court, similar notifications of the place and time at which accused persons were to attend should be supplied. The Act and regulations currently do not provide for any notices to be given to an accused person when bail is dispensed with. It was also suggested that Form 13, the notice respecting the review of a bail application which accused persons are required to be given, should be printed on the back of the bail undertaking because otherwise few accused persons received them.

(c) *Failure to appear in accordance with a bail undertaking*

It was said by most of the court officers that the number of persons failing to appear in court had not changed since the introduction of the Bail Act, and that many of those failing to appear tended to have legitimate excuses. The court staff were more concerned about the procedures relating to the issue of warrants for persons who failed to appear. Some were unsure whether the warrant should be issued for the principal offence or for the offence of failing to appear. Others questioned whether one warrant was sufficient for all offences with which an accused person was charged or whether warrants should be issued for each charge. It was said by officers at one metropolitan court that drug offenders frequently failed to appear, but would appear several days later seeking to have the matter relisted often after warrants had already been issued. One of these officers questioned whether some other means of dealing with drug cases may be more appropriate.

(d) *Other issues*

One area of common concern was the provision under the Bail Act for bail conditional upon the lodgement of security. The question of what constitutes acceptable security was raised several times. One court officer cited as an example of the problems which could occur a case in which an accused attempted to lodge a passbook. The court officer was not prepared to accept the passbook because the balance was low. The accused then offered the deeds to his house as security and when these were not accepted because they carried a mortgage, he proposed that his car be kept by court staff as security. The court staff declined to accept the car because of the practical difficulties involved in holding it. One clerk of petty sessions said that he would accept as security any valuable commodity which he could fit in the safe — he cited jewellery and a fur coat as examples — but stated that the type of security he was prepared to accept would depend upon the offence with which the accused was charged. Several of the court staff spoken to said that they would prefer the magistrate to specify what he considered to be sufficient security when granting bail on that condition. It was also said that problems relating to bail conditional upon security had arisen when officers at one metropolitan prison refused to accept security of any sort and requested that cash be lodged before the accused could be released.

Another area of common concern related to bail on appeal. Several of the court officers questioned whether the Bail Act or Justices Act prevailed for accused persons on appeal. Under the Justices Act, any appellant who is an accused person in custody may be granted bail subject to the Bail Act providing that they undertake to appear at the district court and prosecute the appeal

(S.123(3)). For appellants not in custody, S.122(5) and S.123(1) and (2) of the Justices Act prevail — that is the execution of the conviction or order shall be stayed upon the accused entering a recognizance to prosecute the appeal. In essence, then, the question of bail on appeal only arises when the appellant is in custody. Some court officers expressed concern that whilst a procedure for appealing against a bail determination exists, no such procedure exists where the sum of a recognizance fixed to prosecute an appeal is thought to be excessive.

Another question raised concerned appellants sentenced to a term of periodic detention — whether the accused should be considered to be in custody, and therefore bailable under the Bail Act, or at large and thus subject to a recognizance to prosecute the appeal.

Also related to appeals was this issue of whether appellants in custody would automatically have a bail determination made, or whether they would need to lodge an application for bail. Some court officers thought that there should be an automatic consideration of bail in such cases.

Concern was expressed by court staff, as it was by some magistrates, about persons in custody "shopping around" for a favourable bail decision. It was said that applications were being lodged in areas remote from the court at which the accused person was set down to appear, in the hope that they may come before a more lenient magistrate. (The application for bail is made on Form 3 as prescribed by the regulations. The accused applies to a specified court for bail, and there is nothing in the Act or regulations to limit in any way which court an accused may apply to.) It was said that in one busy court a magistrate had begun to refuse to hear applications for bail from persons who had not been listed to appear in that same court.

One final area of concern which was raised in discussions with court staff was that of training. Several officers commented that there was a lack of adequate training for court staff when new legislation such as the Bail Act was introduced. They suggested that much of the confusion initially experienced in using the new bail procedures could have been avoided with better training prior to the commencement of the Act.

Summary

In summary, magistrates and court staff interviewed generally considered the Bail Act to be working well. The points most commonly seen as positive features associated with the legislation were:

(*a*) The de-emphasis upon money bail;
(*b*) Time savings associated with unconditional bail, continuing bail and dispensing with bail;
(*c*) Less money bail and a consequent reduction in accounting and paperwork;
(*d*) The flexibility of the conditions provided by the Act;
(*e*) Codifying all legislation regarding bail.

Problems were commonly raised regarding the following:

(*a*) The requirement that magistrates document their reasons on Form 8 — it was said that in many courts there simply wasn't time;
(*b*) The presumption in favour of bail for all serious offences with the exception of armed and otherwise violent robbery — some suggested that there should be no

presumption in favour of bail for murder and rape;

(*c*) The offence of failing to appear in accordance with a bail undertaking — concern was expressed that in some cases those who failed to appear were charged with an offence whilst others were not. The suggestion was made that a standardized procedure be adopted so that the police did not have such wide discretion in this regard;

(*d*) Applications for bail — concern was expressed both because no limit exists under the Act to the number of applications which an accused can make, and also because accused persons were said to be making applications to courts geographically remote to that in which they would ordinarily appear, in the hope of appearing before a more lenient magistrate;

(*e*) The bail forms were criticized by some court staff as being poorly designed and unnecessarily complex to complete;

(*f*) The provision under the Act for bail conditional upon the lodgement of security — several court officers were unsure what constituted sufficient security, and commented that the magistrate should specify the type of security when making the bail determination;

(*g*) The correct procedures under the Bail Act or the Justices Act to be followed when an accused lodged an appeal — a number of court officers were unsure of the procedures to follow;

(*h*) The lack of adequate training for court staff in implementing new legislation.

A number of issues specific to the implementation of the Bail Act in children's courts were also raised:

(*a*) The Bail Act was seen to have introduced significant delays for juveniles and their parents in comparison to the previous informal procedure of "citing to appear" — one magistrate recommended in regard to this issue that the power to dispense with bail which the courts have under the Act should also be extended to the police;

(*b*) The problem of juveniles with nowhere to go — it was queried whether S.32 (which defines the criteria to be considered in the determination of bail) can be interpreted to allow the situation of a homeless juvenile to be considered in deciding the question of bail;

(*c*) The lack of available shelters for juveniles outside the metropolitan area was seen by some magistrates as a problem in refusing bail for juveniles;

(*d*) The provision under the Bail Act for a maximum remand in custody of eight days without the consent of the accused was seen as anomalous when compared with the situation of matters under the Child Welfare Act where a juvenile may be remanded to a shelter for 14 days, or in the care of a fit person for 28 days.

4 Supreme Court bail applications

In addition to the sample studied, consideration was also given to bail applications heard in the Supreme Court.

Data was supplied to the Bureau by officers of the Solicitor for Public Prosecutions and Clerk of the Peace with regard to the number of Supreme Court bail applications heard during the period 1 January 1980 to 10 July 1981. This is presented in Table 44.

Table 44. Supreme Court bail applications, 1 January 1980-10 July 1981

No. of previous applications	No. of applicants	No. of applications	%
0	212	212	49.8
1	40	80	18.8
2+	37	134	31.4
		426	100.0

Of the 426 applications heard during the period (an average of 284 per year) multiple applications were lodged by 77 applicants accounting for 214 applications. By way of comparison, 1,272 applications were heard during the period 1 January 1970 to 28 December 1978, an average of 141 applications per year. This substantial increase in Supreme Court applications most probably reflects the introduction of the Bail Act.

In considering this apparent increase in the number of applications, Bureau officers attended the Supreme Court on three occasions during 1981 to collect data on bail applications; data was collected for 77 applications.

As shown in Table 45, 58% of the applications were lodged by persons who had made no previous application to the Supreme Court. A further 16.9% of applicants had made one previous application, 6.5% two previous applications and 5.2% three previous applications.

Two issues may be raised which relate to Table 45; the number of applications which were withdrawn, and the number of applicants seeking a change of bail conditions.

Table 45. Data collected for bail applications — Supreme Court

No. previous applications	Granted	Conditions varied	Refused	Withdrawn	Stood over	Total	%
0	14	4	22	2	3	45	58.4
1	2	4	5	—	2	13	16.9
2	—	—	1	1	3	5	6.5
3	—	—	2	—	2	4	5.2
Unknown	—	4	—	6	—	10	13.0
	16	12	30	9	10	77	100.0

A change in procedure to enable applicants to withdraw an application without themselves or their representatives actually appearing in court would remove a number of matters from the Supreme Court lists.

A change in procedure may also be possible to remove the necessity for applicants who seek a change in bail conditions to appear in the Supreme Court, particularly where the Crown does not oppose the change.

The comments made by judges hearing those applications which were attended by Bureau staff were also noted.

Some concern was expressed about the number of applicants appearing who had made previous applications to the Supreme Court. One judge suggested that a limit should be applied to the number of applications which could be made, whilst another judge expressed reluctance to fetter the rights of the accused with regard to the number of applications which could be made.

A number of other issues worthy of consideration were raised by judges in their determination of bail applications.

The first of these was the question of whether judges have the power when refusing bail to a juvenile to order whether that juvenile should be detained in a juvenile shelter or in a remand prison. (Four cases were observed in which two different judges were involved and in which bail was refused to juveniles without this question being resolved.)

The lack of information about an accused person which is typically available to the judge when making a bail determination was raised as a problem and some discussion ensued about whether S.33 of the Bail Act was being ignored in that Form 4 (the background and community ties questionnaire) was rarely being used.

A number of cases were observed in which the applicant had little or no command of English, and yet no interpreter was present. (In some cases the matters had been stood over from the previous week to enable an interpreter to attend, but again none was present; in each of these cases the accused was unrepresented.) Whilst some of these applicants were stood over for hearing in the next week, in two cases bail was refused despite the applicant being unable to communicate with the judge.

5 Discussion of data

Lack of systematic data regarding bail

In discussing the results of the study, mention must also be made of the lack of available data regarding the use of bail in N.S.W. No system exists for the collection of data concerning bail determinations made by police or courts. More significantly, perhaps, there is no monitoring of the numbers of persons being held in custody either because they were refused bail or because they were unable to meet the conditions which were imposed upon bail.

Information was sought from the Department of Corrective Services about the numbers of remand prisoners in N.S.W. prisons and remand centres, and about the types of bail determinations which had been made for these prisoners. No information was readily available; the statistical system at the Department of Corrective Services was said to be not fully operational at that time and the hope was expressed that in future this type of data would be available via the routine data collection within the Department. Some data were provided, however, based upon a hand count of forms received by the Department with regard to new receptions of unsentenced prisoners for the period 3 to 31 January 1982. The data are presented in Appendix X. However caution must be used in interpreting these figures since it was said that in some instances persons who leave a gaol to appear in court are counted as a new reception when they return again at the end of the day.

There were a total of 424 receptions of unsentenced prisoners at N.S.W. prisons and remand centres during the four-week period for which data were provided; no detail was available regarding the status of bail for these persons. The offences with which these persons were most commonly charged included property offences (39.9%), homicide and serious assault (11.3%) and robbery and extortion (11.1%).

Problems were also encountered with regard to the lack of available and accurate information about the number of persons failing to appear in court in accordance with bail undertakings and for whom warrants were issued. Whilst a computerized central warrant index is maintained by the N.S.W. Police Department and all persons for whom a warrant is issued are listed on that index, a lack of consistency in the manner in which warrants are issued for persons who failed to appear in court has meant that only some of those cases can be identified from the index. The problem lies in that some warrants are issued for the principal offence with which the accused stands charged and do not indicate that the accused has failed to appear at court — in other cases both the principal offence and the failure to appear are noted on the warrant. Since both police and court staff are involved in the issuing of a warrant it would seem that this problem could be overcome by means of a standardized procedure being adopted by both police and court staff to ensure that all warrants issued for persons who have failed to appear in court have recorded on them that the accused did fail to appear. It would then be possible to get an accurate count of these cases from the central warrant index, and some indication of the numbers of accused persons failing to appear in court.

Discussion of results

In general the findings of the study reflect favourably upon the operation of the new legislation. Over 65% of accused persons in the sample were released on unconditional bail at the initial bail determination, and a further 26.2% were granted conditional bail. Of those granted conditional bail, 74.2% of cases did not require the deposit of cash or security as a condition of bail. Bail was refused in 7.2% of cases, and in the remaining cases the requirement for bail was dispensed with. The data indicate that offence seriousness is an important factor influencing the type of bail allowed, with conditional bail being the more common determination for charges involving drug offences, intent to commit an offence, sexual offences, and robbery and extortion. No person charged with robbery and extortion was granted unconditional bail or had the requirement for bail dispensed with. For all other offence groups unconditional bail was the more frequent determination. Persons charged with indictable offences were granted unconditional bail in only 18.2% of cases as compared to 66.5% of cases where the accused was charged with a summary or summary-indictable offence. Conditional bail or the refusal of bail were each the outcome of the determination in 40.9% of indictable matters.

It was unclear from the court papers whether persons granted conditional bail had actually been able to meet those conditions. Perhaps some system of marking the court papers should be adopted so that magistrates and court staff are immediately aware whether an accused who was granted bail is actually still in custody. Data did indicate that in 13 cases persons who were granted conditional bail by the police were unable to meet the conditions imposed and were held in custody prior to their first appearance in court.

The low incidence of unconditional bail, the high rate of bail refusal and the high rate of conditional bails requiring an acceptable person indicate some grounds for concern regarding the bailing of juveniles. Whilst a higher percentage of juveniles were charged with break, enter and steal offences than were any other age group, juveniles were not over-represented in terms of charges relating to any other serious offences and, in fact, the most common charges against juveniles related to larceny (49.3%). The seriousness of offences with which juveniles were charged does not seem to be sufficient to account for the stringency of bail determinations which were made for them as compared to other age groups. The fact that juveniles had the highest rate of conditional bail of any age group, and that in 88.6% of conditional bails an acceptable person was required in some capacity either to acknowledge that the accused was likely to comply with the bail undertaking, or to lodge or agree to forfeit cash or security, appears to indicate a *reluctance by police and courts to release juveniles on their own bail undertakings* despite the fact that the Bail Act applies equally to all persons irrespective of age. Perhaps the attention of police, magistrates and court staff could be drawn to this factor as greater awareness may serve to reduce the degree of discrimination against juvenile offenders in this regard.

Data regarding occupational status also support the notion of discrimination against juveniles in bail determinations, since students (in the majority of cases juveniles) had one of the highest rates of bail refusal. The highest rate of bail refusal, and conditional bail, and consequently the lowest rate of unconditional bail were recorded for unemployed accused persons, although the type of offences with which they were charged did not appear to account for the stringency of the bail determinations they received as compared to other occupational groups. It may be that unemployed persons were judged to be less

reliable and have lesser ties within the community than employed persons and consequently more at risk of absconding on bail. If this is the case, it indicates grounds for some concern given the current economic climate and the high rate of unemployment. *Unemployment alone should surely not be seen as grounds for an onerous form of bail or for the refusal of bail.*

The data regarding the bail determination on adjournment indicate that in 53% of cases the bail allowed at the first determination continued upon adjournment. In a further 35.7% of cases a less stringent determination was made at the first adjournment. Since most initial bail determinations were made by the police, this might be taken as an indication that the courts are more lenient in their determinations than the police; however, it may also be that, having appeared in court on the first occasion, the accused has demonstrated his or her reliability and is thus seen as a good risk to be allowed less stringent bail. Other factors such as the evidence presented, the arguments of counsel, and the length of time which the case may be expected to take to reach finalization would also influence the determination of bail at the first adjournment.

The data regarding the use of the background and community ties questionnaire, Form 4, together with comments by magistrates and court staff about the form indicate that some problems exist in that regard. The fact that many magistrates commented that the form was rarely used, and that others said that they could see little value in the use of such a form is disturbing considering the results of research concerning the use of such an objective measure in other countries. Research in the U.S.A. and the U.K. has indicated that the provision of such objective information about the accused was associated with more people being released from custody and fewer people absconding from bail. It is apparent from the magistrates' comments, however, that this information, even where provided, may not be given much regard by the court. A number of the magistrates stated that the defence almost always provided this information in any case when the question of bail was considered. That may be the case, but the implication may be that for the unrepresented accused person bail decisions may now be based upon little or no information about the accused, just as was the case before the Bail Act (Anderson and Armstrong, 1977).

Although Form 4 was completed in some 12% of cases for which data were available, the large number of unscored or incorrectly scored forms implies that either little regard is held for the form as a means of gathering objective data about the accused and as an aid in reaching a bail determination, and/or that some problems exist with regard to the questionnaire itself. Interviews with police did indicate that the police found the form problematic and some found it of little use to them in making a bail determination. It was also reported that many accused persons found the form confusing and difficult to complete and this comment is borne out by observations of the completed forms for cases in the study. It appeared that in a number of cases accused persons were unsure about what the response alternatives provided actually meant, and many simply wrote in answers to the questions rather than tick the responses which were provided.

The large number of incorrectly scored questionnaires complicates any attempt to reach conclusions about what relationship if any exists between scores on Form 4 and the bail determination which was made. Table 35 shows that average scores on Form 4 were highest for unconditional bail, and that scores for persons granted conditional bail were higher than those for persons refused bail at the initial determination; however, the differences were not great. In

Table 36, relating to the bail determination at the first adjournment, the differences in scores on Form 4 were even less, except that those for whom the requirement for bail was dispensed with scored on average more highly than those receiving other determinations. The small differences in scores between those receiving different bail determinations perhaps can be taken as indicating that the information on the questionnaire alone was not given strong weight in the bail determination. Since the background and community ties of the accused is only one of 12 factors listed by the Act as appropriate to the consideration of bail, perhaps that finding is to be expected despite the volume of overseas research demonstrating the efficacy of similar objective measures in predicting when release from custody is justified.

It was not possible to assess the utility of Form 4 as predictive of failure to appear in accordance with bail for those cases in the sample studied, since of the 47 cases of persons failing to appear in court, Form 4 had been completed in only 10 cases.

Despite the apparent difficulties with the use of the background and community ties questionnaire, it would seem premature and unwise, particularly in the light of the successful use of similar measures in other countries, to discard the device as unhelpful. Perhaps the adoption of certain administrative procedures, such as that the use of the questionnaire was not left solely to the police but that other agencies also co-operated in collecting and verifying this information, may help to make information available in more cases; this would enable the validation of the questionnaire for N.S.W. and would enable an assessment of the form as predictive of failure to appear at court. A redesign of the form could simplify its completion and perhaps make it quicker to administer. In addition, it could be promoted to magistrates and the judiciary as a means of saving time in busy courts by removing the necessity for such factors to be put to the court verbally by either counsel or the accused. It would also be of some assistance to the unrepresented accused to have this information readily available to the bench.

The *plight of the unrepresented accused person* is illustrated by the cases presented in Appendix VIII. Perhaps unrepresented defendants still do not have access to the same type of justice as those who have legal representation, despite the intention of the new legislation. The expansion of legal aid to all persons for whom the question of bail is to be considered, including in the Supreme Court where a number of unrepresented accused persons were observed to be at extreme disadvantage in the hearing of bail applications, may help to alleviate this problem. The institution of an automatic review procedure for all unsentenced prisoners held in custody may also be required to ensure that persons are not detained for long periods before trial through their own incapacity or lack of understanding of the procedures required to seek a review of bail conditions with which they could not comply.

The relationship between the refusal of bail and a custodial outcome (presented in Table 40) showed that for summary or summary-indictable offences a substantial difference was evident in the rate of custodial outcomes between persons who had not been refused bail at any time and those who had been refused bail. Small numbers prevented a similar comparison for indictable offences.

Without controlling for seriousness of offence, plea and legal representation, no link could be established between pre-trial custody and the likelihood of conviction and/or the severity of sentence. There is a large volume of research which indicated that such a relationship may exist; that is, irrespective of

offence, plea or legal representation it is suggested that a person who is refused bail at any time is more likely to be convicted and, having been convicted, is more likely to be sentenced to imprisonment than is a similar defendant who is not refused bail (Oxley, 1979). Whilst this study could not be said to be a test of this alleged link, the results are in the direction of the hypothesized relationship, and serve to emphasize the importance of each bail decision in the progress of a given case through the court process.

Data collected regarding the first court appearance (excluding any bail hearing) and the final court appearance indicate that, in all, 47 people failed to appear in court in accordance with their bail undertaking. In five other cases persons failed to appear at the first date required, but appeared at a later date and had their cases relisted and the warrants which had been issued were withdrawn. The 47 cases represent 5.4% of all cases for which information regarding the final court appearance was available. In 37 cases it was apparent from the court papers that warrants had been issued for the arrest of the accused. It was not entirely clear whether no warrants had been issued in the remaining 10 cases or whether the court papers had simply not been marked to indicate that a warrant had been issued. Discussions with magistrates and court officers indicated some concern with regard to the issue of warrants. Whilst most magistrates did not see the actual numbers of persons failing to appear in court as a matter of concern, some did express concern with regard to the discretion which the police appear to have regarding whether a warrant was or was not issued should a person fail to appear at court. Several magistrates said that they did not know what the current procedure was regarding the decision to issue a warrant and it was suggested that warrants should always be issued in such cases and the defendant could then be given the opportunity to put any excuse for that failure to appear to the court.

Another area of concern raised by the magistrates was the requirement that they document their decisions for a bail determination on Form 8. Most magistrates commented that there was simply not time in busy court to complete such a form for each defendant for whom the question of bail was considered. There is no doubt that time constraints do make it difficult for the magistrate adequately to complete the forms when faced with a busy list, but it would be unfortunate if the documentation of reasons were to cease for this reason. The provision of information to the accused person (and his or her counsel) would seem to be an important principle of the Bail Act and one which should be maintained wherever possible. The completion of Form 8 not only gives the accused an indication of the reason for the bail determination, but should an application for bail or for a review of bail go before another magistrate or judge it also provides them with some understanding of the reasoning behind the determination.

Some magistrates also questioned what they regarded as an anomaly in the legislation; they saw the lack of any presumption or right to bail for persons charged with armed or otherwise violent robbery, and for persons charged with the offence of failing to appear in accordance with a bail undertaking as incongruous with the existence of a presumption to bail for all other serious offences including murder and rape. However, since the Act provides a broad discretion to refuse bail where reason exists, and since those persons for whom no presumption to bail exists may nonetheless be granted bail, it would seem that the suggestion of some magistrates that the Act be amended in this regard seems unnecessary, and would only limit the discretion of the courts and

authorized officers to determine bail in accordance with the circumstances of each individual case.

The fact that no limit is placed by the Act upon the number of applications for bail which an accused may make was also seen as a problem by some magistrates and by the Supreme Court. However, it would seem that the Act makes provision for dealing with any undeserved applications by stating in S.22(4) that the court may refuse to entertain any application which is frivolous or vexatious. Whilst the data provided in Chapter 4 of Part II does indicate a substantial increase in the number of bail applications going to the Supreme Court and consequently the creation of some administrative problems in dealing with this increase, it would seem that some consideration should first be given to altering administrative procedures in an attempt to ease any difficulties being experienced in that jurisdiction. Perhaps some cases could be directed to be heard in other courts to relieve the pressure on the Supreme Court. It would seem unwise and contrary to the spirit of the legislation for any limits to be placed upon the rights of the accused to seek bail in addition to that which already exists with regard to frivolous or vexatious applications.

The doubts expressed about the appropriateness of the Bail Act for dealing with young offenders, and the concern that the Act has introduced long delays in the bailing of juveniles may indicate the need for some further consideration to be given to the use of the Bail Act for juvenile offenders. Attention to the redesign of the bail forms may help to alleviate the problem of delay. This problem could be further remedied if the apparent reluctance by police and courts to allow juveniles unconditional bail could be overcome, since the procedure for entering unconditional bail is a much quicker one than that for conditional bail or for the refusal of bail. Perhaps the suggestion that the police be given the power to dispense with bail for juvenile offenders should also be considered. The problem which was raised with regard to homeless juveniles may require remedies beyond the scope of the legislation, such as the establishment of alternative places of non-custodial care as was recommended by the N.S.W. Anti-Discrimination Board (1980).

The problems raised by court officers were concerned essentially with the forms which it is necessary to complete in accordance with the Act and its regulations, and with some uncertainties about the new legislation. It would seem that these difficulties could best be remedied by attention to the redesign of the bail forms and by the provision of additional staff training. *It is recommended that priority be given to redesigning the bail forms both to simplify their use by police and courts, and to make them more comprehensible for accused persons,* remembering also that the legislation applies equally to juveniles as to adults.

Summary

In summary, the major areas of concern identified regarding bail related to:

(*a*) The lack of systematic data collection to monitor the numbers of unsentenced persons held in custody and the reason for that custody whether it be the refusal of bail or the inability to meet the requirements of bail;

(*b*) The lack of any standardized procedure for the issue of warrants both in terms of the issue of warrants in all cases in which an accused fails to appear, and in terms of ensuring that a uniform procedure is adopted to indicate on the warrant that the accused person failed to appear;

(*c*) The lack of any clear indication from the court papers of whether the accused

could not meet the conditions of bail which were imposed and hence remained in custody;

(*d*) The apparent reluctance of police and courts to grant unconditional bail to juveniles;

(*e*) The stringent bail determinations applied to the unemployed;

(*f*) The incorrect scoring of the background and community ties questionnaire, and the apparent lack of regard for that information by police and courts;

(*g*) The plight of the unrepresented accused person, the need for legal aid schemes to be expanded to allow legal representation on all occasions where the question of bail is considered by the courts, and the need for an automatic review procedure to be adopted in cases of unsentenced persons in custody, particularly where unrepresented;

(*h*) The problems of magistrates in busy courts finding time to document their reasons for bail determinations as required;

(*i*) The concern of magistrates with the apparent anomaly by which those charged with offences such as murder or rape have a presumption to bail whilst those charged with armed robbery do not (although it is not considered that any change to this situation is required since the Act allows a wide discretion in the granting of bail for all offences);

(*j*) The lack of any limit upon the number of applications for bail which an accused may make to the courts (it is not considered that any change in the legislation is required in this regard, since a court may refuse to hear any application which is frivolous or vexatious);

(*k*) The appropriateness of the Bail Act for use with juvenile offenders, and concern that the legislation may have introduced substantial delays for juveniles in bail procedures at both police stations and courts;

(*l*) The problems encountered by court officers with the bail forms, and some uncertainties regarding the provisions of the new legislation.

Most of these issues relate to administrative procedures associated with the implementation of the legislation, rather than to the Act *per se,* and no amendment to the Act is recommended. However, it is recommended that attention be given to improving existing administrative procedures and to implementing others where necessary in order to ensure the equitable operation of the Bail Act.

6 Recommendations

Recommendations are as follows:

1. A systematic data collection should be established to monitor the number of unsentenced persons being held in custody either because bail was refused or because they were unable to comply with the conditions which were imposed upon bail.
2. There should be established:
   (*a*) A standardized procedure for the issue of warrants so that warrants are issued in all cases where an accused fails to appear in accordance with a bail undertaking without reasonable excuse;
   (*b*) A uniform means of documenting warrants so that failure to appear in accordance with a bail undertaking is clearly indicated on the actual warrant. This would allow accurate data regarding the number of persons failing to appear in court to be collected from the central warrant index maintained by the N.S.W. Police Department.
3. Court papers should indicate clearly that an accused person has been unable to meet the conditions imposed upon bail, and therefore remains in custody.
4. Further attention should be given to the bailing of juveniles:
   (*a*) Means to overcome the apparent reluctance by police and courts to allow unconditional bail to juveniles should be considered;
   (*b*) The recommendations of the Anti-Discrimination Board to establish alternative non-custodial care for homeless juveniles and those refused bail should further be considered and implemented;
   (*c*) The concern expressed regarding delays in dealing with juvenile offenders in courts and police stations since the introduction of the Bail Act should be investigated.
5. Consideration should be given to involving other agencies in addition to the police in the collection and verification of background and community ties information (Form 4), and an attempt should be made to assess the value of that objective rating as predictive of the accused absconding on bail.
6. Legal aid schemes should be expanded to ensure that legal representation is available for all accused persons when the question of bail is considered by the court.
7. An automatic review procedure should be established to consider the cases of accused persons held in custody because bail was refused or the conditions of bail were not met, in order to assess whether the continued detention of the accused was warranted. This procedure is particularly recommended for all unrepresented accused persons held in custody, and may serve as an interim measure until the expansion of existing legal aid schemes to allow legal representation to all accused persons.
8. Attention should be given to the administrative problems being experienced in the Supreme Court due to an increased number of bail applications. A committee should be established to consider any administrative procedures which could be implemented as a means of alleviating such problems.
9. Prompt attention needs to be given to the redesign of the bail forms to simplify their use by police and courts, and to make them more comprehensible to accused persons.

REFERENCES

Anderson, K.S. and Armstrong, S.: (1977) *Report of the Bail Review Committee,* New South Wales Government Printer, Sydney.

Armstrong, S.: (1977a) "Unconvicted prisoners: the problem of bail", in Armstrong, Mossman and Sackville, *Essays on Law and Poverty: Bail and Social Security,* Australian Government Commission of Inquiry into Poverty, Law and Poverty Series, Australian Government Publishing Service, Canberra.

———(1977b) "Bail Reform in New South Wales", in *Proceedings of a Seminar on Bail,* Institute of Criminology, Faculty of Law, University of Sydney, Sydney.

Armstrong, S. and Neumann, E.: (1975-76) "Bail in New South Wales", *University of New South Wales Law Journal,* 7:298-326.

Australian Government Commission of Inquiry into Poverty: (1975) *Law and Poverty in Australia,* Australian Government Publishing Service, Canberra.

Australian Institute of Criminology: (1976) *The Issues of Bail: An Administrative Report,* Canberra.

Australian Law Reform Commission: (1975) *Criminal Investigation,* Report No. 2, Australian Government Publishing Service, Canberra.

Botein, B.: (1965) "The Manhattan Bail Project: its impact on, criminology and the criminal law processes", *Texas Law Review,* 43:319-331.

Bottomley, A.K.: (1978) "Bail and the Judicial process", in Baldwin and Bottomley (eds.), *Criminal Justice: Selected Readings,* Martin Robertson, London.

Caine, G.: (1977) "The denial of bail for preventative purposes", *Australian and New Zealand Journal of Criminology,* 10:27-39.

Campbell, E. and Whitmore, H.: (1973) *Freedom in Australia,* Sydney University Press, Sydney.

Donovan, B.H.K.: (1981) *The Law of Bail: Practice, Procedure and Principle,* Legal Books Pty Ltd, Sydney.

Friedman, L.S.: (1976) "The evolution of bail reform", *Policy Science,* 7:281-313.

King, M.: (1974) "Bail Reform: the working party and the ideal bail system", *Criminal Law Review,* 451-461.

Milte, K.L.: (1968) "Pre-trial detention", *Australian and New Zealand Journal of Criminology,* 1:225-238.

N.S.W. Anti-Discrimination Board: (1980) *Discrimination and Age,* N.S.W. Anti-Discrimination Board, Sydney.

N.S.W. Bureau of Crime Statistics and Research: (1977) *Bail,* Research Report No. 1, Department of the Attorney-General and of Justice, Sydney.

N.S.W. Police Department: (1978) "On the Job Training Lecture on the Bail Act", unpublished.

Oxley, P.: (1979) *Remand and Bail Decisions in a Magistrate's Court,* Research Series No. 7, Research Unit, Planning and Development Division, Department of Justice, Wellington.

Sturz, H.: (1965) "The Manhattan Bail Project and its aftermath", *American Journal of Correction,* 28:14-17.

Tomasic, R.: (1976) *Bail and Pre-trial Release: Strategies and Issues,* Law Foundation of N.S.W., Sydney.

Vera Foundation: (1977) *Further Work in Criminal Justice Reform: 1971-76,* A five-year report; Vera Institute of Justice, New York.

Wald, P.: (1972) "The right to bail revisited: a decade of promise without fulfillment", in Nagel (ed.), *The Rights of the Accused,* Sage Publications, Beverly Hills.

Walker, F.J.: (1979) *Speech Delivered by the Hon. F.J. Walker LL.M., M.P. in the Legislative Assembly on the Bail Bill,* Reprinted from Parliamentary Debates 14th December, 1978, New South Wales Government Printer, Sydney.

Ward, P.G.: (1979) "Bail Statistics," in Roulston (ed.), *Proceedings of the Institute of Criminology, Seminar on Bail, 3,* Faculty of Law, University of Sydney, Sydney.

Woods, G.: (1981) *Report to the Premier of N.S.W., Task Force on Domestic Violence,* N.S.W. Government Printer, Sydney.

Zander, M.: (1967) "Bail: a re-appraisal", *Criminal Law Review,* 25-39.

——— (1971) "A study of bail/custody decisions in London magistrates' courts", *Criminal Law Review,* 191-211.

APPENDICES

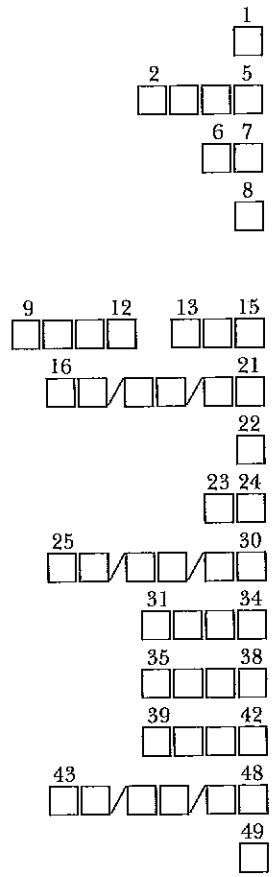
APPENDIX I

CODING FORM

Name .....

Initial Bail Determination

1. Card number
2. Serial number
3. Police station
4. Initial bail determination
5. Address .....
   ..... Postcode .....
6. Age ..... Date of birth
7. Sex (1. Male, 2. Female, 9. D.K.)
8. Country of birth .....
9. Date charged
10. Time charged
11. Time bail determined
12. Time released
13. Date released
14. Any comments re delay in release



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15. Was the accused arrested in the company of other offenders? (1. Yes, 2. No, 9. D.K.) 50

16. Principal offence (code offence, and number of charges for that offence) 51 55 56 57

17. Other offences (code as question 16)

1. 58 62 63 64
2. 65 69 70 71
3. 72 76 77 78

18. How many offences was the accused charged with? 79 80

19. Card number 1

20. Serial number 2 5

21. What was the bail determination for the principal offence? (1. Unconditional, 2. Conditional, 3. Bail refused, 4. Bail dispensed with, 5. Taken straight to court) 6

22. If conditional bail, what conditions were imposed? (1 — 8 on Form 7, 88 if NA, 10 if other) 7 8

If other, please specify .....

.....

23. What was the bail determination for each of the other offences? (code as question 21, 8 if NA)

1. 9
2. 10
3. 11

24. What conditions were imposed for each of the other offences? (code as question 22, 8 if NA)

1. If other 1. 12 13
2. If other..... 2. 14 15
3. If other 3. 16 17

25. Bail requested? (1. Unconditional, 2. Conditional, 3. Not requested, 9. D.K.) 18 □

26. If money bail, what was the total amount? 19 □□□ 22 □
27. Was the accused fingerprinted? (1. Yes, 2. No, 9. D.K.) 23 □
28. If bail was refused, what were reasons for refusal? (code 1 in each box which applies, 8's for NA). 25 24 □□

1. Seriousness of offence/s 26 □
2. Previous failure to comply with bail undertaking 27 □
3. Incapacitated/in physical danger 28 □
4. Prior convictions 29 □
5. Evidence indicating that the accused would not appear at court 30 □
6. Lack of community ties 31 □
7. In custody for another offence 32 □
8. Bail requirement dispensed with 33 □
9. Other (please specify) ..... 34 □

.....

29. Court referred/adjourned to ..... 35 □□ 37 □□
30. Date to appear 38 □□/□□/□□ 43

31. If initial bail decision made by court, did the accused have legal representation? (1. Yes, 2. No, 8. NA, 9. D.K.) 44 □

Name .....

First Court Appearance After Initial Bail Determination

1. Card number — 1
2. Serial number — 2 5
3. Court — 6 8
4. Date — 9 14
5. Occupation ..... — 15
6. What forms were used in the bail determination? (code 1 if appropriate, 8 if N.A.)

Form 4	16
Form 5	17
Form 5A	18
Form 6	19
Form 7	20
	21

7. Family ties (1. Lives with immediate family and has weekly contact with other immediate family members, 2. Lives with immediate family or has at least weekly contact with immediate family, 3. Lives with non-family person, 4. Lives alone, 9. D.K.)

Answer	Score
22	23

8. Employment (1. > 1 year in present job, 2. > 4 months, or at present and prior job > 6 months, 3. Employed/pension/ unemployment benefits, 4. Supported by savings/family, 5. Unemployed and not receiving benefits/pension, 9. D.K.)

Answer	Score
24	25

9. Address (1. Live at present address > 1 year, 2. At present address > 6 months, or present and previous address for > 1 year, 3. At present address > 4 months, or at present and previous address > 6 months, 4. N.F.P.A., 9. D.K.)

Answer	Score
26	27

10. Time in the area (> 10 years in town/area, 1. Yes, 2. No, 9. D.K.) — 28 Answer, 29 Score

11. Other factors (e.g. pregnancy, ill health — 1. Yes, 2. No, 9. D.K.) — 30 Answer, 31 Score

If yes, specify .....

12. Prior record (1. No convictions, 2. 1 summary conviction, no convictions on indictment, 3. 2 summary convictions, or 1 conviction on indictment, 4. 3 or more summary convictions, or 2 or more convictions on indictment, 9. D.K.) — 32 Answer, 33 Score

13. Did the accused appear at court? (1. Yes, 2. No, 3. Ex parte, 9. D.K.) — 34

14. If the accused failed to appear, was a warrant issued? (1. Yes, 2. No, 8. N.A., 9. D.K.) — 35

15. If the case was adjourned; was the accused's bail continued? (1. Yes, 2. No, 8. N.A., 9. D.K.) — 36

16. If no, what was the new bail determination? (1. Unconditional, 2. Conditional, 3. Bail refused, 4. Bail dispensed with, 8. N.A., 9. D.K.) — 37

17. If new bail was conditional, what conditions? (1 — 8 on Form 5A, 88 if N.A., 10 if other) — 38 39

If other, please specify .....

18. Did the accused have legal representation for the initial appearance before the court (not bail hearing)? (1. Yes, 2. No, 8. N.A., 9. D.K.) — 40

19. If adjourned, to what court? — 41 43

20. If adjourned, date to appear? — 44 ☐☐/☐☐/☐☐ 49

21. Was there another court appearance at which something significant happened? (1. Yes, 2. No, 99. D.K.) — 50 51

If yes, explain .....

Final Appearance

22. Date of final appearance — 52 ☐☐/☐☐/☐☐ 57

23. What was the accused's plea? (1. Guilty, 2. Not guilty, 3. Ex parte, 4. No Plea, 9. D.K.) — 58 ☐

24. Was the accused legally represented at the final appearance? (1. Yes, 2. No, 9. D.K.) — 59 ☐

25. Outcome at the final appearance for the principal offence? — 60 61 ☐☐

26. If warrant issued under S.51 was this taken into account at sentencing? (1. Yes, 2. No, 8. N.A., 9. D.K.) — 62 ☐

27. If section 51 offence, what was the penalty for this offence? — 63 64 ☐☐

APPENDIX II. OFFENCE GROUPS

1. Offences against the person — this grouping includes: attempted murder; assault occasioning actual bodily harm; malicious wounding; complaint of apprehended violence; assault (common); assault female; assault officer whilst in the execution of his duty; assault with intent to resist or prevent apprehension;
2. Sexual offences — this grouping includes: rape; carnal knowledge; indecent assault on female; indecent assault on male; procure male for an indecent act;
3. Prostitution: live on earnings of prostitution;
4. Robbery and extortion: robbery in company; robbery whilst armed; robbery with striking or other violence; demand property with threat;
5. Fraud: forge document; false pretences; embezzlement by clerk or servant; larceny by bailee;
6. Break, enter and steal: break, enter and steal; break and enter with intent to steal;
7. Larceny: larceny of a motor vehicle; unlawful use of vehicle; ride in known stolen conveyance; simple larceny; steal in dwelling; shoplifting;
8. Unlawful possession of property: goods in custody; receiving;
9. Intent: found with housebreaking implements in possession; found with intent to commit a crime;
10. Driving: drive dangerously causing grievous bodily harm; drive negligently; exceed speed limit; fail to report accident; drive contrary to notice;
11. Betting: betting in street; found in betting house; organize or conduct unlawful game; play unlawful game;
12. Weapons: use or carry firearm in a dangerous manner; possess firearm with intent to commit an indictable offence; shortening firearm;
13. Damage property: damage property;
14. Offensive behaviour: under influence of intoxicating liquor on railway; use indecent words on railway; disorderly behaviour on railway; make false representation to police; seriously alarm or affront;
15. Drink driving: driving with prescribed concentration of alcohol; driving under the influence of alcohol or drug; refuse breath test; aid and abet drunken driver;
16. Drugs: possess sedative; administer sedative; possess LSD; supply LSD; possess Indian hemp; smoke Indian hemp; possess implement for use of drug; use heroin; deal in heroin; cultivate Indian hemp; permit premises for use of Indian hemp;
17. Other: accessory after the fact; failure to appear in accordance with a bail undertaking; escape from lawful custody; false statement of name and address; corruption of witness; resist officer in execution of his duty; trespass on railway property; sell goods on railway property; navigate whilst under the influence of alcohol; navigate negligently; evade rail fare; refuse to quit licensed premises.

APPENDIX III. COUNTRY OR REGION OF BIRTH BY OFFENCE

		Person	Sexual	Prosti-tution	Robbery/ extortion	Fraud	BES	Larceny	Unlawful possession	Intent	Driving
Australia: non-Aboriginal	No.	25	7	2	5	14	27	125	15	4	34
	%	69.0	70.0	100.0	62.5	82.4	81.8	78.6	88.2	100.0	81.0
Australia: Aborigine	No.	1	—	—	1	—	6	7	1	—	—
	%	2.8	—	—	12.5	—	18.2	4.4	5.9	—	—
New Zealand	No.	3	—	—	—	1	—	4	—	—	4
	%	8.3	—	—	—	5.9	—	2.5	—	—	9.5
United Kingdom	No.	—	1	—	1	—	—	5	—	—	1
	%	—	10.1	—	12.5	—	—	3.1	—	—	2.4
Other Europe	No.	5	1	—	—	1	—	6	1	—	1
	%	13.9	10.1	—	—	5.9	—	3.8	5.9	—	2.4
Africa	No.	—	—	—	—	—	—	—	—	—	—
	%	—	—	—	—	—	—	—	—	—	—
North America	No.	—	—	—	—	1	—	—	—	—	—
	%	—	—	—	—	5.9	—	—	—	—	—
Asia	No.	—	—	—	—	—	—	5	—	—	1
	%	—	—	—	—	—	—	3.1	—	—	2.4
Middle East	No.	2	1	—	1	—	—	2	—	—	—
	%	5.6	10.0	—	12.5	—	—	1.3	—	—	—
Other	No.	—	—	—	—	—	—	5	—	—	1
	%	—	—	—	—	—	—	3.2	—	—	2.4
Total	No.	36	10	2	8	17	33	159	17	4	42

COUNTRY OR REGION OF BIRTH BY OFFENCE (*continued*)

		Betting	Firearms	Damage property	Offensive behaviour	Drink/ drive	Drugs	Other	Total
Australia: non-Aboriginal	No.	8	2	15	48	155	40	16	542
	%	50.0	66.7	83.3	76.2	76.7	81.6	64.0	
Australia: Aborigine	No.	—	—	—	1	—	—	—	17
	%	—	—	—	1.6	—	—	—	
New Zealand	No.	—	—	—	—	4	3	2	21
	%	—	—	—	—	2.0	6.1	8.0	
United Kingdom	No.	—	—	—	3	15	2	1	29
	%	—	—	—	4.8	7.4	4.1	4.0	
Other Europe	No.	8	—	2	8	19	1	3	56
	%	50.0	—	11.1	18.8	9.4	2.0	12.0	
Africa	No.	—	—	—	—	1	—	—	1
	%	—	—	—	—	0.5	—	—	
North America	No.	—	—	—	1	—	—	—	2
	%	—	—	—	1.6	—	—	—	
Asia	No.	—	—	1	2	—	1	—	10
	%	—	—	5.6	3.2	—	2.0	—	
Middle East	No.	—	1	—	—	2	1	2	12
	%	—	33.7	—	—	1.0	2.0	8.0	
Other	No.	—	—	—	—	6	1	1	14
	%	—	—	—	—	3.0	2.0	4.0	
Total	No.	16	3	18	63	202	49	35	704*

* In 26 cases country of birth unknown.

APPENDIX IV. POLICE INTERVIEW SCHEDULE

1. What changes has the new Act meant for you in terms of its administration?
2. Has the new Act resulted in any changes in the type of bail typically being offered (i.e., is unconditional bail being offered more frequently)?
3. In what cases would a Form 4 be used in a bail determination? How often would it be used?
4. What do you see as the chief aims of the new Bail Act?
5. What do you see as the best and worst features of the new Bail Act?
6. What changes would you like to make, if any?
7. Are interruptions to the bailing procedures a problem? In what ways (probe recent cases)? Does this result in delays in attending to other police matters — urgent calls, etc.?
8. Any other comments?

APPENDIX V. COPIES OF BAIL FORMS

Form 1.

Clause 4(a).

Bail Act, 1978.

INFORMATION AS TO RIGHT TO RELEASE ON BAIL IN RESPECT OF MINOR OFFENCES*

(1) Pursuant to section 8 of the Bail Act, 1978, you are entitled to be granted bail by an authorised officer** at any time before your first appearance in a court in respect of the alleged offence UNLESS –
   (a) you are, in the opinion of the authorised officer, incapacitated by intoxication, injury or use of a drug or are otherwise in danger of physical injury or in need of physical protection; or
   (b) you are in custody serving a sentence of imprisonment and the authorised officer is satisfied you are likely to remain in custody for a longer period than the period for which bail would be granted.

(2) Bail may be granted either –
   (a) unconditionally; or
   (b) subject to such condition or conditions imposed on the grant of bail as, in the opinion of the authorised officer, is or are reasonably and readily able to be entered into,

to the intent that you shall be released from custody as soon as possible after you have given an undertaking to appear at a court.

(3) One or more of the following conditions ONLY may be imposed upon a grant of bail:-
   (a) that you enter into an agreement to observe specified requirements (other than financial requirements) as to your conduct while at liberty on bail;
   (b) that one or more acceptable persons acknowledge that they are acquainted with you and regard you as a responsible person who is likely to comply with your bail undertaking;
   (c) that you enter into an agreement, without security, to forfeit a specified amount of money if you fail to comply with your bail undertaking;
   (d) that one or more acceptable persons enter into an agreement or agreements, without security, to forfeit a specified amount or amounts of money if you fail to comply with your bail undertaking;
   (e) that you enter into an agreement, and deposit acceptable security, to forfeit a specified amount of money if you fail to comply with your bail undertaking;
   (f) that one or more acceptable persons enter into an agreement or agreements, and deposit acceptable security, to forfeit a specified amount or amounts of money if you fail to comply with your bail undertaking;
   (g) that you deposit with the authorised officer or court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited if you fail to comply with your bail undertaking;
   (h) that one or more acceptable persons deposit with the authorised officer or court a specified amount or amounts of money in cash and enter into an agreement or agreements to forfeit the amount or amounts deposited if you fail to comply with your bail undertaking.

You may request the authorised officer to grant bail to you subject to any one or more of the foregoing conditions.

Form 1 *(continued)*

(4) If you are refused bail or not released on bail you are entitled to be brought as soon as practicable before a court.

(5) If and when you are granted bail you are entitled to be released in respect of the offence for which you are now in custody after you have –

(a) given an undertaking in writing to appear in person before a court in accordance with the undertaking; and

(b) complied with the conditions (if any) imposed for your being released from custody.

---

* The offences to which section 8 of the Bail Act, 1978, applies are all offences not punishable by a sentence of imprisonment (except in default of payment of a fine).

** A police officer is authorised to grant bail under the Bail Act, 1978, if the officer is –

(a) of or above the rank of sergeant and is present at the police station; or

(b) for the time being in charge of the police station.

Form 2.

Clause 4(b).

Bail Act, 1978.

INFORMATION AS TO ENTITLEMENT TO BAIL

(1) Pursuant to section 9 of the Bail Act, 1978, you are entitled to be granted bail by an authorised officer* at any time before your first appearance in a court in respect of the alleged offence UNLESS –

(a) you are in custody serving a sentence of imprisonment and the authorised officer is satisfied that you are likely for that reason to remain in custody for a longer period than the period for which bail would be granted;

(b) you are charged with an offence to which section 8(1) of the Bail Act, 1978, applies, or an offence under section 51 of the Bail Act, 1978 (failing to appear in accordance with a bail undertaking) or an offence under section 95 (robbery with striking), 96 (robbery with wounding), 97 (robbery whilst being armed or in company) or 98 (robbery whilst being armed or in company with wounding) of the Crimes Act, 1900. If you have been charged with one or more of these offences you may nevertheless be granted bail under section 13 of the Bail Act, 1978; or

(c) the authorised officer is satisfied that he is, after consideration of the matters referred to in section 32 of the Bail Act, 1978, justified in refusing bail. Section 32 of the Bail Act, 1978, provides that the following matters only may be taken into account in considering bail:–

(i) the probability of whether or not you will appear in court in respect of the offence for which bail is being considered, having regard only to –

(a) your background and community ties as indicated by the history and details of your residence, employment and family situations and your prior criminal record (if known);

(b) any previous failure by you to appear in court pursuant to a bail undertaking or pursuant to a recognizance of bail entered into before the commencement of section 32;

(c) the circumstances of the offence (including its nature and seriousness), the strength of the evidence against you and the severity of the penalty or probable penalty;

(d) any specific evidence indicating whether or not it is probable that you will appear in court; and

(e) the rating obtained in relation to your background and community ties.

(ii) your interests having regard only to –

(a) the period that you may be obliged to spend in custody if bail is refused and the conditions under which you would be held in custody;

(b) your needs to be free to prepare for your appearance in court or to obtain legal advice or both;

(c) your needs to be free for any lawful purpose not mentioned in subparagraph (b); and

(d) whether or not you are, in the opinion of the authorised officer or court, incapacitated by intoxication, injury or use of a drug or are otherwise in danger of physical injury or in need of physical protection; and

(iii) the protection and welfare of the community, having regard only to –
(a) whether or not you have failed, or have been arrested for an anticipated failure, to observe a reasonable bail condition previously imposed in respect of the offence;
(b) the likelihood of you interfering with evidence, witnesses or jurors; and
(c) the likelihood that you will or will not commit an offence while at liberty on bail,

but the authorised officer may only have regard to the likelihood that you will commit such an offence if he is –
(d) satisfied that you are likely to commit it;
(e) satisfied that it is likely to involve violence or otherwise to be serious by reason of its likely consequences; and
(f) satisfied that the likelihood that you will commit it, together with the likely consequences, outweighs your general right to be at liberty.

(2) Bail may be granted either –
(a) unconditionally; or
(b) subject to a condition or conditions.

(3) One or more of the following conditions ONLY may be imposed on a grant of bail:–
(a) that you enter into an agreement to observe specified requirements (other than financial requirements) as to your conduct while at liberty on bail;
(b) that one or more acceptable persons acknowledge that they are acquainted with you and regard you as a responsible person who is likely to comply with your bail undertaking;
(c) that you enter into an agreement, without security, to forfeit a specified amount of money if you fail to comply with your bail undertaking;
(d) that one or more acceptable persons enter into an agreement or agreements, without security, to forfeit a specified amount or amounts of money if you fail to comply with your bail undertaking;
(e) that you enter into an agreement, and deposit acceptable security, to forfeit a specified amount of money if you fail to comply with your bail undertaking;
(f) that one or more acceptable persons enter into an agreement or agreements, and deposit acceptable security, to forfeit a specified amount or amounts of money if you fail to comply with your bail undertaking;
(g) that you deposit with the authorised officer or court a specified amount of money in cash and enter into an agreement to forfeit the amount deposited if you fail to comply with your bail undertaking;
(h) that one or more acceptable persons deposit with the authorised officer or court a specified amount of money in cash and enter into an agreement or agreements to forfeit the amount or amounts deposited if you fail to comply with your bail undertaking.

You may request the authorised officer to grant bail to you subject to any one or more of the foregoing conditions.

(4) If you are refused bail or not released on bail you are entitled to be brought as soon as practicable before a court.

(5) If and when you are granted bail you are entitled to be released in respect of the offence for which you are now in custody after you have –
(a) given an undertaking in writing to appear in person before a court in accordance with the undertaking; and
(b) complied with the conditions (if any) imposed for your being released from custody.

---

* A police officer is authorised to grant bail under the Bail Act, 1978, if the officer is –
(a) of or above the rank of sergeant and is present at the police station; or
(b) for the time being in charge of the police station.

Formular 2

Klauzula 4 (b)

Zakon o Jemstvu od 1978 godine.

INFORMACIJE U VEZI PRAVA KAUCIJE

(1) Shodno pravilima sekcije 9, Zakona o Jemstvu od 1978 godine, imate pravo na kauciju od strane ovlašćenog službenika* bilo kada pre Vašeg prvog nastupa pred sudom u odnosu na navodne prekršaje IZUZEV TADA –

(a) Kada ste u pritvoru i služite kaznu zatvorom a ovlašćeni službenik bude uveren da ce te zbog toga ostati u pritvoru duže vremena nego što bi se kaucijom odobrilo.

(b) Kada ste optuženi za prekršaj na koji se odnosi sekcija 8 (I) Zakona o Jemstvu od 1978 godine, ili prekršaj pod sekcijom 51 Zakona o Jemstvu od 1978 godine (to jest tada kada se osoba ne pojavi u smislu uslova kaucije, ili prekršaje pod sekcijom 95, (kradja udarcima), 96 (Kradja ranjenjem) 97 (Razbojnička Kradja) ili zajedno sa ranjenjem, Krivičnog Zakona od 1900 godine. Ako ste ikada bili optuženi sa jednim ili Više od ovih prekršaja možete svcjedno dobiti kauciju na osnovu sekcije 13, Zakona o Jemstvu od 1978 godine ili.

(c) Ako ovlašćeni službenik, nakon njegovog razmatranja predmeta spomenutog u sekciji 32, Zakona o Jemstvu od 1978 godine ima opravdanja da odbije pravo na kauciju. Sekcija 32 Zakona o Jemstvu od 1978 godine obezbedjuje da se samo sledeće stvari uzmu u obzir kada se razmatra o kauciji.

(i) Verovatnost da će te se pojaviti na sudu u odnosu na prekršaja zbog kojeg se kaucija razmatra imajući u vidu –

(a) Vaše biografske podatke. Veze sa zajednicom, označene istrorijom i detaljima. Vaseg stanovanja, zaposlenja i situaciju familije i Va? kriminalni rekord ako ga imate.

(b) Ako se niste pojavili pred sudom skladno sa pismenim ugovorom uslova kaucije, potpisanim pre uspostavljanja sekcije 32.

(c) Okolnosti prekršaja (uključujuci vrstu i obziljnost iste) jačinu izkaza protiv Vas i ozbiljnost kazne ili moguće kazne.

(d) Ako postoje ikakvi specifični izkazi koji bi pokazali da će te se najverovatnije pojaviti na sudu i,

(e) Obaveštenja nabavljena u odnosu na Vašu prošlost i veze sa zajednicom.

(ii) Vaše interese, gledajući samo na –

(a) Rok koji će te morati provesti u pritvoru ukoliko kaucija bude odbijena i uslovi pod kojima će te se nalaziti u pritvoru.

(b) Vaše potrebe da budete na slobodi radi propreme za sud ili radi savetovanja sa advokatom ili oboje.

(c) Potreba da budete na slobodi za bilo kakvu zakonitu svrhu, koja nije spomenuta pod-paragrafom (b); i

(d) Ukoliko ste ili niste, po mišljenju ovlašćenog službenika ili suda, onesposobljeni pijanstvom, povredom ili upotrebom droga ili ako ste pod ikakvim fižičkim opansnostima ili ako Vam je potrebna fizička zaštita.

(iii) Zaštitu i dobrobit zajednice, gledajući samo na to –

(a) Dali ste ili niste bili hapšeni u vezi ne-održavanja uslova kaucije koja je bila dodeljena u odnosu na prekršaj.

(b) Zbog mogucnosti ometanja izkaza, svedoka ili porote.

(c) Verovatnost dali će te ili ne izvršiti prekršaj dok se malazite na slobodi na osnovu kaucije, dok ovlašćeni službenik može proceniti mogućnost dali će te izvršiti takav prekršaj ako je on –

(d) uveren da će te ga izvršiti

Formular 2 *(continued)*

(e) uveren da će te biti u nekom smislu nasilan ili drugim nekim načinim skojim će te uzrokovati ozbiljne posledice i

(f) uveren da će verovatnost da će te to izvršiti zajedno sa mogućim posledicama biti jača od Vašik opštih prava da budete na slobodi.

(2) Kaucija je odobrena bilo –

(a) Bezuslovno ili.

(b) Na osnovu jednog ili više uslova.

(3) Jedan ili više od sledećih uslova SAMO, može se dosuditi pri odobravanju kaucije.

(a) Da pismenim ugovorom prihvatite da će te se pridržavati odredjenih zahteva (osim financiskih zahteva, obzirom na Vaše vladanje na slobodi pod kaucijom.

(b) Da jedna osoba ili vi?e potvrdi da Vas poznaje i da Vas smatra odgovornom osobom, koja će se pridržavati uslovima kaucije.

(c) Da pismenim ugovorom prihvatite bez novčanog osiguranja da će Vam se oduzeti kaucija odredjene sume novaca ako se ne budete pridržavali Vaših obaveza kaucije.

(d) Da jedno odgovorno lice ili vise pristanu pismenim ugovorom bez novčanog osiguranja na oduzimanje kaucije odredjene sume novaca ukoliko se ne budete pridržavali uslova kaucije.

(e) Da će te pismenim ugovorom i ulaganjem dovoljnog novčanog osiguranja pristati na oduzimanje odredjene sume novaca ako se ne budete pridržavali uslova kaucije.

(f) Da jedno odgovorno lice ili više potpiše ugovor ili ugovore, te ulaganjem dovoljnog osiguranja pristanu na oduzimanje odredjene sume novaca ako se ne budete pridržavali Vaših obaveza.

(g) Da kod ovlašćenog službenika ili suda uložite jednu odredjenu sumu gotovog novca i da potpišete ugovor kojim pristajete da Vam se oduzme suma koju ste uložili ako se ne budete pridržavali Vaših uslova kaucije.

(h) Da jedno odgovorno lice ili više ulože kod ovlašćenog službenika ili suda odredjenu sumu gotovog novca i da potpisivanjem ugovora pristanu na oduzimanje uložene sume ako se ne budete pridržavali Vaših obaveza kaucije.

Možete zatražiti da Vam ovlasceni službenik odobri kauciju na osnovu jednog ili više od gorenavedenih uslova.

(4) Ako Vam kauciju budu odbili ili niste pušteni na slobodu kaucijom, imate pravo da Vas što pre dovedu pred sud.

(5) Ako Vam i kada Vam budu odobrili kauciju imate pravo da budete pušteni na slobodu u odnosu na prekršaj zbog kojega se sada nalazite u pritvoru kada se budete –

(a) pismeno obavezali da će te se lično pojaviti pred sudom u smislu obaveza i

(b) pridržavali uslova (ukoliko ih ima) dodeljenih radi Va?eg puštanja iz pritvora.

---

* Policajci su ovlašćeni da odobre kauciju zakonom o Jemstvu od 1978 godine, ako je policajac –

(a) vodnik ili većeg policiskog čina i ako je toga momenta u policiskoj stanici ili;

(b) privremeno rukovodi policiskom stanicom.

Form 3.

Bail Act, 1978.

Clause 6.

APPLICATION FOR BAIL

(1) ..... who is in custody at
(name) *(date of birth)*
..... charged with .....
..... applies to the
..... at .....
(name of court)
for:
(i) bail to be granted; or
(ii) conditions of bail to be altered, pursuant to the Bail Act, 1978.

(2) The applicant was last **refused/granted bail conditionally on .....
(date)
by .....at .....
(name of court) *(place)*

(3) The applicant is next to appear before .....
(name of court)
at .....on .....
(place) *(date)*

Signature .....

Date / /

* *Insert* either Court of Criminal Appeal, Supreme Court, District Court, Court of Petty Sessions.
** *Strike out whichever is not applicable.*
Clause 6(2) of the Bail Regulation, 1979, provides that an application for bail may be signed by the accused person or, on his behalf, by his solicitor, lawful spouse, parent or guardian.

PARTICULARS OF APPLICANT (optional):

Address prior to arrest: .....
Occupation at time of arrest: .....
Proposed address if granted bail: .....
With whom expecting to reside: .....
Proposed occupation if granted bail: .....
Name and address of proposed employer (if known): .....
.....
Nationality: .....
Whether or not the holder of a current passport: .....
Whether or not an application for passport is pending: .....
Names, addresses and occupations of proposed sureties for bail:
(1) .....
(2) .....

Form 3 *(continued)*

Details of family ties in New South Wales at time of arrest:

(1) State whether married, married but separated, single, living in a de facto relationship: .....

(2) Number of dependent children (if any): .....
Ages of such children: .....

(3) Other dependants (if any): .....
.....

Details of property ties in New South Wales (or elsewhere) at time of arrest:

(1) Real Property .....

(2) Personal Property .....

Details of occupational ties in New South Wales (or elsewhere) at time of arrest;

(1) If in employment at time of arrest, name and address of employer and period of employment: .....
.....

(2) If not employed at time of arrest, period of unemployment and name and address of last employer and period of employment: .....
.....

Financial commitments (if considered necessary): .....
.....

GENERAL:

State whether you have made a previous application for bail on the charges the subject of your present application: Yes/No

If so, state (1) Where last application was heard: .....
(2) Result of that application: .....
.....

Particulars of charges on which bail is sought:

Court	Charges	Date to appear
.....	.....	.....
.....	.....	.....
.....	.....	.....

State whether services of an Interpreter are required: Yes/No

If so, what language: .....

State whether represented by a solicitor: Yes/No

If so, name of solicitor, address: .....
..... (Telephone No.....)

State whether assistance and representation by the Public Solicitor (if available) is required at the hearing of this application: Yes/No

Any other matter considered relevant: .....
.....
.....
.....
.....
.....
.....

Form 3 *(continued)*

PARTICULARS TO BE COMPLETED WHERE APPLICANT IS IN CUSTODY AT A PRISON.

Name in full: .....

Establishment wherein detained: .....

The applicant is at present

* on appeal to the Court of Criminal Appeal/District Court;
* under committal for trial/committal for sentence to the Supreme Court/District Court;
* on remand to appeal at a Court of Petty Sessions

the pariculars of which are as follows:

COURT	AT	CHARGES	DATE
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

In my opinion an Interpreter in the .....language will not be/will be required at the hearing.

The information set out within has been supplied by the applicant and so far as it relates to his detention is correct.

Particulars of charges on which he is being held have been extracted from the prison records at .....

Records indicate that a prior application for (reduction of) bail was heard by the .....
(name of court)

.....

at .....on .....
(place) (date)

Referred for favour of consideration please

.....
(Signed)
For Superintendent
..... Prison
(Date) 19

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

Form 4.

Bail Act, 1978.

Clause 8.

BACKGROUND AND COMMUNITY TIES QUESTIONNAIRE

Name of Accused .....

Column 1. TO BE COMPLETED BY ACCUSED PERSON	Column 2. TO BE COMPLETED BY POLICE OFFICER
A. FAMILY TIES. ☐ I live with my *immediate family AND have at least weekly contact with other *immediate family members. ☐ I live with my *immediate family OR have at least weekly contact with my *immediate family. ☐ I live with a non-family person. ☐ I live alone. The name of the person with whom I live is ..... My relationship (if any) with that person is ..... (spouse/de facto spouse/father/ mother/employer/no relation, etc.) The name of an *immediate family member with whom I have contact is ..... who lives at .... NOTE – "Immediate family" includes lawful spouse, de facto spouse (being a person with whom the accused resides on a permanent and bona fide domestic basis), parent, grandparent, son, daughter, grandson, granddaughter.	
B. EMPLOYMENT. ☐ I have been employed at my present job for more than one year (namely since .....)	

Form 4 *(continued)*

Column 1.	Column 2.
TO BE COMPLETED BY ACCUSED PERSON	TO BE COMPLETED BY POLICE OFFICER
☐ I have been employed at my present job for 4 months or more (namely since .....) OR at my present job and my prior job for 6 months or more (namely ..... months). ☐ I am employed OR receiving unemployment benefits or other form of pension. ☐ I am being supported by my family or my savings. ☐ I am unemployed and not receiving unemployment benefits or other form or pension.	
The name and address of my present employer is ..... *(name of present employer)* ..... *(address of present employer)* The name and address of my prior employer is ..... *(name of prior employer)* ..... *(address of prior employer)*	
C. RESIDENCE ☐ I have lived at my present address for 1 year or more (namely since .....) ☐ I have lived at my present address for 6 months or more (namely since .....) OR my present address and prior address for 1 year or more (namely ..... years). ☐ I have lived at my present address for 4 months or more (namely since .....) OR my present address and prior address for 6 months or more (namely months). ☐ I have no fixed place of abode. My present address is .... My last prior address was	

Form 4 *(continued)*

Column 1. TO BE COMPLETED BY ACCUSED PERSON	Column 2. TO BE COMPLETED BY POLICE OFFICER
D. TIME IN AREA ☐ I have lived continuously in the city, town or district in which I now live for 10 years or more.	
E. OTHER FACTORS ☐ I wish other factors to be taken into account (e.g. *pregnancy, old age, poor health, attending school, etc.*)	
F. PRIOR RECORD I have convictions for the following offences Year Court Offence .... NOTE – "Parking" and minor traffic offences need not be included.	☐ The accused has no prior convictions. ☐ The accused has one summary conviction and no convictions on indictment. ☐ The accused has 2 summary convictions or one conviction on indictment. ☐ The accused has 3 or more summary convictions or 2 or more convictions on indictment. NOTE – Clause 8(6) of the Bail Regulation, 1979, excludes offences against the Motor Traffic Act, 1909, unless the offence is punishable by imprisonment.
(MARK WITH AN "X" ONE ANSWER ONLY IN EACH CATEGORY (A-E INCLUSIVE), IF IT IS TRUE, AND COMPLETE THE ADDITIONAL PARTICULARS WHERE APPLICABLE.) ..... ACCUSED (Date) / /	..... POLICE OFFICER (Date) / / (THE POLICE OFFICER IS TO INDICATE THE ANSWERS AND INFORMATION GIVEN BY THE ACCUSED WHICH HE HAS (OR HAS CAUSED) TO BE CHECKED. (ANY DISCREPANCY TO BE NOTED.)

Form 4 *(continued)*

POINTS ALLOCATED BY AUTHORISED OFFICER	POINTS ALLOCATED BY COURT
A.	A. .....
B.	B. .....
C.	C. .....
D.	D. .....
E.	E. .....
F.	F. .....
TOTAL POINTS:	TOTAL POINTS: .....
..... AUTHORISED OFFICER (Date) / /	..... COURT (Date) / /

Form 5.

BAIL ACT, 1978.

Clause 9.

BAIL UNDERTAKING

NAME OF ACCUSED: .....
ADDRESS OF ACCUSED: .....
OFFENCE(S): .....
.....

UNDERTAKING

(1) I undertake to appear in respect of the above offence or offences at the Court of Petty Sessions
at on the
day of , 19 ,
at 10 a.m. (and before such court on such day and at such time and place as is from time to time specified in a notice to be given or sent to me).

(2) This Undertaking includes an undertaking pursuant to section 34(3) of the Bail Act, 1978, that if bail is continued I shall appear at any time and place to which the proceedings in respect of the offence or offences may be continued whether upon an adjournment or otherwise.

.....
Accused

CERTIFICATE

*I certify that the document contained herein is a copy of the notice given to the accused for the purposes of section 34(1) of the Bail Act, 1978, and that I did give the notice to the accused person by delivering it to him personally.

Dated this day of , 19 , at
.....
*Justice of the Peace and Prescribed Officer.
*Authorised Officer and Prescribed Officer.

**Strike out whichever is not applicable.*

A copy of the undertaking is to be given to the accused person.

NOTE – Section 51 of the Bail Act, 1978, provides that a person who fails without reasonable excuse (proof of which lies upon him) to appear before a court in accordance with his bail undertaking is guilty of an offence. A person convicted of such an offence is liable to the same penalties as are by law provided for the offence in respect of which he failed to appear but no sentence of imprisonment shall exceed 3 years and no fine shall exceed $3,000. A sentence so imposed may be directed to be served cumulatively upon any other sentence of imprisonment or penal servitude then imposed or then being served.

If the accused person changes his address, he shall give notice in writing of his new address to the clerk of the court at which he is to appear.

Form 5A

Bail Act, 1978.

Clause 9.

BAIL UNDERTAKING

NAME OF ACCUSED: .....
ADDRESS OF ACCUSED: .....
OFFENCE(S): .....
.....
.....
.....
NAME OF SURETY (SURETIES) (if any) .....
..... and .....
ADDRESS OF SURETY (SURETIES) (if any) .....
.....

UNDERTAKING

(1) I undertake to appear in respect of the above offence or offences at the –
*Court of Petty Sessions
*District Court
*Supreme Court at .....
*Court of Criminal Appeal
on the day of 19
at 10 a.m. (and before such court on such day and at such time and place as is from time to time specified in a notice to be given or sent to me).

(2) This undertaking includes an undertaking pursuant to section 34(3) of the Bail Act, 1978, that if bail is continued I shall appear at any time and place to which the proceedings in respect of the offence or offences may be continued whether upon an adjournment or otherwise.

(3) *I further undertake pursuant to section 123(3) or 125A(2B) of the Justices Act, 1902, to appear before the District Court as referred to in paragraph (1) and prosecute my appeal, to abide the judgment of the Court on the appeal and pay such costs as may be awarded by the Court.

BAIL CONDITIONS

(4) *The grant of bail is subject to the following conditions:-

(a) that I enter into an agreement to observe specified requirements as to my conduct while at liberty on bail as set out hereunder;

(b) that one (or) acceptable person(s) acknowledge that he or she is (they are) acquainted with me and regard(s) me as a responsible person who is likely to comply with my bail undertaking;

(c) that I enter into an agreement, without security, to forfeit an amount of money, as specified herein, if I fail to comply with my bail undertaking;

(d) that one (or) acceptable person(s) enter into an agreement or agreements, without security, to forfeit an amount or amounts of money, as specified herein, if I fail to comply with my bail undertaking;

Form 5A *(continued)*

(e) that I enter into an agreement, and deposit acceptable security, to forfeit an amount of money, as specified herein, if I fail to comply with my bail undertaking;

(f) that one (or) acceptable person(s) enter into an agreement or agreements, and deposit acceptable security, to forfeit an amount or amounts of money, as specified herein, if I fail to comply with my bail undertaking;

(g) that I deposit an amount of money in cash, as specified herein, and enter into an agreement to forfeit the amount if I fail to comply with my bail undertaking;

(h) that one (or) acceptable person(s) deposit an amount or amounts of money in cash, as specified herein, and enter into an agreement or agreements, to forfeit the amount(s) if I fail to comply with my bail undertaking.

---

(5) *I agree to observe as a condition of my bail the following requirements as to my conduct while at liberty on bail:–

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

AGREEMENT OF ACCUSED

(6) I agree to forfeit to Her Majesty the Queen, Her Heirs and Successors, the sum of $..... in money in the event of my failure to appear in accordance with my undertaking.

Form 5A *(continued)*

AGREEMENT OF SURETY OR SURETIES

(7) I/WE ..... and ..... agree to forfeit to Her Majesty the Queen, Her Heirs and Successors, the sum of $..... (each) in money in the event of the failure of the accused to appear in accordance with his undertaking.

PARTICULARS OF CASH DEPOSITED	PARTICULARS OF SECURITY GIVEN
$ ..... deposited by the accused/surety/each surety (Receipt No.)	$ ..... security deposited by the accused/surety/each surety (Receipt No.)

....
Accused Surety Surety

CERTIFICATE

*I certify that the document contained herein is a copy of the notice given to the accused for the purposes of section 34(1) of the Bail Act, 1978, and that I did give the notice to the accused person by delivering it to him personally.

DATED this day of 19 ,

at .....
*Justice of the Peace and Prescribed Officer.
*Authorized Officer and Prescribed Officer.

*(*Strike out whichever is not applicable)*

A copy of the undertaking is to be given to the accused person, a surety or person who has made an acknowledgment under section 36(2) (b) of the Bail Act, 1978.

NOTE – Section 51 of the Bail Act, 1978, provides that a person who fails without reasonable excuse (proof of which lies upon him) to appear before a court in accordance with his bail undertaking is guilty of an offence. A person convicted of such an offence is liable to the same penalties as are by law provided for the offence in respect of which he failed to appear but no sentence of imprisonment shall exceed 3 years and no fine shall exceed $3,000. A sentence so imposed may be directed to be served cumulatively upon any other sentence of imprisonment or penal servitude then imposed or then being served.

Where an amount of bail money, not exceeding $300, deposited pursuant to a bail agreement, is forfeited by reason of non-compliance with a bail undertaking entered into for the appearance of a person, the person by whom the amount was deposited may, within 21 days from the date of forfeiture, lodge with the court of summary jurisdiction at or nearest the place at which the bail money was forfeited an application in or to the effect of the form prescribed under the Fines and Forfeited Recognizances Act, 1954, for the discharge of the forfeited bail money.

If the accused person changes his address, he shall give notice in writing of his new address to the clerk of the court at which he is to appear.

Form 6.

Bail Act, 1978.

Clause 10.

ACKNOWLEDGMENT

NAME OF ACCUSED: .....

ADDRESS: .....

(1) I, ... of
(name)

.....
(address) *(occupation)*

acknowledge that I have been acquainted with the abovenamed accused person for ..... years.

(2) I regard him/her as a responsible person who is likely to comply with his/her bail undertaking.

(3) The nature of my acquaintance with the accused person is

.....
(e.g. employer, business partner, mother, father, spouse, friend)

(4) Before making this acknowledgment I have been warned that it is an offence pursuant to section 56 of the Bail Act, 1978, wilfully to make an acknowledgment under section 36(2) (b) of that Act knowing it to be untrue in a material particular.

Signature .....

This acknowledgment was made before me at .....
..... on the ..... day of
....., 19 , and I did, before the acknowledgment was made, warn the person making the acknowledgment that it is an offence pursuant to section 56 of the Bail Act, 1978, wilfully to make an acknowledgment under section 36(2) (b) of that Act knowing it to be untrue in a material particular.

.....
(Authorised Officer/
Justice of the Peace)

NOTE – Section 54(2) of the Bail Act, 1978, provides that an authorised officer or court to whom or with whom a person, other than the accused person, makes an acknowledgment pursuant to a bail condition shall forthwith give or cause to be given to that other person a copy of the condition or a notice setting out the terms of the condition.

Form 7.

Bail Act, 1978.

Clause 11(1).

REASONS FOR BAIL DECISION BY AUTHORISED OFFICER

NAME OF ACCUSED: .....

OFFENCE(S): .....

.....

.....

.....

(If space is insufficient attach list)

☐ The accused has been provided with information as to his or her eligibility or entitlement to bail being either Form 1 or Form 2.

• *(Mark with an "X" if this information has been provided)*

REQUEST FOR BAIL

The accused has –

*(1) made no request for bail;

*(2) requested that he or she be granted bail unconditionally; or

*(3) requested that he or she be granted bail subject to the following conditions as specified in section 36(2) of the Act:–

.....

.....

.....

DETERMINATION

I have determined that:–

*(1) bail be granted unconditionally;

*(2) bail be refused; or

*(3) bail be granted subject to one or more of the following conditions:–

(a) that the accused person enter into an agreement to observe requirements as to his or her conduct while at liberty on bail, namely: .....

.....

.....

.....

.....

(b) that one (or) acceptable person(s) acknowledge in writing that he or she is (they are) acquainted with the accused person and he or she (they) regard(s) the accused person as a responsible person who is likely to comply with his or her bail undertaking;

Form 7 *(continued)*

(c) that the accused person enter into an agreement without security, to forfeit an amount of money, namely $....., if he or she fails to comply with his or her undertaking;

(d) that one (or) acceptable person(s) enter into an agreement or agreements, without security, to forfeit an amount or amounts of money, namely $..... (each), if the accused person fails to comply with his or her bail undertaking;

(e) that the accused person enter into an agreement and deposit security, to forfeit an amount of money, namely $....., if he or she fails to comply with his or her bail undertaking;

(f) that one (or) acceptable person(s) enter into an agreement and deposit security, to forfeit an amount or amounts of money, namely $..... (each), if the accused person fails to comply with his or her bail undertaking;

(g) that the accused person deposit the sum of $..... in cash, and enter into an agreement to forfeit the amount if he or she fails to comply with his or her bail undertaking;

(h) that one (or) acceptable person(s) deposit the sum(s) of $..... (each) in cash, and enter into an agreement or agreements to forfeit the amount(s) if the accused person fails to comply with his or her bail undertaking.

*(*Strike out whichever is not applicable)*

REASONS FOR DETERMINATION

The reason(s) for my decision is/are (or is/are attached):–

.....

.....

.....

.....

.....
AUTHORISED OFFICER

Date / /

Place

NOTE:

This form should be completed in duplicate in all cases where bail is –

(i) granted conditionally; or

(ii) refused.

The original should be forwarded to the court at which the accused is to appear and a copy should be retained.

Form 8.

Bail Act, 1978.

Clause 11(2).

REASONS FOR BAIL DECISION BY COURT

NAME OF ACCUSED: .....
OFFENCE(S): .....
.....
.....
.....

(If space is insufficient attach list)

DETERMINATION

It is determined (in respect of each offence) that:–
*(1) bail be granted unconditionally;
*(2) bail be refused; or
*(3) bail be granted subject to one or more of the following conditions:–

(a) that the accused person enter into an agreement to observe requirements as to his or her conduct while at liberty on bail, namely: .....
.....
.....
.....
.....

(b) that one (or) acceptable person(s) acknowledge in writing that he or she is (they are) acquainted with the accused person and he or she (they) regard(s) the accused person as a responsible person who is likely to comply with his or her bail undertaking;

(c) that the accused person enter into an agreement without security to forfeit an amount of money, namely $..... if the accused person fails to comply with his or her bail undertaking;

(d) that one (or) acceptable person(s) enter into an agreement or agreements, without security, to forfeit an amount or amounts of money, namely $..... (each), if the accused person fails to comply with his or her bail undertaking;

(e) that the accused person enter into an agreement and deposit security, to forfeit an amount of money, namely $..... if the accused person fails to comply with his or her bail undertaking;

(f) that one (or) acceptable person(s) enter into an agreement and deposit security, to forfeit an amount or amounts of money, namely $..... (each), if the accused person fails to comply with his or her bail undertaking;

(g) that the accused person deposit the sum of $..... in cash and enter into an agreement to forfeit such amount if the accused person fails to comply with his or her bail undertaking.

(h) that one (or) acceptable person(s) deposit the sum(s) of $..... (each) in cash and enter into an agreement or agreements to forfeit such amount(s) if the accused person fails to comply with his or her bail undertaking.

Form 8 *(continued)*

*(*Strike out whichever is not applicable)*

PARTICULARS OF ANY DETERMINATION MADE PURSUANT TO SECTION 36(3) OF THE ACT ARE:–

.....

.....

.....

REASONS FOR DETERMINATION

The reason(s) for the decision is/are (or is/are attached):–

.....

.....

.....

.....

.....

.....

.....

.....

.....

(NAME OF COURT)

Date / /

.....

(PLACE)

Form 9.

Bail Act, 1978.

Clause 14.

APPLICATION BY SURETY FOR HIS DISCHARGE FROM LIABILITY IN RESPECT OF A BAIL UNDERTAKING

NAME OF ACCUSED: .....
ADDRESS: .....
OFFENCE(S): .....
.....
NAME OF SURETY: .....
ADDRESS: .....
..... (Telephone No. .....)

(1) Application is made pursuant to section 42 of the Bail Act, 1978, to the
* ..... at .....
(name of court) *(place)*
being the Court–
**which granted bail; or
**before which the accused person is required to appear in accordance with his bail undertaking
for the abovenamed surety to be discharged from his liability in respect of an agreement entered into as a condition of bail on the ..... day of..... 19 ,
at .....
upon the following grounds:–
.....
.....
.....
.....
The accused has undertaken to appear before the .....
(name of court)
at ..... on the ..... day of
(place)
..... 19 (or .....).

.....
Surety

Date / /

(* *Insert* Court of Criminal Appeal, Supreme Court, District Court or Court of Petty Sessions)
(***Strike out whichever is not applicable*).

A warrant of apprehension/summons has this day been issued by me (returnable on the ..... day of ..... 19).

.....
Justice of the Peace

Date / /

Form 10.

Bail Act, 1978.

Clause 15.

WARRANT OF APPREHENSION WHERE A SURETY APPLIES TO BE DISCHARGED FROM LIABILITY IN RESPECT OF A BAIL UNDERTAKING

To all constables of Police in the State of New South Wales.

WHEREAS on the.....day of.....
19....., ... (hereinafter called the accused person) and .....(hereinafter called the surety) entered into a bail undertaking for the accused person to appear before the .....
..... at ..... on
(name of court) *(place)*
..... in relation to the offence(s) of.....
.....
AND WHEREAS the surety has made application to the.....
..... at .....
(name of court) *(place)*
for him to be discharged from his liability under the bail undertaking.
THESE ARE THEREFORE TO COMMAND YOU TO APPREHEND THE ACCUSED PERSON AND BRING HIM BEFORE THE.....
(name of court)
AT .....or before such other court as may then be sitting TO BE FURTHER DEALT WITH ACCORDING TO LAW.
This warrant was issued by me at ..... on the
.....day of..... 19

.....
Justice of the Peace.

NOTE – This warrant should not be executed after the date upon which the accused has undertaken to appear without reference first being made to the court.

Address of accused: .....
Address of surety: .....

Form 11.

Bail Act, 1978.

Clause 16.

REQUEST FOR REVIEW OF BAIL DECISION

NAME OF ACCUSED: ....
(date of birth)

OFFENCE(S): .....

(1) Request is made pursuant to Part VI of the Bail Act, 1978, to the
* .....
at .....
(place)
for a review of a bail determination made by .....
(name of court or authorised officer)
at .....

(2) Bail was on the .....day
of ..... 19 , **refused/dispensed with/granted
with the following conditions:–
.....
.....
.....
.....

(3) The accused person **is in custody at ..... prison
OR **has been released and resides at .....
.....

.....
Applicant

Date / /

(**Insert* either Court of Criminal Appeal, Supreme Court, District Court or Court of Petty Sessions).
(***Strike out whichever is not applicable*).

Form 12.

Bail Act, 1978.

Clause 18.

NOTICE OF CONTINUANCE OF BAIL

NAME OF ACCUSED PERSON: .....

ADDRESS OF ACCUSED: .....

DATE OF UNDERTAKING: / /

TAKE NOTICE that the proceedings in respect of which you gave a bail undertaking have been adjourned –

*to the.....at.....
(name of court)

on the.....day of.....

19 , at 10 a.m. OR

*to such time and place as will be notified to you in a notice to be given or sent to you.

*The conditions of the bail have been varied in the following manner:–

.....

.....

.....

.....

CERTIFICATE

*I certify that this document is a copy of the notice given to the accused for the purposes of section 34 (1) of the Bail Act, 1978, and that I did give the notice to the accused person by delivering it to him personally.

*(*Strike out if not applicable)*

.....
Prescribed Officer

DATED / /

Form 13.

Bail Act, 1978.

Clause 19.

NOTICE RESPECTING THE REVIEW OF A BAIL DECISION

(1) TAKE NOTICE that Part VI of the Bail Act, 1978, provides that a bail decision may be reviewed.

(2) A "bail decision" includes a refusal to grant bail, a granting of bail conditionally or unconditionally and a dispensing with bail.

(3) A review may only be had at the request of –

(a) yourself;
(b) the informant, being a police officer; or
(c) the Attorney General.

(4) A request for review may be made to the appropriate court as set out hereunder.

If a bail decision was made by –	it may be retrieved by –
an authorised officer	a Magistrate or the Supreme Court
a Justice	the Justice, or a Magistrate or the Supreme Court
a Magistrate	a Magistrate or the Supreme Court
the District Court	the District Court or Supreme Court
the Court of Criminal Appeal	the Court of Criminal Appeal
the Supreme Court	the Supreme Court

(5) A court in reviewing a bail decision may affirm or vary that decision or substitute another decision. A request for review of a bail decision shall be in writing in or to the effect of Form 11, in Schedule 1 to the Bail Regulation, 1979, a copy of which may be obtained from a court office or at a prison.

APPENDIX VI. BAIL DECISIONS FOR ABORIGINES

A report on bail determinations by police in three towns with large Aboriginal populations

Data collected as part of the study of the Bail Act conducted during May to October of 1980 suggested that bail decisions made by police in one country town were particularly harsh with regard to Aborigines.

In order to gather more information, a second visit was made to that town, and two other towns with large Aboriginal populations were also visited during June 1981. A summary of the data collected is presented below.

The initial data collected had indicated that only 36% of persons charged in the particular town had been granted bail, 21% had received conditional bail, and 43% had been refused bail. This compares with 7.3% of the total sample being refused bail. The data collected during the second visit to the town, however, provided a very different picture — in 71% of cases unconditional bail had been granted and in the remaining 29% of cases conditional bail had been granted. In the other towns visited, unconditional bail accounted for 97% of determinations in one town and 100% of determinations in the other case.

The percentage of the total number of charges laid in each town which were for Aborigines ranged from 41% in one town to 92% in another. The over-representation of Aborigines amongst those charged is clear when one considers that according to the 1976 Census the percentage of Aborigines in the populations of these towns ranged from 17.4% to 36.5%.

Most charges laid against Aborigines were for serious alarm or affront (53.8%), or malicious damages (15.4%), offences which discussions with police indicate were usually alcohol related. Non-Aborigines were also charged with essentially alcohol-related offences, the greatest number of charges being for driving with the prescribed concentration of alcohol or driving under the influence (53.2%).

APPENDIX VII. OFFENCES BY SEX, AGE, COUNTRY OR REGION OF BIRTH, OCCUPATION, LEGAL REPRESENTATION

Table A. Offence by sex

	Male		Female		
	No.	%	No.	%	Total
Against the person	46	5.9	2	1.3	48
Sexual offences	14	1.8	0	0.0	14
Prostitution	1	0.1	1	0.7	2
Robbery & extortion	12	1.5	0	0.0	12
Fraud	17	2.2	12	8.1	29
Break, enter & steal	37	4.7	4	2.7	41
Larceny	150	19.2	74	49.7	224
Unlawful possession of property	23	2.9	3	2.0	26
Found with intent	4	0.5	0	0.0	4
Driving	43	5.5	4	2.7	47
Betting & gaming	16	2.0	0	0.0	16
Firearms	3	0.4	1	0.7	4
Damage property	27	3.5	4	2.7	31
Offensive behaviour	91	11.7	14	9.4	105
Drink driving	219	28.0	12	8.1	231
Drug offences	54	6.9	14	9.4	68
Other offences	24	3.1	4	2.7	28
Total	781	100.0	149	100.0	930*

* Excluded from the table are 13 cases in which the sex of the accused was unknown.

Table B. Age of accused and offence group

	Less than 18 yrs		18 yrs		19 yrs		20-24 yrs		25-29 yrs		30-39 yrs		40-49 yrs		50-59 yrs		60 yrs plus		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	Total
Against the person	4	3.0	5	7.8	1	1.7	13	5.5	6	4.2	9	5.8	4	5.3	5	10.6	1	3.8	48
Sexual offences	2	1.5	2	3.1	2	3.4	5	2.1	2	1.4	1	0.6	0	0.0	0	0.0	0	0.0	14
Prostitution	0	0.0	0	0.0	0	0.0	1	0.4	1	0.7	0	0.0	0	0.0	0	0.0	0	0.0	2
Robbery & extortion	1	0.7	1	1.6	0	0.0	2	0.8	6	4.2	0	0.0	0	0.0	2	4.3	0	0.0	12
Fraud	2	1.5	1	1.6	0	0.0	7	3.0	4	2.8	10	6.4	1	1.3	4	8.5	0	0.0	29
Break, enter & steal	26	19.4	6	9.4	4	6.9	4	1.7	0	0.0	1	0.6	0	0.0	0	0.0	0	0.0	41
Larceny	66	49.3	10	15.6	9	15.5	47	20.0	25	17.5	27	17.3	18	24.0	12	25.5	14	53.8	228
Unlawful possession of property	1	0.7	1	1.6	4	6.9	6	2.6	5	3.5	5	3.2	3	4.0	0	0.0	1	3.8	26
Found with intent	3	2.2	1	1.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4
Driving	5	3.7	7	10.9	4	6.9	18	7.6	7	4.9	6	3.8	0	0.0	0	0.0	0	0.0	47
Betting & gaming	0	0.0	0	0.0	0	0.0	0	0.0	3	2.1	7	4.5	4	5.3	2	4.3	0	0.0	16
Firearms	2	1.5	0	0.0	1	1.7	0	0.0	1	0.7	0	0.0	0	0.0	0	0.0	0	0.0	4
Damage property	4	3.0	5	7.8	5	8.6	6	2.6	3	2.1	6	3.8	1	1.3	0	0.0	0	0.0	30
Offensive behaviour	9	6.7	9	14.1	12	20.7	22	9.4	15	10.5	14	9.0	9	12.0	10	21.3	6	23.1	106
Drink driving	2	1.5	12	18.7	12	20.7	70	28.9	41	28.7	57	36.5	28	37.3	10	21.3	3	11.5	235
Drug offences	6	4.5	1	1.6	3	5.2	25	10.6	19	13.3	8	5.1	5	6.7	0	0.0	0	0.0	67
Other offences	1	0.7	3	4.7	1	1.7	9	3.8	5	3.5	5	3.2	2	2.7	2	4.3	1	3.8	29
Total	134	100.0	64	100.0	58	100.0	235	100.0	143	100.0	156	100.0	75	100.0	47	100.0	26	100.0	938

Table C. Principal offence by country or region of birth

	A*		B		C		D		E		F		G		H		I		J		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	Total
Against the person	31	4.6	4	6.5	3	13.6	0	0.0	7	9.6	2	12.5	0	0.0	0	0.0	0	0.0	0	0.0	47
Sexual	9	1.3	1	1.6	0	0.0	1	2.6	1	1.4	1	6.3	1	33.3	0	0.0	0	0.0	0	0.0	14
Prostitution	2	0.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2
Robbery & extortion	8	1.2	1	1.6	0	0.0	1	2.6	0	0.0	1	6.3	0	0.0	0	0.0	0	0.0	0	0.0	11
Fraud	23	3.4	0	0.0	1	4.5	0	0.0	2	2.7	1	6.3	1	33.3	0	0.0	0	0.0	0	0.0	28
Break, enter & steal	27	4.0	11	17.7	0	0.0	0	0.0	1	1.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	39
Larceny	164	24.6	9	14.5	5	22.7	12	30.8	13	17.8	3	18.8	0	0.0	2	66.7	6	66.7	6	40.0	220
Unlawful possession of property	20	3.0	1	1.6	0	0.0	1	2.6	2	2.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	24
Found with intent	4	0.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4
Driving	36	5.4	0	0.0	4	18.2	2	5.1	1	1.4	0	0.0	0	0.0	0	0.0	1	11.1	1	6.7	45
Betting & gaming	8	1.2	0	0.0	0	0.0	0	0.0	8	11.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	16
Firearms	2	0.3	0	0.0	0	0.0	0	0.0	1	1.4	1	6.3	0	0.0	0	0.0	0	0.0	0	0.0	4
Damage property	20	3.0	7	11.3	0	0.0	0	0.0	2	2.7	0	0.0	0	0.0	0	0.0	1	11.1	0	0.0	30
Offensive behaviour	63	9.4	24	38.7	0	0.0	4	10.3	10	13.7	2	12.5	1	33.3	0	0.0	0	0.0	0	0.0	104
Drink driving	177	26.5	4	6.5	4	18.2	15	38.5	20	27.4	2	12.5	0	0.0	1	33.3	0	0.0	6	40.0	229
Drug offences	53	7.9	0	0.0	3	13.6	2	5.1	2	2.7	1	6.3	0	0.0	0	0.0	1	11.1	1	6.7	63
Other	20	3.0	0	0.0	2	9.1	1	2.6	3	4.1	2	12.5	0	0.0	0	0.0	0	0.0	1	6.7	29
Total	667	100.0	62	100.0	22	100.0	39	100.0	73	100.0	16	100.0	3	100.0	3	100.0	9	100.0	15	100.0	909

* Key

A: Australia: non-Aboriginal
B: Australia: Aboriginal
C: New Zealand
D: United Kingdom
E: Europe
F: Middle East
G: North America
H: Africa
I: Asia
J: Other

Table D. Principal offence by occupation

	A*		B		C		D		E		F		G		H		
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	Total
Against the person	0	0.0	1	2.9	14	5.6	12	5.2	2	3.0	4	6.1	1	2.6	13	6.1	47
Sexual	0	0.0	2	5.7	4	1.6	3	1.3	0	0.0	0	0.0	0	0.0	5	2.3	14
Prostitution	0	0.0	0	0.0	1	0.4	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	2
Robbery & extortion	0	0.0	0	0.0	3	1.2	0	0.0	1	1.5	0	0.0	0	0.0	7	3.3	11
Fraud	0	0.0	2	5.7	5	2.0	2	0.9	0	0.0	5	7.6	3	7.9	10	4.7	27
Break, enter & steal	0	0.0	0	0.0	4	1.6	2	0.9	16	24.2	1	1.5	0	0.0	14	6.6	37
Larceny	0	0.0	6	17.1	31	12.4	43	18.7	36	54.5	29	43.9	23	60.5	53	24.9	221
Unlawful possession of property	0	0.0	1	2.9	8	3.2	5	2.2	1	1.5	1	1.5	1	2.5	8	3.8	25
Found with intent	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	1.9	4
Driving	0	0.0	1	2.9	15	6.0	15	6.5	2	3.0	0	0.0	1	2.5	7	3.3	41
Betting & gaming	0	0.0	0	0.0	7	2.8	6	2.6	0	0.0	0	0.0	0	0.0	2	0.9	15
Firearms	0	0.0	0	0.0	0	0.0	1	0.4	1	1.5	0	0.0	0	0.0	2	0.9	4
Damage property	0	0.0	2	5.7	3	1.2	7	3.0	1	1.5	2	3.0	2	5.3	12	5.6	29
Offensive behaviour	0	0.0	2	5.7	34	13.5	17	7.4	2	3.0	20	30.3	4	10.5	25	11.7	104
Drink driving	1	100.0	14	40.0	103	41.0	86	37.4	1	1.5	1	1.5	2	5.3	20	9.4	228
Drug offences	0	0.0	3	8.6	16	6.4	23	10.0	3	4.5	1	1.5	0	0.0	18	8.5	64
Other offences	0	0.0	1	2.9	3	1.2	8	3.5	0	0.0	2	3.0	1	2.6	12	5.6	27
Total	1	100.0	35	100.0	251	100.0	230	100.0	66	100.0	66	100.0	38	100.0	213	100.0	900**

* Key

A: Professional/managerial
B: Semi-professional/middle management
C: Sales, clerical, small business, skilled
D: Unskilled
E: Student
F: Pensioner
G: Domestic
H: Unemployment

**Excluded from the table are 43 cases in which occupation was unknown.

Table E. Principal offence by legal representation at the final court appearance

	Represented		Unrepresented		
	No.	%	No.	%	Total
Against the person	32	5.1	2	1.0	34
Sexual	9	1.4	3	1.5	12
Prostitution	2	0.3	0	0.0	2
Robbery & extortion	8	1.3	1	0.5	9
Fraud	20	3.2	1	0.5	21
Break, enter & steal	33	5.3	3	1.5	36
Larceny	148	23.6	56	28.7	204
Unlawful possession of property	20	3.2	2	1.0	22
Found with intent	2	0.3	0	0.0	2
Driving	33	5.3	6	3.1	39
Betting & gaming	3	0.5	13	6.7	16
Firearms	3	0.5	0	0.0	3
Damage property	17	2.7	10	5.1	27
Offensive behaviour	74	11.8	22	11.3	96
Drink driving	164	26.1	54	27.7	218
Drugs	43	6.8	15	7.7	58
Other offences	17	2.7	7	3.6	24
Total	628	100.0	195	100.0	823

APPENDIX VIII. CASE STUDIES OF UNREPRESENTED ACCUSED PERSONS

Case studies of unrepresented accused persons held in custody for long periods on remand for minor offences

Two cases were identified in the sample studied, in which unrepresented accused persons were held in custody for long periods before trial on relatively minor charges. These cases raise the question of whether some automatic review procedure should be incorporated in the Bail Act so that this would not occur. To illustrate the problem of the unrepresented accused, details of the two cases are presented below.

Case A

The accused was arrested on 16 June 1980 and charged with malicious damage (throwing objects through the windows of a hotel). The accused did not apply for bail and bail was formally refused. He appeared again in a court of petty sessions on 19 June 1980 and was committed for trial at the district court on 18 August 1980; the trial commenced on 19 November 1980. The question of whether the accused was fit to plead was discussed prior to the commencement of the trial, and having been found fit to plead he was offered an adjournment to allow him to obtain legal aid — the accused declined. Having been in custody for five months in the Observation Section of Long Bay Gaol, the accused was convicted on 19 November 1980 and sentenced to a recognizance in the sum of $200 to be of good behaviour for six months. The Probation and Parole Service arranged for the accused to have psychiatric treatment.

On 8 January 1981 the accused was again arrested and was charged with trespassing. He appeared in court on 23 January 1981, where he pleaded not guilty and was refused bail. He appeared again on 5 March 1981 and the charges against him were dropped, due to insufficient evidence. On 3 April 1981 it was reported that the accused had failed to report to the Probation and Parole Service as required and was thus in breach of the recognizance. The Judge recommended that, in light of the two periods of imprisonment that the accused had served prior to trial, no action be taken on the breach.

Case B

The accused was charged with malicious damage and with assaulting a police officer in the execution of his duty. The accused was under the influence of alcohol at the time of the offence, which involved damage to hotel property. He was unrepresented and pleaded not guilty to the offences with which he was charged. Although he was granted bail on committal on 25 June 1980 with the condition that two acceptable persons vouch for him, he was unable to meet this condition and hence remained in custody. He next appeared at district court on 18 September 1980 where the same bail was allowed, and he was again unable

to meet the conditions. Whilst in custody, the prison psychiatrist examined the accused and found him to have some psychiatric problems. After the accused had been in custody for three months awaiting trial, the matter was referred to the Attorney-General who decided not to proceed against the accused. On 24 October 1980, a warrant was issued for the release of the accused.

* * *

In both cases the accused persons were found to require psychiatric care, and neither was in a position to do anything to expedite his own release. It is recommended that some consideration be given to the creation of an automatic review for cases in which accused persons are held in custody awaiting trial, particularly where they are unrepresented.

APPENDIX IX. PROFILE OF PERSONS REFUSED BAIL

Table A. Sex

	No.
Male	77
Female	1
Total	78

Table B. Country or region of birth/racial origin

	No.	%
Australia: non-Aborigine	53	72.6
Australia: Aborigine	7	9.6
New Zealand	3	4.0
United Kingdom	1	1.4
Europe	7	9.6
Asia	1	1.4
Middle East	1	1.4
Total	73*	100.0

* Country of birth was unknown in 5 cases.

Table C. Age

	No.	%
Less than 18 yrs	23	29.9
18 yrs	8	10.4
19 yrs	3	3.9
20-24 yrs	7	9.1
25-29 yrs	12	15.6
30-39 yrs	12	15.6
40-49 yrs	5	6.5
50-59 yrs	4	5.1
60 plus	3	3.9
Total	77*	100.0

* Age was unknown in 1 case.

Table D. Principal offence

Offence	No.
Attempted murder	1
Assault, common	3
Assault female	1
Assault with intent to resist arrest	2
Rape	1
Indecent assault on female	1
Procure indecent act with male	1
Robbery in company	1
Armed robbery	4
Robbery with violence	2
False pretences	1
Break, enter and steal	8
Larceny of motor vehicle	2
Larceny of vehicle	1
Unlawful use of vehicle	1
Ride in known stolen conveyance	4
Steal from person	2
Simple larceny	2
Shoplifting	5
Goods in custody	3
Damage property	7
Fail to appear in accordance with bail	2
Escape from custody	1
Corruption of witness	1
Trespassing	2
Under influence of liquor on railway	1
Behave in offensive manner on railway	1
Serious alarm or affront	2
Found with intent to commit an offence	3
Navigate whilst under influence	1
Possess firearm with intent to commit an indictable offence	1
P.C.A.	6
Cultivate hemp	1
Use heroin	2
Supply heroin	1
Total	78

Table E. Initial bail determination

Determination	No.
Unconditional	4
Conditional	11
Declined bail	1
Total	78

Table F. Occupation

Occupation	No.
Semi-professional/middle management	2
Skilled, sales, clerical	9
Unskilled	11
Student	10
Pensioner	5
Domestic	1
Unemployed	37
Unknown	3
Total	78

Table G. Use of Form 4

	No.
Yes	11
No	67
Total	78

Table H. Bail on adjournment

Determination	No.
Determined at first appearance	23
Unconditional	4
Conditional	13
Refused	33
Unknown	5
Total	78

Table I. Plea

Plea	No.
Guilty	48
Not guilty	11
No plea	6
Unknown	13
Total	78

Table J. Legal representation at final appearance

Representation	No.
Represented	58
Unrepresented	9
Unknown or failed to appear	11
Total	78

Table K. Score on Form 4

	No.
1	2
4	3
5	2
7	2
9	1
Unknown	68
Total	78

Table L. Time between charge laid and case finalized

	No.	%
Same day	5	7.1
1 day	6	8.6
1 week	8	11.4
1 week-2 weeks	7	10.0
2 weeks-4 weeks	7	10.0
4 weeks-8 weeks	8	11.4
8 weeks-16 weeks	13	18.6
16 weeks-24 weeks	7	10.0
24 weeks-1 yr	8	11.4
1 yr +	1	1.4
Total	70*	100.0

* 8 cases were excluded from the table because time to finalization was unknown.

APPENDIX X. RECEPTION OF UNSENTENCED PRISONERS

Receptions of unsentenced prisoners at N.S.W. prisons and remand centres, 3-31 January 1982

Offence	No.	%
Homicide and assault	48	11.3
Sexual offences	9	2.1
Robbery and extortion	47	11.1
Fraud	26	6.1
Property offences	169	39.9
Driving	21	5.0
Offences against the enforcement of order	26	6.1
Drugs	34	8.0
Other	44	10.4
Total	424	100.0

BUREAU OF CRIME STATISTICS AND RESEARCH

PUBLICATIONS LIST

In 1983-84 the Bureau revised its method of publishing, closing all previous series. Our regular publications, such as Court Statistics, will continue to appear. The titles appearing after the dotted line have been produced in the new format.

Statistical reports Series 1

1. Drug Offences 1971 (1972)
2. Aborigines in Prison Census 1971 (1972)
3. City Drunks — Central Court of Petty Sessions — February 1972 (1972)
4. Breathalyser Offences 1971 (1972)
5. Drunks who go to Gaol (1972)
6. Crime in our cities — A Comparative Report (1972)
7. City Drunks — A Possible New Direction (1973)
8. Drug Offences 1972 (1973)
9. Gun and Knife Attacks (1973)
10. Breathalyser Offences 1972 (1973)
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12. Unreported Crime (1974)
13. Who are the Victims? (1974)
14. Safety in the Suburbs (1974)
15. Drug Offences 1973 (1974)
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8. Court Statistics 1976 (1977)
9. Court Statistics 1977 (1978)
10. Court Statistics 1978 (1980)
11. Court Statistics 1979 (1981)
12. Court Statistics 1980 (1981)
13. Court Statistics 1981 (1982)

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Statistical bulletins

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11. Sydney Coroner's Courts Statistics 1974
12. Sydney Coroner's Courts Statistics 1975
13. Sydney Coroner's Courts Statistics 1976
14. Sydney Coroner's Courts Statistics 1977
15. Sydney Coroner's Courts Statistics 1978
16. Sydney Coroner's Courts Statistics 1980
17. Crime in the Western Suburbs
18. Sydney Coroner's Courts Statistics 1981

Conference papers

1. The Work of the Bureau of Crime Statistics and Research
2. Family Violence and the Royal Commission on Human Relationships
3. Proposals on Reform Relating to Legal Remedies for Domestic Violence
4. Women, Drugs, Alcohol and Crime
5. The Role of Police and Prison Officers and Educational Programmes
6. Methodology for Police Analysis and Research
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8. The Determination of Bail
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Research reports

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3. Homosexual Offences
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5. A Study of Complaints Against Lawyers
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7. Penalties and the Drink Driver
8. Day-in-Gaol Programme
9. A Study of Evidence Presented to the District Court in N.S.W.
10. The Sydney Drink/Drive Rehabilitation Programme
11. The Sydney Drug Diversion Programme
12. Vandalism and Theft — a problem for schools

Discussion papers

1. Seminar on Victimless Crime, Seymour Centre, Sydney, February 24 to 27, 1977. Transcript of Proceedings, Background Papers, Papers.
   (This seminar covers public drunkenness, prostitution, homosexuality and drug abuse)
5. Lessons to be learnt from the Dutch Criminal Justice System
6. Prostitution — A Literature Review.

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Court Statistics
Court Statistics 1982 (1984)