

## 6.4 Granting and refusing bail

### What is bail?

Bail is the system whereby a court allows a defendant to be released from custody while awaiting the determination of a charge. Usually courts release defendants on their own undertaking to reappear in court on the adjourned date. Sometimes a third person will give a 'surety'—a guarantee the defendant will appear in court on the adjourned date.

There is a general presumption a person should be granted bail unless there is an unacceptable risk the defendant will:

- fail to appear on the adjourned date
- commit further offences
- endanger other people
- be a danger to himself or herself
- interfere with witnesses.

### Why is bail usually granted?

Bail is usually granted because there will be a period of time before the case can be heard. Being held in custody during this waiting period is a serious curtailment of the rights of the defendant, who is presumed innocent until proven guilty.

### What powers do I have in relation to bail?

Under the *Justices of the Peace and Commissioners for Declarations Act 1991*, if no magistrate is available, you (usually with another JP) have the power to:

- hear applications for bail
- seek information about the defendant to enable you to decide whether or not it should be granted
- decide on any bail conditions
- hear 'show cause' applications, where the onus is on the defendant or the defendant's representative to demonstrate why bail should not be refused.

## Deciding on the defendant's suitability for bail

You are authorised to make any necessary inquiries about the defendant to determine the defendant's suitability for bail. The following factors may be taken into account:

- the nature and seriousness of the offence
- the defendant's character, antecedents (such as a personal history including their criminal history), associations, home environment, employment and background, and their likelihood of committing further offences.
- the defendant's age
- the history of any previous grants of bail
- the strength of the evidence against the defendant
- any criminal history of the defendant
- whether a surety is necessary or a cash deposit.

You should refuse bail if, on any of these grounds, the defendant seems unsuitable, or if there has been insufficient time for you to obtain the information you need.

## Refusing bail

If you refuse to grant bail, you must have the defendant remanded in custody, and a remand warrant must be prepared and signed by both you and the other JP who sits with you. This warrant authorises police to deliver the defendant to the nearest remand centre, where they will be held until the date of the next court hearing.

Bail should also be refused if there has been insufficient time for you to obtain the information required to make an informed decision. You should also refuse bail if there is an unacceptable risk the defendant will:

- fail to appear on the adjourned date
- commit further offences
- endanger other people
- be a danger to himself or herself
- interfere with witnesses.

## Imposing bail conditions

If, on the other hand, you decide to grant bail, you may impose certain conditions. The *Bail Act 1980* allows many types of conditions to be a part of the bail undertaking. Some examples are:

- reporting condition—defendant has to report to a police station at set times
- residence condition—defendant must reside at a particular location
- no-contact condition—defendant must not have contact with certain people
- curfew condition—defendant must not leave residence between certain hours
- surrender passport—defendant ordered to surrender passport to court
- cash bail—defendant is ordered to pay cash into court
- surety—a third party is ordered to guarantee the defendant will appear in court on the due date
- security—a cash amount the defendant must pay before they can be released from custody.

## Dealing with a ‘show cause’ situation

A ‘show cause’ situation is where a defendant is charged with an offence:

- while on bail for another offence
- that involves the use of firearms, offensive weapons or explosives
- against the *Bail Act 1980* (for example, failing to appear in court as required).

## Things to bear in mind

In most situations, the onus is on the prosecutor to demonstrate the defendant should not be granted bail. However, in a ‘show cause’ situation, the onus is reversed, and the defence must prove the defendant is not an unacceptable risk for bail.

In the court proceedings, the defendant or legal representative speaks first, followed by the prosecutor. It may be more difficult for the defendant to obtain bail in these circumstances.

In circumstances where the defendant is in a ‘show cause’ situation and bail is granted, reasons must be given as to why bail has been granted. Also, bear in mind that in determining the issue of bail, a court may make such investigations on oath or affirmation concerning the defendant as ‘the court thinks fit’.

There is a restriction on this power as the defendant or other persons are not to be questioned or queried about the charge or charges before the court. This allows you to seek information, beyond that which has been put before the court, so a fully informed decision can be made.

For example:

- two ‘sitting’ JPs grant a defendant bail with a residential condition
- the JPs may adjourn the court, remanding the defendant in custody, so police may check the address as to its suitability
- the sitting JPs may also adjourn the court to allow the owner or occupant of the home to appear before the court so they can satisfy themselves the proposed address is suitable.

## Frequently asked questions

### What powers do I have with relation to court duties?

The *Justices of the Peace and Commissioners for Declarations Act 1991* states your power is limited to ‘taking or making a procedural action or order’.

Your power in the Magistrates Court is therefore limited to:

- determining bail for a person charged with an offence
- adjourning a matter to another date.

Under the *Domestic and Family Violence Protection Act 2012*, you also have powers in the Magistrates Court. Section 137 grants two JPs the authority to make consent protection orders and temporary protection orders in the Magistrates Court, namely:

- an application to make or vary a temporary protection order if a magistrate is not readily available to constitute a Magistrates Court
- an application to adjourn a proceeding taken with a view to making a domestic violence order against a respondent.

Two JP (Qual) may also deal with an existing application for a domestic violence order or make a domestic violence order relating to the offence and to which the offender is the respondent.

### Where can I get more information?

Queensland Courts

[www.courts.qld.gov.au](http://www.courts.qld.gov.au)

Queensland legislation

[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)