

6.5 Hearing a bail application

How do I conduct a bail hearing?

Though one JP (Qual) can, in most circumstances, constitute a court to deal with a bail application, it is recommended two do so whenever possible.

1. Indicate to the prosecutor that you and your fellow JP are ready to commence. Sitting JPs are referred to as 'Your Honour' when convening a Magistrates Court.
2. The prosecutor (or clerk, in some cases) will open the court by stating, 'Silence, all stand please. This Magistrates Court is now open'.
3. Proceed to your places at the bench and face the body of the courtroom, bow slightly to the assembled persons and then take your seat.
4. The prosecutor will then say, 'You may be seated', and the rest of the people in the courtroom will sit.
5. Greet the parties before the court and then request the parties to announce their appearance for the record. The prosecutor will say words similar to:

.....

'Good morning, Your Honours. My name is Prentis, initials WJ, a Senior Constable of police stationed at the Brisbane Prosecution Corps, and I appear for the prosecution.'

.....

The defendant's legal representative should then announce his or her appearance in the following manner:

.....

'Good morning, Your Honours. My name is McKenzie, initials BA. Solicitor for the firm of McKenzie and McKenzie, and I appear representing the defendant.'

.....

6. You should reply 'thank you', and then ask the prosecutor which matter is to be dealt with.
7. Ensure the necessary paperwork is in front of you. This should either be a bench charge sheet or a bench complaint sheet.
8. Read the charge/s to the defendant to ensure the defendant and their legal representative are fully aware of the charge. The defendant's legal representative may waive this right by stating, 'We take the charge as read'. If the defendant is not represented, you must read the charge in full and ask the defendant if they understand the charge.
9. Inform the court the matter must be adjourned to a date when a magistrate is available. The defendant may at this time indicate whether or not a plea will be entered and, if it is, you must note it on the court file.
10. Request a date from the prosecutor when a magistrate will be available to deal with the defendant. Check with the defendant as to the suitability of the date. Remember the court's time is limited, so there must be a substantial reason for the defendant not to accept the next available date.
11. Determine if the defendant is already on bail from either the watch-house or a previous appearance in court. If the defendant is already on bail, it is normal to extend the bail undertaking until the next available date as advised by the prosecutor.

12. Address the prosecutor in the following terms:

.....
'Mr/Madam Prosecutor, has this court jurisdiction to grant bail, and what is the position in relation to bail for this defendant?'
.....

The prosecutor will then advise the court whether or not bail is opposed, and if you have the power to grant bail. There are some serious offences for which only the Supreme Court can grant bail.

13. If the prosecutor does not oppose bail, you should grant bail to the defendant with terms and conditions you believe are suitable—not just what the police are asking for. You should take into account the nature of the offence and the defendant's character and antecedents.
14. If bail is opposed, you should ask the prosecutor to outline the reasons for their opposition to the defendant's release.
15. The defendant or legal representative is requested to address you on the reasons why bail should be granted.
16. Once you have heard submissions from both the prosecution and the defendant, they should stand the matter down and adjourn the court for a short time. You and your fellow JP should leave the courtroom to discuss in private whether or not to grant bail and, if so, upon what terms.
17. You should then remand the defendant to the next available date for the charge to be determined, and grant bail accordingly. If you decided bail is not to be granted, you and your fellow JP must issue a warrant remanding the defendant in custody to appear before the court at the date, time and place appointed in the warrant. Your reasons for refusing bail must be written on the court records. You must advise the defendant, if bail is refused, they may make further application to a magistrate.
18. Note on the court records all the actions you have taken, and keep notes of the proceedings if bail was opposed, including submissions by both the prosecution and the defence.
19. Unless there are more defendants, the court should be closed by the prosecutor in the following terms: 'Silence. All stand please. This Magistrates Court is now closed.' You should then leave the courtroom and arrange with the courthouse staff to deal with any other paperwork to be completed before you leave the courthouse.
20. Make an entry in your logbook of your appearance on the bench.

Things to bear in mind

You should be familiar with the terms used at bail hearings.

Court

A magistrate, a JP (Mag Ct) or two JPs (Qual) can constitute a Magistrates Court.

Prosecutor

The person who acts on behalf of the Crown in the case before the court is called the prosecutor. The prosecutor—who will either be a police officer, a private prosecutor employed by police or an officer from the Office of the Director of Public Prosecutions—presents the evidence to the court.

Defendant

The person charged with the offence is called the defendant.

Remand

Remand is the term used when a defendant's case is put off to another time. The defendant is said to be 'remanded'.

Adjournment

The matter is ‘adjourned’ when the court puts it off until another day. The court grants an adjournment when it postpones the hearing of the matter. The matter is adjourned and the defendant is remanded.

Bail

Bail is an undertaking by a defendant who is released from custody to observe certain conditions and to reappear before the court when required to do so.

Security

This is a condition of bail when the court orders something (usually cash) to be lodged with the court as a guarantee the defendant will reappear on the due date.

Surety

This is a condition of bail where the court orders a third person to guarantee the defendant will appear in the court on the due date. It also orders the third person to forfeit a sum of money if the defendant fails to honour their bail.

Show cause

The court calls upon the defendant to show cause why their bail should not be revoked and why they should not be placed in custody if they fail to keep any of the conditions of the bail.

Affidavit of justification

A person providing a surety for the defendant must also provide an affidavit of justification to the court before the court will accept that person’s surety. An affidavit of justification is a document that sets out the person’s relationship to the defendant and their financial status, and includes a declaration that, if the court subsequently requires the forfeit of the surety, the loss of the sum of money forfeited would not be ruinous or injurious to their livelihood.

Undertaking as to bail

This is the formal document whereby the defendant undertakes to follow the conditions of bail, including surrendering to the court on the date set for the resumed hearing of the matter (see end of chapter for sample).

Enlarging bail

A court may enlarge an existing bail by extending the date of appearance to another date in the future.

Breach of bail

A defendant is said to ‘breach’ his or her bail by failing to obey one of the conditions of the bail. This would include failing to appear on the due date for the continuation of the hearing.

You should also be familiar with how the people involved are addressed.**Prosecutor**

A prosecutor is addressed by his or her rank if they are a police officer, otherwise they are addressed as Mr, Mrs, Miss or Ms. They may also be addressed as Mr Prosecutor or Madam Prosecutor.

Defendant

The defendant can be addressed as ‘defendant’ but is normally addressed by his or her name. Their legal representative is called by his or her name.

When on the bench, magistrates are addressed as ‘Your Honour’ and JPs are addressed as ‘Your Honours’ or ‘Honours in the court’.

Frequently asked questions

How is the defendant brought before the court?

1. An offence is committed.
2. Police investigate the offence.
3. A suspect may be brought before the court by:
 - a. arrest with or without a warrant (either in custody or on bail granted by the watchhouse)
 - b. the issue of a summons by a JP
 - c. the issue of a notice to appear by the police.
4. On the first appearance in court, the defendant will either be in custody if arrested, on bail from the watchhouse, or responding to a summons or a notice to appear.

The matter must be adjourned to a date when a magistrate is available to constitute a court.

What if I know the defendant?

If you know the defendant personally or are related to them, you must disqualify yourself from hearing the matter.

Where can I get more information?

Queensland Courts

www.courts.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Forms

These forms are not publicly available.

Sample form

Form 7—Undertaking as to Bail (page 1 of 2)

FORM 7
QUEENSLAND
Bail Act 1980
Section 20(1)

File Number: _____

UNDERTAKING AS TO BAIL

Particulars of Defendant and Conditions of Bail

Defendant:
Date of Birth: _____
Residential Address: _____
Occupation: _____

Offence/s:

File No.	Chg No.	Section	Act/Legislation	Offence	Date of Offence	Place of Offence

The conditions of bail are :

(a) I must appear and surrender into custody of the Magistrates Court at:-
Place: _____
Date: _____
Time: _____

(b) I must not depart from the Court, unless bail is enlarged.

(c) I must obey the directions of the Court in relation to any further appearance whether the directions are given to me personally or to my counsel or solicitor

Undertaking of Defendant

I enter into this Undertaking as to Bail and acknowledge receipt of a notice in Form 8 setting forth the nature and extent of my obligations under the conditions of my bail and the consequence of my failure to comply with these conditions.

Signature of Defendant

Section 20(5)(a)
Certificate of person before whom undertaking is made

I have satisfied myself that the defendant understands the nature and extent of the obligations under the conditions of the bail and the consequences of the defendant's failure to comply with them.

Undertaking entered into on:
Date: _____
Place: _____
In the State of Queensland before me:

Signature
Justice of the Peace

Insert your seal of office or your prescribed mark of office and insert your registration number beside or below your signature

Form 7, Version 2, 30 July 2007 Page 1 of 2

Sample form

Form 8—Notice to Defendant of Undertaking as to Bail (page 2 of 2)

Form 8
QUEENSLAND
Bail Act 1980
Section 20(5)(b)

NOTICE TO DEFENDANT OF UNDERTAKING AS TO BAIL

If you fail to appear and surrender into custody in accordance with the undertaking without reasonable cause or break any other condition of the undertaking you will commit an offence that is punishable by fine or imprisonment. A warrant may issue for your apprehension.

Where a court is satisfied that you failed to appear and surrender into custody before the court in accordance with the undertaking, the court may declare the undertaking to be forfeited. If forfeiture is declared, any deposit of money or other security provided by you as stated in the undertaking may be forfeited and paid to Her Majesty. In addition, any deposit of money or other security provided by the surety or sureties as a condition of bail may become forfeited and paid to Her Majesty.

It is lawful for a police officer to arrest you, without warrant, if a police officer reasonably suspects –

- (i) you are likely to contravene, are contravening or have contravened a condition of the undertaking;
- (ii) a surety has given to a police officer written notice stating the surety wishes to be relieved of the obligation of being a surety for you because the surety believes you are likely to contravene the condition for your appearance;
- (iii) you are directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which you have been released on bail

A surety may, with the assistance of a police officer, at any time before you are required to appear and surrender into custody in accordance with your undertaking, apprehend you and bring you before the court before which you are required to appear if the surety is concerned you may not honour your undertaking as to bail or has become aware of a breach by you of a condition of your undertaking

NOTICE TO SURETY OR SURETIES OF UNDERTAKING AS TO BAIL
[This section only applies to matters involving a surety or sureties.]

The custody of the defendant has been entrusted to you on the essential obligation to produce him/her before the court to answer the complaint or charge. It is a serious obligation and one that should not be treated lightly. If you fail to take all reasonable steps to secure the attendance of the defendant before the court, any deposit of money or other security provided by you as a surety may become forfeited and paid to Her Majesty.

Where a court is satisfied that the defendant has failed to appear and surrender into custody before the court in accordance with the undertaking, the court may declare the undertaking to be forfeited. If forfeiture is declared, any deposit of money or other security provided by you as a surety may become forfeited and paid to Her Majesty.

If you are seeking to be discharged from liability with respect to the undertaking you may apply to the court at any time before a condition of the undertaking is broken by the defendant, or the defendant is arrested pursuant to section 367 of the *Police Powers and Responsibilities Act 2000*.

If you are concerned that the defendant may not honour his/her undertaking as to bail or you become aware of a breach by the defendant of a condition of his/her undertaking you may, at any time before the defendant is required to appear and surrender into custody in accordance with his/her undertaking apprehend the defendant and bring the defendant before the court before which the defendant is required to appear. A police officer shall, if required by the surety to do so, assist the surety in the apprehension.

Signature of person before whom undertaking is given

Insert your seal of office or your prescribed mark of office and insert your registration number beside or below your signature

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Quick guide

Follow these steps to conduct a bail hearing

1	Tell the prosecutor or clerk that you and your fellow JP are ready to commence.
2	The prosecutor or clerk will open court.
3	Take your seat after bowing slightly.
4	The prosecutor or clerk will invite people in the courtroom to sit.
5	Greet the parties before the court and ask them to announce themselves.
6	Thank the parties and ask the prosecutor for the matter to be dealt with.
7	Check you have the relevant bench charge sheet or bench complaint sheet.
	Read the charge to the defendant to ensure the defendant understands the charge.
8	a. If the defendant has legal representation, they can waive the right to read the charge. b. If the defendant does not have legal representation, you must read the charge out loud in full and check they understand it.
9	Announce the matter will be adjourned to a date when a magistrate is available.
10	Ask the defendant if they wish to enter a plea, and note the answer on the court file.
11	Determine if the defendant is presently on bail.
12	Ask the prosecutor if bail is opposed or if you have the power to grant it.
13	If the prosecutor does not oppose bail, grant bail with terms and conditions you believe are suitable for the offence and the defendant's character.
14	If the prosecutor opposes bail, ask why.
15	Ask the defendant or their legal representative to explain why bail should be granted.
16	Adjourn with your fellow JP to consider the submissions. a. It is common practice to continue bail if bail has already been granted.
	Remand the defendant to the next available court date and announce your decision regarding bail.
17	a. If you decide not to grant bail, you must issue a warrant remanding the defendant in custody, note your reasons and invite the defendant to apply to a magistrate.
18	Note on the court record all of your actions and note submissions if bail was opposed.
19	Unless there are more defendants, the prosecutor or clerk should close court.
20	Enter relevant details in your logbook.

