

## 6.4 Granting and refusing bail

### What is bail?

Under the *Bail Act 1980* (the Act) bail is a written promise made by a defendant to the court (called an undertaking) that they will attend court on the adjourned date.

Usually, the defendant is released on their own undertaking to reappear in court.

Sometimes a third person will give a 'surety' – a guarantee the defendant will appear in court on the adjourned date as outlined in chapter 6.6.

### Why is bail usually granted?

Bail is usually granted because there is a period of time before the case can be heard and finalised. Being held in custody during this waiting period is a serious limitation 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* (the JP Act) and the *Justices Act 1886*, if no Magistrate is available, you and another JP have the power to:

- hear an application for bail
- seek information about the defendant to enable you to decide whether 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.

There is a general presumption a person should be granted bail unless they should remain in custody for their own protection or there is an unacceptable risk the defendant will either:

- fail to appear on the adjourned date
- commit further offences
- endanger other people, themselves or any other person
- interfere with witnesses.

### How do I decide on the defendant's suitability for bail?

You are authorised to make any necessary inquiries about the defendant to determine their suitability for bail. The following are factors you may, but are not limited to, consider:

- the nature and seriousness of the offence
- the defendant's character and background 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 granting of bail
- the strength of the evidence against the defendant
- whether a surety is necessary or a cash deposit
- if the defendant has been charged with a domestic violence offence or offence against the *Domestic and Family Violence Protection Act 2012* (DFVP Act), the risk of further domestic violence or associated domestic violence.

You should refuse bail if, on any of these grounds, the defendant seems unsuitable.

## What bail conditions can I impose?

The Act allows many types of conditions to be a part of the bail undertaking. Examples include, but not limited to:

- reporting condition – defendant must 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 their residence between certain hours
- surrender passport – defendant ordered to surrender their passport to court
- cash bail – defendant is ordered to pay cash to the 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.

## Refusing bail

If you refuse to grant bail, you must remand the defendant in custody, and a remand warrant must be prepared and signed by both you and the other JP who sits with you. The 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.

## 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 is a 'show cause' situation?

When deciding on whether to grant bail the defendant must show you why they should get bail and not stay in jail when they have been charged with an offence while they are on bail or where they have been charged with an offence, including, but not limited to:

- a breach of a domestic violence order and the offence involved violence to a person
- the use of firearms, offensive weapons or explosives
- threatening violence, stalking, deprivation of liberty if the offence is also a domestic violence offence
- threatening or using a weapon when committing an offence
- against the Act e.g. failing to appear in court as required.

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

The JP Act 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 DFVP Act, you together with another JP also have 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 protection order against a respondent.

Two JPs may also deal with an existing application for a domestic violence protection order or make a domestic violence protection 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)