

## 6.5 Hearing a bail application

### How do two JPs conduct a bail hearing?


1. Indicate to the prosecutor that you are both 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 <surname>, initials <xx>, a <rank> of police stationed at the <location> Prosecution Corps or <police station>, and I appear for the prosecution.’*

The defendant’s legal representative should then announce their appearance in the following manner:

*‘Good morning, Your Honours. My name is <surname>, initials <xx>. Solicitor for the firm of <name of firm>, and I appear representing the defendant.’*

You should reply ‘thank you’, and then ask the prosecutor which matter is to be dealt with.

6. Ensure the necessary paperwork is in front of you. This should either be a bench charge sheet or a bench complaint sheet.  
Read the charge(s) to the defendant to ensure the defendant and their legal representative are fully aware of them. The defendant’s legal representative may waive this right by stating, ‘We take the charge as read’.  
 **Note:** If the defendant does not have legal representation, you must read the charge in full and ask the defendant if they understand the charge.
7. 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.  
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.
8. Determine if the defendant is already on bail from either the watchhouse 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.

9. Address the prosecutor by name and rank or the same way they announced their appearance and ask the following:

*‘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.

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 as outlined in chapter 6.4.

If bail is opposed, you should ask the prosecutor to outline the reasons for their opposition to the defendant’s release.

The defendant or legal representative is requested to address you on the reasons why bail should be granted.

10. Once you have heard submissions from both the prosecution and the defendant, you 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.

If you decide to grant bail, you both should:

- advise the defendant if there are any bail conditions
- remand the defendant to the next available date for the charge to be determined, and grant bail accordingly
- note on the court records:
  - all actions you have taken
  - record of proceedings, including submissions made by the prosecution and defence
  - the conditions under which bail is granted.

If you decide not to grant bail, you both must:

- issue a warrant remanding the defendant in custody to appear before the court at the date, time and place appointed in the warrant.
- note on the court records:
  - all actions you have taken
  - record of proceedings, including submissions made by the prosecution and defence
  - your reasons for refusing bail.
- advise the defendant they may make further application for bail to a Magistrate.

11. 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 coordinate any other paperwork to be completed before you leave the courthouse.

12. Record all relevant information in your logbook as outlined in chapter 2.4.

## Things to bear in mind

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

#### 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.

#### Affidavit of justification

As outlined in chapter 6.6, 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.

#### 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.

#### Breach of bail

A defendant is said to 'breach' their 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.

#### Court

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

#### Defendant

The person charged with the offence.

#### Enlarging bail

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

#### Remand

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

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

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

### **Prosecutor**

A prosecutor is addressed by their rank and surname if they are a police officer, otherwise you should address them the same way they announced their appearance to you at the commencement of the matter.

### **Defendant**

The defendant can be addressed as 'defendant' but is normally addressed by their name.

### **Legal representatives**

A legal representative is called by their name.

### **Magistrates and Justices of the Peace**

When on the bench, Magistrates are addressed as 'Your Honour' and JPs are addressed as 'Your Honours' or 'Honours in the court'.

## **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:
  - arrest with or without a warrant (either in custody or on bail granted by the watchhouse)
  - the issue of a summons by a JP
  - 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.
5. 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](http://www.courts.qld.gov.au)

### **Queensland legislation**

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