



Victorian
Law Reform
Commission

HAVE
YOUR
SAY
ABOUT

Bail Law



SEEKING THE VIEWS OF VICTIMS OF CRIME

Tell us what you think

We want to know what you think about bail law. Please answer the questions in this brochure or just tell us about your experience as a victim with bail law by:

Email: law.reform@lawreform.vic.gov.au
Please mark it 'Bail Reference'.

Post: Bail Reference
Victorian Law Reform Commission
GPO Box 4637
Melbourne Vic 3001

Phone: Freecall 1300 666 555, or TTY 1300 666 557
Ask to speak to a researcher working on the Bail Reference.

Fax: (03) 8619 8600
Please mark it 'Bail Reference'.

Visit: Level 10/10–16 Queen St, Melbourne (near Flinders St)
Please ring first to make an appointment with a researcher working on the Bail Reference.

What is the Law Reform Commission?

The Law Reform Commission was established by the government to look at ways to improve Victoria's laws.

It receives its project topics from the Attorney-General but otherwise operates independently of the government.

Nine people sit on the commission, including judges, academics and lawyers.

Commission staff try to talk to as many people as possible who are affected by the laws under review so that the commission's recommendations for change reflect people's lives.

Bail review

The Victorian Government has asked the Law Reform Commission to review the state's bail law. As part of this review, the commission is looking at the protection of the public, including victims of crime.

The commission has written a detailed consultation paper which explains current bail law. Copies of this are available by calling or emailing us.

This brochure explains how bail law can affect victims of crime and asks you what can be done to make the experience easier for victims.

We'd like you to think about the questions asked in this brochure and send us your answers. You don't have to answer every question and you can also let us know what you think about other issues—even if we haven't asked about them—the questions are only a guide.

DEADLINE FOR RESPONSES: 31 JANUARY 2006

Contributors

Division

Marcia Neave AO (Chairperson)

Her Honour Judge Jennifer Coate (Commissioner)

Her Honour Judge Felicity Hampel (Commissioner)

Reference team

Angela Langan (Team Leader)

Daniel Evans (Policy & Research Officer)

Siobhan McCann (Policy & Research Officer)

What is bail?

A person who is in police custody and has been charged with a crime may be released on bail. Bail is the system our courts use to make sure someone turns up to court on a particular date. A person's guilt is not decided until the case reaches a court.

The law says that a person who has been accused of a crime is innocent until proven guilty. It is for this reason that it is important to avoid holding an accused person in custody until the trial, which may take a long time. Bail law tries to strike a balance between the rights of the accused person and the rights of the community and victims by releasing accused people on bail until their trial, except in situations where there is a real risk of them re-offending or not coming to court.

When the police have evidence that a person has committed a crime, they may **charge** that person.

A charge is a document which the police use to allege that a person has committed a crime.

Generally only the police will charge a person with a crime. Once a person has been charged, police may have to gather more evidence, look for witnesses and send evidence for scientific testing. This usually means that people can wait for weeks or months before the charge is heard in court.

Accused people can apply for bail at any stage between being charged and when their charge is finally heard in court. If they are refused bail, they can apply again at any time if they are able to tell the court about 'new facts and circumstances'.

An accused person is someone who has been charged with a crime.

In most cases, the accused person will have to go to court when the charge is heard. Under Victorian law there are three ways to make sure a person appears in court:

- **summons**—a summons is a document that tells accused people what they have been charged with and when they have to appear in court;
- **arrest, charge and remand**—the police may arrest accused people, charge them with an offence and then put them into **remand**; or
- **arrest, charge and bail**—the police may arrest accused people, charge them and grant them bail.

Remand means that the accused person is held in custody until a court appearance.

Who decides whether to grant bail?

Bail can be granted by a police officer, a **bail justice**, a magistrate or a judge.

After a person is charged, a police officer of the rank of sergeant or above must decide whether or not to grant bail. The officer may grant the accused person bail with or without **conditions**.

If the officer decides not to grant bail, he or she must quickly arrange for the accused person to see either a bail justice or a magistrate. The reasons for refusing bail must be written in the accused person's file.

If a police officer grants bail on conditions and the accused person does not agree with the conditions, then the officer must arrange for the accused person to see a bail justice or a magistrate.

Bail justices may set whatever conditions they think are appropriate when granting bail. When bail justices refuse bail, accused people are remanded until the next court day when they can apply for bail again. This is usually heard in a Magistrates' Court.

When people are charged with murder, usually they can only be granted bail by applying to the Supreme Court; neither the police nor bail justices can grant bail. People accused of murder are remanded until the bail application can be heard by a Supreme Court judge.

A bail justice is a trained volunteer who decides whether to grant bail when a court is not available; this usually means overnight and on weekends.

Sometimes accused people are only given bail if they follow certain conditions, for example staying away from certain people or places, or participating in a drug withdrawal program.

Victims of crime—what the law says

Victims of violent crimes, such as sexual offences and family violence, may be particularly interested in bail decisions.

The Bail Act says that bail should be granted unless there is an ‘unacceptable risk’ that accused people will endanger members of the public, interfere with witnesses, commit crimes or not show up to court if they are released. In some cases, the Act makes it more difficult for a person to be granted bail for some crimes. This is explained in more detail below under ‘refusing bail’.

HOW VICTIMS CAN INFLUENCE BAIL DECISIONS

The Bail Act also says that courts and bail justices should consider a victim’s point of view when deciding if there is an unacceptable risk. The victim’s views will usually be explained to the court or bail justice by the police. Occasionally, the police may call a victim as a witness in a bail hearing before a court.

Police and court staff have told the commission that police officers are good at telling the court or bail justice about how victims feel about bail being granted.

? Do you agree that the victim’s point of view is well represented at bail hearings? If not, how *should* the victim’s views be heard at bail hearings?

The risk to victims is only one factor that bail decision makers must consider in deciding whether to grant bail. They must also consider the seriousness of the crime, the background of the accused person and whether bail has been granted before. For example, if bail has been granted before, did the accused person comply with the bail conditions and turn up at court?

* CASE STUDY 1—Sam and Bill

Bill went to the police and said that a friend of his, Sam, had become drunk and abusive while they were out together and punched him in the face, breaking his nose. The police arrested Sam and charged him with assault. They then released him on bail until his case could be heard in the Magistrates’ Court. One of the conditions of Sam’s bail was that he stay away from Bill.

Bill was surprised and frightened when he found out Sam had been released because he thought Sam might punish him for reporting the assault to the police. He was also upset that the police had not told him about Sam’s release.

Sam was released because he did not have a history of violent behaviour.

WHAT ARE BAIL CONDITIONS?

Bail decision makers must also decide whether to impose conditions upon the accused, and what these should be. They might require the accused to behave in particular ways or avoid contact with particular people, such as victims or other witnesses.

Conditions may also include a requirement that someone provide a **surety** for the accused. The court can decide to keep this surety if the accused does not appear in court.

SUPPORT SERVICES FOR PEOPLE RELEASED ON BAIL

Courts often make bail conditions which order an accused person to use support services. The Melbourne Magistrates’ Court has a program called the CREDIT—Bail Support Program that helps accused people with problems such as homelessness, unemployment and drug addiction, and helps them find alternatives to crime. People providing support services will also monitor accused people to make sure they follow their bail conditions.

REFUSING BAIL

‘Show cause’

The Bail Act makes it more difficult to grant bail if a person has been accused of particular kinds of crimes. For example, if people are charged with stalking or breaching an **intervention order**, the Bail Act says they should not be released unless they can ‘show cause’, in other words, provide good reasons why they should be released. Such reasons may include needing to go to work or needing medical treatment.

A surety is a person, or group of people, who put up money or property on behalf of the accused person. Sometimes bail is not granted unless a surety is provided.

An intervention order is a court order that usually prohibits a person behaving in a particular way, for example, from going near or contacting a particular person or going to a particular place. Intervention orders may be for a particular period of time or indefinite. It is a crime to disobey the court by breaching an intervention order.

* CASE STUDY 2—Elizabeth and Ernie

Elizabeth separated from Ernie and got an intervention order that prevented him from coming near her. The order was granted because Ernie hit Elizabeth when they were still living together. One Friday night, Ernie went to Elizabeth's flat to talk about seeing their children because he was unhappy about their custody arrangement. Ernie and Elizabeth argued and Elizabeth claimed Ernie became very angry and threatened to hurt her if she didn't do as he said. Elizabeth called the police. The police arrived at Elizabeth's flat and arrested Ernie and charged him with breaching his intervention order. Ernie told police he would lose his job if he was not granted bail. The police granted Ernie bail on the condition that he would not go near Elizabeth.

Because Ernie had breached the order and because he had previously been violent towards Elizabeth, the law required him to show why he should be released on bail. In Ernie's case, the police had to decide whether to grant him bail based on whether he was likely to hurt Elizabeth and whether he could lose his job.

BAIL CONDITIONS AND INTERVENTION ORDERS

In some cases, like Elizabeth and Ernie's, a person may have to follow both bail conditions and an intervention order. Bail conditions will usually be the same as those in an intervention order. However, the commission is worried that sometimes the conditions of an intervention order conflict with bail conditions.

? Have you had problems with bail conditions conflicting with intervention orders?

'Exceptional circumstances'

The law says it should be more difficult for an accused person to be released on bail for crimes such as murder and drug trafficking. The Bail Act says the court must be satisfied that there are 'exceptional circumstances' that justify releasing the accused person in these cases. Exceptional circumstances could include a serious medical illness or sole responsibility for the care of children or invalids.

Even though the law defines 'show cause' and 'exceptional circumstances' differently, it seems that in practice there is often no real difference between the kinds of circumstances accused people cite in either situation. Some people have said that the list of crimes which lead to a 'show cause' or 'exceptional circumstance' bail application is not logical.

* CASE STUDY 3—Hugh

The police arrested Hugh on a farm as he was entering a hothouse filled with over 150 cannabis plants. Hugh denied any knowledge of the cannabis and claimed he was there to pick vegetables. While there were vegetables growing on the property, they were not in the hothouse that he was seen entering. On the same day, police arrested another man on the same farm, Mark, who admitted to growing the cannabis. He told the police that Hugh was also involved. Hugh was arrested and charged and refused bail by the police. Hugh's lawyers applied for bail in the Magistrates' Court.

During his bail hearing, Hugh's lawyers argued that there were exceptional circumstances to justify Hugh's release on bail because:

- there was likely to be a long delay before the trial because police needed to collect and prepare evidence;
- Mark had been granted bail and it would be unjust not to grant bail to Hugh;
- Hugh suffered from chronic back pain and was receiving ongoing treatment for it;
- Hugh's wife was undergoing an intensive course of chemotherapy for breast cancer and Hugh was her primary carer.

Due to the combination of all of these factors, Hugh was granted bail by the magistrate.

WHEN IS BAIL MOST COMMONLY REFUSED?

As you can see, even in situations where the law makes it more difficult to grant bail, it may still be granted because of personal circumstances. Accused people are more likely to be refused bail if they have committed crimes in the past, not followed past bail conditions or not attended court on previous charges. If Hugh had been convicted of crimes in the past or had broken bail conditions, the court may have refused bail.

? Do you think it should be harder for people to be granted bail for some crimes? If so, which crimes and why?

WHAT POLICE HAVE TO TELL VICTIMS

The Victoria Police manual instructs police officers to tell victims if an accused person has been granted bail. The police sex assault manual requires police officers to tell victims about the progress of investigations and decisions made in their cases, and the police family violence code of practice requires police to tell victims if an offender has been bailed or dealt with in some other way.

These are all police policies, they are not legal requirements. There is no legal requirement that police keep victims informed about the bail process. Police have told us they do not always have the time or enough staff to tell victims about what has happened to a particular accused person. Also, police may not be able to talk to victims because they have been seriously hurt or because the crime is old and the police cannot find them. In these cases, it will be hard for victims' views to be considered when making bail decisions.

* CASE STUDY 4—Betty and Michael

One night when Betty was in bed, a man broke in to her flat. When Betty woke up and surprised him, he knocked her to the ground, breaking her wrist and one of her ribs. The man took the TV and left.

Michael was arrested by the police and Betty identified him in a line-up. He had prior convictions for burglary and drug possession, but had not previously been charged with assault. Michael was refused bail by the police but his lawyer argued in the Magistrates' Court that he should be granted bail because of the lack of evidence against him and his good family support.

Michael was released on bail on the conditions that he stay with his parents until the trial and participate in the Magistrates' Court drug rehabilitation program. When Betty found out that Michael had been released, she was surprised and frightened that he might harm her again. She was also angry that the police had not told her. Betty had not told the police that she wanted to be kept informed about Michael, but thought they would know how important this would be for her.

? **Should the police have contacted Betty to tell her that Michael had been released? If so, do you think police should always contact victims of crime, no matter what the crime? Should Betty have had to tell the police that she wanted to be told about what happened to Michael?**

Should the police have explained to Betty why bail was granted and what the conditions were?

DEVELOPMENTS IN VICTORIA

The Victorian Government recently said victims should be treated with compassion and respect, that they should be informed about the legal process and be allowed to have their say.

The government has recently established a Victims Support Agency (VSA). The VSA is responsible for developing and delivering services to victims of crime in Victoria. The VSA has drafted a Charter of Victims' Rights that sets out principles for the treatment of victims of crime.

The draft charter says that victims should be kept informed about the outcome of bail and bail conditions, as well as any special conditions intended to protect victims and their families. The draft charter allows victims who feel their rights have been breached to lodge complaints against a criminal justice agency (such as the police or the courts) or a victims' service.

The VSA is currently asking people what they think of the draft charter. A copy of the draft charter is available from the Department of Justice website (www.justice.vic.gov.au) if you would like to make a comment.

? **What do you think about what the charter says about victims and bail? Do you think these provisions should be included in legislation or is the charter enough?**

WHAT HAPPENS IN OTHER STATES?

	Victims' rights legislation	Victims' Charter or other non-legislative document	Law requires police to inform victims of bail proceeding outcomes	Victims' view or interests taken into account when making bail decision	Presumption against bail in situations of family violence
Victoria				✓	✓
Australian Capital Territory	✓		✓	✓	
New South Wales	✓	✓	✓	✓	✓
Queensland	✓		✓	✓	
Northern Territory					
Western Australia	✓		✓	✓	✓
South Australia	✓	✓	✓	✓	
Tasmania					✓



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GPO Box 4637
Melbourne Victoria 3001
Australia
DX 144 Melbourne, Vic

Level 10
10–16 Queen Street
Melbourne Victoria 3000
Australia

Telephone +61 3 8619 8619
Facsimile +61 3 8619 8600
1300 666 555 (within Victoria)
TTY 1300 666 557
law.reform@lawreform.vic.gov.au
www.lawreform.vic.gov.au