

## **BAIL APPLICATION LAWYERS MELBOURNE**

### **If You Have You Been Charged with an Offence and You Want to Make a Bail Application, Contact Us - We are Leading Criminal Lawyers in Victoria**

The relevant legislation and processes that must be considered when making a bail application is complex, confusing and technical. In addition, the amount of evidence and the number of aggravating and mitigating factors that must be considered in deciding whether or not to grant the bail application means being well prepared and seeking legal advice from us as soon as possible before facing a Court is critical to us helping you receive the most favourable outcome.

MK Law has a team of expert criminal defence bail application lawyers across our 4 offices (Melbourne, New South Wales, South Australia and Western Australia) who have represented thousands of parties with bail applications. Our Offices are located within a short distance from the Magistrates Court, which reduces time and stress when you engage us to work through your bail application. We understand the emotional impact associated with being imprisoned without notice. We appear in Court daily and know what works. This means we are well equipped in navigating this complex environment of the law to work through the particular legal processes, procedures and factors that guide the Court. We have your best intentions in mind to help defend you and persuade the Court to grant the application.

During our confidential consultations, we:

- Carefully listen to our clients' unique instructions to gauge a complete picture of your circumstances, consider all relevant factors and guide you through the bail application process
- Use professionalism and confidentiality to liaise and negotiate with a range of law enforcement (police officers, DPP and Courts) about the case and find out allegations against you, like whether you will be imprisoned and the evidence they have against you
- Discuss your prospects of making a bailing application
- Seek all disclosure items relevant to the case from the opposing parties (including issuing of subpoenas)
- Represent you with a strong defence and supporting materials to negotiate a successful bail application (to avoid immediate imprisonment)

Our Lawyers regularly attend professional development training to ensure we are up to date with the latest law in the area.

Contact our experienced team of criminal defence bail application lawyers for free legal advice 24/7 on 1800 130 120 or [marcus.mklawfirm.com.au](http://marcus.mklawfirm.com.au).

### **What is a Bail Application?**

A bail application is provided for by the *Bail Act 1977* (Vic) (BA). A bail application arises as a result of being charged by police with a criminal offence.

A range of different tests apply to whether or not a bail application should be accepted, including “unacceptable risk”, “compelling reasons” (forceful, convincing and powerful circumstances if you committed a Schedule 2 offence (*Re Ceylan* [2018] VSC 361; *DPP v Hughes* [2016])) - see [here](#) for what amounts to a Schedule 2 offence) and “exceptional circumstances” (including surrounding/personal circumstances or any special vulnerability) (see [here](#) for more information). The relevant test will depend on the type and number of offence/s you have been charged with.

Amendments were made to the BA in 2018, including the introduction of variations to bail conditions.

If your bail application is successful, police can release you on bail in your own undertaking (a promise you will return to Court on the date specified). If your bail application is unsuccessful, you will be taken to Court where you may choose to make a bail application and you must show your remand was not justified.

Bail applications are more often than not refused by Courts, particularly for highly violent offences (like family violence). This probes the question, are defendants being imprisoned without receiving the right to a fair hearing?

Bail offences include:

- Failing to answer bail
- Indemnifying surety
  - A surety is a person who accepts responsibility and promises the Court they are accountable for ensuring the defendant complies with their bail conditions
  - A surety can make an application to remove themselves at any time
  - Another surety or security must be found for Court attendance (the defendant will be reprimanded if this cannot be arranged)
    - If granted, the Court will issue a warrant for your arrest
  - The person undertakes to forfeit an amount of money if they breach a bail condition or do not appear at Court
  - The Court considers the following for a proposed surety:
    - Surety’s financial resources
    - Defendant’s character and previous convictions
    - Proximity to the person
  - Any breach may mean the surety amount is forfeited to the Court
- Committing an indictable offence whilst on bail
- Contravening certain conduct conditions
- Publishing evidence heard during a bail application in breach of a Court order

### **Accepting a Bail Application**

If you have been successfully granted bail, you are released from custody. However, many obligations are attached which you must follow. Any breach of a condition or committing a serious (indictable) offence (s 30B BA) may mean you are charged with a bail offence (contravening a condition of bail) and your bail may be withdrawn (s 30A BA). As such, you may be remanded back into custody.

Any bail condition/s can be **varied** if your current circumstances make it difficult/impossible to comply with them (like change of address). This requires an interested party (the defendant, police or DPP) to make an application to the relevant Court. If a surety is in place, the person who provided it must be notified and can be called to give evidence. In deciding whether to vary your bail condition/s, the relevant Magistrates/Judge will consider the seriousness of the charge/s, the defendant's character, nature and relationships, compliance with previous bails, the victim's thoughts about the variation and the strength of the prosecution's case.

Our Lawyers can assist with making an application to vary your bail conditions and/or arrange for you to be re-bailed if you have been charged with a bail offence.

### **Refusing a Bail Application**

If your initial bail application is refused, the defendant cannot be remanded for more than 21 days. The defendant can make another application. However, you must prove to the Court new facts and circumstances exist that demand you not to be reprimanded. This may include stable employment and/or accommodation, a surety and/or support structures (like rehabilitation with a genuine provider). If a subsequent bail application is also refused, the defendant cannot be remanded for more than a further 21 days.

You may also appeal the refusal which will proceed to a full hearing in the County or Supreme Court of Victoria.

### **Where Will my Bail Application be Heard?**

Bail applications are dealt with in the Magistrates, County and Supreme Courts of Victoria. The relevant Court who will deal with your bail application depends on which Court your criminal offence matter is before.

### **Penalties**

If you are found guilty of contravening a condition on your bail (see above), one of the following penalties will likely be imposed:

- Term of **imprisonment** (maximum **3 months**)
- **Financial fine** (maximum **\$4751.10**)

### **Children and Bail Applications**

Children who have been charged with a criminal offence can apply for bail. In many cases, bail may only be granted by the Court. This means the child must make a bail application to the Children's Court. In deciding whether or not to grant bail, the Court will consider:

- All alternative options to custody
- Ensuring bail conditions are not too onerous
- Strengthening and preserving the child's relationship with family, guardians and/or carers

- Desirability of having the child remain in their current living arrangements without disturbance
- Desirability of having the child attend school without interruption
- Reducing stigma from being remanded in custody
- Possible penalty imposed if found guilty of the offence

Our Lawyers can assist children of all ages and circumstances to make an application for bail in the Children's Court.

### **Recent Bail Application Cases**

- **Charges:** bail application for traffic and drug charges
- **Facts:** the defendant allegedly trafficked 15kg of cannabis and was in possession of a prohibited weapon (handgun) whilst driving their motor vehicle. The defendant engaged our lawyers to help prepare a bail application for them. We organised and filed testimony evidence from the defendant's father who submitted their daughter would live with them and they would closely monitor them. We also submitted evidence that supported the traffic allegation could not be made out against the defendant
- **Decision:** the Court granted bail. This was a very good outcome for traffic and drug charges
  
- **Charges:** bail application for family violence whilst on a community corrections order (CCO)
- **Facts:** the defendant was remanded in custody for an allegation of family violence (breaking their son's arm). The defendant was currently serving a CCO and they had a criminal history for similar offences, which in hindsight made their chances of being granted bail very slim. The defendant engaged our lawyers to help prepare a bail application for them. We organised and filed a range of strong evidence from the client to demonstrate why the defendant should not be remanded in custody
- **Decision:** the Court granted bail