

Bail: Tips, Tricks and Recent Changes

6 MARCH 2026

JENNY VAN VELDHUISEN

Decades long back and forth

1. 2007 VLRC recommendations – first comprehensive review
2. 2012-2013 – murder of Jill Meagher
3. 2015-2016 – terrorism concerns
4. 2017 – Bourke St attack
5. 2020-2023 – death of Veronica Nelson in custody
6. 2024 – 2025 – machetes, knife crime, home invasions...

Bail reforms – since March 2025

'first tranche'

1. Community safety as an overarching consideration in bail decisions (s 1B(1AA)).
2. Removal of the 'remand as a last resort' principle for children (s 3B(1)(b)).
3. New offence of committing an indictable offence while on bail (s 30B).
4. Expanded police powers to bring arrested persons directly to court in certain circumstances (s 24(2)).
5. New offence for contravening a bail condition.

Albert Park MP Nina Taylor said the first package passed in March is already working and remand numbers are up. 'As at 6 August 2025 there was an increase of over 26 per cent of remanded youth and over 27 per cent of remanded adults since the same time last year,' she said.

According to the state government, as of May 2025 there are 465 more people on remand in prison and 39 more young people on remand in youth justice, compared to April 2024.

Bail reforms – since Aug 2025 / Mar 26 'second tranche'

On 26 August 2025, provisions of the *Bail Amendment Act 2025 (Vic)* commenced, inserting new offences into Schedules 1 and 2 of the *Bail Act 1977*.

1. Schedule 1 has been amended to include armed robbery, aggravated burglary, home invasion and carjacking.
2. Schedule 2 has been amended to include a range of firearms offences – including theft, acquiring, possession and trafficking – along with modifications to existing provisions, such as a refinement of the offence of theft

The *Bail Further Amendment Bill 2025* proposes two specific changes that will make it harder to get bail (set to commence end of March '26):

1. The introduction of an 'uplift' provision for certain types of offending.
2. The introduction of a new 'high degree of probability' test.

The law – what we are dealing with

Remember: children (s 3B), Aboriginal persons (s 3A), guiding principles (s 1B), family violence (s 5AAAA)

1. Prima facie entitlement (s 4, 4AAA)
2. Show compelling reasons (s 4C)
 - Is charged with Sch 2 offences, or terrorism risk
3. Show exceptional circumstances (s 4A)
 - If charged with a Sch 1 offence, or terrorism record/risk, whilst on bail/summons/awaiting trial/CCO/parole for a Sch 1 or 2 offence

Then move on to...

1. Unacceptable risk (s 4E)

Surrounding circs are relevant to both... always a degree of overlap

Current jurisprudence

1. Re SL [2025] VSC 571 (Incerti J)
 - Discussion and application of the early 2025 amendments in relation to a 15 year old applicant
2. Re MMA (No 2) [2025] VSC 154 (Gorton J)
 - An extension of bail is a fresh app for bail
3. Re Mokbel [2025] VSCA 62 (Emerton P, Osborn JA, Dixon AJA)
 - Application for bail pending second conviction appeal, where applicant has several years of non-parole period left to serve
 - Comprehensive findings of fresh facts in reference determination; prospects of success in combination with other matters amount to truly exceptional circumstances
 - Availability of substantial bail guarantee and strict conditions including electronic monitoring
4. Re Cartledge [2025] VSC 177 (Taylor JA)
 - Particular discussion of the strength of the prosecution case, delay and the respondent's concession that the applicant did not pose an unacceptable risk of any of the s 4E(1)(a) conduct

How does a bail app run...?

- Explain the test
- Informant called
 - In the MC or CCV – they will often seek leave to read or rely on the summary.
 - Viva voce evidence will be lead by the prosecutor.
 - Different in the SCV. Affidavits required.
- Defence calls witnesses
- Submissions made.

XXNing the Informant

- Don't be shy – have a go
- Elicit positive evidence about the accused's personal circumstances, such as their living arrangements, mental and physical health issues, family, employment status etc
- Ascertain whether the informant is aware of any proposed conditions
- Sometimes, getting them to confirm the extent of the evidence / how the pros case is put (if there are some weaknesses there)

Evidencing your submissions

- See s 8 – the rules of evidence don't strictly apply, and the bail decision maker may receive and take into account any evidence which the bail decision maker considers credible or trustworthy in the circumstances
- HOWEVER – consider these statements:
 - “If he is not granted bail, the applicant’s wife will be unable to meet mortgage repayments and look after their three children.”
 - "He has work available 6 days a week with his uncle commencing 30 March."
 - "He is committed to turning his life around / his recovery journey."
 - "There will be significant delays in this matter getting to trial or resolving."

Hot topics

1. Sureties and bail guarantors
2. Electronic monitoring
3. CISP / therapeutic bail / resi rehab
4. Evidence from mum / dad / grandma / best friend / employer

A barrister's wish list

- Updated reports (YJ / CISP / CCO etc)
- Family have been canvassed about accom and aware of the application
- Employment / support letters obtained
- Interpreters booked
- Fulsome brief and exhibits in a place I can find them
- Remand / SCWA history obtained (*Renzella?*)
- Pros is aware of what is being proposed
- Exploration of rehab / support programs has occurred
- Were they serving any sentences at the time (ie were they on a CCO? What for?)
- Pending matters? Do we have those briefs?

Would you grant bail?

- Charges relating to stolen goods, theft (x14), burglary (x9) and possessing drugs of dependence
- On remand for approximately 3 months at this point
- Serving a DATO (for serious matters including agg carjacking) and on summons for a driving matter at the time
- Extensive criminal history (including a 30 mth TOI for carjacking / imitation firearm, and the 45 month DATO)
- Criminality linked to methamphetamine use disorder
- Poor history of bail compliance
- Residential drug rehabilitation program available — Odyssey House

Would you grant bail?

- 71 year old accused - charge of murder
- Cold case / historical offending – alleged by pros that deceased was murdered by applicant and a co-accused over tensions re unpaid rent
- Alleged that the pair assaulted and killed deceased and buried remains in a forest in 2006 before setting car used alight – no body, no DNA – pros relied partly on admissions by co-accused to COs – otherwise circumstantial
- Single old prior
- Special vulnerability
- Delay
- Surety
- Risk asserted of interfering with the body... GPS monitoring device (\$25k/year)

Would you grant bail?

- 62 charges relating to stolen goods, possessing drugs of dependence, possessing ammunition and prohibited weapons, possessing firearms, trafficking drugs of dependence, dealing with proceeds of crime
- Heavily pregnant applicant, 37 years old
- On summons for driving matters at the time of alleged offending
- Surety / CISP / family support present
- Co-accused partner of applicant
- Relevant criminal history for drug matters
- Unborn child at risk of being removed from applicant in custody

Would you grant bail?

- Charges of trafficking a large commercial quantity of methylamphetamine, trafficking a commercial quantity of heroin, possession of a traffickable quantity of firearms, other drug charges, dealing with proceeds of crime
- BailSafe support and private residential rehabilitation available (BailSafe to follow the resi rehab)
- Surety (up to \$1m in property)
- Evidence of drug addiction
- Use of false identity and possession of false documents
- GPS tracking proposed
- Relevant but minimal crim history
- Mental health issues
- Some issues with pros case (i.e. exclusive possession of places where searches executed)

Re Good [2023] VSC 449

Questions....?
