



Royal Victorian Association of Honorary Justices

The peak membership body for Victoria's Justices of the Peace and Bail Justices

RVAHJ MEDIA RELEASE

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In Support of Bail Justices

Melbourne, June 19, 2019. Recent press and television coverage once again thrusts the role of Victoria's Bail Justices into the spotlight. Since the revelations arising from that unbelievably appalling and sad event in Bourke Street on January 20, 2017, Victoria's Honorary Bail Justices have been misrepresented and misunderstood by many people. As the peak membership body for Victoria's Honorary Justices, Justices of the Peace (JP) and Bail Justices (BJ), The Royal Victorian Association of Honorary Justices presents this position in support of the role of Bail Justices as a key and very valuable component of our State's criminal justice system:

Bail Justices currently perform two primary roles:

- after hours bail and remand hearings for children, aboriginal persons and other people with mental health and cognitive challenges.
- after hours applications from the Department of Human services for Interim Accommodation Orders (IAO) for children at risk.

They also carry most of the same witnessing authorities as Justices of the Peace.

ANYBODY CAN BECOME A BAIL JUSTICE?

Contrary to popular belief, it's not very easy to become a Bail Justice. Whilst the core qualifications are straight forward (be over 18, be a Victorian resident and not be an insolvent under administration), in practice the application and vetting processes within the Department of Justice and Community Safety are rigorous and very comprehensive. The process involves National Police checks, ASIC checks, character references, assessment of decision-making ability and conflict management skills, together with empathy and cultural awareness and the ability to understand relevant legislation.

Only a small percentage of those who apply actually make it through to become fully qualified. A Bail Justice is a Judicial Appointment that is approved by the Governor-in-Council and appointed by the Attorney General. The initial appointment is for up to 5 years and Bail Justices are formally re-accredited every 5 years to maintain their qualification.

BAIL JUSTICES HAVE NO LEGAL TRAINING?

It is true that Bail Justices need have no formal legal training or qualifications. They are, however, intensely trained and expert in the application of the Bail Act, the Children, Youth and Families Act, the Charter of Human Rights and Responsibilities, other relevant Acts as well as aboriginal, youth and mental health practices. They undergo initial training including real-time scenarios, in-field mentoring and ongoing training, development and assessments. If unforeseen or contentious issues arise during a hearing in the middle of the night, they have access to an afterhours magistrate and court registrar. Most importantly, they have a wealth of life experience, great listening skills and common sense.

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It is interesting to note that those with comprehensive legal training bail accused persons at a higher rate than Bail Justices. In practice, Bail Justices are more conservative in their decision-making. Bail Justices tend to be mature adults, with 51% of Bail Justices being over the age of 60 years, and 30% between 50-59 years old. About 70% of Bail Justices are, or have been, managers or professionals.

VICTORIA IS THE ONLY STATE WITH BAIL JUSTICES?

Most bail in Victoria is granted by Police (around 93% of cases). Recent changes to the Bail Act allow Police to now also make remand decisions for most alleged offenders excepting for children, aboriginal persons and other people with mental health or cognitive challenges. Applications for bail by these vulnerable adults and children are heard by a Court or, if after hours, by a Bail Justice.

Victoria is certainly the only State in the country with a formal after-hours Bail Justice program. But this is really only part of the full story. In Queensland, South Australia and Western Australia, Justices of the Peace (or Special Justices of the Peace in the case of SA), volunteer with no specific formal legal qualifications and provide valuable judicial services including bail hearings, authorising warrants, hearing applications for restraining orders, minor summary offences (such as the JP (Qualified) role in Queensland, cases within the prison system (as Visiting Justices in WA) and, in SA, sit on the bench of the Magistrate's Court hearing cases in the petty sessions division.

THE ADVANTAGES OF THE BAIL JUSTICE SYSTEM

Bail Justices refuse bail in around 86% of cases. Those refused bail are held by Police, normally until the next day when they are brought before a magistrate in the Melbourne metropolitan area or for longer in the country/regional areas or, in the case of children, until the next Children's Court sitting. But if you are one of the remaining 14% who pose no threat to the community or yourself, you welcome the bail hearing and the opportunity to assert your right to freedom of movement (albeit probably with some bail conditions attached – Bail Justices impose bail conditions on around 90% of those people who are released on bail.)

As recognised under the State Government's Bail Review¹ in 2017, Bail Justices bring enormous value to the Victorian community:

- Bail Justices are drawn from local community and reflect community values
- Bail Justices are fiercely independent of the police
- Bail Justices can make a welfare assessment of the applicant and field complaints about an accused person's treatment whilst in police custody
- Bail Justices can witness interactions between police and an accused and guard against false claims of inappropriate treatment
- Bail Justices are inexpensive, cost-effective, well-trained and are kept abreast of legislative changes
- Bail Justices are willing to travel considerable distances late in the evening and in the early hours of the morning
- Bail Justices are prepared to hear urgent applications for IAOs involving vulnerable children. Not a task many would undertake
- Bail Justices assume the responsibility of making difficult decisions about bail when police may be reluctant to make the decision
- Bail Justices provide a service in rural areas where there may be no sitting magistrate for days or longer and, in doing so, ensure that the question of bail is addressed without delay
- Bail Justices perform a function that might otherwise tie up a magistrate or senior police officer, leaving that person free to do other, possibly more urgent, work

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- Bail Justices represent a bulwark against arbitrary detention and reflect that detention in police custody is sufficiently serious to warrant urgent independent review
- Bail Justices make good decisions, as reflected in refusals in about 86% of applications they determine
- Bail Justices are conscientious about recording their reasons for granting bail applications and discharging their duties
- in addition to police stations, Bail Justices are available to travel to hospitals, remand centres and Department of Health and Human Services offices in order to hear applications
- Bail Justices work attracts very few complaints
- Bail Justices are trained to ask the informant about special circumstances (disability, language, alcohol or drug dependency) and can make an independent, lay assessment of an applicant's demeanour
- Bail Justices are trained to be aware of the disadvantages posed by youth, disability, and aboriginality

SUMMARY AND CONCLUSION

Victoria should be proud that we are the only State with Bail Justices. It is a most effective and successful model for afterhours bail and remand hearings. Bail Justices are well trained and consummately professional in the exercise of their duties. The numbers prove it – the anecdotal data supports it. Bail Justices protect the community and balance that demand for protection against the rights of accused people to maximise the outcome for everyone.

There are only two possible alternative models for afterhours bail hearings. One is to simply allow Police to make the bail/remand decision. Certainly, Police would find this much easier and faster and argue that it is more efficient, for them. Never mind that some people would definitely be needlessly remanded just for the sake of the efficiency. The alternative would be to extend the Magistrate's court hours – a very costly approach which would most likely offer the same or similar outcomes as the current Bail Justice model (actually Magistrates tend to bail alleged offenders more often than Bail Justices do).

An arising question, which should be of more concern to the community than it has been, is whether it is reasonable for those responsible for enforcing the law to also have the authority to make the judgement to remand people, sometimes for a number of days until a Court is available, without the opportunity for independent review. Most people would agree with the human rights presumption of innocence and the doctrine of separation of powers between the enforcement role (executive) and the judicial role.

Since the almost vitriolic and totally misguided attacks on Bail Justices from some portions of the media and the general public following on from the events in Bourke Street back in 2017, Bail Justice numbers across the State have understandably dropped from around 220 to now numbering around 125. Why would anyone volunteer their time and expertise, especially at unseemly hours in middle of the night, with little or no support and in the face of such extremely misguided misinformation? They do it because they believe strongly in the role and in the importance of giving accused people an independent hearing before their liberty is deprived.

Victoria is leading the way by being the only State with a Bail Justice program. Rather than denigrating Bail Justices, we should be celebrating them. We should be extending the program and providing more Bail Justices with more and better tools to help them do an even better job than they are now.

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ABOUT RVAHJ

The Royal Victorian Association of Honorary Justices (RVAHJ) is the peak membership body for Bail Justices and Justices of the Peace (known collectively as Honorary Justices) in Victoria. Founded in 1910, the Association is located in our own premises in the Melbourne bayside suburb of Elwood, Victoria. Through our commitment, experience and expertise we have established relationships with our stakeholders that makes the RVAHJ the voice of Honorary Justices within the Courts System, Government and the Community. We provide Membership, Training and Support services for Honorary Justices along with great customer services to the general public – a combination that can't be beat!

NOTE 1: List used with minor variations under Creative Commons Attribution Licence from The Bail Review undertaken by the former Director of Public Prosecutions and Supreme Court Justice, the Hon Paul Coghlan QC, following the Bourke Street tragedy © State of Victoria (Department of Premier and Cabinet) 2016

MEDIA CONTACTS

RVAHJ Address: 53 Broadway, Elwood VIC 3184

Business Hours Phone: (03) 9525 7099

General Contact: social@rvahj.org.au

Paul Mracek JP

vicep@rvahj.org.au

Andrew Harrington BJ JP

andrew@harringtonhomes.com.au

Kevin Mackin BJ

social@rvahj.org.au