

BAIL AMENDMENT ACT 2016 - SUMMARY

I PURPOSES

The ***Bail Amendment Act 2016 (Vic)*** [No.1/2016] [‘the BAA’] was assented to on 16/02/2016. The BAA-

- amends the ***Bail Act 1977 (Vic)*** [‘the BA’] in relation to-
 - children [BA/ss.3B, 5AA, 10(1B), 10(1C), 12(1AA), 12(1AB), 12(3), 12(4), 16B, 24(3A), 30A]; and
 - certain terrorism related offences & issues [BA/ss.3, 4(2)(b), 4(3)(ba)]; and
 - “serious offences” [BA/ss.3 + 4(4)(ab)]; and
 - failure to answer bail [BA/s.30(1)]; and
- amends the ***Children, Youth and Families Act 2005 (Vic)*** [‘the CYFA’] in relation to-
 - the commencement of criminal proceedings against children [CYFA/s.345]; and
 - the publication of identifying information about children’s proceedings [CYFA/s.534].

II COMMENCEMENT

The amendments are expected to come into operation in March or early April 2016. Consequential changes are required to Courtlink and at least to the following-

- ***Children, Youth and Families Regulations 2007*** [S.R. No.21/2007 – reg.19 & Sch.3];
- ***Children, Youth and Families (CC Family Division) Rules 2007*** [S.R. No.24/2007 – r.10 & Form 38];
- ***Children’s Court Criminal Procedure Rules 2009*** [S.R. No.189/2009 – r.4.08 & Form 17];
- ***Bail Regulations 2012*** [S.R. No.148/2012 – Forms 1, 2A & 3].

III BAIL ACT AMENDMENTS RELATING TO CHILDREN ONLY

A ADDITIONAL CONSIDERATIONS IN BAIL APPLICATIONS FOR CHILDREN

New s.3B(1): In making a determination under the BA in relation to a child, a court must take into account (in addition to any other requirements under the BA)-

- (a) the need to consider all other options before remanding the child in custody; and
- (b) the need to strengthen and preserve the relationship between the child and the child’s family, guardians or carers; and
- (c) the desirability of allowing the living arrangements of the child to continue without interruption or disturbance; and
- (d) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and
- (e) the need to minimise the stigma to the child resulting from being remanded in custody; and
- (f) the likely sentence should the child be found guilty of the offence charged; and
- (g) the need to ensure that the conditions of bail are no more onerous than are necessary and do not constitute unfair management of the child.

Items (b), (c), (d) & (e) are in largely identical terms to the sentencing considerations for a child contained in ss.362(1)(a) to (d) of the CYFA.

New s.3B(2): In making a determination under the BA in relation to a child, a court may take into account any recommendation or information contained in a report provided by a bail support service.

B COURT MUST ENSURE NON-COURT CONDITIONS OF BAIL ARE NOT TOO ONEROUS

New s.5AA: If a child is granted bail by a bail justice [under BA/s.12], a police officer [under BA/s.10(1)] or the sheriff or a person authorised under s.84(5) of the ***Infringements Act 2006 (Vic)*** [under BA/s.10(1A)], the court–

- **[s.5AA(2)]** at the first hearing following the grant of bail at which the child is present, must ensure that the conditions of bail imposed out-of-court comply with the requirements of BA/s.5(4) [i.e. must be no more onerous than required to achieve the purposes of s.5(3) re attendance, not reoffending, not endangering public safety and welfare and not interfering with witnesses or obstructing the course of justice];
- **[s.5AA(3)]** may make any variations to the conditions of bail necessary for the purposes of BA/s.5AA(2).

C TRANSFER OF CERTAIN PROVISIONS RE BAIL FROM CYFA/ss.346 & 348 TO THE BA

A number of provisions relating to bail for children have been transferred from CYFA/ss.346 & 348 to the BA. These are detailed in the table on the reverse of this sheet. Although the wording has been slightly changed in some of these provisions, their effect is substantially unchanged.

NEW BA/s.	OLD CYFA/s.	SUBJECT MATTER
12(1AA)	346(3)	Maximum remand period 21 clear days when child is refused bail by a court
12(1A)	346(4)	Maximum remand period when a child is refused bail by a bail justice: the next working day or within 2 working days for prescribed (country) venues
12(1AB)	346(5)	Maximum further remand period 21 clear days when child re-remanded by a court
10(1B) + 12(3)	346(7)	Parent, guardian or independent person must be present during bail inquiry for a child by police officer, bail justice or sheriff etc.
10(1C) + 12(4)	346(8)	Independent person may take steps to facilitate granting of bail for a child, for example by arranging accommodation.
3B(3)	346(9)	Bail must not be refused on sole ground child has no adequate accommodation
16B	346(10)	Parent or other person may enter undertaking if child does not have capacity
24(3A)	348	Maximum remand period for which court may remand a child arrested under BA/s.24(1) re breach or likely breach of bail is 21 clear days.

D CONTRAVENTION BY CHILD OF CONDUCT CONDITION NO LONGER AN OFFENCE

New s.30A(3): It is no longer an offence for a child to contravene any conduct condition of bail imposed on him or her. This amendment applies on and after the commencement of BA/s.30A(3) regardless of when the contravention is alleged to have been committed.

Unchanged ss.30(1) & 30B: It remains an offence for a child to fail without reasonable cause to attend in accordance with his or her undertaking of bail or to commit an indictable offence whilst on bail.

IV BAIL ACT AMENDMENT RELATING TO ADULTS ONLY

New s.4(4)(ab): A person charged with a “serious offence” [newly defined in BA/s.3] who, as an adult, has within the preceding 5 years been convicted or found guilty of an offence under BA/s.30(1) [failing to answer bail] must be refused bail unless the person shows cause why detention in custody is not justified.

V BAIL ACT AMENDMENTS RELATING TO BOTH ADULTS & CHILDREN

New s.4(2)(b): A person charged with an offence under s.4B(1) or s.21W of the *Terrorism (Community Protection) Act 2003 (Vic)* must be refused bail unless the court is satisfied that exceptional circumstances exist which justify the grant of bail.

New s.4(3)(ba): In determining whether an accused is an unacceptable risk the following consideration is added to the list in BA/s.4(3): “Whether the accused has expressed publicly support for- (i) a terrorist act or a terrorist organisation; or (ii) the provision of resources to a terrorist organisation.”

Amended s.30(1): The maximum penalty for the offence of failing to answer bail is increased from 12 months imprisonment to Level 7 (2 years) imprisonment.

VI COMMENCEMENT OF CRIMINAL PROCEEDINGS AGAINST CHILDREN

Amended CYFA/s.345: This section previously consisted only of item (ii) although its heading was expressed more broadly. Added item (i) is intended to strengthen it by creating a presumption-

- (i) There is a presumption in favour of proceeding by summons if an accused is a child. A police officer must have regard to this presumption in commencing a criminal proceeding against a child.
- (ii) On the filing of a charge-sheet against a child, a registrar must not issue in the first instance a warrant to arrest unless satisfied by evidence on oath or by affidavit that the circumstances are exceptional. This has effect despite anything to the contrary in s.12 of the *Criminal Procedure Act 2009 (Vic)*.

VII PUBLICATION OF IDENTIFYING INFORMATION ABOUT CHILDREN

New CYFA/s.534(1A): Previously only the President (or in special circumstances the Secretary of DHHS) could grant permission for the publication of identifying material about children involved in Children’s Court and related court proceedings. New s.534(1A) provides that on an application to the Children’s Court, a magistrate may grant permission for such publication if the magistrate is satisfied that-

- (a) the circumstances giving rise to the request for permission to publish are an **emergency**; and
 - (b) publication is **reasonably necessary for the safety** of the child or any other person or the community.
- Despite the expressed purpose in BAA/s.1, this is not on its face restricted to Criminal Division proceedings.