

Assessment 1: Complete a Bail Application

Case Study Mr Wallace

You work for the community legal organisation, XYZ Legal and you have been asked to visit Chris Wallace in the remand centre and explain to him that XYZ Legal will act for him in making a bail application to the court.

Chris Wallace is 26 year old Indigenous person and lives in a rented flat with his girlfriend, Roberta. They have lived together in a de facto relationship for 3 months but have been going out for 10 months. They have no children but Chris' younger brother, Darryl, aged 13, often stays over when his parents are unable to look after him.

Roberta works full-time as a nursing assistant. She travels one and half hours each way to work and relies a lot on Chris doing the housework and shopping. Before Chris moved in with Roberta he lived with his two older brothers, younger brother and his parents at the family home. He still visits his family every week as both his parents are elderly and ill.

Chris has been unemployed for the last 8 months and is currently on unemployment benefits. He has relapsed into drug dependence and has recently been diagnosed with an acquired brain injury (ABI) due to prolonged alcohol and drug abuse but is not eligible for Disability Support Pension (DSP) as he is still capable of working. His last job was as a casual kitchen hand at a cafe. He hasn't had a permanent job since he left school aged 15. His uncle, Reg, has promised Chris some labouring work with his demolition business in the near future.

Chris has been in trouble with the law on a few occasions:

- 8 years ago, he was convicted of shoplifting \$1,000 in goods from a chemist. At the time of the offence he was suffering from a dependence on prescription drugs and shoplifted to obtain money for his dependence. He received a 6 months' good behaviour bond for this offence and completed counselling which helped to resolve his dependence for a couple of years.
- 1 year ago, Chris was charged with break, enter and steal. He pleaded not guilty and the charge was dismissed because of a lack of evidence. Chris was on bail for this offence for 5 months.
- 1 month ago Chris was charged with possession of marijuana, to which he is pleading not guilty, and is out on bail pending the hearing.

In relation to the break and enter charge which was dismissed, Chris was on bail and breached his bail by failing to report to the police on one occasion. Chris did not report because he forgot due to memory problems caused by his ABI. He did not breach his bail on any other occasion.

In addition to substance dependence and the ABI, Chris suffers depression and usually takes medication. The medication that he usually takes is not available in the prison system and he has found this disruptive to his condition. He usually sees Dr Walker a psychiatrist at his community health centre. Dr Walker has expressed concerns about Chris' change in medication and has indicated that Chris is usually very compliant with his treatment in the community and that he would be willing to supervise Chris' condition closely if he is released on bail.

One week ago while out on bail for the drug possession charge, Chris was arrested and charged with demanding property with intent to steal under s 99 of the *Crimes Act 1900* (NSW) which carries a maximum sentence of 10 years. Chris had followed a person walking in the street and talking on their mobile phone and when they stopped to cross a road he came up behind the person and threatened to punch them if they did not hand over their phone and wallet. The person immediately ran and went and reported the incident to a nearby police station. Police were able to find CCTV footage from a nearby building which showed the offender roughly the same size and shape as Chris in a black hooded jumper and pants wearing a particular brand of trainers. The victim identified Chris from a mug shot the police had on file. Chris was arrested at 8am the next morning wearing a black hooded jumper, jeans and trainers at his house about half a kilometre from where the offence took place.

Because Chris was on bail at the time of his arrest for an indictable offence Police refused Chris bail upon arrest. The next day, Chris appeared at the Local Court and his bail application was refused by the Magistrate on the grounds Chris posed an unacceptable risk. Chris now appears before the Supreme Court of NSW for a review of his bail.

The XYZ Legal solicitor advises that the offence is a Table 1 offence which means that although it is an indictable offence the matter can be dealt with in the local court (triable summarily). As such Chris's ABI means that if Chris pleads guilty to the offence an application can be made to the court to divert the offender out of the criminal justice system and into a treatment program under the *Mental Health (Forensic Provisions) Act 1990* (NSW), Part 3.