



Template Affidavit in Support of an Application for Bail

Prepared by the Supreme Court Criminal Registry

9 September 2019

Practice Note SC CR 2 ('the Practice Note') and the *Bail Regulations 2012* ('the Regulations') specify what must be included in a supporting affidavit. If there is any disparity between this template, the Practice Note and the Regulations, the Practice Note and the Regulations govern the position. The purpose of this template is to assist the profession in setting out an example of the way in which the requirements of the Practice Note, the Regulations and the *Oaths and Affirmations Act 2018* can be complied with.

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION**

S ECR [proceeding no.]

IN THE MATTER of the *Bail Act 1977*

- and -

IN THE MATTER of an application for bail by [full name]

BETWEEN:

[name of the applicant]

Applicant

- and –

[Victoria Police] or [Australian Federal Police]

Respondent

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR BAIL

Date of document:
Filed on behalf of:
Prepared by:
[name of solicitor]
[name of legal practice]
[professional address]

Solicitor's code:
DX:
Telephone:
Ref:
Email:

I, [full name] of [insert place], [insert occupation], [make oath and say] or [affirm] as follows:

1. I am an Australian Legal Practitioner employed at [insert legal practice] and am the solicitor with carriage of this matter.
2. The matters deposed to in this affidavit are within my personal knowledge unless otherwise specified.

Charges for which the applicant seeks bail

Details	Charges and dates of the alleged offending	Bail status
[name of informant]	[Insert detail the charges and dates of the alleged offending. For example:	On remand
Charge date:	1. Recklessly causing injury pursuant to s 21 of the <i>Crimes Act 1958</i> (Vic) on 28 June 2018; and	Bail refused at
Next listed: [insert date] at [insert court] for [insert nature of the hearing]	2. Unlawful assault pursuant to s 23 of the <i>Crimes Act 1958</i> (Vic) on 28 June 2018]	[insert court] on [insert date]

3. Exhibited to this affidavit and marked **Exhibit [XXX-1]** are true copies of the charges, summaries of the alleged offending and other related documents. A certificate identifying the exhibit must be attached to the exhibited document, dated, and signed by the deponent of the affidavit and a witness. The witness must legibly endorse below their signature their name, address, and a statement of their capacity in which they have authority to take the affidavit.

Previous applications for bail

4. [Insert detail of any previous application for bail and reasons for refusal]

Bail onus and applicable legislation

5. [State the applicable test for the bail application, such as, prima facie entitled to bail, compelling reason or exceptional circumstances, and provide the specific Schedule and item number/s within that apply to the applicant.]
6. [If the applicant is an Aboriginal person, section 3A of the *Bail Act 1977* or section 15AB(1)(g) of the *Crimes Act 1914* (Cth), if the charge is federal, will

apply. If section 3A is relevant, the applicant should detail the issues that arise including whether sections 3A(a) and (b) will be relied on.]

7. [If the applicant is a child, section 3B of the *Bail Act 1977* and section 346(6) of the *Children, Youth and Families Act 2005* will apply.]

Co-accused

8. [Provide details of any co-accused, including their respective charges, prior criminal history, and their bail/remand status.]

Other outstanding charges – where the applicant is on bail

Details	Charges and dates of the alleged offending	Bail status
[name of informant] Charge date: Next listed: [insert date] at [insert court] for [insert nature of the hearing]	[Insert detail the charges and dates of the alleged offending. For example: 1. Recklessly causing injury pursuant to s 21 of the <i>Crimes Act 1958</i> (Vic) on 28 June 2018; and 2. Unlawful assault pursuant to s 23 of the <i>Crimes Act 1958</i> (Vic) on 28 June 2018]	On bail Bail granted at [insert court] on [insert date]

9. Exhibited to this affidavit and marked **Exhibit [XXX-2]** are true copies of the charges, summaries and other relevant documents.¹

Other outstanding charges – where the applicant is on summons

Details	Charges and dates of the alleged offending
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¹ A certificate identifying the exhibit must be attached to the exhibited document, dated, and signed by the deponent of the affidavit and a witness. The witness must legibly endorse below their signature their name, address, and a statement of their capacity in which they have authority to take the affidavit.

<p>[name of informant]</p> <p>Charge date:</p> <p>Summons date:</p> <p>Next listed:</p> <p>[insert date] at [insert court]</p> <p>for [insert nature of the hearing]</p>	<p>[Insert detail the charges and dates of the alleged offending. For example:</p> <ol style="list-style-type: none"> 1. Recklessly causing injury pursuant to s 21 of the <i>Crimes Act 1958</i> (Vic) on 28 June 2018; and 2. Unlawful assault pursuant to s 23 of the <i>Crimes Act 1958</i> (Vic) on 28 June 2018]
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10. Exhibited to this affidavit and marked **Exhibit [XXX-3]** are true copies of the charges and summaries for which the applicant is on summons.²

Criminal history

11. The applicant has no criminal history.

- OR -

12. The applicant has a criminal history including prior convictions/findings of guilt for [insert prior offences].
13. Exhibited to this affidavit and marked **Exhibit [XXX-4]** is a true copy of the applicant's criminal history.³

Personal and surrounding circumstances

14. [Address the 'surrounding circumstances' referred to in section 3AAA of the *Bail Act 1977*, where applicable, and exhibit any relevant supporting materials to this affidavit.

² A certificate identifying the exhibit must be attached to the exhibited document, dated, and signed by the deponent of the affidavit and a witness. The witness must legibly endorse below their signature their name, address, and a statement of their capacity in which they have authority to take the affidavit.

³ Ibid.

Those surrounding circumstances referred to in section 3AAA(1) are:

- (a) the nature and seriousness of the alleged offending, including whether it is a serious example of the offence;
- (b) the strength of the prosecution case;
- (c) the accused's criminal history;⁴
- (d) the extent to which the accused has complied with the conditions of any earlier grant of bail;
- (e) whether, at the time of the alleged offending, the accused –
 - (i) was on bail for another offence; or
 - (ii) was subject to a summons to answer to a charge for another offence; or
 - (iii) was at large awaiting trial for another offence; or
 - (iv) was released under a parole order; or
 - (v) was subject to a community correction order made in respect of, or was otherwise serving a sentence for, another offence;⁵
- (f) whether there is in force –
 - (i) a family violence intervention order made against the accused; or
 - (ii) a family violence safety notice issued against the accused; or
 - (iii) a recognised DVO made against the accused;
- (g) the accused's personal circumstances, associations, home environment and background;
- (h) any special vulnerability of the accused, including being a child or an Aboriginal person, being in ill health or having a cognitive impairment, an intellectual disability or a mental illness;
- (i) the availability of treatment or bail support services;

⁴ If the applicant's criminal history has been addressed in [17], it does not need to be repeated here.

⁵ Again, if this has been addressed earlier, it does not need to be repeated.

- (j) any known view or likely view of an alleged victim of the offending on the grant of bail, the amount of bail or the conditions of bail;
- (k) the length of time the accused is likely to spend in custody if bail is refused;
- (l) the likely sentence to be imposed should the accused be found guilty of the offence with which the accused is charged;
- (m) whether the accused has expressed support for –
 - (i) the doing of a terrorist act; or
 - (ii) a terrorist organization; or
 - (iii) the provision of resources to a terrorist organization;
- (n) subject to subsection (2), whether the accused has, or has had, an association with –
 - (i) another person or a group that has expressed support of the kind referred to in paragraph (m); or
 - (ii) another person or a group that is directly or indirectly engaged in, preparing for, planning, assisting in or fostering the doing of a terrorist act; or
 - (iii) a terrorist organization.]

15. Exhibited to this affidavit and marked **Exhibit [XXX-5]** is a true copy of [insert title of the supporting documentation]. Exhibit each document relevant to surrounding circumstances using a separate exhibit number for each document.⁶

Additional factors to be relied upon in support of the application for bail

16. [Include any additional personal circumstances that are not included in the surrounding circumstances prescribed by section 3AAA(1) of the *Bail Act 1977*.]

⁶ A certificate identifying the exhibit must be attached to the exhibited document, dated, and signed by the deponent of the affidavit and a witness. The witness must legibly endorse below their signature their name, address, and a statement of their capacity in which they have authority to take the affidavit.

Alleged risk factors

17. [If the applicant is aware of any risk factors alleged by the prosecution, please address each factor individually.]

Proposed bail conditions

- (a) The applicant reside at [insert details of proposed residence].
- (b) ...
- (c) ...

The contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

*Sworn or *Affirmed at ⁷

*in the State of Victoria

On ⁸

.....⁹

Before me, ¹⁰

On ¹¹

.....¹²

A person authorised under section 19(1) of the ***Oaths and Affirmations Act 2018*** to take an affidavit.

*delete if not applicable

⁷ Place (City, town or suburb).

⁸ Date.

⁹ Signature of person making the affidavit.

¹⁰ Signature of authorised affidavit taker.

¹¹ Date.

¹² Name, capacity in which authorised person has authority, and address (writing, typing or stamp).