



Template affidavit for use by accused in support of an application for bail or variation of bail, or in response to application for revocation of bail or an appeal against a bail decision

Prepared by the Supreme Court Criminal Registry

9 September 2019 and revised on [xx] June 2020

This template should be used by accused in support of their application for bail or variation of bail, or in response to an application for revocation of bail or an appeal against a bail decision. The template is designed to be indicative of the information required by the court and is designed to assist accused and their lawyers.

Practice Note SC CR 2 (Second Revision): Bail Applications and Appeals and the *Bail Regulations 2012* outline how to make an application for bail or variation of bail. If there is any disparity with this template, the Practice Note and the Regulations govern the position.

**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
<p>[name of informant]</p> <p>Charge date:</p> <p>Next listed: [insert date] at [insert court] 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] 	<p>On remand</p> <p>Bail refused at [insert court] on [insert date]</p>

3. Exhibited to this affidavit and marked **Exhibit [XXX-1]**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

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.

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, the applicant should identify any issues that arise due to the person's Aboriginality, including the person's cultural background, including the person's ties to extended family or place and any other relevant cultural issue or obligation in accordance with section 3A of the Bail Act 1977 (Vic).]
7. [If the applicant is a child, the applicant should address the factors outlined in section 3B of the *Bail Act 1977*.]

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
<p>[name of informant]</p> <p>Charge date:</p> <p>Next listed: [insert date] at [insert court] 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] 	<p>On bail</p> <p>Bail granted at [insert court] on [insert date]</p>

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

Other outstanding charges – where the applicant is on summons

Details	Charges and dates of the alleged offending
[name of informant] Charge date: Summons 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]

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.

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.

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.

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;²
- (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;
- (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;
- (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;

² If the applicant's criminal history has been addressed in [17], it does not need to be repeated here.

- (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.

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*.]

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 ³
*in the State of Victoria
On ⁴

.....⁵

Before me, ⁶

On ⁷

.....⁸

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

*delete if not applicable

³ Place (City, town or suburb).

⁴ Date.

⁵ Signature of person making the affidavit.

⁶ Signature of authorised affidavit taker.

⁷ Date.

⁸ Name, capacity in which authorised person has authority, and address (writing, typing or stamp).