



# Supreme Court of Victoria

## Practice Note SC CR 2

### Bail Applications and Appeals

#### 1 INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to outline the practice and procedure to be adopted in relation to applications or appeals under the *Bail Act 1977 (Vic)* in the Supreme Court of Victoria.

#### 2 COMMENCEMENT

- 2.1 This Practice Note was first issued on 1 January 2017. The Practice Note, as revised, applies to all applications and appeals under the *Bail Act 1977 (Vic)*.

#### 3 DEFINITIONS

- 3.1 In this Practice Note:

**Act** means the *Bail Act 1977 (Vic)*;

**Court** means the Supreme Court of Victoria;

**CPA** means the *Criminal Procedure Act 2009 (Vic)*;

**Criminal Registry** means the Criminal Registry of the Supreme Court of Victoria;

**Judge** means a Judge of the Supreme Court of Victoria, and includes a Reserve Judge;

**Notice** means a notice of intention to make an application for bail, for variation of bail, for revocation of bail or for an appeal against a bail decision;

**Principal Registry** means the Principal Registry of the Supreme Court of Victoria located at 450 Lt Bourke Street, Melbourne, Victoria;

**Prosecution** means the informant, or the Director of Public Prosecutions for Victoria, or the Commonwealth Director of Public Prosecutions, as the case may be;

**Reserve Judge** means either a retired or interstate Judge who has been appointed as a Reserve Judge of the Supreme Court of Victoria under the *Constitution Act 1975 (Vic)*;

**Rules** means the *Supreme Court (Criminal Procedure) Rules 2017 (Vic)*.

#### **4 APPLICATIONS FOR BAIL, VARIATION OF BAIL, REVOCATION OF BAIL OR APPEALS**

- 4.1 To make an application for bail, variation of bail, revocation of bail or an appeal against a bail decision, the following must be filed:
  - 4.1.1 A notice, using Form 6-1D of the Rules with such modification as is necessary. The notice must briefly state the grounds upon which the application is made; and
  - 4.1.2 An affidavit supporting the application. If made by the accused seeking bail, this should be drafted using the template affidavit in support of bail. If made by the prosecution, this should be drafted using the template affidavit in response. Both template affidavits are published on the Court's website and must exhibit copies of all relevant supporting documentation referred to within.
- 4.2 All material must be filed electronically via RedCrest. Subject to any order to the contrary, no material should be filed by email, in person or by post to the Criminal Registry. All electronically filed documents should be in a PDF format that supports optical character recognition or is text searchable.
- 4.3 The Criminal Registry may reject an application or appeal if it does not comply with the Rules, this Practice Note or any order of the Court. If rejected for filing, the Criminal Registry will advise the applicant or appellant of the reason the application was not accepted.
- 4.4 Once an application or appeal has been accepted for filing, the applicant or appellant must serve the notice and affidavit, including exhibits, on the respondent as soon as practicable after filing. In the case of an application for bail or for revocation of bail, service must occur in accordance with section 392 of the CPA.
- 4.5 After an application or appeal has been accepted for filing, the Criminal Registry will contact the parties to notify them of:
  - 4.5.1 The hearing date;
  - 4.5.2 The date by which a response is to be filed; and
  - 4.5.3 Any other outstanding issues relating to the application or appeal.
- 4.6 A response to a bail-related application or appeal:
  - 4.6.1 Should be drafted using the template affidavit in response if prepared by the prosecution, or using the template affidavit in support of bail if prepared by the accused. Both template affidavits are published on the Court's website and must exhibit copies of all relevant supporting documentation referred to within;
  - 4.6.2 Must be filed electronically via RedCrest by the date directed by the Criminal Registry; and
  - 4.6.3 Must be served on the applicant or appellant by the respondent as soon as practicable after filing.

- 4.7 Self-represented applicants or respondents may file bail material by email to [criminaldivision@supcourt.vic.gov.au](mailto:criminaldivision@supcourt.vic.gov.au) or by post to the Supreme Court of Victoria, Criminal Registry, 210 William Street, Melbourne, VIC 3000. Once that bail material has been accepted for filing, the Criminal Registry will serve it on the prosecution by email.

## **5 URGENT APPLICATIONS**

- 5.1 If a bail-related application or appeal is urgent, the applicant or appellant must contact the Criminal Registry by telephone or email prior to filing an application or appeal and provide:
- 5.1.1 The reason(s) why the application or appeal is urgent;
  - 5.1.2 Any vulnerability of the accused, such as advanced or young age, ill health or cognitive impairment;
  - 5.1.3 Whether the accused identifies as Aboriginal or Torres Strait Islander;
  - 5.1.4 The other party's attitude to the proposed application or appeal (if known); and
  - 5.1.5 Any other factor which warrants expedited consideration by the Court.

## **6 HEARING ARRANGEMENTS**

- 6.1 The Criminal Registry will notify the parties of the hearing date as soon as practicable after the filing of an application in accordance with [4.6] of this Practice Note. Please refer to the Court's website for indicative listing timeframes.
- 6.2 The Criminal Registry will arrange for the accused's attendance at the hearing of any bail-related application or appeal, whether that appearance is in-person or via audio-visual link.
- 6.3 If a bail-related application or appeal is not opposed, the presiding judge may consider it appropriate to determine the application or appeal without the parties' attendance. The presiding judge's associate or the Criminal Registry will notify the parties if this is to occur.

## **7 SURETY**

- 7.1 If bail is granted with a surety, the surety or sureties must attend at the Principal Registry to either:
- 7.1.1 Lodge the surety money in the form of a bank cheque made out to 'Supreme Court of Victoria - the Court does not accept personal cheques, cash or any other payment method; or
  - 7.1.2 Provide evidence of ownership and equity in real estate to the amount of the surety. This must include:
    - i. A current search of the land title, completed within the preceding two (2) days;

- ii. A current council rates notice that shows the capital improved value of the real estate (independent valuations will not be accepted); and
  - iii. Mortgage documents, such as a bank statement of a mortgage account.
- 7.2 The surety or sureties will also be asked to:
  - 7.2.1 Affirm or swear an affidavit of justification for bail; and
  - 7.2.2 Sign the undertaking of bail.
- 7.3 Real estate cannot be used as surety if there are any encumbrances over it, such as caveats. This does not include a mortgage. If real estate is jointly owned, all owners listed on the land title must attend the Principal Registry and consent to it being used as surety.
- 7.4 The surety or sureties must personally attend at the Principal Registry regardless of where the accused is to be bailed from.

## **8 WITHDRAWAL OF AN APPLICATION OR APPEAL**

- 8.1 If the applicant or appellant seeks to withdraw an application or appeal, it must notify the respondent and the Criminal Registry by email to [criminaldivision@supcourt.vic.gov.au](mailto:criminaldivision@supcourt.vic.gov.au). The Criminal Registry will advise the parties if a hearing will be required or whether the application or appeal will be withdrawn administratively.

### **AMENDMENT HISTORY**

10 June 2020: This Practice Note was reissued on 10 June 2020 and amends the version issued on 30 November 2019.

30 November 2019: This Practice Note was reissued on 30 November 2019 and amends the version issued on 21 May 2018.

21 May 2018: This Practice Note was reissued on 21 May 2018 and amends the version originally issued on 1 January 2017.

1 January 2017: This Practice Note was issued on 1 January 2017 and replaced Practice Note No. 8 of 2016.

Vivienne Macgillivray  
Executive Associate to the Chief Justice  
10 June 2020