



Supreme Court of Victoria

Criminal Division

Practice Note No 8 of 2016

Bail Applications and Appeals

1. INTRODUCTION

- 1.1 The Chief Justice has authorised the release of this Practice Note.
- 1.2 The purpose of this Practice Note is to centralise the administrative management of applications and appeals with respect to bail in the Registry and to specify the standard requirements necessary for the efficient processing of all such applications and appeals.
- 1.3 This Practice Note replaces *Practice Note No. 5 of 2004* which is hereby revoked.
- 1.4 This Practice Note commences on 11 April 2016 and will apply to applications with respect to bail commenced in the Criminal Division on or after that date.

2. DEFINITIONS

- 2.1 In this Practice Note:

Act means the *Bail Act 1977*.

CPA means the *Criminal Procedure Act 2009*.

Director or DPP means, as appropriate, either the State or Commonwealth Director of Public Prosecutions.

Registry means the Principal Registry of the Supreme Court of Victoria.

3. FILING AND SERVICE

- 3.1 Any application for bail or appeal against a refusal of bail and any opposition thereto, with any supporting affidavit must be filed with the Registry.

- a. Filing may be either by emailing the application and affidavit to criminaldivision@supremecourt.vic.gov.au or by submitting these materials to the Registry in person or via post at 2/436 Lonsdale Street, Melbourne.
 - b. Subject to an explicit order to the contrary, no application, affidavit or opposition should be filed with any individual Judge of the Court or a member of their staff.
- 3.2 An application or further application for bail, or seeking to vary the conditions of bail, and a supporting affidavit:
- a. Must, when filed by the applicant's legal representative, be served on the DPP, in accordance with s 392 of the CPA, on the same day that they are filed with the Registry;
 - b. Will, when filed by an applicant in person, be transmitted electronically to the DPP by the Registry within 24 hours of filing.
 - c. Will in all cases be transmitted electronically to Victoria Police, by the Registry within 24 hours of filing in order to facilitate the timely preparation of a response.
- 3.3 The DPP or informant must file and serve on the applicant or their legal representative any materials in opposition, or a notice of intention not to contest, within 5 days of service or the Registry's electronic transmission of the application.
- 3.4 An application in respect of the revocation of bail and supporting affidavit must be served on the respondent or their legal representative, in accordance with ss 391 & 394 of the CPA, on the same day that they are filed with the Registry.
- 3.5 The respondent must file and serve any materials in opposition to the application for revocation of bail, or a notice of intention not to contest, as soon as practicable and no more than 3 days after service of the application.

4. FORM AND CONTENT

- 4.1 Generally, any application in respect of bail must comply with the requirements of *Supreme Court (Criminal Procedure) Rules 2008* r 1.10.
 - a. Templates to specific types of bail applications may be found on the Court's website. These may also be found as Forms 11, 11A & 14 of the *Bail Regulations 2012*.

4.2 An application in respect of bail must not specify a date for hearing, this will be set by the Registry following consultation with the Criminal Division. ***However, parties must advise the Registry of any information, which they know to be relevant to the fixing of a hearing date, at the time of the filing of their application or any response, or at the earliest opportunity.*** Such information may include, but is not limited to:

- a. Particularised grounds of urgency, including:
 - i. The physical or mental health of an applicant seeking release or variation;
 - ii. Any vulnerability of the person seeking release or variation, such as advanced or immature age;
 - iii. Whether the applicant seeking release or variation is an indigenous person; and,
 - iv. Any other factor which in the judgment of the applicant or their legal representative warrants expedited consideration by the Court.
- b. Whether the prosecution consents to the application;
- c. Whether certain hearing dates are particularly inconvenient to the parties or their representatives.

4.3 An application for bail must briefly state the grounds upon which bail is sought to be granted, varied or revoked including reference to the particular sections of the *Bail Act* which apply to that application and also including whether cause or exceptional circumstances must be established by the applicant.

4.4 Any application or opposition must be accompanied by an affidavit that provides the birth date of the applicant, identifies all charges against the applicant, names the informant and sets out the facts to be relied upon in support of the grounds as stated in the application or opposition.

- a. Information on preparing an affidavit may be found on the Court's website.

4.5 An application to vary a condition of bail must be accompanied by an affidavit of consent from the surety (where relevant).

5. APPEARANCES AND ORDERS

- 5.1 The Registry will make the appropriate arrangements for the applicant's attendance. If the judge hearing the application considers that for good reason the applicant does not need to be present in court, the Registry will arrange a videolink with the place of remand.
- 5.2 If the Prosecution consents to the application and the judge considers it proper so to do, an order admitting the applicant to bail may be made without requiring the parties to attend.
- 5.3 If the applicant is to appear by videolink and bail is granted, the Registry will forward the signed order and the Undertaking of Bail to the governor of the prison or the member of the police force for the time being in charge of the police gaol in which the applicant is held.
- 5.4 If a condition of bail requires a surety, the surety must attend at the Principal Registry to provide the surety, affirm or swear an Affidavit of Justification and sign the Undertaking of Bail. The surety must attend at the Principal Registry, whether the accused is to be bailed by the Principal Registry or by the place of remand. The surety and applicant must also attend at the Principal Registry to sign a new Undertaking of Bail for any variation to conditions of bail that is granted.
- 5.5 When the order contains conditions requiring the applicant to report to any police station, the Registry will transmit a copy of the order to the Chief Commissioner of Police and to the officer in charge of that police station.
- 5.6 When the order contains a condition that the applicant surrender his or her passport, the Registry will transmit a copy of the Undertaking of Bail to the Department of Foreign Affairs and Trade, Passport Section; passports surrendered to the Supreme Court will be transferred to the court in which the charges will be heard.

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8 April 2016