



# Supreme Court of Victoria

## Practice Note SC CR 2 (First Revision)

### Bail Applications and Appeal

#### 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 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.

#### 2. COMMENCEMENT

- 2.1 This Practice Note was issued on 1 January 2017. The Practice Note, as revised, applies to all applications under the *Bail Act 1977* filed on or after 21 May 2018.

#### 3. DEFINITIONS

- 3.1 In this Practice Note:

*Act* means the *Bail Act 1977*.

*Court* means the Supreme Court of Victoria.

*CPA* means the *Criminal Procedure Act 2009*.

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

*LPG* means the Legal Practice Group of Victoria Police Legal Services Department.

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

*Rules* means the *Supreme Court (Criminal Procedure) Rules 2008*.

#### 4. FILING AND SERVICE

- 4.1 Any application for bail, variation of bail, revocation of bail, appeal against a grant or refusal to revoke bail, and any response thereto, with any supporting affidavit, must be filed with the Registry.
- 4.2 Filing may be either by emailing the application or appeal and supporting affidavit to [criminaldivision@supcourt.vic.gov.au](mailto:criminaldivision@supcourt.vic.gov.au), or by submitting these

- materials to the Registry in person at 2/436 Lonsdale Street, Melbourne, or via post addressed to 210 William Street, Melbourne, VIC 3000.
- 4.3 Subject to any explicit order to the contrary, no application, appeal, affidavit in support or response should be filed with any individual judge of the Court or a member of their staff.
- 4.4 An application or further application for bail, or application for variation of bail, and a supporting affidavit:
- 4.4.1 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;
- 4.4.2 Will, in all cases, be transmitted electronically to the DPP and LPG by the Registry within 24 hours of filing, in order to facilitate the timely preparation of a response.
- 4.5 The DPP or LPG (as relevant) must file and serve on the applicant or their legal representative any materials in response within five business days of service, or within any other timeframe set by the Registry.
- 4.6 An application in respect of the revocation of bail and supporting affidavit will in all cases be transmitted electronically to the respondent by the Registry within 24 hours of filing, in order to facilitate the timely preparation of a response.
- 4.7 The respondent must file and serve any materials in response to the application for revocation of bail within five business days of service, or within any other timeframe set by the Registry.

## 5. FORM AND CONTENT

- 5.1 Generally, any application in respect of bail must comply with the requirements of r 1.10 of the Rules.
- 5.2 There is no form for application prescribed by the *Bail Regulations 2012*. However, the general application in Form 6-1D of the *Supreme Court (Criminal Procedure) Rules 2017* may be used for bail applications with such modification as is necessary. A supporting affidavit template can be found on the Court's website.
- 5.3 An application in respect of bail must not specify a date for hearing, this will be set by the Registry subject to judicial and courtroom availability. **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:
- 5.3.1 Particularised grounds of urgency, including:
- (a) The physical or mental health of an applicant seeking release or variation;
  - (b) Any vulnerability of the person seeking release or variation, such as advanced or young age;
  - (c) Whether the applicant seeking release or variation is an indigenous person; and,

- (d) Any other factor which in the judgment of the applicant or their legal representative warrants expedited consideration by the Court.

5.3.2 Whether the prosecution consents to the application;

5.3.3 Whether certain hearing dates are particularly inconvenient to the parties or their representatives.

5.4 An application or appeal must briefly state the grounds upon which bail is sought to be granted, varied, revoked or set aside, including reference to specific sections of the *Bail Act 1977*, including whether compelling reason or exceptional circumstances must be established by the applicant.

5.5 Any application, appeal or response must be accompanied by an affidavit that provides the birth date of the applicant/respondent, identifies all charges against the applicant/respondent, including in respect of any outstanding matters, names the informant/s and sets out the facts to be relied upon in support of the grounds as stated in the application, appeal or response.

5.6 Information on preparing an affidavit in support can be found on the Court's website.

5.7 The applicant must give written notice of any application to vary bail to each surety, and any application to vary a condition of bail must be accompanied by an affidavit of consent from the surety (where relevant).

## **6. APPEARANCES AND ORDERS**

6.1 The Registry will make the appropriate arrangements for the applicant's attendance in Court for an application for bail. If the judge hearing the application considers that for good reason the applicant does not need to be present in Court, the Registry can make arrangements for the applicant to appear via video-link.

6.2 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.

6.3 If the applicant is not present at Court and bail is granted, the Registry will forward the signed order and the Undertaking of Bail to the applicant's remand facility.

6.4 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 applicant's remand facility.

6.5 The 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.

6.6 When the order contains conditions requiring the applicant to report to any police station, the Registry will transmit a copy of the order to that police station.

6.7 When the order contains conditions requiring the applicant surrender to another court in answer to bail, the Registry will transmit a copy of the order to that court.

- 6.8 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.

#### **AMENDMENT HISTORY**

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

21 May 2018: This Practice Note was revised on 21 May 2018.

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21 May 2018