



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

Prepared by the Supreme Court Criminal Registry

Revised on 18 September 2024

This template should be used by the prosecution in response to an application for bail or variation of bail, or in support of 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 the prosecution, to be adapted as necessary to suit the particular circumstances of each case. While it is a matter for parties to put relevant information before the court, there is an expectation that in addition to information about Victorian matters, information about past, pending and subsequent interstate matters is also provided. The template is also designed to ensure that relevant material is not duplicated or replicated. The court seeks as much material as it needs without there being unnecessary repetition.

Practice Note SC CR 2 Bail Applications and Appeals (Fourth Revision) and the *Bail Regulations 2022* outline how to make an application for revocation of bail or appeal against a bail decision. 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 [name of applicant]

BETWEEN:

[name of applicant]

Applicant

- and -

[Victoria Police] or [Australian Federal Police]

Respondent

AFFIDAVIT IN RESPONSE TO AN APPLICATION FOR BAIL

Date of document:

Solicitor's code:

Filed on behalf of:

DX:

Prepared by:

Telephone:

[name of solicitor]

Ref:

[Victoria Police] or [Office of Public Prosecutions Victoria]

Email:

or [the Office of the Commonwealth Director of

Public Prosecutions]

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 [Victoria Police] or [Office of Public Prosecutions Victoria] or [the Office of the Commonwealth Director of Public Prosecutions] and am the solicitor with carriage of this matter.
2. I make this affidavit in response to an application for bail by [insert name of the applicant].
3. The matters deposed to in this affidavit are based on my examination of the documents provided to me and/or information provided to me by the informant/s, [name/s of informant/s], unless otherwise specified.

Note: *If a number of the matters referred to in paragraphs 4 – 17 of the template affidavit are agreed by the respondent, this can be summarised in paragraph 18 (under the heading Response to the applicant’s affidavit in support).*

Charges for which the applicant seeks bail

4. I confirm that the information set out in the applicant’s affidavit in support at [table] or [paragraphs] [insert table or paragraph number/s] captures all relevant information relating to the charges for which the applicant is currently on remand.

– OR –

The information about the charges set out in the applicant’s affidavit does not capture all relevant information and the additional information is [insert additional information].

5. I confirm that the charges sheets and summary/ies in Exhibit [insert exhibit number] of the applicant’s affidavit in support are accurate and capture all charges for which the applicant is currently on remand and the description of the alleged offending in the summary/ies is relied upon by the prosecution for the purpose of the bail application.

– OR –

Exhibited to this affidavit and marked **Exhibit [XXX-1]** is the description of the alleged offending relied upon for the purpose of the bail application. **Note:** *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. **Note:** it is not necessary for the informant's report to include a summary of the alleged offending unless the version provided in the affidavit in support is inaccurate or incomplete.*

Bail onus and applicable legislation

6. I have reviewed the applicant's analysis of the applicable test for this bail application and agree that it is correct.

– OR –

I have reviewed and disagree with the applicant's analysis of the applicable test for this bail application. It is the prosecution's position that the applicable test is [State the applicable test for the bail application, and outline the reason with reference to the specific schedule and item number/s.]

Co-accused

7. I confirm that the information as set out in the applicant's affidavit in support at paragraphs [insert paragraph numbers] captures all relevant details about the co-accused.

– OR –

[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

8. I confirm that the information as set out in the applicant's affidavit in support at [table] or [paragraphs] [insert table or paragraph number/s] captures all relevant information relating to the charge/s for which the applicant is currently on bail.

– OR –

[Provide relevant information relating to the charge/s for which the applicant is currently on bail that are not included in the applicant's affidavit in support.]

9. I confirm that the charge sheets and summaries in Exhibit [insert exhibit number] of the applicant's affidavit in support are accurate and capture all charges for which the applicant is currently on bail.

– OR –

Exhibited to this affidavit and marked **Exhibit [XXX-2]** are true copies of the charges and summaries for which the applicant is on bail. [if not provided as part of the applicant's affidavit in support]

Other outstanding charges – where the applicant is on summons

10. I confirm that the information as set out in the applicant's affidavit in support at [table] or [paragraphs] [insert table/paragraph numbers] captures relevant information relating to the charges for which the applicant is currently on summons.

– OR –

[Provide relevant information relating to the charge/s for which the applicant is currently on summons that are not included in the applicant's affidavit in support.]

11. I confirm that the charge sheets and summaries in Exhibit [insert exhibit number] of the applicant's affidavit in support are accurate and capture all charges for which the applicant is currently on summons.

– OR –

Exhibited to this affidavit and marked **Exhibit [XXX-3]** are true copies of the charges and summaries for which the applicant is on summons. [if not provided as part of the applicant's affidavit in support]

Other outstanding matters

12. I confirm that the information set out in the applicant's affidavit in support at paragraphs [insert paragraph numbers] captures the further outstanding matters that fall within section 4AA(2)(c).

– OR –

[Insert detail of any additional matters that fall within section 4AA(2)(c) - matters including Schedule 1 or Schedule 2 offences for which the applicant is, or was at the time of the alleged offending in the matter/s on which the applicant is now seeking bail:

- a) at large awaiting trial or sentence;
- b) on remand;
- c) on a community correction order;
- d) otherwise serving a sentence; or
- e) released under a parole order.]

13. I confirm that the documents in Exhibit [insert exhibit number] of the applicant's affidavit in support are accurate and capture all additional matters that fall within section 4AA(2)(c).

– OR –

Exhibited to this affidavit and marked **Exhibit [XXX-4]** are true copies of the documents of additional matters that fall within section 4AA(2)(c). [if not provided as part of the applicant's affidavit in support]

Relevant procedural history

14. I confirm that the information set out in the applicant's affidavit in support at [table] or [paragraphs] [insert table/paragraph numbers] captures the relevant

procedural history including previous applications for bail or applications for revocation of bail.

– OR –

[Provide all relevant procedural history not included as part of the applicant's affidavit in support with respect to previous applications for bail or applications for revocation of bail.]

Criminal history

15. The applicant has no criminal history.

– OR –

I confirm the applicant has a criminal history and the criminal history in Exhibit [insert exhibit number] of the applicant's affidavit in support is a true and current copy of the applicant's criminal history.

– OR –

The applicant has a criminal history and exhibited to this affidavit and marked **Exhibit [XXX-5]** is a true and current copy of the applicant's criminal history. [if not provided as part of the applicant's affidavit in support]

5AAAA Family Violence risks and intervention orders

16. I confirm that the information set out in the applicant's affidavit in support at paragraphs [insert paragraph numbers] captures all intervention orders involving the applicant.

- OR –

[Provide details of any family violence intervention order, or family violence safety notice, or recognised domestic violence order made against the applicant that are in force. Also provide details of any other relevant family violence intervention order, family violence safety notice, recognised domestic

violence order, or personal safety intervention order where the applicant is the protected person or applicant.]

17. Exhibited to this affidavit and marked **Exhibit [XXX-6]** is a true copy of the order/s that is/are in force. [if not provided as part of the affidavit in support]

Response to the applicant's affidavit in support

18. I confirm that the information set out in the applicant's affidavit in support at paragraphs [insert paragraph numbers] captures the relevant information in relation to charges, outstanding matters, applicable bail test, co-accused, procedural history, criminal history and family violence intervention orders [delete as required].
19. [Address any issues relating to the personal and surrounding circumstances outlined in the applicant's material] and/or any other surrounding circumstances that the respondent relies upon including any relevant circumstances in section 3AAA(1).]
20. [Address any other issues arising out of the applicant's materials including matters relevant to considerations under section 3A and/or section 3B.]
21. Exhibited to this affidavit and marked **Exhibit [XXX-7]** is a true copy of the informant's report.

Other matters

22. [Detail any other matters relevant to this application.]

Position on application

23. The application for bail is opposed on the basis that the applicant has not discharged the burden of satisfying the Court as to the existence of [a compelling reason that justifies the grant of bail] or [exceptional circumstances that justify the grant of bail.]

– OR –

[The prosecution concedes that it is open to the Court to find that {a compelling reason exists that justifies the grant of bail} or {exceptional circumstances exist that justify the grant of bail}.] OR [The prosecution agrees the applicant has a prima facie entitlement to bail.] However, bail is opposed on the basis that the applicant is an unacceptable risk of:

- (i) endangering the safety or welfare of any person, whether by committing an offence that has that effect or by any other means; and/or

[provide reasons for this position.]

- (ii) [interfering with a witness or otherwise obstructing the course of justice in any matter]; and/or

[provide reasons for this position.]

- (iii) [failing to surrender into custody in accordance with the conditions of bail].

[provide reasons for this position.]

– OR –

The application for bail is not opposed subject to the proposed conditions below:

Proposed conditions if bail is granted

- (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 ¹

*in the State of Victoria

¹ Place (City, town or suburb).

On ²

.....³

Before me, ⁴

On ⁵

.....⁶

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

*This affidavit was signed and *sworn or *affirmed by the deponent by audio visual link *and the authorised affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements under section 27(1) of the *Oaths and Affirmations Act 2018*.

*delete if not applicable

² Date.

³ Signature of person making the affidavit.

⁴ Signature of authorised affidavit taker.

⁵ Date.

⁶ Name, address (personal or professional), and capacity in which authorised person has authority(writing, typing or stamp).