



**Magistrates' Court  
Victoria**

**Practice Direction**

**No. 4 of 2011**

**BAIL RELATED APPLICATIONS IN THE MAGISTRATES' COURT**

**Background:**

**This practice direction revokes Practice Directions:**

**1 of 2004**

**4 of 2005**

**4 of 2008**

Any reference to an in person applicant is to an accused that has not provided any instructions to a solicitor regarding the application for bail.

Any reference to a Coordinator is a reference to the Court Coordinator at the proper venue of the Court.

**All applications:**

- All applications for bail and ancillary applications will be listed at a time directed by the court coordinator. It is the expectation of the Court that all listed applications will be ready to proceed at that time.
- The court coordinator must be informed in the event that a CISP, CREDIT/Bail, Forensicare, Youth Justice, Aboriginal Liaison Officer assessment has been arranged, and the expected time that the assessment will be completed
- Gaol orders are the responsibility of the practitioner listing the application. Where the applicant is appearing in person, the registrar of the proper venue will provide assistance with gaol orders, including faxing these to the relevant prison and Central Prison Records.
- Practitioners/applicants are to notify the informant and prosecuting agency of the date allocated for hearing of the application in a 'reasonable time' prior to hearing. Where an applicant is in person the registrar of the proper venue shall forward a copy of the application to the informant.
- To assist with the timely listing of applications, practitioners/applicants must advise the court coordinator as to estimated duration, number of witnesses and any other information requested by the court coordinator.
- Where an accused is facing charges from multiple informants across multiple briefs a separate application must be filed and served for each informant/brief.

## **Bail application on first remand date**

- Practitioners/Applicants are not required to file an application for bail at the first remand hearing.
- The informant or his/her representative are required to appear at the first remand hearing.
- Applications for bail will proceed on the day subject to available hearing time due to pressure of court business, and if relevant, the availability of Court Services assessments (i.e. CISP, CREDIT/Bail, Forensicare, Youth Justice).

## **Applications for bail after first remand hearing**

- All applications for bail must be filed on the attached 'Application for Bail' form.
- Practitioners/applicants must contact the relevant court coordinator and obtain a hearing date for any application for bail. Applications will not be listed unless a date has been obtained from the court coordinator in advance of the application being filed.
- Applications by fax, email, or letter without practitioners having previously obtained a date from the court coordinator, will not be listed.

## **Applications requiring new facts and circumstances and Applications for bail where bail previously revoked**

- Where bail has previously been refused or revoked by a Magistrate, the practitioner must advise the court coordinator of the date of the hearing and the name of the presiding Magistrate. Such applications will be listed before the Magistrate who refused bail where this is possible within **7 days of notice of the application**. If the original Magistrate is not available, the bail application can be listed before another Magistrate.
- The court coordinator will seek to accommodate listing date requests by practitioner/applicants but will list according to resource availability.

## **Listing of Applications by Co-accused**

- Applications by co-accused will be listed before the same Magistrate.
- Where hearings are not listed for the same date, the dates for the applications by co-accused must be obtained with the court coordinator, and will, wherever practicable, be listed within 7 days. Details of Co-accused must be provided to the court coordinator when notice of the bail application is given.

## **Variations of Bail**

Where a Court has granted bail and an accused person seeks a variation of bail the following procedure should apply:

- An application must be filed in accordance with Form 14, *Bail Regulations* 2003 (attached).
- Practitioners/applicants must contact the relevant court coordinator and obtain a hearing date for any application for variation of bail.
- Practitioners/applicants are to inform the court coordinator of the variation sought and the estimated hearing time. If known to the applicant, the attitude of the Informant should be advised.
- Upon obtaining the date from the court coordinator, practitioners/applicants must file the notice of variation of bail with the Court, and provide notice to the

informant, prosecuting agencies and any surety/sureties (in accordance with s18AI of the *Bail Act 1977*) in a reasonable time.

- If the matter is opposed or if the variation sought requires significant changes to the bail, for example:
  - Reduction or removal of reporting or curfew conditions
  - Deletion of conditions pertaining to leaving Australia and return of passports
  - Reducing sureties or depositsthe court coordinator will list the application before the Magistrate who granted bail within 7 days where practicable.
- Where the Court grants the application for variation of bail, the applicant is required to enter into the new undertaking of bail.

#### **Applications for variation where surety has been fixed**

If a surety is not present at the hearing of an application to vary bail, the applicant will be required to produce an affidavit from the surety or sureties confirming that he/she is aware and consents to the variation(s) sought by the applicant. The affidavit must be sworn or affirmed before a person authorised pursuant to s. 123C, 124 or 125 of the *Evidence (Miscellaneous Provisions) Act (Vic) 1958*.

#### **Revocation of bail**

Applications for revocation of bail or discharge of surety should be listed before the Magistrate who granted bail where practicable.

#### **Applications for Bail after Committal for Trial.**

An application for the granting, variation or revocation of trial bail after the date on which the committal proceedings have concluded must be made to the Court to which the accused has been committed to stand trial, except in accordance with s.18AC(4) of the *Bail Act*.

**This Practice Direction takes effect on 27 June 2011**



Ian L Gray  
Chief Magistrate

Dated: 20th June 2011.

## APPLICATION FOR BAIL

IN THE MAGISTRATES' COURT AT \_\_\_\_\_

### ***APPLICANTS DETAILS***

Applicant Name: \_\_\_\_\_  
Address (prison): \_\_\_\_\_ Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_

### ***CHARGE DETAILS***

Case Number: \_\_\_\_\_  
Respondent (Informant): \_\_\_\_\_  
Charges: \_\_\_\_\_  
Nature of Proceedings (please tick) : ☐ Summary stream ☐ Indictable stream  
Date & Place Where the Applicant is Required to Appear to Answer Charges:  
\_\_\_\_/\_\_\_\_/\_\_\_\_ at \_\_\_\_\_

### ***PREVIOUS BAIL APPLICATIONS***

Details of Previous Bail Application in Relation to These Charges (List all previous bail applications by date and the name of the magistrate/s before whom the application/s were made)

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Magistrate \_\_\_\_\_  
Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Magistrate \_\_\_\_\_

If Bail Previously Refused, State New Facts & Circumstances: \_\_\_\_\_  
\_\_\_\_\_

### ***CO-ACCUSED DETAILS***

Details of Co-Accused (List the names of ALL co-accused, date/s of any bail application and the name/s of presiding magistrates)

Name/Case # \_\_\_\_\_ Bail App \_\_\_\_/\_\_\_\_/\_\_\_\_ Magistrate \_\_\_\_\_  
Name/Case # \_\_\_\_\_ Bail App \_\_\_\_/\_\_\_\_/\_\_\_\_ Magistrate \_\_\_\_\_

### ***HEARING DETAILS FOR THIS APPLICATION***

TAKE NOTICE that the applicant intends to apply for bail at the Magistrates' Court of Victoria  
sitting at \_\_\_\_\_ on \_\_\_\_/\_\_\_\_/\_\_\_\_ at ☐ 9.30am ☐ other : \_\_\_\_\_ am/pm  
☐ CISP/ CREDIT Assessment Required? (please tick) ☐ Will Evidence Be Called? (please tick)  
Estimated Duration \_\_\_\_\_

Dated at \_\_\_\_\_ on \_\_\_\_/\_\_\_\_/\_\_\_\_

Applicant's Legal practitioner

To: (please tick) ☐ Registrar, Magistrates' Court ☐ The Respondent ☐ The Office of Public Prosecutions ☐ VicPol prosecutions

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
email: \_\_\_\_\_

**Bail Act 1977**

Bail Regulations 2003

**NOTICE OF APPLICATION FOR AN ORDER TO VARY  
\*AMOUNT OF BAIL  
\*CONDITION(S) OF BAIL**

In the Court

at

Applicant [*insert name of Accused*]

Respondent [*insert name of Informant*]

Nature of charge

On 20 , I , the applicant, was admitted to bail upon signing an undertaking on the following conditions:

\*(a) A deposit of \$ ;

\*(b) A surety/sureties [*insert name and address of first surety*] of in the amount of \$  
[*insert name and address of second surety*]  
of in the amount of \$

\*(c) [*insert any other condition imposed*]

To the abovenamed \*surety/sureties

Take notice that—

1. I will apply to the Court at \*a.m./ p.m. for an order—  
\* varying the amount of bail fixed as follows [*insert details of the variation sought*]  
\* varying \*a condition/the conditions of bail as follows [*insert details of the variation sought*].
2. You as \*surety/sureties are entitled to attend at the hearing of such application and to give evidence.

Dated at , 20 .

(Signed) Applicant

\* Delete if inapplicable.