

## **BAIL**

### **LEGAL AID NSW CRIMINAL LAW CONFERENCE 1, 2, 3 JUNE 2016**

#### **SUPREME COURT COMMON LAW DIVISION – BAIL**

PRACTICE NOTE SC CL 11, issued on 4 February 2016, commenced on 7 March 2016.

#### **LIST OF MATERIALS/ ATTACHMENTS**

- **Practice Note SC CL 11 with attached Notice of Readiness to Proceed**
- **Application for Expedition of a Bail Application**
- **Application to obtain a Drug and Alcohol report**
- **Detention Application form**
- **Release Application**
- **Variation Application**

Please note that all of the above are available electronically on the Supreme Court website.

- **Paper of CCA Registrar Alanna Van der Veen, “Practice Note SC CL 11; Information Session” held on 2 March 2016 at the Supreme Court Sydney.**

#### **Other useful resources in the area**

- CCA Registrar Alanna Van der Veen’s article “Changes to Supreme Court Bail Procedures” in the March 2016 Law Society Journal
- The “Bail Act” page on the LA NSW Internet site

#### **Contact details for ICLC Supreme Court Bails section.**

- **Email; [supreme.court.bails@legalaid.nsw.gov.au](mailto:supreme.court.bails@legalaid.nsw.gov.au)**
- **Email/fax line; 92195541**
- **Phone; 92195105**
  
- Inner City Local Courts main numbers; P. 92195001, F. 92195889

## **CHANGES AND POTENTIAL CHANGES IN THE AREA OF BAIL TO BE AWARE OF**

### **The Bail Amendment Act 2015**

This was assented to on 5 November 2015 but is yet to commence. Some key sections of the Bail Act 2013 are amended in response to Hatzistergos and Sentencing Council Reports, and there are also amendments in response to the Martin Place siege review.

### **KEY CHANGES**

- S. 16 B Show Cause. There will be an additional group of Release applicants subject to the Show Cause provisions – those who commit a serious indictable offence while subject to a warrant for failing to appear at court, a revocation of parole warrant, or a s. 25 (2) Crimes (Sentencing Procedure) Act 1999 conviction warrant
- S. 16 B (3). The definition of a “serious personal violence offence” will be expanded (it currently is restricted to an offence under Part 3 of the Crimes Act 1900 (NSW)) to include a similar (punishable by imprisonment for 14 years +) offence under “a law of the Commonwealth, another State or Territory or any other jurisdiction...”
- S. 18 – Matters to be considered as part of the assessment of bail concerns. Basically, s. 18 (1) (f) is to be deleted and replaced with a longer list of “orders” etc that the bail authority is to consider regarding the accused person’s history of compliance or non-compliance.
- A new S. 18 (1) (f1) to be added – if the bail authority is satisfied there is or will be a breach of bail – the bail authority is to consider any warnings given to the accused by police or other bail authorities.
- A new S. 18 (1) (i1) to be added – if the accused person has been convicted, but not yet sentenced, the bail authority is to consider the likelihood of a custodial sentence being imposed
- S. 28 accommodation requirements – linked to s. 29 pre-release requirements. A new S. 28 (3) (a1) will add the ability to impose an accommodation requirement “for the purpose of enabling the accused person to be admitted to a residential drug rehabilitation facility for treatment immediately on the person’s release”.
- S. 43 – Police power to make bail decision. A new S. 43 (1) (1A) will be added to allow the police to grant bail to a person who is receiving treatment in a hospital.
- S. 47 – Review of police decision by senior police officer. The definition of “senior police officer” is expanded.
- S. 78 (2) is to be revoked. This deals with the powers of bail authorities when a person has (or is about to) failed to comply with bail. This deletion must make it easier to revoke or refuse bail in these circumstances as the words in S. 78 (2) - “The bail authority may revoke

or refuse bail only if satisfied that .....having considered all possible alternatives, the decision to refuse bail is justified” – will be removed.

- **Response to Martin Place siege review.** Essentially, bail authorities will be required to take into account links with terrorist organisations or violent extremism.
- This will be done via further additions to s. 18 – matters to be considered as part of the assessment of bail concerns. There will now be S. 18 (q) – associations with a terrorist organisation, a S. 18 (r) – whether the accused has made statements or carried out activities advocating support for terrorist acts or violent extremism, and a S 18 (s) – whether the accused has any associations or affiliations with any persons or groups advocating support for terrorist acts or violent extremism.
- A new S. 22 A will be inserted. Essentially, for the listed terrorism related offences, or when charged with any offence for which a custodial sentence may be imposed – when you face current relevant charges, have a conviction for a relevant charge, or are subject to a relevant commonwealth control order - bail must be refused unless exceptional circumstances exist.
- To be abundantly clear, s. 22 A (2) says that if the offence is a show cause offence, the requirement to establish that exceptional circumstances exist applies instead of the requirement to show cause. (Important note – this must mean/ supports the argument that show cause does not mean exceptional circumstances – ie. It is harder if you have to establish exceptional circumstances. It is the second place this is made clear – the first is the current s. 22 – you need to establish that special or exceptional circumstances exist to get bail for an appeal to the CCA or HC. The current S. 22 (2) says the same as the new S. 22 A (2)).
- If exceptional circumstances are shown to exist, the unacceptable risk test is then applied (Second Reading speech).

#### **OTHER POSSIBLE CHANGES ON THE AGENDA/ MISCELLANEOUS BILL/ REGULATIONS**

- Amendment to clarify that a prosecutor can make an application for the imposition of bail conditions when there has been no bail decision (eg Future CAN) or unconditional bail has been granted. S. 51 (interested persons may make variation applications) does not apply because that relates to variation of (current) bail conditions. The ODPP raised this, and it was generally supported, because they were often in a situation where they were simply seeking the addition of certain bail conditions but were constrained by s. 50 – Prosecutor may make detention application. They apparently found themselves forced to make detention applications where they weren't seeking to have bail revoked - just the imposition of certain conditions.
- There is a proposal being examined to amend s. 68 to allow the Local Court to hear a variation application by consent, even if the accused person has appeared in another

(higher) court. Currently s. 68 prohibits the Local Court from hearing a bail application if the accused has made his or her first appearance in that other court. Note; this would only be permitted in consent variation matters and it is anticipated that there may be too many logistical problems associated with this idea.

- Further amendments to S. 18 (matters to be considered as part of the assessment of bail concerns) – to include in S. 18 (1) (f) extended supervision orders and interim supervision orders under the Crimes (High Risk Offenders) Act 2006.
- Amend the Regulations to clarify that a court is not to decline to hear a detention application only on the basis that it is not made in writing. This is due to an identified problem in District/ Supreme Court matters where a jury returns a verdict of guilty post Trial and there have been difficulties seeking a revocation of bail/ detention in these circumstances.
- Clarification of bail status when a S. 33 order is made – Mental Health (Forensic Provisions) Act. The proposal is that bail is deemed to have been dispensed with upon the making of a S. 33 order. There is a further proposal being looked at to enable police to consider the granting of bail after the court has made a s. 33 order, and the person has been returned into police custody after having been assessed as not mentally ill and therefore not requiring admission/ treatment. They also want the ability to formally refuse bail (again?) in these circumstances – so that they can transfer the person from police custody to DCS custody pending their appearance back before the Local Court.
- Finally (and it is hoped that these proposals have been successfully resisted), the NSWPF have at various stages agitated for the following;
  - Creating a new criminal offence of “Breach of Bail”
  - A new offence of committing an Indictable offence whilst on bail.
  - Simplify police powers of arrest for breach of bail.
  - Improve police ability to conduct enforcement condition checks – eg. Curfew checks.

Paul Johnson

Eleanor Thornton

Daniel Covington

May 2016



## PRACTICE NOTE SC CL 11

### Supreme Court Common Law Division – Bail

#### 1. Commencement

- 1.1. This Practice Note was issued on 4 February 2016 and commences on 7 March 2016.

#### 2. Application

- 2.1. This Practice Note applies to applications made under the *Bail Act 2013* (NSW) in the Supreme Court.

#### 3. Purpose

- 3.1. The purpose of this Practice Note is to establish the procedures to be followed when filing an application under the *Bail Act 2013* (NSW) in the Supreme Court.

#### 4. Definitions

- 4.1. In this Practice Note:

- 4.1.1. **Bail Application** means a detention application, release application, variation application, or any other application made under the *Bail Act 2013* (NSW) in the Supreme Court.
- 4.1.2. **Notice of Readiness to Proceed** means the form set out in the appendix to this Practice Note.

#### 5. Filing a Bail Application in the Supreme Court

- 5.1. A party seeking to have a Bail Application listed before the Supreme Court must file a 'Release or Variation Application to the Supreme Court of NSW' form or 'Detention Application to the Supreme Court of NSW' form (as the case may be) with the Supreme Court.
- 5.2. The approved forms can be found using the following link:

[www.supremecourt.justice.nsw.gov.au/Pages/SCO2\\_formsfees/SCO2\\_forms/SCO2\\_forms\\_subject/crime\\_bail\\_forms.aspx](http://www.supremecourt.justice.nsw.gov.au/Pages/SCO2_formsfees/SCO2_forms/SCO2_forms_subject/crime_bail_forms.aspx)

- 5.3. The applicable form can be filed in the following ways:
  - 5.3.1. over the counter at the Supreme Court Registry;
  - 5.3.2. via e-mail to the e-mail address [supremecourt.bails@courts.nsw.gov.au](mailto:supremecourt.bails@courts.nsw.gov.au);
  - 5.3.3. by facsimile to (02) 9230 8628; or
  - 5.3.4. by post.
- 5.4. If a Bail Application is not completed in its entirety, the application will not be accepted for filing.
- 5.5. Once a Bail Application has been filed, the matter will be allocated a hearing date, and a date for call-over before the Registrar. The call-over date allocated will be the Monday the week before the hearing date.
- 5.6. The Supreme Court Registry will provide notification of the Bail Application, the call-over date and the hearing date to the applicant, the applicant's legal representative and the prosecuting authority within one business day of the application being filed.
- 5.7. On request from the applicant's legal representative, the relevant prosecuting authority will provide to the applicant's legal representative a copy of the Court Attendance Notice, statement of facts and the applicant's criminal record. Such documents must be provided within seven days of receiving the request.
- 5.8. When allocating a hearing date, the convenience of counsel will only be taken into consideration in exceptional circumstances.

## **6. Call-over**

- 6.1. The purpose of the call-over before the Registrar is to ascertain:
  - 6.1.1. whether the Bail Application will proceed on the hearing date;
  - 6.1.2. whether an adjournment of the hearing date is required; or
  - 6.1.3. whether the Bail Application is to be withdrawn.
- 6.2. Prior to the call-over or at the call-over, the Applicant's legal representative must file a Notice of Readiness to Proceed that certifies that the matter is ready to proceed on the allocated hearing date. If a Notice of Readiness to Proceed is not filed before or during the call-over, the hearing date may be vacated.
- 6.3. If a Bail Application is to be withdrawn and notification of the withdrawal is sent to the Registrar prior to 2pm on the Friday before the call-over, no appearance is required at the call-over. The withdrawal of the Bail Application will be processed in chambers.
- 6.4. If the Notice of Readiness to Proceed is filed before 2:00 pm on the Friday before the call-over, the Registrar will notify the parties by e-mail if an appearance is not required.
- 6.5. If an adjournment application is to be made, an appearance by the parties is required at the call-over.

- 6.6. Self-represented litigants are not required to complete a Notice of Readiness to Proceed and their matters will not be listed in the call-over.

**7. Application for adjournment of matter made after the call-over**

- 7.1. If a party wishes to make an application for an adjournment after the Notice of Readiness to Proceed has been filed and the party's legal representative has not changed since filing the Notice of Readiness to Proceed, an affidavit from the lawyer who signed the Notice of Readiness to Proceed must be filed that sets out why the matter is not ready to proceed and why the Notice of Readiness was signed.
- 7.2. If the applicant has changed or retained new legal representation after the filing of a Notice of Readiness to Proceed and wishes to make an application for an adjournment, an affidavit must be filed by the new legal representative that sets out why the matter is not ready to proceed.
- 7.3. If such an adjournment application is granted, the matter will be listed in the Registrar's call-over on the following Monday to set a new hearing date.

**8. Application for expedition**

- 8.1. Should a party wish to request a date that is sooner than the date allocated, that party must send to the Registry an Application for Expedition form in any of the ways listed at 5.3 above.
- 8.2. The Registrar will determine the expedition request in chambers.
- 8.3. If an expedition request is granted, the convenience of counsel will not be taken into consideration when determining the date on which the application will be listed.

**9. Requesting a drug and alcohol report**

- 9.1. If a legal representative is of the view that a drug and alcohol report would assist their client's Bail Application, such a report can be requested by sending the Registry an Application for a Drug and Alcohol Report form in any of the ways listed at 5.3 above.
- 9.2. The Registrar will consider the merit of ordering such a report and determine the request in chambers.

**10. Applications involving juveniles and detention applications**

- 10.1. Matters involving juveniles and detention applications will be given expedited hearing dates. The procedures outlined at clauses 6, 7 and 8 do not apply to matters involving juveniles and detention applications.

**11. Material to be filed in a Bail Application**

- 11.1. Any material on which a party intends to rely in a Bail Application must be filed with the Registry and served no later than 4:00 pm the day preceding the day before the hearing.
- 11.2. Such material may be filed in any of the ways listed in clause 5.3 above.
- 11.3. Material provided to the Court after 4:00 pm the day preceding the day before the hearing will be accepted at the discretion of the presiding Judge.



**T F Bathurst AC**  
Chief Justice of New South Wales  
4 February 2016

**Related Information:**  
*Bail Act 2013 (NSW)*





**Supreme Court**  
of New South Wales

## Notice of Readiness to Proceed

This form is required to be completed by the Solicitor on record for the Applicant seeking to confirm the hearing date of a bail application in accordance with Practice Note SC CL 11.

Self-represented litigants and juvenile applicants are not required to complete this form.

This form must be filed before 2pm on the Friday before the Call Over or at the Call Over. If filed prior to the Call Over, the Registrar will advise the parties by e-mail if an appearance is not required at the Call Over.

Send your completed form by email ([supremecourt.bails@courts.nsw.gov.au](mailto:supremecourt.bails@courts.nsw.gov.au)), fax (9230 8628) or post.

### Court file details

Case number:

Applicant name:

Date of bail hearing:

Estimate for hearing of bail application:

### Undertaking

I undertake that:

- For legally aided matters, a merit advice has been completed and the bail application found to have merit;
- A conference has been held with the applicant;
- If a drug and alcohol report is required, it has been requested and has either been received, or it is anticipated that it will be received, prior to the hearing of the bail application;
- There has been a previous refusal of bail after a hearing on the merits;
- For variations of a bail order, existing sureties have been notified of the bail hearing date and the need to consent to variations in person at the hearing or in writing;
- Enquiries have been made as to the availability of a suitable residence for the applicant and there is evidence available of consent to the applicant being bailed to reside there, from those with whom it is proposed that he or she should live; and
- Enquiries have been made to ensure that sufficient sureties have been located and are willing to provide written or oral evidence of their willingness and capacity to provide security.

Signed:	Dated:
Name:	Role: Solicitor for the Applicant
Contact telephone number:	Contact email address:



**Supreme Court**  
of New South Wales

## APPLICATION FOR EXPEDITION OF A BAIL APPLICATION

**Please complete this form if you require an expedited hearing for a bail application.**

**Send your completed application form and make any enquiries regarding the progress of your application by email ([supremecourt.bails@courts.nsw.gov.au](mailto:supremecourt.bails@courts.nsw.gov.au)), fax (9230 8628) or post.**

### Supreme Court Proceeding details

Case number:

Full name of applicant:

Date of bail hearing:

List of offences:

When is the matter next listed in the lower court and why:

What stage is the matter at (pre-brief; committal; sentence, etc):

**Reason/s why an expedited hearing of the bail application is required (please attach third party material where appropriate):**

<b>Details of requesting party</b>	
Signed:	Dated:
Name:	Role: Party or Solicitor of Party ( <i>delete which is inapplicable</i> )
Contact telephone number:	Contact email address:

<b>Registry Use Only</b>	
Application for an expedited hearing APPROVED / NOT APPROVED	
If not approved, reasons:	
Name:	Signature:
Position: JUDGE / REGISTRAR	Date:



**Supreme Court**  
of New South Wales

## APPLICATION TO OBTAIN A DRUG AND ALCOHOL REPORT

**Please complete this form if you require the registry to request drug and alcohol report for use in relation to Supreme Court bail applications.**

**Send your completed application form and make any enquiries regarding the progress of your application by email ([supremecourt.bails@courts.nsw.gov.au](mailto:supremecourt.bails@courts.nsw.gov.au)), fax (9230 8628) or post.**

### Supreme Court Proceeding details

Case number:

Full name of applicant:

Date of bail hearing:

List of offences:

When is the matter next listed in the lower court and why:

What stage is the matter at (pre-brief; committal; sentence, etc):

Has your client previously been admitted to a rehabilitation program (if so, please provide details):

**Reason/s why a drug and alcohol report has been requested and how it is relevant to the Supreme Court bail application (please support with third party material where appropriate):**

<b>Details of requesting party</b>	
Signed:	Dated:
Name:	Role: Party or Solicitor of Party <i>(delete which is inapplicable)</i>
Contact telephone number:	Contact email address:

<b>Registry Use Only</b>	
Application for a drug and alcohol report APPROVED / NOT APPROVED	
If not approved, reasons:	
Name:	Signature:
Position: JUDGE / REGISTRAR	Date:



**Supreme Court**  
of New South Wales

## DETENTION APPLICATION FORM

Send the completed application form and make any enquiries regarding the progress of the application by email ([supremecourt.bails@courts.nsw.gov.au](mailto:supremecourt.bails@courts.nsw.gov.au)), fax (9230 8628) or post.

### RESPONDENT DETAILS

NAME OF RESPONDENT:	
MIN / CORRECTIONAL CENTRE:	
DATE OF BIRTH:	
DOES RESPONDENT REQUIRE AN INTERPRETER? LANGUAGE?	
JUSTICELINK CASE NUMBER:	
CHARGES:	
DATE OF NEXT APPEARANCE IN COURT:	
REASON FOR NEXT APPEARANCE IN COURT:	
NAME AND CONTACT DETAILS OF SOLICITOR REPRESENTING RESPONDENT (IF KNOWN):	

### BAIL DETAILS

DATE BAIL GRANTED:	
COURT IN WHICH BAIL GRANTED:	
NAME OF JUDICIAL OFFICER WHO GRANTED BAIL:	
CONDITIONS OF BAIL (IF ANY):	
ANTICIPATED LENGTH SUPREME COURT BAIL APPLICATION:	

### CROWN DETAILS

NAME AND CONTACT DETAILS OF SOLICITOR WITH CARRIAGE:	
SIGNED:	
DATE:	



**Supreme Court**  
of New South Wales

## RELEASE APPLICATION

**DO NOT** file a release application if:

- You **HAVE NOT** applied for bail in the Local Court and been refused; or
- You have a pending bail application in the Local Court.

Send your completed application form and make any enquiries regarding the progress of your application by email ([supremecourt.bails@courts.nsw.gov.au](mailto:supremecourt.bails@courts.nsw.gov.au)), fax (9230 8628) or post.

### APPLICANT DETAILS

Name of applicant:	
Min:	
Correctional Centre:	
Date of birth:	
Does applicant require an interpreter? if so, what language?	
Justicelink case number:	
Charges:	
Date of next appearance in court:	
Reason for next appearance in court:	
Name and contact details of solicitor (indicate if represented by Legal Aid or Aboriginal Legal Service): <i>NOTE: If you have a grant of Legal Aid to a private solicitor, please indicate "Legal Aid"</i>	

### APPLICATION FOR BAIL IN LOWER COURT - DETAILS

Date bail applied for in lower court:	
Court in which refused bail:	
Name of judicial officer who refused bail:	

<b>PREVIOUS APPLICATIONS FOR SUPREME COURT BAIL - DETAILS</b>	
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<b>Have you previously applied for bail in the Supreme Court?</b>	
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<b>On what date was the Supreme Court bail listed?</b>	
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<b>What was the outcome of that bail application?</b>	
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<b>If bail has been previously refused in the Supreme Court, what change of circumstances do you rely on for the matter to be re-listed before the Supreme Court?</b>	
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Signed:	Dated:
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Name:	Role: Party or Solicitor of Party ( <i>delete which is inapplicable</i> )
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**Supreme Court**  
of New South Wales

## VARIATION APPLICATION

Send your completed application form and make any enquiries regarding the progress of your application by email ([supremecourt.bails@courts.nsw.gov.au](mailto:supremecourt.bails@courts.nsw.gov.au)), fax (9230 8628) or post.

If the bail condition you want varied was imposed by a court other than the Supreme Court and you remain in custody because that bail condition has not been complied with, you **MUST** make your application to that other court.

### APPLICANT DETAILS

Name of applicant:	
Min / correctional centre:	
date of birth:	
Does applicant require an interpreter? if so, what language?	
Justicelink case number:	
Charges:	
Date of next court appearance:	
Reason for next appearance in court:	
Name and contact details of solicitor (indicate if represented by Legal Aid or Aboriginal Legal Service):	

### APPLICATION FOR BAIL IN LOWER COURT - DETAILS

Date bail applied for in lower court:	
Court in which bail granted:	
Name of judicial officer who granted bail:	
Conditions of bail:	
Have you applied to that court to have the conditions varied?	
Date applied to that court to have conditions varied	

Court which refused the variation:	
Name of judicial officer who refused the variation:	

**If you have been granted bail by the Supreme Court of NSW but remain in custody because you cannot meet your bail conditions, state below which conditions you are unable to meet:**

**If you are making this application to the Supreme Court, and you have made an earlier application to the Supreme Court in respect of the same charge(s), state below the special facts or circumstances that have arisen since your last application was heard.**

**SURETY**

**On the previous grant of bail, if there was any surety(ies) involved, they will be required to attend at the hearing to consent to the variations sought. If they do not attend, you will be required to produce to the Court at the hearing:**

**(a) evidence of notification of the date of listing of this application and of the nature of the variation sought; AND**  
**(b) the written consent of the Surety to that variation.**

Signed:	Dated:
Name:	Role: Party or Solicitor of Party <i>(delete which is inapplicable)</i>

# **PRACTICE NOTE SC CL 11: INFORMATION SESSION**

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**Supreme Court of New South Wales**

**Registrar Alanna Van der Veen**

**Date: 2 March 2016**

## **1. INTRODUCTION**

This information session assumes that you have read Practice Note SC CL 11 and the new forms. Much of the procedure contained in the Practice Note is self-explanatory. The purpose of this information session is to give you an understanding of how the new Practice Note will work in practice.

## **2. NEW FORMS**

Previously, the only form available in Supreme Court bail applications was a 'Release or Variation form'.

In conjunction with the implementation of the Practice Note, the following forms will be introduced:

- release application form;
- variation application form;
- detention application form;
- application for expedition form; and
- application for Drug and Alcohol Report form.

The detention application, application for expedition and application for Drug and Alcohol Report forms are new. The release and variation forms that were combined in the one form are now two separate forms. All of these forms can be found on the Supreme Court website. New forms are currently being accepted for filing.

Forms that are incomplete will not be accepted for filing and will be returned.

### **3. LISTING RELEASE OR VARIATION APPLICATIONS FOR HEARING**

#### ***Filing a release or variation application***

When a release or variation application is filed, the matter is now given two court dates: a hearing date, and a date for call-over. The call-over date will be the Monday of the week before the hearing date.

The first call-over under the Practice Note will be on 7 March 2016, for matters to be heard in the week beginning 14 March 2016.

If the Monday the week before the bail application is a public holiday, the call-over will default to the Tuesday of that week.

#### ***Crown to provide documents when requested***

The Crown is required to provide to the applicant's legal representative a copy of the Court Attendance Notice, statement of facts and the applicant's criminal record if such a request is made by the applicant or their solicitor. Such documents must be provided within seven days of receiving the request.

#### ***The call-over***

The purpose of the call-over is to ascertain which matters will proceed to hearing on their allocated date.

While all matters will be listed for call-over when they are filed, there are ways to have the listing vacated, including:

- withdrawing the matter prior to 2pm the Friday before the call-over; and
- filing a Notice of Readiness to Proceed prior to 2pm the Friday before the call-over.

You will receive an email from the Registry if you are not required to attend the call-over. **An appearance is required at the call-over unless you receive such an email.**

If you are making an application to adjourn the hearing date, you will need to appear at the call-over to make that application.

*Self-represented litigants, detention applications and applications involving juveniles*

Self-represented litigants are exempt from the call-over procedures. Detention applications and applications involving juveniles are listed by the Court on an urgent basis, and they are also therefore exempt from the call-over procedures.

#### **4. APPLICATION FOR ADJOURNMENT MADE AFTER THE CALL-OVER**

In circumstances where:

- a Notice of Readiness has been filed;
- the applicant's legal representative has not changed since the Notice of Readiness was filed; and
- an adjournment of the hearing date is sought,

an affidavit must be filed by the lawyer who signed the Notice of Readiness that sets out why the matter is no longer ready to proceed.

If the applicant has engaged new legal representation since the filing of the Notice of Readiness, the new legal representative is required to complete an affidavit setting out why the matter is not ready to proceed on the allocated date.

If an adjournment application is made after the call-over, the adjournment application will need to be made in front of the presiding Judge.

If an adjournment application is granted, the matter will be listed in the next call-over to allocate a new hearing date.

## **5. MATERIAL TO BE FILED IN BAIL APPLICATIONS**

Material in bail applications must be filed by 4pm the day preceding the day before the hearing. Material filed after this time will be accepted at the discretion of the presiding Judge.

## **6. APPLICATION FOR EXPEDITION**

Applications to expedite a hearing date are now made by completing the relevant form and filing it with the Registry. The form includes a prompt to attach third party material supporting the application for expedition. The application for expedition will be determined by the Registrar in chambers.

Factors that may be considered when determining whether or not to expedite a bail application include:

- whether the information that forms the basis of the application to expedite was available to the lower court when refusing bail;
- how soon the bail application is listed. It is not unusual to get an application to expedite a bail application that is listed in two weeks' time; and
- any exceptional circumstances. Arguing the bail application is not enough.

If the decision is made to expedite a bail application, the availability of counsel will not be taken into consideration when allocating a new date.

## **7. APPLICATION FOR DRUG AND ALCOHOL REPORT**

The procedure for applying for a drug and alcohol report is now formalised through the filing of an Application for Drug and Alcohol Report form. Drug and Alcohol Reports

will no longer be ordered as a matter of course; you will need to demonstrate in the Application why a Drug and Alcohol Report is necessary and how it would assist your client's bail application.

The decision regarding whether or not to order a Drug and Alcohol Report will be made by either the Registrar or a Judge in chambers.



