



Director of Public Prosecutions right of review of bail decisions pursuant to s44 of the Bail Act 1992 Director's guideline

This guideline sets out the factors to be taken into account by my Office in deciding whether to seek a review of a decision to grant bail pursuant to s44 of the **Bail Act 1992**. It also sets out the process followed by my Office under s 44.

Section 44 permits the Director of Public Prosecutions ("the Director") to apply for a review of the decision of a court to grant bail if the director considers that exceptional circumstances exist and it is in the public interest to make the application: s44(2).

The right to review exists where a person is charged with a **family violence offence** or a **serious offence**.

Family violence offence is defined in the **Family Violence Act 2016** as **an offence if the conduct making up the offence is family violence**. **Family violence** is defined at s 8 of the Act and covers a range of acts committed by a person upon a family member. **Family member** is defined at s 9 of that Act to include intimate partners and domestic partners (including former partners), relatives, and children of domestic partners including former domestic partners, and a parent of a child of the person. **Intimate partner** and **relative** are further defined in that Act. **Relative** is defined to catch a broad range of familial relationships.

Serious offence is defined in the Bail Act to include a range of serious offences, including an offence of causing harm or threatening to cause harm punishable by imprisonment for more than 10 years.

The decision to review bail does not rest upon either a change of circumstances or the availability of fresh evidence. Other provisions in the Bail Act cover this.

An application will only be made where exceptional circumstances exist and it is in the public interest to make the application.

Those circumstances will primarily be concerns as to the likelihood of the person endangering the safety of anybody, or intimidating a witness or otherwise obstructing the course of justice if released on bail.

The endangering of the safety of the person, the interference with evidence, or the intimidation of a witness or otherwise obstructing the course of justice must all be of an exceptionally serious kind.

If serious threats to the safety of a person have been made, and those threats are credible, and the circumstances otherwise indicate a distinct and not fanciful possibility that threats may be carried out, these are factors which are relevant to the decision to make an application for review.

The DDP's decision on whether to apply for a bail review will be made prior to a bail application. Prosecutors appearing in court must identify potential matters for review under section 44, and bring those matters to the attention of the Director. The Director will pre-approve matters for which prosecutors may give notice of a review application if the defendant is granted bail. The Prosecutor may only give oral notice of a review application where pre-approval has been granted.

The pre-approval process for bail review is taken at the highest level of the Office. Ordinarily, the decision will be made by the Director. In the Director's absence, the decision will be made by the Deputy Director. In the Deputy's absence, the Assistant Director will make the decision, and in the Assistant Director's absence, the decision will be made by a Senior Advocate.

Shane Drumgold
ACT Director of Public Prosecutions

Section 44 bail review process

1. Prior to court, the Prosecutor appearing in the bail list identifies a matter (which must involve a charge for a family violence offence or a serious offence) as a potential section 44 review matter if the defendant is granted bail.
2. The Prosecutor consults the Director (or in their absence, the Deputy Director, Assistant Director or a Senior Advocate). Only the Director (or a nominated person) has authority to pre-approve a matter as a section 44 review matter. The Director will consider whether exceptional circumstances exist and whether it is in the public interest to make a review application if the defendant is granted bail (s 44(2)).
3. The potential s 44 matter goes before the court and the defendant is granted bail (s 44(1)).
4. The Prosecutor gives oral notice of an application for review immediately after the decision to grant bail is made (s 44(4)).
5. The Prosecutor informs the Court that the bail decision is now stayed under s44(5) and the defendant is remanded in custody as if bail had not been granted.
6. The Prosecutor contacts the Office of the DPP (ODPP) to notify the Director that oral notice under s 44 has been given. This will usually be done through the informant.
7. Within 2 hours of the decision to grant bail,¹ a written bail review application signed by the Director must be:
 - a. filed with the Court (r 4724 *Court Procedures Rules 2006*); and
 - b. served on the defendant (this may be through the defendant's lawyer if legally represented).
8. If the Director decides not to make a bail review application:
 - a. as soon as possible after this decision is made, and within 2 hours of the bail decision, the ODPP must advise:
 - i. the Court: s 44(5)(a); and
 - ii. the defendant.
 - b. The ODPP should then advise (if possible, before the defendant is released):

¹ Note: if the Court makes the bail decision after 4:00pm, the DPP must make the application and give a copy to the defendant by 10:00am the next day (s 44(3)(b)).

- i. the informant; and
- ii. the complainant (this may be via the informant).

9. The Supreme Court is required to hear the bail review application within 48 hours of oral notice being given in court by the Prosecutor.

Timeline of bail review process

