

12. Bail

12.1 Introduction

The [Constitution of Nauru](#) and [Bail Act 2018](#) (BA) sets out the law relating to bail.

This chapter focuses on the court's role and all statutory references are to the Bail Act 2018, unless stated otherwise.

12.2 Jurisdiction

Ss [4\(2\)](#), [13-14](#) BA and article 5 of the Nauru Constitution has provided jurisdiction for bail. In addition the police may grant bail as of right (subject any other provisions in the Bail Act set out in ss [9-12](#)).

A Resident Magistrate, a Judge, or a Justice of Appeal may grant bail at any time to a person who is:

- accused of an offence and is brought or appearing before them,
- an appellant under the [Supreme Court Act 2018](#), the [Nauru Court of Appeal Act 2018](#), or any other written law: s [13\(1\)](#) BA.

The Registrar of Courts may only exercise the jurisdiction under this Act, where a Resident Magistrate, Judge or a Justice of Appeal is unable to exercise their powers to grant bail: s [13\(2\)](#) BA.

Lay Magistrates are empowered to grant bail for defendants charged with offences where the maximum penalty is less than 12 months: s [6\(2\)b](#) District Court Act 2018.

If bail has been refused:

- any adjournment to hear the case should not be for more than 14 days except with the person's consent; and
- any further adjournment should **not** be for more than 48 hours and should be to a court available to deal with the case: s [14\(2\)](#) BA.

However, that does not apply if the accused is already in custody in connection with another offence, or if the court is satisfied that there are reasonable grounds for a longer period of adjournment and that bail should continue to be refused: s [14\(3\)](#) BA.

If the accused has been in custody for over two years, and the trial of the accused has not begun, the court should release the person on bail subject to bail conditions the court thinks fit to impose. This applies unless the trial has begun and bail has been refused or the accused is already serving a sentence for another offence: s [14\(4\)](#) and [\(5\)](#) BA.

A court may determine an application for bail by an accused person: s [4\(2\)](#) BA.

An “accused person” means a person who has been charged with an offence and:

- (a) who is awaiting trial before the District Court or the Supreme Court;
- (b) whose trial has commenced and adjourned for continuation, judgment, decision or order or for sentencing: s [3\(1\)](#) BA.

A court that grants bail to an accused person may dispense with the requirements for bail. If no specific order or direction is made in respect of bail during the appearance of an accused person, the court is deemed to have dispensed with any requirement for bail: s [7](#) BA.

12.3 Applications for bail

An accused person may make any number of applications to court for bail: s [15\(1\)](#) BA.

An application to a court for bail must be dealt with as soon as reasonably practicable after it is made: s [15\(2\)](#) BA.

A court may refuse to entertain an application for bail if it is satisfied that the application is frivolous or vexatious: s [15\(3\)](#) BA.

An accused person is entitled to have legal representation for an application for bail, or for review of bail. You should explain this to an unrepresented accused person and refer them to the Office of the Public Legal Defender (see para [10.4.1](#)).

12.4 Considering bail applications

12.4.1 Right to bail

Sections [4-6](#) and [18-19](#) BA

Every accused person has the right to be released on bail: s [4\(1\)](#) BA. This reflects the common law and constitutional presumption under Article 10, that an accused is innocent until proved guilty and, therefore, an accused is prima facie entitled to bail.

This presumption may be rebutted by a prosecutor or any other person, where the interests of justice so requires: s [4\(3\)](#) BA. Section 18 sets out the grounds for any submissions opposing bail and s 19 sets out the various reasons where the court or the police may refuse bail for the accused (see the paragraph on relevant factors below).

You shall not grant bail to a person where they (s [4A](#) BA):

- are charged with an offence:
 - of murder, treason, or sedition,
 - under [Part 7](#), Divisions [7.2](#) and [7.3](#) and [Part 8](#) of the Crimes Act 2016,
 - under [Part 3](#) of the Counter Terrorism and Transnational Crime Act 2004,
 - under the [Illicit Drugs Control Act 2004](#).

- have previously breached a bail undertaking or condition,
- are arrested under the [Extradition Act 1973](#),
- have been convicted of murder, treason or sedition and are appealing such conviction.

The court shall also not grant bail, except in exceptional circumstances proven by the accused, where:

- the person is charged with any of the following offences:
 - attempt to murder or manslaughter
 - assaulting a police officer in the execution of their duties
 - intimidating or threatening a police officer in the execution of their duties
 - contempt of court under the [Administration of Justice Act 2018](#)
- an accused person is incapacitated by intoxication, injury or use of drugs or is otherwise in danger of physical injury, self-harm or in need of protection; s [4B\(1\)](#) BA.

But section [4B\(1\)](#) does not apply to an accused person who has been previously convicted by a court for one or more of those offences.

See also: [Temaki v Republic \[2020\] NRSC 49; Criminal Case 21 of 2020 \(24 November 2020\)](#) which emphasized when assessing whether bail should be granted under section 4B BAA, the issue is:

"whether viewed as a whole, the circumstances can be regarded as exceptional to the extent that, taking into account the very serious nature of the charge to which they are applicable, the making of an order admitting the person to bail would be justified."

If an accused person is remanded in custody under section [4B](#), you shall direct the parties to ensure the hearing is carried out efficiently and without delay. But where the trial has not commenced within 3 months of the date on which the information or charge was filed in court, then the an accused person, who is remanded in custody, may apply for bail on any grounds or reasons, other than exceptional circumstances: s [4B\(5\)](#) BA.

An accused person who is in custody for an offence and who has been granted bail is entitled to be released, after giving a bail undertaking (subject to section [26](#)), and to remain at liberty until required to appear before a court. This applies unless they are in custody for some other offence or reason for which the person is not entitled to be at liberty, whether under this Act or otherwise.

For anyone accused of any summary offences that are not punishable by imprisonment (set out in the regulations) you may grant bail unconditionally or subject to bail conditions (that the Police or you consider reasonable and appropriate), unless the person:

- has previously breached a bail undertaking or bail condition,
- is incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury, self-harm, or in need of protection,
- stands convicted of the offence or the person's conviction for the offence is stayed, or
- the requirement for bail is dispensed with under section [7](#).

- is in custody serving a sentence of imprisonment in connection with some other offence: s [6](#) BA.

12.4.2 Dispensing with bail

ss [7](#) and [8](#) BA

The court may dispense with the requirements for bail unless the accused is in custody for some other offence or reason (but the accused must advise their residential address under s [16](#)): s [7](#) BA.

This means that the accused is entitled to remain at large until required to appear before a court for the offence (subject to s [26](#) "accused person absconding or breaching conditions of bail"): s [8](#) BA.

If you make no specific order or direction for bail when the accused appears then bail is deemed to be dispensed with (unless bail is being continued under s [30](#) "continuation of bail").

12.4.3 Presumption in favour of bail

The Bail Act 2018 makes it clear that subject to its provisions there is a presumption in favour of granting bail.

Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted: s [4\(1\)](#) BA. The "interests of justice" will vary from case to case.

The presumption in favour of granting bail can be rebutted where:

- the accused person:
 - has previously breached a bail undertaking or bail condition, or
 - has been convicted and has appealed against the conviction: s [3\(3\)](#) BA.

12.4.4 Case against the presumption of bail

A person making submissions against the presumption in favour of bail must deal with:

- the likelihood of the accused person surrendering to custody and appearing in court,
- the interests of the accused person, and
- the public interest and the protection of the community.

12.4.5 Primary consideration

Relevant factors for bail applications

ss [17-20](#) BA

The primary consideration in deciding whether to grant bail to a defendant is the likelihood of the defendant appearing in court to answer the charges laid against him or her: s [17\(2\)](#) BA.

When considering bail, you should take into account the time the person may have to spend in custody before trial if bail is not granted: s [17\(1\)](#) BA.

You or the police (as the case may be) must grant bail to an accused person unless you think that:

- the accused person is unlikely to surrender to custody and appear in court to answer the charges laid,
- the interests of the accused person will not be served through the granting of bail,
- granting bail to the accused person would endanger the public interest or make the protection of the community more difficult: s [19\(1\)](#) BA.

Table of relevant factors for deciding if bail conditions are necessary		
Risk of the defendant not appearing: s 19(2)(a) BA	The interests of the accused person: s 19(2)(b) BA	The public interest and protecting the community: s 19(2)(c) BA
The accused person's background and community ties (including residence, employment, family situation, previous criminal history).	The length of time the person is likely to have to remain in custody before the case is heard.	Any previous failure by the accused to surrender to custody or to observe bail conditions.
The conditions of that custody.	The likelihood of the accused interfering with evidence, witnesses or assessors or any specially affected person.	The circumstances, nature and seriousness of the offence.
The strength of the prosecution case.	The need for the person to obtain legal advice and to prepare a defence.	The likelihood of the accused committing an arrestable offence while on bail.
The severity of the likely penalty if the person is found guilty.	The need for the person to be at liberty for other lawful purposes (such as employment, education, care of dependants).	Whether the person is a minor (in which case section 4C applies).
Any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country)	Whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection	

12.4.6 Process for bail applications for defendants

Ss [4-8](#), [15](#), [20](#) and [31](#) BA

At a defendant's first appearance, you may adjourn the matter and you may:

- allow the accused to go at large,
- grant the accused bail,
- remand the accused in custody for the period of the adjournment (see [12.13](#), Refusal of bail).

An accused person may make any number of applications to a court for bail, unless you refuse to hear the review or application if you are satisfied that:

- the application for bail is frivolous or vexatious: s [15\(3\)](#) BA,
- there are no special facts or circumstances that justify a review, or the making of a fresh application: s [31\(5\)](#) BA.

You should deal with an application for bail as soon as reasonably practicable after it is made.

Ask the police whether they wish to oppose bail. Hear from the prosecution first, then the accused. Evidence may be called if necessary.

If you refuse bail, you must give reasons (see Refusal of bail below). Ensure that your reasons are recorded: s [20](#) BA.

An order refusing bail by the police or you is subject to review/appeal by another Resident Magistrate, or a Judge of the Court of Appeal or the Supreme Court, depending on who or which court refused bail: s [31](#) BA.

12.4.7 Other statutory considerations

The court must take into account the time the accused person may have to spend in custody before trial if bail is not granted: s [17\(1\)](#).

An accused person must be granted bail unless in the opinion of the court:

- the accused person is unlikely to surrender to custody and appear in court to answer the charges laid,
- the interests of the accused person will not be served through the granting of bail, or
- granting bail would endanger the public interest or make the protection of the community more difficult: s [19\(1\)](#).

You must have regard to all the relevant circumstances. The following particular factors are listed in s [19\(2\)](#):

Likelihood of surrender to custody

- The accused's person's background and community ties (including residence, employment, family situation and previous criminal history).
- Any previous failure by the person to surrender to custody or to observe bail conditions.
- The circumstances, nature and seriousness of the offence.
- The strength of the prosecution case.
- The severity of the likely penalty if the person is found guilty.
- Any specific indications (such as that the person voluntarily surrendered to the Police at the time of arrest or, on the contrary, was arrested trying to flee the country).

The interests of the accused person

- The length of time the accused person is likely to have to remain in custody before the case is heard.
- The conditions of that custody.
- The need for the accused person to obtain legal advice and to prepare a defence.
- The need for the accused person to be at liberty for other lawful purposes (such as employment, education, care for dependants).
- Whether the accused person is under the age of 18 years).
- Whether the accused person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection.

The public interest and the protection of the community

- Any previous failure by the accused person to surrender to custody or to observe bail conditions.
- The likelihood of the accused person interfering with evidence, witnesses or assessors or any specially affected person.
- The likelihood of the accused person committing an arrestable offence while on bail.

12.5 Bail applications for minors

Section [4C](#) BA

For a defendant who is a minor (under 18 years), you must grant bail unless:

- the person has a previous criminal conviction
- the person has previously breached a bail undertaking or bail condition

- the person is charged with a serious offence referred to in s [4A](#)
- the person is incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury, self-harm or in need of protection.

The Cabinet may designate a place for the remanding of a child in custody.

12.6 Police bail

Ss [4-6](#), ss [9-12](#), and ss [17-23](#) BA

The police may grant bail to a defendant who is arrested for a cognisable offence (as defined in section 10 CPA to include any offence with a term of imprisonment of 5 years or more) and taken to the police station: s [9\(1\)](#) BA.

But a police officer **shall not** grant bail to the defendant if:

- the court has already made a determination concerning bail on the same offence,
- the person has been charged for an offence of contempt of court
- the offence is a serious one.

The police may also release a person arrested on suspicion that they have committed an offence where, after due police enquiry, insufficient evidence is disclosed: s [9\(3\)](#) BA.

The police shall determine bail after they lay any charge(s) and the accused is in custody. They must:

- give the accused information in writing in a language or any other means the person understands about their right to bail: s [10](#) BA
- inform the accused about their right to consult with a lawyer or representative and if so, provide them with reasonable facilities to consult in private: s [11](#) BA
- grant bail (if authorised under section 9) to the accused or have them brought before a court within 24 hours after the accused has been charged: s [10](#) BA
- if not authorised to grant bail under section 9 or if bail is refused, bring the person before a court as soon as practicable and in any event within 24 hours: ss [10](#) and [12](#) BA.

The police may grant bail without or without any bail conditions they consider reasonable and appropriate: s [6\(2\)\(b\)](#).

A “serious offence” is any offence for which the maximum penalty includes imprisonment for three years or more: s [3](#) BA.

12.7 Accused appealing against conviction or sentence

Where the court is considering granting bail to a person who has appealed against conviction or sentence, the court must take into account:

- the likelihood of success in the appeal;
- the likely time before the appeal hearing;
- the proportion of the sentence which will have been served when the appeal is heard: s [17\(3\)](#) BA.

12.8 Accused in custody for two years or more

If an accused person has been in custody for two years or more and his or her trial has not begun, the court must release him or her on bail: s [14\(4\)](#) BA.

Note that this is not the case where:

- the trial has begun and the court has refused bail;
- the accused person is serving a sentence for another offence: s [14\(5\)](#) BA.

The period of two years does not include any period of delay caused by the fault of the accused person: s [14\(6\)](#) BA.

“Trial” means the trial proper of the accused person in respect of the offence which he or she has been charged with and does not include:

- committal proceedings; or
- the determination of any preliminary or interlocutory application: s [14\(7\)](#).

12.9 Case law

See the following cases:

- [Republic v SF \[2021\] NRSC 32 \(SC\) \(appeal from Republic v SF \[2021\] NRDC 11\)](#)
- [Republic v Denuga \[2021\] NRDC 10 \(DC\)](#)
- [Uddin v Republic of Nauru \[2023\] NRCA 10 \(CA\)](#)
- [Republic v Agir \[2020\] NRSC 40 \(SC\)](#)
- [Scotty v Republic of Nauru \[2022\] NRDC 2 \(DC\)](#)

12.10 Granting bail and release

Ss [5](#), [21](#), [22](#) and [30](#) BA, [Criminal Procedure \(Forms\) Rules 1972](#)

A person may be released on bail when:

- they give a written undertaking to:

- a police officer, to surrender into the custody of a court specified in the undertaking and on a day and at a place so specified,
 - to a court, to appear before the court on a day and at a place specified in the bail undertaking,
 - if bail is continued by a court, to appear at the time and place at which the proceedings in respect of the offence will be continued, as specified in the bail undertaking or a notice to be sent to the person: s [21\(1\)](#) BA.
- if deemed necessary, they swear under oath their ability as the accused person or the surety to provide the security,
 - notice has been given by the registrar, you, or the police officer (as the case may be),
 - you endorse on the remand warrant a certificate that all the parties to the bail undertaking have entered into it and the defendant is to be released.

A bail undertaking should be given in the form prescribed by the regulations: s [21\(2\)](#) BA.

An accused person who is granted bail shall appear in person before a court in accordance with the person's bail undertaking: s [21\(3\)](#) BA.

Once bail is granted and they have completed a written bail undertaking, the accused is entitled to be released and remain at liberty until required to appear before a court in accordance with the bail undertaking: s [5](#) BA.

The undertaking can include the amount of a security/bond, and whether it is with or without bail conditions or sureties at your discretion: s [22](#) BA. The court staff will print this out and give it to you, to sign in court, or to the Registrar.

12.11 Bail conditions

Ss [22](#) and [23](#) BA, [Criminal Procedure \(Forms\) Rules 1972](#)

You or a police officer may:

- impose such conditions as are necessary when granting bail, or
- release the accused on bail without any conditions: s [22\(1\)](#) BA.

You or the police officer must grant bail unconditionally, unless or you or they consider that one or more of the conditions in section [22](#) should be imposed for the purpose of:

- ensuring the accused person's surrender into custody and appearance in court,
- protecting the welfare of the community, or
- protecting the welfare of any specially affected person: s [23\(1\)](#) BA.

You must only impose conditions for those purposes and if they are required by the circumstances of the accused person: s [23\(2\)](#) BA.

The police will suggest what conditions should be imposed on the bail. All bail conditions must relate to the concerns about granting bail. When granting bail, you need to state what conditions apply.

Section [22\(3\)](#) sets out different bail conditions that you may impose if necessary. These include that the accused:

- surrender any passports or travel documents in their possession to an authorised officer,
- be barred from applying for or obtaining any passport or travel documents,
- not commit an offence while released on bail,
- provide one or more sureties who acknowledge that they know the accused and regards them as a responsible person who is likely to comply with a bail undertaking,
- not interfere with witnesses, and
- such other conditions as you may deem fit.

If security by an accused person or surety is considered necessary, you or the police officer (as the case may be) must:

- find out under oath if necessary, the ability of the accused person or the surety to provide the security,
- set the security within the capacity of the accused or other acceptable person to meet the obligation,
- not impose the security if it creates an unreasonable barrier to granting bail,
- any acknowledgement or agreement (can be for one offence or more) referred to section 22 shall be given:
 - if by the accused, in the bail undertaking
 - if by a surety, in the form prescribed by regulations: s [22](#) BA.

An accused person and any person offering himself or herself as a surety may appeal to the Supreme Court or Court of Appeal if a police officer or court refuses to accept a person as surety or any proposed security: s [22](#) BA.

Use the bail undertaking form in the [Criminal Procedure \(Forms\) Rules 1972](#).

The parties will enter into the bond/surety before the Registrar, Magistrate or Police Officer.

12.12 Refusal of bail

Ss [4-6](#), ss [14](#), [17-20](#), [31](#) BA

You may refuse bail in certain circumstances (set out in sections [4-6](#) BA above) or for just cause (below).

If you are refusing bail one or more of the following three reasons must apply:

1. the person is unlikely to surrender to custody and appear in court
2. the person's interests are not at risk by this refusal
3. the person endangers the public interest or the protection of the community: s [19](#) BA.

See [Republic v Dabwido \[2019\] NRSC 30; Criminal Case 13 of 2019 \(14 October 2019\)](#).

If the police or anyone else wishes to oppose bail, they must make submissions based on any or all these reasons: s [18\(1\)](#) BA.

You must then give a written ruling on each of the criteria in section [18\(1\)](#), dealing with submissions made on each one.

If you (or a police officer as the case may be) refuse to grant bail to a defendant, you must:

- record your reasons in a written ruling addressing any submissions: s [20\(1\)](#) BA,
- state the reasons for refusing bail to the defendant in a way they can understand as soon as practical but no longer than 24 hours after the decision: s [20\(2\)](#) BA,
- remand the accused person in custody to re-appear before that or another court for trial or review of bail within 14 days from the date of refusal or review: s [18\(4\)](#) BA,
- inform the accused person of the procedure for review of bail under section 31: s [20\(3\)](#) BA,
- not adjourn the hearing of the case for more than 14 days except with the person's consent: s [14\(2\)\(b\)](#) BA, and
- after that if a further adjournment is sought, only adjourn the case for a further period not exceeding 48 hours and to a court available to deal with the case: s [14\(2\)\(b\)](#) BA.

The time limits for adjournments in s [14\(2\)](#) do not apply to:

- an accused person who is in custody in connection with another offence, or
- if you are satisfied that there are reasonable grounds for a longer period of adjournment and that bail should continue to be refused: s [14\(3\)](#) BA.

A court may refuse to entertain an application for bail if it is satisfied that the application is frivolous or vexatious: s [15\(3\)](#) BA.

Any defendant who has been remanded in custody on any charge and not been released on bail may be brought before the court at any time to deal with that charge, notwithstanding that the period of their remand has not expired.

If a defendant has been in custody for over two years and the trial of the person has not begun, the court shall release the person on bail subject to bail conditions: s [14\(4\)](#) BA. This does not apply where:

- the trial of the person has begun and the court has refused to grant bail or the person is serving a sentence for another offence: s [14\(5\)](#) BA

- any period of delay was caused by the fault of the defendant: s [14\(6\)](#) BA.

12.13 Variation and re-granting new or continued bail

Ss [22](#) and [30](#) BA

Bail expires each time a defendant is brought back to court. So, if a defendant who has been granted bail is now before you, then on that second (or next) court date, then the original grant of bail has expired.

If a bail undertaking includes an undertaking to appear at any time and place, you may continue bail each time the defendant is required to appear subsequently in court (on adjournment, committal, appeal against conviction or sentence or otherwise): s [30\(1\)](#) and [\(5\)](#) BA.

Each time bail is re-granted a new bail undertaking is also required, even if it is only to change the court date. This is because, if a new undertaking is not given to the defendant and they do not turn up next time, it would be hard to prosecute the defendant for breach of bail, and a warrant for non-appearance might not be justified.

You may need to consider whether a defendant's bail is to be varied or revoked. Usually, it would be re-granted on the same bail undertaking and conditions, unless there are new reasons to amend the bail conditions or revoke bail: s [30\(2\)](#) BA.

If you make no specific direction regarding bail upon adjournment or committal, continued bail is deemed to have been continued on the same conditions which applied immediately before the person's appearance in court: s [30\(3\)](#) BA.

If bail is applied for, you may make a fresh bail decision (where a bail undertaking does not include the undertaking to appear at any time and place) if:

- the case is adjourned, or the accused person is committed for trial or sentence: s [30\(4\)](#) BA,
- an accused person has been convicted and is appealing against conviction or sentence: s [30\(5\)](#) BA.

You have jurisdiction to review the conditions of bail where an accused person:

- breaches the conditions of the bail undertaking,
- is charged with or convicted or sentenced for a separate offence,
- seeks variation for personal, humane, compassionate or health reasons: s [22\(2\)](#) BA.

The court also has jurisdiction to review bail conditions if circumstances exist, which in the view of the Resident Magistrate, a Judge or Justice of Appeal, justifies a review: s [22\(3\)](#) BA.

If you receive such an application, you may make an order changing:

- the terms on which bail has been granted,
- the conditions of any bail security entered into,

- revoking any conditions of bail.

If sureties are required for the bail security, they shall continue in force and the order varying the conditions will not take effect until the parties' consent in writing or a new security is entered into.

See also [Republic v Qun Hui Ma \[2018\] NRDC 8; Criminal Case 15-28 & 29 of 2018 \(13 November 2018\)](#).

12.14 Breach of bail

Ss [22](#), [26-27](#) BA

Where the conditions of bail are breached, and without limiting the right of the Republic to charge an accused person for a breach of bail condition, you may:

- revoke bail
- grant such other orders you think fit: s [22\(10\)](#) BA.

The Registrar may issue a warrant of arrest for a defendant released on bail where the Court is satisfied that the defendant has:

- failed to surrender to custody
- breached a condition of bail
- absconded from the court without the court's leave at any time after they surrendered to custody
- given a false residential address: s [26\(1\)](#) BA.

A person who has been released on bail may be arrested without warrant if a police officer reasonably suspects the accused person is unlikely to surrender to custody; or likely to break or has broken any of their bail conditions: s [26\(2\)](#) BA, s 87 CPA.

That person who is arrested shall (except where arrested 24 hours immediately before their next court date) be brought before that court as soon as practicable and in any event within 24 hours after their arrest: s 87 CPA.

After the person is arrested and brought before you, if you are satisfied that the defendant has breached their bail conditions without reasonable cause, you may:

- remand the defendant in custody for up to 12 months imprisonment (subject to their right to apply for bail), or order a fine of \$2000 or both, or
- grant bail subject to conditions either the same or different from the original grant of bail at your discretion; s [26\(3\)](#), [27\(1\)](#) BA, s 87 CPA.

Similar penalties apply if the defendant absconds or gives a false residential address without reasonable cause: s [27\(1\)](#) BA. The burden is on the accused person to prove that they had reasonable cause for failing to surrender to custody or for a breach of their bail conditions: s [27\(2\)](#) BA. An offence under this section is an offence of strict liability: s [27\(3\)](#) BA.

If, through mistake, fraud or otherwise, insufficient or unfit sureties have been accepted, or if they afterwards become insufficient or unfit, you may:

- issue a summons or a warrant of arrest, directing that the person released on bail come or be brought before you,
- order the person to find sufficient and fit sureties, and if they fail to do so may commit them to prison: s 84 CPA.

12.15 Forfeiture of a bail bond

Section 28 BA

Where you are satisfied that the defendant without reasonable cause fails to surrender to custody or has breached a bail condition, you may set a time and place to consider enforcing the forfeiture of the bail security (estreating the bail bond).

If you decide to enforce the forfeiture of bail security, you may:

- order that the whole or any part of the money deposited, or security given by the person or given by a surety be forfeited to the Courts Trust Fund,
- order any sum to be paid under section 28 to be enforced as if it were a fine and as if the order were a sentence for an offence,
- direct that the surety be discharged from the defendant's liability, unless satisfied it would be unjust,
- impose further conditions on the grant of bail and may commit the accused person to prison until those conditions are complied with.

You need to certify this on the Bail undertaking/surety.

You may grant forfeiture of bail security unless reasonable cause is shown to the contrary within a period the court directs. At the hearing, if no sufficient cause is shown as to why a condition of bail has not been performed, you may make an order to forfeit the security, to such an amount as you think fit.

12.16 Bail pending an appeal

Ss 13, 17 and 30 BA

A person who appeals (an appellant) may be released on newly granted or continued bail pending an appeal. You may grant bail to a person who is an appellant under the provisions of the Supreme Court Act 2018, the Nauru Court of Appeal Act 2018 or any other written law: s 13(b) BA.

When considering bail for a person who has appealed against conviction or sentence, you must take into account:

- the likelihood of success in the appeal

- the likely time before the appeal hearing
- the proportion of the original sentence which will have been served by the applicant when the appeal is heard: s [17\(3\)](#) BA.

You may continue bail if the appellant has given a written undertaking to appear at any time and place at for the appeal, or otherwise grant a fresh bail determination if the appellant applies: s [30\(5\)](#) BA. If accused appears and no directions are made specifically as to bail it is deemed to be continued on the same conditions as it was granted at the previous adjournment; s [30\(3\)](#) BA.

Use the forms prescribed by regulations when granting bail on an appeal or on committal for sentence.

See: [Kepae v Republic \[2019\] NRSC 37; Criminal Appeal 14 of 2019 \(20 September 2019\)](#).

12.17 Remanding into custody

Ss [4-5](#), s [14](#), ss [17-19](#) BA

Where you have adjourned the hearing after a defendant has been arrested and brought before the court, you may remand the defendant in custody (subject to their right to apply for bail) or allow the defendant to go at large.

This does not apply to an accused person who is in custody in connection with another offence, or if the court is satisfied that there are reasonable grounds for a longer period of adjournment and that bail should continue to be refused.

A remand in custody places a defendant under the control of the court and:

- ensures their attendance at the hearing,
- removes the defendant from the community in the case of a serious offence.

In the interests of justice, long remands in custody should be avoided as much as possible. If a long remand in custody is likely, you may remand the defendant to appear as soon as possible before a Judge and let the Judge decide.

12.18 Review or appeal of bail determination

Ss [31](#) and [32](#) BA

You may review any bail decision made by a police officer or by another Resident Magistrate: s [31](#) BA.

The Supreme Court may review any decision made by it, by a Resident Magistrate or by a police officer in relation to bail. The Court of Appeal may review any decision made by it in relation to bail. The power to review a decision under this Part in relation to an accused person may be exercised only at the request of the following:

- accused person,

- police officer who instituted the proceedings for the offence of which the person is accused,
- Secretary for Justice,
- Director of Public Prosecutions, or
- victim of the offence: s [31\(6\)](#) BA.

You may also refuse to hear the review or a fresh application for bail under section 15(1), if you are not satisfied that there are special facts or circumstances that justify a review, or the making of a fresh application: s [31\(5\)](#) BA.

The power to review a decision under this Part includes the power to confirm, reverse or vary the decision. The review shall be by way of a rehearing, and evidence or information given or obtained on the making of the decision may be given or obtained on review: s [31\(7\)-\(8\)](#) BA.

The Director of Public Prosecutions or the person granted or refused bail may apply to appeal to the Supreme Court or the Court of Appeal, any grants or refusals of bail and all orders, conditions or limitations made or imposed under this Act: s [32\(1\)](#) BA.

The Supreme Court may:

- in its original jurisdiction grant or refuse bail upon such terms as it considers just; or
- on an appeal, confirm, reverse or vary the decision appealed from: s [32\(2\)](#) BA.

The Court of Appeal may:

- confirm, reserve or vary the decision appealed from; and
- grant or refuse bail pending trial upon such terms as it deems fit: s [32\(3\)](#) BA.