SUPREME COURT OF QUEENSLAND

CITATION:	*Re WTD* [2018] QSC 196
PARTIES:	**IN THE MATTER OF AN APPLICATION FOR BAIL BY WTD** **R** (respondent Crown) **v** **WTD** (applicant)
FILE NO:	No 8227 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED EX TEMPORE ON:	9 August 2018
DELIVERED AT:	Brisbane
HEARING DATE:	9 August 2018
JUDGE:	Davis J
ORDER:	**The applicant is released into the care of his mother, pursuant to the provisions of section 11A of the *Bail Act*.**
CATCHWORDS:	CRIMINAL LAW – BAIL – BEFORE TRIAL – GENERALLY – where the applicant has been assessed to have limited cognitive capacity – where the applicant has previously breached bail conditions – whether the applicant is a person with an impairment of mind – whether the applicant should be released under s 11A of the *Bail Act* 1980 (Qld) *Bail Act* 1980 (Qld) s 11A, s 11B
COUNSEL:	E Fletcher (solicitor) for the applicant Z Kaplan (legal officer) for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Office of the Director of Public Prosecutions (Qld) for the respondent

[1] **HIS HONOUR:** The applicant, WTD, applies for bail. There are groups of alleged offences. The first group involves offences of committing a public nuisance, obstruct or assault a police officer and an offence of breach of bail. The second group of offences consists of sexual offences against a single complainant. They are obviously serious,

and they include two counts of rape. And then there is a third group of offences, which are serious assaults against corrective services officers. They were committed whilst WTD was, obviously, in custody.

[2] The facts of the public nuisance offences are perhaps not dreadfully important in the overall scheme of this application, although I will refer later to the bail offence. It should just be observed that the behaviour was somewhat erratic. The significance of that will become apparent.

[3] The second group of offences consists of sexual offences all committed against a 15 year old girl, who was understood by the applicant to be his girlfriend. Those offences allegedly occurred in the context of some consensual sexual activity, which the applicant wished to progress, and the complainant did not. Those alleged offences were committed whilst on bail for the first group of offences.

[4] The third group of offences concern the applicant allegedly throwing urine on two corrective services officers on different occasions, and throwing water on another; all, of course, while he was in custody.

[5] The applicant has been on remand for the offences which are the subject of the application since 1 November 2017. The applicant is in a show cause situation, and the Crown opposes bail. Sections 11A and 11B of the *Bail Act* 1980 (Qld) are relevant to the present application.[1] Section 11A provides:

> "**11A Release of a person with an impairment of the mind**
>
> (1) This section applies if a police officer or court authorised by this Act or the Youth Justice Act 1992 to grant bail considers—
>
> (a) a person held in custody on a charge of or in connection with an offence is, or appears to be, a person with an impairment of the mind; and
>
> (b) the person does not, or appears not to, understand the nature and effect of entering into an undertaking under section 20; and

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1 As far as I can tell, these provisions have not been considered in any published judgments since their introduction by *Criminal Law Amendment Act* 2000 (Qld) s 6.

(c) if the person understood the nature and effect of entering into the undertaking, the person would be released on bail.

(2) The police officer or court may release the person without bail by—

(a) releasing the person into the care of another person who ordinarily has the care of the person or with whom the person resides; or

(b) permitting the person to go at large.

(3) A person's release is on condition the person will surrender, at the time and place stated in the notice under section 11B, into the custody of the court stated in the notice.

(4) If the person surrenders into the custody of the court stated in the notice, the court may release the person again under subsection (2).

(5) A court authorised by this Act or the *Youth Justice Act 1992* to grant bail may revoke a release.

(6) A person's release by a police officer discharges any duty to take the person before a justice to be dealt with according to law.

(7) In this section—

person with an impairment of the mind means a person who has a disability that—

(a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and

(b) results in—

(i) a substantial reduction of the person's capacity for communication, social interaction or learning; and

(ii) the person needing support."

[6] Section 11B provides:

"**11B Release notice**

(1) This section applies if a person is released under section 11A, whether for the first time or because of section 11A(4).

(2) The police officer or court releasing the person must give the person a notice in the approved form stating—

(a) the person's name and place of residence; and

(b) the charge on which or the offence in connection with which the person was in custody; and

(c) if the person is released into the care of another person, the other person's name and place of residence; and

(d) the court into whose custody the person is required to surrender as a condition of release; and

(e) the time and place the person is required to surrender into the court's custody.

(3) The notice must also include a warning that a warrant will be issued for the person's arrest if the person fails to surrender into the court's custody at the time and place stated.

(4) If the person is released into the care of another person, the police officer or court must also give the other person a copy of the notice."

[7] It is important, before turning back to those sections, to understand the medical evidence which has been put before me concerning the applicant. The applicant was examined by a psychiatrist, a Dr Kovakovic, and he produced reports. The report of 18 December 2017 is quite detailed, and deals with the psychological assessment of the applicant, and an analysis of the applicant's offending behaviour. In the report Dr Kovakovic refers to assessments done by others. Relevantly Dr Kovakovic reports:

"**PSYCHOLOGICAL ASSESSMENT**

Mary Antoney[2] is a Clinical Psychology Registrar who provided a report dated 11th September 2017 after assessing [WTD]. Her report contains the results of several psychological tests administered at the time of her examination. In summary:

- He scored extremely low on Adaptive Behaviour Scale of Functioning.
- On a simple cognitive assessment Mini Mental State Examination he scored 8 out of possible 30 points, which was regarded as an indication of a severe cognitive impairment.
- On tests of executive functioning, Mr Williams demonstrated concrete information processing, reasoning and thinking with little evidence to support any abstract reasoning abilities.
- He demonstrated similarly poor performance on card sorting test and tower test.

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2 A reference to a psychologist whose evidence was also before me: see paragraph [9] of these reasons.

- He showed perseveration (repetitive responses) and inability to inhibit his impulsive reactions, poor concept formation, poor problem solving and cognitive inflexibility.

It is of note that the psychologist did not attempt to do any IQ testing.

EXCERPTS FROM MEDICAL RECORDS

- In 2011 [WTD] was referred to Child Safety regarding agitation, arousal and challenging behaviours occurring in his placement. It was noted that he had a family history of mental health problems, a compromised attachment history resulting in a diagnosis of Reactive Attachment Disorder, an unconfirmed IQ in the moderately impaired range and idiopathic encopresis (soiling of underwear) and enuresis (bed-wetting). It was also noted that he attended special education. The psychiatrist indicated that his behavioural profile was not a result of any emergent psychiatric disorder and that his difficulties appear to be predominantly behavioural in nature.

- In 2015 [WTD] presented to Ipswich Hospital Emergency by ambulance after having threatened to kill himself and placing a cord around his neck. He also threatened to hurt others in his residential placement. He complained of hearing his father's voice in his head. Following the assessment he was discharged back to his carers with Ipswich Child & Your Mental Health Service follow up. The subsequent medical review resulted in recommendations that he should continue taking psycho-stimulant medications and risperidone (an antipsychotic) and that Child Safety Department should arrange for behavioural therapy.

- In 2016 [WTD] presented to Emergency Department with suicidal ideations after being threatened by a young woman who had a knife.

- In 2017 he asked to talk to mental health services following an argument with his girlfriend and having some thoughts to harm himself. On another occasion during the same year he reported planning to run in front of a vehicle. When recently assessed at the Toowoomba watch-house he was cheerful and related to the assessor in a friendly manner. He was excited about going to prison as he had friends who would look after him. He was not observed to be responding to unseen stimuli or exhibit significant suicidal tendencies.

DISCUSSION OF [WTD]'S ALLEGED OFFENDING

[WTD] seemed aware that he had been charged with rape, however he lacked the appreciation of the seriousness of his alleged offences. He indicated that his next Court date was in January and expressed a belief that he would be unable to access bail without a psychiatric examination. He appeared to minimize the gravity of his legal circumstances and insisted that the alleged victim consented to a sexual relationship. When reminded of the fact that the alleged victim was only 15 years old, [WTD] seemed unaware of the significance of her age or the concept of a legality of consent. He

seemed unclear about the possible consequences of being convicted and indicated that he would enter any plea that would see him getting released from prison. He seemed surprised when I indicated to him that a conviction on such serious charges could lead to a lengthy prison term. He replied to that by saying, "I will plead not guilty then".

When asked him to outline how he would defend himself in Court, he replied, "I don't know … it all happened, but it was consensual". He reported that the alleged victim was his girlfriend. For a short period of time they lived together in his Department of Housing unit. He was aware he had since lost his accommodation and could no longer return to Toowoomba. He said that as his alternative bail address he could stay in [the Darling Downs region] with his mother.

[WTD] demonstrated very little understanding of the Court proceedings, the purpose and the meaning of a criminal trial, or the roles and responsibilities of the various Court officials. Similarly, [WTD] failed to appreciate the significance of evidence that might be given against him.

OPINION

[WTD] is a 19-year-old male with intellectual disability and a history of Attention Deficit Hyperactivity Disorder (ADHD) and Poly-substance Abuse. His personal, legal and health matters are being dealt with by his Adult Guardian and the Office of the Public Trustee is responsible for the management of his financial affairs.

[WTD] has had multiple contacts with community mental health services, however no clear diagnosis of any major psychiatric disorder has ever been established. There appears to be a general consensus amongst mental health professionals that came into contact with [WTD] that he is a vulnerable and behaviourally disturbed young man with a considerable risk of deliberate self-harm and aggressive outbursts. He has been highly anxious, erratic and distressed in the custodial environment and his therefore been subject to solitary confinement.

Recent psychological assessment has identified multiple cognitive deficits, including in particular low scores on Executive Functioning and Abstract Reasoning also revealed extremely low ratings. Although [WTD's] IQ may not have been formally tested, there is sufficient evidence to diagnose him with mild intellectual disability. This is consistent with the history of an attachment disorder, his illiteracy and his placement in special education. As stated earlier, he has already been considered incapable of managing his personal affairs.

In my opinion, [WTD] requires further and more detailed neuropsychological assessment, including formal assessment of his intelligence. In the meantime, and on the basis of my limited examination and file review I am having reservations about declaring him fit to stand trial. He is of low intellect, appears suggestible and seems to have limited appreciation of the seriousness of his alleged offending and the strength of the evidence against him. He puts forward a claim that his sexual relationship with the alleged victim was consensual, demonstrating at the

same time limited capacity to grasp the concept of consent and the significance of the alleged victim's age. His understanding of the Court processes is rudimentary and I doubt his capacity to provide consistent and meaningful instructions to his counsel and make his own defense. In conclusion, I have found [WTD] to be at least temporarily unfit to stand trial. As stated earlier, he requires further assessment and testing.

Should appropriate arrangements be made, I would be prepared to reassess [WTD] at a later date.

In summary, in response to the specific questions outlined in the referral letter, my opinion is as follows:

1. [WTD] suffers from a natural mental infirmity. He does not appear to have any "mental disease".
2. [WTD] is presently temporarily unfit to stand trial.
3. I am unable to comment on [WTD's] relevant legal capacities and the issues of his unsoundness of mind at this stage.
4. I am prepared to support [WTD's] referral to the Mental Health Court.
5. I recommend further and more detailed psychiatric assessment and neuropsychological testing."[3]

[8] Another report was provided by Dr Kovakovic, and that is dated 5 February 2018. There, the doctor sets out his opinions in relation to a cognitive examination, and the question as to whether the applicant is fit to stand trial:

"**COGNITIVE EXAMINATION**

On this occasion I did not have an opportunity to administer any standardised cognitive assessment tool, however I still tested a number of areas of his cognitive and intellectual functioning. Although he was unable to state the correct date (which was understandable given his circumstances), [WTD] was correct about the month, the year and the day of the week. He knew where he was and was able to give me his correct date of birth. He said he was unable to read or write and could not perform even the simplest mathematical tasks. He could not spell any words and was unable to name the months of the year. He could not recall more than three digits in a forward order and did not even attempt to do backward digit span. When asked to remember three simple words, after about five to ten minutes he was able to recall only one (with a prompt). When asked to name as many words as possible starting with letter F in sixty seconds, he named the following, "f**k, fan, fish, fun, fair". He managed to name only nine animals in sixty seconds. I noted his difficulties in both comprehension and expressive language. He was unable to identify similarities between common objects, which was an indication of poor executive functioning.

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3 Reproduced with emphases and minor grammatical errors as in original.

[WTD's] performance on this occasion was consistent with his previously recorded score of 8 points out of 30 on Mini Mental State Examination. It overall indicated markedly impaired cognitive functioning.

EXAMINATION OF FITNESS TO STAND TRIAL

When asked to list his charges, [WTD] named rape, assaulting police, drug charges, breach of probation and public nuisance. He estimated that rape was the most serious offence that carried an estimated penalty of about eight years in prison. He had a basic understanding of what it meant to enter a plea. With regards to the charges of rape, assault occasioning bodily harm and deprivation of liberty, [WTD] was undecided about his preferred plea options. He said it was his impression that what needed to be determined first was whether his charges would go to the Mental Health Court. He said he knew the difference between pleading guilty and not guilty. He said he had been in Court in the past and he always pleaded guilty. He appreciated that the main difference was that his previous charges had always been relatively minor.

[WTD] understood that after pleading guilty he would get sentenced by the Judge. He was uncertain however what would happen if he pleaded not guilty. After some deliberation he said, *"well ... that's when evidence comes in"*. When asked about any specific evidence that might be presented at his trial ([WTD] had a limited grasp of the concept of a criminal trial more generally), he was able to nominate his ex-girlfriend as a potential witness. It took him some time and prompting to consider other potential sources of evidence (e.g. photographs, statements from neighbours etc.)

When he was asked to name the relevant officials in a Court of law, [WTD] nominated the Judge and his lawyer. He was unfamiliar with the concept of having a police prosecutor, although he had a general understanding that police formed a party to the proceedings. He was unfamiliar with the concept of a Jury trial and did not understand the term *"conviction"*. When these concepts were explained to him, [WTD] demonstrated limited comprehension, in other words he was unable to explain the concepts back to the examiner. Eventually, he understood that the Jury was constituted of a group of people from the community who determined the issues of guilt or innocence, before the Judge can decide a final sentence.

[WTD] estimated that the legal case against him was strong, although he could not say why. When asked about any defence strategy (other than the claim that the alleged victim had consented to their sexual relationship), he replied *"I don't know"*. He said he would let his solicitor speak on his behalf. He asked whether his ex-girlfriend (the alleged victim) was going to be in Court and then said somewhat surprisingly *"do you have her number? ... Do you think my lawyer has her number?"*

OPINION

Following my initial examination of [WTD] I indicated that he was unfit to stand trial. After I had an opportunity to examine him for the second time, my opinion is somewhat more nuanced. Some critical information sources are still missing, in particular a thorough psychometric and IQ testing to determine the level of his intellectual functioning and his performance on subtests of verbal and performance intelligence. However, even without that information, it is safe to conclude that [WTD] has a *natural metal infirmity*, in other words a mild intellectual disability. This is a permanent and stable condition with no possibility of any substantial improvement.

Multiple deficits have been identified across several domains of [WTD's] intellectual performance, including memory, language, attention and executive functioning. I suspect that on some of the relevant scales [WTD] would probably score in an extremely low range, compared with the norms used for general population. Such intellectual and cognitive deficits are expected to play an important part in the determination of his capacity to function in a trial setting, in particular when the demands of a criminal trial are substantial.

[WTD] does not appear to have any diagnosable mental illness. His current mental state is reasonably stable, following a prolonged unsettled period in custody during the early stages of his incarceration. Whilst in custody, [WTD] has committed several additional offences, consisting mostly of assault on corrective services officers.

[WTD] is currently facing a number of charges, ranging from rather minor to very serious ones. Evidently, he is not a stranger to the Criminal Justice System and he has in the past been convicted of a number of relatively simple offences, including misdemeanor and public disorder offences, trespass, stealing, wilful damage etc. His more recent charges of Rape and Deprivation of Liberty fall into a very different category of seriousness and complexity and consequently entail a different threshold for fitness. [WTD's] usual manner of dealing with his charges through an early guilty plea would not be appropriate with such severe allegations.

[WTD] appears to meet a number of *Presser*[4] criteria for fitness for trial. I cannot see a major impediment in him being able to enter a guilty plea in relation to his simple offences on the basis of the facts that he understands his charges and his basic rights under the law and is able to distinguish between different plea options. He is also capable in my opinion of instructing his solicitor at a basic level and sustaining himself through relatively straightforward Court proceedings without any adverse impact on his mental condition, or any potential miscarriage of justice. However, I doubt that [WTD] has intellectual competences to function adequately during a criminal trial for his charges of Rape, Deprivation of Liberty and Assault Occasioning Bodily harm. I believe he would struggle to understand and follow the Court proceedings and meaningfully assist his solicitor by providing consistent and meaningful instructions as the trial progresses. His deficits in memory, comprehension, information processing, communication, planning and organizing would impair his

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4 A reference to *R v Presser* [1958] VR 45.

> capacity to make his own defence and answer to the charges, even with the assistance of a counsel and all reasonable modifications that might be made during the course of a trial.
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> I am still prepared to support [WTD's] referral to the Mental Health Court, given his potentially permanent unfitness to stand trial. He was not in my view of unsound mind on any of the offending occasions. It would be important that the Mental Health Court commission an independent evaluation by a clinical psychologist specialized in psychometric testing for the purposes of the determination of his level of intelligence and adaptive functioning."[5]

[9] There was an earlier report of the psychologist, Mary Antoney. The psychologist provided a report to the Toowoomba Magistrates Court concerning the applicant, and that report is dated 11 September 2017. In that report, the psychologist opined that the applicant was of unsound mind at the time of the alleged offence and therefore she formed the view that he was not criminally responsible for any act or omission as at the time of doing the act or making the omission. Whether that finding should be accepted is a matter that I need not determine. However, Ms Antoney did make findings in relation to the overall cognitive abilities of the applicant:

> "3.1(a) **The capacity to understand what he was doing.**
>
> *The evidence of the assessments demonstrated unequivocally that [WTD] currently* ***does not have/ and has never had, the capacity*** *to conceptualise questions posed to him regarding his mood, or his actions, or the flexible thinking and reasoning skills to understand his actions and their implications.*
>
> [WTD's] cognitive assessments provided evidence he has severe receptive and expressive language and communication difficulties, in addition to his challenges with immediate memory. With his overall cognitive performances of 8/30 being significantly worse than someone with Alzheimer's disease, or other dementias (<23/30). Furthermore, [WTD's] performances on three executive functions test combined provided evidence of his inability to understand what he was doing, and any said implications of those behaviours in that he demonstrated severe and pervasive disabilities. Specifically, [WTD] has concrete processing, reasoning and thinking with nil evidence to support any abstract reasoning abilities at all. His poor performances evidenced [WTD] has no ability for formulating abstract thinking, as well as no ability to incorporate feedback in order to formulate more efficient questions to others."[6]

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5 Reproduced with emphases and minor grammatical errors as in original.

6 Reproduced with emphases and minor grammatical errors as in original.

[10] These findings of the psychologist seem to be accepted by Dr Kovakovic, and are referred to in his reports. The psychologist found that the overall cognitive performance of the applicant was a score of eight out of 30, which places him in a position of being significantly worse than someone with Alzheimer's disease or other dementia. The applicant has been referred to the Mental Health Court, which, I understand, will determine whether he is fit for trial on the indictable offences.

[11] Turning then to section 11A of the *Bail Act*. It is a section which is not without difficulty. However, it operates in this way: for the section to apply, the applicant must fall within the conditions in section 11A(1)(a), (b) and (c). Those subsections create conditions which operate cumulatively, so the applicant must fall within all of them to, in turn, fall within section 11A. If the applicant falls within the conditions of 11A(1), then there is a discretion to release the applicant without bail but to release him or her into the custody of another person. There is also a discretion to permit the person to go at large. In either case, the release is made on condition that the applicant surrender, pursuant to a notice which is then given under section 11B. Perhaps unsurprisingly, that notice is called a release notice.

[12] It is odd, in some respects, that a person may qualify under section 11A only if the person does not, or appears not to understand the nature and effect of entering into an undertaking under section 20 (see section 11A(1)(b)), but then is expected to comply with a section 11B release notice. In any event, despite that oddity, the operation of section 11A is relatively clear. Here, the applicant clearly falls within the condition in section 11A(1)(a). The psychiatrist and the psychologist have identified limited cognitive skills, which equate to "an impairment of the mind" for the purposes of section 11A(1)(a).

[13] Ms Fletcher who appeared for the applicant conceded, quite properly, that there was no direct evidence fulfilling the condition in section 11A(1)(b), being the condition that the applicant does not or does not appear to understand the nature and effect of entering into an undertaking under section 20. However, it would be rare for there to be a case where that condition was fulfilled other than by inferences drawn from circumstantial evidence, and perhaps inferences drawn by experts expressing opinion.

[14] Neither the psychiatrist nor the psychologist was directly asked about the applicant's understanding of an undertaking. However, the evidence of a lack of intellectual capacity and inability to understand the criminal proceedings relating to the sexual offences with which he is charged enables me to draw the inference, which I do, that the applicant does not appear to understand the nature and the effect of entering into an undertaking under section 20 of the *Bail Act*. I draw that inference by reference to the evidence of his intellectual capacity. This inference is supported, to a point, by the evidence of police officers who arrested the applicant on a breach of bail.

[15] The applicant was granted bail on Sunday 19 March 2017. There was a condition that the defendant not attend certain areas of Toowoomba. Police conducted patrols unrelated to the applicant, but noticed him in a relevant area. When police stopped him, the applicant stated that he had no idea that he was prohibited from attending the area. This was despite the fact that the bail undertaking was clear in its terms. The statement to the police, by the applicant, appears to have been a spontaneous reaction; a spontaneous reaction of a person with limited intellectual abilities. The spontaneous statement, then, is more likely to be a true expression of his understanding than it is to be some invention.

[16] Then, by section 11A(1)(c), the release under section 11A will not be made unless the applicant would have been released had he had capacity to understand the undertaking and be admitted to bail. This condition is also a little strange, because it is difficult to assess questions of risk without reference to the applicant's mental capacities. When assessing risk, it must be that regard can be had to arrangements which will be put in place because of his intellectual limitations. When assessing the test under section 11A(1)(c), regard must be had to the fact that the applicant is in a show cause situation under section 16.

[17] The applicant's mother has had a difficult relationship with the applicant. However, she is content to have the applicant released to her. In her affidavit, she frankly describes the problems that she has had managing the applicant. She then says:

> "20. I understand that [WTD] is managed by the Office of the Public Guardian ('the OPG') and that the OPG has approved my address as suitable if [WTD] were to be released from gaol.

21. I would really like [WTD] to be able to come home to me. I now live in a three bedroom house with my current husband [RDL]. We live in town in [the Darling Downs region] and only come into Toowoomba once every two weeks.

22. I understand that [WTD] continues to be managed by the OPG and that they would apply for [WTD] to have support again if he is living in the community.

23. I understand that if [WTD] lives in my home, workers like those from LWB[7] would need to come into my house to help give [WTD] the support he needs. I would welcome this extra support and have no issue in giving any services access if it will help [WTD].

24. Although we had difficulty with [WTD's] behaviour last time he was living at home, I really think it would be different this time because I know he is likely to be eligible for support through the National Disability Insurance Scheme ('the NDIS').

25. I understand that there may be some delay in the NDIS funding coming through and that there may be a period of time where there are not workers available to help with [WTD]. I still believe that I can manage [WTD] on my own in the meantime.

26. I have noticed a change in [WTD's] behaviour since he has been in custody. This is the first time he has ever been to gaol and he seems to have grown up a lot.

27. I have never felt unsafe around [WTD]. Although there have been times that he has made threats to me or my property, I have always seen this as 'acting out' or behaviour that only comes about when he is under a lot of stress. He has never hurt me."

[18] Importantly, a regional manager with the Office of the Public Guardian swore an affidavit which was before me. Critically, he says:

"14. [WTD] was previously in receipt of funding from the Department of Communities, Child Safety and Disability Services. This funding enabled a level of supports from an approved Non-Government Service Provider. [WTD] transitioned from this funding to the National Disability Insurance Scheme (NDIS) in September 2017.

15. The OPG can confirm that [WTD's] first NDIS Plan commenced on 23 September 2017. The National Disability Insurance Agency (NDIA) approved this plan for a period of six months. The NDIS Plan was reviewed in February 2018 and a new plan commenced on 19 March 2018 for a further period of 6 months.

16. The 19 March 2018 NDIS plan provides [WTD] with $1,128.72 for support coordination. This funding enables 12 hours of support coordination for the period of the approved plan. Support

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7 A reference to Life Without Barriers.

Coordinators role is essentialy to implement the approved NDIS plan. Mr Mark Setchfield (Support Coordinator under the NDIS Plan) advised the Public Guardian that the continued support coordination is to maintain contact between [WTD] and the NDIA whilst he is in custody.

17. Whilst [WTD] has been on remand, support funding through NDIS for services has not been available for [WTD] as the NDIA will not provide funds to someone who is in custody. As a consequence [WTD] does not currently have a service provider.

18. Once [WTD] has a release date from custody, the Public Guardian will make an application to the NDIA for a Change in Circumstances Review of his current NDIS Plan. This will allow the NDIA to review the supports that [WTD] will require following his release. [WTD] will not have access to this additional funds until he is released from custody. The NDIA will not accept an application for Change in Circumstances Review for [WTD] until he has a release date.

19. The request for a review of the NDIS plan must come from [WTD] or his Guardian.

20. Additionally, it is Mr Setchfield's intention to visit with [WTD] to discuss his housing and support needs and this information can be used to inform his future NDIS plans.

21. When [WTD] resided in the community, he received funding which enabled 6 hours of support per day, 7 days per week. He also received funding for the development of a Positive Behaviour Support Plan. Mr Setchfield advised that a Positive Behaviour Support Plan was not completed due to [WTD] being placed in custody.

22. Mr Setchfield says that he would expect that the next NDIS plan review will generate a 3 - 6 month plan to investigate longer term support and interventions for [WTD]. The plan is likely to include support hours, however the number of hours will be determined by the NDIA.

23. If [WTD] in released on bail, the OPG will continue to provide details of [WTD's] ongoing needs and any changes of circumstances to NDIA. The information will assist NDIA in keeping an updated support package for [WTD], which will be reviewed periodically, at a frequency determined by NDIA. A review of [WTD's] circumstances does not guarantee that adequate funding for support in the community will be provided."

[19] The applicant is 20 years of age. He has a minor criminal history and his present incarceration is the first time he has been in custody. He has been in custody now a little over nine months. As explained in the affidavits of [RML] and the officer of the Office of the Public Guardian, he has the support of his mother, the Office of the Public Guardian and the National Disability Insurance Scheme.

[20] Mr Kaplan, who appears for the Crown in the application, rightly and properly identifies the relevant risk as that of re-offending, and, in particular, reoffending against the complainant in the sexual charges. That risk, however, is ameliorated to an acceptable level, given the support he will receive. He has shown cause why his continued incarceration is not justified.[8] That, then, fulfils the requirement of section 11A(1)(c).

[21] Given that he otherwise fulfils the conditions of section 11A(1), a discretion then arises under section 11A(2) to release the applicant into the care of another person who ordinarily has the care of the person, or with whom the person resides, or to permit the applicant to go at large. Ms Fletcher, who appears for the applicant, has, in my view quite properly, made no submission that an order under section 11A(2)(b) permitting the applicant to go at large is appropriate. I find that an order under 11A(2)(a), namely, releasing the applicant into the care of his mother, is appropriate.

[22] Under section 11B, a person released under section 11A must be the subject of a release notice, and a police officer or the court releasing the person must give the person a notice in the approved form, stating the things prescribed by section 11B(2) and (3). It is also a condition, by force of section 11B(4) that the person to whose care the applicant for bail is to be released must receive a copy of the notice.

[23] I order that the applicant be released into the care of his mother, pursuant to the provisions of section 11A of the *Bail Act*.

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[8] *Bail Act* 1980 (Qld) s 16.