SUPREME COURT OF QUEENSLAND

CITATION:	*Re JMT* [2020] QSC 72
PARTIES:	**IN THE MATTER OF AN APPLICATION FOR BAIL BY JMT** **R** (respondent Crown) v **JMT** (applicant)
FILE NO:	BS No 3122 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	Orders made on 1 April 2020, reasons delivered on 9 April 2020
DELIVERED AT:	Brisbane
HEARING DATE:	27 March 2020
JUDGE:	Davis J
ORDER:	**The applicant be admitted to bail on the terms appearing in the order attached and marked as "A".**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – BAIL – BEFORE TRIAL – MURDER CASES – where the applicant applies for bail for charges of murder and grievous bodily harm – where the application was opposed by the Crown – where four others, all juveniles, are conjointly charged with the applicant on both charges – where the Crown case is not without difficulties – where the applicant is not the primary offender – where the Crown case is that the applicant is party to a common purpose with the primary offender – where lack of evidence demonstrating knowledge by him of the intention of the primary offender – where lack of evidence demonstrating that offences charged were a probable consequence of the execution of any common purpose – where COVID-19 will undoubtedly cause delay in the finalisation of the proceedings against the applicant – where curfew conditions and conditions preventing him from contacting known associates will militate against the risk of him being involved in street violence while on bail – whether the applicant has demonstrated that his continued detention in custody pending trial or other resolution of the charges is not justified – whether there is no unacceptable risk of the kinds identified in s 16(1) of the *Bail Act*

Bail Act 1980, s 7, s 8, s 10, s 13, s 15, s 16
Bail Act 1977 (Vic)
Bail Act 2002 (ACT)
Bail Act 2013 (NSW), s 18
Corrective Services Act 2006, s 263
Criminal *Code*, s 2, s 7(1)(a), s 7(1)(b), s 7(1)(c), s 8, s 293, s 300, s 302, s 303, s 305, s 317(1), s 596
Human Rights Act 2019, s 4, s 5, s 9, s 30, Part 3, Divisions 1, 2 and 4
Public Health Act 2005, s 362B

Ackland v Director of Public Prosecutions (Qld) [2017] QCA 75, cited
Barlow v The Queen (1997) 188 CLR 1, cited
Crump v New South Wales (2012) 247 CLR 1, cited
Edwards v R (1993) 178 CLR 193, cited
Elliott v The Queen (2007) 234 CLR 38, cited
Giorgianni v The Queen (1985) 156 CLR 473, cited
Keys v Director of Public Prosecutions [2009] QCA 220, followed
Lacey v DPP (Qld); Lacey v DPP [2007] QCA 413, followed
Matsoukatidou v Yarra Ranges Council (2017) 51 VR 625, cited
Minister for Aboriginal Affairs v Peko Wallsend Ltd (1986) 162 CLR 24, followed
Moukhallaletti v Director of Public Prosecutions (NSW) [2016] NSWCCA 314, cited
R v Baden-Clay (2016) 258 CLR 308, cited
R v Barlow (1997) 188 CLR 1, cited
R v Beck [1990] 1 Qd R 30, cited
R v Hughes [1983] Qd R 92, followed
R v Keenan (2008) 236 CLR 397, cited
R v Licciardello [2018] 3 Qd R 206, cited
R v Lowrie and Ross [2000] 2 Qd R 529, cited
R v Power and Power (1996) 87 A Crim R 407, cited
R v Roberts and Pearce [2012] QCA 82, cited
R v Trebeck [2018] QCA 183, cited
Rakielbakhour v The Director of Public Prosecutions [2020] NSWSC 323, considered
Re Broes [2020] VSC 128, cited
Re Kracke v Mental Health Review Board (2009) 29 VAR 1, cited
Re McCann [2020] VSC 138, cited
Re Stott (No 2) [2020] ACTSC 62, cited
Re Tong [2020] VSC 141, cited
Sica v Director of Public Prosecutions [2011] 2 Qd R 254, followed
Williamson v Director of Public Prosecutions [2001] 1 Qd R 99, followed

COUNSEL:	R A East QC for the applicant C Bernardin for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions for the respondent

[1] The applicant applied for bail in relation to two charges namely:

1. *Criminal Code*, s 300 Murder

   That on 13 December 2019 at Surfers Paradise in the State of Queensland [the applicant] murdered John.[1]

2. *Criminal Code*, s 317(b) and (e)

   That on 13 December 2019 at Surfers Paradise in the State of Queensland [the applicant] with intent to do some grievous bodily harm to Alan[2] unlawfully wounded Alan.

[2] The application was opposed by the Crown but on 1 April 2020 I granted bail on the terms which appear in the order attached as a schedule and marked as "A".[3]

The alleged offending

[3] Both charges arise from an incident which occurred on the evening of 13 December 2019 in Surfers Paradise. Four others, all juveniles, are conjointly charged with the applicant on both charges. One of them, who I will call Sam (a pseudonym), was granted bail on 21 January 2020. The other three are all remanded in custody. One of them, who I will call Tom, is, as I later explain, alleged to be the person who physically committed the two alleged offences.[4]

[4] The Crown case is that all five alleged offenders travelled to the Gold Coast by train in the early evening of 13 December 2019. In the morning, at about 10.00 am, many hours before the incident giving rise to the two charges, the appellant sent a text message to a friend, not one of the accused, in terms "Just chilling ma bruv looking for a lick aye". That, the Crown says, is slang, meaning looking for someone to rob.

[5] The applicant's group bought some kebabs and cooked them by the beach. During the barbecue, Tom produced a knife. It was used by some in the applicant's group (including the applicant) in the process of cooking the kebabs. It was returned to Tom before the group then moved on.

[6] John and Alan were with a group of friends on the Gold Coast. The applicant's group noticed John and Alan's group. Three girls, who I will call Sally, Jenny and Mary were with Joe (again, a pseudonym). Sally, Jenny and Mary all provided statements to the police. Sally says that a member of the applicant's group asked

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1 A pseudonym.
2 A pseudonym.
3 With the bail address and the names of various persons appearing in the formal orders redacted.
4 Code s 7(1)(a).

Joe if he could acquire some drugs. That member of the applicant's group also said to Sally and Joe that it was their intention[5] to get money for drugs by robbing someone. Mary also said that members of the applicant's group asked her if she knew anyone who could get drugs. Jenny said that she had a similar conversation with a member of the applicant's group who was asking where they could get drugs, and that the applicant's group would bash people to get drugs. That person also asked her who they could "hit a lick on". Again, it is the Crown case that the term "lick on" is slang for robbery.

[7] A short time later, John and Alan's group had moved up towards near the Boost Juice outlet in Cavill Avenue. Jenny says that she heard members of the applicant's group speaking about John and Alan's group. Someone in the applicant's group asked "if they had sussed them up and set for a lick" while another asked her if she knew anyone in John and Alan's group. She says that she heard someone in the applicant's group yell out "let's go boys, let's go" and then followed John and Alan's group.

[8] Shortly thereafter, there was a fight between the two groups. The fight is captured on closed-circuit television and the footage was in evidence before me. It was played in open court and Mr East QC (who appeared for the applicant) pointed things out to me. None of what Mr East QC said was challenged and my description of the fight which follows accords with his explanation of the footage.

[9] The two groups came together outside a gift shop. John can be seen clearly walking along as the applicant and other members of the applicant's group passed him. One of the applicant's group (not the applicant) confronted John and shaped up to him as if to fight him. That member of the applicant's group (not Tom) and another member then attacked a member of John's group (not John). John goes to the aid of that member of his group and then various members of both groups (including the applicant) start fighting each other.

[10] The applicant is seen to hit a member of John's group with a plastic drink bottle. I describe more of the applicant's involvement in the incident later.

[11] In the course of the fight, Tom stabbed John in the chest and also stabbed Alan in his back and chest. John was fatally wounded and died shortly thereafter. It is alleged that the injuries sustained by Alan constituted grievous bodily harm.

[12] After the stabbings, the applicant's group fled. In the course of their flight from the scene, the applicant and his co-accused discarded the clothes they were wearing.

[13] The applicant was spoken to by police and made a formal statement on 16 December 2019. He was released and then arrested two days later. He was in custody from 18 December 2019 until his release on bail.

The Crown case

[14] Count 1 is a charge of murder. Manslaughter is an alternative verdict on a count of murder.[6] Sections 302 and 303 relevantly are:

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5 Presumably the applicant's group's intention.

6 Code s 576.

"**302 Definition of murder**

(1) Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say—

(a) if the offender intends to cause the death of the person killed or that of some other person or if the offender intends to do to the person killed or to some other person some grievous bodily harm; …[7]

(b) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

(c) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime; …[8]

is guilty of ***murder***. …

303 Definition of manslaughter

(1) A person who unlawfully kills another under such circumstances as not to constitute murder is guilty of ***manslaughter***."[9]

[15] It is the act[10] of stabbing John which caused death and therefore killed him.[11] Section 302(1)(a) is relied upon. The Crown does not allege felony murder.[12]

[16] Count 2 is an offence against s 317. Section 317 creates a number of offences. The Crown relies on s 317(1)(b) and (e). Relevantly, s 317 provides:

"**317 Acts intended to cause grievous bodily harm and other malicious acts**

(1) Any person who, with intent—

(a) …

(b) to do some grievous bodily harm or transmit a serious disease to any person; or

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7 Section 302(1)(aa) is deleted as not relied on by the Crown.

8 Section 302(1)(d) and (e) are also not relied upon.

9 Code s 300 provides that unlawfully killing is a crime, being murder or manslaughter depending on the circumstances.

10 Code s 2.

11 Code s 293.

12 Code s 302(1)(b).

…

either—

(e) in any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person; or

…

is guilty of a crime, and is liable to imprisonment for life."

[17] The act by which grievous bodily harm was done is the stabbing of Alan.

[18] The Crown accepts that the applicant is not the person who did the relevant acts constituting the offences, namely the stabbing. That, on the Crown case was Tom. In order to visit criminal liability upon the applicant for the acts of Tom, the Crown relies upon s 7(1)(b) and/or s 7(1)(c) and/or s 8 of the Code. They are, relevantly, as follows:

"**7 Principal offenders**

(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

…

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(c) every person who aids another person in committing the offence;

…

8 Offences committed in prosecution of common purpose

When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."

[19] The s 7 case is that the applicant aided or enabled Tom to stab John and Alan. The acts of aiding or enabling are:

1. The applicant "[acted] as a crowd control[ler] during the fight".

2. The applicant offered encouragement (presumably to Tom).[13]

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13 *R v Beck* [1990] 1 Qd R 30, *R v Licciardello* [2018] 3 Qd R 206.

3. The applicant "engaged in violence himself".

[20] Section 8 extends the criminal liability of an offender to offences which were a probable consequence of the prosecution of an unlawful purpose. That raises issues as to what the unlawful purpose was that the applicant allegedly joined. The Crown identified the common unlawful purpose as a plan to rob and assault John and Alan. It is alleged that the applicant knew that Tom was in possession of a knife and on that basis the Crown says that the offences which were committed were a probable consequence of the execution of the plan to assault and rob.

Statutory context

[21] Section 8 of the *Bail Act* 1980 vests jurisdiction (subject to exceptions) to grant bail upon any court in which a criminal proceeding is pending. Section 10 vests jurisdiction in this court to grant bail on any offence. Section 13 provides that only this court may grant bail in relation to offences which carry (relevantly here) a mandatory life sentence upon conviction. Murder is such an offence.[14]

[22] Section 16 is a critical provision. It provides relevantly:

> "**16 Refusal of bail**
>
> (1) Notwithstanding this Act, a court or police officer[15] authorised by this Act to grant bail shall refuse to grant bail to a defendant if the court or police officer is satisfied—
>
> (a) that there is an unacceptable risk that the defendant if released on bail—
>
> (i) would fail to appear and surrender into custody; or
>
> (ii) would while released on bail—
>
> (A) commit an offence; or
>
> (B) endanger the safety or welfare of a person who is claimed to be a victim of the offence with which the defendant is charged or anyone else's safety or welfare; or
>
> (C) interfere with witnesses or otherwise obstruct the course of justice, whether for the defendant or anyone else; or
>
> (b) that the defendant should remain in custody for the defendant's own protection. …

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14 Code s 305.

15 A police officer being the officer in charge of a police station or watch house may grant bail under s 7.

(2) In assessing whether there is an unacceptable risk with respect to any event specified in subsection (1)(a) the court or police officer shall have regard to all matters appearing to be relevant and in particular, without in any way limiting the generality of this provision, to such of the following considerations as appear to be relevant—

(a) the nature and seriousness of the offence;

(b) the character, antecedents, associations, home environment, employment and background of the defendant;

(c) the history of any previous grants of bail to the defendant;

(d) the strength of the evidence against the defendant;

(e) if the defendant is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the defendant's community, including, for example, about—

(i) the defendant's relationship to the defendant's community; or

(ii) any cultural considerations; or

(iii) any considerations relating to programs and services in which the community justice group participates;

(f) if the defendant is charged with a domestic violence offence or an offence against the *Domestic and Family Violence Protection Act* 2012, section 177(2)—the risk of further domestic violence or associated domestic violence, under the *Domestic and Family Violence Protection Act* 2012, being committed by the defendant. …

(3) Where the defendant is charged—

(a) …

(b) with an offence to which section 13 applies; or

(c) with an indictable offence in the course of committing which the defendant is alleged to have used or threatened to use a firearm, offensive weapon or explosive substance; or …

the court or police officer shall refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified and, if bail is granted or the defendant is released under section 11A,

> must include in the order a statement of the reasons for granting bail or releasing the defendant. …"[16]

[23] By force of s 16(3)(b) and s 13, s 16(3) is engaged so the applicant can only obtain bail by demonstrating that his detention in custody pending trial or other resolution of the charges is not justified. Section 16(3) is also engaged as it is alleged that a knife was used in the commission of the offences.[17]

The arguments of the respective parties

[24] Mr East QC submitted in writing:

> "It is submitted for the reasons outlined above[18] the applicant's continued detention in custody is not justified.
>
> - He is not alleged to have used a weapon
> - The Crown case on Murder on the basis of the party provisions is not strong
> - The Crown case on Robbery is not a strong one such that s 302(b) is likely to be engaged[19]
> - The current pandemic crisis is a factor militating against continued detention on remand
> - The applicant's co-operation with investigating Police has been of a high order
> - The conditions imposed reduce risk, such that the risk is not unacceptable"

[25] Mr East QC's oral submissions explained and expanded on the points identified above.

[26] The conditions of bail proposed by Mr East QC included:

1. a curfew;
2. a residential condition;
3. for the applicant to report to the Beenleigh Police Station three days a week;
4. a prohibition upon the applicant contacting witnesses or co-accused or other named persons;
5. a prohibition upon the applicant entering the Surfers Paradise "Safe Night Precinct";

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16 Notes and examples omitted.

17 Section 16(3)(c) also places the applicant in a show cause. It is enough that the principal offender was armed: *Williamson v Director of Public Prosecutions* [2001] 1 Qd R 99 at [14] and [15].

18 An analysis of the evidence done by Mr East QC in the written submissions.

19 The Crown did not rely on s 302(b).

6. a prohibition against the applicant leaving Queensland or Australia.[20]

[27] Ms Bernardin for the Crown submitted that the applicant had not shown cause and the application ought to be dismissed. She relied upon:

1. the footage which she submitted showed the applicant as a party to the offences;

2. that the applicant accepted in his dealings with police that he knew (from the barbecue) that Tom had a knife;

3. evidence of the conversations between members of the applicant's group and others which she submitted showed an intention to rob using actual violence;

4. the applicant's criminal history;

5. the applicant fleeing the scene after the stabbings;

6. that the applicant had previously been charged on two occasions with failing to appear;

7. that the applicant in text messages expressed an intention to move interstate;

8. that the applicant may be deported;

9. the prospect of a significant period of custody upon conviction.

[28] The reference to prior offending concerns two convictions in 2015 when the applicant was 14 years of age. The first of these offences occurred in the Queen Street Mall. The applicant provoked a fight which led to various assaults, including punching and kicking. The second incident occurred at the Botanic Gardens. Again, the applicant was in the company of other young people. The applicant approached a group of students demanding cigarettes and drinks and that exchange led to various assaults.

[29] The two failures to appear occurred in relation to those offences. While he did not appear in honour of his bail, he did not abscond.

The impact of COVID-19 on the exercise of discretion

[30] As already observed, Mr East QC raised the "current pandemic crisis" as a factor relevant to the application. He submitted that the pandemic was relevant in three respects, namely:

1. There will be significant delay in the finalisation of the criminal proceedings against the applicant.

2. Because of means taken within prisons to prevent spread of the disease (such as lockdowns), life in prison will be more difficult than usual.

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20 Including a condition requiring the surrender of his passport.

3. There is a risk of transmission of the disease in prison, relevantly here, transmission to the applicant.

[31] Various decisions have now been published in other jurisdictions where judges have assessed the impact of the pandemic upon the exercise of the discretion to grant bail.[21] Those decisions are all made against the statutory regimes relevant to the particular jurisdiction. Some of those regimes are quite different to that in Queensland.

[32] Before turning to the factors identified by Mr East QC, there is the necessity to make two preliminary observations.

[33] Firstly, any submission concerning COVID-19 and its impact upon an application for bail must have some evidentiary basis.

[34] Section 15 of the *Bail Act* makes it clear that the court may act on information notwithstanding that the information might not be in an admissible form in compliance with the rules of evidence. Section 15 provides relevantly here:

> "**15 Procedure upon application for bail**
>
> (1) In a proceeding about the release of a person under this part or the *Youth Justice Act* 1992, part 5—
>
> (a) the court may, subject to paragraph (b), make such investigations on oath or otherwise of and concerning the defendant as the court thinks fit; and
>
> (b) the defendant shall not be examined or cross-examined by the court or any other person as to the offence with which the defendant is charged and no inquiry shall be made of the defendant as to that offence; and
>
> (c) the complainant or prosecutor or any person appearing on behalf of the Crown may submit, in addition to other relevant evidence, evidence by affidavit or otherwise—
>
> (i) to prove that the defendant—
>
> (A) has been convicted previously of an indictable offence; and
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> (B) has been charged with and is awaiting trial on an indictable offence; and
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> (C) has failed previously to appear in accordance with the defendant's

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[21] *Rakielbakhour v The Director of Public Prosecutions* [2020] NSWSC 323, *Re Tong* [2020] VSC 141, *Re McCann* [2020] VSC 138, *Re Broes* [2020] VSC 128, *Re Stott (No 2)* [2020] ACTSC 62.

undertaking and surrender into custody; or

(ii) to show the circumstances of the offence particularly as they relate to the probability of conviction of the defendant; and

(d) the court shall take into consideration such relevant matters as are agreed upon by the complainant or prosecutor and the defendant or the defendant's lawyer; and

(e) the court may receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances; and …"

[35] Some relevant matters may be easily established. For example, restrictions are being imposed upon persons in Queensland by force of directions by the Chief Health Officer pursuant to s 362B of the *Public Health Act* 2005. These directions are easily proved. There are other matters which are also easily established such as the Chief Justice has announced that there will be no jury trials in this court at least until July. Access by lawyers to prisoners to take instructions is now somewhat restricted. The progress of criminal proceedings through the Magistrates Court has dramatically slowed.

[36] There are though other assertions that are being made in bail applications which are more controversial. No evidence was led here, for instance, that the virus is in the remand prison. It is difficult then to conclude that the applicant is at risk of infection. It is important that in the absence of agreement between the parties under s 15(1)(d) of the *Bail Act*, there must be an established factual basis upon which any submission as to the effect of COVID-19 on a bail application is made.

[37] Secondly, the considerations which are or might be relevant to a grant of bail can be conveniently divided into two categories. Firstly are those circumstances which are relevant to one of the risks identified in s 16(1). The second category are those considerations which are not directly relevant to risk but may be relevant to other factors.

[38] Many factors which are regularly considered on bail applications may not appear directly to be related to risk but in fact are. For example, the strength or otherwise of the Crown case is often considered on the basis that the stronger the case the more vulnerable the alleged offender might feel, therefore, the more likely to flee.[22] Section 16(2)(d) of the *Bail Act* recognises the relevance of this factor to the risks identified in s 16(1).

[39] It is easy to see that the impact of COVID-19 may be relevant to risk of flight, reoffending and interfering with witnesses. Human activity within Queensland and within Australia is restricted. Movement is restricted and flight therefore more difficult. An applicant for bail might be fearful of being at risk of contracting the virus and that might motivate him to comply with conditions if granted bail. On the other hand, the Crown may say that fear of incarceration (and therefore infection if

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22 *Keys v Director of Public Prosecutions* [2009] QCA 220.

that is the evidence) after sentence is a motivation to flee. These are ultimately all matters of evidence and inference.

[40] Clearly, the impact of COVID-19 on those risks prescribed in s 16 is a relevant consideration. The second category are all other considerations. More difficult questions arise when the impact of COVID-19 is not directly, or even indirectly, relevant to one of the s 16 risks.

[41] Section 8 vests jurisdiction upon courts to grant bail where "a criminal proceeding" is pending in that court. Section 8 provides, relevantly:

> "**8 Power of court as to bail**
>
> (1) A court, subject to this Act—
>
> (a) may grant bail to a person held in custody on a charge of or in connection with an offence if—
>
> (i) the person is awaiting a criminal proceeding to be held by that court in relation to that offence; or…"

[42] Section 9 creates a presumption in favour of granting bail where an application has been made "to a court empowered by s 8 …". Section 9 provides:

> "**9 Duty of court to grant bail in certain cases**
>
> Where a person held in custody on a charge of an offence of which the person has not been convicted appears or is brought before a court empowered by section 8 to grant bail to the person in relation to that offence, the court shall, subject to this Act, grant bail to that person or enlarge or vary bail already granted to the person in relation to that offence." (emphasis added)

[43] Section 10 of the *Bail Act* is the provision which grants jurisdiction to this court to give bail in relation to all criminal charges, whether or not the charge is the subject of a criminal proceeding pending in this court. It provides, relevantly:

> "**10 General powers as to bail**
>
> (1) The Supreme Court or a judge thereof may, subject to this Act, grant bail to a person held in custody on a charge of an offence, or in connection with a criminal proceeding, or enlarge, vary or revoke bail granted to a person in or in connection with a criminal proceeding whether or not the person has appeared before the Supreme Court in or in connection therewith…."

[44] Section 16(2) lists a series of factors. That list is not exhaustive. Further, the factors identified are relevant to an assessment of "whether there is an unacceptable risk with respect to any event specified in subsection (1)(a)". As will be explained, s 16(1) imposes a prohibition on a grant of bail in certain circumstances. The factors in s 16(2) are expressed to be relevant to the prohibition.

[45] The considerations relevant to the exercise of any statutory discretion must be discerned from the proper construction of the statute taking into account the "subject matter, scope and purpose of the Act". In *Minister for Aboriginal Affairs v Peko Wallsend Ltd*,[23] Mason J (as his Honour then was) said in a very often quoted passage:

> "What factors a decision-maker is bound to consider in making the decision is determined by construction of the statute conferring the discretion. If the statute expressly states the considerations to be taken into account, it will often be necessary for the court to decide whether those enumerated factors are exhaustive or merely inclusive. If the relevant factors — and in this context I use this expression to refer to the factors which the decision-maker is bound to consider — are not expressly stated, they must be determined by implication from the subject matter, scope and purpose of the Act."[24]

[46] There is no stated object or purpose expressed in the *Bail Act*. Clearly enough, though, the purpose of the *Bail Act* is to provide a mechanism whereby persons charged with offences may be allowed freedom in the community pending finalisation of the criminal proceedings against them. As stated by Thomas JA in *Williamson v Director of Public Prosecutions*:[25] "The grant of bail, however, is an important process in civilised societies which reject any general right of the executive to imprison a citizen upon mere allegation or without trial. It is a necessary part of such a system that some risks have to be taken in order to protect citizens in those respects."[26]

[47] It is unsurprising that many different factors are often considered on applications for bail.[27] Delay in the finalisation of a criminal proceeding, whilst perhaps often not being directly relevant to risk,[28] is clearly a relevant consideration to a grant of bail.[29]

[48] In *Lacey v DPP (Qld); Lacey v DPP*,[30] the Court of Appeal recognised delay as a relevant consideration and then said:

> "[13] The length of delay, the reasons for that delay and the strength of the Crown case will always be matters of degree which must be balanced to arrive at a decision as to whether bail should be granted. Glossing the statute, in the manner urged by the appellants, substitutes for the balancing of competing factors required by the statute an evaluative exercise in which the length of detention is of overwhelming importance. Moreover, the differences in the character of each of those competing factors render an evaluative exercise of the type for

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23 (1986) 162 CLR 24.
24 At pages 39-40.
25 [2001] 1 Qd R 99.
26 At [22].
27 *Moukhallaletti v Director of Public Prosecutions (NSW)* [2016] NSWCCA 314.
28 And not a factor listed in s 16(2).
29 *Williamson v Director of Public Prosecutions* [2001] 1 Qd R 99 at [23], where it was said that delay is relevant to an applicant's attempt to show cause (s 16(3)).
30 [2007] QCA 413.

> which the appellants contend largely meaningless. The strength of a Crown case and the consequent risks of flight or interference with Crown witnesses do not diminish as the length of time to trial increases. On the other hand, in a case in which it is demonstrated that the time in custody on remand will likely exceed any custodial sentence which might be imposed after conviction, the relative importance of time may very well be regarded by the judge as outweighing the other relevant factors. The essence of the exercise of the judge's discretion is to balance competing considerations and to weigh the relative importance which the different factors bear in the context of the decision which needs to be made. That exercise of discretion is not an empirical exercise; there are no bright lines drawn to determine conclusively when one important factor outweighs another."

[49] In *Sica v Director of Public Prosecutions*, Chesterman JA[31] made this observation:

> "[43] Delay is, obviously, of considerable importance in cases of this kind. It is always concerning when an accused is held in custody for a lengthy period pending trial. There is considerable prejudice to an accused who, after perhaps years in jail, is acquitted. In considering a bail application in a murder case the judge is obliged to weigh that consideration against the strength of the Crown case and the risks that if allowed bail an accused might abscond, re-offend, or interfere with witnesses."[32]

[50] His Honour went on to cite and approve the passage from *Lacey*, which I have set out above. COVID-19 will undoubtedly cause delay in the finalisation of the proceedings against the applicant.

[51] In Victoria, the *Bail Act* 1977 (Vic) provides that where an accused is charged with certain offences, he must show "exceptional circumstances" in order to obtain bail. In *Re Broes*,[33] *Re McCann*[34] and *Re Tong*,[35] judges of the Supreme Court of Victoria relied upon the delays caused by COVID-19 in bringing an accused to trial as "exceptional circumstances" justifying a grant of bail.

[52] Hamill J, sitting in the Supreme Court of New South Wales in *Rakielbakhour v The Director of Public Prosecutions*,[36] under a regime established by the *Bail Act* 2013 (NSW), also considered, when granting bail, the impact of delay caused by COVID-19.

[53] None of those cases stand as authority for the proposition that delay caused by COVID-19 or any government's reaction to the threat of the virus is a consideration which might override other more weighty considerations, and cannot negative the

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31 With whom the Chief Justice and Keane JA agreed.
32 [2010] QCA 18.
33 [2020] VSC 128.
34 [2020] VSC 138.
35 [2020] VSC 141.
36 [2020] NSWSC 323.

prohibition in section 16(1) against granting bail if one of the identified risks is unacceptable. Delay caused by COVID-19 must be assessed and considered as a factor in accordance with the principles laid down by the Court of Appeal in cases such as *Lacey* and *Sica*.

[54] The other factors identified by Mr East QC concerning the pandemic relate to the safety and comfort of the applicant whilst held in custody. Elkaim J, in *R v Stott (No 2)*,[37] considered an applicant's safety against infection to be a relevant consideration under the provisions of the *Bail Act* 2002 (ACT). Hamill J, when considering the provisions of the *Bail Act* 2013 (NSW) in *Rakielbakhour v The Director of Public Prosecutions*,[38] thought likewise.

[55] Unlike the Queensland legislation, the *Bail Act* 2013 (NSW) expressly prescribes the only factors which must be taken into account on a consideration of bail. Section 18(1) provides:

> "**18 Matters to be considered as part of assessment**
>
> (1) A bail authority is to consider the following matters, and only the following matters, in an assessment of bail concerns under this Division—
>
> (a) the accused person's background, including criminal history, circumstances and community ties,
>
> (b) the nature and seriousness of the offence,
>
> (c) the strength of the prosecution case,
>
> (d) whether the accused person has a history of violence,
>
> (e) whether the accused person has previously committed a serious offence while on bail (whether granted under this Act or a law of another jurisdiction),
>
> (f) whether the accused person has a history of compliance or non-compliance with any of the following—
>
> (i) bail acknowledgments,
>
> (ii) bail conditions,
>
> (iii) apprehended violence orders,
>
> (iv) parole orders,
>
> (v) home detention orders, good behaviour bonds or community service orders, (vi) intensive correction orders,

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37 [2020] ACTSC 62.

38 [2020] NSWSC 323.

(vii) community correction orders,

(viii) conditional release orders,

(ix) non-association and place restriction orders,

(x) supervision orders,

(f1) if the bail authority is making the assessment of bail concerns because the accused person has failed or was about to fail to comply with a bail acknowledgment or a bail condition, any warnings issued to the accused person by police officers or bail authorities regarding non-compliance with bail acknowledgments or bail conditions,

(g) whether the accused person has any criminal associations,

(h) the length of time the accused person is likely to spend in custody if bail is refused,

(i) the likelihood of a custodial sentence being imposed if the accused person is convicted of the offence,

(i1) if the accused person has been convicted of the offence, but not yet sentenced, the likelihood of a custodial sentence being imposed,

(j) if the accused person has been convicted of the offence and proceedings on an appeal against conviction or sentence are pending before a court, whether the appeal has a reasonably arguable prospect of success,

(k) any special vulnerability or needs the accused person has including because of youth, being an Aboriginal or Torres Strait Islander, or having a cognitive or mental health impairment,

(l) the need for the accused person to be free to prepare for his or her appearance in court or to obtain legal advice,

(m) the need for the accused person to be free for any other lawful reason,

(n) the conduct of the accused person towards any victim of the offence, or any family member of a victim, after the offence,

(o) in the case of a serious offence, the views of any victim of the offence or any family member of a victim (if available to the bail authority), to the extent relevant to a concern that the accused person could, if released from custody, endanger

the safety of victims, individuals or the community,

(p) the bail conditions that could reasonably be imposed to address any bail concerns in accordance with section 20A,

(q) whether the accused person has any associations with a terrorist organisation (within the meaning of Division 102 of Part 5.3 of the Commonwealth Criminal Code),

(r) whether the accused person has made statements or carried out activities advocating support for terrorist acts or violent extremism,

(s) whether the accused person has any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism."

[56] After referring to evidence before him about the state of the pandemic, his Honour then held:

> "[15] These are matters properly to be taken into account in any case where a person charged with a criminal offence is making a release application under the *Bail Act*. This is not to place a gloss on the exhaustive list of factors in s 18 of the *Bail Act*. Rather it is to acknowledge the current medical crisis and give practical effect to certain paragraphs within s 18. Without attempting to be exhaustive, the pandemic may be relevant to the following paragraphs within s 18(1):
>
> Section 18(1)(m) says it is relevant to consider "the need for an accused person to be free for any other lawful reason". That might (or must) include the need for an applicant to protect themselves from infection and to support their family if there is evidence to support such a finding. It is relevant to the present application because of the applicant's father's ill-health.
>
> Section 18(1)(h) is also relevant. The length of time a person will remain in custody will often be affected by the measures courts are taking to ensure that participants in litigation are safe. As has been seen, many cases have been, and will be, adjourned or delayed.
>
> Section 18(1)(l) relates to the need for the accused to prepare for their appearance in court or obtain legal advice. At present, all legal visits in NSW prisons are being conducted by video-link. While the same is probably true of most conferences between lawyers and their clients, the facilities within the prison system must be under great strain because so many

> court cases are being conducted by video link and the number of available audio-visual suites is finite.
>
> Section 18(1)(k) refers to any "special vulnerability the accused person has". While not relevant to present application, the literature published by the Health authorities suggest Aboriginal and Torres Strait Islanders are particularly susceptible to the spread of the virus."

[57] While Queensland does not have an equivalent to s 18 (s 16(2) operates quite differently), the factors there prescribed are regularly considered in bail applications in Queensland and consideration of them would likely fall within the discretion granted by s 10 of the *Bail Act*.

[58] There are limitations though upon the impact of COVID-19 considerations upon an application for bail in Queensland.

[59] As already observed, the grant of jurisdiction to courts to grant bail is contained within ss 8 and 10. Section 9 creates a presumption in favour of bail and on its face that presumption applies to courts "empowered by s 8 to grant bail".[39] This court, exercising its overarching jurisdiction to grant bail under s 10, is not, at least literally, "a court empowered by s 8 to grant bail". Unless an indictment has been presented to it, this court's jurisdiction to grant bail comes from s 10. However, in *R v Hughes*,[40] Connolly J,[41] said this:

> "I should shortly say a word on a point which loomed large in the submissions made for the Crown. Section 8 empowers the grant of bail by the Court of hearing, trial or appeal where the applicant is awaiting such a criminal proceeding and by the Court of committal. Section 9 provides that when a person who has not been convicted appears or is brought before a Court empowered by s.8 to grant bail, that is to say the Court of trial or committal, the Court shall subject to the Act grant bail to him. Because s.10 preserves the general power of this Court to grant bail to persons in custody on a charge of an offence whether or not they have appeared before this Court, it was argued for the Crown that the Supreme Court should not be regarded as deriving its power to grant bail from s.8. The consequence would be that an application for bail to this Court by a person who has not been convicted would not be within s.9 and the prima facie obligation to grant bail would not apply. I cannot accept this argument. The drafting of ss.8, 9 and 10 of the Act leaves much to be desired but it is in my view not possible to read s.8 so as to exclude this Court from its provisions. To do so it would be necessary to confine the expression Court in that section to Magistrates Courts and District Courts. But persons who may be bailed by a Court are, primarily, those awaiting a criminal proceeding in that Court and criminal proceeding includes a hearing, trial or appeal in relation to an offence. The definition of hearing indicates that for the most part it means summary

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39 Section 9.

40 [1983] Qd R 92.

41 With whom Kelly J and Macrossan J (as he then was) agreed.

> proceedings and committal proceedings whereas trial means trial on indictment including the passing of sentence. It is true that there is provision for appeal to District Courts as well as trial on indictment in those Courts so that it would be possible to construe s.8 so as to exclude the Supreme Court, but such an exercise runs up against subsec. (6) which deals in terms with the exercise by a Judge of the Supreme Court of the powers of the Court of Criminal Appeal. In my view the Supreme Court is within the Courts described in s.8 and therefore in an appropriate case is subject to the prima facie obligation to grant bail under s.9. The object of s.10 is to emphasize its continuing overriding power to grant bail to persons in custody whether or not they are to be tried in this Court."

[60] Therefore, the starting point on all applications for bail[42] is a presumption that bail should be granted. However, s 16 provides a prohibition. Where one of the risks identified in s 16(1) is "unacceptable", the court "shall refuse to grant bail".[43]

[61] In *R v Hughes*,[44] the court was considering the appropriate approach to an application for bail where the charge was murder. After referring to common law principles, Connolly J then said:

> "Now s.16 of the Act deals in detail with the refusal of bail, positively requiring such refusal if the Court is satisfied that there is an unacceptable risk of certain eventualities one of which is that the defendant if released on bail would fail to appear and surrender himself into custody."[45]

[62] That observation was cited and followed by Chesterman JA[46] in *Keys v DPP (Qld)*.[47]

[63] There is also section 16(3) which "… reverses the defendant's prima facie entitlement under s 9, and, when applicable, requires the defendant to show cause why his or her detention in custody is not justified".[48] Section 16(3) is intended to operate in addition to s 16(1). In other words, if there is an unacceptable risk of one of the matters identified in s 16(1), then the court must refuse bail to any applicant, including an applicant in a show cause position. Even if the applicant who is in a show cause situation is not an unacceptable risk as defined in s 16(1), bail will still be refused unless he "shows cause why his detention in custody is not justified".

[64] Therefore, by operation of ss 8, 9, 10, 16(1) and, in appropriate circumstances, s 16(3), the impact of the COVID-19 virus (however that may be relevant on the evidence to a bail application) cannot result in a successful application for bail where one of the s 16(1) risks are "unacceptable".

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42 Except where s 16(3) is engaged.
43 Emphasis added.
44 [1983] 1 Qd R 92.
45 At 95.
46 With whose reasons Fraser JA agreed and McMurdo P agreed in the result.
47 [2009] QCA 220 at [8]; and see *Ackland v Director of Public Prosecutions (Qld)* [2017] QCA 75 at [5].
48 *Williamson v Director of Public Prosecutions* [2001] 1 Qd R 99 at [13].

[65] Further, depending upon the evidence available, relevance to a bail application of the conditions in prison may be very limited. It is well established that once a prisoner is sentenced, the management of the prisoner passes to the executive.[49] Until that point, the court has jurisdiction over the person accused, but prisoners held on remand in Queensland are held under the provisions of the *Corrective Services Act* 2006. Corrective services facilities established under that Act are under the management of the Chief Executive. Section 263 provides relevantly as follows:

> "**263 Functions and powers**
>
> (1) Subject to any direction of the Minister, the chief executive is responsible for—
>
> (a) the security and management of all corrective services facilities; and
>
> (b) the safe custody and welfare of all prisoners; and
>
> (c) the supervision of offenders in the community. …"

[66] Primarily then, the proper care and control of the applicant while he is in custody is the responsibility of the Chief Executive. That is not to say that conditions in prison are irrelevant to a consideration of bail. However, assuming there is evidence to give rise to such a consideration, it is, like delay, just another factor which may be taken into account. It is also, like delay and every other factor, subject to the prohibition in section 16(1).

[67] There was no reliance made by Mr East QC upon the *Human Rights Act* 2019, although there are provisions in that Act relevant to the treatment of persons detained.[50]

[68] As there was no argument on the impact of the *Human Rights Act*, I will simply mention in passing that the Act primarily casts obligations upon the executive and the parliament[51] and only impacts the exercise of judicial power in limited ways.[52] Obligations under the *Human Rights Act* may fall upon the Chief Executive. Whether any alleged failure by the Chief Executive to honour his obligations under the *Human Rights Act* (which is not alleged here) is a matter relevant to bail is a matter that need not be considered on this application.

[69] In summary then:

1. The pandemic and any government's response to it may give rise to considerations relevant to s 16(1) risks.

2. The pandemic and any government's response to it may give rise to considerations relevant to bail but beyond the s 16(1) risks.

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49 *Elliott v The Queen* (2007) 234 CLR 38 and *Crump v New South Wales* (2012) 247 CLR 1.

50 Section 30.

51 Sections 4, 5(2), 9, Part 3, Divisions 1, 2 and 4.

52 See cases such as *Re Kracke v Mental Health Review Board* (2009) 29 VAR 1 at [282] and *Matsoukatidou v Yarra Ranges Council* (2017) 51 VR 625 at [32].

3. The pandemic and any government's response to it may give rise to considerations relevant to an applicant showing cause under s 16(3).

4. Any submission must be based on evidence or information admitted through s 15.

5. The pandemic and any government's response to it can only be factors to take into account in the broader consideration of the exercise of discretion.

6. Any consideration of the conditions on remand must be made in the context of the Chief Executive's primary responsibility for the welfare of prisoners.

7. Whatever evidence is presented as to the pandemic and governments' response to it, s 16(1) prohibits the grant of bail where any one of the s 16(1) risks is "unacceptable".

The impact of the parties provisions[53]

[70] In order to visit liability upon the applicant for the acts of Tom, the Crown must prove that the applicant intentionally aided Tom to commit the "offence".[54] In other words, he must, at the time he aided, have intended Tom to commit murder and intended Tom to commit grievous bodily harm with intent. In order to do that, he must have known that Tom intended to stab John with an intent to kill him or at least do him grievous bodily harm[55] and that Tom intended to stab Alan with intention of doing some grievous bodily harm.

[71] If the Crown can establish that the applicant knew that Tom intended to stab John and intended to assist him to do that, then the Crown may establish manslaughter as against the applicant if they cannot prove the element of intention. Similarly, if the applicant knew that Tom intended to stab Alan and intentionally assisted him to do that, they may establish against the applicant the offence of doing grievous bodily harm if they could not prove intention.[56]

[72] What is made clear in numerous cases[57] is that critical to any potential liability under s 8 is proof of the "unlawful purpose" embarked upon by the offenders. It is necessary to identify what was intended to be involved in the prosecution of the unlawful purpose before one can consider whether the "offence" which was ultimately committed "was a probable consequence of the prosecution of such purpose". It is possible, depending upon the scope of the plan for the actor (here Tom) to be guilty of a different offence than other participants. Relevantly here, Tom may be guilty of murder, being an intentional killing, whereas other participants may only be guilty of manslaughter if an unlawful killing, but not an intentional one, was a "probable consequence of the prosecution of [the plan]".[58]

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53 Code ss 7 and 8.

54 *Giorgianni v The Queen* (1985) 156 CLR 473, *R v Lowrie and Ross* [2000] 2 Qd R 529 and *R v Roberts and Pearce* [2012] QCA 82 at [170]-[171].

55 Code s 302(1)(a).

56 See generally *Barlow v The Queen* (1997) 188 CLR 1.

57 See, for example, *R v Barlow* (1997) 188 CLR 1 and *R v Keenan* (2008) 236 CLR 397.

58 *Barlow v The Queen* (1997) 188 CLR 1.

Consideration

[73] It is well recognised that where an applicant for bail is charged with murder, the fact that the applicant is facing the possibility of a mandatory life sentence itself gives rise to a serious concern about flight.[59]

[74] However, the Crown case is not without its difficulties, particularly in relation to the count of murder.[60] At this stage, only a preliminary view can be formed on fairly limited material,[61] but there are obvious obstacles facing the Crown proving that the applicant intended to aid (whether by encouragement or otherwise) a murder by Tom. The applicant may have known, from the barbecue, that Tom had a knife. It is quite another thing to prove that the applicant knew that Tom would stab John and/or Alan let alone know that Tom intended to kill or do grievous bodily harm to John or do grievous bodily harm to Alan.

[75] The applicant's involvement in the fight is relatively minor. He clearly is in the background when the fight commences and the violence perpetrated by him seems limited to hitting someone with a plastic bottle, hardly a lethal weapon.

[76] The s 8 case is dependent upon proof of a plan which the Crown identifies as a plan to rob with violence. Much of the Crown case is dependent upon the admission against the applicant of statements made by members of his group to various people. Those statements will only be admissible against the applicant upon proof that they were said in prosecution of the plan to rob.[62] The admission of that evidence against the applicant on his trial is by no means a certain thing. While the Crown relies on the text message sent by the applicant that was sent hours before the incident and not to an alleged co-offender. There is certainly no admission in the applicant's police interview or statement of knowledge of any murderous intention of Tom's.

[77] The significance of the CCTV footage will ultimately be for jury assessment. However, there does not appear to be a demand for property before the fight breaks out and I cannot see any attempt by any of the applicant's group to take anything from any member of John and Alan's group. The theory of a plan to rob does not appear to be supported by the CCTV footage.

[78] As Mr East QC conceded for the limited purposes of the bail application, the applicant's group may have been looking for a fight. That is a far cry from a plan to rob or a plan where the application of lethal force was a probable consequence.

[79] The evidence of the applicant and his group fleeing the scene of the stabbing is relied upon as post office conduct showing a consciousness of guilt.[63]

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59 *R v Hughes* [1983] 1 Qd R 92 at 97 and *Scrivener v Director of Public Prosecutions (Qld)* (2001) 125 A Crim R 279.

60 Section 16(2)(d).

61 *Williamson v DPP* [2001] 1 Qd R 99 at 103 and *Sica v Director of Public Prosecutions (Qld)* [2011] 2 Qd R 254 at [51]-[52].

62 *Tripodi v R* (1961) 104 CLR 1 and *Ahearn v R* (1988) 165 CLR 87.

63 *Edwards v R* (1993) 178 CLR 193 and *R v Power and Power* (1996) 87 A Crim R 407.

[80] Whether flight evidences a consciousness of guilt of the charged offence or is otherwise explained is often a difficult issue.[64] Here, whether the applicant considered himself responsible for the stabbing when he fled is very much in doubt. He knew John was very badly injured. He told police that he saw John badly injured and ran. The motivation to run may simply have been a realisation that his group was generally in trouble. The same can be said about discarding the clothing.

[81] The applicant's criminal history is unfortunate and it was proper for Ms Bernardin for the Crown to point to the fact that there had been offences committed by the applicant on two prior occasions which involved street violence. That offending occurred now almost five years ago when the applicant was 14. He had been in custody for 100 days at the time of the hearing of the application, a little over three months. That was no doubt sobering. Curfew conditions and conditions preventing him from contacting known associates will militate against the risk of him being involved in street violence while on bail.

[82] Flight was raised as a risk. There is a vague suggestion he may be deported from Australia and there is evidence that he texted his intentions to move interstate. Ms Bernardin submitted that the fact that he is facing either life imprisonment or at least a lengthy term of imprisonment is motivation to flee.

[83] The applicant is a very young, obviously fairly unsophisticated man. There is no suggestion of wealth to which he has access and which could sustain him if he fled. The bail conditions which were imposed, especially the curfew, reporting conditions, the obligation to surrender his passport and the prohibition upon departing Queensland or Australia, combat flight. This is especially so in the current climate of the pandemic which makes movement generally more difficult.

[84] The applicant is young, he has a secure place to live while on bail and the bail conditions keep him within the close view of police. There is also likely to be a significant delay in having the criminal proceedings finalised because of the COVID-19 pandemic.

[85] In all those circumstances, I found that the applicant is not an unacceptable risk in relation to the matters identified in s 16(1). He discharged the onus cast upon him by s 16(3) of the *Bail Act* that his continued detention in custody is not justified.

[86] For those reasons, I granted the applicant bail on the conditions in the order. The conditions are more onerous than in the draft proposed by Mr East QC. The alterations I made to the draft conditions further restrict the applicant's movement which was appropriate in the circumstances.

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64 *R v Baden-Clay* (2016) 258 CLR 308 at [72]-[77] and *R v Trebeck* [2018] QCA 183 at [59]-[61].

SCHEDULE
"A"

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 3122/20

THE QUEEN AGAINST JMT

Re: An application for bail by JMT

NOTICE IS PROVIDED THAT THIS DOCUMENT CONTAINS OR REVEALS THE IDENTITY OF A PROTECTED PERSON (RULE 57(7) *CRIMINAL PRACTICE RULES* 1999 (QLD))

ORDER

Before: Justice Davis

Date of Order: 1 April 2020

Document initiating this hearing: Application filed on 19 March 2020

In relation to the charges of:-

(a) 1 x Murder (Criminal Code (Qld) 302)

(b) 1 x Malicious act with intent to do grievous bodily harm or transmit a serious disease to any person (Criminal Code (Qld) 317(b))

IT IS ORDERED THAT, you, JMT, be granted bail on your own undertaking on the following conditions:

1. Court appearances

   You must appear at the Southport Magistrates Court on 21 April 2020, or on any other date as stated by the Court.

   If the charges against you are committed to a higher court, you must appear at that court at any time and date as specified by the court.

   You must not depart from the court without leave of the court. You must return to the court at all times determined by the court.

2. Residential condition

   You must live at [redacted] in the state of Queensland.

   You cannot live at another address unless, before you move to the other address, you have the written permission of the Director of Public Prosecutions to live at the other address.

3. Curfew condition

You are on a curfew.

You must be at your bail address between 8:00pm and 6:00am unless you have the prior written consent of the Director of Public Prosecutions to do otherwise.

You must be at your bail address between the hours of 6:00am and 8:00pm except when it is necessary to leave the address:

(a) to attend court; or

(b) to go to your place of work or to travel to or from your place of work to your bail address; or

(c) to seek or obtain medical treatment; or

(d) to report to police as required under this order; or

(e) otherwise if you have written permission of the Officer in Charge of Beenleigh Police Station or the Office of the Director of Public Prosecutions.

When you are at your bail address, you must answer the door to a police officer when you are asked to.

4. Reporting condition

You must report to the Officer-in-Charge of Beenleigh police station between 8:00am and 8:00pm every day starting from Thursday 2 April 2020 unless you have written permission from the Director of Public Prosecutions not to report on a certain day or days.

5. No contact conditions

(a) Victims

You must not contact or communicate with, or attempt to contact or communicate with, either directly or indirectly, [Alan].

You must not approach, enter or remain in any place where [Alan] may be employed.

If you see [Alan] in public, you must leave the area.

(b) Witnesses

You must not contact or communicate with, or attempt to contact or communicate with, either directly or indirectly [redacted].

(c) Co-offenders

You must not contact or communicate with, or attempt to contact or communicate with, either directly or indirectly, your co-offenders: [redacted].

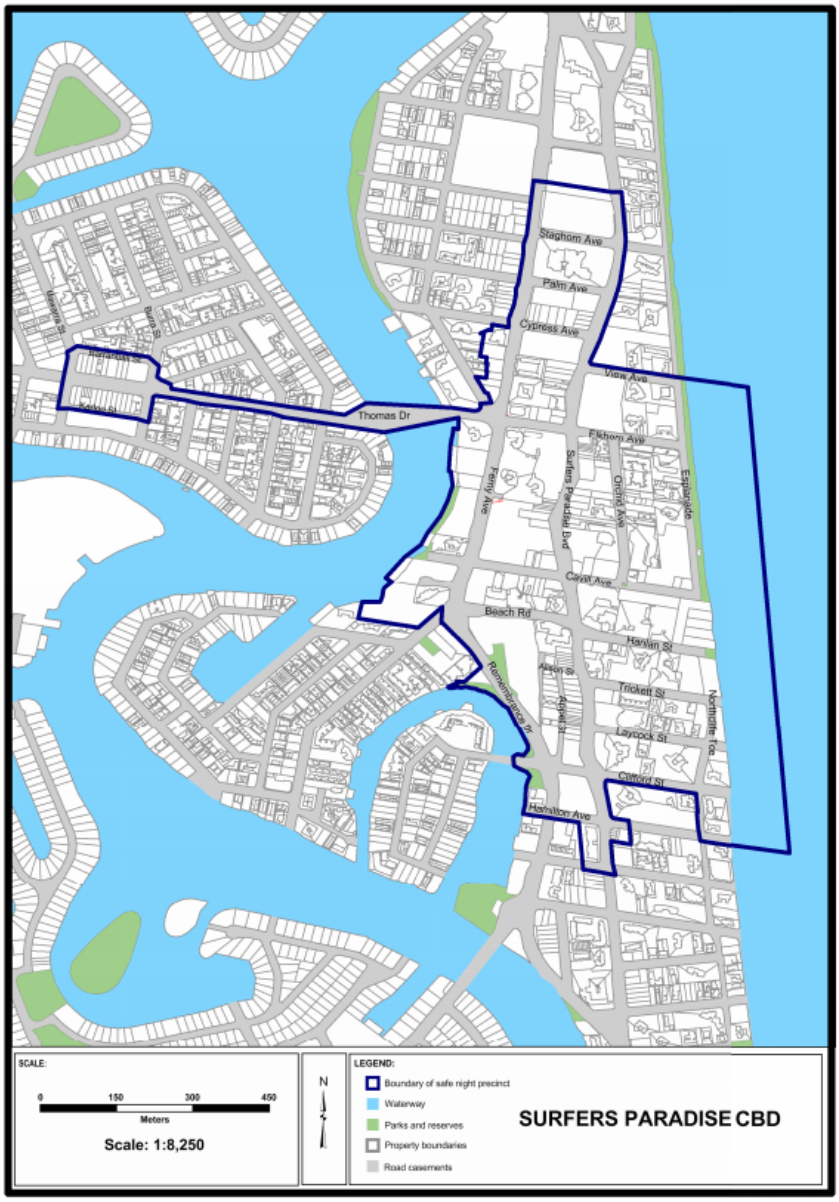
Note: "contact or communicate with" includes –

- **meeting;**
- **speaking to;**

- **telephoning;**
- **sending a text or social media message to;**
- **sending or delivering a written or typed note or letter to;**
- **contacting on social media; or**
- **getting in contact with in any other way.**
- **"directly" means you contacting or communicating , or attempting to contact or communicate;**
- **"indirectly" means getting someone else to contact or communicate, or attempt to contact or communicate, for you.**

6. Attend or remain

(a) You must not go to the Surfers Paradise 'safe night precinct' on the Gold Coast in Queensland, Australia, as identified in the plan below.



7. Surrender of passport

You must not be released from custody until your current passport has been handed to the Registrar of the Supreme Court at Brisbane and a document called a 'receipt for passport' has been given to you or the person handing in your passport for you.

You must not apply for a passport while you are on bail for these charges.

8. Leaving Australia

You must not leave or attempt to leave Australia unless, before you leave or attempt to leave, you have the written permission of the Director of Public Prosecutions to leave.

You must not enter or attempt to enter an international terminal, which includes an international airport or an international sea-port, unless, before you enter or attempt to enter, you have the written permission of the Director of Public prosecutions to enter.

9. Cannot depart from Queensland

You must not leave the State of Queensland unless, before you depart or attempt to depart, you have the written permission of the Director of Public Prosecutions to depart.

Reasons for granting bail

The risks associated with the applicant's release on bail can be ameliorated to an acceptable level by the imposition of the above bail conditions. The applicant has demonstrated that his continued detention is not justified.