

Future court date:

Bail application

Client name:

Reference number:

Date:

Conam:

Contra:

Court:

Criminal charges:

Next action:

Bail test:

- Exceptional circumstances
- Compelling reasons
- Unacceptable risk

How determined:



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Note:

Family violence Schedule 2 offences under the Bail Act:

- (7) making a threat to kill in circumstances that make it a family violence offence (see Crimes Act 1958 s 20);
- (18 & 20) contravening a family violence safety notice or intervention order (Family Violence Protection Act 2008 ss 37, 37A, 123, 123A) in circumstances where:
 - the accused used or threatened violence as part of the contravention; and
 - the accused has been found guilty or convicted of an offence, in the course of which he or she used or threatened violence, within the past 10 years; or
 - the bail decision maker is satisfied the accused has on another occasion used or threatened violence against the person protected by the notice or order (whether or not that other occasion resulted in a charge or conviction);
- (19) persistent contravention of a family violence intervention order (Family Violence Protection Act 2008 s 125A(1)).

Submissions in respect of exceptional circumstances / compelling reasons

1. **Special vulnerabilities** of accused including youth (s 3B), Aboriginality (s 3A), ill health / cognitive impairment / intellectual disability / mental illness:

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2. Accused's **criminal history**:

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3. **Delay** i.e. could the accused spend longer on remand than ultimate sentence? (NB: on its own unreasonable or inordinate delay can constitute exceptional circumstances; in combination with other circumstances, any delay can do so):

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4. **Family violence considerations** (history / orders / safety notices / interstate orders) Note **s 3AAA Bail Act** / surrounding circumstances / (f) in respect of family violence / Note **s 5AAAA Bail Act** / family violence risks / further family violence / mitigating conditions / making of orders:



5. **Accused's personal circumstances**, associations, home environment & background (including accommodation, family support, employment):

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6. Availability of **health and treatment supports** including **bail support programs**:

7. Nature and seriousness of related offending including whether a serious example of the offence:

8. Strength of prosecution case:

9. Bail status of co-offender(s):

10. Compliance with previous grants of bail:

11. Whether the accused at the time of offending on bail / summons / at large awaiting trial / subject to CCO / otherwise serving sentence for another offence:

12. Victim attitude (if any) to bail:

13. Harshness of conditions in custody for accused:

14. Terrorism considerations (s 3AAA):

15. Other (e.g. surety):



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Unacceptable risk

Note s 4E Bail Act:

A bail decision maker must refuse bail for a person accused of any offence if satisfied that—

- (a) there is a risk that the accused would, if released on bail
 - (i) endanger the safety or welfare of any person; or
 - (ii) commit an offence while on bail; or
 - (iii) interfere with a witness or otherwise obstruct the course of justice in any matter; or
 - (iv) fail to surrender into custody in accordance with the conditions of bail; and
- (b) the risk is an unacceptable risk.

Note: it may be appropriate to submit that there is not no risk associated with bailing the accused but rather that the risk is an acceptable one. The bail decision maker is required by s 4E to take into account surrounding circumstances as set out in S 3AAA when deciding whether the risk is acceptable or not.

Conditions to consider to address risk:

1. Reporting to police station:

2. Reside at particular address:

3. Comply with existing IVOs / treatment:

4. Curfew:

5. Not contact specified persons:

6. Surrender passport:

7. Geographical exclusion:

8. Attend and participate in bail support program:

9. Not drive or carry passengers:



Steve Chambers
Family Violence
Barrister

10. Not consume alcohol or drugs:

[Redacted area]

11. Any other condition court considers appropriate:

[Redacted area]

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