

DECISION-MAKING FLOWCHART FOR BAIL APPLICATIONS

STEP 1

IS THE ACCUSED AN ABORIGINAL AUSTRALIAN?

NO

YES

Court *must* take into account *any* issues arising from accused's Aboriginality, including cultural background, ties to family place and any other relevant cultural issue or obligation. s.3A; *Re Chafer-Smith* [2014] VSC 51

STEP 2

WHAT CATEGORY DOES OFFENCE FIT INTO?

Prima Facie Bail Entitlement, s. 4(1)

Unless unacceptable risk, s.4(2)(d)

- fail to surrender himself into custody to answer his bail;
- commit an offence whilst on bail
- endanger the safety or welfare of members of the public
- interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person

Show Cause Offences

[s.4(4)]

Test: *Asmar* one stage test applies: detention is not justified (ie not unacceptable risk)

Exceptional Circumstance [s.4(2)(a)]

Test: *Beljajev* two stage test applies: Exceptional circumstances demonstrated AND risk not unacceptable

STEP 3

IS UNACCEPTABLE RISK ASSERTED?

NO

YES

If unacceptable risk has been raised by the prosecution as a ground for opposing bail, in assessing unacceptable risk, consider: s.4(3)

- a. Nature and seriousness of offence
- b. character, antecedents, associations, home environment and background
- c. history of previous grants of bail
- d. strength of the evidence against the accused
- e. attitude of victim to grant of bail (if expressed to court).
- f. any conditions which may be imposed to address the circumstances which may constitute an unacceptable risk

STEP 4

SHOULD CONDITIONS BE IMPOSED AND IF SO, WHICH CONDITIONS?

Now categorised into two types – 'conduct' and 'financial' – ie surety/deposit **must** consider conditions (other than to appear at court) for release on bail in the following order: s.5(2)

- (a) own undertaking – no conditions,
- (b) own undertaking **and** 'conduct' conditions,
- (c) own undertaking **and** surety/deposit without or without 'conduct' conditions

Possible conduct conditions include:

- (a) reporting to a police station;
- (b) residing at a particular address;
- (c) a curfew of no more than 12 hours in a 24 hour period;
- (d) not contacting specified persons;
- (e) surrender of passport;
- (f) not attend certain geographical zones at certain times;
- (g) attend and participate in a bail support service;
- (h) not drive a motor vehicle or not carry passengers when driving;
- (i) not consume alcohol or use a drug of dependence;
- (j) comply with existing intervention orders;
- (k) any other conditions the court considers appropriate: s.5(2A)

May **only** impose condition to reduce likelihood of:

- (a) failing to appear
- (b) committing offences on bail
- (c) endanger safety/welfare of public
- (d) interfering with witnesses/obstructing course of justice: s5(3)

Conditions **must** be no more onerous than required to give effect to s.5(3) and be reasonable (having regard to the nature of offence and circumstances of accused) s.5(4).

If considering imposition of financial condition, **must** have regard to means of accused in determining (a) whether to impose condition AND (b) amount ss.5(5) & (7).

If court satisfied that the accused doesn't have means to provide deposit/surety, **then** consider what other conditions could be imposed to satisfy s.5(3)