
alternative court means a Magistrates Court for a district or division outside the district or division in which the bail proceeding would otherwise be required to be heard.

16 Refusal of bail generally

(1AA) This section applies in relation to a defendant who is an adult.

(1) Notwithstanding this Act, a court or police officer authorised by this Act to grant bail shall refuse to grant bail to the 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.

(1A) Where it has not been practicable to obtain sufficient information for the purpose of making a decision in connection with any matter specified in subsection (1) due to lack of time since the institution of proceedings against the defendant the court before which the defendant appears or is brought shall remand the defendant in custody with a view to having further information obtained for that purpose.

(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;

Note—

See section 15(1)(e) for the power of a court to receive and take into account evidence relating to the risk of further domestic violence or associated domestic violence.

- (g) any promotion by the defendant of terrorism;
- (h) any association the defendant has or has had with—
 - (i) a terrorist organisation within the meaning of the Criminal Code (Cwlth), section 102.1(1); or
 - (ii) a person who has promoted terrorism.

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- (2A) However, in assessing whether there is an unacceptable risk with respect to any event specified in subsection (1)(a) a court must not have regard to the effect on the risk of imposing a condition under section 11(9B).
- (2B) For subsection (2)(g) and (h)(ii), a person has promoted terrorism if the person has—
- (a) carried out an activity to support the carrying out of a terrorist act; or
 - (b) made a statement in support of the carrying out of a terrorist act; or
 - (c) carried out an activity, or made a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.
- (2C) To remove any doubt, it is declared that a reference in subsection (2B) to a terrorist act—
- (a) includes a terrorist act that has not happened; and
 - (b) is not limited to a specific terrorist act.
- (3) Where the defendant is charged—
- (a) with an indictable offence that is alleged to have been committed while the defendant was at large with or without bail between the date of the defendant's apprehension and the date of the defendant's committal for trial or while awaiting trial for another indictable offence; or
 - (b) with an offence to which section 13(1) 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
 - (d) with an offence against this Act; or

Note—

For this paragraph, a person proceeded against under section 33(3) is taken to be charged with an offence against this Act—see section 33(7).

- (e) with an offence against the *Penalties and Sentences Act 1992*, section 161ZI or the *Peace and Good Behaviour Act 1982*, section 32; or
- (f) with an offence against the Criminal Code, section 359 with a circumstance of aggravation mentioned in section 359(2); or
- (g) with a relevant offence;

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.

Note—

See also section 16A(6).

- (4) In granting bail in accordance with subsection (3)—
 - (a) a court may impose conditions under section 11 or 11AB; or
 - (b) a police officer may impose conditions under section 11.
- (5) If required by a court or police officer for subsection (2)(e), a representative of the community justice group in the defendant's community must advise the court or police officer whether—
 - (a) any member of the community justice group that is responsible for the submission is related to the defendant or the victim; or
 - (b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the defendant or victim.
- (6) In this section—
 - domestic violence offence* see the Criminal Code, section 1.
 - relevant offence* means—

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- (a) an offence against the Criminal Code, section 315A; or
 - (b) an offence punishable by a maximum penalty of at least 7 years imprisonment if the offence is also a domestic violence offence; or
 - (c) an offence against the Criminal Code, section 75, 328A, 355, 359E or 468 if the offence is also a domestic violence offence; or
 - (d) an offence against the *Domestic and Family Violence Protection Act 2012*, section 177(2) if—
 - (i) the offence involved the use, threatened use or attempted use of unlawful violence to person or property; or
 - (ii) the defendant, within 5 years before the commission of the offence, was convicted of another offence involving the use, threatened use or attempted use of unlawful violence to person or property; or
 - (iii) the defendant, within 2 years before the commission of the offence, was convicted of another offence against the *Domestic and Family Violence Protection Act 2012*, section 177(2).

16A Refusal of bail for defendants convicted of terrorism offences or subject to Commonwealth control orders

- (1) This section applies in relation to a defendant if—
 - (a) the defendant—
 - (i) has previously been convicted of a terrorism offence; or
 - (ii) is or has been the subject of a Commonwealth control order; and
 - (b) the defendant is an adult.
- (2) Despite any other provision of this Act, a court must refuse to grant bail to the defendant unless the court is satisfied exceptional circumstances exist to justify granting bail.