

***R v Hayes* [2018] SASC 114 (9 August 2018) – South Australia Supreme Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Bail’ – ‘Family law’ – ‘Physical violence and harm’ – ‘Sentencing’

Charges: Intentionally causing harm x 1; Contravening an intervention order x 1.

Proceeding type: Prosecution appeal against grant of bail.

Facts: The respondent, an Aboriginal man, was charged with intentionally causing harm and contravening an intervention order. The respondent assaulted his former partner (the complainant) during an access visit to their son. The circumstances of aggravation included that the complainant was his ex-partner and the respondent used a coffee mug, to inflict injuries to the head and face of the victim ([5]). The respondent also had a criminal history for offences of violence and dishonesty ([9]). The respondent was a prescribed applicant within the meaning of [s 10A](#) of the *Bail Act 1985* (SA) such that bail may not be granted unless special circumstances are established. The DPP contended that bail should not be granted due to the risk of re-offending (given the respondent’s history of non-compliance with various court orders) and concerns for the complainant’s safety ([15]).

Issues: Whether bail should be granted.

Decision and Reasoning: Kelly J dismissed the appeal. Special circumstances justifying release on bail included that the complainant no longer resided in the Court’s jurisdiction ([17]), the likely trial date would not be for some time, and a recent report that Aboriginal and Torres Strait Islander people are highly over-represented in the remand population. According to the [Australian Law Reform Commission Report No 133](#), Aboriginal and Torres Strait Islander people continue to be over-represented in the remand population by a factor of over 11. However, a finding of special circumstances does not mean that bail is automatically granted. At [12], her Honour stated –

‘Ordinarily, it may be expected that if special circumstances are established, then a grant of bail may follow but upon special circumstances being established, it will remain open to the bail authority to refuse bail if nonetheless, having regard in particular to the gravity of the offending, the likelihood that the prescribed applicant will re-offend, the likelihood that the prescribed applicant will interfere with a witness or evidence and the likelihood that he or she will abscond, the bail authority considers that bail should not be granted’.

Notwithstanding that the respondent was a prescribed applicant, her Honour held that there were special circumstances. It was therefore appropriate to grant the respondent bail on conditions of strict home detention ([18]).