

## ***R v Sumner* [2020] SASC 231 (4 December 2020) – South Australia Supreme Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Application for review of bail’ – ‘Exceptional circumstances’ – ‘Exposing children to domestic and family violence’ – ‘Physical violence and harm’ – ‘Strangulation’ – ‘Threats to kill’ – ‘Weapons’

Charges: Aggravated assault against a child or spouse x 8; Choke, suffocate or strangle a person in a domestic setting x 3; Aggravated threaten to kill or endanger life x 1; Aggravated assault that causes harm x 1.

Proceedings: Application for review of bail.

Facts: The allegations related to the applicant man’s former domestic partner and their two year old daughter. The applicant was originally granted bail by a Magistrate in May 2020, which was then revoked on an application by the Director of Public Prosecutions to review the decision. An application for bail before the Chief Magistrate in September 2020 was refused. This review application related to a further refusal of an application for bail made in November 2020. The key factor that the respondent relied on was that the complainants had moved to Queensland.

Issues: Whether the complainants’ move to Queensland altered the position such that it could be said there were “special circumstances”, pursuant to s 10A of the *Bail Act 1985* (SA).

Decision and reasoning: Bail was granted under strict home detention conditions.

The applicant was a prescribed person for the purposes of s 10A of the *Bail Act 1985* (SA) which provides that bail is not to be granted unless the applicant demonstrates the existence of special circumstances justifying release on bail. The court was also required to have regard to the matters specified in s 10, including the gravity of the alleged offences (s 10(1)(a)) and the need that the victim may have, or perceive, for physical protection from the applicant (s 10(4)) (at [11]).

Not without hesitation, the Court was prepared to conclude that there was a fundamental change of circumstances with the complainants’ relocation to Queensland. This, in combination with other matters, particularly the support from the applicant’s father, the proposal of monitored, home detention bail in the applicant’s family home and the applicant’s lack of offending history outside of the relationship, was capable of amounting to special circumstances justifying the applicant’s release on bail (at [31]). Had the complainants not moved to Queensland for their protection the Court would have refused bail (at [32]).