

SUPREME COURT OF QUEENSLAND

CITATION: *Astolfo v OYF* [2026] QSC 186

PARTIES: **FERNANDA ASTOLFO**
(Applicant)
v
OYF
(Respondent)

FILE NO/S: 3705 of 2026

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: Order made on 11 August 2026; reasons delivered on 13 August 2026

DELIVERED AT: Brisbane

HEARING DATE: 10 August 2026

JUDGE: Davis J

ORDER: **The application for a stay of the bail order made on 6 August 2026 is dismissed.**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – BAIL – REVOCATION VARIATION REVIEW AND APPEAL – where the respondent was granted bail by a magistrate on various domestic violence charges – where the applicant sought review of that decision – where the Magistrate’s decision was automatically stayed by force of the *Bail Act 1980* upon filing of the application for review – where the stay operated by force of the Act for three days – where the applicant sought an extension of the stay – whether there is jurisdiction to grant an extension of the stay – whether the extension of the stay should be granted

Bail Act 1980 (Qld), s 7, s 10, s 11, s 13, s 14, s 15, s 16, s 19B, s 19C, s 19CA, s 19D, s 19E
Bail (Domestic Violence) and Another Act Amendment Act 2017 (Qld)
Criminal Code Act 1899 (Qld), s7, s 328A, s 349, s 352
Justice Legislation (Miscellaneous Provisions) Act 1999 (Qld)
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 13

Al-Kateb v Godwin (2004) 219 CLR 562, followed
Alexander v Credit Cambridge Corporation Ltd (1985) 2 NSWLR 685, cited
Allied Operations Pty Ltd v Australia Industrial Relations Commission (2000) 203 CLR 194, cited

Anthony Hordern & Sons Ltd v Amalgamated Clothing & Allied Trades Union of Australia (1932) 47 CLR 1, followed
Assistant Commissioner Condon v Pompano Pty Ltd (2013) 252 CLR 38, cited
Attorney-General for the State of Queensland v Ellis [2011] QCA 377, cited
Attorney-General for the State of Queensland v Fardon [2011] QCA 111, followed
Australian Securities and Investments Commission v Macleod (2024) 307 FCR 332, cited
Cook's Construction Pty Ltd v Stork Food Systems Australasia Pty Ltd [2008] 2 Qd R 453, followed
Director of Public Prosecutions v Filippa [2005] 1 Qd R 587, followed
House v The King (1936) 55 CLR 499, cited
Iordache v DJM [2023] QSC 134, followed
Jones v The Queen [1980] WAR 203, cited
Lapthorne v The Queen [1990] WAR 207, cited
Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 355, followed
R v A2 (2019) 269 CLR 507, followed
R v Rad [2018] QCA 103, cited
Shrimpton v The Commonwealth (1945) 69 CLR 613, followed
Williamson v Director of Public Prosecutions [2001] 1 Qd R 99, cited
X7 v Australian Crime Commission (2013) 248 CLR 92, cited

COUNSEL: M Shephard for the applicant
A R Dunkerton, counsel for the respondent

SOLICITORS: Queensland Police Service for the applicant
Osbourne Butler Lawyers for the respondent

- [1] The applicant is a police prosecutor who seeks review pursuant to s 19B of the *Bail Act 1980* of a grant of bail made to the respondent in the Magistrates Court in Cairns on 6 August 2026.

Background

- [2] The respondent was charged with four domestic violence offences. Although the charges allege that the offences were committed on 31 July 2026, the police summaries of the alleged offending suggests that the allegations relate to incidents which occurred on 30 July 2026. In any event the respondent faces two counts of

rape,¹ one count of sexual assault² and one count of sexual assault with a circumstance of aggravation.³

- [3] The complainant was the respondent's domestic partner, the two having cohabitated since March 2024.
- [4] Over a period of time the complainant and the respondent began to argue and it is alleged that by 21 July 2026 the complainant wished to end the relationship. She expressed that view to the respondent. Arguments continued. On 22 or 23 July the complainant was allegedly coerced, to perform oral sex on the respondent. No charge has been laid arising from that incident.
- [5] It is alleged that on 30 July 2026 the complainant, the respondent and their dog went for a walk on the beach. There were some arguments about some text messages and the breakdown of the relationship. The complainant alleges that the respondent said that she owed him money and discussed how much he required to be paid by her for him to leave. He suggested that she should submit to him sexually for the next month and he would then depart without payment.
- [6] This, it is alleged, led to the respondent demanding that the complainant take off her clothes which then led to the respondent digitally penetrating her.⁴ There were two instances where he allegedly penetrated her vagina with his penis although these seem to be wrongly charged as one count of rape.⁵ One of the counts of sexual assault alleges that the respondent licked the complainant's vagina and so a circumstance of aggravation is alleged. The other count alleges that the respondent masturbated while hugging her without her consent.
- [7] The respondent was arrested on 1 August 2026 and held in custody. On 6 August, a magistrate sitting in Cairns granted bail. The grant of bail was on standard conditions but included; (1) a condition which required the respondent to live at an address which is about 20 kilometers from the complainant's residence and (2) a condition prohibiting the respondent from contacting the applicant either directly or indirectly.

¹ Code s 349(1).

² Code s 352(1)(a).

³ Code s 352(1)(a) and (2).

⁴ The first rape count.

⁵ *R v Rad* [2018] QCA 103 at [22]–[26] following *Jones v The Queen* [1980] WAR 203 and *Lapthorne v The Queen* [1990] WAR 207.

- [8] An application to review the Magistrate's decision was filed on 6 August 2026 pursuant to s 19B(2) of the *Bail Act*.
- [9] By force of s 19CA of the *Bail Act*, upon an application to review being made under s 19B, the bail order is stayed until 4.00pm on the day that is 3 business days after the day on which the bail order was made.
- [10] The application for review not only seeks an order that the bail order of the Magistrate be set aside but that the order of the Magistrate be stayed until the review application is determined. The effect of that would be that the respondent will remain in custody until determination of the review application. It is said that the Court has jurisdiction to make such an order by force of provisions of the *Bail Act* or alternatively the inherent jurisdiction of the Court. The applicant pressed the application to continue the stay but did not advance the review application. That is to be heard on 16 September 2026. The Registrar apparently could not allocate an earlier date for the substantive hearing.
- [11] Two issues therefore arise: (i) whether the *Bail Act* authorises the granting of an extension of the stay beyond 4:00pm on 11 August 2026⁶ and; if the Court does have jurisdiction then (ii) should the stay be given.

Statutory Provisions

- [12] This application brings into question the proper construction of s 19CA of the *Bail Act 1980*. That section was introduced by the *Bail (Domestic Violence) and Another Act Amendment Act 2017*. The applicant submits that s 19CA taken with s 19B(6) gives the Court power to stay a magistrate's decision granting bail until a review of that decision under s 19B is heard and determined.
- [13] Section 19CA must be construed in the context of the *Bail Act* as a whole.⁷ It is therefore necessary to consider where the section fits within the scheme of the Act.

⁶ Three (3) clear days from the making of the bail order.

⁷ *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 at [69].

- [14] The *Bail Act*, by s 8, grants jurisdiction to each court before which there is a criminal proceeding pending to grant bail to the defendant. Various sections grant power in police to grant watch-house bail.⁸
- [15] Section 10 grants a general power in this Court to grant or revoke bail in relation to a person charged with an offence in any court.
- [16] Section 10 provides, relevantly as follows:

“10 General powers as to bail

- (1) The Supreme Court or a judge thereof may, subject to this Act, grant bail to a person held in custody on a charge of an offence, or in connection with a criminal proceeding, or enlarge, vary or revoke bail granted to a person in or in connection with a criminal proceeding whether or not the person has appeared before the Supreme Court in or in connection therewith. ...” (emphasis added)
- [17] Section 13 provides exclusive jurisdiction to this Court to grant bail in certain circumstances. Here, it is common ground that the Magistrate had jurisdiction to grant bail to the respondent.
- [18] Section 15 prescribes certain procedures for an application for bail. It is unnecessary to analyse s 15. Section 16, headed “Refusal of bail generally”, is a pivotal section in the Act. It provides relevantly:

“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

⁸ Section 7, 11, 14.

- (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.
- ...
- (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
 - ...
 - (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.

...
- (6) In this section—

domestic violence offence see the Criminal Code, section 1.

relevant offence means—

...

 - (b) an offence punishable by a maximum penalty of at least 7 years imprisonment if the offence is also a domestic violence offence;⁹ 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 ...” (emphasis added; citation not in original)

[19] The general structure of s 16 is that there is a presumption in favour of a grant of bail unless a defendant is in a “show cause” situation.¹⁰ In those circumstances, the onus reverses and the defendant may only be granted bail if they have demonstrated that their continued incarceration pending trial is not justified.¹¹ Here, the respondent is charged with domestic violence offences and it is common ground between the parties that he is in a show cause situation.

⁹ The offences of which the respondent stands charged are such offences.

¹⁰ Section 9 and s 16(1).

¹¹ Section 16(3) and see *Williamson v Director of Public Prosecutions* [2001] 1 Qd R 99 at [12] and [13].

[20] Sections 19B to 19E provide for a system of review of decisions of magistrates about bail. Those sections, in their present form are as follows:

“19B Review of particular decisions

- (1) This section does not apply to the following decisions about release under this part—
 - (a) a decision by the Supreme Court;
 - (b) a decision under section 10(2);
 - (c) a decision by a magistrate acting as a reviewing court under this section.
- (2) If a decision has been made about release under this part or the *Youth Justice Act 1992*, part 5, for a defendant, the defendant, complainant or prosecutor or a person appearing on behalf of the Crown may apply to the reviewing court for a review of the decision.
- (3) The reviewing court is—
 - (a) for a decision by a police officer or justice who is not a magistrate—a Magistrates Court constituted by a magistrate; or
 - (b) for any other decision—the Supreme Court constituted by a single judge.
- (4) A complainant, prosecutor or a person appearing on behalf of the Crown who makes an application under subsection (2) must take reasonable steps to inform the defendant of the time and place for the hearing of the application.
- (5) The hearing may proceed in the defendant’s absence, if the reviewing court is satisfied the steps were taken.
- (6) On the review, additional or substitute evidence or information may be given and the reviewing court may make any order it considers appropriate.
- (7) However, the orders that may be made under subsection (6) are limited by sections 13, 16, 16A and 17(1A) and, if the defendant is a child, the *Youth Justice Act 1992*, sections 48, 48AAA, 48AE and 48A.
- (8) The person or court that made the decision under review must give the reviewing court any documents in the person’s or court’s possession that may be relevant to the review.
- (9) The reviewing court must decide an application under this section as soon as is reasonably practicable.

19C Review by Supreme Court of magistrate’s decision on a review

- (1) If a decision is made by a magistrate on a review of a decision about release under this part or the *Youth Justice Act 1992*, part 5, the defendant, complainant or prosecutor or a person appearing on behalf of the Crown may apply to the Supreme Court as constituted by a single judge for a review of the magistrate's decision.
- (2) A complainant, prosecutor or a person appearing on behalf of the Crown who makes an application under subsection (1) must take reasonable steps to inform the defendant of the time and place for the hearing of the application.
- (3) The hearing may proceed in the defendant's absence, if the reviewing court is satisfied the steps were taken.
- (4) The decision may be reviewed only with the court's leave.
- (5) On the review, additional or substitute evidence or information may be given and the court may make any order it considers appropriate.
- (6) However, the orders that may be made under subsection (5) are limited by sections 16, 16A and 17(1A) and, if the defendant is a child, the Youth Justice Act 1992, sections 48, 48AAA, 48AE and 48A.

19CA Stay of release decision relating to relevant domestic violence offence

- (1) This section applies if—
 - (a) a decision has been made about release under this part or the *Youth Justice Act 1992*, part 5, for a defendant charged with a relevant domestic violence offence; and
 - (b) the prosecutor or other person appearing on behalf of the Crown applies to the reviewing court for a review of the decision.
- (2) The decision about release is stayed until the earlier of the following—
 - (a) the reviewing court makes an order under section 19B(6) or 19C(5);
 - (b) the application for the review of the decision is discontinued;
 - (c) 4p.m. on the day that is 3 business days after the day on which the decision about release was made.
- (3) A decision about release does not entitle a person to be at liberty while the decision is stayed.

19D Warrants in aid of orders under section 19B or 19C or stay under section 19CA

- (1) A reviewing court that makes an order under section 19B or 19C may, for the purpose of giving effect to the order, issue a warrant for the apprehension of the defendant directing that the defendant be brought before a stated court.
- (2) Also, a reviewing court may, for giving effect to a stay under section 19CA, issue a warrant for the apprehension of the

defendant directing that the defendant be brought before a stated court.

19E Review provisions do not affect other powers

Sections 19B to 19D do not affect a power of the Supreme Court under section 10, or any other power of a court to grant, enlarge, vary or revoke bail under other provisions of this or any other Act.”

- [21] Sections 19B, 19C, 19D and 19E were all introduced by the *Justice Legislation (Miscellaneous Provisions) Act 1999*. Their current form is the result of various amendments, but tracking those is unnecessary.
- [22] In recent years, the legislature has grappled with the scourge of domestic violence and responded with legislation. The *Bail (Domestic Violence) and Another Act Amendment Act 2017* is one of those responses. That Act introduced s 19CA. It has not been amended.
- [23] The application under s 19B is a review *de novo*. No error, in the sense that is understood in *House v The King*¹² and *Allied Operations Pty Ltd v Australia Industrial Relations Commission*¹³ need be shown.
- [24] No party on the current application put before me a transcript of the reasons of the Magistrate in granting bail. It does not follow that the reasons of the Magistrate are irrelevant because the review is one conducted *de novo*. In *Director of Public Prosecutions v Filippa*,¹⁴ Douglas J observed:

“[17] The reasons for the decision of the magistrate to grant bail subject to the conditions imposed on Mr Filippa are not yet before me in spite of the requirement of s. 19B(8) that the court that made the decision under review must give the reviewing court any documents in the court’s possession that may be relevant to the review. I understand that there has as yet been no transcript made of the magistrate’s reasons for his decision but any tape recording of those reasons may be a document in the Magistrates Court’s possession that may be relevant to the review and certainly one would think that, if a transcript is produced, that would be a document relevant to the

¹² (1936) 55 CLR 499.

¹³ (2000) 203 CLR 194, 203–204. And see, in respect of s 19B of the *Bail Act*, *Director of Public Prosecutions v Filippa* [2005] 1 Qd R 587 and *Iordache v DJM* [2023] QSC 134.

¹⁴ [2005] 1 Qd R 587.

review that the Magistrates Court must give to this Court pursuant to that section. ...”

- [25] I endorse his Honour’s view. Further, even if a transcript is unavailable at the time the review is heard, good practice would be for an affidavit to be filed by a deponent who swears to the contents of the reasons expressed in Court by the Magistrate. While the hearing on review is one conducted *de novo*, the Magistrate’s reasons can be considered. Her Honour’s reasons will explain the exercise of judicial power which led her Honour to grant bail.

Consideration

- [26] Section 19C has no application here. Section 19C concerns a review by the Supreme Court of the decision of a magistrate under s 19B(3)(a) reviewing a decision of a police officer or a justice who is not a magistrate. Here, it is s 19B which is relevant. It provides for review by this Court of a magistrate’s decision to grant bail.¹⁵
- [27] Section 19CA operates to stay the bail order of the Magistrate once an application for review under s 19B is made.¹⁶ The stay operates by force of s 19CA and without the exercise of judicial power.
- [28] By s 19CA(2)(c), the stay dissolves at 4:00pm on the day that is 3 business days after the day on which the bail order is made. It clearly may be dissolved earlier if, before that time, the application for review of the decision is discontinued¹⁷ or this Court determines the application.¹⁸
- [29] The applicant submits that the Court has jurisdiction to extend the stay which comes into effect by force of s 19CA(2). That jurisdiction, it is said, comes from s 19B(6) or the inherent jurisdiction of the Court. The applicant submits that the power vested by s 19B(6) is limited only by s 19B(7) and is otherwise an unfettered discretion.
- [30] The applicant in the alternative submits that as the review application is on foot, this Court has inherent power to stay the operation of the bail order as that is jurisdiction

¹⁵ Section 19B(3)(b).

¹⁶ Sections 19CA(1)(b) and (2).

¹⁷ Section 19CA(2)(b).

¹⁸ Section 19CA(2)(a).

necessary for the effective exercise of the broader discretion of review granted by s 19B.¹⁹

- [31] Mr Dunkerton for the respondent submits that on a proper construction of s 19CA(2), the stay must dissolve, at the latest at 4:00pm on the day which is 3 business days after the day on which the bail order was made. Section 19B(6) cannot, he submits, operate inconsistently with s 19CA(2) to confer a power to extend the stay. He further submits that any inherent jurisdiction would operate to avoid the legislative restrictions of s 19CA(2) and therefore no inherent power arises. He relies upon *Anthony Hordern & Sons Ltd v Amalgamated Clothing & Allied Trades Union of Australia*.²⁰
- [32] The question as to whether the *Bail Act* expressly grants jurisdiction to make the orders sought is one of statutory construction. The task of construing a statute involves ascertaining the meaning of the words actually used by the Legislature taken in context, which context includes the Act as a whole, legislative history, purpose and mischief.²¹
- [33] The *Bail Act* concerns the liberty of the subject. Section 19CA(1) operates so as to deny the subject the benefit of a bail order which grants them their liberty. The interpretation of the review provisions in the *Bail Act* give rise to the consideration of the principle of legality.²² The denial of the effect of the bail order would only be taken to be the intention of the Parliament in the case of the clearest of legislative expression.²³
- [34] Section 19B(6) grants jurisdiction in wide terms. It provides, “the reviewing Court may make an order it considers appropriate”. However, no judicial discretion is unfettered. All jurisdiction is limited by the purpose for which the power is bestowed.²⁴

¹⁹ The applicant relies upon *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 252 CLR 38. (1932) 47 CLR 1.

²⁰ *R v A2* (2019) 269 CLR 507 at [31]-[37].

²¹ *Al-Kateb v Godwin* (2004) 219 CLR 562 at [19], *X7 v Australian Crime Commission* (2013) 248 CLR 92 at [86]-[87], *Australian Securities and Investments Commission v Macleod* (2024) 307 FCR 332 at [58] and [84].

²² *X7 v Australian Crime Commission* (2013) 248 CLR 92 at [86].

²³ *Shrimpton v The Commonwealth* (1945) 69 CLR 613 at 629-630.

- [35] Section 19B(6) concerns orders made “on the review”. That suggests orders made disposing of the review application, rather than interlocutory orders. Similarly s 19B(6) also provides that “additional or substitute evidence or information” may be provided “on the review”.
- [36] Section 19B(7) provides that the orders which may be made under subsection (6) are limited by various sections including 13, 16A and 17(1A).
- [37] Section 13 provides relevantly as follows:

“13 When only particular courts may grant bail

- (1) Only the Supreme Court or a judge of the Supreme Court may grant bail to a person charged with an offence under the Criminal Code if, on conviction—
 - (a) for an adult—the sentencing court must decide which of the following sentences to impose on the person—
 - (i) imprisonment for life, which can not be mitigated or varied under the Criminal Code or any other law;
 - (ii) an indefinite sentence under the *Penalties and Sentences Act 1992*, part 10; or
 - (b) for a child—the sentencing court would have to decide which of the sentences mentioned in paragraph (a) to impose on the person if the person were an adult.

Note—

See also the *Youth Justice Act 1992*, section 59 for when a Childrens Court judge, within the meaning of that Act, may grant bail to a child despite this subsection.

- (2) Only a court may grant bail to a person who—
 - (a) has previously been convicted of a terrorism offence; or
 - (b) is or has been the subject of a Commonwealth control order.
- (3) For subsection (2)—

convicted, of an offence, means found guilty of the offence by a court, on a plea of guilty or otherwise, whether or not a conviction is recorded.

court does not include a justice or justices.”

- [38] By s 19B(2), a defendant may review an unsuccessful bail application. Consequently, by force of s 19B(7), if a police officer refused watch-house bail for a person charged with murder (as the police officer would be obliged to do), the Magistrates Court could not, on a review under s 19B(3)(a), grant bail even if the Magistrate thought such an order was “appropriate”.²⁵
- [39] Sections 16²⁶ and 16A limit the circumstances in which bail can be given. Section 16 provides that bail shall be refused if there is “an unacceptable risk” that the defendant would fail to appear and surrender into custody or would commit certain acts while on bail. Section 16A applies to persons convicted of terrorism offences or subject to Commonwealth control orders and provides that bail must be refused “unless the Court is satisfied exceptional circumstances exist to justify granting bail”.²⁷
- [40] By force of s 19B(7), those restrictions in ss 16 and 16A apply to any bail orders which may be made on review pursuant to s 19B(6) of an unsuccessful bail application made to the Magistrates Court.
- [41] The effect of s 19B(7) is that if any enlargement of an undertaking is ordered under s 19B(6), the surety is only bound in the circumstances of ss 17(1) and 17(1A).
- [42] Section 17 concerns the enlargement of bail undertakings and ss 17(1) and 17(1A) concern, amongst other things, the enlargement of undertakings where there is a surety. By s 17(1A), a power giving surety is only bound with respect to an undertaking that is enlarged if consent was given by the person at the time of the enlargement, or the surety was originally given on provision for its enlargement without further consent. Again, there are prescriptive sections concerning a grant of bail.
- [43] In oral submissions, Ms Shephard for the applicant submitted that the intention of ss 19B and 19CA is that where a defendant has been granted bail and the prosecution has sought a review, the defendant should remain in custody until the review is

²⁵ Section 19B(6).

²⁶ See paragraph [17] of these reasons.

²⁷ Section 16A(2).

determined, whenever that might be. If that is the intention of ss 19(6) and 19CA, it is extremely difficult to discern from the text of the provisions.

[44] To the contrary, s 19CA(2) effects a stay of the Magistrates Court order “until the earlier of” the three circumstances identified respectively in ss 19CA(2)(a), (b) and (c).

[45] In my view, s 19CA(2) operates in this way:

- (a) upon the making of the review application, the bail order is stayed;²⁸
- (b) if, within 3 business days after the day on which the bail order was made, the reviewing Court makes an order under s 19B(6) allowing the review and setting aside the bail order, then the stay ceases to have effect.²⁹ This is logical because the bail order has been set aside and therefore has no effect;
- (c) if, within 3 business days after the day on which the bail order is made, an order is made under s 19B(6) dismissing the review, then the stay is dissolved. This is logical because the challenge to the bail order has concluded and the defendant is entitled to the benefit of bail;
- (d) if, within 3 business days after the day on which the bail order was made, the application for review is discontinued, then the stay is dissolved.³⁰ That is logical because the challenge to the bail order has been abandoned and the defendant is entitled to the benefit of the bail order; and
- (e) if the Court does not, within 3 business days after the day on which the bail order was made, make an order under s 19B(6) disposing of the review and the application for review is not discontinued, then the stay is dissolved by effluxion of time pursuant to s 19CA(2)(c).

[46] Contrary to the applicant’s submissions, the review provisions do not reflect some intention that a citizen who has the benefit of a bail order should be denied the benefit of that order and denied their liberty until the prosecution has the review application heard, whenever that may be. The stay remains in place for three clear business days. If the review application is not determined in that time, the defendant is released, but

²⁸ Section 19CA(2).

²⁹ Section 19CA(2)(a).

³⁰ Section 19CA(2)(b).

may be re-arrested if the review is successful.³¹ There is nothing to suggest a power to extend a stay.

- [47] The interpretation I prefer is consistent with the Explanatory Notes to the Bail (Domestic Violence) and Another Act Amendment Bill 2017, which ultimately resulted in the enactment of the *Bail (Domestic Violence) and Another Act Amendment Act 2017*:

“Clause 7 inserts a new section 19CA into the Act, providing a process for the stay of a release decision relating to a relevant domestic violence offence. The decision about the release is stayed until no longer than 4pm on the day that is 3 business days after the day on which the decision about release was made. The new section 19CA also provides that a decision about release does not entitle a person to be at liberty which the release decision is stayed. This will provide an urgent appeal right for the prosecutor or a person appearing on behalf of the Crown in circumstances where they believe there is an urgent an imminent risk to public safety for the release of a defendant charged with a relevant domestic violence offence.” (emphasis added)

- [48] The intention of s 19CA is to provide “an urgent appeal right” for the prosecution in domestic violence cases and to stay the bail order “until no longer than 4:00 pm on the day that is 3 business days after the day on which the [bail order] was made”.
- [49] There is no power vested by ss 19B or 19CA of the *Bail Act* to extend the time of the operation of the stay which comes into force by operation of s 19CA(2).
- [50] The applicant’s submission that there is an inherent power to extend the statutory stay effected by s 19CA should also be rejected. There is undoubtedly inherent power to stay a decision under appeal if the failure to give the stay would frustrate the effect of any appeal.³²
- [51] However, s 19B does not provide for a general appeal. This is an application brought under particular statutory provisions. Those provisions provide for a stay. They specifically provide that the stay will dissolve in certain circumstances. The provisions operate expressly so that the stay is dissolved at the latest at 4:00pm on the day which is 3 clear business days after the grant of bail. I have found that there is no power to extend that time granted by the statute.

³¹ Section 19D.

³² *Cook’s Construction Pty Ltd v Stork Food Systems Australasia Pty Ltd* [2008] 2 Qd R 453 at [13].

- [52] An inherent power does not exist inconsistently with the express limitations of the statute.³³ An implied power here to extend time would defeat the purpose of the legislation. The Legislature has provided an urgent review right in domestic violence cases and it has considered it appropriate to take the extreme step of automatically staying, for a limited period, the operation of an order granting the citizen their liberty. The offset is to limit the time of the operation of that stay to 3 clear business days after the making of the bail order.
- [53] Of some importance is s 19E of the *Bail Act*. That preserves all other jurisdiction of the Court. A bail order may be appealed. An application may be made to revoke it. The preservation of those powers strongly indicate that the review process as enacted is what was expressed in the Explanatory Note to be what was intended: an urgent appeal process during which the defendant is detained for 3 days.
- [54] Even if I am wrong about the existence of an inherent power, any application to extend the stay would face enormous difficulties.
- [55] In *Cook's Construction Pty Ltd v Stork Food Systems Australasia Pty Ltd*,³⁴ Keane JA, as his Honour then was, observed:
- “... it will not be appropriate to grant a stay unless a sufficient basis is shown to outweigh the considerations that judgments of the Trial Division should not be treated as merely provisional, and that a successful party in litigation is entitled to the fruits of its judgment. Generally speaking, courts should not be disposed to delay the enforcement of court orders. The fundamental justification for staying judicial orders pending appeal is to ensure that the orders which might ultimately be made by the courts are fully effective...” (citation omitted)
- [56] That statement in my respectful view is particularly pertinent when the order sought to be stayed has secured the subject their release from custody.
- [57] Often, courts may grant a stay if a failure to do so may render the appeal ineffective.³⁵ The principles were considered by the Court of Appeal in *Attorney-General for the*

³³ *Anthony Hordern & Sons Ltd v Amalgamated Clothing & Allied Trades Union of Australia* (1932) 47 CLR 1 at 7.

³⁴ [2008] 2 Qd R 453.

³⁵ *Alexander v Credit Cambridge Corporation Ltd* (1985) 2 NSWLR 685 at 695.

*State of Queensland v Fardon*³⁶ in the context of orders made under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

- [58] An order was made pursuant to s 13 of that Act releasing Mr Fardon from custody on a supervision order. The Attorney-General appealed and sought a stay. The Court of Appeal³⁷ referred to the principles in *Cook's Construction Pty Ltd* and *Cambridge Credit Corporation Ltd* and observed:

“[15] Applying these criteria to the present application the result is that the respondent’s release on supervision should not be delayed pending appeal unless the applicant shows that his appeal is arguable on substantial grounds and that the appellant may well lose the benefit of a successful appeal if the primary judgment is not stayed. In applications under the Act the Attorney-General is only likely to lose the benefit of a successful appeal if the prisoner commits a serious sexual offence in the period between judgment at first instance and on appeal. If that should happen the community would not have been adequately protected and the means of ensuring that protection will have been lost.

...

[21] In practical terms, in order to justify the stay, the Attorney-General must demonstrate a degree of likelihood that the order appealed against will not adequately protect the public and that a greater degree of protection than that provided by the order appealed from is necessary pending the appeal. The relevant risk against which the community is to be protected is that of the respondent committing serious sexual offences. For the purposes of the Act and this application the risk of committing other offences, or of breaking the terms of the supervision order, is irrelevant, save to the extent that that risk indicates an increased risk of sexual re-offending.”

- [59] The position is analogous here. The applicant should establish that there is a risk of the commission of a serious offence by the respondent in the time it will take to have the review application heard.
- [60] The respondent was on bail at the time of the alleged commission of the current offences. These earlier offences were allegedly committed between 2022 and 2024. The respondent has been on bail over the intervening period. He has, I understand,

³⁶ [2011] QCA 111 and followed in *Attorney-General for the State of Queensland v Ellis* [2011] QCA 377.

³⁷ Chesterman JA sitting alone on the application.

complied with the conditions of bail. Those earlier offences allegedly occurred in a domestic relationship.

- [61] The suggestion that there is a likelihood that he will commit offences within the next 30 days is unrealistic. There is no evidence to support such a finding.
- [62] If after the respondent's release the review is successful then he can be arrested and returned to prison.³⁸ No right of the applicant has been lost.
- [63] The application for the stay should be dismissed. The application for review remains on foot.
- [64] The order is: The application for a stay of the bail order made on 6 August 2026 is dismissed.

³⁸ Section 19D.