

IN THE CHILDREN'S COURT OF VICTORIA
CRIMINAL DIVISION

THOMAS CARRICK*

v

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

JUDGE: HIS HONOUR JUDGE VANDERSTEEN

DATE OF HEARING: 19 October 2022

DATE OF DECISION: 26 October 2022

CASE MAY BE CITED AS: Application for bail by Carrick (a pseudonym) [2022] VChC 4

REASONS FOR DECISION

Catchwords: CRIMINAL LAW – accused charged with terrorism offences – revocation of bail – application for bail on new facts and circumstances – existence of exceptional circumstances – extensive and extremely stringent array of bail conditions – risk rendered acceptable, having regard to proposed conditions – bail granted.

APPEARANCES: Counsel

For the accused (TC): Mr N. Jane

For the CDPP: Ms. K. Breckweg & Mr M. Keks

* This pseudonym mirrors that used by the Supreme Court in *DPP (Cth) v Carrick (a pseudonym)* [2021] VSC 696.

HIS HONOUR:

Application

1. This is an application by Thomas Carrick ('TC') for bail.
2. The respondent opposes the application.

Applicable Law

3. The application for bail is to be determined in accordance with s 15AA of the *Crimes Act* 1914 (Cth) and the *Bail Act* 1977 (Vic).
4. TC was granted bail on 8 October 2021. Bail was revoked on 20 July 2022. Accordingly, TC must satisfy the Court that new facts and circumstances have arisen since the revocation of bail.¹
5. If TC satisfies the Court that new facts and circumstances have arisen, TC must satisfy the Court that exceptional circumstances exist to justify bail.²
6. Given the nature of the charges before the Court, the Court in determining whether exceptional circumstances exist to justify granting bail to a person who is under 18 years of age, must have regard to (a) the protection of the community as the paramount consideration and (b) the best interests of the person as a primary consideration.³
7. If TC satisfies the Court that exceptional circumstances exist, bail must be refused if the Court is satisfied that there is an unacceptable risk.⁴
8. The prosecution bears the responsibility of satisfying the Court an unacceptable risk exists.⁵
9. The Court in considering the application for bail, must take into account surrounding circumstances set out in s 3AAA and as TC is a child, s 3B of the *Bail Act* 1977 (Vic).

Charges & Factual Allegations

10. TC has been charged with two offences namely:
 - I. *Between 16 April 2021 and 6 October 2021 in the State of Victoria the accused was, contrary to section 102.3(1) of the Criminal Code (Cth), intentionally a member of an organisation, namely Islamic State, knowing that the organisation was a terrorist organisation.*
 - II. *Between 19 September 2021 and 6 October 2021, in the State of Victoria, the accused did engage in advocating terrorism, contrary to section 80.2C(1) of the Criminal Code (Cth).*
11. The maximum penalty for charge 1 is imprisonment for 10 years⁶ and charge 2 imprisonment for 5 years.⁷
12. The allegations before the Court are serious. They involve TC engaging in a range of activities from 16 April 2021 to the time of his arrest that included:

¹ *Bail Act* 1977 (Vic) s 18AA(1)(a)

² *Crimes Act* 1914 (Cth) s 15AA(1)

³ *Crimes Act* 1914 (Cth) s 15AA(3AA)

⁴ *Bail Act* 1977 (Vic) s 4E

⁵ *Bail Act* 1977 (Vic) s 4D(2)

⁶ S 102.3(1) *Criminal Code* (Cth)

⁷ S 80.2C(1) *Criminal Code* (Cth)

- a) On 16 April 2021, watching a video produced by ISIS on a family laptop on how to make a bomb;
 - b) Emails and internet searches relating to terrorist activities including magazines and videos;
 - c) Engaging online possibly with an ISIS recruiter and stating to his mother he knew how much it cost to travel to Syria;
 - d) Making references in a meeting with a Victoria Police Psychologist on 12 May 2021 to 9/11 as “cool”, wanting to fight in Syria and building a bomb and a wish to commit a school shooting;
 - e) A review of TC’s iPhone 6 identified him accessing terrorist related material;
 - f) A review of a laptop provided to police by TC’s parents identified numerous screenshots of IS propaganda videos that displayed the water mark of the IS media wing the “Al Hayat Media Centre” and depicted videos of extreme violence, ISIS members showing an ISIS flag, explosions and a plan to commit a suicide bombing at a French soccer stadium;
 - g) During a voluntary engagement with Victoria Police Countering Violent Extremism unit at the family home on 30 June 2021, TC stated he:
 - I. followed member of ISIS, had attempted to contact them on social media without success;
 - II. had pledged allegiance on Twitter to the current ISIS leader;
 - III. shared ISIS material on the social media website Discord and invited others to view it and in doing so was blocked by others;
 - IV. expressed a desire to be an ISIS recruiter; and to
 - V. make a bomb for it to detonate at Flinders Street Station or at a government building.
13. Between 29 July 2021, to the time of his arrest TC, commenced conversing with an online covert operative (‘OCO’). The OCO initiated contact with TC at 11.12am on 29 July. The subjects discussed between TC and the OCO included:
- a) terrorist events across the world, some of which were historical in nature and others current; a preparedness to engage in acts of violence, numerous discussions involved the subject of ISIS and TC on various occasions described himself as wanting to be a martyr engaging in a jihad and that he was willing to act alone or with others;
 - b) young people that TC had attended primary school with and an individual that he attended high school with; and
 - c) on two occasions TC sent to the OCO images of him holding a weapon. The first was on 7 August 2021 where TC was in his bathroom holding a silver knife; written crudely, as described by the police, on the blade was lettering which TC informed the OCO that it said ‘Islamic state’.⁸ The second occasion was on 5 October 2021 where TC sent another image to the OCO of him holding a large sword.

⁸ Statement of Facts [45], the knife was seized by police on 13 August 2021

14. On 6 October 2021 police executed a search warrant at TC's residence and seized, amongst other items, two swords, a laptop, an iPhone 6, pieces of paper with a sketch of an ISIS flag, and notebooks.⁹
15. TC was deemed unsuitable for interview by two doctors.
16. TC was granted bail by the Children's Court sitting at Melbourne on 8 October 2021.
17. The CDPP appealed the granting of bail to the Supreme Court.
18. The appeal was dismissed on 15 October 2021.¹⁰
19. On 3 May 2022 an application pursuant to s 356(3) of the *Children, Youth and Families Act 2005* (Vic) was refused and summary jurisdiction was granted.
20. On 23 June 2022 a prosecution application for revocation of bail was made alleging TC had breached his bail by conducting searches and having certain material on his school computer.¹¹ The breaches were said to have occurred at school. The application was refused, bail was otherwise varied.
21. On 20 July 2022 a prosecution application for bail was made alleging TC had breached his conditions of bail by conducting searches on an iPad and an attempt to send an email from an iPad whilst at school.
22. The application to revoke was granted.
23. The Google searches involved topics such as "10 ways to cover up a murder", "how to murder", "16 steps to kill someone and not get caught" and references to a schoolteacher.¹²
24. On 26 July 2022 police were provided with a workbook by the school that contained images and notations.¹³ A summary of the images/notations is set out at [16] of the affidavit of DLSC Dennis Cunha dated 18 October 2022, tendered as Exhibit A. It is also now alleged TC had been bullying a fellow student¹⁴ and had made verbal threats relating to a fellow student to a teacher.¹⁵ Further, on 27 July 2022, police found a handwritten note of TC in relation to the home internet IP address and password.¹⁶

TC Submissions & Evidence

New Facts and Circumstances

25. TC submitted that by way of combination the following new facts and circumstances have arisen since the revocation of bail:
 - a) A defence sourced report concluded that TC was *doli incapax* for the period he was 13 years old in relation to charge 1;
 - b) Ongoing delay, particularly in relation to disclosure;
 - c) TC's proposed enrolment at a new school;

⁹ Ibid, [113] [a]-[l] & [114]

¹⁰ Justice Lasry, *DPP (Cth) v Carrick (a pseudonym)* [2021] VSC 696

¹¹ Affidavit of DLSC Dennis Cunha dated 18 October 2022, [9], Exhibit DC-1 refers to the particulars of the breaches of bail

¹² Ibid, [13]

¹³ Ibid, [15]

¹⁴ Ibid, [17]

¹⁵ Ibid, [18]

¹⁶ Ibid, [20]

- d) Religious mentoring/engagement with Sheik [redacted] recommended by the Victorian Islamic Council; and
- e) Support from [redacted] from [redacted] who is a specialist support coordinator.

26. It was conceded by the respondent that it was open on the factors relied upon in [25] for the Court to find that new facts and circumstances have arisen since the revocation of bail.

Exceptional Circumstances

Applicant's Submissions

27. TC relied upon the following matters in combination to amount to exceptional circumstances:

- a) Age at the time of the offences. TC was born in September 2007. In relation to charge 1 TC was 13-14 and in relation to charge 2, 14.
- b) No prior criminal history. TC has no previous findings of guilt.
- c) No subsequent history/offences. Whilst there have been breaches of conditions of bail they do not amount to criminal conduct. It was submitted that the context of the breaches of bail arose in circumstances where TC was seeking to move schools as opposed to committing further offences or arising from a genuine interest in terrorism ideology. The breaches occurred at school. He was otherwise compliant with his conditions of bail.
- d) Strength of the prosecution case. It was submitted, beyond what is relied upon in [27 e]) that there are triable issues as they relate to TC's intention having regard to his age and mental health issues.
- e) Presumption of *doli incapax* in relation to charge 1. A defence sourced expert report has concluded that TC was *doli incapax* for the offending prior to his 14th birthday. A prosecution expert report does not express a view on *doli incapax* due to the report writer's inability to interview TC or TC's parents. An addendum report has been sought by the prosecution from the defence witness which has not yet been provided. The burden on rebutting the presumption of *doli incapax* rests on the prosecution. Accordingly, it was submitted the prosecution case up until TC turned 14 is weak.
- f) TC's mental health vulnerabilities. TC has been diagnosed as having low intelligence with an IQ of 74 and autism spectrum disorder and Oppositional Defiance Disorder.¹⁷
- g) TC's time in custody since the revocation of bail. As of the date of the application for bail, TC had been on remand for 91 days. Initially TC did not initially provide instructions to make an application for bail. It is significant that he does so now and is showing a willingness to engage.
- h) TC's vulnerability in custody. This is discussed at [27 k)].
- i) Delay. The matter is at contest mention stage. There are several issues that remain unresolved, full disclosure has not occurred.

The Court ordered full disclosure occur on or before 13 October 2022. This order was not complied with. Before the bail application proceeded a representative from the Victoria Government Solicitor's Office appeared on the behalf of the Chief Commissioner of Victoria Police who informed the Court, they would not be able to comply with disclosure for at least another 3-4 weeks.

¹⁷ Report of Dr R, Clinical Psychologist, 12 October 2021

It was submitted that it is difficult to forecast the progression of the matter in the absence of disclosure occurring. It was unclear as to whether the outstanding material is voluminous or there would be objection being made or indeed whether it would lead to further requests of disclosure.

Further, it was submitted that it was possible that disclosure may lead to an application for a permanent stay and following which if unsuccessful an evidence-based hearing.

- j) The improbability of detention being the ultimate disposition. It was submitted that a term of immediate detention was not necessarily a foregone conclusion.
- k) Availability of Youth Justice Bail Program. TC has been found suitable for Youth Justice supervised bail.

The report stated, *“in making a recommendation, Youth Justice have taken into consideration the seriousness of [redacted] alleged offending, his age, complex disability and mental health diagnosis, history of social isolation and vulnerability to negative peer influence in custody.”*

Youth Justice noted that TC would attend and be supported at [redacted] Secondary College, be engaged by a religious mentor and would be provided specialist support via [redacted] specialist support coordinator.

TC is a participant in the National Disability Insurance Scheme and has now been provided with a funding package to support service involvement. Through the funding package TC will be assisted by Ms [redacted], Practice ‘Leader Specialist Coordinator of [redacted]. Ms [redacted] will ensure the funding it used to meet TC’s needs which has at this stage been identified as including behavioural support, speech therapy, occupational therapy, psychology, and the provision of support workers to facilitate TC’s timetable.

Ms [redacted] Acting Team Leader [redacted] office, the author of the Youth Justice report, gave evidence. She stated that in devising the plan Youth Justice had extensively consulted.

The chosen school is closer to where TC resides and offered a 1:1 ratio. There was no plan for the student teacher ratio to change. The ratio of 1:1 was like [previous school - redacted] but this altered to a 2:9 ratio. The change in the ratio was around the time that TC began to express dissatisfaction with the school. At the new school TC would be supervised by the Assistant Principal, the Year 11 coordinator and the Wellbeing coordinator. The proposed tutoring would also be 1:1.

Ms [team leader – redacted] stated that in custody TC was vulnerable to negative peer influences, that his engagement in supervision was high and there had been a lowering of his mood and affect. There was a concern by Youth Justice that if TC remained in custody it would continue to affect his mood, behaviour would continue to decrease, and he would be subject to the influence of anti-social behaviour of peers.

Ms [team leader – redacted] confirmed that KB would be moving into the family home, and he would provide daily assistance to TC. She confirmed that KB would not be working, that he would be supervising TC and would assist in transporting him to and from appointments. She noted that TC’s mother arrives home at 5pm and his father at 3:30pm from work.

She described TC’s family has been supportive and that there was nothing to suggest that he has accessed the home internet.

Ms [team leader – redacted] under cross-examination reiterated that any breaches of bail conditions would be reported by Youth Justice to police.

She was cross-examined on the statement within the report of TC being unpredictable. She acknowledged that given TC's multiple diagnosis that it limits the ability to predict certain behaviour. She said however that supervision would mitigate the unpredictability. She confirmed that TC would be always supervised and that there are individuals in place to support this supervision. It was also confirmed that there was no planning or proposal to change the student-teacher ratio of 1:1.

She stated that TC was motivated to stay at school and that TC's experience at the previous school had been impacted by peers, his high needs and limited capacity to engage. It was felt that being a mainstream environment would be at a higher level which would see TC engage.

In respect to his time in custody TC had engagement that was high at Parkville College but did disengage when hard pens were confiscated from all the students. There was no suggestion the removal of the pens related to TC.

It was noted that TC can be distracted by loud noises, and he will be provided with an MP3 player to play music or noise cancelling headphones to assist him.

Ms [team leader – redacted] was of the view that there are strong therapeutic supports in place for TC. It was conceded that the family have several complexities, however the timetable and the proposed supports would assist the family and mitigate any risk. She said that some of TC's behaviour in custody had not been seen before, such as spitting, verbal aggression and tagging. The most recent incident occurred on 17 October when another young person attempted to take TC's glasses.

There was cross-examination relating to the support services or individuals and what knowledge they had of the charges before the Court. Ms [team leader – redacted] said the support services and individuals have not been informed of the charges or the facts before the Court given a suppression order of the Supreme Court.

Under re-examination Ms [team leader – redacted] stated that the complex needs of TC had been disclosed to the support services and individuals and it was upon those needs a plan had been formulated. She confirmed that Youth Justice will continue to report breaches immediately to police.

- l) Engagement of religious mentoring through the Islamic Council of Victoria: To support TC's connection to his faith and culture a religious mentor has been sourced via the Islamic Council of Victoria. It is proposed if granted bail that TC meet twice weekly with [redacted], in person and online.

The mentoring would include sessions on Qur'an teachings, prayer, pro-social modelling, culture, and well-being. Sheik [redacted] is said to have extensive experience in working with youth on these issues.

TC has not been involved in religious mentoring for some time and this re engagement is said to be a positive step for TC to understand and to come to terms with his faith in a positive pro social manner.

- m) Family support and stable residence. TC continues to have the full support of his parents.

KB gave evidence. He is the paternal uncle of TC and is [redacted] years old. He was asked by the family to assist with TC, and this was the first time that he knew of the charges before the Court.

KB said he was willing to move in with the family and assist with TC. He was shown a proposed timetable by Youth Justice and said that he would provide transport and supervision when required. He understands that if TC was bailed that TC could not have access to a mobile, laptop, or the internet. He said that if TC was not complying with bail conditions that he would call his parents and Youth Justice.

Under cross-examination KB stated he was committed to assisting as needed.

TC's father also gave evidence and confirmed that the family will continue to ensure that TC would comply with all bail conditions and that KB would reside with the family on a full-time basis. He said that KB had his full confidence.

He said that the family have a laptop that is used for the younger children for Qur'an lessons, and it was otherwise kept in his study in a safe that had been provided to the family by Youth Justice.

He said he has his own mobile phone which is on his person the whole time, that his work laptop requires authentication, and his wife has a mobile phone, and the Internet is currently not working at home. He said that he only became aware on the day of the bail application that TC had the user and password access and since knowing this he has asked for the password to be changed. He said that he has continued to visit TC whilst in custody and is concerned with the decline in TC's mental health and at times TC has presented as being extremely sensitive. He said that his main responsibility as a parent was to support TC and that his work may be flexible which would permit him to stay at home.

- n) Change of school. This was discussed at [27 k]
- o) S 3B considerations.

Unacceptable Risk

- 28. It was submitted on the behalf of TC that with the imposition of conditions any risk TC poses can be reduced to an acceptable level.
- 29. It was submitted that the following factors reduce the risk to an acceptable level:
 - a) Stable residence: TC's residence and family support have been stable throughout. It was submitted that this is a strong protective factor for him. TC resides with both parents and three younger siblings. Both TC's parents work fulltime.
 - b) Family Support and supervision: TC's parents have been receptive to Youth Justice involvement and ensuring that TC complies with his bail conditions.

To support TC and the family, it is proposed that KB, a maternal uncle, will move into the family home. KB will assist the family to ensure TC complies with his bail conditions and will transport TC to any appointment or activity. KB will supervise TC as required. KB's involvement will ensure that there are no supervision gaps in TC's weekly schedule.

- c) New educational supports: it is proposed TC will attend [redacted] Secondary College on a transitional basis where he will complete a [redacted] class. It is proposed that there be tutoring for the remaining procurement subjects. Further, at school TC will be subject to 1:1 supervision. Mr Jane in final submissions submitted that the evidence revealed the greatest risk was school. This risk was being met by 1:1 supervision, transitional engagement, and tutoring. The new school and the arrangements for attendance were said to be vastly different than previous arrangements.

d) Youth Justice Intensive Bail Program: Youth Justice has recommended supervised bail.

In doing so they provided to the Court a report undated, which set out proposed bail conditions, the current service involvement, and what would be provided by way of supervision and other supports.

Ms Peta Lowe, Principal Consultant of Phronesis Counselling and Training gave evidence in support of TC's application for bail.

Ms Lowe is the former Director, Countering Violent Extremism for Juvenile Justice in the New South Wales Department of Justice. In that role Ms Lowe managed and supervised terrorism related offenders and those vulnerable to radicalisation. Ms Lowe has qualifications including Masters in Terrorism and Security Studies and a Masters of Social Work.

In November 2021 Ms Lowe was contracted by Youth Justice Victoria to support staff in the effective management and supervision of TC.

Ms Lowe is aware of the charges and has read the police summary. She has met with TC on five occasions. Ms Lowe has reviewed the Youth Justice report and proposed timetable. She is aware of the family support that TC has and the allegations of the bail breaches.

She was of the view that at the time of the breaches above, TC was unhappy at school. He attempted to send an email as he felt that no one was listening to him. She is of the view that TC is now confident they are now listening to him. She said TC breached his bail conditions in these circumstances knowing that there will be a response.

Ms Lowe confirmed that TC wants to go to the new school and that he would be well supervised there.

She said a limitation on supervising TC had been the narrow reading of a suppression order where those supervising and managing TC at Youth Justice were not comfortable advising others of the charges before the Court and their circumstances.

Ms Lowe was confident that Youth Justice is aware of the risks that TC presents on bail and is of the view that the bail support plan monitors adequately the risk.

Under cross-examination, Ms Lowe agreed that there are some who are treating and managing TC who are not aware or have the precise knowledge of TC's offending. For example, NDIS and the Sheikh. She agreed the more people knew, the better placed they would be to respond.

Ms Lowe said that the identification of TC's vulnerabilities and responding accordingly would be able to manage better the risk. She highlighted the plan involves significant monitoring and supervision of TC and that TC is highly motivated to comply. She also referred to the new school was supportive of TC and responding to his needs.

Under re-examination Ms Lowe said that there was always a degree of unpredictability, however what needs to be challenged with TC is that he needs to communicate his needs in a more productive way.

She was of the view that having regard to all the circumstances of the case that the risk of TC being released on bail is manageable as proposed in the Youth Justice report.

e) Religious mentoring.

f) Strict bail conditions.

g) Judicial monitoring.

30. It was submitted that the breaches of bail that led to bail being revoked were in circumstances where TC was dissatisfied at [redacted], TC struggled with social isolation and his academic needs were not being met.
31. It was submitted that TC had expressed a desire to change schools for several months leading to bail being revoked and that the breaches were an attempt for attention, or to enter detention, so that he could move schools. In this regard it was submitted that the breaches of 19 July were so blatant that it was inevitable TC would be caught.
32. It was submitted, importantly, that the searches did not involve “*specific terrorism-related matters, and a number of searches for topics that seemingly had no utility to [TC] other than their inherent illegality*”. There was no evidence he went into any of the links and his searches were benign to the extent they related to searches on cocaine and ecstasy.
33. It was submitted that there have been no allegations of TC breaching bail conditions at home, when being supervised by Youth Justice or other supports under the bail previous bail conditions.
34. Mr Jane submitted said that it would be a “*jump*” to say that TC will behave in a certain way where on the material before the Court his thoughts have never been evidenced in a meaningful way.
35. Mr Jane relied upon the following circumstances with when considering TC’s risk:
 - a) Youth
 - b) Mental and cognitive vulnerabilities
 - c) Nature of his bail breaches
 - d) Time in custody and risk of institutionalisation
 - e) Likely disposition on finalisation
 - f) Delay.

CDPP Submissions & Evidence

Exceptional Circumstances and Unacceptable Risk

36. The CDPP submitted that exceptional circumstances have not been established¹⁸ and that TC remains an unacceptable risk of committing an offence/and or endangering the safety and welfare of a person if granted bail. The CDPP submitted that TC will plan, commit, or attempt to commit, an offence involving violence against a person/people or a terrorism offence.¹⁹
37. In support of these submissions the following was relied upon:
 - a) TC has conducted searches on the topics of murder/beheading/referred to a UK citizen. A drawing referred to a teacher of TC being beheaded by TC. That teacher is a UK citizen. Another note referred to a previous informant of calling her a “*bitch*” and that she would be raped. It was said these searches are demonstrative of TC’s thinking, they are evidence of ongoing violent thoughts and desires despite the

¹⁸ Ibid, [22]

¹⁹ Ibid, [23]

interventions to date. The new material suggests TC *“is becoming more sexually aggressive”* which is another dimension of risk.²⁰

- b) TC’s notes indicate he would prefer to be in Parkville rather than [redacted] school. The CDDP relied upon a Youth Justice report dated 28 July 2022, which stated *“[TC] reports that the behaviours undertaken to breach bail conditions acted as a function to have his needs met in relation to not having to attend school”*. There is a concern that TC may if granted bail breach bail condition(s) or commit a further offence to be removed from school if he chooses²¹ and further that TC is becoming aware he can manipulate situations to achieve an outcome.²²
- c) Historically there were periods of time that TC would be left unsupervised, when for example TC’s parents go for a short walk. TC has informed educators that he has accessed the internet via his brother’s device to view YouTube, and the access was without his parent’s knowledge and that a family laptop had had its internet history deleted.²³
- d) It is extremely difficult if not impossible given the family matrix for TC’s parents to adequately supervise TC at home.²⁴
- e) There is no evidence that TC’s *“extremist views”* are deescalating, in fact the material collected by investigators suggest that TC maintains these views.²⁵
- f) Investigators are of the view that TC is self-radicalizing and has been for many years. There are concerns in relation to his fixation on violence, that he maintains an extremist ideology, and that at school he has made utterances and acted in a violent threatening manner towards others and that this behaviour has been observed to escalate since May.²⁶

Ms Breckweg when pressed by the Court if it was being put by the prosecution that TC had radicalised, she said that was not their position.

- g) The CDDP submitted that a change in schools would not address the issue of *“radicalisation and behaviour”* and that TC would simply transfer his behaviour to another school and that TC has written he is *“proud to breach his bail”* and that *“the breaches are a continuation of [TC’s] religious motivated extremist violence ideology which are continuing despite all the support placed around [TC] and which represents a real risk”*.²⁷

38. DLSC Cunha under cross examination gave the following evidence:

- a) There was no delay by Youth Justice reporting breaches of bail to police;
- b) Whilst there was evidence of TC’s searches on 19 July, there was no evidence that TC clicked onto any link, that none of the searches related to Islam, that 2 of the searches related to cocaine and *“drug crisis”* and that there are no concerns that TC is using drugs. The attempt by TC to send an email was to a law enforcement agency and there was no evidence that TC was seeking to *“cover his tracks”* as he was using his own name.

²⁰ Ibid, [23] a)

²¹ Ibid, [23] b)

²² Ibid, [23] g)

²³ Ibid, [23] c)

²⁴ Ibid, [23] d)

²⁵ Ibid, [23] e)

²⁶ Ibid, [23] f)

²⁷ Ibid, [23] h)

- c) TC's workbook was given to him in February 2022, it is unclear when TC created the writings as they were undated.
 - d) Agreed that the evidence of the teacher the subject of the notations in the scrapbook was that he was shocked to see such images/writings, that this as a rule did not match TC's general attitude, demeanour, and general behaviour. Based on that teacher's observations he had not observed TC to have the potential to harm another staff member or himself.²⁸
 - e) Agreed with the proposition of the conflict with another student was described as "*minor*" by his teacher and that the behaviour was corrected by May;²⁹
 - f) That the history on the laptop was cleared after 25 July 2022 and there was nothing to point to TC using the laptop and nor was there evidence when the Outlook shortcut in Google Chrome was created;
 - g) Reiterated the prosecution position concern that any discussions with Sheik [redacted] that related to national security risk would not be reported to police, that is, there is no oversight of this engagement by police;
 - h) Believed TC has radicalised, this opinion was based on his six years as a terrorism investigator, that TC was a young person that was on a clear path;
 - i) Agreed that a supervision ratio of 1:1 at the intended new school mitigated the risk somewhat;
 - j) Could not comment any further on the disclosure delay of Victoria Police; and
 - k) Agreed that TC was not completely disengaged, had been engaging with supports, continued to reside at home and had attended Youth Justice appointments.
39. Ms Breckweg in her final submissions submitted that the primary concern of the prosecution was the protection of the community. She accepted youth was a significant factor for the Court to consider however what underlies the charges before the Court is the potential harm to the community. Ms Breckweg said a year after being charged, nothing has changed.
40. Ms Breckweg said the very factors being relied upon for the grant of bail being TC's autism, youth, oppositional defiance were the very factors that lead to the greatest risk. She said there was a risk on the evidence before the Court that if TC was not listened to, he would obtain a weapon and take action against someone. She said the evidence demonstrates that TC has clear views on violence and violence against members of the community. She said whilst the breaches that led to bail being revoked were not criminal offences it was however further indicia of TC's behaviour, and that TC is maintaining a pattern of thinking that is one focusing on extreme violence. She said the breaches go to the indicia and further he has pledged allegiance to terrorist organisations.
41. She said the evidence demonstrates that TC gets upset on minor matters and that there has been no progress in removing his fixated beliefs. She submitted that the consequences of him acting on his beliefs would be catastrophic.

²⁸ Statement of [redacted] dated 27 July 2022, exhibit DC-7

²⁹ Ibid

Analysis

New Facts and Circumstances

42. It was submitted on the behalf of TC, by way of a combination of factors, that the following are new facts and circumstances that have arisen since the revocation of bail:
- a) A defence sourced report that concludes TC was *doli incapax* for the period he was 13 years old in relation to charge 1;
 - b) Ongoing delay, particularly in relation to disclosure;
 - c) TC's proposed enrolment at a new school;
 - d) Religious mentoring/engagement with Sheik [redacted] recommended by the Victorian Islamic Council; and
 - e) Support from [redacted] from [redacted] who is a specialist support coordinator.
43. It was conceded by the CDPP that having regard to the above matters that it was open for the Court to find that new facts and circumstances that have arisen since the revocation of bail.
44. Having regard to the matters set out at [25 a)-e)] I find that new facts and circumstances that have arisen since the revocation of bail.

Exceptional Circumstances

45. Given the nature of the charges before the Court, the Court in determining whether exceptional circumstances exist to justify granting bail to a person who is under 18 years of age, must have regard to (a) the protection of the community as the paramount consideration and (b) the best interests of the person as a primary consideration.³⁰
46. A combination of factors was relied upon by TC in establishing exceptional circumstances, which included:
- a) Age at the time of the offences.
 - b) No prior criminal history.
 - c) No subsequent history/offences.
 - d) Strength of the prosecution case.
 - e) Presumption of *doli incapax* in relation to charge 1.
 - f) TC's mental health vulnerabilities.
 - g) TC's time in custody since the revocation of bail.
 - h) TC's vulnerability in custody;
 - i) Delay;
 - j) The improbability of detention being the ultimate disposition;

³⁰ *Crimes Act 1914 (Cth)* s 15AA(3AA)

- k) Availability of Youth Justice Bail Program;
- l) Engagement of religious mentoring through the Islamic Council of Victoria;
- m) Family support and stable residence;
- n) Change of school; &
- o) S 3B considerations.

47. It was submitted on the written materials by the CDPP that exceptional circumstances were not established. This was not pressed in my view by Ms Breckweg in oral submissions, where the focus was on risk.
48. I accept the allegations before the Court are serious. TC has maintained a long-term interest/infatuation with ISIS, terrorism, and violence. This interest is reflected in the words spoken to police and others in April-June 2021 and the online conversations he had with the OCO from July to October 2021. Further, the drawings and internet searches in June-July 2022 demonstrates that, to an extent, the interest is being maintained.
49. TC is a young person. He was 13 for the majority of charge 1, turning 14 in September 2021. He is now 15. He has a well-established diagnosis of autism, mild intellectual disability, and oppositional defiance. He is socially isolated with few if any friends. He presents as being immature. He has no prior history. Whilst there have been breaches of bail conditions, there have been no further offences alleged.
50. TC has extremely supportive parents. They have not on any level condoned his behaviour. They seek to make him accountable and continue to support him. They have on more than one occasion engaged proactively and positively with the police and have maintained an open and positive relationship with Youth Justice. When on bail his family ensured strict compliance with bail conditions. They have facilitated his engagement with support services. The evidence of TC's father is that will continue. It is proposed his Uncle KB will move into the family home also support TC and the family. KB is aware of the charges and allegations before the Court and will ensure TC complies with any bail condition and stated he would report any breach.
51. I accept that TC is vulnerable in custody. He has been on remand now since 20 July. He is young, with significant diagnosis of autism and mild intellectual disability. He historically has found it hard to make friends. He can be overwhelmed by noise, the provision of the MP3 player and noise cancelling headphones may assist in this regard. His parents have noted a decline in his mental health in custody. Youth Justice assess TC "*as highly vulnerable to negative peer influence in custody due to his age, his complex mental health and disability diagnosis*". In custody TC has been seen by staff to emulate the bad behaviour of others. TC has stated he does not want to engage in this behaviour in the future.
52. TC is presumed to be *doli incapax* for the offence period he was 13. The presumption may be rebutted, the onus to do so, rests on the prosecution. The defence have obtained a report that concludes that TC was *doli incapax* for the relevant period. The CDPP have also obtained a report. The CDPP witness to date has been unable to draw a definitive conclusion, in the absence of not interviewing TC or his parents. Further information has been sought by the CDPP expert before a concluded view can be reached. The CDPP as a result have not indicated whether they would be seeking to rebut the presumption.
53. I also accept the broad proposition on the behalf of TC that the disclosure may lead to triable issues. It is too early to be able to say with certainty what may or may not be an issue until all the information sought is obtained.

54. There is an amount of unknown material that has yet to be disclosed by Victoria Police. A request was made by defence in early August. The Court was informed by VGSO at the bail application hearing on 19 October it would be another 3-4 weeks before disclosure would occur. It was not known what material would be disclosed. It was not known as to volume. It was not known if objection will be made to the provision of material. There already has been a failure of Victoria Police to comply with a court order relating to disclosure. I accept that the failure to timely comply with disclosure will delay the matter proceeding. It is unclear how long the delay will be.
55. I am unable to conclude what the likely disposition would be. I am prepared to accept with all the information known to the Court at this time, that a sentence that does not involve an immediate term of detention is open. Summary jurisdiction was granted by this Court on 3 May 2022.³¹
56. A court “...may take into account any recommendation or information contained in a report by a bail support service”.³² TC has been assessed as suitable for supervised bail by Youth Justice. A report was provided to the Court. The report details current service involvement and a bail service suitability assessment and considers factors that increase the risk of bail non-compliance and factors to address risks and support bail compliance.
57. Ms Lowe was provided a copy of the Youth Justice report. In Ms Lowe’s opinion what is proposed by Youth Justice mitigated the risk of TC to be released on bail to an acceptable level. In her evidence she accepted there is a risk, but the risk can be well managed in her opinion with what is proposed. Ms Lowe has been advising Youth Justice since November 2021 in relation to TC and is aware of the allegations before the Court. She has met TC and his parents. She is eminently qualified by way of academic qualifications and relevant work-related roles in youth and terrorism offending/behaviour.
58. As has always been the case, Youth Justice would continue to coordinate TC’s current care arrangements together with ensuring that while subject to supervision that he is maintaining compliance with his bail conditions. The NDIS funding will assist further.
59. TC has been accepted to attend [redacted] school. On a transitional basis he would initially attend 2 classes and be always subject to 1:1 supervision by senior schoolteachers. It is not proposed that this ratio alter in the foreseeable future. Tutoring will also be offered to TC on a 1:1 ratio.
60. Youth Justice have engaged the Islamic Council of Victoria to source a mentor for TC. Sheik [redacted] has agreed to engage TC twice weekly, online and face to face. TC has indicated a willingness to engage with religious education. The teachings offered by Sheik [redacted] are important to ensure that TC’s connection to religion is positive and his negative views of Islam as expressed to others is challenged.
61. Ultimately, I accept by way the combination of factors put on TC’s behalf, being his age at the time of the offences, no prior criminal history, no subsequent history/offending, the strength of the prosecution case and presumption of *doli incapax* in relation to charge 1, TC’s mental health vulnerabilities, TC’s time in custody since the revocation of bail and his vulnerability in custody, delay, the possible sentence outcome not necessarily involving a term of detention, the availability of Youth Justice Bail Program, religious mentoring together with family support and stable residence that exceptional circumstances exist to justify granting bail. In coming to this conclusion, I have had regard to the protection of the community as the primary consideration and the best interests of TC as a primary consideration.

³¹ *CDPP v Carrick (a pseudonym)* [2022] VChC 3

³² *Bail Act 1977* (Vic) s 3B(2)

Unacceptable Risk

62. In *HA (a pseudonym) v The Queen* [2021] VSCA 64 the Court of Appeal stated at [54]:

“Whether a particular risk is acceptable must be viewed in light of the circumstances. Those circumstances may be such as to render acceptable a level of risk which in other circumstances would be unacceptable.”

63. I accept that TC poses a risk. However, when having regard to what is proposed if he was granted bail in my view that risk can be “*rendered acceptable*”.

64. In coming to this conclusion, I do not accept the CDDP submissions that given TC’s age, diagnosis of autism, mild intellectual disability and oppositional defiance and the pervasive thoughts he has maintained in relation to terrorism and violence that despite what was submitted on TC’s behalf, he would remain an unacceptable risk.

65. What is proposed on TC’s behalf in reducing the risk is an extensive and extremely stringent array of bail conditions.

66. At no time would TC be unsupervised whether at home or otherwise.

67. The teaching ratio at school would be 1:1.

68. It is proposed that there be the continual removal and limits to TC to the internet.

69. His residence is stable. His family are very supportive. The added addition of KB to the home will greatly assist TC’s parents. KB’s involvement essentially closes any gaps where TC would be otherwise unsupervised.

70. The ongoing religious mentoring presents an avenue for TC to discuss religious matters with a scholar/Sheikh that has been recommended by the Islamic Council of Victoria and endorsed by Youth Justice.

71. Youth Justice have provided a report supportive of bail and TC’s suitability on the intensive bail support program. Youth Justice continue to engage Ms Lowe and are guided by her expert advice. Ms Lowe was of the view that the risk TC being bailed can be managed within the confines of the Youth Justice recommendations.

72. I now turn to the *Bail Act* 1977 (Vic) s 3B factors. I am mindful that they have been addressed throughout the application, as have s 3AAA factors, however for completeness sake the following is noted.

73. The Court must consider all options before remanding TC. TC remaining at home continues to strengthen and preserve the relationship with his family. He has always lived with his family. KB is an additional support to TC and more broadly TC’s parents. TC can resume education that will be facilitated with the assistance of Youth Justice. TC is vulnerable in custody and there is the need to minimise stigma to him by remaining in custody. It is not by any means certain that upon finalisation TC will be sentenced to a term of immediate detention. I have taken into account the recommendation of Youth Justice who are a bail support service and have assessed TC as suitable for bail. In imposing any conditions, the court must ensure that the conditions of bail are no more onerous than are necessary and do not constitute an unfair management of TC.

74. Accordingly, bail will be granted subject to the following conditions and any further submissions by the parties:

a) *To reside at [redacted];*

- b) *Not leave the State of Victoria;*
- c) *Not contact witnesses for the prosecution other than the informant;*
- d) *Obey all lawful directions of Youth Justice and to comply with the directives of the Youth Justice Intensive Bail Program;*
- e) *Not be absent from [redacted] unless accompanied by a parent or an adult approved by Youth Justice;*
- f) *To attend at the front door of the premises if requested to do so by any police officer;*
- g) *Not to attend any school other than the school in which he is enrolled or approved to do so by Youth Justice;*
- h) *Not to go or remain within 1 kilometre of [redacted] save unless in the company of a parent and only for the purpose of attending upon [redacted] of [redacted];*
- i) *Not to go or remain within 5 kilometres of [redacted] unless in the company of a parent or approved by Youth Justice;*
- j) *Not to own, access or use any mobile telephone or laptop/computer/tablet;*
- k) *Not to access the internet (including any social media or messaging website, application or platform) or cause any person to access the internet on his behalf except for the purpose of schooling, attending court, attending medical appointments, obtaining legal advice or as agreed by Youth Justice;*
- l) *Not communicate and associate with or attempt (directly or indirectly) to communicate or associate with any of the following:*
 - i. *Any person incarcerated in any gaol or detention;*
 - ii. *Any person whom it is believed to be a member associate (sic) of a terrorist organisation;*
 - iii. *Any person he knows to be or purports to be in Turkey, Iraq or Syria.*
- m) *Not to acquire or attempt to acquire any firearm, knife and any other weapon like device;*
- n) *Not to acquire or attempt to acquire any substance, material, chemical or other item capable of being used to manufacture a prohibited weapon, a chemical weapon, explosive or explosive device except if that item is for reasonable domestic use;*
- o) *Not to access, acquire, possess or distribute any literature, recording, image or thing depicting or relating to:*
 - i. *Explosives, explosive devices, engineering of explosives or explosive devices and detonation of explosives;*
 - ii. *Firearms, knives and other weapon like device (sic)*
 - iii. *Anti-surveillance or counter-surveillance*
 - iv. *Executions of natural persons or animals;*
 - v. *Terrorist attacks including suicide attacks;*
 - vi. *Propaganda or promotional material for a terrorist organisation;*
 - vii. *The practices, activities or members of a terrorist organisation;*
 - viii. *Armed conflicts of international or non-international character.*