NEW SOUTH WALES

THE CHIEF MAGISTRATE OF THE LOCAL COURT

27 October 2014

The Hon J Wood AO QC
Chairperson
Sentencing Council of NSW
GPO Box 5199
SYDNEY NSW 2001

Dear Chairperson

Re: Bail – additional 'show cause' offences

I am writing in response to the Council's invitation to make a submission to the above reference.

I do not have any comments on the circumstances that should give rise to the classification of an offence as a show cause offence (whether due to the type of offence charged, the type of conditional liberty or existing sentence being served by the accused person, or both), this being a policy matter for government. However, assuming the expansion of a show cause requirement to persons charged with a serious indictable offence in any one or more of those circumstances, the number of applications affected by such a requirement would likely be substantial. Although as far as I am aware quantitative data on such matters is not presently captured, in the Local Court's experience the scenario of an accused person applying for bail in relation to serious indictable offence allegedly committed while subject to some form of conditional liberty is a particularly common one.

Attempting to assess the extent of any resource impact on the Court in the event of an expansion of the categories of show cause offences is problematic in circumstances where the amendments introducing the show cause requirement are yet to have commenced so as to enable observations on their practical effect to be made. However, I do not anticipate that there would be a significant increase in the time required to determine a bail application where a show cause requirement applies as contrasted with an application where it does not.

The new section 16A looks to contemplate a two-step decision-making process where the accused person will be required to first satisfy the court that his or her detention is not justified, before the court must then make a bail decision in accordance with the unacceptable risk test. In practical terms it seems likely that a bail application will proceed in essentially the same way as at present: the court would first hear the application, including the submissions of the parties on considerations relevant to both whether the accused has 'shown cause' and whether any bail concern amounts to an unacceptable risk, before proceeding to make a bail decision. As is evident from the Victorian experience, the considerations relevant to the show cause issue will often be the same, or at least significantly overlap, with those relevant to an assessment of

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unacceptable risk (for instance, see *DPP v Harika* [2001] VSC 237 at [46]; *Re Asmar* [2005] VSC 487 at [12]-[13]).

While I do not foresee a significant resource impact for the Court in dealing with more bail applications where a show cause requirement applies, in light of the very nature of such a requirement and the underlying parliamentary intention, it must be contemplated that a large number of applicants to whom the requirement applies would be refused bail, with the consequence that the most significant and visible impact could reasonably be expected to be an increase in the remand population.

Thank you for the opportunity to comment on this reference. Should I be able to assist the Council further, please do not hesitate to contact my office.

Yours sincerely,

Judge Graeme Henson
Chief Magistrate