



POLICE ASSOCIATION OF NEW SOUTH WALES

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The Chair
Sentencing Council
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Dear Council Members

Please accept a copy of the Police Association of New South Wales (PANSW) submission regarding the consideration of additional categories for which an accused must 'show cause' before being granted bail.

The Police Association of NSW thanks the Council for the opportunity to make a submission and looks forward to the release of the final Report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Weber', with a horizontal line extending to the right.

SCOTT WEBER
President

Police Association of NSW



**Police Association of NSW Submission regarding
suggested additions to the categories of offences for
which the accused must 'show cause' before Bail can be
granted**

October 2014

Version Control

Purpose

The purpose of this document is to provide to the Sentencing Council, the Police Association of New South Wales submission to its consideration of suggested additions to categories of offences for which the accused must 'show cause' before bail can be granted.

Document Control

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Police Association of New South Wales

Submission to the New South Wales Sentencing Council

Bail - Additional show cause offences

When a person is accused of committing a serious indictable offence while subject to conditional liberty, it demonstrates a disregard for the trust that the courts placed in them when they were first sentenced to some form of conditional liberty; and they should not be given that trust again lightly. This issue is relevant not only if a person is accused of committing a serious indictable offence while on bail or parole; it is equally as relevant when the person was subject to a good behaviour bond, intervention program order, intensive correction order, serving a sentence but not in custody, or while in custody.

The Bail Amendment Bill 2014 will make a serious indictable offence, committed while the accused is on bail or on parole, a show cause offence¹. The Police Association of NSW (PANSW) believes that when seeking bail, a person accused of committing a serious indictable offence while subject to conditional liberty *of all forms*, should be required to show cause why his or her detention is not justified. The PANSW seeks an addition to the Bail Amendment Bill, such that subsection 16B(1)(h), read as follows:

(1) For the purposes of this Act, each of the following offences is a show cause offence:

...

(h) a serious indictable offence that is committed by an accused person:

- (i) while on bail, or
- (ii) while on parole,
- (iii) while subject to a good behaviour bond or an intervention program order, intensive correction order**
- (iv) while serving a sentence but not in custody,**
- (v) while in custody**

Under the current wording, persons accused of committing a serious indictable offence while on bail or parole would be required to show cause why their detention would not be justified, while an accused subject to other forms of conditional liberty would not be subject to the same requirement. The PANSW does not see any reason to treat these forms of conditional liberty differently under the Bail Act, as in any of those circumstances the accused may have breached the trust shown to them by granting conditional liberty. They should not receive that same trust again unless they can show cause. Nor is there any reason why a person accused of committing a serious indictable offence while in prison should not be subject to this requirement, while a person on bail or parole should be.

The Bail Act 1978 was consistent in its treatment of these forms of conditional liberty or custody; subsection 9B (1) created an exception to the presumption in favour of bail "if, at the time the offence is alleged to have been committed, the person, in connection with any other offence:

¹ Bail Amendment Bill 2014, s16B(1)(h).

- (a) was at liberty on bail, or
- (b) was on parole, or
- (c) was serving a sentence but was not in custody, or
- (d) was subject to a good behaviour bond or an intervention program order, or
- (e) was in custody.”

This exception was created by the Bail Amendment (Repeat Offenders) Act 2002. This 2002 Amendment was a response to the rate of offenders failing to appear before the courts. A BOCSAR study had found that 14.6% of Local Court defendants failed to appear and a warrant for their arrest was issued. Rates of failure to appear were highest for persons with prior convictions and multiple concurrent offences². The 2002 Amendment therefore created the exception for:

- those on conditional liberty at the time the offence was alleged to have been committed,
- those previously convicted of the offence of failing to appear, and
- those accused of an indictable offence when they had previously been convicted of an indictable offence.³

These amendments were aimed at reducing access to bail for certain repeat offenders. Another BOCSAR study assessed the impact of the Amendment. It made the following finding:

The overall rate of absconding in the Local Court has therefore fallen by 18.4 per cent. Absconding is less common among defendants appearing in the Higher Courts but the fall in absconding has been much greater, with the rate of failure to appear virtually halving since the changes to bail laws came into effect.⁴

The PANSW acknowledges that under the old Bail Act, this was an exception to the presumption in favour of bail, and not a presumption against bail. Including these categories in the ‘show cause offences’ list under the new bail system would therefore go further than the old bail system. However, the PANSW believes this is still appropriate. Firstly, the amendment being considered for the new bail system relates only to ‘serious indictable offences’ while on conditional liberty. The previous Bail Act was broader, creating the exception for any offence dealt with while on conditional liberty, and therefore only created an exception to the presumption for bail and not a presumption against it. The narrower application to serious indictable offences justifies the inclusion in the ‘show cause’ category.

Secondly, the Bail Amendment Bill has already acknowledged that serious indictable offences while on bail or parole should be a show cause offence. In the 2nd Reading Speech for the Bill, the Hon. Brad Hazzard stated that:

² Chilvers, Allen & Doak (2002) Absconding on Bail, Bulletin – Contemporary Issues in Crime and Justice No. 68, NSW Bureau of Crime Statistics and Research, cited by Jacqueline Fitzgerald and Don Weatherburn (2004) The impact of the Bail Amendment (Repeat Offenders) Act 2002 Bulletin – Contemporary Issues in Crime and Justice No. 83, NSW Bureau of Crime Statistics and Research.

³ Bail Amendment (Repeat Offenders) Act 2002, s9B.

⁴ Jacqueline Fitzgerald and Don Weatherburn (2004) The impact of the Bail Amendment (Repeat Offenders) Act 2002 Bulletin – Contemporary Issues in Crime and Justice No. 83, NSW Bureau of Crime Statistics and Research.

“In recommending which offences the show cause requirement should apply to, the review considered the potential consequences for the community and criminal justice system if the risk posed by a person charged with that type of offence were to materialise. The show cause categories therefore apply to those offences that involve a significant risk to the community.”⁵

Section 16B(1)(h) has been included in the Bill because those who offend while on bail or parole pose a significant risk to the community and should not be trusted with conditional liberty again. The same applies to other forms of conditional liberty, and so the PANSW sees no reason to treat other forms of conditional liberty differently.

Offences while on conditional liberty or in custody

It is not uncommon for offences to be committed whilst on a good behaviour bond. In 2011, the NSW Sentencing Council reported on the use of good behaviour bonds and non-conviction orders. It reported that, in 2008,

- of those offenders who received a s9 bond, 22.1% had reoffended before the expiry of the bond, and
- of those offenders receiving a s10 bond, 7.7% reoffended before the expiry of the bond.⁶

Offences committed in custody are not uncommon either. Statistics reported by the NSW Bureau of Crime Statistics and Research provide the number of offences committed at “Law Enforcement premises”, which includes Police stations, detention centres and courts. The number of offences reported on these premises for 2013 included⁷:

- Assault: 884
- Sexual offences: 51
- Malicious damage to property: 937
- Harassment, threatening behaviour and private nuisance: 669
- Receiving or handling stolen goods: 135
- Possession and/or use of cannabis: 518
- Prohibited and regulated weapons offences: 266

NSW Corrective Services provides the rate of assaults committed by the inmate population. For 2012-13, this was⁸:

- Serious assault on officer: 0.01 per 100 prisoners
- Assault on officer: 0.58 per 100 prisoners
- Serious assault on other prisoner: 0.28 per 100 prisoners
- Assault on other prisoner: 14.86 per 100 prisoners

⁵ The Hon. Brad Hazzard (Wakehurst—Attorney General, and Minister for Justice) Bail Amendment Bill 2014 2nd Reading Speech.

⁶ Sentencing Council, Good Behaviour Bonds and Non-Conviction Orders: A report of the NSW Sentencing Council, Attorney General & Justice, September 2011, para [3.52]–[3.53].

⁷ NSW Bureau of Crime Statistics and Research, Online Data Tools, Crimes by type of place.

⁸ Department of Attorney General and Justice 2012-13 Annual Report, p50.

Whilst these sources do not measure the amount of *serious indictable* offences committed whilst subject to a bond or in custody, it does demonstrate that offending whilst subject to a bond or in custody is not uncommon.

In regards to serious indictable offences that were committed whilst subject to conditional liberty, there have been a number of high profile cases that would potentially not fall within the current wording of s16B under the Bill:

- Kieran Loveridge committed manslaughter, assault occasioning actual bodily harm, and 3 counts of assault. He did so while under probation on the condition of good behaviour, imposed for the previous charge of assault occasioning actual bodily harm.⁹
- David Wootton committed the offence of breaking and entering a dwelling and committing a serious indictable offence (robbery, with the circumstance of aggravation being that he was armed with a .22 pump-action long rifle). He did so while subject to a s9 bond for offences of using a carriage service to threaten serious harm and common assault¹⁰.
- Daniel James Robinson committed the offence of breaking and entering a dwelling house, committing larceny therein, in circumstances of “special aggravation”. He did so while subject to a s9 bond imposed for assault.¹¹
- Ray Tuki participated in a criminal group, assisted persons who had committed armed robbery, and possessed an offensive weapon. He did so while subject to a good behaviour bond, and while on conditional bail.¹²
- Sean Andrew Duncombe inflicted grievous bodily harm with intent to cause grievous bodily harm. He did so while subject to a suspended sentence of nine months imprisonment for destroying or damaging property, and a sentence of nine months periodic detention following call-up for break, enter and steal.¹³
- Desmond Jeffrey Currie committed 2 counts of aggravated sexual intercourse without consent, and one count of indecent assault. He did so while subject to conditional liberty. He had previously committed: eight counts of aggravated sexual intercourse without consent, 47 break and enter, stealing, receiving or other property-related crimes, three offences involving assault; 41 driving or motor vehicle-related offences, including dangerous driving causing death for which a sentence of imprisonment was imposed, and eight drug-related offences.¹⁴

These cases represent serious offences, by repeat offenders. In many cases the community would consider it abhorrent for them to be released into the community on bail when accused of another serious indictable offence. Accused persons of this sort should be required to show cause why his or her detention is not justified if they are seeking bail.

⁹ R v Loveridge [2014] NSWCCA 120.

¹⁰ David Wootton v R [2014] NSWCCA 86.

¹¹ R v Daniel James Robinson [2014] NSWCCA 12.

¹² R v Tuki (No 4) [2013] NSWSC 1864.

¹³ Sean Andrew Duncombe v R [2013] NSWCCA 271.

¹⁴ Currie v R [2013] NSWCCA 267.