



CDPP

Australia's Federal Prosecution Service

Commonwealth Director
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NSW Law Reform Commission
Locked Bag 5000
PARRAMATTA NSW 2124

By email: nsw-lrc@justice.nsw.gov.au

Dear Sir / Madam,

Review of Bail: “show cause” offences

Thank you for the opportunity to make a submission to the review by the NSW Law Reform Commission into aspects of the *Bail Act 2013* (NSW) (*Bail Act*). I note that this review has been asked to consider whether the list of firearms and criminal associations offences subject to the “show cause” requirement of the *Bail Act* should be expanded and whether the term “criminal associations” should be defined.

Background and context

The Commonwealth Director of Public Prosecutions (CDPP) is Australia’s federal prosecution service. Although the CDPP prosecutes some NSW State criminal offences, the bulk of prosecutions conducted by the CDPP in NSW arise out of alleged contraventions of Commonwealth law.

To the extent they are not inconsistent with Federal law, NSW laws with respect to the arrest and custody of offenders or persons charged with offences, and the procedure for holding persons to bail, apply by operation of the *Judiciary Act 1903* to persons charged with offences against the laws of the Commonwealth. Accordingly, the *Bail Act* provides the legislative framework for the consideration of any application for bail made by a person charged with or convicted of a federal offence in NSW.

Section 15AA of the *Crimes Act 1914* (Cth) provides that, despite any other law, a bail authority must not grant bail to a person charged with or convicted of certain Commonwealth terrorism and other serious offences unless the bail authority is satisfied that exceptional circumstances exist which justify a grant of bail. These provisions create a right to review any decision to grant bail for such an offence.

Section 15AAA of the *Crimes Act 1914* provides that, despite any other law, a bail authority must not grant bail to a person charged with or convicted of certain Commonwealth child sex

and other serious offences unless the bail authority is satisfied that circumstances exist to justify a grant of bail. These provisions provide a list of relevant matters which a bail authority must take into account when considering any application for bail for such an offence. These provisions also create a right to review any decision to grant bail for such an offence.

Section 15AB of the *Crimes Act 1914* sets out a number of matters which must and must not be taken into account in certain applications for bail by persons charged with or convicted of Commonwealth offences.

Commonwealth firearms offences

In addition to the dangerous weapons offences set out in Part 9.4 of the *Criminal Code* (Cth), other Commonwealth firearms offences exist in section 233BAB of the *Customs Act 1901* (Cth). The *Customs Act 1901* (Cth) creates an offence of importing tier 2 goods which include, inter alia, specified firearms, munitions and military warfare items, including combat vests and body armour. These offences are punishable by a maximum penalty of 10 years when prosecuted on indictment, or 2 years if prosecuted summarily.

Commonwealth criminal associations offences


Part 9.9 of the *Criminal Code* (Cth) sets out Commonwealth criminal associations and organisations offences. These offences carry a maximum penalty of between 3 and 15 years imprisonment. In our experience, these offences are often charged alongside other serious Commonwealth offences.

Questions for review

The nature and number of the firearms offences or criminal association offences to be treated as “show cause” offences under the *Bail Act* is a policy matter for the NSW Government.

The reference to “criminal associations” in s18(1)(g) of the *Bail Act* appears not to have caused CDDP prosecutors any concern or practical difficulty. Whilst the meaning of this phrase seems well understood, it may sometimes be difficult to establish that a person known to the defendant is a criminal associate rather than just an associate. In our view, these difficulties often arise from the state of the evidence rather than a lack of guidance on the meaning of “criminal associations”.

Yours faithfully,

A large black rectangular redaction box covering the signature of Scott Bruckard.

Scott Bruckard
A/g Commonwealth Director of Public Prosecutions