



NSW Law Reform Commission

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**Submission to the NSW Law Reform
on proposed amendments to the Bail Act 2013**

This document is in response to the call for submissions on the proposal to make amendments to the Bail Act 2013 NSW (the Act) seeking comment on the proposed introduction of additional firearm offences as ‘show cause’ offences and including a definition of criminal associations into the Act.

Acknowledgments

We acknowledge the Traditional Owners of the lands on which we work across NSW and on which we live. We pay respect to Elders past, present and emerging. Is, was and always will be Aboriginal land.

Introduction: Illawarra Legal Centre

Illawarra Legal Centre (ILC) is an independent Community Legal Centre (CLC), funded by State and Federal Governments to provide a comprehensive range of free legal services to residents of the Illawarra who experience social and economic disadvantage.

ILC offers a range of services to people who suffer disadvantage in the community. ILC is located in Warrawong, within the Illawarra region, south of Sydney. We provide free legal advice and assistance across the local government areas of Wollongong, Shellharbour and Kiama. In addition to these areas, our Tenants Service & Welfare Rights Service reach as far as Wingecarribee, Shoalhaven, Eurobodalla and Bega Valley. The Centre was established in 1985 and is part of a national network of over 175 CLCs. As a CLC, ILC prioritises assistance to the most vulnerable members of our community, with particular emphasis on working with people living with economic and social disadvantage.

While we do not work predominantly in the criminal court system, we do run a Children's Court Assistance Scheme and advise and occasionally represent people in minor criminal matters when we consider that a person is at significant disadvantage, cannot afford alternative legal representation and is not eligible for Legal Aid. The Centre also does specialist work assisting vulnerable woman who have been subject to domestic violence.

Now with the increase of domestic violence and the legislative reform into coercive control to be included in the Crimes Act NSW our centre is at the forefront in advising women leaving domestic violence relationships after being exposed to partners involved in criminal associations and serious criminal activities.

Notably, the report by the NSW Bureau of Crime Statistics and Research (BOCSAR) has found that 17% of people accessing a core disability support were victims of a recorded crime in NSW between 2014-2018; 6.5% experienced a violent incident and 4.4% experienced a domestic violence-related crime. Aboriginal women with disability were found to be particularly vulnerable to violent crime with 18% experiencing a violent crime during this 5-year period.

For example, a young aboriginal female with disabilities became homeless and found others on the street similar to her circumstances and was quickly introduced to drugs to help her deal with everyday life and her problems. She soon became addicted to and reliant on drugs. She then got asked to participate in serious crime for promise of payment of drugs. She then found herself in fulltime custody

for a serious crime involving firearms however she did not fully understand how she got involved in the crime.

The recent statistical information is that there has been no increase in firearm offences except in targeted areas of criminal organisations. We therefore err on the side of caution and submit there should be no further additions of firearms offences to the show cause test.

If any amendments are to be made in the Act then criminal associations should be defined in the Act so as not to confuse it with unintended relationships, particularly people with disabilities. Any definition will need to be well-drafted to avoid any unintended consequences for individuals or communities.

For example, a 16 year girl who had intellectual disabilities fell in love with a 20 year old male and defied her family by running away with him. He made promises to look after her, marry her and that they would have a good life. She soon learnt he was a part of a criminal organisation. She saw money, drugs and guns in the house and heads about violent crimes he had just committed. She was then told that if she talked about it she would get hurt. Her boyfriend started controlling who she saw, what she wore and where she was allowed to go. She was kept in the house. She was then introduced to drugs and she then found herself being taken to a brothel to work. To the extent she was trapped, she was then made to commit serious crimes by driving getaway cars in fear of being assaulted by her boyfriend. She then managed to escape and she was then arrested as an associate of organised crime and having committing serious crime. She was then given a lengthy sentence with full time custody.

The list of offences relating to criminal associations that are treated as ‘show cause’ offences we submit can be addressed within the existing bail framework by the authorities assessing the seriousness of the offences.

1. Background

Law reform involves the process of changing laws to adapt to the ever changing society. The laws should reflect social values of the majority of the community and any changes to the law should not only recognise the changes taking place in society, but should also reflect the changes that have produced better circumstances for significant portions of society as well as providing protections against harm.

There are competing interests at play with respect to debates about authorities giving bail to offenders of serious crime and community safety. The reform of bail has historically been subject to complex and competing demands. However, notwithstanding perceived community concerns, reforms to the Bail Act

have significant implications for any accused person and the community alike, and so it is imperative that law reform proceeds carefully, with an emphasis on research, evidence, review and due process.

In late 2019, the former Australian Data and Digital Council and Disability Reform Council agreed to pilot the development of a longitudinal National Disability Data Asset (NDDA) with integrated data from the Commonwealth, States and Territories. The pilot aimed to overcome barriers to data use for disability purposes, build and maintain trust between jurisdictions, and with the disability community, and achieve a new scale of de-identified data sharing in Australia. The Pilot program is called the Link National Disability Data Asset Pilot¹.

A new report by the BOCSAR has found that 17% of people accessing a core disability support were victims of a recorded crime in NSW between 2014-2018; 6.5% experienced a violent incident and 4.4% experienced a domestic violence-related crime. Aboriginal women with disability were found to be particularly vulnerable to violent crime with 18% experiencing a violent crime during this 5-year period.

These are the key findings from the Justice Test Case of the National Disability Data Asset pilot. Jointly led by BOCSAR and the Commonwealth Department of Social Services (DSS), the Justice Test Case pilot used State and Commonwealth administrative data collections to identify a cohort of 2.8 million people who received a core disability support and/or who had contact with the NSW criminal justice system as a victim or as an offender, in NSW over a 10-year period.

BOCSAR found that, relative to the total NSW population, people with disability were more than twice as likely to be victims of violent and domestic violence-related crime. People with disability were also more likely to experience violent and DV-related re-victimisation within 12 months compared with victims with no known disability. Generally, those with cognitive and/or psychosocial disabilities were at greater risk of re-victimisation.

The study also found that police action rates were lower for incidents involving victims with disability, especially for violent incidents. The odds of a person being proceeded against for a violent offence involving a person with disability were 17% lower than for a violent incident involving a person without disability. Police action rates were particularly low where the victim had both cognitive and physical disabilities. Relative to the total population, rates of victimisation and offending were higher in the disability cohort for all offence types. Individuals in the disability cohort were more than twice as likely

¹ People with disability twice as likely to be victims of violent crime - https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2022/mr-NDDA-pilot-CJB252.aspx

to be victims of violent and domestic violence related crime and were around three times as likely to have committed violent and property offences, compared with the total population.²

Introduction of Criminal Organisations Legislation

Police have been using the powers provided under the Restricted Premises Act, which was formerly known as the Disorderly Houses Act, to target outlaw bikie clubhouses for the past decade.

Consorting laws were introduced by then Premier Barry O’Farrell in 2012 as part of a suite of new laws in response to a spate of drive-by shootings in western Sydney. The laws were intended to be used to crack down on criminal organisations including the Brothers 4 Life gang.³

These powers were strengthened in 2013 to enhance the ability of Police to combat firearms-related and organised crime, with a focus on the activities of outlaw bikie gangs.

These powers are on top of a range of other tough measures available to Police to target outlaw bikie crime, including those set out below.

- Serious Crime Prevention Orders – to impose restrictions on people to disrupt their involvement in serious criminal activity.
- Public Safety Orders – to prevent people from attending places or events where they are expected to engage in violence or present a serious threat to public safety or security.
- Consorting laws – which carry a maximum three year prison term for people who continue to associate with convicted offenders after receiving an official warning from Police.
- Unexplained wealth laws – which place a burden on suspects to prove their income was lawfully acquired.
- Firearm Prohibition Orders – allowing Police to search, without warrant, premises or vehicles occupied by anyone subjected to the order to ensure compliance.

In a NSW Police Media Release on 10 September 2018 the Police commissioner Mick Fuller said:

“Strike Force Raptor has dismantled numerous bikie-led drug and organised crime operations and is continuing to crack down on outlaw bikie violence”

² Trends in rates of victimisation and offending for people with disability in NSW - Clare Ringland, Stewart Boiteux and Suzanne Poynton

³ Motorcycle gang laws overwhelmingly target Indigenous Australians, police watchdog reveals- <https://www.theguardian.com/australia-news/2020/dec/08/motorcycle-gang-laws-overwhelmingly-target-indigenous-australians-police-watchdog-reveals>

In April 2018, NSW Police successfully applied to the Supreme Court for Serious Crime Prevention Orders against 10 high-ranking members of the Finks and Nomads outlaw motorcycle gangs who were linked to gang-related violence across the Lower Hunter region⁴.

A recent study by Morgan, Dowling and Voce (2020) used national Australian data on the criminal histories of 5,669 known OMCG members from 39 gangs, and identified 29 percent of the gangs as criminal organisations based upon the extent to which both low-level and executive members were involved in organised criminal activity⁵.

Outlaw motorcycle gangs are "one of the most high-profile manifestations of organised crime" with 85 per cent of gang members apprehended for crime before turning 33.

A study by the Australian Institute of Criminology examines the criminal histories of more than 5600 known outlaw motorcycle gang members from 39 gangs across Australia.

Of the 39 clubs examined, it identified 475 chapters or regional branches, while three quarters of all gangs were linked to recent organised crime offending.

Seventy-eight percent of Outlaw Motorcycle Gang (OMCG) members across all three cohorts had at least one recorded offence between the ages of 12 and 24. The majority of offenders did not desist but continued offending at a steady rate into adulthood⁶.

The Australian Criminal Intelligence Commission (ACIC) describes bikie gangs as "one of the most high-profile manifestations of organised crime, with an active presence in all Australian states and territories."⁷

The National Task Force Morpheus (Morpheus)—a joint law enforcement initiative through which all Australian state and territory police, the Australian Federal Police National Anti-Gangs Squad, other Australian Government partners and New Zealand Police collaboratively target the highest threat OMCGs impacting Australia.

⁴ NSW Media Release - New laws to tackle bikie gangs Published: 10 Sep 2018 <https://www.nsw.gov.au/media-releases/new-laws-to-tackle-bikie-gangs>

⁵ Australian Institute of Criminology - Early-career offending trajectories among outlaw motorcycle gang members Report April 2021 https://www.aic.gov.au/sites/default/files/2021-04/ti625_early-career_offending_trajectories_among_omcg_members.pdf

⁶ Australian Institute of Criminology - Early-career offending trajectories among outlaw motorcycle gang members Report April 2021 https://www.aic.gov.au/sites/default/files/2021-04/ti625_early-career_offending_trajectories_among_omcg_members.pdf

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In 2019–20, the Task Force’s achievements included 2,393 arrests, summonses and court attendance notices and 5,590 charges, seizure of 170 firearms and \$4.3 million in cash.⁸

2. History of the Bail Act 2014

Bail Laws were commenced in 1978 and there was an assumption for bail for all imprisonable sentences. A high-profile case resulted in the presumption against bail in an armed robbery case and continuous amendments have been enacted since then.

In 2013 it became the *Bail Act (NSW) 2013* and some months after this enactment and a number of amendments occurred which saw the tightening of the new laws. These 2014 changes included a list of offences whereby bail is to be refused unless the accused can ‘show cause’ for it not to be.

Expanding the ‘show cause’ category to include further firearms can only be fully considered in light of a broader analysis of concerns about the impact of any amendments of the Act.

Following the Bail Amendment Bill 2014, for a substantial list of serious offences, the accused must first show cause why bail should not be refused. The current list of show cause offences contained in s16B includes:

- offences punishable by life imprisonment
- child sexual assault offences
- repeat personal violence offences
- drugs offences involving commercial quantities.

As set out in s18, of the Bail Act 2013 the matters to be considered as part of “an assessment of bail” already cover all factual circumstances that it may be desirable to raise on a bail application when dealing with alleged repeat offenders. Specifically, in s18:

A bail authority is to consider the following matters, and only the following matters, in an assessment of bail concerns under this Division—

⁸ Australian Criminal Intelligence Commission - National Task Force Morpheus - <https://www.acic.gov.au/about/task-forces/national-task-force-morpheus>

- (a) the accused person's background, including criminal history, circumstances and community ties,
- (b) the nature and seriousness of the offence, ...
- (d) whether the accused person has a history of violence, ...
- (f) whether the accused person has a history of compliance or non-compliance with bail acknowledgments, bail conditions, apprehended violence orders, parole orders or ... good behaviour bonds, ...
- (i) the likelihood of a custodial sentence being imposed if the accused person is convicted of the offence.

Section 18 sets out the factors that affect the common law right to be at liberty. Section 17(2)(a) deals with concerns with failure to appear. Section 17(2)(b) and (c) deal with concerns that the person will commit a serious offence and/or the accused person will endanger the safety of victims or the community. Section 18(1)(p) can address serious concerns that the accused person will commit a serious offence or endanger the victims or community but there are limits under section 20A.

Summoning up the above the Act has significant and substantive mechanisms already in the legislation for the authority to assess persons if there is an unacceptable risk to the community to be released on bail.

3. Whether the existing list of firearms offences treated as 'show cause' offences under the *Bail Act 2013* (NSW) should be expanded.

Firstly, some firearms offences which are already subject to the 'show cause' test, are:

- Possessing an unregistered pistol or prohibited firearm (as opposed to other firearms) in a public place without authorisation (*Crimes Act*, s **93I(2)-(3)**).
- Giving possession of a pistol or prohibited firearm (as opposed to other firearms) or part to an unauthorised person (*Firearms Act*, s **50B**).
- Possessing or using a military-style weapon (as opposed to other prohibited weapons) (*Weapons Prohibition Act*, s **7**).
- Selling a military-style weapon (as opposed to other prohibited weapons) without the buyer holding a permit and the seller either seeing that permit or knowing that the buyer is authorised (*Weapons Prohibition Act*, s **23A(2)**).

Additionally indictable offences involving the unlawful possession of a pistol or prohibited firearm in a private place, as opposed to a public place, are not included as ‘show cause’ offences (*Bail Act*, s**16B(1)(d)(ii)**).

Some specific examples of offences that are not ‘show cause’ offences include:

- Possessing an unregistered firearm (which is not a pistol or prohibited firearm) in a public place without authorisation (*Crimes Act*, s **93I(1)**).
- Giving possession of a firearm (which is not a pistol or prohibited firearm) or firearm part to an unauthorised person (*Firearms Act*, s **50B**).
- Possessing or using a prohibited weapon (other than a military-style weapon) (*Weapons Prohibition Act*, s **7**).
- Selling a prohibited weapon (which is not a military-style weapon) without the buyer holding a permit and the seller either seeing that permit or knowing that the buyer is authorised (*Weapons Prohibition Act*, s **23A(1)**).
- Offences relating to cross-border firearms trafficking and international firearms trafficking under **Part 9.4** of the Commonwealth Criminal Code.

According to the Bureau of Crime Statistics and Research NSW, NSW Police record four types of non-fatal shooting offence. These are: shoot with intent to murder, shoot with intent other than to murder, discharge firearm into premises and unlawfully discharge firearm. Below are some general descriptions of these four incident types which are taken from police descriptions of a sample of these incidents:

- Discharge firearm into premises - in most of these incidents gunshots were fired into a residential premises from the street. It appears that the intention is usually to threaten rather than to physically harm residents. Some of these are shootings where the firearm is discharged from a vehicle but many gunshots are also fired by an offender on foot. Police reports suggest that there is usually a pre-existing relationship, often of a criminal nature, between offender and victim. Some residences, however, appear to be mistakenly targeted such as where shots are fired into the former residence of a known offender. Often residents are present at the time of the shooting and this sometimes includes family members and children.
- Unlawfully discharge firearm - in most of these incidents gunshots are fired with the apparent intention to threaten or frighten the victim (similar to discharge firearm into premises). This offence also includes (but is not limited to) shootings where the firearm is discharged from a vehicle. Frequently gunshots are fired into the air, towards a dwelling, into parked cars or in the vicinity of (but not necessarily at) a victim. In most cases the

victim is present to hear or see the gunshot. This category also includes a small number of cases where people are either accidentally shot, shot in ambiguous circumstances or where an animal is shot. It appears that few of these incidents are for the sole purpose of maliciously damaging property as they tend to involve an element of menace.

- Shoot with intent offences (shoot with intent to murder and shoot with intent other than to murder) – in most of these incidents the victim is deliberately shot. The victims of these offences are overwhelmingly male and many do not wish to cooperate with police investigations. Many incidents are apparently planned attacks against known individuals where the victim is approached and shot at their residence or in the street with the intention to maim (as evidenced by injuries to the legs or knee caps) or kill (injuries to the chest or head). In other incidents it appears that the shooting is not premeditated and it arises in the course of the commission of another offence or there a dispute escalates and one of the involved parties has a firearm.

As evidenced below in Table 1⁹ from the Bureau of Crime Statistics and Research NSW (BOCSAR) there is a downturn between June 2012 to June 2022 in relation to Firearm offences.

Table 1.

NSW Recorded Crime Statistics July 2012-June 2022
Number of and trend^a in incidents of selected non-fatal shooting offences recorded by the NSW Police Force with the 2 Year Trend & annual % change, the 5 Year Trend & average annual % change and the 10 Year Trend & average annual % change for the Greater Sydney Statistical Area & NSW

Region	Offence type	Jul 2012 - Jun 2013 Number of incidents	Jul 2013 - Jun 2014 Number of incidents	Jul 2014 - Jun 2015 Number of incidents	Jul 2015 - Jun 2016 Number of incidents	Jul 2016 - Jun 2017 Number of incidents	Jul 2017 - Jun 2018 Number of incidents	Jul 2018 - Jun 2019 Number of incidents	Jul 2019 - Jun 2020 Number of incidents	Jul 2020 - Jun 2021 Number of incidents	Jul 2021 - Jun 2022 Number of incidents	2 year trend and annual percent change (July 2020-June 2022)	5 year trend and average annual percent change (July 2017-June 2022)	10 year trend and average annual percent change (July 2012-June 2022)
Greater Sydney Statistical Area	Assault - Shoot With Intent Other Than To Murder	53	37	35	24	28	18	21	28	22	18	nc	nc	nc
Greater Sydney Statistical Area	Firearms Legislation - Discharge Firearm Into Premises	57	48	50	38	35	38	23	36	38	23	Stable	Stable	Down 9.6%
Greater Sydney Statistical Area	Firearms Legislation - Unlawfully Discharge Firearm	90	71	50	48	37	44	30	45	44	27	Down 38.6%	Stable	Down 12.5%
Greater Sydney Statistical Area	Homicide - Shoot With Intent To Murder	14	18	4	7	6	6	4	12	10	4	nc	nc	nc
Greater Sydney Statistical Area	Total non fatal shootings	214	174	139	117	106	106	78	121	114	72	Down 36.8%	Stable	Down 11.4%
NSW	Assault - Shoot With Intent Other Than To Murder	58	46	42	36	43	32	33	39	42	33	Stable	Stable	Down 6.1%
NSW	Firearms Legislation - Discharge Firearm Into Premises	70	66	64	51	54	70	32	51	59	37	Stable	Stable	Down 6.8%
NSW	Firearms Legislation - Unlawfully Discharge Firearm	154	134	115	115	96	118	97	119	116	68	Down 41.4%	Down 12.9%	Down 8.7%
NSW	Homicide - Shoot With Intent To Murder	18	19	10	10	9	8	9	13	14	6	nc	nc	nc
NSW	Total non fatal shootings	300	265	231	212	202	228	171	222	231	144	Stable	Stable	Down 7.8%

^a Shows the results of a statistical test for a significant upward or downward trend in the monthly number of criminal incidents recorded. Where the trend is significant (i.e. p < .05) the percentage change in the number of incidents between the last 12-month period and the preceding 12-month period is shown. Significant upward trends are highlighted in red; significant downward trends are highlighted in yellow. 'Stable' indicates there was no significant upward or downward trend and 'nc' indicates that the number of incidents recorded was too small for a reliable trend test to be performed.

Source: NSW Bureau of Crime Statistics and Research, reference Non_Fatal_Shootings2202.

Please retain this reference number for future correspondence.

NOTE: Data sourced from the NSW Bureau of Crime Statistics and Research must be acknowledged in any document (electronic or otherwise) containing that data.

The acknowledgement should take the form of 'Source: NSW Bureau of Crime Statistics and Research'.

For information about recorded crime data please see our 'Using crime statistics' webpage.

Notably a mid 2020 BOCSAR Report found in their key findings:

From 15 March 2020 to 10 May the NSW prison population fell sharply, declining by 1,508 people or 10.7%.

⁹ https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Non-fatal-shootings-statistics-in-NSW.aspx

Most of the decline occurred in the remand population (down 1,049 people or 70% of the total decline). The sentenced prisoner population fell by 559 people (30% of the decline).

The remand population fell due to both a decrease in remand receptions and an increase in remand discharges. Remand receptions declined for two reasons. Firstly, we saw a short-term decline in the number of Court Attendance Notices issued by Police (down 10% in the 4-weeks from 15 March). Secondly, police and court bail refusal rates fell from mid-March to the end of May (police bail refusal fell 14% and court bail refusal fell 26% respectively). Remand discharges increased due to the number of remandees being released to bail nearly doubling in April 2020.

The decline in sentenced prisoners occurred due to a drop in sentenced custody receptions associated with reduced numbers of court finalisations.¹⁰

4. Whether further legislative guidance should be provided on the meaning of ‘criminal associations’ under the *Bail Act 2013* (NSW).

The NSW Law Reform Commission has asked for submissions because "Criminal associations" are not defined in the *Bail Act*. They have asked for submissions as to whether it should be.

The wording ‘criminal group’ is already attached to some firearm offences.

Section 93S provides the definition of a Criminal Group as follows:

- (1) "criminal group" **means a group of 3 or more people who have as their objective or one of their objectives--**
 - (a) obtaining material benefits from conduct that constitutes a serious indictable offence, or
 - (b) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence, or
 - (c) committing serious violence offences, or
 - (d) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence.

- (2) A group of people is capable of being a criminal group for the purposes of this Division whether or not—

¹⁰ The impact of COVID-19 measures on the NSW adult prison population
https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/BB149-The-impact-of-COVID-19-measures-on-the-NSW-adult-prison-population.aspx.

- (a) any of them are subordinates or employees of others, or
- (b) only some of the people involved in the group are involved in planning, organising or carrying out any particular activity, or
- (c) its membership changes from time to time.

In the Crimes Act – Part 3A – Division 5 – ‘Criminal Groups’ are involved in the following offences;

- S. 93GA(1B) – A person must not fire a firearm at a dwelling-house or other building with reckless disregard for the safety of any person in the course of an organised criminal activity. Maximum penalty – 16 years imprisonment.
- S.93T(1) – A person must not participate in a criminal group. A person participates in a criminal group if that person knows or ought reasonably to know that the group is a criminal group, and knows, or ought reasonably to know, that his or her participation in that group contributes to the occurrence of any criminal activity. Maximum penalty – 5 years imprisonment.
- S. 93T(1A) – A person must not participate in a criminal group by directing any of the group’s activities. The person must know the group is a criminal group, and know or be reckless as to whether his/her participation contributes to the occurrence of any criminal activity. Maximum penalty – 10 years imprisonment.
- S. 93T(4A) – A person must not participate in a criminal group whose activities are organised and on-going by directing any of the group’s activities if that person knows the group is a criminal group, and knows, or is reckless as to whether, that participation contributes to the occurrence of any criminal activity. Maximum penalty – 15 years imprisonment.
- S. 93TA(1) – A person must not receive from a criminal group a material benefit derived from the group’s criminal activities. The person must know the group is a criminal group, and know, or be reckless as to whether, the material benefit is derived from the group’s criminal activities. Maximum penalty – 5 years imprisonment.
- S. 93TA(2) “Derived” means “derived or realised, or substantially derived or realised, directly or indirectly” from the criminal activities of a group.

The Second Reading Speech of the Act which introduced s 18(1)(g) observed that an accused person's links to organised crime networks can affect their level of risk, such as by giving them the means to flee the jurisdiction or continue criminal activity.

On one hand, it may be desirable to leave this expression undefined in the interests of flexibility. However, left undefined, there is a risk it could be applied to relationships other than those involving organised crime.

Any definition will need to be well-drafted to avoid any unintended consequences for individuals or communities. Another relevant question is whether any further safeguards should apply to the definition to ensure the law serves its intended purpose and does not overreach.

5. Whether the list of offences relating to criminal associations that are treated as 'show cause' offences under the *Bail Act 2013* (NSW) should be expanded.

Some offences related to criminal associations are not currently "show cause" offences. For instance:

- Offences outlined in Part 9.9 of the Commonwealth Criminal Code, which includes offences relating to criminal associations and organisations
- Participating in a criminal group (*Crimes Act*, s 93T)
- Habitually consorting with convicted offenders (*Crimes Act*, s 93X)
- Associating between members of declared criminal organisations which are subject to interim control orders or control orders (*Crimes (Criminal Organisations Control) Act 2012* (NSW), s 26)

The issue is whether any criminal association offences should be added to the "show cause" list to target, for instance, activities linked to organised crime.

Some may argue such reforms are required in the interests of community safety. Another view is these concerns can be addressed within the existing bail framework, as bail authorities are required to consider the seriousness of the offence when assessing bail concerns.

Without clear evidence that the risk of criminal associations offences not being treated as a show cause offence under the Act is failing to address bail concerns there is no justification for encroaching on the presumption of innocence and right to be at liberty.

6. Conclusion

We firstly note that our position is not against any changes to the Bail Act, it is a position of caution. Caution that lack of consultation and careful drafting will lead to unintended consequences adversely affecting some victim-survivors and vulnerable people with disabilities. Caution that lack of proper training, education, resources and cultural change will lead to ineffective implementation of the legislation and risk further harm to some defendants.

We must carefully consider the reality of how proposed legislation might operate including the potential impact on the vulnerable and disadvantaged members of the community, who are likely to be disproportionately affected by unintended consequences of such legislation.

In the absence of a broader inquiry into whether the Bail Act requires further amendment, we urge the following:

1. Given the recent statistical information there has been no increase in firearm offences except in targeted areas of criminal organisations, we submit there should be no further addition of firearms offences to the show cause test.
2. If any amendments are to be made to the Act then Criminal Associations should be defined in the Act so as not to allow confusion with unintended relationships particularly people with disabilities. Any definition will need to be well-drafted to avoid any unintended consequences for individuals or communities.
3. The list of offences relating to criminal associations that are treated as ‘show cause’ offences we submit can be addressed within the existing bail framework by the authorities assessing the seriousness of the offences.

We thank you for considering our submissions. We would be pleased to provide further information or clarification with regard to any of these submissions.