



Mark Speakman
Attorney General

MEDIA STATEMENT

Tuesday, 16 August 2022

BAIL ACT MONITORING GROUP REPORTS

Today I released recommendations by the Bail Act Monitoring Group (BAMG) and sought the NSW Law Reform Commission's advice on three of those recommendations.

In November 2021, I requested the BAMG review eight decisions and to advise on what, if any, reforms to the *Bail Act 2013* might be necessary or appropriate.

I received the BAMG's final report on 28 July 2022. The BAMG made six recommendations.

Three of the BAMG's recommendations relate to giving further consideration to expanding the list of 'show cause' offences concerning firearms and criminal associations.

If a person is charged with a 'show cause' offence, police and the courts must refuse bail unless the accused 'shows cause' why their detention is not justified.

Show cause offences are set out in [section 16B](#) of the *Bail Act 2013*. They already include an offence punishable by life imprisonment and serious indictable offences involving the use of a firearm, amongst others.

I have asked the NSW Law Reform Commission to review and report on the discrete aspects of the *Bail Act 2013* identified by the BAMG for further consideration. I anticipate receiving the Commission's report in time for any legislative response to occur this year.

There is no formal requirement for the NSW Government to release the BAMG's report. I have decided nevertheless to table the BAMG's executive summary and recommendations because it is important that our community and the Parliament can see how the State's bail laws are operating in practice. The body of the final report has not been released at this time as, among other things, it contains sensitive operational details.

I thank the BAMG for its work on this report over the last nine months. The BAMG comprises representatives from the courts, Legal Aid NSW, the NSW Police Force, Corrective Services NSW, the Bureau of Crime Statistics and Research, Aboriginal Legal Service (NSW/ACT), the Office of the Director of Public Prosecutions, the Department of Communities and Justice and the Department of Premier and Cabinet.

Attached: Executive summary and recommendations of the BAMG final report and the terms of reference for the Law Reform Commission review.

MEDIA: Sue Finn | 0476 871 252



Communities
& Justice

Reference to the Bail Act Monitoring Group

Final Report of the Bail Act Monitoring Group

July 2022

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1. Executive summary

This is a confidential final report from the Bail Act Monitoring Group (**BAMG**) to the Attorney General. The report has been prepared to address a request from the Attorney General that the BAMG review the following bail matters to consider whether any legislative, operational or procedural reforms may be necessary or appropriate (**the review**):

- (i) Mostafa Baluch
- (ii) Salim Hamze
- (iii) Trent Jeske
- (iv) Charbel Attie
- (v) Daniel Middlebrook
- (vi) Stanley Russell
- (vii) Jason Williams
- (viii) Ahmed Karim.

The first six matters were referred by the Attorney General to the BAMG for review in a letter dated 10 November 2021.

The BAMG agreed at a meeting on 18 November 2021 that the matter of Mr Russell should be excluded from the review. The death of Mr Russell occurred in the course of a police operation, and will therefore be subject to a critical incident investigation as well as a mandatory coronial inquest. The BAMG therefore considered it was inappropriate for it to review this matter.

The Attorney General referred the matters of Mr Williams and Mr Karim to the BAMG for review on 23 November 2021.

On 15 December 2021, the BAMG provided the Attorney General with an interim report that provided details of the eight matters and outlined potential issues arising from the first five matters listed above identified by the BAMG for further consideration. This final report is to be read in conjunction with that interim report.

The interim report identified the following issues for exploration in the final report:

- surety and enforcement/bail forfeiture orders
- the use of electronic monitoring (**EM**) as a bail condition
- firearms offences and show cause
- criminal associations
- unplanned arrests and information available at the time of the bail decision
- access to legal advice/brief of evidence in custody
- the procedures of making detention applications and seeking a stay of a release decision, and
- the impacts of COVID-19 on bail decision-making.

On 30 March 2022, the BAMG met to discuss the cases of Mr Karim and Mr Williams. Following that discussion, the BAMG agreed to add two additional issues to the list for consideration in the final report, being:

- the way bail laws provide for consideration of, or operate in relation to, sexual and domestic violence offences, and
- court consideration of the views of victims.

Members of the BAMG were then asked to consider, for each issue:

- (a) whether the way the issue arose in the cases suggests that any reforms are warranted, and
- (b) if so, what legislative, operational or procedural reforms are necessary or appropriate to address the issue.

The BAMG again met to discuss and finalise the review on 11 May 2022 and 19 July 2022.

This final report explores each of the above issues and describes stakeholder views and proposals for reform. Generally, the BAMG has approached its recommendations for reform with caution. Bail laws exist to keep victims and the community safe until criminal proceedings are finalised, while safeguarding the presumption of innocence and general right to be at liberty until a matter is determined by the courts. Keeping that balance right requires ongoing scrutiny of the operation of the law over time, rather than *ad hoc* law reform in response to individual cases that may not represent broader trends.

The NSWPF continues to advocate for the legislative changes it requested as part of the review process, and is of the view that overall the recommendations do not go far enough to address the issues identified through the course of the review.

The BAMG is an operationally focussed group, which was formed to monitor and advise on the operation of the *Bail Act 2013* (**Bail Act**), and assisted with the independent Review of the Bail Act 2013 conducted by former Attorney General John Hatzistergos (**the Hatzistergos review**).

Importantly, the BAMG does not have a role, within the legislative framework, in reviewing the merits of individual bail determinations. This function rests with the judiciary under the processes for stays and further detention and release applications under the Bail Act, as well as the legislative pathways for bail decisions to be reconsidered by higher courts (see 3.8 below).

Further, while the BAMG's operational focus means its role is substantially different from bodies like the NSW Law Reform Commission or the NSW Sentencing Council, it has in the past been consulted on and, at times, recommended amendments to bail laws.

The BAMG also notes that, while data has been sought from BOCSAR to estimate the size of the cohort that may be affected by the reform in some sections of this report, it is difficult to predict the full impact of some of the proposed reforms on the criminal justice system more generally. The NSW Government is currently undertaking an extensive program of work in relation to Closing the Gap and the BAMG notes there is a particular risk that amending bail laws may disproportionately increase the Aboriginal remand population, and impact the Government's capacity to reach Closing the Gap targets.

With the above issues in mind, BAMG members have made the following recommendations for the Attorney General's consideration:

Recommendation 1: The Department of Communities and Justice monitor the progress of the litigation in the enforcement proceedings for the bail forfeiture order in Mr Baluch's matter, and brief the Attorney General and the BAMG if any specific issues arise.

Recommendation 2: The Attorney General note that the NSWPF will put matters related to the making of BFOs, security and enforcement that were beyond the scope of this review on the agenda of a regular meeting of the BAMG for further consideration.

Recommendation 3: The BAMG:

- monitor the effect of the new legislative framework for EM over the coming 12 months
- place EM on the agenda of the BAMG at its final meeting of 2023, and
- report back to the Attorney General on the BAMG members' experience of the new framework.

Recommendation 4: If the Attorney General is minded to pursue reforms to expand the list of firearms offences treated as 'show cause' offences under the Bail Act, the Attorney General provide a reference to the NSW Sentencing Council to consider this reform.

Recommendation 5: The Attorney General request that Department of Communities and Justice conduct further research and consult with stakeholders to determine whether further legislative guidance should be provided on the meaning of 'criminal associations' under the Bail Act.

Recommendation 6: If the Attorney General is minded to pursue reforms to expand the list of offences relating to criminal associations that are treated as 'show cause' offences under the Bail Act, that the Attorney General provide a reference to the NSW Sentencing Council to consider this reform.

Appendix A to this final report provides further detail of the cases under review.

Membership of the BAMG

The following organisations are represented on the BAMG and were consulted on the review:

- Aboriginal Legal Service (NSW/ACT) (**ALS**)
- Bureau of Crime Statistics and Research (**BOCSAR**)
- Children's Court of NSW
- Corrective Services NSW (**CSNSW**)
- Department of Communities and Justice (**DCJ**)
- Department of Premier and Cabinet (**DPC**), including Aboriginal Affairs NSW (**AANSW**)
- District Court of NSW (Court Services representative involved in District Court operations)
- Legal Aid NSW (**LANSW**)
- Local Court of NSW (representative from the Chief Magistrate's Office)
- NSW Police Force (**NSWPF**)
- Office of the NSW Director of Public Prosecutions (**ODPP**)
- Supreme Court of NSW (Registrar representative).



Mark Speakman
Attorney General

The Honourable Tom Bathurst AC QC
Chairperson
NSW Law Reform Commission
Selborne Chambers
Level 6, 174 Phillip Street
SYDNEY NSW 2000

Dear Mr Bathurst

Reference to the NSW Law Reform Commission on discrete aspects of the *Bail Act 2013*

Pursuant to section 10 of the *Law Reform Commission Act 1967*, the NSW Law Reform Commission is asked to review and report on the following discrete aspects of the *Bail Act 2013* (NSW):

1. Whether the existing list of firearms offences treated as ‘show cause’ offences under the *Bail Act 2013* (NSW) should be expanded.
2. Whether further legislative guidance should be provided on the meaning of ‘criminal associations’ under the *Bail Act 2013* (NSW).
3. 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.

I look forward to the NSW Law Reform Commission’s work and contribution to this important area of law.

Yours sincerely

Mark Speakman

16 August 2022