ADDENDUM TO FINAL REPORT OF THE REVIEW OF THE *BAIL ACT 2013*

July 2015

1. This Addendum supplements the final report of the *Review of the Bail Act 2013* and includes a summary of more recent Supreme Court judgments regarding 'show cause' offences.

2. These judgments were not contained in the final report presented to Government.

R v Spedding

3. On 19 June 2015, the matter of *R v Spedding* was determined by the Supreme Court of NSW. Conditional bail was granted.

4. The matter involved five counts of sexual assault and two counts of common assault.

5. Bellew J found that the applicant discharged the obligation to show cause on the basis that it was difficult to accept that the Crown's case was strong. The strength of the Crown's case was analysed in detail, particularly taking into consideration the veracity of evidence and the historical nature of the matter. Further, Bellew J considered that the accused had known that he was under investigation for some months but had made no attempt to flee the jurisdiction, sell his house or wind up his business.

6. Bellew J stated that the question of 'show cause' and that of 'unacceptable risk' are *"separate and distinct considerations"* but that some of the factors may be relied upon in respect of both issues.

7. Having found that that the accused had shown cause, Bellew J went on to consider each of the section 18 factors in determining the accused's level of risk, finding that release on conditional bail was appropriate.

DPP v Campbell [2015] NSWCCA 173

8. This matter involved offences of robbery whilst armed, assault occasioning actual bodily harm, take and drive conveyance without the consent of its owner, and break, enter and commit serious indictable offence.

9. On appeal, the Court of Criminal Appeal refused bail and granted the detention application.

10. The Court considered the following factors when determining show cause: that the respondent had been accepted into a residential rehabilitation program; that he had pleaded guilty to very serious offences; that he had a significant criminal history for a person of his age; his history of failing to appear and of breaching bail; his seeming acceptance that he must be sentenced to a significant term of imprisonment; and his need to appear for sentence in the District Court shortly.

11. On the balance of probabilities, the Court held that the respondent had not shown cause.

***Director of Public Prosecutions v Boatswain* [2015] NSWCCA 185**

12. This matter involved the show cause offence of murder.

13. The applicant in this matter was suffering from terminal liver cancer. Reports provided to the Court showed that the applicant's condition was worsening and that he did not have long to live. Also considered relevant was the fact that the accused was said to be either illiterate or dyslexic, making the obtaining of instructions either challenging and burdensome.[1]

14. RA Hulme J (with whom Hoeben CJ at CL and Johnson J agreed) stated:

> *Whilst the respondent is gravely ill, at this point it is not something that incapacitates him to any significant degree. He had almost daily telephone contact with his wife whilst in gaol with the content of the conversations being concerned with trivial day to day matters; his terminal condition was rarely discussed. The discussion of his daily activities included how he was spending time watching movies and using the gym and recreational yard. Counsel for the respondent conceded that he has no current symptoms that render him incapable of day to day activities.*
>
> *I am satisfied that in the unusual circumstances of this case, particularly having regard to the respondent's grave condition of ill-health with relatively short life expectancy, that there is a strong case made for cause being shown why his detention is not justified.*[2]

15. However, the Court went on to find that the accused presented an unacceptable risk with RA Hulme J stating:

> *[T]here are unacceptable risks of the respondent committing a serious offence and of interfering with witnesses. There is some force in the submission of counsel for the respondent that an awareness of police attention upon him will serve as a disincentive for further offending. However, the practical reality is that police are unlikely to be able to devote around the clock and privacy invasive resources to monitoring everything he might say or do. Moreover, the submission that his experience of custody will serve as a disincentive does not carry as much weight as it usually might in the face of the Crown's contention that "he has nothing to lose".*[3]

16. Bail was refused, although Hulme J left open the reconsideration of the matter if the health of the accused deteriorated to the point of incapacitation.[4]

DPP v Brooks [2015] NSWCCA 190

17. This matter involved the charges of murder and intentional infliction of grievous bodily harm.

18. In refusing bail, the Court of Criminal Appeal stated at [22] that:

> *[T]here is nothing particularly special or unusual in what the respondent has put before the Court. Age, lack of criminal antecedents, ties to the community and strong family support do not amount to showing cause. This is particularly so when one has regard to the seriousness*

[1] *Director of Public Prosecutions v Boatswain* [2015] NSWCCA 185 at [24].
[2] Ibid at [25]-[26].
[3] Ibid at [29].
[4] Ibid at [30].

of the offence with which the respondent has been charged and the apparent strength of the Crown case. In view of the conclusion which we have reached, it is not necessary to consider the question of unacceptable risk.

19. The Court concluded that on the balance of probabilities, cause had not been shown and detention was justified. The Court in these circumstances did not consider the unacceptable risk test.

20. On the facts of the case, the Court appeared to endorse the need for" special or unusual circumstances" in meeting the show cause requirement in a context that focussed on the nature and circumstances of the alleged offending, the seriousness of the charge and the strength of the prosecution case.