

# The Hawi Bail Decision

R v Hawi [2014] NSWSC 837

“It is also important to observe, however, that **sentences of imprisonment are only imposed upon offenders who have committed offences** and who have been **adjudged to be guilty following a trial**, or who plead guilty beforehand. They are not imposed upon anyone else.

...

Indeed, consistently with the presumption of innocence, **there is something manifestly very troubling about the avoidable incarceration** of people charged with offences, but not yet convicted... It is regrettably not unknown for people to spend some years in gaol, bail refused, only to be later acquitted at trial. The Bail Act endeavours to strike a balance between the need to protect the community from unacceptable risks...”

Harrison J in R v Hawi [2014] NSWSC 837

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## Orders (Bail Conditions) in Hawi Bail Decision

“I make the following orders:

1. Bail is granted to Mahmoud Hawi subject to the following conditions upon his conduct while at liberty on bail:

- (1) To be of good behaviour.
- (2) To live at xxx.
- (3) To report daily between the hours of 10.00am and 6.00pm to the officer in charge of the Police Station at Rockdale.
- (4) To appear at the Supreme Court on 4 July 2014 and thereafter as required.
- (5) Whilst residing at xxx, not to be absent from that address between the hours of 8.00pm and 6.00am.
- (6) xxx, being an acceptable person, is to enter into an agreement with security under which xxx agrees to forfeit the sum of \$500,000 if Mahmoud Hawi fails to appear before court in accordance with the bail acknowledgment.
- (7) xxx, being an acceptable person, is to enter into an agreement with security under which xxx agrees to forfeit the sum of \$200,000 if Mahmoud Hawi fails to appear before court in accordance with the bail acknowledgment.
- (8) Not to communicate or associate in any way other than through his legal adviser with any of the persons listed in SCHEDULE 1 to these conditions or to attend any of the premises listed in SCHEDULE 2 to these conditions.
- (9) Not to communicate, directly or indirectly, with any person whom he has received notice is, or is likely, to be called by the Crown at his trial.
- (10) Not to apply for a new passport or other travel document.
- (11) Not to go within one kilometre of any airport or recognised point of departure for overseas.
- (12) To present himself at the front door of xxx at the direction of any police officer to confirm his compliance with the curfew condition, provided that such direction may only be given by a police officer who believes on reasonable grounds that it is necessary to do so, having regard to the rights of other occupants of the premises to peace and privacy.”

## Bail Decisions Mentioned

### Pre-Show Cause under New Bail Act

R v Hawi [2014] NSWSC 837

R v Fesus [2014] NSWSC 770

### Show Cause Examples

Benzce v R; Yates v R [2015] NSWSC 139

M v R [2015] NSWSC 138

R v Tikomaimaleya [2015] NSWCA 83

R v Rodney Boatswain [2015] NSWSC 878

R v Mawad [2015] NSWSC 1273

## Acts Mentioned

Bail Act 1978 (NSW) “Old Bail Act”

Bail Act 2013 (NSW) “New Bail Act”

Crimes (Sentencing Procedure) Act 1999 (NSW) - s5(1)

Crimes Act 1900 (NSW)

## Other Cases Mentioned

X7 v the Australian Crime Commission [2013] HCA 29

Lee v the NSW Crime Commission [2013] HCA 39

## Right to Silence in NSW

**s89A of the Evidence Act 1995 (NSW)** - on right to silence an allowing unfavourable inferences to be drawn

## Other Reports Mentioned

**Hatzistergos Review of the 2013 Bail Act**, see: <http://www.justice.nsw.gov.au/Documents/publications-research/jh-review-of-the-bail-act-2013-july-2014.pdf>

**Sentencing Council Report on Bail - Additional Show Cause Offences**, see: [http://www.sentencingcouncil.justice.nsw.gov.au/Pages/sent\\_council\\_index/sent\\_council\\_current\\_projects/bail\\_show\\_cause\\_project.aspx](http://www.sentencingcouncil.justice.nsw.gov.au/Pages/sent_council_index/sent_council_current_projects/bail_show_cause_project.aspx)

**Bureau of Crime Statistics and Research Report on Show Cause and Remand Population**, see: [http://www.bocsar.nsw.gov.au/Pages/bocsar\\_news/Bail.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_news/Bail.aspx)

**ALRC Freedoms Inquiry Interim Report** on aspects of a ‘fair trial’ pp.279-80, see: [http://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc\\_127\\_interim\\_report.pdf](http://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_127_interim_report.pdf)

**NSW Law Reform Commission Report on Bail**, see: <http://www.lawreform.justice.nsw.gov.au/Documents/r133.pdf>

# Excerpts from the Bail Act 2013 (NSW)

as at October 9 2015

## Section 17 Assessment of bail concerns

“(1) A bail authority must, before making a bail decision, assess any bail concerns.

(2) For the purposes of this Act, a bail concern is a concern that an accused person, if released from custody, will:

- (a) fail to appear at any proceedings for the offence, or
- (b) commit a serious offence, or
- (c) endanger the safety of victims, individuals or the community, or
- (d) interfere with witnesses or evidence. ...”

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## Law Reform: Expanding Show Cause Offences

The Hatzistergos Review proposed that show cause offences should be expanded or decreased as required.

The NSW Sentencing Council has been asked by the Attorney General to report on whether the requirement to show cause should be added to **serious indictable offences** committed while an accused is **on sentence**.

The Sentencing Council has recommended that if the show cause requirement is expanded in this way that it should only include **strictly indictable offences**.

**Serious indictable offence** - means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more. There are over 1500 serious indictable offences in NSW.

**On sentence offences** - a new offence committed while a person is subject to a good behaviour bond, intervention program order, intensive correction order, serving a sentence in the community or is in custody.

**Strictly indictable offence** - an offence which must be prosecuted in the District Court.

**Serious personal violence offence** - means an offence under Part 3 of the Crimes Act 1900 that is punishable by imprisonment for a term of 14 years or more.

The Sentencing Council's report can be found:

[http://www.sentencingcouncil.justice.nsw.gov.au/Documents/Bail/Bail\\_Additional\\_show\\_cause\\_offences.pdf](http://www.sentencingcouncil.justice.nsw.gov.au/Documents/Bail/Bail_Additional_show_cause_offences.pdf)

## Section 18 Matters to be considered as part of assessment

“(1) A bail authority is to consider the following matters, and only the following matters, in an assessment of bail concerns under this Division:

- (a) the accused person's background, including criminal history, circumstances and community ties,
- (b) the nature and seriousness of the offence,
- (c) the strength of the prosecution case,
- (d) whether the accused person has a history of violence,
- (e) whether the accused person has previously committed a serious offence while on bail,
- + (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,
- (g) whether the accused person has any criminal associations,
- (h) the length of time the accused person is likely to spend in custody if bail is refused,
- (i) the likelihood of a custodial sentence being imposed if the accused person is convicted of the offence,
- (j) if the accused person has been convicted of the offence and proceedings on an appeal against conviction or sentence are pending before a court, whether the appeal has a reasonably arguable prospect of success,
- (k) any special vulnerability or needs the accused person has including because of youth, being an Aboriginal or Torres Strait Islander, or having a cognitive or mental health impairment,
- (l) the need for the accused person to be free to prepare for his or her appearance in court or to obtain legal advice,
- (m) the need for the accused person to be free for any other lawful reason,
- + (n) the conduct of the accused person towards any victim of the offence, or any family member of a victim, after the offence,
- + (o) in the case of a serious offence, the views of any victim of the offence or any family member of a victim (if available to the bail authority), to the extent relevant to a concern that the accused person could, if released from custody, endanger the safety of victims, individuals or the community,
- (p) the bail conditions that could reasonably be imposed to address any bail concerns in accordance with section 20A. ...”

+ **indicates a matter added or modified in the Hatzistergos Review**



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