

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
JUDICIAL COMMISSION OF NEW SOUTH WALES
DVD LAUNCH – ‘THE BAIL ACT 2013: SELECTED SCENARIOS’
22 MAY 2014

1. Good evening. It is a great pleasure to join you this evening to launch this excellent production that explains various aspects of the new *Bail Act 2013*.

2. I must say I was particularly pleased when I heard that I had been invited to speak about a DVD. From time to time I'm asked to launch a book, which is more often than not a fairly weighty legal text. It was certainly easier to sit down and watch this very accessible DVD than it often is to consider and attempt to distill in a few brief words the complexities of written legal commentary.

3. I was, however, a little unsure about how I should approach a DVD launch. Should I treat it the same as if I was talking about a textbook, or would those attending expect something different from me? After much thought I decided that if I was to properly launch a DVD, then I would need to bring to the occasion some of the rigorous analysis that I would expect of Margaret and David.

4. I freely admit that movie reviews aren't part of my job description. However, I thought an appropriate place to begin would be discussing some of the strong performances in the production. I want to particularly congratulate Magistrates Les Mabbutt and Paul Mulroney for their clear commentary and analysis in each of the scenarios. They both explain in simple terms the provisions of the new Act, the similarities and differences from the old *Bail Act 1978*, and how the new scheme will operate in practice.
5. The five scenarios in the production have been carefully devised to address the key changes to the bail regime and to provide information about new processes that will need to be addressed when making a bail decision. Importantly, a number of the scenarios provide useful examples about how the concept of an 'unacceptable risk' might be considered by a bail authority.
6. The first scenario considers the unacceptable risk test in relation to a person accused of a series of repeated minor offences. It explores matters to be taken into account by a court where it is satisfied there has been a failure to comply with bail. This leads back to an application of the unacceptable risk test and whether bail conditions can be imposed to mitigate such risks. The third scenario further explores unacceptable risk in relation to a person accused of domestic violence offences. It addresses the various matters that a bail authority must consider when deciding if there is an unacceptable risk. Here, Magistrate Mabbutt carefully works through the flow chart in section 16.

7. The fourth scenario clearly illustrates the difference between the presumption against bail for certain serious drug offences under section 8A of the old *Bail Act*, and the application of the unacceptable risk test under the new Act. The remaining scenarios explore several discrete issues. In particular, the deferral of making a bail decision in relation to an intoxicated person, and the option of imposing an accommodation requirement as a bail condition.

8. I should also mention the very commendable performance by the Supreme Court's own, Justice RA Hulme. Justice Hulme rightly observes that the approach to bail decisions under the *Bail Act 2013* "will be radically different to the way in which they have been approached under the old act". As he indicates, the new Act will hopefully provide a more practical response to the question of bail and related issues that arise. The new Act certainly requires those making bail decisions to focus on the risk that the accused person poses to the community or the administration of justice, rather than the complex offence-based presumptions that applied under the old Act.

9. This DVD will no doubt assist those who make bail decisions to understand the new regime that commenced on Tuesday. However, I encourage legal practitioners, and those working for agencies and service providers whose work is affected by the new Act, to also watch the video. Not only is it available on disc, but it can be viewed on the Judicial Commission's website

and I believe on the Commission's Youtube Channel. I never imagined that one day I would be talking about things like the Supreme Court's Twitter account or the Judicial Commission's Youtube channel. Nevertheless, here we are.

10. On a personal note, I must admit that I paid particularly close attention to the DVD. In my time as Chief Justice I believe that I have only been required to grant bail once. It was a process that I was not entirely familiar with. Unfortunately for me, the powers specific to the Court of Criminal Appeal under section 67 of the Act are not covered in the DVD. I therefore encourage everyone to watch this program and to also take the time to read the new Act. It is fairly brief and much simpler than the complex regime of presumptions and considerations under the old legislation.

11. My congratulations go to all involved in the production. The DVD was funded by the then Department of Attorney General and Justice and was an initiative of many of the organisations that assisted in its production. Importantly, it was arranged and produced in a very timely fashion. I would like to congratulate the Judicial Commission, the NSW Police Force, Juvenile Justice NSW, Legal Aid NSW, the Aboriginal Legal Service (NSW/ACT), and particularly the volunteer actors and the judicial officers who contributed their time.

12. *The Bail Act 2013: Selected Scenarios* is perhaps unlikely to win an award for the most compelling name for a DVD. However, it makes a significant contribution to the education and training campaign surrounding the introduction of the new *Bail Act*. I encourage judicial officers, registrars, police officers and legal practitioners to watch the DVD. Through each of the five scenarios it clearly and simply explains many aspects of the new bail regime.

13. Thank you all for taking the time to attend this evening's launch. I should conclude my review in the appropriate fashion by simply saying: *The Bail Act 2013: Selected Scenarios*, I give it 5 stars.