



POLICE ASSOCIATION OF NEW SOUTH WALES

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Ms Dara Read
NSW Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

Dear Ms Read

Submission to the NSW Law Reform Commission
RE: Bail

In response to the NSW Law Reform Commission's discussion paper of June 2011 "Bail: Questions for Discussion", the Police Association makes the following submission.

In this submission, not all of the questions for discussion will be answered, nor will all points within a question be answered. Only those areas deemed relevant to operational policing and bail in the first instance will be addressed. Other questions will be left out. If there are no comments or responses to a question, then the Association has no position on the issue.

Headings correspond to the question headings in the Commission's discussion paper.

THE QUESTIONS

1. OVER-ARCHING CONSIDERATIONS

- 1.1 The fundamental principles underpinning a review of the *Bail Act* should include ensuring the accused's appearance at court, and victim and community protection.

2. RIGHT TO RELEASE FOR CERTAIN OFFENCES

- 2.1 The current wording of section 8(1) encompasses a range of offences that does not admit to a simple answer to this question. Principles that address victim and community safety need to be weighed up in the process of making decisions about bail.

- 2.2 There are offences contained within the *Summary Offences Act* 1988 for which there should be no automatic right to release, eg. [11G](#). “Loitering by convicted child sexual offenders near premises frequented by children”, [11FA](#). “Custody or use of laser pointer in public place”, [11A](#). “Violent disorder” and [11E](#). “Wielding of knives in a public place or school”; to name but a few. These offences are all punishable by a sentence of imprisonment and are offences for which the community and police expect that a person will be given bail conditions largely in consideration of the protection and welfare of the community.
- 2.3 As indicated above there are many offences for which a right to release on bail should not be considered. The four offences listed above are merely a sample of offences which should be removed from section 8.

3. *PRESUMPTIONS AGAINST AND IN FAVOUR OF BAIL AND CASES IN WHICH BAIL IS TO BE GRANTED IN EXCEPTIONAL CIRCUMSTANCES ONLY*

- 3.1 The existing presumptions are applied in a consistent manner, predominantly due to system upgrades to the Computerised Operational Policing System (COPS) which identify whether offences linked to the charge are those which fall within these sections. This provides the custody manager with the foundation from which to consider bail.
- 3.2 From a policing perspective, these presumptions are intended to remove the possibility that an offender will not appear in court due to the severity of the offence/s that they are facing and ensuring victim protection in the case of domestic violence.
- 3.3 For this we will focus purely on domestic violence matters and rely solely on anecdotal evidence. There are examples daily of DV offenders being refused bail due to the provisions of section 9A. This provides a high degree of relief to the victim of the offence and often gives the offender the time to consider the ramifications of their actions. While it does not always lead to offences not being repeated, there are a number of matters for which DV offenders are not seen for a bail determination in relation to DV again.
- 3.7 Murder and serious personal violence offences, domestic violence offences, serious drug and firearms offences should all have a presumption against bail to ensure not only that the offender will appear in court due to a high flee risk associated with offences carrying lengthy custodial sentences, but there is a broader community expectation of protection of the victim and the community.

4. *DISPENSING WITH BAIL*

5. *POLICE BAIL*

- 5.1 There are no current operational impediments in relation to police granting bail. While it is acknowledged that there are not always substantive Sergeants available to consider bail, the current provisions are able to be utilised to ensure bail is considered as soon as reasonably practicable.

- 5.2 In practice, these reviews occur infrequently. The senior officer review referred to in section 43A is one where variance between metropolitan and regional/rural policing becomes evident. A section 43A review in the metropolitan area by an Inspector of a decision of a Sergeant is able to be facilitated quite simply. In the event that an Inspector is not rostered at the station where the decision is made, a neighbouring station would have an Inspector rostered for duty. In regional/rural locations, there may not be a more senior officer for several hundred kilometers to make an assessment of the grounds for review. Awaiting an officer for a review may cause unnecessary delay and therefore is not conducted in accordance with section 43A(2). In these cases the review, in effect, is conducted by the magistrate or authorised justice. A change to the current provisions of section 43A is not necessary due to the regional variations.

6. COURT BAIL

7. REPEAT BAIL APPLICATIONS

- 7.1 From an operational policing perspective, there should be no amendments to section 22A as there is currently sufficient protection for an offender to ensure they have their matter heard. To amend or repeal section 22A would allow offenders to 'magistrate shop' and waste valuable court time.
- 7.2 Section 22A should apply to all persons appearing before the court. Young persons have the benefit of being provided with legal assistance beyond that of an adult offender. Their legal practitioners are able to make an application pursuant to the current section 22A(1A) grounds.
- 7.3 There should be a penalty considered for those offenders who are either repeatedly seeking bail applications with no additional information or amended circumstances or those as currently defined in section 22A(2) as 'frivolous or vexatious'.

8. CRITERIA TO BE CONSIDERED IN BAIL APPLICATIONS

- 8.1 The current prescribed criteria are working well in the first instance in relation to police bail. The four primary criteria cover the aspects required to be considered in a general sense.
- 8.3 No. The ability to determine 'unacceptable risk' or 'reasonable grounds to suspect' is a very subjective test and may restrict an offender's likelihood of being granted bail if applied as opposed to the current arrangements.
- 8.4 No there is no need to amend the current criteria. The protection of particular people is paramount in regional and rural locations where offenders and their victims will generally reside in close proximity to each other.
- 8.10 This section should be retained as it ensures that the offender is not released while unable to care for themselves in line with the standard duty of care that police officers apply to all people in their custody and also ensures that the

offender is able to comprehend and understand their bail conditions and the implications of breaching them.

9. *BAIL CONDITIONS*

- 9.1 The current provisions in relation to police bail and the imposing of bail conditions requires no change. It is generally working well in practice.
- 9.2 Bail conditions are imposed in the first instance to protect the victim and community more broadly and promote effective law enforcement thereafter.
- 9.8 No two offenders are the same and therefore having standard conditions would not be fair for either the victim and community nor the offender. Each case must be assessed separately.

10. *BREACH OF UNDERTAKINGS AND CONDITIONS*

- 10.1 The current wording of section 50 does not need to be amended. It clearly indicates police powers in respect to breaching bail undertakings.
- 10.2 Each instance of a breach of a bail undertaking will be different, even for the same offender at a different time. To prescribe the exact order in which a police officer should consider taking action may unnecessarily place a victim in more danger or may allow an offender a greater opportunity to commit further offences whilst at liberty on bail.
- 10.3 No, as stated above each instance is different and is determined on the facts. No change from the current system is required.
- 10.4 See above.
- 10.5 The current wording of section 50 already indicates 'may'. Offenders are not arrested without warrant in every case of breaching their bail undertaking. There are numerous offenders throughout the state every day who are given warnings for breaching their bail undertaking. Prescribing a specific course of action may place victims in greater danger and in any event is unnecessary based on current policing practice.
- 10.6 A breach of a bail undertaking should be considered an offence not just a redetermination where the vast majority of offenders are released on their original bail. It does not enforce the seriousness of the offender being granted liberty on bail. A penalty attached to a breach would ensure a greater compliance with bail.

11. *REMAINING IN CUSTODY BECAUSE OF NON-COMPLIANCE WITH A BAIL CONDITION*

12. *YOUNG PEOPLE*

12.1 Simply, no. There are sufficient safeguards within the *Bail Act* to ensure that young people will be treated in accordance with the offence for which they have been charged. There may be some basis to include the principles of section 6 of the *Children (Criminal Proceedings) Act 1987* to cover young people.

13. *PEOPLE WITH A COGNITIVE OR MENTAL HEALTH IMPAIRMENT*

14. *INDIGENOUS PEOPLE*

15. *DURATION OF BAIL*

15.1 Yes bail should continue until the matter pertaining to the bail is finalised.

16. *REVIEW OF BAIL DECISIONS*

17. *STRUCTURE OF BAIL ACT*

18. *PLAIN ENGLISH*

19. *FORMS AND PROCESSES*

20. *OTHER SUBMISSIONS*

20.1 It is our opinion that the *Bail Act* does not need to cater specifically for young people, people with a cognitive or mental health impairment or indigenous people. However, support services should be increased to these groups to ensure that they do not become the perpetrators of crime. Significant government resources should be diverted to these services which will in turn reduce the number of people within these groups becoming a person accused of an offence subject to a bail determination.

The Association thanks the Commission for the opportunity to respond to these questions and looks forward to the Commission's report regarding the *Bail Act*.

Yours sincerely



SCOTT WEBER
President