

SUBMISSION TO THE DEPARTMENT OF JUSTICE ON THE REVIEW OF THE BAIL ACT NT

The Criminal Lawyers Association of the Northern Territory Inc (CLANT) comprises over 200 members. It represents Northern Territory criminal lawyers from both the defence and prosecution sides, the public and private sector, and those who work in policy and in court.

Amongst CLANT's Objects and Purposes are:

- to promote and advance the administration of the criminal justice system and development and improvement of criminal law throughout the Northern Territory
- to actively contribute in public debates in issues relating to the criminal justice system
- to represent the views of members to bodies and persons engaged in the administration of criminal justice and in development of criminal law, procedures and civil liberties

CLANT members have discussed the *Bail Act* review, and in general we support and endorse the substance of the submissions made by LSNT, NAAJA, CAALAS and NTLAC, which we have read. We also highly commend to the Northern Territory Government the detailed and carefully considered New South Wales Law Reform Commission Report No. 33 ('Bail').

CLANT considers that review of the Bail Act should proceed in accordance with the following fundamental principles:

1. Simplicity
2. Judicial discretion
3. The presumption of innocence
4. Incarceration should be a last resort

In accordance with these principles, CLANT endorses the following key Recommendation by the NSWLR:

In a new Bail Act, the scheme of presumptions, exceptions and exceptional circumstances in the current legislation should be replaced with a uniform presumption in favour of release applicable to all cases except those covered by an entitlement to release and appeal cases.

CLANT supports the repeal of Section 37B. It serves no useful purpose. It is inimical to the efficient administration of the criminal justice system. Breach of bail already carries its own significant penalties, namely forfeiture of (a) recognizances and sureties; and (b) the defendant's liberty.

CLANT notes that there is some divergence of views in the submissions referred to above as to whether the *Youth Justice Act* should contain provisions regulating the granting of bail to young persons, or whether any such provisions should be included within the *Bail Act*. That divergence of views is reflected in CLANT's own membership, and accordingly, CLANT does not make a submission on this particular issue.

The review of the *Bail Act* is needed because the Act is:

- unwieldy and overly complex
- unnecessarily punitive in its operation
- restrictive of judicial officers in the discharge of their duties to exercise discretion; and
- inconsistent in its operation with fundamental principles of criminal justice

Moreover, the review is timely because the Northern Territory prison system is in a state of chronic crisis caused by ever-increasing incarceration rates. Last week some of our members were given a tour of the Alice Springs Correctional Centre by Commissioner Middlebrook. The Commissioner very forcefully reminded us that over the last decade,

whereas the population of the Territory has increased by about 20%, the population of our prisons has risen by almost 100%. On current projections, it will double again in the next 6 years. Obviously, this is unsustainable, and every effort must be made to reverse this alarming trend.

On 21 March 2013, in the course of imposing sentence at Alice Springs for minor offences on an offender whose application for bail had been refused over twelve months previously, Chief Justice Riley stated:

I express concern that the proceedings took such a long time to come to this court and I also express concern that you remained in custody for such a long period of time when the sentence that I imposed reflecting your culpability in relation to the offending was much less than the period which you actually served.

In the same week, similar concerns arose in a matter before Southwood J sitting at Darwin, when a man who had been in custody for a similar period was released after the filing of a *nolle prosequi*.

The most effective and simple manner to minimise injustices of this nature is to reform the *Bail Act*. It is of very serious concern that so many defendants are denied bail. It is particularly concerning when ultimately are required to serve time unnecessarily.

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