



Criminal Lawyers Association of the Northern Territory (CLANT)

Patron: The Hon Justice Virginia Bell • President: Russell Goldflam (telephone: 040 1119020) •
Secretary: Madeleine Rowley (PO 969, ALICE SPRINGS NT 0871) • www.clant.org.au • ABN:64391168 310

29 September 2014

Ms Jenni Daniel-Yee
Acting Director
Legal Policy
Department of Attorney-General & Justice
DARWIN NT 0800

Dear Madam,

RE: BAIL AMENDMENT BILL 2014

I am writing in response to your invitation to comment on the Consultation Draft of the Bail Amendment Bill 2014.

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

On 31 March 2013 CLANT lodged a submission to a review of the *Bail Act*, in which we enunciated the following fundamental principles which we consider should underpin a bail law:

- Simplicity
- Judicial discretion
- The presumption of innocence
- Incarceration should be a last resort

We further noted that the *Bail Act* requires review 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

Accordingly, we proposed that the offence of breaching bail be repealed, and that there be a general presumption in favour of bail (subject to limited exceptions).

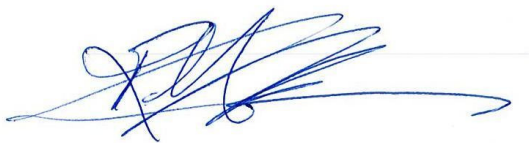
We note with concern that the draft Bill does not incorporate either of these measures, both of which we continue to support.

Clause 7 ('Section 7A amended') of the Bill will reduce existing access to bail, because a presumption against bail will apply to more alleged offences, further reducing the existing rights of defendants. Consequently, more defendants will be incarcerated on remand, and for longer periods. Remand prisoners are housed with sentenced prisoners in the Northern Territory, contrary to international human rights instruments to which Australia has acceded. Many of these incarcerated defendants will subsequently be released without ever having been ordered to serve a sentence of imprisonment, either because charges against them are withdrawn, or they are acquitted.

Clause 7 of the Bill should not be enacted.

In summary, CLANT welcomes the proposed abolition of the "neutral presumption" category of offences, but deplores the proposed wholesale expansion of the range of offences to which a presumption against bail will apply.

Yours faithfully



Russell Goldflam
President