DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL BRIEF FOR DECISION

Date 2 June 2014

To Attorney-General and Minister for Justice

From Strategic Policy and Legal Services

Subject Bail Act 1980 - evidence on bail objections

Requested by Internally generated

RECOMMENDATION

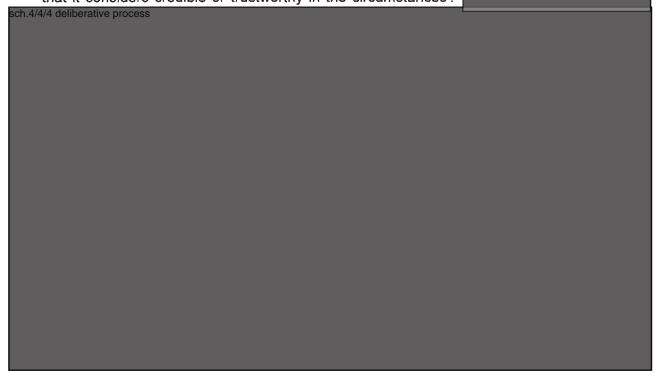
That you **sign** the attached letter (**Attachment 1**) to the Honourable Jack Dempsey MP, Minister for Police and Community Safety, declining to make an amendment to the *Bail Act* 1980 concerning how evidence is presented by police in objecting to bail.

BACKGROUND SUMMARY

- 1. On 13 November 2012 the Honourable Jack Dempsey MP, Minister for Police and Community Safety, wrote to you (**Attachment 2**) requesting that you consider certain amendments to legislation within your portfolio.
- 2. On 26 July 2013 you responded to Minister Dempsey on the proposals, which included a proposal that the Bail Act be amended to remove the need for police to provide objection to bail to a magistrate by way of an affidavit. You proposed an alternative approach and on the same day you wrote to the former Chief Magistrate seeking his views on this.

ISSUES

3. The Bail Act does not require that evidence be presented in affidavit form. Section 15(1)(e) states that 'the court may receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances'.



5. Given these factors, it is recommended that no amendments be made and that you advise Minister Dempsey of this.

EMPLOYMENT IMPACT

6. Not applicable.

CONSULTATION WITH STAKEHOLDERS

7. The former Chief Magistrate was consulted.

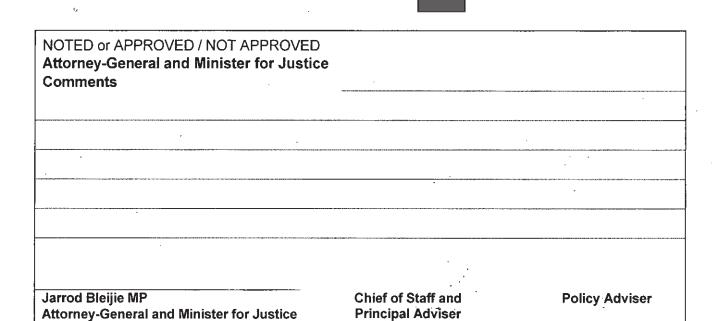
FINANCIAL IMPLICATIONS

8. Not applicable.

POTENTIAL MEDIA

9. Not applicable.

Page 2 of 3



Contact Officer:	Phone: 323 (ncipal Legal Officer	Approved by Executive Director:	Name: Loui: Position: Dii Phone: 323 Date: 17 Oc	96084	
Approved by:	Name: Jenny Position: Ass Phone: 3989 Date: xx Oct	sistant Director-General 0161	Endorsed: John Sosso Director-General			
	Date. A Oct	DDEI 2013		1	1	

Page 3 of 3

In reply please quote: 548834/1; 2340960

The Honourable Jack Dempsey MP
Minister for Police, Fire and Emergency Services
Member for Bundaberg
PO Box 15195
CITY EAST QLD 4002

Dear Minister

I write further to my letter of 26 July 2013, which responded to your letter of 13 November 2012, regarding possible legislative reform identified by the Queensland Police Service (QPS).



I am therefore not inclined to pursue this amendment.

Should officers in the QPS require further information they may contact Ms Alison Ryan, Principal Legal Officer, Strategic Policy, Department of Justice and Attorney-General on (07) 3239 6129.

Yours sincerely

JARROD BLEIJIE MP

Attorney-General and Minister for Justice

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Minister for Police and Community Safety

BY:----

Level 24 State Law Building 50 Ann Street PO Box 15195 City East Queensland 4002 Australia Telephone: +61 7 3239 0199 Facsimite: +61 7 3221 9987

Email: police@ministerial.qld.gov.au or communitysafety@ministerial.qld.gov.au

ABN 65 415 158

1-3 NOV 2012

The Honourable Jarrod Bleijie MP Attorney-General and Minister for Justice GPO Box 149 BRISBANE QLD 4001

Dear Attorney-General

The Queensland Police Service (QPS) has identified areas of unnecessary legislative and operational burden. These various economy and efficiency initiatives have the potential to provide significant benefits to the QPS.

Some of the initiatives identified would require amendments to the following Acts which you administer:

S./3(2)

Bail Act 1980

s.73(2)

The attached table summarises the proposed amendments to these Acts.

I seek your support for these proposed amendments. In order to progress the changes I would ask that a member of your Department contact Inspector Simon James of the Office of the Commissioner on telephone 3364 8173.

Yours sincerely

Jack Dempsey

Minister for Police and Community Safety

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s.73(2)	
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Ball Act 1980	

Remove the requirement for a police officer to tender a bail objection via sworn
evidence such as an affidavit, thereby removing the need for a justice of the peace to
witness the objection to bail.

s.73(2)		

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DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL BRIEF FOR DECISION

Date

16 April 2013

To

Attorney-General and Minister for Justice

From

Strategic Policy

Subject

The Bail Act 1980 - issues regarding conditions and flight from the

jurisdiction

Requested by

Attorney-General's Office

RECOMMENDATIONS

That you:

- support the further exploration of option A (the Queensland Police Service (QPS), the Australian Federal Police and the Department of Immigration linking electronic systems); and
- **sign** the attached letter to the Honourable Jack Dempsey MP, Minister for Police and Community Safety (**Attachment 1**) requesting that the QPS develop the proposal with the assistance of the Department of Justice and Attorney-General.

DACKGROUND SUMMARY		
sch.4/3/3 personal		

Page 1 of 6'



ISSUES

- 7. Under the Bail Act 1980 (the Bail Act), the court must refuse to grant bail if satisfied there is an unacceptable risk that the defendant, if released on bail would: fail to appear; reoffend; endanger the safety of the victim; interfere with the witnesses; or should remain in custody for their own protection.
- 8. In many bail applications, an accused is assessed as an unacceptable risk of one or more of these criteria unless conditions are put in place. A difficulty in some instances is the inability of the accused person to comply with those conditions from custody, often because of a lack of support. Organising a surety (which must be by someone other than the accused), a place of residence, a rehabilitation program and surrendering a passport are common examples of conditions which an accused, remanded in custody, can have difficulty organising. While support systems exist to assist people who need help with residency or treatment, an isolated accused in custody can find the condition to surrender a passport impossible to comply with for purely logistical reasons, hence the allowance of time to allow collection and surrender of the document (often, as in this case, supplemented by a residential condition or a reporting condition).
- 9. The Courts Performance and Reporting Unit has collated statistics in relation to bail orders conditional on surrender of passports for all State courts from the 2005-2006 financial year. They are at Attachment 4. Over this seven-year period, the number of such conditions for all courts averaged 659.86 per year. The overwhelming majority of these conditions required the accused to remain in custody until the passport was surrendered. While the data shows that courts sometimes allowed up to 21 days for surrender of a passport, it is important to note that this does not mean that the accused was released prior to the passport being surrendered. That would depend on the precise wording of each individual bail condition.
- 10. The Bail Act certainly allows a magistrate to allow release on bail prior to the defendant fulfilling another condition and overrides any other protocol or policy. However, the Magistrates Court Manual of Accounting, an administrative document, requires a defendant to be kept in custody until a passport is produced. Therefore in cases where the condition is ambiguous as to the time of release (as arguably the case was in this matter), a defendant would normally be kept in custody. The CPPLU is reviewing the manual with a view to requiring confirmation from the magistrate, in the case of ambiguity, that the actual intention was to release a defendant immediately.



sch.3/2, sch.4/4/4 cabinet, deliberative process	
h3/2	

EMPLOYMENT IMPACT

26. Not applicable.

CONSULTATION WITH STAKEHOLDERS

27. Preliminary consultation on the options occurred with the QPS and Queensland Courts.

FINANCIAL IMPLICATIONS

sch.4/4/4 deliberative process				

POTENTIAL MEDIA

29. Any media coverage around an amendment to address the issue is likely to be positive.

NOTED or APPROVED / NOT APPROVED Attorney-General and Minister for Justice Comments		
Proceed	inth of	tion,
sch.3	3/2 cabinet	
Jarrod Bleijie MP Attorney-General and Minister for Justice	Chief of Staff and Principal Adviser	Policy Adviser
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Contact Officer:	Name: Vinton Pedley Position: Legal Officer Phone: 3404 1456 Date: 12 November 2012/April 2013	Approved by Executive Director:	Name: Jennifer Lang Position: Assistant Director-General Phone: 3898 0161 (81361) Date: 10 January 2013/ 15 April 2013	
Approved by:	Name: Louise Shephard Position: Director Phone: 3239 6084 Date: 3 December 2012/ 15 April 2013	Endorsed: John Sosso Director-General	17 H 13	

☐ Election Commitment

☐ CBRC / Cabinet related

☐ ECM related



The Hon Jarrod Bleijie MP Attorney-General and Minister for Justice

in reply please quote: 2062990

Level 18 State Law Building 50 Ann Street Brisbane 4000 GPO Box 149 Brisbane Queensland 4001 Australia Telephone +61 7 3247 9068 Facsimile +61 7 3221 4352 Email attorney@ministerial.qld.gov.au

The Honourable Jack Dempsey MP
Minister for Police and Community Safety
Member for Bundaberg
PO Box 15195
CITY EAST QLD 4002

Dear Minister

I write regarding the *Bail Act 1980* (Bail Act) and the risk posed by non-residents in fleeing the jurisdiction.



At my request, the Department of Justice and Attorney-General (DJAG) has considered options to alleviate the risk of flight by an alleged offender released on bail, conditional upon the surrender of a passport a short time later. I am advised that preliminary consultation, at an officer-level, has occurred with the Queensland Police Service (QPS).

sch.3/2 cabinet		



Should you agree that the proposal merits consideration, I have instructed DJAG to assist as necessary. In that regard, Ms Louise Shephard, Director, Strategic Policy, DJAG, may be contacted on 3239 6084 or at louise.shephard@justice.qld.gov.au.

Thank you for considering this matter and I await your advice.

Yours sincerely

JARROD BLEIJIE MP
Attorney-General and Minister for Justice

Ministerial Statement Topic

Topic: Amendments to Bail Act 1980

Topic Explanation:

Amendments to the Bail Act 1980 commence Friday 27 September 2013.

The amendments take away the need for a bail program to be listed in the *Bail (Prescribed Programs) Regulation 2006.*

The amendments to the *Bail Act 1980* also make it an offence for breaches of a bail condition, however the bail condition is at the magistrate's discretion.

Division/Agency: Courts Innovation Programs, Magistrates Courts Service-

Contact Officer: Chris White, Executive Manager, Indigenous Justice Strategies

Date: 27 September 2013