

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'.

sch.4/4/4 deliberative process



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.

NOTED or APPROVED / NOT APPROVED Attorney-General and Minister for Justice Comments		
Jarrold Bleijie MP Attorney-General and Minister for Justice / /	Chief of Staff and Principal Adviser / /	Policy Adviser / /

Contact Officer:	Name: Alison Ryan Position: Principal Legal Officer Phone: 323 6129 Date: 23 September 2013	Approved by Executive Director:	Name: Louise Shephard Position: Director Phone: 323 96084 Date: 17 October 2013
Approved by:	Name: Jenny Lang Position: Assistant Director-General Phone: 3989 0161 Date: xx October 2013	Endorsed: John Sosso Director-General	_____ / /

- Election Commitment
 CBRC / Cabinet related
 ECM related




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).

sch.4/4/4 deliberative process



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

Ministerial Correspondence Action Request
 Attorney-General and Minister for Justice

Due Date REQUIRED:
 ___ / ___ / 2012

ACTION BY

- JUSTICE SERVICES
- OFFICE OF FAIR AND SAFE WORK
- FAIR TRADING, LIQUOR & GAMING
- YOUTH JUSTICE
- SPLES
- CORPORATE SERVICES
- AG'S OFFICE
- _____

URGENT NORMAL

Date of Entry: <i>2/11/2012</i>
Signature: _____
AG Ref: _____
Dept Ref: <i>548834/1</i>
Other Ref: _____
<p><u>ACTION OFFICER</u> <u>(DLO IN AG'S OFFICE)</u></p> <p style="font-size: 2em; font-weight: bold;">BA JL</p>

ACTION REQUESTED

- BRIEFING NOTE
- MINISTER REPLY
 Response to: MP Constituent
- CHIEF OF STAFF REPLY
- DEPARTMENT TO RESPOND DIRECT
- NO RESPONSE REQUIRED
- FOR INFORMATION ONLY
- NOTE AND FILE IN AG'S OFFICE
- REFER TO _____
- _____

Chief of Staff / Adviser Comments:	
Signature: _____	Date: _____

Other Comments:	
<i>SPLES</i>	
Signature: _____	Date: _____

RECEIVED
21 NOV 2012

Minister for Police and Community Safety

BY:.....

13 NOV 2012

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Facsimile: +61 7 3221 9987
Email: police@ministerial.qld.gov.au or
communitysafety@ministerial.qld.gov.au

ABN 65 415 158

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.73(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

Enc

s.73(2)



Bail 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)



Ministerial Correspondence Action Request
 Attorney-General and Minister for Justice

Due Date REQUIRED:
 ___+___/2013

ACTION BY

- JUSTICE SERVICES
- OFFICE OF FAIR AND SAFE WORK
- FAIR TRADING, LIQUOR & GAMING
- YOUTH JUSTICE
- SPLES
- CORPORATE SERVICES
- ESB
- _____

URGENT NORMAL

Date of Entry: 11 / 09 / 2013
Signature: _____
AG Ref: _____
Dept Ref: 553507/1
Other Ref: _____
<p><u>ACTION OFFICER</u> <u>(DLO IN AG'S OFFICE)</u></p> <p>SE AB</p>

ACTION REQUESTED

- BRIEFING NOTE
- MINISTER REPLY
 Response to: MP Constituent
- CHIEF OF STAFF REPLY
- DEPARTMENT TO RESPOND DIRECT
- NO RESPONSE REQUIRED
- FOR INFORMATION ONLY
- NOTE AND FILE IN ESB
- REFER TO _____
- _____

Chief of Staff / Adviser Comments:	
Maggie	
Signature: _____ MF	Date: 12/9/13

Other Comments:	
Signature: _____	Date: _____

**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.

BACKGROUND SUMMARY

Sch.4/3/3 personal



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; re-offend; 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.

11. Strategic Policy has identified three options to address the issue:

sch.4/4/4 deliberative process



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



sch3/2



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.



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

In reply please quote: 2062990

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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.

sch.3/2, sch.4/3/3, cabinet, personal

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

(2)

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