



20 March 2007

Watchhouse Review Team (WRT)
GPO Box 401
CANBERRA CITY ACT 2601

Dear WRT

This is the submission of Civil Liberties Australia, a rights/responsibilities community group whose headquarters are in the ACT. As background, this is what we say about ourselves on our website (www.claact.org.au):

We stand for people's rights, and go in to bat for everyone's civil liberties.

We monitor police and security forces, and the actions and inaction of politicians. We review proposed legislation, to make it better, and keep watch on government departments and agencies.

We work to keep Australia the free and open society it has traditionally been, where you can be yourself without undue interference from 'authority'.

We admire police, and the tough, unsociable, difficult job that they do on behalf of the rest of us, often under very strenuous and sometimes dangerous circumstances. The watchhouse is one of those places where everyone is stressed, and the control, patience and good training of police officers is often tested in the extreme.

We have first-hand knowledge of watchhouse behaviour and attitudes amongst our CLA lawyer members but, unfortunately, we can't tap into that knowledge because our members with the specialist knowledge are currently representing people before the courts.

CLA has not kept a close watch on the watchhouse in the past; however, we intend to keep a much closer watch in future. We expect to be well informed by reading the submissions made to the WRT.

In that regard, we hereby give permission to publish the CLA submission on the AFP and/or Ombudsman websites, and we expect that you will also publish all other submissions to the WRT as soon as you receive them, so that we may analyse them and decide whether to make a supplementary submission.

Because we are constrained as to what our members can say, we wish to concentrate in this submission solely on the issues surround the granting of bail.

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Bail issues

CLA is concerned about the attitude of police in exercising the powers and functions vested in them under the *Bail Act 1992* (ACT). Questions surrounding the granting of bail relate to the amount of a time a person may be detained in the watchhouse, and the powers, duties and obligations of police working in the watchhouse and in related areas.

Under section 14, a superintendent or sergeant is empowered to grant an accused person bail after they have been charged, subject to limitations elsewhere in the Act.

At all times an accused person is entitled to be presumed innocent until proven guilty; it is not the role of police officers administering the Bail Act to exercise their functions so as to make decisions that have a punitive effect.

Where police refuse to grant bail, the accused person has to be taken before a court as soon as practicable, and in any case, not longer than 48 hours after the person was detained. It is then the role of a magistrate or judge to determine whether bail should be granted.

CLA contends that police take a very conservative approach to granting bail. Frequently police decide not to grant bail to an accused person, only to then have the court subsequently grant bail at its earliest opportunity. In instances where a person is entitled to bail, but is denied bail by police, the detention of that person is unnecessarily prolonged, and an unnecessary and avoidable burden is placed on the courts.

CLA believes that police often refuse bail, where an accused person could be bailed, for a number of reasons:

- Police are not familiar with their duties, powers and obligations under the Bail Act - this is a training issue;
- Police form an adverse or unfavourable view of the detained person and, notwithstanding the provisions of the Bail Act, refusing bail becomes a means of prolonging detention and either deliberately or inadvertently taking action which is punitive in nature; and
- Police are fearful of making mistakes or misjudging a situation that may have the effect of releasing a potentially dangerous person back into the community, and would prefer to leave the decision to the courts.

The legislature gave police the power to grant bail under the Bail Act for a reason: to prevent an unnecessary burden being placed on the courts and to prevent the unnecessary or prolonged detention of accused people. Therefore, police should exercise their powers and duties diligently under the Act.

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Accordingly, CLA recommends that:

- Police be better trained concerning their role under the Bail Act; and
- Police take note of the attitude and disposition of the courts towards the granting of bail, and exercise their powers consistent with the approach taken by the courts.

In relation to training, CLA believes there should be special watchhouse training for any police officer on his/her first posting to the watchhouse, and refresher training on re-posting at any rank where the officer has not served in the watchhouse in the previous 12 months.

CLA also recommends that:

- it be a new condition of future contracts between the AFP and the ACT Government for the provision of police services that, where it becomes apparent by statistical and other analysis that police are not appropriately exercising their powers under the Bail Act and thus occasioning extra expense to the ACT court system, that the extra cost be recoverable to the Territory from the AFP by a deduction of moneys to be paid under the contract.

Yours sincerely

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