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FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet

Inquiry into the Administration of Bail

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Inquiry into the Administration of Bail in the ACT

SUBMISSION BY ACT POLICING

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Introduction

ACT Policing is committed to protecting the safety of the Canberra community and welcomes the opportunity to make a submission to the Standing Committee on Justice and Community Safety in response to the Inquiry into the Administration of Bail in the ACT. ACT Policing recognises that the bail process serves as an important component of the criminal justice system and that a number of considerations are taken into account to determine whether or not to grant bail. These considerations are outlined in the Act and intersect with Government policy objectives for restorative justice, reducing recidivism, victim-survivors and addressing issues such as illicit drug use as health issues.

This submission focuses on ACT Policing's operational experience under the *Bail Act 1992* (Bail Act). The availability of bail is broadly categorised under three categories in which this submission is structured, including a **presumption for bail**, **no presumption for bail** [neutral] and a **presumption against bail**.

Presumption for bail is considered 'neutral' for certain offences, including contraventions of family violence orders, threat to kill, threat to inflict grievous bodily harm and stalking. The presumption 'against bail' includes for serious offences, including murder, certain serious drug offences and serious offences alleged to have been committed while a charge of another serious offence is before the court. ACT Policing's position is that the offences listed under the presumption 'against bail' should be reviewed, particularly to consider the inclusion of offences committed in family violence settings.

The submission addresses the Terms of Reference (ToR) by highlighting recurring themes referenced within the three areas in which the Bail Act is structured and note other considerations including bail reporting conditions, training of police and the judiciary and bail considerations for First Nations peoples.

This is a standalone response from ACT Policing and will complement a separate submission from the ACT Justice and Community Safety (JaCS) Directorate.

Presumption for bail

Under section 22 of the Bail Act, in making a decision about the granting of bail to an adult, a court or authorised officer must consider matters such as the likelihood of the person appearing in court in relation to the offence and the likelihood of a person committing further offences or endangering the safety or welfare of another person while released on bail and the interests of the person. At present, a person charged with a minor offence punishable by imprisonment of less than six months, has the presumption for bail and is entitled to be granted bail and released from custody.

For offences where a presumption against bail does not exist, ACT Policing has observed that it is generally assumed there is a presumption for bail for all other offences, rather than the courts adopting a neutral position and determining the granting of bail on the particular circumstances of each case. ACT Policing would support amendments to the Bail Act to ensure that where a presumption against bail does not exist, that the courts adopt a neutral position for certain offences and determine the granting of bail on the circumstances of each case. As outlined in ACT Policing's submission to the Inquiry into Dangerous Driving (2022) (Dangerous Driving Submission), some of the offences that should be addressed include assaulting a police officer, driving at police and for recidivist serious motor vehicle offenders.

In November 2021, the ACT Government did not progress changes to the bail laws in relation to assaulting police on the basis that there is no evidence to suggest that changes would result in an improvement to community safety. ACT Policing believes these proposed changes to the legislation, particularly for use with recidivist offenders, would provide greater safety for police especially for dangerous driving offenders who drive at police, both in vehicles and on foot, to avoid apprehension. As reiterated throughout the Dangerous Driving Submission, the driving behaviour of these offenders proves a significant risk to all members of the community and as such, the current position on bail in relation to these offences needs to be addressed. ACT Policing regularly encounters recidivist offenders for driving matters being released on bail only to commit further offences shortly after.

The case study at **Attachment A** illustrates ACT Policing's concerns around applying bail conditions without support services to address the cause of offending, contributing to recidivism.

The young person whose bail experience is the basis of this case study is currently 15 years of age, has been coming to the attention of police since April 2021. The attached timeline outlines the reasons for his involvements with police, and the subsequent bail conditions imposed by the court.

ACT Policing notes that in many circumstances bail conditions are not sufficient in terms of their core purpose under the Act – to ensure someone appears in court and reducing the likelihood of reoffending or endangering others. Alternatives need to be put in place to deter offenders from committing further offences when released on bail.

Charges laid by ACT Policing where the person was already subject to bail							
Offence	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24*
Homicide	0	0	0	0	3	2	0
Assault	69	52	68	83	68	96	60
Sexual offences	0	1	4	11	3	4	1
Other offences against the person	13	11	8	11	26	23	8
Robbery	10	15	9	5	4	11	12
Burglary	18	16	16	18	17	45	55
Stolen Motor vehicle	31	22	45	40	46	56	40
Theft (excl motor vehicle theft)	21	42	35	26	55	82	91
Property damage	24	29	33	42	49	35	36
Other offences against property	43	25	59	71	44	62	44
Environmental Offences	0	0	0	0	0	0	4
Government security/operations	13	16	22	17	9	11	10
Justice procedures**	1643	1601	1789	1618	1267	1532	1332
Firearms and weapons	42	46	40	33	50	48	31
Other offences against good order	22	27	28	23	11	32	33
Drug offences	64	58	69	50	38	36	18
Traffic Offences	263	340	452	418	253	250	137
Other offences n.e.c.	8	4	17	8	17	5	2
Total	2284	2305	2694	2474	1960	2330	1914

*1 July 2023 - 30 April 2024

** *Justice procedures* includes where a person on bail breaches those conditions and is placed before the court again

Source: PROMIS as at 30 April 2024

No presumption for bail [neutral]

There are offences for which there is no presumption for bail [neutral] for certain offences, including contraventions of family violence orders, threat to kill, threat to inflict grievous bodily harm and stalking.

ACT Policing supported the ACT Government's introduction of the *Sexual, Family and Personal Violence Legislation Amendment Bill 2023* (currently before the Legislative Assembly and introduced on 2 November 2023) which will create a neutral bail presumption for certain sexual offences. Having a neutral position relating to the granting of bail will reflect the serious nature of sexual assaults, together with providing victims a greater sense of safety that the facts of their matter will be taken into account rather than a presumed position the offender will be granted bail.

ACT Policing notes that in many circumstances bail conditions are not sufficient to mitigate identified risks and bail does not necessarily stop or deter future offending, which places a victim-survivor at further risk and in turn can re-traumatise the victim-survivor. The neutral position with respect to the granting of bail in these matters is a positive step forward for sexual assault prosecutions.

Presumption against bail

The presumption against bail is for serious offences, including murder and certain serious drug offences. ACT Policing recommends that the offences listed under the presumption against bail should be reviewed, particularly for matters where they have occurred in a family violence setting and the operation of section 9F of the Bail Act.

ACT Policing recommends that bail for Domestic and Family Violence (DFV) offences must be refused unless there are exceptional circumstances as to why the accused should not be kept in custody. As at 26 April 2024, there were 515 people on bail in the ACT for DFV related offences*. This represents a high level of risk to victim-survivors in terms of the potential for re-offending and escalation of behaviour by offenders.

*This data is based on offenders who have previously been apprehended for FV related offences and currently have active bail alerts. These bail alerts may or may not necessarily be for family violence offences and could relate to offences subsequently committed.

The ACT Policing Watch House maintains strict compliance with the provisions of the Bail Act 1992 when considering bail for accused persons. There is a strict prohibition against Watch House bail in family violence homicide cases. ACT Policing upholds the presumption 'against' the normal granting of Watch House bail to persons charged with a family violence offence except where the Watch House Sergeant is genuinely satisfied the person poses no danger to the victim, a family member, or another protected person while released on bail; and that the bailed person will appear before court within 48 hours. Should bail be granted in these circumstances, the Watch House Sergeant must detail their decision rationale in writing.

If a presumption against bail for family violence offences was not supported, the Bail Act should at least acknowledge, and require the Magistrate to consider, that fixated family violence offenders are unlikely to comply with bail conditions, no matter how strict, especially if they have a previous occurrence of breaching family violence orders.

Please see below a recent case study.

Date	Incident
31 September 2021	A male was arrested for property damage and using a carriage service to harass. This offending was after the victim would not let him into her house sometime after they had broken up. The male yelled at the victim, tried to break into her house and left her threatening phone messages. These matters were dealt with by the court by way of fine in December 2021. Parallel to this, the victim was granted a Family Violence Order against the male.
24 January 2022	The male was arrested for breaching the Family Violence Order. He was granted bail with conditions including not to contact or be within 100m of, the victim.
12 March 2022	Police arrested the male for assaulting the same victim. This offence occurred due to an argument arising between the pair after he accused the victim of secretly having a conversation with another male. The assault involved the male pinning the victim to the bed, placing his hands around her

	neck and verbally threatening her life, before he was pulled off the victim by her housemates. He was granted bail with the same conditions.
15 April 2022	The victim was murdered by the male offender. He was convicted and is serving a 15-year custodial sentence in the ACT.

In circumstances where the magistrate or judge grants bail for persons charged with family violence offences, ACT Policing would support the consideration of home detention and electronic monitoring as a condition of the bail.

Bail and effective bail conditions is a topic that needs to be further explored including understanding the dynamics of coercive control and understanding the evidence-based risk factors such as those outlined in Australia's National Research Organisation for Women's Safety (ANROWS) risk assessment principles.

Other considerations

Bail conditions

ACT Policing believes one result of the current approach to sentencing and granting of bail by the ACT Courts is recidivism, as the punishments being handed down by the courts is not a deterrent for these offenders.

Bail conditions are often unenforceable – for example curfews without a condition to present to police when compliance action is being conducted or conditions prohibiting drug and alcohol use but no condition to submit to drug and alcohol screening.

Support Services

There are a wide range of services, and new initiatives such as the Safer Youth Response Service which should assist police to refer youth to easily. Despite the array of services available, ACT Policing believes the main challenges revolve around the logistical and administrative facets of these programs that prevent optimal uptake and use of these services.

ACT Policing's Vulnerable Persons Team often engages with vulnerable young people to help reduce the burden placed on frontline police officers continually responding to repeat calls for service.

Even with the luxury of more time to work with young persons in an attempt to divert them from criminal or dangerous behaviours, including becoming victims of crime, the Vulnerable Persons Team's efforts are limited by a range of factors.

ACT Policing constantly experiences the following limitations:

- Wait times to enrol young persons into support programs can be lengthy.
 - Regarding the Restorative Justice process - the wait time for a matter to be allocated is approximately 10 weeks.
 - The wait list for a serious matter (sexual assault or family violence) can be up to approximately 16 weeks.

- There is often multiple directorates and agencies who are attempting to place a person with a support service.
- A lack of transport options that can affect a person's ability to attend the relevant program matched to their individual needs and goals.
- Where services have narrow thresholds for program access – limiting the acceptance of nominated persons into their programs.
- Accessibility and affordability of mental health support services; and
- Minimal options for continued long term support once a young person completes a program.

In addition to addressing the above issues, there are several measures that ACT Policing believes may be effective in the management of recidivist offenders which were previously included in its Dangerous Driving Submission. These included:

- A High Risk-Offenders scheme for repeat drink and drug drivers in the ACT

This scheme would require recidivist offenders to demonstrate to a court their fitness to drive, requiring proven abstinence from problematic or dependent drug or alcohol use, along with evidence that they are no longer a persistent user. This would coincide with the person receiving tailored welfare support. The United Kingdom (UK) has had a similar scheme in place for drink driving since 1983 which has proved successful. The UK is now looking to implement the scheme for drug driving.

- Electronic Monitoring

The ACT is the only jurisdiction in Australia that does not use electronic monitoring as a means of supervising serious offenders and defendants in the community. This proposal should be aimed at serious and recidivist offenders as a condition of bail or parole. In her submission to the ACT Government's Standing Committee on Justice and Community Safety Inquiry on Community Corrections, Professor Lorana Bartels of the Australian National University stated "...on balance, the evidence suggests that, if implemented appropriately, the use of electronic monitoring would potentially bring significant benefits to the ACT community, including people involved in the justice system, victims and taxpayers". Other jurisdictions in Australia have found the use of electronic monitoring to be beneficial, with Queensland Police implementing the use for high-risk offenders charged with family violence.

ACT Policing welcomes the ACT Government's work to scope out the potential application of electronic monitoring in the ACT, though notes that the benefits of electronic monitoring will not be fully realised unless substantial resources, support and mechanisms accompany its implementation.

Training

Anecdotal evidence is that Magistrates' understanding of coercive control and consideration of domestic family violence risk is mixed and tends to be based on personal judgement rather than evidence-based risk factors such as those in the ANROWS risk assessment principles. For example, high risk offenders will ignore conditions, so placing a high-risk offender on strict bail is no better than releasing them without bail.

It would be helpful if all Magistrates hearing DFV matters had the same mandatory DFV training and for the content of that training to be transparent to police, prosecutors and defence. This way bail submissions could be informed by the DFV risk training the Magistrate can be expected to possess. Ensuring consistent and appropriate training on the dynamics and complexities of DFV for police, prosecutors, judiciary and defence is desirable.

First Nations bail considerations

ACT Policing continues to work with the ACT Government to uphold its commitment to addressing the underlying issues causing the over representation of First Nations peoples in the criminal justice system. ACT Policing believes to better address this issue, there needs to be a greater focus on engagement, early intervention, diversion and importantly partnerships with other key stakeholders to address this issue holistically.

The Front-Up Program is a long-established and mature partnership between the Aboriginal Legal Service (ALS) and ACT Policing to support First Nations peoples who have outstanding arrests warrants or who have breached bail conditions. Each fortnight, ACT Policing provides a list of people for whom a first instance warrant is in existence. Thereafter, ALS contacts and attempts to negotiate with the person subject of the warrant to co-attend court to resolve the outstanding matter, thereby diverting the person from police custody.

In 2022-23 the Front-Up Program saw 17 male and 24 female First Nations persons diverted from police custody, totalling 41 people.

With regard to additional First Nations bail reform considerations, ACT Policing has been encouraging those reporting for bail via alternate means to the traditional sites of police stations, such as exploring the use of the JaCS bail reporting smartphone application, for instances when the risk to the community does not warrant police reporting.

ACT Corrections has established alternate reporting through First Nations Community Groups and Non-Government Organisations which may also be considered on a risk and compliance basis.

Conclusion

ACT Policing is committed to protecting the safety of the Canberra community. ACT Policing's position is that broader examination of policy around bail and appropriate sentencing is necessary to ensure all offenders have the opportunity to rehabilitate, while not placing the community's safety at greater risk.

ACT Policing believes that the availability and use of appropriate support services and consideration to the individual circumstance of the offender should be a key consideration of bail. Appropriate conditions applied to an alleged offender upon receiving bail will benefit both the offender and the community, ensuring bail remains a key part of the judicial process and community safety.

Attachment A - Case Study

Date	Incident	Result	Bail conditions
19 June 2021	First arrest for numerous burglary and stolen motor vehicle offences.	Granted bail and released into the care of his mother.	Place of residence; curfew; locations not to attend; and persons not to associate with; to attend school; not be in the driver's seat of a motor vehicle or have possession of car keys.
29 June 2021	Arrested for breaching his bail conditions as he had run away from home and was failing to abide by most of the conditions set by the Children's Court.	Released by the ACT Children's Court and placed on stricter bail conditions.	Accept the supervision of the Director-General under the Children and Young Persons Act 2008.
3 July 2021	While in attendance at court he was further charged with 'fresh charges before court' for offences that included burglary and stolen motor vehicles. These offences had been allegedly committed by the young person while subject to existing bail conditions. <i>*Although suspected to be involved in several offences, investigations were unable to prove beyond a reasonable doubt, his involvement.</i>	Released upon entering into bail conditions.	Meet with CYPS as directed; be of good behaviour when meeting with CYPS. Notify CYPS of any changes to the young person's address or contact details; and to reside as directed and abide by curfew conditions to be at home between the hours of 8pm and 7am each day. Remained on bail conditions for the rest of 2021.
1 November 2021 – 24 May 2022	A police check at the young person's home identified that he had failed to comply with the curfew as stipulated within his bail conditions and he was reported as being in breach. The young person was arrested early January 2022 and placed before the Children's court for breaching his bail conditions.	Placed on bail conditions and ordered to return to court in late January 2022. Upon returning to court, he was released on bail conditions and ordered to return to court in May 2022. Bail was extended until mid-July 2022.	Accept the supervision of the Director General; reside as directed by CYPS; be present at place of residence from 8pm to 7am except when in the company of his mother or delegate from CYPS; not to be in the suburb of Holt; not to approach any gym or fitness centre unless in the company of his mother; to attend school as directed by CYPS; not to contact certain persons; and not to be in the driver's seat of a motor vehicle or possess

			any motor vehicle keys or fobs.
24 May 2022	Arrested for breaching conditions of his bail and remanded in custody until he next appeared in court four days later. Throughout the rest of 2022 the young person remained on bail conditions. <i>*The young person suspected to be involved in numerous offending including stolen cars and dangerous driving offences, but it was unable to be proven to a standard acceptable to the court.</i>	Released on entering bail conditions.	Bail conditions were continued as outlined above.
3 February 2023	Involved in a police pursuit which involved the ramming of a police car. The stolen motor vehicle the young person was traveling in, was successfully stopped with the use of a tyre deflation device. The young person was arrested and charged for riding in a stolen car.	Faced the ACT Children's Court and released.	Restrictions on who he associated with; where he resided; and was given a curfew.
17 February 2023	Arrested for his involvement in a burglary and theft of a motor vehicle and appeared in court the next day.	The ACT Children's Court released the young person on bail with added conditions.	Not to drive a motor vehicle, not to be in the driver's seat of a motor vehicle or possess car keys. Reinstated placement under the supervision of the Director General.
26 April 2023	Breached bail conditions by running away from home. Taken into custody in early May 2023 for the breach and placed back before the Children's Court.	Released with bail conditions and into the custody of his mother.	Accept the supervision of the Director General including but not limited to directions with respect to the young person's education and employment; to reside as directed; a curfew to be at his place of residence between 9pm and 7am each day; not be in the company of certain other young persons; and

			not drive, be in the driver's seat of, or physically possess traditional or remote access keys to a motor vehicle.
4 July 2023	Came to the notice of police after pursuing a stolen motor vehicle. The young person was suspected to be involved in the incident and was located near where the stolen motor vehicle had been left.	Taken into custody for being in breach of his bail conditions. Released on bail conditions.	Bail conditions outlined as those above, although the curfew was removed.
25 July 2023	Later that same month the young person was involved in an assault upon another young person and was charged with <i>Assault Occasioning Actual Bodily Harm</i> .	When the young person faced the ACT Children's Court, he was remanded in custody and remained in custody until the start of September 2023.	None – remanded in custody.
22 September 2023	The young person was found to have left his place of residence and therefore was in breach of his bail conditions. A few days later he was arrested for this breach as well as his involvement in stealing a motor vehicle and being in possession of stolen property.	The court placed the young person on 18 bail conditions.	Restricting his behaviour; associates; curfew; and consumption of drugs; and alcohol.
14 October 2023	Arrested for breach of bail, ride in stolen motor vehicle, drive stolen motor vehicle and participating in a criminal group.	Faced the ACT Children's Court and was remanded into custody until mid-November, at which time he was released on bail which included nine conditions.	Supervision; not to drive or be in the driver's seat of a car; curfew; not to associate with certain persons and not to consume drugs or alcohol.
28 December 2023	Found to be in breach of bail conditions as he was not residing at his mother's home and his location was unknown.	Arrested in late December 2023 for breach of bail as well as his involvement in a string of burglaries and ram raids that had taken place throughout Fyshwick. On 1 January 2024 the young person faced Court and was remanded in	Reside as directed by CYPS; not commit any offences; not to associate with certain persons; not to drink alcohol; not to drive or be in the driver's seat or be in possession of traditional or remote access keys to a motor vehicle; accept supervision of Director General and comply with all reasonable directions; be at

		custody until mid-April 2024. Released from custody in April 2024 with bail conditions.	his place of residence from 6pm to 7am each day; present to police during curfew period as required; not to contact certain young persons; not to use illegal drugs or drink alcohol; undertake alcohol breath tests if requested by a member of the AFP; not be in a public place under the influence of drugs or alcohol; and to undertake urinalysis as directed by CYPs.
1 May 2024	The young person ran away from home and was reported as a missing person, which in turn breached his bail conditions. He was arrested a week later and placed before the ACT Children's Court.	Several of his outstanding matters were dealt with by the Magistrate. The young person was given bail to appear back in court at the end of May 2024 in relation to approximately 20 outstanding charges that are yet to be dealt with by the Children's Court.	Acceptance of supervision of Director General and comply with all reasonable directions; reside as directed by CYPs, be present at his place of residence unless in the company of his mother or CYPs; present to police when they attend his place of residence; not commit any offences; restrictions as to who he allowed to contact or be in the company with; not to use alcohol or drugs; undertake urinalysis as directed by CYPs; and not drive, be in the driver's seat or physically possess any traditional or remote access keys to a motor vehicle.