

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**REVIEW OF
AUDITOR-GENERAL'S REPORT
NO 7, 1998**

Magistrates Court Bail Processes

**STANDING COMMITTEE FOR THE CHIEF MINISTER'S PORTFOLIO
(INCORPORATING THE PUBLIC ACCOUNTS COMMITTEE)**

Public Accounts Committee Report Number 20

June 1999

RESOLUTION OF APPOINTMENT

The Standing Committee for the Chief Minister's Portfolio was appointed by the Legislative Assembly on 28 April 1998 to examine any matter under the responsibility of the Chief Minister's portfolio. The Assembly also resolved that the committee perform the duties of a public accounts committee, specifically:

- (a) to examine:
 - (i) the accounts of the receipts and expenditure of the Australian Capital Territory;
 - (ii) the financial affairs of authorities of the Australian Capital Territory; and
 - (iii) all reports of the Auditor-General which have been laid before the Assembly;
- (b) to report to the Assembly, with such comments as it thinks fit, on any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed; and
- (c) to inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question.

MEMBERSHIP OF THE COMMITTEE

Mr Ted Quinlan MLA Committee Chair

Mr Trevor Kaine MLA Deputy Committee Chair

Mr Greg Cornwell MLA

Secretary: Bill Symington

1. INTRODUCTION

1.1. Auditor-General's Report No 7, 1998 was presented to the Assembly on 26 November 1998.

1.2. This audit reviewed bail procedures and enforcement at the Magistrates Court. It did not review judicial decisions or matters related to children under 18 years of age.

2. AUDIT FINDINGS

2.1. The audit found that:¹

- (i) generally defendants on bail appear at Court when required to do so;
- (ii) forfeiture of bail and imposition of penalties frequently does not occur in accordance with legislation and/or court directions; and
- (iii) processes for issuing warrants for the apprehension of defendants who fail to appear at the Magistrates Court are inefficient and often result in warrants not being issued in a timely manner.

2.2. The committee sought comment on the audit findings from the Attorney-General and received a Government submission.²

2.3. The next section of this report discusses the Government's response to those audit findings of significance.

3. COMMENT ON THE SIGNIFICANT AUDIT FINDINGS

3.1. Forfeiture of bail occurs where a sum of money has been deposited or an undertaking has been given that a sum of money will be paid should a person granted bail fail to attend at Court as required. This money becomes forfeited when the person fails to appear in Court and the Court makes an order for forfeiture.³

3.2. The Minister advised that the penalty that may be imposed where a person granted bail fails to attend Court is a penalty in respect of the offence of failing to appear. The penalty is one which can only be imposed by the Court where a person is charged and convicted of the relevant offence, created by section 49 of the *Bail Act 1992* (the Act). The penalty for this offence is imprisonment for a period not exceeding 2 years or a fine not exceeding 200 penalty units, or both.

¹ Audit report p3

² Attorney-General, letter to committee with submission, dated 14 April 1999

³ *ibid*

3.3. The Minister further advised that both orders for forfeiture and imposition of penalties are matters for the exercise of judicial discretion. Follow up action taken to recover bail ordered forfeited is not a judicial issue and the Minister emphasised the importance of this distinction.

3.4. The committee accepts the distinction and the Minister's advice that Court staffs were understood to have raised with the Auditor concerns that references construed as reflections on judicial decisions were retained in the report. However, the committee does not consider the issue derogates from the general audit findings. It notes, in fact, that the Minister's concerns were not reflected by the Departmental comment included in the audit report.⁴

3.5. With regard to the audit findings in general, the Minister acknowledged they demonstrate a need for improved processes within the Magistrates Court for the recovery of amounts forfeited pursuant to the Bail Act. The Minister also welcomed the audit suggestions for future action and noted that the need for change to bail forfeiture arrangements had also been identified by the Law Reform Commission in its draft report on Bail, issued in December 1998.

3.6. The committee turns to the specific audit findings and suggestions for future action.

The audit noted that forfeiture of bail and imposition of penalties is frequently not occurring in accordance with the requirements of legislation and/or Magistrates' directions.

3.7. The audit found:⁵

- (i) inadequate documentation of procedures at the Magistrates Court Office addressing how cases where defendants fail to comply with an undertaking to appear should be processed;
- (ii) there are no control procedures at the Court to ensure that when defendants fail to comply with an undertaking to appear action is initiated to recover bail amounts from defendants and/or steps are initiated to apprehend the defendant;
- (iii) that in none of the 20 cases tested by the audit had the defendants been specifically fined or imprisoned for failing to attend Court when required;
- (iv) in 7 out of 12 cases tested where it was applicable, there was no evidence that any action to either recover forfeited bail amounts from defendants and/or issue warrants for their apprehension as requested by the Court had been initiated;
- (v) there was evidence in only 2 of the 20 cases tested had defendants partially repaid their forfeited bail amounts; and

⁴ Audit report, p22

⁵ *ibid*, pp20/21

- (vi) evidence in only 2 of the 20 cases tested, that cases had been referred to a Magistrate in order for the Court to reverse its original bail forfeiture and warrant issue decision.

3.8. In response, the Minister advised that the audit identified largely procedural deficiencies and that the Chief Executive of the Department of Justice and Community Safety had, in response to a draft of the audit report, advised that there is enthusiasm and commitment by all Court staff to improve breach processes to the maximum extent possible and that the audit would play a useful role in improving the efficiency of this part of the criminal justice system.⁶

3.9. The Minister advised that as a result of discussions between the Auditor and Court staff in the course of the audit, there has been a sharper focus by the Court on its procedures and that reforms were implemented well in advance of the final audit report, that written procedures for recovery of forfeited bail have been distributed to relevant staff and bail forfeiture recovery procedures have been automated. Accordingly, if the debt remains unpaid a warrant of execution is issued.

3.10. The Minister acknowledged that a public perception that sanctions for non-compliance with the directions of a Court will not be followed up could damage the standing of the Court and the integrity of the broader criminal justice system. However, the Minister noted that in the three-year period 1996-1998 over 230,000 criminal matters were listed before the Magistrates Court involving some 30,000 defendants and that bail was forfeited on 330 occasions.

3.11. As a result of the audit, the Minister advised that Court staff would ensure that Magistrates consider reversing forfeited bail moneys when the Magistrates deal with substantive charges.

3.12. However, the Minister advised that this raised the issue of when a Court should impose, as a condition of admitting a person to bail, an undertaking to forfeit an amount of money if the person fails to appear at Court. The Minister advised that the provisions of the Bail Act acknowledge the reality that many defendants have limited financial resources. For example, the Act does not permit a defendant to be required, as a condition of bail, to deposit a specified sum of money where the Court has reasonable grounds to believe that the defendant does not have the means to provide such a sum.

3.13. The Minister further advised that it is an offence under the Act, with significant penalties, to fail to appear before the Court, having given an undertaking to do so, and that the Court has an alternative sanction for those who fail to appear as required. The Minister put the view that it could be seen as somewhat harsh for both sanctions (that is, forfeiture and a criminal penalty) to be applied in respect of the same failure to appear.

3.14. The Minister advised that it seemed likely that the Court would continue to require defendants to enter into undertakings as to the forfeiture of significant amounts of money (even where it seemed unlikely that the defendant would have the

⁶ *ibid*, p9

means to pay such an amount) as a means of ensuring the defendant's attendance at Court.

The audit found that current processes for issuing warrants of apprehension of defendants who fail to appear at Court when required to do so are inefficient and often result in warrants not being issued in a timely manner.⁷

3.15. The audit noted that the current procedures by which warrants of apprehension for defendants who breach their bail undertaking to appear at court involve the Australian Federal Police (AFP) informant swearing out a first instance warrant for the arrest of the defendant on a charge of failure to answer bail. The Director of Public Prosecutions (DPP) initiates this process and contacts the police informant.

3.16. The Minister agreed that this is a cumbersome and time consuming process, noting that it has also been addressed in the Law Reform Commission's draft report on Bail. The Minister advised that the Commission has recommended the Court be empowered to issue a warrant for the arrest of a person who has failed to comply with a bail condition without the informant's involvement. The Commission has recently sought public comments on that report and the Government expects to receive its final report shortly. Without pre-empting a response, the Minister agreed there is a need for a more timely, less resource intensive, mechanism for issuing warrants of apprehension in the case of breaches of bail conditions.

3.17. The Minister advised that, in the meantime, the Court has implemented arrangements to ensure the informant is notified promptly when a defendant fails to attend as required. The new AFP computerised case management system produces the documentation necessary for the warrant to be sworn out and the Court is also generating regular monthly reports of unactioned bail breaches for forwarding to the AFP and the DPP. Protocols and Memoranda of Understanding between the AFP, the DPP, and the Courts are being developed to set out the responsibilities of these agencies including the time frames in which relevant information or documentation should be provided.

4. COMMITTEE COMMENT

4.1. The committee was advised that the Magistrates Court has commenced backcapturing details of cases where bail forfeiture was ordered, and for the three years 1996-1998 had established that bail was ordered forfeited in 330 cases. The monetary value of these forfeitures was \$390,000 of which \$62,000 was ordered reversed. The committee was advised that less than \$2,000 of the bail remaining forfeited had been paid.⁸ It was put to the committee that while this partly reflected a lack of follow-up to recover forfeited bail it must also be acknowledged, as noted in paragraph 3.12 above, that in some cases defendants will have little or no realistic prospect of meeting the payment of forfeited bail.⁹

⁷ *ibid*, p30

⁸ Attorney-General, letter to committee dated 8 February 1999

⁹ *ibid*

4.2. Nevertheless, the Minister advised that the audit had been a useful examination of the bail procedures in the Magistrates Court, which had already undertaken a number of procedural reforms. The committee was advised that the audit report would assist the Government in considering those aspects of the Law Reform Commission's report on Bail relating to procedural matters.¹⁰

4.3. The committee notes that the Government has undertaken to monitor the procedural changes arising from the audit report to assess the degree to which they impact on the recovery of forfeited bail moneys.¹¹

4.4. Having said that, the committee finds it disturbing that the court's bail processes are rather meaningless. There seems every likelihood that persons who breach bail conditions will not be penalised. Further there is no evidence that those who stand surety for bail are brought to account when bail conditions are not met. It would appear to the committee that the lack of application of process has the potential to bring the court system into disrepute.

5. RECOMMENDATION

5.1. The committee recommends that:

- (i) the Government establish regulatory processes which ensure that where bail and surety conditions are breached appropriate bail forfeitures apply; and**
- (ii) the Attorney-General, after 12 months experience with the procedural changes initiated by the Magistrate's Court following the audit, inform the Assembly of the extent to which those procedures have been beneficial in improving the recovery of forfeited bail monies.**

Ted Quinlan MLA
Chair

¹⁰ Attorney-General, letter to committee with submission op cit

¹¹ *ibid*