

Auditing for the Australian Capital Territory

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PA97/16

26 November 1998

The Speaker
ACT Legislative Assembly
South Building
London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

In accordance with the Authority contained in the *Auditor-General Act 1996*, I transmit to the Legislative Assembly my Report titled "*Magistrates Court Bail Processes*".

This audit was managed by Kurt Munro and conducted by Vicky Kapota.

Yours sincerely

John A Parkinson

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1. REPORT SUMMARY

1.1 INTRODUCTION

In the ACT, all procedures relating to bail are governed by the *Bail Act 1992*. Bail is a defendant's undertaking to attend Court in return for release from custody. The *Bail Act* provides that a person who has given an undertaking to appear at Court and fails, without reasonable excuse, to appear before a Court is guilty of an offence punishable by imprisonment or a fine or both. A person who fails to comply with conditions imposed on the grant of bail may be apprehended without warrant and brought before the Magistrates Court which has the power to reconsider the person's entitlement to bail and may remand the person in custody. Failure to attend Court can also lead to the forfeiture of money as specified in the conditions of bail.

It should be noted that all references to Court in this Report refer to the Magistrates Court.

For 1997-98, the majority of costs incurred administering bail are reported in the ACT Budget Papers as part of the Attorney-General's Department's *Output 5.2 — "Adjudication of Disputes and Resolution of Questions of Legal Fact in the Magistrates Court and Associated Courts"*.

1.2 AUDIT SCOPE AND APPROACH

The audit reviewed bail procedures at the Magistrates Court and the processes in place to ensure enforcement of relevant penalties when

defendants fail to comply with an undertaking to appear at Court.

The audit did not review judicial decisions made by the Court. Also matters related to children under the age of 18 years were excluded from the audit.

1.3 AUDIT OBJECTIVES

The objectives of the audit were to provide the Legislative Assembly with independent opinions on:

- whether defendants on bail attend Court as required; and
- whether, if bailees fail to attend Court, forfeiture of bail and imposition of penalties occurs as provided by legislation and/or Magistrates' directions.

The independent audit opinions formed from the audit are set out on *page 3*.

AUDIT OPINIONS

Bailees Attendance at Court when Required

- Generally defendants on bail appear at the Magistrates Court when required to do so.

Forfeiture of Bail and Imposition of Penalties

- Forfeiture of bail and the imposition of penalties is frequently not occurring in accordance with the requirements of legislation and/or Magistrates' directions.

Other Significant Issue

- The current 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.

1.4 BASES FOR AUDIT OPINIONS

The bases on which each audit opinion was formed are set out below:

Bailees Attendance at Court when Required

The opinion that, *generally defendants on bail appear at the Magistrates Court when required to do so* is based on the following:

- a report prepared by the Magistrates Court for the audit titled “*Bail Statistics 1996-97 Financial Year*” contained statistics showing that 90% of bailed defendants appeared in Court (*Chapter 3*); and
- the Audit reviewed the statistics contained in the report and verified the results to supporting documentation (*Chapter 3*).

Comment

The Audit found that in the ACT there is a good compliance rate. The audit however was unable to identify any specific reasons for the level of compliance in attending Court. One factor may be the well defined procedures operating at the Court which ensure defendants are made fully aware of the potential consequences of not appearing at Court when required to do so.

There may well be other factors unrelated to the Court which influence whether or not bailed defendants comply with their bail conditions. Factors suggested to Audit include the small population of the ACT and the small geographical size of the ACT compared to other jurisdictions. These factors could

generate in defendants a belief that they are more likely to be detected and arrested in the ACT than if they resided in larger jurisdictions.

Forfeiture of Bail and Imposition of Penalties

The opinion that *forfeiture of bail and the imposition of penalties is frequently not occurring in accordance with the requirements of legislation and/or Magistrates' directions* is based on the following:

- there is 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 (*Chapter 4*);
- there are no control procedures in place 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 (*Chapter 4*);
- in none of the 20 cases tested by the audit, had defendants been specifically fined or imprisoned for failing to attend Court when required (*Chapter 4*);
- 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 (*Chapter 4*);

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- in only 2 of the 20 cases tested had defendants partially repaid their forfeited bail amounts (*Chapter 4*); and
- there was 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 (*Chapter 4*).

Audit Comments

The lack of documentation and controls over processing procedures where defendants fail to comply with an undertaking to appear is a significant administrative weakness at the Court. There are currently no procedures in place to ensure that all failures to appear are actioned, or that they are being actioned in accordance with the Court's directions. The results of testing performed by audit found several instances where failures to appear had not been actioned correctly.

In a large proportion of the 20 cases tested by the audit no charge of failing to attend Court had been made against any defendant.

In 12 of the 20 cases tested by the Audit it was found that the defendants should have forfeited their bail and a warrant should have been issued for their apprehension. However in 7 of these cases no action had commenced to recover bail amounts from the defendants, nor had steps been taken to issue warrants for the defendants apprehension.

It should however be noted that a number of these cases had yet to be finalised.

The results of audit testing support the opinion that in a large number of cases Magistrates' directions in regards to bail forfeiture and

apprehension have not been acted on by the Court Office in a timely manner.

Issue of Warrants of Apprehension

The opinion that the *current processes for issuing warrants for the 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* is based on the following:

- the current process by which warrants are issued for the apprehension of defendants who fail to appear at Court when required are inefficient; and
- the warrants are not being issued in a timely manner.

1.5 CONCLUDING COMMENTS

The audit found that there is a high level of compliance by defendants on bail with their bail conditions. This high level of compliance may be attributable to procedures currently operating at the Magistrates Court which ensure defendants are made fully aware of the potential consequences of breaching their conditions of bail or not appearing at Court when required to do so.

There may also be reasons not related to Court procedures which contribute to the high level of compliance by bailed defendants.

The audit however found that the Court lacked controls to ensure that when defendants did fail to appear at Court when required that the breaches were actioned in accordance with legislative requirements or Magistrates' directions. The Court was not consistently taking action to recover forfeited bail amounts, nor are warrants for the apprehension of defendants who fail to appear consistently being issued.

The audit found that the process by which warrants are issued for the apprehension of defendants who fail to appear is cumbersome and results in warrants either not being issued or not being issued in a timely manner.

The overall view is that there is a relatively high level of compliance by bailees in attending Court when required. However, for those bailees who fail to appear, the Court is not fully meeting its obligation to ensure that the legislative penalties, etc, are being effectively imposed.

1.6 SUGGESTIONS FOR FUTURE ACTION

To address the audit finding that cases where defendants fail to appear at Court when required to do so are not being actioned in accordance with the directions of the courts, it is recommended that the following actions should take place:

- required procedures for actioning cases where defendants fail to appear at Court should be documented and communicated to relevant staff of the Court to ensure staff are fully aware of the action which is required in such cases;

- controls should be introduced at the Court to ensure that all cases where defendants fail to appear in Court are actioned in accordance with the Court's directions;
- court management should introduce monitoring procedures to ensure the controls implemented are being adhered to; and
- procedures should be revised to ensure warrants of apprehension are expeditiously issued.

1.7 RESPONSE TO THE REPORT

The Chief Executive of the Department of Justice and Community Safety and the Chief Magistrate provided a combined response to a draft of this Report. The response concluded with:

“Finally, I am assured that there is enthusiasm and commitment by all Courts staff to improve breach processes to the maximum extent possible and your report will play a useful role in improving the efficiency of this part of the criminal justice system”.

The response also included:

“Memorandums of Understanding should be entered into between the various criminal justice agencies involved in ensuring compliance with bail undertakings and/or the enforcement of Court decisions. These Memorandums of Understandings would detail the required procedures for actioning cases and identifying areas of responsibilities and would include control and monitoring procedures.”

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Various other extracts from the response are reported in the body of this Report.

Audit Comments

The Audit agrees that the development of Memorandums of Understanding is a useful approach. Co-operative development of the Memorandums by all parties involved should result in a more effective and efficient process than is currently occurring.

2. BAIL LEGISLATIVE REQUIREMENTS AND PROCEDURES

2.1 INTRODUCTION

All procedures relating to bail in the ACT are governed by the *Bail Act 1992*.

This Chapter outlines the criteria to be taken to account in granting bail, the different types of bail, conditions imposed and the consequences of breaching bail conditions. A development involving review of the *Bail Act 1992* by the Law Reform Commission is also mentioned.

2.2 BAIL

Bail is a defendant's undertaking to attend Court in return for release from custody, either on his/her own undertaking or upon the guarantee of others. Where others are involved they are known as sureties. Once a person is charged, the police have a discretion to either grant bail and release the defendant or refuse bail. If the police decide not to grant bail to a defendant, the defendant is kept in custody and brought before the Court as soon as practicable, normally at the Court's next sitting.

The granting of bail can be either with or without conditions. Bail granted without conditions simply requires an undertaking by the defendant to appear in Court at a specified time and date. Generally a defendant will be bailed without conditions if charged with a minor offence. For more serious offences the police or Court decide whether or not to release the defendant on bail and whether the bail should have conditions.

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Section 22 of the Bail Act 1992 sets out the criteria to be considered in making a determination regarding the granting of bail. The Court or an authorised officer must take into account:

Probability of Appearance

The probability of the person appearing in court to answer the charge must be considered. Relevant matters include:

- the background and community ties of the person having regard to the nature of his or her home environment and employment and to his or her criminal record; and
- the circumstances in which the offence is alleged to have been committed, the nature and seriousness of the alleged offence, the strength of the evidence against the person and any other information relevant to the likelihood of the person absconding.

Interests of the Person Charged

The interests of the person charged must be considered. Relevant matters include:

- the period that the person may be held in custody if bail is refused and the conditions under which he or she would be held in custody;
- the need for the person to be free for the purposes of preparing for his or her appearance before a court and obtaining legal advice or for other purposes; and
- the need of the person for physical protection because the person is incapacitated by intoxication, injury or use of drugs or some other reason.

Protection of the Community

The protection of the community must be considered. Relevant matters include:

- the likelihood of the person interfering with evidence, intimidating witnesses or otherwise obstructing the course of justice whether in relation to himself or herself or any other person;
- the likelihood of the person committing an offence while released on bail; and
- the likelihood of the person harassing a victim or other persons while released on bail.

2.3 TYPES OF BAIL

There are basically three types of bail:

- a personal undertaking to appear in Court, but where no bail amount is set;
- personal bail, where the defendant agrees to forfeit a sum of money if bail is breached; and
- personal bail with surety, where the defendant and another person (surety) each agree to forfeit a bail amount if bail is breached.

Most defendants are granted bail at their first appearance in Court or bail is extended if the police had granted bail at the defendant's arrest. In 1996-97 13% of defendants were required to give a personal undertaking with no bail amount set, 76% were granted bail on their own

agreement to appear, and 11% were granted bail with a surety.¹

Other bail conditions can be imposed to prevent the defendant from absconding or behaving unlawfully in addition to the requirement for an undertaking to appear in court. The two broad types of conditions are those designed to ensure the appearance of the defendant at court and those concerned with the defendants conduct whilst at liberty. Some common conditions imposed are:

- that the accused person report periodically at a specified place;
- that the accused person reside at a specified place;
- that the person undergo psychiatric treatment or other medical treatment; and
- that the person participate in a program of personal development, training or rehabilitation.

A person cannot be released on bail unless they undertake to appear before Court at a specified time and date.

The Court or an Authorised Officer may require another person or persons to guarantee that the defendant will attend Court in accordance with the bail undertaking. This person must be acceptable to the Court and must agree in writing that the defendant is a responsible person who is likely to appear in Court to answer the charge. The person or persons who make this guarantee are referred to as a surety or sureties. A surety who has entered into an

¹ Bail statistics obtained from a report prepared by the ACT Magistrates Court for the 96-97 financial year.

agreement to forfeit an amount may have some or all of that amount forfeited if the defendant fails to comply with any of the set terms or conditions of bail.

2.4 BREACHES OF BAIL

Effects of Breaching Bail

The *Bail Act 1992* provides that a person who has given an undertaking to appear at Court and fails, without reasonable excuse, to appear before a Court is guilty of an offence punishable by imprisonment for a period not exceeding 2 years or a fine not exceeding \$20,000 or both. A person who fails to comply with conditions imposed on the grant of bail may be apprehended by the police without warrant and brought before the Magistrates Court which has the power to reconsider the person's entitlement to bail and may remand the person in custody.

Where a defendant fails to attend Court in accordance with their conditions of bail, the Court will order, as a general rule, that bail and any amounts and/or surety pledged should be forfeited and a warrant issued for the arrest of the defendant.

Issue of Warrants for Arrests

It is the responsibility of the Director of Public Prosecutions to advise the Police that the defendant did not appear in court and that a warrant for the arrest of the defendant on a charge of breaching *Section 49(1)* of the *Bail Act* is required to be issued.

On receipt of the Director of Public Prosecutions' advice the commanding officer of the relevant police district forwards a minute to the original Police Informant, together with a brief, requesting the Informant i.e. the police officer who made the original charge to contact the Court and arrange issue of a first instance warrant. The Informant is required to attend Court with the brief and an affidavit setting out reasons why the warrant is sought as required by *Section 349ZD* of the *Crimes Act 1900*.

The Court then prepares an information and warrant for the arrest of the defendant. An authorised issuing officer formally issues the warrant after the Informant has sworn the information. The warrant is then forwarded to the police for action to be taken.

2.5 REVIEW OF THE BAIL ACT

In December 1997, the Attorney-General, having regard to community concern about the application of the *Bail Act 1992*, referred the following terms of reference to the ACT Law Reform Commission:

- to review the provisions of the *Bail Act 1992* to determine whether they are best suited to the public interest and particularly, the interests of victims of crime;
- to identify how successfully the provisions of the *Bail Act 1992* are operating;
- to identify appropriate criteria, if not already identified, for the grant of bail and whether discretion for various offences is appropriately exercised by police or

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members of the judiciary and under what circumstances;

- to determine whether amendments to the *Bail Act 1992* should be recommended; and
- to identify and make recommendations on any associated issue that the Commission considers relevant.

It is the Audit's understanding that the review of the *Bail Act 1992* by the Commissioner is currently underway.

3. BAILEES ATTENDANCE AT COURT

3.1 INTRODUCTION

This Chapter presents the results of a review of the degree of compliance of bailees with requirements to appear at Court on specified hearing dates.

3.2 SIGNIFICANT FINDINGS FROM THIS CHAPTER

- *A report prepared by the Magistrates Court for the audit titled “Bail Statistics 1996-97 Financial Year” contained statistics showing that 90% of bailed defendants appeared in Court; and*
- *The Audit reviewed the statistics contained in the report and verified the results to supporting documentation.*

3.3 LEVEL OF COMPLIANCE WITH BAIL CONDITIONS

A report was produced by the Magistrates Court of non appearing defendants (NAD's) for 1996-97. The NAD report lists all defendants who breached their bail conditions by not appearing in court during the 1996-97 financial period.

The NAD report showed that in 1996-97 approximately 10% or 235 bailed defendants did not attend Court when they were required to do so under their conditions of bail.

Audit Testing

The audit selected a sample of cases where the Court records showed that defendants had appeared as required by their bail conditions.

The case files for the sample selected were reviewed. For each there was adequate documentation verifying that the defendants actually appeared as required.

Audit Comments

On the basis of the results of the audit testing the conclusion has been drawn that Court records are substantially correct in relation to defendants who appeared as required and those who did not.

There are limited readily available benchmarks against which the ACT's 90% compliance rate can be compared. One that is available concerns Western Australia. A report was published by the Auditor-General of Western Australia in October 1997 titled *Bail and Prisoners in Remand*. In relation to bail this report highlighted that in Western Australia there is an 80% compliance rate. In comparison therefore to Western Australia the ACT compliance rate is good.

Explanations given to the Audit to explain the comparatively good compliance rate (90%) included the effectiveness of procedures operating in the Court to ensure that defendants are aware of the potential consequences of not appearing, and the small size of the ACT which motivates most defendants to believe that avoiding apprehension is more difficult in the ACT than in other Australian jurisdictions.

4. FORFEITURE OF BAIL AND IMPLEMENTATION OF PENALTIES

4.1 INTRODUCTION

This Chapter reviews whether the actions taken in cases of non-attendance were in accordance with legislative requirements and procedures. As mentioned in the previous Chapter some 235 (10%) of defendants released on bail in 1996-97 failed to appear at Court when required.

In order to test the actions taken in cases of non-attendance, the Audit randomly selected 20 of the 235 non-appearance cases to review in detail. Details of these cases were traced to defendants' files to establish the facts of the cases, ascertain what action the Court had decided to take, and to determine if the decisions of the Court had been completely and accurately actioned.

Procedures and internal controls operating in relation to bail breaches were also reviewed.

4.2 SIGNIFICANT FINDINGS FROM THIS CHAPTER

- *There is inadequate documentation of procedures at the Magistrates Court Office addressing how cases where defendants who fail to comply with an undertaking to appear should be processed;*
- *There are no control procedures operating at the Magistrates 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;

- *In none of the 20 cases tested by the audit, had defendants been specifically fined or imprisoned for failing to attend Court when required;*
- *In 7 out of 12 cases tested where it was applicable, there was no evidence that follow up action to either recover forfeited bail amounts from defendants and/or issue warrants for their apprehension as requested by the Court had been initiated;*
- *In only 2 of the 20 cases tested had defendants partially repaid their forfeited bail amounts; and*
- *There was 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 decision and warrant issue decision.*

4.3 LACK OF DOCUMENTED PROCEDURES

The audit found an absence of documentation of procedures at the Court addressing how cases where defendants had failed to comply with an undertaking to appear should be processed.

Documented procedures not only assist existing staff but also ensure new staff understand how cases should be processed. By documenting procedures, organisations ensure there is no loss of knowledge should long serving staff members leave. Good documentation also

promotes a consistency in how services are delivered.

The Audit believes that currently at the Court there is not a good understanding amongst staff of how cases where bail conditions are breached should be processed. There is no documentation to assist these staff in their duties.

In its response to a draft of this Report the Department advised:

“Most of the provisions in relation to bail forfeiture are contained in legislation. In addition there is a procedural manual, which, although somewhat dated, does have detailed procedures in relation to how bail forfeitures are to be recovered. Those procedures have not changed substantially over the years. The Court is also in the process of preparing updated procedural statements for all positions, however, this has not progressed as far as management had hoped. It remains a Court priority.

Additionally, in April this year, following the bail procedures being documented for the auditors, a copy of those procedures were given to the Deputy Registrars for dissemination to their sections. The procedures to be followed where bail has been forfeited and warrants are to issue are set out in that document. The current staff employed in the charge/summons sections are aware of the processes, but the auditors comments are noted.”

Audit Comments

As proposed by the Department it will be useful for the information prepared for the Audit to be distributed to staff of the Court. Such documentation detailing the processes required to be followed by legislation will assist staff in

the performance of their duties. Ensuring staff have readily available and understandable documentation will assist in ensuring there is consistency in the delivery of services at the Court.

4.4 LACK OF CONTROL PROCEDURES TO ENSURE ALL CASES ARE ACCURATELY PROCESSED

The Audit also found that there were inadequate control procedures operating at the Court to ensure that all cases where defendants failed to comply with undertakings to appear were being processed. The Audit found for instance:

- there were no controls in place to ensure that each case was actioned in accordance with the directions of the Court, ie. if the Court directed that bail be forfeited that action was initiated for the collection of the forfeited bail etc;
- the Court had only recently begun to review the extent of unissued warrants for the apprehension of defendants who had breached their conditions of bail conditions; and
- the Court had only from 1 January 1998 begun recording as a debt owed to the Court forfeited bail amounts; prior to this the amounts were only recorded when payment of a forfeited bail amount was made.

The existence of these control procedure shortcomings provides no confidence to Court management that all cases where bail conditions are breached are being processed in accordance with the directions of the Court.

It is the audit view that due to the absence of basic control procedures over the processing of cases, instances where the directions of the Court are not completely or accurately implemented will frequently occur and these cases will not be identified subsequently for corrective action to be taken.

In its response to a draft of this Report the Department advised:

“At the time there were no control procedures in place to ensure that breaches of bail act were initiated in a timely manner and this is an acknowledged fault in the system. If one accepts that the Court has an overarching responsibility control procedures have now been put in place”.

4.5 AUDIT TESTING

As mentioned in the previous chapter, 90% of defendants on bail appeared at the Magistrates Court when required to do so in 1996-97.

From the 10% or 235 defendants who did not appear at Court when required, the Audit randomly selected 20 cases and reviewed the case files to ascertain how the Court dealt with the matters.

Defendants Charged with Failing to Appear at Court

The Audit found that while breach of bail is an offence, none of the defendants in the sample tested were specifically charged with this offence for failing to appear at Court when required. A number of these cases had however yet to be finalised.

Forfeiture of Bail and Imposition of Penalties

In 7 of the cases tested by the Audit it was found that the Court's direction to forfeit bail and issue a warrant for the arrest of the defendant had not been actioned. The Audit found no evidence in any of the 7 cases that action had been taken to either recover forfeited bail amounts from defendants or to issue a warrant for arrest.

When Court officials were asked why action had not been taken no satisfactory explanation was given.

Follow up Action on Forfeited Bail Amounts

When the Court orders that a bail amount be forfeited the standard procedure is that a letter explaining this and requesting payment of the amount is sent to the defendants' or surety's address. However a large number of these letters are returned to the Court because either the defendant is not known at the address or no longer lives at the address. The letter appears to be the only follow up action taken by the Court to recover forfeited bail amounts.

The Audit found that in only 2 of the cases tested had defendants paid any of the forfeited bail amounts and these had only been paid partially.

The Audit also noted a further 2 instances where no letter was sent advising that payment of forfeited bail amounts was required.

Audit Comment

Even when defendants continue to reside at the address contacted by the Court, forfeited bail is

rarely collected. This is because unpaid forfeited bail is not pursued by the Court. If the defendant appears at Court at a future date, the Court hears the original charge but does not pursue the matter of the forfeited bail amount.

The Department in its response to a draft of the Report advised:

“It is acknowledged that the Court’s management does have a responsibility for ensuring that forfeited bails are recovered in a timely manner if at all possible and senior management have never instructed Court staff not to pursue any amounts due and payable to the Court, including bail forfeitures.

At the outset it should also be acknowledged that there have been problems in this area, and that those problems have been properly identified and highlighted by the auditors in their report. I am also informed that those problems have since been addressed and changed procedures implemented by Court staff following the auditors initial findings. There was some human error or omission which was not helped by an inability to electronically identify outstanding bail forfeitures and hence there was a heavy reliance on written documentation which was deficient in identifying such matters.

Historically, when Magistrates ordered a bail to be forfeited, staff processing the file would only make a minor notations following non payment on a letter of demand as it was generally the case that the forfeiture would be reversed by the Court when the defendant was finally apprehended and appeared before the Court. Enforcement action would only proceed where the forfeiture was not reversed either in full or in part, on finalisation of the case.

This did not always happen and has led to the problems highlighted in the Report. It should be quite clear however, that a substantial amount of bail forfeitures are not easily recoverable nor is it economically feasible to attempt to pursue some forfeitures which may eventually need to be written off to avoid an accumulation of debts to the Territory which are irrecoverable.”

4.6 REVERSAL OF PREVIOUS COURT DECISIONS

The Court can at any time reverse previous decisions forfeiting a defendant's bail and issuing a warrant of apprehension.

In most cases the expected procedure is that forfeited bail amounts are reversed by the Court when new bail conditions are set or when sentencing for the original charge has been passed.

The audit however noted that reversals had occurred in only 2 of the 20 cases tested by the Audit. For the reversal to formally occur the Magistrate needs to be requested to reverse the previous decision. If the Magistrate agrees the forfeited bail amounts becomes no longer owed by the defendants.

Unless Magistrates are requested to reverse previous decisions, defendants' forfeited bail amounts continue to be owed to the Territory, and a Warrant of Execution should be issued. Currently cases where defendants have breached bail conditions but then have had their charges dealt with by the Court are not having their forfeited bail amounts reversed by the Court. This is an oversight by the Court and means that a large number of forfeited bail

amounts which relate to charges which have been dealt with by the Court are still recorded as outstanding.

4.7 CONCLUDING COMMENTS

The reason why 90% of defendants on bail appear at Court when required to do so appears to be due to the actions taken by the Court to ensure defendants at the time of their first court attendance are made fully aware of the potential consequences of failing to appear. In contrast the audit testing of a sample of cases where defendants had not appeared at Court when required to do so found that the action taken by the Court was not adequate to ensure the potential consequences described actually become realities if the defendants did not appear as required.

This absence of documented procedures relating to the processing of breaches of the Bail Act may explain why testing performed by the Audit identified many instances where decisions of the Court had not been actioned.

The results of the audit testing illustrate the ineffectiveness of procedures and controls at the Court in ensuring that all cases where the Bail Act has been breached are properly processed.

Given the absence of these procedures and controls, the Court management clearly cannot have any real assurance that all necessary actions in regard to cases where the Bail Act is breached are being processed.

5. ISSUE OF WARRANTS OF APPREHENSION

5.1 INTRODUCTION

When defendants do not appear in Court when required certain processes are required by legislation. Amongst the processes required are the issue of Warrants of Apprehension. This Chapter outlines the process for issue of warrants and comments on the efficiency of the process.

5.2 SIGNIFICANT FINDINGS FROM THIS CHAPTER

- *The current process by which warrants are issued for the apprehension of defendants who fail to appear at Court when required are inefficient; and*
- *The warrants are not being issued in a timely manner.*

5.3 CURRENT PROCESS BY WHICH WARRANTS FOR THE APPREHENSION OF DEFENDANTS WHO BREACH THEIR CONDITIONS OF BAIL ARE ISSUED

Before a warrant can be issued by the Court for the apprehension of a defendant who has not attended Court when required to do so, the original Police Informant is required to take out a first instance warrant for the arrest of the defendant on a charge of breaching *Section 49* of the *Bail Act 1992*.

Audit testing of the issuing of warrants found firstly, that in several cases warrants had not

been issued, and secondly, when warrants had been issued there was frequently a lengthy time delay between when the warrants were requested and when they were issued.

The Court's management explained that the delay in issuing warrants was mainly due to delays in Police Informants attending the Court for the issuing of first instance warrant. Without the attendance of the Police Informant, the Court cannot begin the process of issuing a warrant. Possible reasons for the delay in Police Informants appearing at Court, other than human errors or simple oversight, include the Police Informants no longer being stationed in the ACT or police officers giving higher priority to other duties.

It is noted that the Court earlier this year began to follow up cases with the police where significant time delays have elapsed since a request was made to the police for a first instance warrant to be issued.

The Department in its response to a draft of this Report stated:

“It should be made quite clear that the Court is an impartial forum where parties present their cases, and which makes available the processes that guarantee the attendance of parties before the Court. The parties prepare the documentation and the Court issues it. Whilst the Court has an overarching responsibility and is vitally interested in ensuring that its orders are complied with, the Court's management and its statutory office holders do not have the primary responsibility for instigating procedures which would ensure that apprehension warrants are issued in a timely manner, once a defendant fails to appear. That responsibility rests properly with either the

police informant, and/or the Director of Public Prosecutions.”

Audit Comment

While Audit acknowledges that the prime responsibility for the issuing of apprehension warrants rests with other parties, Audit believes the Court has a responsibility to assist these parties in the issuing of the warrants. Ensuring that the Police Informant and/or the Director of Public Prosecutions is promptly made aware of warrants which have to be issued would not effect the impartiality of the Court, and would assist the other parties in the performance of their duties. This could be a matter for inclusion in the proposed “Memoranda of Understanding” mentioned elsewhere in this Report.

5.4 PROPOSED AMENDMENTS TO THE BAIL ACT EFFECTING THE ISSUING OF WARRANTS

During the conduct of this audit the Court has made a submission to the ACT Law Reform Commission’s review of the *Bail Act 1992*. The submission included comment on the inefficiency of the current process by which warrants are issued. The Court submission recommends that:

- breach of a condition of bail should be an offence;
- the Registrar should have the capacity to enforce any breach of a bail undertaking as an informant. Similarly a Judge or Magistrate should have the capacity to issue a bench warrant for the arrest of an accused person for any breach of a bail condition; and

MAGISTRATES COURT BAIL PROCESSES

- provisions should be inserted in the *Bail Act 1992* which clarify the effect of a bail forfeiture and the liability of any surety as a consequence.

Implementation of the recommendations would assist in warrants being issued in a more timely manner. The recommendations if implemented would eliminate the need for Police involvement in the issuing of warrants. Instead the process by which warrants are issued can be fully managed by the Court.

Annexure

Reports Published in 1992

- 1 Information Technology Management Policies in the ACT Government Service**
- 2 Financial Audits with Years Ending to 30 June 1991**
- 3 GAO Annual Management Report for Year Ended 30 June 1992**
- 4 ACT Board of Health - Management of Information Technology**
- 5 Budget Outcome Presentation and the Aggregate Financial Statement for the Year Ended 30 June 1992**
- 6 Financial Audits with Years Ending to 30 June 1992**

Reports Published in 1993

- 1 Management of Capital Works Projects**
- 2 Asbestos Removal Program**
- 3 Various Performance Audits Conducted to 30 June 1993**
 - Debt Recovery Operations by the ACT Revenue Office
 - Publicity Unaccountable Government Activities
 - Motor Vehicle Driver Testing Procedures
- 4 Various Performance Audits**
 - Government Home Loans Program
 - Capital Equipment Purchases
 - Human Resources Management System (HRMS)
 - Selection of the ACT Government Banker
- 5 Visiting Medical Officers**
- 6 Government Schooling Program**
- 7 Annual Management Report for the Year Ended 30 June 1993**
- 8 Redundancies**
- 9 Overtime and Allowances**
- 10 Family Services Sub-Program**
- 11 Financial Audits with Years Endings to 30 June 1993**

Annexure (continued)

Reports Published in 1994

- 1 Overtime and Allowances - Part 2
- 2 Department of Health - Health Grants
- Management of Information Technology
- 3 Public Housing Maintenance
- 4 ACT Treasury - Gaming Machine Administration
- Banking Arrangements
- 5 Annual Management Report for Year Ended 30 June 1994
- 6 Various Agencies - Inter-Agency Charging
- Management of Private Trust Monies
- 7 Various Agencies - Overseas Travel - Executives and Others
- Implementation of Major IT Projects
- 8 Financial Audits with Years Ending to 30 June 1994
- 9 Performance Indicators Reporting

Reports Published in 1995

- 1 Government Passenger Cars
- 2 Whistleblower Investigations Completed to 30 June 1995
- 3 Canberra Institute of Technology - Comparative Teaching Costs and Effectiveness
- 4 Government Secondary Colleges
- 5 Annual Management Report for Year Ended 30 June 1995
- 6 Contract for Collection of Domestic Garbage/Non-Salary Entitlements for Senior Government Officers
- 7 ACTEW Benchmarked
- 8 Financial Audits With Years Ending to 30 June 1995

Reports Published in 1996

- 1 Legislative Assembly Members - Superannuation Payments/Members' Staff - Allowances and Severance Payments
- 2 1995 Taxi Plates Auction

Annexure (continued)

- 3 VMO Contracts
- 4 Land Joint Ventures
- 5 Management of Former Sheep Dip Sites
- 6 Collection of Court Fines
- 7 Annual Management Report For Year Ended 30 June 1996
- 8 Australian International Hotel School
- 9 ACT Cultural Development Funding Program
- 10 Implementation of 1994 Housing Review
- 11 Financial Audits with Years Ending to 30 June 1996

Reports Published in 1997

- 1 Contracting Pool and Leisure Centres
- 2 Road and Streetlight Maintenance
- 3 1995-96 Territory Operating Loss
- 4 ACT Public Hospitals - Same Day Admissions
Non Government Organisation - Audit of Potential Conflict of Interest
- 5 Management of Leave Liabilities
- 6 The Canberra Hospital Management's Salaried Specialists Private Practice
- 7 ACT Community Care - Disability Program and Community Nursing
- 8 Salaried Specialists' Use of Private Practice Privileges
- 9 Fleet Leasing Arrangements
- 10 Public Interest Disclosures - Lease Variation Charges
- Corrective Services
- 11 Annual Management Report for Year Ended 30 June 1997
- 12 Financial Audits with Years Ending to 30 June 1997
- 13 Management of Nursing Services

Annexure (continued)

Reports Published in 1998

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12 Reports were issued prior to 1992. Details can be obtained from the Government Audit Office.

- 1 Management of Preschool Education**
- 2 Lease Variation Charges - Follow-up Review**
- 3 Major IT Projects - Follow-up Review**
- 4 Annual Management Report for Year Ended 30 June 1998**
- 5 Management of Housing Assistance**
- 6 Assembly Members' Superannuation and Severance Payments to Former Members' Staffers**
- 7 Magistrates Court Bail Processes**

Availability of Reports

Copies of Reports issued by the ACT Auditor-General's Office are available from:

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11 Torrens Street
BRADDON ACT 2601

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CIVIC SQUARE ACT 2608

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