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28 June 2012

Ms Jaqui Dean MP
Chair
Law and Order Select Committee
Parliament Buildings
P O Box 18 041
Wellington 6160

Dear Ms Dean

Bail Amendment Bill 2012 (17-1)

1   This submission is made by the Legislation Advisory Committee (LAC).

2   The LAC was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced and updates the *Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation* (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.

3   The terms of reference of the LAC include:

        (a)   to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues; and

(b) to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.

4   The LAC wishes to make two submissions in relation to this Bill. The first relates to the role of the electronic monitoring (EM) assessor and the second to the age of the alleged offender that the new rules would apply to.

Role of the electronic monitoring assessor

5   The LAC is concerned that some of the functions given to the EM assessor may not be appropriate for the assessor, who may be a police employee.

6   In particular we would submit that the following proposed sections be deleted:

- section 30F(3)(a), which would require an EM report to consider "whether an EM condition is appropriate"; and
- section 30F(4)(c), which would permit an EM report to address "the response of the prosecuting agency to the application, including any reasons for opposing it".

7   These proposed sections either require, or permit, evaluations of the merits of any application that are best left to the judge in the particular case to make.

Age at which the new rules would apply

8   Currently, section 15 of the Bail Act 2000 requires courts to grant bail to young defendants aged 17-19 years, subject to such conditions as they think fit. If enacted, clause 9 of the Bill would amend section 15 by not requiring courts to grant bail to these defendants if they have been previously sentenced to imprisonment. This removes the current presumption in favour of this group being granted bail.

9   The LAC is concerned that clause 9 derogates from New Zealand's compliance with the United Nations Convention on the Rights of the Child (UNCROC), which provides that children aged 17 years or under shall only be detained or imprisoned "as a measure of last resort and for the shortest appropriate period of time" (article 37(b)). New Zealand ratified UNCROC in 1993 and has lodged a formal reservation against the Convention so that children in custody may be held with adult prisoners in some circumstances.

10   The LAC suggests that the clause 9 could be amended to apply to defendants aged 18-20 years. This will fulfil the policy rationale for the change and avoid impinging on New Zealand's UNCROC obligations. Provisions for denying bail to 17 year olds will still exist, as the Bail Act currently provides that 17 year old defendants may be denied bail in some circumstances if they cannot

satisfy the Judge that bail or remand at large should be granted (for example, under sections 10 or 12). Section 142 of the Criminal Justice Act 1985 also states that, despite the presumption in section 15 of the Bail Act, the court may order the detention in prison of a 17 year old remanded or committed for trial or sentencing if it considers "no other course is desirable, having regard to all the circumstances".

11   The LAC does not wish to be heard on this submission.

Yours faithfully

Sir Grant Hammond
Chair
Legislation Advisory Committee