To: "nsw_lrc@agd.nsw.gov.au" <nsw_lrc@agd.nsw.gov.au>
cc:

Subject: BAIL ACT REVIEW

Dear Attorney & Whoever,

I have been a solicitor in NSW for some 35 years, during the course of which I have held to the principle that any lawyer worth his salt should be able to go to a police station and help a client in trouble. I have dealt with a variety of criminal matters over my career, which has gone from a big-city firm through legal aid to my current situation as a sole practitioner in rural NSW.

I see nothing wrong with the common law principles behind bail as a substantial starting point, a platform on which to build, and provided these are not detracted from have no objection to the glosses put on them by statement of objects and the like..,

The fine tuning of the presumptions applicable, and indeed the Act generally, is a matter beyond my expertise, as I have not had sufficient experience in bail applications to venture an informed opinion, but I do wish to make specific comment on Section 22A repeat bail applications, young people, and plain English, and do so below.

7. I was puzzled to learn of the introduction of Section 22A, which seems potentially harsh in situations where young and inexperienced lawyers can be instructed to make pathetic applications that fail, rather than postponing an application till their arsenal is ready. The hardship falls on the client, who well may be unable to fully appreciate the importance of postponing their application.

It seems to me that if there was a limitation, say two or three, on the number of applications that may be made in any one jurisdiction, then this scenario is far less likely to arise, and the possible hardship to accused could be avoided or ameliorated thereby. As it stands, the rule has the potential to work in arbitrary and Draconian fashion.

12. You (and the law) differentiate between young people and those with a cognitive or mental health impairment, but research in recent times tends to indicate that the formation of young people's brains and mental processes can be far from complete, and that they are/can be impaired to that extent. They should therefore be the subject of special considerations, but whether the Bail Act needs re-writing accordingly, or whether it can deal with them accordingly within its general framework is

an issue I leave to you.

For some, this raises problems of equality before the law, as it does with the treatment indigenous people. To them I say that the law does treat individuals individually, in both criminal and civil matters, and it must. There is in reality only a initial theoretical assumption of equality before the law, as in life, and this is no basis for objection to differential treatment.

16. See above.

18. The long-standing language of bail is now well understood by the majority of the population. Common usage and television's enduring police procedural obsession, for example, make such terms as 'remand' routine and the 'plain English' that you seek. This is a concept I have supported since the NRMA's insurance policy re-writes in plain English of the 1970's, whom we at Abbott Tout represented at the time. In this case, any variation from these terms would only cloud this understanding, and be a step backwards.

Overall, the present Bail Act does its job without major problems that I know of, but for S.22A, which is a concern, and a major re-write does not warranted, only fine-tuning.

Thank you for considering these comments and thoughts. I wish you well with your endeavours in a difficult operation, given the pressures over the issue.

Regards,

Richard Moloney

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