

Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001

Case studies prepared by Shopfront Youth Legal Centre, July 2003

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged people aged 25 and under. The service is based near Kings Cross but works with young people from all over the Sydney metropolitan area.

The Shopfront assists clients with a variety of legal problems, but the majority of our work involves criminal law. Given the nature of our client group, charges for low-level property crime, minor drug offences, and “street offences” are very common.

The Shopfront is concerned about the police practice of imposing non-association and/or place restriction bail conditions. While police have always had the power to impose conditions of this nature, we have observed that this practice has become increasingly common since the introduction of the legislation.

In some areas, police routinely impose place restriction conditions on bail for trivial offences. Not only are these bail conditions out of proportion to the seriousness of the alleged offence, but they often interfere with the legitimate activities of the person concerned.

The following examples illustrate the experience of some of the Shopfront’s clients.

Tran

Tran, 19, lives in a rented flat in suburb near Cabramatta. He grew up in the Cabramatta area and still has close family members there. He also uses a range of services in Cabramatta including Centrelink, his job network provider, his general practitioner, and a drug and alcohol counselling service. He also does most of his shopping in Cabramatta as it is the best and cheapest source of Vietnamese food.

Unfortunately Tran is also a heroin user and, by his own admission, sometimes purchases drugs in Cabramatta. He also uses the needle exchange van to obtain safe injecting equipment. Tran has been attempting to stop using heroin by going on a methadone program. In order to pick up his daily methadone, he catches a bus from his home to Cabramatta, and then a train to his clinic at Liverpool.

Tran has been given numerous police “move-on” directions while in Cabramatta. Because he is a known drug user, police tell him they believe he is Cabramatta “to buy or to use” and tell him he must not come back within a 2km radius for seven days.

On at least one occasion, Tran disobeyed the police direction by returning to Cabramatta twice within seven days. The fact that he had legitimate reasons to be there, and was not there to purchase drugs, was of no interest to the police. The police arrested him, charged him with disobeying a police direction, and bailed him on the condition that he not go within a 2km radius of Cabramatta railway station.

Despite the bail conditions, Tran continued going to Cabramatta. He knew no way of getting to his methadone clinic without passing through Cabramatta. He also had to

attend employment-related interviews and faced being breached by Centrelink if he did not attend.

Tran was arrested for breach of bail and held overnight in the police cells before being taken to court. The magistrate told him that if he pleaded guilty to the original charge he would be released straight away with a fine. However, Tran had received legal advice and believed he was not guilty, so he entered a plea of not guilty and the matter was adjourned for hearing. The magistrate released him again on bail but refused to vary the conditions.

Tran was arrested again for breach of bail, and the same thing happened. His solicitor then helped him to apply to the Supreme Court for a bail variation. The Supreme Court varied his bail conditions so that he was allowed to be in Cabramatta as long as it was not for a drug-related purpose.

Before Tran's charge of disobey police direction came up for hearing, his solicitor wrote to the police requesting that they withdraw the charge because there was no reasonable prospect of Tran being found guilty. On the hearing date, the prosecutors withdrew the charge.

Lisa

Lisa, 18, is a street sex worker who works in an industrial area in Bankstown. Along with other sex workers in the area, she has been charged several times with soliciting for prostitution within view of a church. This is a summary offence carrying a maximum penalty of 6 months' imprisonment and/or a \$?? fine.

Lisa was given bail on the condition that she not attend the area where she had been arrested for soliciting. However, she was finding it difficult to pay her rent without any income, so she decided to run the risk and go back to work on the streets.

One night Lisa was arrested for breach of bail and held overnight in the police cells before being taken to court. She pleaded guilty to the soliciting charge and was released with a fine. Because the matter had been finalised, her bail conditions no longer applied. However, the police apparently failed to update their computer system and, when Lisa went back to work, she was arrested for breach of bail. She tried to tell the police officer that she was no longer on bail and, when he wouldn't listen, she got agitated and a scuffle ensued. Lisa was charged with assault police and resist arrest.

The following morning, the court confirmed that there was no breach of bail, and released Lisa immediately. She still had to face the assault police and resist arrest charges, but the police eventually withdrew these.

Jimmy

Jimmy, 17, was charged with being a passenger in a stolen car along with three of his mates. The police imposed a bail condition that he not associate with the three co-accused, which was reasonable in the circumstances. However, they also included a condition requiring Jimmy not to associate with a long list of other young people from his

local area. None of these other people had anything to do with the alleged offence, Jimmy did not even know most of them!

Jimmy's solicitor applied to the court to drop the second non-association condition. The possibility of Jimmy having accidental contact with these people – and the risk that he might be arrested for breach of bail as a result - was high. There was no evidence to suggest that seeing these people would make Jimmy more likely to re-offend. The magistrate granted Jimmy's application so that he was not allowed to hang around with his co-accuseds but was not restricted from associating with other people.

Nicky

Nicky, 21, is a former heroin user who is on a methadone program at a clinic in the Kings Cross area. One day she was arrested attempting to sell small amounts of cannabis in Kings Cross. Police had arrested her in the area more than once before, so they imposed a condition on her bail not to go within a 1km radius of Kings Cross railway station.

Although police had a good reason not to want Nicky hanging around Kings Cross, they did not seem to consider her legitimate need to come to the area. Both her methadone clinic and her solicitor's office are within 1km of Kings Cross. Nicky's solicitor helped her to lodge an application to vary her bail to allow her to go to Kings Cross to get legal advice or pick up her methadone.

The court granted the bail variation requested by Nicky. However, this required paperwork, several phone calls and a trip to court - all of which would have been unnecessary if police had thought more carefully when imposing the bail conditions.