
EM BAIL EVALUATION FOR NEW ZEALAND POLICE



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1. EXECUTIVE SUMMARY

Scope of evaluation

- 1.1 This report presents the findings of an evaluation of EM bail (electronic monitoring of defendants on pre-trial bail). The report was prepared by Duncan Consulting Services Ltd under contract to New Zealand Police (NZP).
- 1.2 The focus of the evaluation was EM bail processes operated by NZP. Key evaluative questions were:
- Are these processes operating as intended (section 4 below)?
 - Is NZP's supporting infrastructure for EM bail adequate (section 5)?
 - How could EM bail processes operate more effectively (section 6)?
- 1.3 The evaluation did not attempt to assess how agencies other than NZP are implementing EM bail or to evaluate the scheme's outcomes from a policy perspective. Evidence collection -- in the main, interviews with a range of internal and external stakeholders -- was limited to how NZP's responsibilities under EM bail are being discharged.
- 1.4 The findings of the evaluation reflect EM bail's early operation rather than how EM bail may operate in the medium or long term. For example, many interviewees commented on a 'slow' uptake for EM bail, but in the period since the interviews were completed the number of applications for EM bail has grown exponentially.

Main findings

- 1.5 Interviews and other sources of information indicate that, in general, EM bail processes operated by NZP are functioning as intended and that NZP's supporting infrastructure for EM bail is adequate. In particular:
- EM Bail Assessors (EMBA) and other NZP employees follow relevant EM bail processes using tools provided as part of official guidance material
 - Steps have been taken to correct initial difficulties with the operation of assessment and monitoring procedures
 - Training and recruitment of EMBA's is good and supporting instructional/guidance material regarding EM bail is comprehensive
 - NZP resources for EM bail (e.g. the number of EMBA's) are sufficient for current application volumes.
- 1.6 Less positive findings are that:
- In the case of at least some EMBA's, expectations regarding their day-to-day management are not being met. A cause may be confusion about the role of HQ staff
 - Turnover of EMBA's has been high, perhaps because of limited application volumes in the early months of EM bail and, perhaps related to this, concerns about job security
 - At the time of interviews, dissemination of information about EM bail had had limited success.

Changes to EM bail processes

- 1.7 NZP and non-NZP interviewees commented positively on EM bail procedures but a number suggested possible improvements. Interviewees indicated that:

- Legislation for EM bail should be introduced and one subject of this should be whether and how time spent on EM bail should be taken into account when the defendant is subsequently sentenced to a term of imprisonment.
- The processing period for applications for EM bail (15 working days) should be shorter and that the proportion of such applications which are withdrawn before a court hearing is of concern
- There could be more efficient ways of processing variations to EM bail

2. EVALUATION PURPOSE, SCOPE AND METHODOLOGY

Introduction

- 2.1 This section of the report details the evaluation's purpose, scope and methodology. Some limitations on the evaluation are noted.

Scope

- 2.2 The evaluation had a particular focus: EM bail processes operated by NZP. There were three main evaluative questions:
- Are these processes operating as intended? For example, do EM bail employees follow relevant procedures?
 - Is NZP's supporting infrastructure for EM bail adequate?
 - How could EM bail processes operate more effectively?
- 2.3 The evaluation did not attempt to:
- Assess how agencies other than NZP are implementing EM bail. For example, interviews with stakeholders did not focus on EM bail processes operated by the Ministry of Justice
 - Evaluate EM bail from a policy perspective. For example, the evaluation did not consider the extent to which EM bail is contributing to justice sector outcomes
 - Analyse in detail whether legislation to support EM bail would be warranted. Interviewees were asked about how legislation might improve the operation of EM bail, but there was no systematic examination of alternative (non-legislative) means of achieving similar ends.

Purpose

- 2.4 This report is intended to assist NZP in assessing EM bail's first year of operation. The report is expected to be one source of information for decision-making about how EM bail processes could be improved.

Methodology

- 2.5 The evaluation was based on three main sources of information. The first was interviews undertaken with 33 stakeholders between September and November 2007 (compare the table immediately below). The results of the interviews were analysed thematically. The second source was quantitative data collected and collated by NZP. The data relate to the volume, content and result of applications for EM bail. The third source of information was a sample of EM bail court reports (47 in total) and corresponding judicial decisions.

Type of interviewee	Number interviewed
Defence lawyer	Five interviewed individually
Judge	One interviewed individually
Defendant	Five interviewed individually
Family of defendant	Three groups of two interviewed
Contractor supplying electronic monitoring	One written response to questions

Type of interviewee	Number interviewed
EM Bail Assessors (NZP)	One interviewed individually
	Two groups of two interviewed
	Two groups of three interviewed
Prosecutor (NZP)	Seven interviewed individually
Police National HQ staff (NZP)	Three interviews with one or more individuals
District Prosecution Manager (NZP)	One individual

- 2.6 As noted in the table above, five defendants were interviewed. Two of the five had had an application for EM bail granted. Three had had an application for EM bail rejected. Six family members were interviewed. Two of the six were related to a defendant who had had an application for EM bail granted and four were related to defendants who had had an application for EM bail rejected.

Limitations

- 2.7 EM bail has been operational across all Police districts for only 14 months. The findings stated in this report reflect this fact: they reflect EM bail's early operation rather than how EM bail may operate in the medium or long term. The findings are therefore indicative rather than definitive. It may be appropriate to undertake a more substantive evaluation in 24-36 months time.
- 2.8 It is particularly relevant in this context that, at the point when interviews were undertaken, the number of applications for EM bail was relatively modest. Many interviewees commented on a slow uptake for EM bail, but in the period since the interviews were completed the number of applications for EM bail has grown exponentially (see section 3 below).
- 2.9 Interviews were undertaken with 33 individuals. This is a relatively small number from which to draw conclusions about EM bail's operation. However, as noted in the course of this report, interviewees often expressed consistent views about how EM processes are operating. A positive feature of the interview sample is that it includes interviews with 18 individuals that are not employees of NZP. A negative feature is that only one judge was interviewed.

Authorship

- 2.10 The report was prepared by Duncan Consulting Services Ltd (Anne Duncan) under contract to New Zealand Police (NZP). Interviews were undertaken by Akroyd Research and Evaluation. Analysis of justice sector processes was supported by a third contractor, Alby Rean.

3. EM BAIL BACKGROUND

Introduction

- 3.1 This section provides background information about: EM bail processes; NZP role in these; EM bail volumes.

Sector-wide context: 'effective interventions'

- 3.2 In April 2006 the New Zealand Government approved implementation of EM bail as part of a wider package of reforms termed 'effective interventions' (see http://www.justice.govt.nz/effective_interventions/home.asp). EM bail is relevant in this context since:

- Applicants for EM bail (pre-trial defendants) have been remanded in custody
- If an application for EM bail is granted, the applicant is released from custody subject to a condition of electronic monitoring.

- 3.3 NZP began a phased implementation of EM bail in September 2006 (Central district and north) and completed this in November 2006.

NZP's role

- 3.4 The decision to grant an application for EM bail is a made by a judge. NZP's role is to:
- Provide to the judge a report on the viability of the application (e.g. in respect of the suitability of the proposed residence): see 3.6-3.8 below
 - Assist in ensuring that those who are granted EM bail comply with their bail conditions and, in particular, remain within a set perimeter at the approved residence: see 3.9-3.10 below
- 3.5 NZP's stated aim is to give emphasis to three factors while fulfilling this role: community safety; the interests of the victim(s); the need to preserve the integrity of the trial process.

Assessment processes

- 3.6 EM bail may be applied for by any person who has been remanded in custody pre-trial (i.e. by any person who has had bail refused or has been remanded in custody because bail was not sought before the trial). There are no legal restrictions on the age of the defendant or in respect of the offence with which the defendant has been charged.
- 3.7 An application for EM bail is made to a court. When the application form (prepared by the defendant or his/her lawyer) is filed at court, a copy must also be served on NZP. A specialist member of NZP (an EM Bail Assessor: EMBA) is then assigned to assess the viability of the application. The EMBA's assessment informs a report back to the court (EM bail court report) which is presented by a prosecutor. The assessment considers factors including:
- Public safety (e.g. the possibility that the defendant will breach EM bail or commit other offences)
 - Views of the victim(s)
 - The technical suitability of this residence for electronic monitoring
 - Requirements of the Bail Act 2000.
 - The location of the proposed EM bail residence (e.g. the distance from this location to a 24-hour Police station)

- 3.8 As noted, the decision to grant or reject an application for EM bail is made by a judge. The decision is made after the EM bail court report has been provided to the judge (normally 13 days after the application for EM bail is received) and after the judge has considered the requirements of the Bail Act 2000 and any arguments put forward by the defendant's lawyer. The report indicates whether NZP considers EM bail appropriate and, if so, puts forward possible bail conditions for consideration by the judge.

Monitoring processes

- 3.9 If a defendant's application for EM bail is granted:
- The defendant (EM bailee) is released from custody to live at an approved residence
 - The EM bailee's physical location is electronically monitored relative to a set perimeter at this residence. The present contractor for electronic monitoring is Chubb NZ Ltd
 - NZP is informed, and appropriate action occurs, if electronic monitoring indicates that the EM bailee has moved outside the perimeter without authorisation.
- 3.10 The monitoring entails the EM bailee wearing an anklet which sends an electronic signal to a monitoring unit located at the approved residence which in turns connects to a control centre which monitors the defendant's presence at the specified address. If the person moves beyond a designated area for an unapproved reason an alarm is raised, to which Police respond.

Organisational context and structure

- 3.11 Within NZP, day-to-day management of EM bail is the responsibility of the Police Prosecution Service (PPS), which is separated from district ('front-line') governance. The PPS (290 FTEs in total) is located in offices from Kaitaia in the north to Invercargill in the south. The largest PPS office is in Auckland (35 FTEs). EMBAAs (36 FTEs) are located in slightly over half of the PPS's 42 offices. The PPS National Office (located in Wellington) includes an EM Bail Manager and an EM Bail Support Officer.
- 3.12 The EM Bail Manager's main function is to support the development of operational policy for EM bail; the role does not include line management of EMBAAs. EMBAAs are line managed by District Prosecution Managers (16 FTEs nationally) who in turn are line managed by Regional Prosecution Managers (three FTEs nationally). Regional Prosecution Managers report to the PPS Operations Manager who, like the EM Bail Manager, is line managed by the PPS National Manager.

EM bail volumes

- 3.13 As at 6 September 2007, when interviews for the present evaluation commenced:
- 362 applications for EM bail had been received
 - 171 of the 362 applications (47%) had been heard in court
 - 77 applications for EM bail had been granted
 - The number of persons on EM bail (the 'muster') was 37 and the average time spent on EM bail was 85 days.
- 3.14 The table below records key figures by Police district as at 6 September 2007. It is noteworthy that, as at this date, some districts (e.g. Tasman and Wellington) had received very few applications for EM bail and that the current muster in eight of the twelve districts was three or less.

DISTRICT	APPLICATIONS	HEARD	GRANTED	MUSTER
Northland	17 (5%)	6 (4%)	3 (4%)	2 (5%)
Waitemata	27 (7%)	18 (11%)	11 (14%)	3 (8%)
Auckland City	63 (17%)	44 (26%)	19 (21%)	4 (11%)
Counties-Manukau	52 (14%)	19 (11%)	7 (9%)	3 (9%)
Waikato	34 (9%)	8 (5%)	5 (6%)	2 (5%)
Bay of Plenty	58 (16%)	18 (11%)	7 (9%)	5 (14%)
Eastern	15 (4%)	6 (4%)	2 (3%)	2 (5%)
Central	42 (12%)	22 (13%)	11 (14%)	9 (24%)
Wellington	12 (3%)	6 (4%)	3 (4%)	1 (3%)
Tasman	4 (1%)	2 (1%)	2 (3%)	1 (3%)
Canterbury	26 (7%)	15 (9%)	4 (5%)	4 (11%)
Southern	12 (3%)	7 (4%)	3 (4%)	1 (3%)
Total	362 (100%)	171 (100%)	77 (100%)	37 (100%)

3.15 EM bail volumes have grown dramatically in the five months since interviews commenced. As at 17 January 2008:

- 636 applications for EM bail had been received
- 304 applications had been heard in court
- 146 defendants had been granted EM bail.

3.16 During interviews a number of stakeholders described the uptake of EM bail as 'slow.' Indeed, as described in section 5 below, some EMBA interviewees expressed concerns about the level of uptake and its possible relation to 'job security.' It is noteworthy that the uptake of EM bail in other jurisdictions has not been dissimilar to that seen in New Zealand. For Scotland, for instance, see:

<http://www.scotland.gov.uk/Publications/2007/06/20102655/0>.

4. ARE EM BAIL PROCESSES OPERATED BY NZP FUNCTIONING AS INTENDED?

Introduction

- 4.1 As part of preparations for implementing EM bail, NZP:
- Defined how EM bail processes would operate internally (e.g. defined how NZP staff would review applications for EM bail)
 - Issued instructional/guidance material on this basis
 - Trained EMBA and other staff accordingly.
- 4.2 The evaluative question answered by section 4 is: are EM bail processes operated by NZP functioning as intended? Do NZP staff (EMBA in particular) understand and follow relevant EM bail processes? Paragraphs 4.3-4.11 concern assessment procedures i.e. how applications for EM bail are processed by NZP staff. The remaining paragraphs concern monitoring procedures i.e. how defendants granted EM bail are monitored.

Assessment procedures in general

- 4.3 Interviews with stakeholders and other sources of information suggest that, in general, assessment procedures operated by NZP are functioning as intended. Interviewees consistently reported that:
- EMBA apply criteria set out in the EM bail desk-file when assessing applications for EM bail
 - EMBA use relevant assessment tools (e.g. official forms) when fulfilling their role
 - With minor exceptions (see below), the practical processing of applications for EM bail is operating well
 - NZP achieves its deadlines for preparing EM bail court reports

Risk aversion in EM bail court reports

- 4.4 EM bail court reports are the key product of NZP's assessment processes for EM bail. Their function is to set out NZP's position on an application for EM bail (NZP's assessment of the application's merits) and the reasons for this position.
- 4.5 Although interviewees consistently stated that EM bail court reports are of good quality, NZP's analysis indicates that, during the early months of EM bail, the reports reflected a highly risk-averse approach. During these months, according to the analysis:
- Applications for EM bail were sometimes opposed solely because the applicant had previously offended whilst on bail
 - EM bail court reports did not always reflect attention to differences between EM and non-EM bail (e.g. how electronic monitoring may affect defendant behaviour and in some cases reduce risks to community safety).
- 4.6 It is noteworthy in this context that, in the first seven months of EM bail's operation:
- 43% of applications for EM bail were granted by the courts
 - NZP opposed 83% of granted applications.
- 4.7 Interviewees agreed that there could be many reasons why a judge's position on an application for EM bail differs from that of an EMBA/prosecutor and, therefore, that it should not be expected that the courts will grant an application for EM bail if and only if the application is not opposed by NZP. However, the fact that NZP opposed 83% of

granted applications during this period is striking. Interviewees suggested two reasons why the percentage was so high:

- The newness of the scheme and the need for NZP staff to gain familiarity with judicial decision-making around EM Bail. Many interviewees said that process change of this type often entails a level of caution
- NZP's traditional focus on enforcement/prosecution and community safety. Some interviewees said that, given their standard operational focus, Police staff could have a natural tendency to oppose rather than support any application for bail, not just applications for EM bail.

- 4.8 NZP managers who were interviewed said that the PPS has taken steps to respond to the level of risk aversion seen in early EM bail court reports. NZP data support this view. Of the 58% of applications for EM bail granted between July and October 2007, only 32% were opposed by NZP (the equivalent percentage prior to July 2007 was 83%: see above).
- 4.9 NZP interviewees suggested that a decisive factor in this change has been learning about the degree to which those granted EM bail comply with their orders. NZP managers who were interviewed commented that the high degree of compliance (approx 80% of defendants granted EM bail have fully complied with their orders and approx 90% have not absconded) has allowed more accurate risk assessments to be made.
- 4.10 Noting there were cases in which an EM bailee had breached bail when NZP had opposed the granting of EM bail to him/her, some EMBA interviewees commented that judicial decision-making was fallible and that remand is the only safe option for some pre-trial defendants. However, some EMBA interviewees noted that the deterrent effect of electronic monitoring had surprised them and that the benefit to EM bailees of EM bail could be significant. One EMBA interviewee said:

'It actually worked spectacularly successfully in that ... [the EM bailee] has got an excellent supportive family. He has no previous convictions. He is facing a very serious charge ... [EM bail] has been exactly right for him, as it turns out.'

- 4.11 As noted above, NZP's analysis suggests that EM bail court reports reflected significant risk aversion during the early months of EM bail. However, it is clear that judicial responses to applications for EM bail have not been entirely at odds with those of NZP. (For, although NZP opposed 63% of applications for EM bail between July 2007 and 17 January 2008, 72%, of the applications opposed by NZP, were eventually declined by a judge.) This fact is consistent with interviewees stating that EM bail court reports are of good quality.

Monitoring procedures: in general

- 4.12 Between September 2006 and 17 January 2008 146 defendants started a period of EM bail. Interviews and other sources of information suggest that, in general, NZP's monitoring of these defendants is functioning as intended. Interviewees consistently reported that:
- EMBA's understand and follow relevant monitoring procedures
 - Appropriate action occurs when a breach of EM bail is reported by the electronic monitoring contractor
 - NZP provides information required by the electronic monitoring contractor, usually within set deadlines.

- 4.13 Although NZP interviewees commented positively on how breach procedures had been followed, some said not all district staff fully appreciated the implications of a breach of EM bail. In addition:
- A NZP manager noted that, because of an ambiguity in the original EM bail desk-file, minor amendments had been made to the guidance material on breach processes
 - A number of NZP and non-NZP interviewees commented on the importance of the reliability of EM bail monitoring equipment (see below).

Breach volumes

- 4.14 In the first twelve months of EM bail's operation, 17 EM bailees breached their bail. According to NZP data:
- Ten of the 17 defendants absconded and seven defendants breached other conditions of their bail
 - Thirteen of the 17 defendants were returned to custody and four returned to EM bail. (As at 27 January 2008, three defendants who had absconded from EM bail are yet to be located)
 - Six of the 17 breaches resulted in new offending. The new offending ranged from aggravated assault, burglary and possession of methamphetamine to driving while disqualified and giving false details.
- 4.15 Some NZP interviewees commented that the volume of breaches did not reflect negatively on monitoring procedures. In fact, one NZP manager suggested the contrary i.e. that the volume reflected the quality of recording and the intensive (*highly proactive, very front-footed*) nature of the monitoring. It is relevant in this context that other jurisdictions have seen comparable or higher levels of breaches under EM bail: see <http://www.scotland.gov.uk/Publications/2007/06/20102655/0> for Scotland and <http://www.mops.gov.il/BPEng/About+MOPS/MOPS++A+closer+look/13-Electronic+Monitoring.htm> for Israel.
- 4.16 Noting that many applicants for EM bail had had an application for non-EM bail rejected, some interviewees commented that a relatively high volume of breaching could be expected. Interviewees noted in this context that some applications for non-EM bail had been rejected because of previous non-compliance with bail. Compare the following from a recent evaluation of EM bail in Scotland:

'applicants for EM Bail have a high propensity for bail aggravated offending, and it is perhaps not surprising, therefore, if they fail to comply with one or more conditions of EM Bail. EM Bail targets those who are less likely to comply, because of a previous history of offending and a history of non-compliance with bail orders.' See: <http://www.scotland.gov.uk/Publications/2007/06/20102655/0>

- 4.17 Referring to the profile of those granted EM bail and the possible effect of electronic monitoring itself, some NZP interviewees said that the level of breaching for EM bail might be less than that for non-EM bail.

Electronic monitoring

- 4.18 Interviewees were generally positive about the quality of electronic monitoring. One EMBA said: *'I personally have found Chubb bloody good.'* NZP managers said the quality of electronic monitoring had been *'good'* or *'satisfactory.'* NZP interviewees noted that there had been some issues with the electronic monitoring equipment during the early months of EM bail but that the issues had been minor (relating to over-reporting of events rather than the more serious under-reporting) and quickly resolved.

- 4.19 NZP requires EM bail equipment to be installed (supplied, tested and in all other ways fully operational) for new starts on EM bail within two working days notice at any site which is within 30 km of a 24/7 Police station and Vodafone's cellular network. Chubb NZ Ltd has been able to meet this requirement, almost without exception, according to NSP interviewees.
- 4.20 However, there have been occasions on which the notice provided to Chubb NZ by NZP was insufficient (EMBA's are required to determine the date and time of installation site visit and to communicate this to the contractor in writing). On these occasions the contractor has been requested to install equipment with less than two working days notice. Interviewees described the number of such incidents as low and declining. A NZP manager commented that it is late notification of hearing rather than installation dates that results in late notice for installation.

Summary

- 4.21 Interviews and other sources of information suggest that, in general, EM bail processes operated by NZP are functioning as intended. EMBA and other NZP staff follow relevant EM bail processes using tools provided as part of official guidance material. This applies both to how applications for EM bail are assessed and how EM bailees are monitored. Steps have been taken to correct initial difficulties with the operation of assessment and monitoring procedures.

5. IS NZP'S SUPPORTING INFRASTRUCTURE FOR EM BAIL ADEQUATE?

Introduction

5.1 Interviews and other sources of information suggest that, in general, EM bail processes operated by NZP are functioning as intended (section 4). The subject of section 5 is NZP's support for the operation of these processes. Key questions are:

- How well selected and trained are specialist staff (EMBA's)?
- Is instructional material relating to EM bail fit for purpose?
- Are NZP resources for EM bail adequate?
- How well supported are specialist staff?
- Is dissemination of information about EM bail effective?

EMBA training and selection

5.2 EMBA interviewees consistently commented on the 'good', 'great' or 'excellent' quality of their training. One EMBA said '*I thought we were very well-trained and we set out with all the procedures in place.*' NZP managers said there were plans to maintain the training programme for new EMBA recruits.

5.4 The general perception of NZP and non-NZP interviewees was that EMBA's are performing their functions well. For example, the quality of EM bail court reports was described as 'good' or 'high' (section 4 above).

5.5 In addition, interviewees commented on the general aptitude of EMBA appointees. One Police prosecutor said: '*they all seem well suited to the role.*' Some interviewees thought the quality of EMBA recruits was a function of sound selection processes and the large number of applicants. One NZP interviewee said:

'I thought the selection was terrific because our four were, you know, you couldn't get anyone better.'

Instructional material

5.6 The EM bail desk-file, the primary source of instructional material for EMBA's, is widely regarded as an excellent resource. EMBA interviewees noted it was '*comprehensive*' and made comments such as, '*if you read the desk-file, you know what EM Bail is all about.*'

5.7 A small number of EMBA's expressed negative views about how instructional material (e.g. EM bail forms) had been altered since the inception of EM bail. The view expressed was that the number of changes had been '*too high*' and that communication of them (e.g. via email: see below) had been '*ad hoc.*' According to a NZP manager, however, the communication of changes to the desk-file had been systematic (a 'version 2' was officially released at an EMBA conference in late 2007, it was noted) and had involved considerable consultation, including with EMBA's.

NZP resources for EM bail

5.8 Interviewees regularly commented that NZP resources for EM bail were presently adequate, given the volume of applications for EM bail. In particular, it was noted that the number of EMBA's was sufficient. In fact, a common theme amongst NZP interviewees was that, in some districts with low application volumes, EMBA's were not fully occupied on core EM bail tasks.

5.9 For some EMBA interviewees, this fact raised significant questions about job security. This fact might be connected to the high turnover for EMBA's during EM bail's first

twelve months (see below). One NZP manager suggested that there could be value in considering whether, in a location in which application volumes are low and an EMBA has resigned, there should be delay before a replacement EMBA is appointed.

- 5.10 A number of NZP interviewees commented that the modest volume of granted applications during the early months of the new scheme had allowed significant attention to be given to the monitoring of EM bailees. In this respect the perception was that the low number of applications for EM bail during these months was advantageous.
- 5.11 Some EMBA interviewees expressed concern about access to computers and cars. For example, some said that computers and cars allocated specifically for EM bail (in their view) were being used by other PPS staff on occasion and that this could reduce their access to these resources.

Court resources

- 5.12 A small number of interviewees commented that the Ministry of Justice had not received funding to implement EM bail and that this could become *'an issue'* if the number of applications for EM bail grew. One court registrar said:

'it's extra administrative work for us with no extra resource. It takes up judicial time, once again, usually in a busy court list.'

Legal aid

- 5.13 Some interviewees (including some defence lawyers) said that legal aid fees for EM bail were *'too low'* or *'inadequate.'* Some went on to imply that, if the legal aid fees for EM bail were higher (e.g. if fees for preparing applications for EM bail were greater), dissemination of information about the scheme would be more effective and the number of applications for EM bail would grow.
- 5.14 Although the evaluation did not attempt to assess claims about the adequacy of resources, it is perhaps noteworthy that:
- The claims were made by interviewees when numbers of applications for EM bail were significantly lower than presently
 - Legal aid funding for EM bail has remained constant.

Support for specialist staff

- 5.15 The evaluation found that, in general, interviewees had a positive attitude towards the EM bail scheme. A typical comment was:

'I think the concept is good and I would recommend that they retain it. But I would like to see some incentives that would help produce more applications.'

- 5.16 The family member of an EM bailee said that *'EM bail changed his [the EM bailee's] whole life for the better'*. Another interviewee said that it is plausible that EM bail scheme will *'improve the rehabilitation and reintegrate offenders.'*
- 5.17 EMBA's who were interviewed shared the same positive view about the EM bail scheme, but a small number were highly critical of the role of HQ staff in some aspects of its day-to-day management. In the view of these interviewees:
- Communication with EMBA's was sometimes poor. For example, it was stated that the volume of e-mails sent by HQ was excessive (*'we don't have time to check nine emails a day'*)

- Planned actions are not always timely. In particular, some EMBA's expressed dissatisfaction about progress on the resolution of particular HR matters
 - Although HQ provides regular and useful updates on procedural matters, it does not provide day-to-day '*leadership*' for EMBA's.
- 5.18 Some of these negative comments seem to assume that it is the function of the HQ staff to carry out line management tasks relating to EMBA's or, at least, to provide day-to-day direction for EM bail activities. Strictly speaking, this assumption is incorrect, since EMBA's are line managed by District Prosecution Managers (section 3). However, it is clear that the assumption is not fully understood to be incorrect and also that, because it is not, there is a level of dissatisfaction amongst at least a minority of EMBA's. Misunderstanding about responsibilities for line management of EMBA's might be a function of:
- The specialist policy role of the HQ-based EM Bail Manager (e.g. the provision of regular procedural advice which is unavailable from other sources)
 - The newness of the EM scheme and so the need for intensive contact between HQ staff during the scheme's early months
 - How District Prosecution Managers conceive of their EM bail role and how EMBA's have been integrated into local PPS offices.

EMBA job security and turnover

- 5.19 A key concern expressed by many EMBA interviewees, and one that could be connected to comments about HQ staff (see above), is '*job security*.' A number of EMBA's stated that, given the volume of EM bail applications received to date (i.e. at the time of interviews), there was a possibility that some EMBA posts would be cut or that the EM bail scheme as a whole would be withdrawn. In fact, some EMBA interviewees queried whether the present evaluation was connected to a decision about whether the EM bail scheme should continue.
- 5.20 Nine EMBA's (almost one in four) resigned in the first twelve months of EM bail's operation. This rate of turnover is twice that of non-sworn staff more generally. A key factor, in the opinion of many NZP interviewees, is the low volume of EM bail applications in certain locations and concerns about job security.
- 5.21 NZP managers commented that, although a high turnover rate is undesirable, it is positive that a number of departing EMBA had applied for and accepted alternative jobs in the PPS (e.g. as prosecutors) or in NZP more generally. A NZP manager stated that he expected that the turnover rate would reduce as the volumes of applications for EM bail grew.

Dissemination of information

- 5.22 Although NZP has expended considerable effort disseminating information about EM bail, it is clear (and openly stated by NZP managers interviewed) that these efforts are yet to be fully effective. Interviewees consistently commented that lawyers and judges are not uniformly aware of the operation or even existence of the EM bail scheme. One prosecutor commented that, in his view, defendants on remand '*just don't know EM bail*.' Another NZP staff member said that '*lawyers aren't telling them [those able to apply for EM bail that] it is available*.'

Summary

- 5.23 Interviews and other supporting information suggest that there are important respects in which the supporting infrastructure for EM bail is adequate. Training and recruitment of EMBA's is good and supporting instructional material is comprehensive. NZP

resources for EM bail (e.g. the number of EMBAAs) are sufficient for current application volumes. There are important areas for improvement, however:

- In the case of at least some EMBAAs, expectations regarding their day-to-day management are not being met; a cause may be confusion about the role of HQ staff
- Turnover of EMBAAs has been high, perhaps because of limited application volumes in the early months of EM bail and, perhaps related to this, concerns about job security
- At the time of interviews, dissemination of information about EM bail had had limited success.

6. HOW COULD EM BAIL PROCESSES OPERATE MORE EFFECTIVELY?

Introduction

- 6.1 This section concerns how EM bail processes operated by NZP could operate more effectively. The main focus is potential procedural change. The evaluation team did not conduct a systematic examination of existing EM bail procedures or of potential alternatives to these; the chief source of content is suggestions made by interviewees.
- 6.2 Interviewees consistently commented that, in general, EM bail processes are operating well. As seen below, suggestions for improvement do not refer to a need for large-scale changes to core aspects of EM bail processes.

Three-week waiting period

- 6.3 A number of EMBA, defence lawyers and defendants commented on the period of time taken between when an application for EM bail is submitted and when the outcome of the application is determined. Interviewees regularly suggested that a shorter period would be desirable. One defence lawyer said: *'people don't want to wait three weeks for the answer. They want the answer now.'* Another said:

'I don't see why it takes 15 [working] days. I can't see why it wouldn't be a 7 day turnaround max. If your client is declined bail you can get a bail appeal heard within a week in the High Court in Wellington, or you can spend 15 days waiting for an EM Bail application to be processed. I mean 15 days for someone sitting in custody is basically 21 days. 21 actual days. Which is a fair bit of time to be sitting in custody.'

- 6.4 Some interviewees commented that non-EM bail applications are heard relatively quickly (*'sometimes the next day and always within a week'*) and that the length of time required to process an application for EM bail could deter potential applicants. One lawyer said that the assessment period was *'seriously off-putting.'* Noting that a significant proportion of remandees are on remand for less than six weeks, one NZP manager said that the 15-day processing period meant that its appeal for many remandees was limited.
- 6.5 A number of non-NZP interviewees (including defendants and their family members) commented that the reason for the length of the assessment period was unknown to them. NZP interviewees, on the other hand, referred to particular reasons for this length. For example, some EMBA referred to the difficulty of getting information from other justice sector agencies. One EMBA said:

'We have to wait for other agencies to come back with information and that can be very slow and we need the full three weeks.'

Transport to EM bail residence

- 6.6 Some EMBA interviewees expressed concern about the period between EM bail being granted for a particular defendant and this defendant arriving at the relevant approved residence. There is a risk, they said, that the defendant would abscond during this period (i.e. before the commencement of electronic monitoring -- an unfortunate *'window of opportunity'*) and suggested that supervised transportation should be available for some EM bailees.
- 6.7 One interviewee argued that the risk of a defendant absconding during this period was not high and, as possible evidence for this, noted that it had eventuated only once

since the inception of EM bail (the EM bailee was subsequently arrested, according to NZP data). Further, the interviewee (a NZP manager) said that the EM bail court report pro forma had been amended to include reference to how the applicant for EM bail proposed to travel to the residence in question; he said this would assist judicial decision-making regarding whether the application for EM bail should be granted.

Withdrawn applications

- 6.8 A number of NZP interviewees commented on the proportion of applications for EM bail that are withdrawn before the relevant court hearing -- the most common comment was that this proportion was '*high*' and that it entailed '*wasted*' effort (since a withdrawal typically occurs after an EMBA has begun assessing the application). NZP interviewees said EM bail would be more effective if the withdrawal rate were lower.
- 6.9 As at 17 January 2008, 43% of applications for EM bail (274 of 636) had been withdrawn. NZP data and interviews suggest that withdrawals occur for three main reasons:
- The applicant for EM bail enters a guilty plea and decides for this reason that his or her application would have less merit
 - The 15 working-day processing period. Interviewees suggested that some applicants for EM bail became discouraged while waiting for the outcome of the their application and withdrew it for this reason
 - The applicant or his/her lawyer come to believe that the application will be rejected -- or, at least, opposed by NZP -- because basic prerequisites for it have not been met (e.g. if occupants of the proposed residence do not consent to EM bail). Some NZP interviewees said it was frustrating that applications for EM bail were submitted before such prerequisites were considered by the applicant's lawyer. Some suggested the withdrawal rate might decline over time as understanding of the EM bail scheme grew.

Varying conditions of EM Bail

- 6.10 A number of NZP and non-NZP interviewees said the process for varying conditions to EM bail (e.g. to allow for medical appointments) was inefficient because it entailed the EM bailee submitting an application to a judge -- this was thought to be time-consuming and '*a burden on court resources*.' Some EMBA interviewees suggested it would more efficient if EMBA's had the authority to approve simple variations to EM bail.

Legislation

- 6.11 EM bail was introduced without separate legislation but a strong view held by many interviewees -- both NZP and non-NZP -- is that legislation would be highly desirable. For many interviewees, an immediate reason is that legislation would assist in clarifying important aspects of the EM bail scheme. A defence lawyer said: '*there aren't clear guidelines. If the Bail Act itself dealt with EM bail as a fresh consideration, then that would assist enormously.*' A court official said:

'I guess what people are looking for is a bit more definition around the legislation to specifically allow EM Bail and maybe some legislative guidelines about appropriate types of cases for EM Bail to be granted on.'

- 6.11 Commenting on the desirability of legislation for EM bail, a judge commented:

'it is a very deep constitutional issue. The Cabinet cannot say without legislation or regulation "this is so" and expect the Courts to be bound by it.'

- 6.12 Some interviewees said an example of current uncertainty regarding EM bail related to whether EM bail constitutes a 'new circumstance' under the Bail Act 2000. It was noted that most judges consider EM bail to be a new circumstance but some do not which generates uncertainty amongst the legal community and potential applicants. A NZP manager stated that, in the absence of legislation, there have been a small number of instances of judges declining to consider applications for EM bail on the legal principle that the matter of the defendant's release on bail has already been decided and that there is no new or changed circumstance to warrant reconsideration of bail.
- 6.13 Some interviewees suggested that current uncertainty regarding aspects of the EM bail scheme was leading to situations in which defence lawyers would '*shop around*' for a judge who would interpret the Bail Act in a way that suited their client. One NZP interviewee said that lack of legislation and, related to this, variability in judicial decision-making, might be a factor in:
- The high withdrawal rate (paragraphs 6.8-6.9 above)
 - Delays in applications being filed and processed (paragraphs 6.3-6.5).
- 6.14 Some EMBAAs said that, if legislation were introduced to allow EMBAAs to approve variations to EM bail, court resources would be saved (compare paragraph 6.10). A judge, prosecutor and defence lawyer commented in more general terms, saying that legislation regarding variations to EM bail would allow the scheme to operate '*more effectively*.'
- 6.15 Almost every interviewee who commented on the issue of the desirability of legislation referred to uncertainty whether and how time spent on EM bail should be taken into account when the defendant is subsequently sentenced to a term of imprisonment. One lawyer stated:
- 'if you were going to go to jail, I couldn't see the point of spending a month or two at home where you could be getting it accredited to your sentence.'*
- 6.16 It was noted that, on a limited number of occasions, the courts had taken time spent on EM bail into account at sentencing in various ways (including sentence reduction and leave to apply for home detention). However, the view expressed by a wide range of NZP and non-NZP interviews is that:
- Uncertainty regarding this matter is ongoing (*'no clear pattern'* was available in existing, very limited, case law)
 - This uncertainty is a factor in limiting the uptake of EM bail by some defendants (e.g. as some defendants, anticipating the imposition of a prison sentence, prefer to remain in custody rather than undergo the restrictions associated with EM bail). One EMBA said that knowing you would get credit for time spent on EM bail '*would make a real difference*' to potential applicants
 - Receiving credit for time spent on EM bail could lead to EM bailees to be more inclined to comply with relevant conditions of EM bail.
- 6.17 A number of interviewees suggested that, if legislation were drafted, it should consider EM bail as a scheme for defendants not already remanded in custody (i.e. rather than as an option for only those defendants who had already had applications for ordinary bail declined).

Summary

- 6.18 Interviewees described EM bail processes as operating well in the main. However, many interviewees noted ways in which procedures could be improved. The suggestions focused on:

- The timeliness of processing applications for EM bail. Some interviewees suggested that the current processing period (15 working days) was too long
- Reducing the proportion of applications for EM bail that are withdrawn before the relevant court hearing. NZP interviewees said that the relatively high proportion wasted resources
- Improving how variations to EM bail are processed. The way in which variations are processed at present is inefficient, according to some interviewees
- Introducing legislation to increase clarity about the EM bail scheme. According to a large number of interviewees, legislation is needed to clarify whether EM bail constitutes a 'new circumstance' under the Bail Act 2000 and whether and how time spent on EM bail should be taken into account if the defendant is subsequently sentenced to a term of imprisonment.

7. SUMMARY AND RECOMMENDATIONS

Main findings

7.1 Interviews and other sources of information suggest that, in general, EM bail processes operated by NZP are functioning as intended and that NZP's supporting infrastructure for EM bail is adequate. In particular:

- EMBA and other NZP employees follow relevant EM bail processes using tools provided as part of official guidance material. This applies both to how applications for EM bail are assessed and how EM bailees are monitored
- Steps have been taken to correct initial difficulties with the operation of assessment and monitoring procedures
- Training and recruitment of EMBAAs is good
- Supporting instructional/guidance material regarding EM bail is comprehensive
- NZP resources for EM bail (e.g. the number of EMBAAs) are sufficient for current application volumes.

7.2 Less positive findings are that:

- In the case of at least some EMBAAs, expectations regarding their day-to-day management are not being met. A cause may be confusion about the role of HQ staff
- Turnover of EMBAAs has been high, perhaps because of limited application volumes in the early months of EM bail and, perhaps related to this, concerns about job security
- At the time of interviews, dissemination of information about EM bail had had limited success.

7.3 NZP and non-NZP interviewees commented positively on EM bail procedures but a number suggested possible improvements. Interviewees indicated that:

- Legislation for EM bail should be introduced and one subject of this should be whether and how time spent on EM bail should be taken into account if the defendant is subsequently sentenced to a term of imprisonment.
- The processing period for applications for EM bail (15 working days) should be shorter and that the proportion of such applications which are withdrawn (approximately 40% to date) is of concern
- There could be more efficient ways of handling variations to EM bail

Recommendations

7.4 It is recommended that NZP consider how EM bail procedures could be improved given suggestions by interviewees (see section 6). It is relevant that many interviews were conducted at a point when application volumes were relatively modest; it will be important to test whether proposed amendments -- including through legislative means -- are consistent with a more up-to-date understanding of EM bail processes.

7.5 A further recommendation is that NZP consider how EMBA expectations regarding their day-to-day management be addressed. It is possible that these expectations have changed, given significant changes to the volume of EM bail applications in recent months. On the other hand, it is possible that concerns persist and that they are a function of difficulties of management structure and/or communication.

7.6 A final recommendation is that NZP consider conducting a more substantive evaluation of EM bail in 24-36 months time. An important limitation of the present evaluation is

that is was based on interviewees with stakeholders who were still coming to understand how EM bail works. It is possible that stakeholder feedback might have been significantly different if EM volumes were higher, for example.