

BRIEFING PAPER

BAIL

THE **ESSENTIAL** MEMBERSHIP FOR
THE LEGAL PROFESSION

Prepared by the Law Society of Western Australia

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BAIL¹

Background

A large remand prisoner population is a problem. Firstly, a remand prisoner by definition is yet to have their guilt adjudicated by the Court. The taking of a person's liberty, especially in circumstances where they are presumed innocent, should not be done lightly and only in appropriate circumstances. Secondly, and perhaps more important politically, detaining people unnecessarily in custody during the criminal process is expensive.

The *Bail Legislation Amendment Bill 2016 (WA)* was introduced in 2016, with numerous proposed amendments to the *Bail Act 1982 (WA)*. The Bill lapsed when Parliament was prorogued in early 2017. A subsequent Bill dealing with similar proposed amendments has not yet been introduced into Parliament.

Number and percentage of remand prisoners

Western Australia keeps statistics on the number of remand prisoners detained.

The rate of sentenced vs unsentenced **juvenile** detainees is as follows (figures taken from Department of Justice, Corrective Services, Quarterly Statistics - Custodial (Youth Detainee) 2019 - Quarter 4:

Quarter End	Sentenced	Unsentenced	Total
31/12/2019	34 (29.82%)	80 (70.18%)	114
30/09/2019	35 (39.33%)	54 (60.67%)	89
30 /06/2019	64 (52.03%)	59 (47.97%)	123
31/03/2019	52 (36.62%)	90 (63.38%)	142
31/12/2018	56 (46.67%)	64 (53.33%)	120

The rate of sentenced vs unsentenced **adult** detainees is as follows (figures taken from Department of Justice, Corrective Services, Custodial (Adult Prisoner) 2019 - Quarter 4:

Quarter End	Sentenced	Unsentenced	Total
31/12/2019	4,990 (71.05%)	2,033 (28.95%)	7,023
30/09/2019	4,954 (72%)	1,927 (28%)	6,881
30 /06/2019	4,984 (71.82%)	1,956 (28.18%)	6,940
31/03/2019	4,950 (71.05%)	2,017 (28.95%)	6,967
31/12/2018	4,877 (70.92%)	2,000 (29.08%)	6,877

When assessing these figures two questions arise:

1. are too many people refused bail?
2. Of those granted bail, are too many unable to meet the conditions of bail set and remain in custody?

National Comparison of percentage of remand prisoners

The Australian Bureau of Statistics reports (see 4517.0 – Prisoners in Australia, 2019) that at 30 June 2019 the percentage of remand vs sentenced adult prisoners nationally was:

WA	28%
NSW	34%
Victoria	37%
Queensland	31%
South Australia	38%
Tasmania	33%
NT	30%
ACT	40%

Notwithstanding concern regarding an overall national trend of an increase in the remand prisoner population (see ABS media release of 11 December 2015, 'Unsentenced prisoners at the highest level in a decade' – reporting a 21% increase in the Australia wide remand population for the period of 30 June 2014 – 30 June 2015) it would appear that Western

Australia’s percentage of remand prisoners is in keeping with levels in other States.

Costs of prisoners

The total net cost of keeping a prisoner in Western Australia per day is **over \$300** (this figure was current for 2018 – 2019 and is taken from the Australian Government Productivity Commission, Report on Government Services 2020).

Estimates however are that keeping people in custody for short periods of time (for example whilst the person secures release on bail) has a higher daily cost due to the assessment process and additional support needed when a prisoner is first received in prison. Corrective Services estimates that a person kept in custody for less than a week can cost up to **\$770.00** per day (approximately double the cost than for longer term prisoners) (Taken from WA Auditor General’s Report, Management of Adults on Bail, June 2015, page 14).

In June 2015 the Auditor General reported on the management of adults on bail. This report looked at the figures for the year 2014. Key findings included:

1. The Police and Courts made a total of 80,815 bail decisions in 2014, granting bail to 43,248 of those people, more specifically:
 - a. Police granted bail to 55% of those they considered
 - b. The Court granted bail to 53% of those they considered (total number considered for bail = 52,475 people).
 - c. Accordingly, 47% of people considered by the Court in 2014 were refused bail.
2. Of the 27,619 people granted bail by the Court, 7% (1,663 people) were unable to meet the bail conditions immediately.
3. Of those 1,663 people who could not meet their bail immediately, 81.5% (1,356 people) were eventually able to meet their bail conditions.
4. Just under half met the bail conditions within a week (the actual figure is not reported but presented graphically below – page 14 of the Auditor General’s Report).

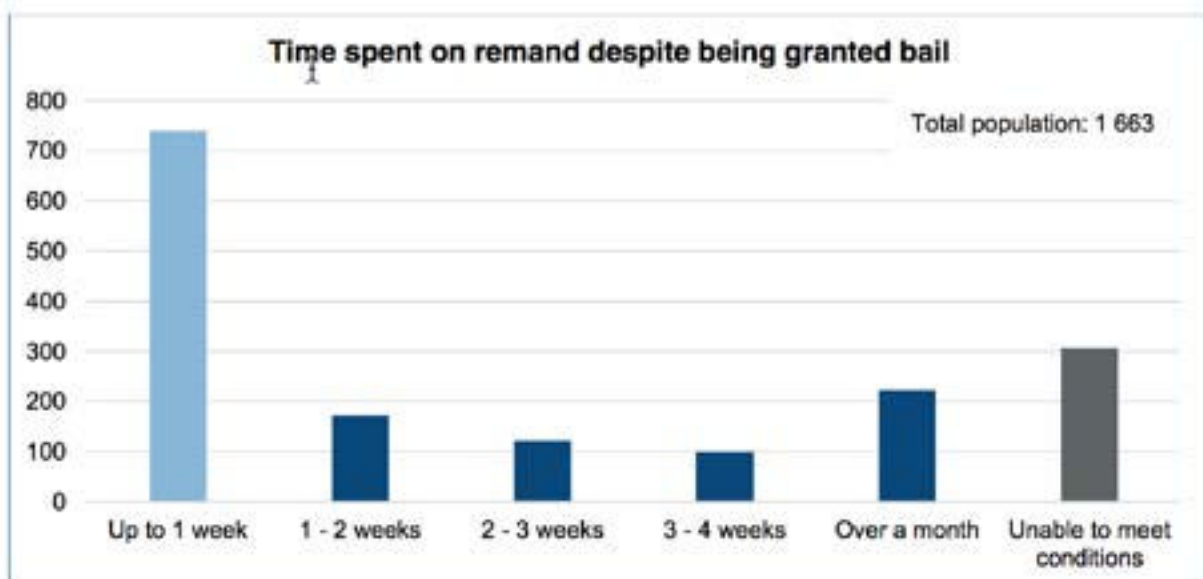


Figure 3: People granted bail held in remand for failing to initially meet their conditions

Helping get people out of custody that have bail granted

The Department employs bail coordinators to try and reduce the population of prisoners that have bail granted, but have not taken up bail. Bail coordinators assist in contacting family and friends to obtain sureties and addresses etc.

The Auditor General in 2015 reported that there were 4 bail coordinators employed servicing approximately 2,000 people per month. The Auditor General reported that the Department of Corrective Services acknowledged the high volume and were taking steps to increase service levels. Further the Department was 'considering' other options to improve support available for accused trying to satisfy their bail conditions.

In light of the cost (both financially and the cost to the accused personally) of holding those granted bail in custody it is critical that these initiatives are followed up by the Department.

Being held on remand when bail has been granted has a potentially devastating effect on an accused including:

1. Loss of income or loss of employment;
2. Loss of education or training course opportunities;
3. Loss of housing;
4. Inability to prepare an adequate defence (particularly if self-represented);
5. Isolation from family and children;
6. Separation from country for aboriginal accused.

Policy Position

In light of the above the Law Society of Western Australia makes the following recommendations:

1. Resources should be allocated to ensuring that those accused that have bail granted are able to take up bail.
2. Adequate funding of bail co-ordinator positions, particularly Aboriginal and Torres Strait islander positions are essential.
3. Adequate funding of prison visiting services (such as Legal Aid and ALSWA) to ensure that those who are unable to meet the conditions of bail are quickly identified and, if appropriate, applications to vary bail conditions are made.
4. Any changes to the *Bail Act 1982* that either dispense with bail, or make it easier to seek the removal of prohibitive conditions (such as surety conditions) should be encouraged.
5. Any amendments to the *Bail Act* should be clearly drafted. For example if similar amendments are proposed in a new Bill as were proposed in the lapsed *Bail Legislation Amendment Bill*, the Law Society seeks a detailed explanatory memorandum addressing requirements to take into account victim views 'if available'

NOTES

1. This summary paper is specifically written for the purposes of the Law Society preparing for the State Election – importantly for the purposes of identifying key talking topics for the Law Society during that election period.



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The voice of the legal profession in Western Australia