

25 March 2026

Commissioner Blanch
Office of Commissioner of Police
Western Australian Police Headquarters
2 Adelaide Terrace
EAST PERTH WA 6004

By email: commissioner@police.wa.gov.au

Dear Commissioner

EXERCISE OF DISCRETION BY POLICE IN RELATION TO BAIL

I write in relation to concerns raised by Law Society members regarding an emerging trend of police exercising discretion to refuse bail for accused persons charged with summary and indictable offences.

The Society's members have reported the experience of increasing numbers of arrests and refusal of bail for accused charged with lower-end offences. The Magistrates Court in Northbridge sits on weekends and public holidays to hear and determine bail applications initially refused by police. Applications or those accused are often unopposed by police prosecutors when the matter is before the Court. These practices create implications for the rights of accused persons and increase the burden on the Magistrates Court.

Law Society members have identified examples of police refusal of bail for clients charged with low-end stealing and disorderly behaviour in public. The trend of refusing bail for such charges has the potential to infringe on the rights of accused who ought to have been granted police bail, and results in unnecessary applications for bail to the Magistrates Court.

Members have also raised concerns about a lack of discretion exercised by Western Australian Police in relation to initiating breach of bail proceedings in the Magistrates Court. The most concerning example of this is when an accused is held in custody for a breach of reporting obligation at the very time the accused has attended at a police station to report. Such practices create a powerful disincentive to accused persons who may have missed a small number of reporting dates to meet their future obligations, if they believe doing so will only lead to them being kept in custody until such time as they can be brought before a Magistrate.

Our members have noted a distinct difference in practice between the approach of the Office of the Director of Public Prosecutions in relation to accused on bail in the District Court and the discretion exercised by Western Australian Police to err on the side of refusing bail for accused in relation to Magistrates Court offences. This difference in practice seems incongruous when considering the different levels of seriousness of the charges involved.

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We would appreciate a meeting with you in the coming weeks to discuss these issues, to help us understand these trends and work with you to address them. Attendees at the meeting from our end would include representatives from our Council and Criminal Law Committee.

To facilitate this discussion, I would be grateful if your office could contact Ms Sue Langmair (Personal Assistant to the CEO and President) by email to slangmair@lawsocietywa.asn.au or by telephone on 9324 8605 to agree a convenient time. We would be happy to host you or meet at your offices if preferred.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Judy McLean', with a stylized initial 'J'.

Judy McLean
President