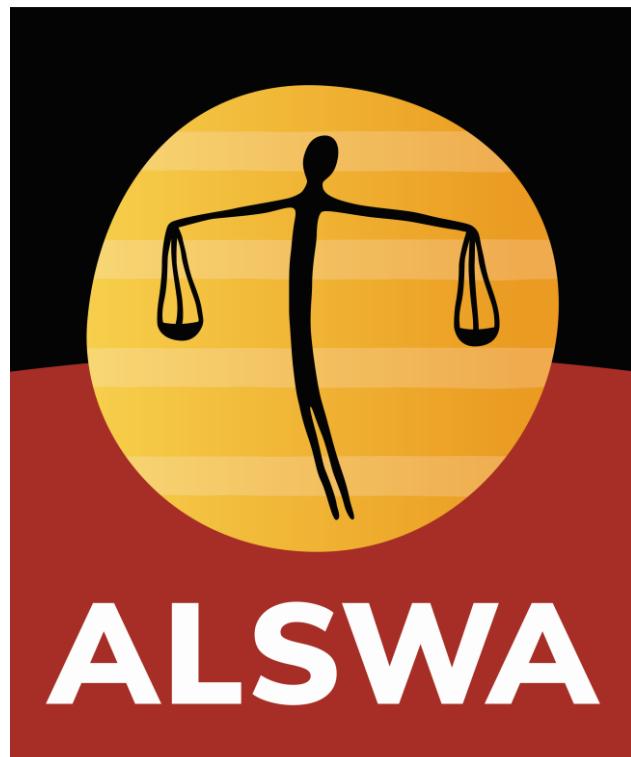


# Aboriginal Legal Service of Western Australia Limited



## Police Bail

*Submission*  
November 2025

*The Aboriginal Legal Service of Western Australia Limited acknowledges the Traditional Custodians of the land on which we all live and work, and pay our respects to their Elders past, present and emerging. We acknowledge and respect the continuing culture and contributions that our First Nations Peoples make to the life of this state and country.*

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## Recipients

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Hon Matthew Swinbourn, Minister for Community Services; Homelessness (WA)

Hon Brad Pettitt, Parliamentary Leader of the Greens (WA)

Ms Kylie Maj, Director General of the Department of Justice (WA)

## List of Recommendations

### Recommendation 1

That the *Bail Act 1982* (WA) be amended to insert a section requiring bail decision-makers to consider the vulnerabilities and Aboriginality of accused persons, as a measure to reduce the overrepresentation of Aboriginal peoples in police custody and in keeping with the government's commitment to Closing the Gap.

### Recommendation 2

That WA Police review and revise their internal policy and procedural guidelines pertaining to bail decision-making, with particular guidance on:

- How vulnerability is to be considered;
- How 'risk' is assessed; and
- Low-level offences, particularly those punishable by way of a fine only.

### Recommendation 3

That the Western Australia Government allocate funding to WA Police for the purpose of upgrading/developing a single crime recording system that is capable of reconciling data for the production of accurate statistical reports.

### Recommendation 4

That WA Police collect state-wide data on, and publish reports pertaining to, the age, sex, and Aboriginality of persons in police custodial facilities, including:

- Reason for arrest;
- Reason bail granted/refused;
- Time in police custody; and
- If imposing conditions on a grant of bail, rationale behind conditions imposed.

### Recommendation 5

That the Department of Justice collect state-wide data on, and publish reports pertaining to, the age, sex, and Aboriginality of accused persons brought before the court:

- For breach of police bail conditions only; and
- For first hearing following police bail refusals.

### Recommendation 6

That the Western Australia Government prioritise the drafting of enabling legislation and ongoing funding for NPMs appointed under OPCAT.

## 1. EXECUTIVE SUMMARY

The Aboriginal Legal Service of Western Australia Limited ('ALSWA') frequently represents Aboriginal and/or Torres Strait Islander adults<sup>1</sup> charged with low-level offences who are:

- i) refused bail by the Western Australia Police Force ('WA Police') in circumstances where loss of liberty is evidently unjust; and
- ii) subject to excessive police-imposed bail conditions that severely restrict freedom of movement and are disproportionate to both the nature of the alleged offence(s) and the level of risk that a further offence(s) may be committed.

The impact of these decisions is that Aboriginal people are unnecessarily deprived of their liberty in circumstances where the nature of the alleged offending is such that, in the event of conviction, a custodial sentence is either extremely unlikely or unable to be imposed by the courts. In the vast majority of cases, these individuals subsequently have their matters resolved at first hearing or, if their matters are adjourned, have their bail either dispensed with or varied by the courts.

Many Aboriginal people who are impacted by these approaches to bail (including children) are experiencing homelessness, mental ill-health, chronic disadvantage, and financial difficulties. In 2017, the Australian Law Reform Commission ('ALRC') recommended that state and territory bail laws be amended to require bail decision makers to consider the vulnerabilities of a person or issues that may arise due to a person's Aboriginality, as is the case in Victoria.<sup>2</sup>

ALSWA strongly supports reforms in line with this recommendation and continues to advocate for amendments to the current provisions of the *Bail Act 1982* (WA) ('*Bail Act*'). However, in lieu of awaiting potential legislative reform, ALSWA submits that there is a need for WA Police to review and revise their internal policy and procedural guidelines in order to address the issues raised throughout this submission. ALSWA further submits that there is an urgent need for improved data and transparency regarding persons held in police lockups across Western Australia.

## 2. ABOUT ALSWA

ALSWA was established in 1973 and is an Aboriginal Community Controlled Organisation. ALSWA is the lead provider of specialist legal advice, support services and advocacy for Aboriginal people in Western Australia. ALSWA works in collaboration and partnership with communities and key government and non-government partners to rectify legal policies and practices that impact adversely and disproportionately on the legal and human rights of Western Australia's First Peoples.

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<sup>1</sup> Throughout this document, the Aboriginal Legal Service of Western Australia ('ALSWA') uses 'Aboriginal' to refer to Aboriginal and/or Torres Strait Islander people.

<sup>2</sup> Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) 169.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in the areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is governed by a Board of Directors, who are all Aboriginal. ALSWA is a company limited by guarantee registered with the Australian Securities and Investment Commission and a public benevolent institution registered with the Australian Charities and Not-for-Profits Commission.

ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, child protection and human rights law. Its services are available throughout Western Australia via 11 regional and remote offices and one head office in Perth.

ALSWA also provides a number of additional wraparound services to support clients, including the Bail Support Service and Prison In-Reach Legal Service, the Custody Notification Service, the Custody Wellbeing Service, the Work and Development Permit Service and the Youth Engagement Program. ALSWA also leads the justice reinvestment program, Old Ways New Ways, along with Wadjak Northside Aboriginal Corporation, Stephen Michael Foundation and Hope Community Services. In addition, ALSWA works in partnership with Hope Community Services and other organisations for the delivery of the Waullo Dawn Healing Service and Koolark Healing Service in Armadale and the Mara Pirni Healing Service in Kalgoorlie.

### 3. LEGISLATIVE FRAMEWORK

#### 3.1 Bail

Broadly speaking, bail decision-makers in Australia are required to balance an accused's presumed innocence and right to be at liberty pre-trial alongside the protection of alleged victims, the wider community, and trial integrity.<sup>3</sup>

As the 'gatekeepers' to the criminal justice system, police are generally tasked with the initial decision of whether a person who has been arrested and charged with a criminal offence is granted bail or detained in police custody prior to the first court hearing. Pursuant to the *Bail Act*, police have a duty to consider bail for most individuals who have been arrested and charged with an offence.<sup>4</sup> For the purpose of this submission, the paragraphs below provide an overview of the legislation that pertains to bail decision-making for accused persons charged with offences that may be dealt with summarily in the Magistrates Court and which do not fall under Schedule 2 of the *Bail Act*.<sup>5</sup>

In exercising the discretion to grant or refuse bail, police officers in Western Australia are required to consider whether, if granted bail, an accused may fail to appear in court, commit an

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<sup>3</sup> Doreen Chen, *International perspectives on using bail to improve Indigenous criminal justice outcomes* (Report, Indigenous Justice Clearinghouse, 2020).

<sup>4</sup> *Bail Act 1982 (WA) pt II s 6 ('Bail Act')*.

<sup>5</sup> Schedule 2 lists 'serious offences' for which 'exceptional circumstances' are required for a bail application if the accused person is already on bail for a 'serious offence'; see *Bail Act* (n 4) sch 1 pt C cls 3A-3B.

offence, endanger others or the property of others, or interfere with the justice process.<sup>6</sup> The ‘risk’ that an accused may do any of these things is to be considered with regard to the strength of the case against the accused, as well as the nature and seriousness of any other outstanding charges against the accused, and the probable manner in which those charges would be dealt with if the accused were convicted.<sup>7</sup>

In relation to both outstanding charges and previous convictions, an officer must also have regard to the conduct of the accused towards a complainant and their family after the time that the offence is alleged to have occurred. Finally, an officer must also consider the accused’s personal circumstances (such as character, social background, residential environment, and financial position), the history of any previous grants of bail to the accused, and any other matter that the officer considers relevant.<sup>8</sup>

Where a risk is identified through the above considerations, or the accused is considered to be a danger to their own wellbeing, an officer considering bail must further determine whether there are conditions that could be imposed on a grant of bail to sufficiently alleviate these risks.<sup>9</sup> An officer may impose conditions on a bail undertaking that relate to the accused’s conduct or place of residence; these conditions are to be complied with prior to the accused being released to bail and/or while the accused is on bail.<sup>10</sup>

Conditions may be imposed for the purpose of ensuring that the accused appears in court, does not commit an offence while on bail, does not endanger others or the property of others, and does not interfere with the course of justice.<sup>11</sup> The conditions imposed should be no more onerous on an accused person than the officer considers is necessary in the public interest when regard is had to the nature of the alleged offence and the circumstances of the accused.<sup>12</sup>

If an accused has been released to bail by police and an officer has a subsequent reasonable belief that the accused has not complied with, or is unlikely to comply with, a requirement of the bail undertaking, the officer may cause the accused to be brought before a judicial officer to show cause as to why the accused’s bail should either be revoked or not varied.<sup>13</sup> In order to do so, a police officer is empowered to arrest the accused without a warrant.<sup>14</sup>

If it is alleged that an accused has failed to comply with the bail undertaking by not appearing in court, or by failing to comply with a protective condition of the undertaking (imposed to prevent the accused from endangering another person, endangering another person’s property, or interfering with the course of justice), then the accused may also be charged with a further offence.<sup>15</sup>

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<sup>6</sup> *Bail Act* (n 4) sch 1 pt C cl 1(a).

<sup>7</sup> *Ibid* sch 1 pt C s 3.

<sup>8</sup> *Ibid*.

<sup>9</sup> *Ibid* sch 1 pt C cl 1(e).

<sup>10</sup> *Ibid* pt D cl 2(1).

<sup>11</sup> *Ibid* sch 1 pt D cl 2(2).

<sup>12</sup> *Ibid* pt II cl 17(2).

<sup>13</sup> *Ibid* pt VII s 54.

<sup>14</sup> *Ibid* pt VII cl 54(2)(a).

<sup>15</sup> *Ibid* pt VII cl 51(1)-(2a).

### 3.2 Low-Level Offences

ALSWA submits that, in circumstances where individuals face charges that are likely to—or must—result in a moderate penalty (such as a fine), refusals of police bail and restrictive police-imposed bail conditions are both unjust and inefficient. These practices cause state resources to be depleted, place additional strain on an already overburdened judicial system, and risk exacerbating the vulnerabilities of accused persons.<sup>16</sup>

ALSWA notes that 3,676 people were arrested for offences punishable by a fine only in Western Australia in the last financial year.<sup>17</sup> Over 11% (420) of those arrested were refused bail by WA Police,<sup>18</sup> and over 26% (977) were Aboriginal peoples.<sup>19</sup>

#### i. Stealing (Under \$1,000)

Where an individual is charged solely with stealing property valued at \$1,000 or less, the offence carries a maximum penalty of a \$6,000 fine.<sup>20</sup> Alternatively, an accused may be given a Community Based Order ('CBO').<sup>21</sup>

The *Criminal Code Amendment Act 2024* (WA) has recently introduced higher maximum penalties for repeat stealing convictions that involve property valued at \$1,000 or less.<sup>22</sup> ALSWA notes, however, that the imposition of a penalty that is or includes imprisonment remains highly unlikely in the overwhelming majority of circumstances. This is because the gravamen of the offending is often relatively minor and previous instances of the same kind of offending do not aggravate an offence, nor justify the imposition of a harsher penalty than that which would otherwise be appropriate.<sup>23</sup>

For this reason, ALSWA submits that individuals accused of stealing property valued at \$1,000 or less ought to be proceeded against by way of summons or notice to attend only when section 426A of the *Criminal Code 1913* (WA) does not apply. In circumstances where this section is applicable and a notice to attend or summons is deemed inappropriate, ALSWA submits that a personal bail undertaking ought to be all that is required in the majority of circumstances.

#### ii. Disorderly Behaviour

The offence of disorderly behaviour in public, a police station, or lock-up carries a maximum penalty of a \$6,000 fine.<sup>24</sup> Alternatively, an accused may be sentenced to a CBO.<sup>25</sup>

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<sup>16</sup> Jesinta Burton, 'Someone Will Take Their Life': Magistrate Lashes WA Police for Keeping Too Many in Lock-Up', *WA Today* (online, 11 August 2023) <<https://www.watoday.com.au/national/western-australia/someone-will-take-their-life-magistrate-sounds-alarm-over-police-bail-decisions-20230731-p5dsre.html>>.

<sup>17</sup> Standing Committee on Estimates and Financial Operations, Parliament of Western Australia, *2025-26 Budget Estimates* (Western Australia Police Force, Answers to Supplementary Information Questions, 2025) 1.

<sup>18</sup> *Ibid* 2.

<sup>19</sup> *Ibid* 10.

<sup>20</sup> *Criminal Code 1913* (WA) s 426(4) ('*Criminal Code*').

<sup>21</sup> *Sentencing Regulations 1996* (WA) sch 2.

<sup>22</sup> *Criminal Code* (n 20) s 426A.

<sup>23</sup> See *Durward v Belton* [2012] WASC 479 [29]; *Kotnowski v Richardson* [2019] WASC 369 [24]; *Banwait v Eaton* [2020] WASC 15 [78].

<sup>24</sup> *Criminal Code* (n 20) s 74A.

<sup>25</sup> *Sentencing Regulations 1996* (WA) sch 2.

ALSWA submits that bail is incompatible with offences that do not attract a term of imprisonment. This is because any individual who is on bail and subsequently fails to attend court and answer their bail may be charged with breach of bail, an offence which carries a term of imprisonment. This is despite the fact that the offence of disorderly behaviour can be dealt with pursuant to section 55 of the *Criminal Procedure Act 2004* (WA), which enables accused persons to be convicted and sentenced in their absence. In addition, bail conditions frequently involve significant restrictions on freedom of movement and association which is equally incompatible with an offence which does not include imprisonment as a penalty.

For this reason, ALSWA submits that individuals accused of disorderly behaviour ought to be proceeded against by way of summons or notice to attend only.

### iii. Failure to Obey ‘Move On’ Orders

The offence of failing to comply with an order given by an officer carries a maximum penalty of a \$12,000 fine and/or 12 months’ imprisonment pursuant to s 153 of the *Criminal Investigation Act 2006* (WA) (‘*CI Act*’).<sup>26</sup>

ALSWA notes that this offence arises from a failure to comply with a number of different orders that may be made by police under the *CI Act*, including a ‘move on’ order issued by a police officer pursuant to s 27. In *Durward v Belton*, Pritchard J concluded that:

The primary purpose of s 27 thus appears to be to assist in the prevention of offending. The preventive purpose behind s 27 suggests that an offence under s 153, committed as a result of failure to comply with an order under s 27, is likely to be very much at the less serious end of the spectrum of offences.<sup>27</sup>

In brief, a person who has been issued a ‘move on’ order by a police officer must leave, or maintain a specified reasonable distance from, the place or area specified within the order.<sup>28</sup> A ‘move on’ order may require that the person abide by these conditions for a specified reasonable period of up to 24 hours.<sup>29</sup>

In keeping with the provisions of the *CI Act*,<sup>30</sup> the WA Police Commissioner’s Orders and Procedures Manual (‘COPS Manual’) provides guidelines that officers must follow when issuing ‘move on’ orders.<sup>31</sup> These guidelines include the requirement to aid a person issued with a ‘move on’ order to expediently comply with the order, such as by providing the person with access to a telephone. If the offer of assistance is declined, police officers are to record this. Where a person is later identified as having failed to obey an order, the COPS Manual further provides:

[...] officers must be mindful of the purpose of the original Move on Order and whether the purpose of the order has been satisfied.

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<sup>26</sup> *Criminal Investigation Act 2006* (WA) s 153 (‘*CI Act*’).

<sup>27</sup> *Durward v Belton* [2012] WASC 479 [19].

<sup>28</sup> *CI Act* (n 26) s 27(2).

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid* pt 4 div 1.

<sup>31</sup> Western Australia Police, Commissioner’s Orders and Procedures Manual, *AP-01.09 Move on Orders* (‘COPS Manual’).

Where a person is in technical breach of an order, but their behaviour in that place no longer causes concern and they have given a reasonable and lawful excuse for being in the area, officers should consider warning the person and reiterating the requirements of the order, rather than preferring charges.<sup>32</sup>

ALSWA submits that in many of the cases analysed and exemplified within this submission, police do not appear to have exercised their discretion in the manner suggested by these guidelines. ALSWA further notes that, where charges are preferred, accused persons are often granted bail by police with conditions that mirror those of the issued ‘move on’ order. Such practices effectively extend the duration of ‘move on’ orders from a period of up to 24 hours to a period of several weeks. ALSWA submits that this is both grossly unfair, excessive and a form of double punishment for an offence which—in the event of conviction—is likely to result in a penalty of a fine under \$1,000.<sup>33</sup>

#### 4. ANALYSIS

ALSWA analysed the cases of 70 Aboriginal adults charged with at least one low-level offence in 2024, of whom:

- 53 were refused bail by WA Police in the first instance;
- 13 were arrested for breaching bail conditions imposed by WA Police only; and
- Four (4) were arrested for breaching police-imposed bail conditions and charged with at least one additional low-level offence.

Of the 53 individuals who appeared in court after being refused bail by WA Police:

- 24 individuals had their matters dealt with at first hearing by way of fine (19), suspended fine (3), or no further punishment (2);
- 13 individuals were granted bail by the court with a personal undertaking only;
- 11 individuals had their matters adjourned and were released without bail;
- Just four (4) individuals were granted conditional bail by the court with a requirement to either report to police (2), reside at a specific address (1), or abide by a curfew (1); and
- One (1) individual’s matters were dismissed for want of prosecution.

Of the 13 individuals who appeared in court after breaching their bail conditions only:

- The majority of individuals (12) had breached a ‘boundary’ condition imposed by police, while one (1) individual had breached a condition not to consume alcohol;

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<sup>32</sup> Ibid.

<sup>33</sup> See *Cotterell v Jones* [2019] WASC 354 [41]-[45].

- Seven (7) individuals had their matters finalised by way of fines (4), no further punishment (2), or received fines and no further punishment (1);
- Three (3) individuals had their matters adjourned after bail was dispensed with by the court;
- Two (2) individuals were granted bail by the court with conditions either reduced (1) or entirely removed (1); and
- Just one (1) individual's bail was renewed on the same conditions set by police.

Of the four (4) individuals arrested for breaching police bail and charged with at least one additional low-level offence:

- All had breached a 'boundary' condition imposed by police;
- One (1) individual had both of their matters adjourned after bail was dispensed with by the court;
- One (1) individual had their bail varied by the court to remove the 'boundary' condition imposed by police, and their new matters were adjourned without bail;
- One (1) individual's matters were finalised by way of fines with spent conviction orders made in respect of each charge; and
- One (1) individual's bail was renewed on the same conditions set by police and they were granted bail with a personal undertaking only on their new matter.

Overall:

- Almost all individuals (87%) were detained in police custody overnight.<sup>34</sup>
- Over 21% of individuals (15) had their matters adjourned without bail by the court, including four (4) for whom police-imposed bail was dispensed with;
- Over 31% of individuals (22) were granted bail by the court, of whom the majority (16) were granted bail with a personal undertaking only; and
- Just under 46% of individuals (32) had their matters finalised at first hearing, of whom:
  - The majority (78%) received only fines (23) or suspended fines (2);
  - Four (4) received no further punishment only; and
  - Three (3) received both a fine and a suspended fine (1), fines and no further punishment (1), or a fine with spent conviction orders (1).

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<sup>34</sup> Detained in police custody before midnight the day prior to their appearance in court.

## 5. FINDINGS

### 5.1 Unreasonable Bail Refusals

As outlined in [Part 3.1 of this submission](#), police have a duty to consider bail for most individuals who have been arrested and charged with an offence pursuant to the *Bail Act*.

The COPS Manual includes guidelines for officers that pertain to the consideration of bail in limited specific circumstances, such as where an accused is charged with a family violence offence. However, in relation to the general consideration of bail, the COPS Manual solely includes the following paragraph:

A member who is an authorised police officer under the *Bail Act 1982* shall:

- Consider each detainee's case for bail as soon as practicable
- Ensure that no person is detained unnecessarily.<sup>35</sup>

ALSWA submits that in many circumstances, this makes the COPS Manual an inadequate resource for officers who are required to exercise their discretion to grant or refuse bail, which necessitates the balancing of various factors including the personal circumstances of the accused.

A 2022 study<sup>36</sup> that sought to develop a greater understanding of police bail decision-makers' considerations of vulnerability found that much of the knowledge that police officers possess in relation to bail is procedural, which can mean that the vulnerabilities of alleged offenders are unlikely to be considered.<sup>37</sup> Formal and informal 'rules' regarding bail practices, together with cultural attitudes within police forces, can also influence whether an officer decides to grant or refuse an accused person's bail.<sup>38</sup> Ultimately, researchers concluded that:

For the sake of procedural justice, it is crucial to gauge the importance of police obligation to consider vulnerability at any stage of the policing process, up to bail and prosecution stages, and as the gateway to criminal justice, the extent to which police involvement in the bail process is essential in addressing Australia's rising imprisonment rate. Understanding requirements to consider vulnerability can assist in reducing imprisonment rates and recidivism while still balancing the rights of the accused with the interests of the community. It is essential that intersecting vulnerabilities are considered by police when making bail decisions to help reduce the number of vulnerable people being remanded or imprisoned.<sup>39</sup>

ALSWA notes that, in some instances, conversations between WA Police and Custody Notification Service ('CNS') staff indicate that police bail decisions are influenced by police culture and informal bail policies. For example, on several occasions when CNS have been told that an Aboriginal person will be refused bail prior to the first hearing of a stealing charge,

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<sup>35</sup> COPS Manual (n 31), *LP-07.00 Release*.

<sup>36</sup> Danielle Hughes, Emma Colvin and Isabelle Bartkowiak-Théron, 'Police and Vulnerability in Bail Decisions' (2022) 11(3) *International Journal for Crime, Justice and Social Democracy* 122, 122-138 <<https://doi.org/10.5204/ijcjd.1905>>.

<sup>37</sup> *Ibid* 125 [4].

<sup>38</sup> *Ibid*.

<sup>39</sup> *Ibid* 134 (citations omitted).

police officers have advised CNS that the reason for the refusal is that the Aboriginal person is already on bail for a separate stealing charge.

ALSWA submits that refusals of police bail on this basis undermine the presumption of innocence, fail to have proper regard to the relevant provisions of the *Bail Act*,<sup>40</sup> and ultimately result in greater punishment (due to time spent in custody) than would otherwise be imposed by a judicial officer in the overwhelming majority of cases involving convictions for low-level offences. This is because judicial officers must not sentence an offender to imprisonment unless an offence is of such seriousness that only imprisonment can be justified or it is necessary for the protection of the community.<sup>41</sup>

ALSWA is similarly concerned by refusals of police bail in circumstances where an accused is arrested and charged with a low-level offence that predates another low-level offence for which the accused is already on bail. ALSWA submits that this is both unfair to the accused and an unnecessary drain on court resources. Where no offending is alleged to have occurred in the time since the accused was originally granted bail, and there is no indication that existing bail has not been or will not be complied with, these initial refusals are often followed by bail being granted by the court.

### Case Examples

The following cases are examples of those which give rise to the concerns expressed above and outline the circumstances in which ALSWA submits Aboriginal adults have been unnecessarily refused bail by police.

- A. In April 2024, a 29-year-old Aboriginal woman was refused bail by police and detained in custody overnight after being arrested and charged with stealing food and sunglasses valued at \$30. Although she had never previously been charged with breach of bail, WA Police advised ALSWA that they were refusing bail because the woman had a ‘poor history’. The woman was subsequently fined \$500 for the offence.
- B. In August 2024, a 25-year-old Aboriginal man from a very remote area was charged with stealing a jumper and refused bail by police. The man had been released on bail by the court earlier that same day after spending the night in police custody for an unrelated offence. When speaking with CNS, the man was very upset and said that he had only stolen the jumper because he was freezing cold. The man spent another night in police custody and was granted bail with a \$500 personal undertaking by the court the following day.
- C. In September 2024, a 28-year-old Aboriginal woman was charged with stealing a pram valued at \$150 and possession of cannabis. She was refused bail by police and detained overnight, spending almost 24 hours in police custody before being granted bail by the court with a residential condition the following day.

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<sup>40</sup> *Bail Act* (n 4) sch 1 pt C cl 1.

<sup>41</sup> *Sentencing Act 1995* (WA) s6(4).

- D. In June 2024, a 28-year-old Aboriginal woman was arrested and charged with a low-level stealing offence and was subsequently also charged with disorderly behaviour in a lock-up. The woman was refused bail by police and held in custody overnight before being brought before the court, where she received a \$100 fine for the stealing offence and a \$200 fine for the disorderly offence.
- E. In January 2024, a 49-year-old Aboriginal woman who was charged with disorderly behaviour in public and failure to provide personal details was refused bail by police and detained in custody overnight. She was not on bail at the time, had not been charged with an offence in almost a year, and had no convictions for breaching bail for the previous 9 years. The woman appeared in court the following day and was fined \$800 for the offences.
- F. In April 2024, a 31-year-old Aboriginal woman was arrested and charged with obstruct public officer. The woman was not on bail at the time, had no breach of bail charges on her record, and had a limited court history. She was refused bail by police and spent the night in police lock-up prior to being granted bail by the court with a personal undertaking. The matter was subsequently resolved at the next hearing and the woman was fined \$1,000.
- G. In April 2024, a 34-year-old Aboriginal woman was arrested and charged with disorderly behaviour in public. Although she had no outstanding matters and had not appeared in court for an offence since 2019, she was refused bail by police and held in police custody overnight. The woman appeared in court the following day, where the matter was adjourned to a later date. The woman was released without bail and she was eventually sentenced to a \$400 suspended fine.
- H. In April 2024, a 49-year-old Aboriginal woman was detained in police custody under the *Protective Custody Act 2000* (WA). The woman had been unconditionally released from prison earlier that day after spending several months on remand and was experiencing homelessness at the time. While in police custody, the woman was charged with disorderly behaviour in a lock-up and refused bail by police. The matter was adjourned without bail by the court, and the woman was ultimately unconditionally released pursuant to the *Criminal Law (Mental Impairment) Act 2023* (WA).
- I. In February 2024, a 34-year-old Aboriginal man was refused bail by police after being arrested and charged with a single offence of stealing property valued at approximately \$190. Police advised CNS that the man would be refused bail because he was already 'on a few bails'. The man was detained in custody overnight and appeared in court the next day, where he was fined \$500 for the offence.
- J. In March 2024, an 18-year-old Aboriginal man was refused bail by police for a single charge of stealing. Police advised CNS that they 'could not' grant the man bail because he was already on bail for four other stealing charges. The man was detained in custody overnight and appeared in court the following day, where he was fined \$500 for the offence.

## 5.2 Unduly Onerous and Excessive Bail Conditions

As discussed in [Part 5.1](#), police approaches to bail decision-making can mean that the vulnerabilities of accused persons are not considered when determining whether to grant or refuse bail in the first instance.<sup>42</sup> Similarly, when police do grant bail, they have been found to impose onerous bail conditions upon accused persons.<sup>43</sup> Notably:

These conditions include restricting access to public transport, excluding persons from entering large geographic areas, and placing abstinence conditions on offenders. Conditions such as these have the greatest negative effect on those who are already disadvantaged, such as people of low socioeconomic status, who rely on public transport, people from rural areas who may be excluded from their township and, thus, face homelessness, and people with addictions who are not presented with adequate support services. Arduous and demanding bail conditions such as these nearly always result in people breaking their bail conditions and being remanded. When people are remanded, their risk of recidivism increases. Placing onerous bail conditions upon an accused offender can often result in more harm than good.<sup>44</sup>

In Western Australia, police powers to arrest an accused are significantly expanded by the imposition of conditions on a grant of bail.<sup>45</sup> This increases the likelihood of further police contact and loss of liberty for an accused in circumstances where both would otherwise be unnecessary, utilizing valuable police and state resources in turn.

Pursuant to the *Bail Act*, and as outlined in [Part 3.1](#) of this submission, the imposition of conditions on a grant of bail should be no more onerous on an accused person than is necessary when regard is had to the nature of an alleged offence and the circumstances of the person accused of committing the offence. However, the COPS Manual advises officers only of the following with regard to the imposition of conditions on a grant of bail in general:

No unreasonable bail conditions should be imposed as a defendant who breaches a condition of bail, does not commit an offence under Section 51 of the *Bail Act 1982*. The purpose of imposing conditions is to ensure compliance with the bail undertaking only.<sup>46</sup>

ALSWA submits that this offers no meaningful guidance to officers in complying with their obligations under the *Bail Act*, nor in determining whether conditions are reasonable or unreasonable. The imposition of unduly onerous conditions on bail granted by police for low-level offences is indicative of a clear need for such guidance.

The conditions imposed on police bail that ALSWA most frequently encounters are those which prohibit Aboriginal adults from being in specified public areas. These areas are typically sizeable and designated by the streets which surround them, creating a ‘boundary’ that an accused is restricted from entering. In the vast majority of cases, for Aboriginal adults living in regional areas, conditions prevent Aboriginal adults from accessing the main streets of their local areas and, by extension, the essential facilities and services commonly located within these central areas.

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<sup>42</sup> See generally Danielle Hughes, Emma Colvin and Isabelle Bartkowiak-Théron (n 36).

<sup>43</sup> Danielle Hughes, Emma Colvin and Isabelle Bartkowiak-Théron (n 36) 125 [5].

<sup>44</sup> Ibid.

<sup>45</sup> See Part 3.1 of this submission.

<sup>46</sup> COPS Manual (n 31), *LP-07.00 Release*.

These conditions severely restrict an accused's freedom of movement, are often incongruent with the objective seriousness of an alleged offence, and are more punitive than preventive.<sup>47</sup> ALSWA notes that, when agreeing to abide by these conditions, Aboriginal persons are often 'in a vulnerable position with little space to contest the appropriateness of supervision requirements or conditions of release, as challenging conditions risk their continued detention'.<sup>48</sup>

Further, as noted by Brad Pettitt (Member of the Legislative Council WA) in a question posed to the Office of the Director of Public Prosecutions (WA) regarding bail conditions that prevent accused persons from entering Perth CBD:

There is a long history in WA of the Crown enacting segregational policies and laws against First Nations People, including legal barriers which effectively ban First Nations persons from entering Perth CBD either wilfully, as with the historic practice of gazetted Aboriginal exclusion zones, or through more covert policing measures. Either way, such practices deny First Nations people access to vital services and opportunity, and their harms are most acutely felt by those sleeping rough or experiencing homelessness [...]<sup>49</sup>

ALSWA submits that the exclusion of people experiencing homelessness from areas in which they typically live is both cruel and ineffective. Individuals experiencing homelessness are particularly vulnerable to both victimisation and criminalisation, and are often charged with offences that arise from life-sustaining activities (such as the need to provide themselves with food, clothes, and shelter) or their visibility in public places more broadly.<sup>50</sup> When subject to 'boundary' conditions while on bail, this vulnerability is inevitably exacerbated. There is also the additional important consideration as to whether homeless people with disabilities or impairments have the capacity to understand bail conditions which exclude them from specific areas and, even if understood, the capacity to comply with such conditions.

In a similar vein, ALSWA clients on bail are frequently brought before the Magistrates Court for breach of bail condition ('Form 5B')<sup>51</sup> when they have failed to comply with a condition on just one occasion. For example, police may issue a Form 5B for failure to report when an accused person subject to reporting conditions attends their local police station a day late to report. This occurs even when there is an available reason or reasonable excuse for non-compliance. In many cases, these applications to the court require accused persons to be held in custody unnecessarily and further burden an already overstretched court system.

The findings of a recently published research project<sup>52</sup> are consistent with ALSWA's experience of bail refusals following breaches of this nature. The project surveyed 230 police

<sup>47</sup> See, eg, Nicole M Myers, 'The Bail Process is Both the Trial and the Punishment: Surveillance and Control Without the Burden of Conviction' (2024) *Journal of Criminology* 0(0), 1-19.

<sup>48</sup> Ibid 10.

<sup>49</sup> Standing Committee on Estimates and Financial Operations, Parliament of Western Australia, 2024-25 *Budget Estimates* (Answers to Additional Questions, Office of the Director of Public Prosecutions – Attorney General Portfolio, 2024) 2 <[https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/8F4CF5F6E1C1927B48258B6B001B2B0D/\\$file/ef.be25.240724.qad.001.jq.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/8F4CF5F6E1C1927B48258B6B001B2B0D/$file/ef.be25.240724.qad.001.jq.pdf)>.

<sup>50</sup> Tamara Walsh et al, "'Back Off! Stop Making Us Illegal!': The Criminalisation of Homelessness in Australia' (2025) 34(1) *Social and Legal Studies* 67, 74-76.

<sup>51</sup> *Criminal Procedure Regulations 2005* (WA) sch 1 s 5B.

<sup>52</sup> Natalie Gately et al, 'Complex Lives and Procedural Barriers: Detainees' "Life Happens" Explanations for Breaching Orders' (2024) *Journal of Criminology* 26338076241265980, 1-22.

detainees in Western Australia who were in custody for breaching the conditions of police and/or court orders, of which bail was the most breached type of order.<sup>53</sup> Reasons associated with non-compliance were found to include issues arising due to homelessness, obligations to family and employers, and procedural barriers. Ultimately, researchers concluded that:

The experiences of the detainees surveyed in this study highlight the difficulties of people in contact with the justice system that have already been well-established. Of more importance, however, is the detainees' descriptions of how their complicated lives impact on their ability to adhere to conditions issued to them. Unique to this study is that those on orders are subject to monitoring and reporting conditions but are not supported in the community, as offenders who have been sentenced are. This was evident in the findings of the current study where their difficulties fed into increased justice administration offences and a recriminalisation of people on orders.<sup>54</sup>

ALSWA notes that over a third of participants in the study identified as Aboriginal and/or Torres Strait Islander,<sup>55</sup> with researchers finding that these participants 'presented with additional family responsibilities and requirements'<sup>56</sup> and 'discussed the complexities of bail conditions on cultural requirements, in particular the requirement to report in person to a specific location that was a long distance from their location'.<sup>57</sup>

### Case Examples

The following cases are provided as examples of the circumstances in which ALSWA submits police have imposed unduly onerous bail conditions on Aboriginal adults accused of low-level offences.

- A. In April 2024, a 26-year-old Aboriginal man charged with stealing a roast chicken valued at \$12 from a major supermarket was granted bail by police with conditions prohibiting him from entering Perth CBD. The man had no other outstanding charges and had last been charged with a stealing offence 10 years earlier (when he was still a child). The man had been subject to these conditions for almost a month when he was arrested and detained in police custody for breaching them. He was subsequently held in a lock-up overnight and appeared in court the next day, where he was fined \$50.
- B. In November 2024, a 33-year-old Aboriginal woman charged with stealing four chocolate bars valued at \$28 was granted bail by police with conditions prohibiting her from entering Perth CBD and Northbridge. Over three weeks later (and two days before the first hearing of the charge), the woman was arrested for breaching these conditions. She was detained in police custody overnight and brought before the court the next day, where she was fined \$50.
- C. In August 2024, a 42-year-old Aboriginal woman charged with stealing a jacket valued at \$35 was granted bail by police with a \$1,000 personal undertaking and conditions

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<sup>53</sup> Ibid 8.

<sup>54</sup> Ibid 15.

<sup>55</sup> Ibid 7.

<sup>56</sup> Ibid 12.

<sup>57</sup> Ibid.

prohibiting her from entering Perth CBD. She had last been in court in January 2024 for stealing \$15 worth of food from a major supermarket. The woman was later arrested for breaching the conditions of her bail by entering the CBD. While in custody, the woman advised CNS that she was experiencing significant anxiety due to her mother being in hospital and that, as a result of this anxiety, she had not clearly understood the boundary conditions of her bail. The woman was detained in police custody until she could be brought before the court, where she was fined \$150.

- D. In January 2024, a 46-year-old Aboriginal woman in a remote area was charged with disorderly behaviour in public. Police granted the woman bail with the condition that she was not to consume alcohol. The woman was arrested for breaching the bail condition later the same day. She was detained in police custody overnight and appeared in court the following day, where bail was dispensed with. The woman was ultimately convicted under section 55 of the *Criminal Procedure Act 2004* (WA) and was fined \$1,500.
- E. In February 2024, a 27-year-old Aboriginal woman was arrested and charged with disorderly behavior in public and failing to obey an order given by an officer. She was granted bail by police with conditions not to enter the Perth CBD between 7 pm and 7 am unless for work or medical purposes. Later the same day, the woman was arrested for breaching these bail conditions. Although she was on bail for a separate charge of disorderly behavior in public at the time, the woman had not appeared before the court since 2017 and had a very limited criminal record. All three matters were dealt with in court the following day and the woman received a \$650 fine with spent conviction orders.
- F. In May 2024, a 52-year-old Aboriginal man was arrested for breaching a ‘move on’ order 15 minutes before the order’s expiry. The man had been issued the order for drinking in a public park the previous day. He usually resided in a very remote community and did not have accommodation in the city, having travelled there to be with his wife who required surgery. The man was charged and released on police bail with conditions that prohibited him from being in the area where the hospital was located, which essentially extended the duration of the order from 24 hours to his court date a month later. A few hours after his release, the man was arrested again after police saw him in the hospital’s carpark. He was refused bail and spent the night in police custody before appearing in court the following day and received no further punishment for the offence pursuant to section 46 of the *Sentencing Act 1995* (WA).
- G. In July 2024, a 36-year-old Aboriginal woman charged with disorderly behaviour in a public place was granted police bail with a \$1,000 personal undertaking and conditions prohibiting her from entering the Perth CBD. Two weeks later, the woman was arrested for breaching these conditions. While in custody, she advised CNS that she did not know that she was prohibited from entering the city and had gone there to visit the bank. The woman was detained in police custody overnight and was released from court the following day and received no further punishment for the offence pursuant to section 46 of the *Sentencing Act 1995* (WA).

- H. In January 2024, a 23-year-old Aboriginal woman charged with disorderly behaviour in public was granted bail by police with conditions not to enter a suburb between 7 pm and 7 am. The woman was subsequently arrested for breaching this condition and when she appeared in court, bail was dispensed with and the matter was adjourned to a later date.
- I. In March 2024, a 37-year-old Aboriginal man charged with failing to obey a ‘move on’ order was granted bail by police with conditions not to enter the Perth CBD between 7 pm and 7 am unless for work or medical treatment. Two days later, he was arrested for breaching these conditions. The man advised CNS that he usually resided in a very remote Aboriginal community and had been flown down to Perth by an Aboriginal Community Controlled Health Service because he required surgery. The man was detained in custody overnight and appeared in court the following day, where he was fined \$200 for the offence.
- J. In May 2024, a 26-year-old Aboriginal woman charged with disorderly behaviour in public was granted bail by police with conditions not to enter the Perth CBD. The woman was arrested for breaching her bail conditions approximately four hours later. She advised CNS that she entered the CBD because she was homeless and had nowhere else to go. The woman was detained in police custody overnight and appeared in court the following day, where bail was dispensed with and the matter adjourned to a later date.

## 6. RELEVANCE OF A REVIEW AS PROPOSED

The gross overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system is longstanding and well-known.<sup>58</sup>

One of the key factors that contributes to the overrepresentation of Aboriginal adults on remand in Western Australia is the difficulty in obtaining bail.<sup>59</sup> This difficulty is compounded by increasingly punitive and highly politicised ‘tough on crime’ policies<sup>60</sup> that increase police interactions with Aboriginal people in the community, broaden the circumstances in which harsher penalties may be imposed for an offence, and increase the likelihood that Aboriginal

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<sup>58</sup> See, eg, *Royal Commission into Aboriginal Deaths in Custody* (1991); Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017); Thalia Anthony et al, ‘30 Years On: Royal Commission into Aboriginal Deaths in Custody Recommendations Remain Unimplemented’ (Working Paper No. 140/2021, Centre for Aboriginal Economic Policy Research, Australian National University, 2021) <<https://caepr.cass.anu.edu.au/research/publications>>; Louis Schetzer and Mindy Sotiri, ‘Reforming Bail and Remand’ (Justice Reform Initiative Position Paper, November 2024) <[https://www.justicereforminitiative.org.au/position\\_papers](https://www.justicereforminitiative.org.au/position_papers)>.

<sup>59</sup> See ALSWA, Submission to the Department of the Attorney General Government of Western Australia Review of the Bail Act 1982 (October 2010); ALSWA, Submission No 10 to Federal Senate Finance and Public Administration References Committee, Parliament of Australia, *Inquiry into Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (29 April 2015); ALSWA, Submission No 74 to Australian Law Reform Commission, *Discussion Paper 84: Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (11 September 2017).

<sup>60</sup> See, eg, Julia Quilter, ‘Not for Punishment: We Need to Understand Bail, Not Review It’, *The Conversation* (online, 3 July 2014) <<https://theconversation.com/not-for-punishment-we-need-to-understand-bail-not-review-it-28651>>; Chris Cunneen, ‘How “Tough on Crime” Politics Flouts Death-in-Custody Recommendations’, *The Conversation* (online, 14 April 2016) <<https://theconversation.com/how-tough-on-crime-politics-flouts-death-in-custody-recommendations-57491>>.

people who enter the justice system will reoffend or remain in the system for longer periods, as well as risking incarceration.<sup>61</sup>

## 6.1 Risk of Arrest in Western Australia

A 2024 study<sup>62</sup> that examined contact between Aboriginal peoples and the criminal justice system identified a high rate of arrest as ‘the leading proximate cause’<sup>63</sup> of the overrepresentation of Aboriginal peoples in Australian custodial facilities. Even after controlling for factors that influence the risk of Aboriginal people being arrested (such as gender, drug and alcohol use, mental well-being, and membership of the Stolen Generations) marked differences ‘consistent with the influence of criminal law and law enforcement policy’<sup>64</sup> remained between Australian states and territories. Researchers found that the odds of arrest are higher ‘for those who live in any state or territory other than New South Wales’<sup>65</sup> and, notably, that:

Living in Western Australia is associated with a 4.7 percentage point increase in the risk of arrest, a result comparable in magnitude to having a high or very high level of psychological distress.<sup>66</sup>

This not only represented a greater influence on risk of arrest than that associated with living in any other state or territory, but also than that associated with being a relative or member of the Stolen Generations.<sup>67</sup> The findings of this study are very concerning for ALSWA clients, for the Western Australian justice system as a whole, and for Aboriginal populations across the state. This is especially so when considered in tandem with the associated social, health, and economic determinants that are affected by involvement in the criminal justice system and time in custody.<sup>68</sup>

While there are currently no statistics that pertain to arrests in Western Australia,<sup>69</sup> ALSWA receives notifications of Aboriginal peoples in police custody via the Custody Notification Service (‘CNS’). State legislation requires WA Police to contact CNS every time an Aboriginal person is arrested or detained in police custody. In 2022, CNS received 23,911 notifications regarding Aboriginal adults in police custody across Western Australia. In 2024, CNS received

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<sup>61</sup> See, eg, Brenda Lin, Brendan Delahunty and Garner Clancey, “‘Law and Order’ Policy” in Diana Perche et al (eds), *Australian Politics and Policy* (Sydney University Press, 2024) 1126; Louis Schetzer and Mindy Sotiri, ‘Reforming Bail and Remand’ (Justice Reform Initiative Position Paper, November 2024)

<[https://www.justicereforminitiative.org.au/position\\_papers](https://www.justicereforminitiative.org.au/position_papers)>; Max Travers et al, ‘Bail Decision-Making and Pre-Trial Services: A Comparative Study of Magistrates Courts in Four Australian States’ (Report to the Criminology Research Advisory Council Grant: CRG 34/16–17, Australian Institute of Criminology, October 2020).

<sup>62</sup> Don Weatherburn et al, *Towards a Theory of Indigenous Contact with the Criminal Justice System* (Research Report No 32, Australian Institute of Criminology, 22 May 2024) <<https://www.aic.gov.au/publications/rr/rr32>>.

<sup>63</sup> *Ibid* vii.

<sup>64</sup> *Ibid* 31.

<sup>65</sup> *Ibid* 21.

<sup>66</sup> *Ibid* 22.

<sup>67</sup> See *ibid*, fig 1.

<sup>68</sup> See, eg, Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) 61–82 [2.25]–[2.105].

<sup>69</sup> Australian Bureau of Statistics, *Recorded Crime: Offenders Methodology* (6 March 2025) <<https://www.abs.gov.au/methodologies/recorded-crime-offenders-methodology/2023-24>>.

40,227 notifications, suggesting a 68% increase in contact between Aboriginal adults and police in the last two years.<sup>70</sup>

ALSWA submits that the increased risk of arrest for Aboriginal people in Western Australia and the difficulties that Aboriginal people face in obtaining bail are intrinsically related issues. Individuals with a history of previous arrests, failures to appear in court, and criminal convictions have long been more likely to be refused bail and held in police custody. ALSWA's analysis suggests, however, that the frequency with which Aboriginal people are either refused bail by police or subject to restrictive police bail conditions for alleged low-level offending appears to be increasing, even in circumstances where the accused has had limited or dated interactions with police.

## 6.2 Costs of Police Bail Decisions

As discussed in [Part 5](#) of this submission, police decisions to refuse an accused bail, or to set onerous conditions when granting bail, can have a significant impact on accused persons. In addition to the immediate personal effects these decisions can have on Aboriginal people, there are also significant associated costs to the state.

In 2015, the Western Australia Office of the Inspector of Custodial Services ('OICS') estimated that housing individuals in prison for less than one week cost the government \$770 per person, per day in Western Australia.<sup>71</sup> While ALSWA is unaware of any available estimates for the cost of holding a person in police custody (whether overnight or otherwise), the cost is likely to be high and to create associated issues with staffing, security, and wellbeing for both staff and detainees.<sup>72</sup>

Although ALSWA is also unaware of any publicly available information regarding the management of accused persons subject to police-imposed bail conditions, the cost is likely to be similarly high. This is because conditions imposed on police bail frequently prohibit behaviours that would otherwise be lawful, such as remaining in a public place, which is likely to increase the workload of police officers on patrol. Further, the increased opportunities for police to interact with accused persons subject to these conditions in turn increases the likelihood that individuals found to be in breach of their bail conditions will be arrested and refused bail, utilising further police resources and ultimately attracting all of the costs associated with immediate police bail refusals.

In addition to these costs, research which examined how magistrates approach bail 'found significant flaws in procedural and distributive justice when bail is refused by police'.<sup>73</sup> This is indicative of the additional, indirect costs—both to individuals and to the state—that may arise from police bail decision-making. For example, where an accused is arrested by police for breaching bail conditions and appears in court pursuant to a Form 5B, this not only impacts

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<sup>70</sup> Custody Notification Service data, Unpublished.

<sup>71</sup> Western Australia Office of the Inspector of Custodial Services, *Western Australia's Rapidly Increasing Remand Population* (Report, October 2015) 10.

<sup>72</sup> See generally WA Police Union, 'Fighting for Change' (March 2023) *Police News* 24-25; WA Police Union, *Annual Report 2024* (Report, 2024) 32 [4.2].

<sup>73</sup> Isabelle Bartkowiak-Therion and Emma Colvin, 'Understanding the Impact of Bail Refusal on the Australian Public Health System' (2022) 7(4) *Journal of Community Safety and Well-Being* 174, 175.

an overburdened court system but may also influence future court decisions to grant or revoke bail in the event the accused later faces further charges or is again brought before the court on a Form 5B.

The Western Australia Government has recently announced an independent jurisdictional review of the justice system with the aim of improving justice outcomes.<sup>74</sup> While outside the remit of the review, ALSWA nevertheless submits that developing a greater understanding of police bail decision-making, its flow-on effects, and its associated costs is integral to understanding and addressing delays within the justice system, as well as to reducing avoidable remand in Western Australia.<sup>75</sup>

### 6.3 Data Limitations and Insufficient Oversight

Despite the well-known significance of police bail decision-making, there remains limited publicly available data from which an improved understanding of the factors that influence it can be drawn. This presents significant impediments to determining the extent to which police practices and procedures influence bail decisions across Australia, and to understanding the overrepresentation of Aboriginal people within the Australian criminal justice system more broadly.<sup>76</sup> ALSWA notes that a further impediment is the absence of data pertaining to police proceedings and Aboriginal defendants in Western Australia. Notably, this data is available for all states and territories except Western Australia, which ‘precludes the production of national data about police proceedings or the number of times an offender was proceeded against by police’.<sup>77</sup>

At the time of writing, there is no publicly available data pertaining to the number of people who are refused bail by police in the first instance and subsequently granted bail by the court at first hearing in Western Australia, nor to the number of arrests related solely to breaches of police-imposed bail conditions and the outcomes of court hearings that follow these arrests.

In the period 1 January 2025 to 30 June 2025, Aboriginal adults were detained by police and held in custody prior to a court hearing solely for failing to comply with the conditions of their bail on 1,686 occasions, representing 9% of all CNS notifications regarding Aboriginal adults received during this period.<sup>78</sup> ALSWA notes, however, that there is no publicly available data from which to determine the number of occasions non-Aboriginal adults were arrested and detained by police for the same reason during this period, nor is it possible to determine the

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<sup>74</sup> Western Australia Government, ‘Justice System Review Aims to Improve Court Efficiency’ (Media Release, 19 August 2025).

<sup>75</sup> Regarding the issues associated with growing remand populations in prisons across Australia, see generally, Eden Gillespie, “‘Always a Bed in Prison’: Australia’s Housing Crisis Blamed for Rise in Unsentenced Prisoners”, *Guardian Australia* (online, 4 February 2024) <<https://www.theguardian.com/australia-news/2024/feb/04/always-a-bed-in-prison-australias-housing-crisis-blamed-for-rise-in-unsentenced-prisoners>>; Maani Truu and Casey Briggs, ‘More than a Third of Prisoners are Locked Up Without a Sentence: For Decades, that Number has Been Growing’, *ABC News* (online, 25 February 2023) <<https://www.abc.net.au/news/2023-02-25/one-third-of-australian-prisoners-are-unsentenced-on-remand/102015092>>; Adeshola Ore, ‘Unsentenced Prisoners Make Up a Third of Australia’s Prison Population as Bail Refusals Boom’, *Guardian Australia* (online, 1 February 2023) <<https://www.theguardian.com/australia-news/2023/jan/31/unsentenced-prisoners-make-up-a-third-of-australias-prison-population-as-bail-refusals-boom>>.

<sup>76</sup> See, eg, Ilya Klauzner and Steve Yeong, New South Wales Bureau of Crime Statistics and Research, *What Factors Influence Police and Court Bail Decisions?* (Crime Bulletin No 236, March 2021) 5 [2].

<sup>77</sup> Australian Bureau of Statistics (n 69).

<sup>78</sup> Custody Notification Service data, Unpublished.

frequency with which the courts subsequently granted or revoked bail to those accused in these matters.

In addition to the limitations this lack of data presents to understanding police bail decision-making, there is currently no published data relating to individuals who are detained in police custody for any reason in Western Australia. In the first six months of 2025, Aboriginal people were arrested and detained in a police facility on 22,157 occasions,<sup>79</sup> yet there is no means by which to determine the number of non-Aboriginal adults arrested and detained during the same period. As a result, ALSWA submits that the true extent of Aboriginal overrepresentation within custodial facilities across Western Australia remains unknown.

While data regarding all persons held in police lock-ups in Australia is excluded from the Australia Bureau of Statistics ('ABS') collection on prisoners,<sup>80</sup> ALSWA notes that in Queensland, data pertaining to persons in police custody is made public in reports released twice-daily by Queensland Police for the purpose of 'fulfilling recommendations from the Women's Safety and Justice Taskforce and requests from the Queensland Human Rights Commission'.<sup>81</sup> These reports not only provide transparency around the number of people in police custody across the state, but also provide information relating to the sex, age group, and Aboriginality of individuals, together with indications of the length of time individuals have spent in custody. ALSWA notes that similar approaches have also been taken by police internationally.<sup>82</sup>

The lack of transparency regarding persons detained in police custodial facilities across Western Australia is particularly concerning to ALSWA due to the fact that police lock-ups are not subject to any form of independent oversight. In 2013, the Community Development and Justice Standing Committee WA ('the Committee') found that Western Australia lacked a comprehensive system of oversight in relation to police lock-ups.<sup>83</sup> The Committee subsequently recommended that amendments be made to the *Inspector of Custodial Services Act 2003* (WA) to enable the OICS to assume oversight of all police lock-ups in Western Australia.<sup>84</sup> ALSWA notes that nearly 12 years later, no such amendments have been made and no additional information regarding police oversight of police lock-ups appears to have been made publicly available.

ALSWA further notes that Australia's obligations as a signatory to the United Nations Optional Protocol to the Convention Against Torture ('OPCAT') commenced on 20 January 2023. On this date, the jurisdiction of the OICS was proposed to be expanded to include 156 police lock-up facilities across Western Australia.<sup>85</sup> Despite anticipating its work would commence soon

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<sup>79</sup> Ibid.

<sup>80</sup> Australian Bureau of Statistics, *Prisoners in Australia Methodology* (19 December 2024) <<https://www.abs.gov.au/methodologies/prisoners-australia-methodology/2023>>.

<sup>81</sup> 'Watch-House Data', *Queensland Police Service* (Web Page, 21 Aug 2025) <<https://www.police.qld.gov.au/qps-corporate-documents/reports-and-publications/watch-house-data>>.

<sup>82</sup> See, eg, Home Office, Government of the United Kingdom, 'Police Custody and Pre-Charge Bail, Year Ending March 2024', *Official Statistics* (Web Page, 27 February 2025): <<https://www.gov.uk/government/statistics/police-custody-and-pre-charge-bail-year-ending-march-2024>>.

<sup>83</sup> Parliament of Western Australia, *In Safe Custody: Inquiry into Custodial Arrangements in Police Lock-ups* (Report, November 2013).

<sup>84</sup> Ibid 82.

<sup>85</sup> As a National Preventive Mechanism for justice-related places of detention under OPCAT.

after, the OICS currently remains ‘unfunded and without statutory authority to commence this new function’,<sup>86</sup> awaiting both a commitment to adequate funding and the passage of legislation which, at the time of writing, has not yet been drafted.<sup>87</sup>

ALSWA submits that information relating to persons held in police lock-ups in Western Australia could be utilised to develop an improved understanding of police bail decision-making and is essential to addressing the gross overrepresentation of Aboriginal adults within detention populations across the state, in keeping with the Government’s commitment to Closing the Gap.<sup>88</sup>

## 7. CONCLUSION

An increasing use of pre-trial detention and imposition of restrictions on bail for accused persons is indicative of the erosion of the presumptions of innocence and loss of liberty as a last resort.<sup>89</sup> Despite overwhelming evidence of this erosion in Western Australia,<sup>90</sup> there remains a scarcity of publicly available data that would assist in its counteraction. The importance of police decision-making and its significant influence on judicial processes is well-established, yet information regarding police bail decision-making in Western Australia is severely limited.

To address the issues raised in this submission, ALSWA submits that there is a need for greater transparency around police bail decision-making. Without greater insight into the rationale behind police officers’ decisions to refuse an accused bail, or to grant an accused bail with or without conditions, the ability to accurately identify and address factors that contribute to the over-representation of Aboriginal people in Western Australia’s justice system is limited.

Increased rates of both police bail refusal and arrest for breaches of police-imposed bail conditions affect not only the human rights of accused persons, but also Western Australia’s already overstretched and overburdened police force, court system, and custodial facilities. In the absence of legislative reform or greater judicial oversight, ALSWA submits that there is a need for WA Police to address these issues by reviewing and revising their internal policies and procedural guidelines relating to bail.

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<sup>86</sup> Office of the Inspector of Custodial Services (WA), *Annual Report 2023-24* (Report, 5 November 2024) 39

[<https://www.oics.wa.gov.au/wp-content/uploads/2024/10/2023-24-Annual-Report-Final.pdf>](https://www.oics.wa.gov.au/wp-content/uploads/2024/10/2023-24-Annual-Report-Final.pdf).

<sup>87</sup> Australian National Preventive Mechanism, *Annual Report 2023-24* (Report, 2024) 51

[<https://www.ombudsman.gov.au/data/assets/pdf\\_file/0018/317160/Australian-NPM-Annual-Report-2023-24.pdf>](https://www.ombudsman.gov.au/data/assets/pdf_file/0018/317160/Australian-NPM-Annual-Report-2023-24.pdf).

<sup>88</sup> Particularly Target 10, which is to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031.

<sup>89</sup> Doreen Chen, *International perspectives on using bail to improve Indigenous criminal justice outcomes* (Report, Indigenous Justice Clearinghouse, 2020).

<sup>90</sup> See Part 5 of this submission.