

MEDIA RELEASE



NEW SOUTH WALES
BAR ASSOCIATION

HASTY BAIL REFORMS MAY WORSEN DELAYS IN OUR COURTS

22 June 2022

The President of the New South Wales Bar Association, Gabrielle Bashir SC, has called on the NSW Government to rethink its precipitous reforms to the Bail Act.

‘In recent years the NSW Government has passed laws to encourage defendants to enter early appropriate guilty pleas, and to reduce costly backlogs in our criminal justice system. Unfortunately, the proposed changes to the Bail Act may have the opposite effect’, said Ms Bashir.

‘First, they may discourage defendants from entering timely guilty pleas, lest they be immediately remanded into custody’, said Ms Bashir.

‘Secondly, the proposed amendments will require, in effect, sentencing submissions at the point of a guilty plea, without relevant material being available, which conflates sentencing, an exercise in punishment, with bail, which is not about punishment.

Thirdly, these proposed amendments apply to all matters across all jurisdictions whenever there is a guilty plea and a sentence of full-time imprisonment will be imposed, which will mean a large influx of bail applications in matters where there has been no issue as to compliance with bail and no danger to the community.

Fourthly, there will be delays and pressures on an already overburdened audio-visual link system in custody, because evidence that is relevant to the sentencing exercise, including sentencing assessment reports and other evidence that goes to moral culpability, such as the background of the offender or his or her mental health or intellectual functioning, will need to be obtained from a custodial setting. “This will add to the backlogs that we already have owing to the pandemic in the Local and District Courts”, said Ms Bashir.

Bail is granted to a person when, taking into account conditions that will be imposed on release, it is decided that the person does not carry an unacceptable risk of failing to appear, committing a serious offence, endangering a person or interference with witnesses or evidence. There is no punitive element in the bail process. Sentencing, in contrast, is punishment for wrongdoing.

The Bar Association has long expressed the very clear view that substantive reforms to the Bail Act of the type proposed in the Bill should be based on the findings of detailed, targeted public reviews of New South Wales bail laws or targeted reference to the New South Wales Law Reform Commission. This should include:

- a careful analysis of the effect the changes may have on remand rates, and the number of breaches of post-conviction bail,
- a comparative analysis of bail provisions in other jurisdictions, and
- an assessment of the current operation of electronic monitoring of bailed persons.

Judicial officers make upwards of fifteen thousand bail decisions every year and in doing so are required to weigh up the statutory list of risk-based considerations when granting or refusing bail and when setting (often onerous) conditions on a person’s release pending trial or sentencing.

‘In response to three cases, the government has introduced hastily drafted legislation that would apply to *all* convictions, including *all* guilty pleas in *all* jurisdictions administering the criminal law. The Bar calls for the urgent reconsideration of this legislation and the effects that it, in practice, will visit on an already overburdened system’, Ms Bashir concluded.

Media contact: Chris Winslow | 0409 245 369 | cwinslow@nswbar.asn.au