

Bail

Terms of Reference

In 1976 the Commission was asked, as a matter of priority, to review the law and procedure relating to bail.

Background of Reference

At the time of the reference the law governing the grant of bail was contained in 117 provisions of 14 different statutes and regulations. The diversity of legislation led to the undesirable situation where doubts about irregularities, omissions and ambiguities in the law existed. In addition, some practices, such as the imposition of a condition requiring a cash surety, were not authorised. As a consequence, decisions regarding bail were often taken on an ad hoc basis without adequate or comprehensive guidelines, and sometimes without sufficient relevant information about the defendant. In many cases excessive use was made of the requirement that a defendant find a surety as a condition of their release on bail. Failure to meet this condition had added significantly to the number of remand prisoners in Western Australian jails. There was also no clear procedure for either the defendant, or the prosecution, to appeal against decisions made relating to bail.

Nature and Extent of Consultation

Because the issue was one of potentially wide public concern the Commission broadened the scope of consultation. In order to attract public submissions on the matter, an advertisement was placed in *The West Australian* newspaper and a survey was taken of remand prisoners at Fremantle Prison. Extensive consultation was also had with persons involved at all stages of the bail process, including police and judicial officers at all levels of the state judicial hierarchy.

These preliminary submissions and the research undertaken by the Commission informed a working paper which was distributed for comment in November 1977. The working paper analysed the existing law and discussed the issues surrounding various reform proposals, both in Western Australia, and in other comparable jurisdictions. It proposed consolidation of the existing provisions into a single statute with the inclusion of procedures to enhance the supply of relevant and accurate information about a defendant seeking bail. The paper attracted comment from a wide range of individuals and groups including government departments, judicial officers, the Law Society of Western Australia, Probation and Parole Services, the Royal Association of Justices of Western Australia and the Council for Civil Liberties in Western Australia.

The Commission submitted its final report in March 1979.¹

Recommendations

The Commission made detailed recommendations to consolidate, clarify and reform the law and procedure relating to bail. The primary recommendation was to enact a separate *Bail Act* to deal comprehensively with bail for defendants in all levels of court in Western Australia and at all stages of criminal proceedings. The Commission also recommended further reforms designed to improve bail procedures that could not appropriately be included in the proposed legislation.

The principal recommendations may be summarised as follows:

- The proposed *Bail Act* should provide that bail be considered for all criminal offences in Western Australia.

¹ Law Reform Commission of Western Australia, *Bail*, Project No 64 (1979).

- All unconvicted defendants should have a qualified right to bail. Certain provisions should limit this right. These provisions ranged from the likelihood of certain behaviour whilst on bail to the requirement of further information about the defendant.
- Bail conditions should be reasonable, specified and relevant.
- The law relating to sureties should be specified and streamlined.
- Greater use should be made of summons procedures.
- Bail centres should be established in Western Australia.
- Steps should be taken to improve conditions for defendants who are remanded in custody, and to reduce pre-trial delay.
- Better interview facilities should be provided for prisoners on remand.
- There should be sufficient Justices of the Peace available to perform bail decision-making duties in rural and remote areas.
- Consideration should be given to the establishment of a body to provide a continuing review of bail procedures.

A comprehensive outline of the Commission's recommendations may be found in chapter 10 of the final report.

Legislative or Other Action Undertaken

In 1982 Parliament passed the *Bail Act 1982* (WA) which implemented the Commission's primary recommendation for consolidation of bail provisions. In July 1986 the Government conducted a further review of the legislation² which resulted in the implementation of the remaining recommendations by the *Bail Amendment Act 1988* (WA).

² Western Australia, *Parliamentary Debates*, Legislative Assembly, 2 July 1986, 1287.