

## 1 Inspector's overview

Western Australia is experiencing large increases in its prisoner population, and this is costing the state a great deal of money. By far the biggest increase in recent years has been in the remand population, not in the sentenced prisoner population. Despite this, very little information is publicly available on the remand population, and most members of the criminal justice professions appear unaware of the trends or are very surprised by the speed at which change has occurred.

This report attempts to address the public information deficiencies, and to promote further debate and research. Better data and better cross-agency collaboration will be required if the reasons behind the trends are to be better understood. Growing remand numbers are not just a 'Corrective Services' problem – they are also a problem for the courts, the Police and Treasury.

### Legal principles

Prisoners are classified into two legal categories: those who have already been found guilty and sentenced ('sentenced' prisoners), and those who are still awaiting the final outcome of their court case ('remand' prisoners or 'remandees'). A small number of remandees are awaiting sentence, and have already been convicted, but the vast majority have not yet been found guilty.

The majority of remandees are in prison because the court has refused to grant them bail. However, around ten per cent have been granted bail and are in prison because they have not yet been able to meet the conditions set by the court.

Our criminal law is based on the unequivocal presumption that an accused person is innocent unless the prosecution can prove they are guilty. In addition, the standard of proof in a criminal case is high: the state must prove 'beyond a reasonable doubt' that the person committed the criminal act. These rules lie at the heart of our concepts of freedom, and of the appropriate relationship between the individual and the state.

Given these principles, it should be of concern to everyone that remand numbers have increased dramatically, to the point where one in four people in Western Australia's prisons is now on remand.

### Growing numbers and a gender imbalance

This report focuses primarily on the period from July 2009 to July 2014. Over that five year period, remand numbers grew by 70 per cent. Over the following year, remand numbers have continued to rise.

At the time of writing this Overview (early September 2015), remand numbers stand at around 1,400. In July 2009, there were fewer than 700. Remand numbers have therefore grown by more than 100 per cent in six years. By contrast, the number of

sentenced prisoners has grown by just 13 per cent (around 480 people) over the same period. Put another way, remand prisoners account for 60 per cent of the rise in prisoner numbers. They comprise a rapidly growing proportion of a rapidly growing population (25% today compared with 15% in July 2009).

The growth in the proportion of remand prisoners is all the more unexpected because in 2009, the Prisoners Review Board abruptly adopted a more stringent approach to parole. Far fewer prisoners were granted parole and there was a much more stringent approach to enforcing parole conditions. Only sentenced prisoners are eligible for parole. It would have been expected that clamping down on parole would have seen an increase in the proportion of sentenced prisoners, and a decline in the proportion of remandees.

The proportion of remand prisoners has been increasing across the country, with Western Australia sitting slightly below the national average. However, this does not in any way detract from the need to understand the extraordinary trends in this state.

The impact of the growth has not been even, and there are some disconcerting gender differences. In mid-2009, roughly equal proportions of men and women were on remand (15-17%). The situation has changed. At the time of writing, 29 per cent of women in prison are on remand, compared with around 24.5 per cent of men (Aboriginal and non-Aboriginal). The growth in the number of Aboriginal women on remand has been especially sharp and alarming (over 150 per cent).

### Housing remandees and the impact on prisons

In theory, remandees have a different legal status from sentenced prisoners, but the two groups are frequently intermingled in the prisons. Remand prisoners are not housed in separate parts of the prisons but routinely share accommodation blocks with sentenced prisoners. It is also quite common for remand and sentenced prisoners to share cells. Sometimes this will be for family and support reasons but more often it is simply due to pressure for prison beds. As remand numbers have risen, it has also become necessary to house remandees in prisons that were intended only for sentenced prisoners, notably Casuarina Prison.

Remand prisoners tend to pose more complex challenges and demand a higher level of service than their sentenced peers. Remandees are quite likely to be unsettled, unwell or recently under the influence when they arrive in prison. Many are stressed about their upcoming court appearances or about matters that they have left unaddressed in the community. Not surprisingly, we found that remand prisoners are more likely than sentenced prisoners to be involved in incidents, and especially in assaults on staff or other prisoners.

Obviously, prisoners must be carefully screened as soon as they are admitted in relation to matters such as risk to themselves, risk to other prisoners and staff, health risks and escape risks. Then, until such time as their matters are finalised, the prison must

facilitate links to the courts (either in person or by video-link), and access for lawyers to speak with their clients. Reflecting their legal status, remandees also have additional entitlements in relation to matters such as family visits. These factors generate additional requirements for prisons.

The Department of Corrective Services must service not only the needs of remand prisoners but also the requirements of the wider justice system. There is probably no other government agency where demand is so much driven by the decisions and actions of other agencies, including the courts and the police.

Unfortunately, the required resources have not been provided to the prisons to meet service needs. A simple and telling example is video-link facilities to the courts. By reducing the need for people to be transported to the courts, video-links enhance security and save the state enormous amounts of money. However, the video-link facility at the state's main male remand prison, Hakea, is too small; Bandyup Women's Prison has wholly inadequate facilities; and although Casuarina Prison is now one third remand, it has not been given commensurate resources.

### What does it cost?

Obviously, there are some very significant 'up front costs' when people arrive at a prison, as well as ongoing costs in relation to the needs of remand prisoners. This can impact on matters such as the cost per prisoner per day at a prison.

In early February this year, we requested the Department for a breakdown of the costs of short stays by different prisons. In June, it advised that it 'estimates that the cost per person in prison for less than a week can cost up to \$770 a day'. In a recent report on bail, the Auditor General also relied on the Department's figure of \$770.<sup>1</sup>

Unfortunately the Department's figures are imprecise, out of line with other data, and extremely limited:

- \$770 is only an 'estimate'
- the words 'can cost up to \$770 a day' suggest this is an upper limit, not an estimate of average costs. However, other Departmental data show the daily cost of imprisonment at some prisons is more than \$770.<sup>2</sup>
- no breakdown is available by prison. In June 2015, in response to the Auditor General's report on bail, the Opposition sought information on 'what it costs to accept a prisoner into prison; an outline of additional costs on a case-by-case basis that would make that initial cost of accepting a prisoner more expensive; and also a breakdown on that prison by prison across the state.' The Minister agreed to provide this information but subsequently advised Parliament that the

---

<sup>1</sup> Office of the Auditor General. *Management of Adults on Bail* (June 2015).

<sup>2</sup> Economic Regulation Authority, *Inquiry into the Efficiency and Performance of Western Australian Prisons, Issues Paper* (November 2014), 13.

Department had advised that the ‘information requested is not recorded in a manner that is easily retrievable in the timeframe required.’<sup>3</sup>

In short, we know that imprisonment is very expensive, we know that many of the stays on remand are short (see below), and we know that imprisoning a person for a short period will be far more expensive per day than holding them for a longer period. But the Department has not been able to provide Parliament, the Auditor General, the ERA, or us with a robust estimate of system-wide costs or of individual prison costs.

The absence of robust data on such issues is concerning in itself. It is all the more so at a time when comparisons are being drawn between the relative costs of different prisons, and the focus is on ‘costing models’, ‘comparators’ and ‘contestability’. The absence of robust data on key issues impacts negatively on political debate, public understanding, and the capacity for evidence-based decision making.

### Time on remand

This report confirms the ‘roll-in/roll-out’ nature of much of the remand population. The average stay for a woman is less than three weeks and for a man it is less than four weeks. A quarter of people are held for less than a week. In part these figures probably reflect the fact that some prisoners have been granted bail but take some time before they can meet the conditions attached by the court, but this is unlikely to be the full picture. The social as well as the financial costs of these short term remands can be very high.

### Accounting for the changes and looking ahead

For more than three years now, I have been highlighting the ever-escalating number of remand prisoners,<sup>4</sup> and talking to a range of people about them. The vast majority of people, including members of the legal profession who deal with bail applications in the courts, were either unaware of the change or unaware of its scale.

Unfortunately, as the Hon Wayne Martin AC pointed out in a letter in response to a draft of this report, ‘convincing explanations for the increase appear elusive,’ and I end this overview with more questions than answers.

While the courts are dealing with more defendants and more charges, this does not explain why the number of remandees has escalated whereas the number of sentenced prisoners has only slightly increased. It is also unclear why the increase in women remandees has been so big, why the nature of the charges against women has changed, and why, in the juvenile area, the trend in remandees has been down.

It is particularly concerning that key government agencies do not have the capacity to jointly analyse data holdings to determine the drivers behind the growing trend of

---

<sup>3</sup> Hansard Western Australia, Legislative Assembly Estimates Committee A, 11 Jun 2015, page E29.

<sup>4</sup> See OICS Annual Reports from 2011-2012 onwards.

remandees. The trends have been apparent for a number of years and we should know more. Anecdotally, possible drivers could include:

- increased seriousness of offences being committed
- increasing use of violence in committing offences
- misuse of alcohol and drugs, in particular the growing scourge of the 'ice' epidemic
- prevalence of mental health issues which may exacerbate drug misuse
- increased waiting and processing times in courts due to resourcing issues

I urge that immediate research is taken to determine underlying factors leading to the large increase in Western Australia's remand population. It is only when there is a comprehensive understanding of causes, that preventative actions can be identified to address a growing and costly problem.