



Inquiry into the *Crimes Legislation Amendment Bill*
2019

Submission by
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INTRODUCTION

1. Legal Aid Western Australia has been invited to make a submission to the Inquiry into the *Crimes Legislation Amendment Bill 2019*.
2. Legal Aid WA is the largest provider of legal services in Western Australia. Among the services Legal Aid WA provides is advice and representation to criminal accused.

SUBMISSIONS

Schedule 6 Minimum sentences

3. A sentencing judge should retain the discretion to ensure that a sentence imposed for an offence serves sentencing purposes including just punishment, deterrence, rehabilitation, denunciation and community protection.
4. Where the Crown considers a sentence is too lenient then the Crown can appeal the sentence to an appellate court.
5. Mandatory sentencing deprives judges of the power to reduce a sentence below the minimum sentence on account of the offence being a less serious example of the type of offence, mitigating factors that may be applicable such as cooperation with the authorities, pleas of guilty and on account of factors pertaining to an offender that may justify a lower sentence due to diminished responsibility due to youth, mental illness or cognitive impairment.
6. Mandatory sentencing also has a substantial cost impact on the community due to the very high cost of keeping a prisoner in prison.
7. The allocation of government resources to imprisonment deprives the government of resources that could be allocated to prevent crime such as community education and rehabilitation programs for offenders to reduce risk.
8. Mandatory sentencing therefore is not supported by Legal Aid WA.

9. Should mandatory sentencing remain a part of the proposed legislation then it is recommended that there be exceptions as to when mandatory sentencing will apply where an offender is a young offender (aged between 18 and 23) or a mentally impaired offender (due to mental illness or cognitive impairment).

Schedule 7 Presumption against bail

10. A person is presumed to be innocent until proven guilty.
11. The presumption against bail contained in Schedule 7 is not supported as it is a serious erosion of the presumption of innocence.
12. Where an accused person has been falsely accused then the presumption against bail may result in this person being detained in prison for a significant period of time, seriously impacting on the person's career, income and family, until the accused can have the charge determined in a trial.
13. There is no compensation for an innocent accused who have often suffered substantial losses as a result of a false accusation.
14. It is considered that the existing law is sufficient to ensure that judicial officers appropriately consider whether a person accused of a crime should be permitted to be on bail in the community on conditions.

Schedule 8 Matters court has regard to when passing sentence

15. Legal Aid WA does not support the proposed amendment to the *Crimes Act 1914* (Cth) to add s16(2AAA)(b) to provide a consideration that "in determining the length of any sentence or non-parole period – to include sufficient time for the person to undertake a rehabilitation program."
16. The reasons this amendment is not supported are:
 - The sentencing judge has no power over the administration of a sentence which is a responsibility of the corrective services department in each State.

- Rehabilitative programs are often run on a periodic basis in certain prisons and may have significant waiting lists.
- An offender should not have their sentence increased just so they can undertake a rehabilitative program which may not be available for a significant period of time.
- A sentence should be based on the maximum penalty applicable, the seriousness of the offence, whether the offender has pleaded guilty or not, whether there has been cooperation or not, and the personal factors of the offender such as youth, old age, illness, and mental impairment, not the availability or time required to undertake rehabilitative programs.
- The availability of rehabilitative programs is an issue of the funding allocated to these programs and to pursue the objective of increased participation in rehabilitative programs, additional funding would need to be allocated to this area.

Schedule 10 – Cumulative sentence

17. When sentencing an offender for multiple offences a judge needs to consider the totality principle by reviewing the total sentence to ensure that the total is proportionate to the offending overall and also consider whether there is a prospect of the offender having useful life remaining upon release.
18. The calculation of a total sentence is not simply a matter of arithmetic as the severity of the impact of a sentence increases exponentially with the length of the sentence¹ and an extremely long sentence may be crushing for the individual.
19. Legal Aid WA does not support the proposed amendment to s19(5) of the *Crimes Act 1914* relating to concurrent or partly cumulative sentences not being imposed for Commonwealth child sex offences, because it is considered this amendment is not consistent with well-established totality principles.

¹ Ipp J in *Jarvis v The Queen* (1998) 20 WAR 201, 207