

# BRIEFING PAPER

# PRESUMPTION

# AGAINST BAIL

THE **ESSENTIAL** MEMBERSHIP FOR  
THE LEGAL PROFESSION

Prepared by the Law Society of Western Australia

[lawsocietywa.asn.au](http://lawsocietywa.asn.au)

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## PRESUMPTION AGAINST BAIL

### Issue

The Northern Territory's Government has introduced new legislation into Parliament to make bail rules stricter for repeat juvenile and adult property offenders.

### Background

Northern Territory Chief Minister, Adam Giles, published a Facebook post on property crime targeting young people promising to remove the presumption of bail "for those who keep smashing up our cars, and constantly breaking into homes." In his post, he described that the proposed changes would "extend to persons who are arrested and have previously been convicted of two or more serious property crimes within the preceding two years." He went on to say:

*"Serial property offenders will be required to enter into a conduct agreement, which will include being fitted with an electronic monitoring device in the event that the presumption against bail is rebutted...As I said, nobody wants to see young people behind bars. But I'm standing up for people in our community who've had a gutful."*

In the NT, youth detention costs \$350,000 per year or \$87,500 for three months per young person.

Studies conducted in Australia, the USA, New Zealand and Europe show that 'lock 'em up, get tough' methods such as juvenile incarceration, overly strict bail legislation, boot camps, trying juveniles in adult courts, 'scared straight' programs and so on, are not effective in reducing offending/reoffending.

A study by the Australian Institute of Criminology found that young people diverted from the court system were less likely to have further involvement in the criminal justice system.

(See Law Society NT [media release 18 May 2016](#)).

### Policy Position

#### Law Council of Australia

The Law Council has urged the Northern Territory Government to immediately withdraw its plan to remove the presumption in favour of bail for repeat property offenders.

Law Council President-elect, Fiona McLeod SC, backed the Law Society Northern Territory's position that the laws proposed by the Territory Government would only exacerbate existing problems:

*"Locking-up children and adults on remand unnecessarily risks exposing them to the criminal justice system; which in turn generally increases their chances of becoming repeat offenders. Instead of actually reducing crime in the long-term, this proposal will only make matters worse. Judicial discretion exists for a reason — the courts are best placed to make a determination as to whether bail is appropriate in each case."*

*"Policy makers should consider alternative, evidence-based justice strategies that are more likely to achieve lower rates of crime and improved community safety."*

Ms McLeod said that the proposal not only goes against the rule of law, it also goes against established and authoritative research.

(See LCA media release [25 May 2016](#)).

The Australian Bar Association has also spoken out against the legislation. President Patrick O'Sullivan QC said:

*"This proposed legislation will disproportionately target young Indigenous Australians in the Northern Territory, where the rate of indigenous people in prison is close to 90 percent... Indigenous incarceration is a national crisis and we need to be looking at solutions that divert Indigenous people from the criminal justice system, not the other way around."*

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### Law Society of Western Australia

The Law Society does not appear to have a policy position on this issue, however it did re-publish the Law Council's media statement, above.

### Current status

The Northern Territory Government introduced the *Bail Act Amendment Bill 2016* into the Legislative Assembly on 25 May 2016.<sup>2</sup>

The Western Australian Government has not given any indications that it is considering the same changes to the presumption in favour of bail.

WA and the NT were the first Governments to introduce the “three strikes” mandatory sentencing laws

### Funding implications

N/A

### NOTES

1. <http://www.austbar.asn.au/archives/2600>
2. <http://notes.nt.gov.au/dcm/legislat/Acts.nsf/8951faff2d9faeaa692565610018f15c?OpenView&Start=1&Count=300&Expand=2#2>

### Recommendation

The Law Society of Western Australia endorses the Law Council of Australia's media statement of 25 May 2016 and seeks the support of all parties to:

- Withdraw any plans to remove the presumption in favour of bail for repeat property offenders; and
- Consider alternative, evidence-based justice strategies that are more likely to achieve lower rates of crime and improved community safety.