



Inquiry into the Bail Amendment Bill 2026

Answer to question taken on notice

Asked by: Ms Rebecca Vassarotti MLA

Addressed to: Professor Lorana Bartels, Justice Reform Initiative

In relation to: Pre-custody time limits proposal

Hearing: 25 June 2026

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Transcript provided: 3 July 2026

Answer Due: 10 July 2026

Professor Lorana Bartels took on notice the following question(s):

MS VASSAROTTI: Thank you. I was really interested in getting more information, particularly around the proposal around pre-custody time limits and how they might operate in the ACT. I referenced the fact that they are operating in places like the UK. So interested to get your perspective on what type of length it should be. And what is the practical outcome if a person is held on remand for this period and then still has no trial? You know, like, relating to what has happened in the UK, what are the practical outcomes of that?

Prof Bartels: We may have to take some of this on notice. And again, you know, I am mindful of broad discussions at play around funding to the DPP and Legal Aid and the Aboriginal Legal Service. It would need to be coupled with adequate funding to legal services on both sides of the Bar table. But it would be a way of ensuring that people do not linger in custody for too long. And if implemented—I do not think this is going to happen in this current round of legislative reform—it would signal at that point of decision-making, “Wait a second, is this the kind of matter where someone might be sitting for years? And is it necessary in this particular case for them to be in custody for the safety of the community, or could they, with the appropriate conditions, be in the community and meet those needs there?”

I would have to check the data in the UK on, you know, and how long this has been happening and how many people are released. But then the presumption would be that if that time elapses and the trial is not ready to proceed, as I understand it, the presumption is that they would then be released. But I think really it is about kind of creating a more normative framework that expedites matters generally. And it would have to be part of a much bigger discussion around—you know, it is not uncommon for us to have delays of a year, two years or more. So yes, we would need to come back with a fuller proposal of what that would look like.

MS VASSAROTTI: Yes, okay.

Justice Reform Initiative: The answer to the Member's question is as follows:

What type of length of limit should there be to pre-trial custody?

Although there are currently no Australian jurisdictions with pre-trial custody time limits (CTLs) in place for adults, these are in place in many overseas jurisdictions.

Across Europe these CTLs differ, but six months is a common time limit for general offences, with four months being the average for pre-trial detention¹.

The **French Code of Criminal Procedure** allows the remand detention period to extend to a **maximum of four months** without aggravating circumstances.²

England and Wales generally have six-month CTLs in place (as per the information in our submission).

In Austria the maximum CTLs are related to the potential imprisonable time:

- two months if the defendant is in detention only for being a flight risk;
- six months if the maximum sentence does not exceed three years;
- one year if the maximum sentence is five years; and
- two years if the maximum sentence is more than five years.

However, there is generally a six-month limit which can only be exceeded due to unavoidable difficulties or scope of the investigation. If a defendant needed to be released due to the expiry of a CTL, but then needs to be remanded again in order to conduct the main hearing, this additional remand period may only be six weeks³.

In Germany a remand period cannot generally exceed six months before trial⁴, unless the Higher Regional Court deems the case exceptionally complex or voluminous, otherwise the detainee must be released. There is also a principle of proportionality that is applied to any continued detention period thereafter⁵.

In the United States time limits vary, but there is a federal Speedy Trial Act, by which a trial must commence within 70 days of the indictment or the defendant's initial appearance.

In India, bail processes are governed by the Code of Criminal Procedure 1973, and judicial custody is subject to an overall limit of 60 days or 90 days, depending on the gravity of the offence.⁶ If the investigation is not completed within the prescribed period, the accused becomes entitled to bail.⁷ "Bail, not jail" is the basic rule, except where there is a threat of fleeing from justice, repeat offences, intimidating witnesses or similar.⁸

¹ Penal Reform International, <https://www.penalreform.org/issues/pre-trial-justice/key-facts/>, accessed 10 July 2026.

² Children of Prisoners Europe, *Impacts of Pre-trial detention procedures on children with parents in conflict with the law*, https://childrenofprisoners.eu/wp-content/uploads/2022/01/Impacts-of-pre-trial-detention-procedures-on-children-with-parents-in-conflict-with-the-law_COPE.pdf, accessed 10 July 2026.

³ Ibesich, M, <https://ibesich.at/en/faq/what-is-the-maximum-length-of-pre-trial-detention/> accessed 10 July 2026.

⁴ Criminal Defense Bonn, *Pre-Trial Detention in Germany – Defense and Review*, <https://bonnstrafverteidiger.de/en/pre-trial-detention-bonn/>, accessed 10 July 2026.

⁵ Schlun and Elseven, *Pre-Trial Detention Procedure and Advice*, <https://se-legal.de/services/criminal-defense-lawyer/pre-trial-detention-procedure-and-advice/?lang=en>, accessed 10 July 2026.

⁶ District and Sessions Court District - Kondagaon (C.G.), *Divisional Judicial Seminar of all Judicial Officers posted in Bastar Division at Jagdalpur on 14/09/2025*, https://csja.gov.in/pdf/study_material/Remand%20&%20Bail.pdf, accessed 10 July 2026, 4.

⁷ Ibid, 4.

⁸ Ibid, 16.

The *Australian and New Zealand Human Rights Checklist on Minimising pre-trial detention* recommends that Chief Justices create a 'red flag' when a detainee has been held for longer than 12 months⁹. It also recommends that Judges and Magistrates provide clear reasons for extending detention each time, particular to the case and in writing¹⁰.

It is worth noting that in Australia, under the *Children, Youth and Families Act 2005* (Vic) Part 5, until the 2025 reforms to Victorian bail legislation, children in Victoria were not able to be remanded in custody for longer than 21 days.¹¹

What is the practical outcome if someone has been kept on remand and their case has still not been heard within 6 months, in the UK example?

The practical outcome if someone's case hasn't been heard within 6 months is that the accused person would be released on bail.

Here is a hypothetical example of how this may work in practice:

Consider M - a person was charged with an offence (Theft of a motor vehicle) that could be heard summarily in the Magistrates Court/Local Court. M has said that he wants to plead not guilty.

- M has been denied bail by police.
- M is brought before the Local Court after being charged on 1 July. M indicates that he wants to plead not guilty, and applies for bail.
- M's bail application to the Local Court was denied and he is remanded in custody. M has previously failed to attend on bail on several occasions.
- The Local Court has set down the matter for a contested hearing on 4 September (65 days later).
- On 1 September the police prosecutor advises that one of the police witnesses is not available on 4 September and that they will seek to have the matter adjourned.
- On 4 September the court says that the earliest available date for a contested hearing is 8 October (99 days after M was remanded in custody).
- **Under a CTL on 9 September (70 days after being remanded in custody) M must be released on bail. The prosecution can apply for an extension of the custody time limit for particular, specified reasons, or for a good and sufficient cause, as long as the prosecution has acted with all due diligence and expedition.**

The court must first consider -

- Whether the prosecution has acted with all due diligence and expedition;
If not, or if the delays could have been avoided, then M must be released on bail.
- Then the court will consider whether there are particular, specified reasons, or a good and sufficient cause, to keep M in custody;
If not, then M must be released on bail.
- If there are such reasons/cause, then the court will consider whether any special conditions can be attached to bail to address the reasons/cause put forward by the prosecution.
If special conditions can address the reasons/cause, then M must be released on bail with conditions.

⁹ Graydon, C, (2020). [*Minimising pre-trial detention – Checklist 1 For Chief Justice, Judge, Magistrate and Court Staff*](#). Pacific Judicial Strengthening Initiative – New Zealand Foreign Affairs and Trade Aid Programme and Federal Court of Australia, 4.

¹⁰ Ibid, 11.

¹¹ Richards, K and Renshaw, L (2013), *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology Report 125, 33.

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Approved for circulation to the Standing Committee on Legal Affairs

Signature: 
By the ACT Coordinator, Justice Reform Initiative

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