

# The impact of COVID-19 measures on the size of the NSW adult prison population

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## AIM

To measure changes in the size and composition of the NSW adult prison population and variations in the flow of people in and out of custody during the COVID-19 pandemic.

## METHOD

Trends in the NSW adult prison population from January 2019 to May 2020 are examined using weekly data obtained from Corrective Services New South Wales (CSNSW). Variations in prisoner status, discharges/receptions and prisoner demographics are also described.

## RESULTS

Between 15 March and 10 May 2020 the NSW adult prison population decreased by 10.7% (1,508 people). Decreases in both the male and female custody population as well as the Aboriginal custody population were evident during this period. The majority of this decline was due to a drop in the remand population which fell by 21.2% (1,049 people). A smaller decline (6.1%) in the sentenced custody population was observed from 22 March.

Receptions into remand fell substantially from 15 March 2020, by mid-April the weekly number of receptions fell to 43.4% below the average weekly receptions for the year to 15 March. This decline coincided with a 4-week period in which average weekly court attendance notices were down by 9.5% compared to pre-15 March, as well as a fall in the rate of bail refusal between 15 March and 31 May. Sentenced custody receptions also decreased after March, consistent with the decline in court finalisations occurring during this period.

Discharges to bail from remand also increased significantly. In April 2020 the average weekly number of discharges to bail was 95.0% higher than the average weekly number of discharges between 12 January and 15 March 2020. There was little change in the number of people released from sentenced custody during this period.

## CONCLUSION

The COVID-19 pandemic was associated with large falls in the NSW adult prison population. Most of this decline was due to a drop in remand receptions and increase in discharges to bail.

## KEYWORDS

prison population

social distancing

COVID-19

Coronavirus

remand

sentenced custody

## INTRODUCTION

In response to the global COVID-19 pandemic, the Australian and NSW Governments implemented various measures to minimise personal contact and contain the spread of the virus. Social distancing and social isolation initiatives were rolled out throughout March 2020. Most significantly, orders under the *NSW Public Health Act 2010* closed indoor spaces and businesses for non-essential activities<sup>1</sup>, prohibited people from leaving their place of residence without reasonable excuse<sup>2</sup>, and limited most outdoor gatherings to two persons<sup>2</sup>.

The COVID-19 response also involved changes to the Criminal Justice System to minimise the risk of transmission. Substantial changes were made to court operations to protect the safety of court users and limit the number of people required to attend court. Corrective Services NSW (CSNSW) also introduced various strategies to prevent and manage potential cases of COVID-19 within its correctional centres.

Court changes included<sup>3</sup>:

- Suspension of new jury trials in the District Court from 15 March<sup>4</sup>
- Postponement of defended hearings, and sentencing matters likely to result in a custodial penalty in the Local Court from 30 March<sup>5</sup>
- Suspension of new judge alone trials, sentencing hearings, Local Court appeals, arraignments and readiness hearings in the District Court for defendants awaiting their court appearance in the community from 1 April<sup>6</sup>

These changes meant that court finalisations were delayed for many defendants. Due to the potential impact on remandees, the Local Court stated it would consider release applications from remandees who might ultimately spend more time on remand than the duration of their custodial penalty if found guilty<sup>5</sup>.

Various practice changes were also implemented to prevent new cases of COVID-19 entering correctional centres including suspending social visits, and quarantining new custody arrivals<sup>7</sup>. Practice changes were also implemented to minimise the risk of transmission between inmates such as reducing prisoner movements and participation in group activities. In addition to these practice changes, as of 25 March, a new section was inserted into the *Crimes (Administration of Sentences) Act 1999* allowing the Commissioner of Corrective Services to release inmates on parole if they fulfil certain criteria (e.g. increased vulnerability to COVID-19, identified as low-risk to community safety, earliest release date within 12 months). Release of inmates under this provision also required the Commissioner to be satisfied that it be “reasonably necessary because of the risk to public health or to the good order and security of correctional premises arising from the COVID-19 pandemic”<sup>8</sup>.

This report examines how the cumulative effect of these changes has impacted the size and composition of the NSW adult prison population and altered the flow of people in and out of custody.

1 [https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette\\_2020\\_2020-54.pdf](https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2020_2020-54.pdf)

2 [https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette\\_2020\\_2020-65.pdf](https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2020_2020-65.pdf)

3 <https://www.dcj.nsw.gov.au/news-and-media/media-statements/update-on-local-court-arrangements>

4 <http://www.districtcourt.justice.nsw.gov.au/Documents/COVID-19/Covid-19,%20Jury%20Trials,%2015%20March%202020.pdf>

5 <https://www.coronavirus.dcj.nsw.gov.au/media-updates/further-update-on-local-court-arrangements>

6 <http://www.districtcourt.justice.nsw.gov.au/Documents/COVID-19/Covid-19%20update%20District%20Court%20of%20NSW%2030.3.2020.pdf>

7 [https://www.coronavirus.dcj.nsw.gov.au/\\_data/assets/pdf\\_file/0009/784422/COVID-Safe-ROADMAP.pdf](https://www.coronavirus.dcj.nsw.gov.au/_data/assets/pdf_file/0009/784422/COVID-Safe-ROADMAP.pdf)

8 <https://www.legislation.nsw.gov.au/regulations/2020-123.pdf>

## METHOD

This report presents weekly trends in the NSW adult prison population and prisoner status from January 2019 to May 2020. Prisoner receptions and discharges over this period are also described. Demographic changes in the adult prison population are reported for the period January 2020 to May 2020.

Custody data used in this report were provided by the Corrections Research, Evaluation and Statistics (CRES) unit of CSNSW and were extracted from the CSNSW Offender Integrated Management Systems (OIMS). Prison population is the count of prisoners in custody as at midnight on each Sunday. Flow data refers to receptions and discharges during the week ending midnight on Sunday. These extracts also contain information about a person's legal status, gender, and Aboriginality.

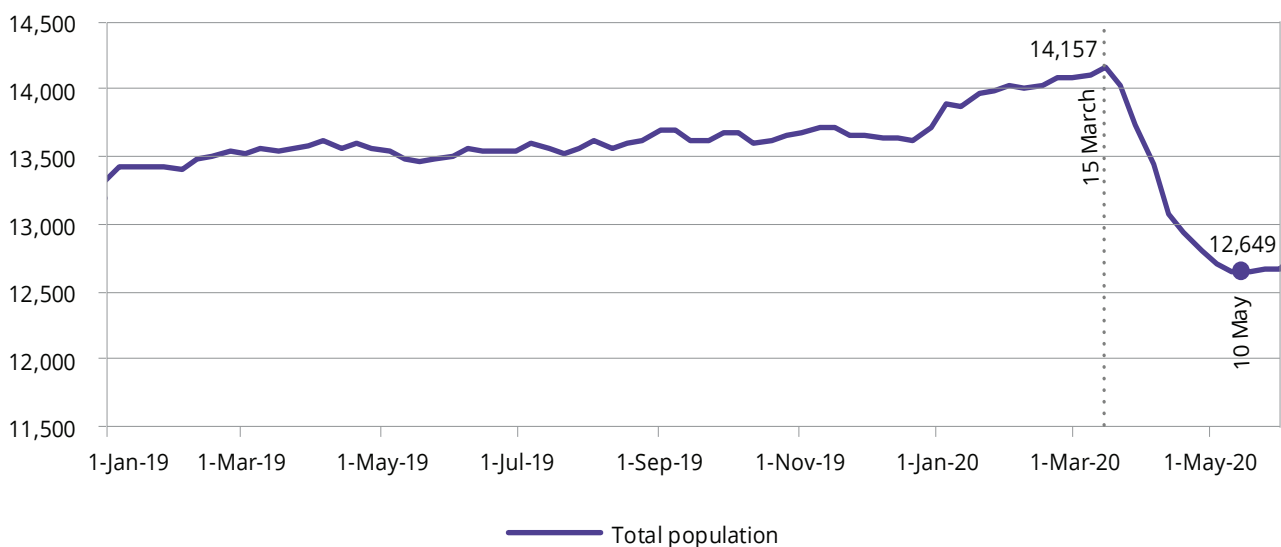
For comparative purposes, weekly data on the number of court attendance notices (CANs) issued and the number of people refused bail were obtained from the NSW Police Force's (NSWPF) Computerised Operational Policing System (COPS). Data on court finalisations per week were also extracted from the JusticeLink System. JusticeLink is an administrative computer system used by the NSW Local, Children's, District and Supreme Courts. More recent data from both sources are preliminary and may be subject to revision over time.

## RESULTS

### Prison Population

Figure 1 shows the NSW adult prison population from January 2019 to May 2020. It is apparent that the prison population dropped substantially within the time frame that the COVID-19 public health measures were implemented. On 15 March 2020 the prison population was 14,157 and by 10 May it had declined to 12,649; a 10.7% decrease. The prison population remained relatively stable throughout the remainder of May 2020.

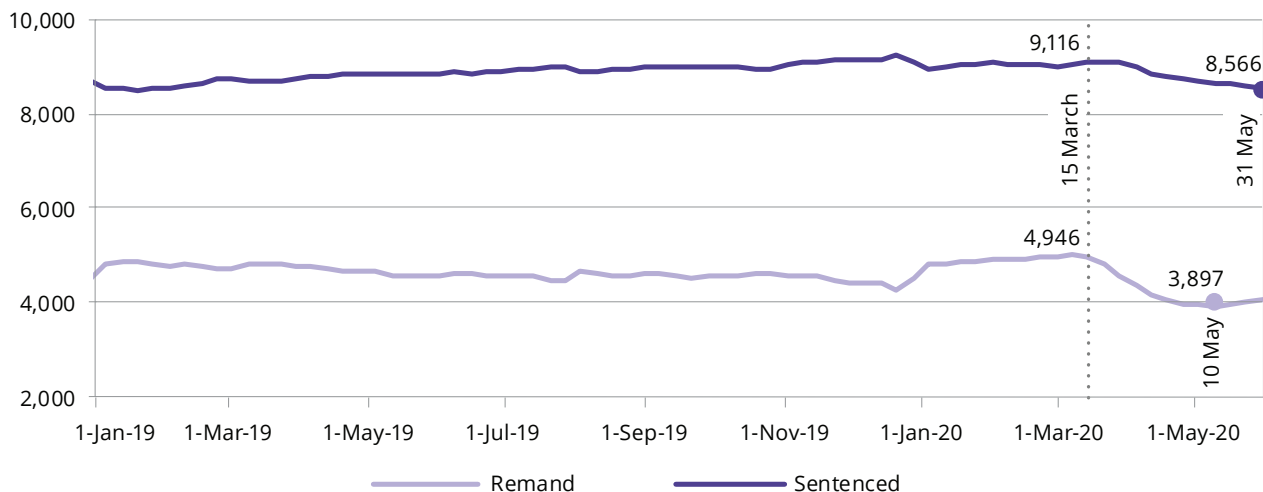
Figure 1. Total NSW adult prison population



The majority of the decline in the prison population was due to a fall in the number of people held on remand. From 15 March to 10 May the remand population decreased by 21.2%, from 4,946 to 3,897 inmates (see Figure 2). This accounts for 69.6% of the total reduction in the custody population within this time frame.

The number of sentenced inmates began to decline from 22 March 2020, falling from 9,125 on the 22 March to 8,566 by the end of May; a decline of 6.1%.

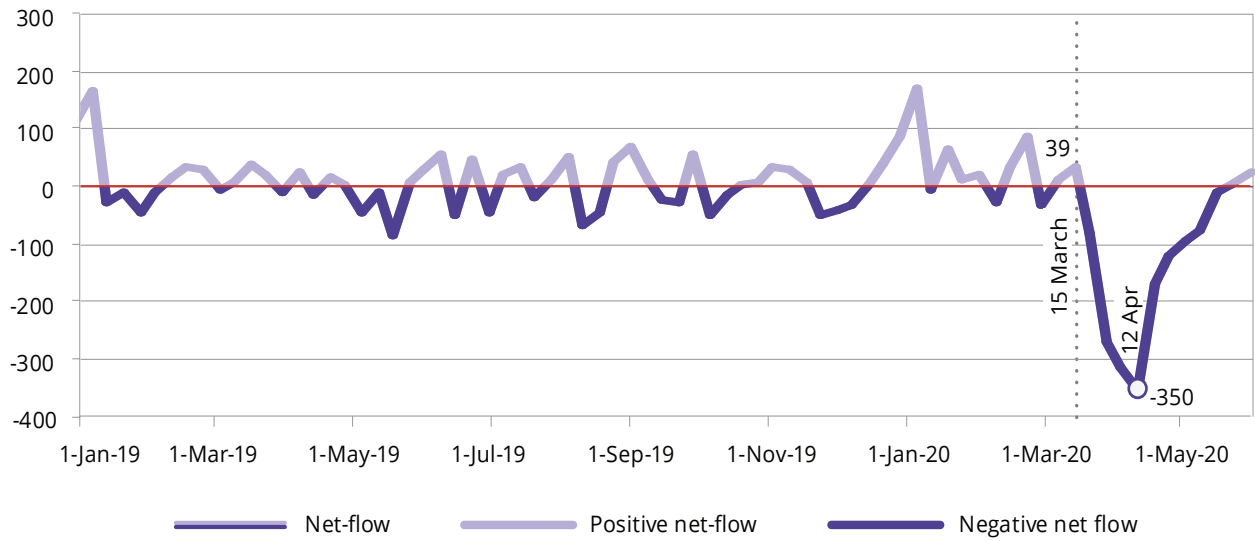
**Figure 2. NSW prison population split by legal status**



### Prison receptions and discharges

The prison population declines when the number of people discharged from custody exceeds the number of receptions. Figure 3 shows the net flow into custody (receptions minus discharges) from January 2019 to May 2020. Between January 2019 and 15 March 2020 the number of receptions mostly exceeded discharges (positive net-flow). This resulted in an increase of 740 inmates between 6 Jan 2019 and 15 March 2020 (as seen in Figure 1). This pattern reversed sharply after 15 March with discharges exceeding receptions (negative net-flow) for 9 consecutive weeks. From 22 March to 17 May 2020 discharges exceeded receptions by 1,459 people. The analysis to follow examines trends in prison receptions and discharges by type to provide further insight into the changes that occurred from mid-March in the prison population.

Figure 3. Net-flow into custody (prison receptions versus discharges)



### Receptions

Adult remand receptions declined substantially after 15 March 2020, as shown in Figure 4. In the 11 weeks up to 15 March the average weekly number of remand receptions was 371. This declined to a low of 210 in the week ending 12 April; a 43.4% decrease from the 2020 average prior to 15 March. The fall in remand receptions may be the result of a decline in police legal actions or a fall in the rate of bail refusal, or both. These drivers are explored in the following paragraphs.

Figure 4. Receptions into remand and sentenced custody

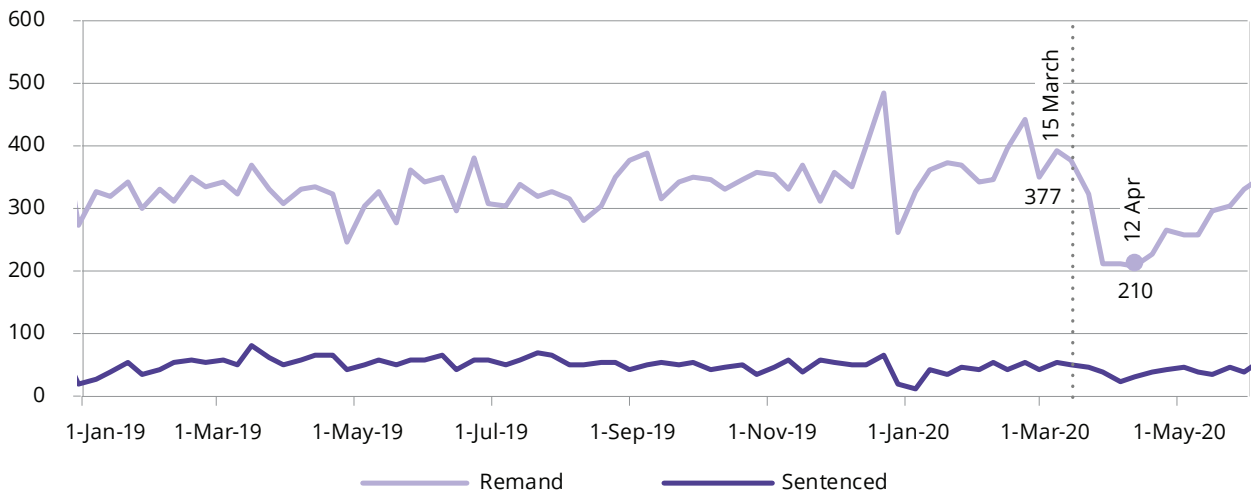


Figure 5 shows the weekly number of court attendance notices issued by police from 6 January 2019 to 31 May 2020. For the 4 weeks from 15 March, the average weekly number of court attendance notices dropped by 9.5% compared with the 2020 average prior to 15 March. Figure 6 shows that the weekly proportion of people being refused bail also fell from 15 March. The 2020 average police bail refusal rate was 23.2% between 6 January and 15 March but dropped to 20.0% in the period between 15 March and 31 May. Similarly, the court bail refusal rate in 2020 dropped from 11.4% to 8.4% in the same periods.

Figure 5. Court attendance notices issued

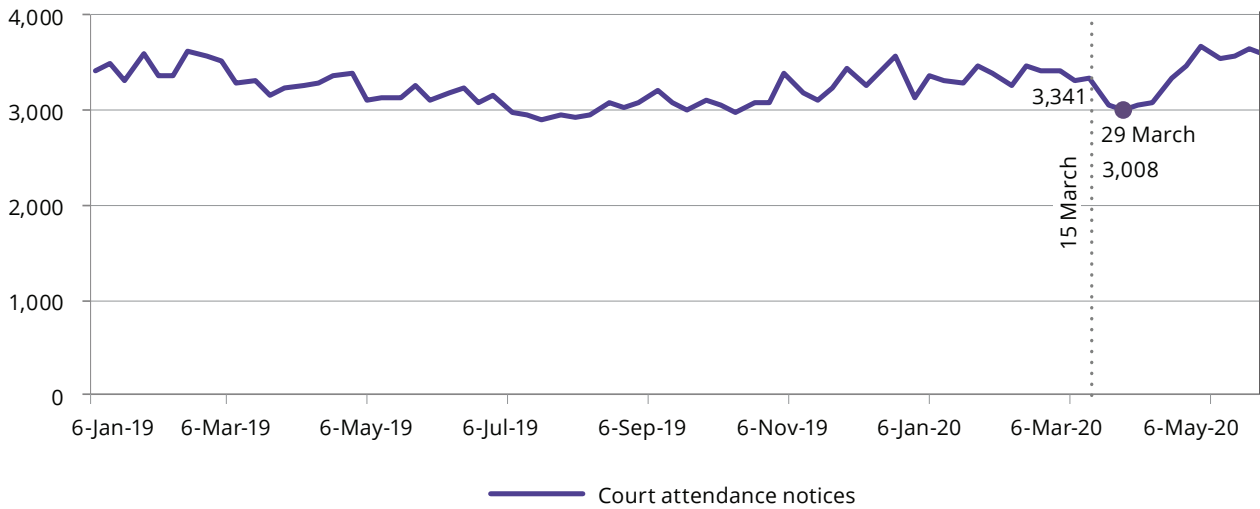
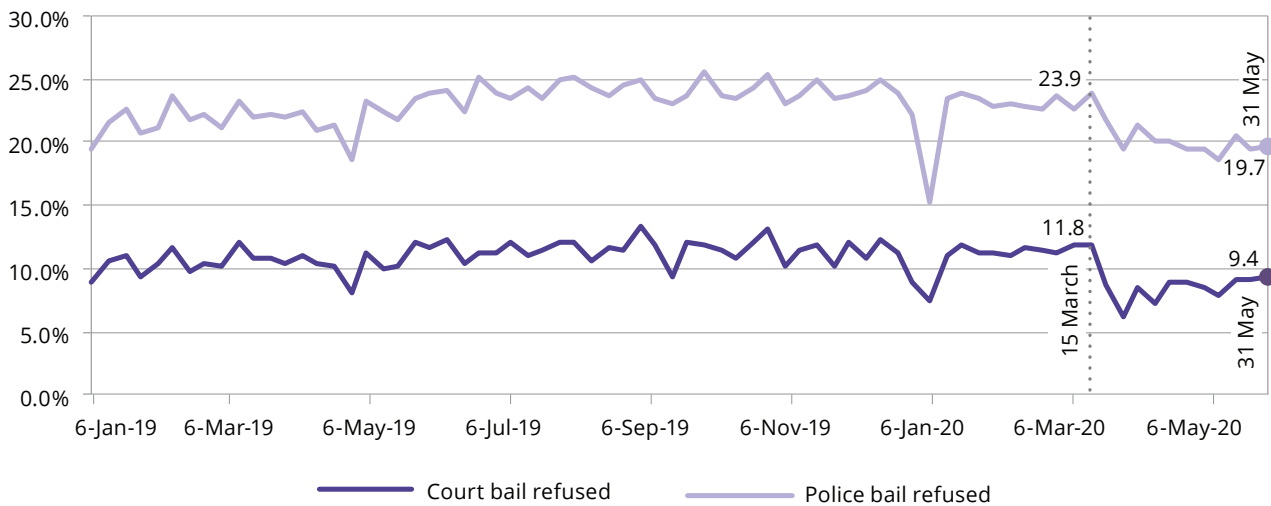


Figure 6. Proportion of persons refused bail



A smaller decline occurred in the weekly number of receptions into sentenced custody, as shown in Figure 4. From 6 Jan to 15 March, 44 people were received into sentenced custody on average each week. In April the average weekly number of sentenced receptions dropped to 35 before increasing again to 42 in May. This small reduction is consistent with an overall decrease in Local and District Court finalisations after 22 March and the Local Court direction to suspend cases likely to result in a custodial penalty. Figure 7a and 7b shows the total number of finalised matters per week in both the Local and District Courts. From 22 March the combined average weekly number of finalisations in both courts dropped by 47.3% compared to the period between 12 January and 22 March 2020.

Figure 7a. Total Local Court finalisations

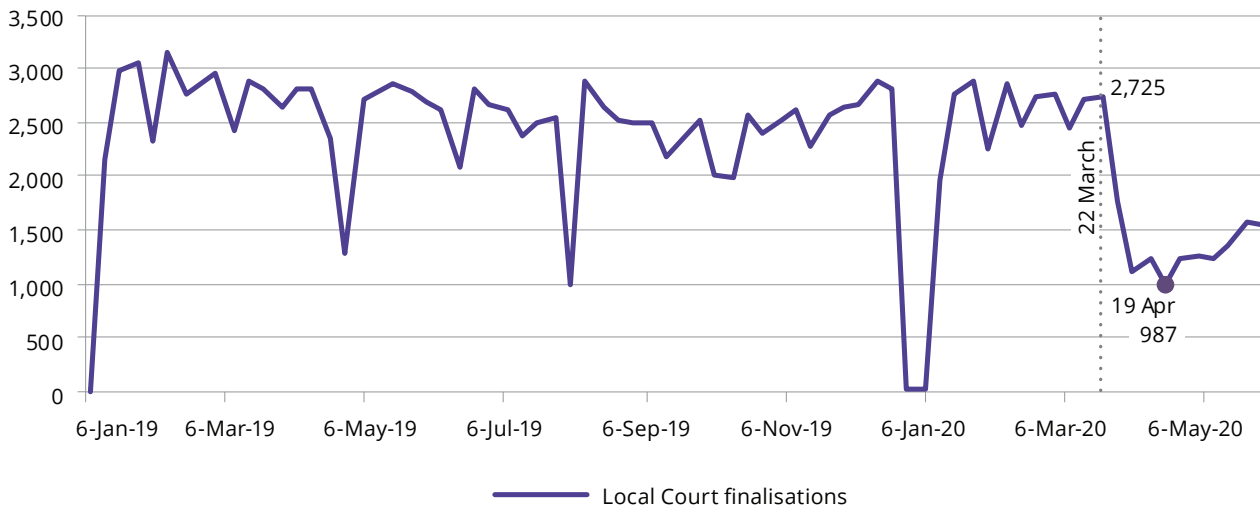
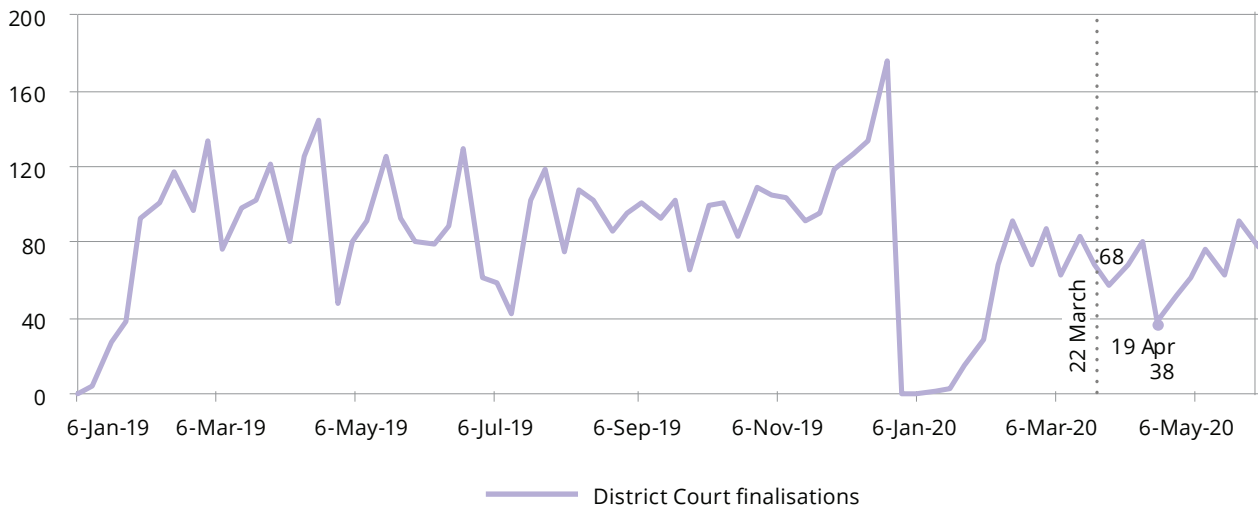


Figure 7b. Total District Court finalisations



## Discharges

People on remand can be discharged from prison in a number of ways. Most commonly, after being initially remanded they are granted bail to await their court appearance in the community. Other remandees exit prison having been acquitted in court or after receiving a non-custodial penalty.

Figure 8 shows that weekly discharges from remand to bail increased substantially after 15 March 2020. Between 12 January and 15 March the average weekly number of discharges to bail was 101. After 15 March, discharges to bail increased by 95.0%, reaching an average of 197 discharges per week in April. However, in May, this figure dropped back down to an average of 104 discharges to bail per week. With the exception of a short spike in the last two weeks of March, there was little change in the number of people discharged after being sentenced to community-based orders.

People in sentenced custody can be discharged having served the entirety of their sentence or they can be released to parole. Figure 9 shows no noticeable change in any form of sentenced discharges from mid-March onwards. The absence of an increase in parole discharges suggests that the new power allowing the early release of inmates to parole by the Commissioner of Corrective Services has not been widely used.

Figure 8. Discharges from remand custody by legal status

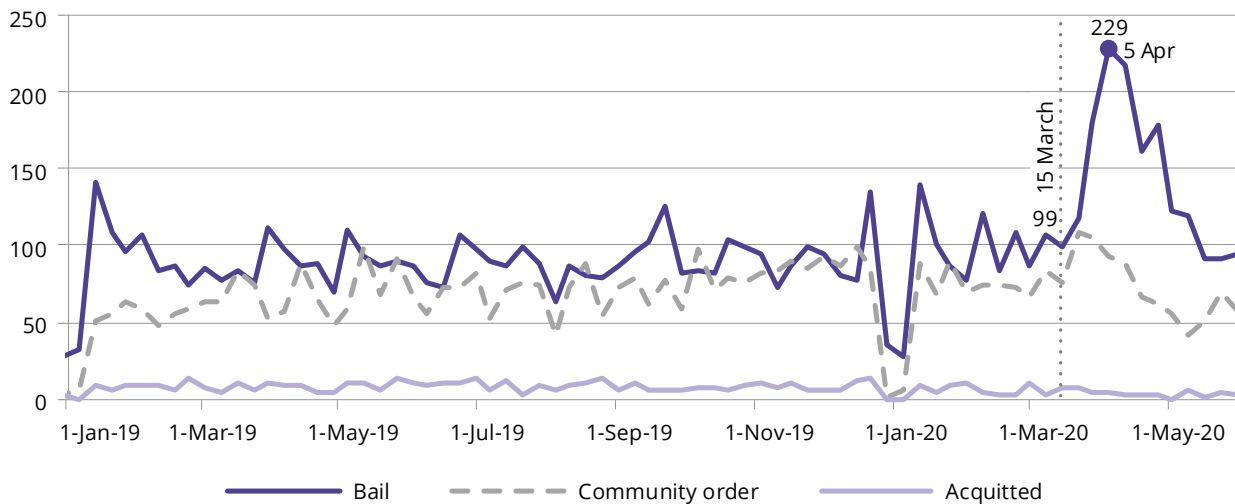
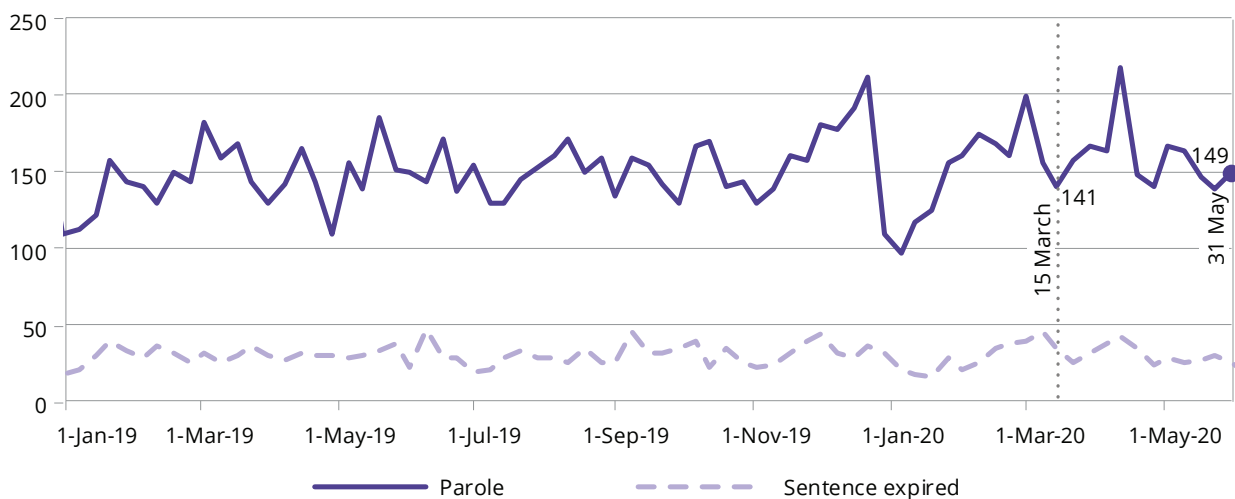


Figure 9. Discharges from sentenced custody to parole and after sentence expiry



### Demographic changes in the adult prison population

The fall in custody numbers has had a greater impact on certain demographic cohorts. Table 1 shows the adult prison population at the last week of each month in 2020 for male, female, and Aboriginal persons in custody. The total population declined by 1,412 inmates from February to May 2020. The greatest proportional decrease was in the female population which declined by 18.7%. The male population decreased by 9.4% over the same time frame. Current figures for the Aboriginal population show a decrease of 11.3% between February and May 2020.

Table 1. Adult prison population at the end of the last week of each month

	Jan-20	Jan	Feb-20	Mar-20	Apr-20	May-20	Change (Feb to May)	% Change (Feb to May)
Total	13,979	14,080	13,737	12,801	12,668	▼ 1,412	▼ 10.0%	
Male	12,964	13,058	12,768	11,961	11,837	▼ 1,221	▼ 9.4%	
Female	1,015	1,022	969	840	831	▼ 191	▼ 18.7%	
Aboriginal*	3,641	3,739	3,613	3,321	3,315	▼ 424	▼ 11.3%	

\* Due to delays in identification of Aboriginal status the number of Aboriginal persons in custody is potentially undercounted in these figures.



## CONCLUSION

The size of the NSW adult prison population decreased substantially in the wake of policies put in place to limit the spread of COVID-19. The bulk of this decline was due to fewer people being remanded to custody and more remandees being discharged to bail. As a result, out-flow from remand custody substantially exceeded in-flow after 15 March 2020. The fall in remand receptions coincided with a 4-week period of relatively low numbers of court attendance notices issued by police and a more prolonged period of lower rates of bail refusal.

A smaller decline also occurred in the sentenced custody population. This was due to a decrease in sentenced custody receptions after March, which coincided with a fall in court finalisations. There was little change in discharges from sentenced custody.