

LIBERTY VICTORIA

An Illusion of Toughness

New proposed bail law reforms are no real response to community safety concerns

MEDIA RELEASE

Liberty Victoria is deeply concerned about proposed changes to Victoria's bail laws proposed by the Victorian Government under the "Tough Bail Bill" which appear to be primarily targeted at children.

These reforms are not evidence-based. They will not remedy the concerns about community safety in the medium to long-term. The only guarantee of these proposed reforms is that they will inflict cruelty and, as past inquiries have shown, expose vulnerable people who have not been convicted of any offence to potential loss of life.

We know that prisons are particularly unsafe for First Nations peoples, with at least 587 Aboriginal and Torres Strait Islander people having died in custody since the Royal Commission into Aboriginal Deaths in Custody published its Final Report in 1991.¹

When we talk about bail and community safety, it is fundamental that we talk about it in its proper context. We are talking about people who are *suspected* of having committed a crime and entitled to the presumption of innocence. Many of these people may ultimately be found to have committed no crime at all, or a lesser offence. It is, therefore, entirely incorrect to describe bail laws as applying to 'offenders' before people have had their day in court. By remanding people in custody this places vast pressure on them to plead guilty in order to be released from custody, even when they may have a defence.

¹ Australian Institute of Criminology, <https://www.aic.gov.au/statistics/deaths-custody-australia>

It has been reported² that the Victorian Government's proposed bail reforms include:

- Remanding a young person accused of committing a crime would no longer be a measure of “last resort” for judicial officers;
- Community safety would become the “overarching principle” when deciding bail for children and adults;
- A separate offence of committing an indictable offence on bail would be reintroduced; and
- The introduction of a new test for people who allegedly commit serious and violent crimes while already on bail which would require a Court to be satisfied of a “high degree of probability” that the person will not reoffend.

Community safety is already a significant consideration at every stage of the process of applying for bail. A person accused of committing a serious or violent offence faces a “reverse onus” and must show compelling or exceptional circumstances depending on the crime they have committed when applying for bail. Moreover, in all cases, a person may be denied bail if the prosecution establishes there is an unacceptable risk of endangering the safety or welfare of the community and no bail conditions can satisfactorily reduce that risk to an acceptable level.

Adults and children are subject to the same bail laws. In the case of children, a Judge or a Magistrate must consider some additional factors such as:

- The child's age, maturity and stage of development at the time of the alleged offending;
- Putting in place bail conditions, supports and services before resorting to remand; and
- The importance of keeping a child connected to family, community, education or work.

² Rooney, K and Le Grand C, ‘Victorian bail overhaul to treat accused children like adults in serious cases’, *The Age*, 12 March 2025.

Taking these additional factors into account recognises that custody centres are criminogenic (they increase the likelihood of reoffending so make us all less safe in the long run) and are particularly harmful to children. Community safety, however, remains a guiding principle to bail decision-makers.

The reintroduction of the offence of commit indictable offence while on bail is deeply flawed. The offence was recommended to be abolished by Coroner McGregor in the Inquest into the death of Veronica Nelson, a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, who passed away in the State's custody on 2 January 2020 having been denied bail for relatively minor alleged offending. These bail offences often led to the disproportionate and unnecessary refusal of bail situations for some of the most vulnerable members of the community including First Nations people, those battling with substance abuse issues, and people living with complex mental health issues and disability. The kind of offences lead to the loading-up of charge sheets but do nothing to contribute to community safety. The death of Ms Nelson in custody was preventable and reflects one of the most shameful episodes of cruelty and systemic racism in the history of Victoria's criminal justice system.

It is a fundamental right of every member of our community to live without being the fear of being a victim of violent crime. While there has been a statistical increase in youth crime in Victoria, this has largely been driven by a small cohort of repeat offenders.³ There is no evidence that we are in the midst of a youth crime epidemic. The Victorian Government should be crafting tailored responses to address this small cohort, rather than introducing fundamental changes to our bail system that are simply not required and have historically shown to be ineffective at improving community safety or even potentially making matters worse.

Reforming the criminal justice system should never be conducted in secret with real public consultation. It should never be driven by knee-jerk reactions. It should never be driven by an election cycle. Such approaches will only succeed in causing a range of unintended, cruel and harmful consequences, particularly to vulnerable members of our

³ Chwasta, M. 'Thefts linked to cost-of-living drive rise in Victoria's crime rates, statistics agency data shows', ABC News, 19 December 2024.

community, and increasing the probability that first-time offenders become life-long criminals.

Liberty Victoria calls on all members of our Parliament to lead our community in informed and thoughtful discussions about how we address crime. These discussions should be based on the evidence. People within the community with expertise and lived experience of all aspects of the criminal justice system should be consulted to strike a proper balance.

The Bill should be rejected.