



Tasmanian Council of Social Service Inc.

BAIL BILL 2024

February 2025



**INTEGRITY
COMPASSION
INFLUENCE**



INTEGRITY
COMPASSION
INFLUENCE

About TasCOSS

TasCOSS' vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

Please direct any enquiries about this submission to:

Adrienne Picone

Chief Executive Officer

Phone Number: (03) 6231 0755

Email Address: adrienne@tascoss.org.au

Table of Contents

About TasCOSS	2
Table of Contents	3
Introduction	4
TasCOSS position	4
Bail in Tasmania	5
The significance of bail	5
Social impact of bail decisions.....	5
Legal impact of bail decisions.....	6
The current framework in Tasmania	7
COI recommendations relating to bail	9
Key changes introduced by the Bill	11
Key concerns	15
Recommendations	23

Introduction

TasCOSS welcomes the opportunity to provide feedback to the Department of Justice (the 'Department') in relation to the Bail Bill 2024 ('the Bill'). We refer to our previous submission in relation to earlier iterations of the Bill,¹ as well as our submission to earlier consultation on bail reform in Tasmania.²

We acknowledge the effort that has been made to address concerns raised by a wide range of stakeholders in relation to the previous consultation draft released in 2021. We also acknowledge and support the inclusion of provisions which relate to recommendations from the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (the 'COI').

TasCOSS' position

Despite significant and positive changes made to the Bill since the previous consultation draft was released in 2021, TasCOSS remains concerned about the potential impact of the Bill, particularly Tasmanians who may already be vulnerable within the criminal legal system. Whilst we support provisions aligned with recommendations from the COI, we are concerned the provisions drafted will not adequately safeguard the rights of children and young people. We are also concerned about the impact of stricter bail provisions on the criminal legal system more generally. We strongly recommend further consultation – particularly with community-based organisations working to support criminalised Tasmanians and their families, as well as legal experts – to ensure any changes to bail legislation do not result in increased remand and incarceration of groups experiencing disadvantage.

Our submission includes a brief overview of factors relating to bail in Tasmania, as well as an overview of the key changes introduced by the Bill and COI recommendations relating to bail decisions. We then explore our key concerns with the Bill before outlining recommendations to address these concerns.

¹ TasCOSS, (2021), 'TasCOSS Submission on the Bail Bill 2021'.

² TasCOSS (2018), 'Submission to the Consultation on Bail Reform'.

Bail in Tasmania

The significance of bail

Bail allows for people who have been charged to remain in the community until the finalisation of their criminal matter/s. The granting of bail supports the presumption of innocence and the right to liberty, key principles underpinning our criminal legal system. However, the use of bail has been recently politicised in jurisdictions across Australia, with a number of high-profile cases and ‘tough on crime’ positions leading to significant bail reforms. This has had a deleterious impact on the granting of bail.

Social impact of bail decisions

Bail decisions have serious implications for the life of an accused person. Being held in custody on remand disrupts the ordinary daily life of a person accused of an offence and can lead to loss of employment, disruption to study or loss of housing (particularly for those in social or community housing).³ Recent research highlights the disproportionate impacts on women, particularly those with caregiving responsibilities. When a woman is held on remand or spends time in custody, her ability to provide care is greatly disrupted;⁴ this can lead to involvement with child protection and long-term consequences for families.⁵

For children and young people, the criminogenic impacts of custody and remand are well-documented, with research showing that the earlier a young person comes into contact with the police or the courts, the more likely they are to go on to offend or be imprisoned as an adult.⁶ Spending time in police custody or on remand at prison also exposes children and young people to significant safety risks, as comprehensively outlined in the recent COI report. The most recent reports from the Office of the Custodial Inspector also show ongoing concerns relating to child safety and wellbeing at Ashley Youth Detention Centre (‘AYDC’) and the continued use of practices such as lockdowns,⁷ which are inconsistent with Australia’s obligations under international law.⁸

³ Australian Government, Productivity Commission, [Australia’s prison dilemma: research paper](#) (October 2021), p38.

⁴ Even short periods of incarceration can result in women having their children removed and losing their home, job and connection with their community - Victorian Legal Services Board and Commissioner, [Keeping Women Out of the Justice System](#), Final report – August 2023, p8.

⁵ The female prison population has grown at a greater rate than the male population over the past 10 years. While the male prison population increased by 45% (from 27,000 to 39,500), the female prison population increased by 64% (from 2,100 to 3,500) (ABS 2019b) - AIHW, [The health and welfare of women in Australia’s prisons](#) (Nov 2020), p2.

⁶ According to the Sentencing Advisory Council of Victoria, children ‘who were first sentenced at an earlier age tended to have higher reoffending rates in the six years after their index sentence than those who were first sentenced at a later age. The younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to an adult sentence of imprisonment before their 22nd birthday’ – Sentencing Advisory Council of Victoria (2016), ‘Reoffending by Children and Young People in Victoria’ (2016), pxiii, accessed at [Reoffending by Children and Young People in Victoria | Sentencing Council](#). The criminogenic nature of youth detention has also been explored in Tasmanian reports – see Sentencing Advisory Council (2021), ‘Sentencing Young Offenders’, accessed at [Sentencing Young Offenders](#).

⁷ The Office of the Custodial Inspector Tasmania, [Youth wellbeing inspector report 2024](#), notes ‘lockdowns are continuing to occur due to short staffing’, p18.

⁸ Including the United Nations Convention on the Rights of the Child and the Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Reports from jurisdictions such as Victoria also show stricter bail regimes have disproportionately impacted groups who are already vulnerable within the legal and prison system – in particular, children and Aboriginal women.⁹ This is especially concerning given the Tasmanian Government’s commitments to protect these groups from further harm – such as their commitment to implement in full all recommendations from the COI, as well as commitments under Closing the Gap in relation to Aboriginal communities, adults and children.¹⁰

Research from across the country has highlighted links between increased remand populations and rates of incarceration generally,¹¹ including in Tasmania.¹² This in turn has a significant impact on public expenditure, given the comparatively high cost of holding people in custody¹³ (particularly children and young people).¹⁴

Legal impact of bail decisions

Aside from the social impacts outlined above, bail decisions also have significant legal implications. Being on remand can have implications on a person’s ability to properly prepare for and participate in their legal proceedings, including preparing a defence. Research has shown that spending time on remand increases the likelihood that a person accused of a crime will plead guilty or be found guilty,¹⁵ and spending time on remand may in fact encourage people to plead guilty as a way of finalising their legal matters to avoid spending further time on remand.¹⁶

Academic research from other Australian jurisdictions has found that increases to the number of people being held on remand ‘is having an indirect effect on sentencing outcomes’,¹⁷ with ‘time served sentences’ (in which a person is sentenced to a period of time equal to or less than the time they have already spent in custody on remand) becoming increasingly common – this means that offenders who may have

⁹ ‘The *Bail Act 1997*(Vic) reforms introduced a reverse onus test, intended to capture serious, violence offenders. Instead, the changes have had a disproportionate impact on women who have engaged in low-level, non-violent offending, in particularly Aboriginal and Torres Strait Islander women, and people experiencing homelessness, and has resulting in an alarming increase in the number of people incarcerated on unsentenced remand.’ VCOSS (2022), [Final Report: Inquiry into Victoria’s Criminal Justice System](#).

¹⁰ The Government has committed to reducing the rate of imprisonment of Aboriginal and Torres Strait Islander adults by 15%, and children by 30% - see Tasmanian Government (2020), ‘Closing the Gap: Tasmanian Implementation Plan 2021 – 2023’.

¹¹ Research from the Productivity Commission highlights that ‘over one third of prisoners are on remand, waiting for trial or sentencing’ - Productivity Commission (2021), ‘Australia’s prison dilemma’, p2, accessed at [Australia’s prison dilemma, research paper](#).

¹² Between 2020 and 2024, Tasmania saw a 69% rise in the remand population, by the end of this period unsentenced individuals made up 41.1% of the total prison population (increase from 194 people in 2020 to 329 in 2024). ABS Table 14, Prisoners, selected characteristics by state, [Prisoners in Australia, 2024 | Australian Bureau of Statistics](#).

¹³ According to the Productivity Commission, Prisons cost ‘Australian taxpayers more than \$5 billion per year, or more than \$330 per prisoner per day. In contrast, alternative punishments, such as community corrections orders, may have much lower costs.’ - Productivity Commission (2021), ‘Australia’s prison dilemma’ p2, accessed at [Australia’s prison dilemma, research paper](#).

¹⁴ The latest Report on Government Services released by the Productivity Commission, reveals that the cost of youth detention-based services in 2023-24 surpassed \$1 billion; this equates to \$3,320 per average day per young person. [Youth justice services](#), - Data tables, Table 17A.20 – Cost per young person in detention 2023-24 dollars.

¹⁵ Dobbie, W, Goldin, J & Yang, C (2018) ‘The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges’ *American Economic Review* 108(2): pp201-240.

¹⁶ Sentencing Advisory Council Victoria (February 2020), p13, accessed at [Time Served Prison Sentences in Victoria](#).

¹⁷ Sentencing Advisory Council Victoria (2020) p16, accessed at [Time Served Prison Sentences in Victoria](#).

otherwise been sentenced to a community-based order or non-custodial sentence may have instead been sentenced to ‘time served’ in recognition of the time they already spent in custody. Increasing the likelihood that an offender (particularly someone who pleads guilty to a lower-level offence) will have a term of imprisonment recorded on their criminal history. This has significant legal implications, including increasing the likelihood that the person will have further involvement in the criminal legal or detention system. The recent inquiry into Victoria’s criminal justice system made a finding that ‘short custodial sentences are associated with higher rates of recidivism than longer custodial sentences and custodial sentences combined with parole’,¹⁸ and also noted the links between increases in the remand population and increases to ‘time-served’ prison sentences.¹⁹

Another issue related to the rising number of people on remand is that many people are spending more time in custody than what they would have received as a prison sentence. This was identified as an issue for women in Victoria following the recent changes to the *Bail Act 1977 (Vic)*, with reports noting that women were spending increasing amounts of time in custody for low-level offending which would not usually attract a prison sentence equal to, or more than, the amount of time they had already spent on remand.²⁰

The current framework in Tasmania

In Tasmania, considerations about decisions to grant bail are set out in common law rather than legislation.²¹ The common law in Tasmania establishes that accused persons have a presumptive right to liberty until they stand trial (with exclusions in cases involving murder,²² family violence,²³ restraint order application or breaches of existing orders²⁴). Under this framework, the primary consideration in bail determination has typically been whether the person charged with an offence will appear in court as and when required.²⁵ Subsequently, bail decision-makers provide further considerations to:²⁶

- *The nature of the alleged offence and severity of punishment*
- *The strength of evidence against the person*
- *The person’s family, social and employment ties to the community*
- *Any mental or health problems suffered by the person*

¹⁸ Parliament of Victoria, Legislative Council Legal and Social Issues Committee, Inquiry into Victoria’s criminal justice system (2022), [Vol. 1](#), Finding 50, p483.

¹⁹ Ibid, p546.

²⁰ In addition, the Council Legal and Social Issues Committee heard that the ‘majority of these women are the victim/survivors of family and domestic violence and the experience of incarceration cause immense trauma and distress’ – Ibid, p451.

²¹ Hughes D, Colvin E and Bartkowiak-Théron I (2021), Police and vulnerability in bail decisions, International Journal for Crime, Justice and Social Democracy, Advance online publication, p10, <https://doi.org/10.5204/ijcisd.1905>

²² ‘The common law provides that bail should only be granted on a charge of murder if the person charged shows ‘exceptional circumstances’ – Tasmanian Government, Department of Justice, Bail Bill 2024, [Explanatory Fact Sheet – Bail Bill 2024](#), p.2.

²³ ‘The presumption of bail is also altered by s 12 of the Family Violence Act 2004, which provides that a person charged with a family violence offence is not to be granted bail unless a judge, court or police officer is satisfied that the release of the person on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person or affected child.’ Tasmanian Government, Department of Justice, Bail Bill 2024, [Explanatory Fact Sheet – Bail Bill 2024](#), p2.

²⁴ The presumption as to bail is altered where a person has been taken into custody in respect of an application for a restraint order, or a breach of a restraint order – Tasmanian Government, Department of Justice, Bail Bill 2024, [Explanatory Fact Sheet – Bail Bill 2024](#), p2.

²⁵ R v Fisher [1964] Tas SR 318.

²⁶ R v Fisher [1964] Tas SR 318.

- *The person's past history of answering bail.*

The circumstances and interests of the alleged offender must also be weighed against the interests of the state and community, including considerations about community safety, as well as the likelihood the bail applicant will engage in criminalised behaviour while on bail, or interfere with witnesses.²⁷ The weighting of these factors is however largely discretionary,²⁸ and there is limited guidance about how matters of vulnerability should be considered by the court.²⁹

²⁷ Tasmania Law Reform Institute (2004) Offending while on bail, Research Paper No 1, p. 4.

²⁸ Hughes D, Colvin E and Bartkowiak-Théron I (2021), Police and vulnerability in bail decisions, International Journal for Crime, Justice and Social Democracy, Advance online publication, p. 10, <https://doi.org/10.5204/ijcjsd.1905>

²⁹ Bartels, L., Gelb, K., Spiranovic, C., Sarre, R., & Dodd, S., (2018), Bail, Risk and Law Reform: A Review of Bail Legislation across Australia.

COI recommendations relating to bail

With the exception of section 24B of the *Youth Justice Act 1997* (Tas),³⁰ children and young people in Tasmania are generally subject to the same bail legislation as adults. While section 5 of the *Youth Justice Act 1997* (Tas) requires bail makers to consider the ‘general principles of youth justice’ this when determining bail and setting bail conditions, this framework has been insufficient to reduce the extent of children on remand.

The COI heard that a range of structural and systems issues are contributing to children being detained on remand. This includes issues associated with a child’s vulnerability,³¹ as well as bail processes such as delays in appearing before a judge or magistrate. In instances where children have been refused bail in an afterhours context, the COI heard that they are commonly granted bail when they appear before a magistrate the following business day,³² leading to increased detention rates of children. The negative impact of detention on a young person (even if they are only spending a night or weekend on remand) cannot be understated.

The COI emphasised that the most effective way to safeguard children at risk of criminalisation, is to prevent their entry or re-entry into the youth justice system, reinforcing the principle that remand should only be used as a measure of last resort.³³ Over-reliance on remand not only exposes children to the harms of detention but also fails to address the underlying factors contributing to their involvement in the criminal legal system. To promote the safety and wellbeing of children, the COI recommended significant systems reform including raising the age of criminal responsibility to 14 and the age of detention (including remand) to 16,³⁴ enhancing diversionary measures,³⁵ and improving the youth detention system to ensure children in detention have timely access to high-quality, developmentally appropriate therapeutic support, education, and healthcare.³⁶

The COI also made a number of recommendations aimed at addressing existing issues with the bail system,³⁷ including:

³⁰ [Youth Justice Act 1997](#) (Tas) s24B:

Conditions of bail - *A court or justice, or a police officer, who intends to admit a youth to bail must have regard to the principles set out in [section 5](#), so far as they may apply to the circumstances of the youth, in deciding whether to impose any conditions on the bail and in determining the conditions that are imposed on the bail.*

³¹ Including that they have no suitable place to live while their charges are being processed, they lack family or kinship support and appropriate supervision, due to instability or breakdown of out-of-home care placements, and undiagnosed mental health conditions or disabilities that have contributed to the offending behaviour - Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, Final Report, Vol. 5, [Chapter 12](#), 5.4.1 – Drivers of Remand.

³² Ibid.

³³ Ibid, 5.4 – Increasing access to bail for children and young people.

³⁴ Ibid, Recommendation 12.11.

³⁵ Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, Final Report, Vol. 5, [Chapter 12](#), Recommendation 12.27.

³⁶ Ibid, Chapter 12 Recommendations.

³⁷ Ibid, 5.4 – Increasing access to bail for children and young people.

- **Recommendation 12.14:** to maximise opportunities for children to be admitted bail by introducing legislation requiring bail decision-makers to consider a child’s circumstance at the time of the alleged offence, including age, developmental age, Aboriginal identity, trauma history, and experience in out-of-home care; and prohibiting bail refusal solely due to a lack of accommodation. Establishment of a fully resourced 24-hour bail system with specialised decision-makers, legal representation, and expanded bail support programs to provide wrap around services for children.
- **Recommendation 12.27:** urgently develop, in partnership with Aboriginal communities, an Aboriginal youth justice strategy that is underpinned by self-determination and that focuses on prevention, early intervention and diversion strategies for Aboriginal children.
- **Recommendation 9.27:** ensure that children in care receive appropriate court support and ongoing case management to prevent unnecessary detention.

Ensuring that all children have legal representation in bail matters is essential, given their lack of legal capacity to navigate the system independently. Without the establishment of a child-focused bail system, as recommended by the COI, unnecessary bail refusals, deprivation of liberty, and the associated harms of detention—including abuses and assaults in watchhouses and remand will continue. Without this system in place, children remain at risk of the very harms the Government has committed to eliminating by committing to implementation all of the COI recommendations in full.

More broadly, the COI recognised that the increasing number of children within the criminal legal and detention systems is driven by systemic failings that place already vulnerable children at further risk.³⁸ A legal framework that does not prioritise remand as a last resort fails to uphold children's rights and risks further entrenching cycles of criminalisation. Strengthening bail processes, expanding legal representation, and ensuring that detention (including remand) is truly a last resort are critical steps toward creating a legal system that prioritises the safety, wellbeing, and rehabilitation of children.

³⁸ Ibid, Chapter 12.

Key changes introduced by the Bill

The Bill seeks to bring Tasmania into line with other Australian jurisdictions by introducing a clear legislative framework to guide judicial decision making in determining bail.

While the Explanatory Factsheet states the Bill does not amend the existing common law presumption in favour of granting bail, the Bill itself does introduce a more explicit (and likely more onerous) test that would have to be satisfied in relation to all applications for bail. There are also several provisions which introduce significant changes to the current legislative regime.

Firstly, Clause 3 introduces four clear purposes of the Bill:

- To ensure the impact on victims of crime, individuals and the community are taken into account;
- To provide a legislative framework to govern the granting of bail;
- To ensure the presumption of innocence and the right to liberty are taken into account; and
- To promote impartiality, transparency and consistency.

The wording of this clause appears to more explicitly put the impact on victims and the community ahead of the rights of the accused person in relation to their innocence and liberty (or other principles/rights which may arise due to the particular circumstances/rights of the accused person – for example, the relevant principles under the *Youth Justice Act 1997* (Tas) in relation to an accused who is under the age of 18).

While there is no explicit provision stating a presumption that an accused person is entitled to bail, Clause 6 (3) indirectly confirms the presumption,³⁹ which is later limited by other clauses in the Bill (discussed below). In assessing whether or not an accused should be granted bail, the Bill also introduces what we understand to be a multi-stage test, outlined below.

Step one: has the accused committed a certain offence?

- This step largely mirrors the current framework as per common law outlined above, and requires the bail decision-maker to take certain matters into consideration when an accused has been remanded for certain offences;

³⁹ *Nothing in this Act removes the presumption of innocence, and the general right of a person to be at liberty, when determining whether a person is to be granted bail under this Act for a bail matter.*

- Clause 8 outlines several offences for which an accused may not be granted bail except in ‘exceptional circumstances’⁴⁰ – these offences include murder, treason, attempted murder/treason, or conspiracy/incitement to commit murder or treason;⁴¹
- Clause 9 limits the presumption in relation to a person ‘who is the subject of a bail matter that is a family violence offence’ – bail is not to be granted unless the person considering the application is satisfied that the release of the person on bail is unlikely to negatively impact the safety, wellbeing and interests of an affected person/child; and
- Clause 10 provides that, in situations where a person is taken into custody for the purpose of making an application for a family violence order, restraint order, interim restraint order or telephone restraint order, a bail decision-maker must take into consideration whether the accused person poses a risk to the protection and welfare of an affected person/child or a person for whose benefit the relevant order is sought.

Step two: does the accused pose an ‘unacceptable risk’?

- We understand that a bail decision-maker must consider the question of risk in relation to all applications for bail (and even in situations where a bail decision-maker may have already found the existence of ‘exceptional circumstances’ which may justify the grant of bail in relation to the offences outlined above);
- In considering the question of risk, the Bill provides that a decision-maker must consider the person an ‘unacceptable risk’ if there is a risk that the person (if released on bail) would:
 - o pose a danger to the safety or welfare of an individual, a class of individuals or the community generally; or
 - o is unlikely to attend the court as required; or
 - o is likely to commit an offence; or
 - o is likely to interfere with witnesses or potential witnesses, or otherwise obstruct or impede justice

⁴⁰ (2) Despite subsection (1), bail may be granted in respect of an offence specified in that section if the person who is charged with the offence proves that exceptional circumstances exist in accordance with section 15(6).

15(6) A court may only grant bail in respect of a person under this Act for an offence referred to in section 8 if –

- (a) the person proves, to the satisfaction of the court, that there are exceptional circumstances in respect of the person or the bail matter to which the grant of bail relates; and
- (b) the court is satisfied, on reasonable grounds, that –
 - (i) the person is entitled to a grant of bail under section 9(1); and
 - (ii) the person does not pose an unacceptable risk.

⁴¹ Persons not entitled to bail for certain offences.

(1) Except as otherwise specified in this Act or any other Act, a person who is charged with, and taken into custody in respect of, one or more of the following offences must not be granted bail in respect of the offence:

- (a) the crime of murder or treason;
- (b) one of the following crimes under the Criminal Code:
 - (i) section 297 – conspiracy to commit murder or conspiracy to commit treason;
 - (ii) section 298 – incitement to commit murder or incitement to commit treason;
 - (iii) section 299 – attempting to commit murder or attempting to commit treason;
- (c) any offence committed by a person that the bail authority believes, on reasonable grounds, is a terrorism-linked person.

(2) Despite subsection (1), bail may be granted in respect of an offence specified in that section if the person who is charged with the offence proves that exceptional circumstances exist in accordance with section 15(6).

Step three: is the accused a child or young person?

- In relation to children and young people, the Bill introduces a list of factors which a bail decision-maker must take into account when determining/assessing whether or not the risk is unacceptable.⁴² It also allows for consideration of certain circumstances where the person was under 18 at the time the alleged offences occurred.⁴³

⁴² 13. Grants of bail in respect of youths

(1) A bail authority must take into account the following matters, in addition to any other matter under this Act, when making a decision in relation to a grant of bail in respect of a youth:

- (a) the youth's age, maturity and stage of development at the time of the relevant bail matter;
- (b) the fact that remand of a youth should be the last resort and any intervention required in the circumstances should be as minimal as practicable;
- (c) the presumption that –
 - (i) a person who has not attained the age of 10 years is unable to commit an offence; and
 - (ii) a youth who has not attained the age of 14 years is only able to commit an offence if the youth has the capacity to understand, at the time of the offence, that the act or omission constituted an offence;
- (d) the need to preserve and strengthen the youth's relationship with –
 - (i) the youth's parents, siblings, guardians and carers; and
 - (ii) any other significant persons in the youth's life;
- (e) the importance of supporting the youth to –
 - (i) live in a home that is safe, stable and secure; or
 - (ii) have other safe, stable and secure living arrangements in the community;
- (f) the importance of –
 - (i) supporting the youth to engage in education, training or work; and
 - (ii) ensuring that any disruption to that engagement be minimised as much as practicable;
- (g) the need to minimise the stigma to the youth that may result from being remanded;
- (h) the fact that time in custody has been shown to pose a risk to youths including, but not limited to, a risk –
 - (i) that it may cause, or lead, to criminal behaviour in youths; and
 - (ii) that the youth may become further involved in the criminal justice system; and
 - (iii) of harm to the youth or to others;
- (i) the need to ensure that any conditions imposed in respect of the grant of bail are no more onerous than is necessary;
- (j) the fact that some cohorts of youths, including but not limited to the following cohorts, experience discrimination that results in that cohort's overrepresentation in the criminal justice system:
 - (i) Aboriginal children;
 - (ii) children who have been the subject of an order under Division 2 of Part 5 of the Children, Young Persons and Their Families Act 1997;
 - (iii) children from culturally and linguistically diverse backgrounds;
- (k) if the relevant bail matter is an offence, whether it is likely –
 - (i) if the youth were found guilty of the offence, that the youth would be sentenced to a term of imprisonment; and
 - (ii) that the time that the youth would spend in remand, if bail were refused, would exceed that term of imprisonment;
- (l) whether the youth suffers from any health issues including, but not limited to, mental health issues;
- (m) whether the youth has been, or is likely to be, diagnosed with a disability including, but not limited to, physical disability, intellectual disability, cognitive impairment and developmental delay;
- (n) the impact on the youth, including the youth's behaviour, of any experience of abuse, trauma, neglect, loss, family violence or child protection involvement including, but not limited to, removal from family and placement in out of home care;
- (o) any other factor or characteristic that the bail authority considers relevant.

⁴³ Clause 13 (3): A bail authority may take, but is not required to take, the matters specified in subsection (1) into account when making a decision under this Act in respect of a person who is not a youth but was a youth at the time at which the relevant bail matter occurred.

- If the 'unacceptable risk' identified in step two relates to a lack of safe/secure accommodation, these provisions prohibit the refusal of bail on these grounds alone;⁴⁴
- The factors which must/may be considered mirror similar provisions in the Victorian legislation,⁴⁵ and respond to recommendations from the COI in relation to bail for children and young people as outlined above.

⁴⁴ Clause 13 (4): *Bail must not be refused in respect of a youth solely on the basis that the youth does not have suitable, or safe, accommodation if released on bail.*

⁴⁵ *Bail Act 1977* (Vic) s3B.

Key concerns

TasCOSS is supportive of some of the provisions in the Bill – in particular, those reforms which respond directly to recommendations from the COI aimed at reducing the number of children and young people held on remand. However, we do have significant concerns relating to the potential impact of the Bill, particularly in relation to children and young people and provide recommendations to address these concerns.

All criminal legal reforms (including consideration of legislative changes relating to bail) should support the objective of reducing the criminalisation and incarceration of children and young people

TasCOSS strongly believes all legislative reform should be focused towards reducing the number of children and young people on remand and in detention – factors recognised by the COI as significant risks for child sexual abuse, particularly within institutions. We are concerned that the Bill may have unintended consequences for children and young people – evidence from other jurisdictions demonstrates the negative effect of more stringent tests to applications for bail, particularly for those who are already vulnerable within the legal system (such as children and young people).⁴⁶ Whilst the Bill does contain provisions designed to support the consideration of certain factors for children, the experience in Victoria shows that even with these protective legislative provisions, children and young people have been disproportionately impacted by harsher bail laws.⁴⁷ Furthermore, recent Australian inquiries have highlighted the devastating impacts of legislative reform on children (particularly Aboriginal children), with the Yoorrook Justice Commission noting that reform was needed to ensure children are not being remanded in custody because of ‘welfare concerns, health concerns, substance misuse and because of a lack of suitable accommodation.’⁴⁸

Further, it is essential that bail decision-makers actively enquire about and consider the responsibilities and duties of any parent, guardian, caregiver, child protection official, or other responsible adult involved in a child's bail matter. This includes assessing their ability to support the child in meeting bail conditions, such as facilitating court attendance or providing supervised accommodation. Ensuring that these factors are properly considered can help prevent unnecessary bail refusals and detention. A child-focused approach to bail decisions must recognise the role of supportive adults in maintaining stability and reducing the risk of criminalisation.

Given the strong evidence that harsher bail laws disproportionately impact children and young people—despite protective legislative provisions, we strongly recommend the inclusion of provisions establishing a clear presumption that children are only to be remanded in ‘exceptional circumstances’ and as a measure of last resort. The inclusion of this principle would support the Government’s commitment to raising the age of detention to at least 16, as this would significantly limit the number of children under 16 who are remanded.

⁴⁶ Parliament of Victoria, Legislative Council – Legal and Social Issues Committee, Inquiry into Victoria’s criminal justice system – Final Report (2022) pp474-478.

⁴⁷ Ibid.

⁴⁸ Ibid, p. 322.

Reforms should support the underpinning rights and principles of the criminal legal system, both for adults and children

Whilst we appreciate the Bill attempts to adequately balance competing expectations/demands in relation to bail, we do not believe the provisions adequately affirm the presumption of innocence and right to liberty – key principles underpinning our criminal legal system. As outlined above, the negative impact of bail decisions (particularly on groups already experiencing disadvantage within the criminal legal system) have significant ramifications for community safety and wellbeing. Furthermore, children and young people are also likely to be impacted by legislative changes which may lead to the greater criminalisation and/or detention of adults – for example, recent inquiries have highlighted the impact of parental incarceration on children and young people and the criminogenic impact of family or parental involvement in the legal system.⁴⁹

The Parliamentary Inquiry into Victoria's Criminal Justice System heard that parental incarceration significantly disrupts children's lives. The Inquiry found:⁵⁰

- *Parental incarceration is an adverse childhood experience due to its traumatic nature. Like other adverse childhood experiences, parental incarceration can interrupt childhood development and have detrimental impacts on emotional and social wellbeing.*
- *Children exposed to parental incarceration have a greater risk of experiencing adverse mental and physical health outcomes due to trauma, a lack of appropriate healthcare, or both.*
- *Carers supporting children of incarcerated parents are often left with minimal guidance or emotional and financial support.*
- *Separating Aboriginal children and parents due to incarceration can disrupt connection to culture, land and family. Removal of children from communities into out of home care, particularly into non-Aboriginal care placements, can perpetuate the impacts of historic trauma.*
- *Incarceration can be intergenerational when families and children do not receive timely and appropriate support. Cycles of trauma and disadvantage typically contribute to intergenerational incarceration.*

These findings highlight the need for bail reform to account for the broader impacts of parental and familial detention on children and young people, particularly those already vulnerable, to disrupt intergenerational experiences of disadvantage.

To ensure bail decisions uphold fundamental legal principles and mitigate these harms, we strongly recommend that the presumption of innocence and the right of an accused person to remain at liberty until conviction be explicitly included as the principal purpose of the Bill.

Additionally, we recommend that the 'purpose' clause of the Bill include provisions requiring bail decision-makers to consider relevant principles of youth justice when assessing bail applications for children and young people. We note that the COI recommended the revision of these principles to ensure they 'adequately reflect contemporary understandings of child development, children's antisocial behaviour and children's needs'.⁵¹ Aligning bail decision-making with best practice principles is essential to prevent

⁴⁹ Parliament of Victoria (2022), Legislative Council, Legal and Social Issues Committee, 'Inquiry into Children Affected by Parental Incarceration: Final Report'.

⁵⁰ Parliament of Victoria (2022), Legislative Council, Legal and Social Issues Committee, 'Inquiry into Children Affected by Parental Incarceration: Final Report', pp13-31.

⁵¹ **Recommendation 12.12**

The Tasmanian Government should ensure legislation to replace or amend the Youth Justice Act 1997 contains updated general principles of youth justice that reflect contemporary understandings of child development, children's antisocial behaviour and children's needs

unnecessary detention of children and young people and ensure decisions are made in their best interests.

The introduction of ‘unacceptable risk’ provisions carry a significant risk of increasing the number of people (including children) who are refused bail

We are concerned that the introduction of the ‘unacceptable risk’ provisions will result in increased numbers of adults and children on remand. We also note that factors which may be considered as part of the ‘unacceptable risk’ test may actually reflect the vulnerability of an accused person – for example, an accused person who is experiencing homelessness may be considered by a decision-maker to be at greater risk of failing to appear at court. An assessment of higher risk may therefore reflect a person’s experience of structural disadvantage rather than an intent to not meet bail conditions. Such provisions risk compounding experiences of disadvantage and structural harm by increasing remand.

We understand the Tasmanian Government has been reviewing the legislation and framework for bail in Tasmania for the last few years, but it is unclear from the materials provided why the changes proposed in the Bill (aside from those relating to COI recommendations) are being pursued now, particularly as previous academic reviews in relation to bail have emphasised the risks of changes to the existing system in Tasmania.⁵² In the absence of clear guidance/recommendations from legal and community experts justifying the proposed changes, TasCOSS does not support any legislative reform which may result in an increased number of adults or children on remand.

The unacceptable risk provisions in the Bill do not provide sufficient safeguards to protect people who may be vulnerable within the criminal legal system

Alongside our general concerns that the introduction of the ‘unacceptable risk’ test may lead to few successful applications for bail (particularly for applicants from groups who are already marginalised within the criminal legal system), we have the following issues with the test as proposed by the Bill:

- We believe the matters to be considered by a bail decision-maker to be too broad – in particular, we do not support the provision which requires a bail decision-maker to refuse bail in situations where an applicant may be at risk of ‘committing an offence’. Many applicants for bail may in fact be at risk of committing further, non-violent offences which do not pose serious risks to community safety and wellbeing – for example, a person experiencing homelessness may be at risk of committing offences (such as theft) as a result of financial insecurity. If such a provision is to be included, we recommend a more stringent test – for example, changing Clause 5(iii) to ‘is likely to commit a serious offence’ or ‘is likely to commit a violent offence which may endanger the safety of an individual or the community’;
- We recommend mandating the consideration of the factors outlined in Clause 13 for applicants who are under the age of 25, rather than solely for applicants under the age of 18 – acknowledging that young people (under 25) are also vulnerable within the criminal legal system;
- We recommend consideration of recommendations from other jurisdictions to ensure bail legislation does not negatively impact those who are experiencing vulnerability within the criminal legal system.

Discussed at Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, Final Report, Vol. 5, ‘Chapter 12 – The way forward: Children in youth detention’, pp81-84.

⁵² For example, see the findings of Tasmanian Law Reform Institute (2004) ‘Offending while on bail’ which do not recommend the imposition of more stringent, ‘reverse-onus’ tests.

- In relation to the safety and wellbeing of Aboriginal and Torres Strait Islander people (who continue to be overrepresented in the legal and detention system), we note the Victorian Aboriginal Legal Service (following the death of Veronica Nelson in custody in Victoria)⁵³ recommended amendments to the existing ‘unacceptable risk’ test to allow for bail to be granted ‘unless the prosecution shows that there is a specific and immediate risk to the safety of another person, a serious risk of interfering with a witness or a demonstrable risk that the person will flee the jurisdiction’.⁵⁴
- In relation to all applications for bail, decision-makers should be empowered to consider a person’s individual circumstances as part of the assessment to determine whether they should be granted bail (and alongside consideration of any ‘risk’ they may present). This could include adding additional provisions similar to section 3AAA of the *Bail Act 1977* (Vic) to be considered as part of any assessment of ‘risk’ (explored below). It could also include specific provisions for consideration by a bail decision-maker in relation to applicants who are Aboriginal and/or Torres Strait Islander (explored below).

The provisions of the Bill do not provide sufficient safeguards to protect Aboriginal and Torres Strait Islander individuals and communities

The *Bail Act 1977* (Vic) provides a non-exhaustive list of considerations that bail makers must take into account when making decisions about bail application of Aboriginal people. These provisions acknowledge the unique factors that contribute to the overrepresentation of Aboriginal people on remand, the distinct risks of harm and trauma that custody poses for Aboriginal people, and the exercise of Aboriginal cultural rights under the Victorian Human Rights Charter. These considerations *must* be applied in all bail determinations for Aboriginal adults and children made under the Victorian Bail Act, including ‘extending, granting, refusing or revoking bail; setting or varying conditions; considering whether a person has a reasonable cause for failing to answer bail.’⁵⁵ We note that the Victorian Government have published guidelines to assist bail makers to understand and apply these provisions in practice.⁵⁶

Importantly, the Victorian Government has also developed clear guidelines for bail decision-makers to support the consistent and informed application of these provisions in practice. Such legislative safeguards and judicial resources are critical to ensuring that bail decisions take into account the specific vulnerabilities of first peoples in contact with the criminal legal system. We strongly recommend that similar provisions are introduced and tailored to the Tasmanian context, in consultation with Tasmanian Aboriginal stakeholders.

⁵³ Coroner’s Court of Victoria at Melbourne (5 April 2023) Finding into death with inquest – inquest into the passing of Veronica Nelson COR 2020 0021.

⁵⁴ Known as ‘Poccum’s Law’, these recommendations can be found at VALS’ website: <https://www.vals.org.au/wp-content/uploads/2023/08/Pocccums-Law-August-2023.pdf>.

⁵⁵ Victorian Government, Department of Justice and Community Safety, (2023) [Bail considerations for Aboriginal people](#) .

⁵⁶ Ibid.

The provisions of the Bill do not provide sufficient safeguards for people with disability

People with disability are significantly overrepresented within the criminal legal system and experience heightened risks of violence, abuse, neglect and exploitation in criminal legal settings.⁵⁷ People with disability also experience increased discrimination and stigma as support needs are often overlooked and behaviours associated with the disability can be misinterpreted as non-compliance.⁵⁸

Recognising the complex relationship between disability and the criminal legal system, the Victorian Bill Act sets out provisions for ‘vulnerable adults’ who are defined as 18 years of age or over, and have a ‘cognitive, physical or mental health impairment that causes the person to have difficulty in – (a) understanding their rights; or (b) making a decision; or (c) communicating a decision.’⁵⁹ Further the Victorian legislation enables bail decision-makers to exercise discretion in considering the vulnerability of the person beyond the factors listed.⁶⁰ We strongly recommend that similar provisions be introduced in the Tasmanian context, alongside comprehensive support, training and resources for bail decision-makers to promote fair, safe and equitable outcomes.

The 2022 Parliamentary Committee Inquiry into Victoria’s Criminal Justice System made a range of recommendations to improve criminal legal responses to people with disability. Notably it recommended that the ‘Victorian Government conduct a trial screening program assessing all people entering incarceration—on remand or a custodial sentence—for physical, cognitive and intellectual disability, to inform the provision of reasonable adjustments and support in prison and following release.’ In addition, the Committee also recommended that the trial connect people with disability to social supports – including the NDIS – and facilitate adjustments so as to support access to and participation in rehabilitative programs.⁶¹ Enhanced screening mechanisms would provide bail decision-makers with critical information to inform bail decisions and sentencing proceedings, ensuring that individuals with additional vulnerabilities receive appropriate support and sentencing outcomes.⁶²

Additional support and reform is needed to ensure the bail system is fair and does not disproportionately impact those who already experience disadvantage within the legal system

TasCOSS supports reforms aimed at reducing the number of children and adults in the legal and detention systems and believes that any legislative reform relating to bail should be accompanied by additional legislative and policy changes. The need for broader reform to support changes to bail legislation, policy and practice has been highlighted in other systemic reviews in other jurisdictions; for example, a key recommendation from the Victorian inquiry into the criminal legal system was the development of

⁵⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020) [Issues Paper – Criminal justice system](#), p1.

⁵⁸ Parliament of Victoria, Legislative Council – Legal and Social Issues Committee (2022) [Inquiry into Victoria’s criminal justice system – Final Report](#), p206.

⁵⁹ *Bail Act 1977* (Vic), 3A AAAA (1).

⁶⁰ *Bail Act 1977* (Vic), 3A AAAA (2).

⁶¹ Parliament of Victoria, Legislative Council – Legal and Social Issues Committee (2022) [Inquiry into Victoria’s criminal justice system – Final Report](#) (2022), Recommendation 75, plviii.

⁶² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Criminal justice and people with disability, Final Report, [Vol. 8](#), p172.

specialist guidelines for bail decision-makers on how to appropriately consider and give weight to factors relating to a person's Aboriginality (as noted above).⁶³

TasCOSS supports the expansion of diversionary options for both children and adults, to reduce the number of people who are held on remand and increase opportunities to engage in community-based support programs to address the underlying drivers of criminal behaviour. In relation to children and young people in particular, we have previously highlighted the need for targeted strategies to reduce the number of youth prosecutions and have recommended the following:

- Increasing pre-charge diversionary measures and reducing the rates of arrest of young people – this could include changes to police decision-making processes, such as the model used in New Zealand, where police engage in consultation with a child's family and/or other supports before deciding whether to formally charge a child (which has resulted in significantly lower numbers of charges being laid against children);⁶⁴
- The development of specific caution and charging protocols for children in out-of-home care, to address the high rates of criminalisation of these children and ensure they are being offered opportunities for community-based rehabilitation;
- Removal of prohibited offences for pre-court diversion from the *Youth Justice Act 1997 (Tas)*;
- Measures to promote non-prosecutorial options within Tasmania Police;
- The development of specialist policing divisions or units to better support young people,⁶⁵ such as the New Zealand Police Youth Aid section;⁶⁶
- Additional legislative provisions to allow for review of early decisions (such as whether an informal or formal caution may have been appropriate) without the approval of the prosecutor or charging officer, to give magistrates and judges greater opportunities to proactively intervene in cases where they deem it appropriate for diversion to be offered;
- Increased diversionary programs (ideally offered by community organisations); and
- Greater support for young people who may struggle to meet attendance requirements or comply with programs.⁶⁷

We have previously highlighted the need for increased accountability in relation to police decision-making,⁶⁸ noting the high degree of discretion exercised by police and the potential impact of poor decision-making, particularly in relation to groups who are vulnerable to institutional and other abuse.⁶⁹

⁶³ Parliament of Victoria, Legislative Council – Legal and Social Issues Committee (2022) Inquiry into Victoria's criminal justice system – Final Report, pp471-473.

⁶⁴ For an overview of the New Zealand model, see Ministry of Justice (2013), 'Youth Crime Action Plan 2013 – 2023', New Zealand Government; anecdotal evidence about rates of youth being charged is also discussed here: [Lessons from NZ on what works to stop children and young people getting caught up in the criminal justice system – JYP Network](#).

⁶⁵ Victorian Aboriginal Legal Service (2021), 'Submission to the Inquiry into Victoria's Criminal Justice System', p12.

⁶⁶ For an overview of the policing practices in New Zealand, see Ministry of Justice (2013), 'Youth Crime Action Plan 2013 – 2023', New Zealand Government, pp21-27.

⁶⁷ See, for example, the case study of 'Trevor' found at Tasmania Legal Aid (2015), 'Children First: Children in the child safety and youth justice system', p15.

⁶⁸ For example, see TasCOSS (2025), Submission to Department of Justice, 'Police Powers and Responsibilities Act – Proposal Paper'.

⁶⁹ Australian Law Reform Commission (2017) Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report No 133, pp452-455.

We have recommended consideration of a police ombudsman or similar body to increase public confidence in and understanding of police decisions and duties.⁷⁰

Legislative reform relating to bail could also be supported by a broader review of offences to consider whether decriminalisation of certain offences may be appropriate – for example, a review of the existing legislative framework in relation to drug use and possession, to consider whether certain acts should be decriminalised, consistent with recent Tasmanian research and advocacy from community organisations.⁷¹

TasCOSS has frequently heard from member organisations who are concerned about judicial attitudes and opinions which may be inconsistent with community awareness and understanding of social issues, such as family and sexual violence. This is consistent with recent research findings, with one study noting ‘affirmative consent reforms in Australia, including Tasmania, have proved to be relatively ineffective as a catalyst for changing attitudes and beliefs in society’,⁷² highlighting the need for further education and training across agencies (including police and the courts). Inquiries conducted in other jurisdictions have also highlighted the need for expanded training and education to ensure judicial officers and bail decision-makers are able to make decisions which are culturally aware and trauma-informed, particularly in relation to groups who are vulnerable within the legal system, such as people with disability, Aboriginal people and children and young people (as outlined above). The need for a diverse judiciary which is reflective of the needs of the community was also recognised in the recent Victorian inquiry into the criminal legal system,⁷³ which also made specific findings and recommendations relating to the recruitment and training of judicial officers.⁷⁴

Finally, bail and other reform would be greatly assisted by the expansion of funding and support for specialist, community-based organisations who provide services to people in the community (including bail support services). This includes additional funding for organisations who support communities in the

⁷⁰ TasCOSS (2025), Submission to Department of Justice, ‘Police Powers and Responsibilities Act – Proposal Paper’, p11 – this is consistent with recommendations from other jurisdictions: see Yoorrook Justice Commission (2023) ‘Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems’ p21. For information on the Police Ombudsman in Northern Ireland, see <https://www.policeombudsman.org/>.

⁷¹ For example, Anglicare Tasmania, Social Action Research Centre (2023) [Action for a healthier community: an effective response to illicit drugs](#), provides an evidence-based for the decriminalisation of possession and personal use of drugs; Alcohol, Tobacco and other Drugs Council Tasmania (2022) [Decriminalising personal drug use, position paper](#).

⁷² Monica Otlowski, ‘A Critical Assessment of Consent to Sexual Intercourse: Is the Law at Odds with Current Realities?’ (undated), University of Tasmania, 4-5, accessed at <https://www.lawreform.justice.nsw.gov.au/Documents/Current-projects/Consent/Preliminary-submissions/PCO45.pdf>.

⁷³ Parliament of Victoria, Legislative Council – Legal and Social Issues Committee (2022) Inquiry into Victoria’s criminal justice system – Final Report.

⁷⁴ For example:

Recommendation 98: *In the development and implementation of a recruitment process for judicial appointments, the Victorian Government should:*

- establish processes that actively promote diversity in the judiciary
- consider ways to identify and engage specific cohorts which are underrepresented in the judiciary with a view of recruiting them into positions where appropriate, including Aboriginal and Torres Strait Islander peoples and culturally and linguistically diverse communities
- collect and make public data on the diversity of applications and recommendations for judicial office

‘social determinants of justice’,⁷⁵ such as housing support, AOD services and family and sexual violence support services. It also includes greater funding for bail and other community-based, non-statutory support services (particularly those offered by specialist organisations, such as Aboriginal community controlled organisations), as well as careful consideration of justice reinvestment options.⁷⁶

⁷⁵ McCausland, R. and Baldry, E. (2023) “Who does Australia Lock Up? The Social Determinants of Justice”, *International Journal for Crime, Justice and Social Democracy*, 12(3), pp. 37-53.

⁷⁶ For a report outlining justice reinvestment options for Tasmania, see Noetic Solutions Pty Ltd (2016), ‘Custodial Youth Justice Options Paper: Report for the Tasmanian Government Department of Health and Human Services’, p79. For a general overview of existing justice reinvestment initiatives, see Allison, F (2022), ‘Redefining Reinvestment: An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW’, *Just Reinvest NSW*, accessed at <http://www.justreinvest.org.au/wp-content/uploads/2022/10/JRNSW-I-Reinvestment-Forum-I-Report.pdf>.

Recommendations

While TasCOSS does support (in principle) those provisions of the Bill which relate to COI recommendations, we are concerned that the overall impact of the Bill may result in outcomes which undermine the Government's commitments in improving outcomes through youth justice reform and the full implementation of all COI recommendations.

We therefore make the following recommendations:

- The Bill should be withdrawn until a full review of current issues related to bail and remand in Tasmania can be completed – this review should incorporate feedback previously provided by community and other stakeholders, as well as a review of recent inquiries and consultations in other Australian jurisdictions;
- If legislative reform in relation to bail is to be enacted, we strongly recommend consideration of the following key principles:⁷⁷
 - o There should be a clear presumption in favour of bail for all offences; To satisfy a bail decision-maker that bail should not be granted, the prosecution should be required to establish there is a specific and immediate risk to the safety of another person, a serious risk of interfering with a witness or a demonstrable risk that the person will flee the jurisdiction; and
 - o There should be a specific provision prohibiting the refusal of bail in situations where an applicant is unlikely to receive a term of imprisonment if they were to be sentenced for a bail offence (either due to the nature of the offending, or due to the personal circumstances of the applicant).
 - o Bail decision-maker must consider relevant principles of youth justice when making decisions about a child or young person's bail application.
 - o Children should only be remanded in 'exceptional circumstances' and as a matter of last resort.
- If legislative reform in relation to bail is to be enacted, we strongly recommend consideration of the following provisions to provide protections for vulnerable people:
 - o Amend the factors outlined in Clause 13 for applicants who are under the age of 25, to recognise that those under 25 are also vulnerable within the criminal legal system.
 - o Conduct a comprehensive review of recommendations from other jurisdictions who have undergone bail reform to ensure bail legislation does not heighten risks for those who are vulnerable within the criminal legal system.
 - o Develop and introduce legislative provisions such as those within the Bail Act 1977 (Vic) to safeguard Aboriginal people in contact with the criminal legal system, in consultation with Tasmanian Aboriginal stakeholders.

⁷⁷ Adapted from Schetzer, L & Sotiri, M (2024) 'Reforming Bail and Remand', Justice Reform Initiative, Australia, accessed at [Position Papers - Justice Reform Initiative | Jailing Is Failing](#).

- Develop and introduce provisions for ‘vulnerable adults’ such as those within the Bail Act 1977 (Vic).
 - Ensure legislative reform is accompanied by comprehensive support, training and resources for bail decision-makers to promote fair, safe and equitable outcomes.
- Bail law reform should be accompanied by reforms in other areas, including:
- Expansion of diversionary options (for children and adults) to reduce the number of people who are held on remand;
 - Introduction of review mechanisms to increase transparency and accountability around police decision-making (including decisions relating to bail);
 - Consideration of decriminalisation of certain offences (for example, drug possession and use offences) to reduce the number of people coming into the legal and detention systems;
 - Increased judicial training and awareness in relation to key issues impacting bail decisions; and
 - Expansion of funding and support for specialist, community-based organisations to expand services provided to people in the community (including bail support services).