Briefing Paper: *Bail Amendment Bill 2023*

The *Bail Amendment Bill 2023* ("the bill") was tabled in Parliament on 15 August 2023, in response to the Coronial Inquest into the passing of Veronica Marie Nelson ("Veronica's Inquest").

Veronica was a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, who passed away at the Dame Phyllis Frost Centre on 2 January 2020, after days of crying out for help. Victoria's unfair and discriminatory bail laws put Veronica in prison for minor shop-lifting and failure to appear on bail. Veronica passed away in that prison, alone and isolated from culture and support.

Veronica's loved ones have called for urgent changes to the bail laws and have asked that these reforms are referred to as Poccum's Law. Poccum was Veronica's nickname, based on the way she pronounced possum as a child.

The advocacy of Veronica's family has resulted in some significant wins, including the removal of two bail offences, strengthening of special considerations for Aboriginal people and changes to the reverse onus provisions. However, the Government's bill does not implement Poccum's Law and does not even come close to implementing the coronial recommendations from Veronica's Inquest.

This briefing outlines amendments to the bill which would ensure that bail hearings are fair, remand is only used as a last resort, and what happened to Veronica never happens again.

Contents

Summary of proposed amendments to the Bill

Priority amendments

1. In accordance with Poccum's Law, the bill should repeal the presumption against bail in its entirety, including Schedules 1 and 2, the "exceptional circumstances" test (section 4A), the "compelling reasons" test (section 4C) and section 4AA.
2. The bill must include a requirement for statutory review, within 12 months of the reforms coming into operation.

Additional amendments

3. The bill should come into operation within 3 months after being tabled in Parliament.
4. The double uplift provision in section 4AA(2)(c) should be repealed in accordance with coronial Recommendation 4.1; it should not be expanded under any circumstances.
5. If section 4AA(2)(c) is retained, the bill should also clarify that "at large awaiting sentence" under section 4AA(2)(c) does not include someone who is released on a sentence deferral under Section 83A of the *Sentencing Act.*
6. In accordance with Poccum's Law, the bill must include a robust prohibition on remanding someone who is unlikely to receive a custodial sentence.
7. The bill should include a legislative requirement that summary offences and fine-only offences must proceed by way of summons or the notice to appear process.
8. The "unacceptable risk" test in section 4E(1) should be amended to implement Poccum's Law. Bail should be granted unless the prosecution can show that there is: (i) a specific and immediate risk to the safety of another person; (ii) a serious risk of interfering with a witness; or (iii) a demonstrable risk that the person will flee the jurisdiction.
9. The bill should repeal the presumption against bail for children, with no exceptions.
10. The presumption against bail should not apply to historical offences corresponding to offences in Schedules 1 and 2.
11. The proposed reforms to Section 3A should be strengthened by:

(a) Incorporating authoritative case law on Section 3A which provides that: where incarceration of an Aboriginal person can be avoided, it should be;[1] and that in a marginal case, Aboriginality should be considered in favour of granting bail.[2]

(b) Explicitly referencing "systemic racism" in proposed Section 3A(1)(a).

(c) Requiring that if a bail decision maker (**BDM**) refuses bail to an Aboriginal person, they must be required to record the matters that they took into account in writing. Audio visual and audio recordings of an oral statement do not provide an adequate safeguard.

(d) If the proposed Section 3A(5)(b)(i) is retained, the BDM must be required to make the audio visual or audio recording of the statement available to the applicant.

12. The proposed amendment to Section 5AAA regarding Aboriginal bail support services should be retained and accompanied by Government investment in Aboriginal bail support services, including residential bail support services.

13. The proposed reforms to Section 3B should be strengthened in the following way:

(a) In accordance with Recommendation 10(a) from *Our Youth, Our Way* and international standards, remand of children under the age of 16 years should be prohibited.

(b) BDMs should also be required to consider the need to support the social and emotional wellbeing of the child" and the need to "promote the healing of the child.

(c) Similar to the proposed Section 3A(5), if a BDM refuses bail to a child, they should be required to explain, and record in writing, how they took into account the factors in Section 3B.

14. Similar to the proposed Section 3A(5), if a BDM refuses bail to a child or adult, they should be required to explain, and record in writing, how they took into account the surrounding circumstances in Section 3AAA.

15. In accordance Poccum's Law, and Coronial Recommendations 4.5, 4.6 and 4.7, the bill must repeal all three bail offences.

16. The bill should implement coronial Recommendation 4.8.1, so that the "new facts and circumstances" test does not apply to vulnerable applicants, including Aboriginal applicants, children and vulnerable adults.

[1] *Re Hooper (No 2) [2021] VSC 476*, [30](c).
[2] *Re Chafer-Smith; An application for Bail* [2014] VSC 51 [27].

17. The bill should be amended to implement coronial Recommendation 4.13, so that BDMs are required to make all necessary enquiries about (and note on the remand warrant where necessary) any custody management issues.

18. The bill must include legislative requirements for all BDMs – courts, police and bail justices – to collect and regularly publish disaggregated data on bail applications, bail outcomes and bail offences.

19. The bill should clarify the power of police to grant bail, including when they are obliged to consider a bail application, and when it would be more appropriate to proceed by way of summons.

20. The bill should be amended to prohibit the use of sureties/bail guarantees for children.

Removing Items 1 and 30 from Schedule 2

The *Bail Act 1977* provides that there is a presumption against bail for anyone charged with a Schedule 1 or 2 offence. For these offences, the burden of proof is reversed, so that the person applying for bail must prove why they should get bail (also referred to as reverse onus).

The bill removes items 1 and 30 from Schedule 2, which narrows the scope of the reverse onus provisions.

Currently, under item 1 Schedule 2, individuals are subject to reverse onus if they are charged with an indictable offence that is alleged to have been committed while the accused was: (a) on bail for another indictable offence; (b) subject to a summons to answer to a charge for another indictable offence; (c) at large awaiting trial for another indictable offence; (d) on a CCO for another indictable offence or while otherwise serving a sentence for another indictable offence; or (e) on parole. Item 1, Schedule 2 will be removed.

Under item 30 Schedule 2, individuals are also subject to reverse onus if they are charged with a bail offence.

This proposed reform aligns with coronial Recommendations 4.2 and 4.3 from Veronica's Inquest. However, it does not implement coronial Recommendation 4.1, that the Government should urgently repeal the double uplift provisions in section 4AA(2)(c), which are incompatible with section 21(6) of the *Victorian Charter of Human Rights and Responsibilities* ("the Charter").

Proposed amendments

Poccum's Law calls for the Government to repeal the presumption against bail in its entirety. The presumption against bail is contrary to international human rights law and the Charter, which provide that individuals are innocent until proven guilty, and any restrictions on the right to liberty must be for a legitimate purpose, proportionate and necessary in all the circumstances. Detention of children must be a last resort, and pre-trial detention of adults must be the exception rather than the rule.

The bill should repeal the presumption against bail in its entirety, including Schedules 1 and 2, the "exceptional circumstances" test (section 4A), the "compelling reasons" test (section 4C) and section 4AA.

Statutory review of the reforms

When the 2017/18 bail reforms were passed, there was no statutory mechanism for legislative review. Despite evidence on disproportionate impacts and skyrocketing remand rates, the Government refused to act until the Veronica's Inquest revealed Veronica's horrific experience with both the bail and corrections systems.

Proposed amendment

The bill must include a requirement for statutory review, within 12 months of the reforms coming into operation. The Government must stop its harmful practice of gaslighting advocates and Aboriginal Communities, until someone dies in custody.

There have been three bail bills passed by the Victorian Parliament since 2013 and the Government has conceded there were mistakes in all of them. Given this track record and the fact the Government has included a number of novel provisions - including those relating to preventing someone from being remanded when they are unlikely to receive a prison sentence - it would be prudent to ensure the effect of the bill can be reviewed and that the intent of the bill has been achieved.

Commencement of the Act

The bill will come into effect on 25 March 2024 (just over 7 months after the bill is tabled).

At Veronica's Inquest, the Coroner found that the *Bail Act* discriminates against Aboriginal people and recommended that the Act be reviewed to repeal any provisions that disproportionately affect Aboriginal people (Recommendation 3).

Every day that the bail reforms are delayed, is another day that Aboriginal families and communities are being destroyed by the harsh bail laws.

Between 2009-2010 and 2019-2020, the number of Aboriginal women entering prison on remand increased by 440%, compared to a 210% increase for the total prison. In January 2022, 71% of Aboriginal women in prisons in Victoria had not been sentenced. As at June 2023, 48% of Aboriginal people in Victorian prisons were on remand, compared to 42% of non-Aboriginal people.

Proposed amendment

To ensure that what happened to Veronica never happens again, the bail reforms must be implemented urgently. The bill should come into operation within 3 months after being tabled in Parliament.

Double uplift provision

Contrary to coronial Recommendation 4.1, the bill expands the double uplift provision in section 4AA(2)(c) so that the "exceptional circumstances" test would also apply to adults alleged to have committed an offence:

- while the adult was at large awaiting sentence for a Schedule 1 or 2 offence; or
- while the adult was on remand for a Schedule 1 or 2 offence.

The bill clarifies that "at large awaiting sentence" under section 4AA(2)(c) does not include someone who is released on an adjournment under Sections 72 or 75 of the *Sentencing Act 1991.*

Proposed amendments

The double uplift provision in section 4AA(2)(c) should be repealed in accordance with coronial Recommendation 4.1; it should not be expanded under any circumstances.

If section 4AA(2)(c) is retained, the bill should also clarify that "at large awaiting sentence" under section 4AA(2)(c) does not include someone who is released on a sentence deferral under Section 83A of the *Sentencing Act.*

Offences for which bail cannot be refused

The bill introduces Section 4AAA, which seeks to prevent detention of people who are unlikely to receive a custodial sentence. Section 4AAA provides that bail cannot be refused if:

(i) the person is only accused of offences under the *Summary Offences Act 1966* (**SOA**) which are not referred to in Schedule 3 (including obscene language, disorderly conduct, begging, wilful destruction/damage of property);[3] and

(ii) there is no risk that the person will commit a terrorism offence; and

(iii) the person has not had bail revoked previously in respect of any of the same offences.

The bill also amends Section 12B so that the same restrictions apply to a court when someone is appearing subject to a summon to answer to a charge.

[3] Offences that are in the SOA and not in Schedule 3 also include posting a placard, defacing road/bridge/footpath/building, lighting a fire in the open air.

As a result of the 2017/18 reforms, many people are locked up for offences which would not attract a custodial sentence if the person was proven guilty. Veronica was locked up for minor shop-theft and failing to answer bail.

Veronica's tragic passing has finally pushed the Government to consider bail reform. Yet Veronica's experience of the bail system is not unique. Every day, we see clients locked up for similar low-level non-violent offences, such as shoplifting and bail offences.

Many women on remand are victim-survivors of family violence, and many have dependent children as well as caring responsibilities for Elders.

Proposed amendment

Poccum's Law calls on the Government to prohibit detention of someone who is unlikely to receive a custodial sentence. The proposed Section 4AAA and changes to Section 12B would not achieve this key ask for the following reasons:

- There are many offences under the *Crimes Act 1958*, e.g. theft (shop-lifting) which are minor offences that do not normally attract a custodial sentence; these offences will not be covered by the reform.
- There are several offences that exist under both the *Crimes Act 1958* and the SOA (e.g. wilful damage of property). The proposed reform creates a risk that Victoria Police will charge someone with an offence under the *Crimes Act 1958* (rather than the SOA), to avoid the proposed restriction on refusing bail.
- The restriction on refusing bail does not apply to someone who has previously had bail revoked for the same offence. There is a risk that Victoria Police will seek to circumnavigate the reform, by seeking to have bail revoked. Additionally, the rigid approach to excluding a person who has previously had bail revoked for the same offence, fails to recognise the various reasons why bail may have been revoked or the period of time since the revocation.

In accordance with Poccum's Law, the bill must include a robust prohibition on remanding someone who is unlikely to receive a custodial sentence. Additionally, the bill should include a legislative requirement that summary offences and fine-only offences must proceed by way of summons or the notice to appear process.

Surrounding circumstances

The bill amends Section 3AAA, so that as part of the surrounding circumstances, BDMs must take into account "whether, if the accused were found guilty of the offence with which the accused is charged, it is likely: (i) that the accused would be sentenced to a term of imprisonment; and (ii) if so, that the time the accused would spend remanded in custody if bail is refused would exceed that term of imprisonment."

This is a new factor in Section 3AA which seeks to further prevent detention of someone who is unlikely to receive a custodial sentence.

The bill also expands the "special vulnerabilities" in Section 3AAA(1)(h) to include: (i) being an Aboriginal person; or (ii) being a child; or (iii) experiencing any ill health, including mental illness; or (iv) having a disability, including physical disability, intellectual disability and (v) cognitive impairment.

Proposed amendments

Poccum's Law calls for a prohibition on remanding someone who is unlikely to receive a custodial sentence. The proposed Section 3AAA(aa) falls short of Poccum's Law as it is not a binding legislative requirement. As above, the bill should include a robust legislative prohibition on remanding someone who is unlikely to receive a custodial sentence.

Similar to the proposed Section 3A(5), if a BDM refuses bail to a child or adult, they should be required to explain, and record in writing, how they took into account the factors in Section 3AAA.

Unacceptable risk test

The bill amends the "unacceptable risk" test in Section 4E(1)(a)(i), so that the prosecution must show that there is an unacceptable risk that the person will:

(i) endanger the safety or welfare of any other person, whether by committing an offence that has that effect, or by any other means;

(ii) interfere with a witness or otherwise obstruct the course of justice in any matter; or

(iii) fail to surrender into custody in accordance with the conditions of bail.

This proposed reform responds to Recommendation 4.11 from the Veronica Nelson Inquest, which provided that section 4E(1)(a)(i) should be urgently amended to narrow the scope of "commit offence while on bail."

Proposed amendments

The bill does not align with Poccum's Law, which calls for a narrow "unacceptable risk" test. A person should be granted bail unless the prosecution can show that there is: (i) a specific and immediate risk to the safety of another person; (ii) a serious risk of interfering with a witness; or (iii) a demonstrable risk that the person will flee the jurisdiction.

The proposed third limb of the "unacceptable risk" test (s. 4E(1)(a)(iii)) prevents access to bail if there is an unacceptable risk that a person may not attend court. There are many reasons why someone may not be able to attend court, including reasons relating to social disadvantage, health concerns, fear of courts and/or police, court delays, and cultural obligations.

Veronica was locked up because she failed to demonstrate "exceptional circumstances." However, she had previously failed to attend court for different reasons, including illness in her family. This did not make Veronica a danger to the community. People in Veronica's position who simply fail to attend Court, should never be seen as presenting an 'unacceptable risk.'

The "unacceptable risk" test in section 4E(1) should be amended to implement Poccum's Law.

Bail tests for children

The bill removes the presumption against bail for children, except if:

- the child is charged with the murder, terrorism offences, manslaughter, homicide, culpable driving causing death, arson causing death;
- the child has a terrorism record;
- the court determines that there is a risk that the child will commit a terrorism offence.

Proposed amendment

In 2017, the Commission for Children and Young People (CCYP), in *Our Youth, Our Way*, recommended that children must be excluded from the presumption against bail, without exceptions (Recommendation 57). This is the only way to genuinely comply with the requirement under international human rights law, that detention of children is a measure of last resort.

The bill should be repeal the presumption against bail for children, with no exceptions.

Historical offences corresponding to Schedules 1 and 2

The bill amends Schedules 1 and 2 to provide that any historical offence which consist of elements that constitute an offence under Schedules 1 or 2, will be covered under each respective Schedule.

Proposed amendments

Poccum's Law calls on the Government to repeal the presumption against bail in its entirety. The presumption against bail should not apply to historical offences corresponding to offences in Schedules 1 and 2.

Considerations for Aboriginal people

Section 3A of the *Bail Act* provides that in making a decision under the Act, bail decision makers (**BDMs**) must take into account any issues arising due to the person's Aboriginality, including: (a) the person's cultural

background, including the person's ties to extended family or place; and (b) any other relevant cultural issue or obligation.

Despite this legal requirement, the police did not ask Veronica any questions about her Aboriginality, which was not recorded on the police remand summary. During her bail hearing at the Melbourne Magistrates Court, Veronica's Aboriginality was not mentioned once.

The bill makes four substantive changes to strengthen Section 3A:

1. BDMs must take into account an expanded list of factors when making a decision under the Act in relation to an Aboriginal person (see further below).
2. BDMs are required to have reference to evidence and information that is reasonably available at the time, including information provided by family and community, as well as providers of Aboriginal bail support services.
3. BDMs are required to take into account the expanded list of factors, regardless of whether the person's connection to their Aboriginality has been intermittent throughout their life, or if they have only recently connected to their culture.
4. If the BDM is refusing bail to an Aboriginal person, they must identify which factors they took into account, either orally (and ensure that an audio visual or audio recording of the statement is made available) or in writing.

Additional factors in Section 3A

The bill would amend Section 3A to include the following factors:

(a) the historical and ongoing discriminatory systemic factors that have resulted in Aboriginal people being over-represented in the criminal justice system, including in the remand population;

(b) the risk of harm and trauma that being in custody poses to Aboriginal people;
(c) the importance of maintaining and supporting the development of the person's connection to culture, kinship, family, Elders, country and community;
(d) any issues that arise in relation to the family person's history, culture or circumstances, including the following—
    (i) the impact of any experience of trauma and intergenerational trauma, including abuse, neglect, loss and family violence;
    (ii) any experience of out of home care, including foster care and residential care;
    (iii) any experience of social or economic disadvantage, including homelessness and unstable housing;
    (iv) any ill health the person experiences, including mental illness

(v) any disability the person has, including physical disability, intellectual disability and cognitive impairment;

(vi) any caring responsibilities the person has, including as the sole or primary parent of an Aboriginal child;

(e) any other relevant cultural issue or obligation.

Proposed amendments

The proposed reforms align with Recommendation 4.9 from Veronica's Inquest, that Section 3A be amended to include more guidance on the procedural and substantive matters that must be considered by BDMs. The Coroner also recommended that any changes to Section 3A should be consistent with Aboriginal self-determination (Recommendation 4.10).

The proposed changes to Section 3A will improve understanding and application of this important legal requirement. However, the reforms should be strengthened in the following ways:

- Authoritative case law on Section 3A provides that: where incarceration of an Aboriginal person can be avoided, it should be;[4] and that in a marginal case, Aboriginality should be considered in favour of granting bail.[5] This guidance on how Section 3A should be applied must be included in the proposed reforms.
- The proposed Section 3A(1)(a) recognises discriminatory systemic factors that have resulted in Aboriginal people being over-represented in the criminal legal system. Section 3A(a) should specifically recognise "systemic racism."
- The proposed Section 3A(5) should be strengthened so that if a BDM refuses bail to an Aboriginal person, they must be required to record the matters that they took into account in writing. Audio visual and audio recordings of an oral statement are much harder to access by legal representatives and do not provide an adequate safeguard.
- If the proposed Section 3A(5)(b)(i) is retained, the BDM must be required to make the audio visual or audio recording of the statement available to the applicant.

[4] *Re Hooper (No 2) [2021] VSC 476*, [30](c).

[5] *Re Chafer-Smith; An application for Bail* [2014] VSC 51 [27].

Conduct conditions for Aboriginal people on bail

The bill amends Section 5AAA to provide that if a BDM imposes a condition on bail that an Aboriginal person attend and participate in a bail support service, they should take into account that an Aboriginal bail support service is preferable, where that is appropriate, and where such services are available.

Proposed amendment

This is a positive reform. It should be accompanied by Government investment in Aboriginal bail support services, including residential bail support services.

Considerations for children

The bill expands Section 3B, which requires BDMs to take into account a range of factors when making a decision in relation to a child. Section 3B would be expanded significantly, from 7 to the following 13 factors:

(a) the child's age, maturity and stage of development at the time of the alleged offence
(b) the need to impose on the child the minimum intervention required in the circumstances, with the remand of the child being a last resort;
(c) the presumption at common law that a child who is 10 years of age or over but under 14 years of age cannot commit an offence;
(d) the need to preserve and strengthen the child's relationships with—
    (i) the child's parents, guardian and carers; and
    (ii) other significant persons in the child's life;
(e) the importance of supporting the child to live at home or in safe, stable and secure living arrangements in the community;
(f) the importance—
    (i) of supporting the child to engage in education, or in training or work; and
    (ii) of that engagement being subject only to minimal interruption or disturbance;
(g) the need to minimise the stigma to the child resulting from being remanded;
(h) the fact that time in custody has been shown to pose criminogenic and other risks for children, including—
    (i) a risk that the child will become further involved in the criminal justice system; and
    (ii) a risk of harm;
(i) the need to ensure that the conditions of bail—
    (i) are no more onerous than is necessary; and
    (ii) do not constitute unfair management of the child;

(j) the fact that some cohorts of children, including the following cohorts, experience discrimination resulting in that cohort's over-representation in the criminal justice system—
    (i) Aboriginal children;
    (ii) children involved in the child protection system;
    (iii) children from culturally and linguistically diverse backgrounds;
(k) whether, if the child were found guilty of the offence charged, it is likely—
    (i) that the child would be sentenced to a term of imprisonment; and
    (ii) if so, that the time the child would spend remanded in custody if bail is refused would exceed that term of imprisonment;
(l) any of the following issues that arise—
    (i) any ill health the child experiences, including mental illness;
    (ii) any disability the child has, including physical disability, intellectual disability, cognitive impairment and developmental delay;
    (iii) the impact on the child, and on the child's behaviour, of any experience of abuse, trauma, neglect, loss, family violence or child protection involvement, including removal from family or placement in out of home care;
(m) any other relevant factor or characteristic.

Proposed amendments

The proposed reform largely implements Recommendation 58 from the CCYP Inquiry, *Our Youth, Our Way.*

To further strengthen the proposed changes to Section 3B, and fully implement Recommendation from *Our Youth, Our Way*, the bill should amend Section 3B to include the following:

- In accordance with Recommendation 10(a) from *Our Youth, Our Way* and international standards, remand of children under the age of 16 years should be prohibited.
- BDMs should be required to consider the need to support the social and emotional wellbeing of the child" and the need to "promote the healing of the child.
- Similar to the proposed Section 3A(5), if a BDM refuses bail to a child, they should be required to explain, and record in writing, how they took into account the factors in Section 3B.

Repeal of bail offences

The bill repeals the two bail offences that were introduced in 2013: contravening certain conduct conditions (s. 30A) and committing an indictable offence whilst on bail (s. 30B). The bill does not repeal the bail offence of failing to answer bail (s. 30).

Proposed amendments

Veronica's family have advocated for the removal of bail offences, and the proposed repeal of sections 30A and 30B is a significant win. However, the proposed reform only goes part way in implementing the Coroner's recommendation that the Government urgently repeal all three bail offences (Recommendations 4.5, 4.6 and 4.7).

Bail offences are harmful and serve no purpose other than to further criminalise people who are already criminalised. The bail offence of failing to answer bail has a disproportionate impact on Aboriginal people. This is one of the offences which Veronica was charged with, which resulted in her being locked up for minor non-violent offending.

The bill must repeal all three bail offences, in accordance Poccum's Law and the Coroner's recommendations.

New facts and circumstances test

Under section 18AA, anyone seeking to make a second or subsequent bail application must demonstrate that there are "new facts and circumstances" which warrant the application being heard.

In Veronica's Inquest, the Coroner recommended that the "new facts and circumstances test" should not apply to second bail applications (Recommendation 4.8.1), and should never apply to vulnerable applicants, including Aboriginal applicants, children and vulnerable adults (Recommendation 4.8.2).

The bill implements coronial Recommendation 4.8.1, so that the new facts and circumstances test would not apply to second bail applications, however it does not implement coronial Recommendation 4.8.1. The new facts and circumstances test will continue to apply to third and subsequent bail applications.

Proposed amendment

The bill should implement coronial Recommendation 4.8.1, so that the new facts and circumstances test does not apply to vulnerable applicants, including Aboriginal applicants, children and vulnerable adults.

Access to bail should always be able to be reviewed, given that remand is an extreme restriction on a person's right to liberty when they are not sentenced.

Custody Management Issues

In Veronica's Inquest, the Coroner recommended that the BDMs must be required to make all necessary enquiries about (and note on the remand warrant where necessary) any custody management issues (Recommendation 4.13).

Custody management issues include any issues relating to the person's health and wellbeing whilst in custody, for example, health concerns (including mental health) and medication.

Proposed amendment

The bill should be amended to implement coronial Recommendation 4.13, so that BDMs are required to make all necessary enquiries about (and note on the remand warrant where necessary) any custody management issues.

Regular and transparent bail data

The Coroner recommended that both the Chief Commissioner of Police and the Magistrates Court of Victoria should collect and make publicly available, data on people charged with offences to which the "exceptional circumstances" and "compelling reasons" tests apply (Recommendations 12 and 15).

Currently, there is limited publicly available data on bail, including bail applications, outcomes, and bail offences. The lack of transparency regarding the impact of the 2017/18 bail reforms has made it easier for the Government to deny and ignore the harmful impacts of the bail laws.

Proposed amendment

The bill must include legislative requirements for all BDMs – courts, police and bail justices – to collect and regularly publish disaggregated data on bail applications, bail outcomes and bail offences.

Clarify the power of police and bail justices to grant bail

Both Victoria Police and Bail Justices play an important role in reducing the number of people on remand. Victoria Police make the vast majority of bail decisions. Yet we frequently see police officers who remand clients because they do not understand which bail test applies.

Veronica's Inquest revealed concerning practices regarding police bail, including evidence of an "unwritten internal policy" of automatically refusing bail to anyone who falls under the reverse onus test, even though legally there is a requirement to consider bail in these circumstances.

The Coroner found that the police officer failed to appropriately exercise his discretion under the Act, which infringed Veronica's rights not to be subjected to arbitrary detention (s. 21(2) Charter) and not to be automatically detained in custody (s. 21(6) Charter).

It is critical that people have access to bail at the earliest opportunity, to avoid the disruption and harm that is caused by remand. It is not acceptable that individuals have their right to liberty restricted, simply because the legislation is too complex for police and bail justices to understand.

Better bail decision by Victoria Police and Bail Justices will also reduce the number of cases going to the courts and allow for more considered decision making about complex cases.

Proposed amendment

The bill should clarify the power of police to grant bail, including when they are obliged to consider a bail application, and when it would be more appropriate to proceed by way of summons.

Remove sureties for children

Under Section 5AAB of the *Bail Act*, BDMs can impose a bail condition that requires the applicant to pay an amount of money to access bail ("surety").

Although it is very rare, sureties are sometimes used in the Childrens' Court for children to access bail. This is entirely inappropriate as it can impose financial strain on children and their families.

Proposed amendment

The bill should be amended to prohibit the use of sureties/bail guarantees for children.