

Bail Saves Lives

Poccum's Law is the Way Forward



VALS Briefing: *Bail Further Amendment Bill 2025*

Introduction

The *Bail Further Amendment Bill 2025* (Bill) was introduced to Parliament on 30 July 2025. VALS, alongside over 100 other Aboriginal, social, family violence and legal organisations, stands firmly opposed to this Bill.

Tranche One of the government's 'tough' bail laws, which came into effect in March 2025, have already significantly increased the number of Aboriginal people on remand, depriving them of access to the self-determined, community-led supports that actually address alleged offending behaviour. This Bill will further exacerbate the harms that vulnerable communities are already experiencing by widening the carceral net even further. Locking people up is not the way to achieve community safety.

Any bail reform must align with Poccum's Law.

The Bill grossly exacerbates the risk of human rights abuses and deaths in custody. It would make Victoria's bail laws as dangerous as they were when Veronica Nelson passed away. Victoria's previous bail laws were described by Coroner McGregor as an 'unmitigated disaster' that directly led to the death of proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, Veronica Nelson, who died in a cold prison cell after her calls for medical help went unanswered.

We were promised that cost-of-living and poverty related charges, as well as women affected by family violence, would not be caught up in these "tough" new bail tests. The Bill does not achieve this. Now, vulnerable children and adults charged with non-violent crimes can be required to overcome a tougher bail test than a person charged with murder and rape. The new laws will push people into prison who should not be there and will risk their lives in the process.

The purpose of this briefing is to articulate the devastating impacts of this Bill and outline key amendments that would help reduce the harm that will be caused to Aboriginal communities.

Granting bail saves lives.

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1. Summary of priority amendments to the Bill

A. Priority Amendments

Amendment 1: Amend Clause 5 by clarifying aggravated burglary with intent to steal and aggravated burglary with intent to damage are not included in the list of offences subject to the 'high degree of probability' test in proposed new s 4F(1)(a)(ii) and s 4F(1)(a)(v) of the Bail Act.

Amendment 2: Amend Clause 5 so new s 4F(1)(a) reads: 'who is accused of having committed any of the following offences and where the accused is alleged to have used force or violence (either actual or apprehended) against another person in committing the following offences —'.

Amendment 3: The Bill should amend the Bail Act to make it clear in its flow charts or in an explanatory note that where the 'show compelling reason' test applies and someone is unlikely to receive a term of imprisonment, then compelling reasons exist, and the person should be granted bail.

Amendment 4: Amend Clause 12 so the following offences in Schedule 5 are moved to Schedule 4 and are not subject to a value amount threshold:

- S 74 (Theft) and s 197 (Damage property) of the *Crimes Act*.
- S 73 (Drug possession) of the *Drugs, Poisons and Controlled Substances Act*.

Amendment 5: If Amendment 4 is not implemented, then Clause 12 should be amended so the value amounts applicable for charges contrary to s 74 (Theft) and s 197 (Damage property) in new Schedule 4 is \$50,000.

Amendment 6: Amend Clause 12 so the following offences are added to Schedule 4:

- S 7(1) (Carrying dangerous article) and s 7(1A) (Carrying dangerous article near licensed premise) of the *Control of Weapons Act*.
- S 76 (Burglary) of the *Crimes Act*.
- S 71AC, s 71A, s 71B (1) and (2) of the *Drugs, Poisons and Controlled Substances Act*.

Amendment 7: The Bill should amend the guiding principles in s 1B of the Bail Act to include "taking into account issues that arise due to a person's Aboriginality under section 3A".

Amendment 8: If Amendment 7 is not implemented, then the Bill should amend s 3A of the Bail Act to include an explanatory note that the obligation to consider s 3A is not limited or diminished by new s 4F or 4AA(4A).

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Amendment 9: The Bill should amend s 3AAA(1)(h)(iv) of the Bail Act to include “*neurodivergent disabilities*”.

Amendment 10: The Bill should amend s 3AAA(1) to require a bail decision maker to make positive inquiries of the accused and (if applicable) their legal representative to identify whether the accused has special vulnerability identified in s 3AAA(1)(h)(iii) or (iv).

Amendment 11: The Bill should insert an explanatory note in s 3AAA(1) stating that a bail decision maker may consider a person to be affected by special vulnerability pursuant to sub-para (h)(iii)(iv), including ill health, mental illness, disability, including physical disability, intellectual disability, neurodivergence and cognitive impairment, even if the accused person or bail decision maker cannot identify with diagnostic precision the particular attribute or impairment.

Amendment 12: Insert two additional vulnerabilities at s 3AAA(1)(i) ‘*being a victim survivor of family violence, including as a protected person under a family violence safety notice or interim or final family violence intervention order*’ and at 3AAA(1)(j) ‘*experiencing chronic social or economic disadvantage, including homelessness and unsafe housing*’.

Amendment 13: The Bill should amend relevant sections of the Magistrates Court and County Court Acts to expand the jurisdiction of both Koori Courts to hear bail hearings.

Amendment 14: Amend Clause 2 so the Bill commences no sooner than 12 months after the Bill is passed and on a day or days to be proclaimed. The Attorney General should make a public commitment that the Bill will not commence until Victorian prisons are no longer understaffed, Dame Phyllis Frost Women’s Prison no longer has rolling lockdowns due to staff shortages, and prison conditions have materially improved.

B. What should be maintained in the Bill

- Schedule 4 and 5 offences are exempt from the 2-step test. The burden is on the prosecutor to demonstrate that the ‘show compelling reason’ test applies.
- Bail decision makers must consider caring responsibilities and pregnancy as surrounding circumstances.
- The statutory review of the amendments in this Bill must consider the impacts on Aboriginal people.

C. Non-legislative commitments sought around bail reform

- Immediately make further investment in therapeutic bail support options, which will improve community safety more than anything in this Bill.
- To address driving factors of reoffending, the government must fund and invest in:

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- Intensive bail supervision and supports, including Aboriginal led models, to support alleged offenders to successfully fulfil their bail conditions and address the causes of their offending.
- Aboriginal led therapeutic and specialist family violence supports and services, including access to legal supports based in communities.

2. The devastating impact of new 'high degree of probability' test in s 4F

Discriminatory impact

The new section 4F establishes the 'high degree of probability' test - a test which is harsher than that which applies for murder and rape. In VALS view, this will needlessly criminalise some of Victoria's most vulnerable cohorts of people, including children and young people, people with disabilities and people who are targeted by systemically racist policing practices, including Aboriginal people. VALS has represented children charged with Home invasion charges which were later withdrawn in favour of a charge of trespass. Under these laws, that child would not have been granted bail. The children and young people most impacted will likely be in out-of-home care as the State systemically fails to support them and this new section works to further push them into the criminal legal system instead.

Breaches human rights

In VALS' view, the 'high degree of probability' test is almost impossible for bail applicants to satisfy and is tantamount to automatic detention. This is because:

- The test is so high and it's not clear how bail decision makers are going to decide what a 'high probability' is, putting bail applicants at risk of stereotyping and profiling;
- A bail applicant's personal circumstances, including considerations of Aboriginality, child specific considerations and other vulnerabilities including disability, will either not be relevant now or have very limited relevance for bail decision makers;¹ and
- A bail applicant is unlikely to have access to supports and programs that could relieve cost of living pressures, poverty, family violence, and homelessness that might have led to the alleged charges, because there has been no investment in such supports.

In practice, the Bill will breach numerous human rights outlined in the *Victorian Charter of Rights and Responsibilities 2006* (Vic) (**Charter**),² including the right to liberty and cultural

¹ See: s 3AAA, 3A and 3B of the *Bail Act 1977* (Vic) and comments as to their relevance in the Bill's Statement of Compatibility.

² See: *Victorian Charter of Rights and Responsibilities 2006* (Vic) (**Charter**): right against arbitrary arrest or detention (s 21(2)); right not to be automatically detained in custody (s 21(6)); right to be presumed innocent until proved guilty (s 25(1)); right to recognition and equality before the law (s 8); right against unlawful or arbitrary interferences with the family (s 13(a)); right of children to protection (s 17(2)).

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rights for Aboriginal people.³ There is no reasonable justification for limiting these rights, given the severity of the limitations on rights, lack of evidence that the limitations serve the purported aim of improving community safety, and inadequate safeguards for vulnerable bail applicants. The Bill's limitations of human rights do not lead to community safety - just further recidivism and continued cycles of disadvantage.⁴

Rule of law issues (constitutionality, chapter III and non-judicial detention)

The 'high degree of probability' test is extraordinarily rigid and grossly fetters the exercise of judicial discretion. This undermines the institutional integrity of the judicial system of Victoria and raises serious issues as to its compatibility with Chapter III of the *Australian Constitution*.

Aggravated burglary should not be subject to this high test

New section 4F includes Aggravated burglary in a list of offences that will now be subject to the 'high degree of probability' test. This is inappropriate as Aggravated burglary charges also include Aggravated burglary with intent to steal and Aggravated burglary with intent to damage. These offences do not involve violence, in many instances are poverty driven, and often do not reflect a high level of harm against the community. This charge can be satisfied by a person coming into a house requesting a glass of water, and stealing a phone on the way out. Including all Aggravated burglary offences in new section 4F will result in non-violent bail applicants being subject to an impossibly high bail test; higher than murder and rape.

Test should only apply to instances where there is actual violence

If the 'high degree of probability' test is to be included over VALS objections, the Bail Act should be clear that the test should only apply to the listed offences **where** an accused is alleged to have used force or violence (either actual or apprehended) against another person in the alleged offence. The Bail Act is meant to balance the protection of community safety with the fundamental rights to liberty and presumption of innocence. However, the offences captured in the 'high degree of probability' test do not inherently pose such serious, violent danger to the community that justifies depriving an untried person of their liberty. For example, a charge of home invasion does not require the actual use or threat of violence, or

³ Charter, s 19(2), and *Universal Declaration of the Rights of Indigenous Peoples*, articles 1 and 7.1.

⁴ In New South Wales, the similarly worded 'high degree of confidence' test has been condemned by the judiciary to be "a ham-fisted attempt to deal with a political difficulty in a manner which ... creates significant problems for the administration of justice and does not deal with the problem that was sought to be overcome." *R v TW* [2024] NSWSC 1504 [16].

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even an interaction with the person who is home at the time. This test is likely to result in non-violent bail applicants being refused bail.

VALS regularly sees clients overcharged by police and prosecutors and there is ample evidence of the misuse of police discretion to unfairly charge and prosecute Aboriginal people.⁵ Requiring for there to be an element of actual or apprehended violence in order for the 'high degree of probability' test to apply meets the government's stated aims more squarely.

Recommendation: VALS opposes Clause 5 introducing new s 4F in its entirety and recommends it be removed. If the government proceeds, we recommend:

Amendment 1 sought: Amend Clause 5 by clarifying aggravated burglary with intent to steal and aggravated burglary with intent to damage are not included in the list of offences subject to the 'high degree of probability' test in proposed new s 4F(1)(a)(ii) and s 4F(1)(a)(v) of the Bail Act.

Amendment 2 sought: Amend Clause 5 so new s 4F(1)(a) reads: 'who is accused of having committed any of the following offences and where the accused is alleged to have used force or violence (either actual or apprehended) against another person in committing the following offences —'

3. Problems with the 2-step test

The current drafting of the 'show compelling reason' test set out at Clause 9 of the Bill (inserting subsection (4A) in Section 4AA of the Bail Act) will unnecessarily capture many low-level offences that would not even result in a sentence of imprisonment. There are various low-level offences which *may* be punishable by a term of imprisonment but would not likely attract a sentence of imprisonment (like Theft). As was made clear with the passing of Veronica Nelson, people facing charges that are unlikely to result in a sentence of imprisonment should not be remanded in the first place.

Rather than excluding an offence on the basis of not being punishable by a term of imprisonment, the 'show compelling reason' test must be amended to reflect the likelihood of a term of imprisonment given the circumstances of the offending. Bail decision makers must be given discretion to balance these circumstances against the likelihood of sentencing outcomes to ensure that bail applicants are not needlessly remanded and imprisoned on matters that, even if convicted, they would never be imprisoned for. Under

⁵ Yoorrook Justice Commission, [Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems](#) (2023), p 258.

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the current test, unlikelihood to be sentenced to a term of imprisonment is not a sufficient compelling reason on its own. The Bail Act must be amended so that the existence of this fact is a sufficient compelling reason, and a bail applicant should be granted bail.

Amendment 3 sought: The Bill should amend the Bail Act to make it clear in its flow charts or in an explanatory note that where the 'show compelling reason' test applies and someone is unlikely to receive a term of imprisonment, then compelling reasons exist, and the person should be granted bail.

4. Essential amendments to make Schedules 4 and 5 fairer

Whilst VALS welcomes the inclusions of Schedules 4 and 5 in the Bill, the following amendments are required to protect over-criminalised cohorts from undue remand:

Theft

Theft should be classified in Schedule 4 and the value amount of \$2,500 must be removed. The commission of theft offences often occurs due to cost-of-living pressures, poverty and disadvantage. The amount thresholds are far too low and the reasoning for the set amounts is not clear, especially as many white-collar theft crimes are captured in Schedule 4 (including Obtaining financial advantage by deception, which can be charged for millions in stolen money). Instead, the low threshold of \$2,500 for theft will capture many non-violent, relatively petty thefts that don't threaten community safety (e.g. handbag, laptop and phone theft). Veronica Nelson had previously been charged with theft and the value stated by police was more than \$3,000 in her charges. Subjecting low level offences to the harsher bail test is a disproportionate and unjustifiable limit on the rights that bail protects.

Destroying or damaging property

Destroying or damaging property should be classified in Schedule 4 and the value amount must be removed. Reclassifying as a Schedule 4 offence recognises that damaging property is not a violent offence that causes injury or a serious risk of safety for the broader community. Children in out-of-home care are disproportionately charged with offences like this, often due to up-charging, so the drafting will create a harsher bail test for Victoria's most vulnerable children.

Possession offences

All possession and some trafficking offences must be classified as Schedule 4 to reflect the nature of the offending behaviours. As it stands, selling a joint to a friend for \$20 would require people to demonstrate 'compelling reasons' about why they should get bail.

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Possession offences are non-violent offences that are often committed by people experiencing drug use disorders. Failing to include all possession offences in Schedule 4 only further harms people with such vulnerabilities. Any possession offence that puts people in a higher test for bail risks disconnecting people from the health and social support services they need.

Burglary

Reflecting the fact that burglary is often dealt with summarily in the Magistrates Court, Burglary should be included in Schedule 4. Burglary may be committed as a crime of poverty, where people are seeking to have their basic needs met and do not intend to cause harm. An example of this would include stealing from an area of a shop that is 'staff only'. To appropriately reflect the lack of violence inherent in the charge, burglary should be a Schedule 4 offence.

Possess and carry dangerous article offences

As the Bill is currently drafted, anyone who possesses a 'dangerous article' would be subject to the unacceptable risk test despite the absence of violent or harmful circumstances or intent. This is overly broad. Articles that are charged by police as 'dangerous articles' are very often not inherently dangerous, and in VALS experience have included sticks, scissors and metal spatulas. People experiencing homelessness are often unfairly caught by this offence for carrying implements in public for lack of housing as opposed to some other intention.

Amendment 4 sought: Amend Clause 12 so the following offences in Schedule 5 are moved to Schedule 4 and are not subject to a value amount threshold:

- s 74 (Theft) and s 197 (Damage property) of the *Crimes Act*.
- s 73 (Drug possession) of the *Drugs, Poisons and Controlled Substances Act*.

Amendment 5 sought: If Amendment 4 is not implemented, then Clause 12 should be amended so the value amounts applicable for charges contrary to s 74 (Theft) and s 197 (Damage property) in new Schedule 4 is \$50,000.

Amendment 6 sought: Amend Clause 12 so the following offences are added to Schedule 4:

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- s 76 (Burglary) of the *Crimes Act*.
- s 71AC, s 71A and s 71B (1) and (2) of the *Drugs, Poisons and Controlled Substances Act*.

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5. Cementing a 3A and considerations of Aboriginality in the guiding principles of the Act

The Bill significantly diminishes the obligation of a bail decision maker to have consideration for section 3A when applying the ‘high degree of probability’ test. The test limits the consideration and applicability of section 3A in those circumstances because it requires the bail decision maker to focus only on the purported risk of reoffending and the paramountcy to be given to ‘community safety’ in the guiding principles. The Bill’s Statement of Compatibility confirms that this makes consideration of section 3A irrelevant or less relevant.

Section 3A contains key considerations about a bail applicant’s Aboriginality which a bail decision maker must consider, as per Coroner McGregor’s recommendations after Veronica’s passing. The Supreme Court of Victoria has interpreted section 3A to mean that Aboriginality is a significant and crucial consideration in all bail decisions, and one that is no “less than a radical transformation to the decision-making process”.⁶ The Court notes that section 3A should inform every aspect of the process, and encourage decision makers to not contribute to over-incarceration without “good reason to do so”.

To ensure the protections of section 3A continue to be genuinely considered and applied in all bail decisions for Aboriginal people, the Bail Act must be amended to include the factors of section 3A in the guiding principles.

Amendment 7 sought: The Bill should amend the guiding principles in s 1B of the Bail Act to include “taking into account issues that arise due to a person’s Aboriginality under section 3A”.

Amendment 8: if Amendment 7 is not implemented, then the Bill should amend s 3A of the Bail Act to include an explanatory note that the obligation to consider s 3A is not limited or diminished by new s 4F or 4AA(4A).

6. Safeguards to protect vulnerable cohorts of the Victorian community

People with disabilities are grossly over-represented in the prison population. Approximately 5 per cent of incarcerated people have an intellectual disability⁷ and between 40-90 per cent of incarcerated people have an acquired brain injury,⁸ including a significant number of victim survivors of family violence. These regressive bail amendments will further entrench

⁶ *Re Terei* [2024] VSC 294, p 57.

⁷ Victoria Auditor General’s Office, [Correctional Services for People with Intellectual Disability or an Acquired Brain Injury](#) (Web page) (22 June 2023).

⁸ Australian Institute of Health and Welfare, [The Health of people in Australia’s prisons](#) (Report) (2022).

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the disproportionate impact and overrepresentation of vulnerable people in prisons and the criminal legal system. The Bill must introduce safeguards that require a bail decision maker to have consideration for an applicant's vulnerability due to disability or impairment, without requiring a formal diagnosis at this stage of the proceedings. A positive obligation should exist for a bail decision maker to make enquiries about disability or impairment.

Recognising the high prevalence of disability amongst people in contact with the criminal legal system, this amendment should be accompanied by adequate investment and resourcing for disability support and assessments at an early stage of the criminal legal process. If the government is serious about its concern for community safety, it will invest in providing support to people with a disability as early intervention and prevention.

The Bill must also recognise the criminalisation of vulnerable victims in the context of family violence, and primary or secondary homelessness as a psychosocial factor that indicates vulnerability. In line with including pregnancy and caregiving responsibilities, the Bill must be amended to require consideration for special vulnerabilities of the above-mentioned cohorts of the Victorian community.

Amendment 9 sought: The Bill should amend s 3AAA(1)(h)(iv) of the Bail Act to include “*neurodivergent disabilities*”.

Amendment 10 sought: The Bill should amend s 3AAA(1) to require a bail decision maker to make positive inquiries of the accused and (if applicable) their legal representative to identify whether the accused has special vulnerability identified in s 3AAA(1)(h)(iii) or (iv).

Amendment 11 sought: The Bill should insert an explanatory note in s 3AAA(1) stating that a bail decision maker may consider a person to be affected by special vulnerability pursuant to sub-para (h)(iii)(iv), including ill health, mental illness, disability, including physical disability, intellectual disability, neurodivergence and cognitive impairment, even if the accused person or bail decision maker cannot identify with diagnostic precision the particular attribute or impairment.

Amendment 12 sought: Insert two additional vulnerabilities at s 3AAA(1)(i) ‘*being a victim survivor of family violence, including as a protected person under a family violence safety notice or interim or final family violence intervention order*’ and at s 3AAA(1)(j) ‘*experiencing chronic social or economic disadvantage, including homelessness and unsafe housing*’.

7. Expanding the Koori Court's jurisdiction to hear bail applications

Koori Courts must be expanded to hear bail applications. Doing so would ensure Aboriginal people have access to culturally appropriate bail proceedings, with Elders and Respected

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Persons being able to assist bail decision makers to properly consider a person's Aboriginality in accordance with section 3A.

The Bill will increase pressure on the mainstream bail and remand system – a system that is not adequately resourced or skilled to meaningfully engage with section 3A. Veronica Nelson was remanded because every level of bail decision maker and legal counsel failed to understand these factors and apply them to their decision making. This Bill will only further entrench Aboriginal people as a high-remand population. Noting that the 'high degree of probability' test will restrict how bail decision makers can consider section 3A, it is imperative that the Koori Court's jurisdiction be expanded to hear bail applications to ensure cultural competency in this process.

Koori Courts provide access to fair, culturally relevant and appropriate justice, as well as reducing the likelihood of further serious contact with the criminal legal. Engaging Elders and Respected Persons at the early stage of the criminal legal process, rather than just at the sentencing stage, will help the accused persons access the support they need earlier and when it is more impactful.

Amendment 13 sought: The Bill should amend relevant sections of the Magistrates Court and County Court Acts to expand the jurisdiction of both Koori Courts to hear bail hearings.

8. Commencement of Bill must be delayed as prisons are at breaking point

Tranche One has not even fully commenced yet, and there has already been an explosion in the number of Aboriginal people needlessly on remand in prison and police cells.⁹ The flow on effects have been devastating, with the corrections system being stretched to breaking point. Prisons have become full and this, coupled with the crisis facing Victoria Corrections due to staffing shortages, has meant rolling lockdowns in prisons – especially women's prisons and youth prisons. Women at DPFC are facing acute mental health distress, with reports that 5 Aboriginal women attempted suicide in the space of a month.¹⁰ There is a heightened risk of deaths in prison custody.

⁹ In Victorian Legal Aid, [The impact on our clients of changes in bail laws](#) (1 August 2025) VLA reports that in the past three months, First Nations adults were granted bail in only 47 per cent of the first bail applications run by VLA's remand service. This has reduced from 56 per cent in the previous 12 months. In addition, VALS' Balit Ngulu team, for youth client, has seen a 200% increase in clients on remand since Tranche One commenced, and VALS Criminal Law team has seen a 100% increase in the number of clients remanded. The data from our Custody Notification Service (CNS) also shows that there has been a significant uptick in the amount of time Aboriginal people are spending in prison cells. Prior to April 2025, it was very rare for our clients to be spending more than a week in a police custody. Only one client had spent more than seven days in police custody in April 2024. However, in July 2025, we had 56 clients spend more than 7 days in police custody.

¹⁰ ABC News, [Inside a Victorian prison where an inmate recorded seven suicide attempts in four weeks](#) (2 June 2025).

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Victoria Police operations are also being stretched thin, as people are being forced to spend weeks on remand at police stations because of over-crowded prisons. Police cells are not intended or designed to detain people for weeks at a time, with limited access to healthcare, Aboriginal Wellbeing Officers, cultural supports and time outside of the cell. This creates a further heightened risk of deaths in police custody.

The bail changes proposed in this Bill are substantially more regressive than those in Tranche One. The Bill will quickly funnel even more of Victoria's most vulnerable people into prisons, especially children in out-of-home care. There is no doubt that the moment this Bill comes into effect, exponentially more strain is going to be placed on a corrections system that is already failing.

Tranche Two cannot proceed as is. If it does, over VALS' objections, the Bill's commencement must be delayed by over a year to allow Corrections Victoria to address its short staffing and capacity issues which create unacceptable risks to the lives of people in custody.

Amendment 14 sought: Amend Clause 2 so the Bill commences no sooner than 12 months after the Bill is passed and on a day or days to be proclaimed. The Attorney General should make a public commitment that the Bill will not commence until Victorian prisons are no longer understaffed, Dame Phyllis Frost Women's Prison no longer has rolling lockdowns due to staff shortages, and prison conditions have materially improved.

9. What must be maintained in the Bill

Carve-outs for the 2-step test

VALS supports the creation of Schedule 4 and Schedule 5 offences which are definitively excluded from the 2-step test. Although we consider the proposed schedules too narrow, their creation acts as a safeguard to reduce the risk of low-level offending being captured in the higher bail tests. Every day, we see clients locked up for low-level non-violent offences, such as shoplifting and bail offences. Remanding people for offences connected with poverty, homelessness, mental health issues, and alcohol and other drug dependency only serves to criminalise them further and entrench disadvantage. It does nothing to contribute to community safety.

The carved-out offences in Schedule 5 also include the provision section 4C(b), stating that the 2-step test does not apply if the prosecutor is unable to satisfy the bail decision maker that the threshold is met. Although VALS maintains concerns about the low monetary thresholds for Schedule 5 offences, we are pleased to see this onus laid on the prosecutor.

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Maintain in the Bill: Schedule 4 and 5 offences are exempt from the 2-step test. The burden is on the prosecutor to demonstrate that the 'show compelling reason' test applies.

Amendments to section 3AAA

VALS welcomes the addition of caring responsibilities and pregnancy as surrounding circumstances in section 3AAA(1) that must be considered by the bail decision maker. We know that bail laws disproportionately impact Aboriginal women, and in turn, their families and children. However, like the diminished consideration of section 3A, the Bill significantly reduces the relevance of surrounding circumstances under section 3AAA when the 'high degree of probability' test is applied. This test myopically prioritises the probability of reoffending over all else, making surrounding circumstances 'less relevant' or not relevant.¹¹ Despite this weakened ability of section 3AAA to mitigate harm and safeguard vulnerable people, the consideration of caring responsibilities and pregnancy should be included in the Bill.

Maintain in the Bill: The bail decision maker must consider caring responsibilities and pregnancy as surrounding circumstances.

Review of the amendments

A statutory review of the *Bail Act* will now consider the 2025 amendments alongside those made by the *Bail Amendment Act 2023*, the *Youth Justice Act 2024* and others. VALS welcomes Clause 18 requiring this review considers impacts on Aboriginal people.

The requirement to explicitly examine these impacts is a rudimentary step towards accountability. The community and the sector know that these laws will have disastrous and disproportionate impacts on Aboriginal people – yet the Government is ignoring the evidence and proceeding with its regressive agenda. This is also an important opportunity to review the 2023 amendments introduced in response to the advocacy of Veronica Nelson's family, which the Victorian Government is now shamefully walking back.

Maintain in the Bill: The statutory review of the amendments must consider the impacts on Aboriginal people.

¹¹ The Statement of Compatibility states: "In accordance with section 3AAA of the Bail Act, the court must also take into account all the surrounding circumstances that are relevant to the risk-based HDOP assessment. The narrow focus of the HDOP test on the probability of specified Schedule 1 serious reoffending means that certain circumstances in section 3AAA which may otherwise shift the balance towards a grant of bail, such as the likely sentence to be imposed if the accused is found guilty, may not be relevant to this determination".