

Parliament of Victoria

Bail Amendment Bill 2023

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Bill Brief

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Executive Summary

While the *Bail Act 1977* includes the general entitlement to bail, amendments to the Act in 2013, 2016 and 2017-8 made it harder for some alleged offenders to be granted bail. The 2013 amendments made it an offence to commit further offences while already on bail and the 2017 amendments increased the number of cases where the ‘exceptional circumstances’ or ‘show compelling reasons’ tests and the ‘reverse onus’ provisions apply.

One of the consequences of these amendments was an increase in the number of prisoners in Victoria, especially those who are unsentenced. On 30 June 2013, the prison population of Victoria was 5,340 (954 unsentenced and 4,386 sentenced). By June 2022 this had grown to 6,568 (2,769 unsentenced and 3,799 sentenced). Women and Aboriginal and/or Torres Strait Islander peoples have been particularly impacted by these changes, as they often commit non-violent, low-level crimes. Many people charged with low-level, non-violent crimes find it hard to pass the ‘exceptional circumstances’ or ‘show compelling reasons’ tests due to other circumstances such as homelessness, family violence and trauma.

There have been calls for the Act to be reviewed for many years. Experts have highlighted the negative impact the recent amendments had on the ‘presumption of innocence’, the number of people given ‘time served’ prison sentences and the disproportionate impact on women and Aboriginal and/or Torres Strait Islander peoples.

The Bail Amendment Bill 2023, introduced in the Legislative Assembly on 15 August 2023, attempts to address some of these issues with a range of changes, including narrowing the application of the ‘reverse onus’ test to only the most serious offences, refining the ‘unacceptable risk’ test and removing two bail related offences. It will also clarify how bail decisions for children and Aboriginal and/or Torres Strait Islander people should be made including what circumstances need to be considered before refusing bail.

While these changes have been welcomed by many, some stakeholders do not believe that they have gone far enough to address problems facing the bail system, while others have expressed concerns over community safety.

Bill information

Introduced: 15 August 2023

House: Legislative Assembly

Second Reading: 16 August 2023

Commencement: 25 March 2024

Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second reading Speech can be found at the [Library’s Infolink page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary documents website](#).

Introduction

Victoria has been described as having the ‘toughest bail laws in our nation’.¹ Amendments to the *Bail Act 1977* (the Act) in 2013, 2016 and 2017-8 have decreased access to bail and increased the consequences if an accused is charged with further offences while on bail. Changes to bail laws have often occurred in response to major incidents, such as the 2017 Bourke Street car attack, and after calls from the media and politicians to tighten bail laws to protect community safety.

With the number of unsentenced people held in custody rising significantly over the past decade, there has been a focus in recent debates on whether Victorian bail laws are overly restrictive and disproportionately impact on certain communities. In 2013 only 17.9 per cent of all people in prison in Victoria were unsentenced. By June 2022, that number had increased to 42.2 per cent.² Advocates for amending the bail laws argue that the 2017 amendments, in particular, had unequal impacts on women, children, Aboriginal and Torres Strait Islander peoples and those charged with low-level, non-violent offences.

Accordingly, the Bail Amendment Bill 2023 was introduced to the Legislative Assembly on 15 August 2023. This Bill will remove the ‘reverse onus’ and ‘double uplift’ provisions for certain offences. It will also remove certain bail-related offences and make changes to how bail decisions are made for children and Aboriginal and Torres Strait Islander peoples.

This paper examines some of the recent amendments to the Act and outlines some of the consequences of these changes. It will also outline selected changes proposed in the Bail Amendment Bill 2023 and stakeholder responses to them.

1 | What is bail?

Bail is the ‘conditional release from custody of a person arrested and charged with a criminal offence’.³ Section 4 of the Act provides for the general entitlement to bail, but this presumption may be revoked. The Act states:

A person accused of an offence, and being held in custody in relation to that offence, is entitled to be granted bail unless the bail decision maker is required to refuse bail by this Act.⁴

Historically, whether an alleged offender would attend their trial was the major consideration when granting bail.⁵ Since the codification of bail laws in 1977, however, an increasing number of factors now need to be considered before bail is granted.⁶

If an alleged offender is granted bail, there are often conditions attached, such as: agreeing not to contact others involved in the case; reporting to a police station at agreed times; adhering to a curfew; or therapeutic conditions, such as attending a drug and alcohol treatment program.⁷

¹ D. Andrews, Premier (2018) ‘[Questions without notice and ministers statements](#)’, *Debates*, Victoria, Legislative Assembly, 19 September, p. 3405.

² Department of Justice and Community Safety – Corrections Victoria (2022) *Annual Prison Statistical Profile 2012-13 to 2021-22*, Melbourne, DHCS, May.

³ E. Colvin (2022) ‘[Bail decisions: key challenges driving bail refusal](#)’, *Australian Courts: Controversies, Challenges and Change*, M. Camilleri and A. Harkness (eds.), Cham, Switzerland, Palgrave Macmillan, p. 121.

⁴ *Bail Act 1977*, s 4.

⁵ M. McMahon (2019) ‘[No bail, more jail?: Breaking the nexus between community protection and escalating pre-trial detention](#)’, *Research Paper*, no. 3, Melbourne, Victorian Parliamentary Library and Information Service, p. 2.

⁶ L. Auld & J. Quilter (2020) ‘[Changing the rules on bail: an analysis of recent legislative reforms in three Australian jurisdictions](#)’, *UNSW Law Journal*, vol. 43(2), p. 644.

⁷ *Bail Act 1977*, s 5AAA; Colvin (2022) *op. cit.*, p. 122.

Sometimes a surety or deposit is required. A surety is a person who pays or promises to pay money to the court if the alleged offender fails to comply with their undertaking of bail.⁸ A deposit is similar, except that it is provided by the alleged offender.⁹

Who can grant bail? How is bail granted?

In Victoria, bail may be granted by police, a magistrate, a judge or a bail justice.¹⁰ How and when bail is granted is dependent on the type of alleged offence. A police officer must grant bail or organise a bail hearing within a reasonable time.¹¹ The bail justice system is staffed by volunteers and ensures that bail can be granted overnight or over the weekend.¹²

When considering a bail application, decision-makers must take several factors into account, including whether the person is a child, is Aboriginal and/or Torres Strait Islander, has stable accommodation, has a previous criminal history, has breached bail conditions in the past or may be a threat to community safety.¹³ All decision-makers should also consider the alleged victim when granting bail.¹⁴

If a person is not granted bail, they are held on remand—i.e. they remain in custody until a hearing.¹⁵ Bail may also be revoked if a person does not adhere to any special conditions or if they are accused of committing another offence. Although further applications for bail can be made, even when it is initially refused, a court will only hear the matter if new facts and circumstances have arisen since the previous application, or if the alleged offender did not have legal representation at the first bail hearing.¹⁶

While Victoria does have a presumption of bail, the nature of the offence an alleged offender is charged with impacts on the likelihood of it being granted. Those deciding bail for persons charged with offences listed under Schedule 1 and Schedule 2 of the Act are required to apply the ‘exceptional circumstances’ or ‘show compelling reason’ tests, respectively. In both cases, the alleged offender ‘bears the burden of satisfying the bail decision maker’.¹⁷ This is often called the ‘reverse onus’ test.¹⁸

2 | Recent Victorian legislation

2013 amendments

The Bail Amendment Bill 2013 passed Parliament in August 2013. The Bill was introduced in April 2013, partly in response to the murder of Jill Meagher by Adrian Bayley on 22 September of the previous year. Bayley was on bail at the time of the murder.¹⁹ The Bill introduced two new offences relating to committing offences while on bail: ‘Offence to contravene certain conduct conditions’ and ‘Offence to commit indictable offence whilst on bail’.²⁰ These misdemeanours attracted a penalty of 30 penalty units or three months’ imprisonment.

⁸ Magistrates’ Court of Victoria (2018) ‘[Bail and custody](#)’, Magistrates’ Court of Victoria website.

⁹ *ibid.*

¹⁰ Legal Aid (2022) ‘[Being released from police custody](#)’, Legal Aid Victoria website.

¹¹ Magistrates’ Court of Victoria (2018) *op. cit.*

¹² Department of Justice and Community Safety (no date) ‘[Bail Justice position description](#)’, DJSC website.

¹³ *Bail Act 1977*, ss 3AAA, 3A, 3B, 3C; Colvin (2022) *op. cit.*, p. 124.

¹⁴ Victims of Crime (no date) ‘[Bail and remand](#)’, Victims of Crime website.

¹⁵ Colvin (2002) *op. cit.*, p. 125.

¹⁶ *Bail Act 1977*, s 18AA.

¹⁷ *ibid.*, s 4A(2).

¹⁸ The *Bail Act* includes flow charts for decision makers to use when granting bail. The current flow charts and those proposed in the Bail Amendment Bill 2023 can be found in Appendix 1 of this paper. A simplified flow chart from the Judicial College of Victoria is [here](#).

¹⁹ N. Bucci & R. Spooner (2015) ‘[Adrian Bayley: how the justice system left him free to stalk Melbourne's streets](#)’, *The Age*, 26 March.

²⁰ *Bail Act 1977*, ss 30A, 30B.

In the second reading speech, the then Attorney-General, the Hon. Robert Clark, claimed there were ‘inadequate deterrents’ to discourage people from offending again whilst on bail and the changes would ‘send a clear message to those granted bail that bail obligations should be treated seriously’.²¹

2016 amendments

In 2016 the *Bail Amendment Act 2016* tightened bail for those accused of terrorism offences and created new rules for children who are deemed too much of a risk to be bailed.

Under the new laws, the presumption in favour of bail was reversed for those charged with certain terrorism offences and an alleged offender would be required to demonstrate exceptional circumstances to be granted bail.²²

The new Act also attempted to address the number of children who were being held on remand by introducing new rules that apply to children. These changes included exempting children from the offence of breaching a condition of bail and created ‘a presumption in favour of initiating criminal proceedings against children by summons, rather than arrest, to align with Victoria Police best practice’.²³ It also added additional considerations for bail decision-makers to take into account when deciding a case involving a child, including the need to consider all other options before remanding a child in custody, the need to preserve the relationship between a child and key adults in their lives, and the need to allow for continued education, training or employment of a child.²⁴

2017-8 amendments

Amendments were made to the Act in 2017 in response to the 20 January 2017 Bourke Street incident, where James Gargasoulas killed six people and injured 27 others by erratically and deliberately driving his car through Bourke Street Mall. A week earlier, on 14 January 2017, Gargasoulas had been charged with 23 offences. Police had refused bail at the time, but as his arrest was after hours, a bail justice was called and Gargasoulas was granted bail.²⁵

In response to the Bourke Street attack, Premier, the Hon. Daniel Andrews announced a review of the bail system, to be led by Justice Paul Coghlan. Night courts would also be established for magistrates to hear bail requests over the weekend or after-hours, reducing the use of bail justices. The Premier emphasised that these steps would ‘best manage risk and maximise community safety’.²⁶

The first report from Justice Coghlan was provided to the government on 3 April 2017. He opened his report by writing:

The provisions relating to bail in Victoria are already very strict. I do not consider that the *Bail Act 1977* (the *Bail Act*) needs a major overhaul in terms of its theoretical underpinnings ...

However, the *Bail Act* is difficult to follow and apply. In particular, it is often difficult to work out what offences are in the reverse onus categories, and the provision relating to grant of bail should be clarified.²⁷

²¹ R. Clark, Attorney General (2013) ‘[Second reading speech: Bail Amendment Bill 2013](#)’, *Debates*, Victoria, Legislative Assembly, 17 April, p. 1267.

²² *Bail Amendment Act 2016*, ss 4-5.

²³ M. Pakula, Attorney-General (2015) ‘[Second reading speech: Bail Amendment Bill 2015](#)’, *Debates*, Legislative Assembly, 25 November.

²⁴ *Bail Amendment Act 2016*, ss 3B, 5AA; P. Power (2016) ‘[Bail Amendment Act 2016 – Summary](#)’, Children’s Court of Victoria, 17 February.

²⁵ L. Milligan, J. McGregor & L. Carter (2019) ‘[Time bomb: The making of Bourke Street killer James Gargasoulas](#)’, *ABC News*, 10 June.

²⁶ D. Andrews, Premier (2017) *Major Shake Up Of Victoria’s Bail System*, media release, 23 January.

²⁷ P. Coghlan (2017) *Bail review: first advice to the Victorian government*, Melbourne, Government of Victoria, 3 April, p. 3.

His second report was received by the government on 1 May 2017.²⁸

In response to the first report, the Bail Amendment (Stage One) Bill 2017 was introduced to the Legislative Assembly on 24 May 2017. It introduced a new purposes section and guiding principles ‘to inform the community about the purposes of bail and remind decision-makers of some important considerations relevant to bail’.²⁹ New Schedules 1 and 2 were introduced to list offences where the presumption in favour of bail would be reversed. Schedule 1 offences include treason, murder, aggravated home invasion and drug trafficking. Schedule 2 offences include manslaughter, sexual assault charges, contravention of intervention orders, drug offences.

Those accused of offences listed in Schedule 1 would be required to prove ‘exceptional circumstances’ as to why they should be granted bail, and those accused of a Schedule 2 offence would need to ‘show compelling reasons’.³⁰ These tests replaced the ‘show cause’ test. The Bill also expanded the list of offences where the presumption of bail does not apply.

At the time of introduction, the government flagged that it would be introducing a further Bill to enact other recommendations of the Coghlan review.³¹ The Bail Amendment (Stage Two) Bill 2017 was second read on 13 December 2017.³² The Bill did not include all the changes first flagged by the government, but it did:

- reformulate and clarify the bail tests;
- introduce the power for police to remand an alleged offender until a court is available;
- require an adult accused of certain serious offences (other than an Aboriginal and/or Torres Strait Islander person or vulnerable adult) who is already on two undertakings of bail for indictable offences, to be brought before a court in relation to any bail decision; and
- provide an express power for a court to bail or remand a person appearing on summons.³³

3 | What has happened since 2017?

Since 2017, there have been calls for the bail laws to be reviewed.³⁴ These calls have come from legal experts (including the coroner investigating the death of Veronica Nelson),³⁵ women’s groups,³⁶ Aboriginal and Torres Strait Islander advocacy groups³⁷ and legal

²⁸ *ibid.*

²⁹ M. Pakula, Attorney-General (2013a) ‘[Second reading speech: Bail Amendment \(Stage One\) Bill 2017](#)’, *Debates*, Victoria, Legislative Assembly, 25 May, p. 1492.

³⁰ Bail Amendment (Stage One) Bill 2017, c 13.

³¹ D. Andrews, Premier & M. Pakula, Attorney-General (2017) *Community Safety The Priority In Bail System Overhaul*, media release, 8 May.

³² M. Pakula, Attorney-General (2013b) ‘[Second reading speech: Bail Amendment \(Stage Two\) Bill 2017](#)’, *Debates*, Victoria, Legislative Assembly, 13 December, p. 4365.

³³ M. Pakula, Attorney-General (2013b) *op. cit.*, p. 4365.

³⁴ R. Millar & C. Vegelago (2019) ‘[Is there any way back from the war on crime?](#)’, *The Age*, 28 June;

C. Le Grand (2020) ‘[Shrinking prison population prompts call to rethink bail laws](#)’, *The Guardian*, 18 June;

M. Hurley (2021) ‘[Victoria’s bail laws are broken and need to be fixed](#)’, *The Age*, 7 March.

³⁵ Auld & Quilter (2020); Human Rights Law Centre (no date) ‘[Challenging unjust bail laws](#)’, HLRC website; I. Skaburskis (2021) ‘[Opinion: The cruel politics of bail](#)’, Law Institute Victoria website, June; S. McGregor (2023) *Inquest into the passing of Veronica Nelson*, Melbourne, Coroners Court of Victoria, 30 January.

³⁶ Committee for Economic Development of Australia (2022) *Double jeopardy: the economic and social costs of keeping women behind bars*, Melbourne, CEDA; E. Russell, B. Carlton, D. Tyson, H. Zhou, M. Pearce, J. Faulkner (2020) *A Constellation of circumstances: The drives of women’s increasing rates of remand in Victoria*, Melbourne, Fitzroy Legal Service and the La Trobe centre for Health, Law and Society; E. K. Russell, B Carlton & D. Tyson (2022) ‘[It’s a gendered issues, 100 per cent: How tough bail laws entrench gender and racial inequality and social disadvantage](#)’, *International Journal for Crime, Justice and Social Democracy*, vol. 11(3).

³⁷ Victorian Aboriginal Legal Service (2022), *Fixing Victoria’s Broken Bail Laws*, VALS Policy Brief, Melbourne, VALS.

experts.³⁸ In January 2023 the Premier acknowledged that there was ‘clearly a need to reform the law’, and in February 2023 said that the bail laws needed to ‘better balance’ the treatment of those who commit violent offences and those who commit non-violent offences.³⁹

Many legal experts see the changes made in 2017 as part of a larger pattern of criminal justice reform occurring after ‘trigger incidents’.⁴⁰ This pattern of changes made in response to incidents, they note, is characterised by legislation that goes further than ‘the specificity of the issues that initially instigate[d] the intervention’.⁴¹ In Victoria’s case, the 2017 reforms mean that the majority of those impacted ‘engage in predictable low-level offending in conditions of poverty and marginalisation’.⁴²

As changes are frequently made quickly after an incident, some experts argue that there is often little consultation with experts or legal stakeholders and a lack of research and evidence collection before implementing those changes.⁴³

Increased prisoner population

The prison population in Victoria has increased since 2017, especially the number of unsentenced people. This increase is especially clear among women, First Nations peoples and those charged with low-level, non-violent offences. According to the Sentencing Advisory Council (SAC), in 2020 ‘sentenced prisoners account for less than 8% of the overall increase in Victoria’s prison population in the last five years, while unsentenced prisoners account for over 92% of the increase’.⁴⁴

The following charts were produced using the Annual Prisons Statistical Profile 2012–13 to 2021–22, published by Corrections Victoria.⁴⁵ They can be accessed [here](#).

Notes:

- Data for Victoria for 2015 are provided for the morning of 30 June (i.e. the midnight muster from 29 June) due to data anomalies in the census date.
- Sentenced includes sentenced prisoners who also had remand warrant(s).

³⁸ Auld & Quilter (2020) op. cit.

³⁹ A. Ore (2023) ‘Daniel Andrews promises Victorian bail law reform after inquest into Veronica Nelson’s death’, *The Guardian*, 31 January; D. Andrews, Premier (2023) ‘Questions without notice: Bail laws’, *Debates*, Victoria, Legislative Assembly, 17 February, p. 86.

⁴⁰ Auld & Quilter (2020) pp. 650–655.

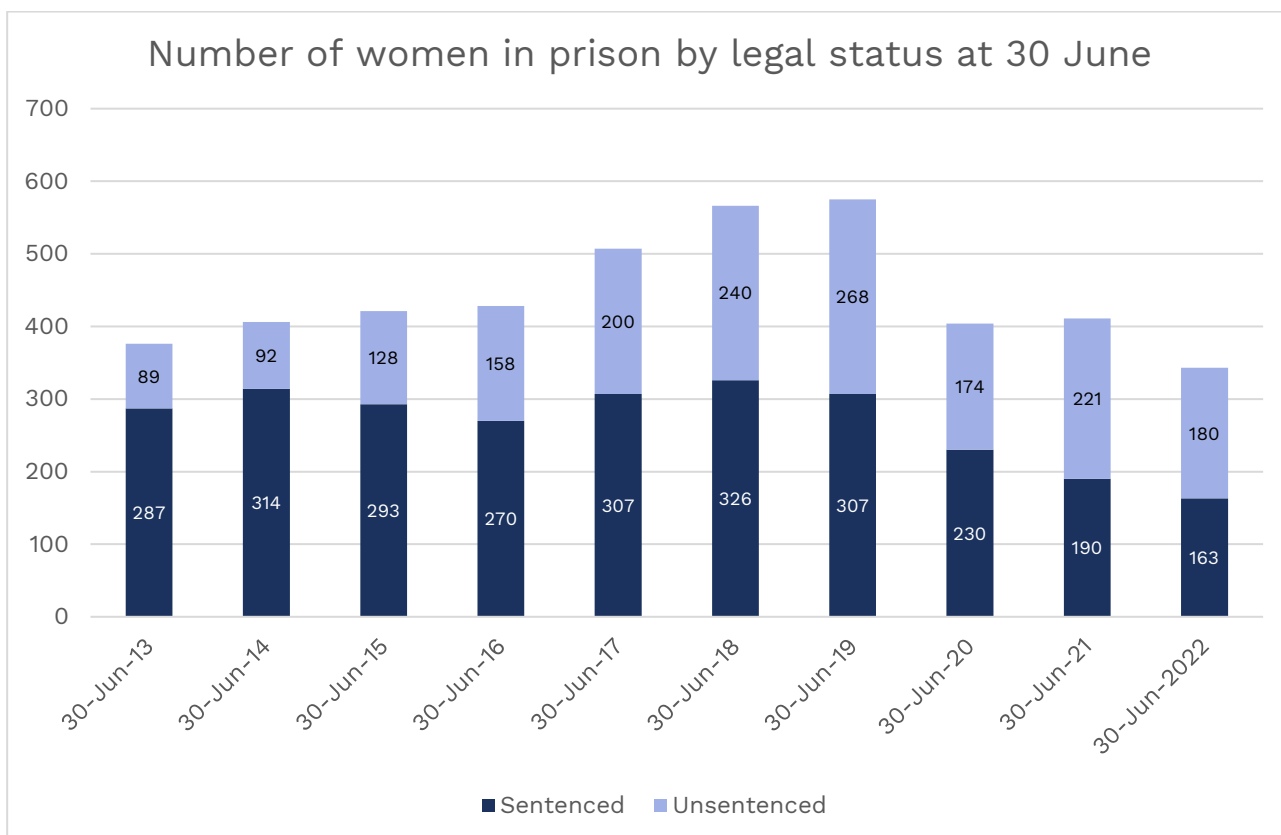
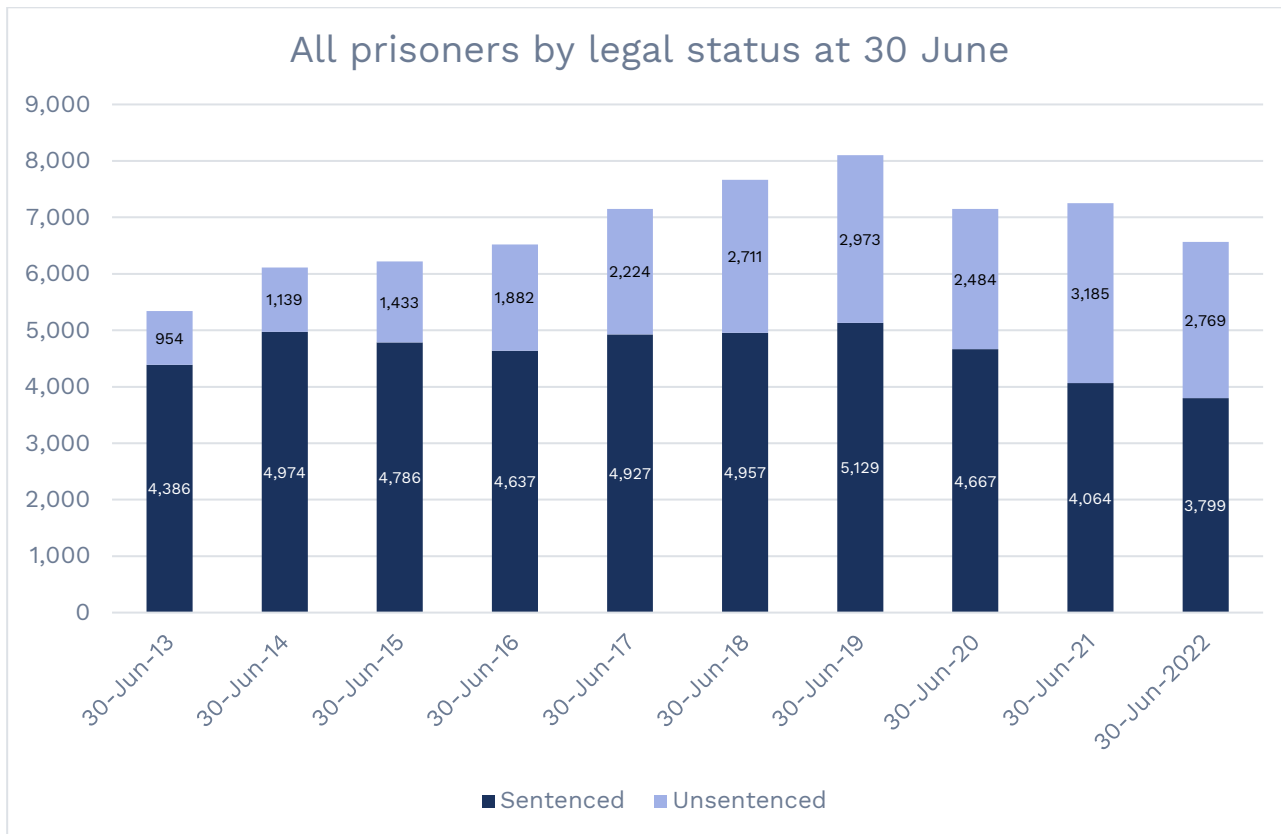
⁴¹ *ibid.*, p. 652.

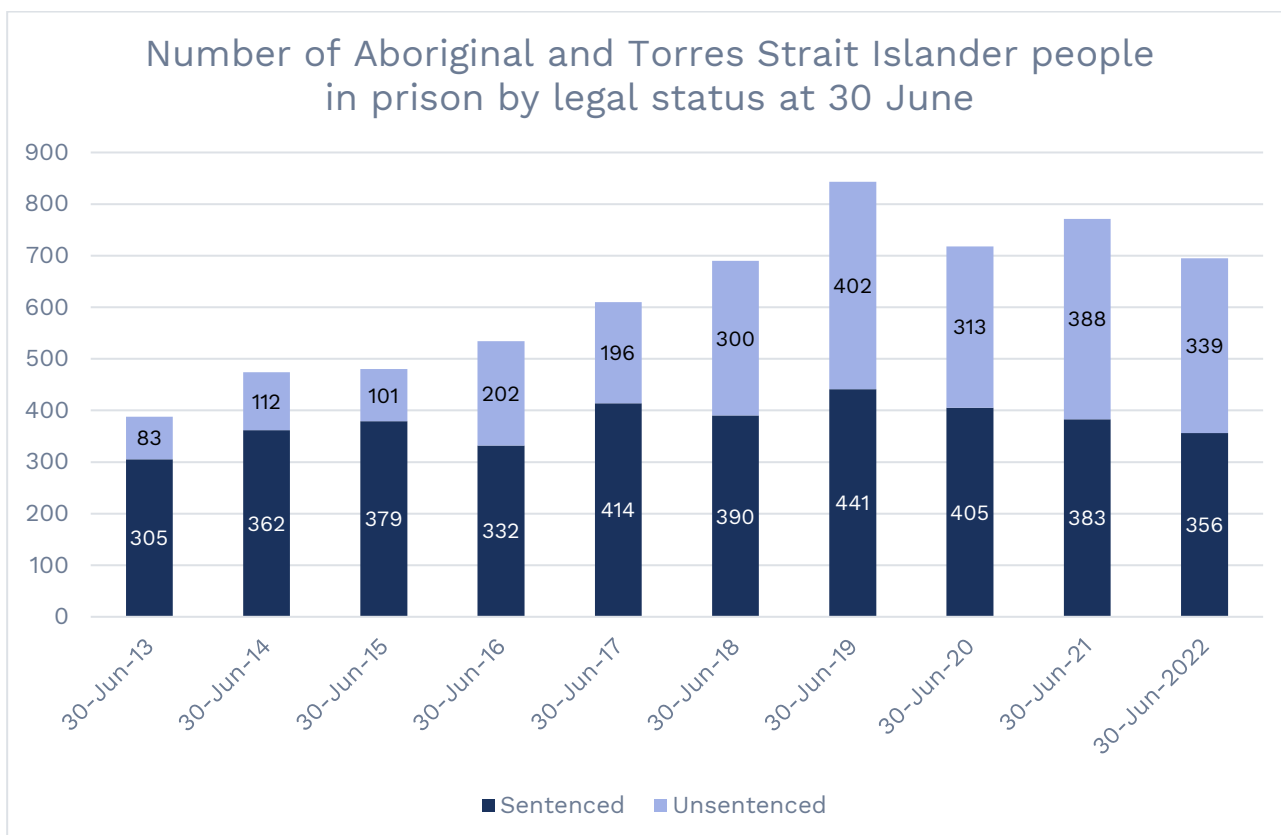
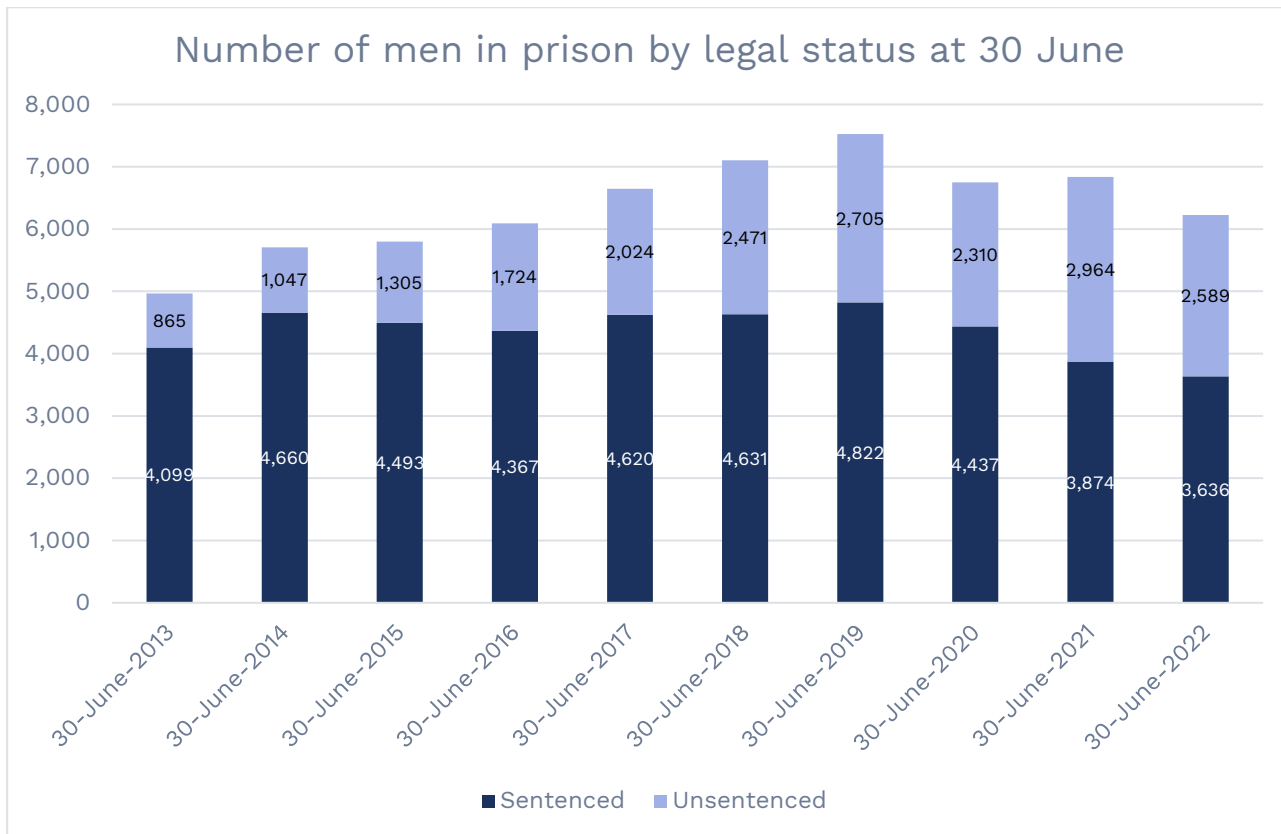
⁴² Russell (2020) op. cit., p. 31.

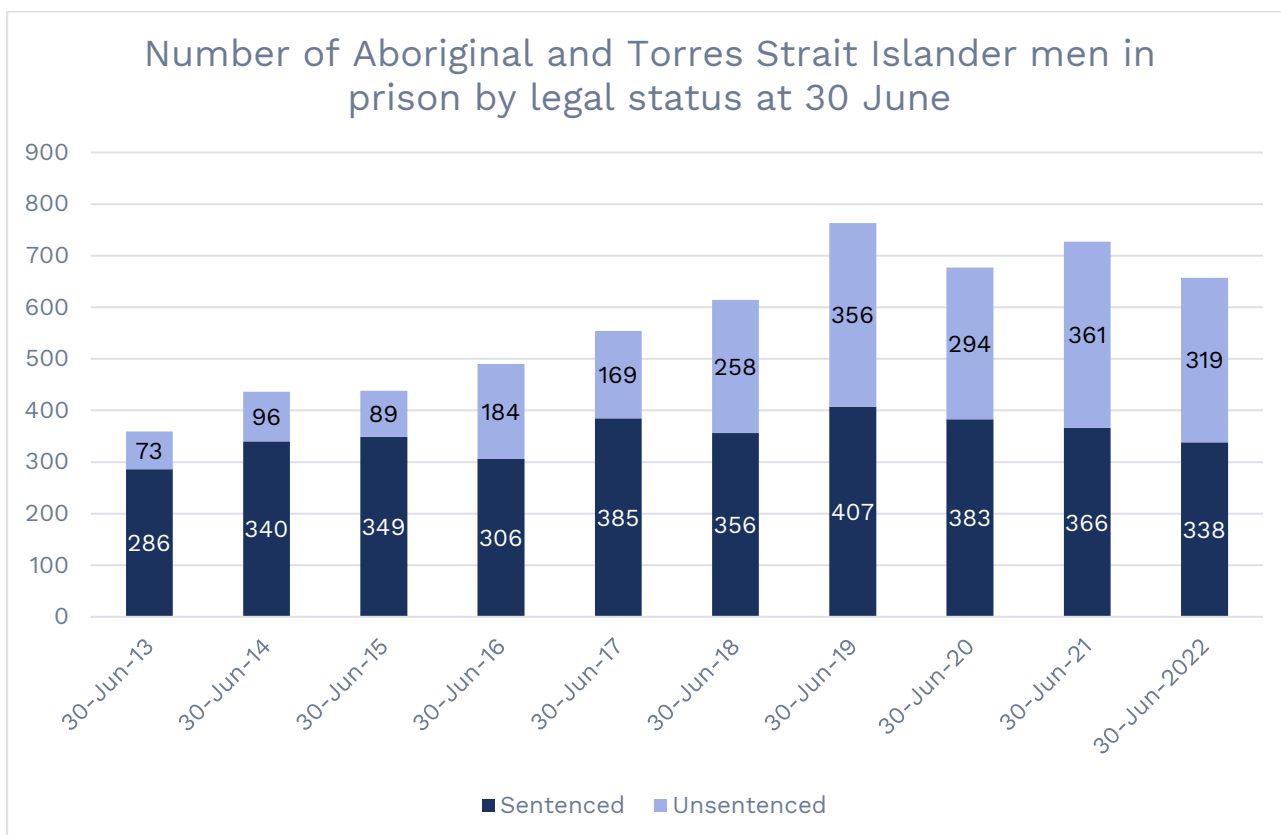
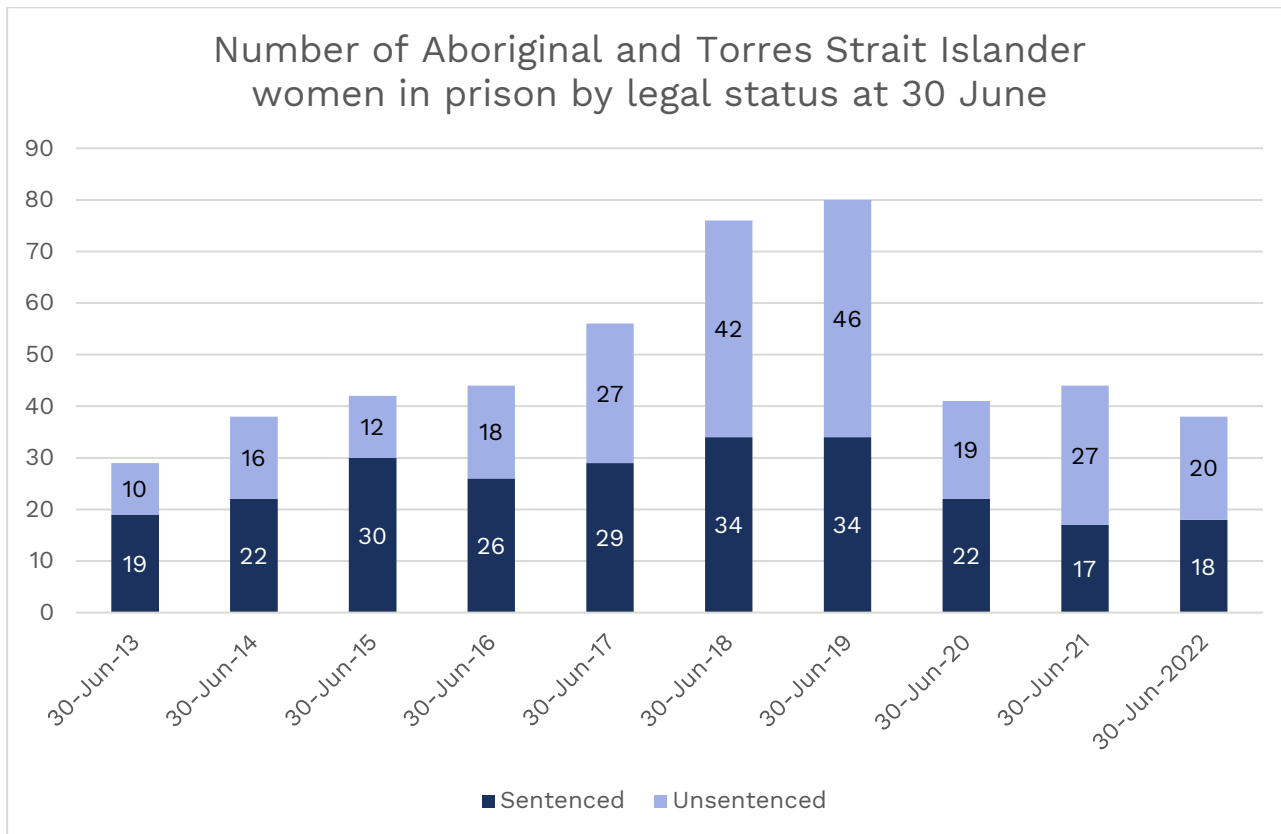
⁴³ Auld & Quilter (2020) op. cit., p. 650.

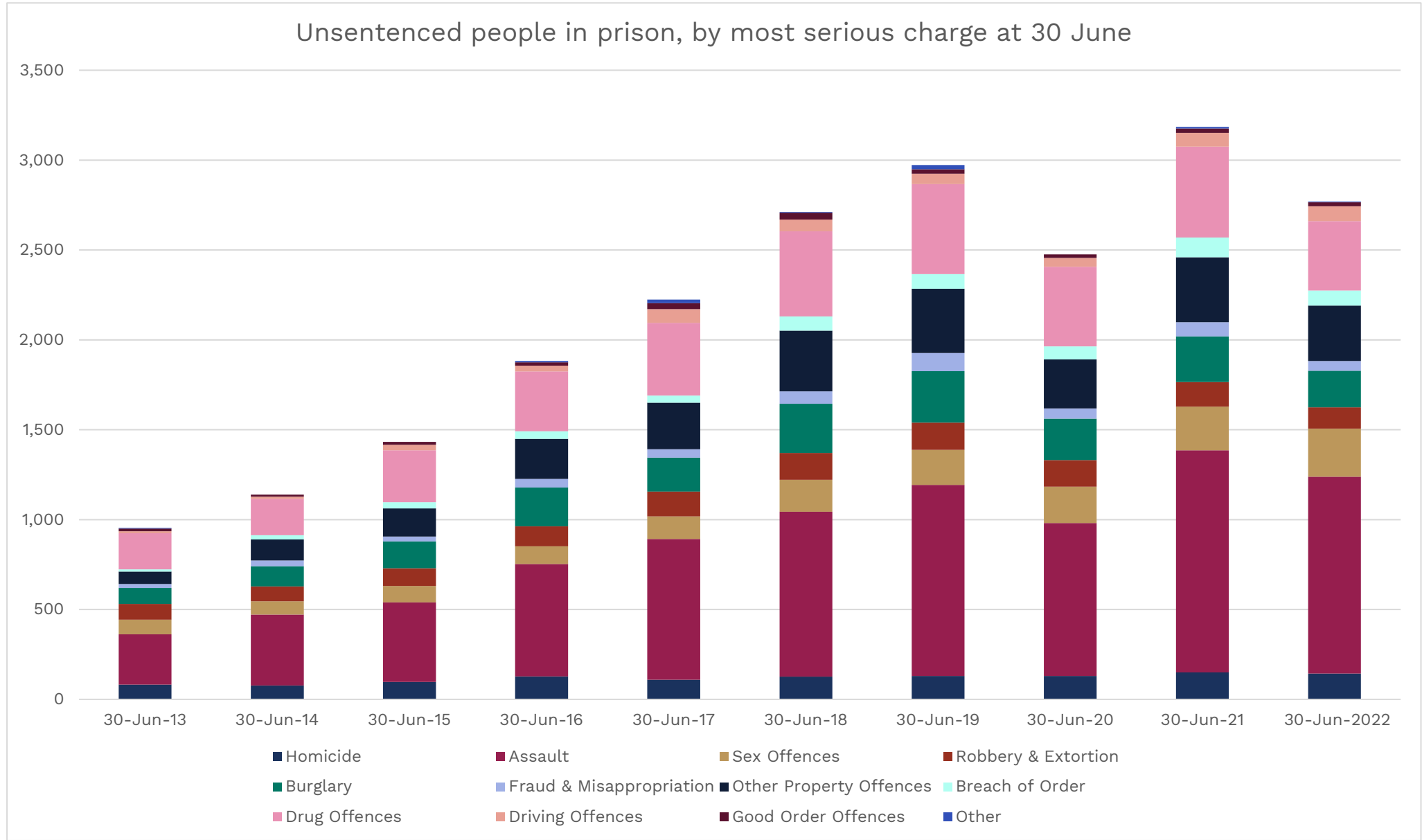
⁴⁴ P. McGorry & Z. Bathy (2020) *Time Served Prison Sentences in Victoria*, Melbourne, Sentencing Advisory Council, p. 5.

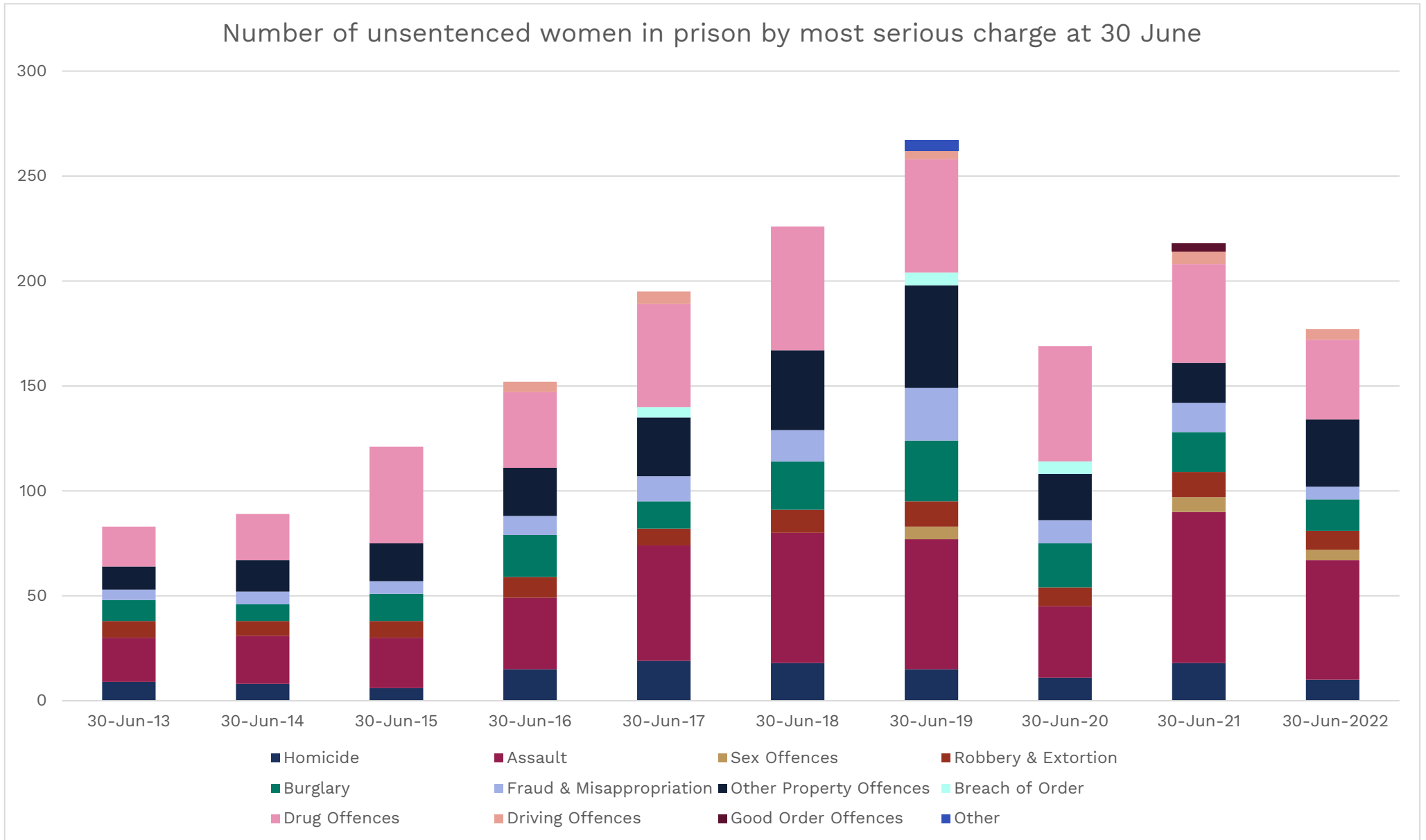
⁴⁵ Department of Justice and Community Safety – Corrections Victoria (2022) op. cit.

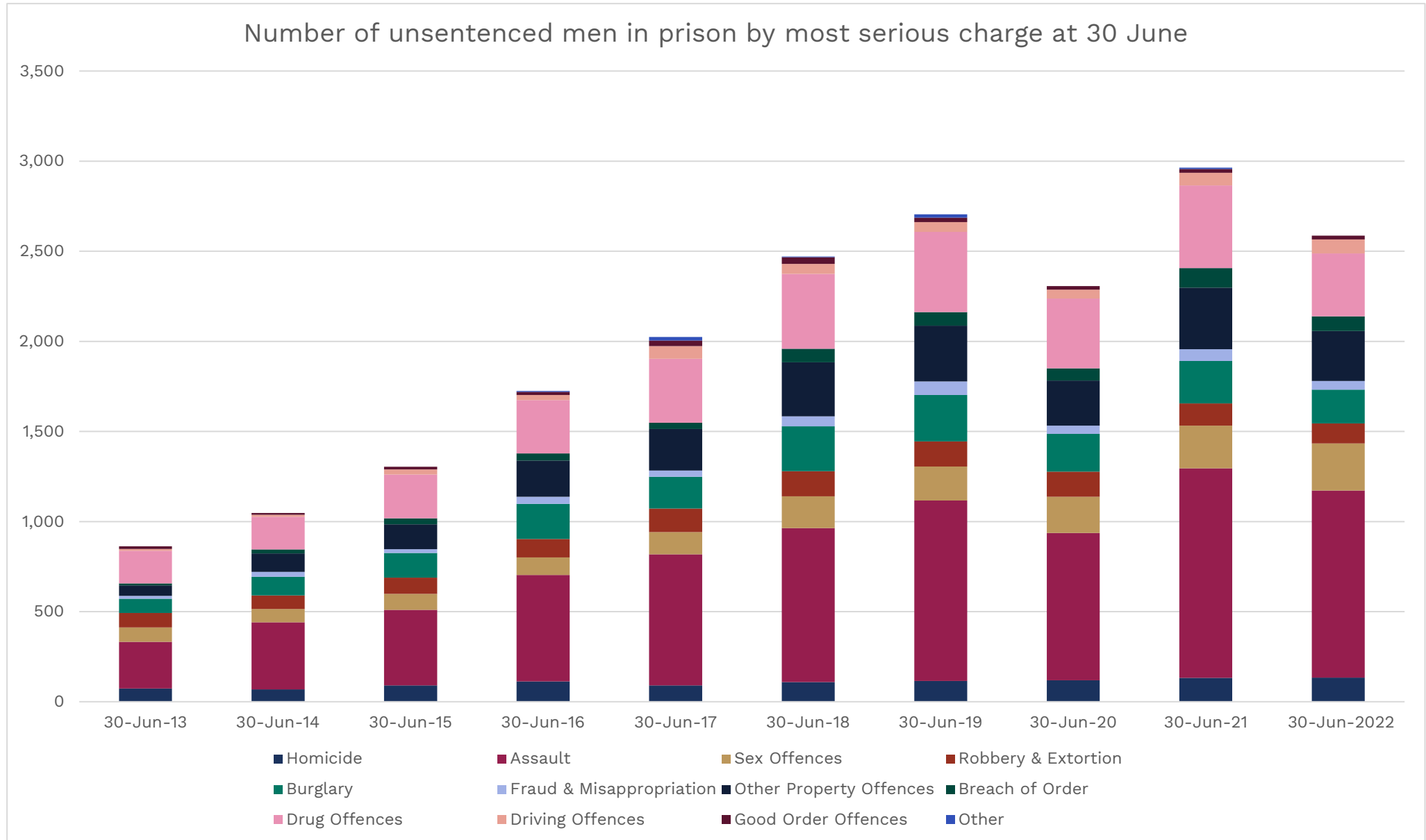












Increase in number of ‘time served prison sentences’

Along with the increased number of people in prison, there has also been an increase in the number of people receiving ‘time served prison sentences’. A time served prison sentence is ‘a sentence of imprisonment imposed on an offender where the length of imprisonment is equal to the amount of time that the offender has spent on remand in custody’.⁴⁶

One of the consequences of a ‘reverse onus’ test being applied to the ‘exceptional circumstances’ and ‘show compelling reasons’ tests is that a growing cohort of unsentenced prisoners, even if they were to be found guilty, would not receive a jail sentence or would receive one shorter than the period they spent on remand. This can set a precedent ‘for future imprisonment for relatively minor offending’.⁴⁷

An SAC report from 2020 found that 20 per cent of all prison sentences were time served prison sentences.⁴⁸ In 2020, nearly one-third of those who received a prison sentence and had already spent time on remand received a time served prison sentence. In 2014, this same group only made up one in nine of offenders who received a prison.⁴⁹

The Crime Statistics Agency stated that, in 2018, only 61.7 per cent of women remanded in custody went on to receive a prison sentence, including time served, and that 8.5 per cent of unsentenced women’s charges were not proven in court.⁵⁰ Proponents of changes to bail laws have argued that these statistics demonstrate that the law ‘punishes women excessively and potentially undermines the principle of proportionality’.⁵¹

The SAC have acknowledged that some alleged offenders may be encouraged to plead guilty if there is the chance that they will receive a time served prison sentence. They explain:

That is, remandees may find themselves weighing up whether to remain in custody and await trial to contest the charges, or to plead guilty in the (increasingly realistic) hope of receiving a time served prison sentence and being released earlier. The temptation of early release may dissuade remandees from engaging in what could have been a legitimate defence of the allegations against them.⁵²

Having a criminal conviction can have a negative flow-on effect in terms of employment, housing and access to services, raising concerns about people choosing to plead guilty in order to be released from custody.⁵³

Increase in criminal activity after release

Some experts have argued that there may be a link between being held on remand and the likelihood of future criminal activity.⁵⁴ As remand is a short-term solution employed with the aim of ensuring community safety, its long-term effects have not been widely studied, but some experts have claimed them to be mostly negative. The Law & Advocacy Centre for Women (LACW) writes that remand:

... frequently interrupts important opportunities for recovery and rehabilitation that may address the underlying causes of offending behaviours ... Perversely, this

⁴⁶ McGorrery & Bathy (2020) op. cit., p. 1.

⁴⁷ Russell et. al. (2020) op. cit., p. 44.

⁴⁸ McGorrery & Bathy (2020) op. cit., p. 1.

⁴⁹ *ibid.*, p. 9.

⁵⁰ Russell et. al. (2020) op. cit., p. 35.

⁵¹ *ibid.*, p. 35.

⁵² McGorrery & Bathy (2020) op. cit., p. 13.

⁵³ Russell et. al. (2020) op. cit., p. 37.

⁵⁴ McMahon (2019) op. cit., p. 22.

increases the likelihood that when eventually released, there is a greater risk of reoffending.⁵⁵

The Justice Reform Initiative also argued in its submission to the Legislative Council Legal and Social Issues Committee (LCLSIC) inquiry into Victoria’s criminal justice system that the ‘more people we are sending to prison the less safe we are making the community’, due to the likelihood of someone who has been imprisoned reoffending.⁵⁶ Furthermore, Mel Walker, the co-chair of the Criminal Law Committee at the Law Institute of Victoria, told the inquiry that pre-trial detention ‘creates a toxic recipe for criminalising those who are in poverty, and the refusal of bail increases the criminogenic causes of offending in the first place’.⁵⁷

Concerns over community safety

Concerns over community safety have driven many changes to bail laws, and these changes are supported by some stakeholders. The Victims of Crime Commissioner stated in February 2023 that ‘bail laws should always operate in a way that prioritises victim and community safety’, but also acknowledged that they should not disproportionately impact people accused of minor crimes who are already disadvantaged.⁵⁸ The Commissioner supported bail laws that strike the right balance between all these factors.

The Police Union has previously come out in opposition to changes to bail laws. Association secretary Wayne Gatt said, ‘If laws are wound back to once again let violent criminals like sex offenders and drug traffickers act with impunity, the cost to community safety will be far greater’.⁵⁹

Impact on the ‘presumption of innocence’

People who follow bail law changes have highlighted a trend to prioritise ‘community safety’, reducing the importance of the presumption of innocence that forms the basis of the legal system. Deakin Law School Professor Dr Marilyn McMahon points out that, by 2019, ‘community protection [was] the primary consideration in relation to *all* applications for bail’.⁶⁰ The first guiding principle of the Act inserted in the 2017 amendments is:

The Parliament recognises the importance of—

- (a) maximising the safety of the community and persons affected by crime to the greatest extent possible ...⁶¹

The ‘presumption of innocence and the right to liberty’ is the second guiding principle.⁶² Those who have analysed Hansard debates from when the 2017 Bills were before Parliament have noted that the presumption of innocence was not often talked about in relation to the proposed amendments.⁶³

Auld and Quilter, in an analysis of recent legislative reforms in new South Wales, Queensland and Victoria argue that much of the focus on community safety in bail law debate is driven by the media and politicians, particularly when the commentary ‘frequently excludes

⁵⁵ Law & Advocacy Centre for Women (2022) [Submission to the Yoorrook Justice Commission, Systemic Injustice into the Criminal Justice System](#), November, Melbourne, p. 8.

⁵⁶ Justice Reform Initiative (2021) [Submission to the Social and Legal Issues Committee, Inquiry into the Victorian Criminal Justice System](#), September, Melbourne, The Committee, p. 6.

⁵⁷ M. Walker (2021) [Transcript of public hearing: Mel Walker, Co-Chair of Criminal Law Committee, Law Institute of Victoria, Inquiry into the Victoria’s Criminal Justice System](#), 24 August, Melbourne, The Committee, p. 12.

⁵⁸ Victims of Crime Commissioner (no date) ‘[Policy position: Bail reform](#)’, Victims of Crime Commissioner website.

⁵⁹ T. Mills, R. Millar & C. Vedelago (2021) ‘[Keep tough bail laws, says police union, as Greens try to wind them back](#)’, *The Age*, 17 May.

⁶⁰ McMahon (2019) op. cit., p. 12.

⁶¹ *Bail Act 1977*, s 1B(1)(a)

⁶² *Bail Act 1977*, s 1B(1)(b)

⁶³ McMahon (2019) op. cit., pp. 15-16; Auld & Quilter (2020) op. cit., p. 655.

consideration of fundamental rights'.⁶⁴ They argue that the media has at times created an environment where governments are forced to 'fix the bail system'.⁶⁵ Liberty Victoria expressed concerns over this in 2017 and opposed the Bill because it 'undermine[d] the presumption of innocence'.⁶⁶

In 2022, the LCLSIC inquiry into Victoria's criminal justice system found:

Victoria's bail system must balance the maintenance of community safety with the presumption of innocence for people accused of an offence. Victoria's criminal justice system does not currently appropriately or fairly balance these objectives.⁶⁷

The committee encouraged the government to address these issues as soon as possible.

Impact on women

The impacts of the 2017 changes to Victoria's bail laws on women have been thoroughly researched. Women held on remand are more likely to have committed low-level, non-violent offences and often cannot meet the standards required by the 'exceptional circumstances' and 'show compelling reasons' tests.⁶⁸

The Centre for Innovative Justice at RMIT University said that Victoria's bail laws have 'arguably had the most dramatic effect on women's prison numbers'.⁶⁹ Another study said the large number of women in prisons 'indicated that the crisis of women's remand level is a product of *systemic inequalities* in the operation of bail laws rather than individual issues or "crime trends"'.⁷⁰

The Fitzroy Legal Service described a 'constellation of circumstances' that impact the chance of a woman being granted bail.⁷¹ Often women commit low-level offences but, due to 'overlapping issues of homelessness, trauma, addiction, mental health and disadvantage', struggle to prove that they should be granted bail.⁷² Prison also exacerbates these issues.⁷³

Family violence is often a large factor in women being granted or refused bail. The Crime Statistics Agency reported that half the women on remand in 2018 were the victim of at least one reported crime in the previous two years, with assault being the most common crime.⁷⁴ Some studies have found that the 2013 changes to the law regarding contravening a bail condition particularly impact women, as women are at times prevented from attending court or do not know that they are required to attend court due to family violence. If they are then charged with further offences, they may be required to meet a higher threshold for bail, which could be harder to meet.⁷⁵

The impact of remanding women also has a flow-on effect to any children in their care. Removing a woman from her children 'can have enduring impacts on families, extending well beyond a woman's release from custody'.⁷⁶ More than half of prison entrants in 2020 reported having at least one dependent child.⁷⁷

⁶⁴ Auld & Quilter (2020) op. cit., p. 655.

⁶⁵ *ibid.*, p. 655

⁶⁶ Liberty Victoria (2017) 'Bail Amendment (Stage One Bill) 2017', Liberty Victoria website.

⁶⁷ Legal and Social Issues Committee (2022) *Inquiry into the Victoria's Criminal Justice System*, final report, vol. 2, Melbourne, The Committee, March, p. 459.

⁶⁸ Russell et al. (2022) op. cit.

⁶⁹ C. Caruana, E. Campbell, E. Bissett & K. Ogilvie (2021) *Leaving custody behind: Foundations for safer communities & gender-informed criminal justice systems*, Melbourne, Centre for Innovative Justice, RMIT University, July, p. 47.

⁷⁰ Russell et al. (2020) op. cit., p. 108.

⁷¹ *ibid.*, p. 19.

⁷² *ibid.*, p. 20.

⁷³ *ibid.*, p. 108.

⁷⁴ *ibid.*, p. 25.

⁷⁵ *ibid.*, p. 29.

⁷⁶ Russell et al. (2020) op. cit., p. 26.

⁷⁷ Australian Institute of Health and Welfare (2020) *The health and welfare of women in Australia's prisons*, Canberra, AIHW, p. 10.

A lack of stable housing is often a reason women are refused bail, something which is exacerbated by the lack of short-term emergency housing and affordable rental properties.⁷⁸ It has also been shown that there is a ‘nexus between family violence, homelessness and women’s criminalisation’.⁷⁹ In 2020, 27 per cent of all women in prison were in short-term or emergency accommodation and 7 per cent were sleeping rough or in non-conventional housing in the four weeks leading up to their entry into prison.⁸⁰ Even short-term periods on remand can impact a woman’s ability to keep her housing and, if housing is lost, there is an increased likelihood of her committing more crimes.⁸¹ The LACW writes that ‘stable housing can act as a circuit breaker to break the cycle of offending and imprisonment’.⁸²

Fitzroy Legal Service found that due to women mostly committing low-level, non-violent offences, which often do not receive an imprisonment sentence, more women were pleading guilty.⁸³ The Committee for Economic Development of Australia (CEDA) and Smart Justice for Women, a coalition of legal, academic and community services, have also written in support of changing bail laws to reduce the number of women in prison.⁸⁴

Impact on Aboriginal and/or Torres Strait Islander peoples

The 1991 Royal Commission into Aboriginal Deaths in Custody (RCADIC) raised concerns over the percentage of Aboriginal and Torres Strait Islander peoples who have died while in police custody and the over-representation of Aboriginal and Torres Strait Islander peoples in prison.⁸⁵ Although the final report was released over 30 years ago, these concerns are still relevant, as not all the recommendations have been adopted.⁸⁶

The royal commission recommended that prison must be a last resort and that governments ‘revise any criteria which inappropriately restricts the granting of bail to Aboriginal people’.⁸⁷ There is evidence that police are more likely to apprehend First Nations peoples compared to non-First Nations peoples and that Aboriginal women are more likely to be apprehended for low-level, non-violent offences that are ‘a direct result of their poverty and disadvantage’.⁸⁸

The death of Veronica Nelson, a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman who died in police custody on 2 January 2020, and the coronial inquest that followed, highlighted the disproportionate impact that the 2017 bail amendments have had on Aboriginal and Torres Strait Islander peoples. Ms Nelson, who was not represented at her hearing, was refused bail as she was deemed unable to meet the ‘exceptional circumstances’ test.⁸⁹ The coroner wrote, ‘When the passing of an Aboriginal person occurs in custody, it occurs on the continuum of the problematic relationship between the Australian criminal justice system and First Nations peoples’.⁹⁰

⁷⁸ Law & Advocacy Centre for Women (2022) op. cit., pp. 10, 11.

⁷⁹ Russell et al. (2020) op. cit., p. 5.

⁸⁰ AIHW (2020) op. cit., p. 5

⁸¹ Law & Advocacy Centre for Women (2022) op. cit., p. 11.

⁸² *ibid.*, p. 12.

⁸³ Russell et. al (2020) op. cit., pp. 36–38.

⁸⁴ Committee for Economic Development of Australia (2022) op. cit.; Smart Justice for Women (2021) [Submission to the Social and Legal Issues Committee, Inquiry into the Victorian Criminal Justice System](#), September, Melbourne, The Committee.

⁸⁵ Royal Commission into Aboriginal Deaths in Custody (1991) *National Report*, vol. 5, Canberra, RCIADIC, 1991.

⁸⁶ T. Anthony, K. Jordan, T. Walsh, F. Markham & M. Williams (2021) *30 years on: Royal Commission into Aboriginal Deaths in Custody recommendations remain unimplemented*, CAEPR Working Paper, no. 140/2021, Canberra, Centre for Aboriginal Economic Policy Research, ANU College of Arts and Social Sciences.

⁸⁷ S. Ratnam (2023) ‘Adjournment: Bail Laws’, *Debates*, Victoria, Legislative Council, 4 May, p. 1359.

⁸⁸ Law & Advocacy Centre for Women (2022) op. cit., pp. 6–7.

⁸⁹ McGregor (2023) op. cit., p. 4.

⁹⁰ *ibid.*, p. 11.

The coroner identified that section 3A of the Act, which was introduced in 2010, had not reduced the number of Aboriginal people in police custody as was intended.⁹¹ He found that:

... the Bail Act has a discriminatory impact on First Nations people resulting in grossly disproportionate rates of remand in custody, the most egregious of which affect alleged offenders who are Aboriginal and/or Torres Strait Islander women.⁹²

The coroner also found that sections 4AA(2)(c), 4A and 4C and clauses 1 and 30 of schedule 2 of the Act are incompatible with the Charter for Human Rights and Responsibilities and that, had all of the recommendations of the RCADIC been implemented, Ms Nelson's death would not have occurred.⁹³ He recommended changes to the Act, including that sections 4AA(2)(c), 18(4), 30, 30A and 30B and clauses 1 and 30 of schedule 2 be repealed, and that sections 18AA, 3A and 4E(1)(a)(ii) be amended.

The Victorian Aboriginal Legal Service (VALS) has recommended changes to the bail laws to stop Aboriginal and Torres Strait Islander peoples from being disproportionately incarcerated. The service highlights the 'immediate harm' caused through detaining an Aboriginal person, separating them from family, community, Country and culture. This can negatively impact on their health, wellbeing and safety, can disrupt education and may affect their ability to maintain stable housing, employment and custody of dependent children.⁹⁴

There is particular concern around the over-representation of women in Victorian jails. In a submission to the Yoorrook Justice Commission, the Law & Advocacy Centre for Women examined how the current legal system exacerbates trauma experienced by many alleged offenders, especially Aboriginal women, which can undermine the chance of rehabilitation.⁹⁵ The Centre's submission stated that 'First Nations women experience over-policing and other forms of systemic racism' and that a 'gendered lens' needs to be used when looking at the criminal justice system, centring the voices of First Nations women.⁹⁶

VALS assisted the family of Veronica Nelson in developing Poccum's Law—named after Ms Nelson's nickname among her family. Poccum's Law has four key asks:

- remove the presumption against bail;
- grant access to bail 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;
- explicitly require that a person must not be remanded for an offence that is unlikely to result in a sentence of imprisonment; and
- remove all bail offences (committing an indictable offence while on bail, breaching bail conditions and failure to answer bail).⁹⁷

The proposed changes are supported by over 55 organisations including the Human Rights Law Centre, National Aboriginal and Torres Strait Islander Legal Services, the Victorian Council of Social Services, Amnesty International, ISJA, and the National Justice Project.⁹⁸

⁹¹ *ibid.*, p. 304.

⁹² *ibid.*, Appendix B p. 2.

⁹³ *ibid.*, Appendix B p. 8.

⁹⁴ VALS (2022), *op. cit.*

⁹⁵ Law & Advocacy Centre for Women (2022) *op. cit.*, p. 5

⁹⁶ *ibid.*, pp. 5-6.

⁹⁷ Victorian Aboriginal Legal Service (2023) 'Poccum's Law', VALS website, March.

⁹⁸ VALS (2023b) *op. cit.*

4 | Second reading speech

Following its introduction to the Legislative Assembly on 15 August 2023, Minister for Police and Minister for Crime Prevention the Hon. Anthony Carbines delivered the second reading speech for the Bail Amendment Bill 2023 on 17 August 2023.⁹⁹ In his speech, the minister acknowledged that the amendments made in 2017 in response to the Bourke Street car attack got the balance of community safety and the rights of the accused wrong. He conceded that those who are most vulnerable, including women, Aboriginal and/or Torres Strait Islander peoples, children and people with disabilities were disproportionately impacted by the government's attempts to increase community safety and, therefore, were 'disproportionately exposed to criminalisation and incarceration'.¹⁰⁰

Minister Carbines outlined how, under the amended Act, alleged offenders will still be held on remand if it is decided that they will endanger community safety, but that bail will not be used to 'further punish the most vulnerable members of our community'.¹⁰¹

Should the Bill pass, the changes will come into effect on 24 March 2024. It is expected that this will give all relevant parties enough time to accommodate the Bill's provisions through any necessary changes.

5 | The Bill

Removal of 'reverse onus' test and 'double uplift' for some offences

Under the proposed amendments, the application of the 'reverse onus' test will be narrowed to only the most serious offences listed in the Act. The current uplift consequences will be removed from non-scheduled offences and Act offences, and item 1 (an indictable offence committed in certain circumstances) and item 30 (an offence against the Principal Act) of schedule 2 will be repealed.¹⁰² Removing these two items will 'eliminate the possibility of "uplift" into a reverse-onus category for adults charged with repeat, lower-level offences'.¹⁰³

The 'double uplift' provisions refer to an instance when an alleged offender is first granted bail using the 'show compelling reason' test and then commits another crime while on bail. In this situation, they are then required to pass the 'exceptional circumstances' test, even if the crime they committed would not normally warrant the application of this test.

However, clause 25 inserts new sections 4AA(2)(c)(iia) and (iib), which will mean that adults charged with a scheduled offence while on remand or awaiting sentencing for a Schedule 2 offence will be uplifted to the 'exceptional circumstances' test.¹⁰⁴

The 'reverse onus' test will remain in certain circumstances, such as those in which the alleged offender poses a terrorist risk or a greater threat to community safety.

Refining the unacceptable risk test

The unacceptable risk test will be refined so that those who are deemed to not be a risk to community safety may be released, even if they commit another offence while on bail. Under the current test, a person may be remanded if they pose a risk of minor reoffending.¹⁰⁵ The test will be refined so that 'a risk of minor, non-violent reoffending cannot by itself result in

⁹⁹ A. Carbines, Minister for Police and Minister for Crime Prevention (2023) 'Second reading speech: Bail Amendment Bill 2023', *Debates*, Victoria, Legislative Assembly, 17 August, p. 2897.

¹⁰⁰ *ibid.*, p. 2897.

¹⁰¹ *ibid.*, (2023) *op. cit.*, p. 2897.

¹⁰² Bail Amendment Bill 2023, 8(2).

¹⁰³ Statement of compatibility, Bail Amendment Bill 2023, p. 4

¹⁰⁴ *ibid.*, p. 4.

¹⁰⁵ *Bail Act 1977*, s 4E(1)(a)(ii).

an accused person being remanded'.¹⁰⁶ Section 4E(1)(a)(ii) will be repealed and section 4E(1)(a)(i) will be updated.

Repeal of bail offences

Clauses 39 to 41 repeal sections 30A, 30B and 32A of the Act. These sections represent three of the four offences relating to committing a crime whilst on bail, and the changes will reduce the number of instances where an alleged offender can be charged with multiple offences for a single act.¹⁰⁷ The offence of failure to answer bail will remain, as will the option for bail to be revoked.

Changes to granting bail to children

The Bill will exclude children from the application of 'reverse onus' bail tests, except for murder and homicide offences and terrorism-related offences. Bail decisions relating to children will be based on the 'unacceptable risk' test.¹⁰⁸

Clause 35 will update section 3B of the Act in relation to the issues that a bail decision-maker must consider when granting bail to a child. Some of these considerations include:

- the child's age, maturity and state of development;
- the common law presumption on *doli incapax* (i.e. the common law assumption that a child between the ages of 10 and 14 cannot commit an offence);
- that remand of a child should be the last resort;
- the importance of maintaining a connection to family or other significant persons and their connections with educational and training settings; and
- whether the child is Aboriginal and/or Torres Strait Islander, is involved in the child protection system, has any disabilities or has any history of trauma or abuse.

Changes to granting bail to Aboriginal and/or Torres Strait Islander peoples

Section 3A of the current Act provides a 'non-exhaustive' list of considerations for bail decision-makers to take into account when determining bail for an Aboriginal and/or Torres Strait Islander person. This Bill will amend section 3A to insert additional considerations and give greater guidance to decision-makers. In the second reading speech, the Attorney-General said:

this includes consideration of broader systemic factors that drive inequality as well as circumstances relevant to Aboriginal people, including factors that make them particularly vulnerable in custody.¹⁰⁹

Clauses 31 to 34 of the Bill relate to considerations concerning Aboriginal and/or Torres Strait Islander peoples. Some of the expanded considerations include:

- systemic factors that have resulted, and continue to result, in the over-representation of Aboriginal peoples in the criminal justice system and remand population and the increased risks of Aboriginal peoples in custody;
- personal circumstances and the lived experiences of Aboriginal peoples that may make a person particularly vulnerable in custody, may be a causal factor for offending behaviour, or may be disrupted by being remanded, such as disability, trauma, family violence, involvement with child protection, housing insecurity and caring responsibilities;

¹⁰⁶ Carbines (2023) op. cit., p. 2898.

¹⁰⁷ Statement of compatibility, Bail Amendment Bill 2023, p. 9.

¹⁰⁸ Carbines (2023) op. cit., pp. 2899-2900; Bail Amendment Bill 2023, cc. 16-24.

¹⁰⁹ Carbines (2023) op. cit., p. 2900; Bail Amendment Bill 2023, cc. 31-38.

- the importance of maintaining protective factors that play a significant role in rehabilitation, such as connection to culture, kinship, family, Elders, Country and community; and
- any other cultural obligations, such as sorry business.¹¹⁰

Bail decision makers must also consider the importance of Aboriginal bail support services, and if they refuse bail, they will be required to state in writing or to the court specifically why they have made this decision.¹¹¹

Further bail hearings

The Bill will allow for a second legally represented bail hearing before a court in which new facts or circumstances must be presented. Under the current system, if an alleged offender is refused bail with legal representation, they can only apply for bail again if they are able to present new facts or circumstances.¹¹² This has meant that lawyers have been hesitant to represent a client during their original application when of the belief that they can make a more thorough application in the future. The alleged offender then must make a self-represented bail application, or not apply for bail at the first opportunity, leading to many short remand stays.

The Bill will insert new paragraph (aa) in section 18AA(1) of the Act so that ‘all accused people will be entitled to 2 bail applications before a court following arrest, both of which can be legally represented’.¹¹³

Consideration of time on remand exceeding sentence of imprisonment

As explained above, more and more offenders are being given time served prison sentences. Clause 36 of the Bill will insert a new paragraph before section 3AAA(1)(a) of the Act, which means that a bail decision-maker must take into account whether the alleged offender would be given a term of imprisonment if found guilty, and ‘if so, that the time the accused would spend remanded in custody if bail is refused would exceed the term of imprisonment’.¹¹⁴

Other amendments

The Bill aims to update the Act with further amendments, including changes that:

- address anomalies in the application of bail tests;
- adopt gender neutral terms;
- updates the definition of ‘Aboriginal person’;
- adopts the term ‘bail guarantee’ and ‘bail guarantor’ for ‘surety’; and
- restricts remand for minor offences in the *Summary Offences Act 1966*.

6 | Stakeholder responses

Political party responses

The Victorian Greens welcomed the reforms and the decision to set the commencement date to six months after the passage of the Bill, rather than the rumoured 12 months. However, they said they were still concerned that the ‘proposed reforms may not go far enough or

¹¹⁰ Carbines (2023) op. cit., p. 2900; Bail Amendment Bill 2023, cc. 31–34.

¹¹¹ Bail Amendment Bill 2023, c. 33.

¹¹² Carbines (2023) op. cit., p. 2894; Bail Amendment Bill 2023, c. 115.

¹¹³ Explanatory Memorandum, Bail Amendment Bill 2023, p. 27.

¹¹⁴ Bail Amendment Bill 2023, c. 36.

heed the advice long given by experts'.¹¹⁵ The justice spokesperson for the Greens, Katherine Copsey MLC for Southern Metropolitan region, said that the 'real test' will be whether the number of people on remand is reduced as a result of the Bill's passing.

The Opposition 'broadly welcomed' the changes but expressed concern over the removal of offences for breaching bail conditions.¹¹⁶ The Shadow Attorney-General, the Hon. Michael O'Brien stated that, while bail reform was important, 'community safety must always be the priority'.¹¹⁷ In February 2023, Shadow Minister for Criminal Justice Reform, Brad Battin criticised the government for not responding to the LCLSIC inquiry report within the required timeframe. He said:

If the Andrews Labor Government were serious about criminal justice reform, they would not have ignored this important report for almost a year...

If these matters were taken seriously at the time, we could be a lot closer to a better system that works for all Victorians...

These reforms are too important to wait...¹¹⁸

Responses from legal experts

While the Law Institute of Victoria (LIV) welcomed the Bill, they stated they would like to see the government go further in their changes.¹¹⁹ They specifically welcomed the removal of the 'reverse onus' provisions for children, the repeal of the 'double uplift' provisions and the repeal of bail offences. However, LIV President Tania Wolff also stated that the institute would like to see a general repeal of the 'reverse onus' test and a general presumption in favour of bail. The institute called on the government to fully enact Poccum's Law and supported VALS in its call for a statutory review of the Bill after 12 months.

Legal Aid Victoria also welcomed the proposed changes.¹²⁰ They highlighted the impacts that the current system has on people who spend time on remand for low-level offences and especially the impact on First Nations peoples. They also called for Poccum's Law to be enacted and stated that 'it is crucial the reforms translate into change on the ground and that we monitor their impact so that the harms of the current bail laws are prevented in the future'.¹²¹

The Federation of Community Legal Centres Victoria said that, while the proposed new law is a step in the right direction, it doesn't go far enough to remove certain clauses from the existing Act.¹²² It called for the removal of the 'reverse onus' test and urged Parliament to adopt Poccum's Law, 'acknowledging the intersection between marginalisation, discrimination, family violence, mental illness, trauma and the remand of women, and addressing the disproportionate damage currently caused by the Bail Act'.

¹¹⁵ Victorian Greens (2023) *Real test of bail reform will be reduction in unsentenced prisoners, deaths in custody*, media release, 15 August.

¹¹⁶ R. Willingham (2023) 'Victorian government introduces legislation to parliament to reform state's bail laws', *ABC News*, 15 August.

¹¹⁷ A. Ore (2023) 'Victoria's bail laws to be loosened after being labelled 'complete, unmitigated disaster'', *The Guardian*, 5 March.

¹¹⁸ B. Battin (2023) *Criminal justice reforms ignored by Daniel Andrews*, media release, 8 February.

¹¹⁹ Law Institute of Victoria (2023) *LIV welcomes bail reform, but further action needed*, media release, 15 August.

¹²⁰ Legal Aid (2023) 'Reforming bail laws for a better, fairer justice system', Legal Aid Victoria website, 15 August.

¹²¹ Legal Aid (2023) op. cit.

¹²² K. Wand (2023) 'Proposed bail reform a step in the right direction – but more is needed to fix Victoria's broken bail system', Federation of Community Legal Centres website, 17 August.

Responses from Aboriginal and Torres Strait Islander stakeholders

VALS called the Bill a ‘small step’ towards enacting Poccum’s Law and welcomed the removal of two bail offences and the ‘reverse onus’ provision for children and the strengthening of special considerations for Aboriginal people.¹²³ However, it expressed concern that these changes will actually make the Act more complicated ‘rather than making it simple and clear so that it can function more effectively’.¹²⁴ It called for the following proposed amendments to the current bill:

- inclusion of a statutory review of the Bill 12 months after it is enacted;
- removal of the ‘reverse onus’ provisions; and
- a quicker enactment of the Bill.

CEO of VALS, Nerita Waight, said:

This is a first small step towards ending the damage that Victoria’s bail laws have done over the last 5 years particularly.

...

There are some good changes thanks to the advocacy of Veronica’s family, especially in relation to removing bail offences, making it easier for children to get bail, and changes to reduce the overincarceration of Aboriginal people.

...

There has been 3 bail bills before this in the last decade and the Government has admitted that there was mistakes in all of them. They should accept that they probably haven’t got this one right either and set a timeline for reviewing the Bill in the legislation.¹²⁵

While the Yoorrook Justice Commission had not released a statement at time of writing, in March 2023 when it was flagged that changes would be made in 2023, it ‘cautiously welcomed’ them.¹²⁶

Responses from police

On 15 August 2023, the Police Association told the ABC that it had not seen the Bill and therefore did not have a statement on it. It did, however, state that:

Our position remains that there is a legitimate case for reform of the Bail Act, however we maintain that reform must not come at the expense of the safety of Victorians.¹²⁷

¹²³ Victorian Aboriginal Legal Service (2023) ‘[Victorian government’s bail bill is a good first step but can be improved](#)’, VALS website, 15 August.

¹²⁴ VALS (2023), op. cit.

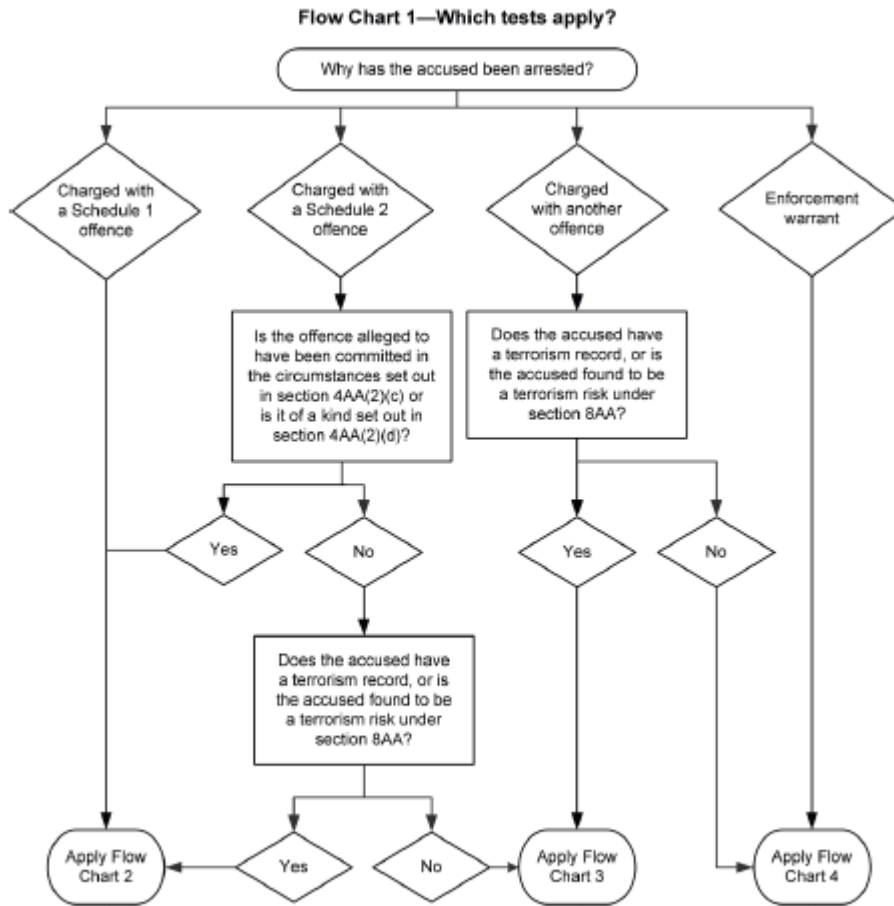
¹²⁵ VALS (2023) op. cit.

¹²⁶ Yoorrook Justice Commission (2023) *Yoorrook Justice Commission cautiously welcomes bail law reform as an important first step*, media release, 6 March.

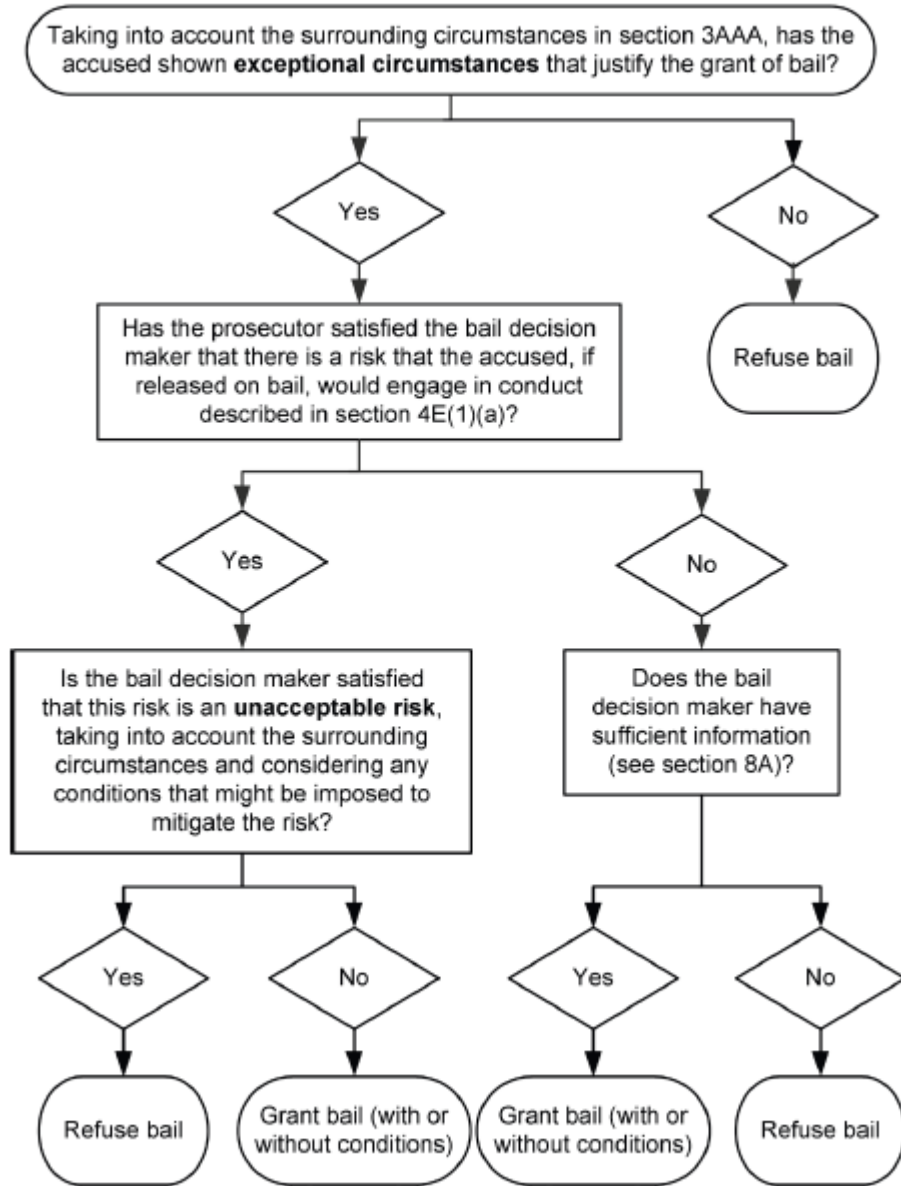
¹²⁷ R. Willingham (2023) op. cit.

Appendix 1

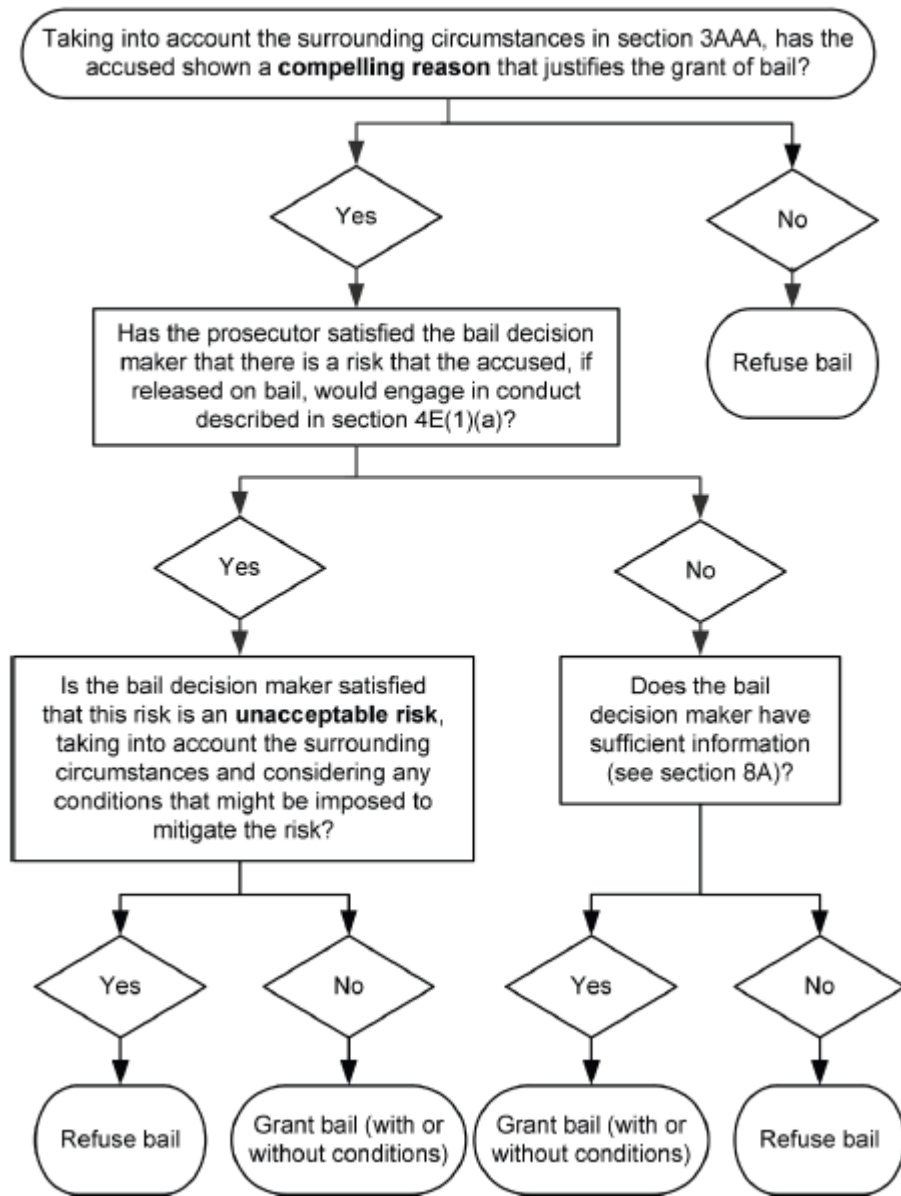
Flow charts from *Bail Act 1977*, section 3D:



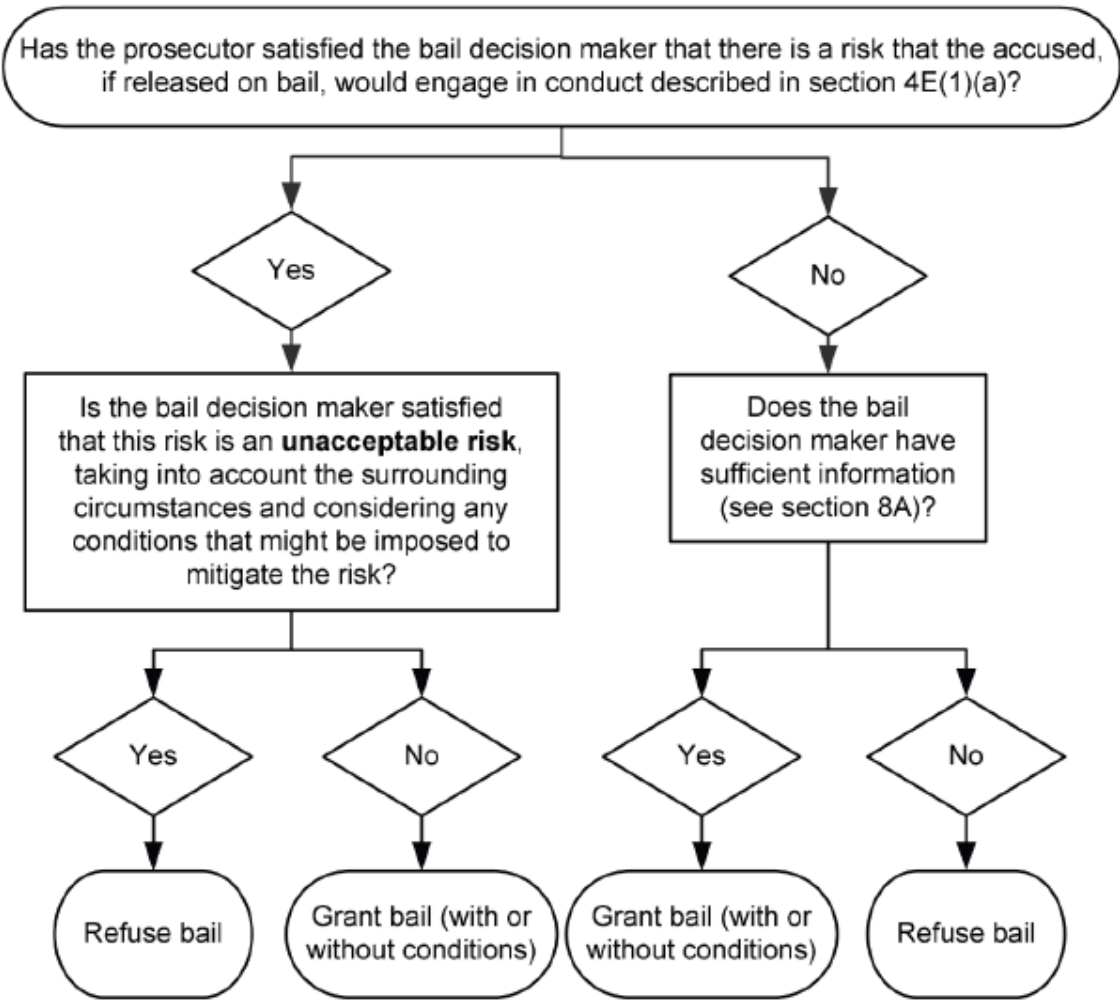
Flow Chart 2—Exceptional circumstances and unacceptable risk tests



Flow Chart 3—Show compelling reason and unacceptable risk tests

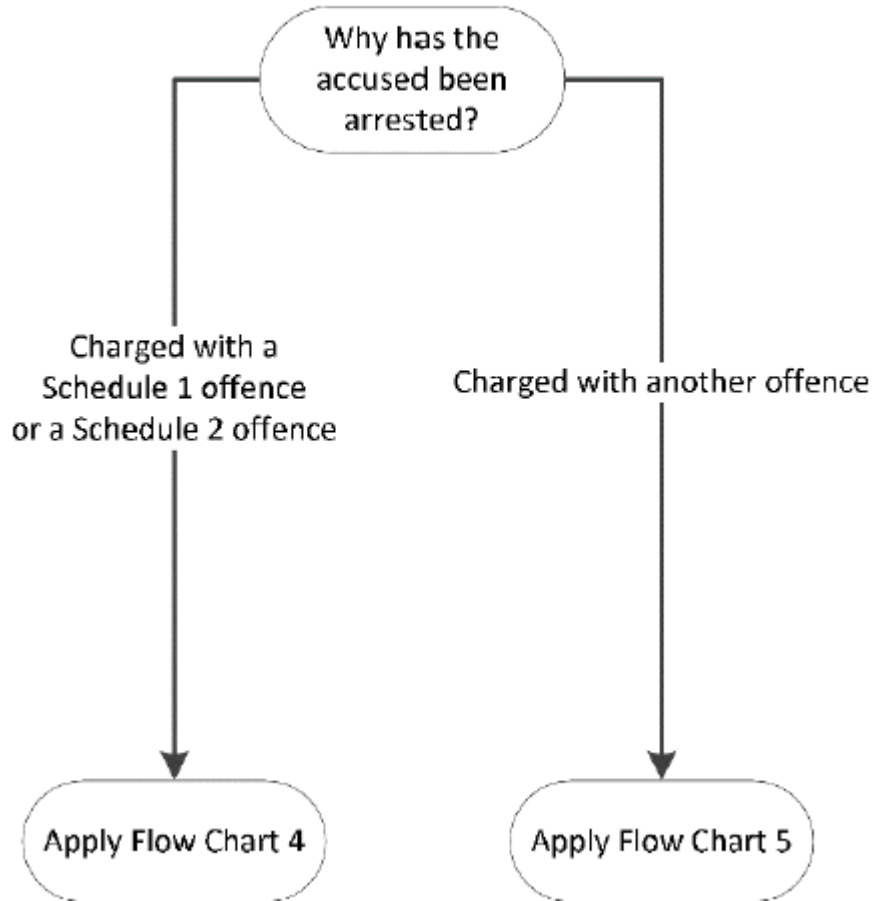


Flow Chart 4—Unacceptable risk test

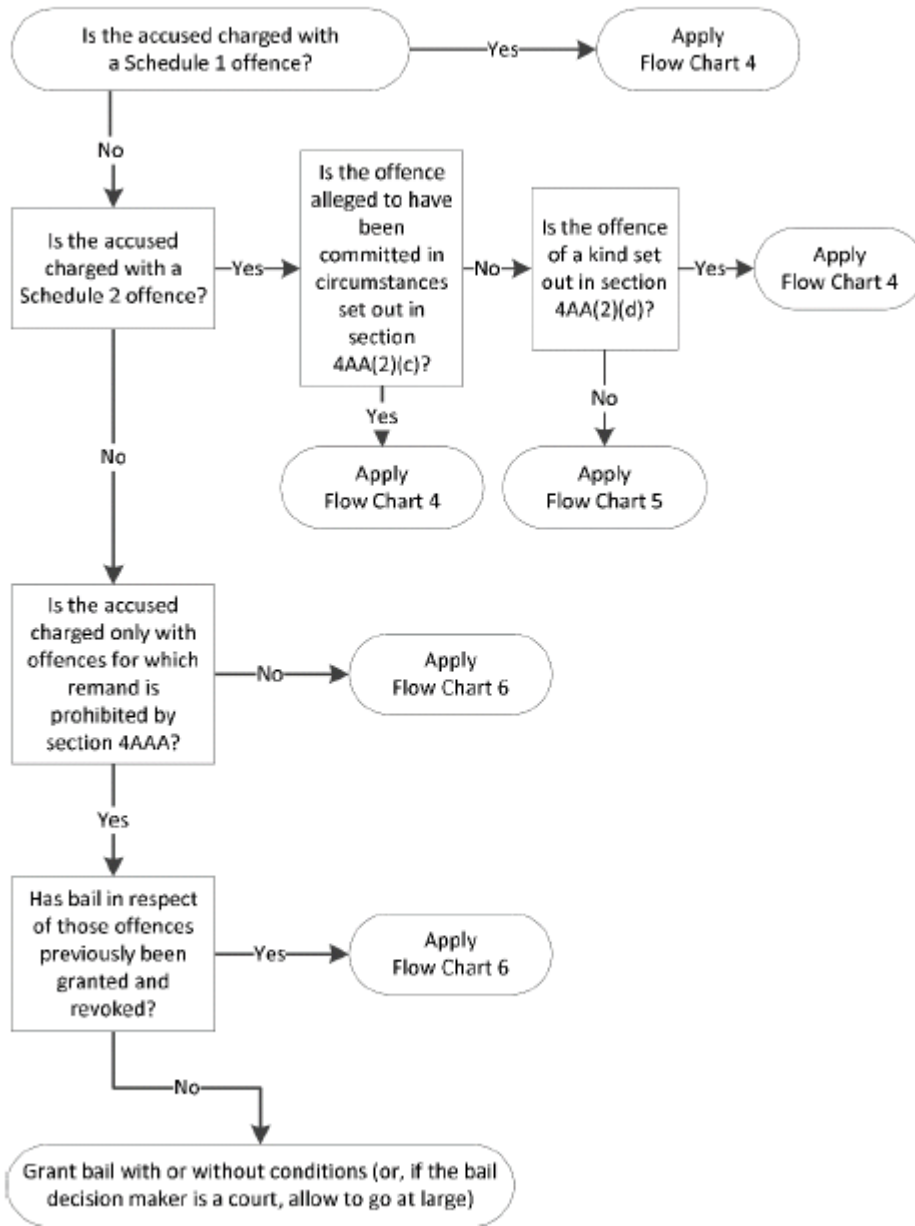


Flowcharts proposed in the Bail Amendment Bill 2023, clause 30:

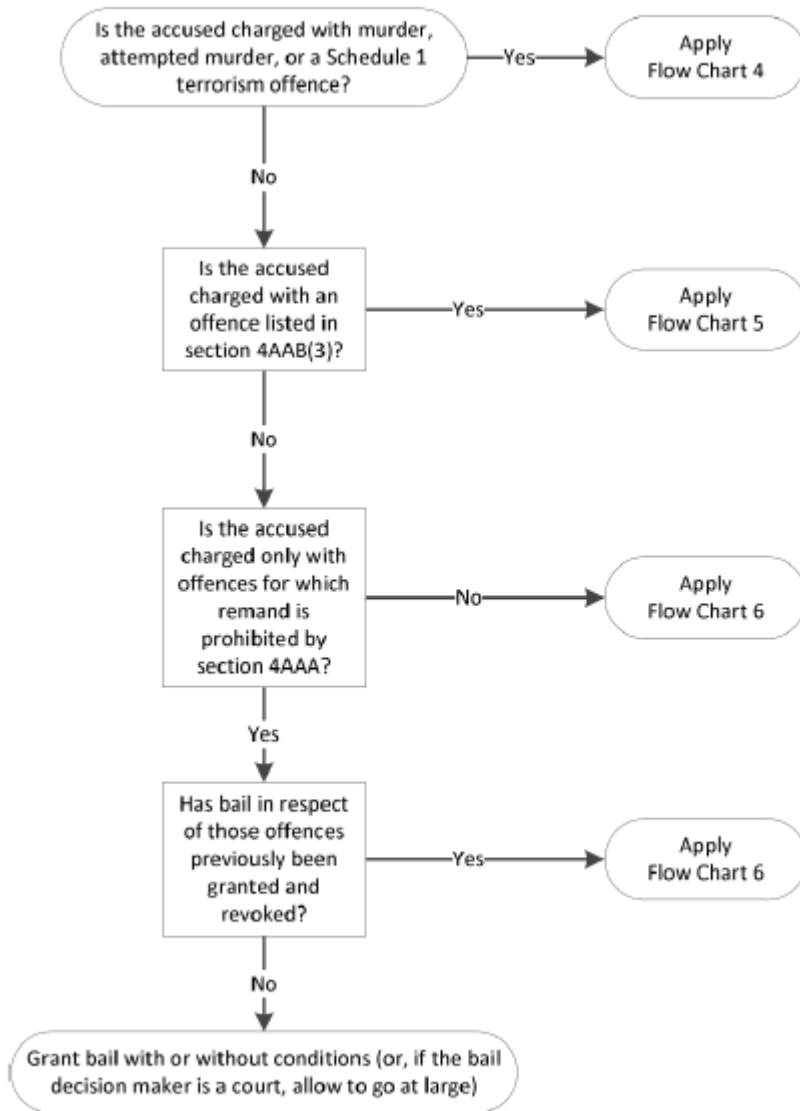
Flow Chart 1 – Terrorism record or terrorism risk



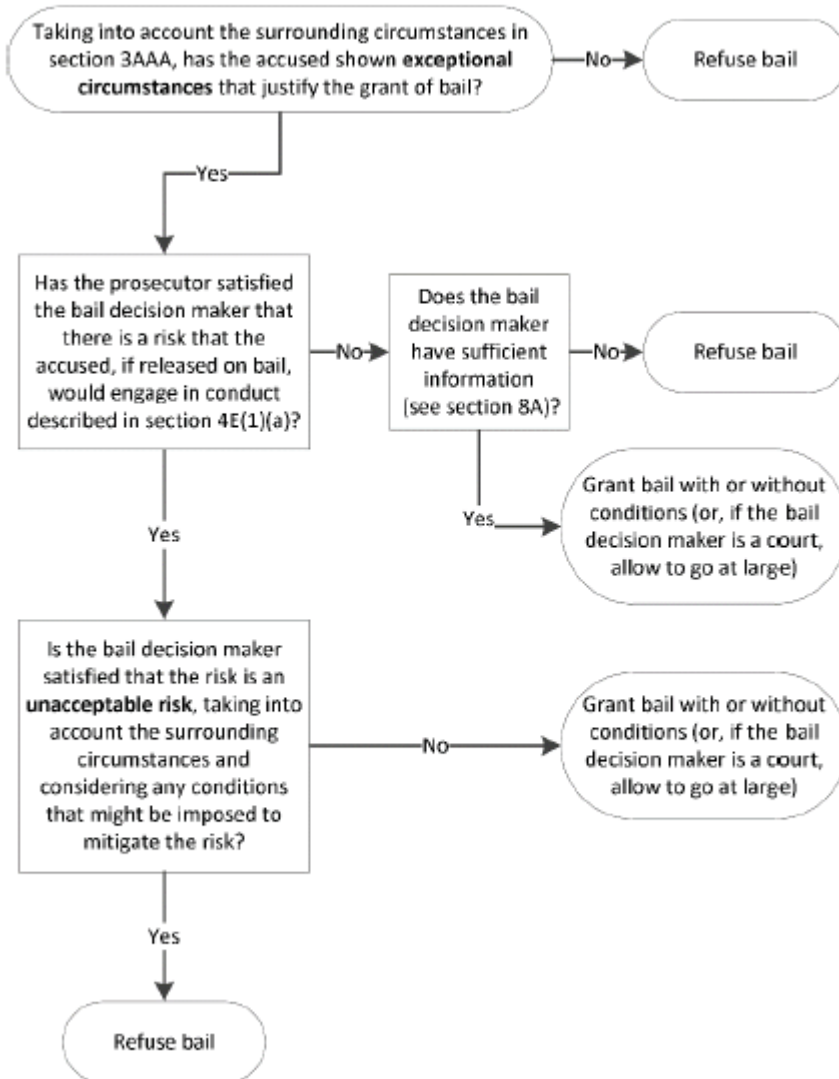
Flow Chart 2 – Which tests apply to adults generally?



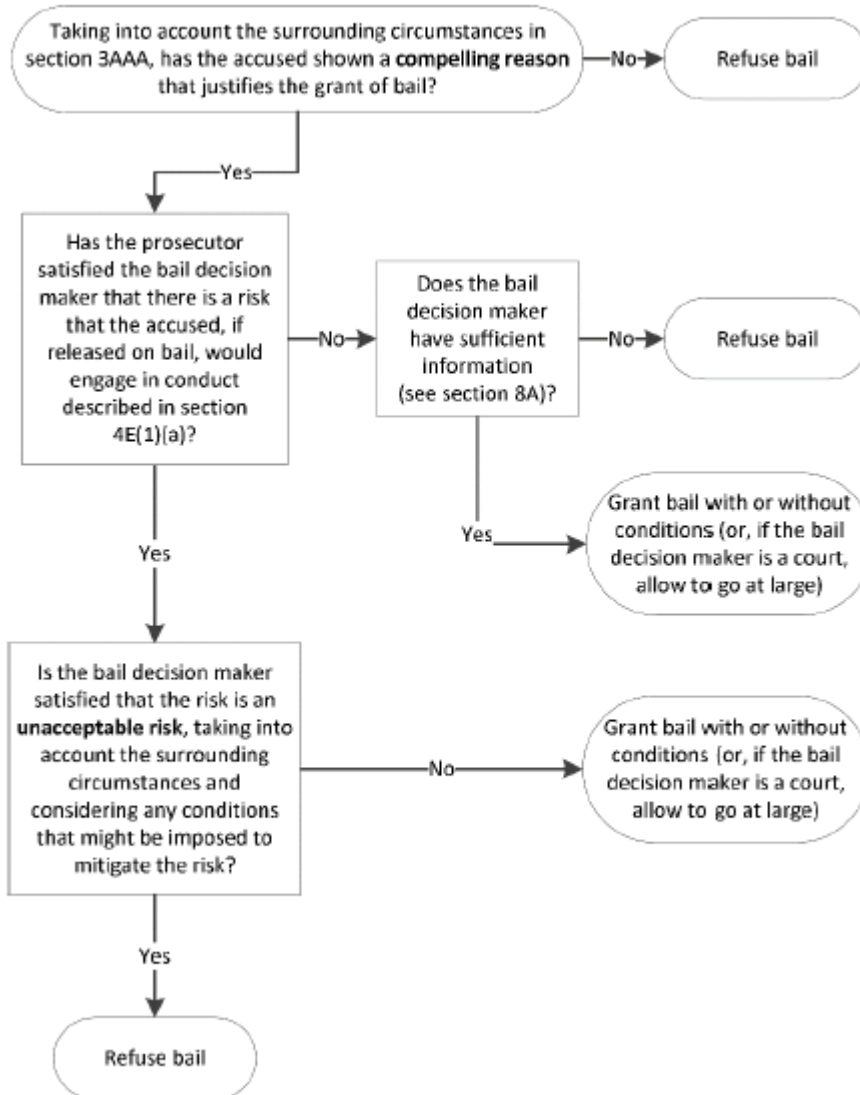
Flow Chart 3 – Which tests apply to children generally?



Flow Chart 4 – Exceptional circumstances and unacceptable risk tests



Flow Chart 5 – Show compelling reason and unacceptable risk tests



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