

**Bail Amendment (Reducing Pre-trial Imprisonment
of Women, Aboriginal, and Vulnerable Persons)
Bill 2021**

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Introduced in the Council by Samantha Ratnam

Bail Amendment (Reducing Pre-trial Imprisonment of Women, Aboriginal, and Vulnerable Persons) Bill 2021

A Bill for an Act to amend the **Bail Act 1977** to simplify the process of granting bail, to make related amendments to that Act and for other purposes.

The Parliament of Victoria enacts:

1 Purpose

The purpose of this Act is to amend the **Bail Act 1977**—

- (a) to simplify the process for granting bail; and
- (b) to provide for other matters related to the process for granting bail.

2 Commencement

This Act comes into operation on the day that is 6 months after the day on which this Act receives the Royal Assent.

5 3 Principal Act

In this Act, the **Bail Act 1977** is called the Principal Act.

4 Surrounding circumstances

In section 3AAA(1) of the Principal Act—

10 (a) for paragraph (a) **substitute**—

"(a) the nature and seriousness of the alleged offending, including—

15 (i) whether the alleged offence is a Schedule 1 offence or a Schedule 2 offence; and

(ii) whether it is a serious example of the offence;"

(b) after paragraph (e) **insert**—

20 "(ea) if paragraph (e) applies to the accused, the nature and seriousness of the other offence, including—

(i) whether the other offence is a Schedule 1 offence or a Schedule 2 offence; and

25 (ii) whether it is a serious example of the offence;"

(c) in paragraph (g), after "background" **insert** ", including any parental responsibilities the accused may have in relation to a child";

30 (d) after paragraph (k) **insert**—

"(ka) any length of time the accused has already spent in custody;"

- 5
- (e) in paragraph (l), after "is charged" **insert** "including the likelihood of a custodial sentence";
- (f) in paragraph (n), for "organisation." **substitute** "organisation;";
- (g) after paragraph (n) **insert**—
- 10 "(o) any risk of physical, psychological or other harm to the accused while on remand, including self-harm or harm by others;
- (p) the interests of justice;
- (q) the requirement to give consideration to any relevant human rights under the Charter of Human Rights and
- 15 Responsibilities.".

5 Flow charts

- (1) For the heading to section 3D of the Principal Act **substitute**—
- 20 "**Flow chart**".
- (2) Section 3D(1) of the Principal Act is **repealed**.
- (3) Section 3D(2) of the Principal Act and the flow chart at the foot of that section are **repealed**.
- (4) Section 3D(3) of the Principal Act and the flow chart at the foot of that section are **repealed**.
- 25 (5) Section 3D(4) of the Principal Act and the flow chart at the foot of that section are **repealed**.
- (6) For section 3D(5) of the Principal Act **substitute**—
- 30 "(5) The flow chart at the foot of this subsection shows the process for applying the unacceptable risk test.".

(7) For the heading to the flow chart at the foot of section 3D(5) of the Principal Act **substitute**—

"Flow Chart—Unacceptable risk test".

6 Sections 4AA, 4A, 4C and 4D repealed

5 Sections 4AA, 4A, 4C and 4D of the Principal Act are **repealed**.

7 All offences—unacceptable risk test

(1) For section 4E(1) and (2) of the Principal Act **substitute**—

10 "(1) A bail decision maker must refuse bail for a person accused of any offence if the bail decision maker is satisfied that if the accused is released on bail there is an unacceptable risk that the accused would—

- 15 (a) endanger the safety or welfare of any person; or
- (b) commit an offence while on bail; or
- (c) interfere with a witness or otherwise obstruct the course of justice in any
- 20 matter; or
- (d) fail to surrender into custody in accordance with the conditions of bail.

Example

25 An unacceptable risk that the accused, if released on bail, would commit a family violence offence.

(2) If a court has determined under section 8AA(2) that there is a risk that an accused will commit a terrorism or foreign incursion offence, the court must refuse bail for the

30 accused if the court is satisfied that the risk is unacceptable.

Note

If, under section 8AA(2), a court determines that there is no risk that the accused will commit a terrorism or foreign incursion offence, section 4(1) applies to the court's consideration of whether to grant bail to the accused person.

(2A) The prosecutor bears the burden of satisfying the bail decision maker that a risk exists of a kind mentioned in subsection (1) that is unacceptable.

(2B) For subsection (2), the prosecutor bears the burden of satisfying the court that the risk determined under section 8AA is unacceptable."

(2) In section 4E(3) of the Principal Act, for "subsection (1)(a)" **substitute** "subsection (1)".

8 Court to make preliminary determination if terrorism risk alleged

(1) In section 8AA(1) of the Principal Act—

(a) paragraph (b) is **repealed**;

(b) Note 2 at the foot of the subsection is **repealed**.

(2) The Note at the foot of section 8AA(2) of the Principal Act is **repealed**.

9 Power of police officer, sheriff or authorised person to grant or refuse bail

In the Note at the foot of section 10(5) of the Principal Act **omit** the first dot point.

10 Power of bail justice to grant or refuse bail

In the Note at the foot of section 10A(5) of the Principal Act **omit** the first dot point.

11 Section 12A substituted

For section 12A of the Principal Act **substitute**—

"12A When bail decision maker must state reasons for granting bail

5 If a bail decision maker grants bail for a Schedule 1 or Schedule 2 offence—

- 10 (a) if the bail decision maker is a court, the court must include in the order granting bail, a statement of reasons for granting bail; or
- 15 (b) if the bail decision maker is not a court, the bail decision maker must record and provide the prosecutor and the accused with a statement of reasons for granting bail."

12 Treason, murder, certain other offences

For section 13(3) and (4) of the Principal Act **substitute**—

20 "(3) Subject to subsection (4), only a court may grant bail to a person accused of a Schedule 1 offence.

(4) Subsection (3) does not apply if the accused person is—

- 25 (a) a child; or
- (b) a vulnerable adult; or
- (c) an Aboriginal person."

13 Transitional provisions

After section 34(21) of the Principal Act **insert**—

30 "(22) An amendment made to this Act by a provision of the **Bail Amendment (Reducing Pre-trial Imprisonment of Women, Aboriginal and Vulnerable**

5 **Persons) Act 2021** applies to an application made, or an appeal commenced, under this Act on or after the commencement of that provision, regardless of when the offence is alleged to have been committed."

14 Schedule 1—Schedule 1 offences

In Schedule 1 to the Principal Act **omit** Notes 1 and 2.

15 Schedule 2—Schedule 2 offences

10 In Schedule 2 to the Principal Act **omit** the Note.

16 Repeal of this Act

This Act is repealed on the first anniversary of its commencement.

Note

15 The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.