

Media Release

Jaclyn Symes MLC

Leader of the Government in the Legislative Council

Attorney-General

Minister for Emergency Services



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NEW REFORMS TO MAKE VICTORIA'S BAIL LAWS FAIRER

The Andrews Labor Government will make the state's bail laws fairer for vulnerable and disadvantaged people, while continuing to take a tough approach to those who pose a serious risk to Victorians.

Attorney-General Jaclyn Symes announced new legislation will be introduced into Parliament today, amending the *Bail Act 1977* to reduce unnecessary remand for people accused of low-level offending.

For low-level offences, the Government will abolish the "double uplift" provision and the test for bail will depend on the offence committed.

This recognises that most repeat low-level offending does not prove a safety risk and will reduce the number of people – particularly women – entering remand who don't post a risk to community safety.

In 2018, the "double uplift" provision was introduced, where people who had committed an offence while they're on bail could have their test for bail for the new offence 'uplifted' from a less onerous test, to a more onerous one.

Uplifting could also result in a "reverse onus" test for certain offences, so that someone would need to prove why they should get bail – rather than the prosecution proving they should not.

We will also refine the definition of "unacceptable risk" to make it clearer that a potential risk of minor offending isn't a good enough reason to refuse bail unless someone else's safety or welfare is threatened. This can capture property-based offending that impacts welfare – such as repeated theft from the same small shop.

Under the current laws, if someone commits an offence while on bail, they can face charges not only for the crime itself but also additional charges – known as "bail offences." These are standalone offences that apply on top of the consequences connected to the actual conduct.

The bail offences of "breaching bail conditions" and "committing further offences while on bail" will be repealed. These offences were introduced in 2013 and have been shown to disproportionately impact women, children and Aboriginal people with no clear deterrent benefit or improvement to community safety.

This doesn't mean those who commit these offences no longer face consequences – it simply means the conduct is addressed without adding an additional offence. For example, if conditions are breached, an application can be made for bail to be revoked.

Under the current system, there are people in prison on remand for offences that are highly unlikely to result in a sentence. We will introduce remand-prohibited offences – making it so the system operates under the principle that if you are unlikely to receive a prison sentence for a crime, you shouldn't be remanded for it.

This will apply to offences listed in the *Summary Offences Act* but there will be some instances where this won't apply such as sexual exposure, Nazi symbol display and common or aggravated assault.

Currently in most instances, if someone's represented bail application is denied they need to prove new facts and circumstances have arisen in their case before a second application can be heard.

This has resulted in a situation where a lawyer could advise their clients to represent themselves in the first application immediately after being arrested – saving their represented application for a time when the case may be stronger due to things like securing a stable home or getting counselling, but where the accused enters prison on remand in the meantime.

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The reforms will change this so that if someone has their bail application rejected, they can make a second application without having to show new facts and circumstances. This seeks to remove the incentive to make an unrepresented application in the first place.

Our reforms will implement a presumption of bail for children with exceptions for certain crimes such as terrorism and homicide offences.

Custody will be considered a last resort for a child, but children will still be subject to the unacceptable risk test — so if a child is a risk to the community or someone else, it'll be possible to hold them on remand.

Finally, if a bail decision maker has decided to reject an Aboriginal person's bail application, they'll now be required to record how they have considered specific, self-determined Aboriginal considerations such as a person's culture, kinship and family situations.

The suite of changes will address key recommendations of the coronial Inquest into the death in custody of Veronica Nelson and the Parliamentary Inquiry into Victoria's criminal justice system.

Quotes attributable to Attorney-General Jaclyn Symes

"These reforms are sensible, proportionate and necessary. They address the most urgent changes needed to our bail system so that those involved in minor offending don't have a major life setback because of it."

"We also have a responsibility to Victorians to protect the community from serious offending. Our reforms maintain the tough approach to those who pose a serious risk to people's safety that Victorians expect."