# Review of Victoria’s bail system

Sent to The Hon. Paul Coghlan QC via email at [bailreview@justice.vic.gov.au](mailto:bailreview@justice.vic.gov.au)

Dear Justice Coghlan

## Review of Victoria’s bail system

Thank you for the opportunity to contribute to the review of Victoria’s bail system.

Victoria Legal Aid (VLA) understands that there is currently strong community concern about Victoria’s bail system and whether it sufficiently prioritises community safety. We believe that it is vital that every part of Victoria’s criminal justice system operate so as to maximise community safety. However, we do not believe that reforming the Bail Act 1977 to further limit the availability of bail will achieve this.

## Further limitations on bail are unnecessary

In our view, the current regime set out in the Bail Act, though complex, is workable, flexible and effective. It provides bail decision makers with sufficient scope and discretion to balance risk to community safety with the presumption of innocence and the need to avoid unnecessary detention. The protections currently afforded to children under section 3B of the Act are appropriate.

We believe that further limits on the presumption in favour of bail are unnecessary. In particular, there is no demonstrable need to add to the current lists of offences to which the ‘show cause’ and ‘exceptional circumstances’ provisions apply, although as we note below, there is scope to simplify these tests.

## Restricting bail will not reduce reoffending or protect the community

We consider that any legislative change aimed at further limiting the availability of bail will have a dramatic impact on the criminal justice system. The number of people on remand in Victoria has more than doubled in the last six years. The adult remand population now constitutes almost one third of Victoria’s overall adult prison population. The Victorian prison system is already overburdened. Further pressure is likely to result in reduced access to rehabilitation programs and services for prisoners. This will do nothing to reduce reoffending or protect the community, and is in fact likely to do the opposite.

Placing further restrictions on the granting of bail would quickly cause overcrowding in prisons and police cells. This would place the safety of prisoners and prison staff at risk and create the conditions for riots. It would also increase the rate at which prisoners are not brought to court, adding to delay in resolving matters. This would put further pressure on a summary crime jurisdiction which is already at crisis point. Additional delay would also result in lengthier remand periods, and an increase in the proportion of prisoners being released into the community without support. None of this ultimately serves or protects the community.

## Bail provides better opportunities to reduce reoffending than remand

Unlike sentenced prisoners, remandees have limited access to rehabilitation programs. Remand thus provides little or no opportunity to assist alleged offenders to address the problems in their lives which may be driving their offending behaviour. In contrast, a properly resourced bail system can provide an accused person with intensive supports to address the underlying causes of his or her offending.

Programs such as the Court Integrated Services Program and the CREDIT/Bail Support Program, which provide access to accommodation, health, welfare and other community supports, have the potential to achieve powerful transformations in the life of an accused. Unfortunately, such programs are currently only available in specific catchment areas. VLA believes that the expansion of properly resourced bail support programs is far more likely to address risk, reduce offending and maximise community safety than restricting the availability of bail.

## The Bail Act could be simplified

The Bail Act has never been comprehensively updated and would thus benefit from simplification. In this respect, we endorse the Victorian Law Reform Commission’s recommendation in its 2007 Review of the Bail Act: Final Report to remove the ‘show cause’ and ‘exceptional circumstances’ tests from the Act so that all bail decisions are based solely on the question of ‘unacceptable risk’. This would allow bail decision makers to focus on the ultimate issue in all bail applications – whether the accused poses an unacceptable risk – regardless of the offence with which he or she has been charged.

## The quality of information for bail decision makers could be improved

VLA also considers that there is scope to improve the quality of the information to which bail decision makers have access, although we are conscious of the need to avoid unnecessarily delaying bail decisions.

## Early intervention must be strengthened

As the review of Victoria’s bail laws was precipitated by the tragic events in Melbourne on 20 January 2017, we consider that the coronial inquest into the deaths will be critical in determining whether there are broader systemic issues that need to be addressed, such as better access to mental health services, or treatment services for users of the drug ice. Early intervention is our best protection against offending which is fuelled by such problems.

We would welcome the opportunity to comment on any specific proposals to reform Victoria’s bail system, particularly in relation to the addition of new ‘show cause’ or ‘exceptional circumstances’ offences. We would also be pleased to provide practical advice concerning our experience of the operation of the current system.

The VLA contact officers for the review are Catherine Tobin and Katya Zissermann.

Once again, thank you for the opportunity to contribute to the review.

Yours faithfully

Bevan Warner

Managing Director