Indigenous Justice Clearinghouse

Bail and remand across Australia

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Acronyms and abbreviations

AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health and Welfare
ALRC	Australian Law Reform Commission
BOCSAR	Bureau of Crime Statistics and Research
NIAA	National Indigenous Australians Agency

Abstract

Aboriginal and Torres Strait Islander people experience disproportionately high incarceration rates. The growing remand population across Australia contributes to the high imprisonment rate for Aboriginal and Torres Strait Islander adults and young people. This study examines the current literature to understand the factors driving bail refusal as it relates to Aboriginal and Torres Strait Islander defendants.

Increasingly restrictive amendments to bail laws have been criticised as driving remand rates, particularly in relation to show cause/compelling reason offences and exceptional circumstance provisions. Legal factors, such as prior offending and the seriousness of the offence, as well as extra-legal factors including Indigenous status, gender and housing insecurity, were noted in the literature as contributing to higher rates of bail refusal. Lastly, the over-policing of Indigenous communities, and of bail conditions, was found to be contributing to the over-representation of Indigenous people on remand in the criminal justice system.

Spending time on remand and the experiences faced during incarceration can increase the risk of further involvement in the criminal justice system for both adults and young people, perpetuating the cycle of disadvantage.

Executive summary

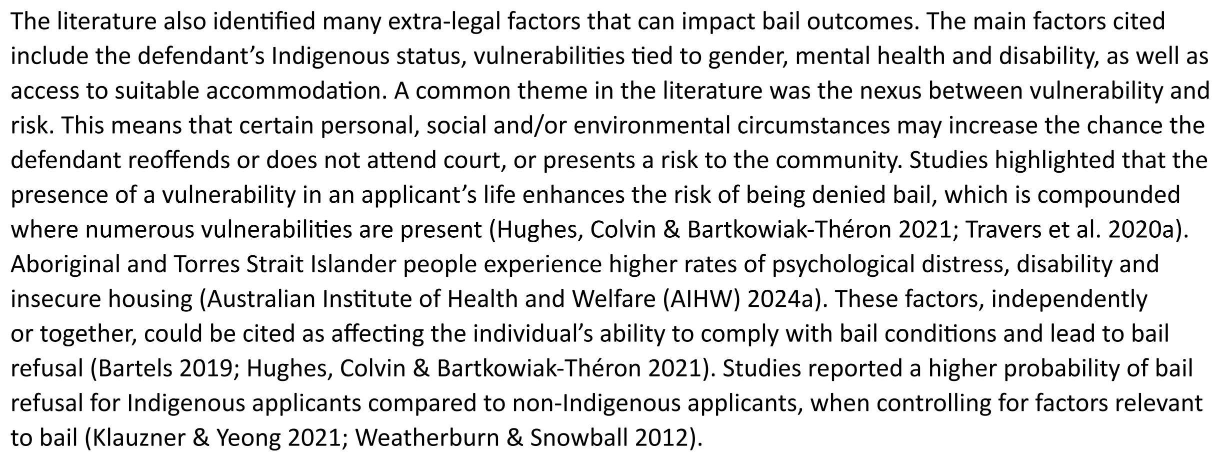
Incarceration is experienced at disproportionately high rates among Aboriginal and Torres Strait Islander adults and young people. Contributing to this high rate of incarceration are higher rates of bail refusal, and consequently, increases in the remand population. Bail refers to when an accused person is released back into the community on a temporary and conditional basis, while awaiting their court date (Auld & Quilter 2020; Barclay 2019; Weatherby-Fell 2014; Willis 2017). If bail is refused or breached, or if there is no application for bail, then a defendant is remanded into custody (Australian Law Reform Commission (ALRC) 2017b; Weatherby-Fell 2014).

This study, commissioned by the Indigenous Justice Clearinghouse, aimed to examine the context of bail and remand in Australia and describe the factors that influence bail refusal, with a specific focus on the impact on Aboriginal and Torres Strait Islander people. Literature published between 2014 and 2024 and relevant to an Australian context was reviewed to ensure all material was contemporary and suitable for the study. Earlier or non-peer-reviewed sources were added where findings were applicable in the context of bail and remand, or cited in the contemporary literature. While this research identified recent bail law amendments, current at the time of writing, bail legislation is constantly changing. Legislative changes not yet enacted were not included in the analysis.

The literature noted that bail laws are often amended following highly publicised offences committed by individuals released on bail at the time of the offence, prompting legislators to address perceived community concerns around safety (Auld & Quilter 2020; McMahon 2019; Russell et al. 2020; Schetzer & Sotiri 2024). There was a general consensus across the literature that there has been a shift towards more punitive bail laws in Australia, which has a net-widening effect, capturing more defendants due to higher bail thresholds. Bail laws have been identified as a key contributory factor to the increasing size of the remand population (see, for example, Klauzner & Yeong (2021) and Thorburn (2016)). Specifically, defendants must meet increasingly difficult thresholds in order to be granted bail. The unacceptable risk test, show cause/compelling reason tests and exceptional circumstances tests have all been introduced or reinforced with recent changes to bail laws. These tests mean fewer defendants are granted bail. A study by Klauzner and Yeong (2021) found adult defendants were much more likely to be refused bail by police and the courts for show cause offences compared with other offences.

Both legal and extra-legal factors considered in bail determinations were recognised as affecting bail outcomes. Legal factors include the defendant's offending history as well as the seriousness of the offences committed. Extra-legal factors include sociodemographic and life history circumstances such as Indigenous status, gender, age, mental health and availability of suitable accommodation.

However, research also found that legal factors were more influential than extra-legal factors in bail outcomes for both court and police decisions (Pisani et al. 2024). The literature identified several legal factors that increased the likelihood of a defendant having their bail denied. Defendants who had a history of prior offending or prior imprisonment, or who were charged with more serious (or show cause) offences, were more likely to be refused bail (Klauzner & Yeong 2021). Prior convictions were also noted as particularly disadvantaging Aboriginal and Torres Strait Islander defendants when applying for bail, as they are more likely to have a larger number of previous convictions (McLean 2020; Senate Finance and Public Administration References Committee 2016). A defendant having a larger number of prior convictions can prompt a presumption against bail and restrict access to bail (ALRC 2017b).



The literature also identified many extra-legal factors that can impact bail outcomes. The main factors cited include the defendant's Indigenous status, vulnerabilities tied to gender, mental health and disability, as well as access to suitable accommodation. A common theme in the literature was the nexus between vulnerability and risk. This means that certain personal, social and/or environmental circumstances may increase the chance the defendant reoffends or does not attend court, or presents a risk to the community. Studies highlighted that the presence of a vulnerability in an applicant's life enhances the risk of being denied bail, which is compounded where numerous vulnerabilities are present (Hughes, Colvin & Bartkowiak-Théron 2021; Travers et al. 2020a). Aboriginal and Torres Strait Islander people experience higher rates of psychological distress, disability and insecure housing (Australian Institute of Health and Welfare (AIHW) 2024a). These factors, independently or together, could be cited as affecting the individual's ability to comply with bail conditions and lead to bail refusal (Bartels 2019; Hughes, Colvin & Bartkowiak-Théron 2021). Studies reported a higher probability of bail refusal for Indigenous applicants compared to non-Indigenous applicants, when controlling for factors relevant to bail (Klauzner & Yeong 2021; Weatherburn & Snowball 2012).

Policing practices, already identified as a contributory factor in the over-representation of Indigenous people in the criminal justice system (Productivity Commission 2021; Senate Finance and Public Administration References Committee 2016; Stone 2016), can influence the rates of bail refusal and thus the size of the remand population (Cunneen, White & Richards 2015; Hughes, Colvin & Bartkowiak-Théron 2021; Richards & Renshaw 2013; Russell et al. 2020; Sarre 2016, 2018). A number of papers highlighted how Aboriginal and Torres Strait Islander people are more likely to have stringent bail conditions, which are then over-policed, compared to non-Indigenous people (Boulten 2019; Hughes, Colvin & Bartkowiak-Théron 2021; Stone 2016; Victorian Aboriginal Legal Service 2022). The literature emphasised that curfews, place restrictions and non-association orders are bail conditions that are difficult for Indigenous defendants to comply with (ALRC 2017b; Donnelly & Trimboli 2018). Imposing onerous bail conditions can often set people up to fail, which further entrenches them in the criminal justice system (Bartels 2019; Chen 2018; Colvin 2019). The literature recognised breaching bail as a cause of Indigenous over-representation and as a direct pathway to remand (Crawford & Josey (2018), as cited in Bartels (2019)).

While there are numerous contributory factors, this study's examination of the literature indicates punitive amendments to bail legislation are the primary driving factor for bail refusal and for the increase in remand rates of Aboriginal and Torres Strait Islander people. For both adults and young people, experiences of incarceration (including on remand) are disruptive and can increase the risk of future involvement in the criminal justice system, further perpetuating the cycle of disadvantage (Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia 2023; Jones 2018; Mathieson & Dwyer 2016; McGorrery, Bathy & Simu 2020; Symes 2023b). Responses for reducing rates of remand will be explored in the second paper in this series.

Introduction

Aboriginal and Torres Strait Islander people experience disproportionately high incarceration rates. Addressing the over-incarceration of Indigenous Australians is a priority for governments, as set out by Targets 10 and 11 of the National Agreement on Closing the Gap. These targets aim to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 percent and young people by 30 percent by 2031 (Closing the Gap 2020). Despite these targets, the imprisonment rate for Aboriginal and Torres Strait Islander people continues to rise. The Indigenous adult imprisonment rate increased by 46 percent overall between 2013 and 2024, compared with a 10 percent increase in the non-Indigenous adult imprisonment rate, and was 18 times higher than the non-Indigenous imprisonment rate at 30 June 2024 (2,559.4 vs 146.0 per relevant 100,000 population; Australian Bureau of Statistics 2024, 2013). Young Aboriginal and Torres Strait Islander people are similarly affected, with a youth detention rate up to 27 times the rate for non-Indigenous young people (AIHW 2024b).

The increase in the Indigenous prison population is partly attributable to higher rates of bail refusal and an increase in the remand population. Bail is the temporary and conditional release of an arrested individual accused of committing an offence back into the community while they wait to attend court (Auld & Quilter 2020; Barclay 2019; Weatherby-Fell 2014; Willis 2017). Police officers, magistrates and, in some jurisdictions, bail justices are the designated bail authorities empowered to grant bail under certain conditions (ALRC 2017b; Colvin 2022). If bail is refused, breached, or if there is no application for bail, then a defendant is remanded into custody (ALRC 2017b; Weatherby-Fell 2014).

Data from New South Wales show that double the proportion of Aboriginal and Torres Strait Islander adult defendants were refused bail by NSW courts between 2014 and 2023 compared with non-Indigenous defendants (19% vs 10%; Bureau of Crime Statistics and Research (BOCSAR) 2024a). Similarly, almost double the proportion of Indigenous young defendants were refused bail compared with non-Indigenous defendants over the same time period (18% vs 10%; BOCSAR 2024a). Indigenous adult and youth defendants were consistently refused bail at higher rates for almost all offence types (BOCSAR 2024a).

The Indigenous adult remand population has correspondingly increased, up 83 percent over the 11 years between 2013 (24% of the prison population) and 2024 (44%; Australian Bureau of Statistics 2024, 2013). The remand rate rose by 30 percent for Indigenous male prisoners and 26 percent for Indigenous female prisoners. Remand rates have consistently been high for Indigenous young people as well. Over two-thirds of Indigenous young people in youth detention in June 2023 were unsentenced (87%), an increase of 47 percent since June 2013 (55% on an average night; AIHW 2024b, 2013).

Bail laws have consistently been identified as a factor contributing to the size of the remand population. Past literature has criticised recent and notable amendments to bail laws as having a net-widening effect (Bartels 2019; Brown 2013; Russell, Carlton & Tyson 2022; Sarre & Bartels 2023; Yoorrook Justice Commission 2023). Governments often enact these laws and amendments in response to perceived community concern around community safety, typically following instances of high-profile offences committed by individuals out on bail (Auld & Quilter 2020; McMahon 2019; Russell et al. 2020; Schetzer & Sotiri 2024). This is of particular relevance where these laws disproportionately affect Aboriginal and Torres Strait Islander people, who experience higher rates of arrest (Bartels 2019; Productivity Commission 2021; Stone 2016; Weatherburn & Thomas 2023).

When reviewing a bail application, bail authorities must consider legal and extra-legal factors as outlined in the relevant Bail Act (see *Appendix*). A defendant's offending history and the seriousness of the charged offence are examples of legal factors, while extra-legal factors can include the defendant's Indigenous status; vulnerabilities particular to gender, mental health and disability; and the availability of suitable accommodation. Bail considerations affect remand rates by influencing rates of bail refusal (Productivity Commission 2021).

This report examines the context and use of bail and remand across the states and territories, and specifically the effect on Aboriginal and Torres Strait Islander people. It reviews the current literature to describe the nature of contemporary bail laws in Australia, the factors driving bail refusal and how they affect the size of the Aboriginal and Torres Strait Islander remand population in Australia.

Methodology

A literature search was conducted in collaboration with the AIC's JV Barry Library. We limited the search to literature relevant to the Australian context and published in the most recent 10 years (starting 2014) to ensure the information gathered related to the time period considered in this paper and captured material regarding the impact of recent legislative amendments on bail refusal and remand. Literature published before 2014 was additionally sourced where it was cited in the contemporary literature and described findings that were still pertinent to the current context.

We conducted searches of 14 major databases—the AIC's JV Barry Library Catalogue, the Australian Criminology Database (CINCH), SocINDEX, E-Journals, International Security & Counter Terrorism Reference Center, Criminal Justice Abstracts with Full Text, Psychology and Behavioral Sciences Collection, Violence & Abuse Abstracts, OpenDissertations, eBook Collection, ProQuest Criminal Justice, DeepDyve, Google Scholar and Informit (RMIT)—as well as literature compendia administered by the AIC (the Indigenous Justice Clearinghouse) and external bodies (eg Australian Institute of Aboriginal and Torres Strait Islander Studies, BOCSAR, Jumbunna Institute for Indigenous Education and Research). The following search terms were used:

- Bail: (remand* OR unsentenced OR remanded in custody OR custodial remand OR bail OR refused bail OR bail refusal OR bail legislation OR bail decision* OR bail act OR bail justice OR bail determination* OR apply for bail OR bail application* OR bail consideration* OR granted bail OR unconditional bail OR grant of bail) AND
- Indigenous status: (over*representation OR indigenous OR first nation* OR aboriginal OR torres strait islander* OR indigenous australian*).

We supplemented this search with further searching of relevant journals, grey literature sites, and relevant government department and key program websites.

Despite the range of search terms used, it is possible that some relevant papers may not have been captured in the current study. It should also be noted that while this review aimed to look at bail and remand across Australia, more information was available for some jurisdictions than others. Most of the available literature compiled for this study focused on New South Wales, Victoria, Queensland and Western Australia. There were few published studies examining bail and remand in the remaining states and territories.

Bail history

Bail laws are under the jurisdictional scope of each state and territory in Australia, having previously been under the purview of common-law doctrine until the 1970s (see Table A1; Auld & Quilter 2020; Hughes, Colvin & Bartkowiak-Théron 2021). As a result, there are notable distinctions in the development of bail legislation between jurisdictions. While bail legislation differs across Australia, the application of bail laws is still contingent on two common-law principles—that is, the presumption of innocence and an individual's right to bail (Travers et al. 2020a, 2020b).

The Bail Acts across jurisdictions and relevant amendments made within the last 10 years are summarised below. This summary was current as at the time of writing. Relevant amendments in this case refer to legislative changes considered to have a direct impact on the likelihood of bail being granted. Examples of such amendments included the creation of bail-related offences as well as the expansion of scheduled offences, for which a higher threshold is to be met in order to be granted bail. These examples will be further expanded on below.

New South Wales

In 2013 the *Bail Act 1978* (NSW) was repealed and replaced by the *Bail Act 2013* (NSW), to simplify the legislation and align bail decisions made by the courts and police (Yeong & Poynton 2018). This Act implemented the unacceptable risk test in place of bail presumptions, although subsequent amendments have since reinstated bail presumptions for some offences (Klauzner & Yeong 2021; Yeong & Poynton 2018).

In 2014, the New South Wales Government passed the *Bail Amendment Act 2014*, introducing 'show cause' offences. Show cause offences require a bail authority to refuse bail, unless the accused can demonstrate their detention is not justified. This puts defendants in a reverse onus position for offences outlined in the Act, such as an offence punishable by life imprisonment, or a serious indictable offence committed while on bail or parole.

The *Bail and Crimes Amendment Act 2024* (NSW), passed in March 2024, introduced a temporary test for defendants aged 14 to 18 years who are charged with offences relating to motor vehicle theft and serious breaking and entering. Under this test, bail authorities must have a 'high degree of confidence that the young person will not commit a further serious indictable offence while on bail before granting bail' (NSW Government 2024: 1). The amendment creating this temporary test ceased to be in effect after 12 months (NSW Government 2024).

The *Bail and Other Legislation Amendment (Domestic Violence) Act 2024* (NSW) received royal assent in June 2024. This legislation expanded show cause offences to include offences relating to serious domestic violence and coercive control. Changes to bail considerations were also made through this Act, requiring bail authorities to assess whether the defendant has engaged in behaviour that can be considered domestic abuse under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

Victoria

The *Bail Amendment Act 2013* (Vic) introduced two new offences to Victoria's *Bail Act 1977*; the first was 'breach particular conduct conditions while on bail' and the second was 'commit an indictable offence on bail'.

The *Bail Amendment (Stage One) Act 2017* (Vic) further amended Victoria's Bail Act to substitute the term 'show cause' with 'show compelling reason', thereby limiting access to bail by raising the threshold, requiring defendants to demonstrate a compelling reason as to why their detention was not justified.

The *Bail Amendment (Stage Two) Act 2018* (Vic) further altered the Bail Act to include a new bail consideration assessing the risk of family violence posed by a bail applicant. Under s 5AAAA, a bail authority must assess whether the defendant has a current family violence intervention order, a family violence safety notice or a domestic violence safety notice made against them.

Further changes to the *Bail Act 1977* arose when the *Bail Amendment Act 2023* (Vic) came into effect in 2024. Notably, the amending Act repealed the two offences introduced by the *Bail Amendment Act 2013* (mentioned above). The new Act states that bail must not be refused for an individual if they are accused of offences listed in the *Summary Offences Act 1996* that are not schedule 3 offences and they have not been previously charged with a terrorism offence (*Bail Amendment Act 2023* (Vic), s 9(1)). The offences listed in schedule 3 include, but are not limited to, a number of assault offences (eg common assault, aggravated assault, and assaulting a registered health practitioner) and sexual offences (eg sexual exposure and distribution of an intimate image). Exceptions can be made and bail refused if the court is the deciding bail authority.

The *Bail Amendment Act 2023* also removed the 'uplift' provisions, where defendants who had accumulated numerous low-level offences were 'uplifted' into a higher severity category and subsequently had to meet a higher threshold for bail. Instead, defendants with repeated low-level offences must meet the exceptional circumstances test, meaning bail can be granted only if the defendant proves exceptional circumstances exist (Bartels et al. 2018; McMahon 2019). Further, bail authorities must consider whether the defendant poses an unacceptable risk to community safety. The 2023 Act further mandated that bail authorities consider 'any issues that arise due to the person's Aboriginality' (*Bail Act 1977* (Vic), s 3A(1)), including over-representation of Aboriginal people in the criminal justice system (including on remand), and the impacts incarceration can have on Indigenous people such as risk of trauma and harm. Furthermore, if an Indigenous defendant is refused bail then the bail decision-maker must record what had been considered, with reference to 'Determination in relation to an Aboriginal person' outlined in s 3A of the *Bail Act 1977* (Vic).

On 25 March 2025, the *Bail Amendment Act 2025* was given royal assent. This Act introduced punitive changes that reversed the amendments made in 2023. The 2025 Act removed wording in the legislation that specified the use of remand as a last resort for children, reintroduced bail offences, and expanded offences in schedule 1, schedule 2 and schedule 3 categories. The Act re-established the offence of committing an indictable offence while on bail and amended the *Summary Offences Act 1966* (Vic) to make contravening a condition of bail an offence.

Offences relating to armed robbery, aggravated burglary, home invasion and carjacking were upgraded to a schedule 1 offences, requiring defendants charged with these offences to meet the exceptional circumstances test to be granted bail. There was also a greater expansion of schedule 2 offences, largely relating to offences against the *Firearms Act 1996* (Vic) such as using a firearm to resist arrest.

The Victorian Government intends to introduce a second Bill later in 2025 that 'will create the proposed tough new bail test for serious, repeat offenders' (Allan 2025). It also intends to impose a more onerous bail test for defendants accused of committing an indictable offence while on bail (Allan 2025).

Queensland

Numerous legislative amendments have been made in recent years in Queensland. Most recently the *Strengthening Community Safety Act 2023* (Qld) passed, introducing considerable changes to the *Bail Act 1980* (Qld) and overriding the state's *Human Rights Act 2019*. This amendment created a new offence of breaching bail conditions, and acknowledged that child defendants can also be charged with this offence, 'despite being incompatible with human rights' (*Strengthening Community Safety Act 2023*, s 29(3)(a)).

The Act also amended s 59A of the *Youth Justice Act 1992* (Qld) so that police officers do not need to consider alternatives to arrest for bail contraventions if the youth defendant who is out on bail is accused of a prescribed indictable offence or if the alleged offence relates to contravening a domestic violence order or police protection order.

The *Strengthening Community Safety Act 2023* also amended the *Youth Justice Act 1992* to enable a court to impose an electronic monitoring condition on a youth defendant released on bail, in certain situations. The situations stipulated in this Act are aimed towards repeat youth offenders.

Western Australia

In 2022, the Western Australian Government passed the *Bail Amendment Act 2022,* making changes to the *Bail Act 1982* (WA). This Act included changes to bail considerations, such as mandating that the bail authority considers the conduct of the defendant towards any alleged victims and their family 'in relation to each pending offence and each offence of which the accused has previously been convicted' (*Bail Amendment Act 2022* (WA), s 3(c)).

The *Family Violence Legislation Reform Act 2024* (WA) was passed in September 2024 to amend Western Australia's Bail Act. The amendments require electronic monitoring of repeat and serial family violence offenders who are out on bail. The Government of Western Australia (2024) released a statement outlining that electronic monitoring would be imposed on defendants on bail who have been accused or convicted of a family violence offence while subject to a family violence restraint order, and those who are serial family violence offenders and accused or convicted of a further family violence offence.

Furthermore, the *Family Violence Legislation Reform Act 2024* (WA) introduced new offences for a defendant subject to electronic monitoring. These are: failure to wear the electronic monitoring device, failure to charge the device for consistent operation, entering exclusion zones without a reasonable justification and not permitting the electronic monitoring device to be installed in the address specified by the conditions.

South Australia

The *Bail (Conditions) Amendment Act 2024* was enacted in South Australia in May 2024. The amendments focused on domestic violence offences and made changes to the *Bail Act 1985* (SA). These changes specified certain bail conditions that a defendant must be subject to if that person is charged with contravening conditions of an intervention order. Under these conditions, a defendant must reside at a specific address unless for one of the purposes outlined in the *Bail Act 1985* (SA) and must agree to be fitted with a monitoring device.

Tasmania

The most recent changes to Tasmania's *Bail Act 1994* were initiated by the *Justice Miscellaneous (Court Backlog and Related Matters) Act 2020* (Tas). This Act sets out the circumstances in which the Supreme Court may grant bail, and the conditions in which appeals relating to bail can be made. A wide range of proposed legislative amendments are contained in the Bail Bill 2021*,* which has not progressed past the consultation draft.

Australian Capital Territory

The *Bail Amendment Act 2023* in the Australian Capital Territory changed the bail presumption for three offences, from a presumption for bail to no presumption. No presumption means it will be more difficult to obtain bail than if there were a presumption for bail. These offences were an offence against the *Road Transport (Safety and Traffic Management) Act 1999* (ACT) for furious, reckless or dangerous driving, as well as two offences under the *Crimes Act 1900* (ACT)—namely, culpable driving of a motor vehicle and driving at the police.

Northern Territory

The *Bail Amendment Act 2015* (NT) created a presumption against bail for specified offences relating to family and domestic violence offences. That Act also introduced cognitive impairment, the young age of the defendant and needs relating to the defendant's cultural background, such as family and place ties and cultural obligations, as additional criteria for bail authorities to consider in bail applications. The *Bail Amendment Act (No. 2) 2015* (NT) empowers the court to rescind bail if the accused is charged with either a serious offence or an offence with presumption against bail under s 7A and is found by the court to have breached bail. Bail must also be revoked if the accused breaches a bail condition by contravening an existing conduct agreement that includes provisions under s 27A(1)(ia).

The *Bail Amendment Act 2017* (NT) amended the Northern Territory's *Bail Act 1982* to enable an authorised member require an accused person to wear an approved police monitoring device (ie an electronic device), to reside at a specific address, and to enter into a conduct agreement while on bail.

The *Bail Amendment Act 2023* (NT) made changes to the *Bail Act 1982* to incorporate a presumption against bail for defendants who are charged with a serious violence offence that involves the use of a controlled or prohibited weapon by the accused or another person present.

Recently the *Justice Legislation Amendment (Domestic and Family Violence) Act 2023* (NT) amended the criteria for bail to include consideration of domestic violence related offences. These considerations include: the accused having a domestic violence order in force against them, the risk that the accused could commit domestic violence if released on bail, and whether that risk could be mitigated through bail conditions or a domestic violence order.

The *Bail Legislation Amendment Act 2024* (NT) recently passed through the Northern Territory parliament and includes a wide range of amendments. This Act reintroduces the offence of breaching bail for young people and amends the wording in s 7A(1)(de) to omit the term 'adult'. This means that there will be a presumption against bail for both adult and youth defendants accused of a serious offence while on bail for a serious offence. The Act established a presumption against bail for all serious violence offences, irrespective of weapon use. Relatedly, the Act amended the definition of serious violence offence for which there is a presumption against bail to include the two offences of robbery and assault with intent to steal. The Act also targets repeat offenders by introducing a presumption against bail for defendants charged with a prescribed or serious offence if they have been convicted of two or more prescribed or serious offences in the 24 months prior to date of the current charge. Defendants who are repeat offenders and those accused of serious offences while on bail who are then granted bail may receive bail conditions in the form of electronic monitoring, or directions to reside at a specified address.

The *Bail and Youth Justice Legislation Amendment Act 2025* (NT) commenced in May 2025. The Act introduced an array of punitive bail amendments with the intention of delivering 'the strongest bail laws in the country' (Finocchiaro 2025: np). The Act changes the wording in s 7A(2) of the Northern Territory's Bail Act, from a presumption against bail to no bail as a starting point for bail determinations for offences listed in s 7, such as murder. The Act also introduces wording to emphasise that the risk to community safety is the primary consideration in bail determinations. Further to this, the Act creates an additional bail test to be considered in bail determinations for s 7A(2) offences. This test establishes that the court must not grant bail unless it is satisfied to a high degree of confidence that, if released, the person will not commit a prescribed or serious violence offence or endanger community safety. Additionally, in relation to young defendants, the Act removes the requirement that all other options be considered and that custody be used as a last resort.

Summary of bail amendments

As will be examined in the following sections, recent legislative amendments have generally been punitive, meaning bail laws themselves have become more punitive. Table 1 presents the number of punitive amendments as a proportion of all bail reforms made in each jurisdiction over the six-year period 2019 to 2025. For the purposes of Table 1, punitive changes were classified as those that changed the presumptions or restrictions on bail for certain offences or offenders, or changed the nature of the considerations in determination of applications (following Steel 2009). This approach adapts the work of Steel (2009), in which amending Acts were categorised as punitive, administrative or both depending on the changes to the legislation. For the purposes of this paper, legislation was categorised as punitive if it contained one or more amendments that would have a direct impact on bail determinations and reduce the probability of bail being granted—for example, creating a new offence of committing an indictable offence while on bail. If no punitive changes were present in an amendment, it was categorised as non-punitive. Across Australia, at least 49 percent of all bail amendments made in the last six years were punitive. As shown in Table 1, bail legislation in New South Wales and Western Australia had the highest proportion of punitive changes (67%, *n*=6 and 64%, *n*=7 respectively).

Table 1: Punitive amendments to state and territory bail legislation (2019–2025)

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Number of punitive changes	6	4	4	7	5	0	4	6	36
% of all amendments[a]	67	36	44	64	56	0	33	55	49

a: Percentages presented are the proportion of punitive legislation enacted from all amendments passed in each jurisdiction in the last six years

Driving factors for bail refusal

The literature describes numerous factors that may contribute to increasing rates of bail refusal and remand in Australia. Three main drivers consistently identified during this review will be explored in this paper: bail reform, bail considerations and policing practices. This paper notes that the literature used in this review predates a number of the amendments described above and, as such, the impacts of recent amendments may not yet be seen.

Bail reform

The bail decision-making process, in which bail authorities determine whether a defendant is afforded pre-trial liberty or remanded into custody, is critical (Jones 2018; Richards & Renshaw 2013; Stone 2016). As mentioned above, bail laws had previously been in the scope of common law. During this time the primary purpose of bail was to ensure that a defendant attended court, traditionally through the use of monetary sureties (Commission for Children and Young People 2021; Richards & Renshaw 2013). Research gathered for this paper, however, has observed a gradual change to the central purpose of bail, from a focus on defendants attending court to ensuring community safety. This gradual change occurred as the states and territories assumed responsibility of bail laws. Subsequent amendments to state and territory bail laws indicate a shift away from a presumption for bail towards more restrictive legislation where access to bail is limited on the grounds of community safety (Auld & Quilter 2020; Chen 2018; Hurley 2022; McMahon 2019). These amendments have impacted greatly on defendants and are considered a primary driver of bail refusal for Aboriginal and Torres Strait Islander defendants (Bartels 2019; Russell, Carlton & Tyson 2022; Sarre & Bartels 2023).

The literature highlighted how bail amendments are often motivated by high-profile or public incidents of violence or other serious offending (Auld & Quilter 2020; McMahon 2019). In response to the sentiment that ‘soft’ bail laws enabled these acts to occur, governments have enacted more punitive reforms, with community safety at the forefront of these changes (Auld & Quilter 2020; McMahon 2019; Russell et al. 2020; Schetzer & Sotiri 2024). Some of these high-profile incidents and the subsequent bail reforms are described below in Box 1.

Notable legislative changes, such as those outlined above, include the introduction of offences carrying a presumption against bail (such as show cause offences) and bail conditions that are often onerous for the defendant (Stone 2016). The shift away from the presumption for bail has also resulted in bail being used as a risk management and crime prevention tool through preventative detention (Hurley 2022; McMahon 2019). This is evident from the expansion of offences for which there is a presumption against bail, thereby casting a wider net and subjecting more defendants to a higher threshold for bail.

As mentioned previously, the New South Wales Government introduced the *Bail Act 2013* to replace the *Bail Act 1978*, and implemented the unacceptable risk test. The new Bail Act had a flow-on effect for bail applicants. Yeong and Poynton (2018) found that the introduction of the 2013 legislation resulted in the likelihood of court bail refusal increasing by approximately 11 percent for defendants charged with non-minor offences. This equates to roughly 1,500 additional bail refusals by the New South Wales courts in the two-year period following the 2013 Act’s introduction (Yeong & Poynton 2018).

Recent reforms have tried to balance the defendant’s presumption of innocence with perceived risk to the community, alleged victims and any witnesses, and ensuring the defendant attends court (Colvin 2022; Rahman 2019; Steel 2009). Several papers noted that these restrictive changes to bail, such as the reverse onus provisions, represent a gradual breakdown of the key common-law doctrine of the presumption of innocence (Russell, Carlton & Tyson 2022; Travers et al. 2020a, 2020b).

Bail tests

Jurisdictions have sought to balance the presumption of innocence and perceived risk through legal tests and provisions that assess the risk the accused would pose if granted bail. Such legal tests include the unacceptable risk test, the show cause/compelling reason test, and the exceptional circumstances test (Commission for Children and Young People 2021; Hughes, Colvin & Bartkowiak-Théron 2021; Weatherburn & Fitzgerald 2015). In Victoria, for example, these tests can be combined to form a multistep process, each step of which the accused must satisfy before they can be granted bail if charged with serious offences (McMahon 2019). Thus, if a defendant is accused of a serious offence, they must first satisfy the 'compelling reason' test, and are then subject to the 'unacceptable risk' test, which must also be satisfied before bail is granted (McMahon 2019).

'Unacceptable risk' considers the risk the defendant poses to the community and is the legal test in the Bail Acts for New South Wales, Victoria and Queensland (*Bail Act 2013* (NSW); *Bail Act 1977* (Vic); *Bail Act 1980* (Qld)). Unacceptable risk is also present in other state and territory bail legislation, as a general consideration rather than a definitive legal test. A bail authority considers several factors when applying the unacceptable risk test. These include whether the accused poses an unacceptable risk to the community or any alleged victims and/or witnesses, and whether there is a risk the accused will reoffend or fail to appear in court (ALRC 2017b; Colvin 2022). The burden of proof that the accused presents an unacceptable risk is placed on the prosecution or police. When the test is applied, there is a presumption for bail unless the bail authority identifies the accused as posing an unacceptable risk that cannot be managed through bail conditions (ALRC 2017b; Victorian Aboriginal Legal Service 2022; Yeong & Poynton 2018). If it cannot be shown that the risk can be managed, bail is denied (Brown 2013; Weatherburn & Fitzgerald 2015; Yeong & Poynton 2018).

The show cause/compelling reason test and the exceptional circumstances test apply to scheduled offences specified in some Bail Acts. Defendants charged with these offences are refused bail unless they can show cause or compelling reason or demonstrate exceptional circumstances as to why they should be granted bail (Bartels et al. 2018; McMahon 2019). The types of offences legislated vary across the jurisdictions but show cause/compelling reason offences largely include family and domestic violence offences, while the exceptional circumstances test applies in cases such as murder and terrorism related offences. Similarly, these tests also subject the accused to reverse onus provisions (Bartels et al. 2018), under which the presumption is for bail to be refused unless the accused can demonstrate why bail should be granted.

The literature highlights how these provisions reduce the likelihood of an accused person being granted bail. A study by Klauzner and Yeong (2021) used New South Wales data to estimate the extent to which various factors affected the probability of bail refusal. This study found that, for show cause offences, adult defendants are more likely to be refused bail by both the police (57.7 percentage points, a 417.9 percent increase as compared to the police refusal rate mean) and the courts (24.1 percentage points). Thorburn (2016) similarly described an increase in the proportion of eligible defendants being refused bail following the show cause amendments to the *Bail Act 2013* (NSW). The show cause amendments had resulted in more cases where the defendant was released without having to meet bail conditions, and more bail refusal cases where defendants would have likely been granted bail previously. Walker, Sutherland and Millsteed (2019) found that bail amendments in Victoria resulted in an increase in the proportion of women in custody on remand who would have been subject to the show cause/compelling reason test (from 29% in 2012 to 76% in 2018). The new offences introduced as show cause offences, such as breaching a bail conduct condition and committing an indictable offence while on bail, mainly accounted for this increase (Walker, Sutherland & Millsteed 2019).

Box 1: Examples of trigger incidents

Example 1

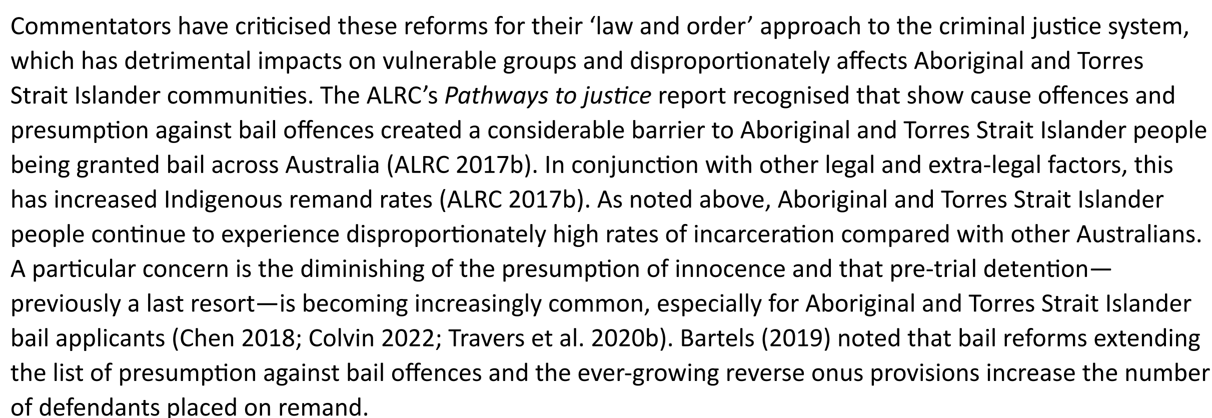
The literature noted trigger incidents as a reason governments introduce amendment laws (Auld & Quilter 2020; McMahon 2019; Russell et al. 2020; Schetzer & Sotiri 2024). For example, in 2017 Victoria introduced tighter bail laws in response to the Bourke Street murders. James Gargasoulas, who had breached bail on several occasions, drove a vehicle into pedestrians in Melbourne's central business district, killing six people, after being released on bail a week earlier (Auld & Quilter 2020; Colvin 2022; Sarre & Bartels 2023). As a result of this incident, two Acts were passed through the Victorian parliament amending the *Bail Act 1977* (Vic) (Colvin 2022; Russell et al. 2020). The first altered the wording from 'show cause' to 'show compelling reason' in order for bail to be granted, heightening the threshold for the accused to demonstrate why their bail should be granted (Bartels et al. 2018). The changes also increased the number of offences for which presumption against bail applies, meaning more defendants must justify their grant of bail with a compelling reason (Bartels et al. 2018; Walker, Sutherland & Millsteed 2019). The second Act amended the unacceptable risk test to highlight the importance of bail authorities considering a defendant's risk to the community. This change has enabled the court to grant or refuse bail for defendants appearing on summons (ie a person required to appear in court in relation to a low-level offence but who has not been arrested or charged for that offence; Bartels et al. 2018).

Example 2

The New South Wales Government introduced changes to the Bail Act through the *Bail and Other Legislation Amendment (Domestic Violence) Act 2024* following the alleged murder of Molly Ticehurst. Daniel Billings was charged in April 2024 with committing murder in the context of domestic violence while out on bail for charges relating to rape, stalking and intimidation (Woodburn 2024). The amending Act was given royal assent in June 2024, within two months of the incident occurring. The Act extended show cause offences to domestic violence offences, serious domestic violence offence and an offence under the *Crimes Act 1900* (NSW) relating to abusive behaviour directed at a current or former partner. These changes create a higher threshold for defendants to be granted bail, putting the onus on the bail applicant. These kinds of reforms have been criticised for the impact they have on vulnerable groups such as women experiencing domestic violence. Drawing a comparison, Schetzer and Sotiri (2024: 12) discussed similar laws introduced in Victoria, highlighting how reverse onus provisions for domestic violence related offences have 'had a disproportionate effect on women who are often misidentified as predominant aggressors in family violence matters'.

Example 3

The Bail Legislation Amendment Bill 2024 passed by the Northern Territory Government has come as part of sweeping legislative changes made in response to the murder of Declan Laverty as well as a range of tough-on-crime election promises (Dick 2024). Declan Laverty was killed while at work in March 2023 by Keith Kerinauia, who was out on bail at the time of the incident. Laverty's murder garnered community outcry, putting pressure on law makers to tighten bail laws. As specified in the *Bail history* section of this paper, the *Bail Amendment Act 2023* (NT) introduced a presumption against bail for a serious offence involving a weapon, whether the weapon is used by the defendant or another person. This was despite the *Bail and Weapons Review Taskforce* report not recommending any amendments be made to the Bail Act, emphasising that introducing more presumption against bail offences 'would capture a large number of defendants who pose a low risk to community safety and could put undue pressure on an already overcrowded prison system' (Department of the Attorney-General and Justice 2023: 4).



Commentators have criticised these reforms for their 'law and order' approach to the criminal justice system, which has detrimental impacts on vulnerable groups and disproportionately affects Aboriginal and Torres Strait Islander communities. The ALRC's *Pathways to justice* report recognised that show cause offences and presumption against bail offences created a considerable barrier to Aboriginal and Torres Strait Islander people being granted bail across Australia (ALRC 2017b). In conjunction with other legal and extra-legal factors, this has increased Indigenous remand rates (ALRC 2017b). As noted above, Aboriginal and Torres Strait Islander people continue to experience disproportionately high rates of incarceration compared with other Australians. A particular concern is the diminishing of the presumption of innocence and that pre-trial detention—previously a last resort—is becoming increasingly common, especially for Aboriginal and Torres Strait Islander bail applicants (Chen 2018; Colvin 2022; Travers et al. 2020b). Bartels (2019) noted that bail reforms extending the list of presumption against bail offences and the ever-growing reverse onus provisions increase the number of defendants placed on remand.

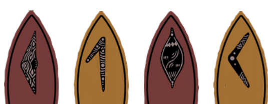
Victoria provides a contemporary example of the impact of bail reforms on Aboriginal and Torres Strait Islander remand rates, although other examples have been cited in the literature (see Bartels 2019; Brown 2013; Russell, Carlton & Tyson 2022; Sarre & Bartels 2023). Under Victoria's 2017 and 2018 bail reforms, an accused person who had committed certain offences while released on bail was subject to the exceptional circumstances test. These amendments also included the previously described 'uplift' provisions (Hurley 2022; Russell et al. 2020; Symes 2023b; Yoorrook Justice Commission 2023), which increased the number of defendants subject to a higher legal threshold to obtain bail (Hurley 2022; Russell, Carlton & Tyson 2022).

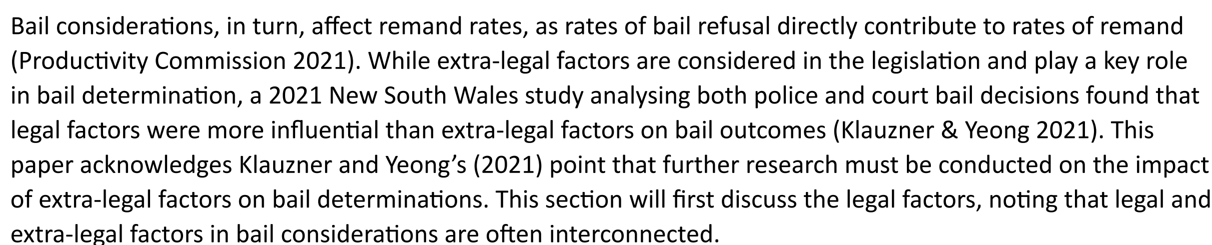
The Victorian Government acknowledged the net-widening impact of these bail laws on defendants and the harm caused to Aboriginal and Torres Strait Islander people in particular (Symes 2023b). Specifically, the Victorian Attorney-General, Jaclyn Symes, stated that reverse onus provisions within the bail laws contributed to capturing lower level repeat offenders who 'are unlikely to receive a custodial sentence and do not pose an unacceptable risk to community safety' (Symes 2023b: 35). Symes (2023b: 38) additionally noted in her witness statement to the Yoorrook Justice Commission that the 'uplift' provisions in particular were 'understood to be a key driver of the remand of persons accused of repeat lower level offences who pose little risk to the community'. This witness statement was a recognition by the Victorian Government of the negative effects of these amendments, especially on the Aboriginal and Torres Strait Islander community. The uplift provisions for low-level offences were repealed as part of the 2023 amendments, which commenced in March 2024 (Symes 2023a). Approximately one year after the commencement of these changes, the Victorian Government passed the 2025 amendment. This amendment, outlined above, reversed some of the previous changes and added additional restrictions to bail. A media release from Premier Allan acknowledged that these new changes and the forthcoming Bail Bill, to be introduced later in 2025, are expected to increase 'the number of adult and youth offenders on remand' (Allan 2025: np).

Bail considerations

In each jurisdiction there are a number of legal and extra-legal considerations within the legislation that bail authorities must review when assessing a bail applicant. Generally, bail considerations refer to both legal and extra-legal factors relevant to the accused which can impact bail determinations and whether bail is granted or denied (Sarre 2016; Willis 2017). Legal factors often include prior offending and the seriousness of the offence, while extra-legal factors can include the defendant's Indigenous status, gender, age and the availability of suitable accommodation.

Several papers within the literature noted the impact that other factors, including legal representation and court attitudes, may have on bail outcomes. Details about the impact of legal representation on bail outcomes were limited; however, McCausland and Baldry (2023: 46) described 'inadequate legal representation' as a factor contributing to bail refusal. Another study also referred to a lack of access to legal representation (Russell et al. 2020). Further investment in legal assistance for Aboriginal and Torres Islander people is a Closing the Gap initiative to reduce incarceration rates (Attorney-General's Department nd). Court attitudes were cited in the literature as another factor that can impact bail determinations (Klauzner & Yeong 2021; Richards & Renshaw 2013).





Bail considerations, in turn, affect remand rates, as rates of bail refusal directly contribute to rates of remand (Productivity Commission 2021). While extra-legal factors are considered in the legislation and play a key role in bail determination, a 2021 New South Wales study analysing both police and court bail decisions found that legal factors were more influential than extra-legal factors on bail outcomes (Klauzner & Yeong 2021). This paper acknowledges Klauzner and Yeong's (2021) point that further research must be conducted on the impact of extra-legal factors on bail determinations. This section will first discuss the legal factors, noting that legal and extra-legal factors in bail considerations are often interconnected.

Legal factors

A defendant's prior offending history and the seriousness of the relevant offence increases the likelihood of being refused bail. Klauzner and Yeong's (2021) study of factors influencing police and court bail decisions in New South Wales observed that defendants who had prior offences, and particularly previous imprisonment, had a greater likelihood of being denied bail. They also found that defendants in New South Wales charged with more serious (or show cause) offences were more likely to have their bail refused by both police and courts (Klauzner & Yeong 2021). Similarly, Pisani and colleagues (2024) found that the most influential factors in bail outcomes for both court and police decisions were legal factors, including the seriousness of the offence and a defendant's criminal history.

Prior convictions are a compounding factor that can disadvantage Indigenous defendants applying for bail (McLean 2020; Senate Finance and Public Administration References Committee 2016). Indigenous defendants may be more likely to have prior convictions—the ALRC (2017b: 154) noted that Indigenous defendants 'are up to twice as likely as non-Indigenous accused people to have 10 prior convictions'—and are therefore less likely than non-Indigenous defendants to have bail granted. For example, the Northern Territory's Department of the Attorney-General and Justice (2019: 39) found that previous convictions among Indigenous defendants can 'trigger presumptions against bail or greater difficulty complying with bail considerations', therefore restricting access to bail. Previous offending was also identified as a risk factor for bail refusal for young people as it can be perceived as a signal that further offending is likely (Commission for Children and Young People 2021).

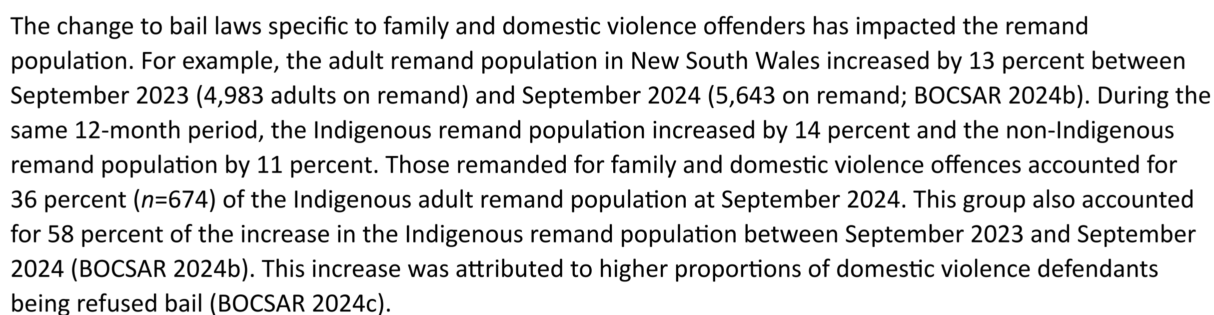
As mentioned, in Victoria the 2013 bail reforms made it an offence to breach bail conditions. The 2017 and 2018 amendments to bail laws replaced the term 'show cause' with 'show compelling reason' and expanded the list of offences subject to reverse onus provisions (McMahon 2019). Russell, Carlton and Tyson (2022) noted that the 2013 and 2018 bail reforms, which made it more difficult for defendants to obtain bail, disproportionately impacted Indigenous women. In the 10-year period between 2009–10 to 2019–20, the number of unsentenced Indigenous women entering Victorian prisons increased by 440 percent (Russell, Carlton & Tyson 2022).

In recent years, Australian governments have placed additional importance on addressing the prevalence of family and domestic violence offending. Government responses include changes to bail legislation as they apply to people charged with these offences. Family and domestic violence offences and related risks are specific considerations in the Bail Acts of all states and territories except Tasmania. This means bail authorities must consider whether the applicant has been charged with a family and domestic violence related offence and whether the accused has received an intervention order. In Tasmania, the *Family Violence Act 2004* s 12(1) specifies that a defendant accused of a family violence related offence can only be granted bail if the bail authority is satisfied their release would not 'adversely affect' the victim-survivor(s).

The 2023 reforms in the Northern Territory, introducing the presumption against bail for serious violence offences that involve a controlled or prohibited weapon, may also affect victim-survivors of family and domestic violence applying for bail. As noted in the *Bail and Weapons Offence Review Taskforce* report (Department of the Attorney-General and Justice 2023: 5):

> … victim-survivors of domestic and family violence who defend themselves from domestic and family violence using a controlled or prohibited weapon will facing [sic] time in prison on remand until their matter is heard.

Furthermore, family and domestic violence related offences have either no presumption for bail or a presumption against bail, in which the defendant is subject to reverse onus provisions and needs to demonstrate why they should be granted bail.



The change to bail laws specific to family and domestic violence offenders has impacted the remand population. For example, the adult remand population in New South Wales increased by 13 percent between September 2023 (4,983 adults on remand) and September 2024 (5,643 on remand; BOCSAR 2024b). During the same 12-month period, the Indigenous remand population increased by 14 percent and the non-Indigenous remand population by 11 percent. Those remanded for family and domestic violence offences accounted for 36 percent (*n*=674) of the Indigenous adult remand population at September 2024. This group also accounted for 58 percent of the increase in the Indigenous remand population between September 2023 and September 2024 (BOCSAR 2024b). This increase was attributed to higher proportions of domestic violence defendants being refused bail (BOCSAR 2024c).

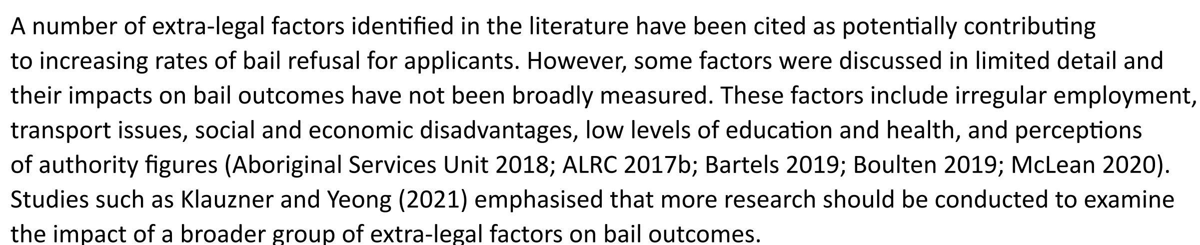
Strengthening bail laws with regard to family and domestic violence can have an unintended impact of increasing the risk of women, particularly Indigenous women, being denied bail and held on remand (Colvin 2022; Russell et al. 2020). Klauzner and Yeong (2021) found that in New South Wales police are more likely to refuse bail if the offence is related to domestic violence (by 14 percentage points). Russell et al. (2020: 44) described the ‘nexus between family violence, homelessness and women’s criminalisation’. This connection may be due to a number of factors, such as experiencing and perpetrating violence within a relationship, which can lead to the criminalisation of women who seek help from police. The literature highlighted how women, often Indigenous women, can be and are misidentified by police as the main perpetrator within a family and domestic violence incident, especially if they do not align with the stereotype of an ‘ideal victim’ (Australia’s National Research Organisation for Women’s Safety 2020: 36; Schetzer & Sotiri 2024).

Also prevalent in the literature was the notion that women known to police and/or women who offend may be perceived by police as undeserving of assistance (Russell, Carlton & Tyson 2022; Russell et al. 2020). This notion can have flow-on effects to bail determinations. The tightening of bail laws requiring consideration of family and domestic violence offences and intervention orders places vulnerable women at risk of being remanded, especially if their own experience of family and domestic violence is not considered in bail determinations (Caruana et al. 2021; Russell, Carlton & Tyson 2022).

Extra-legal factors

Present in the literature was the notion that individuals and communities may have personal or surrounding circumstances, or ‘vulnerabilities’, that can increase the likelihood of being denied bail (Hughes, Colvin & Bartkowiak-Théron 2021; Moore & Lyons 2007). These ‘vulnerabilities’ may be perceived as placing the person at further risk or harm as well as increasing the risk they will reoffend or fail to appear in court (Stanford in Travers et al. 2020a). Travers et al. (2020a: 12) noted that the conflation of vulnerabilities as risks can lead to more defendants with vulnerabilities being ‘criminalised because of the presence of perceived risk factors in their lives, not because of criminal behaviour’.

Studies across the literature have noted that the presence of a vulnerability in the life of an applicant heightens the risk of bail refusal, and this impact is compounded where multiple vulnerabilities are present (Hughes, Colvin & Bartkowiak-Théron 2021; Travers et al. 2020a). For example, McGorrery, Bathy and Simu (2020) documented complex vulnerabilities along with lack of access to adequate legal representation, defendants not applying for bail, bail breaches, and the culture of increasing risk aversion within bail processes, as possible drivers of the increasing remand rates among young people. Aboriginal and Torres Strait Islander people experience higher rates of psychological distress, disability and insecure housing than other Australians (AIHW 2024a), all of which are compounding extra-legal factors in adverse bail determinations. The Victorian Attorney-General (Symes 2023b: 72) similarly acknowledged a range of extra-legal driving factors contributing to the over-representation of Indigenous people in the Victorian criminal justice system, including ‘inequality in educational opportunities, economic exclusion, lack of access to housing, child protection involvement, intergenerational trauma, mental health and substance misuse issues’.



A number of extra-legal factors identified in the literature have been cited as potentially contributing to increasing rates of bail refusal for applicants. However, some factors were discussed in limited detail and their impacts on bail outcomes have not been broadly measured. These factors include irregular employment, transport issues, social and economic disadvantages, low levels of education and health, and perceptions of authority figures (Aboriginal Services Unit 2018; ALRC 2017b; Bartels 2019; Boulten 2019; McLean 2020). Studies such as Klauzner and Yeong (2021) emphasised that more research should be conducted to examine the impact of a broader group of extra-legal factors on bail outcomes.

Certain factors have received greater research focus, such as Indigenous status, gender, mental health and disability, and housing security. For this reason, this paper discusses these specific factors in more detail. While this report will discuss these factors individually, it should be noted these vulnerabilities are often interconnected, which can compound effects on the likelihood of bail refusal.

Aboriginal and Torres Strait Islander status

Indigenous status of the defendant is a bail consideration outlined in the Bail Acts of New South Wales and Victoria and a bail consideration for youth defendants in the Northern Territory. In Queensland, Indigenous defendants may have a submission from their community, specifically a community justice representative, considered by the bail authority in relation to unacceptable risk (*Bail Act 1980).* Indigenous status is not an explicit bail consideration for adults in the Northern Territory, or for youth and adult defendants in Western Australia, South Australia, Tasmania or the Australian Capital Territory.

The literature described a higher probability of bail refusal for Indigenous applicants compared with non-Indigenous applicants, controlling for relevant factors (Klauzner & Yeong 2021; Weatherburn & Snowball 2012). This review found differences between bail authorities in the likelihood of bail refusal for Indigenous defendants. Klauzner and Yeong (2021) found Indigenous defendants in New South Wales were more likely than non-Indigenous defendants to be denied police bail (by 2.8 percentage points; see also Klauzner 2023). While the study did control for factors within the Bail Act, such as offence type and demographic characteristics, it did not control for the strength of the prosecution's case, which could affect bail outcomes (Klauzner 2023; Klauzner & Yeong 2021). Similarly, Weatherburn and Snowball (2012) found that, for bail decisions by court authorities in New South Wales, Indigenous defendants were 12 percent more likely to be refused bail than non-Indigenous defendants.

After controlling for relevant legal factors, Weatherburn and Thomas (2023) found that Indigenous young people were more likely than non-Indigenous young people to be proceeded against rather than cautioned by police. The flow-on effects for young people are considerable, as this group is then more likely than non-Indigenous youth to appear in court, which then places them at a greater risk of bail refusal (Weatherburn & Thomas 2023). This risk is compounded if the defendant has a history of offending (Weatherburn & Thomas 2023). The literature emphasised that incarceration, including remand, can have a criminogenic impact on an individual, making it more likely they will have future contact with the criminal justice system (Baldry & Russell 2017; Mathieson & Dwyer 2016; Schetzer & Sotiri 2024).

A language barrier was also noted to be a factor that could impact bail outcomes for Indigenous defendants, with those who experience a language barrier more likely to be denied bail (ALRC 2017b; McLean 2020). This may be due to a lack of access to an interpreter or legal services (ALRC 2017b). The ALRC's final report into the incarceration rate of Aboriginal and Torres Strait Islander peoples (2017b: 155) cited a submission from Australian Lawyers for Human Rights, highlighting that bail refusal could be due to an accused person's inability to convey and 'accurately outline their living arrangements, support networks, cultural obligations and other relevant matters to the court'.

The Northern Territory Department of the Attorney-General and Justice (2019) noted that Indigenous defendants often experience complex circumstances that may contribute to a higher proportion of bail refusals. These complex circumstances were identified by the Royal Commission into Aboriginal Deaths in Custody (1991) to include unstable housing and employment and previous instances of failing to appear in court.

Gender

A number of sources identified factors that increase the risk of women being denied bail. These include homelessness, co-offending in a violent relationship, and poorer mental health as well as caring responsibilities, which can affect a female defendant's capacity to attend court and may result in breach of bail charges (ALRC 2017b; Russell, Carlton & Tyson 2022; Russell et al. 2020). The conflation of vulnerabilities as risk and the tightening of bail laws can uniquely affect women in the bail application process. This has the effect of increasing bail refusal 'not because they [women] pose a risk to the community, but because they themselves are at risk' (Hurley 2022: 34; see also Russell, Carlton & Tyson 2022). This paper notes that these factors can be compounded for Aboriginal and Torres Strait Islander women as they are more likely to experience vulnerabilities that lead to bail refusal. For example, the Department of Justice and Community Safety – Corrections Victoria (2019) noted that Indigenous women are less likely than non-Indigenous women to have stable housing, which is found in the literature to be an important bail consideration.

Not applying for bail was mentioned in the literature as a driving factor for the high number of women on remand. In 2015 and 2016, Corrections Victoria surveyed 1,932 women entering the Dame Phyllis Frost Centre on remand. Fifty-one percent (*n*=981) of the women surveyed reported that they had not applied for bail (Department of Justice and Community Safety – Corrections Victoria 2019). Russell et al. (2020) found that a woman's fear for her safety could influence her decision to apply for bail in the first place. Russell, Carlton and Tyson (2022: 114) also outlined the impact that family and domestic violence can have on bail and remand, noting that such violence 'can prevent women from staying engaged in the legal process'. One lawyer interviewed in their study commented that:

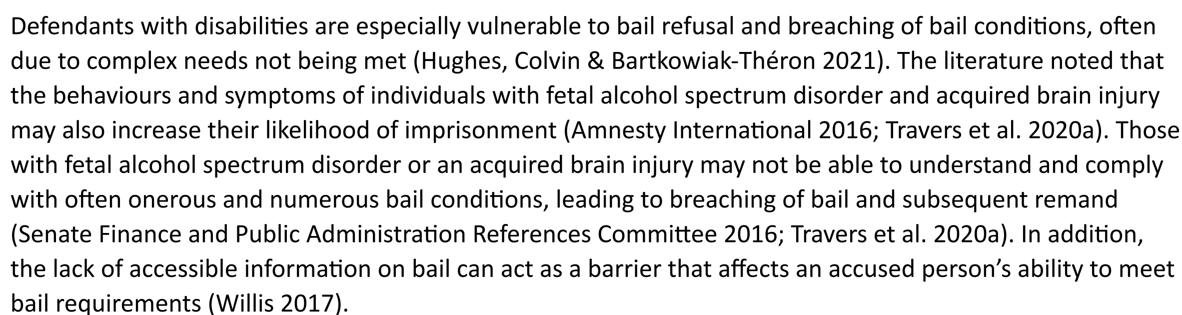
> … if somebody is in this really violent, unstable relationship, then getting to a court date on the shop theft might seem to have very little importance if every day you're living with the fear of whether you survive. (Russell et al. 2022: 114)

Furthermore, the lawyers Russell et al. (2020) interviewed suggested that higher reverse onus thresholds can lead to women not applying for bail in order to have their matters finalised quicker. Another study highlighted how domestic and family violence victimisation and unstable housing can impact bail determinations, such as when bail authorities refuse bail to women without stable housing or with limited access to housing if there is an intervention order in place (Russell, Carlton & Tyson 2022). Russell, Carlton and Tyson (2022) identified through their fieldwork a key theme of re-criminalisation of female victim-survivors who had sought police protection. In these cases, victim-survivors with complex trauma could be misperceived as dishonest and criminalised for seeking assistance (Russell, Carlton & Tyson 2022). As noted by Symes (2023b: 71), a multitude of factors can create a barrier for Aboriginal and Torres Strait Islander women reporting violence, such as:

> … fear of child removal, poverty, homelessness, over-policing and criminalisation, lack of awareness of legal rights and – in many areas – lack of access to culturally safe services and supports.

Mental health and disability

The literature identifies poor mental health as a factor that may contribute to bail refusal and to remand rates. Mental health is specified as a bail consideration in the Bail Acts of New South Wales, Victoria and the Northern Territory, although it could be seen as a factor that justifies either leniency or bail refusal as a way of mitigating a perceived risk (Russell et al. 2020; Schetzer & Sotiri 2024). Hughes, Colvin and Bartkowiak-Théron (2021) stated that poor mental health can be perceived as meaning that the defendant is at risk of committing further offences rather than being 'at risk'. The Royal Commission into Aboriginal Deaths in Custody (1991) also raised mental health issues as a factor contributing to the frequent bail refusal of Indigenous defendants, and this was reiterated at the 2016 Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services inquiry (ALRC 2017b; Bartels 2019; Senate Finance and Public Administration References Committee 2016). In Victoria, the Commission for Children and Young People (2021) noted that mental health, alongside other factors such as housing insecurity, can contribute to bail refusal for Indigenous youth defendants. Substance dependency, a recognised mental health condition, was also cited as a factor that can increase the likelihood of an accused person being refused bail in cases of police and court bail determinations (Boulten 2019; Richards & Renshaw 2013), as is also the case for Indigenous young people (Commission for Children and Young People 2021).



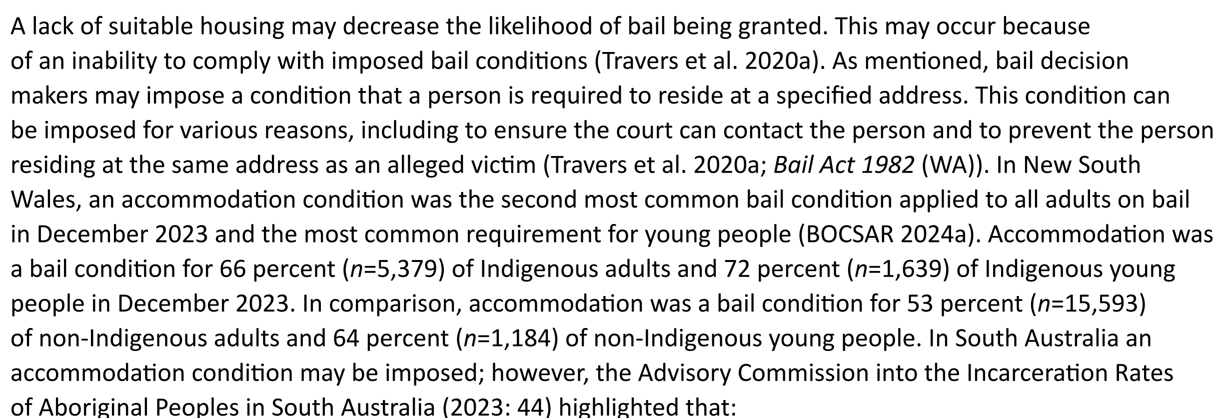
Defendants with disabilities are especially vulnerable to bail refusal and breaching of bail conditions, often due to complex needs not being met (Hughes, Colvin & Bartkowiak-Théron 2021). The literature noted that the behaviours and symptoms of individuals with fetal alcohol spectrum disorder and acquired brain injury may also increase their likelihood of imprisonment (Amnesty International 2016; Travers et al. 2020a). Those with fetal alcohol spectrum disorder or an acquired brain injury may not be able to understand and comply with often onerous and numerous bail conditions, leading to breaching of bail and subsequent remand (Senate Finance and Public Administration References Committee 2016; Travers et al. 2020a). In addition, the lack of accessible information on bail can act as a barrier that affects an accused person's ability to meet bail requirements (Willis 2017).

Poor mental health and having a disability more generally can also impact on a defendant's ability to comply with imposed bail conditions, particularly if the conditions are onerous and the defendant has limited support (Hughes, Colvin & Bartkowiak-Théron 2021; Russell et al. 2020). This can have flow-on effects to remand. If a defendant breaches or cannot comply with bail conditions, they are at risk of having their bail revoked and being remanded into custody, and in some jurisdictions they are at risk of committing an offence for having breached bail, increasing their conviction load. For example, this would apply in Victoria, with the reintroduction of bail offences such as contravention of a bail conduct condition in the 2025 amendments.

Housing insecurity

Available literature consistently mentioned the impact that housing instability and a lack of suitable accommodation has on the high rates of bail refusal and remand in Australia (Barclay 2019; Colvin 2022; Sarre 2016; Travers et al. 2020a). Housing insecurity can be a barrier for all people applying for and subsequently being granted bail but particularly impacts children and young people, women (as discussed previously) and homeless people (Colvin 2022; Legal and Social Issues Committee 2018; Russell et al. 2020; Schetzer & Sotiri 2024; Senate Finance and Public Administration References Committee 2016; Travers et al. 2020a). A lack of access to suitable accommodation was also cited as an issue for people who live in rural, regional or remote areas due to the lack of services available in those areas (Mathieson & Dwyer 2016; Schetzer & Sotiri 2024). Hughes, Colvin and Bartkowiak-Théron (2021) also noted that defendants with vulnerabilities, such as those with a disability and those leaving family and domestic violence situations, are more likely to experience housing instability and unemployment, which can contribute to bail refusal.

Several authors highlighted that issues surrounding housing instability and suitable accommodation as they relate to bail refusal are exacerbated for Aboriginal and Torres Strait Islander people and contribute to their over-representation in custody (Colvin 2022; Commission for Children and Young People 2021; Senate Finance and Public Administration References Committee 2016). The proportion of Indigenous people living in appropriately sized (ie not overcrowded) housing in 2021 was lower than the proportion for non-Indigenous people (81% vs 94% respectively; AIHW & National Indigenous Australians Agency (NIAA) 2024). An appropriately sized dwelling is one where there are a sufficient number of bedrooms to adequately accommodate the number, sex and relationships of household members. The proportion of Indigenous people living in appropriately sized housing decreased as remoteness increased, with 88 percent of Indigenous people who lived in major cities living in appropriately sized housing compared with 45 percent of Indigenous people who lived in very remote areas. In 2011, Aboriginal and Torres Strait Islander people were 14 times more likely to be homeless than non-Indigenous people. While this has since decreased, Aboriginal and Torres Strait Islander people were still approximately nine times more likely to be homeless compared to non-Indigenous people in 2021 (AIHW & NIAA 2024). The literature in this review found that housing instability and a lack of access to suitable accommodation can increase the rates of remand for multiple reasons. A lack of suitable housing can deter people from applying for bail to begin with. Bartels (2019: 1) noted that 'some defendants may not seek bail because they anticipate that they will not qualify and/or weigh up the fact that they will not need to worry about meeting bail requirements if held in prison on remand'. Access to suitable accommodation or a need to reside at a specified address is outlined in most Bail Acts as a condition that can be imposed, with the exception of Tasmania. In Tasmania, a judicial officer can impose conditions as required in the interests of justice.



A lack of suitable housing may decrease the likelihood of bail being granted. This may occur because of an inability to comply with imposed bail conditions (Travers et al. 2020a). As mentioned, bail decision makers may impose a condition that a person is required to reside at a specified address. This condition can be imposed for various reasons, including to ensure the court can contact the person and to prevent the person residing at the same address as an alleged victim (Travers et al. 2020a; *Bail Act 1982* (WA)). In New South Wales, an accommodation condition was the second most common bail condition applied to all adults on bail in December 2023 and the most common requirement for young people (BOCSAR 2024a). Accommodation was a bail condition for 66 percent (*n*=5,379) of Indigenous adults and 72 percent (*n*=1,639) of Indigenous young people in December 2023. In comparison, accommodation was a bail condition for 53 percent (*n*=15,593) of non-Indigenous adults and 64 percent (*n*=1,184) of non-Indigenous young people. In South Australia an accommodation condition may be imposed; however, the Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia (2023: 44) highlighted that:

> While access to appropriate or stable accommodation is not legislated as a bail requirement, in practice, the requirement that a person have appropriate accommodation, or an appropriate address, has become a proxy for being satisfied that the person will attend court.

In line with this, Travers et al. (2020a) found that courts often view homelessness as a bail risk and are unwilling to grant bail to a person without evidence of a stable address. Similarly, Schetzer and Sotiri (2024: 8) noted that 'homeless defendants were more likely to be refused bail due to poor community ties or the risk of failing to appear in court'.

Several papers noted that housing instability and unsuitable accommodation were a substantial barrier to bail being granted for children and young people as well as women (Caruana et al. 2021; Colvin 2019; Department of Justice and Community Safety – Corrections Victoria 2019; Richards & Renshaw 2013; Russell et al. 2020). Difficulties locating a responsible adult or suitable supervised accommodation were said to contribute to the high number of young people, especially Indigenous youth, on remand (Amnesty International 2015; Richards & Renshaw 2013). As outlined by McGorrery, Bathy and Simu (2020) in the context of Victoria, a lack of suitable accommodation can be considered in conjunction with other factors that make the person an acceptable risk for being in the community. Sarre (2016: 202) states that an:

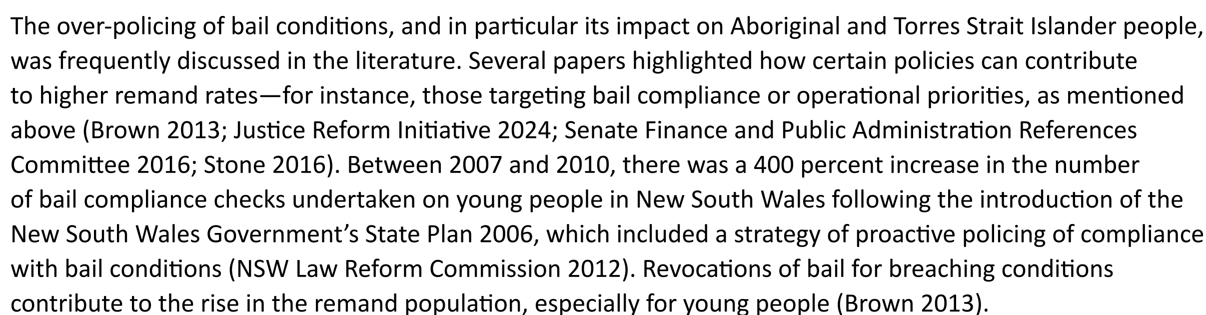
> Inability to access bail accommodation is also likely to impact more on particular groups of people such as young women applying for bail, as histories of physical and sexual abuse often make it less likely that young women (who may be both alleged offenders and victims) will have a stable home environment to which to return.

Policing practices

The over-representation of Indigenous people in the criminal justice system has been attributed in part to over-policing of Aboriginal and Torres Strait Islander communities (ALRC 2017b; Productivity Commission 2021; Senate Finance and Public Administration References Committee 2016; Stone 2016). Aboriginal and Torres Strait Islander people are more likely to be questioned, arrested and referred to court, and less likely to be cautioned, than non-Indigenous people (ALRC 2017a; AIHW & NIAA 2024; Cunneen, White & Richards 2015; Productivity Commission 2021; Russell et al. 2020; Senate Finance and Public Administration References Committee 2016; Stone 2016; Weatherburn & Ramsey 2016).

Policing practices can influence the rates of bail refusal. In a study conducted by Klauzner and Yeong (2021: 16), variation in rates of bail refusal for adults occurred between different police area commands in New South Wales (16.6 percentage points between the 'most lenient' police area command and the 'harshest'). A non-negligible effect between commands was also found for young defendants.

A shift towards more punitive and risk-averse attitudes by police was also cited as a potential driving factor of the increasing remand population (Cunneen, White & Richards 2015; Hughes, Colvin & Bartkowiak-Théron 2021; Richards & Renshaw 2013; Russell et al. 2020; Sarre 2018, 2016). Russell et al. (2020) highlighted that the development of a conservative culture and attitude towards bail in which police decide to remand people to court rather than bail from the police station could have contributed to the rising rates of bail refusal in Victoria. In South Australia, Sarre (2016) found that some operational policies encouraged arrests where a summons could be equally appropriate.



The over-policing of bail conditions, and in particular its impact on Aboriginal and Torres Strait Islander people, was frequently discussed in the literature. Several papers highlighted how certain policies can contribute to higher remand rates—for instance, those targeting bail compliance or operational priorities, as mentioned above (Brown 2013; Justice Reform Initiative 2024; Senate Finance and Public Administration References Committee 2016; Stone 2016). Between 2007 and 2010, there was a 400 percent increase in the number of bail compliance checks undertaken on young people in New South Wales following the introduction of the New South Wales Government's State Plan 2006, which included a strategy of proactive policing of compliance with bail conditions (NSW Law Reform Commission 2012). Revocations of bail for breaching conditions contribute to the rise in the remand population, especially for young people (Brown 2013).

Several papers highlighted that Indigenous people are more likely than non-Indigenous people to be placed on stringent bail conditions, and then these conditions are over-policed (Boulten 2019; Hughes, Colvin & Bartkowiak-Théron 2021; Stone 2016; Victorian Aboriginal Legal Service 2022). In New South Wales, for example, data from December 2023 reveal that Aboriginal and Torres Strait Islander adults and young people had a higher average number of bail conditions per person (2.6 each) compared with non-Indigenous adults and young people (2.3 and 2.4 respectively; BOCSAR 2024a). Conversely, a smaller proportion of Indigenous adults (23%) and young people (24%) had just one bail condition compared with non-Indigenous adults (34%) and young people (32%; BOCSAR 2024a).

The imposition of onerous bail conditions can set people up to fail, further entrenching them in the criminal justice system (Bartels 2019; Chen 2018; Colvin 2019). Conditions such as curfews, place restrictions and non-association orders were highlighted in the literature as conditions that are often difficult for Indigenous defendants to comply with (ALRC 2017b; Donnelly & Trimboli 2018). This is especially the case for those in regional or remote areas (ALRC 2017b). Data from New South Wales show that, in recent years, a higher proportion of Indigenous adults had these conditions imposed, primarily place restrictions and curfews, than non-Indigenous adults (BOCSAR 2024a). Curfews have been more commonly imposed on Indigenous young people than non-Indigenous young people (BOCSAR 2024a). Some police districts in New South Wales have begun implementing practices that aim to divert Indigenous people from the courts, with one district no longer applying bail reporting conditions for low-level offences (Law Enforcement Conduct Commission 2023).

Breach of bail is recognised as a 'key driver' of Aboriginal over-representation in the criminal justice system and a direct path to remand (Crawford & Josey (2018), cited in Bartels 2019). A report by the Queensland Sentencing Advisory Council (2017) found Indigenous people accounted for 26 percent of offenders sentenced for breach of bail as their most serious offence between 2005–06 and 2015–16, despite representing only four percent of the relevant population. For all other offence types, this was approximately 16 percent. Moreover, Indigenous women accounted for 32 percent of women sentenced for a breach of bail, compared with 25 percent of Indigenous men (Queensland Sentencing Advisory Council 2017). A study of accused persons in New South Wales found that the rate of Aboriginal and Torres Strait Islander defendants breaching a court order was more than twice the rate for non-Indigenous defendants (ALRC 2017a). While the proportion of defendants breaching bail and having it revoked has decreased over the years, recent data from New South Wales show that Indigenous people were more likely than non-Indigenous people to have breached bail and had their bail revoked (BOCSAR 2024a). Over one-quarter (27%, *n*=1,121) of Indigenous adults breached bail and had it revoked in 2023 compared with one-fifth (21%, *n*=1,787) of non-Indigenous adults. In the same year, double the proportion of Indigenous young people breached bail and had it revoked in 2023 compared with non-Indigenous young people (20%, *n*=322 vs 10%, *n*=71 respectively).

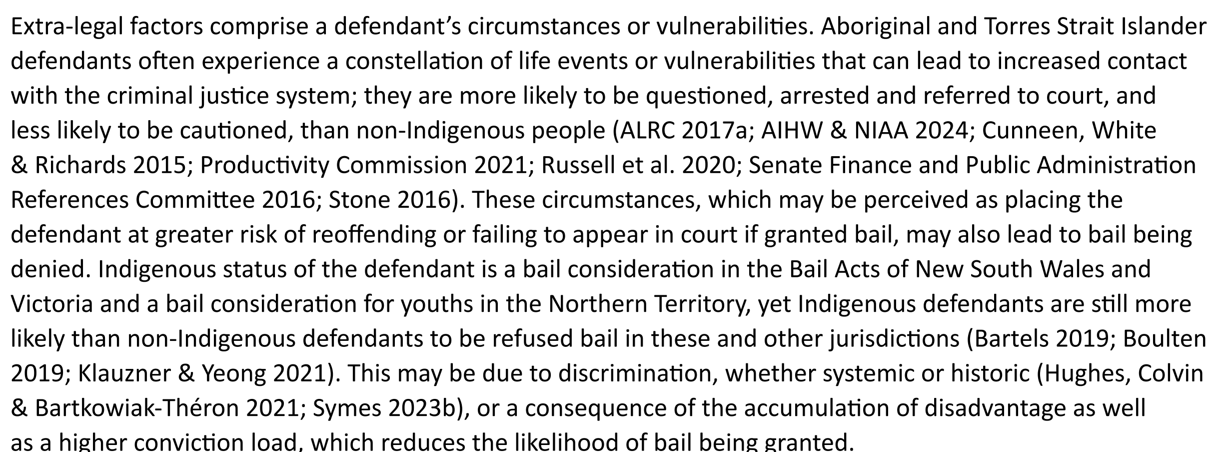
Discussion

This study found numerous interrelated and compounding factors that may affect the likelihood of a defendant being denied bail. These include static factors such as Indigenous status and gender, and factors that are subject to change and can elicit different outcomes depending on the nature of the change. Bail reforms, bail considerations and policing practices were identified as notable examples of the latter, especially for their effect on Aboriginal and Torres Strait Islander people who come into contact with the criminal justice system.

Bail laws are under the jurisdictional scope of each state and territory in Australia. The application of bail laws, while historically based on the presumption of innocence and an individual's right to bail, have gradually shifted in the last decades to become more punitive and risk-averse. Increasingly punitive reforms have been enacted, sometimes in response to the sentiment that 'soft' bail laws enabled serious and violent crime to be committed by a person out on bail (Auld & Quilter 2020; McMahon 2019; Russell et al. 2020; Schetzer & Sotiri 2024). These laws have been criticised as net-widening and driving up remand rates, particularly in circumstances of show cause/compelling reason offences and exceptional circumstances in which there is a reverse onus on defendants (Bartels 2019; Brown 2013; Russell et al. 2022; Sarre & Bartels 2023). Research reviewed for this study showed how bail law reforms in New South Wales and Victoria increased bail refusal for defendants. Yeong and Poynton (2018) found bail was more likely to be refused by the court for non-minor offences following the introduction of the *Bail Act 2013* in New South Wales. Klauzner and Yeong (2021) further determined that adult defendants in New South Wales were more likely to be refused bail by police and the courts for show cause offences, after the reintroduction of offence-based presumptions to that state's Bail Act. Furthermore, they found police were more likely to refuse bail if the offence was related to domestic violence. The authors of the study noted that internal policy encouraging officers to 'give the strongest consideration to arresting offenders of domestic and family violence' may have contributed to this (NSW Police 2018, cited in Klauzner & Yeong 2021: 21). Walker, Sutherland and Millsteed (2019) noted that the proportion of unsentenced women in Victoria who would have been subject to the reverse onus test, based on offence types at reception into prison, doubled to 79 percent in six years. Similar amendments have been enacted in the other jurisdictions, but limited research was available about their impacts and whether they align with the findings in New South Wales and Victoria.

Under these increasingly punitive bail reforms, legal factors such as prior offending and the expansion of show cause offences were specifically noted in the literature as key drivers of bail refusal. In particular the inclusion of family and domestic violence offences in some jurisdictions, coupled with an increase in offending rates, likely affected rates of bail refusal and increases in the remand population. Legal factors alone may increase the likelihood of Aboriginal and Torres Strait Islander defendants being refused bail due to their offending histories and higher conviction load. Indigenous defendants are more likely than non-Indigenous defendants to have 10 or more prior convictions (ALRC 2017b). The accumulation of convictions reduces the likelihood of bail being granted, because of presumptions against bail or the reasoning that bail considerations cannot be met (Department of the Attorney-General and Justice 2019). Further, the accumulation of numerous low-level offences, also more characteristic of Indigenous compared with non-Indigenous offenders, could also result in the defendant being required to meet a threshold for bail similar to that set for a defendant charged with more serious offences. This was the case in Victoria until the 2023 amendments, which disproportionately affected Aboriginal and Torres Strait Islander people in that state. These 'uplift' provisions are proposed to be reintroduced in 2025 in the second Bail Amendment Bill.

Legal factors may have a more pronounced effect on bail refusal than extra-legal factors. Extra-legal factors frequently mentioned in the literature include Indigenous status, gender, disability and mental health status, and housing security. While the association between extra-legal factors and bail refusal is not disputed, further research into extra-legal factors is needed to establish their impact (see, for example, Klauzner & Yeong 2021).



Extra-legal factors comprise a defendant's circumstances or vulnerabilities. Aboriginal and Torres Strait Islander defendants often experience a constellation of life events or vulnerabilities that can lead to increased contact with the criminal justice system; they are more likely to be questioned, arrested and referred to court, and less likely to be cautioned, than non-Indigenous people (ALRC 2017a; AIHW & NIAA 2024; Cunneen, White & Richards 2015; Productivity Commission 2021; Russell et al. 2020; Senate Finance and Public Administration References Committee 2016; Stone 2016). These circumstances, which may be perceived as placing the defendant at greater risk of reoffending or failing to appear in court if granted bail, may also lead to bail being denied. Indigenous status of the defendant is a bail consideration in the Bail Acts of New South Wales and Victoria and a bail consideration for youths in the Northern Territory, yet Indigenous defendants are still more likely than non-Indigenous defendants to be refused bail in these and other jurisdictions (Bartels 2019; Boulten 2019; Klauzner & Yeong 2021). This may be due to discrimination, whether systemic or historic (Hughes, Colvin & Bartkowiak-Théron 2021; Symes 2023b), or a consequence of the accumulation of disadvantage as well as a higher conviction load, which reduces the likelihood of bail being granted.

The over-policing of Indigenous communities and of bail conditions in particular was noted to be a factor contributing to the increasing remand population (Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia 2023; Bartels 2019; Stone 2016). Several papers highlighted that Indigenous people are more likely to be placed on stringent bail conditions than non-Indigenous people, and that these conditions are more likely to be over-policed (Boulten 2019; Hughes, Colvin & Bartkowiak-Théron 2021; Stone 2016; Victorian Aboriginal Legal Service 2022). The introduction of new breach of bail offences in several jurisdictions has added to this risk, as evidenced by higher rates of breach of bail offending and bail revocation among Aboriginal and Torres Strait Islander people in Queensland (Queensland Sentencing Advisory Council 2017) and New South Wales (BOCSAR 2024a).

Each of the factors described in this study is likely to affect whether bail is granted to a defendant. However, the introduction of more punitive bail reforms enacted in the last decade has had the greatest impact on remand rates. These reforms have expanded the number of offences which have strict provisions around bail eligibility. As a result, more people are subject to legal tests (eg reverse onus provisions) that have a higher threshold for positive bail outcomes. Consequently, this exacerbates the pre-existing disadvantage often experienced by defendants, particularly Aboriginal and Torres Strait Islander defendants, and limits access to bail.

Spending time on remand has a multitude of consequences for adults and young people. These impacts range from being ineligible to participate in rehabilitation programs due to not having been convicted of an offence, to undermining housing security and disrupting education and employment (Colvin 2022; McGorrery, Bathy & Simu 2020; Richards & Renshaw 2013). Several papers also noted that bail refusal may increase the risk of receiving a custodial penalty, such as being sentenced to 'time served' (Legal and Social Issues Committee 2018; Rahman 2019; Richards & Renshaw 2013; Sentencing Advisory Council 2020; Symes 2023b). As outlined by Schetzer and Sotiri (2024), 'time served' sentences move people up the sentencing hierarchy. This makes it more likely that defendants are sentenced to a term of imprisonment for subsequent offending. It also means a reduced likelihood of a defendant being diverted to a community based or therapeutic sentencing alternative.

The available literature also noted that many adults and young people held on remand are subsequently found not guilty or, if they are convicted, sentenced to a short period of imprisonment or given a non-custodial order (McGorrery, Bathy & Simu 2020; McMahon 2019; Sentencing Advisory Council 2020; Stone 2016; Travers et al. 2020a; Walker, Sutherland & Millsteed 2019). A study conducted by Caruana et al. (2021) found that approximately 40 percent of unsentenced women in prison in Victoria received no custodial sentence or were sentenced to a time served sentence once their matter was heard in court. This outcome may be due to the over-representation of people charged with minor offences being remanded into custody (McCausland & Baldry 2023; Travers et al. 2020a; Travers et al. 2020c).

The disruption caused by spending time on remand as well as the experiences faced during incarceration can increase the risk of further involvement in the criminal justice system for both adults and young people, perpetuating the cycle of disadvantage (Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia 2023; Jones 2018; Mathieson & Dwyer 2016; McGorrery, Bathy & Simu 2020; Symes 2023b). Ways of reducing rates of remand will be explored in a later report.

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Appendix: Bail legislation by jurisdiction

Table A1: Bail legislation by jurisdiction

Jurisdiction	Legislation	Amendments enacted since 2014
NSW	*Bail Act 2013*	*Fines Amendment Act 2013* *Bail (Consequential Amendments) Act 2014* *Bail Amendment Act 2014* *Bail Amendment Act 2015* *Industrial Regulations Amendment (Industrial Court) Act 2016* *Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016* *Justice Legislation Amendment Act 2017* *Justice Legislation Amendment (No 2) Act 2017* *Statute Law (Miscellaneous Provisions) Act 2018* *Terrorism (High Risk Offenders) Act 2017* *Justice Legislation Amendment Act (No 3) 2018* *Justice Legislation Amendment Act (No 2) 2019* *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* *Stronger Communities Legislation Amendment (Miscellaneous) Act 2020* *Bail Amendment Act 2022* *Justice Legislation Amendment (Miscellaneous) Act 2023* *Industrial Relations Amendment Act 2023* *Bail and Crimes Amendment Act 2024* *Bail and Other Legislation Amendment (Domestic Violence) Act 2024* *Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025*

Table A1: Bail legislation by jurisdiction (cont.)

Jurisdiction	Legislation	Amendments enacted since 2014
Vic	*Bail Act 1977*	*Bail Amendment Act 2013* *Legal Profession Uniform Law Application Act 2014* *Honorary Justices Act 2014* *Victoria Police Amendment (Consequential and Other Matters) Act 2014* *Fines Reform Act 2014* *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* *Serious Sex Offenders (Detention and Supervision) and Other Acts Amendment Act 2015* *Bail Amendment Act 2016* *Crimes Amendment (Carjacking and Home Invasion) Act 2016* *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* *Bail Amendment (Stage One) Act 2017* *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* *Justice Legislation Amendment (Protective Services Officers and Other Matters) Act 2017* *Corrections Legislation Further Amendment Act 2017* *Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017* *Bail Amendment (Stage Two) Act 2018* *Oaths and Affirmation Act 2018* *Serious Offenders Act 2018* *Justice Legislation Amendment (Terrorism) Act 2018* *Justice Legislation Amendment (Police and Other Matters) Act 2019* *COVID-19 Omnibus (Emergency Measures) Act 2020* *Crimes Amendment (Manslaughter and Related Offences) Act 2020* *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020* *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* *Justice Legislation Amendment (System Enhancement and Other Matters) Act 2021* *Statute Law Amendment (References to the Sovereign) Act 2023* *Bail Amendment Act 2023* *Youth justice Act 2024* *Bail Amendment Act 2025* *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025*

Table A1: Bail legislation by jurisdiction (cont.)

Jurisdiction	Legislation	Amendments enacted since 2014
Qld	*Bail Act 1980*	*Criminal Law Amendment Act 2014* *Safe Night Out Legislation Amendment Act 2014* *Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016* *Mental Health Act 2016* *Racing Integrity Act 2016* *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* *Serious and Organised Crime Legislation Amendment Act 2016* *Criminal Law Amendment Act 2017* *Bail (Domestic Violence) and Another Act Amendment Act 2017* *Victims of Crime Assistance and Other Legislation Amendment Act 2017* *Justice Legislation (Links to Terrorist Activity) Amendment Act 2019* *Youth Justice and Other Legislation Amendment Act 2019* *Medicines and Poisons Act 2019* *Community Services Industry (Portable Long Service Leave) Act 2020* *Youth Justice and Other Legislation Amendment Act 2021* *Evidence and Other Legislation Amendment Act 2022* *Strengthening Community Safety Act 2023* *Police Powers and Responsibilities and Other Legislation Amendment Act (No. 2) 2023* *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*
WA	*Bail Act 1982*	*Mental Health Legislation Amendment Act 2014* *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* *Dangerous Sexual Offenders Legislation Amendment Act 2017* *Bail Amendment (Persons Linked to Terrorism) Act 2019* *Family Violence Legislation Reform (COVID-19 Response) Act 2020* *High Risk Serious Offenders Act 2020* *Family Violence Legislation Reform Act 2020* *COVID-19 Response and Economic Recovery Omnibus Act 2020* *Bail Amendment Act 2022* *Criminal Appeals Amendment Act 2022* *Criminal Law (Mental Impairment) Act 2023* *Western Australian Marine Amendment Act 2023* *Criminal Code Amendment Act 2024* *Family Violence Legislation Reform Act 2024*

Table A1: Bail legislation by jurisdiction (cont.)

Jurisdiction	Legislation	Amendments enacted since 2014
SA	*Bail Act 1985*	*Criminal Law (High Risk Offenders) Act 2015* *Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015* *Firearms Act 2015* *Statutes Amendment (Courts and Justice Measures) Act 2016* *Summary Procedure (Indictable Offences) Amendment Act 2017* *Bail (Miscellaneous) Amendment Act 2017* *Statutes Amendment (Sentencing) Act 2017* *Statutes Amendment (Terror Suspect Detention) Act 2017* *Statutes Amendment (Attorney-General's Portfolio No 3) Act 2017* *Statutes Amendment (Domestic Violence) Act 2018* *Statutes Amendment (Bail Authorities) Act 2020* *Statutes Amendment (Attorney-General's Portfolio) Act 2020* *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020* *Statutes Amendment (Recommendations of Independent Inquiry into Child Protection) Act 2021* *Statutes Amendment (Attorney-General's Portfolio) Act 2022* *Statutes Amendment (Sexual Offences) Act 2023* *Public Holidays Act 2023* *Bail (Conditions) Amendment Act 2024* *Bail (Terror Suspects and Firearm Parts) Amendment Act 2024*
Tas	*Bail Act 1994*	*Justice and Related Legislation (Miscellaneous Amendments) Act 2015* *Domestic Violence Orders (National Recognition) Act 2016* *Financial Management (Consequential and Transitional Provisions) Act 2017* *Justice and Related Legislation (Miscellaneous Amendments) Act 2017* *Terrorism (Restrictions on Bail and Parole) Act 2018* *Justice and Related Legislation (Miscellaneous Amendments) Act 2018* *Justice Miscellaneous (Court Backlog and Related Matters) Act 2020*

Table A1: Bail legislation by jurisdiction (cont.)

Jurisdiction	Legislation	Amendments enacted since 2014
NT	*Bail Act 1982*	*Correctional Services (Related and Consequential Amendments) Act 2014* *Bail Amendment Act 2015* *Bail Amendment Act (No. 2) 2015* *Local Court (Repeals and Related Amendments) Act 2016* *Statute Law Revision Act 2017* *Bail Amendment Act 2017* *Parole Amendment Act 2017* *Supreme Court Amendment (Associate Judges) Act 2017* *Youth Justice Legislation Amendment Act 2017* *Youth Justice and Related Legislation Amendment Act 2019* *Evidence and Other Legislation Amendment Act 2020* *Justice Legislation Amendment (Domestic and Family Violence) Act 2020* *Youth Justice Legislation Amendment Act 2021* *Criminal Code Amendment (Property Offences) Act 2022* *Bail Amendment Act 2023* *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023* *Justice Legislation Amendment (Domestic and Family Violence) Act 2023* *Justice and Other Legislation Amendment Act 2024* *Bail Legislation Amendment Act 2024* *Bail and Youth Justice Legislation Amendment Act 2025*
ACT	*Bail Act 1992*	*Crimes Legislation Amendment Act 2015 (No 2)* *Mental Health Act 2015* *Crimes (Sentencing and Restorative Justice) Amendment Act 2016* *Protection of Rights (Services) Legislation Amendment Act 2016 (No 2)* *Family Violence Act 2016* *Crimes (Serious and Organised Crime) Legislation Amendment Act 2016* *Crimes Legislation Amendment Act 2019* *Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Act 2019* *COVID-19 Emergency Response Legislation Amendment Act 2020* *COVID-19 Emergency Response Legislation Amendment Act 2021* *Crimes Legislation Amendment Act 2021* *Operational Efficiencies (COVID-19) Legislation Amendment Act 2021* *Work Health and Safety Amendment Act 2021* *Sexual Assault Reform Legislation Amendment Act 2023* *Bail Amendment Act 2023* *Crimes Legislation Amendment Act 2024* *Crimes Legislation Amendment Act 2024 (No 2)* *Sexual, Family and Personal Violence Legislation Amendment Act 2024*

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