

# Bail Bill 2021

Submission to the Office of Strategic Legislation and  
Policy, Department of Justice

22 March 2021



## Contents

Who we are.....	4
Introduction .....	5
Comments.....	5
Conclusion.....	6

## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

---

<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to provide this submission to the Department of Justice regarding the consultation draft of the Bail Bill 2021 ('the Bill').

## Comments

2. The Bill is fundamentally flawed because it commences from the premise that liberty of the subject, a fundamental right, and the presumption of innocence which entails that a person ought not be detained except by exception, rank behind "community safety". Show cause provisions and statutory injunctions against bail, both of which are reflected in this Bill, are incompatible with those human rights.
3. Justice Bell in the Supreme Court of Victoria put it this way: "the presumptive entitlement to bail, which reflects the importance of the presumption of innocence and the prosecutorial onus of proof as well as the right of all persons to liberty and freedom of movement" was displaced by the 'show cause' provisions in the Victorian *Bail Act*.<sup>2</sup>
4. The show cause provisions contemplated by the Bill will see prison numbers rise and an increase in the work of the courts in hearing bail applications. Similar reforms introduced in New Zealand in 2013 have seen "[r]emand prisoners have increased from 27 to 40 per cent of the prison population in the time since, or from 1817 to 3826 inmates".<sup>3</sup>
5. The societal impact of increasing the number of remand prisoners is serious. As Marilyn McMahon has argued: "Imprisoning those charged with, but not convicted of, a crime breaches the right to liberty and the presumption of innocence. Being imprisoned disrupts family relationships, can lead to the loss of employment, makes preparing for trial more difficult and exposes people to the dangers of a prison environment".<sup>4</sup>

---

<sup>2</sup> *Woods v Director of Public Prosecutions* (2014) 238 A Crim R 84.

<sup>3</sup> Ripu Bhatia, 'Bail law changes reversing burden of proof 'breached human rights' - law experts', *Stuff* (online, 23 July 2020) <<https://www.stuff.co.nz/national/300058274/bail-law-changes-reversing-burden-of-proof-breached-human-rights--law-experts>>.

<sup>4</sup> Marilyn McMahon, 'Locking up legally innocent people before their trial is straining Victoria's prisons', *The Conversation* (online, 6 September 2019) <<https://theconversation.com/locking-up-legally-innocent-people-before-their-trial-is-straining-victorias-prisons-122392>>.

6. Further, the increased number of remandees will frustrate the ability of the court to give priority to trial matters involving vulnerable child complainants. The result will be to the detriment of the administration of justice.
7. In addition, the Government will need to increase the budget of the Tasmanian Prison Service and the courts in order to deal with the inevitable consequence of this poor legislation. From the perspective of fiscal responsibility this does not make sense. For a lesser impost on the taxpayers of Tasmania the Government could invest in keeping those charged with criminal offences in housing, able to get treatment for mental health issues and addiction, and to ensuring pro social supports.

## Conclusion

8. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the Bail Bill 2021.
9. We submit that the Bill is fundamentally flawed. If enacted in its current form, the consequences could include higher numbers of individuals in prison who have not yet been convicted of a crime (which has serious implications for both those individuals and their families, as detailed above); an increase in the work of courts in hearing bail applications; and a financial burden on the Tasmanian Government and taxpayers.



**Sebastian Buscemi**

**Tasmanian President and State Director**

**Australian Lawyers Alliance**