

# Is Victoria's criminal justice system relying too heavily on imprisonment?

## What they said...

*'We need to have a really close look at each and every element of our bail system and we need to make profound change for the future to keep Victoria safe'*

**Victorian premier, Daniel Andrews, commenting on bail reform after the Bourke Street Mall massacre in January 2017**

*'The Adrian Bayleys and James Gargasoulases of the world are a tiny fraction of the prison population. We do not need a mass incarceration system to deal with these extreme cases'*

**Melanie Poole, a consultant and former policy engagement director at the Federation of Community Legal Centres**

## The issue at a glance

In May 2019, Victoria's budget announced greatly increased government spending on the state's prisons.

The state budget contained \$1.8 billion in new spending on prisons and corrections, including funding for the new maxi jail at Chisholm Road, beside the existing Barwon Prison just north of Geelong. The budget also contained \$237 million for an upgrade of the state women's prison at Ravenhall in Melbourne's west.

<https://www.theage.com.au/national/victoria/victoria-to-spend-an-extra-1-8-billion-on-jails-20190524-p51qra.html>

This investment is a response to the state's soaring prison numbers and represents a point of strain within government policy.

Reforms undertaken by successive governments, both Labor and Coalition, have seen a tightening of parole and bail regulations, the removal of suspended sentences and a reduction in judges' discretion around sentencing. Together with a growing state population and increased numbers of police, the result has been the most rapid growth in incarceration in the state's history. <https://www.theage.com.au/national/victoria/prisons-blowout-a-legacy-of-remand-crackdowns-and-repeat-offenders-20190703-p523q9.html>

Commentators vary in their responses to these developments. The State Opposition is urging an even stronger 'tough-on-crime' approach while some lawyers' groups and social welfare advocates are recommending a more nuanced response and greater spending on preventative measures. <https://www.abc.net.au/news/2018-01-16/victorian-law-and-order-debate-re-offending-opposition-policy/9332128>

## Background

The information below has been drawn primarily from a Wikipedia entry titled 'Punishment in Australia'. The full text can be accessed at

[https://en.wikipedia.org/wiki/Punishment\\_in\\_Australia](https://en.wikipedia.org/wiki/Punishment_in_Australia)

Where information is drawn from other sources, these are indicated next to the material being cited.

### Prisons in Australia

Punishment in Australia arises when an individual has been convicted of breaking the law through the Australian criminal justice system. Australia uses prisons, as well as community corrections (various non-custodial punishments such as parole, probation, community service

etcetera). The death penalty has been abolished, and corporal punishment is no longer used. Prison labour occurs in Australia; prisoners are involved in many types of work with some paid as little as \$0.82 per hour. Before the colonisation of Australia by Europeans, Indigenous Australians had their own traditional punishments, some of which are still practised.

#### Prisons are a state responsibility

Prisons in Australia are operated by state-based correctional services departments, for the detention of minimum, medium, maximum and supermax security prisoners convicted in state and federal courts, as well as prisoners on remand. There is no separate federal prison infrastructure, only state prisons. In the June quarter of 2018, there were 42,855 people imprisoned in Australia, which represents an incarceration rate of 222 prisoners per 100,000 adult population., or 172 per 100,000 total population. This represents a sharp increase from previous decades. In 2016-2017 the prison population was not representative of the Australian population, for example 91% of prisoners were male, while males were only half of the population, and 27% of prisoners were Aboriginal or Torres Strait Islanders, while indigenous people were only 2.8% of the population. In 2018, 18.4% of prisoners in Australia were held in private prisons.

#### Growing prison numbers and expenditure on prisons

In the 2016-17 financial year, Australia spent \$3.1 billion on prisons and \$0.5 billion on community corrections.

In November 2017, annual expenditure had reached \$4 billion and Australian prisons were the fifth most expensive among 29 countries in the Organisation for Economic Cooperation and Development (OECD). Sweden, Norway, and the Netherlands made up the top three.

<https://www.abc.net.au/news/2017-08-08/australia-spending-more-on-prisons-than-other-oecd-countries/8784466>

An Institute of Public Affairs (IPA) report released in November 2018 found incarceration rates are growing rapidly. As of November 2017, there were 36,000 prisoners in Australia, up 39 per cent from a decade before. The report states, 'Over the past five years, international figures show Australia's incarceration growth has outstripped that of many comparable countries. Fellow common law countries, the United States, the United Kingdom, Canada, Ireland and New Zealand all reduced their incarceration levels over the [same] period.'

<https://www.abc.net.au/news/2017-08-08/australia-spending-more-on-prisons-than-other-oecd-countries/8784466>

The report also found Australians spent more per capita on police than many other OECD countries. In 2015, Australia is estimated to have spent \$427 per person on police services — ranking ninth highest in the OECD. Australia's level of policing was now higher than all other common law countries apart from Ireland, at 295 police per 100,000 citizens for the year 2015-16. <https://www.abc.net.au/news/2017-08-08/australia-spending-more-on-prisons-than-other-oecd-countries/8784466>

#### Growing community concern over crime

Despite the growth of spending on prisons and police, Australians are increasingly concerned about crime levels. Australia now ranks 50 (from a previous high of 37) among all countries for how safe its citizens feel in their communities, according to Gallup's 2018 Law and Order Report. Australia ranks behind most other English-speaking countries such as Canada, Ireland, UK, US and New Zealand – as well as behind unexpected countries like Indonesia, China, Egypt, Rwanda, Bangladesh and Serbia. <https://www.finder.com.au/gallup-law-order-2018>

The results are based on interviews in which more than 148,000 adults from 142 countries were asked the following four questions: In the city or area where you live, do you have confidence in the local police force? Do you feel safe walking alone at night in the city or area where you live? Within the last 12 months, have you had money or property stolen from you or another household member? Within the past 12 months, have you been assaulted or mugged?

Countries were then given a score from 0 to 100, with 0 effectively meaning 'not safe at all' and 100 effectively meaning 'completely safe'.

Australia scored 82 compared to the relatively similar score of 84 the year before. The highest this year was Singapore with 97 and the lowest was Venezuela with 44.

<https://www.finder.com.au/gallup-law-order-2018>

Data from the independent government advisory body, the Productivity Commission, confirms community concern about safety. In 2015-16 only 51.7 per cent surveyed said they felt safe walking home at night, while less than a quarter felt safe on public transport at night. <https://www.abc.net.au/news/2017-08-08/australia-spending-more-on-prisons-than-other-oecd-countries/8784466>

### Bail, remand and parole

**Bail:** This involves the conditional release of a defendant with the promise to appear in court when required. Bail involves a set of pre-trial restrictions that are imposed on a suspect to ensure that s/he complies with the judicial process. For example, a person on bail may have to surrender his or her passport, have a fixed address or guarantee to reside within a designated area. The requirement that a bail recipient have a fixed address is a factor that generally disqualifies the homeless from receiving bail.

An undertaking of bail is a promise to appear at court on a certain date to answer the charges. Bail can be granted with special conditions or no conditions.

A surety is a person who pays or promises to pay money to the court if the accused person fails to comply with his or her undertaking of bail. A surety must prove they can provide the amount fixed by the court. This may be done by providing money or proof of assets such as real property.

A deposit can be made by an accused person to provide security that s/he will attend court. A deposit is like a surety, except the deposit is given by the accused person rather than someone else. <https://www.mcv.vic.gov.au/criminal-matters/bail-and-custody>

**Remand:** Alleged offenders on remand are held in custody before and during their trial (on criminal charges) by order of a court. Generally, remandees will be held in special remand facilities and will have fewer restrictions placed on them than convicted prisoners.

An alleged offender is remanded in custody by a court if they: have not applied for bail; have been refused bail; cannot meet bail or provide a surety or are unable or unwilling to meet the conditions set out in the bail bond

Remanding an offender in custody is intended to ensure that the alleged offender attends their trial. <https://www.corrections.vic.gov.au/prison/remand>

Research shows 50 per cent of people on remand are eventually released without conviction. <https://www.theage.com.au/national/victoria/prisons-blowout-a-legacy-of-remand-crackdowns-and-repeat-offenders-20190703-p523q9.html>

According to evidence from the United Kingdom, remandees are more likely than sentenced prisoners to be homeless, unemployed or have some form of mental disorder. There appear to be increasing levels of drug and mental health issues affecting those in custodial remand populations. Victorian data indicates that remandees demonstrate statistically significant declines in seriousness of criminal history at the same time as there were indications of

increasingly severe drug and alcohol abuse and mental health problems.

<https://aic.gov.au/publications/tandi/tandi310>

Parole: This involves the early release of a prisoner under set conditions. If a prisoner applies for parole, Corrections Victoria will prepare reports for the Board to provide it with relevant information to make a decision. The Board may also receive information from other sources, including Victoria Police.

If the Board decides to release a prisoner on parole, the prisoner will be supervised by a Corrections Victoria parole officer, who will meet regularly with the parolee. The parole officer may also visit the parolee at home and may direct the parolee to do certain things, such as to do community work or to take a drug test.

<https://www.adultparoleboard.vic.gov.au/what-parole/how-parole-managed>

## **Internet information**

On July 3, 2019, The Age published a comment by Victoria's Ombudsman, Deborah Glass, titled 'Prisons blowout a legacy of remand crackdowns and repeat offenders'

Glass criticises the growth in Victoria's prison population and invites a more pro-active rehabilitative approach.

The full text can be accessed at <https://www.theage.com.au/national/victoria/prisons-blowout-a-legacy-of-remand-crackdowns-and-repeat-offenders-20190703-p523q9.html>

On July 1, 2019, The Age published an editorial titled 'Crowded jails show need for review of Victoria's "war on crime"'

The editorial argues that dramatically rising numbers of inmates in Victoria's prisons indicates a need for the government to change its approach.

The full text can be accessed at <https://www.theage.com.au/politics/victoria/crowded-jails-show-need-for-review-of-victoria-s-war-on-crime-20190701-p52356.html>

On June 30, 2019, The Age published a report titled 'Women prisoner numbers explode amid state crackdown on male violence'

The report details the unintended consequence of increased numbers of women in prison following policy changes intended to reduce male violence.

The full text can be accessed at <https://www.theage.com.au/politics/victoria/women-prisoner-numbers-explode-amid-state-crackdown-on-male-violence-20190629-p522jo.html>

On June 28, 2019, The Age published a report titled 'Is there any way back from the war on crime?'

The analysis and comment criticises Victoria's focus on imprisonment as a crime control measure and speculates as to what other options may be available to the government.

The full text can be accessed at <https://www.theage.com.au/national/victoria/is-there-any-way-back-from-the-war-on-crime-20190628-p522ah.html>

On June 28, 2019, The Age published a report titled 'Prisons to focus on rehabilitation not recidivism: Minister'

The report details the plans of the Victorian Corrections Minister, Ben Carroll, to overhaul Victoria's prison system and revise the Corrections Act to place an emphasis on prisoner rehabilitation.

The full text can be accessed at <https://www.theage.com.au/national/victoria/prisons-to-focus-on-rehabilitation-not-recidivism-minister-20190628-p522bh.html>

On June 27, 2019, The Age published a report titled, 'Prisons are booming as Victoria pays for its 'tough on crime' stance'

The report analyses Victoria's growing expenditure on the state's prisons and the impact this is having on government funding directed toward other areas.

The full text can be accessed at <https://www.theage.com.au/national/victoria/prisons-are-booming-as-victoria-pays-for-its-tough-on-crime-stance-20190627-p5220f.html>

On June 3, 2019, The Guardian published a report titled 'Victoria criticised for \$2bn prison spend while neglecting social housing'

Within this report the Victorian government is criticised for its growing expenditure on the state's prisons while neglecting public housing.

The full text can be accessed at <https://www.theguardian.com/australia-news/2019/jun/03/victoria-criticised-for-2bn-prison-spend-while-neglecting-social-housing>

On May 24, 2019, the Victorian premier, Daniel Andrews, and the Minister for Corrections, Ben Carroll, issued a media release titled 'A Stronger Prison System to Keep People Safe'

The release outlines the government's proposed further reforms to the state's penal system.

The full text can be accessed at

<https://www.premier.vic.gov.au/a-stronger-prison-system-to-keep-people-safe/>

On March 2, 2019, The Age published a report titled 'Improving mental health key to reducing prison population: Andrews'

The report details the Victorian government's commitment to addressing mental health, in part as a means of lowering the state's imprisonment rate.

The full text can be accessed at <https://www.theage.com.au/politics/victoria/improving-mental-health-key-to-reducing-prison-population-andrews-20190301-p5119i.html>

In March 2019, the most recent Crime Statistic Agency of Victoria's figures were released covering the 12 months from March 31, 2018, to March 31, 2019. These show increases in some categories of crime.

Full figures can be accessed at <https://www.crimestatistics.vic.gov.au/recorded-offences>

On January 24, 2019, The Age published a report titled 'Almost a third of Victorians feel unsafe at night on public transport'

The report details widespread levels of anxiety among Victorians travelling on public transport and when walking around their neighbourhoods at night.

The full text can be accessed at <https://www.theage.com.au/national/victoria/almost-a-third-of-victorians-feel-unsafe-at-night-on-public-transport-20190123-p50t62.html>

On December 20, 2018, The Age published a report titled 'Eight times each day in Victoria, someone on bail breaches a family violence order'. The report details the extent to which those on bail are breaching intervention orders and questions the efficacy of both the orders and the bail system in these instances. The full text can be accessed at

<https://www.theage.com.au/national/victoria/eight-times-each-day-in-victoria-someone-on-bail-breaches-a-family-violence-order-20181220-p50ne3.html>

On December 11, 2018, 9 News televised a report titled 'Crime rates are falling – why do we have such a hard time believing that?'

The report examines the overall decline in crime rates across Australia and attempts to account for the persistent rates of popular anxiety about crime and public safety.

The full text can be accessed at <https://www.9news.com.au/national/crime-getting-worse-myth-australia-tough-on-crime-rates-falling/d50cbdf9-c212-4b17-9844-cfb82596b445>

On December 5, 2018, The Herald Sun published a report titled 'Victoria records increase in family violence over five-year period'

The report details the increase in reported incidents of family violence over the last five years.

The full text can be accessed at <https://www.heraldsun.com.au/news/law-order/victoria-records-increase-in-family-violence-over-five-year-period/news-story/c1c9c64198f8cc29f6b00072a33eeb95>

On November 5, 2018, ABC News televised a report titled 'Victoria's "madhouse" prisons are expensive, but are they making the state more dangerous?'

The analysis examined Victoria's growing recidivism and incarceration rates and suggested the state needed to find alternatives to imprisonment.

The full text can be accessed at <https://www.abc.net.au/news/2018-11-05/victoria-prison-system-costly-crowded/10454444>

On October 30, 2019, ABC News televised a report titled 'Victoria's mental health services "sink to the absolute bottom" with tragic consequences.'

The report examines the under resourcing of mental health in Victoria and suggests this is contributing to the state's increasing imprisonment rate.

The full text can be accessed at <https://www.abc.net.au/news/2018-10-29/victoria-mental-health-crisis-and-its-tragic-consequences/10433286>

On September 20, 2018, the ABC published a report titled 'Victoria's crime rate has fallen again, figures show'

The report details the continuing decline in Victoria's overall crime rate and in key crime categories.

The full text can be accessed at <https://www.abc.net.au/news/2018-09-20/victoria-crime-rate-down-new-criminal-statistics-agency-figures/10284918>

On April 23, 2018, The Age published a report titled 'Jails bursting with unsentenced prisoners as costs also soar'

The report details the rapidly growing number of prisoners on remand in Victorian prison and the costs associated with catering for them.

The full text can be accessed at <https://www.theage.com.au/politics/victoria/jails-bursting-with-unsentenced-prisoners-as-costs-also-soar-20180423-p4zb8p.html>

On January 24, 2018, The Sydney Morning Herald published a report titled 'Relatively safe, but scared. How Victoria became a state of fear'

The report details Productivity Commission figures indicating perceptions of public safety in different Australian states and territories. It reveals high levels of apprehension among Victorians surveyed.

The full text can be accessed at <https://www.smh.com.au/opinion/give-thanks-for-our-states-they-make-us-australian-20180124-h0nfg8.html>

On October 19, 2017, ABC News televised a report titled 'Almost half of Victoria's prisoners are back in jail within two years of release'

The report analysed the high recidivism rate in Victoria's prisons and compared it with that in some other jurisdictions.

The full text can be accessed at <https://www.abc.net.au/news/2017-10-19/victorian-prisoner-recidivism-rates-increase-justice-department/9065752>

On October 19, 2017, The Conversation published a comment by Lorana Bartels, Associate Professor and Head, School of Law and Justice, University of Canberra, titled 'Is Victoria's sentencing regime really more lenient?'

The comment suggests that for several categories of crime sentences in Victoria are less lenient than they are in most other states and territories.

The full text can be accessed at <https://theconversation.com/is-victorias-sentencing-regime-really-more-lenient-85684>

In June 2017 the Victorian Sentencing Advisory Council published a report comparing rates of imprisonment in Victoria with those in other Australian states and territories.

The full text can be accessed at

<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/australias-imprisonment-rates>

In April 2017, the former Director of Public Prosecutions and Supreme Court Justice, the Hon Paul Coghlan QC, released his formal review of Victoria's bail system undertaken for the state government.

The review made 37 recommendations to reform the bail system, all of which were accepted by the state government.

The full text can be accessed at <https://engage.vic.gov.au/bailreview>

On February 2, 2017, Mamamia published a comment by Caitlin Bishop titled 'To the people our system has failed: We are so, so sorry'. The comment details cases covering a five-year period during which men either on bail or parole committed murder in several Australian jurisdictions. Some of these offences occurred within Victoria.

The full text can be accessed at <https://www.mamamia.com.au/murders-by-people-on-bail/>

On July 26, 2016, Lexis Nexis published an analysis and comment titled 'Crime rates fall, but Australia's imprisonment rates are soaring'

The article analyses and attempts to account for Australia-wide trends that show increased rates of imprisonment at the same time as there has been an overall decline in crime.

The full text can be accessed at <https://www.lexisnexis.com.au/en/insights-and-analysis/rule-of-law/2016/26july2016-crime-rates-fall,-but-australias-imprisonment-rates-are-soaring>

On October 1, 2015, The Age published a report titled 'Victoria's bail system is in disarray' which detailed the significant increase in those on bail breaching their bail conditions. Such breaches include the committing of further criminal offences.

The full text can be accessed at <https://www.theage.com.au/national/victoria/victorias-bail-system-is-in-disarray-20151001-gjz5w2.html>

On March 26, 2015, The Age published a report titled 'Adrian Bayley: how the justice system left him free to stalk Melbourne's streets'

The report details the various grounds under which Ernest Bayley should neither have been granted bail nor parole at the time he raped and killed Jill Meagher in September 2012.

The full text can be accessed at <https://www.theage.com.au/national/victoria/adrian-bayley-how-the-justice-system-left-him-free-to-stalk-melbournes-streets-20150325-1m70ps.html>

## **Arguments supporting Victoria's prison policies**

### **1. Certain categories of crime are increasing in Victoria**

Those who support Victoria's increasing rates of imprisonment and 'tough-on-crime' approach argue that although there has been an overall decline in crime in Victoria and Australia as a whole, certain categories of crime are continuing to increase.

According to the most recent nationwide Productivity Commission report into the performance of government agencies, Victoria has grounds for concern regarding the rate at which some categories of crime are being committed. The report detailed crime statistics for each state with Victoria recording near average statistics for most crime categories; however, crime rates were up for some offences. Assault was up 27 per cent while break-ins were up almost 10 per cent. <https://www.abc.net.au/news/2018-01-25/victorians-dont-feel-safe-at-home-crime-report-shows/9359448>

Data released in December 2017 indicated that sexual assault in Victoria was up 10 percent relative to data issued in October 2015. <https://www.abc.net.au/news/2017-12-14/significant-downward-trend-in-victorian-crime-rate/9257686>

According to figures released in May 2019 by insurer Budget Direct, Victoria had the most car thefts with 29 percent of all thefts in 2017. <https://www.budgetdirect.com.au/car-insurance/research/car-theft-statistics.html>

There has also been a significant increase in carjackings. Crime Statistics Agency data shows that from April 2015 to March 2016 there were 171 incidents where motor vehicle thefts co-occurred with robberies. This is an 80 percent increase over the 95 carjackings in Victoria the previous year. <https://www.heraldsun.com.au/news/law-order/carjackings-soar-80-per-cent-in-victoria/news-story/b9ba7c01ff0e2f1e02a0c19ec014dc82>

Edward O'Donohue, the shadow police minister, has stated, 'Carjackings were virtually unknown in Victoria until relatively recently but as...recent incidents...show, they have become all too common, causing enormous angst in the community.'

<https://www.heraldsun.com.au/news/law-order/carjackings-soar-80-per-cent-in-victoria/news-story/b9ba7c01ff0e2f1e02a0c19ec014dc82>

The most recent Crime Statistic Agency figures covering the 12 months from March 31, 2018, to March 31, 2019, show significant increases in several types of crime. These figures indicate: assault and related offences (up 3.3% in the last 12 months, from 43,327 to 44,772); stalking, harassment and threatening behaviour (up 5.8% in the last 12 months, from 11,689 to 12,366); drug use and possession (up 12.9% in the last 12 months, from 23,066 to 26,051) and weapons and explosives offences (up 8.5% in the last 12 months, from 14,695 to 15,937). <https://www.crimestatistics.vic.gov.au/recorded-offences>

A Crime Statistics Agency analysis of Assault Victorian data in the 12 months to December 2017 found 29 percent of criminal incidents involving assault were recorded with only an assault offence type; the other 71 percent were recorded with other offence types associated with the criminal incident. Of the other offences that were associated with assault incidents, Property damage was the most frequently reported offence type, present in 8 percent of the criminal incidents of assault, followed by Breaches of orders (8 percent) and Stalking, harassment and threatening behaviour (6 percent).

<https://www.crimestatistics.vic.gov.au/media-centre/news/spotlight-assault-and-related-offences>

Domestic violence incidents (now referred to as 'family incidents') are another area where there are ongoing increases in the number of reported incidents (recorded events) and of confirmed offences. The most recent Crime Statistic Data indicates the number of offences



related to family incidents increased 6.9% (6,196 offences) from 89,197 to 95,393.

<https://www.crimestatistics.vic.gov.au/recorded-offences>

Victoria Police recorded 76,124 family violence incidents in 2017-18, up 17 per cent compared to five years ago. The figures were revealed in Crime Statistics Agency's annual family violence snapshot, which includes data from police, courts, public hospitals and support services. It shows police sought 11,889 family violence intervention orders (FVIOs) to protect victims and potential victims over the year (2017-18).

<https://www.heraldsun.com.au/news/law-order/victoria-records-increase-in-family-violence-over-five-year-period/news-story/c1c9c64198f8cc29f6b00072a33eeb95>

## 2. Bail and parole reform was necessary in Victoria

Those who defend the growing number of people being held in Victoria's prisons argue that this is simply an inevitable consequence of necessary reforms to bail and parole provisions in Victoria.

Committing an illegal act while on bail is termed a breach of bail conditions. Data regarding crimes committed by people while on bail is seen as evidence that Victorian magistrates have been granting bail to those who pose a risk to the community. There have also been long-standing complaints that parole has been granted too readily and that breaches of parole are not acted on.

Between 2010 and 2015 bail breaches soared by 278 per cent, which led critics to raise serious concerns about magistrates and judges granting bail to those facing criminal charges in Victoria. Victims of Crime Commissioner, Greg Davies, termed the dramatic increase in bail breaches an 'out-of-control problem' that required an urgent response from government and the judiciary. Davies stated, 'This is a clear signal that not everyone can be rehabilitated and not everyone should be granted bail.'

<https://www.theage.com.au/national/victoria/victorias-bail-system-is-in-disarray-20151001-gjz5w2.html>

In addition to bail breach statistics suggesting many of those granted bail posed a threat to public safety, several serious, high-profile crimes were committed by those on bail or parole which provoked criticism of Victoria's bail and parole system.

In 2002, Earnest Bayley was sentenced to 11 years imprisonment and released on parole after serving the minimum term of eight years for 16 counts of rape against five sex workers.

Despite his conviction and a previous history of assault and abduction, Bayley was not sentenced as a serious sexual offender, which would have permitted a longer sentence. While on parole, he committed a serious assault; however, after conviction and appealing his sentence, Bayley was released on bail. His parole was not revoked. Seven months later, while still on parole, bail and awaiting his appeal, Bayley raped and murdered 29-year-old Irish-born woman, Jill Meagher. <https://www.theage.com.au/national/victoria/adrian-bayley-how-the-justice-system-left-him-free-to-stalk-melbournes-streets-20150325-1m70ps.html>

The coroner, Ian Gray, judged, 'Gillian Meagher's death was preventable. A more rigorous, risk-averse approach by CCS (Community Correctional Services) and the APB (Adult Parole Board) would have led to a cancellation of Bayley's parole. The approach taken is difficult to understand ... it did not bring dangerous and high-risk parolees immediately to account.'

<https://www.abc.net.au/news/2016-05-27/jill-meaghers-murder-preventable,-coroner-says/7455378>

Other cases of serious crimes committed in Victoria by offenders while on bail or parole include Greg Anderson's murder of his 11-year-old son Luke Batty, in September 2014; Sean Price's murder of 17-year-old schoolgirl Masa Vukotic, in March 2015; and the murder of six Melbournians deliberately run down in Bourke Street Mall by James Gargasoulas, in January 2017. <https://www.mamamia.com.au/murders-by-people-on-bail/>

The former Director of Public Prosecutions and Supreme Court Justice, the Hon Paul Coghlan QC, who in April 2018 released his formal review of Victoria's bail system undertaken for the state government, acknowledged the extent to which high-profile cases such as these undermined public faith in the bail system.

Referring specifically to the Bourke Street Mall murders of November 2017, Coghlan stated, 'Mr Gargasoulas, was on bail at the time...He had several warrants executed and had been released on bail earlier on 14 January 2017 by a bail justice. If bail had been refused then, these [later] offences might not have occurred... The fact that Mr Gargasoulas was on bail (and other publicised cases of people offending whilst on bail) has caused significant community concern about whether the bail system is working properly.'

<https://engage.vic.gov.au/bailreview>

The upshot of this history of misapplied bail and parole provisions has been the progressive tightened of the regulations regarding bail and parole in Victoria. The Victorian government has, for example, decided to act on all 37 recommendations of the Coghlan Bail Review. The Victorian Attorney-General, Martin Pakula, has claimed that this will give Victoria 'the most onerous bail conditions in the country'. <https://www.abc.net.au/news/2017-05-08/victoria-set-to-tighten-bail-justice-system-after-review/8505506>

Critics of Victoria's provisions for granting bail and parole argue that there is still room for further reform. A continuing area of concern is those facing charges of family violence who are released on bail pending trial. Police statistics reveal a total of 2806 family violence intervention orders (IVOs) were broken by people who had been released back into the community on bail in the 12 months to September 2018. There was a total of 14,806 criminal offences reported against those breaching bail conditions during this 12-month period, the most common being contravention of an IVO.

<https://www.theage.com.au/national/victoria/eight-times-each-day-in-victoria-someone-on-bail-breaches-a-family-violence-order-20181220-p50ne3.html>

### 3. Victorians are becoming more apprehensive regarding certain categories of crime

Those who support harsher bail and parole provisions and increased penalties for crimes argue that governments need to respect and respond to community fears. Apprehensions regarding crime are based on experience of crime within Victorian jurisdictions, on the reported incidence of crime and on high-profile crimes that shift popular perceptions.

The proportion of Victorians who indicated they felt 'safe' walking at night dropped from 50 to 45 per cent in 2016-17. This made Victorians the most apprehensive respondents in Australia, more fearful for their safety than traditionally anxious Western Australians and Northern Territorians. <https://www.smh.com.au/opinion/give-thanks-for-our-states-they-make-us-australian-20180124-h0nfg8.html>

Anxiety about their safety also afflicted Victorians within their homes. In 2016-17 the proportion of New South Wales locals who felt safe in their own homes at night remained unchanged at 90 per cent, but the proportion of Victorians who felt safe at home dropped from 87 to 79 per cent, making Victorians now the most anxious on this measure, sharing this ranking with Northern Territorians. <https://www.smh.com.au/opinion/give-thanks-for-our-states-they-make-us-australian-20180124-h0nfg8.html>

Twelve months later, in the period from July 2017 to July 2018, the Productivity Commission's annual survey found that just under a third of Victorians (28.4 per cent) felt unsafe walking around their neighbourhoods at night. Only the Northern Territorians reported a greater proportion (38.5 per cent) as worried about their safety on their local streets after dark during the same period. The 27.9 per cent of Victorians who reported feeling unsafe on public transport at night is also markedly higher than the national average of 20.6 per cent.

<https://www.theage.com.au/national/victoria/almost-a-third-of-victorians-feel-unsafe-at-night-on-public-transport-20190123-p50t62.html>

It has been suggested that a series of high-profile crimes has contributed to this anxiety among Victorians regarding their safety. These incidents have included the November 2018 lone terrorist attack in Bourke Street Melbourne which resulted in two injuries and the death of Pellegrini's Espresso Bar co-owner, Sisto Malaspina, a prominent and highly regarded local identity. Prior to this there had been extensively reported flare-ups of gang violence involving Sudanese-Australian youths. The same ethnic group has also been involved in a spike in carjacking and home invasions, crimes previously uncommon in Victoria. Contributing to a sense of danger for Victorian women was the rape and murder of comedian Eurydice Dixon in Princes Park in June 2018.

<https://www.theage.com.au/national/victoria/almost-a-third-of-victorians-feel-unsafe-at-night-on-public-transport-20190123-p50t62.html>

Dixon's death is one of a number resulting from attacks by strangers on women in public places in Melbourne, perhaps most prominently the rape and murder of Jill Meagher in September 2012.

Further undermining Victorians sense of safety in public spaces was the killing of six people, in January 2017, by James Gargasoulas who drove a car through the Bourke Street Mall. The Bourke Street massacre was followed by a violent siege in June 2017 involving terrorist Yacqub Khayre, who murdered a receptionist and held a prostitute hostage at a Brighton apartment building, leading to a shootout with Victorian police.

Those who argue against governments responding to fear provoked by such extreme or outlier behaviour as that detailed above fail to acknowledge the impact that such fear can have on the lives of people. It restricts people's freedom of movement and reduces their personal choices, potentially limiting how they recreate and even where they live and work. Following the rape and murder of Eurydice Dixon, Sally Capp, the first woman to be directly elected as Melbourne's Lord Mayor, stated, 'As a woman who walks around, cycles around and drives around and uses the city at all hours of the day I want to be able to feel safe. It's going to be difficult to achieve that... the city should be safe for everybody who wants to live, work and move through...[it] at any time of the day. The reality is, it's not. What happened was absolutely devastating.' <https://www.theage.com.au/national/victoria/we-don-t-feel-safe-police-minister-lord-mayor-voice-fears-after-eurydice-dixon-s-death-20180615-p4zlr5.html>

Victoria's Police Minister, Lisa Neville, similarly stated, in response to Dixon's death, 'As a woman I want to be able to be safe in my community. Unfortunately, that's not the case and we've got a lot of work to do.' <https://www.theage.com.au/national/victoria/we-don-t-feel-safe-police-minister-lord-mayor-voice-fears-after-eurydice-dixon-s-death-20180615-p4zlr5.html>

#### 4. Victoria's imprisonment rate is lower than that of most other Australian states and territories

Defenders of Victoria's imprisonment rate note that it is lower than that of most other Australian states and territories.

As at June 2017, Victoria had the second lowest rate of imprisonment in Australia after the Australian Capital Territory. Victoria had 145.4 prisoners per 100,000 adults, the Australian Capital Territory had 141.2 per 100,000 adults and the national rate was 215.9 per 100,000 adults. In contrast, the Northern Territory had the highest rate of imprisonment at 878.4 per 100,000 adults. This is significantly higher than all other states and territories. At 340.0 per 100,000 adults, Western Australia also had a rate of imprisonment that was substantially higher than the national average.

<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/australias-imprisonment-rates>

Court data for 2015-16 indicates that 64 percent of defendants convicted of sex offences in the Victorian higher courts (the County and Supreme Court) were sent to prison, compared with 68 percent nationally. <https://theconversation.com/is-victorias-sentencing-regime-really-more-lenient-85684>

For all offences in the higher courts, the average and typical sentences for Victoria were 38 and 24 months respectively, while the national figures were 38 and 30 months. This means that, while the typical sentence is shorter, the average sentence is the same for Victoria as the rest of Australia. <https://theconversation.com/is-victorias-sentencing-regime-really-more-lenient-85684>

Some critics have argued that although Victoria has a lower rate of imprisonment than most other Australian states and territories, it is increasing its rate of incarceration more rapidly. Defenders of Victoria's rate of imprisonment acknowledge the rapid increase; however, they argue that Victoria is not out of pace with the rest of the nation, while its growth rate is significantly lower than Tasmania's.

Current data indicates that Tasmania's prison population is growing more rapidly than that of any other state or territory. The state's average daily number of full-time prisoners increased by 2 percent in the December 2018 quarter alone, as indicated by Australian Bureau of Statistics figures. That was double the growth rate of South Australia and Queensland and well ahead of every other state or territory.

Despite Victoria's growing number of prison inmates, the state is taking steps to redress the disproportionate number of Indigenous Victorians in prison. Victoria is the first Australian jurisdiction to have set a target to close the gap in justice outcomes for Aboriginal and Torres Strait Islander people. Generational targets have been set. The commitment is to close the gap in the number of Aboriginal people (youth and adult) under justice supervision by 2031. Roles and responsibilities of key stakeholders are detailed, and progress against the key justice indicators and targets will be reported in the annual Victorian Government Aboriginal Affairs Report.

[https://www.alrc.gov.au/sites/default/files/subs/108.\\_law\\_council\\_of\\_australia.pdf](https://www.alrc.gov.au/sites/default/files/subs/108._law_council_of_australia.pdf)

It has also been noted that Victoria has relatively low numbers of youth in prison. In 2015-16, New South Wales had the highest number of people in youth detention facilities of any Australian state or territory, at 1,445 young people. Tasmania had the lowest at 30 young people. Victoria had 500 young people in detention during 2015-16.

In 2015-16, Victoria had the second lowest detention rate of 10 to 17-year-olds in youth detention facilities of all Australian states and territories, at 0.90 per 1,000 young people or 500 people. Tasmania had the lowest rate, at 0.59 per 1,000 young people or 30 people. Victoria's rate was substantially lower than the Australian average of 1.83 per 1,000 young people. In contrast, Western Australia had the highest rate of 10 to 17-year-olds in youth detention, at 3.36 per 1,000 young people or 843 people.

<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/young-people-in-detention>

##### 5. Victoria's prisons are working to reduce recidivism

The Victorian government has indicated that it is seeking to rehabilitate prisoners so that they will be able to live gainfully on their release. It is concerned to reduce the number of prisoners who repeat offend. The government has pledged that its growing prison population will not be a permanent prison population.

On May 24, 2019, the Minister for Corrections, Ben Carroll, issued a media release stating 'Victoria's prisons will be expanded with boosted behaviour programs, as the Andrews Labor

Government takes action to break the cycle of reoffending to keep the community safe and creating jobs in the process...

To reduce the number of Victorians moving into, out of, and then back into the prison system, \$22.7 million will be invested in diversion, rehabilitation and reintegration programs... We know that community safety is more than just building more prison beds – that’s why we’re boosting prison programs and investing in education and skill development that lead to jobs.’ <https://www.premier.vic.gov.au/a-stronger-prison-system-to-keep-people-safe/>

Mr Carroll wants to redraft the Corrections Act which currently does not have prisoner rehabilitation as one of its purposes. Carroll has stated, ‘I want rehabilitation to actually mean something – for it to flow through and for it to have accountability.’

<https://www.theage.com.au/national/victoria/prisons-to-focus-on-rehabilitation-not-recidivism-minister-20190628-p522bh.html>

This change in focus has been endorsed by RMIT’s Centre for Innovative Justice, which has stated, ‘Remarkably, the Act’s stated purposes do not include the rehabilitation of prisoners or the reduction of recidivism. Both should be included in the Corrections Act’s legislated purposes. They are far too important to be left to policy and administrative guidance.

Compared with other states, Victoria’s model for providing a legislative context for rehabilitation programs has been described as ‘virtually non-existent’. In the ACT, for example, there is a specific legislative mandate for rehabilitation programs. To drive reform in Victoria, rehabilitation and the reduction of recidivism should be described as the primary purposes of the Act. This would bring about change because it would re-focus the whole correctional system on its most important task.’ <https://cij.org.au/news-and-views/reversing-the-trend-of-mass-incarceration-do-prisons-have-a-role/>

Mr Carroll is also seeking a review of parole provisions which would require prisoners to prove they had been rehabilitated by completing mandatory education and training programs. Currently about 91 per cent of prisoners are employed but only 36 per cent participate in education programs. <https://www.theage.com.au/national/victoria/prisons-to-focus-on-rehabilitation-not-recidivism-minister-20190628-p522bh.html>

As part of this scheme, the new privately-run Ravenhall Prison in Melbourne’s west is promising a new model of rehabilitation for prisoners with pre- and post-release support, plus a 75-bed mental health unit, to help identify and tackle the causes of crime.

Amid a surge in prisoner numbers across Victoria, the state government has offered the prison’s private operator, GEO, bonuses of up to \$2 million a year if it reduces recidivism by 12% compared with the overall prison system. The target is 14% for indigenous prisoners.

The Minister for Corrections has stated, ‘The prison will place a strong emphasis on rehabilitation to help offenders break the cycle of crime.’

<https://this.deakin.edu.au/society/could-victoria-follow-norways-lead-on-prisoner-rehabilitation>

## **Arguments opposing Victoria’s prison policies**

1. Victoria’s prison population has increased dramatically and is resulting in increased violence and management issues

After a historic low rate of 38 prisoners per 100,000 people in 1977, the imprisonment rate has shown a continual upward trend. In 2017, it reached 113.1 prisoners per 100,000 people, a rate not seen in Victoria since 1896.

<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/victoria-imprisonment-rates>

The number of people in Victoria’s prisons has doubled over the past decade to more than 8,100. Recent projections suggest the growth will continue into the foreseeable future, with

prisoner numbers expected to soar to 11,130 within four years.

<https://www.theage.com.au/politics/victoria/crowded-jails-show-need-for-review-of-victoria-s-war-on-crime-20190701-p52356.html>

Women are being imprisoned in Victoria in record numbers. The female prison population has grown 140 per cent over the last ten years. Official projections show that growth in the incarceration of women is set to continue by another 40 per cent from now until mid-2023.

<https://www.theage.com.au/politics/victoria/women-prisoner-numbers-explode-amid-state-crackdown-on-male-violence-20190629-p522jo.html>

Critics concerned by current trends have noted ‘the explosion in the number of low-level female offenders on remand, ineligible for bail, unable to get a timely hearing or incapable of meeting conditions for their release such as stable housing.’ The government forecasts the number of female remandees to rise by almost 60 per cent, overtaking the number of female sentenced prisoners by 2023.

<https://www.theage.com.au/politics/victoria/women-prisoner-numbers-explode-amid-state-crackdown-on-male-violence-20190629-p522jo.html>

The number of Indigenous women incarcerated has grown at an even greater rate. The figure is up 240 per cent over the past five years, with Indigenous women now making up 13 per cent of female prisoners despite being only 0.4 percent of Victoria’s population.

<https://www.theage.com.au/politics/victoria/women-prisoner-numbers-explode-amid-state-crackdown-on-male-violence-20190629-p522jo.html>

At the current rate of growth, Corrections Victoria will exceed its planned capacity for housing female prisoners before reaching the end of the government’s four-year forecast period in 2023, leaving a shortfall in beds.

<https://www.theage.com.au/politics/victoria/women-prisoner-numbers-explode-amid-state-crackdown-on-male-violence-20190629-p522jo.html>

It has further been noted that many of those in prison, whether male or female, are either awaiting trial or sentencing. The number of prisoners in remand in Victoria has almost doubled since the Andrews government came to power. More than a third of people behind bars in Victoria are on remand. <https://www.theage.com.au/politics/victoria/jails-bursting-with-unsentenced-prisoners-as-costs-also-soar-20180423-p4zb8p.html>

Sentencing Advisory Council chairman, Arie Freiberg, has stated, ‘35 per cent of those inside are not convicted.’ <https://www.theage.com.au/politics/victoria/jails-bursting-with-unsentenced-prisoners-as-costs-also-soar-20180423-p4zb8p.html>

Population pressure in Victoria’s prisons is having an adverse effect on prison management and is precipitating riots. Overcrowding contributed to the largest prison riot in Victoria's history when inmates caused \$10 million worth of damage at the maximum-security Metropolitan Remand Centre in 2015. In March 2016, it was revealed that Corrections Victoria was so overwhelmed by inmate numbers it was failing to bring prisoners on remand to court appearances. <https://www.bendigoadvertiser.com.au/story/5123441/victorias-crowded-jails-to-get-345-million-for-new-cells/>

A Department of Justice report released in November 2014 found overcrowding in Victorian prisons is linked to an increase in violence and escapes. The report stated, ‘The increase in capacity has also understandably coincided with an increase in the number of incidents at the prison.’ <https://www.abc.net.au/news/2015-03-16/violence-and-escapes-in-victorian-prisons-linked-to-overcrowding/6322620>

Department of Justice data has also revealed that Victoria has the most violent prisons in Australia, with a prison officer assaulted every three days. The Commonwealth Public Sector Union, which represents prison officers, has claimed the rise in violence is linked to prison overcrowding. <https://www.abc.net.au/news/2015-03-15/victorian-prisons-the-most-violent-in-australia/6319186>

2. Increasing imprisonment is unnecessary as the crime rate in Victoria is declining  
Critics of Victoria's growing prison population argue the increased rate of incarceration is not justified as crime rates are declining.

Figures released from the Crime Statistics Agency Victoria in September 2018 show the state's criminal incident rate fell to 5,922 cases per 100,000 people in the last financial year - down from 6,420 a year earlier, and 6,432 the previous year. The offence rate also fell, dropping 7.0 per cent to 7,835. Victoria Police deputy commissioner Shane Patton said the number of victims had dropped by 24,000 over the year to the end of June.

<https://www.abc.net.au/news/2018-09-20/victoria-crime-rate-down-new-criminal-statistics-agency-figures/10284918>

The total number of criminal incidents across the state fell 1.6 per cent to 384,183 in the 12 months to September, the lowest numbers since 2015.

<https://www.theaustralian.com.au/nation/politics/victorias-crime-rate-lowest-since-2015-amid-rise-in-sex-offences/news-story/9c2a788d8f5b31013d77b8ef7646e140>

Property damage is down 4 per cent, burglaries are down 16.3 per cent and justice procedure offences are down 7.3 per cent. Theft is also down 8.5 per cent while drug-dealing and trafficking is down 5.2 per cent. <https://www.abc.net.au/news/2018-09-20/victoria-crime-rate-down-new-criminal-statistics-agency-figures/10284918>

Critics who question the need for increasing the number of people in prison when overall crime rates are falling argue that incarceration is not the cause of a reduction in crime.

Instead, critics claim, incarceration rates across Australia are bounding ahead of crime figures and seem to reflect electorates' and politicians' perceptions as to what needs to be done rather than the reality.

New South Wales' chief crime statistician, Dr Don Weatherburn, the director of his state's Bureau of Crime Statistics and Research, told the National Applied Research in Crime and Justice Conference in Brisbane in 2016 that research had shown a 10 per cent increase in imprisonment only delivers a 1-2 per cent fall in crime, which does not account for the 40 to 70 per cent falls, depending on the offence, recorded in Australian states and territories over the past 15 years. Dr Weatherburn stated, 'You'd think this dramatic fall in crime would bring with it a dramatic fall in imprisonment rates and a dramatic turnaround in public attitudes towards offenders, but you'd be wrong.' <https://www.lexisnexis.com.au/en/insights-and-analysis/rule-of-law/2016/26july2016-crime-rates-fall,-but-australias-imprisonment-rates-are-soaring>

Dr Weatherburn argues that increasing imprisonment has become a conditioned political reflex rather than a considered response to the actual incidence of crime. He has stated, 'Having pushed the law and order merry-go-round as hard as they could for more than 15 years, politicians found to their surprise that it was hard to get off. So, the tougher laws kept coming.' <https://www.lexisnexis.com.au/en/insights-and-analysis/rule-of-law/2016/26july2016-crime-rates-fall,-but-australias-imprisonment-rates-are-soaring>

In a 9 News report televised on December 11, 2018, Dr Weatherburn noted that Australia's declining crime rate is not recognised by the general population. Dr Weatherburn cited Australian Bureau of Statistics figures which indicate that the murder rate in the year 2000 was 1.6 per 100,000 people. By 2017, it had halved to 0.8 per 100,000. Over the same period, robbery dropped by 58.8 percent and break and enter dropped by 59.7 percent. Since 2008, there has also been a drop in the rate of assaults. Dr Weatherburn stated, 'The trouble is, of course, public opinion hasn't kept pace with that [decline in crime]. It takes a long time for public opinion to catch up with the facts, partly because shock jocks keep banging on about crime even when it's falling.' <https://www.9news.com.au/national/crime-getting-worse-myth-australia-tough-on-crime-rates-falling/d50cbdf9-c212-4b17-9844-cfb82596b445>

Research has shown that relative to jurisdictions overseas, the Australian public overestimates the level of violent crime and underestimates the current severity of sentences with over 80 percent of respondents believing harsher sentences should be given to offenders. <https://www.justiceaction.org.au/crime-11/crime-perception>

### 3. Imprisonment does not reform inmates and causes additional social damage

Critics of Victoria's growing reliance on incarceration to manage crime argue that prisons are not achieving prisoner rehabilitation and may be increasing offenders' likelihood of reoffending.

Research undertaken by the Victorian Justice Department in 2017 indicated that nearly half of all prisoners who have completed their sentence will return to jail within two years. The annual report from the Department of Justice showed 43.6 per cent of adult prisoners were incarcerated within two years of leaving jail. The figure was up from 42.8 percent in 2016. <https://www.abc.net.au/news/2017-10-19/victorian-prisoner-recidivism-rates-increase-justice-department/9065752>

Prisons have been placed under pressure because of more inmates on remand and changes to parole laws, which have increased prisoner numbers. The overcrowding has negatively affected services designed to rehabilitate prisoners, including education and employment. The Justice Department report showed that just 34 per cent of prisoners were involved in education. <https://www.abc.net.au/news/2017-10-19/victorian-prisoner-recidivism-rates-increase-justice-department/9065752>

Concern has also been expressed regarding the growing numbers of young prisoners within Victoria's prisons, especially young prisoners from particular ethnic groups. The report highlighted a developing demographic of teen prisoners, with 40 per cent of young people detained or on parole coming from Aboriginal, Pacific Islander and east African, mainly Sudanese, communities. Youth Parole Board chairman, Michael Bourke, has warned there is a glaring over-representation of these ethnic groups. Judge Bourke said offenders with present or past child protection involvement also accounted for almost 40 per cent of the population.

Critics are concerned that these young inmates will have their life options permanently diminished and will become a criminal sub-class with no desire or opportunity to improve their condition.

Judge Bourke stated, 'I see, as to those sentenced to youth detention, a growing disproportion of disadvantaged and excluded young people. In my view, there is risk of an entrenched underclass within our young which feels no connection or aspiration to being part of a functional and hopeful community.' <https://www.abc.net.au/news/2017-10-19/victorian-prisoner-recidivism-rates-increase-justice-department/9065752>

Victorian Victims of Crime Commissioner, Greg Davies, argues that the community is not gaining very much from the large financial investment the state makes in building and maintaining prisons. Mr Davies has stated, 'I don't think anyone could claim we are getting great value for it. Our recidivism rates in Victoria are at almost 45 per cent. If you were running a business where you did a particular thing in a specific way, and it failed nearly 45 per cent of the time, you probably wouldn't keep your position as the CEO for very long.' <https://www.abc.net.au/news/2018-11-05/victoria-prison-system-costly-crowded/10454444> Researcher Andrew Bushnell from the Institute of Public Affairs (IPA) has similarly stated, 'We are not really getting bang for our buck... This is a massive intervention into people's lives. If we are going to be undertaking it, how do we do it most effectively?... If we are putting people into prison who can safely be punished outside of prison, then obviously we are taking on a much greater cost than we need to.' <https://www.abc.net.au/news/2018-11-05/victoria-prison-system-costly-crowded/10454444>



Victorian Ombudsman Deborah Glass is similarly concerned about a lack of effectiveness. Glass has stated, 'One in every two prisoners are leaving prison, then committing crime and going back there. The question we need to ask is: what are we doing to make sure people get out of prison and don't go back?' <https://www.abc.net.au/news/2018-11-05/victoria-prison-system-costly-crowded/10454444>

Concern has also been expressed about the damage inflicted upon the families of prisoners, especially their children. Some 67,500 Victorian children have a parent appear as defendants in the criminal court each year, while 38,000 children in Victoria annually have a parent in prison. These estimates are somewhat dated and likely to be underestimates, given the Victorian Government's commitment to increasing prisoner numbers. Typically, around 50 percent of prisoners are thought to be parents. Parental imprisonment for many children is both stigmatising and shameful, and actively concealed by many of their families.

<https://shineforkids.org.au/children-of-prisoners-collateral-damage/>

Among the traumatic experiences undergone by the children of prisoners are the arrest processes; the consequences of both their parents' behaviour and the decisions of the adult criminal court, which has no clear protocols for considering hardship to children in sentencing; sudden and forced separation from their parent/s at remand or imprisonment; and the struggle to maintain contact with their parents during the period of incarceration.

<https://shineforkids.org.au/children-of-prisoners-collateral-damage/>

4. The financial cost of Victoria's prison system is drawing resources from other government programs

Critics have condemned the Victorian government for its vastly increased expenditure on the state's prisons compared to a far smaller funding increase directed toward services such as hospitals, schools, social housing and mental health services.

In April 2018, it was announced that annual spending on Victoria's prisons had risen by more than \$300 million since 2013-2014. <https://www.theage.com.au/politics/victoria/jails-bursting-with-unsentenced-prisoners-as-costs-also-soar-20180423-p4zb8p.html>

The annual cost of running the Victoria's prisons is now more than \$1.6 billion. This is triple the outlay in 2009-2010. In March 2018 a report by the Auditor-General found that the annual cost to the state of managing male prisoners had risen 90 per cent, from \$425.9 million in 2010-11 to \$811.2 million in 2016-17. Each prisoner costs the state \$127,000 a year on average, the report found. <https://www.theage.com.au/politics/victoria/jails-bursting-with-unsentenced-prisoners-as-costs-also-soar-20180423-p4zb8p.html>

In addition to the increasing expenditure involved in maintaining prisoners in jail, in the May 2019 budget, the government announced a record \$1.8 billion in new capital spending on prison infrastructure over four years to accommodate 1600 additional prisoners.

<https://www.theage.com.au/national/victoria/prisons-are-booming-as-victoria-pays-for-its-tough-on-crime-stance-20190627-p5220f.html>

An analysis conducted by RMIT emeritus professor David Hayward shows that the increase in spending on corrections is outstripping that for most other areas of government, including on hospitals, schools and social housing.

<https://www.theage.com.au/national/victoria/prisons-are-booming-as-victoria-pays-for-its-tough-on-crime-stance-20190627-p5220f.html>

The huge increase in spending on the state's prisons has been compared unfavourably with the far smaller \$200 million the Victorian government has pledged to spend on social housing over the next three years. Melanie Poole, a consultant at the Federation of Community Legal Centres, has noted that a lack of secure housing was a key factor in imprisonment, and that an investment in social housing could cut crime and imprisonment rates. Ms Poole stated, 'We know that one in four women who go to prison are affected by homelessness.'

<https://www.theage.com.au/national/victoria/prisons-are-booming-as-victoria-pays-for-its-tough-on-crime-stance-20190627-p5220f.html>

In June 2019, The Guardian reported Victoria spends about half the national average per person on social housing and has about 80,000 people on the public housing waiting list, including 25,000 children. It also reported on criticism the government has received for channeling far greater funds into building prisons. The Victorian Council of Social Service chief executive, Emma King, has claimed, 'The budget blows almost \$2bn on... mega prison[s]. For \$2bn, we could have built tens of thousands of social housing units to fight homelessness.' <https://www.theguardian.com/australia-news/2019/jun/03/victoria-criticised-for-2bn-prison-spend-while-neglecting-social-housing>

Critics of the Victorian government's expenditure on prisons also condemn its reduced funding of mental health services. It has been estimated only one in three Victorians in need of mental health care are able to access it. This access figure is nearly 40 per cent lower than the national average, according to Australian Institute of Health and Welfare data, and means more than 120,000 Victorians with mental health issues are unable to obtain care.

<https://www.abc.net.au/news/2018-10-29/victoria-mental-health-crisis-and-its-tragic-consequences/10433286>

Patrick McGorry, Professor of Youth Mental Health at the University of Melbourne, has argued Victorian mental health services need a state government investment of \$1 billion a year. He unfavourably compared the \$700 million being spent to build a single new maximum-security near Geelong to the state's \$700 million mental health package. Professor McGorry argues increased investment in mental health would reduce pressure on the state's penal system as many find their way into prison because they lack adequate care for mental health issues. Professor McGorry stated, 'If we had a proper mental health system, we wouldn't need to be building that new prison.' <https://www.abc.net.au/news/2018-10-29/victoria-mental-health-crisis-and-its-tragic-consequences/10433286>

Even the Victorian premier, Daniel Andrews, who continues to support his state's 'tough-on-crime' policies, has expressed reservations regarding the current spending trajectory for increased building of prisons and maintaining prisoners. Andrews has stated, 'We don't want to get to a place where we're spending more on prison beds than we are on hospital beds.'

<https://www.theage.com.au/politics/victoria/improving-mental-health-key-to-reducing-prison-population-andrews-20190301-p5119i.html>

##### 5. Laws governing bail and parole are excessive and too inflexible

Opponents of the changes made to Victoria's laws surrounding the granting of bail and parole argue that they are excessive and insufficiently flexible. According to critics, these changes were made in response to extreme cases and so represent an overreaction. The provisions now in place are not, it is claimed, appropriate for most people who apply for bail or parole. Opponents claim these changes are resulting in the mass incarceration of minor offenders who do not represent a serious threat to the community.

Melanie Poole, a consultant and former policy engagement director at the Federation of Community Legal Centres, has stated, 'The Adrian Bayleys and James Gargasoulases of the world are a tiny fraction of the prison population. We do not need a mass incarceration system to deal with these extreme cases.'

<https://www.theage.com.au/national/victoria/prisons-are-booming-as-victoria-pays-for-its-tough-on-crime-stance-20190627-p5220f.html>

It has been claimed that most of those caught in the current crime crackdown are not hardened criminals or sexual and violent attackers. Rather, it has been suggested, Victoria's prisons are becoming increasingly populated by lower-level offenders on remand, ineligible

for bail, unable to get a timely hearing or incapable of meeting conditions for their release such as stable housing.

Jill Prior, a criminal lawyer and the principal legal officer for the Law and Advocacy Centre for Women, has stated, 'Those violent and unpredictable offences are outliers, but the laws made in response to them are catching everyone.'

<https://www.theage.com.au/national/victoria/is-there-any-way-back-from-the-war-on-crime-20190628-p522ah.html>

The primary factor in the dramatic increase in Victoria's prison population is the number of offenders being remanded into custody because they are denied bail as a result of tightening bail laws and the response of judges in the wake of high-profile crimes such as the Bourke Street massacre by James Gargasoulas in 2017 and the failed Bourke Street terror attack in 2018.

<https://www.theage.com.au/national/victoria/prisons-are-booming-as-victoria-pays-for-its-tough-on-crime-stance-20190627-p5220f.html>

People on remand now account for 38 per cent of all prisoners in the system, up from 19 per cent five years ago. The projection for 2023 anticipates a four-fold increase in the number of remandees compared to 2014, when the Andrews-led Labor was first elected.

Remandees remain innocent until found otherwise so must be housed away from sentenced prisoners. That means special, well-located facilities that allow ready access to lawyers' services and families. Such provision is costly, and the government is playing catch-up in attempting to provide it. It has also been noted that the surge in offenders on remand is having serious flow-on consequences for the courts, including slow-downs in processing cases when offenders are delivered late, or do not arrive at all, for hearings.

<https://www.theage.com.au/national/victoria/is-there-any-way-back-from-the-war-on-crime-20190628-p522ah.html>

Opponents of the growing number of Victorians in remand argue that remand practices in place for children are particularly unsuitable. These remand provisions pre-date the most recent reforms to the bail system in Victoria taken in response to the Coghlan Bail Review. In 2014 and 2015 the number of children (those under 18) held on remand in Victoria increased dramatically, including a significant increase in children under 15. This was the result of reforms to the Bail Act in December 2013 that imposed the same conditions and restrictions on children as are applied to adults.

A paper produced by the Jesuit Social Services in 2015 has claimed, 'Failing to distinguish between children and adults in this way puts Victorian practice out of step with the core principles of the Children Youth and Families Act 2005 to act in the best interests of children and to use prison only as a last resort, and is also inconsistent with our international commitments under the UN Convention on the Rights of the Child.' [https://jss.org.au/wp-content/uploads/2016/01/An\\_escalating\\_problem\\_-\\_Responding\\_to\\_the\\_increased\\_remind\\_of\\_children\\_in\\_Victoria.pdf](https://jss.org.au/wp-content/uploads/2016/01/An_escalating_problem_-_Responding_to_the_increased_remind_of_children_in_Victoria.pdf)

It has been noted that children who are highly vulnerable are overrepresented among those on remand and in sentenced detention. The 2015 Youth Parole Board Annual Report showed: 62 per cent were victims of abuse, trauma or neglect; 33 per cent presented with mental health issues; 23 per cent had a history of self-harm or suicidal ideation and 22 per cent presented with issues concerning their intellectual functioning. [https://jss.org.au/wp-content/uploads/2016/01/An\\_escalating\\_problem\\_-\\_Responding\\_to\\_the\\_increased\\_remind\\_of\\_children\\_in\\_Victoria.pdf](https://jss.org.au/wp-content/uploads/2016/01/An_escalating_problem_-_Responding_to_the_increased_remind_of_children_in_Victoria.pdf)

## **Further implications**

The following is an abbreviated version of a comment written by the Victorian Ombudsman, Deborah Glass, published in The Age on July 3, 2019.

<https://www.theage.com.au/national/victoria/prisons-blowout-a-legacy-of-remand-crackdowns-and-repeat-offenders-20190703-p523q9.html>

‘The rise in Victorian prisoner numbers recently reported in The Age is depressingly familiar. I reported on this trend four years ago; since then, both the numbers and the cost of the system have continued to spiral upward. I warned in 2015 that, at this rate, it would not be long before we had to make hard decisions between prison beds and hospital beds, better schools or more security...

While there are many reasons for this growth, a key driver is the remand population – prisoners who have been charged but not convicted of a crime. My reports noted that the proportion of unsentenced prisoners in jail went from 18.5 per cent in 2011 to more than one-third in 2018; The Age’s latest number is 38 per cent.

I hear the argument all the time that prisons keep us safe. But the recidivism rate – the rate at which prisoners reoffend and go back to prison within two years – has risen from a low of 33.7 per cent to 44 per cent in 2015. And while I reported a year ago that it had not continued upward, it has stayed there. Almost one in two prisoners commit further crime and go back to prison – a massive cost both to public safety and the public purse.

So, it was encouraging to read last week about the government’s commitment to rehabilitation. A focus on reforming offenders is necessary and welcome news. But reworking the Corrections Act to make rehabilitation a core objective of imprisonment will not take us very far if the rest of the system is unchanged. Long-term solutions do not lie within the walls of our prisons, a single government department or a single piece of legislation, important though they all are.

Corrections Victoria has been working on a reform program since I first reported on the issue. But the evidence of those countries and states that have managed to turn around the blowout in their prisons is that they did so through a more comprehensive approach, across the justice system, education, health and housing, looking also to the community to play its part in supporting reintegration.

And what about the remand population? How will a commitment to rehabilitation change anything much when more than one-third of people in our prisons have not been convicted of a crime?

It does not require a fresh ombudsman investigation to observe that the bail reforms of successive governments have had this impact. It is undoubtedly the case they are driven by violent crime and alarming headlines. Successive government spokespeople continue to “make no apology” for the toughness of our bail laws, in the interests of keeping us safe. But can it really be that all these unconvicted prisoners, more than one-third of our prison population, are serious, violent, repeat offenders?...

Research shows 50 per cent of people on remand are eventually released without conviction, which raises the obvious question of what most are doing in our prisons in the first place.

I have made numerous recommendations in my reports about prisons, almost all of them accepted, and many implemented. It is encouraging to see the government’s recent focus on mental health, a major contributor to crime and imprisonment. But what we have not yet seen is the whole-of-government approach – the commitment that comes not only from the Minister for Corrections – to reducing offending.

I cannot enforce my recommendations – rightly so, as I am not responsible for government policy or the state budget. But I do monitor them, and as an independent officer of Parliament I can express views that may not be popular. To fully implement some of my recommendations will take long-term investment and sustained political will. The benefits should be to us all.’