



Submission cover sheet

Inquiry into the Bail Amendment Bill 2026

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Inquiry into Bail Amendment Bill 2026

Standing Committee on Legal Affairs

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Introduction

ACT Policing is committed to our mission of policing for a safer community and appreciates the opportunity to make a submission to the Standing Committee on Legal Affairs' Inquiry into the Bail Amendment Bill 2026.

As authorised officers to make decisions on bail, ACT Policing plays a key role in the administration of bail in the ACT, serving as a decision-maker at the point of arrest and the primary enforcement body throughout the pre-trial process. Authorised officers, including police, may grant or refuse bail in accordance with the *Bail Act 1992* (the Bail Act) and certain conditions or requirements may be attached alongside bail.

In making bail assessments, ACT Policing is required to balance the probability of the person appearing in court, the interests of the person charged and their right to the presumption of innocence, and the protection of alleged victims, witnesses and the broader community. This submission provides ACT Policing's operational experience under the Bail Act, position on key elements of the Bail Amendment Bill 2026 (the Bill), and opportunities for broader bail reform options. These reflections are made in line with the purpose of bail, which is to ensure the accused appears in court either to face charges or be sentenced and accords with the principle of the presumption of innocence.

Typically, ACT Policing's Watch House Sergeant makes bail decisions where the person is present at the Watch House, the matter has not yet been determined by a court, and the offence is not a family violence offence or murder. The nature and seriousness of the offence determines whether a decision to grant or refuse bail is required.

Operational experience demonstrates that refusal of bail in certain circumstances is essential in the public interest, including for:

- serious offenders
- recidivist offenders, and
- high-risk family and domestic violence offenders.

This submission references ACT Policing's previous submissions to the 2024 Inquiry into the Administration of Bail in the ACT¹ and the 2025 Review of the decision-making criteria in the *Bail Act 1992*. While this submission focuses upon specific elements of the Bill, the submission will briefly discuss other elements of bail reform for the Committee's consideration.

Overall, ACT Policing supports the Bill's policy intent to provide a balanced approach to bail to address community concerns about safety, protect the rights of accused people, and improve confidence that authorised decision makers are making informed and risk-based decisions. However, we maintain concerns with the drafting and language contained in the Bill which appears to misalign with the expectations of the intent and purpose of the amendments as set out in the Explanatory Statement.

Without further clarity in the primary legislation, there is a risk that there may be unintended consequences and expectations on authorised decision makers to gather, consider and weigh up relevant factors that are not reasonably available. ACT Policing is concerned that this may inadvertently extend a person's time in custody, lead to increased risk and scrutiny on bail decision makers and impose additional resourcing implications. These concerns could be alleviated if additional guidance was contained in the Bill and would support greater clarity and consistency amongst authorised decision makers.

ACT Policing's position aligns with the comments from the ACT Government that "bail decisions are a high-volume, significant component of our criminal justice system and it is vital that the law is clear and accessible"². Given the concerns raised in this submission, ACT Policing would support further consultation and amendments to clarify the Bill, to ensure that the amendments are effectively implemented and support the key goals of the reform. We welcome the opportunity to discuss these matters with the Committee.

Further to this, ACT Policing would encourage the ACT Government and Committee to consider broader review of and reforms to the Bail Act to

¹ ACT Policing (May 2024) Submission to the Inquiry into the Administration of Bail in the Act, available at https://www.parliament.act.gov.au/_data/assets/pdf_file/0005/2467769/Submission-013-ACT-Policing_redacted.pdf

² ACT Government (May 2025) 'Review of decision-making criteria in the Bail Act 1992' – Discussion Paper.

support a more holistic approach to addressing bail, including enhancing community confidence and trust in the justice system, reduce rates of remand and recidivism, and ensure the most appropriate outcomes for the accused person and broader community. Ultimately, ACT Policing seeks to ensure that any changes to the bail framework is balanced and proportionate to support the purpose of bail, consistent decision making and community safety outcomes.

ACT Policing's Administration of Bail

At the ACT Watch House, the primary goal of ACT Policing members is to ensure the safety and welfare of all persons in custody and staff whilst supporting necessary prosecution and judicial processes. ACT Policing members seek to ensure that any person who is in ACT Watch House custody is treated with humanity, dignity and with due regard for their rights, and is not to be subjected to cruel, inhumane or degrading treatment.

When a person is charged with having committed an offence, they can either be held in custody until their Court case is heard, or they may be released from police or Court custody and required to return to Court at a later date to face the charge(s) against them. In considering whether bail should be granted or opposed, ACT Policing members refer to provisions contained in the Bail Act.

In line with the requirements of section 19 of the *Human Rights Act 2004*, anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the person, and an accused person must be treated in a way that is appropriate for a person who has not been convicted.

ACT Policing members have a duty of care for all people in police custody and must, on all occasions, be satisfied that the person is fit to be placed in custody. Duty of care requirements on persons in custody is not solely managed by ACT Policing, but with the support of a range of services, including but not limited to:

- Aboriginal Legal Services (ALS)
- Access Mental Health Team (AMHT)
- Home Assessment & Acute Response Team (HAART)
- Clinical Forensic Medical Service (CFMS)
- ACT Public Advocate

This engagement is undertaken in accordance with strict internal and external guidelines, relevant legislation, and human rights requirements. ACT Policing undertakes and records considerations during both the intake process and as part of bail considerations to inform decisions, including ascertaining information regarding:

- particulars of the individual
- if family violence is present
- medical and health details
- prior or appropriate assessments
- details of use of substances including alcohol
- previous involvement with criminal justice system

In considering these matters, ACT Policing members support the safety and welfare of all persons at the Watch House to support judicial processes.

Bail Amendment Bill 2026

Commencement

The Bill proposes delayed commencement of 6 months after the Act's notification day. Noting the Bill has implications for ACT Policing to update governance and training material, ACT Policing **supports** a delayed commencement to ensure ACT Policing, ACT Government agencies and other services are operationally ready and appropriately resourced to effectively implement the Bill.

General comments

ACT Policing supports the intent of the Bill, however is **concerned** that the current provisions do not provide sufficient clarity to bail decision makers. Efforts have been made to provide guidance to decision makers in the Explanatory Statement, however, ACT Policing considers the task of the decision maker should be clear on the face of the legislation, and recourse to the Explanatory Statement should not be needed to clarify fundamentals such as mandatory and discretionary considerations, how criteria are to be weighted, and whether a decision maker has a duty to enquire into specific facts or is only required to take into account information that is reasonably available to them .

The proposed amendments clarify and codify the matters that decision makers **must** take into account when making decisions on bail. Where a provision requires that a factor must be considered, a reasonable interpretation may be that each factor must be evidenced, investigated, analysed and recorded. On further review of the Explanatory Statement, it includes that a:

“decision maker will only be required to consider the matters listed in a provision where relevant to the particular case. For example, if the information available to the decision maker demonstrates that the accused person has never been subject to bail undertakings, bail conditions, or any other orders of an Australian court, the decision maker is not required to consider those matters when making a decision. Similarly, a decision maker is not required to consider the matters listed in section 22D where the information they have available to them indicates that the accused person is an adult.

The Bill does not impose an obligation on decision makers to undertake investigations into each of the matters listed in sections 22A to 23 when making bail decisions. In some cases, as set out below, the relevant matters are presented as general considerations for the decision maker to turn their mind to. There is no requirement for authorised officers to

specifically ask the accused person, or for the parties to specifically make submissions about, those general matters”.³

The apparent misalignment between the language contained in the Explanatory Statement and the proposed legislation provides a challenging situation for ACT Policing and its members to operationalise and demonstrate consistent decision making that aligns with the legislative provisions. The introduction of additional ‘must’ criteria will likely impose additional reporting and record keeping requirements, that could extend a person’s time in custody due to procedural duplication in some instances for limited material benefit.

While the guidance contained in the Explanatory Statement is reassuring to some degree, embedding clarifications within the legislation would enhance clarity, reduce unintentional administrative burden, and support community confidence in how decision-making factors are applied. Notwithstanding these concerns, ACT Policing broadly supports the proposed inclusions where they are apparent, and the decision-maker is not required to substantiate claims made by the accused or record considerations to a high-degree.

Relevant factors for specific cohorts

Bail decision makers are required to weigh up a broad and complex set of legal, social and practical factors, nuanced further by individual circumstances, availability of services and supports, and seeking to have matters referred to court as soon as practical. ACT Policing is **concerned** that the legislation mandates bail decision makers to take into account personal circumstances of significant complexity despite, as a practical matter, only being able to make a decision based on information reasonably available at the time.

While the Bill seeks to codify the matters decision makers already routinely consider, it should be noted that many of these matters are routinely considered as part of intake and custody management at the Watch House to ensure the person is fit for custody. The Bill’s ambiguity with how these factors are to be considered may inadvertently lead to extending a person’s time in custody, especially if this information is not reasonably available.

In particular, with respect to the new considerations in sections 22B-23, the Explanatory Statement indicates the factors in sections 22B – 23 are intended to likely “weigh in favour of granting bail, and will never weigh against the granting of bail”, however, this is not clear in the Bill. ACT Policing considers this to be a fundamental matter for a decision maker to consider in making their decision which should appear on the face of the legislation.

In addition, in new sections 22B – 23, the bail decision maker ‘**must**’ consider a list of considerations in applying the criteria in section 22 to particular applicants. On its face, this drafting mandates the consideration of each factor in turn and creates an obligation for the decision maker to enquire into those matters prior to making a decision.

As demonstrated by the data in Table 1, ACT Policing’s peak arrest periods are outside of business hours and largely concentrated in the evenings. This means that ACT Policing is frequently

³ Bail Amendment Bill 2026 Explanatory Statement, available at https://www.legislation.act.gov.au/View/es/db_74267/current/html/db_74267.html

required to make bail decisions outside of business hours and while managing for the safety and welfare of all persons in custody and staff.

Table 1: Arrests by time of day / day of week

Arrests by time of day / day of week								
Date Range: 01 June 2025 to 31 May 2026								
	00:00 - 02:59	03:00 - 05:59	06:00 - 08:59	09:00 - 11:59	12:00 - 14:59	15:00 - 18:59	18:00 - 20:59	21:00 - 23:59
Sunday	62	26	16	23	33	36	48	50
Monday	23	20	21	48	48	35	37	62
Tuesday	18	15	19	40	59	42	45	36
Wednesday	32	14	26	40	56	37	54	39
Thursday	25	14	21	48	49	50	41	61
Friday	39	13	17	64	62	40	46	69
Saturday	42	19	16	31	37	30	35	51

SOURCE: PROMIS as of 08 June 2026
Does not include Jervis Bay
Counts apprehensions of selected offences containing at least one charge cleared by 'ARREST'

At times, these considerations may be interrupted due to the dynamic and sometimes volatile environment of the Watch House. To contextualise these concerns, specific examples regarding the relevant factors are set out in the following sections and hypothetical scenarios are at **Attachment A**.

While it may be more feasible to make these types of assessments in a Court room setting, it is important to recognise the importance of clear legislation noting the complex and dynamic environment of the Watch House, especially noting the primary goal of ensuring the safety and welfare of all persons in custody and staff. ACT Policing continues to advocate for the guidance contained in the Explanatory Statement to also be included in the primary legislation, such as a guidance note or example, to provide bail decision-makers greater clarity and consistency, reduce misinterpretations in practice and ensure fairness to applicants.

ACT Policing supports amending the drafting of the provisions and inserting additional guidance in the Bill that explicitly clarifies:

- a decision maker is not required to take into account all considerations in all cases, only those that are relevant, based on the information before them
- decisions are to be based on readily available information
- a decision maker is not required to undertake enquiries into matters provided by the accused for bail consideration
- there is no obligation on a decision maker to verify or investigate all factors
- how criteria are to be weighted in considering the grant of bail.

Making these changes will provide bail decision makers with greater clarity and consistency, reduce misinterpretations in practice and ensure fairness to applicants.

If enacted in their current form, the lack of clarity on these matters, and the extent to which they must be taken into account, will inevitably raise the likelihood of claims for compensation for supposed non-compliance with the Bail Act. ACT Policing already receives civil claims regarding supposed breaches of the Bail Act by police officers. Accordingly, it can reasonably be expected

that the proposed changes, and the approach taken of trying to address issues in the Explanatory Statement rather than the legislation itself, will be subject of judicial consideration and commentary.

The likely increase of claims arising from supposed breaches of the Bail Act also reinforces the issues with the current state of civil liability protections for police in ACT legislation. Section 52(2)(b) of the Bail Act explicitly preserves civil proceedings as an option for breaches of the Bail Act. However, unlike other jurisdictions which provide police officers with a defence of reasonableness, the ACT's *Civil Law (Wrongs) Act 2002* does not provide a defence for ACT Policing. This is because the definition of 'public or other authority' in Chapter 8 does not currently encompass the AFP, including in its capacity as ACT Policing. If an approach is being taken that is likely to increase the volume of civil claims, serious consideration should also be given to amending the *Civil Law (Wrongs) Act* to provide police with similar protections to those which exist in most other state and territory jurisdictions.

While the drafters have raised some reservations with the suggestion to include additional guidance or notes within the legislation, it would not be dissimilar to other ACT legislation. While acknowledging that the *Crimes (Sentencing) Act 2005* relates to sentencing considerations, it includes provisions across multiple sections that refer to "information currently available to the court" and "any relevant factor that is known". These formulations may provide a useful comparative model.

ACT Policing welcomes further consultation to address these concerns, noting that a clear, efficient and consistent bail process is key to ensuring public confidence and fairness in the criminal justice process. To assist the committee, ACT Policing has identified some examples below that would benefit from further clarity in the primary legislation.

Example 1: Relevant factors for Aboriginal or Torres Strait Islander people

At the outset, ACT Policing continues to work with the ACT Government to support targets to reduce recidivism and overrepresentation of First Nations people in the criminal justice system, including on responding to and implementing relevant recommendations that arose from the Independent Review into the Overrepresentation of First Nations People in the ACT Criminal Justice System. To support ACT Policing's engagements with First Nations people and community, ACT Policing operates under the Policing Strategy for Engagement with First Nations People and Communities.

ACT Policing acknowledges that this component of the legislation responds to issues of overrepresentation of First Nations people in the ACT Criminal Justice System. Overall, ACT Policing **supports** the Bill's intent to include relevant factors for Aboriginal or Torres Strait Islander people as part of broader efforts to address over-representation in the criminal justice system, however, would support further clarity in the Bill.

New section 22B of the Bill requires decision makers to take into account particular matters in applying section 22 to Aboriginal and Torres Strait Islander applicants and defines 'Aboriginal or Torres Strait Islander people' by way of three cumulative criteria. However, only in the Explanatory Statement is further guidance provided on the extent to which bail decision makers must gather and consider information to apply this provision, and this is by reference to additional "guidance material" which it appears does not form part of the Act or Explanatory Statement:

"The guidance material directs the decision maker to first ask whether the person is an Aboriginal or Torres Strait Islander person, and notes that where a person says they are an Aboriginal or Torres Strait Islander person, the decision maker must accept this. Where a person does not answer or does not want to answer this question, the decision maker should determine whether there is evidence to suggest the person is an Aboriginal or Torres Strait Islander person and make reasonable further enquiries (for example, checking existing ACT Policing holdings), but should not challenge a person's self-identification or require the person to provide evidence of their cultural identity."⁴

ACT Policing would prefer the approach contemplated by the Explanatory Statement to be reflected in the primary legislation. It would be relatively straight forward to amend the drafting of the provision to make clear that where a person self-identifies as Aboriginal or Torres Strait Islander, the decision maker should treat them as such. Less ideally, but also possible, would be a guidance note or example, to assist with the application of the provision.

Example 2: Professional assessment or support services required

While ACT Policing supports the need to consider an individual's disability or health condition, ACT Policing notes that members are not trained medical professionals and may have limited capability to independently assess a person's condition to the satisfaction of the Bill as currently drafted. Under existing processes, ACT Policing already imposes an obligation on Watch House staff to obtain medical advice for a person in custody for a range of matters, including where the person presents in a manner that is depressed or disturbed, seriously ill, pregnant, shows signs of impaired sensibility etc.

A CFMS nurse is also on duty and available to the Watch House 24 hours a day, seven days a week, and a nurse is generally located at the Watch House during peak periods. Typically, the on-duty nurse will triage all calls and will organise for the Forensic Medical Officer (FMO) to attend the Watch House when necessary.

Without further clarification in the legislation, the additional considerations in proposed new sections 22C – 23 may reasonably require bail decision makers to seek more thorough or in-person advice from qualified professionals with appropriate clinical knowledge for effective assessment, such as assessing a child's maturity and developmental capacity or the likely effect of custody on an unborn child after they are born.

It is also not uncommon for individuals to present with mixed impairment arising from alcohol and other drugs. This impairment may be temporary or fluctuating, making assessment difficult and unclear whether observed behaviour is attributable to intoxication, mental illness, cognitive impairment or a combination of factors.

Access to reliable health information may also be limited, particularly after business hours. ACT Policing notes mental illness frequently intersects with contact with the criminal justice system and may significantly impact an individual's ability to understand, comply with and meaningfully engage in the bail process. Bail decision makers are not clinicians and may have

⁴ Bail Amendment Bill 2026 Explanatory Statement, available at https://www.legislation.act.gov.au/View/es/db_74267/current/html/db_74267.html

limited ability to determine the existence of a disability or mental illness, the severity or acuity of a condition and the treatment or supports required without professional advice or support.

Noting these concerns, ACT Policing has noted that the proposed amendments may have resource impacts on services to provide additional support to inform bail decision-making e.g. CFMS, Access Mental Health, Aboriginal Legal Service, Legal Aid etc. While ACT Policing has received assurances from the ACT Government that the Bill should not create an additional burden on parties involved in the criminal justice system, this level of clarity is not contained in the Bill and it is unclear if all impacted services have been consulted on this aspect of the Bill or if there are any privacy restrictions on what information could be shared.

Additionally, ACT Policing is cautious about the operational implications where information is not readily available or not disclosed by the person in custody, whether that be due to capacity or willingness to cooperate with police. In such scenarios, the use of the word 'must' in the Bill and limited guidance contained in the Bill removes discretion and imposes an obligation on decision makers to consider the criteria even where it is not readily available or accessible.

Example 3: Relevant factors for children

ACT Policing supports the Bill's recognition that bail decision makers should consider specific factors when making a bail decision in relation to an accused who is a child. Under existing bail practices, ACT Policing members are required to comply with the provisions of the *Children and Young People Act 2008*, including that a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary.

While supportive of additional criteria, ACT Policing would appreciate further clarity on the expectations on bail decision-makers, specifically in assessing, balancing and weighing the range of considerations which police may not have access to or influence over and the primary consideration being the best interests of the child. Consistent with the feedback on professional assessments, many of these considerations are subjective and challenging to apply consistently within a legal decision-making framework without specific psychological or developmental advice in relation to the child, for example, the child's maturity and developmental capacity at the time of the offence or the need to reduce the stigma associated with being remanded in custody.

Matters for further consideration

Community concerns around repeat offending on bail

ACT Policing notes that we continue to respond to concerns from the community for offences committed while persons are on bail and subject to bail conditions. While not explored in detail within this submission, ACT Policing encourages future consideration on alternative mechanisms that work in tandem with strategies targeted to address recidivism, the risk of reoffending and establish effective consequences for breaching bail.

As outlined below in Table 2, justice procedures breaches are by far the highest number of charges laid by ACT Policing on apprehensions with a breach of bail charge. For this reason, we continue to strongly support reforms that improve compliance with conditions, reduce reoffending and support

ongoing efforts in community safety, wellbeing and security in conjunction with the proposed reforms.

Table 2: Charges laid by ACT Policing on apprehensions with a breach of bail charge

Charges laid by ACT Policing on apprehensions with a breach of bail charge

Offence	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	01 July 2025 to 31 May 2026
Homicide	0	0	3	2	0	0	0
Assault	68	83	68	96	138	113	128
Sexual offences	4	11	3	4	3	3	8
Other offences	8	11	26	23	14	28	19
Robbery	9	5	4	11	14	23	16
Burglary	16	18	17	45	75	71	36
Other offences	59	71	44	62	65	47	35
Stolen Motor vehicle	45	40	46	56	57	65	31
Theft (excl motor)	35	26	55	82	120	99	83
Property damage	33	42	49	35	50	34	27
Environmental	0	0	0	0	4	0	0
Government	22	17	9	12	17	25	25
Justice procedures	1789	1618	1267	1533	1595	1547	1464
Firearms and	40	33	50	48	36	47	54
Other offences	28	23	11	32	39	39	42
Drug offences	69	50	38	35	29	19	13
Traffic Offences	452	418	253	250	165	161	160
Other offences	17	8	17	5	16	4	4
Total	2694	2474	1960	2331	2437	2325	2145

Source: PROMIS as at 08 June 2026

To effectively address the drivers of repeat offending, ACT Policing suggests that the bail decision-making framework should be appropriately supported by support services and early intervention pathways that are resourced appropriately. The enforceability and engagement with these programs are at times limited, further reducing their effectiveness and opportunity to provide support at a critical period.

ACT Policing understands appropriate access to social and therapeutic supports is critical to breaking the cycle of crime. Availability and use of appropriate support services should be a key consideration of bail. ACT Policing continues to work collaboratively with courts, prosecutors, corrections and service providers to support consistent, risk-based bail outcomes.

Presumptions against bail

ACT Policing notes that in many circumstances bail conditions are not sufficient to mitigate identified risks and bail does not necessarily stop or deter future offending. ACT Policing would support a broader review of presumptions listed in the Bail Act to reduce the level of complexity for decision makers and to include further serious offences which pose significant risk and harm to the community in the offences where presumption against bail should be necessary.

ACT Policing recommends that the offences listed under the presumption against bail should be reviewed, particularly for matters where they have occurred in a family violence setting and the operation of section 9F of the Bail Act. While the proposed legislation includes that a decision maker must consider the likelihood of a person using family violence if released on bail and how to manage any risk of the person using family violence, ACT Policing also recommends that bail for family violence offences must be refused unless there are exceptional circumstances as to why the accused should not be kept in custody.

ACT Policing also continues to support consideration of the following legislative reform in relation to presumptions in the Bail Act:

- That presumption against bail be extended to the following offences:
 - aggravated robbery (*Criminal Code 2002 (ACT)*)
 - 87 charges laid July 2025-May 2026 (142 charges laid 2024-2025)
 - aggravated burglary (*Criminal Code 2002 (ACT)*)
 - 150 charges laid July 2025-May 2026 (173 charges laid 2024-2025)
 - assaulting police and any frontline community service provider (*Crimes Act 1900 (ACT)*);
 - 96 charges laid July 2025-May 2026 (118 charges laid 2024-2025)

Presumption for bail

For offences where a presumption against bail does not exist, ACT Policing has observed that it is generally assumed there is a presumption for bail for all other offences, rather than the courts adopting a neutral position and determining the granting of bail on the particular circumstances of each case. ACT Policing would support amendments to the Bail Act to ensure that where a presumption against bail does not exist, that the courts adopt a neutral position for certain offences and determine the granting of bail on the circumstances of each case.

Scheduled offences – where presumption for bail does not apply

ACT Policing also considers updates may be warranted to provide inclusion of additional offences as ‘**scheduled offences**’ under the Bail Act. ACT Policing strongly supports consideration of offences, including where a history of family violence exists, that pose a significant risk of injury or harm to be incorporated within the outlined offences. The inclusion of serious driving offences, particularly for repeat offending and offending linked to additional criminal behaviour is also supported by ACT Policing.

Conclusion

Overall, ACT Policing supports the intent of the Bill, but we are concerned with the lack of clarity for bail decision makers in the legislation. Bail decisions are a high volume and significant component of the ACT’s criminal justice system, and it is critical that the law is clear and accessible.

There are two significant risks arising from the current drafting of the Bill. While distinct, these risks are not independent and may arise concurrently without further clarification. First, the lack of clarity in the proposed provisions may increase the likelihood of claims alleging non-compliance with the Bail Act, including claims seeking compensation. Secondly, the prospect of such claims may encourage bail decision-makers to adopt a more cautious approach by seeking additional information to demonstrate compliance with the statutory requirements.

Critically, these risks are interrelated. The uncertainty created by the drafting gives rise to potential litigation risk but may also promote behavioural changes in decision-making that produce adverse operational and custodial impacts. Noting the key aims of the Bill was to address community concerns about safety and improve confidence that bail decision makers are making informed, risk-based decisions, we suggest that further work is necessary to clarify the Bill.

Furthermore, ACT Policing's position is that the proposed amendments do not sufficiently address the community's concerns with the administration of bail and the offences that are committed while persons are on bail and subject to bail conditions. As such, ACT Policing would support a more holistic review of bail and measures that address recidivism, the risk of reoffending and effective consequences/conditions while a person is subject to bail.

Attachment A: Scenarios

Scenario 1

At 3:00am in the ACT Policing Watch House, the Watch House Sergeant (who acts as the bail decision maker) is managing multiple persons in custody and competing operational demands when an accused person is presented for intake. This accused person doesn't self-identify as Aboriginal or Torres Strait Islander, though indicates they have a health condition. Police records indicate that the person has previously declared their First Nations status.

In making a bail decision, the Sergeant is required under the Bill to consider whether the accused person meets the definition of an 'Aboriginal or Torres Strait Islander person' and a broad range of risk, cultural and health factors. While the Explanatory Statement indicates these matters are intended to be considered based on information readily available and do not require extensive investigation, this guidance is not reflected in the legislation itself.

Faced with the mandatory 'must consider' wording and uncertainty about the level of inquiry required to properly satisfy each factor, the Sergeant adopts a risk-averse approach, attempting to verify the accused person's health needs and making further enquiries that are difficult to resolve at that time of night. For example, the Sergeant is unable to reach a qualified health professional to provide advice on the accused person's treatment and support required to manage their health condition.

As a result, the bail decision is delayed, and the accused remains in custody longer than would otherwise be necessary, not due to an assessed bail risk but due to legislative ambiguity and concern about scrutiny of the decision-making process.

Scenario 2

At 1:00am in the ACT Policing Watch House, a young person aged 16 years is brought in for bail consideration, visibly affected by alcohol or drugs, distressed, and refusing to answer questions or engage with police.

Under the Bill, the Sergeant must consider the welfare of the young person and a wide range of mandatory factors, including the child's best interests, developmental capacity, relationships, access to support services, and the need to reduce stigma associated with being remanded in custody. However, the child's condition prevents the Sergeant from obtaining meaningful information about their circumstances, and there is limited reliable information available on police systems at that time.

While the Explanatory Statement indicates that decision makers are not required to make extensive enquiries and may rely on readily available information, this guidance is not reflected in the legislation itself. Faced with the 'must consider' requirements and uncertainty about how to properly assess factors – particularly abstract considerations such as how to measure or weigh "the need to reduce stigma associated with being remanded in custody" – the Sergeant adopts a cautious approach, delaying the decision and attempting to locate a responsible carer, youth worker or other information to inform the assessment.

As a result, the child remains in custody for longer than necessary, not because of an assessed bail risk, but due to the practical difficulty of satisfying multiple mandatory considerations in circumstances where the child is non-communicative and the legislation provides limited clarity on the level of inquiry required.