



Submission cover sheet

Inquiry into the Bail Amendment Bill 2026

Submission number: 013

Submitter: ACT National Preventive Mechanism

Date authorised for publication: 24 June 2026



ACT National Preventive Mechanism

19 June 2026

Ms Chiaka Barry MLA

Chair, Standing Committee on Legal Affairs

ACT Legislative Assembly

By email: **LACommitteeLegal@parliament.act.gov.au**

Dear Chair

Inquiry into Bail Amendment Bill 2026

1. The ACT Ombudsman, ACT Office of the Inspector of Custodial Services (OICS) and ACT Human Rights Commission (the Commission) are grateful for the invitations to make a submission to the Standing Committee on Legal Affairs' Inquiry into the Bail Amendment Bill 2026. We have decided to make a submission in our collective role as the ACT National Preventive Mechanism (NPM)
2. The ACT NPM is responsible for undertaking regular preventive visits to places of detention within the ACT under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
3. Under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*, the ACT NPM has unfettered access to all places of detention and people deprived of liberty, can make recommendations about treatment and conditions, and can submit proposals on legislation.
4. The Bail Amendment Bill 2026 (the Bill) is a valuable opportunity to strengthen the protections of individuals against ill-treatment in detention. Time in pre-trial detention can significantly disrupt a person's integration within the community and has the potential to leave people more vulnerable and more likely to either reoffend in future or to be a victim of crime, rather than less likely. Such detention should be reserved for the most serious cases.

5. When considering bail reform, it is important to keep in mind that people who are detained because they have been refused bail have not been convicted of an offence and in many cases will not subsequently be convicted of the offence with which they have been charged.
6. In summary, we support the passage of the Bill with suggested amendments:
 - a. The addition of changes to reverse the current presumptions against bail in the *Bail Act 1992* (Bail Act) that are incompatible with the *Human Rights Act 2004* (HR Act).
 - b. Greater discretion for decision makers beyond the mandatory factors set out in the Bill.
 - c. Carer responsibilities should also be included expressly as a mandatory consideration in proposed s 22A.
 - d. An explicit prohibition on refusing bail to a child on the sole ground that the child does not have any, or any adequate, accommodation.
 - e. ACT Police be provided with discretion to regrant bail to a child arrested for breach of bail under s 56A and s 56AD of the Bail Act.
 - f. There is a statutory review included in the Bill for all the amendments to be considered after a period of time, such as 3 years.
7. Further, legislative reform alone will not achieve the required outcomes for the community, without investments in bail support, including culturally appropriate bail support, funding Sunday Court to avoid short weekend remands, and adequate housing for young people.

A significant ongoing need for law reform

8. The Bill would significantly amend the existing Bail Act. As discussed further below, any reforms must be compatible with the general presumption in the HR Act in favour of bail. The Bill does not however address the fact the ACT Supreme Court has declared that section 9C of the Bail Act is not compatible with this presumption. This Bill is an opportunity to address the longstanding, ongoing problem of the inconsistency of this section, and other sections of the Bail Act setting out presumptions against bail, with the HR Act.

Human rights and other consequences of presumptions against bail

9. The Bill proposes maintaining the current presumptions concerning bail in the Bail Act, which include presumptions for bail (Division 2.2), no presumption for bail (Division 2.3) and presumptions against bail (Division 2.4).
10. Several human rights within the HR Act are relevant to considerations for bail. They include the right to liberty in s 18(1) of the HR Act, the right to the presumption of innocence in s 22(1) of the HR Act, and the presumption in favour of bail, which is a well-established human right,¹ explicitly included in s 18(5) of the HR Act.
11. To fulfil these rights, people must be presumed innocent until proven guilty and pretrial detention must be an exceptional measure, not the general rule. The United Nations Subcommittee on the Prevention of Torture, the international expert body established under OPCAT, has recommended to Australia that pretrial detention always be a measure of last resort² and the ACT NPM supports this recommendation.
12. The ACT NPM accepts that there are times an accused person must be detained on remand, such as to prevent flight or the recurrence of crime if there is no other way to manage these risks.³ Nonetheless, it is important to balance these factors against the risks posed by unnecessary detention, such as increasing the likelihood of future contact with the criminal legal system. Research shows a single night in detention increases the likelihood of a person offending in future and spending further time in detention.⁴

¹ See, e.g. [International Covenant on Civil and Political Rights](#), Article 9(3).

² United Nations Subcommittee on the Prevention of Torture (UN SPT) (20 December 2023), [Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party](#), UN doc. CAT/OP/AUS/ROSP/1, [34]. See also UN SPT (26 March 2025), [Eighth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), UN doc. CAT/C/54/2, [76]; [United Nations Standard Minimum Rules for Non-Custodial Measures \(The Tokyo Rules\)](#) (United Nations General Assembly resolution 45/110, 14 December 1990, annex), [6.1].

³ See, e.g., United Nations Human Rights Committee (16 December 2014), [General Comment 35, Article 9 \(Liberty and security of person\)](#), UN doc. CCPR/C/GC/35, [38].

⁴ McMahon, M. (2019). *No bail, more jail? Breaking the nexus between community protection and escalating pre-trial detention*. Victorian Parliamentary Library and Information Service, 22-23.

13. The initial period of incarceration is also the period of highest risk of ill treatment,⁵ which reinforces the need for people to be detained pretrial only as an exceptional measure.
14. Section 9C of the Bail Act creates a presumption against bail for persons accused of certain serious offences. In 2010, the ACT Supreme Court *In the Matter of an Application for Bail by Isa Islam* [2010] ACTSC 147 declared that s 9C is inconsistent with the human right recognised by s 18(5) of the HR Act.⁶ We are concerned that this inconsistency remains and that it has yet to be addressed. While the Government has previously stated the appropriate forum for resolving this issue is the courts,⁷ we suggest that this is an issue best addressed through legislative amendments to remove the incompatibility. Responding to incompatible laws is clearly a matter for the Legislative Assembly as provided for in the dialogue model of human rights set out in the HR Act, in which parliament has supremacy in the making of laws.⁸
15. At a practical level, the number of individuals deprived of liberty continues to rise at the Alexander Maconochie Centre (AMC), reaching 482 in April 2026, and is approaching its operational capacity of 521.⁹ As the number of people detained rises, the number of 'prisoner on prisoner' assaults has also increased from 12.86 per 100 persons detained to 17.2 per 100 persons detained, with the rate of serious assaults also rising from 0.51 to 0.73 per 100 persons detained.¹⁰

⁵ See, e.g. Office of the United Nations High Commissioner for Human Rights (2010), Preventing Torture: An Operational Guide for National Human Rights Institutions, 3–4.

⁶ *In the matter of an application for bail by Isa Islam* [2010] ACTSC 147, [2].

⁷ ACT Attorney General (June 2011), Declaration by the ACT Supreme Court that section 9C of the Bail Act 1992 is not consistent with section 18(5) of the Human Rights Act 2004 Government Response, 17.

⁸ ACT Bill of Rights Consultative Committee (2003), Towards an ACT Human Rights Act, 61–63. See generally Hogg, P, and Bushell, A. (1997). 'The Charter Dialogue between Courts and Legislatures'. 35.1, *Osgoode Hall Law Journal*, 75–124.

⁹ ACT Corrective Services (May 2026), ACT Corrective Services data dashboards; Marisa Paterson (21 October 2025), Response to question on notice 26 September 2025.

¹⁰ Productivity Commission (3 February 2026), Report on Government Services 2026, Table 8A.18.

16. The Bimberi Youth Justice Centre has also seen an increase in the average number of young people detained in the 2025–26 financial year to date, particularly young people on remand.¹¹
17. We further note that the Standing Council of Attorneys-General Bail and Remand Reform Working Group has recommended that all Australian jurisdictions consider removing presumptions against bail from bail laws, specifically to address remand rates and meet National Agreement on Closing the Gap Targets 10 and 11.¹²

Mandatory consideration of factors

18. The proposed inclusion of ss 22A–D and the proposed amendment to s 23 in the Bail Act would make it mandatory for the court or authorised officer to consider specified relevant matters when making bail decisions. We are generally supportive of this approach as the amendments would promote informed decision-making and mitigate arbitrary decision-making. However, we also consider it important for the court or authorised officer to be able, at their discretion, to consider relevant matters beyond the mandatory factors included in the proposed sections. Bail decisions by their nature depend on individual circumstances.

Primary consideration of carer responsibilities

19. We welcome the proposed amendments that require consideration be given to carer responsibilities in assessing bail for Aboriginal and Torres Strait Islander people (proposed s 22B(1)(d)) and to carer relationships in assessing bail for children (proposed s 22D(1)(e)).
20. The Bill additionally proposes the likely effect of bail refusal on a person's family or dependents be a mandatory consideration under s 22A(c). We would suggest carer responsibilities should also be included expressly as a mandatory consideration in this provision.¹³ This would encourage bail decision makers to thoroughly consider

¹¹ For the 2025–26 year to date, the average number of young people in Bimberi has gone up from 19 in the previous year, to 23. See ACT Government (June 2026), Bimberi Headline Indicators Report – June 2026, 3.

¹² Standing Council of Attorneys-General Bail and Remand Reform Working Group, [Final Report](#) (July 2025) rec 5(e).

¹³ Similar to s 3AAA(1)(g)(i) of the *Bail Act 1977* (VIC).

the impact remanding someone would have on people that rely on their care.¹⁴ Furthermore, it would align with other amendments the Bill proposes under s 22A that make clear safety and wellbeing considerations.

Relevant factors for Aboriginal or Torres Strait Islander people

21. We are generally supportive of the amendments to introduce a standalone provision (proposed s 22B) setting out mandatory considerations when assessing bail for Aboriginal and Torres Strait Islander people. While not a panacea, the inclusion of First Nations-specific considerations in the Bail Act will recognise that Aboriginal people are overrepresented on remand and face unique disadvantages in their contact with the criminal legal system. Mandating consideration of the cultural background and kinship ties of Aboriginal and Torres Strait Islander peoples also aligns with the recognition and protection of their distinct cultural rights in s 27(2) of the HR Act.
22. However, on our reading, a decision maker would still first have to apply the presumptions against bail in Division 2.4 of the Bail Act for those specific offences and would only move to consider proposed s 22B if special or exceptional circumstances apply.¹⁵ As such, even with the proposed s 22B, these presumptions would apply to Aboriginal and Torres Strait Islander peoples. Presumptions against bail are also contrary to Targets 10 and 11 for reducing the incarceration rates of young and adult Aboriginal and Torres Strait Islander people under the National Agreement on Closing the Gap, to which the ACT Government is a signatory.

Relevant factors for children

23. We are also generally supportive of the amendments proposed under 22D that intend for the broad impacts of a child being denied bail and remanded in custody to be considered in bail decisions. We suggest there should be a prohibition on refusing bail to a child on the sole ground that the child does not have any, or any

¹⁴ Bail Further Amendment Bill 2025 Explanatory Memorandum, 14.

¹⁵ See current s 9G(3)

adequate, accommodation.¹⁶ This would address a broad issue that children may be refused bail and remanded because of factors outside their control.¹⁷

24. The fact that ACT Police lack discretion to grant bail to youth arrested for breach of bail can lead to children and young people being detained for an uncertain amount of time and potentially missing activities important to their wellbeing and development, including education, community and family activities.¹⁸ We would urge an amendment to provide police discretion to grant bail if a child is arrested for breach of bail under s 56A and s 56AD of the Bail Act.¹⁹

Statutory review

25. In relation to all the amendments proposed in the Bill, the Committee may wish to consider whether a statutory requirement that there be a future review of the amendments should be added to the Bill, to assess if the amendments have any unintended consequences, including in relation to how courts or authorised officers make decisions. We suggest that the Committee recommend the Bill be amended to provide for a statutory review of these changes after 3 years.

¹⁶ The *Bail Act 1977* (VIC) prohibits this under s 3B(3). The Tasmanian Government may reform its bail laws to also prohibit this: see Section 13(4) of the [Draft Bail Bill 2024](#) (TAS) and Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse (August 2023), [Who was looking after me? Prioritising the safety of Tasmanian children](#). Recommendation 12.14.

¹⁷ Australia Law Reform Commission (19 November 1997), [Seen and heard: priority for children in the legal process](#), [18-163].

¹⁸ Presently, under s 56AD(1), individuals arrested for breaching conditions of their bail must be presented before a court, removing police discretion to re-grant bail. See also ACT Custodial Inspector (December 2024), [Heathy Centre Review of Bimberi Youth Justice Centre 2024](#), 99. Reductions in police discretion with respect to bail have also been identified to contribute to bail refusal in Australia generally. See Hughes, D., Colvin, E. and Bartkowiak-Théron, I. (1 September 2022), "Police and Vulnerability in Bail Decisions", [International Journal for Crime, Justice and Social Democracy](#), 11(3), pp. 122-138.

¹⁹ Legislation in Tasmania and Western Australia does not remove police discretion to grant bail after arresting an individual for breaching their bail conditions. See s 5 and s 10 of the *Bail Act 1994* (TAS). In Western Australia, an accused arrested in an urban area for a serious offence whilst on bail must be brought before a court: see s 13, s 16, s 51 and Schedule 1 Part C of the *Bail Act 1982* (WA).

Need for broad government reform

26. While the Bill provides an opportunity to meaningfully address some shortcomings concerning bail, we want to reiterate that broader supports and investments are required to deliver effective, holistic solutions. Alternatives to legislative reform, such as investments in bail support including culturally appropriate bail support, funding Sunday Court to avoid short weekend remands, and adequate housing for young people, can help adults and young people avoid contact with the criminal legal system. These have been previously recommended to Government by the ACT NPM collectively and by individual NPM members.²⁰

27. Should you wish to discuss this submission you can contact the ACT NPM through Steven Caruana, ACT NPM Coordinator on 02 6207 2222 or steven.caruana@act.npm.gov.au.

Yours sincerely

Rebecca Minty

**ACT Inspector of Custodial
Services**

derson

ACT Ombudsman

Dr Penelope Mathew

**President and Human
Rights Commissioner**

²⁰ See, e.g. ACT Custodial Inspector (December 2024), Heathy Centre Review of Bimberi Youth Justice Centre 2024, 102; ACT NPM (August 2025), Post Visit Summary Bimberi Youth Justice Centre, Recommendation 5.