



# Submission cover sheet

## Inquiry into the Bail Amendment Bill 2026

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**SUBMISSION**

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**INQUIRY INTO THE BAIL  
AMENDMENT BILL 2026**



**ANTAR**

**CHANGETHERE**RE**CORD** —

**Joint submission to the Standing Committee on Legal Affairs  
Change the Record and ANTAR**

**Standing Committee on Legal Affairs  
22 June 2026**

## **About Change the Record**

Change the Record is Australia's only First Nations-led coalition of legal, health and family violence prevention experts. Change the Record works to end the systemic violence and over-incarceration of Aboriginal and Torres Strait Islander peoples, including by advocating for an end to the criminalisation and incarceration of First Nations children. Change the Record's work is grounded in self-determination and driven by a vision for systemic change: a future where children are supported, families are safe, and communities are strong and free.

## **About ANTAR**

ANTAR is a national First Nations-led advocacy organisation dedicated to achieving rights, justice and respect for the First Nations Peoples of Australia. ANTAR has been working with First Nations communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit and independently funded organisation. ANTAR is guided by and takes its lead from Aboriginal and Torres Strait Islander Peoples, and is committed to supporting First Nations-led solutions, self-determination and justice.

## **Acknowledgement**

Change the Record and ANTAR acknowledge Aboriginal and Torres Strait Islander Peoples as the custodians and First Peoples of so-called Australia. We acknowledge the Traditional Owners of the lands and waters on which this submission has been prepared and considered and pay respect to Elders past and present. Sovereignty was never ceded.

This submission has been authored by Jade Lane, Change the Record Chief Executive Officer, and Blake Alan Cansdale, ANTAR National Director.

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## Introduction

Change the Record and ANTAR welcome the opportunity to provide this joint submission to the Standing Committee on Legal Affairs Inquiry into the *Bail Amendment Bill 2026* (the Bill).

This submission is structured around the key provisions of the Bill, which seeks to amend the *Bail Act 1992* (ACT) (the Act), in particular proposed sections 22, 22A, 22B, 22C, 22D, 23 and 23A. This submission focuses especially on proposed sections 22B and 22D, and on the interaction between those provisions, bail presumptions, bail conditions and the practical supports required to reduce the remand of Aboriginal and Torres Strait Islander people, especially children.

Change the Record and ANTAR wish to echo the position of the Aboriginal Legal Service (NSW/ACT) on the 2025 ACT bail reform discussion paper, and particularly their positions on:

- the need for a standalone Aboriginal and Torres Strait Islander bail consideration provision;
- the need for child-specific bail legislation or, at minimum, a child-specific test;
- the need to abolish reverse-onus bail requirements for children and introduce a presumption in favour of bail; and
- the need for meaningful community-based, Aboriginal community-controlled bail support.

Importantly, the Bill presents an opportunity for the ACT Government to meaningfully reduce the youth remand population, minimising family separations and responding to the over-representation of First Nations children on remand in the ACT.

## Context

This reform proposal must be considered in the context of a national youth justice crisis, in which First Nations children are targeted and disproportionately impacted by policing practices and structural discrimination in criminal legal systems across Australia.

Under s.13 of the Act, “a person who has been taken into custody by a police officer is charged with an offence but is not to be brought before a court immediately after being charged” must be given an opportunity to apply for bail with an authorised officer. Under s.17 of the Act, where an accused is refused bail by an authorised officer, the accused generally “must be brought before a court as soon as practicable, and in any case within 48 hours after being taken into custody”. In controlling decisions regarding the ongoing detention of an accused, the Act is ultimately determining whether that individual remains connected to family, culture, community, education, employment, housing, health care and other supports. Importantly, in respect of the impact of bail decisions on children, volumes of research has long established the harmful impacts of imprisonment on a child’s cognitive and social development.

For Aboriginal and Torres Strait Islander people, and particularly for First Nations children, remand is not neutral. It is widely known and accepted that carceral systems in Australia sustain and deepen cycles of colonial harm. For this reason, among others, any reform to the criminal legal system in the ACT, including to the operation of bail laws, must reflect a commitment to

addressing the overincarceration of First Nations peoples. Particularly where it concerns children, such reform must adhere to the foundational and internationally recognised human rights principle that the detention of children must only ever be used as a measure of last resort.<sup>1</sup>

Furthermore, the ACT Government is a party to the National Agreement on Closing the Gap, including Target 10 to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031, and Target 11 to reduce the rate of Aboriginal and Torres Strait Islander young people aged 10 to 17 in detention by at least 30 per cent by 2031.<sup>2</sup> The ACT Government's decisions regarding bail and remand frameworks are central to the Government achieving its obligations under the National Agreement. A bail framework that does not reduce remand numbers cannot be treated as neutral. In the context of First Nations over-incarceration, neutrality indicates acceptance, and maintains the status quo. Any maintenance of the status quo would put the Government in breach of its commitments under the National Agreement, would conflict with its legal responsibilities under international law (including the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of the Child), and would run counter to its moral obligation to ensure the protection, safety and wellbeing of all Australians residing within its territory—particularly those most vulnerable and marginalised within the community.

The Bill should therefore be amended and implemented with an explicit purpose: to reduce the unnecessary remand of Aboriginal and Torres Strait Islander people, particularly children, and to ensure that no person is remanded because of poverty, homelessness, disability, trauma, family responsibilities, child protection involvement, systemic racism, lack of services or unmet support needs.

Change the Record and ANTAR broadly support legislative provisions that seek to recognise and/or respond to the particular harms of custody inflicted upon First Nations peoples, people with disability or health conditions, pregnant people and children. However, these protections will only be meaningful if they are strong, targeted, properly resourced and embedded within a framework that treats remand as a last resort, not as a default response or a result of inadequate community support.

## Recommendations

Change the Record and ANTAR recommend that the ACT Government:

1. Amend proposed section 22B to explicitly require decision-makers to consider systemic racism at every stage of the criminal legal process, including policing, charging, bail opposition, risk assessment, surveillance, bail compliance checks, access to services and court decision-making.

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<sup>1</sup> Article 37(b) of the [United Nations Convention on the Rights of the Child](#) states: No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

<sup>2</sup> National Agreement on Closing the Gap, [Target 10 and Target 11](#); Attorney-General's Department, *Closing the Gap: Adult and Youth Justice Outcomes*.

2. Amend proposed section 22B to make clear that Aboriginal and Torres Strait Islander status must be accepted on self-identification for the purpose of applying the provision, and that no person should be required to prove their identity, community acceptance or cultural connection before the provision is applied.
3. Require bail decision-makers to give oral and written reasons explaining how proposed section 22B was considered where bail is refused to an Aboriginal or Torres Strait Islander person.
4. Establish a funded, First Nations-led socio-cultural background reporting process, to assist courts and authorised officers to properly apply proposed section 22B.
  - I. Ensuring any socio-cultural background reporting process is voluntary, consent-based, culturally safe, independent of police and prosecution, and facilitated by Aboriginal Community Controlled Organisations and/or community appointed groups.
  - II. Ensure socio-cultural background reports are available at the bail stage, particularly where an Aboriginal or Torres Strait Islander person is at risk of remand, and not only after conviction or at sentence.
5. Amend proposed section 22D to require decision-makers to consider the need to support the child's social and emotional wellbeing and promote the child's healing.
6. Require bail decision-makers to give oral and written reasons explaining how each child-specific factor was considered where bail is refused to a child.
7. Abolish the "special or exceptional circumstances" test for children and introduce a clear presumption in favour of bail for all children.
8. Amend the Bill to make clear that a lack of appropriate housing, therapeutic support, disability support, family support or other services must never be used as a reason to remand a child.
9. Ensure that bail conditions imposed on children are the least onerous necessary, culturally appropriate, proportionate to a specific identified risk and reasonably capable of being complied with.
10. Exclude electronic monitoring as a bail condition for children.
11. Fund and expand the Ngurrumbai Bail Support Program, including supporting Aboriginal and Torres Strait Islander children, and invest in a broader Aboriginal community-controlled bail support ecosystem so children and adults can remain safely in community. This should include properly resourced legal, youth, health, housing, family, disability, social and emotional wellbeing, cultural, family violence and throughcare supports delivered by trusted Aboriginal community-controlled and First Nations-led organisations.

12. Expand culturally safe alternatives to police reporting on bail compliance, including flexible responses to technical or accidental non-compliance.
13. Ensure that proposed section 22C is implemented so that disability or health needs can only weigh in favour of bail and support, and never as a reason to remand a person, irrespective of availability of support services for the accused.
14. Strengthen safeguards around proposed section 23A so that victim-survivor safety is supported while procedural fairness is preserved, and untested, irrelevant or prejudicial material does not unfairly drive bail decisions.
15. Collect and publicly report disaggregated bail and remand data, including Aboriginal and Torres Strait Islander status, age, gender, disability, pregnancy, decision-maker, conditions imposed, bail refusal reasons, alleged bail breaches and final case outcome.
16. Commission an independent, First Nations-led evaluation of the reforms within two years of commencement.

## Proposed sections 22 and 22A - the core bail framework

Proposed section 22 of the Bill sets out the core matters a court or authorised officer must consider when deciding whether to grant bail to an individual who is being held in custody on criminal charges. For adults, bail considerations include the likelihood of the person appearing in court, the likelihood of specified conduct occurring whilst on bail, and the interests of the adult. For children, proposed section 22 positions the best interests of the child as the primary consideration, and requires consideration of the child's flight risk, risk of further offending, victim and public safety, and justice integrity considerations generally.

Proposed section 22A then sets out general relevant factors, including the nature and seriousness of the alleged offence, the accused's character, background and community ties, the likely effect of refusal of bail on family or dependents, the accused's history of compliance with bail or court orders, the strength of the case, the need for protection, time likely to be spent in custody, whether the accused was on bail at the time, victim-related matters and family violence considerations.<sup>3</sup>

While we support the Bill's attempt to make bail considerations more transparent, transparency alone will not reduce remand. The Explanatory Statement states that the Bill is not expected to result in a higher or lower overall rate of remand.<sup>4</sup> For Change the Record and ANTAR, this is both a concern and a missed opportunity to address the harmful and racially discriminatory use of remand in the ACT.

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<sup>3</sup> *Bail Amendment Bill 2026* (ACT), cl 10, proposed s 22A.

<sup>4</sup> *Bail Amendment Bill 2026*, Explanatory Statement and Human Rights Compatibility Statement (May 2026) 6.

## Proposed section 22B: Aboriginal and Torres Strait Islander people

Change the Record and ANTAR support the inclusion of a standalone provision requiring bail decision-makers to consider matters specific to Aboriginal and Torres Strait Islander people.

Proposed section 22B recognises that custody causes particular harm to First Nations peoples, including through disconnection from culture, family, Elders, communities and Country. It also recognises the ongoing effects of trauma, intergenerational trauma, child welfare involvement, family violence, homelessness and social or economic disadvantage.<sup>5</sup>

This is an important and necessary reform. It aligns with the ALS position that the ACT Bail Act should contain a standalone Aboriginal and Torres Strait Islander bail consideration provision, and with the Australian Law Reform Commission's recommendation that bail laws should require bail authorities to consider issues that arise due to a person's Aboriginal and Torres Strait Islander status.

Change the Record and ANTAR submit that proposed section 22B must be strengthened in three ways:

### I. Systemic racism must be named

Proposed section 22B should require decision-makers to consider systemic racism at every stage of the criminal legal process. A provision that recognises cultural connection, trauma and social disadvantage is incomplete if it does not expressly name systemic racism.

The over-incarceration of First Nations people is not accidental, nor due to individual failure. It is the result of, and produced by, systems shaped by colonisation, dispossession, child removal, over-policing, underinvestment and systemic racism. These systems have been built and maintained in ways that criminalise First Nations people, families and communities.

As such, Section 22B of the Bill should require decision-makers to consider systemic racism, including its operation in police behaviour (including surveillance, search, investigation, interrogation, charging, and compliance checks), bail decisions (including risk assessment, bail conditions, etc.), access to services, and other judicial decision-making.

### II. Self-identification must be enough for the provision to apply

Proposed section 22B should be amended to make clear that a person should not be required to prove their Aboriginal or Torres Strait Islander identity before the provision is applied. The Bill currently defines an Aboriginal or Torres Strait Islander person as a person who is a descendant of an Aboriginal person or Torres Strait Islander person, identifies as an Aboriginal person or Torres Strait Islander person, and is accepted as such by an Aboriginal or Torres Strait Islander community.<sup>6</sup>

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<sup>5</sup> *Bail Amendment Bill 2026* (ACT), cl 10, proposed s 22B.

<sup>6</sup> *Bail Amendment Bill 2026* (ACT), cl 10, proposed s 22B(3).

That definition may be familiar in legislation, but it should not operate in a way that empowers courts, police or the legal system to delay bail decisions in order to interrogate an individual's identity. In any case, it would not be appropriate for the legal system to interrogate an individual's identity under such circumstances.

For the purposes of bail decision-making, where a person identifies as Aboriginal and/or Torres Strait Islander, proposed section 22B should apply. A person should not be required to demonstrate documentary proof, continuous cultural connection, community acceptance, family history or any other evidence before the court considers the particular harms of custody.

### III. Reasons must be required when bail is refused

Where bail is refused to an Aboriginal or Torres Strait Islander person, decision-makers should be required to record orally and in writing how they considered the relevant section 22B factors.

Without active efforts, section 22B risks becoming a formal checklist rather than meaningful protection. Written and oral reasons are essential for transparency, accountability, review and systemic monitoring. They would also ensure that decision-makers engage directly with the person's culture, family responsibilities, community connections, exposure to systemic racism and risks of harm in custody, rather than merely asserting that the provision has been considered.

### First Nations-led socio-cultural background reporting

Change the Record and ANTAR recommend that the ACT Government establish a funded, First Nations-led socio-cultural background reporting process to support the proper application of proposed section 22B.

Based on a high-level comparative analysis, proposed section 22B appears to reflect some of the same concerns that underpin the Gladue principles in Canada. In *R v Gladue*, the Supreme Court of Canada considered the statutory direction requiring courts to consider the circumstances of Indigenous people before imposing imprisonment, including the systemic and background factors that may have contributed to the person coming before the court, and appropriate sanctions other than imprisonment.<sup>7</sup>

The ACT should not import the Canadian model uncritically. The Canadian experience shows that principles alone are not enough. If reports are inconsistent, underfunded, unavailable at the right stage, or treated as discretionary, they will not deliver justice. But the core insight is important: decision-makers cannot properly consider the historical and ongoing impacts of colonisation, systemic racism, cultural obligations, intergenerational trauma, family responsibilities, community ties or alternatives to custody without reliable, culturally safe and properly prepared information.

Key principles underpinning First Nations-led socio-cultural background reporting should include:

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<sup>7</sup> *R v Gladue* [1999] 1 SCR 688; Justice Canada, *Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada's Criminal Justice System* (19 January 2023) <https://www.justice.gc.ca/eng/rp-pr/jr/gladue/index.html>.

- First Nations-led and designed with First Nations communities and young people;
- Availability at the bail stage, not only after conviction or at sentence;
- Voluntary participation, based on processes of free, prior and informed consent;
- Prepared independently of police and prosecution;
- Trauma-informed and culturally safe;
- Available for both children and adults;
- Focused on connection, support, healing and community-based alternatives, not risk classification;
- Resourced and structured so that reports can be prepared quickly enough to be useful in urgent bail contexts; and
- Accompanied by funding for the supports identified in the report.

The purpose of these reports should not be to pathologise First Nations people or convert trauma, poverty, homelessness or child protection involvement into indicators of risk or a tool for additional surveillance. The purpose should be to assist the court to understand the accused in a holistic way, as an individual situated within family, culture, community and the ongoing impacts of colonisation, as well as to identify appropriate community-based supports that would make part of the case for granting bail.

For children, the process should be adapted to ensure that the child's voice, as well as those of family, kin, Elders and community supports can be heard in a safe and non-extractive way. A child should never have to recount trauma in a rushed court process in order to avoid being locked up. The system should carry the responsibility of creating culturally safe mechanisms for the court to understand what the child needs to remain safe and supported in community.

## Proposed section 22C: disability and health conditions

Proposed section 22C requires decision-makers to consider the treatment and support required to manage a person's disability or health condition, and the effect of the disability or health condition on the person's ability to understand rights and obligations, make decisions, communicate decisions and represent their interests.<sup>8</sup>

We support the inclusion of this provision. It is common for people who are remanded to have unmet disability, mental health, cognitive, psychosocial, physical health and support needs. First Nations people are also often denied access to culturally safe, community-controlled health and disability supports.

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<sup>8</sup> *Bail Amendment Bill 2026* (ACT), cl 10, proposed s 22C.

The Explanatory Statement states that the factors in proposed sections 22B, 22C, 22D and 23 are intended to have a beneficial effect and should not be considered as factors that could ever weigh against the granting of bail.<sup>9</sup> That intention should be made explicit in the legislation.

Proposed section 22C should be amended to make clear that disability or health needs must never be used to justify remand, whether or not relevant services are available in the community. If a person requires treatment, support, communication assistance, disability advocacy or decision-making support, the Act should be clear that the ACT Government has an obligation to provide such support, and where such support is not available, that fact cannot be relied upon in bail refusing an accused.

### Proposed section 22D: bail considerations for children

Change the Record and ANTAR support the inclusion of child-specific bail provisions in the Act. Proposed section 22D of the Bill includes important considerations, including reference to the youth justice principles in the *Children and Young People Act 2008* (ACT), the child's age, maturity and developmental capacity, the need to impose only the least onerous necessary bail conditions, the importance of preserving relationships, the importance of safe and stable living arrangements, therapeutic support, education and training, the need to reduce stigma, the need to manage and reduce the effects of custody on children, and the ongoing effects of health conditions, disability, trauma, abuse, neglect, loss, family violence and child welfare involvement.<sup>10</sup>

These are welcome protections. They recognise what First Nations communities, health experts, legal services and children's advocates have said for decades: children do not belong in prisons. Custody does not rehabilitate children, it harms them, and often irreparably so. Incarcerating children does not create safety for anyone. It deepens harm, causes disconnection and increases the likelihood of future criminal legal system involvement for children who are already being failed by society.

However, proposed section 22D does not go far enough. Change the Record and ANTAR submit the following for consideration:

#### I. Social and emotional wellbeing and healing must be included

The Bill should be amended to include two additional mandatory considerations: the need to support the child's social and emotional wellbeing, and the need to promote the child's healing.

For First Nations children, wellbeing is inseparable from family, culture, Country, identity, belonging and community. Healing must be recognised as a central consideration, not an optional rehabilitative pathway outside the legal test.

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<sup>9</sup> *Bail Amendment Bill 2026*, Explanatory Statement and Human Rights Compatibility Statement (May 2026) 11-12.

<sup>10</sup> *Bail Amendment Bill 2026* (ACT), cl 10, proposed s 22D.

## II. Reasons must be required where bail is refused to a child

The Bill should require decision-makers to explain, orally and in writing, how they considered each child-specific factor if bail is refused.

A child should not be remanded through a decision that merely records that the factors were considered. If the ACT Government is serious about upholding the international human rights standard that detention only be used as a last resort for children, decision-makers must be required to show why no less restrictive, community-based option was available.

## III. Children remain subject to punitive bail architecture

The most significant weakness of the Bill is that it does not remove the reverse-onus barriers that continue to make it harder for children to access bail. A child-specific list of considerations will not be enough if children are still required to overcome adult-designed presumptions, including the “special or exceptional circumstances” test.

Change the Record and ANTAR strongly support the ALS’ position that the “special or exceptional circumstances” test should be abolished for children, and that there should be a presumption in favour of bail for children. This would better align the Bill with section 8 of the *Children and Young People Act 2008* (ACT), namely the need for all decisions in criminal legal proceedings to be made with the best interests of the child as the paramount consideration. Abolition of the special or exceptional circumstances test is also necessary to give real effect to the international human rights law principle that detention of children must be a measure of last resort, and must only be used for the shortest appropriate period of time.<sup>11</sup> That international human rights standard should not sit in the background as a general youth justice value — it should be built into the operative bail test.

A child should not have to prove they are exceptional to be free.

## IV. Unmet need must not be used against children

Change the Record and ANTAR are concerned that some section 22D factors could be misused if they are not framed carefully. For example, decision-makers are required to consider whether a child is receiving, or is likely to receive, therapeutic support services, and the importance of supporting the child to live in safe, stable and secure living arrangements.

These are important considerations. But in practice, First Nations children are often criminalised precisely because governments have failed to provide safe housing, disability support, mental health care, education support, family support and culturally grounded community-led services. The ACT Government cannot allow the absence of these supports to be relied on as a reason for depriving a child of their liberty.

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<sup>11</sup> Article 37(b), United Nations Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force for Australia 16 January 1991) art 37(b).

The Bill should state clearly that a lack of available services, appropriate housing, therapeutic support, disability support or family support must never weigh against the grant of bail. Where a child needs support, the response should be to provide support, not custody. Remand must not be used as crisis accommodation, disability support, child protection intervention or as a mechanism for behaviour management.

This is particularly important for First Nations children, who are already over-surveilled by police, child protection systems, schools and courts. Bail law must not create another pathway for unmet need to be reframed as risk and for the criminal legal system to be used as a tool of criminalisation for First Nations children.

## Bail conditions, electronic monitoring and bail support

Onerous and/or inappropriate bail conditions can become a predictable pathway back into custody. Conditions that are too numerous, confusing, culturally unsafe or unrealistic do not support positive outcomes for the accused, the police, the courts or the wider community.

Bail conditions must be culturally appropriate, necessary, proportionate to a specific identified risk and capable of being complied with by the person in their actual circumstances. This is especially important for children and for people with disability, cognitive impairment, trauma, unstable housing, family responsibilities or limited access to transport.

For First Nations children, conditions must also be assessed for their impact on that child's connections to their culture, family, community and Country. Unless absolutely necessary, conditions should not prevent a child from attending cultural obligations, seeing family, accessing community supports, or maintaining relationships that keep them safe and connected.

Moreover, electronic monitoring should not be available as a bail condition for children. It is a carceral technology that extends the prison into the home, family and community. For children, particularly First Nations children who are already over-policed and over-surveilled, electronic monitoring risks stigma, shame, anxiety, sleep disruption, family conflict, technical breach and further criminalisation. For children with trauma, disability, cognitive impairment or mental health needs, these risks are even more acute. The use of electronic monitoring must be understood within the broader human rights context of child carceral systems, where punitive technologies and practices too often expose children to degrading treatment, isolation, restraint and harm.

## Investment

Legislative reform will not reduce remand unless it is matched by immediate, recurrent and needs-based investment in the supports that make bail possible.

The ACT Government should fund and expand the Ngurrumbai Bail Support Program, including a dedicated youth stream for Aboriginal and Torres Strait Islander children, and invest in a broader Aboriginal community-controlled bail support ecosystem. This should include properly resourced

Aboriginal and Torres Strait Islander legal services, Aboriginal field officers, youth workers, social workers, disability advocates, mental health and alcohol and other drug support, safe and stable accommodation, transport, family support, social and emotional wellbeing support, cultural support, family violence prevention and response, and throughcare. It should also include funding for the Galambany Court to hear bail applications, Sunday bail sittings, and First Nations-led socio-cultural background reporting so that courts and authorised officers have practical, culturally grounded options before them at the point bail is decided. This is not ancillary to bail reform; it is the infrastructure that allows a person, particularly a child, to remain safely connected to family, culture, community, education, health care and Country while presumed innocent.

The value of this investment is already clear. The Jumbunna Institute's Final Report into the overrepresentation of First Nations people in the ACT criminal justice system<sup>12</sup> found that, in 2022–23, Ngurrumbai developed 271 bail plans, with 229 clients granted bail — a success rate of 85 per cent. The same report recommended that the ACT Government expand Ngurrumbai to provide services to children and young people.

The lesson is straightforward: when First Nations people are supported to put forward workable bail plans and meet realistic conditions, remand can be reduced. Conversely, where housing, therapeutic care, disability support, transport, family support or culturally safe reporting options are unavailable, the system too often converts unmet need into alleged risk.

The ACT Government must ensure that lack of services is never treated as a reason for remand. Bail support should be flexible, culturally safe and community-based, including culturally safe alternatives to police-station reporting and proportionate responses to technical or accidental non-compliance. Remand must not be used as crisis accommodation, child protection intervention, disability support, mental health care or behaviour management.

## Proposed section 23: pregnant people

Proposed section 23 requires decision-makers to consider the likely effect of custody on a pregnant accused, the likely effect of custody on the unborn child after they are born, and the likely effect of complying with bail conditions on the accused.<sup>13</sup>

Change the Record and ANTAR support the inclusion of section 23 in the Bill. The impacts of parental incarceration are profound for children and families, and particularly for First Nations children whose separation from parents and caregivers can disrupt connection to culture, Country, family and community. Pregnancy must never be treated as a factor that increases risk or justifies custody. It should only operate as a factor in favour of bail, care and support.

The Bill should make this clear in the legislation itself. Where a pregnant person needs housing, health care, family violence support, disability support, perinatal care, cultural support or family

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<sup>12</sup> Chris Cunneen, Fiona Allison, James Beaufils, Tatiana Corrales and Ayse Selcuk, *Independent Review into the Overrepresentation of First Nations People in the ACT Criminal Justice System: Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System* (Final Report, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, July 2025): 293–296.

<sup>13</sup> *Bail Amendment Bill 2026* (ACT), cl 10, proposed s 23.

support, the state must provide those supports in community. Custody should never be used as a substitute for care.

## Proposed section 23A: victim safety, family violence and procedural fairness

Change the Record and ANTAR recognise the importance of safety for victim-survivors, including First Nations women, children and families experiencing family violence. Change the Record's work includes ending family violence against First Nations women and children, and we reject any framing that pits victim-survivor safety against the rights of accused people. Both must be held together.

Proposed section 23A expands the mechanism by which victims can express concern about the need for protection from violence or harassment, and by which primary victims may provide other information about the accused person to a relevant justice agency.<sup>14</sup> Proposed section 22A also requires decision-makers to consider whether the offence is a family violence offence, the likelihood of the person using family violence if released on bail, and how to manage that risk.<sup>15</sup>

We support bail decision-making that takes victim-survivor safety seriously. However, bail decision-making must remain fair, evidence-based and focused on the statutory risks relevant to bail. Where victim concerns or other information are provided to the court, safeguards are needed to ensure that untested, irrelevant or prejudicial material does not unfairly drive remand, especially for children and First Nations people.

The Bill should make clear that any information provided under victim-related provisions must be directly relevant to the bail decision, must be handled consistently with procedural fairness, and must not broaden bail into punishment before conviction. Where information cannot be disclosed because of safety concerns, the court should adopt safeguards that protect the victim-survivor without denying the accused person a fair opportunity to respond to the substance of the concern.

The ACT Government should also invest in First Nations-led, culturally safe family violence prevention and response. A carceral response alone will not end family violence. Safety requires housing, healing, accountability, early support, community-led prevention, and services designed with and for First Nations women, children, families and communities.

## Data, monitoring and implementation

The ACT Government must collect and publish detailed bail and remand data. Without transparent data, the Government cannot know whether this Bill is reducing remand, reducing racial disparity or improving outcomes for children.

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<sup>14</sup> *Bail Amendment Bill 2026* (ACT), cl 10, proposed s 23A.

<sup>15</sup> *Bail Amendment Bill 2026* (ACT), cl 10, proposed s 22A(j)-(k).

The ALS has recommended that the ACT Government collect and regularly publish data on bail applications, bail decisions by all bail decision-makers including police, and bail offences, disaggregated by Aboriginal and Torres Strait Islander status, age and gender. Change the Record and ANTAR support this recommendation.

The Government should also commission an independent, First Nations-led evaluation of the reforms within two years of commencement, with particular attention to whether the reforms have reduced the number of Aboriginal and Torres Strait Islander children and adults on remand.

Implementation must also include:

- Mandatory training for all bail decision-makers on proposed sections 22B, 22C, 22D and 23;
- Guidance developed by Aboriginal Community Controlled Organisations and First Nations experts;
- Funding for defence lawyers, Aboriginal field officers, youth workers, social workers, disability advocates and culturally safe bail support;
- Community legal education so Aboriginal and Torres Strait Islander people know how the provisions should operate; and
- Mechanisms for review where decision-makers fail to properly consider the new provisions.

## Conclusion

The *Bail Amendment Bill 2026* contains reforms that could support better bail decision-making for First Nations children and adults. But consideration is not the same as transformation.

The ACT Government must not settle for a bail framework that names culture, trauma, disability, family and childhood, while still allowing children to be remanded because services are missing, bail conditions are unrealistic, or reverse-onus tests remain in place.

For First Nations children to be safe, they must be held by family, community, culture and care, not cages. Bail reform must reduce remand, reduce surveillance and reduce the reach of carceral systems into First Nations lives. It must be backed by self-determined and sustainable First Nations-led supports that allow children and adults to remain connected, safe and free while they are presumed innocent.

Change the Record and ANTAR urge the Committee to recommend that the Bill be strengthened in line with the recommendations in this submission.

For more information on this submission, please contact:

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