



Submission cover sheet

Inquiry into the Bail Amendment Bill 2026

Submission number: 006

Submitter: ACT Aboriginal & Torres Strait Islander Children and Young People Commissioner

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Standing Committee on Legal Affairs
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601



OFFICE FOR ACT ABORIGINAL
& TORRES STRAIT ISLANDER
CHILDREN & YOUNG PEOPLE
KEEPING OUR KIDS STRONG
IN FAMILY & CULTURE

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

Submission to the Inquiry into Bail Amendment Bill 2026 – ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner.

Dear Committee Secretary,

Firstly, I wish to acknowledge and pay my deepest respect to the Ngunnawal people as the traditional custodians of the land that we live and work on. We thank the local community elders for their wisdom and guidance. We also acknowledge and value the Aboriginal and Torres Strait Islander children and young people in the community, who continue to be the focus of our work every single day.

I write to you as the Acting ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner.

The Aboriginal and Torres Strait Islander Children and Young People Commissioner (the Commissioner) is an independent statutory role dedicated to advocating for the rights and interests of Aboriginal and Torres Strait Islander children and young people in the ACT. This role was established following a recommendation from the Our Booris Our Way Review and staunch advocacy by the local ACT Aboriginal and Torres Strait Islander community.

I welcome the Bail Amendment Bill (The Bill) and the much-needed changes to recognise the unique circumstances of Aboriginal and Torres Strait Islander people, particularly our children and young people. Being remanded in custody for Aboriginal and Torres Strait Islander children (young people) is incredibly harmful to their cultural, social and emotional wellbeing.

This office is seeing significant over representation of Aboriginal and Torres Strait Islander children (young people) detained in Bimberi Youth Justice Centre. A steady increase over the first half of 2026, has at times seen over 50% representation of our young people, which has been incredibly alarming. Most of these young people have not been sentenced. The over representation of our children in the youth justice system is the result of deeply engrained racism at all systemic levels, disadvantage and intergenerational trauma.

Office of the ACT Aboriginal & Torres Strait Islander Children & Young People Commissioner

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The over representation of Aboriginal and Torres Strait Islander children (young people) in Bimberi is not the sole responsibility of the ACT Children's Courts refusing bail; however, it is the juncture at which the child's (young person's) right to liberty is decided. It has become clear to this Office that some children (young people) are not provided adequate legal advice and/or do not have the capacity to understand the legal advice provided. This makes it very difficult for our young people to make an informed decision about applying for bail. Some young people have even expressed to this Office that being detained in Bimberi, is sometimes easier, as they find their bail conditions too onerous to comply with.

Care criminalisation continues to disproportionately impact Aboriginal and Torres Strait Islander children (young people); it is evident to this Office that children (young people) who are placed in residential care settings who may be experiencing a mental health crisis or exhibiting trauma related behaviours are experiencing care providers opting to call the police instead of providing a therapeutic response to them. Our children who are subjected to residential care are experiencing significant systemic harm as a result of being raised and living in an institution. This Office welcomes the *Bail Amendment Bill 2026* recognising the disproportionate impact and harm children (young people) on care and protection orders experience in that statutory system.

This Office continues to advocate for culturally safe and therapeutic responses being provided to children and young people, as history has proven, detaining children and young people in custody and entrenching them in the youth justice system only compromises their ability to rehabilitate and may further undermine community safety.

In combination s22B and s22D of The Bill focuses more on therapeutic responses for Aboriginal and Torres Strait Islander young people, which considers the harm done to our children (young people) by detaining them, and recognises the importance of Connection to Country, Community and Culture.

This Office welcomes The Bill if implemented in its current form, and we would expect more Aboriginal and Torres Strait Islander children (young people) will be afforded a culturally grounded and therapeutic response when applying for bail, rather than detention.

The *Standing Committee on Justice and Community Safety (the Committee)*, made several recommendations in the report on the *Inquiry into the administration of bail in the ACT (2024)*¹ and received several submissions relevant to Aboriginal and Torres Strait Islander children and young people. Some of the recommendations made in the report, would complement the amendments being proposed to the Bail Act, to ensure greater outcomes for Aboriginal and Torres Strait Islander children and young people.

The Ngurrambai Bail Support Program², mentioned in several submissions identified it as a highly successful program. The program is delivered by the Aboriginal Legal Service and funded by the Act Government; however, it is not funded to cover young people. We support the Committee's view that the program should be expanded to meet the needs of

¹ [Report-Inquiry-into-the-administration-of-bail-in-the-ACT-with-the-dissenting-report-by-Mr-Cain.pdf](#)

² [Bail - Aboriginal Legal Service \(NSW/ACT\) Limited](#)

Aboriginal and Torres Strait Islander children and young people. We also strongly support recommendations 8, 10 and 15.

The ACT Law society recommended in their submission that data be made publicly available, for evidence-based decisions making; with data breakdown including among other factors, age and Aboriginal and Torres Strait Islander status.

The ACT Government is a signatory to the National Agreement on Closing the Gap. Priority reforms one to four, includes increasing shared decision making, building the Aboriginal Community Controlled Organisation sector, increasing access to data and information at a regional level and improving Indigenous Data Sovereignty. These factors should be recognised in establishing a monitoring and evaluation process.

Whilst this Office welcomes the *Bail Amendment Bill 2026*, specifically the amendments relevant to Aboriginal and Torres Strait Islander persons, children and young people, it is important not to overlook the evidence and submissions that relate to diversion, therapeutic support and rehabilitation. The Australian and New Zealand Children's Commissioners, Guardians and Advocates³, have provided numerous recommendations individually and collectively to Commonwealth and State Governments on the need for early intervention for vulnerable children in contact with the justice system.

Especially for Aboriginal and Torres Strait Islander children and young people there needs to be increased cultural connection to assist in improving safety and wellbeing. Greater access to education and employment opportunities may assist in reducing reoffending. The report, by the former National Children's Commissioner, 'Help Way Earlier!' How Australia can transform child justice to improve safety and wellbeing⁴, also reiterates the need for early intervention.

Culturally appropriate and Aboriginal lead diversion programs, for Aboriginal and Torres Strait Islander young people, need to be developed and funded to increase the opportunity for courts to divert young offenders away from remanding them into full time detention. Importantly any such support programs must be co-designed with the Aboriginal and Torres Strait Islander community.

Systemic bias and ensuring equitable treatment for Aboriginal and Torres Strait Islander persons should also be a consideration in enacting the legislation, especially in this current environment. This may require a more iterative training process for all professionals involved in enacting this legislation, to maintain the consistent efforts required to overcome individual and systemic bias in decision making.

Recommendations:

1. That comprehensive awareness training on these amendments for legal professionals be mandatory across the ACT.

³ <https://www.hrc.act.gov.au/childrenyoungpeople/do-you-work-with-kids,-teens,-or-young-people/anzccga-reports>

⁴ <https://humanrights.gov.au/resource-hub/children-and-youth-rights/help-way-earlier!-transforming-child-justice-for-safety-and-wellbeing>

2. That a process be established, with Aboriginal and Torres Strait Islander involvement to measure the impact and progress of the implementation of the amendments and ensure they are translating to practice as intended.
3. That a baseline data set be considered for measuring the effect of the implementation, this process being co-designed with the Aboriginal and Torres Strait Islander community and including a baseline for children (young people) also.

Yours sincerely

Barbara Causon

Acting ACT Aboriginal and Torres Strait Islander Children & Young People Commissioner