



Submission cover sheet

Inquiry into the Bail Amendment Bill 2026

Submission number: 015

Submitter: ACT Government

Date authorised for publication: 24 June 2026



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Government

Government Submission

**ACT Legislative Assembly Standing Committee on Legal Affairs
Inquiry into the Bail Amendment Bill 2026**

June 2026

Justice and Community Safety Directorate

The ACT Government welcomes the opportunity to provide a submission to the Standing Committee on Legal Affairs' inquiry into the Bail Amendment Bill 2026 (the Bill).

Background

Bail is a fundamental part of the criminal justice system. It requires decision-makers to balance complex and sometimes competing considerations, including: the safety of victims, witnesses and the broader community; the rights of accused people (e.g., the presumption of innocence and the right to liberty); the need to maintain confidence in the administration of justice; avoiding unnecessary pre-trial detention (where risks can be managed safely and appropriately in the community); and recognising the particular circumstances of vulnerable accused people.

The ACT Government recognises that bail decisions have significant consequences. For victims and their families, bail decisions can affect immediate safety, wellbeing and confidence in the justice system. For accused persons and their families, a decision to refuse bail can result in a loss of liberty, disruption to housing, employment, education, caring responsibilities and access to support, before a person has been convicted of an offence. Bail decisions also have broader consequences for the justice system, including the use of custodial resources, rates of remand, compliance with bail conditions, and the overrepresentation of Aboriginal and Torres Strait Islander people in custody.

To respond to these challenges, on 2 December 2025, the Attorney-General announced that the ACT Government would introduce a bill to amend the *Bail Act 1992* (Bail Act) in 2026 that would strengthen the statutory framework for bail decision-making.

The Attorney-General's announcement followed a public consultation process with the release of the discussion paper, *Review of decision-making criteria in the Bail Act 1992*, on the [YourSay website](#) in May 2025. The consultation process reflected the diverse and sometimes competing views held by stakeholders and the community about bail. Stakeholder submissions highlighted the inherent tensions between the interests of victims, interests of the accused person, and interests of community safety and justice integrity. The ACT Government's response to this consultation was guided by the need for reforms that carefully balance these interests, while upholding human rights, maintaining procedural fairness, and judicial independence and discretion.

The development of the Bill also took into account a petition seeking changes to the bail regime lodged on 24 September 2025 by Mr James Milligan MLA (E-PET-041-25). The [petition](#) was also formally [responded](#) to by the ACT Government on 12 December 2025.

The petition raised concerns about reoffending while on bail, public trust in the bail system, community safety, support for vulnerable young people and families, early intervention and rehabilitation, and the need for a system that protects the community while upholding the rights of accused people and victims. The ACT Government acknowledges that these are significant and legitimate community concerns. They reflect the broader challenge of bail reform: ensuring that decision-makers have the right information to assess and manage risk, while maintaining the

presumption of innocence, procedural fairness, judicial independence and consistency with human rights.

The [Bill](#) was introduced in the Assembly on 6 May 2026. A detailed [explanatory statement](#) was tabled with the Bill, and the Government encourages the Committee and stakeholders to refer to the explanatory statement for more detail on the intended operation of the Bill and human rights implications of the reforms.

In developing the Bill, the ACT Government has heard a wide range of views from community members, legal stakeholders, victim-survivor advocates, Aboriginal and Torres Strait Islander organisations, justice agencies, human rights stakeholders and service providers. Those views demonstrate the complexity of bail reform and the importance of avoiding both overly punitive responses that increase unnecessary remand and approaches that fail to respond adequately to risks to victim and community safety.

Objectives of the Bill

The Bill progresses important reforms to the way bail decisions are considered by courts and authorised officers (police) in the ACT by codifying the matters decision-makers must consider when deciding whether to refuse or grant bail, and if bail is to be granted, any conditions to be imposed on the person.

The reforms are designed to ensure decision-makers are directed to the relevant matters that should inform a bail decision, based on the information that is available or readily accessible to them at the time.

The Bill is a targeted reform to the statutory decision-making framework for bail. It is not intended to either increase or decrease remand as an end in itself. Rather, the purpose of the Bill is to ensure bail decisions are informed by the right matters, made consistently, and understood by accused people, victims and the broader community. The better informed the decision, the greater likelihood there is for persons who present the greatest risk to be managed appropriately, for detention to be limited to where it is necessary, and for any conditions applied to someone released on bail to be appropriate for the circumstances and level of risk.

The Bill seeks to achieve this by clarifying the core matters that bail decision-makers must consider, and by codifying additional relevant factors that may already be considered in practice. These include factors relevant to: victim and community safety; the accused person's history of compliance with bail and court orders; family violence risk; and the particular circumstances of vulnerable accused people, including Aboriginal and Torres Strait Islander people, people with disability or health conditions, children and pregnant people.

The ACT Government considers that clearer statutory guidance will support more principled and transparent bail decisions, while preserving the independence and discretion of decision-makers. The Bill does not prescribe outcomes, create a hierarchy of considerations, or make any single

factor determinative. Decision-makers will continue to assess each matter on its individual circumstances and weigh the relevant considerations according to the evidence and information available in each case.

The Bill also reflects the ACT Government's commitment to a human rights-consistent bail system. A human rights approach is not focused solely on the rights of accused people. Victims and community members also have human rights including the right to life and the right to security of person. The rights and interests of victims, accused people, and the community are not required to be treated as mutually exclusive. Rather, a human rights approach requires the framework for decision-making to properly recognise all of these rights and interests, and to support decisions that are proportionate, procedurally fair and directed to the management of real risk.

Summary of Reforms

The Bill seeks to strengthen the statutory framework for bail decision-making by:

- clarifying the core matters relevant to bail decisions for adults and children;
- codifying relevant factors that decision-makers may already consider, so they are considered more consistently;
- improving transparency about the matters that inform bail decisions;
- supporting individualised decision-making by allowing decision-makers to weigh each matter according to the circumstances of the case;
- strengthening victim safety considerations, particularly in family violence matters;
- expanding the ability of victims to provide relevant safety information and receive bail notifications;
- recognising the particular circumstances of vulnerable accused people, including Aboriginal and Torres Strait Islander people, people with disability or health conditions, children and pregnant people;
- supporting proportionate and practical bail conditions that are no more onerous than necessary to manage risk;
- promoting human rights-compatible decision-making by balancing community safety, victim safety, the rights of accused people, the presumption of innocence and the interests of justice; and
- preserving discretion, ensuring the decision-maker remains responsible for balancing all relevant matters and reaching the appropriate decision in each case.

In addition, the Bill makes a number of minor or structural changes to the Bail Act to make it easier to understand and apply.

Mandatory consideration of core matters, and general and specific factors

The Bill updates and expands the matters that decision-makers *must* consider when deciding whether to grant or refuse bail. Many of these matters *may* already be considered in practice. Prescribing them as mandatory considerations strengthens the decision-making process, while allowing decision-makers to weigh those matters according to the circumstance of each case. By clearly identifying the matters that must be considered, the Bill helps accused people, victims and the broader community understand how bail decisions are made. In doing so, the Bill reinforces that bail decisions are structured and principled. They are made following an assessment of risk, the rights of the accused, the safety of victims and the community, and the interests of justice.

The Bill lists the **core matters** and **general factors** relevant to the core matters that decision makers must consider when making bail decisions in relation to adults and children accused of an offence. In addition, the Bill sets out **specific factors** decision makers must consider when making decisions in relation to accused persons who have a specific vulnerability.

New section 22 sets out the **core matters** a decision maker must consider when making a decision about the grant of bail to a person. In relation to accused persons who are adults, new section 22(1) provides that the decision-maker must consider:

- (a) the likelihood the adult will appear in court in relation to the offence;
- (b) the likelihood the adult, while released on bail, will commit an offence, harass or endanger the safety or welfare of anyone, or interfere with evidence, intimidate a witness or otherwise obstruct the course of justice in relation to the adult or anyone else; and
- (c) the interests of the adult.

In relation to bail decisions relating to children, the decision maker must consider, under new section 22(2):

- (a) as a primary consideration, the best interests of the child;
- (b) the likelihood the child will appear in court in relation to the offence; and
- (c) the likelihood the child, while released on bail, will commit an offence, harass or endanger the safety or welfare of anyone, or interfere with evidence, intimidate a witness or otherwise obstruct the course of justice in relation to the child or anyone else.

These matters are all currently mandatory considerations in the Bail Act (see current sections 22 and 23).

New section 22A sets out **general factors** that a bail decision maker must take into account, in considering the matters in section 22, in addition to any other matter the bail decision maker considers relevant. Many of these factors are currently discretionary factors in the Bail Act. The Bill retains these factors and makes them mandatory considerations:

- the nature and seriousness of the offence [current section 22(3)(a) of the Bail Act];

- the person's character, background and community ties [current section 22(3)(b)];
- the likely effect of a refusal of bail on the person's family or dependants [current section 22(3)(c)];
- the strength of the case against the person [this adapts current section 22(3)(e) which refers to strength of the evidence];
- the person's need for protection [this is currently an example after section 22(1)(c)];
- the period that the person may be held in custody if bail is refused, and the conditions under which the person would be held [this is currently an example after section 22(1)(c)]; and
- whether the person was released on bail at the time of the offence [similar to consideration of any previous grants of bail to the person under current section 22(3)(d)].

Additional matters have been included in new section 22A following community consultation, and are designed to assist in preventing further offending and protecting victims, particularly where family violence is involved:

- the accused's history of compliance with bail undertakings, bail conditions, and any other orders of an Australian court;
- the behaviour of the person towards a primary victim of the offence, or a family member of a primary victim;
- whether the offence is a family violence offence; and
- the likelihood of the person using family violence if released on bail and how to manage any the risk of the person using family violence (new).

An accused person's history of compliance with bail conditions and other court orders (including whether the person was on bail at the time of the alleged offending), is information that can assist decision-makers to assess risk in a practical and evidence-based way. In some cases, a history of repeated breaches may indicate that release on bail with conditions is unlikely to manage risk. In other cases, it may indicate that different or clearer conditions, or additional support, are required.

The Bill also requires decision-makers to consider the accused person's behaviour towards a primary victim or a primary victim's family member, whether the offence is a family violence offence, and the likelihood of further family violence if bail is granted. These matters are relevant because family violence often involves patterns of coercion, intimidation, escalation and control. Requiring these matters to be considered helps ensure bail decisions reflect the real-world risks faced by victims and their families, and whether those risks can be safely managed through bail conditions.

New sections 22B, 22C, 22D and 23 require decision-makers to consider additional **specific factors** where the accused person may be particularly vulnerable because they are an Aboriginal or Torres Strait Islander person, a person who has a disability or health condition (including mental illness), a child, or a person who is pregnant.

Royal Commissions and other inquiries have demonstrated that vulnerable accused people are often over-represented in the criminal justice system and may have special needs that are not being met. Across Australia, unsentenced prisoner numbers have increased significantly in recent years, with disproportionate impacts on Aboriginal and Torres Strait Islander people, people with disability and people experiencing mental illness.

The Bill responds by requiring decision-makers to consider the particular risks, needs and circumstances of vulnerable accused people before deciding whether bail should be granted, refused, or granted with conditions. The inclusion of these provisions in the Bill is intended to have a beneficial effect for these individuals, in recognition of their particular vulnerabilities and wellbeing needs. However, this does not mean that vulnerable accused people automatically receive bail. It means their circumstances must be properly considered. This avoids a one-size-fits-all approach and supports decisions that are fair, practical and informed by the available evidence.

For Aboriginal and Torres Strait Islander accused people, under new section 22B, bail decision-makers must consider the following factors:

- the risk of harm that custody may pose to the person as an Aboriginal or Torres Strait Islander person;
- the likely effect of being held in custody on the person's ability to maintain their connections to culture, family, Elders, communities and Country;
- any relevant matter in the person's history, culture or circumstances, including the ongoing effect of any of the following: trauma, including inter-generational trauma, abuse, neglect, loss or family violence; being dealt with under a child welfare law; or social or economic disadvantage, including homelessness or unstable housing arrangements;
- if the person has carer responsibilities, including as a parent or guardian of an Aboriginal or Torres Strait Islander child, the effects of bail conditions or custody on the person's ability to discharge their responsibilities and on the person being cared for; and
- any other significant cultural issue or obligation.

The Bill adopts the definition of Aboriginal and Torres Strait Islander person from the *Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022* and section 3 of the *Bail Act 1977* (Victoria). Guidance material provided by the Judicial College of Victoria provides that it is sufficient to satisfy the meaning of 'Aboriginal and Torres Strait Islander people' under the Victorian Bail Act, regardless of: whether the person's connection to their culture has been

intermittent throughout their life; whether the person has only recently connected to or discovered their culture or heritage; or when the person first discloses that their status.

New section 22B responds to recommendations of the Australian Law Reform Commission, the ACT Legislative Assembly's Standing Committee on Justice and Community Safety, and the Jumbunna Institute's 2025 *Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System*.

New section 22C acknowledges the vulnerability of individuals with a disability or health condition in the criminal justice system and the need to take their disability or health related needs into account when making decisions. Specifically, where an accused person self-reports or appears to have a disability or health condition, section 22C requires a decision maker to consider:

- the treatment and support required to manage the disability or health condition; and
- the effect of the disability or health condition on the person's ability to understand their rights and obligations, make and communicate decisions, and represent their interests.

The Bail Act already requires additional specific factors to be considered in relation to children, including, as a primary consideration, the best interests of the child, and the youth justice principles in section 94 in the *Children and Young People Act 2008* (including that a child or young person may only be detained in custody for an offence as a last resort and for the minimum time necessary).

The Bill retains these mandatory considerations and expands upon them, recognising that children are still developing and that custody can carry significant long-term consequences. Decision-makers must, under new section 22D, consider matters such as family relationships, stable accommodation, education, training, rehabilitation, and the risk that time in custody may increase future involvement with the criminal justice system.

This is not about allowing children to avoid accountability. It is about ensuring accountability is age-appropriate, fair and directed towards rehabilitation, because that is what best supports long-term community safety.

Where the accused person is pregnant, under new section 23, decision-makers must consider the likely effect of custody on both the accused person and the child after birth. This specific provision recognises the particular vulnerability of pregnant people in the criminal justice system and the need to take their pregnancy related needs and the needs of their child (once born) into account when making decisions.

Strengthening victim participation

While the Bail Act already requires consideration of risks to others, consultation showed that more could be done to ensure victim safety concerns are clearly heard, appropriately considered and responded to prior to bail being granted. The Bill creates a clearer pathway for victims to raise concerns about violence, harassment or intimidation.

Current 23A of the Bail Act sets out how a victim's concerns about the need for protection are to be used. The Bill makes changes in relation to the input of victims for bail decisions by expanding *who* may make representations, the *nature* of the representations, and *how* these representations are to be used for the purpose of a bail decision (new section 23A and new definition of 'victim' and 'primary victim').

Specifically, the Bill broadens the definition of *victim* to better align with the *Victims of Crime Act 1994* (VOC Act), recognising that harm may also be experienced by family members, dependants and witnesses. The Bill also allows for a *primary victim* to nominate a representative to make representations and receive notifications on their behalf to provide for a primary victim to be able to be heard and informed, in cases where their capacity, safety concerns or other factors such as cultural expectations make it difficult for them to make representations or give information themselves.

The Bill clarifies that harm is not limited to physical injury and may include mental injury, emotional suffering, economic loss and serious impacts on legal rights.

The Bill also includes a definition of violence and harassment (new section 23A(5)) to clarify the broad scope these representations can cover, including to address concerns raised that a victim cannot make representations about the need for protection from violence or harassment to family members or pets of the victim. This definition explicitly provides that violence and harassment includes family violence, personal violence and violence against or harassment of a victim's family member or pets.

The Bill also permits primary victims to make representations on factors relevant to bail decisions more generally in recognition of the special insight a primary victim might have into a defendant's patterns of behaviour or escalation that may not be apparent from the charge or criminal history alone.

Additionally, the Bill removes the requirement that any representation made by a victim regarding their need for protection from violence or harassment be put to the court if the victim has indicated that they do not want this to occur. This ensures the prosecution is not required to communicate the concerns expressed where doing so might create more risks for a victim.

These changes, in conjunction with the new general factors that must be considered relating to the accused's behaviour towards a primary victim and the likelihood of an accused using family violence if released on bail, will ensure the safety and wellbeing of victims is central to bail decisions.

Amendments to section 17 of the Victims of Crime Act

Section 17 of the VOC Act sets out obligations on a relevant justice agency to help inform decision-makers to make bail decisions that take into account a victim's safety concerns. Specifically, section 17(1) requires that, prior to making a decision on bail, the court *must* be notified of any

victim concerns about the need for protection from the accused that the victim has expressed to DPP or police.

However, new section 23A will give the prosecution a *discretion* not to make submissions to the court regarding a victim's representations regarding concerns about the need for protection in circumstances where the victim does not wish submissions to be made, including because doing so may increase safety risks to the victim.

The Bill therefore includes amendments to address the inconsistency of new section 23A of the Bail Act with existing section 17(1) of the VOC Act (see clause [1.2] of Schedule 1 to the Bill).

The Victims of Crime Commissioner has identified concerns about unintended consequences of these amendments, namely that it could operate to diminish victims' rights under the Charter of Victims' Rights. The ACT Government will address this through government amendments to be moved during debate of the Bill.

The Justice and Community Safety Directorate will continue to work closely with the Victims of Crime Commissioner to develop appropriate government amendments to ensure victims are appropriately consulted about any safety concerns they may have, and whether they want these concerns to be communicated to a bail decision-maker.

No obligation on decision-makers to investigate all considerations

The Bill does not require decision makers to investigate all matters listed in new sections 22A to 23 in every bail decision. The purpose of the amendments is to ensure that relevant matters are brought within a clear and consistent statutory framework, while preserving the practical and time-sensitive nature of bail decisions; decisions which are necessarily based on the information that is before the decision-maker (i.e., information that is observable, disclosed or reasonably available at the time).

The Bill is not intended to convert bail proceedings into a broader inquiry into an accused person's circumstances. Rather, it codifies matters that decision-makers can already take into account, and in many cases already do take into account, so that relevant risks, needs and circumstances are considered consistently and transparently.

A decision-maker will only be required to consider a matter where it is relevant to the particular case. For example, where the information available to the decision-maker indicates that the accused person has never previously been subject to bail undertakings, bail conditions, or any other court orders, the decision-maker is not required to consider the person's history of compliance with those matters. Similarly, a decision maker is not required to consider the child-specific 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 require all matters in sections 22A to 23 to be considered in every case and does not require decision-makers to undertake investigations into each listed matter.

The Bill does, however, expect decision-makers to turn their minds to the relevance of listed matters where the information before them indicates they may arise. Where an authorised officer is the decision-maker, relevant information is expected to be obtained through ordinary and practical sources, including ACT Policing holdings, speaking with the accused person, completing ACT Policing intake and bail consideration forms, and speaking with the informant. This is not intended to be onerous or to require further inquiries with third parties where the information is not readily available.

In setting out the matters that decision-makers must consider when making bail decisions, the Bill is not designed to impose an obligation on decision-makers or informants to collect additional information. The onus is on the accused person to provide information relevant to their situation that may weigh in their favour. Where the accused person is unable to, or refuses to, provide relevant information, the decision-maker is only expected to consider information about those matters that is readily available.

In some cases, the relevant factors for a vulnerable accused 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.

For example, in relation to Aboriginal and Torres Strait Islander accused people, a decision-maker is not required to require proof of broad contextual matters, including the disproportionate harm experienced by Aboriginal and Torres Strait Islander people in custody or the importance of maintaining connections to culture, family, Elders, communities and Country.

Similarly, in relation to children, some matters reflect general principles about children's vulnerability, the importance of supportive relationships, stable accommodation, education and the risks associated with custody. These provisions are designed to remind decision-makers of the vulnerability of children and the importance of early intervention and rehabilitation, rather than to require separate inquiries or submissions to establish each general matter in every case.

The Bill will commence six months after notification to allow justice agencies and non-government stakeholders time to update forms, guidance, training and operational processes. This implementation period will support consistent application of the new framework by authorised officers, prosecutors, courts and relevant support services.

Conclusion

The Bill is a careful, targeted and proportionate reform to strengthen the quality and consistency of bail decision-making while avoiding both blanket punitive responses and reforms that could undermine victim and community safety.

The Bill strengthens the statutory framework for bail by clearly identifying the core matters and general and specific factors that decision-makers must consider, supporting structured, principled and practical decision-making based on the information available to the decision-maker at the time.

The ACT Government considers that the Bill strikes an appropriate balance between strengthening victim and community safety, upholding human rights, supporting transparency and confidence in bail decisions, and preserving the independence and discretion of decision-makers.

The ACT Government is grateful for the input from stakeholders that has informed the development of the Bill and welcomes the Standing Committee's inquiry and hearing further insights on the proposed reforms from justice and community stakeholders.