



Submission cover sheet

Inquiry into the Bail Amendment Bill 2026

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About the Justice Reform Initiative

The Justice Reform Initiative (JRI) is a national justice advocacy organisation, working to reduce over-incarceration in Australia, and promote a community in which disadvantage is no longer met with a default criminal justice system response. The JRI alliance includes people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system. The JRI is committed to reducing Australia's harmful and costly reliance on incarceration. We seek to shift public discourse and policy away from building more prisons as the primary response of the criminal justice system and move instead to proven alternative evidence-based approaches that break the cycle of incarceration.

Our patrons include more than 130 eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal and Torres Strait Islander leaders, senior former judges including High Court judges, and many other community leaders who have added their voices to end the cycle of overincarceration in Australia.

The JRI's patrons in the Australian Capital Territory (ACT) are:

- **Professor Lorana Bartels (co-chair).** Professor of Criminology, Australian National University. Adjunct Professor of Law, University of Canberra and University of Tasmania.
- **Professor Tom Calma AO.** Former Chancellor, University of Canberra. Co-Chair, Reconciliation Australia. Former Aboriginal and Torres Strait Islander Commissioner and Race Discrimination Commissioner. 2023 Senior Australian of the Year.
- **Kate Carnell AO.** Former ACT Chief Minister. Deputy Chair, BeyondBlue. Former Australian Small Business and Family Enterprise Ombudsman.
- **Simon Corbell.** Former ACT Deputy Chief Minister, Attorney-General, Minister for Police and Emergency Services. Adjunct Professor, University of Canberra.

- **Dr Ken Crispin AM KC.** Former ACT Director of Public Prosecutions, Justice of the ACT Supreme Court and President of the ACT Court of Appeal.
- **Karen Fryar AM.** President of ACT Legal Aid Commission. Former ACT Magistrate, ACT Children’s Court Magistrate and Coroner of the ACT.
- **Neil Gaughan APM.** Former Deputy Commissioner of the AFP and former ACT Chief Police Officer.
- **Jodie Griffiths-Cook.** ACT Public Advocate and Children and Young People Commissioner, ACT Human Rights Commission.
- **Gary Humphries AO (co-chair).** Former ACT Chief Minister and Attorney-General. Former Senator representing the ACT in the Australian Parliament.
- **Rudi Lammers APM.** Former ACT Chief Police Officer.
- **Dr Michael Levy AM.** Public health physician with 24 years’ experience as a clinician for adult and youth detainees in New South Wales (NSW) and the ACT.
- **Dr Michael Moore AM PhD.** Former independent ACT Minister for Health and Community Care. Past President, World Federation of Public Health Associations. Distinguished Fellow, The George Institute, University of NSW. Adjunct Professor, University of Canberra.
- **The Honourable Richard Refshauge AM SC.** Former Justice of the ACT Supreme Court. Former ACT Director of Public Prosecutions.
- **Dr Helen Watchirs OAM.** Former President, ACT Human Rights Commission.

We are supported by our ACT Coordinator, Indra Esguerra.

Introduction

The Justice Reform Initiative (JRI) is grateful for the opportunity to present our position on proposed legislative reforms to the *Bail Act 1992* (ACT).

We note that the ACT Government released a discussion paper on the proposed legislative changes in 2025 and the JRI gave significant feedback on decision-making criteria in the legislation through that process. We are pleased to see that much of that feedback has been reflected in the Bail Amendment Bill 2026 (the Bill). We note that much of that feedback has been included in this submission.

The JRI suggests that, while improving the legislative frameworks in which decisions about bail are being made in the ACT is critical, there is also a strong and urgent need to increase community-based alternatives to remand and associated support services, and there is little point in improving one without the other. In particular, we note that there is still no bail support program in the ACT for non-Indigenous people or children and young people.

If we are increasing the number of people being released on bail, but not addressing the systemic issues that bring the accused persons into contact with the justice system, the cycle of disadvantage will remain unaddressed.

BACKGROUND ISSUES IN RELATION TO REMAND AND BAIL

It is of concern to us, nationally and locally, that the criminal justice system continues to disproportionately impact vulnerable people. This includes Aboriginal and Torres Strait Islander people, young people, and women; those with particular challenges, such as people living with mental illness and/or cognitive disability; people with alcohol and other drug (AOD) dependency; and people from other disadvantaged or marginalised groups. More information about the impacts of the criminal justice system on these groups is set out on the JRI [website](#).

The JRI is concerned about the consistent overrepresentation of vulnerable populations in the Alexander Maconochie Centre (AMC). The evidence shows that most people entering prison arrive there because of an underpinning cycle of poverty and/or disadvantage and that prison both exacerbates and entrenches a broader cycle of disadvantage.

The massive increase in the adult prison remand population over the last 10 years in Australia has been largely driven by an overly politicised approach to bail, with a strong emphasis on law and order and notions of minimising perceived risks to community safety. This has resulted in restrictive bail laws making it much more difficult for a person charged with an offence to be released on bail.¹

However, the over-use of remand does not make the community safer. It is a socially and financially costly policy response that ultimately increases the risk to community safety, by making further offending more likely due to the criminogenic nature of incarceration.² The JRI has also released a [position paper on bail](#) which give further background to a range of key related issues.³

As a core principle, it is worth noting that **the JRI believes that bail laws, processes and programs should be informed by an evidence-based approach that genuinely centres community safety**. Remanding people in custodial settings should only be used as a last resort for people who are waiting for their court hearing. Evidence-based alternatives that are community-led and managed outside of custodial settings are urgently required. This includes looking at appropriate diversion alternatives, such as access to AOD services,

¹ Schetzer, L & Sotiri, M (2024). *Reforming bail and remand*. Justice Reform Initiative, Australia.

² Heard, C, & Fair, H (2019). *Pre-trial detention and its over-use: Evidence from ten countries*. Institute for Crime & Justice Policy Research, 8.

³ Ibid.

mental health and disability support, holistic wrap-around case management, culturally-safe First Nations supports, and safe and secure accommodation.

People who do not receive bail and are remanded in custody suffer all of the hardships of incarceration, including disconnection and separation from family and community; loss of liberty, housing, employment, and identity; institutionalisation; de-humanisation; and the traumatic experience of imprisonment, before having been found guilty of an offence. There are also many similar impacts on the accused person's family and close contacts. People on remand are typically housed in high-security custodial environments, with limited (if any) access to programs and services. There is also strong evidence to suggest that even short periods of remand contribute to future offending.⁴

Furthermore, there is a significant financial public cost of remanding people in custody. Based on the total daily net operating cost (excluding capital costs) of detaining an adult in prison at \$574 per day in the ACT in 2024-25,⁵ this costs the ACT taxpayers around \$209,510 per year. For children or young people on remand, it costs the ACT Government \$4,149 per day to detain someone in Bimberi Youth Detention Centre – around \$1,514,385 per year.⁶ Reducing the numbers of people in prison on remand will result in considerable savings.⁷

Calls to reform bail have been a regular part of the advocacy and law reform landscape in Australia for decades. In recent times, the Queensland Productivity Commission,⁸ Coghlan review in Victoria,⁹ New South Wales (NSW) Law Reform Commission,¹⁰ and non-government organisations – such as the National Aboriginal and Torres Strait Islander Legal Services (NATSILS), Law Council of Australia and Institute of Public Affairs¹¹ – have all advocated for bail reform to reduce the number of people on remand, especially for people who are charged with non-violent offences.¹² The JACS Committee *Inquiry into the*

⁴ Sarre, R. (2018). How to reverse Australia's remand explosion. *Inside Story* (online, 29 April).

<<https://insidestory.org.au/how-to-reverse-australias-remand-explosion/>>. McMahon, M. (2019). *No bail, more jail?: Breaking the nexus between community protection and escalating pre-trial detention*. Research Paper No 3, Parliamentary Library & Information Service, Parliament of Victoria, August 2019, 3.

⁵ Productivity Commission (2026). *Report on Government Services (ROGS) 2025*, Corrective Services Tables, Table 8A.19.

⁶ Productivity Commission (2026). *ROGS 2026*, Youth justice services, Table 17A.20.

⁷ Ball, J. (2019). *Australia pays the price for increasing rates of imprisonment*. Committee for Economic Development of Australia.

⁸ Queensland Productivity Commission. (2019). *Inquiry into imprisonment and recidivism: Final report*.

⁹ Coghlan, P (2017). *Bail review – First advice to the Victorian Government, 3 April*; Coghlan, P. (2017). *Bail review – Second advice to the Victorian Government, 1 May*.

¹⁰ New South Wales Law Reform Commission (NSWLRC) (2012). *Bail*.

¹¹ National Aboriginal and Torres Strait Islander Legal Services (NATSILS). (2017). *Submission to the Australian Law Reform Commission's Inquiry into the Incarceration of Aboriginal and Torres Strait Islander peoples*, 4-11; Law Council of Australia (2018). *Justice Project Prisoners and detainees: Final report, Part 1*; Andrew Bushnell, A. Wild, D. (2016). *The use of prisons in Australia: Reform directions*. Institute of Public Affairs, 40-43, 63-64.

¹² See, for example, Queensland Productivity Commission 2019, n 8, xxxv.

administration of bail in 2024 also examined these issues, and the JRI endorses their many recommendations for reform.¹³

There is strong evidence of the efficacy of community-led approaches that address the social drivers of over-incarceration. We believe the ACT has the opportunity to lead the nation, in turning around our reliance on incarceration as a default response to disadvantage. We can invest in accessible, evidence-based systems of support in the community, where people at risk of imprisonment are given genuine opportunities to build productive and meaningful lives in the community.

Our 2024 report, *Alternatives to Incarceration in the ACT*,¹⁴ outlines a broad range of programs and changes that can be made to our criminal justice system to improve outcomes for individuals, our community and the Government in the longer term. Much of the content in this submission in relation to bail support and alternatives to remand has been sourced from that report. To better understand the context of bail, we set out the recommendations from that report in Table 1 below, across all of the points of contact with the criminal justice system.

¹³ ACT Legislative Assembly Standing Committee on Justice and Community Safety (2024). *Inquiry into the administration of bail*, vi-vii.

¹⁴ JRI (2024). *Alternatives to incarceration in the ACT*.

Table of Recommended Short, Medium, and Long-Term Actions To Break The Cycle of Incarceration

Holistic intervention and prevention	Positive policing and diversion	Bail support and alternatives to remand	Alternative court processes	In-prison programs and alternative detention models	Throughcare, reintegration and post-release support
Provide long-term funding for Yarrabi Bamirr Expand Strong Connected Neighbourhoods program Reinstate funding for Aboriginal Drivers Licensing Program Increased wrap around community service provision Adopt restorative practice approach to child protection	Expond the PACER program to meet community needs Introduce DFV co-responder model Review systemic racial discrimination in policing	New integrated bail support programs, such as the Victorian CISP Establish dedicated specialist case managers in Magistrates Court Increased beds and more client support for Justice Housing Program	Provide long-term funding for DASL Increased access to Restorative Justice (Phase 3) Expand DASL model to Magistrates Court Establish Neighbourhood Justice Centre	Dedicated alcohol and other drug rehabilitation programs in the AMC Implement a tertiary education strategy in the AMC (see Healthy Prison Review) Introduce NDIA officer into AMC Expand use of telehealth consultations in AMC (HPR) Expand programs and activities including to weekends in the AMC (HPR) Introduce Diagrama model for youth justice	More beds for Justice Housing Program Continued and increased Throughcare case management and supports for Bimberi and AMC Improve WWVP card system to lessen barriers to employment for people exiting prison
Recommendations for implementation as part of Breaking the Cycle Fund Short Term Medium Term Long Term					

Table 1: JRI recommendations to break the cycle of incarceration in the ACT¹⁵

Reducing remand goes hand-in-hand with more people being released into the community on bail. This requires complementary increases to bail support services and/or support designed to assist an accused person to successfully comply with their bail obligations.¹⁶ The principal aims of bail support are to reduce (re)offending while on bail, increase the likelihood of a person facing criminal charges appearing in court and provide an alternative to detention and remand. Research has shown that such programs can reduce reoffending (by 33%), increase compliance with bail conditions (by 95%),¹⁷ improve a range of other

¹⁵ JRI (2024). *Alternatives to incarceration in the ACT: Highlights paper*, 7.

¹⁶ Denning-Cotter, G. (2008). *Bail support in Australia*. Indigenous Justice Clearinghouse.

¹⁷ See eg Lulham, R. (2009). *The Magistrates' Early Referral into Treatment*. New South Wales (NSW) Bureau of Crime Statistics and Research; Klauzner, I. (2021). *An evaluation of the youth bail assistance line*. NSW Bureau of Crime Statistics and Research; Marchetti, E. (2021). *Evaluation of the Caxton Legal Centre Bail Support Program*. Griffith University.

social and health wellbeing measures relevant to the drivers of criminal justice system contact,¹⁸ and achieve cost savings, when compared to an absence of bail support.¹⁹

Bail support programs may also be combined with diversionary programs that seek to address underlying issues, such as harmful AOD use. These combined programs seek to provide an integrated approach to assisting people to obtain and remain on bail.²⁰

HIGH USE OF REMAND IN THE ACT

The JRI considers it essential to address the ACT's high use of remand, alongside the underlying causes for offending, is critical. **As at March 2026, 45% of adults in prison in the ACT were on remand slightly higher than the national average (44%).**²¹

Furthermore, in 2025, 59% of unsentenced adults in the ACT's prison were held on remand for three months or more, with 20% on remand for a year or more.²²

The number of people on remand in the ACT has been steadily increasing. Between 2023 and the March 2026 quarter, the number of unsentenced detainees rose by 16%, outstripping the national increase for this cohort (11%).²³

SOCIAL DETERMINANTS OF INCARCERATION

There are many vulnerable cohorts in the justice system who would strongly benefit from support systems and programs. As background for the Committee, we would like to highlight the 2023 research²⁴ by Associate Professor Ruth McCausland and Professor Eileen Baldry from UNSW which linked administrative data across a broad range of factors to identify the eight 'social determinants of justice' that can contribute to people being involved in the criminal justice system. Their analysis shows that a person's chance of being imprisoned is greatly increased by:

1. having been in out-of-home care
2. receiving a poor school education
3. being Indigenous
4. having early contact with police

¹⁸ Spratley, S., Donnelly, N. & Trimboli, L. (2013). *Health and wellbeing outcomes for defendants entering the Alcohol-MERIT program*. NSW Bureau of Crime and Statistics Research.

¹⁹ PricewaterhouseCoopers (2009). *Economic evaluation of the Court Integrated Services Program (CISP): Final report on economic impacts of CISP*; Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final report*.

²⁰ Willis, M. (2017). *Bail support: A review of the literature*. Australian Institute of Criminology.

²¹ Australian Bureau of Statistics (ABS) (2026). *Corrective services, Australia, March 2026 quarter*, Table 1.

²² ABS (2025). *Prisoners in Australia, 2025*, Table 14.

²³ ABS (2026), *Prisoners in Australia, 2026*, Table 5.

²⁴ McCausland, R. & Baldry, E. (2023). The social determinants of justice: 8 factors that increase your risk of imprisonment. *The Conversation*. See also McCausland, R. & Baldry, E. (2023). *Who does Australia lock up? The social determinants of justice. International Journal for Crime, Justice and Social Democracy*, 12: 37-53.

5. having unsupported mental health and cognitive disability
6. problematic alcohol and other drug use
7. experiencing homelessness or unstable housing
8. coming from or living in a disadvantaged location.

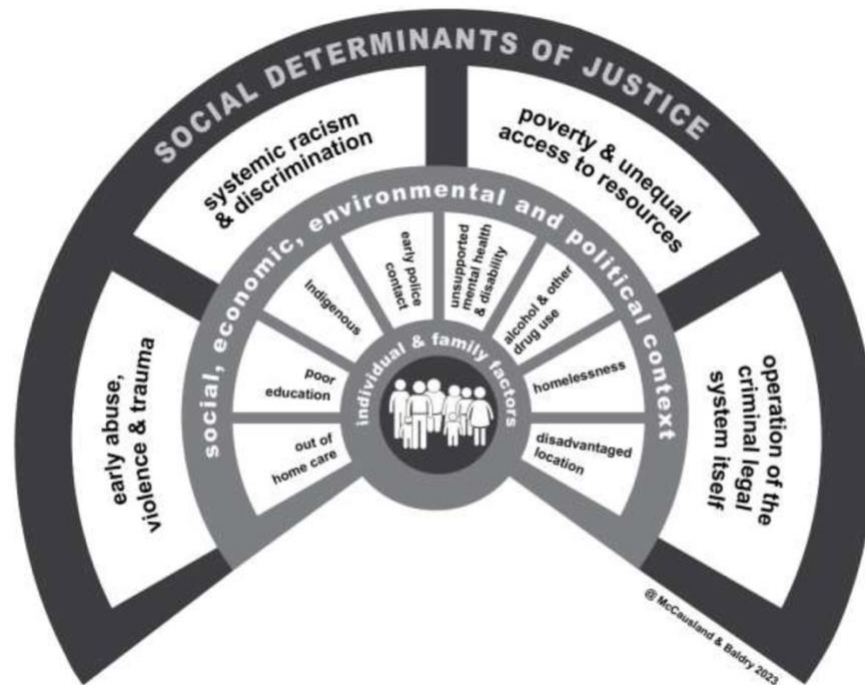


Figure 1: The social determinants of justice (McCausland & Baldry 2023)

Despite the best efforts of many community sector organisations, including a range of programs funded by government, it is clear that without systems reform and reform that addresses these social determinants, we will continue to see far too many people incarcerated, directly impacting their children and families.

INDIGENOUS OVERINCARCERATION, PARTICULARLY ON REMAND

The ACT consistently has the highest over-representation of Indigenous imprisonment in the country: Aboriginal and Torres Strait Islander adults are 23 times more likely to be in prison than the non-Indigenous adult population (the national average is 19 times).²⁵ NSW BOCSAR data also show that adult Aboriginal defendants are more likely to be refused bail by the police than non-Aboriginal defendants²⁶ and this would appear to be reflected in ACT remand statistics.

²⁵ ABS (2025). *Prisoners in Australia 2025*, Table 19.

²⁶ Klauzner, I., & Yeong, S. (2021). *What factors influence police and court bail decisions?* NSW Bureau of Crime Statistics and Research.

The over-representation of Aboriginal and Torres Strait Islander people in the ACT's justice system both reflects and reproduces systemic disadvantage. It is impossible to disconnect this over-representation from the social drivers of incarceration identified so clearly by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) over 35 years ago, including the impact of colonisation, structural racism and dispossession.

First Nations organisations and communities have been providing leadership and advocacy in this space for decades, as well as clearly stating what is needed to stop this over-representation. As well as legislative reforms, significant investment must be made to increase accessibility to services and supports that are Aboriginal-led, and culturally safe.

The Jumbunna Institute's *First report for the independent review into the overrepresentation of First Nations people in the ACT* particularly highlighted gaps in our bail system, including that:²⁷

- it was unclear whether there has been sufficient *identification with Aboriginal and Torres Strait Islander organisations* of gaps in bail support/diversion, followed by appropriate responses to these gaps;
- the Ngurrumbai Bail Support program is only available for adults and more specific community-based and -led programs for young people are needed;
- the lack of available supports in community hinders the effectiveness of the Ngurrumbai bail program, including gaps in mental health and AOD services and housing;
- the lack of solutions for First Nations people who come to the ACT from interstate and are arrested and refused bail, due in part to issues of reporting; and
- there is a lack of data on remanded/sentenced Aboriginal and Torres Strait Islander people and for which offences (for mapping gaps).

Although governments accepted almost all of the RCIADIC's recommendations from 35 years ago, many of them have still not been implemented, as was highlighted in both the *Pathways to Justice* and Jumbunna Institute reports. Although the recommendation that imprisonment be used only as a 'last resort' exists in principle in the legislation, there are a range of reasons why this is not a reality in practice (including, critically, due to the absence of adequate alternatives). Governments also continue to fail to adequately address the underlying systemic issues which the Royal Commission identified as the cause of the disproportionate rate of Indigenous incarceration.

²⁷ Cunneen, C. et al (First Report, August 2024). *ACT Government responses to the Australian Law Reform Commission's Pathways to Justice Report recommendations*, vi. <https://www.act.gov.au/open/review-into-overrepresentation-of-first-nations-people-in-the-act-justice-system>

Recommendation 9-1 of the ALRC Pathways to Justice Report states:

Recommendation 9-1 State and territory corrective services agencies should develop prison programs with relevant Aboriginal and Torres Strait Islander organisations that address offending behaviours and/or prepare people for release. These programs should be made available to:

- prisoners held on remand;
- prisoners serving short sentences; and
- female Aboriginal and Torres Strait Islander prisoners.²⁸

We note the ACT Government response to this was that ‘people on remand retain a presumption of innocence for their alleged offence, so it may be both presumptuous and prejudicial to have them participate in criminogenic programs’.²⁹

The ACT Government is attempting to better understand the points in the system that are continuing to deliver such high rates of Indigenous overincarceration, which led to the Jumbunna Institute’s independent review process.³⁰ We know that, at a high level, intergenerational inequities of being Indigenous continue to be passed on to each generation – this includes poverty, lack of access to adequate housing, lack of support for mental illness and drug and alcohol addiction, DFV, and, importantly for justice purposes – intergenerational trauma. This trauma is often a key driver in the types of behaviour that cause people to be incarcerated, and yet is not addressed in the supports offered to people in the various touchpoints of the ACT’s justice system.

To better address one key reason why remand rates are so high in the AMC, the Justice Housing Program should provide increased dedicated priority beds for First Nations people. This would enable more people to be released on bail, rather than waiting in the AMC for their case to be heard.

Bail Act criteria and considerations

Overall, the JRI is pleased to see that the proposed reforms will improve the overall criteria for courts to consider, compared to the legislation in force.

The JRI is especially pleased to see that the proposed legislation in relation to considerations for granting bail to adults and children and young people at section 22 have

²⁸ Australian Law Reform Commission (2018). Pathways to justice: Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples (ALRC report 133). <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>.

²⁹ n27, 62.

³⁰ n27, 26.

been significantly enhanced to reflect issues raised in the Government's discussion paper; proposed s.23 also outlines separate considerations for granting bail to pregnant people which is also positive.

It is also a vast improvement to see Aboriginality being proposed as a critical provision in s.22(B) for courts to take into account in bail considerations, based on the provision in the Victorian *Bail Act 1977* (s.3A), and as outlined in the ACT Government's discussion paper.³¹ As noted in the discussion paper, Recommendations 5-1 and 5-2 of the Australian Law Reform Commission's *Pathways to Justice* Report³² outline clear and achievable steps to address this issue.

The *Bugmy Bar Book*³³ gives courts information to help consider a wider range of issues around people's backgrounds, laying out many considerations that align with the social determinants of justice. As was noted in the Government's discussion paper, these social determinants enable courts to have an alternative perspective about the complex lives that have led people to a lifestyle that includes (alleged) offending, and provide a lens to better understand a positive and productive pathway forward for people caught in the justice system.

These issues have recently been explored in the Indigenous Justice Clearinghouse's recent paper *Bail and remand across Australia*.³⁴

CONSIDERATION OF BEHAVIOUR WHILE ON PREVIOUS GRANTS OF BAIL

It is logical to include consideration of whether someone undertook previous grants of bail with good behaviour or breached conditions (perhaps repeatedly). However, this consideration should also be an opportunity to examine *why* that person previously failed to meet their bail conditions and what supports or processes could have been put in place, to better ensure that the person could meet those conditions.

It is also crucial to ensure that bail conditions are meaningful and realistic. For example, we are aware of someone who was in breach of their bail condition not to travel through a certain part of Canberra, but needed to do so, to get from their home to their work. We certainly do not endorse disrespect of court orders, but urge a nuanced approach that will promote genuine public safety and wellbeing.

³¹ ACT Government (2025). *Review of decision-making criteria in the Bail Act 1992*, 10.

³² Australian Law Reform Commission (ALRC) (2017). *Pathways to justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*.

³³ Bugmy Bar Book (2026). *Home*. <https://bugmybarbook.org.au>.

³⁴ McDonald, A, McAlister, M & Bricknell, S. (2026). *Bail and remand across Australia*. Indigenous Justice Clearinghouse

The Bill proposes consideration under s. 22A(d) of “the person’s history of compliance with the following:”, however, noting the above issue, the **JRI suggests that this be amended to: “the person’s history of compliance with the following, and any reasons for non-compliance”**. This would allow a more fulsome consideration of the person’s specific circumstances.

The accused person should also have the opportunity to speak to the court about any of these considerations, including information about why they may have failed to meet any previous bail conditions (this could include, for example, failure to understand the conditions, due cognitive impairment).

TIMELINESS OF BAIL HEARINGS

It is important that bail hearings are held as soon as possible post-arrest, to ensure people do not unnecessarily spend long periods of time in custody. This also requires both defence and prosecution to have all of their evidence ready for the bail hearing to prevent delays and thus longer custodial periods.

PRE-TRIAL CUSTODY TIME LIMITS

Another area of reform to ensure that people are not being unnecessarily denied bail and held on remand includes having a **maximum time limit for how long a person can be detained in custody, prior to their trial**. Some jurisdictions overseas have pre-trial custody time limits (CTL) that aim to prevent the over-use of pre-trial detention.³⁵ CTLs safeguard unconvicted defendants, by preventing them from being held in pre-trial custody for an excessive period of time.

In England and Wales, under the *Prosecution of Offences Act 1985* (UK) and the *Prosecution of Offences (Custody Time Limits) Regulations 1987* (UK), the CTL is 182 days for indictable offences and 70 days for offences that can be heard in the magistrates’ court. The time limits refer to the time between committal into custody and the start of trial. If the trial has not started within the time limit, **then the presumption is that the accused person must be released on bail**. The state can apply for an extension of the custody time limit for particular, specified reasons, or for a good and sufficient cause, as long as the prosecution has acted with all due diligence and expedition.³⁶

Placing maximum limits on pre-trial detention and only permitting extensions after an official review ensures that an accused person is not arbitrarily detained longer than

³⁵ Clifford Msiska and Victor Mhango. 2013. '[Pre-Trial Detention Custody Time Limits: Ensuring Compliance in Malawi](#)'. (2013) *Open Society Institute for Southern Africa*, 8-14.

³⁶ Section 22, *Prosecution of Offences Act 1985* (UK), Clauses 4-5, *Prosecution of Offences (Custody Time Limits) Regulations 1987*

necessary, and encourages the expeditious passage of cases through the court system.³⁷ Such time limits for pre-trial remand exist have yet to be applied in Australia for adult cohorts.

CHILDREN AND YOUNG PEOPLE

The overwhelming majority of young people incarcerated in the ACT are on remand. The most recent data indicate that 76% of young people in detention were on remand (national data were not available, but ranged from 39% in Victoria to 89% in Queensland).³⁸ Concerningly, research from Victoria has indicated that nearly two-thirds of children remanded in custody ultimately receive a non-custodial sentence.³⁹ This reinforces the importance of ensuring that remand is only employed as a last resort and young people are instead supported to remain in the community.

In their report on justice reinvestment, Legal Aid NSW provided examples of how some bail conditions can be difficult to comply with and may end up further punishing an individual for an unavoidable situation. This is particularly so for people experiencing disadvantage. For example, a common bail condition imposed on children in out-of-home care is the condition to ‘obey the directions of the carer’. If this condition is placed on a child with a cognitive disability or mental health issue, the child may be reported to the police for breaching bail by carers and subsequently arrested for demonstrating the type of behaviour that, if they were living in a functioning family environment, may have been dealt with without police intervention.⁴⁰

When a child or young person has been caught up in the justice system, this should be seen as an opportunity for early intervention by the ACT Government. Now that we have raised the age of criminal responsibility to 14, and have in the process established a more rigorous family group conferencing framework, we have the opportunity to provide more supports for families involved in the criminal justice system.

For example, bail conditions could be that the children or young person needs to undertake particular programs or regularly check-in with CPYS. These conditions should be established through family group conferencing wherever possible, to ensure that the

³⁷ n1, 20.

³⁸ Australian Institute of Health and Welfare (2026). *Youth detention population in Australia 2025*, Supplementary tables S29, S47.

³⁹ Victorian Sentencing Advisory Council (2014). *Children held on remand in Victoria*.

⁴⁰ Legal and Constitutional Affairs References Committee, Parliament of Australia (2013). *Value of a justice reinvestment approach to criminal justice in Australia*, 39.

broadest range of specific supports can be integrated into manageable and achievable conference agreements and bail conditions.

Sometimes the bail conditions will need to take into account whether young people are attending the same school. We understand that on occasion young people have been given bail conditions not to associate with someone else that also attends their school and, as a consequence, were required not to attend school. This is clearly a perverse outcome that needed deeper consideration.

DOMESTIC AND FAMILY VIOLENCE

We are aware of the concerns about bail being granted to defendants charged with domestic and family violence (DFV) offences, and note the data cited in the ACT Policing submission about the number of people in the ACT on bail for DFV offences.⁴¹ The JRI is very concerned to ensure the safety of DFV victim/survivors. We believe that the proposed related clauses will allow courts to more fully consider the risks to all involved.

To address cycles of DFV, intervention programs must be available at the earliest opportunity and, wherever possible, options available for both protecting victim/survivors, as well as ensuring (alleged) perpetrators have access to appropriate intervention options, including bail support programs and alternative housing. These measures also need to be carefully coordinated with any family violence orders in place.⁴² Established risk factors, such as high levels of alcohol consumption are highly relevant to situations where a person may be applying for bail. Addressing these risk factors should be a key function of non-custodial bail alternatives.

The JRI is pleased to see that the proposed legislation allows the courts to take into account victims' opinions about whether the accused person should be remanded or housed somewhere alternative. There are instances where the victim does not necessarily want the accused person to be taken into custody, but there may be no alternative housing options available. Increased bail housing availability would enable a wider range of options for courts in giving bail, if this could be done with strong bail conditions and appropriate and sufficient supports.

⁴¹ ACT Policing (2024). *Submission to Standing Committee on Justice and Community Safety inquiry into the administration of bail in the ACT*.

⁴² For discussion, see Bartels, L. et al. (2020). *Review of the implementation of the Family Violence Act 2016 (ACT)*. Australian National University.

PEOPLE WITH DISABILITY, COGNITIVE IMPAIRMENT, MENTAL ILLNESS, LACK OF LITERACY AND OTHER RELEVANT RELATED CIRCUMSTANCES

Having unsupported mental health and cognitive disability and/or problematic AOD use should be considerations in determining bail and incarceration. These are all health issues and should be treated as such, not as criminal issues.

The JRI believes that all people who come into contact with the justice system should be afforded the opportunity to access AOD rehabilitation and adequate mental health support (where required). Going through the bail process is an excellent opportunity for these interventions.

An accused person's prior health and disability history should be made available to the court, if available. However, it is worth noting that many people who are entering the justice system may not yet be diagnosed with the conditions that apply. Contact with the justice system is a vital opportunity for screening for issues like cognitive disability, as outlined in the Disability Justice Strategy.⁴³ It is also a good opportunity for mental health assessments and discussions about AOD addiction. There are certainly no long-term cost savings to government by postponing or ignoring the need for screenings, as the costs of incarceration will be far higher than community-based support services for people with undiagnosed illness or conditions who come into contact with the justice system.⁴⁴

Another consideration for the decision-maker should be how well the prison can support the person to manage their disability, and whether prison is an appropriate place to accommodate someone with those particular needs.

Cognitive impairment, mental illness and lack of literacy are key factors that should be taken into account in ensuring that bail conditions are able to be understood, with many people unable to read and/or fully understand the meaning and implications of their bail conditions. For example, someone may 'breach their bail by failing to report as required, but this may be due to poor executive function stemming from Attention Deficit Hyperactivity Disorder (ADHD). This may require careful examination of the reasons why these behaviours occur, especially in the context of the ACT's *Disability Justice Strategy*.⁴⁵ **It is clear that many instances of 're-offending' may be addressed, if processes and forms were simplified, to help promote bail compliance.**

⁴³ For further discussion, see Bartels, L. & Eales, S. (2026). *Creating inclusive courts and tribunals: Best practice guidance to support people with disability*, prepared for the ACT Courts and Tribunal.

⁴⁴ See eg Rahman, S. & Chronopoulos Theore, N. (2024). *The costs and benefits of the Magistrates' Early Referral into Treatment (MERIT) program*. NSW Bureau of Crime Statistics and Research.

⁴⁵ ACT Government (2019). *Disability Justice Strategy 2019-2029*.

DEFINITION OF VICTIM

We are supportive of the definition of victim being broadened to include not just those people who were dependent on the victim, but also other family members, as is drafted in the bill.

INPUT FROM POLICE

The JRI supports police having the ability to submit relevant information to the bail consideration process. The police will likely have intelligence about the person, their activities, family, friends and networks, and place of residence, and other useful information. It is logical to allow courts to take this information into account, when determining a bail outcome if they deem it helpful.

Police are able to play a role in advising on issues of housing and accommodation in a sentencing administration context (for example, parole), so it is logical that ACT Policing should also be able to provide similar advice in the bail process.

PREGNANT PERSONS

When a primary caregiver is imprisoned, not only is that person affected, but also their whole family, including any dependents. The damaging and intergenerational impact of imprisonment (even for short periods of time) for pregnant people, primary care-givers and their children is well documented.⁴⁶ Reducing recidivism and intergenerational incarceration requires developing systems that enable parents and primary caregivers to stay in the community, with their family and dependents. Child-centred decision-making is critical, when it comes to bail decisions, and it is pleasing to see that this has been reflected in the proposed legislation.

Primary caregivers, pregnant people and their families require genuine options, with regard to non-custodial bail support options. The ability to be able to access a wide range of services and supports, including mental health and AOD support services is essential. Holistic service sector responses are needed, which take into account the needs of the whole family. Alternatives to incarceration require serious consideration for all pregnant people. There are still reports of women labouring, while handcuffed to hospital beds, which remains a serious concern.

⁴⁶ Victorian Parliament (2022). *Inquiry into children impacted by parental incarceration*.

BAIL CONDITIONS AND SUPPORTS

The JRI would like to see an increase in bail being able to be granted. However, for this to happen, courts must be able to apply sufficient and appropriate bail conditions with the confidence that these conditions are enforceable.

Legislation ordinarily requires bail conditions to be reasonably necessary, proportionate, appropriate, no more onerous than is necessary to address the bail concern, and reasonably practicable for the person to comply with the condition. Release on bail is usually subject to a number of conditions to mitigate risk, for example:

- conduct requirements (such as reporting to a police station or not associating with or contacting specific people);
- character references;
- accommodation requirements;
- restrictions on movement, curfews and/or surrender of travel documents (passports);
- financial requirements, such as giving a surety;
- bans, such as on alcohol or substance use; and
- participation in treatment programs.⁴⁷

It is important that bail conditions are responsive to the circumstances of the individual, so that bail is not refused for reasons that are beyond the control of the person on bail, such as absence of appropriate accommodation or lack of a responsible adult to supervise and care for the defendant.⁴⁸ Bail conditions themselves should not ‘set people up for failure’, resulting in them being remanded in custody.⁴⁹ Bail conditions also need to acknowledge issues such as disability⁵⁰ and the broader complexity of defendants’ lives.⁵¹

There must also be more supports put in place to support people on bail. Successful bail often requires bail support programs that enable the accused person to meet all their bail

⁴⁷ Matthew Willis. (2017). *Bail support: A review of the literature*. Australian Institute of Criminology, 27; Presneill, A. (2018). A viable solution? Bail hostels in the ACT Research report, ACT Inspector of Correctional Services, 3.

⁴⁸ Legal and Constitutional Affairs References Committee, Parliament of Australia (2013). *Value of a justice reinvestment approach to criminal justice in Australia*, 10.

⁴⁹ Sanderson, J. et al. *Exploring bail and remand experiences for Indigenous Queenslanders – Final report*. Griffith University; Bartels, L. (2019). ‘The growth in remand and its impact on Indigenous over-representation in the criminal justice system’ (Indigenous Justice Clearinghouse, Research Brief No. 24), 5, citing Myers, N. (2017). Eroding the presumption of innocence: Pre-trial detention and the use of conditional release on bail. *British Journal of Criminology*, 57: 664-683; Brown, D. (2013). ‘Looking Behind the Increase in Custodial Remand Populations’, 2(2) *International Journal for Crime, Justice and Social Democracy*, 80 at 91.

⁵⁰ See eg Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final report – Criminal justice and people with disability* (2023); Bartels, L. & Eales, S. (2026). *Creating inclusive courts and tribunals: Best practice guidance to support people with disability*, prepared for the ACT Courts and Tribunal.

⁵¹ Gately, N. et al. (2025). Complex lives and procedural barriers: Detainees’ “life happens” explanations for breaching orders. *Journal of Criminology*, 58: 299-320.

obligations, as well as engaging in programs and activities that address the drivers of offending (where required).

Having access to appropriate housing is critical, especially if shifting the person away from previous contacts is a key part of their bail conditions, or rehabilitation prospects. In the ACT people are often either denied bail due to a lack of suitable accommodation and thus going to prison on remand, or given justice housing, which involves sharing group houses with other people also involved in the justice system, sometimes with too little support.

It could be worth exploring application of the behavioural psychology that shows that it is usually better for someone to have something and not want to give it up (such as freedom to be in the community), eg. Being on bail and knowing that if you breach by failing to meet your conditions, the court will send you straight to prison for a set period, rather than the psychology of being incarcerated on remand, where there is very little incentive towards good behaviour or rehabilitation.

People with lived experience of the justice system routinely tell us that being on bail is often the key opportunity to turn their life around, undertake AOD rehabilitation, and generally take stock of where they are in life. **The lack of structured support at this self-identified crossroad of change is a consistently missed opportunity for people in the ACT community more broadly.**

Supervision of People on Bail

An issue that arose in Ms Haskins' inquest was the lack of resources allocated by ACT Corrective Services to supervise people on bail. We note that a third bail officer has been appointed to supervise people on bail. However, the ACT Government submission to the JACS Committee's 2024 inquiry into the administration of bail⁵² states that, at 30 April 2024, there were 182 people on bail (with no other orders in place), plus 52 accused people also subject to a community-based order or who had entered a guilty plea. This suggests a very high case load and that there can likely be only perfunctory supervision, which represents a missed opportunity to support people with complex needs. Once again, we call for government investment in bail support programs to address this issue.

⁵² ACT Government (2024). *Submission: Standing Committee on Justice and Community Safety inquiry into the administration of bail in the ACT.*

SPECIFIC BAIL SUPPORT PROGRAMS

There is currently only one adult bail support program in the ACT, the Ngurrambai Bail Support Program, delivered by the Aboriginal Legal Service (NSW/ACT). This program is only available to First Nations people, leaving many people without appropriate support. Although First Nations people are significantly over-represented in the justice system and rightly the focus of significant interventions, there is also an urgent need (in addition to and separate from the existing service) for a more generic bail support program (BSP).

Establishing additional bail support programs such as those that operate interstate should be introduced in the ACT. There are multiple models of potential programs in other jurisdictions. The **Magistrates Early Referral into Treatment (MERIT)** program in NSW is a voluntary pre-plea program for adults to take 12 weeks to get support to treat their drug or alcohol problems before their hearing. This program shows good results, including a cost-benefit analysis yielding a benefit of between \$2.41 and \$5.54 for every dollar spent,⁵³ and could be replicated in the ACT.

Another suitable program is the **Court Integrated Services Program (CISP)**. CISP is a case management program that operates in 20 magistrates' courts across Victoria. It is a wider-reaching bail support program than MERIT, and offers:

- drug and alcohol treatment services;
- crisis and supported accommodation;
- disability and mental health services;
- acquired brain injury services; and
- Koori-specific services.

To participate, a person must be charged with an offence, consent to participating, and experience:

- physical or mental disabilities or illnesses;
- drug and alcohol dependency and misuse issues;
- inadequate social, family and economic support that contributes to the frequency or severity of their offending; and/or
- homelessness.

Independent evaluations of CISP⁵⁴ found that it:

⁵³ Passey, M. et al (2003). *Evaluation of the Lismore MERIT Pilot Program – Final report*. Northern Rivers University Department of Rural Health. For more recent data, see Rahman & Chronopoulos Theore (n 42).

⁵⁴ See Victorian Department of Justice (2010). *Court Integrated Services Program: Tackling the causes of crime – Executive summary evaluation report*. This summarises separate evaluations of CISP.

- **reduced reoffending: people involved in CISP showed a 33% reduction in reoffending and, where they did reoffend, the offending was less frequent and less serious;**
- improved health outcomes;
- saved money, with a return on investment of \$1.70-5.90 for every dollar spent;
- increased referrals to treatment; and
- improved assessment, providing magistrates with access to timely, accurate and objective information about CISP clients' risk of reoffending and support needs, to address the causes of their offending behaviour.

A BSP available to non-Indigenous people such as these would reduce the high rates of remand and would be a cheaper, early-intervention supplement and complement to the Drug and Alcohol Sentencing List (DASL) in the Supreme Court. DASL has been an effective additional tool for our court system to better support people with drug and alcohol related offending appearing before the Supreme Court.⁵⁵ However, there are also many people appearing in the Magistrates' Court who would also gain from similar support services being available.

Women in particular generally have access to fewer support services, and access to a BSP would improve outcomes for them and the community more broadly. We understand that many women simply do not apply for bail as there are not sufficient community services to support them on the outside. A BSP would also reduce the corresponding impacts on the families of these women - an important consideration, if we want to start reducing the next generation of offending. The CISP as outlined above is highly recommended.

BAIL SUPPORT FOR CHILDREN AND YOUNG PEOPLE

It is pleasing to see that the youth justice principles in section 94 in the *Children and Young People Act 2008* have been incorporated into the Bill. It is important that this bail legislation is consistent with the new legislation and processes that accompany raising the age of criminal responsibility and puts the interests of the child as the priority. This should ensure that the use of family group conferencing can be part of bail conditions for children and young people.

One additional measure to promote the successful application and completion of bail for young people includes the availability of an after-hours bail assistance line.⁵⁶

⁵⁵ Rossner, M. et al. (2022). *ACT Drug and Alcohol Sentencing List: Process and outcome evaluation – Final report*. Australian National University.

⁵⁶ Klauzner, I. (2021). *An evaluation of the youth bail assistance line*. NSW Bureau of Crime Statistics and Research.

We note that the Ngurrumbai Bail Support Program is only funded to support Indigenous adults, the JRI would also like to funding to support Indigenous young people to apply for and successfully complete their bail orders, as was recommended by the 2024 Inquiry into the administration of bail.⁵⁷

Additional priority issues

‘DO NO FURTHER HARM’ – FOR BOTH VICTIMS AND ACCUSED PERSONS

The JRI urges that social determinants are assessed at the stage of deciding bail and determining bail conditions. It is highly likely that bail support programs would help most, if not all, accused people who are before the courts, and the opportunity to offer interventional supports in place should not be missed. This includes enabling wrap-around case managers to support their clients to navigate the service delivery system and access services as needed, as recommended by the 2024 JACS inquiry into bail administration⁵⁸, especially including programs that help people to address underlying issues and reduce (re-)offending behaviours.

BAIL ACCOMMODATION

Lack of suitable and stable accommodation poses a barrier for many individuals to be able to meet bail requirements, especially for people experiencing homelessness. Obtaining and maintaining bail is a particular challenge for Aboriginal and Torres Strait Islander people.⁵⁹ Bail hostels provide a potential solution, as they increase access to bail by ensuring adequate housing; when coupled with effective bail support, this can increase bail compliance.⁶⁰

Research by the Australian Institute of Criminology has noted that the importance of bail hostels include having the capacity to be available for diverse populations, including First Nations people, people with mental health or cognitive impairment, people at risk of DFV and people who are homeless.⁶¹ Overall, the research and analysis on the effects of bail hostels suggests that **it is more cost-effective to house a defendant in a bail hostel than**

⁵⁷ ACT Legislative Assembly Standing Committee on Justice and Community Safety (2024). *Inquiry into the administration of bail*, vi.

⁵⁸ Ibid, vii.

⁵⁹ n32; Bartels, L. (2019). *The growth in remand and its impact on Indigenous over-representation in the criminal justice system*. Indigenous Justice Clearinghouse.

⁶⁰ Bartels, *ibid*.

⁶¹ n44.

a prison, after taking into consideration the economic and social benefits of individuals maintaining employment and relationships, contributing to rent, and reduced recidivism.⁶²

The Justice Housing Program (JHP) is an ACT Government program, introduced as a key pillar of the Government's Reducing Recidivism Plan (RR25by25). The program provides transitional shared accommodation houses for people leaving the Alexander Maconochie Centre (AMC) who are able to live independently. Accommodation is provided for up to three months and, during that time, the program assists people to find more permanent accommodation and access community services.

This helps people who are charged with offences make stronger arguments that they have stable living situations that minimise the risk of reoffending or absconding, meaning they may have more success obtaining bail.

Despite the introduction of the JHP, we know that there is still not enough temporary accommodation available for people released from prison in Australia, including the ACT.⁶³ Research with people released from prison in the ACT reported challenges in finding suitable housing upon their release, primarily related to a 'lack of availability, wait-times, condition of housing and difficulty of obtaining private rental in the absence of government housing'.⁶⁴

The JHP was evaluated in 2023;⁶⁵ since commencement in 2020, 188 people (about 30% of whom were on remand)⁶⁶ had accessed the program, including high proportions of both females and Indigenous people. This means the JHP is fulfilling some of its key aims – to reduce the number of people being denied bail or parole, due to homelessness or not having appropriate housing, and to address priority cohorts. However, the evaluation recommended further investment in housing options for people exiting prison, especially broadening the offerings to also include 1-2 bedroom dwellings (to enable visits from children), as well as single-occupancy dwellings for people who are likely unsuitable for shared accommodation. We note the recommendations of the evaluation report, in particular, that participants should be given more intensive supports and opportunities and continued contact with case managers, even after exiting the JHP.

⁶² Presneill, A. (2018). *Bail hostels: Report prepared for the ACT Office of the Inspector of Custodial Services*. Australian National University, 16-21.

⁶³ Griffiths, A. et al. (2017). *Evaluation of ACT Extended Throughcare Pilot Program: Final report*. Social Policy Research Centre.

⁶⁴ Doyle, C., et al. (2020). *[T]hey say "you're going home, you're going home" ... but I don't have a home... I'm getting out, but I'm not going home, there's no home...': The experiences of people leaving prison in the Australian Capital Territory*. University of NSW; Doyle, C., et al. (2022). "People say you're going home, but I don't have a home": Housing after prison', *International Journal of Offender Therapy and Comparative Criminology*. <https://doi.org/10.1177/0306624X221132226>.

⁶⁵ Taylor, H. et al. (2023). *Process evaluation of the Justice Housing Program*. Australian National University.

⁶⁶ Ibid, 22.

Justice housing would be an even better proposition, if people who accessed it were first given access to AOD rehabilitation programs, to better ensure that people exiting prison aren't being co-housed and picking up old AOD habits again together. The importance of separating from previous networks is a key factor in successful post-prison rehabilitation.

It is evident that the amount of housing available through the program does not come close to matching the number of people being released from prison into homelessness.

Addressing homelessness and the lack of affordable and accessible housing is a key determinant of people's ability to break the cycle of poverty and disadvantage. If the ACT does not address the housing shortage, the ACT will simply not be able to improve the corresponding impacts to people's ability to support their families, and hold stable and secure lives, including obtaining and retaining regular employment. We also note the 2024 JACS committee's recommendation on increasing availability of bail accommodation, particularly for priority cohorts.⁶⁷

In the longer term, the JRI would be interested in exploring **a legislative requirement for the ACT to ensure people have a house to live in**. We do not believe that it should be legal to imprison someone only because they have no housing or accommodation available to them. It is also going to be far cheaper for the Government to provide housing for people than to imprison them.

ENHANCE CONFIDENCE AND TRUST IN THE JUSTICE SYSTEM

The ACT community has a general expectation that the ACT's justice system will lead to better outcomes for the community, through both reductions in offending and enabling the rehabilitation of people who are committing crimes.

This includes the bail process, where the expectation would be that people are sent to prison, if they are a risk to community safety and may (re)offend. However, most people would be appalled to realise that instead the ACT Government spends over \$200,000 each year per person in prison, with very few positive outcomes with regard to rehabilitation. Given that most people in the AMC have been imprisoned before, we know that the justice and prison system is not delivering the outcomes our community expects.

Conclusion

We have seen a politicised approach to bail legislation and policy development around Australia. This has resulted in a number of jurisdictions adopting a legislative approach that

⁶⁷ n57, vii.

restricts access to bail and funnels many more people into prison on remand. The JRI notes that the underlying primary objective informing bail policy should always be the recognition that a person charged with an offence has a right to bail as they are presumed innocent until being found guilty by a court. While there is a need to protect the public from risk of further offences being committed and to ensure that a person charged with criminal offences appears at their trial, the response to addressing this risk should be an evidence-based approach that genuinely centres community safety.

Remanding people in custodial settings should only be used as a last resort for people who are waiting for their court hearing. The JRI supports bail laws and policies that reinstate the presumption in favour of bail for all offences, with the onus on the prosecution to demonstrate that bail should not be granted due to there being a specific and immediate risk to the physical safety of another person. It is also important that bail conditions are not excessively onerous.

Whilst the JRI is strongly supportive of this proposed bail amendment legislation before the Assembly, increased government investment in bail support programs and services is critical to ensure success in reducing both recidivism and remand statistics in the ACT.

The JRI looks forward to discussing the issues raised in this submission with the Committee.