



Submission cover sheet

Inquiry into the Bail Amendment Bill 2026

Submission number: 011

Submitter: Aboriginal Legal Service

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17 June 2026

Ms Chiaka Barry MLA
Chair, Standing Committee on Legal Affairs
ACT Legislative Assembly
By email: LACommitteeLegal@parliament.act.gov.au

Dear Ms Barry,

Re: Inquiry into the Bail Amendment Bill 2026

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**).

The ALS is a proud Aboriginal Community-Controlled Organisation (**ACCO**) and the primary legal assistance provider for Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. Our vision is to achieve social justice and equity for Aboriginal and Torres Strait Islander people, families and communities.

More than 400 ALS staff members based at offices in 21 communities across NSW and the ACT support Aboriginal and Torres Strait Islander people through the provision of high quality and culturally safe legal assistance, including court representation in criminal law, children's care and protection law, and family law. We also deliver a variety of wrap-around programs including bail support, family violence prevention, and child and family advocacy and support. We provide a Visiting Legal Service for Aboriginal children in youth detention centres, represent Aboriginal and Torres Strait Islander families in the Coroner's Court, and deliver a variety of discrete civil law services including tenants' advocacy, assistance with fines and fine-related debt, and discrimination and employment law.

The ALS is the Justice Peak on the NSW Coalition of Aboriginal Peak Organisations and a key partner in Closing the Gap in NSW and the ACT. As an ACCO, we represent community interests in our advocacy for the reform and transformation of systems which impact the lives of Aboriginal and Torres Strait Islander people.

This submission is informed by the experiences of the clients and communities we serve, and the expertise of our staff.

Comments on the Bail Amendment Bill 2026

Section 22A(i)-(k) – Bail Assessment – Relevant Factors Generally

We oppose the proposed inclusion of the following mandatory considerations for bail decision-makers:

- 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 risk of the person using family violence.

As previously submitted, bail decision-makers are already required to consider the likelihood of the person applying for bail harassing or endangering the safety or welfare of anyone in proposed s 22(1)(b)(ii) and s 22(2)(c)(ii). We also consider that there is already sufficient scope for risk factors in

the context of domestic and family violence offences to be taken into account within the existing ACT bail framework. In particular, police may refer to such factors when completing a Police Bail Consideration Form. We consider that the proposed amendments are unnecessary.

Section 22B – Bail Assessment – Relevant Factors for Aboriginal and Torres Strait Islander People

We strongly support the proposed inclusion of additional considerations in relation to Aboriginal and Torres Strait Islander people, however, we recommend the following further amendments to strengthen the drafting of the bill:

- Inclusion of explicit guidance that a bail decision-maker cannot request evidence of confirmation of a person's Aboriginal and/or Torres Strait Islander status before deciding whether to consider the factors in proposed s 22B. While guidance to this effect is provided in the Explanatory Statement, we consider that this requirement should be enshrined in the legislation.
- The addition of an equivalent to s 3A(4) of the *Bail Act 1977* (Vic) explicitly stating that s 22B will apply irrespective of whether the person's connection to their Aboriginality and culture has been intermittent throughout their life, whether the person has only recently connected to their culture or heritage, or when a person first discloses that they are an Aboriginal person. Although this guidance is provided in the Explanatory Statement we consider that it should also be enshrined in legislation, like the Victorian legislation.
- The addition of an equivalent to s 3A(5) of the *Bail Act 1977* (Vic) providing that a bail decision-maker must explain and record in writing how they have considered each of the factors in s 22B and provide reasons if they refuse bail to an Aboriginal person.
- The inclusion of an additional subsection in s 22B(1), modelled on s 3A(1)(a) of the *Bail Act 1977* (Vic), requiring consideration of 'the historical and ongoing discriminatory systemic factors that have resulted in Aboriginal people being over-represented in the criminal justice system, including in the remand population'.

Section 22D – Bail Assessment – Relevant Factors for Children

We strongly support the proposed amendment to introduce additional specific criteria for children applying for bail. We recommend the following amendments to proposed s 22D:

- Inclusion of a requirement for bail decision-makers to explain and record in writing how they have considered each of the factors in s 22D if bail is refused.
- The inclusion of additional subsections in s 22D(1) explicitly requiring bail decision-makers to consider the need to 'support the social and emotional wellbeing of the child' and the need to 'promote the healing of the child'. Alternatively, s 94 of the *Children and Young People Act 2008* could be amended to explicitly include these two factors as matters that a decision-maker must consider in deciding what is in the 'best interests of a child', noting the principles in s 94 must be considered by bail decision-makers pursuant to proposed s 22D(1)(a).

Remove reverse onus bail requirements

Under the current law, both children and adults must show 'special or exceptional circumstances' to make a bail application if charged with specified offences.¹ We oppose reverse onus bail requirements

¹ *Bail Act 1992* (ACT) s 9G.

for both adults and children, but we are particularly concerned that children in the ACT remain subject to the same high threshold for accessing bail as adults.

In most Australian jurisdictions, there are different bail tests for adults and children. The criminal law recognises the special vulnerability of children in contact with the criminal legal system, which has led to the evolution of specific principles in relation to youth justice. Our ACT office services courts in the ACT as well as courts in NSW near the border. Under the NSW bail framework, the 'show cause' reverse onus test in s 16A of the *Bail Act 2013* (NSW) does not apply to children: s 16A(3). As a result, children represented by the ALS in the ACT face a higher bar to accessing bail than children we represent whose matters are heard by NSW courts just a short distance away.²

The ALS recommends that the 'special or exceptional circumstances' test be abolished for both adults and children. The ALS also recommends that there be a presumption in favour of bail for children, reflecting the international human rights law principle that imprisonment of children should be a measure of last resort.³

Thank you for the opportunity to provide a submission. Please contact _____ if you would like to discuss this submission further.

Yours faithfully,

Nadine Miles
Principal Legal Officer
Aboriginal Legal Service (NSW/ACT) Limited

² We note an exception in the small cohort of children aged 14-18 in NSW who are charged with repeat offences in the categories of motor vehicle theft and/or aggravated breaking and entering, attracting the novel 'high degree of confidence' test in s 22C of the *Bail Act 2013* (NSW) introduced in 2024. This provision is currently due to sunset in October 2026.

³ [Convention on the Rights of the Child](#) opened for signature 20 November 1989, UNTS 1577 (entered into force 2 September 1990) art 37(b).