



Submission cover sheet

Inquiry into the Bail Amendment Bill 2026

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To the Standing Committee on Legal Affairs

ACT Legislative Assembly

LACommitteeLegal@parliament.act.gov.au

Dear Ms Barry and Committee members,

Thank you for the opportunity to respond to your inquiry into the Bail Amendment Bill 2026. I am writing on behalf of ANTAR ACT, a voluntary organisation in the ACT of mainly non-Indigenous people who support and advocate for First Nations' people's rights and wellbeing. We maintain relationships with Aboriginal organisations in Canberra, including the ACT Aboriginal and Torres Strait Islander Elected Body, and we educate and advocate on issues that matter to First Nations people here.

We note that we were consulted in the earlier stages of Bail Reform and we are pleased to see many of the aspects of bail reform that we supported being included in this Bill. We support this reform and urge that it be enacted as quickly as possible (with a few suggestions noted below).

We appreciate that this legislative reform is a partial response to the full set of bail recommendations from the Jumbunna and ALRC reports, both of which the ACT Government received some time ago. We look forward to seeing all the bail recommendations being implemented as soon as possible, along with other recommendations, which would reduce the rates of First Nations incarceration in the ACT.

1. Introduction and context

The Jumbunna Interim Report looked specifically at recommendations of the Australian Law Reform Committee Report on Incarceration of Indigenous People related to Bail, especially the following recommendation:

Recommendation 5-1: State and territory bail laws should be amended to include standalone provisions that require bail authorities to consider any issues that arise due to a person's [Aboriginal and Torres Strait Islander status], including cultural background, ties to family and place, and cultural obligations. These would particularly facilitate release on bail with effective conditions for

Aboriginal and Torres Strait Islander people who are accused of low-level offending.

Jumbunna found that this recommendation had not yet been implemented in the ACT. These bail reforms now respond to that finding.

A further ALRC recommendation was:

‘Recommendation 5-2 State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to:

- develop guidelines on the application of bail provisions requiring bail authorities to consider any issues that arise due to a person's [Aboriginal and Torres Strait Islander status], in collaboration with peak legal bodies; and
- identify gaps in the provision of culturally appropriate bail support programs and diversion options and develop and implement relevant bail support and diversion options.’

It found that this recommendation had only been partially implemented and added the following comments:

- ‘Unclear whether there has been sufficient identification with Aboriginal and Torres Strait Islander organisation participation of gaps in bail support/diversion followed by appropriate responses to these gaps in alignment with R5-2.
- Ngurrambai Bail Support program is only available for adults and more Aboriginal and Torres Strait Islander specific community-based and led programs through which young people in particular could be supervised are needed.
- Lack of available supports in community further hindering the effectiveness of the bail program, including gaps in mental health and drug/alcohol services and housing.
- Lack of solutions for First Nations people who come to the ACT from interstate and who are arrested and refused bail due in part to issues of reporting.
- Lack of availability of data on remanded/sentenced Aboriginal and Torres Strait Islander people and for which offences (for mapping gaps).’

ANTaR ACT strongly concurs with these comments, and argues that to succeed in reducing Aboriginal and Torres Strait Islander incarceration and very high rates of recidivism, bail reform must go hand in hand with the provision of the services mentioned above. In particular we highlight the point above regarding the lack of suitable alternative programs for young people on remand.

2. Incarceration rates now

Rates of Aboriginal and Torres Strait Islander prisoners on remand, rather than sentenced, remain unacceptably high. Over the last 12 months, according to ACT Corrections data dashboard¹, at any time, between 55 and 70+ of the ATSI prison population have been remandees, with between 72 and 86 being sentenced prisoners.

Aboriginal incarceration rates generally remain too high. As at 30 June 2024 in the Australian Capital Territory, the age-standardised rate of Aboriginal and Torres Strait Islander prisoners was 1,670.9 per 100,000 adult population. The 2024 rate is an **increase** from the previous year (1,561 per 100,000 adult population in 2023) though a decrease from 1,703.9 per 100,000 adult population in 2019 (the baseline year).² However, it appears that the Closing the Gap Target on reducing the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15% is unlikely to be achieved by 2031 under current arrangements. Worse, the rate of Aboriginal and Torres Strait Islander young people aged 10–17 years in detention on an average day was 28.6 per 10,000 young people in the population, an **increase** from 15.3 per 10,000 young people in 2018-19 (the baseline year). Despite the ACT's Raise the Age legislation, we remain concerned that the Closing the Gap Target on reducing the rate of Aboriginal and Torres Strait Islander young people held in detention by at least 30% is unlikely to be achieved by 2031 under current arrangements.

Further, in the year 2024-25, almost **46% of adult ATSI prisoners returned to jail** within two years of release. This recidivism rate is extremely high and indicates that **jailing is failing to deal with the underlying issues** that bring these people into the criminal justice system. This must be considered when refusing bail to any person. This is particularly so because remandees appear unable to access important programs at the jail, which, given the length of time many are held on remand, is a lost opportunity to help them rehabilitate themselves.

3. Bail Reform

It is in this context that we applaud the Bill which is now before your committee to amend the ACT's Bail legislation. It is one small step in the right direction.

We recall that the Bail Reform Discussion paper provided to us in the earlier phase of consultation stated that among the reform's objectives were to:

¹ <https://www.act.gov.au/open/act-corrective-services-data-dashboard>

² https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/2875686/List_National-Agreement-on-Closing-the-Gap-ACT-Annual-Report-2024.PDF

- **Reduce the high rates of remand and recidivism; and**
- **Address the significantly high rates of incarceration of Aboriginal and Torres Strait Islander people.**

We continue to underline the importance and urgency of achieving these two objectives in the ACT.

We therefore strongly support the amendments to the Bail Act, particularly those at s22A, s22B and s22C which require consideration of Aboriginality, Disability or Health conditions and Children seeking bail.

As the earlier Discussion Paper on Bail reform stated:

With disadvantage being a significant contributor to interactions with the criminal justice system, the consequences being remanded in custody can entrench the cycle of disadvantage^{3,4}—and thus increase the overall risk to community safety.

Clearly, placing Aboriginal people on bail with effective conditions would reduce the numbers on remand and hence reduce the risk of entrenching Aboriginal and Torres Strait Islander disadvantage and the risk of deaths in custody, of which there have been too many in the ACT. We await the promised **Board of Inquiry** into these deaths to make further recommendations for reducing this risk.

In short, it should be made easy and simple for people on bail to comply with their bail orders. Incarceration should be a **last** option.

We strongly support the arrangements at alternative reporting sites to police stations for Aboriginal and Torres Strait Islander people on bail in Yeddung Mura Aboriginal Corporation, Winnunga Nimmityjah Aboriginal Health and Community Services and Canberra Alliance for Harm Minimisation and Advocacy (CAHMA).

4. Intersectionality

In interpreting s 22 and 23 it is important that consideration is given to the fact that a person who is Aboriginal may also have a disability or health condition and their age or pregnancy may also be a consideration. These factors should be taken together when determining a bail application.

³ Baldry E, Bright D, Cale J, Day A, Dowse L, Giles M, Hardcastle L, Graffam J, McGillivray J, Newton D, Rowe S, Wodak J (2018). A Future Beyond the Wall: Improving Post-release Employment Outcomes for People Leaving Prison: Final Report. Sydney: UNSW Sydney. <http://doi.org/10.26190/5b4fd2de5cfb4>

⁴ Emma Russell, Bree Carlton and Danielle Tyson, “‘It’s a gendered issue, 100 per cent’: How tough bail laws entrench gender and racial inequality and social disadvantage’ (2022) 11 International Journal for Crime, Justice and Social Democracy 107.

Aboriginal and Torres Strait Islander people are unfortunately more likely than others to have a disability or have significant health needs for which they may not get adequate treatment in jail; sometimes their health issues are undiagnosed, yet quite serious.

During the bail period, provision should also be made for support to enable them to address their disability or health issues and meet any other requirements. For example, lack of access to transport to meet reporting obligations during bail and inability to know date/times of reporting required can mean people with disabilities breach bail conditions due to their disabilities.

5. Perpetrators and Victims

Our primary concern is to reduce the appalling incarceration and recidivism rates for Aboriginal and Torres Strait Islander people in the ACT. We also share a concern, however, about the high rates of domestic, family and sexual violence perpetrated against Aboriginal and Torres Strait Islander women. Thus we acknowledge that the safety of victims is an important consideration in relation to bail.

However, on the whole, imprisonment *alone* is not what the community or survivors of domestic family and sexual violence and other offences want for the perpetrators: they also want them to have support for their rehabilitation. *Custody alone seems to fail both the victims and the perpetrators.*

There is overwhelming evidence that intergenerational trauma may affect the Aboriginal perpetrator as much as any Aboriginal victim, and both are in a sense victims of the ongoing effects of colonisation. It is important that the ACT develop suitable culturally informed programs for male perpetrators of domestic, family and sexual violence in order to change their behaviours. Placing them in detention, in the absence of such programs, is unlikely to change their behaviours and may lead them into the cycle of recidivism. So even in cases of domestic, family and sexual violence, we emphasize that remanding them into custody may not be the right solution. Culturally appropriate approaches to bail that foreground rehabilitation are desperately needed in the ACT, as is funding for such longer-term and culturally appropriate approaches to support behavioural change.

6. Court Processes

To provide support to the accused person and the bail decision-maker, any Aboriginal person and the decision maker should have access to the Aboriginal Custody Notification Service (ACNS). Police are required to call this service whenever they arrest an Aboriginal or Torres Strait Islander person in NSW or the ACT. On the ACNS website they give the following example of how they work, and how they can reduce the number of Aboriginal people on remand:

‘We received a call to the CNS about a 15-year-old Aboriginal boy who had been arrested for a breach of bail in relation to interacting with another young person at school. He had never been in custody before, never been charged before, and had never breached bail.

When police first called us, they were determined to refuse bail, meaning the boy would be in police lock-up overnight. Our CNS solicitor had a discussion with the officer in charge, impressing on them the importance of avoiding juvenile detention and the likelihood that a court would grant the boy bail the next morning if police didn’t.

The boy lived at home with his dad, who was present at the police station, and he had good support at home. Our solicitor pointed out there were no unacceptable risks identified under the Bail Act if the boy were to go home with his dad that night.’

The police officer ended up agreeing with our solicitor and the boy was released from custody that night.’

Different court processes can also support bail. As the Jumbunna Report noted:

*‘There has also been the introduction of innovative and specifically First Nations’ programs including Ngurrumbai Bail Support, Front Up, Galambany Court and Empowerment Yarning Circles, although as we discuss in the Report, these are **hampered by lack of sufficient support and much still needs to be done.**’ (our emphasis)*

It is clear that these initiatives need to be expanded and strengthened which could help the ACT reduce the very high levels of Aboriginal and Torres Strait Islander prisoners held on remand. **Jumbunna recommended that the Ngurrumbai bail support program be extended to include young people and this has yet to occur.**

7. Bail or Remand for Young People

Placing young people on remand strengthens their pathway into the criminal justice system, rather than rehabilitating them. For that reason it must only be a very last resort. The former ACT Children’s Commissioner stated:

‘As our young people are often denied bail or restorative options, they are placed in remand in youth prison which further cements their relationships with a peer group involved in offending and leads to institutionalisation where these young people become accustomed to periods in and out of incarceration. This pattern disconnects them from their culture, education and other positive influences in their lives. They feel rejected by society and accept and live up to their image as “offenders”.’

Worse still, on remand prisoners (young or adult) do not generally have access to programs or activities that might assist them on release. They are just bored stiff waiting for their day in court. The Children's Commissioner went on to say:

Given that the vast majority of young people are in youth prison on remand rather than sentence, it is also vital that we don't wait until sentence to start work on rehabilitation and building community connections. Time in youth prison, if absolutely necessary, should be an opportunity to provide intensive supports and a joinedup approach rather than simply placing young people in a holding pattern.

If young people are not allowed bail, then the Government has a duty of care to children in detention and should make every effort to care for them in a way which maximises their opportunity for rehabilitation. **Should Bimberi be unable to provide such support to young people on remand then we believe it should be a requirement that the court considers this when considering bail applications from young people.**

Most importantly bail conditions for children would need to consider their opportunities for education and health/disability treatment, so that a much more rehabilitative approach is taken with children than at present. And clearly their Aboriginality should be a strong consideration, so retaining their connection to kin and country should be an important part of any bail criteria.

8. Some specific Comments on the Bill

S22B (a) See above regarding the risk of death in custody in Canberra's detention centre. Risk of harm or death may be better wording.

S 22 B (b) This is very important and must include consideration of whether an Aboriginal person would be able to attend a funeral of a loved one while on remand. Attendance at funerals is an important obligation for Aboriginal and Torres Strait Islander people in maintaining connection to family and culture.

S22B (c) This must also include experience of removal from family of oneself or a previous generation in the family, and placement in out of home/ state care. S22C (ii) may cover this, but some older Aboriginal people were removed under a variety of State Protection Acts rather than Child Welfare laws.

S22 B (c) (iii) homelessness has to date been used as a reason to deny bail. If this is to function in favour of bail as stated, then more justice housing provision is required in the ACT in order that bail decision makers can direct homeless people to suitable shelter during bail, rather than place them on remand. Jail should not be used as a housing option.

S 22B (d) This caring responsibility may be for an extended family member rather than a nuclear family member in the case of Aboriginal or Torres Strait Islander people.

Recognition that the caring responsibility may be for a person who is not a nuclear family member is essential.

S 22 B (3) We recognise that Stolen Generation people and their descendants may not be able to satisfy this definition of Aboriginality, (especially 3c) yet are likely to have high levels of trauma and worse health than other Aboriginal people. It is therefore important that bail decision makers consider persons who are from the Stolen Generations, or their descendants, as bona fide Aboriginal or Torres Strait Islander people.

S 22C As mentioned above, rates of disability and health conditions, including mental health conditions, are high in the Aboriginal and Torres Strait Islander community. Consideration must be given to whether persons may be able to access **culturally safe** care for these conditions if remanded, compared to if granted bail.

S23 If an Aboriginal or Torres Strait Islander woman is pregnant, her disconnection from culture and country, and in particular from female elders who may guide her through pregnancy, is a very important consideration in deciding about a bail application.

9. Other Jumbunna Report recommendations relating to bail

In addition to recommending this bail reform (Recommendations 8.2a and b), the Jumbunna Report also recommended the introduction of Sunday sittings of the Magistrates Court for the purposes of bail (Recommendation 8.2c). ANTAR ACT urges the Committee to recommend that the court be adequately funded to enable it to hold Sunday sittings of the Magistrates Court for the purposes of bail. We do not know if the additional funding for the Magistrates Court recently announced will enable this.

As the Jumbunna Report stated:

‘Currently, an accused person taken into police custody and not processed by the Watchhouse by 9am on a Saturday morning must wait until Monday morning at the earliest, even if they were taken into custody on the Friday evening. There was widespread support in our consultations (and particularly from the legal profession broadly) for a bail court to operate on a Sunday.’

It went on to say:

‘Submissions by Legal Aid ACT and the Inspector of Custodial Services to the Standing Committee on Justice and Community Safety Inquiry into the administration of bail also supported the Magistrates Court permanently sitting on Sundays for the purposes of bail. The Inspector of Custodial Services noted that: During the course of our Healthy Centre Review, we also heard from stakeholders positive reports of the pilot program for Sunday bail hearings and how it resulted in many being released on bail who otherwise would have been detained until Monday morning.’

Legal Aid ACT has warned that holding a person in detention longer than the 48 hours contravened section 17 of the Bail Act, as well as sections 18 and 21 of the ACT Human Rights Act 2004. The Standing Committee on Justice and Community Safety recommended that the ACT Government put in place arrangements for the Magistrates Court to permanently sit on Sundays for the purposes of bail (Recommendation 14). As we have noted, there is substantial support for weekend court for the purposes of bail.’

Recommendation 9.3 of the Jumbunna Report was:

‘We recommend that the ACT government properly resource the Galambany Court to resume hearing bail applications. Consideration also needs to be given to increasing funding to the Ngurrumbai Bail Support program to meet further service demands’.

This bail reform Bill is silent on this matter. ANTaR ACT understands that under this legislation, the Galambany Court will be able to hear bail applications from First Nations people, and we support this.

Adequate funding for the Ngurrumbai Bail support service is also critical. The Jumbunna Report found that

‘in 2022– 2023, the Ngurrumbai service developed 271 bail plans for their clients, and 229 of them were granted bail, a success rate of 85%’.

If First Nations people have the opportunity to develop bail support plans through the Ngurrumbai service, then the chances of dramatically reducing the number of First Nations people on remand can be achieved. This service needs adequate, ongoing funding.

Further, the Jumbunna Report’s Recommendation 8.1 was to ‘Improve data on bail’. Improved data on bail applications and results would enable policy makers and practitioners to target their interventions more effectively to reduce the number of First Nations people held on remand.

While these issues may go a little beyond responses to the Act’s amendments, it is important that the Legislative Assembly sees the bail reform legislation in its wider context, so that the maximum benefit can be achieved from the reforms. We urge Legislative Assembly members to pursue the matters raised here which were central to the Jumbunna Report’s recommendations on bail.

10. Concluding Comments

While we welcome the general thrust of the bail reforms proposed in this Bill, we emphasise that the ACT Government is still failing to comprehensively address the social determinants of incarceration, in particular shortages of housing, and inadequate

support relating to drug and alcohol or mental health /cognitive impairment specifically for Aboriginal and Torres Strait Islander people. We continue to be concerned that poor systemic integration of services sees people without fixed permanent addresses ineligible for bail. This creates unnecessary costs for the broader community and entrenches criminogenic pathways. Jail should not be a (very expensive) housing service.

ANTaR ACT also recommends that the Government commit to a review, or evaluation and public reporting two years after the introduction of the Bail Amendment Act, which specifically considers the impacts on Aboriginal and Torres Strait Islander incarceration and recidivism rates, to ensure that any bail reform does not have unintended consequences.

References

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ANTaR ACT

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