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Dear Members of the Committee

Re: Bail Amendment Bill 2026

### **Introduction**

This submission is provided in response to the referral of the *Bail Amendment Bill 2026 (Serial 52)* to the Legislative Scrutiny Committee for inquiry and report.

We write from a lived-experience, community-led perspective shaped by decades of working alongside criminalised women, girls, and families across Australia, including in the Northern Territory. Our work has consistently demonstrated that bail laws are one of the most significant drivers of imprisonment, particularly for Aboriginal children, young people and women. As such, even amendments described as technical, or clarifying must be examined carefully for their real-world impacts.

The Bill is framed as a measure to clarify that the *Bail Act 1982* applies to youth, the Youth Justice Court, and its judicial officers unless otherwise specified. While this may appear administrative, legislation relating to bail in the Northern Territory cannot be viewed in isolation from the broader context of punitive bail settings, extraordinarily high youth imprisonment rates, and longstanding concerns about systemic racism and the treatment of Aboriginal children in the justice system.

In a jurisdiction where children, overwhelmingly Aboriginal children, are routinely denied bail, imprisoned on remand, and criminalised for breaching conditions they cannot reasonably meet, legislative clarification has material consequences. The Committee must therefore consider not only the stated intent of the Bill, but the system into which it will operate.

### **Context: Bail as a Driver of Youth Detention**

The Northern Territory continues to record some of the highest rates of child and youth imprisonment in the country. A significant proportion of children in prison are caged on remand rather than serving sentences. Many of these children have not been found guilty of any offence but are imprisoned because bail has been refused or because they have breached conditions attached to their bail.

This pattern is not accidental. It is the product of increasingly restrictive bail laws, high levels of police surveillance, poverty, housing instability, and systemic racism. Aboriginal children, who are already subject to intense monitoring and intervention by state systems, are particularly vulnerable to bail refusal and breach. In practice, bail operates less as a mechanism to support children to remain in community and more as a pathway into imprisonment.

Against this backdrop, any amendment that further embeds children and young people within existing bail structures must be scrutinised closely. While the Bill states that it does not change current



processes and merely clarifies application, clarification can have the effect of entrenching and legitimising harmful practices that are already producing devastating outcomes.

### **Operation of the Bill**

The Bill amends the *Bail Act 1982* to make explicit that references to the Local Court, Local Court judges, and registrars include the Youth Justice Court and its judicial officers unless otherwise specified. Its stated purpose is to make the law easier to understand and apply by clearly confirming that the powers and functions under the Act apply to youth bail matters.

Although characterised as a technical amendment that does not alter existing processes, the formal expansion of definitions to include the Youth Justice Court has substantive implications. It consolidates the application of an adult-oriented bail framework to children without introducing any additional safeguards specific to youth, nor any recognition of the unique vulnerabilities and rights of children.

This is particularly concerning in a jurisdiction where bail decision-making has already contributed significantly to children's imprisonment and where systemic reform has been repeatedly called for by inquiries, advocates, and community organisations.

### **Concerns Regarding the Impact on Children and Young People**

#### **Entrenchment of punitive bail practices**

The Bill risks reinforcing a bail framework that is already operating in a punitive manner toward children. Children and young people in the Northern Territory are frequently refused bail not because they present a serious risk to community safety, but because they lack stable accommodation, supportive adult supervision, or the capacity to comply with onerous conditions. Curfews, geographic restrictions, reporting requirements, and behavioural conditions can be impossible for children living in poverty or unstable housing situations to meet.

Where bail is granted, the conditions imposed often set children up to fail. Breaches of bail conditions, even technical or minor breaches, can quickly lead to imprisonment. In this way, bail becomes less a mechanism for ensuring court attendance and more a mechanism of surveillance and control that funnels children into custody.

By explicitly embedding youth bail decision-making within the broader Bail Act framework without additional protections, the Bill risks normalising this approach rather than challenging it.

#### **Disproportionate impact on Aboriginal children**

Any legislative amendment affecting youth justice in the Northern Territory must be assessed for its impact on Aboriginal children, who make up the overwhelming majority of children in prison. The failure of the Bill to acknowledge this reality is deeply concerning.

Aboriginal children are more likely to be denied bail, more likely to be subject to restrictive conditions, and more likely to be detained for breaches. These outcomes are shaped by structural factors including racism, poverty, family separation, family policing intervention, and over-policing of Aboriginal communities. They are also shaped by racism and systemic bias within decision-making processes.



A legislative amendment that appears neutral on its face can nonetheless produce racially disproportionate outcomes. Without explicit safeguards or acknowledgment of these dynamics, the Bill risks reinforcing existing patterns of mass-incarceration.

### **Absence of a child-centred and rights-based framework**

The Bill does not incorporate or reference fundamental principles that should guide all decisions relating to children in the justice system. These include the principle that imprisonment should be used only as a measure of last resort and for the shortest appropriate period, and that the best interests of the child must be a primary consideration.

Australia's obligations under the Convention on the Rights of the Child require that children are not deprived of their liberty unlawfully or arbitrarily and that alternatives to prison are prioritised. The Royal Commission into the Protection and Detention of Children (2016) in the Northern Territory similarly emphasised the need to reduce reliance on imprisonment and adopt a more therapeutic, community-based approach.

By focusing solely on definitional clarification without embedding these principles, the Bill risks reinforcing a system oriented toward risk management and administrative efficiency rather than child wellbeing and rights.

### **Expansion of surveillance and breach-based criminalisation**

Formal confirmation that all Bail Act powers apply to the Youth Justice Court may contribute to increased surveillance of children on bail and more rapid escalation from breach to imprisonment.

Children already subject to intense monitoring by police family policing systems often find themselves criminalised for behaviour that would not attract the same level of scrutiny for other young people.

In this context, bail conditions can function as a mechanism of control rather than support. The expansion or consolidation of legal powers without corresponding safeguards risks deepening this dynamic.

### **The Need for a Broader Approach to Bail Reform**

Legislative clarification will not address the underlying drivers of child imprisonment in the Northern Territory. Children are not entering prison because the law is unclear; they are entering prison because bail settings are too restrictive, support systems are inadequate, and structural inequalities remain unaddressed.

Meaningful reform would involve investment in community-led bail support programs, safe and stable accommodation for children and young people, culturally grounded services delivered by Aboriginal community-controlled, and Aboriginal led organisations, and diversionary responses that keep children out of the court and custody systems altogether.

Without these supports, changes to legislative definitions will do little to improve outcomes and may in fact contribute to further entrenchment of harmful practices.



## Recommendations

The Committee should consider whether it is appropriate to proceed with the Bill in the absence of a broader review of youth bail laws and their impacts. At minimum, any legislative amendment affecting youth bail should be accompanied by explicit safeguards recognising the rights and vulnerabilities of children, particularly Aboriginal children.

Consideration should also be given to requiring transparent public reporting on youth bail refusal rates, remand numbers, and breach-related imprisonment to ensure that the impact of legislative changes can be monitored and assessed.

Most importantly, the Northern Territory Government must invest in community-led, non-custodial responses that support children to remain safely in community rather than expanding or consolidating legislative frameworks that facilitate their imprisonment.

## Conclusion

In a jurisdiction where bail laws already function as a primary driver of child and youth imprisonment, no amendment relating to bail can be considered purely technical. Clarifying the application of the *Bail Act 1982* to the Youth Justice Court may appear administrative, but it operates within a system that is producing profound and well-documented harm.

The Committee has an opportunity to ensure that legislative reform does not further entrench pathways into prison for children, particularly Aboriginal children, who are already disproportionately impacted by the justice system. Any change to bail legislation must be guided by the principles of reducing imprisonment, upholding children's rights, and investing in community-led alternatives.

Without such an approach, legislative clarity risks reinforcing injustice rather than addressing it.

Yours sincerely



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13 February 2026

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