

***Statutory Review of the Bail Amendment
(Extension of Limitation on Bail in Certain
Circumstances) Act 2025***

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing marginalisation or disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We actively collaborate and partner in our work and focus on finding practical solutions. We work across five focus areas:

Disability rights: challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

Justice for First Nations people: challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

Homelessness: reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

Civil rights: defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

Energy and water justice: working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

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Recommendations

Recommendation 1

Section 22C of the Bail Act should be repealed in its entirety, so that the temporary bail test no longer applies. The provision imposes an elevated threshold that is inconsistent with the purposes of the Bail Act, and which precludes individualised assessment. Removing the temporary bail test in its entirety would restore coherence to the legislative scheme and ensure that bail decisions for children and young people are made in accordance with established principles.

Recommendation 2

The NSW Government should increase investment in community-led, place-based early intervention and prevention programs, with a focus on young people. Aboriginal Community Controlled Organisations must be at the centre of program design and delivery for Aboriginal and Torres Strait Islander children and their families.

Recommendation 3

The NSW Government should increase the availability of support services, as well as crisis and long-term accommodation options for young people. Solutions for young Aboriginal and Torres Strait Islander people must be lead and designed by Aboriginal Community Controlled Organisations.

Recommendation 4

The NSW Government should expand diversion and early intervention programs for young people with disability.

Recommendation 5

The NSW Government should invest in bail support programs for young people, assisting them to address the root causes of offending, increase compliance with bail conditions and better realise the underlying goals of bail systems.

Recommendation 6

The NSW Government should resource and expand the availability of evidence-based, culturally-safe diversionary programs for children.

1. Introduction

The Justice and Equity Centre ('JEC') is pleased to provide a submission to the Department of Communities and Justice ('DCJ') for the statutory review of section 22C of the *Bail Act 2013* ('the Bail Act').

Section 22C of the Bail Act, introduced by the *Bail and Crimes Amendment Act 2024* ('the 2024 Act') on 3 April 2024, established a temporary bail test for 14 to 17 years olds charged with motor theft, serious breaking and entering, or a performance crime offence while already on bail for similar offences. Although originally due to sunset on 4 April 2025, its operation was extended by the *Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025* ('The Amendment Act'), commencing on 2 April 2025. This Act also inserted s 22D, requiring the Attorney General to conduct a statutory review and table the report in Parliament.

This submission recommends that s 22C be repealed in its entirety, and that reforms instead prioritise investment in evidence-based, community-led early intervention, diversion and bail support programs. This includes culturally safe, Aboriginal-led initiatives that address the underlying drivers of youth offending and deliver more effective and sustainable public safety outcomes.

2. Impact of the temporary bail test

2.1 Data

The data provided in the consultation paper indicates that s 22C has had a significant impact on bail outcomes, particularly by increasing the likelihood that young people are remanded in custody.

Between April 2024 and December 2025, there were 454 first bail appearances captured by the provision, and 70% resulted in bail refusal.¹ This is approximately double the refusal rate for comparable cases generally,² suggesting that s 22C is operating as a materially more-restrictive test. This has occurred alongside a broader increase in youth detention. The number of young people on remand alone increased by nearly 30% over the same period,³ suggesting that the provision may be contributing to more children being held in custody prior to trial.

The statistics also demonstrate a disproportionate impact on Aboriginal children. Of all s 22C cases, 79% involved Aboriginal young people.⁴ Of the cases where bail was refused under s 22C, 84% involved Aboriginal young people.⁵

¹ Department of Communities and Justice (2026), Consultation paper, *Statutory Review of the Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025* at page 8.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Taken together, these figures show that s 22C is not only associated with higher remand rates overall, but is also likely exacerbating existing disparities.

2.2 Youth justice impacts

The temporary bail test has directly increased the number of children and young people on remand in detention. This is particularly concerning in the youth justice context, where detention should be a measure of last resort,⁶ and where prolonged detention is well-established to cause developmental and psychological harm.⁷ The temporary bail test imposes a more punitive approach than that taken for adults for equivalent offences.⁸

The Bail Act is premised on the principle that liberty is the default position, and that bail should be granted unless an unacceptable risk is established. By imposing a new ‘high degree of confidence’ test, s 22C effectively elevates the threshold for release beyond the unacceptable risk test, undermining the legislative scheme and reducing the practical capacity of courts to tailor conditions that would otherwise mitigate risk. Section 22C operates as a broad, offence-based restriction that applies irrespective of a child’s circumstances, supports, or capacity to comply with conditions. There is a risk that detention will be used where appropriate community-based alternatives would be more appropriate and effective to address community safety and risk of reoffending.

Recommendation 1

Section 22C of the Bail Act should be repealed, so that the temporary bail test no longer applies. The provision imposes an elevated threshold that is inconsistent with the purposes of the Bail Act, and which precludes individualised assessment. Removing the temporary bail test in its entirety would restore coherence to the legislative scheme and ensure that bail decisions for children and young people are made in accordance with established principles.

3. Achieving the policy objectives

Section 22C ultimately undermines the policy objectives of enhancing community safety, reducing repeat offending, and responding to youth crime in NSW. The available data does not point to any demonstrable improvements in safety outcomes. The evidence consistently shows that increased reliance on pre-trial detention does not sustainably reduce reoffending, and may in fact be counterproductive.⁹ The continued use of s 22C risks entrenching the adverse consequences

⁶ Article 37(b) of the United Nations Convention on the Rights of the Child (CRC)

⁷ Barnert, Elizabeth S et al. “Child incarceration and long-term adult health outcomes: a longitudinal study.” *International journal of prisoner health* vol. 14,1 (2018): 26-33.

⁸ NSW, *Parliamentary Debates*, Legislative Assembly, 12 March 2024, page (Michael Daley, Attorney General) <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-139003>

⁹ Silver, I. A., Walker, J., DeMichele, M. T., Dole, J. L., & Labrecque, R. M. (2024). Does pretrial detention influence time until re-involvement with the criminal legal system? *Journal of Criminal Justice*, 94, Article 102234.

while delaying the development and implementation of more-effective, evidence-based responses.

Criminalising young children is a failure. It does not address the causes of offending, nor does it help children to do better. When experienced by children, early exposure is a key predictor of future involvement with, and escalation through, the criminal legal system.¹⁰

As noted by the JEC in our 2020 submission to the Council of Attorneys-General Working Group review:¹¹

There are many ways in which children can be effectively supported to take responsibility for their actions which avoid the blunt, harmful and criminogenic processes of the criminal justice system... We must move away from a narrative of accountability that emphasizes reactive measures and the imposition of penalties, and recognise the hard work involved in engagement and diversion and restorative justice processes that address the underlying causes of offending, and ultimately, improve community safety.

Recommendation 2

The NSW Government should increase investment in community-led, place-based early intervention and prevention programs, with a focus on young people. Aboriginal Community Controlled Organisations must be at the centre of program design and delivery for Aboriginal and Torres Strait Islander children and their families.

To effectively address increased youth crime rates in regional areas, community-led and place based approaches must be used to reduce recidivism.¹² In 2019, the Productivity Commission suggested that:¹³

[G]overnments need to adopt a place-based approach to the design and delivery of services and programs for families and children... [A] place-based approach involves flexible service provision to find fit-for-purpose solutions that reflect the needs of local communities By its nature, a place-based approach relies on engagement between governments and the community to understand the specific issues faced by the community.

Reducing the drivers of youth crimes requires a focus on capacity building through social policy, education, health, housing and the provision of support services. This necessitates a whole-of-

¹⁰ UNSW Comparative Youth Penalty Project, Arguments for Raising the Minimum Age of Criminal Responsibility (Report, 2017)

¹¹ Public Interest Advocacy Centre, Submission to Council of Attorneys-General – *Age of Criminal Responsibility Working Group Review* (28 February 2020), <https://jec.org.au/publication/submission-to-council-of-attorneys-general-age-of-criminal-responsibility-working-group-review/>.

¹² The NSW Implementation Plan for Closing the Gap notes that early interventions to support young people need to be community designed and driven and to support health, education and housing: NSW Government, 2022-24 *NSW Implementation Plan for Closing the Gap* (Implementation Plan, August 2022)) 99 ('NSW CTG Implementation Plan').

¹³ Productivity Commission, Expenditure on Children in the Northern Territory (Draft Report, November 2019) 50, cited in Aboriginal Legal Service, Submission to the Council of the Attorneys-General, Review of the Age of Criminal Responsibility (3 March 2020) 32.

government response and a move away from reactive responses that continue to fail communities in NSW. Governments must work collaboratively, in partnership with community, to develop evidence-based early intervention strategies.¹⁴

Recommendation 3

The NSW Government should increase the availability of support services, as well as crisis and long-term accommodation options for young people. Solutions for young Aboriginal and Torres Strait Islander people must be lead and designed by Aboriginal Community Controlled Organisations.

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The NSW Government should resource and expand the availability of evidence-based, culturally-safe diversionary programs for children.

¹⁴ Australian Human Rights Commission, How Australia can transform child justice to improve safety and wellbeing (June 2024) 57 (“Help Way Earlier!” report’).