

Department of Communities and Justice  
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4 May 2026

To whom it may concern,

We thank you for the opportunity to make a submission to the review of s22C the *Bail Act 2013* (NSW). We did not support this law when it passed, and do not support it now. We are concerned s22C further entangles children in the prison system- particularly First Nations children, which has drastic consequences for First Nations communities. There is ample evidence that place-based, sustainable prevention and diversion programs are better suited to addressing youth crime than the incarceration precipitated by s22C.

**About Community Restorative Centre**

We write from Community Restorative Centre (CRC). CRC is a lead NGO supporting people exiting prison in NSW. We run a variety of programs for cohorts transitioning to the community after prison. This includes a youth focused program called Pathways Home. Pathways Home supports young people 10-24 who are exiting prison and would like support with their alcohol and other drug use in the greater Sydney metropolitan area.

**The ramifications of denying a child bail- Jackson's story**

Through our casework supporting children with prison system involvement, we know that any extra time spent in prison due to being denied bail (including through the introduction of s22C) can have dangerous consequences. We highlight this through the story of Jackson,<sup>1</sup> a First Nations child that CRC's Pathways Home program is supporting. Jackson was out in the community on bail, with one of his bail conditions being that he needed to reside at a private residence. The private residence he was residing at, his friend's place, was raided by police on an unrelated matter, and Jackson was found to have breached his bail. This was because the judge ruled that his friend's house was not a 'private residence'- a decision that was subsequently challenged by a solicitor before a different judge, who agreed that Jackson should indeed be released on bail. The fallout of differing judicial decisions was that Jackson had unnecessarily spent 2 nights in custody. This was not insignificant; Jackson had experienced verbal and psychological harassment from prison staff due to being an identified First Nations person in custody. He also experienced victimisation in prison

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<sup>1</sup> Not his real name.

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through physical violence from other young people. We raise Jackson's story to emphasise that any kind of avoidable prison system involvement- whether it be precipitated through s22C or otherwise-is not beneficial to children or the community. It places children- particularly First Nations children- in proximity to systems that can degrade their physical and mental wellbeing. This is not in anybody's interest.

### **Response to consultation questions**

#### **1. Do the policy objectives of section 22C and the extension of section 22C remain valid?**

We recognise the policy objectives for s22C include:

- Temporarily restricting access to bail for children and young people who are charged with specific offences on a repeat basis.
- Improving community safety, particularly in regional locations, through reducing recidivism with respect to specific property crimes.
- Addressing high crime rates in regional locations.<sup>2</sup>

We additionally recognise that the policy objectives informing the extension of s22C beyond the original sunset period include:

- Promoting community safety, particularly in regional communities
- Providing further time to implement and assess community-based approaches to reducing youth crime in regional NSW, including in Moree.
- Facilitating more time to consider data on the impacts of s22C.

#### **Valid policy objectives**

Promoting community safety and addressing higher crime rates in regional NSW are valid policy objectives.

#### **Policy objectives we do not perceive to be valid**

##### *Temporarily restricting bail for specific, repeat offences*

Restricting access to bail for children and young people who are charged with specific offences on a repeat basis is not a valid policy objective for a range of reasons.

Firstly, bail law tightening contributes to the hyperincarceration of First Nations people, and puts First Nations people's lives at risk through prison system involvement. First Nations young people are already overrepresented in the NSW system, making up 56.4 per cent of the NSW youth prison population.<sup>3</sup> First Nations people are also disproportionately

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<sup>2</sup> Department of Communities and Justice (DCJ). (2026). *Statutory Review of the Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025. Consultation Paper.*

<https://www.nsw.gov.au/sites/default/files/noindex/2026-04/statutory-review-of-the-bail-amendment-extension-of-limitation-on-bail-in-certain-circumstances-act-2025-consultation-paper.PDF>, p.5.

<sup>3</sup> BOCSAR. (2026, February 17). *Custody.* <https://bocsar.nsw.gov.au/statistics-dashboards/custody.html>

impacted by s22C, accounting for 84% of people denied bail during court appearances between April 2024 and December 2025.<sup>4</sup> Bail laws have dangerously been tightened in a context where, in 2024-2025, Australia reported the highest number of First Nations deaths in custody on record.<sup>5</sup> Bail law tightening presents an unacceptable risk to First Nations people, and contributes to the hyperincarceration of First Nations communities.

Bail law tightening also actively stymies policy efforts to address the hyperincarceration of First Nations people. Notably, s22C sits in tension with the federal government aim to meet its Closing the Gaps targets.<sup>6</sup> One such target is Target 11- to reduce the rate of Aboriginal and Torres Strait Islander children (10-17 years) in detention by at least 30 percent,<sup>7</sup> which is not on track to be met by 2031.<sup>8</sup> The first driver listed for high rates of detention in the text of Target 11 is, notably, 'unsentenced detention rates'.<sup>9</sup> Additionally, s22C contradicts recommendations from the Royal Commission into Aboriginal Deaths in Custody from 1991, which includes that incarceration should be a last resort (recommendation 92) and that the government should consider revising any criteria which puts restriction on bail being granted to First Nations people (recommendation 91(b)).<sup>10</sup> Tightening bail laws is not a valid policy objective as it contradicts policy work to address the hyperincarceration of First Nations people at a federal level.

A second reason that temporarily tightening bail laws is not a valid policy objective is it sits in tension with Article 37(b) the United Nations Convention on the Rights of a Child, which states that the detention of young people should always be a, 'last resort'.<sup>11</sup>

A third reason that tightening bail laws temporarily is not a valid policy objective is that the social determinants (or drivers) of incarceration are not addressed through imprisonment, which is necessary to properly address crime. Drivers of incarceration include trauma,

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<sup>4</sup> DCJ. (2026, April). *Statutory Review of the Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025. Consultation Paper*, pp.7-8.

<sup>5</sup> National Aboriginal and Torres Strait Islander Legal Services (NATSILS). (2025, December 11). *Media release. "Our people are paying with their lives": Aboriginal deaths in custody reach record high.*

<https://www.natsils.org.au/wp-content/uploads/2025/12/NATSILS-2512-MR-Record-number-of-deaths-in-custody.pdf>

<sup>6</sup> *Open letter to NSW Premier Minns and the Labor Government*. (2024). Aboriginal Legal Service NSW/ACT. <https://www.alsnswact.org.au/open-letter-from-lawyers-community-workers-and-academics>, p.1.

<sup>7</sup> Productivity Commission. (n.d.). *Socio-economic outcome area 11—Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system*. <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/youth-justice/#unsentenced-detention>

<sup>8</sup> Productivity Commission. (2025, July). *Closing the Gap: Annual Data Compilation Report*. <https://assets.pc.gov.au/2025-10/closing-the-gap-annual-data-compilation-july2025.pdf?VersionId=9X7LLZW8iMzuSBI2bw8hblQodXZD108C>

<sup>9</sup> Productivity Commission. (n.d.). *Socio-economic outcome area 11—Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system*.

<sup>10</sup> AustLII (1998, April 29). *Recommendations*.

<https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html#Heading5>

<sup>11</sup> Office of the High Commissioner for Human Rights. (1989, November). *Convention on the Rights of the Child*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

alcohol and other drug use, homelessness, unmet mental health needs, structural racism and more.<sup>7</sup> An example of prison worsening the drivers of incarceration rather than addressing them was clear in the case of Angie, an 18-year-old First Nations woman that accessed CRC's domestic and family violence support service, The Miranda Project. Prior to prison, Angie had experienced domestic and family violence, childhood trauma, rough sleeping since the age of 13, and using alcohol and other drugs to cope with the trauma. Angie was further victimised while in custody, which exacerbated her trauma and mental ill health. She was also denied the ability to be bailed at a First Nations-led alcohol and other drugs rehabilitation program in the community, to enable her to address her unresolved trauma and live a life free of substances. Additionally, Angie was evicted from her transitional property while in prison, which launched Angie into homelessness and housing insecurity, which is a major driver of reoffending. Angie's experience demonstrates how incarceration can worsen the social drivers of incarceration, rather than address them. In a similar vein, Palawa woman and the CEO of the Aboriginal Legal Service (ALS) NSW/ACT, Karly Warner, has highlighted the inability of incarceration to address social drivers of offending, stating, 'The fact is, bail laws are not capable of "reducing crime". They are just a tool for warehousing people in jails instead of dealing with the issues that bring them into contact with police in the first place'.<sup>12</sup> Notably, temporarily tightening bail laws is not a valid policy objective, as incarceration through the denial of bail does not address the root causes of why young people offend in the first place, which is crucial to addressing youth crime.

A fourth reason temporarily tightening bail laws is not a valid policy objective is the costliness of incarceration compared to diversionary and prevention options. It costs \$2,573 per day to lock up a young person in NSW,<sup>13</sup> which equates to almost \$1 million per year. Prevention and diversion programs have been shown to be more cost effective for government and the community. For instance, a KPMG evaluation of the Maranguka Justice Reinvestment Project in Bourke, NSW, showed the initiative precipitated \$2.5 million worth of savings to government and society over the course of 1 year in 2017.<sup>14</sup> The project, which was place-based and Aboriginal-led, has since ended. It adopted a 'life course' approach and targeted concerns that were likely to put Aboriginal people at risk of criminal legal system<sup>15</sup> involvement from early years into adulthood.<sup>16</sup> Additionally, an early intervention program in Queensland for 10-15 year olds, called the Community Youth

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<sup>12</sup> Aboriginal Legal Service (NSW/ACT). (2025, May 9). *Bail fail: report card exposes shocking truths about NSW Government's bail reforms*. <https://www.alsnswact.org.au/bail-fail-report-card>

<sup>13</sup> Productivity Commission. (2026). *17 Youth Justice Services Data Tables, Table 17A.20*.

<https://www.pc.gov.au/ongoing/report-on-government-services/community-services/youth-justice/>

<sup>14</sup> KPMG. (2018). *Maranguka Justice Reinvestment Project Impact Report*. Indigenous Justice Clearinghouse. <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/maranguka-justice-reinvestment-project-kpmg-impact-assessment-final-report.pdf>

<sup>15</sup> We use the term 'criminal legal system' as opposed to 'criminal justice system' to recognise that the legal system regularly fails to precipitate 'just' outcomes for communities, particularly First Nations communities. We also use this terminology to recognise that the legal system has been imposed on First Nations communities without consent in Australia.

<sup>16</sup> Just Reinvest NSW. (n.d.). *Bourke (Maranguka)*. <https://www.justreinvest.org.au/community/bourke-maranguka/>

Response and Diversion (CYRD) initiative, showed notable cost savings too. Specifically, it led to \$4.5 million in savings over 1 year from a reduction in offending and time spent in prison.<sup>17</sup> Tightening bail laws for young people is not a valid policy objective given the costliness of incarceration in comparison to diversion and prevention programs.

#### *Facilitating more time to consider data on the impacts of s22C*

Facilitating more time to consider data on the impacts of s22C is not a valid policy objective. This is because it was known before the legislation was passed that this law would disproportionately impact First Nations peoples,<sup>18</sup> given the structural racism of the criminal legal system and the racial targeting of First Nations young people. It was not necessary to wait for BOCSAR data to be released to confirm this suspicion.<sup>19</sup>

#### **2. Does section 22C remain appropriate to meet these policy objectives?**

##### The policy objective of improving community safety is not met by s22C

Stricter bail laws do not enhance community safety for a range of reasons, which we have explored below.

#### *Prisons are criminogenic*

Prisons are often understood as criminogenic:<sup>20</sup> there can be barriers to people accessing the supports they need inside prison to change their behaviour (for instance, adequate mental health supports or cultural programs), and prisons often put people in closer proximity to others who will encourage them to engage in criminalised behaviours. One young First Nations person that our Pathways Home program supported, Clarence, explained: 'I feel like when we come in [to prison], we make more criminal friends and once we get out, we all go out and commit more criminal activity'. The cycle of imprisonment that incarceration precipitates is additionally clear in the fact that 62.5% of young people in NSW will re-offend within 12 months of being released from prison.<sup>6</sup> In the Legislative Council debate of the Bail and Crimes Amendment Bill 2024, the Treasurer Daniel Mookhey described the Bill as a 'circuit breaker' to address youth crime in regional NSW. However, it is well known that prisons are not circuit breakers; they precipitate further incarceration and thus do not keep communities safe in the long term.<sup>21</sup>

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<sup>17</sup> Nous Group. (2023, December 5). *Community Youth Response and Diversion Evaluation – Final Findings Report*. Queensland Government. <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/d380d451-d4db-49a7-b392-a12157cf3868/cyrd-evaluation.pdf?ETag=aab86fde681a49857f90784d2308583a>, p. 6.

<sup>18</sup> Torre, G. (2024, March 12). *NSW Indigenous groups warn of danger posed by harsh bail laws for children*. National Indigenous Times. <https://nit.com.au/12-03-2024/10219/nsw-indigenous-groups-warn-of-danger-posed-by-harsh-bail-laws-for-children>

<sup>19</sup> DCJ. (2026, April). *Statutory Review of the Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025: Consultation Paper*, pp. 7-8.

<sup>20</sup> Haney, C. (2020). *Criminality in Context: The Psychological Foundations of Criminal Justice Reform*. American Psychological Association.

<sup>21</sup> Murphy, C. (2024, March 21). *Legislative Council Hansard – 21 March 2024. Bail and Crimes Amendment Bill 2024. Second Reading Speech*. NSW Parliament.

*Bail law tightening undermines community and therapeutic supports*

Bail law tightening inhibits the effectiveness of community based and therapeutic approaches to preventing incarceration- some of which were included in the government package alongside s22C.<sup>22</sup> Examples of bail law tightening stymying the effectiveness of prevention and diversionary programs were provided by the ALS (NSW/ACT) in their submission to this review. The ALS explained that through s22C, Aboriginal young people have been denied access to diversionary programs like Youth Koori Court and alcohol and other drugs residential rehabilitation.<sup>23</sup>

*Some of the community supports accompanying s22C may be ineffective*

The decision to fund the expansion of PCYC and NSW Police-run Youth Action Meetings (YAMs) may impact on the efficacy of such early intervention and diversionary approaches that accompany s22C,<sup>24</sup> particularly with regards to their ability to keep young people and the broader community safe. This is because First Nations young people, who are racially targeted and face violence from police, may not feel comfortable engaging with police run initiatives. For instance, in a justice reinvestment project in Mt Druitt, NSW, called Mouny Yarns, a young First Nations person shared discomfort with police-run programs:

no-one wants to go to a police run PCYC...if it was a community run one, young kids might rock up and feel safer. I remember as a kid going to PCYC and they'd question me about my brothers all the time. I'm not here for you to question me about my brothers, I'm here to play the games or work out.<sup>25</sup>

Another young person involved with Mouny Yarns shared their unease around police, stating, 'whenever police see me, they just see a suspect'.<sup>26</sup> Additionally, BOCSAR has released an evaluation of police run Youth Action Meetings (YAMS), which found they did not show real benefits with respect to offending, school enrolment or participants accessing mental health services.<sup>27</sup> Like PCYCs, young people may experience YAMS as an extension of

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<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1820781676-95156'>

<sup>22</sup> Aboriginal Legal Service (NSW/ACT). (2026, April). *Submission to Statutory Review of s 22C of the Bail Act 2013*.

[https://assets.nationbuilder.com/alsnswact/pages/5108/attachments/original/1777532400/ALS\\_Submission\\_-\\_Statutory\\_Review\\_of\\_s\\_22C\\_Bail\\_Act.pdf?1777532400](https://assets.nationbuilder.com/alsnswact/pages/5108/attachments/original/1777532400/ALS_Submission_-_Statutory_Review_of_s_22C_Bail_Act.pdf?1777532400), p.9.

<sup>23</sup> Aboriginal Legal Service (NSW/ACT). (2026, April). *Submission to Statutory Review of s 22C of the Bail Act 2013*, pp. 6-7.

<sup>24</sup> Aboriginal Legal Service (NSW/ACT). (2026, April). *Submission to Statutory Review of s 22C of the Bail Act 2013*, pp.9-10.

<sup>25</sup> Just Reinvest NSW. (2023, March 24). Mouny Yarns Official Film. YouTube.

<https://www.youtube.com/watch?v=Bni2BDutOgo>

<sup>26</sup> Mouny Yarns. (n.d.). Mouny Yarns: lived experiences of Aboriginal young people in Mt Druitt.

<https://static1.squarespace.com/static/644e27ff8602074e9b8ef945/t/64fe4341bf2ec6376e5d5db8/1694385003181/Mouny+Yarns.pdf>, p.14.

<sup>27</sup> BOCSAR. (2026, April). An outcome evaluation of the NSW Youth Action Meetings pilot program.

<https://bocsar.nsw.gov.au/research-evaluations/2026/CJB273-Report-NSW-youth-action-meetings-pilot-program.html#:~:text=Key%20findings,the%20output/outcome%20occurring%20sooner.>

police surveillance.<sup>28</sup> We support the recommendation by the ALS (NSW/ACT) that funding for police-run prevention and diversionary initiatives should not be prioritised, given these initiatives may not be accessible to First Nations young people in particular.<sup>29</sup>

### s22C was not needed to address high crime rates in regional NSW

It was not necessary to introduce s22C to address high crime rates in regional NSW. This is because it is already well-known that prevention and diversionary programs that address the root causes of offending are more effective at addressing crime,<sup>30</sup> and that funding inequities between rural, regional and metropolitan areas are a long-standing structural issue that need to be addressed.<sup>31</sup> One concern, which was highlighted by Labor politician Stephen Lawrence during the inquiry into youth justice in NSW this year, is that transformative investment programs tend to be supported by sporadic, small-scale investments in regional areas, which can inhibit their chance of success.<sup>32</sup> These programs are also operating in a context where there has been a long-standing, structural concern of more investment and attention being given to metropolitan areas over regional and rural locales.<sup>33</sup>

Rather than further criminalising young people through bail law tightening, what is needed is support for long-term, sustainable, place based initiatives to address high crime rates in regional NSW. Such initiatives should be flexible, outreach-based, inclusive and culturally appropriate for young people. We particularly recognise the need to support youth led and First Nations led initiatives in this space. The outcomes sought from the programs should be developed in consultation with young people and their families.<sup>34</sup> Rather than making it more difficult for children to access bail, government should focus on addressing the

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<sup>28</sup> Aboriginal Legal Service (NSW/ACT). (2026, April). *Submission to Statutory Review of s 22C of the Bail Act 2013*.

[https://assets.nationbuilder.com/alsnswact/pages/5108/attachments/original/1777532400/ALS\\_Submission\\_-\\_Statutory\\_Review\\_of\\_s\\_22C\\_Bail\\_Act.pdf?1777532400](https://assets.nationbuilder.com/alsnswact/pages/5108/attachments/original/1777532400/ALS_Submission_-_Statutory_Review_of_s_22C_Bail_Act.pdf?1777532400), p.9.

<sup>29</sup> Aboriginal Legal Service (NSW/ACT). (2026, April). *Submission to Statutory Review of s 22C of the Bail Act 2013*, p. 9.

<sup>30</sup> Aboriginal Legal Service (NSW/ACT). (n.d.). *NSW Bail Laws Report Card Fail: More children in jail. No drop in crime*.

[https://assets.nationbuilder.com/alsnswact/pages/3425/attachments/original/1746684593/NSW\\_Bail\\_Laws\\_Report\\_Card.pdf?1746684593](https://assets.nationbuilder.com/alsnswact/pages/3425/attachments/original/1746684593/NSW_Bail_Laws_Report_Card.pdf?1746684593); Holland, L., Lee, C., Toombs, M., Smirnov, A., & Reid, N. (2024). Resisting the incarceration of Aboriginal and Torres Strait Islander children: A scoping review to determine the cultural responsiveness of diversion programs. *First Nations Health and Wellbeing-The Lowitja Journal* (2), 100023, p.2.

<sup>31</sup> Aboriginal Legal Service (NSW/ACT). (n.d.). *NSW Bail Laws Report Card Fail: More children in jail. No drop in crime*, p.6.

<sup>32</sup> Lawrence, S. (2026, April 15). *Report on proceedings before Select Committee on Youth Justice*. NSW Parliament. <https://www.parliament.nsw.gov.au/lcdocs/transcripts/3717/Transcript%20-%20UNCORRECTED%20-%20Youth%20justice%20-%2015%20April%202026.pdf>, p.40.

<sup>33</sup> Aboriginal Legal Service (NSW/ACT). (2026, April). *Submission to Statutory Review of s 22C of the Bail Act 2013*, p.6.

<sup>34</sup> Yung Prodigy. (2026, March 13). *Submission to the NSW Legislative Council Select Committee on Youth Justice on behalf of Yung Prodigy (YP)*. NSW Parliament. <https://www.parliament.nsw.gov.au/lcdocs/submissions/94834/0035%20Yung%20Prodigy.pdf>, p. 7.

broader structural inequities in funding and attention given to city areas over rural and regional locales, and adequately support diversion and prevention programs.

We are also concerned that rather than s22C addressing youth crime in regional NSW, it may be encouraging young people to plead guilty to crimes they did not commit. We say this recognising reports by Shopfront Youth Legal Centre and the ALS (NSW/ACT) that children are being incentivised to plead guilty to crimes they did not commit due to s22C.<sup>35</sup> The ALS (NSW/ACT), for instance, gave the example of one First Nations young person who was contemplating pleading guilty for an offence he did not commit as he knew it would be a community-based sentence. Pleading guilty would mean the young person would avoid being held on remand in prison. However, children pleading guilty for crimes they have not committed means they could be unnecessarily acquiring criminal records. Criminal records can exclude young people from work, study, and other opportunities, which impinges on their capacity to build lives outside of the criminal legal system. It is notable that children pleading guilty to charges they did not commit does not reduce crime; it means they acquire criminal records that make it more difficult to cease reoffending through means like employment and educational opportunities.

### **Summary of recommendations**

**Recommendation 1:** repeal s22C of the *Bail Act 2013* (NSW)

**Recommendation 2:** A genuine reinvestment of funds away from the youth prison system to place-based, long term and sustainable prevention and diversionary programs in NSW, particularly youth led and First Nations led initiatives.

### **Conclusion**

Thank you for taking the time to consider our position. We urge the repeal s22C. We say this recognising that prevention and diversion programs that address the social determinants of incarceration are better equipped to tackle issues of youth crime. Such initiatives are also more cost effective for government and society. We welcome any further engagement with DCJ with respect to this review.

Kind regards,  
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<sup>35</sup> Sanders, J. & Clifford, J. (2026, April 15). *Report on proceedings before select committee on youth justice youth justice*. NSW Parliament. <https://www.parliament.nsw.gov.au/lcdocs/transcripts/3717/Transcript%20-%20UNCORRECTED%20-%20Youth%20justice%20-%2015%20April%202026.pdf>, p.28.