



**Submission to the consultation on performance crime in
section 154K of the Crimes Act**

Department of Communities and Justice

Submission by Community Restorative Centre and Trans Justice Sydney

8 May 2026

Acknowledgement of Country

This submission was authored on the lands of the Wangal, Bidjigal and Kamaygal peoples. We would like to recognise their Elders past and present, and their ongoing care and custodianship of Country. The overrepresentation of First Nations people in the criminal legal system¹ across this continent is a national shame. We recognise the harm caused by these systems and the tireless advocacy of First Nations people to reduce the criminalisation of their family and communities. Ultimately, incarceration is not part of First Nations cultures, and First Nations people have had, and continue to have, systems of accountability outside of the colonial carceral system.

About us

Community Restorative Centre (CRC)

CRC is a lead NGO supporting people exiting prison in NSW. CRC runs a range of programs for people transitioning from prison back into the community. This includes a youth focused program called Pathways Home. Pathways Home supports young people aged 10-24 who are exiting prison and would like support with their alcohol and other drug use. They support young people in the greater Sydney metropolitan area.

Trans Justice Sydney

Trans Justice Sydney is a location-specific network of the larger Trans Justice Project. The Trans Justice Project is a continent-wide, trans and gender diverse (TGD)-led advocacy organisation whose aim is to push back against transphobic rhetoric and organising, and build a powerful movement working for freedom, justice and equity for all TGD people. The Trans Justice Project works together with loved ones and allies to bring about a future where all TGD people are safe, celebrated, and free.

¹ We use the term 'criminal legal system' as opposed to 'criminal justice system' here to recognise that the system regularly fails to precipitate 'just' outcomes for minoritised and disadvantaged populations- particularly First Nations people. We also use the language of 'criminal legal system' to recognise that the system was imposed without consent on First Nations communities through settler colonialism.

How we prepared this submission

This submission was prepared by Dr Rory Gillard (they/them) in the Advocacy, Research and Policy Unit at Community Restorative Centre, with input from the Pathways Home team at CRC. The submission was co-authored by Sorcha Conlan (she/they), Wellbeing Coordinator and Advocacy Volunteer with Trans Justice Sydney.

Introduction

‘You’ve got to understand, it’s so much bigger than performance crimes’.

These were the words of a case worker supporting children and young people through CRC’s Pathways Home program. In this statement, the case worker highlights the way the broader context and social drivers of offending must be understood and addressed to prevent performance crimes. Given criminalisation does not address the social drivers of this offending, and given the racial inequities perpetuated through criminalisation approaches, we do not support s154K or its expansion under the *Crimes Legislation Amendment (Hate Crimes) Bill 2026* (NSW). We are seeking the repeal of s154K. In this submission, we support the reinvestment of funds away from child prisons to place-based, sustainable prevention and diversionary supports, which address the social drivers of young people’s behaviours of concern. We argue that such an approach is more cost effective and is better placed to promote community safety in the long term.

Recommendations

Recommendation 1: that s154K be repealed.

Recommendation 2: that s154K not be expanded, as per the *Crimes Legislation Amendment (Hate Crimes) Bill 2026* (NSW).

Recommendation 3: government support for appropriate and engaging activities for young people in rural and regional areas.

Recommendation 4: 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.

Recommendation 5: that government support and encourage improved social media moderation by companies like META.

Response to consultation questions

Question 1: Do the policy objectives of the performance crime offence in section 154K of the Crimes Act remain valid?

We recognise the stated policy objective of s154K was to address a trend in young people posting footage of specific offences to social media, including break and enter and vehicle theft offences (DCJ, 2026, p.1). We also recognise that s154K was supposed to function alongside therapeutic and community supports.

We additionally note that the NSW government has introduced the *Crimes Legislation Amendment (Hate Crimes) Bill 2026* (NSW), which aims to expand s154K to include the criminalisation of performance crimes for serious robbery and assault offences (DCJ, 2026, p. 2). The NSW government stated this was in response to the targeted queerphobic assault and robbery of sexuality diverse young men, which was then uploaded to social media.

The policy objectives of deterring people from sharing and advertising harmful, hateful and/or exploitative conduct via social media are legitimate. So too is the government funding therapeutic and community supports for communities at risk of criminal legal system involvement.

Question 2: Do the terms of section 154K of the Crimes Act remain appropriate to achieve those policy objectives?

We do not believe that the criminalisation of conduct through s154K, or expanding s154K through the *Crimes Legislation Amendment (Hate Crimes) Bill 2026* (NSW), will address intended policy objectives. We explore the reasons for this below.

Racial inequities perpetuated through s154K

We do not believe s154K is an appropriate way to address youth crime, given the way it perpetuates racial inequities and the entanglement of First Nations children with the criminal legal system. BOCSAR data demonstrates First Nations people are disproportionately impacted by s154K (DCJ, 2026, p.3). Indeed, between April 2024 and September 2025, 72% of people who had legal action initiated against them under s154K were Aboriginal people. Further, between April and September 2025 in the children's and local courts, all cases where a person was found guilty of a s154K offence (in which the s154K offence was the principal offence) involved an Aboriginal defendant (DCJ, 2026, p.3). The overrepresentation of First Nations children in the criminal legal system speaks to the ongoing effects of colonisation, dispossession, and the impacts of laws and policy which discriminate against, and intergenerationally impact, First Nations communities (Australian Human Rights Commission, 2024, p. 22). Data on the way s154K entangles First Nations children in the criminal legal system is highly concerning, given 2024-2025 marked the year of the highest number of First Nations deaths in custody (NATSILS, 2025). s154K has resulted in further criminalising First Nations children, which has devastating impacts on First Nations communities' social and emotional wellbeing (Holland et al. 2024, p. 4), and simply worsens recidivism (UNSW Sydney, 2024, p. 38).

The effects of the racialised criminalisation of First Nations children was shared in anecdotes by a First Nations identified case worker with the Pathways Home team. She shared that one young person she supported, Scott,² experienced the loss of his cousin while he was in custody.

² Not his real name.

Scott was not able to attend the funeral and participate in Sorry Business. He also wasn't able to grieve in custody, given the prison environment. This resulted in Scott not being okay spiritually, which entangled him in further police contact. The case worker additionally described the emotional impacts of incarceration on First Nations children and their families during young people's prison visits. She shared, 'it's quite upsetting seeing visits in custody rooms... I remember witnessing a compassionate Officer having to add toys to a visit room after a family had come interstate, which included six younger siblings... it's a tiny room...you can see the joy of the young person in seeing their family, then it cracks when they realise the family will be leaving'. She also shared that the younger siblings didn't understand why their older sibling couldn't come home, and why they had to go through guards, be subjected to searches and metal detectors to see their family member in prison. The negative impacts of the criminalisation of First Nations children, including on their wellbeing and that of their families and communities, is one of the reasons we do not support s154K.

s154K is also out of alignment with policy work to address the hyperincarceration of First Nations people. This includes Target 11 of the Closing the Gap Agreement, which sets the target of reducing the rate of Aboriginal and Torres Strait Islander children (10-17 years) in detention by at least 30 percent (Productivity Commission, 2025). This is not on track to be met by 2031 (Productivity Commission, n.d.). s154K inhibits the capacity of government to meet this Closing the Gap target.

Questionable deterrence effect

While a policy objective of s154K is to reduce youth crime, there is inadequate evidence that harsher penalties reduce offending (Knight, 2020; Hoerr, 2024). James Clifford, a solicitor at the Aboriginal Legal Service (NSW/ACT) expressed concern that children do not know about the 'post and boast' law, that it would be unlikely they would be thinking about legislation prior to committing an offence, and that there is no evidence that the law would deter young people from committing an offence (Hoerr, 2024).

Increased criminalisation through s154K does not address the root causes of the behaviour.

Pathways Home case workers highlighted the importance of understanding the developmental experiences of young people, and the root causes of offending, for which criminalisation is not an appropriate response. Developmentally, young people have not yet achieved maturity in terms of brain development and critical thinking skills, impacting their capacity for critical thinking, risk assessment, foreseeing outcomes, impacts and consequences. For young people involved in the criminal legal system, this is often compounded by developmental delays, difficulties with impulse control related to disabilities and trauma symptoms. Such context is crucial to understand regarding why young people commit performance crimes.

Staff shared a range of other factors contextualising why young people engage in performance offences, for which criminalisation is not an effective intervention. Staff shared that some young people engage in performance crime as a way of seeking belonging from peers. In some cases, young people described posting offences like car theft to social media as being driven by 'boredom'. Further assessment revealed more complex underlying factors, including difficulties with impulse control and unmet developmental milestones to make informed decisions. These challenges were exacerbated by factors like a lack of supervision, a lack of structured activities, poor social connection and struggling with belonging. These unmet needs were intensified by the inadequate number of appropriate services and activities for young people to occupy their time in regional NSW (see also Australian Human Rights Commission, 2024, p. 35). Staff explained that the impact of the lack of activities was worsened when young people experienced school expulsion and work exclusion- the latter of which was particularly bad when young people had criminal records. School and work exclusion reduced young people's access to prosocial support, engagement, and purposeful activity. Rather than criminalising young people's behaviour, we argue that attention should be focused on ensuring adequate services to meet young people's needs, and that prosocial activities and work opportunities exist for young people, particularly in rural and regional areas.

Michael's story

Michael,³ a First Nations young person, stole a car and posted footage of this theft to his social media. He used trending hashtags to enable more people to see the content. Michael lives in a regional area, and said one of the reasons for the theft, in addition to filming and uploading the event, was boredom. He stated there was nothing to do where he was located, that there weren't any jobs available, and that his mum wanted him out of the house. There was nowhere for him to go, and he didn't know what to do, which precipitated him being on the streets. Michael was subsequently incarcerated for his behaviour. Workers noted several other compounding factors contributing to Michael's circumstance, including issues with impulse control, experiences of trauma, not being engaged in education, and not being at a developmental stage to make informed decisions. Whilst in prison, Michael was stressed about not being able to look after his family and experienced strained kinship ties. Notably, the prison sentence did not address the lack of access to activities, services, supports and work, which were drivers of his behaviour.

The Pathways Home team reported further reasons for children committing offences like performance crimes, which criminalisation does not address. In some instances, children were coerced or incentivised by adults to commit crimes, including being required to film the behaviour as proof they had committed the offence. At the same time, many children were not at a developmental stage to fully understand the impacts and consequences of their actions. They also experienced influencing factors like living in poverty. Additionally, a CRC worker described that, for some children, engaging in what are now performance crimes was a deliberate attempt to be incarcerated to escape domestic and family violence (DFV) at home. Other young people had committed what are now performance offences due to a lack of access to resources outside of prison. Staff described some instances where young people had deliberately tagged police in social media posts documenting offences they were involved with in the hope of being imprisoned. Some young people wanted to be incarcerated because they

³ Not his real name.

had heard from other young people that they could find work through prison, which they could not otherwise access in the community. Other young people experiencing homelessness or housing insecurity had heard that Services and Programs Officers (SAPOs) inside prison could help them find housing while they were inside. When the case worker explained to a young person that they would not be getting housing through prison, she relayed: ‘that’s when you see they start to crumple- they think “then what did I do this all for then”’? What is evident is that many children are committing crime because of unmet needs, including in relation to surviving DFV, seeking belonging from peers, navigating poverty, and surviving homelessness, which in the long term, prison cannot solve (see also McCausland & Baldry, 2023, p.45).

The high cost of criminalisation compared to diversion and prevention

Increasing criminal legal system engagement through s154K is not a legitimate way to address performance offences, due to the high cost of criminalisation approaches compared to diversionary and prevention alternatives. It costs \$2,573 per day to incarcerate a young person in NSW (Productivity Commission, 2026). This equates to almost \$1 million per year. Prevention and diversion programs are notably less costly for government and the community. For instance, an evaluation of the Maranguka Justice Reinvestment Project in Bourke, NSW, indicated that the initiative led to \$2.5 million in savings to government and the community during 2017 (KPMG, 2018). The Aboriginal-led, place-based project has since ended. The initiative employed a ‘life course’ approach and addressed factors that were likely to put Aboriginal people at risk of criminal legal system involvement across one’s lifespan (Just Reinvest NSW, n.d.). In addition, an initiative called the Community Youth Response and Diversion (CYRD) project, which is an early intervention program in Queensland for those who are 10-15, showed notable cost savings too. The project led to \$4.5 million in savings over 1 year, due to reduced offending and less prison time (Nous Group, 2023, p.6). One reason criminalisation approaches are not appropriate is their costliness relative to diversion and prevention alternatives.

Concerns with police-led community programs

The potential positive effect of the therapeutic and community programs funded and implemented in regional NSW through the 2024 government package are in many instances outweighed by the focus on funding police initiatives. These include support for PCYC and police-led Youth Action Meetings (YAMs). There is a concern that such programs increase surveillance of First Nations young people by the criminal legal system, and that their effectiveness is undermined by an ongoing community distrust of police (Aboriginal Legal Service NSW/ACT, 2026a). This is due to the hyper-policing of First Nations communities and the operation of racism in the functioning of the criminal legal system.

Youth Action Meetings (YAM) and other police led initiatives, whilst praised for their collaborative design, including with community Elders and service providers, have been critiqued due to the power imbalance held by police and harms that can be caused. YAMs have also been critiqued for placing young people and their families at higher likelihood of being considered at Risk Of Significant Harm (ROSH) and reported to the Department of Communities and Justice (DCJ), which places First Nations families at a higher risk of being subject to child removal. Notably, in April 2026, BOSCAR evaluated YAMs, and suggested reinvestment into more evidence-based programs is a more effective use of government funds for reducing crime. The evaluation showed: 'participation in the YAMs pilot program was not significantly associated with changes in proven criminal offences or police-recorded crime victimisation' (Boiteux, 2026). While the increased funding for therapeutic supports in the package accompanying the Bail and Crimes Amendment Bill 2024 is welcomed, particularly the resourcing of Aboriginal Community Controlled Organisations (ACCOs), we support the call by the Aboriginal Legal Service (NSW/ACT) not to prioritise funding for police-led initiatives in diversionary and prevention programs (Aboriginal Legal Service NSW/ACT, 2026, p.9).

Ways forward

The importance of justice reinvestment and alternatives to incarceration

Justice reinvestment and alternatives to incarceration are considered best practice approaches to addressing crime (Australian Human Rights Commission, 2026, p.9), and we support such approaches over criminalising behaviour through performance crime. Place-based community initiatives, in partnership with Aboriginal Community Controlled Organisations (ACCOs), such as the Maruma-Li Walaay youth bail accommodation in Moree, provide examples of evidence-based, culturally safe community care for young people who have had contact with the criminal legal system. Additionally, the Dharriwaa Elders Group, in partnership with UNSW, do important prevention and diversionary work, particularly for First Nations communities in Walgett (Dharriwaa Elders Group and Yuwaya Ngarra-li Partnership, 2026). Here, the project delivers group-based recreational and educational activities for children and young people in the area. Activities have included painting, dance workshops, creating frog habitats, recognising native vegetation, which is facilitated by a local Elder, cooking and weaving. An evaluation of the program showed a significant decrease of Aboriginal children and young people from Walgett appearing in the local Children's Court (Dharriwaa Elders Group and Yuwaya Ngarra-li Partnership, 2026, p.7). Excellent qualitative feedback from participants included them reporting that they, 'want to come every day', that, '2 hours is too short' and that they, 'want to stay until 7pm' (Dharriwaa Elders Group and Yuwaya Ngarra-li Partnership, 2026, p.7-8). We advocate for government support for initiatives like the Dharriwaa Elders Group, and their partnership with UNSW, over approaches that criminalise children.

Notably, a concern that was identified through the inquiry into Youth Justice in NSW this year was that alternatives to the prison system, like justice reinvestment programs, tend to experience sporadic, short-term funding, which can inhibit their capacity to properly address crime in the long term (Lawrence, 2026, p.6). Recognising this, we support sustainable government funding for place-based, inclusive and culturally appropriate justice reinvestment programs that are given the opportunity to move beyond short-term projects.

Implementing the Therapeutic Pathways for Children report

Like the Aboriginal Legal Service (NSW/ACT), we encourage government to implement recommendations from *The Therapeutic Pathways for Children* report (UNSW Sydney, 2024). Therapeutic pathways include, ‘trauma-informed and culturally-safe responses which seek to direct children away from the formal criminal justice system, and back into the community’ (UNSW Sydney, 2024, p.38). The report, commissioned through government funds, systematically reviewed and evaluated social, community and public health measures which prevent and divert children from prison system involvement. The report highlighted that therapeutic pathways could reduce crime by 31%, and reduce recidivism for populations considered to be at risk by 50% (Justice Reform Initiative, 2024; UNSW Sydney, 2024, p. 38). Recognising the successes of therapeutic pathways, we recommend that the government implement the report findings to address the concerns faced by local communities, and support children and young people to grow up safely. We believe the evidence-based approaches recommended in this report hold more validity than harsher penalties.

Improved social media moderation

The question of why performance crimes can be posted to social media in the first place is an important one. Posting such content occurs in a social media landscape where reduced moderation of posts has become the norm, with companies like META amending their moderation policies in 2025 to make it easier to post hateful content, for instance. In their submission to this inquiry, the Aboriginal Legal Service (NSW/ACT) propose that social media companies fail in a moral obligation to protect children and young people from harm, by responsibly removing harmful content (Aboriginal Legal Service NSW/ACT, 2026). Allowing hateful or harmful posts made by children to remain on their platforms increases children’s risk of criminalisation and thus poorer social and health outcomes. We recommend that the government work with social media companies to encourage and support them to better moderate social media landscapes to ensure problematic content undergoes more thorough social media moderation.

Suggested alternatives to expanding s154K

We recognise LGBTQIA+ community safety is of the utmost importance, but we believe this best achieved through alternatives to criminalisation brought about by the Crimes Legislation Amendment (Hate Crimes) Bill 2026, which expands s154K. The expansion of s154K would not simply criminalise performance crime related to LGBTQIA+ discrimination, but people broadly charged with distributing content related to assault and theft. As can be seen through the creation of s154K, we are concerned criminalisation approaches tend to disproportionately impact First Nations communities due to racialised police targeting and structural racism in the criminal legal system. In general, where community members do commit performance crimes and are motivated by hate towards LGBTQIA+ communities, we support approaches that address the drivers of this behaviour, educate the public about why this conduct is unacceptable and better support LGBTQIA+ communities experiencing discrimination and hate through community-controlled supports. Alternatives to criminalising conduct through expanding s154K that we support include:

- Anti-discrimination and awareness education about LGBTQIA+ communities through schools, workplaces and public campaigns
- The government addressing risk factors for right wing extremist hate, including social isolation, economic insecurity and inequity, which increase people's susceptibility to hateful and discriminatory worldviews (Parliament of Victoria Legislative Council Legal and Social Issues Committee, 2022).
- Removing exemptions to anti-discrimination legislation in NSW that permits discrimination against LGBTQIA+ communities, including through the ability of private educational institutions to expel and fire LGBTQ+ staff and students due to their identities.
- The government sustainably funding LGBTQIA+ community organisations, including an LGBTQIA+ community legal centre. Funding NSW LGBTQIA+ legal services would support these services to do legal, advocacy and policy work to reduce hate and harm against

LGBTQIA+ people.

Conclusion

We thank the Department for taking the time to consider our submission. We recommend that s154K be repealed, and we do not support the expansion of s154K. We are concerned that s154K disproportionately impacts First Nations young people, and believe alternatives to the prison system, and justice reinvestment approaches that address the root causes of children's problematic behaviour, are better suited to addressing performance offences. We welcome contact from DCJ if we can provide any further guidance with respect to this review.

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