The Law Society OF NEW SOUTH WALES

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1 May 2026

Ms Jessica Wardle
Policy, Reform and Legislation
NSW Department of Communities and Justice

By email: [redacted]

Dear Ms Wardle,

**STATUTORY REVIEW OF SECTION 22C OF THE *BAIL ACT 2013* (NSW)**

The Law Society is grateful for the opportunity to contribute to the Department of Communities and Justice's statutory review of section 22C of the *Bail Act 2013* (NSW). This submission is informed by the Law Society's Children's Legal Issues and Indigenous Issues Committees.

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

Section 22C introduced a temporary limitation on bail for young people aged 14 to 17 years charged with a motor theft, serious breaking and entering, or performance crime offence while on bail for a similar offence. The provision requires bail to be refused unless the bail authority (a police officer or a court) has a high degree of confidence the young person will not commit another serious indictable offence while on bail.

The provision was introduced in response to community concerns about youth crime, particularly repeat break and enter and motor theft offences by young people in regional NSW, and was intended to provide an immediate, temporary legislative measure to promote community safety, while a broader package of responses was developed by the NSW Government to reduce youth offending behaviour in the long-term.[1]

The Law Society considers increasing community safety and reducing youth crime to be valid policy objectives. However, both at the time section 22C was introduced by the *Bail and Crimes Amendment Act 2024* (NSW),[2] and again, when the "temporary" test was extended in 2025 by the *Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025* (NSW),[3] the Law Society expressed, and reiterated, its view that section 22C is an ineffective and inappropriate response to youth crime and community safety concerns.

[1] Consultation Paper, p 4.
[2] Law Society of NSW, Open letter to Members of the Legislative Council, *Bail and Crimes Amendment Bill 2024,* available at: https://www.lawsociety.com.au/sites/default/files/2024-03/Letter%20to%20Members%20of%20the%20Legislative%20Council%20-%20Bail%20and%20Crimes%20Amendment%20Bill%202024%20-%2020%20March%202024.pdf.
[3] Law Society of NSW, Letter to NSW Attorney General, *Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Bill 2025,* available at: https://www.lawsociety.com.au/sites/default/files/2025-10/Ltr%20to%20Attorney%20General%20-%20Extension%20of%20section%2022C%20Bail%20Act%20NSW%20%282013%29%20-%204.3.25_0.pdf.

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In our view, it is appropriate for section 22C to sunset on 1 October 2026 as legislated, for the reasons set out below.

*Section 22C fails to meaningfully address youth crime*

Increased bail refusal of children accused of crime, in our view, fails to meaningfully address community safety concerns. While we recognise the need to respond to youth offending behaviour, especially where the offending is serious and/or repeated, temporarily limiting bail for this cohort does not engage with the complex underlying factors driving offending behaviour in young people, which include a mix of individual, family and community risk factors.[4]

We suggest the operation of section 22C may undermine its purported policy objectives. Section 22C exposes young people to an increased risk of bail refusal and detention on remand, notwithstanding an extensive body of evidence demonstrating that incarceration during adolescence severely reduces the rehabilitation prospects of young people.[5] Studies have frequently shown that childhood contact with the criminal justice system is a powerful determinant of later persistent recidivism,[6] and that exposure to the criminal justice system itself is a criminogenic factor.[7] Rather than detention being a "circuit breaker"[8] disrupting that young person's criminal trajectory, we suggest that increased bail refusal of young people under section 22C may contribute to this cohort's ongoing and persistent contact with the criminal justice system, undermining community safety in the medium and long term.

In this regard, we emphasise the preliminary findings of the United Nations Working Group on Arbitrary Detention (**Working Group**), which identified restrictive bail tests as legislative mechanisms contributing to the rising remand population in NSW.[9] The Working Group specifically criticised the "high degree of confidence" test in section 22C, referring to research which suggests that even short periods of remand may contribute to future re-offending, undermining the community safety goals such reforms purport to serve.[10]

*Disproportionate impact on Aboriginal young people*

At the time section 22C was introduced, the NSW Government acknowledged the potential for this provision to disproportionately impact Aboriginal young people and limit the ability for the NSW Government to meet its Closing the Gap targets. The introduction of this provision, notwithstanding these concerns, was justified on its temporary and time-limited basis:[11]

> The Government is aware that tightening bail laws, especially for young people, gives rise to concerns about the risk of increasing the number of young people in detention and the ability for the Government to meet its Closing the Gap targets. This proposed change has been approached cautiously in light of the potentially serious consequences for young people and, in particular, Aboriginal young people. That is why this change is time-limited and specifically targeted at young people who are already alleged to have committed at least one relevant offence whilst on bail for another relevant offence.

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[4] Legislative Assembly Committee on Law and Safety, 'Interim Report - Community safety in regional and rural communities: addressing the drivers of youth crime through early intervention' May 2025, p. 8-11.
[5] See: Akpanekpo, E. I. et al, 'Criminal justice transitions among adolescents in Australia: A multi-state model' *Journal of Criminal Justice* 2024(92).
[6] See: NSW BOCSAR, 'Offending over the life course: Contact with the NSW criminal justice system between age 10 and age 33' April 2018, p. 8.
[7] Standing Council of Attorneys-General, 'Age of Criminal Responsibility Working Group Report' September 2023, p. 23.
[8] NSW, *Parliamentary Debates,* Legislative Assembly, 19 February 2025 (Michael Daley, Attorney General): https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-149980'.
[9] United Nations Working Group on Arbitrary Detention, *Preliminary Findings from tis visit to Australia (1 to 12 December 2025),* p 2-3. Available at: https://www.ohchr.org/sites/default/files/statements/20251212-eom-stm-australia-wg-arbitrary-detention-en.pdf.
[10] Ibid.
[11] 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'.



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Our members advise that the risks associated with section 22C, as identified by the NSW Government, have materialised. Our members advise that in their experience, section 22C has had a markedly disproportionate impact on Aboriginal young people, with the consideration of the provision arising far more frequently in matters involving Aboriginal youth.

These observations are consistent with data from the NSW Bureau of Crime Statistics and Research as set out in the Consultation Paper, demonstrating that of the 454 matters where section 22C applied, 79% of all defendants were Aboriginal young people, and of the 317 matters where bail was refused, 84% of defendants were Aboriginal young people.[12] Given the disproportionate impact section 22C has had on the bail refusal of Aboriginal young people, we suggest the operation of section 22C has undermined the NSW Government's ability to meet its commitments under the National Agreement on Closing the Gap, and in particular, commitments to reduce the overrepresentation of Aboriginal and Torres Strait Islander young people in detention.[13]

Our members note that the operation of section 22C on Aboriginal youth, especially in the regions, has also been affected by the centralisation of bail proceedings from July 2025. Prior to bail centralisation, bail proceedings in regional NSW ordinarily involved a local solicitor, often from the Aboriginal Legal Service (NSW/ACT) or Legal Aid NSW, appearing in the Local Court on behalf of the young person. Both the judicial officer and solicitor would be familiar with local supports and available services for the young person, and could readily obtain information about the young person's circumstances.

However, now that bail proceedings are centralised in Sydney and conducted remotely in an online courtroom, solicitors appearing in the Bail Division for young people located in regional NSW report that it is particularly difficult to obtain information about the young person relevant to the court's determination of section 22C, and to have the young person and their family participate in the proceedings. Our members report that bail centralisation has had the unintended consequence of making the test in section 22C practically more difficult to satisfy for regionally located young people, who are often Aboriginal, resulting in some young people spending unnecessary and avoidable periods of time on remand while relevant information about the young person is gathered.

*Curtails judicial discretion and limits rehabilitative pathways*

We reiterate our significant concerns that section 22C curtails judicial discretion in relation to bail decision-making for young people aged 14 to 17. Justices of the Supreme Court have specifically criticised section 22C for requiring the court to treat children less favourably than if the same circumstances applied to a person aged 18 or older.[14] In our view, it is critical that judicial officers are able to meaningfully consider the young person's risk to community safety and whether the young person will be able to better address their rehabilitative needs in the community or in custody. In this regard, we consider it particularly concerning that section 22C does not permit a judicial officer to consider the strength of the prosecution case or the likelihood of a custodial sentence being imposed if found guilty.

Our members also report that the limitation on bail imposed by section 22C has operated to reduce access to rehabilitation pathways for otherwise eligible young people, where such pathways would better address the underlying factors contributing to the young person's offending behaviours than their detention on remand. For example, members report that bail refusal pursuant to section 22C has caused otherwise eligible young people

[12] Consultation Paper, p. 8.
[13] See: National Agreement on Closing the Gap, Target 11, available at: <https://www.closingthegap.gov.au/national-agreement/targets>.
[14] *TB* [2025] NSWSC 38 at [6]-[8].



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to not be able to attend a drug and alcohol rehabilitation service despite securing a bed or placement, and Aboriginal young people to disengage from the Youth Koori Court due to their detention.[15]

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

The Law Society considers it appropriate for section 22C to sunset, as legislated, on 1 October 2026. The NSW Government introduced, and extended, section 22C on the basis that it was a short-term and temporary measure while the NSW Government developed and implemented early intervention and diversionary programs and services to reduce youth crime in the long term:[16]

> The additional bail test was intended as a circuit breaker. It offered an immediate response while the broader community-based programs were implemented. Section 22C was initially intended to sunset on 4 April 2025, 12 months after it commenced. While I had hoped that 12 months would be sufficient to address community concerns, as the sunset approaches it has become clear that community concern remains high. More time is needed to fully implement and expand on the measures in Moree and other regional areas to address youth crime. …
>
> This step is not taken lightly, recognising that it has a very real impact at an individual and system-wide level. However, the provision remains a time-limited and specifically targeted test. It is not being made permanent. Rather, the extension is intended to keep the additional bail test in place and keep the community safe while efforts continue across government to reduce youth crime through therapeutic and community-based solutions that aim to minimise a young person's contact with the criminal justice system over the longer term. Additional funding is being allocated to further develop and expand these programs.

Over the last two years the NSW Government has made significant and commendable investments in therapeutic and community-based responses to youth crime. We highlight the NSW Government's $23 million investment into programs and services aimed at reducing reoffending by young people on bail and preventing at-risk youth from entering the criminal justice system in NSW.[17] Of this funding package, $12 million was allocated to service providers in regional NSW to develop and deliver place-based early intervention and diversionary programs, such as youth hubs, after-hours activities, intensive family supports, intervention programs and alternative education pathways, and a further $6.3 million was allocated to intensive bail supervision and support services for young people on bail.[18]

The NSW Government's investments appear mostly consistent with an evidence-based approach to youth crime, supporting localised responses to antisocial youth behaviour and early intervention and diversionary measures to support at-risk young people and their families. It is important that investments are sustainable and long-term, rather than one-off or short-term grants, in order to meaningfully address the underlying causes contributing to differences in crime rates and other outcomes between regional and metropolitan NSW communities. The Law Society suggests the NSW Government continue to partner with Aboriginal Community Controlled Organisations in designing and implementing effective early intervention and diversionary programs to support the specific local social, cultural and developmental needs of Aboriginal young people, especially in regional NSW.

Given section 22C was introduced, and extended, on the basis that it was a temporary measure designed to give the NSW Government time to implement broader community-based initiatives to reduce youth offending, which has since occurred, we suggest that there is no need for the section to be extended beyond 1 October 2026. The sunsetting of the provision is also appropriate given recent data demonstrating a 13.7% reduction in youth crime in regional NSW over the last two years, consistent with the overall decline in youth crime over the last fifteen

[15] See, for example, *DC v R* [2026] NSWSC 81 at [14]-[16].
[16] NSW, *Parliamentary Debates,* Legislative Assembly, 19 February 2025 (Michael Daley, Attorney General), available at: https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-149980'.
[17] NSW Government, 'NSW Government invests $23 million to tackle youth crime and build safer regional communities | NSW Government' (7 November 2025).
[18] Ibid.



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years.[19] The Law Society suggests that the sunsetting of section 22C might enable the significant funds involved in supporting an increased youth remand population to be redistributed to fund the ongoing delivery of therapeutic and early intervention services for at-risk young people.

We are grateful for the opportunity to provide feedback on section 22C. Inquiries at first instance may be directed to Jade Fodera, Policy Lawyer, at (02) 9926 0218 or Jade.Fodera@lawsociety.com.au.

Yours sincerely,



**Ronan MacSweeney**
President

[19] NSW BOCSAR, Youth crime (December 2025), https://bocsar.nsw.gov.au/topic-areas/young-people.html.



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