

Submission

SOCIAL JUSTICE UNIT

JULY 2011

Submission to the NSW Law Reform Commission

Review of Bail Law July 2011

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We would like to thank UnitingCare Children, Young People and Families staff who participated in consultations and made other contributions as part of the preparation of this submission.



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About UnitingCare Children, Young People & Families

UnitingCare Children, Young People and Families is a service group of UnitingCare NSW.ACT and part of the Uniting Church in Australia. Our concern for social justice and the needs of children, young people and families who are disadvantaged informs the way we serve and represent people and communities. The Service Group is comprised of:

- UnitingCare Burnside
- UnitingCare Unifam Counselling and Mediation
- UnitingCare Children's Services
- UnitingCare Disability
- The Institute of Family Practice, a registered training organisation.

Together these organisations form one of the largest providers of services to support children and families in NSW. In 2009/2010 UnitingCare Children, Young People and Families provided services to over 30,000 children, young people and their families.

UnitingCare Children, Young People and Families welcomes the opportunity to comment on the review of the NSW *Bail Act 1978*.

About UnitingCare Burnside

UnitingCare Burnside (Burnside) is part of the Service Group of UnitingCare Children, Young People and Families. Burnside is a leading child and family organisation in NSW, with over 6,000 services users in metropolitan, regional and rural communities. Burnside works directly with children and young people and their families in early intervention programs, intensive child protection services and out-of-home care.

Burnside's experience as a child and family service provider gives us insight into the impacts of juvenile justice system on vulnerable children and young people. Burnside has been a strong advocate calling for reform of the juvenile justice system and, in particular, calling for children and young people to be exempt from Section 22A to the *Bail Act 1978*.

Executive Summary

UnitingCare Children, Young People and Families' submission to the NSW Law Reform Commission on the review of bail law focuses on children and young people and the juvenile justice system. We have not made comment on broader issues related to bail law in the adult criminal justice system.

Changes made to the *Bail Act 1978*, including the introduction of Section 22A in 2007 has been a major contributor to the increase in children and young people being held on remand. Under Section 22A, children and young people can only apply once for bail except under particular circumstances. If bail is not granted during the first application they may only apply again if they were not legally represented during the first application or if the court is satisfied that new facts or circumstances have arisen since the first application.

Since the introduction of Section 22A of the *Bail Act 1978*, the number of children and young people placed on remand has increased by over forty percent.

A significant body of evidence shows the negative impacts that remand has on children and young people's life chances. Research has shown that contact with the juvenile justice system is the leading indicator in repeat offending.

At the 2010/11 Budget Estimates hearings, the then NSW Minister for Juvenile Justice Barbara Perry said that four in five children and young people on remand will not receive a custodial sentence. Section 22A has had the unintended consequence of increasing the numbers of often disadvantaged or vulnerable children and young people who are being remanded unnecessarily, with a high likelihood that they will not be given a control order following their court appearance. Furthermore, evidence on recidivism suggests the legislation may be directly contributing to increasing the rate of reoffending.

It is clear that many of our most vulnerable children and young people are in contact with the juvenile justice system. We know that out of the population of children and young people held in custody:

- 45% have had a parent in prison
- 62% were not going to school

- 18% of young women had experienced homelessness
- 49.8% of the population were Aboriginal.¹

To better address the needs of this population, we recommend that bail provisions for children and young people are dealt with separately to the *Bail Act 1978*. We recommend this should be achieved by including bail provisions specific to children and young people within the *Children (Criminal Proceedings) Act 1987*.

Having bail provisions for children and young people separate from *the Bail Act 1978* would create opportunities to better respond to their individual needs in bail proceedings.

The *Children (Criminal Proceedings) Act 1987* already contains general provisions on how children and young people should be dealt with in the judicial process. Incorporating bail provisions into the Act will enable greater focus on the specific needs of children and young people in the legal system.

This submission from UnitingCare Children, Young People and Families builds on UnitingCare Burnside's past work, including:

- *Locked into Remand: Children and young people on remand in New South Wales*, February 2009
- *Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales*, a sector position paper launched in October 2009
- Submission on the Bail Bill 2010
- 'Juveniles on Remand' *Hot Topics: Young people and crime*, 2010.

¹ Indig, D., Vecchiato, C., et. al., *2009 NSW Young People in Custody Health Survey: Full Report*, Justice Health and Juvenile Justice, Sydney, 2011 p. 13.

Recommendations

Recommendation 1

That children and young people be given a uniform right to have bail dispensed with, subject to relevant considerations. Where bail hearings are required, children and young people should have a universal presumption in favour of bail.

Recommendation 2

That police should not actively pursue bail conditions unless they hold reasonable suspicion of a breach or suspect a crime has been committed.

Recommendation 3

That alternatives to arrest must be considered by police for breaches of bail by children and young people.

Recommendation 4

That where a child or young person's circumstances change, variations to bail conditions can occur either by police or court approval.

Recommendation 5

That children and young people be exempted from Section 22A of the *Bail Act 1978*.

Recommendation 6

That the *Bail Act 1978* not apply to juveniles and that the *Children (Criminal Proceedings) Act 1987* is amended to include bail provisions developed specifically to meet the needs of children and young people.

Recommendation 7

That separate bail provisions for children and young people must take into account any additional needs the child or young person may be experiencing.

Recommendation 8

That the review of bail law in NSW includes provisions for new models of support to divert children and young people away from detention in juvenile justice centres.

Recommendation 9

That investment in accommodation support services for children and young people who are at risk of having being remanded in custody be expanded.

Introduction

UnitingCare Children, Young People & Families welcomes the Attorney General's direction to the NSW Law Reform Commission to undertake a review of the law of bail in NSW. This submission focuses on the application of bail law to children and young people in the juvenile justice system.

We welcome the NSW Law Reform Commission's intention to build on the work undertaken last year by the Department of Justice and Attorney General as part of the review of the *Bail Act 1978* and the exposure draft of the *Bail Bill 2010*.

Last year UnitingCare Burnside provided a submission to the Attorney General on this review and exposure draft. We highlighted that the proposed Bail Bill 2010 was unlikely to make a substantial difference to the high numbers of children and young people on remand and that more extensive revision of the bail laws was required. We further supported the decision to refer this work to the roundtable convened by the Hon. Justice Megan Latham.

More recently UnitingCare Burnside made a submission to the NSW Law Reform Commission's review into young people with cognitive and mental health impairments in the criminal justice system. Our submission and participation in a follow-up roundtable also included the experience of UnitingCare Disability which delivers programs for young people with a disability who are exiting the juvenile justice and adult corrections system. It was our view that increased support services are required to enable effective diversion approaches to be implemented.

It is encouraging that the current review into the law of bail in NSW is broad and plans to 'consider the way in which the law is operating from a first principles perspective'. This is particularly important when we consider the application of bail to children and young people.

Research shows that contact with a juvenile justice centre is one of the leading factors in increasing the risk of reoffending.² There is a growing body of evidence that diversion of children and young people from juvenile justice detention centres is vital to reducing their future contact with the juvenile justice

² Holman and Ziedenberg, *The Dangers of Detention: The Impact of incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, USA, 2006

system.³ Timely access to bail and flexible bail conditions are essential components to a diversionary approach.

UnitingCare Burnside has highlighted in a number of our publications and presentations that the increasing numbers of children and young people held on remand is a significant issue in NSW.⁴ These concerns are echoed in NSW Law Reform Commission's 'Bail: questions for discussion', which states that the numbers of young people on remand is particularly concerning: '... more than half of the young people in detentions centres are on remand, 85% are remand admissions and more than four in five of these children and young people who are remanded in custody did not receive a custodial sentence.'⁵

This submission outlines our views on bail in relation to the juvenile justice system. These views are set out according to the review's terms of reference. Without significant changes in our current approach to access to bail and the policing of bail conditions, the numbers of people in our adult prison population are likely to continue to grow. Therefore the impact of bail law on children and young people should be addressed as a matter of first priority.

³ See for example: House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing: Indigenous youth in the criminal justice system*, Canberra or Noetic Solutions 2010, *A Strategic Review of the New South Wales Juvenile Justice System: Report for the Minister for Juvenile Justice*, Noetic Solutions,

⁴ See the UnitingCare Burnside background paper: *Locked into Remand: Children and young people on remand in New South Wales* and position paper: *Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales*

⁵ NSW Law Reform Commission, *Bail Questions for discussion*, June 2011.

Terms of Reference

1. Whether the Bail Act should include a statement of objectives and if so, what those objectives should be

Bail provisions that apply to children and young people should include a statement of objectives that highlight:

- the fundamental principle of bail is the presumption of innocence
- access to bail is a right for all children and young people who are charged with an offence
- dispensing with bail for children and young people should be the preferred option.

The objective of bail, within the juvenile justice system, should be to enable children and young people to remain out of detention whenever possible, with consideration of:

- the likelihood of the accused appearing before the court if bail is granted
- the interests of the accused
- the protection of the alleged victim
- the protection and welfare of the community.

Bail should only be used as a means to ensure that a child or young person returns to court, rather than as an interim form of caution or punishment.

The option of holding a child or young person on remand should only be used as a last resort. In order to ensure that bail is a viable option for the majority of children and young people, efforts to address any barriers, such as accommodation to the granting of bail, should be an explicit priority within the objectives of bail provision.

2. Whether the Bail Act should include a statement of the factors to be taken into account in determining a bail application and if so, what those factors should be

It is well established that vulnerable children and young people are over represented in the juvenile justice system, including:

- Aboriginal children and young people

- children who are living in out-of-home care
- children and young people experiencing homelessness
- children and young people with cognitive impairments and mental health issues.⁶

Determining bail conditions needs to take account of the individual circumstances of a child or young person who is making the bail application. Factors to be taken into consideration should include family and community, education and employment.

Particular consideration should be given to factors that may impact on a child or young person's capacity to both understand and comply with bail conditions.

These factors may include:

- literacy
- cognitive impairment
- mental health issues
- access to extended family support
- access to legal representation
- access to transport and community supports
- any relevant issues that may affect bail conditions such as current circumstances in an out-of-home care placement and support
- homelessness.

There should be a clear distinction between the factors considered for adults and juveniles. It is essential that children and young people are not given more onerous bail conditions than necessary to fulfil the objectives of bail.

UnitingCare Burnside's previous submissions and reports have highlighted the damaging effects that overly burdensome bail conditions can have on a child or young person. Non-association orders, area restrictions, reporting orders and curfews can be difficult to comply with, which increases the likelihood that the child or young person will end up on remand.

Inflexible bail conditions can lead to a child or young person being arrested as a result of a minor bail breach. This can result in the child or young person's bail being revoked and then being placed on remand detention. Restrictive or

⁶ Indig, D., Vecchiato, C., et. al. 2011, op. cit.

inflexible bail conditions can also lead to a perverse outcome of creating the appearance of a pattern of repeating offending. In our experience, restrictive bail conditions, combined with intensive policing are major contributing factors to the high juvenile remand population.

Lots of kids that are out on bail have very, very strict conditions. You know, some of the bail conditions I've seen, I don't think I could keep. I would find it really quite trying to be in the presence of a responsible adult at all times, to be home by 5 o'clock, to report 4 times a week to the police station. It is sort of setting kids up to fail. The young people with these bail conditions are not good at time management and some of them can't read and write so just understanding what's actually required of them is often very hard.

Liz Price, Manager UnitingCare Burnside DOORWAYS and Reconnect, Dubbo

3. What presumptions should apply to bail determinations and how they should apply

In order to achieve effective diversionary approaches within the juvenile justice system, children and young people should have a universal right to have bail dispensed with except where a bail hearing is considered necessary to fulfil the objectives of bail. This will greatly reduce the need for bail hearings and reduce the burden on the legal system and the number of children and young people held on remand.

A right to bail should enable police to dispense with bail without requiring children and young people to attend court in the majority of cases. Where bail hearings are required there should be a uniform presumption in favour of bail. The nature of the offence should be taken into consideration, however, it should not alter the presumption in favour of bail for children and young people.

Recommendation 1

That children and young people be given a uniform right to have bail dispensed with, subject to relevant considerations. Where bail hearings are required, children and young people should have a universal presumption in favour of bail.

4. The available responses to a breach of bail including the legislative framework for the exercise of police and judicial discretion when responding to a breach

While it is important that any bail conditions are determined in a way that will support a child or young person's capacity to comply, the role of police in identifying and responding to bail breaches requires attention.

Our experience across different areas of NSW indicates that proactive policing of compliance with bail conditions has impacted on the number of children and young people on remand. This has also been highlighted in the Ombudsman's 2007/08 Annual report.⁷ Severe bail restrictions and proactive policing can have the effect of criminalising otherwise non-offending behaviour.

Recent research by the NSW Bureau of Crime Statistics and Research (BOCSAR) found that 71% of young people who breached their bail conditions without breaking any laws were remanded in custody.⁸ Once remanded, their ability to re-apply for bail has been limited by Section 22A in the current *Bail Act 1978*.

The limitations of access to bail and the proactive policing of bail conditions has led to a sharp increase in the remand population and in the length of time spent in remand by children and young people. In extreme cases, we have received reports from our staff of young people removing themselves from dangerous or abusive situations, only to be arrested for breaching their bail condition to reside as directed. This has also been highlighted in the Noetic Review of the NSW Juvenile Justice system.⁹

The Bail Act should provide police with alternatives to arrest for breaches of bail, particularly when those breaches are seen as 'one-off' or are technical breaches. These alternatives should include the ability for police to issue a court attendance notice or give the child or young person a warning. Police must consider these alternatives prior to arrest.

⁷ NSW Ombudsman, *NSW Ombudsman Annual Report, 2007-2008: Juvenile Justice*, NSW Ombudsman, Sydney, 2008, p.120.

⁸ NSW Bureau of Crime Statistics and Research, 'Recent trends in legal proceedings for breach of bail, juvenile remand and crime', *Contemporary Issues in Crime and Justice*, Number 128, May 2009

⁹ Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System: Report for the Minister for Juvenile Justice*, Noetic Solutions, 2010, p. 65

Police should be able to amend bail conditions to minimise a child or young person's future bail breaches, where reasonable cause can be provided. For example, where a family member, caseworker, carer or guardian identifies bail conditions that may be at odds with the needs of a child or young person, they should be able to seek amendment by contacting the local police. Simple variations to bail conditions, which are not likely to jeopardise the child or young person's future appearance at court, may be co-ordinated through police youth liaison officers and/or the police officers who operate within this role.

I had a young person in foster care who was going to respite care for 3 days, to give him and his carers a little break. He had bail conditions not to leave the house without his carers.

I went down to the court a few days before to ask for a hearing, then on the day – he lived 2 hours away from court – we had to go and pick him up, take him to court, wait around for 3 hours or so, then take him back home afterwards. The judge only took 5 minutes to approve the change, but it's all the administration that takes time. So that was hours and hours of time for me and the young person, all for just 3 days! After that, the bail conditions went back to normal.

UnitingCare Burnside staff member, Dubbo

Recommendation 2

That police should not actively pursue bail conditions unless they hold reasonable suspicion of a breach or suspect a crime has been committed.

Recommendation 3

That alternatives to arrest must be considered by police for breaches of bail by children and young people.

Recommendation 4

That where a child or young person's circumstances change, variations to bail conditions can occur either by police or court approval.

5. The desirability of maintaining Section 22A

In 2007 the *Bail Act 1978* was amended with the introduction of Section 22A. Under the Bail Act, children and young people can only apply once for bail except under particular circumstances. If bail is not granted during the first

application they may only apply again if they were not legally represented during the first application or if the court is satisfied that new facts or circumstances have arisen since the first application.

UnitingCare Burnside has advocated for the exemption of children and young people from Section 22A of the *Bail Act 1978*. The restricted access to bail under Section 22A has led to a large increase in the numbers of children and young people who cannot access bail and/or were placed on remand after breaching restrictive bail conditions.

Evidence from a number of sources, including BOCSAR, confirms that the increase is directly linked to the Section 22A amendment of the *Bail Act 1978* in 2007.¹⁰

Since the introduction of Section 22A of the *Bail Act 1978*, the number of juveniles placed on remand has increased by over forty percent.¹¹ However, the majority of these children and young people have not gone on to receive a custodial sentence. Time spent in remand detention increases the risks of these children and young people offending at a later time, in addition to removing the child or young person from their community links and relationships.

It is clear that Section 22A of the *Bail Act 1978* has not served the interests of vulnerable children and young people nor has it served the interests of the legal system. The costs incurred by the community of increased remand detention have far outweighed the savings in court time for dealing with repeat bail applications and so-called 'magistrate shopping'.

Recommendation 5

That children and young people be exempted from Section 22A of the *Bail Act 1978*.

6. Whether the Bail Act should make a distinction between young offenders and adults, and if so, what special provision should apply to young offenders

¹⁰ NSW Bureau of Crime Statistics and Research 2009. op. cit.

¹¹ NSW Bureau of Crime Statistics and Research 2009, *ibid.*, p. 3

As highlighted previously, there should be a clear legal distinction between bail provisions for children and young people, and adults.

Our experience in working with vulnerable children and young people has shown that there are multiple contributing factors in their lives that lead to contact with the juvenile justice system. Many children and young people have had little control over the impacts of these circumstances in their lives.

For example, some children and young people in contact with the juvenile justice system may have experienced poorly supported and unstable placements in out-of-home care. They may be at a stage in their life where they are trying to 'self-restore' back to their birth families in spite of the early traumatic experience that they may have experienced.

Many children and young people, particularly with Aboriginal backgrounds, may have experienced significant family breakdown over generations and need targeted support to help reconnect them with their family and country. Without appropriate supports from within Aboriginal communities, these children and young people can be isolated and experiencing significant disconnection. Figures suggest that this is often coupled with the impacts for Aboriginal children and young people of undiagnosed and/or untreated physical and mental health issues, low levels of literacy and cognitive impairment and learning difficulties.¹²

Bail provisions for children and young people should be specifically designed address the needs of their life stage and development. To achieve this, the links between bail provisions and other legislation that focuses specifically on children and young such as the *Young Offenders Act 1997* and the *Children and Young Persons Care and Protection Act 1998* should be strengthened.

The most appropriate Act to contain bail provisions for young offenders is the *Children (Criminal Proceedings) Act 1987*. Legislating bail provisions for young offenders within this Act rather than the *Bail Act 1978* recognises that the circumstances for children and young people charged with an offence are fundamentally different from those of adults. The *Children (Criminal*

¹² House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing: Indigenous youth in the criminal justice system*, Canberra, 2011

Proceedings) Act 1987 highlights the principles that should be applied to bail provisions applied to children and young people.

This is supported by the evidence that children and young people's capacity for decision-making and self-regulation is still developing.¹³ As noted above, children and young people in contact with the juvenile justice system are overburdened by physical and mental health issues, challenging life circumstances, developmental delay and cognitive impairment.

I can't think of what might have made a difference for me. If I'd had a father around, that might've made a difference. Who knows? And maybe if I'd been educated, if I stayed in one school instead of being in five different schools in a year? Maybe I would've been all right.

I started drugs and alcohol at a young age: nothing heavy, mainly marijuana. I moved out of my mother's house when I was thirteen and I was staying everywhere and anywhere. Mum tried her hardest but she's only one woman. I couldn't understand why she was always moving us, why we were in and out of refuges, why she was always running from Dad. I didn't know what was going on behind closed doors.

Shannon, as an adult, reflects on his experiences that led to contact with the juvenile justice system.

Recommendation 6

That the *Bail Act 1978* not apply to juveniles and that the *Children (Criminal Proceedings) Act 1987* is amended to include bail provisions developed specifically to meet the needs of children and young people.

7. Whether separate provisions should apply to vulnerable people including Aboriginal people and Torres Strait Islanders, cognitive impaired people and those with a mental illness. In considering this questions particular attention should be given to how the latter two categories of people should be defined

¹³ Blakemore, S.J and Choudhury, S. Development of the adolescent brain: implications for executive function and social cognition, *Journal of Child Psychology and Psychiatry* 47:3, 2006, pp 296–312.

As referred to above, bail provisions for children and young people should be developed to take account of the life circumstances for vulnerable people.

Given that most of the children and young people in contact with the juvenile justice system experience multiple vulnerabilities – including some vulnerabilities which regrettably may not be assessed or diagnosed until these children and young people are in the juvenile justice system – bail provisions should be drafted to accommodate the additional needs of children and young people.

It is essential that the principles that underpin the drafting of bail provisions include the ability of the child or young person to comply. For example, the bail application process and subsequent bail should be outlined in ‘Easy Plain English’ and illustrated where possible. Resources for children and young people that clearly set out the parameters of their bail conditions should be produced.

Recommendation 7

That separate bail provisions should be developed to accommodate the broad and significant additional needs of children and young people.

8. The terms of bail schemes operating in other jurisdictions, in particular those with a relatively low and stable remand population, such as the UK and Australian states such as Victoria, and of any reviews of those schemes

In the report on the Special Commission of Inquiry into Child Protection Services in NSW, Justice Wood recommended that two programs based in Victoria and Queensland be implemented in New South Wales.¹⁴ These are the Victorian Central After Hours and Bail Placement Service and the Queensland Conditional Bail and Youth Program Accommodation Support Service.

Victorian Central After Hours and Bail Placement Service

The Victorian Central After Hours and Bail Placement Service (CAHABPS) is an after-hours service that provides support to children and young people aged 10-18 throughout Victoria who commit an offence and are being considered for remand or who need accommodation options in order to access bail. During business hours these children and young people are referred to the regional

¹⁴ Special Commission of Inquiry into Child Protection in NSW and New South Wales 2008

youth justice unit. Police must notify CAHABPS or the youth justice unit when recommending remand of a child or young person.¹⁵

It is worth noting that while the report on the Special Commission of Inquiry has only recommended implementation of the after-hours service, accessing appropriate accommodation in order to meet bail conditions and obtaining court support during remand hearings are not only 'after-hours' problems. Implementation of an all-hours program based on the CAHABPS and the regional youth justice units based in Victoria may be more effective. This model would provide comprehensive court support for young people during their remand hearing and would assist young people to find accommodation appropriate to their bail conditions.

Following the former NSW Government's response to Justice Wood's report, a trial of the Bail Hotline in Dubbo has been implemented. This is a welcome initiative, however, it is not sufficient to address the inadequate accommodation options for children and young people who are granted bail across the state.

Queensland Conditional Bail Program and YBASS

The Queensland Conditional Bail and Youth Program Accommodation Support Service, as recommended by Justice Wood, represents two separate programs known as the Conditional Bail Program and the Youth Bail Accommodation Support Service (YBASS).

The Conditional Bail Program was established in Queensland "in response to the growing numbers of young people remanded in custody". This program is available for young people 10-16 years who are facing remand and are considered by the court to be unlikely to comply with bail. The Conditional Bail Program provides youth worker support to the young person and engages them with social, educational and vocational activities in order to reduce the risk of re-offending while on bail.¹⁶

¹⁵ Department of Human Services, 'Central After Hours Assessment and Bail Placement Service' Youth justice fact sheet, 23 April 2007, Victorian Department of Human Services, 2007, viewed July 2011, http://www.cyf.vic.gov.au/__data/assets/pdf_file/0013/44302/yj_factsheet_cahabps_23042007.pdf

¹⁶ Venables, P. & Rutledge, R., 'The Conditional Bail Program: Early Intervention without Net Widening', *A conference paper presented at Juvenile Justice: From Lessons of the Past to a Road Map for the Future*, Australian Institute of Criminology, 1-2 December 2003, viewed July 2011 <http://www.aic.gov.au/conferences/2003-juvenile/venables.html>, p. 2

YBASS is a similar program but is available for children and young people who are facing remand due to insufficient accommodation options, or who are on bail but are at risk of being remanded in custody due to accommodation instability.¹⁷ YBASS provides brokerage services and youth worker support to these children and young people. Working agreements between YBASS and SAAP accommodation services enable the YBASS youth workers to access accommodation options that the young person may not have been able to access on their own. YBASS complements the Conditional Bail Program when needed.

United Kingdom – Youth Justice Board

The Youth Justice Board is a non-departmental public body that oversees the youth justice system in England and Wales.¹⁸

Programs overseen by the Youth Justice Board meet the following standards:

- Programs should be developed at the initial bail assessment point, and be individually tailored to the needs of the young person.
- Young persons should have immediate access to programs and support services once they are released on bail.
- Programs should take a more holistic view of the young person and their needs, and interventions should be focused on promoting a more stable lifestyle.
- Family should be involved when possible.
- Programs should include court support to help the person to comply with their bail conditions.¹⁹

In order to meet these standards and the needs of young offenders, local area Youth Offending Teams (YOTs) employ representatives from police, probation, education, health, drug and alcohol services, and housing.²⁰ YOTs identify the needs and find appropriate support programs for every young offender and provide support to young people on bail through a bail support and supervision program.

The accommodation officer employed by YOTs is responsible for ensuring that all young offenders have access to appropriate accommodation and support,

¹⁷ Venables, P. & Rutledge, R. 2003, op. cit.

¹⁸ Youth Justice Board website, Youth Justice Board, UK, viewed January 2009 www.yjb.gov.uk

¹⁹ Special Commission of Inquiry into Child Protection in NSW and New South Wales 2008, pp.560-1

²⁰ Youth Justice Board website 2009, op. cit.

including those on remand. A variety of accommodation options for young people are considered by the YOTs team including:

- floating support: This option provides a young person with support no matter where the young person is living and can be provided alongside any type of accommodation
- remand foster care: Remand foster care is successfully running as a remand option in England and Wales for children and young people without appropriate bail accommodation. This program places children and young people who are on remand but unable to access appropriate accommodation under the care of specifically trained remand foster-carers²¹
- supported lodging: Individuals in the community provide low-cost short-term lodging in their home along with varying levels of support
- Foyer: While the foyer model is normally for young people in more stable situations, some foyer accommodation providers are considering offering supported accommodation for young offenders.²²

A 2004 study by the Youth Justice Board examined further the effectiveness of some of the accommodation options available to children and young people, including the accommodation type's impact on re-offending, increasing compliance with bail conditions, ensuring young people attend their court hearing, and at protecting public safety, victims and the defendants.

Victorian Review of Bail

In October 2007, the Victorian Law Reform Commission recommended that courts should be required to review bail conditions set by police at the first mention date to ensure they are appropriate, and are no more onerous than required to fulfil the objectives of the Bail Act.²³

The review also recommended that bail support programs be established for children and young people within the Children's Court, which would assist in ensuring children and young people are not placed on remand as a result of a lack of appropriate accommodation or onerous bail conditions.²⁴

²¹ Lipscombe, J., 'Fostering Children and Young People on Remand: Care or Control?', *British Journal of Social Work*, 37, 2007, pp.973-986

²² Youth Justice Board website 2009, op. cit.

²³ Victorian Law Reform Commission, Review of the Bail Act: Final Report, October 2007, Rec 100, p. 127

²⁴ Victorian Law Reform Commission 2007, op. cit., Rec 130, p. 158

Recommendation 8

That the review of bail law in NSW includes provisions for new models of support to assist with diverting children and young people away from detention in juvenile justice centres.

9. Any other related matter

Doing Time – Time for Doing

The Commonwealth Parliament's House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs recently released a comprehensive report *Doing Time – Time for Doing: Indigenous youth in the criminal justice system*.

This report makes 40 recommendations to address the over-representation of Indigenous youth in the criminal justice system. We welcome the findings of this report and recommend that any changes to the NSW bail laws are consistent with the report.

With particular reference to bail law, the inquiry found that “the single biggest factor in being unable to comply with bail conditions is the lack of appropriate accommodation available to young offenders while they are awaiting sentencing”. The effectiveness of any changes to the NSW bail laws will be dependent on further investment in the number and range of accommodation options, particularly to support Aboriginal children and young people.

Aboriginal over-representation in juvenile justice

There is wide agreement that the over-representation of Aboriginal children and young people in the juvenile justice system must be addressed as a matter of urgency.

Burnside staff have highlighted the benefits of strengthening vulnerable Aboriginal children and young people's connection with culture and community, particularly where they have been in contact with the juvenile justice system.

Some Aboriginal kids come from remote areas up to the city Juvenile Justice [centre]; they get taken off their lands; don't get visitors, don't get phone calls. Those kids are isolated in Juvenile Justice. It's like Stolen Generation again, kids are taken from their ancestral lands and brought up here. They're away from their mob, they're away from their culture.

UnitingCare Burnside staff member, Tom Moloney

Often these Aboriginal children and young people, who are also overrepresented in out-of-home care, have had little opportunity to find out about culture and country.

Access to bail support for Aboriginal children and young people should not only include support for accommodation, but also support children and young people to be linked with Aboriginal services that can help find family and take children back onto country.

Programs that support connecting to culture can strengthen vulnerable children and young people's identity and self-esteem. This can help divert children and young people away from juvenile justice centres as well as support rehabilitation and reduce the risks of reoffending.

It is likely that we are under-estimating how many of Aboriginal children and young people in contact with the juvenile justice system may be third or fourth stolen generation. And while it is common at intake to ask children and young people if they are Aboriginal or Torres Strait Islander, these questions need to go further.

Often today's Aboriginal children and young people think they are not part of the stolen generation because it was something that happened generations ago in the 1960s and 1970s. However, these children and young people are continuing to experience the effects of disposition from family and community. It is possible to sit and talk with these children and young people and ask about their family history and start to help them through the healing process.

Counsellor and Aboriginal Elder Maurice Wright, who works in UnitingCare Burnside's Bringing Them Home program in Dubbo.

Support services can include Healing Camps, taking children and young people back onto country and finding family members who they may not know. Greater connection between the juvenile justice system and the support services available for people who were connected with the stolen generation should be developed.

Recommendation 9

That investment in accommodation support services for children and young people who are at risk of having being remanded in custody be expanded.

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