

**Submission to the
Law Reform Commission
Review of the NSW Bail Act (1978)**



July 2011

Council of Social Service of NSW (NCOSS)
66 Albion Street, Surry Hills, 2010

Ph: 02 9211 2599, Fax: 9281 1968, email: info@ncoss.org.au

1. ABOUT NCOSS

The Council of Social Service of NSW (NCOSS) is the peak body for the social and community services sector in New South Wales. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in NSW. It was established in 1935 and is part of a national network of Councils of Social Service, which operate in each State and Territory and at the Commonwealth level.

NCOSS provides an independent voice on welfare policy issues and social and economic reforms. It is the major coordinator for non-government social and community services in NSW.

2. INTRODUCTION

NCOSS welcomes the opportunity to comment on the *NSW Bail Act (1978)* (the Act). NCOSS has been concerned about the number of incremental changes that have been made to the Bail Act with very little evaluation of the impact of each change.¹ More recently, due to overcrowding and pressure on the corrections system, particularly in the juvenile justice system, attention has been brought to how the Act is used to police young people and increase their contact with the juvenile justice system. The application of this policy together with the restrictions on applications for bail has increased the likelihood of poor outcomes for individuals and the community.

This failure has led to increased pressure on support services. Reducing the remand population would reduce the cost to community, housing and support services that are faced with finding emergency and long term housing for people exiting prison, re-establishing supports and reuniting family members, particularly children that have been placed in care. There are also additional costs to legal and government agencies that must find placements for children of parents on remand, children released from custody where placements have broken down, renegotiating custody arrangements, pay for emergency housing, process applications for housing and so on.

Housing, for example, is put at risk when tenants are placed in custody. Tenants held in custody can return to the community to find they have an unacceptable tenant history as the property owner may not be notified the tenant had vacated the property, resulting in rent arrears or damage to abandoned property. This places greater stress on services asked to assist in re-housing people released from remand. In the case of women, for example, 600 are released each year from remand without a custodial sentence. In these circumstances people are exiting prison on short notice and without time to organise housing and support.

¹ Lenny Roth, *Bail Law: development, debate and Statistics*, Briefing Paper 5/2010, NSW Parliamentary Library Research Service, 5.

Notices to attend court and non-custodial bail can help keep families intact and maintain a tenancy for people at high risk of homelessness.

NCOSS notes that the Law Reform Commission (LRC) and various other inquiries have made recommendations to change the Act to improve the efficiency of the courts and outcomes for people in contact with the justice system.² Generally these reports provide evidence that the Act has unnecessarily kept vulnerable people, particularly young people, in custody, when there was no risk to the community. The Attorney-General has made public statements that support the diversion of people from the corrections system who are living with mental illnesses or cognitive disability.³ Hopefully this policy position will be reflected in the proposed changes to the Act.

In this submission, NCOSS focuses on the costs to the social service sector of both the current problems arising from the current Act as well as the benefits of equitable reforms to the justice system. NCOSS supports the Youth Justice Coalition⁴ specific recommended changes to the Act.

3. RESPONSE TO THE TERMS OF REFERENCE

1. Statement of objects in the Bail Act

A review of the inclusion of objects in the Act could help to clarify the purpose of setting bail for people that have health and welfare needs, particularly young people and adults with a mental health issue or cognitive disability. The Act should clarify whether the purpose of the Act is to impose conditions that relate to the welfare needs of the individual and/or the needs of the court and the safety of the community.

NCOSS would argue that the court requires expert advice when making decisions about the welfare of offenders. Young people are disadvantaged when bail conditions such as curfews, reside as directed orders, and non-association orders are set without proper assessment of the young person's needs and allocation of appropriate support services. Out-of-home care placement services, housing and support services should be funded to take part in bail support programs for individuals who have reside as directed or other welfare related bail conditions.

2. Factors to be taken into account in determining a bail application

NCOSS is concerned that whatever factors are taken into account when determining bail should be supported by evidence. In deciding whether conditional bail is applied, guidance should be provided to the court as to when

² Roth, above n 1, 13.

³ News item, *Coalition to remove thousands from jails*, Sydney Morning Herald, 25 July 2010, www.smh.com.au/nsw/coalition-to-remove-thousands-from-jails-20100724-10pkq.html at 6 January 2011.

⁴ Youth Justice Coalition, *Submission to the Review of the Bail Act*, July 2011.

and what conditions are appropriate to meet the objects of the Act. The courts need evidence based practice guidelines to determine what people are more likely to fail to appear, how to identify the risk factors and how those on bail with welfare needs can have their needs met in order to meet their court date and not reoffend.

For example, criteria such as community safety should not be used without evidence that there is a significant risk. There is no evidence that links periods in custody with a reduction in crime. The specific deterrent effect of custodial penalties on juvenile re-offending was examined by the NSW Bureau of Crime Statistics and Research. No link was found between the deterrent affect of custodial sentences. There was however, evidence that such bail conditions increase the likelihood of the young person's contact with the courts, and increased contact increases the likelihood of increasing the number of times a young person will receive a custodial sentence or community supervision order.⁵

The court may also take into account the welfare of the alleged victim. Most young people commit offences that are minor and do not attract a custodial sentence. Only 2.5 percent of young people are in custody for more than six months, indicating most are not sentenced for serious offences.⁶ Statistics for women are similar, with only half on remand sentenced to custodial sentences, and the majority of sentences are six months or less.⁷

In determining bail conditions, the court should take into account:

- whether the alleged offender has the cognitive ability to understand and comply with the conditions, particularly if there is more than one condition;
- the nature of the offence and whether remand in custody is a greater punishment than that imposed if found guilty;
- whether the conditions imposed will hinder employment or education, housing or access to health treatment or other programs; and
- advice from parents, carers or support workers.

3. Presumptions to apply to bail determinations

Unconditional bail should be the presumption and conditions only placed where there is clear evidence that it will support the person on bail and meet the aims of the court. This is particularly the case with young people. Australia is signatory to the Convention of the Rights of the Child and the Act should realise the rights of

⁵ Don Weatherburn, Sumitra Vignaendra and Andrew McGrath, *The specific deterrent effect of custodial penalties on juvenile re-offending*, NSW BOCSAR (2009) Bulletin Number 132.

⁶ NSW Law Reform Commission, *Young Offenders*, (2010) 22.

⁷ Corrective Services NSW 2010, *Women offenders*, New South Wales Government, <http://www.correctiveservices.nsw.gov.au> at 2 February 2011.

young people as described in this Convention, including section 37(b) that detention for young people should be a last resort:

The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.⁸

There is evidence that police prefer to arrest and detain on bail rather than issue notices to attend court. This is said to be driven by indicators at the local command levels, the lack of information about bail support services and a general assumption of guilt.⁹ The NSW Government should review the State wide crime prevention indicators and ensure that there is evidence that the indicators lead to actions that support rather than detract from the government's aims. For example, an indicator that leads to increased in breaches of bail does not contribute to an objective to decrease violent crime in a command area.¹⁰

Police monitoring young people intensively on bail are more likely to unnecessarily detain young people when conditions are set that are numerous, not understood and difficult to meet due to family and community responsibilities. Removing the number of conditions where there is no evidence that it supports a young person in the community will reduce the opportunity for monitoring and therefore the likelihood of detention.

The court is in a difficult position when the alleged offender is homeless, or in the case of young people, there are risks to the young person if returned home. The court then resorts to 'reside as directed' orders as a response to young people, as the court has no responsibility or power to meet the welfare needs of a child but attempts to influence the responsible agencies.¹¹

Unfortunately, the number of support services for adults and young people who are homeless and on bail in the community is inadequate. As a result 'reside as directed' will usually mean a stay in custody until the case is heard, regardless of the severity of the offence. Justice Wood included in his report inquiring into Child Protection Services a report from the Juvenile Justice NSW that in a survey over a three month period in 2006-2007 that between 50 and 75 percent of the detention centre population were on remand, 90 percent of this group were remanded because they could not meet bail conditions. The most common bail condition young people could not meet (95 percent of those not able to meet conditions) was a 'reside as directed' order – meaning suitable accommodation was not provided by Community Services NSW or Juvenile Justice.¹²

⁸ *Convention on the Rights of the Child* (1989), UNCRC

⁹ Dr Matthew Ericson, *Young People on Remand in Victoria*, (2010) Jesuit Social Services, 29.

¹⁰ Weatherburn et al above n 5.

¹¹ Katherine Boyle, *The More Things Change...Bail and the Incarceration of Homeless Young People*, *Current Issues in Criminal Justice*, (2009) Vol 21 number 1

¹² The Hon James Wood AO QC, above n 9, 558

The courts and police should be supported to assume innocence and grant bail to homeless people, including young people, by ensuring community programs are funded to support people on bail and providing a legislative base that requires government welfare services to take responsibility for at risk young people and others from disadvantaged groups that would otherwise be held in custody.

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

The police monitoring and detaining of people for minor breaches of bail, particularly for young people is the most likely reason a young person will appear before a court. As described above, the more contact a young person has, at a young age, the more likely they will become entrenched in the criminal justice system.¹³ Immediate change is needed to police policy and the Act to stop the waste of court time, legal service resources, the cost to the detention system and disruption to young people and their families.

The *Bail Me Out*¹⁴ study also found four percent of breaches were the result of administrative error by the courts.¹⁵ The number and complexity of conditions placed on a young person seems to make it more likely that the court will make mistakes. Courts could reduce the likelihood of mistakes by reviewing all conditions for all matters for an individual prior to the issue of new conditions. This includes considering whether a condition is practical (for example, asking someone to report to a city police centre when they live in Penrith), whether there are contradictions between conditions - such as attending the same school as people listed in non-association orders, or restricting contact with elders in their community by specifying the address and name of an adult that must have constant supervision. All of these examples of breaches were found in the *Bail Me Out* study.

People are also arrested because data on police computer systems about bail conditions can be inconsistent with the data on court systems. As a result, people are arrested for breaching bail conditions for matters that have been finalised by the court.¹⁶ Police should have the responsibility of checking the information about finalised matters and changes to bail conditions prior to arrest for breach of bail. Currently, they cannot assume that the information they have on hand is accurate.

¹³ K Wong, B Bailey and D Kenny, *Bail me Out: NSW Young Offenders and Bail* (2010), 11, 60 percent of young people in this study appeared in court from custody on breaches of bail.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Public Interest Advocacy Centre, *Falsely imprisoned children commence class action*, Media Release, 8 June 2011, < <http://www.piac.asn.au/news/2011/06/falsely-imprisoned-children-commence-class-action>> at 13 July 2011/

Breaches of bail that do not involve a fresh offence, does not harm the young person, another person or the community should not result in a person being held in custody, this is particularly the case for young people where detention should be a last resort. In the *Bail Me Out* study, breaching a curfew or a non-association order or failure to report to police were the most common reasons for police detaining a person. The most common result of the court appearance resulting from such a breach was to have bail continued.¹⁷

The Act should require police in these circumstances to issue a notice to attend court and if necessary take the young person to a service that can provide accommodation. In order for police to take this step, services must be in place in regional and urban areas with capacity to take short term residents. Placing a young person in custody on the basis that it is a 'safe' place is an unsatisfactory outcome. If the person is under 18, the police should be required to issue a court attendance notice if a 'technical breach' of their bail condition has occurred.

Response to a breach of bail is made more complex for young people who are homeless. NSW overhauled its child protection laws in 1987 to separate proceedings for children in need of care and protection from children in the criminal jurisdiction. At the time new legislation was introduced the NSW Parliament made it clear that this was to prevent young homeless people from being refused bail due to welfare reasons, acknowledging that 'once children are incarcerated in a detention centre, the probability of them committing further offences is very high.'¹⁸

Despite the aims of the *Children and Young Persons (Care and Protection) Act 1998* to divert young homeless people into care and out of the criminal jurisdiction, young people continued to be detained because they were homeless. As a result amendments were made to the *Bail Amendment (Repeat Offenders) Act 2002 (NSW)*, to give the Children's Court options to consider bail accommodation when granting bail. The Attorney-General reported to Parliament at the time that diversion at the point of a bail hearing was very important,

'particularly for vulnerable accused persons such as juveniles, intellectually or mentally disabled persons or persons of an Aboriginal or Torres Strait Islander background'¹⁹

The changes allowed the court to issue the 'reside as directed' condition, but not require Community Services NSW or Juvenile Justice NSW to find community based accommodation. The amendments draw attention to the reason the young person is remanded in custody – the need for accommodation, but does not lead directly to accommodation being provided.

This is in keeping with the principle that welfare matters should be kept separate from criminal proceedings. However, the strict application of this principle results

¹⁷ K Wong, B Bailey and D Kenny, *Bail me Out: NSW Young Offenders and Bail* (2010), 14

¹⁸ Katherine Boyle, *The More Things Change...Bail and the Incarceration of Homeless Young People*, Current Issues in Criminal Justice, (2009) Vol 21 number 1

¹⁹ NSW Parliament *Parliamentary Debates* (Hansard) Legislative Assembly 20 March 2002: 819-820.

in young people remaining in detention due to the lack of attention to their welfare needs, that is - safe and culturally appropriate accommodation.²⁰

Juvenile Justice NSW should review the situation of all young people remanded in custody because of a lack of suitable accommodation every 48 hours, until the condition 'reside as directed' condition is met. This would increase the pressure on Community Services NSW and Juvenile Justice NSW to find a place for these young people to reside, or apply to the court to alter the condition, thus reducing the length of time that young people are unnecessarily kept on remand.

In order for this to be effective, housing in the community needs to be available for people when they are detained by police or at the time of the bail hearing. NCOSS submits that increased funding and a range of accommodation options need to be available, from independent living units, out-of-home care placements and supported accommodation.²¹

The *Bail Me Out* study also makes recommendations for each government agency that has responsibilities for young people that would assist the police and courts to provide alternatives to custody.²² NCOSS refers the LRC to this report for recommendations including: better coordination of services, information sharing between services, policing practices and delivery of culturally appropriate support services.

5. Desirability of maintaining s22A

Section 22A provides that anyone applying for bail (including children and young people) can apply only once for bail, unless the court is satisfied that new facts or circumstances have arisen since the first application. This section was initially aimed at eliminating repeated bail applications by those charged with serious offences. However, this section applies regardless of the severity of the offence.²³

Since its introduction in 2007, this section has led to a direct increase in the number of children placed on remand until their charges are finalised.²⁴

Section 22A was amended in 2009 to include section 22A(1A)(b), which allows a further application for bail if information relevant to the grant of bail is to be

²⁰ Katherine Boyle, *The More Things Change...Bail and the Incarceration of Homeless Young People*, Current Issues in Criminal Justice, (2009) Vol 21 number 1

²¹ Burnside UnitingCare and Youth Justice Coalition, *Releasing the Pressure* (2006) provides a description of one bail accommodation option < <http://www.ncoss.org.au/resources/091028-Releasing-the-pressure.pdf> > at 14 July 2011.

²² Ibid.

²³ Ibid.

²⁴ S Vignaendra *et al*, 'Recent trends in legal proceedings for breach of bail, juvenile remand and crime' (2009) 128 *Crime and Justice Bulletin* 3.

presented in the application that was not presented to the court in the previous application. This amendment has not reduced the numbers of young people held on remand. In order to reduce its unintended impact on juveniles, young people appearing in the Children's Court should be entirely exempt.²⁵

NCOSS submits that all young people and those charged with offences that are not defined as serious (attracting a custodial sentence of three years or more) should be exempt from this section.

6. The distinction between young offenders and adults and special provisions for young offenders

The nature of offending by young people is different from adults, they are usually one-off, minor events. The NSW LRC report *Young Offenders* provides a list of reasons why refusing bail to a young person is detrimental.²⁶ How they are treated on their first contact can determine whether they have ongoing contact with the justice system.²⁷ A recent review by the Australian Institute of Criminology reported a Canadian study that found that contact with the juvenile justice system increased the risk of a young person finding themselves in an adult prison by a factor of seven.²⁸

The ability of a child, particularly one who is unfamiliar with the legal system, to adequately cope with the court system is often compromised by their youth and inexperience, and if the young person has spent their first night in a juvenile detention facility, the associated trauma of this experience may hinder their ability to effectively communicate their needs. This is particularly a problem for young Indigenous people, who often do not have experience of positive examples of interaction with authority figures, and may be unwilling or unable to provide information.

At least three conditions are usually imposed upon young people when granted bail —such as comply with a curfew, reside as directed or specified, non-association with particular people and reporting to police. This reflects a welfare-based approach to supervision on bail,²⁹ as well as performing a punitive function of limiting the freedom and movement of the young person to a greater extent than is required by the nature of the offence. This demonstrates the significant difference in how the courts treat young people. The aim of bail conditions is to ensure appearance at court at a future date and/or reduce re-offending, yet there is no evidence that such conditions relate to this aim.

²⁵ Wong, Bailey and Kenny, above n 17, 24.

²⁶ NSW LRC, *Young Offenders* (2005) Section 10.

²⁷ Dr Matthew Ericson, above n 9, 26

²⁸ Kelly Richards, *What makes juvenile offenders different from adult offenders?* Trends and Issues in criminal Justice, No 409 (2011) Australian Institute of Criminology.

²⁹ *Ibid* 15.

The burden on families and parents in particular, for conditions that include constant supervision of a teenager, are often not taken into account when these conditions are imposed. Bail conditions should be established in discussion with appropriate carers or advisors such as the Community Services NSW, Juvenile Justice NSW, legal representatives and parents or other relevant people in the young person's life.

The police and court, should consider what needs the child has, how they should be met, and whether bail conditions will help or hinder access to these needs. An inquiry in 2007 found that the risk of reoffending is high if the needs of young people are not met.³⁰ Given that the majority of young people in the juvenile justice system have either a mental health issue or cognitive impairment, the delivery of services should be based on the assumption of a disability, rather than the exception.³¹

International research indicates that programs at the point of bail are the 'optimal time for effective intervention'. Programs that are coordinated, adaptable, developed at the initial bail assessment point and provided immediately, are the most effective in meeting social and welfare needs of young people. This has a direct and long term impact on whether a young person will continue to have contact with the justice system, as a juvenile and an adult.³² There is a need for greater investment in diversion programs in the community sector to achieve better results in juvenile justice.

Girls

The *Bail Me Out* study found that girls were less likely to meet their bail conditions and therefore to be remanded in custody.³³ This is of concern if the courts are making assumptions about the safety of girls and placing more restrictive conditions than they do for boys. Placing girls in detention because of concerns about safety is not an acceptable solution to the lack of appropriate services. Specific diversionary programs should be introduced at the time of the bail hearing that redirects girls from the court system and provides appropriate accommodation.

7. Special provisions for vulnerable people including Aboriginal people and Torres Strait Islanders, cognitively impaired people and those with a mental illness.

Indigenous people

³⁰ NSW Auditor-General, Performance Audit, *Addressing the Needs of Young Offenders* (2007).

³¹ Kelly Richards, *What makes juvenile offenders different from adult offenders?* Trends and Issues in criminal Justice, No 409 (2011) Australian Institute of Criminology.

³² Gabrielle Denning-Cotter, *Bail support in Australia*, Indigenous Justice Clearinghouse (2008) Brief 2.

³³ Wong, Bailey and Kenny, above n 17, 24

NCOSS refers the LRC to the recent report *Doing Time – Time for Doing* by the House of Representatives Standing Committee on Aboriginal and Torres Islander Affairs, which describes the experience of indigenous youth as being 28 times more likely to be detained as non-indigenous youth. More than half of young people aged 10–17 years in juvenile correction institutions are Indigenous.³⁴ The report considers the first contact with the criminal justice system, relationship with police and the importance of diversions.³⁵

These statistics are most alarming when considering the effects of time spent in custody on later life. The earlier a child has an interaction with the criminal justice system, the more likely they are to be involved with that system in the future, leading to more serious penalties.³⁶ As indigenous children are likely to come into contact with the courts at a younger age than non-indigenous children, they are more likely to have more contacts with the system as they age.³⁷

It is important to consider the specific needs of particular groups, particularly in the case of people from an Indigenous background. Developing directions for courts about the special needs of these groups would aid decision makers to impose more appropriate bail conditions. For example, police and courts, when setting bail for people with Indigenous backgrounds should recognise the importance of extended family, the need for flexibility in living arrangements, the cultural requirements of travel to attend ceremonial and family functions, and traditional disadvantages in relation to literacy, employment and experiences in custody.

Appropriate support services need to be available if Aboriginal people are diverted at the point of police bail or court imposed bail. There is a need for Aboriginal specific services and non-Aboriginal services to build the capacity to meet the needs of Aboriginal clients, to develop appropriate service models and to employ and retain skilled Aboriginal workers.

Cognitive ability and mental health issues

People with intellectual disabilities and mental health issues are over represented in the justice system, compared with the general population. Just three percent of the general population has an intellectual disability compared with 17 percent of young people in detention (IQ below 70). Eighty-eight percent in custody report symptoms of mild or severe psychiatric disorder. For adult prisoners, 49 percent of men and 54 percent of women had been treated for a mental health problem.

³⁴ Australian Institute of Criminology, *Australian Crime Facts and Figures 2008* (2009) 103.

³⁵ House of Representative, Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing*, June 2011, Canberra.

³⁶ S Vignaendra and J Fitzgerald, *Reoffending among young people cautioned by police or who participated in a youth justice conference* (2006).

³⁷ D Weatherburn *et al*, 'The specific deterrent effect of custodial penalties on juvenile reoffending' (2009) 33 *Australian Institute of Criminology Reports: Technical and Background Paper* 10

The Act should ensure that the court has regard to any special needs of:

- (a) Juveniles under the age of 20, or
- (b) Aboriginal person or Torres Strait Islander, or
- (c) Anyone who has mental illness or any other disability (whether physical or intellectual)

8. 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

Victoria has managed to maintain lower percentages of prisoners remanded in custody than any other jurisdiction since 1984. NCOSS refers the Commission to a recent report from Jesuit Social Services, *Young People on Remand in Victoria*,³⁹ that examines programs supporting people on bail in Victoria, Britain and Canada. NCOSS recommends that the programs in Victoria should be considered for adoption in NSW, in particular the:

- ‘Dual track system’, where young people between the ages of 18 and 20 can be referred to the youth justice process, this improves the likelihood of offenders being diverted from adult prisons. Western Australia is also moving towards this approach.
- The Court Integrated Services Program (CISP), that meets the health, accommodation and welfare needs of people on bail. Evaluations have shown that there are cost savings of \$1.70 to the state for every dollar spent in the program. Recidivism rates for participants also decreased by 10 percent.
- Youth Justice Court Advice Service, a service for those with serious offences. It has most success with 18 to 20 year olds that are charged with a violent offence but do not have a history of offending.

9. Other related matters

Meeting the health needs prior to detention

In May 2011, NCOSS held a forum with community stakeholders to identify health priorities for prisoners and young people. The forum discussed the needs of this population group prior to entering prison and how the lack of attention to

³⁸ Kelly Richards, *What makes juvenile offenders different from adult offenders?* Trends and Issues in criminal Justice, No 409 (2011) Australian Institute of Criminology.

³⁹ Dr Matthew Ericson, (2010) *Young People on Remand in Victoria*, Jesuit Social Services.

their health needs, particularly mental health, led to periods on remand in custody. The issues identified included:

- inadequate screening and assessment;
- workforce issues such as retaining aboriginal staff; and
- lack of welfare staff in the corrections system and community services.

The forum recommended a range of improvements, including several that were not resource intensive, such as:

- ensuring medication followed the persons movements through the system;
- providing culturally specific health programs;
- prison 'Expos' to include Justice Health representatives; and
- better coordination between services.

4. CONCLUSION

The NSW community has paid a high price for the increase in the numbers of people remanded in custody without any corresponding benefits of a reduction in crime that can be attributed to this level of imprisonment. Instead, NSW has seen, at least for young people, an increased likelihood of repeat offending, increase costs and demands on individuals, their families and government and community social services. In addition, the amount of government funds allocated to new remand centres and increased prison population has resulted in an opportunity forgone, where additional teachers, health workers and community workers could have been funded.

In part, the courts in holding people in custody has been a response to the social problems that bring people in contact with the justice system, that is, poverty, lack of appropriate accommodation, indigenous status, mental health issues, cognitive disability, drug and alcohol dependence and limited education and employment opportunities for people who are disadvantaged. These social and economic causes of crime may not be solved by the courts, but legislation should not entrench this disadvantage.

NCOSS urges the LRC to recommend amendments to the Act that will increase judicial discretion and focus on therapeutic justice. The Act should return to a presumption of innocence and aim to increase the likelihood that people, particularly young people will be granted unconditional bail, that bail conditions will support the welfare needs of the individual and cease the revolving door of detention and court appearances for minor breaches of bail.

It is also important for the LRC to note the need for new programs and community supports for those on bail in the community. This will require the adoption of a restorative justice model, one that shifts funding from detention services to health and community services.

5. RECOMMENDATIONS

As a member of the Youth Justice Coalition (YJC), NCOSS supports the recommendations in the YJC submission to this inquiry.

Reforms to the NSW Bail Act

1. NCOSS recommends that the objects of the Act should clarify whether the purpose of the Act is to impose conditions that relate to the welfare needs of the individual and/or the needs of the court and the safety of the community.
2. NCOSS recommends that the Act should comply with Australia's obligations under the Convention of the Rights of the Child, particularly 37(b) that detention should be a last resort for people under the age of 18.
3. NCOSS recommends that the Act should require the police and courts to presume innocence and set unconditional bail and place conditions only when there is clear evidence that it will support the person on bail and meet the aims of the court.
4. NCOSS recommends that Courts should be responsible for ensuring that the number of bail conditions for all offences are manageable by the individual, and that the conditions are practical given the individual's circumstance.
5. NCOSS recommends that the Act should aim to divert people from the court system who are living with mental illnesses or cognitive disability, young people and those charged with offences that do not attract a custodial sentence from the justice system.
6. NCOSS recommends that the Act should require police and courts when setting bail for people from Indigenous backgrounds to set conditions that recognise the importance of extended family, the need for flexibility in living arrangements, cultural requirements of travel to attend ceremonial and family functions.
7. NCOSS recommends that the Act should ensure that the court when considering bail and conditions has regard to any special needs of:
 - juveniles under the age of 20,
 - aboriginal person or Torres Strait Islander, or
 - individuals with a mental illness or any other disability (whether physical or intellectual)
8. NCOSS recommends that the Act should require police and the courts, when setting bail conditions to take into account:
 - the nature of the offence and whether remand in custody is a greater punishment than that imposed if found guilty;

- whether the conditions imposed will hinder employment or education, housing or access to health treatment or other programs; and
 - advice from parents, carers or support workers about the management and effect of the bail conditions.
9. NCOSS recommends that the Act should require police to determine that their records are accurate and up-to-date prior to arrest for breach of bail. Alternative options to detention should be used if the records cannot be guaranteed.
 10. NCOSS recommends that when monitoring bail conditions, the Act should prohibit police from detaining a person if the breach does not involve a fresh offence, does not harm the person, another person or the community. The Act should require police to issue a notice to attend court if the person is under 20 when a 'technical breach' of this nature has occurred.
 11. NCOSS recommends that all young people and those charged with offences that are not defined as serious (attracting a custodial sentence of three years or more) should be exempt from section 22A of the NSW Bail Act.
 12. NCOSS recommends that the relevant legislation should be amended to require relevant government agencies to take responsibility for meeting the housing, health and other needs of young people and others from disadvantaged groups from the time they are granted bail.
 13. NCOSS recommends that the Act should require Juvenile Justice NSW to review the situation of all young people remanded in custody because of a lack of suitable accommodation every 48 hours, until the condition 'reside as directed' condition is met.

Administrative, policy and funding to support reforms to the Bail Act

14. NCOSS recommends that the NSW Government should review state-wide crime prevention indicators used by police and ensure that there is evidence that the indicators used lead to the best measurement of evidence-based crime prevention objectives.
15. NCOSS recommends courts and police should be provided with evidence based practice guidelines to determine what people are more likely to fail to appear, how to identify risk factors and how those on bail with welfare needs can have their needs met in order to meet their bail conditions.
16. NCOSS recommends that courts and police, when deciding whether conditional bail is applied, should be provided with evidence based guidance as to when and what conditions are appropriate.

17. NCOSS recommends that police computer systems should be upgraded to ensure information it holds about bail conditions can be relied upon. Police practices when monitoring people on bail should reflect that the information they hold could be out-of-date.
18. NCOSS recommends that the Victorian court diversion programs should be considered for adoption in NSW, in particular the:
 - 'Dual track system', deferral of young people between the ages of 18 and 20 to the youth justice process
 - Court Integrated Services Program (CISP) that meets the health, accommodation and welfare needs of people on bail.
 - Youth Justice Court Advice Service, for those with serious offences.
19. NCOSS recommends that out-of-home care placement services, housing and prisoner support services should be funded to take part in bail support programs for individuals who would not otherwise be able to meet bail conditions.
20. NCOSS recommends that the NSW Government provide funding to establish Aboriginal specific diversion programs and non-Aboriginal programs to build the capacity to meet the needs of Aboriginal clients, to develop appropriate service models and to employ and retain skilled Aboriginal workers.
21. NCOSS recommends that specific diversionary programs should be introduced at the time of the Bail hearing that redirects girls from the court system. The program should be a residential based service.
22. NCOSS recommends that the LRC consider the recommendations in the *Bail Me Out* study particularly those relating to improvements in coordination of services, information sharing between services, policing practices and delivery of culturally appropriate support services.