

Submission

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Australian Human Rights Commission

Access to justice in the
criminal justice system for
people with a disability

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 (UnitingCare CYPF) is a service group of UnitingCare NSW.ACT. Our concerns for social justice and the needs of children, young people and families who are disadvantaged, inform the way we serve and represent people and communities. The Service Group is comprised of UnitingCare Burnside, UnitingCare Unifam Counselling and Mediation, UnitingCare Disability, UnitingCare Children's Services and the Institute of Family Practice, a registered training organisation. Our purpose is to provide innovative and quality programs and advocacy to break the cycle of disadvantage that affects vulnerable children, young people, individuals and families.

This submission draws on the experience of UnitingCare Disability, UnitingCare Burnside (Burnside) and Jannimili, our Aboriginal Services and Development Unit.

UnitingCare Disability

UnitingCare Disability plays a lead role in the provision and development of services for people with disabilities and their families, as part of the UnitingCare Children, Young People and Families service group of UnitingCare NSW.ACT.

UnitingCare Disability services focus on enabling people with disability and their families to participate in their communities. To achieve this we work with local communities to build their capacity to include people with disabilities.

In 2012/13, UnitingCare Disability worked with nearly 300 people with disabilities. The majority of our clients have an intellectual disability, however, we offer assistance for a broad range of primary disabilities, including autism, psychiatric, neurological, hearing, vision, acquired brain injury, physical and specific learning disabilities.

Our services provide accommodation support, assistance with employment and education, financial support, respite care and crisis support. We also offer practical support in skill development in areas such as independent living and social skills. Our services also include intensive short-to-medium term case management services for people with disabilities and their families who are experiencing difficulties with their current support arrangements.

The UnitingCare Disability Extended Family Support Service provides a service to families with a child or young person from ages 0-18 with a chronic disability who is at risk of an out-of-home care placement due to family breakdown.

Burnside

Burnside is a leading child and family welfare organisation in New South Wales, with over 72 programs across metropolitan, regional and rural communities. Its purpose is to provide innovative and quality programs and advocacy to break the cycle of disadvantage that affects vulnerable children, young people and families.

Burnside provides services across the continuum of care, ranging from preventative programs such as supported playgroups; early intervention programs such as Brighter Futures; intensive family support programs; out-of-home care and after care.

In preparing this submission we consulted with managers of Burnside's intensive family support programs. These are programs with referrals for the statutory child protection system to prevent children and young people entering out-of-home care. A high proportion of the families using these programs have a child or parent with a disability.

Jaanimili

Jaanimili is the Aboriginal Services and Development Unit of UnitingCare CYPF. Jaanimili provides cultural guidance and advice to the Service Group. Jaanimili also operates a number of Aboriginal-specific programs. These include several programs for people with disabilities and their families.

Birring Gurung and the Aboriginal Intensive Family Support Service provide short-term intensive and flexible in-home support to assist Aboriginal families at risk of relinquishing the care of their child or young person with a disability. These services are based in South Western Sydney and Dubbo and are funded by ADHC.

The Aboriginal Support Network in Dubbo is a pilot program funded by ADHC to develop social supports for Aboriginal children and young people (aged 8 to 18) with a disability, their parents, carers and siblings. It focuses on building support networks, promoting friendships and increasing awareness of community support services.

Jaanimili also manages three Aboriginal Early Start positions. These positions are funded under the Australian Government's National Disability Strategy. They are

located at the new COAG-funded Aboriginal Child and Family Centers in Gunnedah, Campbelltown and Mt Druitt and provide outreach to surrounding Aboriginal communities. The workers assist families with a child with a disability to access the support, resources and therapies that the child requires. They facilitate placement of the child in an appropriate early childhood service. Importantly, they are able to work with the family regardless of whether or not the child has a diagnosis at the time of referral.

While we did not identify any case studies involving Aboriginal clients at the time of preparing this submission, we are particularly concerned about the over-representation of Aboriginal children and young people with disabilities in the NSW juvenile justice system. We have actively supported trials of Justice Reinvestment in NSW and have been strong advocates for the reform of the juvenile justice system in NSW. This includes changes to the Bail Act to reduce the high numbers of children and young people held on remand when four out of five will not go on to serve a custodial sentence. We know that many children and young people caught up in the juvenile justice system have disabilities including mental health issues due to experiencing trauma and abuse. We note the report prepared by the UNSW and Price Waterhouse Coopers for this inquiry, which highlights that early holistic support is crucial for the development and well-being of children and young people with cognitive impairment, particularly Aboriginal children and young people. We endorse the conclusion of this report that:

Robust, holistic, targeted cross portfolio support and intervention for people with mental health disorders and cognitive impairment would reduce the significant economic and human costs of this group of people cycling in and out of the criminal justice system.

Summary of recommendations

Recommendation 1

That the AHRC monitor how well people are able to access the NDIS through DisabilityCare Australia.

Recommendation 2

That the AHRC monitors COAG's evaluation of the pilot sites of DisabilityCare Australia.

Recommendation 3

That the AHRC provide advice on and monitor the development of specific strategies to overcome the barriers that Aboriginal and Torres Strait Islander people face in accessing the NDIS through Disability Care Australia.

Recommendation 4

That the NSW Ombudsman or NSW Commissioner for Children and Young People provide oversight of the MOU between NSW Community Services and Ageing, Disability and Home Care.

Recommendation 5

That the Australian Human Rights Commission provide advice to state and territory governments on strengthening the collection, monitoring and public reporting on school suspension and expulsion data. This should include collecting and publishing data on the number of students with a disability who are suspended and the incidence of repeat suspensions.

Recommendation 6

That the Disability Discrimination Commissioner investigate the incidence and impact of suspension on students with disabilities and provide advice to governments on other ways of managing challenging behaviour in schools.

Recommendation 7

That state and territory governments review their policies and practices relating to school suspension with a focus on reducing the incidence and duration of suspension. This should include particular attention to ensuring that there are appropriate processes in place to support children with disabilities and that suspension is used as a rare and last resort.

Recommendation 8

That the AHRC provide advice to state and territory governments and encourage them to shift their policies to make greater use of in-school suspension with increased student support (where suspension is deemed absolutely necessary).

Recommendation 9

That the National Aboriginal and Torres Strait Islander Health Plan includes provision for the roll-out of the national FASD instrument and diagnostic and management services for people with FASD.

Recommendation 10

That the NDIS through DisabilityCare Australia funds diagnostic, early intervention and management services for people with Foetal Alcohol Spectrum Disorders.

Recommendation 11

That Legal Aid services receive funding for disability specific services, resources and training to support their work with people with a disability.

Recommendation 12

That mandated court support is provided for all people with disability who are charged with a criminal offence. This should include support prior to and during the court appearances.

Recommendation 13

Training of police in identifying hearing loss should become standard in police forces across all jurisdictions in Australia. It will be important that there are strong processes put in place to monitor implementation of this process through COAG and the 'Closing the Gap' strategies.

Recommendation 14

That the AHRC monitor and report on findings about remand populations in criminal justice systems across all states.

Introduction

UnitingCare CYPF welcomes the Australian Human Rights Commission (AHRC) Inquiry into the access to justice in the criminal justice system for people with a disability. We appreciate the AHRC issues paper that highlights five key barriers to accessing justice for people with a disability. All of the barriers identified by the AHRC resonate with the experience of our staff working with people with disabilities.

We see the Inquiry as an opportunity to explore these issues through the lived experience of people with a disability who we work with in our programs.

This submission focuses on:

- the impact of the deficiencies of service and support provision to people with disability. In particular we highlight the fragmented nature of existing programs for people with disabilities.
- the impacts of lack of appropriate educational supports and exclusion of children with disabilities from school
- the difficulties which arise from non-diagnosis of disability and an inability to recognise the presentation of disability
- the systemic problems people with a disability encounter when coming into contact with police, legal services, the courts and corrections
- the accumulated reports about disability and disability and justice, which indicate the need for change.

As outlined in our submission, there have been multiple reports at the state and Commonwealth level which have made recommendations to improve access to justice for people with a disability. In particular, we highlight the following reports:

- The 2008 AHRC report looking at Indigenous young people with cognitive disabilities and mental health issues which recommended the development and use of diagnostic tools and therapies for young babies and children with Foetal Alcohol Spectrum Disorders (FASD).¹
- The 2011, report of the House of Representatives inquiry² on Indigenous youth in the criminal justice system made a number of recommendations for improving

¹ Calma, T., 2008, *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues*. Australian Human Rights Commission, Sydney, March 2008.

² House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011, *Doing Time - Time for Doing Indigenous youth in the criminal justice system*, Commonwealth of Australia, pp. 102-103.

access to justice for people with a disability. These recommendations were repeated more recently in the 2012 Parliamentary Inquiry into FASD³

- The Noetic Review of Juvenile Justice in NSW in 2010 which found consistent evidence of a lack of services for children and young people with borderline cognitive disability.
- The Productivity Commission's 2011 inquiry into Disability Care and Support which found that disadvantage for people with disability has strong links to a lack of service supports and an inequitable distribution of supports.⁴
- The recent NSW Law Reform Commission⁵ report looking at people with cognitive and mental health impairments in the criminal justice system focused attention on the relationship between the criminal justice system and the service sector.

The key challenge at a state and Commonwealth level has been poor implementation and lack of oversight of the recommendations contained in these reports. It seems the issues were investigated, reported on and recommendations made but the implementation of most these has not happened. To date, there has not been an improvement in access to justice for people with a disability. The following recent case study from one of our programs illustrates this point.

³ Department of the House of Representatives, 2012. FASD: The Hidden Harm. Inquiry into the prevention, diagnosis and management of Fetal Alcohol Spectrum Disorders. Available from http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=spla/fasd/report.htm

⁴ Australian Government Productivity Commission, 2011, *Disability Care and Support Public Inquiry*. Available from <http://www.pc.gov.au/projects/inquiry/disability-support>

⁵ NSW Law Reform Commission, 2012, Report 135, *People with cognitive and mental health impairments in the criminal justice system*, NSW Law Reform Commission.

Case Study Toby - One boy's struggle for a stable place in his community

Background

Toby is 16 years old and has an intellectual disability. He has also been diagnosed with epilepsy and organic psychotic illness.

Toby had a history of aggressive attacks on his two younger half-brothers and his step-father. In April 2012, his mother moved to a flat with Toby because of his aggressive behaviour. She then spent time moving between the family home and the flat to care for all the children, but this became extremely demanding. Also, she was behind in paying rent for the flat and couldn't sustain this expense.

UnitingCare Disability's Extended Family Support has supported the family since November 2012.

Prior to the involvement of the UnitingCare Disability Extended Family Support Service Toby had been in a juvenile detention centre. Upon his release, his mother asked Community Services for a temporary care agreement as she could not manage his behaviours. Community Services, in conjunction with the court, assisted in having Toby admitted into an adolescent mental health unit.

Following this he returned to his mother's care for a short while. However, his mother said that she could not support Toby given his continued drug use and she wanted to go home to her husband and children. She was then subjected to many verbal and physical attacks.

In December 2012, Toby's mother permanently left the flat. Since then, she has lived with friends due to the breakdown of her marriage and her fear of being alone with Toby. Toby is also estranged from his biological father and is not acknowledged by his step-father or half-brothers due to his past violent attacks.

In March 2013, his mother relinquished all care and signed over all guardianship rights to the Public Guardian.

Toby now lives on his own without family support. The lack of support for Toby and his family to help manage his mental illness and behaviours at an earlier stage contributed to the complete breakdown of his relationships with his family. In turn, lack of family support and a reliable informal support network has increased his need for formal support services. It has also meant that there is limited support available

when Toby comes into contact with police.

Over the past few years, prior to any services coming on board, Toby had many admissions to adolescent mental health units as an inpatient for extended amounts of time. The instability in Toby's home life has meant that at times he did not comply with taking medications. Toby had no access to his medication on occasions when placed in juvenile detention. This had a negative effect on his treatment and ability to engage with services.

Toby has been in and out of juvenile detention centres because of aggressive assaults, theft and property damage.

Toby's experiences in the criminal justice system have been impacted by a lack of understanding and insight from police about disability and mental illness. For example, Toby was previously arrested for carrying a garden hedge trimmer from his home. Police classed the hedge trimmer as a weapon and possible stolen good. Toby was arrested. The item was neither stolen nor being used as a weapon. The Police were unaware of Toby's disability until he was detained and questioned. If Toby was known to police or his records flagged with his disability the arrest may not have taken place.

One of the problems when police lack experience and knowledge of mental illness and disability is that they do not understand the effect the arrest has on Toby's behaviour. Toby was not provided with timely, appropriate support and, the arresting officer did not provide clear communication to Toby about what would happen following the arrest. Toby can behave inappropriately when confused by or fearful of instructions. Toby has also had inappropriate bail conditions set prior to sentencing including curfews that are unrealistic for a young person. This has had the effect of setting him up to breach bail and then be held on remand.

Current situation

Toby is still living alone in the flat but is unable to manage independently. He is also unable to meet the rent payments. Many different housing options such as refuges have been explored, but it is very difficult to find suitable accommodation given his violent behaviour.

UnitingCare Disability has successfully negotiated with the Department of Ageing, Disability and Home Care (ADHC) and Toby now has a Supported Living Package which will provide funding and support to help him to live in the community on an

ongoing basis.

Toby was expelled from all past schools. He unsuccessfully re-entered the education system at a behavioural school in November 2012. However, with the support of respite care workers from the Extended Family Support Service Toby has attended school during May and June 2013 for 1 hour each day, and the service is working with Toby and the school to gradually increase this.

Toby currently has a case manager with ADHC and with the adolescent mental health unit. He is complying with a community treatment order and receiving fortnightly medication injection. His daily medications are also monitored by support staff to ensure compliance. The young person continues to engage well with the services involved.

The Extended Family Support Service is working with Toby to help him develop living skills and to have a routine in his daily activities. The workers have found out his interests and helped link him into activities such as football and joining a gym. They are working with Toby to set goals for his education, ongoing training and work options. Linking him to these activities also reduces boredom and negative influences of peers on his behaviour.

The program offered to Toby by the Extended Family Support Service has been successful in improving Toby's behaviour due to the consistency in service provision and him feeling a sense of connectedness and support from services.

The high level of cross-sectoral collaboration has also been a key factor. The services involved, including UnitingCare Disability, adolescent mental health, and ADHC have all worked collaboratively to ensure Toby's needs are met. Toby's Justice Health worker has also been instrumental in supporting the young person through the barrage of charges and court appearances and liaising with services involved.

Barrier 1

Community support, programs and assistance to prevent violence and disadvantage and address a range of health and social risk factors may not be available to some people with disability. This means that people with disability are left without protection and face ongoing violence, or have repeated contact with the criminal justice system because appropriate programs and community support are not available.

Addressing inconsistent, inflexible, short-term service provision

People with disabilities, their families and carers, face significant disadvantage as measured on various markers, including social exclusion, poverty, and personal well-being. The overrepresentation of people with cognitive disability in the criminal justice system is evidence of this disadvantage. The Productivity Commission's 2011 inquiry into Disability Care and Support found that this disadvantage had strong links to a lack of service supports and an inequitable distribution of supports.⁶

UnitingCare Disability practitioners witness the impact of unmet need for services in their daily work. Our experience is that the services that are available to people with disabilities, are frequently short-term and fragmented. Additionally, many disability programs have narrow eligibility criteria. This means that people with disabilities have to go from service to service and continually retell their story. The lack of ongoing and consistent support can have a critical impact on the person and their family, and can place them at risk of repeated contact with the criminal justice system.

The Toby case study illustrates this. Toby has significant mental health issues as well as an intellectual disability. He and his family had not received support services except on his admission to a mental health facility. Unfortunately, by the time of referral to UnitingCare Disability, there had been an almost complete breakdown of his relationships with his family. In turn, lack of family support or a reliable informal support network has increased his need for formal support services.

Since UnitingCare Extended Family Support has become involved with Toby and his family, they have emphasised providing consistent and flexible support. Our staff have worked with Toby to ensure continuity of service provision and connect him to a range of services that match his needs. Another key factor in helping Toby has been

⁶ Australian Government Productivity Commission, 2011, *Disability Care and Support Public Inquiry*. Available from <http://www.pc.gov.au/projects/inquiry/disability-support>

strong collaboration between the service providers involved including UnitingCare Disability, Justice Health, the Adolescent Mental Health Service and ADHC. This has helped to stabilise his mental health condition, living situation and his behaviour. This has now enabled him to start making plans for his future around education and employment. As one case manager from UnitingCare Disability said of Toby, “*We hung in there, so he has too.*”

Early intervention and whole-of-life approach

The *National Framework for Protecting Australia’s Children 2009-2020* recognises the importance of appropriate early intervention and specialist services to meet the additional needs of vulnerable children.⁷ Strategies to achieve this include:

- implementation of an integrated approach to service design, planning and delivery for children and families across the lifecycle and spectrum of need
- development of information sharing between Commonwealth, State and Territory agencies and NGOs
- ensuring consistency of support and services for all children and families, with disability.

Early diagnosis and service provision would help in maintaining community supports, in connecting people to education and in supporting individuals and families in meeting their needs. Importantly, early intervention services have a strong evidence base in preventing young people from entering the criminal justice system.

Numerous reports have made findings about the problems that arise when early intervention services are not available for babies, children and young people. A submission to the Wood Royal Commission⁸ by the Public Schools Principals Forum, identified the increasing numbers of children enrolling in school with undiagnosed or unidentified disabilities. These children miss out on the opportunity provided by early intervention services, support groups and access to early childhood education and care.

The support provided to children with complex needs in transitioning to school also impacts on educational outcomes. The nature and extent of transition support is decided on a local level by individual school leadership teams. Our 2011 submission

⁷ Council of Australian Governments, 2009, *Protecting Children is Everyone’s Business National Framework for Protecting Australia’s Children 2009–2020*.

⁸ Submission: Public Schools Principals Forum, cited in The Honourable James Wood 2008. *Report of the Special Commission of Inquiry Into Child Protection Services in NSW*.p.858.

to NSW Legislative Council Standing Committee on Social Issues⁹ highlighted the need for strong collaborative relationships between schools and the early childhood sector to support positive transitions from early childhood services to school. For children with additional or complex needs, additional support for this transition is vital to assist them to have a positive start at school and maintain engagement with education. Disengagement from school greatly increases the likelihood of earlier, ongoing involvement in the criminal justice system.

There have been a number of reports which have highlighted the lack of appropriate services for children with disabilities. The Noetic Review of Juvenile Justice in NSW in 2010 found consistent evidence of a lack of services for children and young people with borderline cognitive disability.

A 2012 NSW ADHC study confirmed that people with cognitive disability and complex need received low rates of support as children and young people.¹⁰ The lack of identification of disability and support for children and young people is reflected in a significantly greater chance of ongoing and more intense involvement in the criminal justice system.¹¹

Our staff witness the problems that arise because children with a disability are not diagnosed at an early age. Their experience is that many people with cognitive disabilities do not receive services until later in childhood or adolescence because they have not received a diagnosis. Unfortunately many young people receive their diagnosis and access to services upon entering the criminal justice system.¹²

As Baldry, Dowse and Clarence have said,

It can be theorised that many in these groups with complex needs become locked early in their lives into cycling around in a liminal, marginalised community/criminal justice space (Baldry et al 2008; Baldry 2009; Dowse et al 2009; Baldry 2010), a space that is neither fully in the community or fully in the prison. They do not fall through cracks, they are directed into the criminal justice conveyor belt. This suggests it is important to recognise the different space and need for different

⁹ See *UnitingCare Submission to NSW Legislative Council Standing Committee on Social Issues. Inquiry into transition support for students with additional or complex needs and their families*, available at:

www.childrenyoungpeopleandfamilies.org.au/info/social_justice/submissions/submissions/?a=65196

¹⁰Baldry E, Dowse L and Clarence M 2012. *People with intellectual and other cognitive disability in the criminal justice system*. Report for NSW Family and Community Services Ageing, Disability and Home Care.p.48

¹¹ Ibid, p.4.

¹² Ibid, p3.

disability and rehabilitative interventions and supports at many points along these persons' pathways.¹³

National Disability Insurance Scheme delivered by DisabilityCare Australia

In 2007 the Labor Government signposted their concern about the functioning of the disability services sector. In 2008 the Government established the Disability Investment Group to explore 'innovative funding ideas' from the private sector for disability services. The model proposed was a National Disability Insurance Scheme (NDIS) to replace the current system. In July 2011 the Productivity Commission released an Inquiry Report which concluded that much of the disadvantage faced by people with disability is attributable to "*the dysfunctional nature of the 'system' providing them with support.*"¹⁴

The Productivity Commission recommended a framework for a new system of funding the disability sector in the National Disability Insurance Scheme (NDIS). The NDIS uses a person-centred approach that offers clients the potential to pick and choose services that more closely match their needs. UnitingCare supported this scheme alongside the broader disability sector.

Legislation for the NDIS was passed in the Commonwealth Parliament in March 2013 and the scheme is called DisabilityCare Australia. Complete roll out of the NDIS is due by 2019 with the scheme gradually implemented across the country.

Access to DisabilityCare Australia for vulnerable people

The introduction of DisabilityCare Australia is a great opportunity to provide a more consistent, equitable, life-long approach to meeting the needs of people with a disability. UnitingCare CYPF strongly welcomes this opportunity to connect people with a disability to appropriate, timely, and consistent support.

We note that there are some unanswered questions about how vulnerable people will access the NDIS through DisabilityCare Australia. The scheme is likely to work well for people who have a good understanding of the choices available to them and who can be strong self-advocates. However, we are concerned about how the new

¹³ Baldry E, Dowse L and Clarence M., 2012, *Background Paper for Outlaws to Inclusion Conference February 2012. People with Mental Health and Cognitive Disability: pathways into and out of the criminal justice system* p.15.

¹⁴ Australian Government Productivity Commission, 2011, *Disability Care and Support Public Inquiry*. Available from www.pc.gov.au/projects/inquiry/disability-support. p155-156.

system will work for people with cognitive disabilities and/or communication difficulties. We have particular concerns about access to DisabilityCare Australia for Aboriginal people, people leaving care, people leaving the criminal justice system, people without strong family or community supports, and those who are homeless or living in insecure housing.

Impact of type of disability and life circumstances on access to the NDIS

Once people are assessed as eligible they can access their package of support through one of two different broad approaches. The first allows clients to receive a package of supports. A disability organisation can act as a broker of services. The second approach is self-directed funding where individuals can cash-out their package and manage it themselves. Self-directed funding also allows people to hire their own support workers.

A 2012 study conducted jointly by the Australian National University (ANU) and the Australian Institute of Health and Welfare (AIHW) points out that self-directed funding is likely to most benefit those with a higher level of education, who live in urbanised areas and have access to a broader range of services.¹⁵ It is less likely to be of benefit for those in rural or remote areas with few service choices and who have complex needs. As Kirkman argues, “*people are not equally well placed to take advantage of autonomy*”¹⁶

The type of disability also impacts how well people can access market-based service delivery. In a literature review of market-based delivery of disability services, Kirkman found that those with physical disabilities and strong family supports were better able to participate in market-based services:

The more able service users and those with strong support networks are most likely to benefit from individualised funding...[whereas] the most vulnerable may be left unsupported in a market economy marginalised even further because they are not the route to a profit and, lacking a case manager, without an effective advocate to challenge inadequate resources and support.¹⁷

We note that DisabilityCare Australia has a process in place for appointing ‘nominees’ as advocates. However, there is currently no funding attached to providing professional advocacy services within the scheme and it is unclear how

¹⁵ Biddle, N. Al-Yaman, F. Gourley, M. Gray, M. Bray, R. Brady, B. Anh Pham, L. Williams, E. Montaigne, M., 2012, *Indigenous Australians and the National Disability Insurance Scheme: The extent and Nature of Disability, Measurement Issues and Service Delivery Models*, ANU & AIHW, p. 6

¹⁶ Kirkman, M. 2010, *Literature Review: Person-Centred Approaches to Disability Service Provision*, Melbourne City Mission, p.39

¹⁷ *Ibid*, p.41

this will work for people who do not have a formal guardian or who lack family support. The COAG appraisal of the evaluation reports prepared about the launch sites of DisabilityCare Australia in 2016 will provide important information against the performance indicators and the baseline data collected in 2012-13.

Recommendation 1:

That the AHRC monitor the pilot NDIS sites to assess how well the new approach is working for vulnerable people with disabilities.

Recommendation 2:

That the AHRC monitors COAG's evaluation of the pilot sites of DisabilityCare Australia.

Meeting Aboriginal-Specific needs under the NDIS

The Productivity Commission has identified Aboriginal people as deserving special consideration under the NDIS. The Productivity Commission named barriers to access for Aboriginal people including remoteness, social marginalisation, cultural attitudes towards disability and culturally inappropriate services.

Aboriginal people are more likely to have less education and live in more remote areas where there are fewer resources and services. The First Peoples Disability Network considers that there is a significant risk that self-directed funding models of service delivery could entrench existing disadvantage among Aboriginal people.¹⁸ They suggest the need for specific strategies that help build the capacity of Aboriginal people and their families to engage in these approaches.

As the First Peoples Disability Network argues many Aboriginal people unaware of the culture of disability and lack knowledge of appropriate disability supports. This is due to historical, cultural, socio-economic and structural reasons.

Specific barriers for Aboriginal people include:

- living in remote locations where there is an entrenched lack of services
- the impact of a mistrust of government services due to negative past experiences
- a feeling that services are not culturally appropriate

¹⁸ First Peoples Disability Network, 2013, *Making the National Disability Insurance Scheme Accessible and Responsive to Aboriginal and Torres Strait Islanders*, p.2

- previous experiences of racism and other negative experiences with mainstream services.¹⁹

The Aboriginal Disability Network NSW argues that access to disability services will only improve if a number of key things occur. These measures will increase the resources available for Aboriginal people with a disability and make it easier and more likely that Aboriginal people will use disability services. Aboriginal community members have articulated these as:

- non-Aboriginal services becoming more culturally aware
- Aboriginal people with a disability, their families and carers becoming confident in using the service system including developing an understanding of the language of the disability service system
- Aboriginal people with a disability being fully aware of their rights and entitlements and able to assert their rights.
- Disability services having Aboriginal people working within them who are aware of the rights and entitlements of Aboriginal people with a disability.²⁰

The NDIS presents a key opportunity to provide greater access to resources and support for Aboriginal and Torres Strait Islander people with disability. This is an important strategy which will help to reduce their contact or involvement with the criminal justice system.

Recommendation 3:

That the AHRC provide advice on and monitor the development of specific strategies to overcome the barriers that Aboriginal and Torres Strait Islander people face in accessing the NDIS through DisabilityCare Australia.

Child Protection and Risk of Harm

Our staff raised concerns about child abuse and risk of harm for some young people with a disability. Our practitioners identified problems with coordination of service provision between Community Services (CS) and ADHC in NSW. Their experience is that often, once ADHC becomes involved CS do not remain engaged. This results in a failure to address the care and protection needs of the young person.

¹⁹ Biddle, N. Al-Yaman, F. Gourley, M. Gray, M. Bray, R. Brady, B. Anh Pham, L. Williams, E. Montaigne, M. 2012, *Indigenous Australians and the National Disability Insurance Scheme: The extent and Nature of Disability, Measurement Issues and Service Delivery Models*, ANU & AIHW, p.99

²⁰ Aboriginal Disability Network NSW, 2012, *Living Life My Way: Consultations with Aboriginal Communities Final Report*, NSW Government, p.9

This is a long-standing issue. In 2008, Justice Wood reported on issues around the implementation of the memorandum of understanding (MOU) between CS and ADHC in the Special Commission of Inquiry into Child Protection Services in NSW.²¹ The Commissioner found that there were issues between CS and ADHC regarding responsibility for relevant aspects of service provision for children with a disability who are at risk of harm. Justice Wood found a need for a stronger emphasis on joint assessment and planning by CS and ADHC within the MOU between the departments.

We note the current MOU dated May 2012 between CS and ADHC stating their commitment to joint assessment, case planning and decision-making. We also note the strong wording of the governance structure within the MOU, including regular regional review and forums with relevant non-government service providers. However, it is unclear whether this is actually happening in practice. Our experience is that problems persist in implementing the MOU at the local level. This highlights the need for external oversight of the MOU.

Recommendation 4:

That the NSW Ombudsman or NSW Commissioner for Children and Young People provide oversight of the MOU between NSW Community Services and Ageing, Disability and Home Care.

Exclusion from school

Exclusion from school is a significant factor impacting on the well-being of children and young people with a disability. Sustained involvement in education reduces the risk of involvement in the criminal justice system,²² whilst disengagement from school is a common characteristic among young people in the justice system.²³ Not attending school at the time an offence was committed is also a strong predictor of recidivism.²⁴

Our practitioners are particularly concerned about the lack of appropriate educational supports for children and young people with disabilities and the impact this has on

²¹ The Honourable James Wood 2008. *Report of the Special Commission of Inquiry Into Child Protection Services in NSW*, pp 859-858.

²² Noetic 2010. *A Strategic Review of the New South Wales Juvenile Justice System Report for the Minister for Juvenile Justice*. Canberra: Noetic Solutions . p p. 91

²³ Indig D, Vecchiato C, Haysom L, Beilby R, Carter J, Champion U, Gaskin C, Heller E, Kumar S, Mamone N, Muir P, van den Dolder P, Whitton G 2009. *2009 NSW Young People in Custody Health Survey: Full Report*. Human Services.NSW Health

²⁴ Indig D, McEntyre E, Page J & Ross B., 2010, *2009 NSW Inmate Health Survey: Aboriginal Health Report*, Justice Health, Australia, p.33,

their learning and later life. They report that many children with disabilities are being continuously suspended from school. For example, last term, a 12-year-old boy who is being supported by our Extended Family Support Service was suspended for 7 weeks out of a 10 week term. This is not unusual and is affecting students with disabilities across all age groups including the early years of Kindergarten and early primary school.

Over the past few years, the UnitingCare CYPF Social Justice Unit has undertaken a body of research and policy work on the issue of school suspension. This research confirms that the rate of school suspension is increasing in most Australian states and territories.²⁵ For example, NSW Department of Education and Communities (DEC) data shows that between 2006 and 2011, the total number of 'long' suspensions (more than 4 days) increased by 36% from 12,326 to 16,814.²⁶ In 2011, the average length of suspension was 12.6 school days.

The use of suspension impacts disproportionately on our most vulnerable children and young people – children with disabilities, Aboriginal children and children growing up in care. These children often experience a repeated pattern of suspension over many years of their schooling.

Unfortunately, DEC does not publish data on the number of children with disabilities who are suspended from school. However, anecdotally, reports from our practitioners, parents, and other service providers working with children with disabilities indicate that there are very high rates of suspension of children with disabilities, particularly students with autism.

Recommendation 5:

That the Australian Human Rights Commission provide advice to state and territory governments on strengthening the collection, monitoring and public reporting on school suspension and expulsion data. This should include collecting and publishing data on the number of students with a disability who are suspended and the incidence of repeat suspensions.

²⁵ However, it is notable that the South Australian statistics show that in the last year there was a marked fall in suspensions rates, with the number of suspensions dropping by 18% (reversing a trend to increased suspensions each previous year since 2007). See, Government of South Australia, Department of Education and Child Development, *Behaviour Management 2011*. Available from www.sa.gov.au/upload/franchise/Education,%20skills%20and%20learning/2011Stat/DECDBehaviourManagement2011.pdf.

²⁶ See *UnitingCare Burnside Suspension in NSW Schools*, Fact Sheet September 2012, available at: http://childrenyoungpeopleandfamilies.org.au/__data/assets/pdf_file/0005/82283/SchoolSuspensionFactSheet.pdf

Impacts of school suspension on students with disabilities

Research evidence shows that suspension is not effective in changing students' behaviour because it does not address the underlying issues that lead to challenging behaviour. Further, suspension has serious unintended consequences for the suspended student. Multiple incidents of suspension intensify academic difficulties and disengagement from learning.

Our practitioners also report that when a student is suspended from school, it places increased pressure on their relationships with their parents or carers and other family members.

Suspension also increases the risk that students with disabilities will become involved in the juvenile justice system. Several Australian studies have shown that school suspension increases the likelihood of the student engaging in antisocial and violent behaviour (the studies controlled for other risk factors such as previous violent behaviour or spending time with violent peers)²⁷

At a time when we are seeking to increase engagement in education, it is both counter-intuitive and counter-productive to be using long-term school suspension as a behaviour management technique.

The planned changes to educational funding through the National Plan for School Improvement (which is based on the recommendations of the Gonski inquiry) provide an opportunity to use resources to implement alternative approaches to challenging behaviour in schools. This will help to keep young people with disabilities engaged with education. Oversight of this process is also needed to monitor and evaluate the effectiveness of alternative behaviour management strategies.

Recommendation 6:

That the Disability Discrimination Commissioner investigate the incidence and impact of suspension on students with disabilities and provide advice to governments on other ways of managing challenging behaviour in schools.

²⁷ Hemphill S.A., Toumbourou, R., Kendall, G., Rowland, B., Freiberg, K. and Williams, J., 2010, 'Are rates of school suspension higher in socially disadvantaged neighbourhoods? An Australian study', *Health Promotion Journal of Australia*, 21(1).

Recommendation 7:

That state and territory governments review their policies and practices relating to school suspension with a focus on reducing the incidence and duration of suspension. This should include particular attention to ensuring that there are appropriate processes in place to support children with disabilities and that suspension is used as a rare and last resort.

Professional development to equip teachers to manage challenging behaviour

The experience of our practitioners is that often students are suspended from school because teachers have insufficient training on the needs and behaviour of children with disabilities and do not have adequate resources to respond. To address this gap, our Extended Family Support Service is employing a clinician (using brokerage funding) to work with local schools to help teachers develop skills in managing the challenging behaviour of these children.

We are also aware that the Federal Government funds a program called *Positive Partnerships* which provides professional development for teachers and other school staff who are working with students with Autism Spectrum Disorder. An independent evaluation of *Positive Partnerships* found that it is an appropriately designed program which is evidence based and reflects good practice.²⁸ While this program is a positive initiative, there is clearly still a long way to go in rolling-out the program to reach teachers in all schools.

There also needs to be a stronger focus in initial teacher training and professional development on building the capacity of teachers to implement positive behaviour management strategies. This will help them to manage challenging behaviour in the classroom more effectively.

Increasing options for in-school suspension

The practitioners with our Extended Family Support Service commented that there is one school in their area that uses in-school suspension and this has worked well for one of their clients.

This is consistent with research evidence which indicates that in-school suspensions are an effective alternative to out-of-school suspension, particularly when combined

²⁸ See: www.deewr.gov.au/Schooling/Programs/Documents/PositivePartnerships.pdf

with increased support.²⁹ Under this approach, students are not relieved of the consequences of their behaviour, but remain at school where they are supervised and receive support to address the behavioural problems that led to the suspension. In-school suspensions are more widely used in this way in the United States.

Recommendation 8:

That the AHRC provide advice to state and territory governments and encourage them to shift their policies to make greater use of in-school suspension with increased student support (where suspension is deemed absolutely necessary).

Stay Connected – a successful approach in addressing school suspension for students with disabilities

*Stay Connected*³⁰ was established in 2009, initially as a two-year pilot program funded by ADHC and is operated by UnitingCare CYPF in both of the pilot areas – the Central Coast and South West Sydney areas. In 2011, ADHC provided UnitingCare CYPF with recurrent funding to enable continuation of the program in the two pilot areas. However, *Stay Connected* is only available in these two areas of the State.

Stay Connected targets children in Years 6 to 10, with diagnoses or suspected Autism Spectrum Disorder or intellectual disability, who are at risk of school suspension, expulsion or prematurely leaving school because of their challenging behaviour. The program uses a collaborative casework approach to work across the home and school environments to develop and implement a comprehensive case plan to support students to remain engaged at school. Additional funds are used for brokerage of clinical therapy services, such as speech pathology. *Stay Connected* also encourages young people to build community connections and reduce social isolation.

ADHC commissioned an independent evaluation of the *Stay Connected* pilot program; however, the evaluation is not publicly available. UnitingCare CYPF suggests that the AHRC seek a copy of the evaluation and review its findings.

²⁹ Morris, R. and Howard, A., 2003, Designing an Effective In-School Suspension Program, *The Clearing House*, 76, 3, 156-159.

³⁰ The official name used by ADHC for the program is the *Case Management for Young People with Challenging Behaviour*. However, it is locally known as *Stay Connected*

Stay Connected is a promising approach in supporting students with disabilities to remain engaged at school and thereby reduce the risk that they will become involved in the criminal justice system. The program should be expanded to other areas of NSW and potentially adopted by other states and territories.

Foetal Alcohol Spectrum Disorders

Foetal Alcohol Spectrum Disorders (FASD) affect both Aboriginal and non-Aboriginal people and is the leading cause of non-genetic developmental disorder in Australia. FASD is a life-course disability that can be difficult to recognise and diagnose. The Aboriginal Disability Justice Campaign has highlighted FASD as an area of concern. The cognitive disabilities associated with FASD are becoming more predominant and the numbers of people affected are predicted to reach “*epidemic proportions*” in the coming years.³¹

A 2008 AHRC report looking at Indigenous young people with cognitive disabilities and mental health issues recommended the development and use of diagnostic tools and therapies for young babies and children to aid identification of this disability.³² Early diagnosis and intervention prevents secondary issues across health, education and justice areas.

In 2011, the report of the House of Representatives inquiry into Indigenous youth in the criminal justice system, *Doing Time - Time for Doing Indigenous youth in the criminal justice system*³³ recommended the Commonwealth Government:

- develop and implement diagnostic tools and therapies
- recognise FASD as a registered disability and as a condition eligible for support in the health and education systems
- hold a comprehensive inquiry into the prevalence, diagnosis, intervention and prevention of FASD.

We appreciate that following this inquiry FASD is receiving some attention. We endorse the recommendations of the 2012 Parliamentary Inquiry into FASD³⁴ that the Commonwealth Government:

³¹ Aboriginal Disability Justice Campaign, 2013, *Submission to the Senate Inquiry for the National Disability Insurance Scheme*.

³² Calma T., 2008, op cit.

³³ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011, op cit, pp. 102-103.

- develop and implement a national FASD diagnostic and management services strategy
- speed up the roll-out of the FASD diagnostic instrument and the development of a training and user manual
- develop educational materials and targeted training for police and court officials and officers in correctional facilities and juvenile detention centres to improve their awareness and understanding of FASD
- include FASD in the list of recognised disabilities
- recognise that people with FASD have, amongst other disabilities, a cognitive impairment, and therefore amend eligibility criteria to enable access to support services diversionary justice programs.

Unfortunately, the Commonwealth Government has not yet made a response to the recommendations that came out of the 2012 Parliamentary Inquiry into FASD.³⁵ We note the Commonwealth's commitment in the 2013-2014 Budget to spend \$777 million over the three years to June 2016 for Closing the Gap in Indigenous Health and look forward to the development of the National Aboriginal and Torres Strait Islander Health Plan. It is important that this plan includes strategies to improve outcomes for people with FASD.

The rollout of DisabilityCare Australia also provides an opportunity for funding the recommendations set out in the Parliamentary Inquiry into FASD in 2012.

Recommendation 9:

That the National Aboriginal and Torres Strait Islander Health Plan includes provision for the roll-out of the national FASD instrument and diagnostic and management services for people with FASD.

Recommendation 10:

That the NDIS through DisabilityCare Australia funds diagnostic, early intervention and management services for people with FASD.

³⁴ Department of the House of Representatives 2012, op cit. www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=spla/fasd/report.htm

³⁵ Foundation for Alcohol Research and Education 2013. FASD harms remain hidden: Parliamentary Inquiry Ignored. Media Release June 4 2013. Available from www.fare.org.au/wp-content/uploads/2013/06/FASD-HARMS-REMAIN-HIDDEN-AS-GILLARD-IGNORES-PARLIAMENTARY-INQUIRY-Final.pdf

BARRIER 2

People with disability do not receive the support, adjustments or aids they need to access protections, to begin or defend criminal matters, or to participate in criminal justice processes.

Issues relating to provision of Legal Aid services

UnitingCare Extended Family Support practitioners report that people with disabilities often do not access Legal Aid services and do not have any legal representation in court.

When they do access Legal Aid, the lawyers often have little experience or understanding around disability issues. Our experience is that Legal Aid lawyers often do not liaise with disability or community services involved in supporting the client. This may be due to lack of time and resources within Legal Aid. In some cases, it may be because the lawyer is not aware that the person has a disability.

Recommendation 11:

That Legal Aid services receive funding for disability specific services, resources and training to support their work with people with a disability.

Anxiety and stress with legal process

Cognitive disability can affect the person's capacity to understand legal proceedings and this can create stress and anxiety. This hinders the ability of people with cognitive disability to communicate effectively with police, courts and legal support services. Family members may not know what options are available and are not able to help them in navigating the legal system.

Service providers from the Extended Family Support Service spoke highly of the support provided to Toby (see case study) by the Justice Health worker. This worker has remained with Toby to help him through the barrage of charges and court appearances. The role has also included liaising with all the service providers involved in working with Toby.

However, in most cases, our clients with mental health issues have not had access to a Justice Health worker to provide this type of support in the court process.

UnitingCare's Extended Family Support Service has sometimes been able to address the gap in court support services, by brokering court support (particularly for clients who do not have legal representation). For example, the service brokered court support for a 15-year-old Pacific Islander male with an intellectual disability. This young person had no suitable family supports and the service gave him a support person specifically to help him through his court appearances. Program managers carefully select support people that provide a strong 'match' with the client to assist with social role modelling and effectively extend the client's community supports.

Recommendation 12:

That mandated court support is provided for all people with disability who are charged with a criminal offence. This should include support prior to and during the court appearances.

Hearing impairment and interaction with the police and courts

In 2011, the report of the House of Representatives inquiry *Doing Time - Time for Doing Indigenous youth in the criminal justice system* recognised the strong link between high rates of hearing loss, low levels of educational attainment, involvement of Aboriginal people in the criminal justice system and consequent poor employment outcomes.³⁶

The Inquiry highlighted the problems Aboriginal people with hearing loss experience when encountering the police, courts and the corrections system. The report outlines the communication difficulties that arise, such as a hearing-impaired person speaking loudly is interpreted as aggression by police and leads to arrest and charge. Aboriginal people who are hearing impaired also experience difficulties in giving instructions to legal representatives and do not receive supports to assist this process. The Inquiry³⁷ recommended training for police and court officials to support them in identifying and assessing individuals who have hearing loss.

In its response to the Doing Time inquiry, the Australian Government accepted the Committee's recommendation that training on identify hearing loss should be

³⁶ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011, op cit., p. 108.

³⁷ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011, op cit, p 113

incorporated into police training.³⁸ It is promising that the Commonwealth Attorney General is working with relevant jurisdictions to collate information on current police training as a first step in this process.³⁹ This training needs to become standard in police forces across all jurisdictions in Australia. It will be important that there are strong processes put in place to monitor implementation of this process.

We also welcome the recent announcement by Jenny Macklin⁴⁰ that the Government will prioritise the high rates of Aboriginal incarceration by establishing a working group to create a 'justice target' to improve both community and lower incarceration rates safety for Aboriginal Australians.

Recommendation 13:

Training of police in identifying hearing loss should become standard in police forces across all jurisdictions in Australia. It will be important that there are strong processes put in place to monitor implementation of this process through the 'Closing the Gap' strategies and COAG.

BARRIER 3

Negative attitudes and assumptions about people with disability often result in people with disability being viewed as unreliable, not credible or not capable of giving evidence, making legal decisions or participating in legal proceedings.

UnitingCare Disability practitioners have found that police often assess their clients according to stereotypes and value judgments. Such stereotyping hampers interactions between the police and people with a disability. For example, if someone has a physical disability, it is often assumed that they have a cognitive disability too. This presents a communication barrier and people are treated as if they are not capable of participating in the criminal justice system.

Our practitioners have also observed that people with mild intellectual disability or mental illness often become 'lost' in the criminal justice system, because their

³⁸ Commonwealth Government of Australia 2011. *Government Response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report: Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System, Commonwealth of Australia.*

³⁹ Senate Standing Committee On Legal And Constitutional Affairs Attorney-General's Department 2012. Group 2 Output 1.5 Question No. 166 Senate hearing Of 23 May 2012: p. 1

⁴⁰ Karvelas, P August 09, 2013. Labor commits to new targets to help close indigenous gap. *The Australian*. Available from www.theaustralian.com.au/national-affairs/election-2013/labor-commits-to-new-targets-to-help-close-indigenous-gap/story-fn9qr68y-1226693894404

disability is not recognised. Their inability to understand what is required of them often manifests itself as frustrated or angry behaviour.

Police may interpret this behaviour as aggressive, anti-social or antagonistic. Minor incidents can escalate into incidents involving arrest.

Research by the Law and Justice Foundation NSW⁴¹ highlights the lack of training given to both police and legal services in identifying cognitive and mental health impairment. This means that people with disabilities do not receive the supports they need to participate in legal processes.

This highlights the importance of ensuring that all police officers, legal practitioners and court staff receive training on how cognitive impairment may affect behaviour and manner and how to communicate effectively with people with cognitive impairment.

BARRIER 4

Specialist support, accommodation and programs may not be provided to people with disability when they are considered unable to understand or respond to criminal charges made against them ('unfit to plead'). Instead, they are often indefinitely detained in prisons or psychiatric facilities without being convicted of a crime.

Increased access to suitable accommodation

UnitingCare Disability staff report that a number of their clients see juvenile justice centres and adult prisons as safe environments to live compared with their life at home or with living on the streets. For people with intellectual disabilities prison may provide a structure and routine they find comforting and reassuring.

Our practitioners point to a lack of transition programs between prison and the community, including therapeutic and practical support and lack of appropriate, safe housing options as key factors which contribute to this.

The House of Representatives Inquiry into Indigenous youth in the criminal justice system⁴² supports the need to provide a transition support plan for individuals leaving custody and re-entering the community. These plans need to be specific to

⁴¹ Gray A, Forell S, and Clarke S (2009). Cognitive Impairment, legal need and access to justice. *Justice Issues. Paper 10*. Law and Justice Foundation of NSW.

⁴² House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011, *Doing Time - Time for Doing Indigenous youth in the criminal justice system*, Commonwealth of Australia.

the range of needs of the individual if they are to be effective. UnitingCare CYPF endorses this finding as a means of preventing people cycling through the juvenile justice and prison systems.

We note the National Disability Strategy⁴³ recommendation on the need for improved access to support for people with disability leaving custodial facilities. The implementation of this strategy requires careful monitoring and evaluation.

We also note the measures implemented in the National Disability Strategy NSW Implementation Plan 2012–2014⁴⁴ which include:

- introduction by Justice Health of Community Integration Teams that link young people leaving juvenile custody who have mental health, cognitive disability and alcohol and other drug issues into community supports
- establishment of the Community Justice Program that provides clinical and accommodation support services to people with intellectual disability who are exiting custody
- establishment of a Corrective Services pilot program aimed at supporting offenders with intellectual disability to access suitable accommodation and other support services when they transition into the community.

We look forward to public reporting on the key indicators of progress within the plan. In particular, it will be important to set targets to monitor and report on:

- the level and range of programs and support options for people with disability in the justice system
- the number of people with cognitive impairments who are incarcerated.

Bail and incarceration

Bail reform law in NSW has had the effect of increasing the number of young people held on remand.⁴⁵ Bail conditions sometimes reflect welfare concerns rather than criminal justice concerns and are often so restrictive that young people remain in custody and are not released on bail. The increased numbers in the detention population means that young people on remand are denied opportunities for

⁴³ Council of Australian Governments 2011. 2010–2020 National disability Strategy. Chapter 2 Rights protection, justice and legislation. Policy Direction 3 People with disability have access to justice. p. 41

⁴⁴ NSW Government *National Disability Strategy NSW Implementation Plan 2012–2014*, www.adhc.nsw.gov.au/__data/assets/file/0003/262542/3002_ADHC_NDS_NIP_A4_reprint_web.pdf

⁴⁵ Bolitho, J and Fishwick, E (2010). Politics-led policy and policy-led evidence : the Noetic review of Juvenile Justice in New South Wales. *Current Issues in Criminal Justice*; 22 (1) July 2010: 171-180.

appropriate interventions.⁴⁶ This is particularly worrying for young people with disabilities and complex needs. Incarceration, even for a short time, is associated with increasing levels of recidivism, adding to the cycling of people with disability through the criminal justice system.⁴⁷

The prescriptive bail conditions set by police and the courts are often unrealistic and difficult for people with intellectual disability to understand. For example, in the Toby case study bail conditions included curfews and non-association orders that were inappropriate in his circumstances. Reporting requirements may also be difficult for young people like Toby who lack family and informal community supports. Setting bail conditions and using sentencing options that can be met will help to maintain community and service supports and keep people out of the custodial environment.

Bail conditions or bail refusal are also used to attempt to meet welfare needs. Custody is not an acceptable alternative to providing community support and suitable housing alternatives for people with disabilities charged as offenders in the criminal justice system. Our staff report that secure housing is fundamentally important to the well-being of their clients and to family stability.

Being held on remand for even a few days can interrupt medication and treatment stability. Our clients are best supported when bail conditions allow them to maintain their access to community support programs. This allows for consistent service provision and stability for the client situation.

Recommendation 14:

That the AHRC monitor and report on findings about remand populations in criminal justice systems across all states.

Problems in delivery of specialist court support programs

The NSW Law Reform Commission (NSW LRC) 2012⁴⁸ report looking at people with cognitive and mental health impairments in the criminal justice system focused attention on the relationship between the criminal justice system and the service sector. The report highlights the need to link people with cognitive impairments to services at every point in the system, and to match the services to the needs of the

⁴⁶ Mazerolle P & Sanderson J 2008. *Understanding remand in the juvenile justice system in Queensland*. Brisbane: Griffith University.

⁴⁷ Noetic 2010. *A Strategic Review of the New South Wales Juvenile Justice System Report for the Minister for Juvenile Justice*. Canberra: Noetic Solutions . p.68.

⁴⁸ NSW Law Reform Commission, 2012, op cit.

offender. Programs which divert people out of the criminal justice system are effective in reducing offending.

Specialist lists within the court system and court programs for people with mental health impairments have been successful in linking people with a disability and complex need to services. The NSW LRC report highlights that these successful options are underutilised due to a lack of skills and training in the specialised programs, as well as their limited availability across NSW.

The report also emphasised the difficulty specialised courts have in linking offenders with services. This has limited the effectiveness of the Statewide Community and Court Liaison Service (SCCLS) and the Court Referral for Eligible Defendants into Treatment (CREDIT) in NSW.

This situation suggests that resources need to be applied to increase the training and skills of workers within the criminal justice system. Resources to develop the relationships between service providers and the criminal justice system should also be provided. The support provided to Toby (see case study) by the Justice Health worker built a strong connection between Toby, our services and juvenile justice. However, as noted previously, many of our clients do not receive this service, suggesting a more consistent approach to service delivery is needed.

BARRIER 5

Support, adjustments and aids may not be provided to prisoners with disability so that they can meet basic human needs and participate in prison life. They often face inhuman and degrading treatment, torture and harmful prison management practices.

Harmful prison management practices

The Toby case study recounts an occasion when Toby was in custody and did not receive his medication for a few days. This created instability in his behaviour and interrupted the provision of therapeutic programs and his mental health treatment. Even a seemingly short delay can have a large impact on the behaviour and treatment of people with disabilities.

Our practitioners suggest that having a worker available within the prison system twenty-four hours a day to streamline the process of working with a person with a disability charged with a criminal offence would help prevent situations such as this

occurring.

We note the NSW Government's provision of Justice Health screening of young people in juvenile custody for physical, sensory, cognitive disability and mental illness in order to provide appropriate supports within 48 hours of entry.⁴⁹ However, we note that a delay of 48 hours in receiving care may still be critical to the welfare of the young person. We understand that Justice Health is conducting an evaluation of the outcomes of this screening program and look forward to the release of the evaluation report.

⁴⁹ NSW Government *National Disability Strategy NSW Implementation Plan 2012–2014*.