



because
children
matter

Submission to:

NSW Law Reform Commission

**Young people with cognitive and mental health impairments in the
criminal justice system**

11 January 2011

UnitingCare Burnside welcomes the opportunity to comment on the NSW Law Reform Commission's consultation paper 11 on young people with cognitive and mental health impairments in the criminal justice system. Our submission focuses on the need for policy reforms to better support young people who have a mental health or cognitive impairment, particularly in regards to bail and remand.

About UnitingCare Burnside

UnitingCare Burnside (Burnside) is a leading child and family welfare agency in NSW and part of UnitingCare Children, Young People and Families (UCCYPF). UCCYPF is a Service Group of UnitingCare NSW.ACT. UCCYPF assisted more than 23,000 disadvantaged children, young people and families across NSW in 2010. 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. UnitingCare Children, Young People and Families also includes UnitingCare Unifam, the Institute of Family Practice, UnitingCare Disability and UnitingCare Children's Services. Together with UnitingCare Burnside, these organisations form one of the largest providers of services to support children and families in NSW.

UnitingCare Burnside is also a member of the Youth Justice Coalition (YJC), which is a network of youth workers, children's lawyers, policy workers and academics working to promote the rights of children and young people in New South Wales. The YJC aims are to promote appropriate and effective initiatives in areas of law affecting children and young people; and to ensure that children's and young people's views, interests and rights are taken into account in law reform and policy debate. UnitingCare Burnside supports the Youth Justice Coalition's submission on this issue.

Vulnerable young people in the criminal justice system

The *2009 NSW Young People in Custody Health Survey* (2009 Health Survey) report by the NSW Department of Juvenile Justice is the most recent analysis of the incidence of cognitive and mental health impairments in the criminal justice system. The report is yet to be released although a number of initial results from this upcoming report have been made available. The initial results show that 86.7% of respondents had a psychological disorder.¹ 13.5% of respondents have an IQ below 70, classified as an intellectual disability. An additional 32% have an IQ between 70

¹ Juvenile Health NSW and Juvenile Justice NSW, 'Young People in Custody Health Survey 2009', as cited in presentation by Dr. E Heller, *Juvenile Offending – What are the facts*, http://www.djj.nsw.gov.au/presentations/Presentation_11nov10_2.ppt, 2010, p. 19

and 79, which is a borderline intellectual disability. In contrast, less than 9% of the general population have an IQ score below 80.²

These figures indicate that the population of the juvenile justice system has significant over-representation of young people with one or more cognitive or mental health impairments. As a result of this high prevalence, we would support significant increases in support for young people with mental and cognitive impairments throughout the juvenile justice system.

These supports are required not only for those serving custodial sentences, but also for children and young people at all points of contact in the criminal justice system, in particular during court and whilst on remand.

In response to the growing number of children and young people on remand, Burnside produced a position paper titled *Releasing the Pressure on Remand* in 2009, which has been fully endorsed by the non-government sector. It highlights options for reducing the high rate of remand for young people. We submit *Releasing the Pressure on Remand* for your consideration, as it sets out recommendations that would reduce the number of young people with cognitive and mental health impairments in the criminal justice system, in addition to improving the outcomes for those who do come into contact with this system. These recommendations include:

- amend the *Bail Act 1978* to ensure that children and young people are exempt from s.22A to reduce the number of young people placed on remand unnecessarily
- increase the resourcing of early intervention programs for children and young people at risk of entering the juvenile justice system
- implement mandated before court community based support for all children and young people who are charged with a criminal offence
- change court processes to ensure that a lack of accommodation is not sufficient reason to refuse bail to a child or young person.

If you have any questions please contact me on (02) 9407 3201.

Yours sincerely,

Karen Bevan
Director – Social Justice Unit
UnitingCare Children, Young People and Families
PO Box W244, Parramatta NSW 2150
Phone 02 9407 3201, Fax: 02 9687 6349
Email: kbevan@burnside.org.au

² Juvenile Health NSW and Juvenile Justice NSW, 'Young People in Custody Health Survey 2009', as cited in presentation by Peter Muir, National Juvenile Justice Summit 2009, 25/02/09, unpublished transcript