

Australian Human Rights Commission Issues Paper
Access to justice in the criminal justice system for people with disability
NSW Government submission
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Introduction

Improving outcomes for people with disability who come into contact with the criminal justice system is a NSW Government priority as is providing support for people with disability and complex needs to participate in legal processes. One of the thirty-two goals in *NSW 2021* (the NSW Government's ten-year plan to guide decision-making) is increasing opportunities for people with a disability by providing supports that meet their individual needs and realise their potential.

This submission outlines the main actions of the NSW Government relevant to the barriers identified by the Australian Human Rights Commission (AHRC). This includes recent initiatives such as the NSW Law Reform Commission (LRC) inquiry on people with cognitive and mental health impairments in the criminal justice system, Life on Track and Youth on Track. The *National Disability Strategy NSW Implementation Plan 2012-14* also outlines the major achievements in the five years preceding its commencement to reform legislation to protect the rights of people with disability and improve their access to justice. These achievements include improving the accessibility of court environments, procedures and judicial practices, screening procedures for people in juvenile and adult custody and targeted support services.

Context

People with cognitive and mental health impairment are overrepresented in the NSW criminal justice system. According to studies, 74% of adults in custody experienced a psychiatric disorder within a 12-month period, and 87% of young people in custody had at least one psychological disorder. As high as 13% of people in custody have an intellectual disability and a further 7% have a borderline intellectual disability.¹

The *2009 NSW young people in custody health survey* found that young people in custody come from disadvantaged backgrounds and have complex and multiple needs. Around 27% of young people had been placed in care before the age of 16 years, 45% have had a parent in prison and only 38% were attending school prior to custody. Sixty per cent had a history of child abuse or trauma, 87% were found to have a psychological disorder and 32% had had a head injury resulting in unconsciousness.

The 2003, 2006 and 2009 *Young People Health Surveys* (surveys of young people in both custody and the community) identified that 18% of those surveyed (24% of young women surveyed) had mild to moderate hearing loss. None recorded a sight impairment over that period. A recent report from Juvenile Justice NSW Client Information Management System 2007-2013 records 13 young people in custody with sight impairment over the past five years, one genetic and the remainder due to accidents.

Ageing, Disability and Home Care (ADHC), a division within the Department of Family and Community Services (FACS) has also been involved in a research

¹ Chapter 4 of the Law Reform Commission report number 135, *People with cognitive and mental health impairments in the criminal justice system - diversion* provides further statistical information about people with cognitive and mental health impairments in contact with the criminal justice system.

project conducted by Professor Eileen Baldry, Dr Leanne Dowse and Ms Melissa Clarence from the University of New South Wales on a cohort of 2,731 individuals with mental health disorders and cognitive disability who have been in prison. Their paper, *People with intellectual and other cognitive disability in the criminal justice system* (December 2012) made a number of findings about the characteristics of this group, their criminal justice history, patterns of offending and custody.

The project's key findings include:

- a high incidence (66%) of people with complex needs in this group (dual diagnosis, co-morbidity and multiple mental, physical and cognitive disabilities)
- higher rates of intellectual disability for Indigenous Australians (65% compared to 54% for the whole group)
- earlier contact with police (50% before they were 16, compared to the average of 17.7 years)
- that almost 50% of the group had been convicted of at least one offence by age 21 and spent time in prison, and
- that people with cognitive disability experience a much higher rate of custodial episodes.

Aboriginal people with a disability are highly vulnerable. The prevalence of disability amongst Aboriginal and Torres Strait Islander people is significantly higher than the general population.² As the Issues Paper notes, Aboriginal and Torres Strait Islander people face multiple disadvantage and barriers to accessing justice in the criminal justice system.

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.

(a) Preventative, educational and support services for people with disability experiencing violence at home and in residential and institutional settings

Women who have a disability experience domestic and family violence at higher rates, greater severity and over longer periods than other people.³

People with Disability Australia Ltd, a national peak disability rights and advocacy organisation, recently released a report, *Stop the Abuse*. The report notes that in 2011, a quarter of sexual assault cases reported by women in Australia were perpetrated against women with disability. It is estimated that up to 70 per cent of women with psychosocial disability in Australia have experienced past sexual abuse including child sexual assault. The report calls for a coordinated national effort to combat violence, abuse, neglect and exploitation of people with disability.

² NSW Government, *National Disability Strategy NSW Implementation Plan 2012-2014*, page 6.

³ See S Murray & A Powell, 'Sexual Assault and adults with a disability: enabling recognition, disclosure and a just response' ACSSA Issues 9, Australian Institute of Family Studies, Canberra 2008.

The NSW Government is currently reforming laws and service provision relating to domestic and family violence. NSW has introduced Domestic and Family Violence Reforms to align with the National Plan to Reduce Violence Against Women and their Children. These reforms acknowledge that women with disabilities require a specific response and will implement appropriate strategies to address the particular vulnerabilities and needs of women with disabilities experiencing domestic and family violence.

ADHC operated and funded services provide support in accordance with the *Abuse and Neglect Policy and Procedures*. The Policy and Procedures contain specific reporting and procedural response requirements to allegations or suspicion of abuse, including reporting abuse to police. The Policy and Procedures advise support workers to contact the Guardianship Tribunal if they suspect that the best interests of the person are not being met by a guardian or person responsible. The Policy and Procedures also provide resources for prevention and early intervention, descriptions of different types of abuse and recognition of indicators of abuse, and useful contacts who specialise in responding to abuse.

(b) Referrals for assistance and support

NSW acknowledges that people with a disability face challenges that can make accessing mainstream services more difficult. The National Roundtable on the Mental Health of People with Intellectual Disability held in May 2013 highlights a further issue not explored in the Issues Paper – that of access to services for people with both intellectual disability and mental illness.

The Integrated Services Program (ISP) for Clients with Challenging Behaviour is a joint initiative between ADHC, NSW Health and Housing NSW that fosters improved life outcomes for people with complex needs and challenging behaviour in the Sydney metropolitan area.

The ISP is a specialist service that coordinates a cross-agency response for a limited number of adults who have been identified from across the NSW government human services agencies as having complex needs and challenging behaviour. The ISP aims to reduce the associated cost to the service system and community, and contribute to the evidence base for supporting the target group to live effectively in the community.

The ISP is administered by ADHC and is overseen by a Program Management Committee consisting of officers from ADHC, the Mental Health and Drug and Alcohol Office (MHDAO) within Ministry of Health and Housing NSW. It is advised by a broader Interagency Reference Group.

The clients of the ISP are adults with multiple and complex needs who have had significant barriers accessing coordinated cross-agency responses. These clients have complex needs and severe challenging behaviour that is associated with one or more of the following: intellectual disability, brain injury, mental illness, mental disorder and/or psychosocial factors. The ISP consists of a range of time-limited intensive services including comprehensive assessment, behaviour and therapeutic intervention, supported accommodation, and case coordination.

For many years, NSW disability legislation has aimed to ensure that services available to the general public are equally available to people with disability. Section 9 of the *Disability Services Act 1993* (NSW) requires that NSW Government departments prepare and implement Disability Action Plans. Disability Action Plans must encourage the provision of services in ways that further the principles of the Act and in this way extend the Act's principles to all NSW Government services, whether they are general services or specialist disability services. Various disability actions plans are in place across the justice sector in NSW.

The *Anti-Discrimination Act 1977* (NSW) (ADA) prohibits discrimination on the ground of disability, including the provision of goods and services.⁴ For the purposes of the ADA, the term 'services' is defined to include services provided by a public authority.

(c) Early intervention and addressing issues contributing to criminal behaviour

Broadly, NSW acknowledges the importance of effective, person centred approaches to disability service provision that ensure that people with disabilities are able to realise all of their human rights. One of the thirty-two goals in *NSW 2021* is increasing opportunities for people with a disability by providing supports that meet their individual needs and realise their potential. *Stronger Together 2*, the NSW Government's current long term plan for disability support, includes a focus on providing a lifespan approach to disability support which embeds early intervention and skills development across a person's whole life and focuses on providing support at significant life stages and transition points.

The Issues Paper notes the importance of early intervention and programs that address people's needs, as an alternative to criminal justice responses. Two recent NSW Government initiatives, Youth on Track and Life on Track, are examples of this approach.

(i) Youth on Track

Youth on Track is an early intervention program that commenced in mid-2013 in the Blacktown, Newcastle and Mid-North Coast regions. The program aims to identify young people at risk of becoming entrenched in a life of crime and to support appropriate intervention. The program adopts a holistic approach and places a strong emphasis on intervening early by engaging families, involving the NSW Police Force, the Department of Attorney General and Justice (DAGJ), the Department of Education and Communities (DEC), NSW Ministry of Health, FACS and non-government organisations (NGOs). Young people identified by government agencies as being 'at-risk' are provided with intensive case management by NGO's who direct the young person to relevant services to address the cause of their offending, (including substance abuse), as well as educational, mental illness and family dysfunction support services.

⁴ Exceptions apply in relation to unjustifiable hardship (s 49M(2)), public health (s 49P), drug addiction (s 49PA), superannuation and insurance (s 49Q) and sport (s 49R).

(ii) Life on Track

Life on Track is a new case management service that offers person-centred support and case management to eligible defendants appearing in the Local Court. It is primarily aimed at defendants with a medium to high risk of reoffending or medium to high level needs. Life on Track helps identify and address the broad range of issues that contribute to a defendant's likelihood of reoffending. This includes linking them with available services and programs in their local area.

Life on Track is one element of the Department's work towards achieving the goals and targets established by *NSW 2021: A plan to make NSW number one*. *NSW 2021* is the NSW Government's 10-year plan for change. It establishes the Government's goal of preventing and reducing the level of reoffending (Goal 17) in NSW. It also sets two key targets that are relevant to the service which include a 5% reduction in juvenile and adult reoffending by 2016 and an increase in completion rates for key treatment and intervention programs.

Life on Track marks a shift in the overall management of re-offenders away from a program-driven model, towards an approach that seeks to understand the needs of the individual and build a response that adequately meets those needs.

The service builds on the successes of the current Court Referral of Eligible Defendants into Treatment (CREDIT) and Magistrates Early Referral into Treatment (MERIT) programs. These enhancements aim to deliver:

- a single entry point to court-based diversionary programs including those delivered by other agencies, including better linkages, collaboration and clearer pathways with other programs at court and in the community.
- streamlined risk and needs assessment for access to treatment and services. For example, the service has negotiated to provide completed assessments along with referrals to MERIT. This will avoid duplication in assessment of a defendant's needs across the services.
- case management for greater numbers of medium to high risk defendants and those with medium to high level needs to address the underlying causes of reoffending.
- longer timeframes for case management for defendants with the greatest risk and/or needs.
- access to appropriate services and treatment that is not necessarily tied to the progress of a defendant's legal matter.

The service will also promote a strengths-based approach by enhancing social engagement, significant relationships, recreation and pursuit of personal goals.

Life on Track will be delivered by local NGOs in each area of operation. The service model is being finalised in consultation with Mission Australia (the NGO service provider for the start-up sites) and local stakeholders prior to service commencement.

Service delivery to defendants began in mid-August 2013 in the two start-up Local Court locations of Bankstown (servicing the Sutherland and Kogarah Local Court

locations) and Lismore (servicing the Casino, Kyogle and Ballina Local Court locations).

(iii) NSW Senior Officers' Committee on People with Cognitive Impairment and Complex Needs in Contact with the Criminal Justice System

To facilitate interagency collaboration and coordination, a whole of government NSW Senior Officers' Committee on People with Cognitive Impairment and Complex Needs in Contact with the Criminal Justice System was formed in 2012. The Committee collaborates on strategies that aim to reduce the number of people with cognitive impairment and complex needs in contact with the criminal justice system by:

- improving access and promoting provision of appropriate support services and programs within the criminal justice system
- promoting existing, and increasing the number of, diversionary options available either at the time of contact with the police or with NSW courts, and
- increasing the number of people with cognitive impairment and complex needs being offered and accepting diversionary options where applicable.

(iv) ADHC Justice Services Policy and Criminal Justice Resource Manual

The *ADHC Justice Services Policy and Criminal Justice Resource Manual* provides direction and advice to all staff in the disability sector on working with people with an intellectual disability in, or at risk of contact with, the criminal justice system. This involves taking a proactive and early intervention approach, supporting people if they do come into contact with police, courts and custodial settings, as well as with pre-release planning and post-release support. ADHC provides regular training to the disability sector on working with people with an intellectual disability in, or at risk of contact with the criminal justice system. In 2012-13 ADHC provided eight training sessions for the disability sector across NSW. More than 190 disability staff attended the training. Funding for Social Justice Teams will commence in the 2014-15 financial year. The aim of the Social Justice Teams is to build the capacity of the disability sector to work effectively with people with an intellectual disability who are in, or at risk of, contact with the justice system. ADHC staff also provide advice to a wide range of interagency forums to ensure they are aware of, and develop more effective responses to the needs of people with an intellectual disability in, or at risk of contact with the justice system.

(v) National Disability Insurance Scheme

There is concern amongst advocates for people with disability that their needs be carefully considered if they are to be well serviced by the National Disability Insurance Scheme (NDIS). The NSW Council for Intellectual Disability has prepared a report *Participants or just policed? Guide to the role of DisabilityCare Australia with people with intellectual disability who have contact with the criminal justice system*.⁵ This project was funded by a grant from the Australian Government. The NSW

⁵ J Simpson, *Participants or just policed? Guide to the role of DisabilityCare Australia with people with intellectual disability who have contact with the criminal justice system*, NSW Council for Intellectual Disability (May 2013).

Council for Intellectual Disability report identifies the need for active outreach to link people with intellectual disability and criminal justice involvement to the NDIS.⁶ The report also notes that people with intellectual disability and criminal justice involvement tend to come to the notice of disability agencies at times of sudden and great crisis, making responsive and flexible service delivery important.⁷ Workforce and service provider skills and support, structures to meet complex needs and collaboration with mainstream services are also identified by the report as critical if the NDIS is to connect people with disability in contact with the criminal justice system to its services.

(vi) Health and education services

NSW Health Services and non-government health-related programs assist people with disabilities to live a healthy life and/or to achieve optimal health and well being in their own homes and communities by receiving timely access to community-based health services. They complement primary health care services, funded by the Australian government. Training programs are in place to ensure that health personnel have a good understanding of disability and optimal ways of responding to the health needs of people with disabilities. One example is the Intellectual Disability Mental Health E-learning program, developed by the University of NSW with a Ministry of Health funding contribution. The program is available to all NSW Health personnel.

Approximately 90,000 students in NSW public schools, around 12% of the student population, have additional learning and support needs due to disability and/or difficulties in learning or behaviour. The Department of Education and Communities (DEC) provides additional support for students with disability through programs such as:

- specialist teachers who work directly in every regular school to support students with additional needs in learning and/or behaviour and their classroom teachers
- additional support for students with disability enrolled in regular classes through the Integration Funding Support Program
- specialist support classes that operate in special schools and in some regular schools across the state
- the provision of specialist teachers with expertise in specific areas of special education including hearing, vision and transitions, and
- an extensive range of professional learning for teachers and support staff in understanding and responding to the specific learning needs of students with disability.

The high rates of disability amongst Aboriginal people, coupled with the over-representation of Aboriginal people in the criminal justice system generally, means that this cohort of the population is particularly vulnerable to denial of access to justice. It is important that support and access programs are specifically aimed at this cohort.

⁶ Ibid, note 5.

⁷ Ibid, note 5.

(d) Identifying that somebody has a disability

The NSW Government acknowledges the importance of identifying that somebody is a person with disability as a critical step in identifying supports. Experience suggests that people with intellectual disability and criminal justice involvement are unlikely to seek out disability services. As noted by Simpson: 'Because of the interplay of their intellectual disability and their life histories, they (the person with intellectual disability) will tend to be reluctant to identify as having a disability and seek or trust disability services.'⁸ This makes case management and ongoing engagement important to help the person see how services can assist them to make their life more positive. Factors such as behavioural and cultural 'masking' or a lack of resources or expertise can also lead to a disability not being identified. Disability can also often be overshadowed by a range of complex needs and vulnerabilities. The arrangements in place in NSW to identify whether a person has a disability when they come into contact with different aspects of the criminal justice system are outlined in the discussion of barriers 2, 4 and 5.

(e) Access to language interpreters and communication support workers in regional areas

LawAccess NSW is a statewide telephone and online service that can assist people with disability to access information, services and advice about their legal question or problem. The telephone and online nature of the service means that it is particularly helpful for people located in regional areas. People with disability, people who are Aboriginal, people in remote areas and people who are from a culturally and linguistically diverse background are priority customers for LawAccess NSW and National Relay Service, telephone typewriter services (TTY) and translation services are available.

LawAccess NSW staff are trained in flexible delivery of services and consider the supports a person with disability might need in delivering the service. For example, legal officers consider the need for more than one advice session or to provide minor assistance such as contacting a service on behalf of a customer to organise an appointment.

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.

(a) Criminal allegations made by a person with disability who lives in a residential setting

The Issues Paper notes concerns from stakeholders that police may not investigate criminal allegations made by a person with disability who live in a residential setting. As noted above, procedures are in place for ADHC operated or funded services, including reporting to the police.

⁸ Ibid note 5.

(b) Legal and technical language

ADHC's Statewide Behaviour Intervention Service has been involved in a project focusing on the communication skills of individuals with intellectual disability who have behaviours that bring them into contact with the justice system. The project has investigated the specific communication difficulties that individuals with mild to moderate intellectual disabilities have, and the impact on their ability to understand and respond to the criminal justice system process.

A protocol was subsequently developed to inform the practice of speech pathologists working in the disability field with this client group. The protocol outlines a communication assessment process, tools and appropriate intervention strategies. The protocol is based on an extensive review of literature, clinical practice, and consultation with specialists in the field.

The project's literature review highlights the high prevalence of speech, language and communication needs of individuals within the juvenile justice system in Australia, with approximately 50% of young people (without intellectual disability) having language deficits that were often undetected. However, for individuals with intellectual disability, over 80% have some speech, language and communication needs, and 45% will have complex communication needs that present a major barrier to accessing the justice system, whether as a witness, victim or defendant.

The review also found that individuals with speech, language and communication needs and those with intellectual disability experience significant challenges when they come into contact with the justice system. These challenges affect individuals' abilities to:

- understand and answer questions in investigative interviews (e.g. questions that are abstract, leading, repeated or require a specific response), which may result in the individual providing answers that they think are 'expected' rather than the facts
- tell their story or version of events when reporting a crime (e.g. specific difficulties with narratives or 'story-telling'), which may result in an individual providing a fragmented and illogical recount of an event
- understand their rights and legal jargon
- understand and follow court proceedings, (e.g. poor literacy skills which may cause an individual with an intellectual disability to sign a written statement or agree to conditions that they don't understand)
- survive on a daily basis if placed in custody (e.g. difficulties with pragmatic or social skills which can affect a person's ability to understand the nuances and subtleties of interactions), and
- participate in treatment programs to address offending behaviours.

The NSW Police Force has recently reviewed and redrafted a number of forms to ensure that they are simple and easy to understand. Examples of such forms include the 'Caution and Summary' and 'Role of Support Persons' forms.

(c) Modifications to the legal process that would help a person with disability to participate may not be provided or permitted by police, lawyers or the courts

(i) NSW Police Force

The NSW Police Force is committed to ensuring that people with disability are treated equitably, respectfully and in a non-discriminatory manner in their dealings with police. People with disability may come into contact with the NSW Police Force as victims of crime, witnesses, offenders and members of the general community. Victims of crime, witnesses and members of the public are entitled to receive quality customer service under the NSW Police Force Customer Service Charter.

The NSW Police Force recognises that continued consultation with the disability community is required to help bridge gaps in knowledge and understanding. The NSW Police Disability Advisory Council (DAC) is the key mechanism by which the NSW Police Force consults with the disability community on matters associated with criminal justice and law enforcement for people with disability in NSW.

The role of the DAC is to:

- inform the approaches and priorities for the NSW Police Force in interacting with people with disability
- provide advice to the NSW Police Force on corporate documents that affect people with disability
- identify significant emerging issues capable of affecting relations between the NSW Police Force and people with disability
- provide advice to NSW Police Force about strategies for operational police in interacting with people with disability
- assist in developing strategies to facilitate positive interaction between the NSW Police Force and people with a disability
- facilitate open communication between the NSW Police Force and external stakeholders on issues relevant to people with disability.

As noted above, all public authorities in NSW are required to prepare a Disability Action Plan. The NSW Police Force has had Disability Action Plans in place since 2000. The current plan identifies key areas for the NSW Police Force to minimise barriers to community access, provide information in an accessible way and ensure participation and advice from people with disabilities.

The NSW Police Force uses the definition of disability in the *Disability Services Act 1993* (NSW) and the Commonwealth *Disability Discrimination Act 1992*. NSW Police Officers are not qualified to diagnose a disability however they do seek to identify indicators of disability. Identifying disability is especially challenging for police as they are often interacting with people for relatively short periods of time. Custody Managers receive specific training from the Intellectual Disability Rights Service (IDRS) and the Brain Injury Association of NSW to assist in identifying and interacting with people with disability. This helps ensure that appropriate supports and services can be identified as early as possible.

People with disabilities are 'vulnerable persons' under the *Law Enforcement Powers and Responsibilities Regulation 2005*. When a disability is established or strongly suggested, the vulnerable person has the right to a support person when being interviewed by the police. This is the case whether the person is a witness, victim or alleged offender. This may involve the use of a carer, case worker, legal representative, guardian or AUSLAN interpreter.

Support for people with intellectual disability can be arranged through the Criminal Justice Support Network (CJSN), a service provided by the IDRS (which receives significant funding from the NSW Government). Further, Local Area Commands have Customer Service Duty Officers. Local issues involving people with disability and the police can be pursued through Customer Service Duty Officer.

People with hearing and speech impairments can contact police, emergency services, the Police Assistance Line or Crime Stoppers through the National Relay Service.

(ii) Courts

The Department of Attorney General and Justice (DAGJ) Request for court assistance brochure is designed to make it easier for people with disability to identify and obtain the support they need when attending court. The brochure is intended for use by anyone attending court (e.g. witness, accused, plaintiff, lawyer). It is available at all courts and online and has been translated into community languages.

Some examples of the assistance and/or adjustments that can be provided to people when attending court are:

- moving the court to a more accessible courtroom or venue,
- changing the physical layout of the court
- providing assistance with physical entry to the court
- AUSLAN interpreter services
- computer/technology assisted communication devices, symbol devices or other communication aids (although it is more common for people to supply their own equipment if they are familiar with a particular device or software program).
- evidence and submissions being received via TTY or by telephone or videoconference.
- court documents in alternative formats, including large print, audio or electronic format
- hearing loops or infrared devices to assist people who have hearing impairments overcome variations in courtroom acoustics (infrared devices are similar to hearing loops but ensure that information is not broadcast outside the relevant hearing room)
- making sure an assistance animal is able to remain with the person at all times,
- being flexible (or more precise) about listing times and the time that may be needed to give evidence, and
- providing more frequent breaks to accommodate fatigue.

The NSW Judicial Commission provides information about inclusion of people with disability in both Local Court Benchbook the Equality Before the Law Benchbook. The information aims to assist magistrates in providing full access to the justice

system for people with disability. It contains information and practical guidance on conducting proceedings in a way that takes account of issues that may arise because a party or witness has a disability. It explains the adjustments identified above and communication techniques for those with particular disabilities. More generally, due to the frequency with which self-represented people come before the court, magistrates are familiar with techniques such as speaking in simple, direct and non-legal language to assist a person's effective participation in and understanding of proceedings.

DAGJ has also produced a specific brochure about requesting reasonable adjustments for people with hearing impairment. '*Can you hear in the courtroom?*' is available at courts and online, and explains the use of portable infra-red systems to assist people who have hearing impairments to overcome the variations in courtroom acoustics.

All content provided on court and tribunal websites complies with the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.

DAGJ has also produced a DVD to provide basic information and tips for people with cognitive disabilities who are required to attend court. The DVD is called 'So you have to go to court!'. The DVD is distributed regularly to relevant services, is provided on request and can be viewed online.

(iii) Witnesses and victims

The Witness Assistance Service (WAS) assists victims and witnesses with a disability. The service is provided by the Office of the Director of Public Prosecutions (ODPP), the agency responsible for the prosecution of serious crime in NSW. The WAS is a case management service that liaises closely with ODPP staff and external agencies such as courts, DAGJ and the CJSN to enable people with disability to participate in the criminal justice system. As part of the service, staff help witnesses prepare to give evidence and explain their entitlements. WAS staff also coordinate court support for the witness and provide this support if it is not provided by other services. In 2011-12 WAS provided case management services to 138 victims and witnesses with disability.⁹

DAGJ's Victims Services Division provides information for people with disability who have been the victim of a crime or may need to give evidence in court. This includes contact information for advocacy and health services as well as online brochures and videos explaining what to expect in court, how to request assistance from court staff and checklists designed to help witnesses for are with intellectual disability prepare for a hearing.

(d) *Bail and parole conditions and court orders*

The Issues Paper highlights the importance of bail and parole conditions and court orders being communicated in a way that people with a mental or cognitive impairment can understand. For example, a DAGJ study into young offenders found

⁹ The Office of the Director of Public Prosecutions, *Annual Report 2011-2012* (2012).

that none of the young people surveyed could correctly detail all of their bail conditions. This is a significant issue as breach of a condition or court order can have very negative outcomes for the person.

As noted above, magistrates have guidance material to assist them in providing people with disability full access to the justice system, including communication techniques. In relation to bail, this is supported by a statutory requirement under section 37 of the Bail Act 1978 that the court to be satisfied before imposing a bail condition on a person with an intellectual disability that 'the bail condition is appropriate having regard (as far as can reasonably be ascertained) to the capacity of the accused person to understand or comply with the bail condition'.

NSW Parliament passed the *Bail Act 2013* (NSW) earlier this year. When it commences, the new Bail Act will require a bail authority to consider whether there is an unacceptable risk if the accused person is released from custody. In considering whether there is an unacceptable risk, the bail authority will be required to consider any special vulnerability or needs the accused person has, including cognitive or mental health impairment.¹⁰ The new Bail Act will also require a police officer to consider the personal attributes and circumstances of a person in deciding whether to take action and what action to take if a person has failed to comply with a bail condition.¹¹

Programs such as Life on Track and CREDIT play an important role in addressing this issue. CREDIT provides support to navigate the criminal justice system, liaising with solicitors and ensuring important details such as bail conditions and AVO restrictions are explained and understood. Advocacy, such as through the IDRS, can also assist in addressing this barrier.

(e) Advocacy

The NSW Government funds advocacy services for people with intellectual disability, including the IDRS. The IDRS is a specialist legal advocacy service for people with intellectual disability that:

- provides legal advice, casework and support
- advocates for improvements to legislation and policies affecting people with intellectual disability
- assists legal and other professionals supporting people with intellectual disability, and
- provides information to service providers and the community about the rights and needs of people with intellectual disability.

The CJSN provides support persons for people with intellectual disability when they come into contact with the criminal justice system as defendants, witnesses or victims of crime. Support is provided at police stations, courts, correctional centres, community sentencing forums and court ordered mediations. Some court supports are provided from correctional centres for clients who are in custody. The CJSN

¹⁰ Section 17 of the *Bail Act 2013* (NSW).

¹¹ *Ibid*, note 10, section 77.

relies on a network of trained and dedicated volunteers to provide most supports to people with intellectual disability at courts and at police stations.

The Mental Health Advocacy Service (MHAS) of Legal Aid NSW provides free legal information, advice and assistance about mental health law to people who have been admitted to a hospital and persons appearing before the Guardianship Tribunal.

Legal Aid NSW also coordinates private duty solicitors in criminal Local Court matters. It is common for magistrates to refer self-represented persons to the duty solicitor service where it appears that the person does not understand the meaning or implications of proceedings.

NSW courts and tribunals may appoint a Guardian ad Litem to a person involved in legal proceedings to protect or promote their interests in circumstances where the person is incapable of representing him/herself due to age, mental illness or incapacity, disability. Alternatively, people with intellectual, mental or psychosocial disabilities may bring a support person to a court/tribunal hearing (often accessed through the CJSN or through local disability advocacy organisations).

(f) Styles of communication and questioning techniques used by the police and during cross-examination in court

NSW Police Officers receive training on communication barriers and strategies when dealing with vulnerable people, including those with disability. This includes training on the operation of section 112 of the *Law Enforcement (Police Responsibilities) Act 2005* when dealing with offenders who have a disability. The training covers the modifications to police powers and procedures that apply when a vulnerable person is in police custody. Reference materials include the NSW Police Handbook section on dealing with people with disabilities, the Commonwealth *Disability Discrimination Act 1992*, and the Disability Awareness Mandatory Continuing Police Education training package. A support person in an interview can also greatly assist in communication. Provision is made for this under the *Law Enforcement (Powers and Responsibilities) Regulation 2005*.

Section 26 of the *Evidence Act 1995* (NSW) confers a general power for the court to 'make such orders as it considers just in relation to... the way in which witnesses are to be questioned'. In the context of cross-examination, the court is required to disallow an improper question if, for example, it is misleading or confusing, or is based only on a stereotype as to the person's mental, intellectual or physical disability. In considering a question the court may take into account 'any mental, intellectual or physical disability of which the court is, or is made, aware and to which the witness is, or appears to be, subject'.¹²

¹² Section 41 of the *Evidence Act 1995* (NSW).

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.

(a) Presumption that people are not able to participate in legal proceedings

In NSW, there is a common law presumption that an adult has capacity. The NSW Capacity Toolkit is a resource on decision-making capacity with this presumption of capacity at its core. Published in 2008, it is available in hardcopy, audio and online. The Toolkit:

- educates sectors and the community on the broader concept of autonomy and decision-making capacity
- ensures understanding and practical application of the best practice capacity assessment principles
- provides a plain English explanation of the legal tests for capacity in NSW and explains the relationship these tests have to capacity assessments
- provides practical information on assisted decision-making, and
- acts as a 'one-stop-shop' for other useful contacts.

The Toolkit provides that assisted decision-making must be considered during a capacity assessment before pursuing substitute decision-making (except where there is a court/tribunal appointed substituted decision-maker). The idea of assisted decision-making encompasses using augmentative and alternative communication (AAC) techniques. AAC is used to enhance speech by using gestures, eye pointing and body language, or to provide an alternative communication system to speech by pointing to symbols, signing or spelling.

Over 70,000 Toolkits have been distributed across the NSW medical, allied health, mental health, legal, finance, ageing and disability sectors, and to people with disability, their family, carers and advocates.

Rebound Research undertook a satisfaction survey with a sample of 392 Toolkit users in November 2008. Ninety three percent of the sample said that the Toolkit is useful to their sector, with the same percentage saying that it is useful to them at work. Content and usability were rated equally as the best features (93% and 92% satisfaction, respectively).

DAGJ provides Flexible Service Delivery (FSD) training to its frontline staff. The training takes an innovative hands-on approach to educate staff on how best to meet the needs of individual clients. It also provides staff with the resources, information and skills to enable them to:

- use appropriate language in communicating with people with disability
- identify barriers to inclusion / participation encountered by people with disability, and
- respond to the individual needs of a person with disability to ensure accessibility of services and/or participation in programs in a practical and appropriate manner.

DAGJ has provided training to the NSW Judiciary at magistrates conferences and judicial commission education sessions with the aim of debunking common myths about people with disability; including dispelling assumptions about unreliability, credibility, capability and decision making capacity. The training also provided information on reasonable adjustments available to people with disability.

(b) Police or lawyers may not investigate or prosecute an allegation made by a person with disability

Once proceedings have commenced any decision to withdraw the proceedings must be in accordance with the 'NSW Police Force Withdrawal Policy'. That policy provides a system of check and balances to ensure that there are sufficient ground for withdrawal. The NSW Police Force has no specific information about police officers not taking allegations seriously in this regard.

As noted above, the ODPP operates the WAS, which assists witnesses to prepare to give evidence and explain their entitlements.

(c) Concern the rules of evidence may not allow people with disability to give evidence using necessary communication support

The Disability Policy Research Working Group mapping project *People with Cognitive Impairment and the Criminal Justice System* lead by ADHC, identified different jurisdictional approaches of state, territory and federal governments when working with people with cognitive impairment. ADHC has just commenced work on a continuation of this project, which will identify the needs of people with cognitive disability in contact with the justice system as witnesses and victims.

The Evidence Act provides that a person is competent to give evidence unless for any reason including a mental, intellectual or physical disability they cannot understand a question or give an answer that is able to be understood, and that incapacity cannot be overcome. Further provision is made for a person who is not competent to give sworn evidence to give unsworn evidence, and for the questioning of and taking of answers from witnesses who are hearing or speech impaired.¹³

Under the NSW *Criminal Procedure Act 1986*, courts are permitted to make arrangements for 'vulnerable persons' who need to appear in court to give evidence. A vulnerable person includes a person with cognitive impairment.¹⁴ Provision is made for the vulnerable person to: have their record of interview with police given as their evidence in chief; give evidence by CCTV; and have a support person present while giving evidence.

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. This situation mainly happens to

¹³ Ibid, note 12 sections 12, 13 and 31.

¹⁴ See Part 6 of Chapter 6 of the *Criminal Procedure Act 1986* (NSW).

people with intellectual disability, cognitive impairment and people with psychosocial disability.

(a) Access to accommodation and disability and therapeutic support and concerns about the accommodation and support provided

Availability of specialty support, accommodation and programs is an issue for both forensic and non-forensic inmates with cognitive impairments. One way this is being addressed is through the Community Justice Program (CJP), administered by ADHC. The purpose of the program is to improve general community well-being and the quality of life of individuals by:

- reducing the prevalence in the criminal justice system of people with an intellectual disability by helping them succeed in the community through improved service planning, co-ordination and service delivery; and
- ensuring that the criminal justice system and supporting processes respond appropriately and equitably to their circumstances.

The CJP has a focus on the provision of accommodation, case management and behaviour support for young people and adults with an intellectual disability exiting correctional centres. This includes support for people on remand or bail conditions. The CJP provided support for 200 clients in 2011-12.

If a court finds that a person is unfit to plead, they must refer the matter to the Mental Health Review Tribunal (MHRT) in accordance with the *Mental Health (Forensic Provisions) Act 1990* (NSW) (MHFPA). The MHRT must then determine whether it considers that the person is currently unfit to be tried and, if so, whether the person is likely to become fit within the next 12 months. If the MHRT determines that the person is not likely to become fit within 12 months and the DPP wishes to proceed, the court conducts a special hearing.¹⁵ Following the special hearing, the court can find the accused not guilty or not guilty by reason of mental illness or the court can find the person did on the limited evidence commit the offence charged (or an available alternative offence).

If the court finds that the person did, on the limited evidence, commit the offence charged (a qualified finding of guilt), the court must determine if it would have imposed a sentence of imprisonment if the person had been fit. If the court would have imposed a sentence, the court must instead nominate a term, referred to as a limiting term, which is the best estimate of the sentence the court would have imposed in an ordinary trial. At the end of the person's limiting term, the patient's status as a forensic patient expires and the patient is no longer able to be detained.

A forensic patient may be held in a declared mental health facility or, in some cases, a general correctional centre. One consideration is that there is little utility or benefit in a person without a mental illness being detained in a mental health facility. The MHRT regularly reviews the care, detention and treatment of all forensic patients and has the power to release patients in certain circumstances. The MHRT is comprised of three members, a lawyer, a psychiatrist and another community member. Its

¹⁵ Section 19 of the *Mental Health (Forensic Provisions) Act 1990*.

proceedings are informal and support people are welcome to sit beside the patient and to be involved in explaining processes to them.

A patient on a limiting term is eligible for conditional or unconditional release before the expiry of the term. Prior to ordering a person's conditional release, the MHRT must be satisfied that the patient has 'served sufficient time in custody.'¹⁶ The MHRT must also be satisfied that the safety of the patient or any member of the public will not be seriously endangered by the patient's release.¹⁷ Availability of appropriate services so as to allow the patient's conditional release is one of the matters the MHRT consider in making a determination. An interagency committee meets regularly to discuss high risk forensic patients in order to better manage the sometimes complex coordination arrangements and issues that can arise in pre-release planning.

If a person is found not guilty by reason of mental illness, the court can order that the person be detained, released conditionally, released unconditionally or make any other order the court thinks appropriate.¹⁸ If the court orders conditional release or detention, the person becomes a 'forensic patient' and is subject to the supervision of the MHRT. A person who is detained or conditionally released must be reviewed by the MHRT every six months (or every three months if the person is subject to a community treatment order and is detained in a correctional centre).¹⁹ The MHRT has the power to make orders in relation to the person's detention, care and treatment.²⁰ The MHRT now has the power to release a person either conditionally or unconditionally where a statutory test is satisfied.²¹

As part of its inquiry into people with cognitive and mental health impairments in the criminal justice system, the LRC has published two reports. The first report focuses on diversion and is considered as part of the discussion of diversion below. The focus of the second report is the criminal responsibility of people who have mental health and/or cognitive impairments, and the management of forensic patients. As part of its report, the LRC made a series of recommendations about what should occur when a person is found unfit to plead but not acquitted, or not guilty by reason of mental illness. The NSW Government's response to the report is being prepared.

The MHAS provides free advice and legal assistance to forensic patients.

(b) Use of medical and physical restraint and seclusion on forensic patients

Reducing the use of seclusion and restraint is a priority for the NSW Government. In relation to forensic patients that are held in a declared mental health facility, the NSW Health policy *Aggression Seclusion and Restraint: Preventing, minimising and managing disturbed behaviour in mental health facilities in NSW* (PD2012_035) applies. The policy has an annual target of a 15% reduction in seclusion incidents. As the policy states, chemical restraint through the overuse of sedation is not an

¹⁶ Ibid, note 15, section 74(e).

¹⁷ Ibid, note 15, section 43.

¹⁸ Ibid, note 15 section 39.

¹⁹ Ibid, note 15 section 46.

²⁰ Ibid, note 15 section 47.

²¹ Ibid, note 15 section 43.

acceptable form of restraint and is not used in NSW. Medications may be used as part of a treatment plan to manage a mental disorder or mental illness but not solely to restrict a person's movement or freedom.

(c) Access to processes that can divert people with disability out of the criminal justice system

Diversion of people with disability can occur in a number of ways including pre-court diversion practices such as cautions, conferencing and case management, court based diversion through referral of defendants to treatment and/or services and problem solving courts that combine referral to services with ongoing monitoring.

A challenge for court diversion is the ensuring people with disability are identified when they appear before a court, particularly when the person is not legally represented or otherwise supported. While the existence of a disability may sometimes be readily apparent as a matter of observation, it may not be in other instances, for example where a person has an intellectual disability or acquired brain injury. While not specifically established to support individuals with an intellectual disability or cognitive impairment, the Justice Health and Forensic Mental Health Network (Justice Health) court diversion teams do assist in diverting people with cognitive impairment away from custody where there are comorbid mental health issues. The Statewide Community and Court Liaison Service (adults) and Adolescent Court and Community Team (young people) assess people appearing before the court and provide recommendations to the Magistrate on diversion pathways into community based care.

The legislative framework for diversion by the Local and Children's Court is provided by Part 3 of the MHFPA, which provides for the diversion of defendants who are charged with an offence that may be dealt with summarily. These diversion processes sit alongside treatment and rehabilitation programs. These programs are considered in turn below.

(i) CREDIT

CREDIT is a Local Court based trial program that commenced in 2009 at both the Tamworth and Burwood Local Court locations. It is modelled on key features of New York's 'Community Court' that refers defendants at a high risk of reoffending to treatment services.

CREDIT recognises key criminogenic risk factors, as well as important non-criminogenic factors, and aims to address those factors as a means to reduce the risk of reoffending. Support is provided to gain access to services or programs that address issues such as homelessness or unstable housing, financial management issues, drug and alcohol problems, mental health issues, intellectual disability and acquired brain injuries.

The program was evaluated by the Bureau of Crime Statistics and Research (BOCSAR) based on the first two years of the trial. The evaluation was positive with 99% of participants being satisfied or very satisfied with both the support they received from the CREDIT staff and with the progress they had made on the

program. Stakeholder's opinions of the program were also positive. All service providers, police prosecutors, solicitors and probation and parole officers who were interviewed reported positive working relationships with CREDIT staff.

The findings of the evaluation include:

- Over the two-year period (24 August 2009 – 23 August 2011), the CREDIT program received 719 referrals and conducted 637 assessments. A total of 451 defendants participated in the program.
- The results of the interviews in this study show high levels of satisfaction among both stakeholders and program participants. The vast majority of participants (95.9%) reported that their life had changed by being on the CREDIT program.
- The overriding opinion of the program was positive and stakeholders suggested that the program should be extended.

The second stage of BOCSAR's evaluation of CREDIT was recently published. This second evaluation examines the impact of CREDIT on reoffending. To conduct the evaluation adult defendants referred to CREDIT who had their matter finalised in court by 30 June 2011 were matched to control defendants. Reoffending was measured until 30 June 2012. Unfortunately at both the Tamworth and Burwood pilot sites, there was no statistically significant difference in the proportion of defendants referred to the CREDIT program who were re-convicted when compared with a matched group who had been dealt with through the normal court process. There were also no significant differences between the CREDIT referral group and their matched controls in the number of reconvictions or the time to the first new offence. Although these results are disappointing it is important to keep in mind the very small number of defendants referred to the program over the study period.

CREDIT provides a service to defendants based on their individual needs and supports are tailored to meet these needs. This can be a very effective service model for people with a disability. In addition the level of support provided can be intensive through to minimal. This is based on both risk of reoffending and individual support requirements.

CREDIT provides assistance and support for a broad range of issues. Providing referrals to appropriate services and monitoring to ensure required service delivery is provided. As noted in the discussion of Barrier 2 above, CREDIT also provides support to navigate the criminal justice system.

CREDIT gathers evidence of a defendant's disabilities by requesting copies of reports and records. CREDIT court reports outline the impact of a defendant's disability in their day-to-day life. Solicitors often use this information to support an application under section 32 of the MHFPA. Section 32 of the MHFPA allows a magistrate to make certain orders if a person is developmentally disabled, suffering from a mental illness or suffering from a mental condition, or was at the time of the alleged commission of the offence.

CREDIT has developed close working relationships with key services for people with disabilities such as the Statewide Community and Court Liaison Service, Community Mental Health, IDRS, CJSN and local disability services.

(ii) MERIT

MERIT is a court-based treatment program for Local Court defendants who have an identified illicit drug problem (at some courts defendants with primary alcohol issues are also eligible).²²

MERIT has a deliberately inclusive set of criteria to ensure as many defendants with drug problems are eligible for the program as possible. Referrals may come from anyone, including police, magistrates, solicitors, health professionals, family, friends or from the defendant themselves.

(iii) Forum sentencing

Forum Sentencing is an alternative process for people convicted of a criminal offence in the NSW Local Court. A forum is a meeting that brings together the offender and the victim with a facilitator, and others affected by the offence to discuss what happened, the harm caused by the offence and an 'intervention plan' for the offender.

Forum Sentencing currently operates at 13 sites across NSW servicing a total of 52 Local Court locations.

Where an offender with disability is referred to the program every effort is made to support them to participate. For offenders with intellectual disabilities, staff work with the Statewide Community and Court Liaison Officer or an appropriate mental health professional to ensure that offenders have the capacity and support required to participate. Where offenders and victims with intellectual disabilities are involved in a forum the program works with IDRS to provide support and allow participation whenever possible.

When forums are organised, the time and location of the forum is tailored to meet the needs of participants, including participants with disabilities. If any participant has a physical disability or mobility issues, staff ensure that the venue of the forum is accessible.

(iv) NSW Law Reform Commission Inquiry

As part of its inquiry on people with cognitive and mental health impairments in the criminal justice system, the LRC, published *Report 135 People with cognitive and mental health impairments in the criminal justice system – diversion*. The report includes a series of recommendations about enhancing diversion at all stages of the criminal justice system for people cognitive and mental health impairments. Some of the main recommendations are:

- new definitions of mental health and cognitive impairment
- significant expansion of the Statewide Community and Court Liaison Service and CREDIT

²² Further details are available on the website:
http://www.lawlink.nsw.gov.au/lawlink/cpd/merit.nsf/pages/merit_index

- establishment of a new Court Referral for Integrated Service Provision list (CRISP) in the Local and District Courts (and possible later extension to the Children's Court), for offenders with mental health and cognitive impairments at risk of imprisonment
- a formalised framework for police diversion
- amendments to sections 32 and 33 of the MHFPA, including specific powers to enable courts to maintain oversight of individuals participating in diversion programs to ensure compliance
- extending the availability of diversion orders to the higher courts.

The NSW Government's response to the report is currently being prepared.

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.

(a) Identifying people with disability and provision of supports

Corrective Services NSW, Juvenile Justice NSW and Justice Health, work closely to ensure access to and delivery of appropriate care and support for individuals with disability while in custody.

When a person goes into custody they receive a comprehensive health assessment from Justice Health staff. Medical histories and health issues are documented and care plans developed. When necessary, Justice Health clinicians also arrange referral to specialist health services such as psychiatrists, psychologists, inpatient and other services.

Corrective Services NSW also has screening procedures to identify if offenders in custody or in the community (e.g. on a community-based order) have a disability. There is a standard set of questions to explore disability. Follow-up includes further specific questionnaires or using screening psychometric instruments. All information about possible and confirmed disabilities is recorded on a computer system that is available to all staff.

Young people in juvenile custody are screened for physical, sensory and cognitive disability and mental illness within 48 hours of entry in order to identify and provide appropriate supports. One of the challenges identified by Juvenile Justice NSW, the division of DAGJ responsible for the supervision and care of young offenders in the community and in detention centres, is that young people aged between 10 and 17 years have often not been identified as having a disability previously and do not wish to be seen as having a disability. This can lead to some young people refusing testing and interventions.

(b) Communication supports

People are able to access interpreters, including sign language interpreters within NSW correctional centres. Support people are also provided. However, interpreters and support people are only present under limited circumstances such as when

during legal proceedings. VideoLink does create difficulties at times for people with hearing impairment and those with cognitive impairment but the availability of support people can mitigate this. Assistive hearing devices are provided to assist people with hearing impairment who are in custody to attend education and programs

A joint research program between DAGJ and Monash University being led by Associate Professor Pamela Snow is exploring ways that DAGJ can work better with young people in the juvenile justice system who have complex needs. The study's focus is oral competence. Oral competence refers to everyday talking and listening skills. Children who have difficulties with oral language (talking and listening skills) often have other developmental difficulties. Language difficulties frequently go undiagnosed (or misinterpreted) in the early years. Aboriginal young people and young women in custody are included in the sample of 100 young people being investigated by a qualified speech pathologist.

(c) Participation in health, education, employment and rehabilitation programs

People with a range of disabilities are able to access programs run by Corrective Services NSW. These programs are primarily focussed on addressing reintegration or re-entry into the community and as such aim to reduce the risk of reoffending. All people with disabilities are also able to attend Corrective Services Industries if they are in mainstream correctional centres. However experience has shown that some people with disability, especially cognitive impairment, require programs that address their learning styles. A number of programs have been developed that match learning style with program intensity (so addressing the responsivity principle). The programs are run based on need and number of inmates available to participate in groups. These programs are focussed on the following areas: addressing criminogenic factors, psycho-educational programs, education and vocational and employment skills training. There are also services provided which aim to reduce recidivism. These services include pre-release planning and referrals to disability agencies and NGOs.

TAFE NSW provides vocational education and training services and programs to inmates in NSW correctional centres including those with disability. TAFE also delivers the Pathways to Employment, Education and Training program, including delivery of the program to offenders on community based orders.

DEC operates education and training units in seven juvenile justice centres and the one juvenile correctional centre. The units are staffed by teachers with either special education qualifications and/or experience working with students with behavioural difficulties and so are well equipped to provide learning and support programs to meet the specific needs of these students.

In its report on people on criminal responsibility and consequences, the LRC recommended the formation of a forensic working group and that it develop an action

plan to provide for additional and improved options for the detention, care and community support of forensic patients with cognitive impairment.²³

(d) Medical and physical restraints and seclusion

Corrective Services NSW follows a policy of least restrictive practice in the detention of people with disability. As noted above, there is a process for identifying whether a person is a person with disability and a team that facilitates assessments and notifies all staff of the person's disability. Through the process of classification, people with disability receive equitable decision-making about their placement and management. Case management also takes into account the impact of the person's disabilities. Corrective Services has beds allocated to people with disability so they are managed in the least restrictive manner by staff trained and experienced in working with people with disability.

In relation to seclusion, a prisoner can be isolated against their wishes when, in the opinion of the general manager of the prison, there is a threat to the good order and discipline within the prison²⁴ or there is a threat to their personal safety.²⁵ This is the case for both people with and without disability. Segregation cannot be imposed as a punishment. A prisoner can be confined for seven days by the prison's general manager or for 28 days by a magistrate.

(e) Access to health care

Justice Health provides an extensive range of health services to adults and young people in contact with the NSW criminal justice system and forensic mental health systems. As such, lack of access to Medicare is not a significant barrier to receiving healthcare. These services are provided across custodial, inpatient and community settings, including police cells, the Local Court and correctional and juvenile justice centres.

Justice Health services delivered in NSW correctional and juvenile justice centres include mental health, drug and alcohol, primary health, oral health, population and sexual health, Aboriginal health, haemodialysis and aged care. Where clinically required, the Justice Health refers civil patients to local health facilities/specialists for additional care.

Inmates are generally released with a week's medication. For planned releases, there is also a referral to community mental health services. The only time that people may be released without medication is where the release is unplanned (ie the court orders the person's release). Where a person with disability identifies as being Aboriginal or Torres Strait Islander, they can be case managed in conjunction with an Aboriginal support worker.

²³ NSW Law Reform Commission, *Report 138 People with cognitive and mental health impairments in the criminal justice system: criminal responsibility and consequences* (May 2013), page 10.

²⁴ Section 10 of the *Crimes (Administration of Services) Act 1999*.

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