



9 July 2012

Dear Member,

Existing bail laws operate very unfairly for people with intellectual disability:

- Police and lawyers often do not realise that an alleged offender has an intellectual disability.
- People with intellectual disability have impaired communication skills and so police and lawyers may not become aware of key factors relevant to bail decisions.
- People with intellectual disability have impaired capacity to understand and recall bail conditions.
- Many people with intellectual disability lack the support services they need to give them an equal chance to stay out of trouble with the law and get bail.

As a result, alleged offenders with intellectual disability are less likely to get bail and are particularly disadvantaged at the time of initial bail decisions.

People with intellectual disability are highly represented in remand populations. NSW government studies show approximately 13% of juvenile detainees as having intellectual disability and a further 32% in the borderline range of intellectual disabilityⁱ, making them five times more likely to be detained than those without intellectual disability.

Imprisonment has “particular consequences for intellectually disabled people including becoming increasingly entrenched in a culture of criminality, finding it very hard to readjust when they leave prison, and being vulnerable and mistreated in the mainstream prison environment.” (NSW Sentencing Council 2004ⁱⁱ).

Our particular focus is on alleged offenders with intellectual disability. However, similar negative outcomes of the Bail Act impact other disadvantaged groups including alleged offenders with psychiatric disorders (87% of young people in detentionⁱⁱⁱ and 74% of adults in gaol^{iv}). Many people have both intellectual disability and a psychiatric disorder.

As the Law Reform Commission has found, the current Bail Act is unduly complex and restrictive at the expense of a balanced consideration of whether bail is appropriate in the particular circumstances of a case. All submissions to the Commission agreed the current Bail Act is a failure.

We urge you to support the implementation of the Law Reform Commission's recommendations in your party and in the Parliament.

Yours sincerely,

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- i 2009 NSW Young People in Custody Health Survey <http://www.djj.nsw.gov.au/publications.htm>
 - ii Abolishing Prison Sentences of Six Months or Less, Final Report, 2004, page 17
 - iii 2009 NSW Young People in Custody Health Survey
 - iv T Butler and S Allnutt, Mental Illness amongst NSW Prisoners, NSW Corrections Health Service 2003.