

# Chapter 11: Housing

## *A Quality Youth Justice System Meets Young People's Housing Needs*

### Relevant Terms of Reference

- Programs for education and training, health and wellbeing and rehabilitation
- Throughcare and aftercare services provided to detainees and CYJ clients

### Relevant Human Rights Standards

- Article 11, ICESCR

## 11.1 Introduction

- 11.1.1 One of the themes of the interviews and submissions received during the Review is the importance of suitable housing for young people involved in the youth justice system.
- 11.1.2 This chapter discusses the significance of housing for successful outcomes in early intervention, diversion and rehabilitation programs. Lack of suitable housing is a risk factor for involvement in the youth justice system; it is a contributing factor to high rates of remand in the ACT; and it is associated with recidivism when young people leave detention.

## 11.2 Importance of safe, secure and affordable housing

- 11.2.1 Housing is a fundamental component of well being, and helps fulfill our essential need for shelter, security and privacy. The right to housing is enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights.
- 11.2.2 Homelessness is a complex, dynamic experience, and the term is now understood to encompass more than simply 'sleeping rough'. Recent definitions of homelessness acknowledge the diverse nature of people's experiences:
- *Primary homelessness* includes all people without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.
  - *Secondary homelessness* includes people who move frequently from one form of temporary shelter to another. It includes all people staying in emergency or transitional accommodation provided under the Supported Accommodation Assistance Program (SAAP). Secondary homelessness also includes people residing temporarily with other households because they have no accommodation of their own (including couch surfing) and people who are staying temporarily in boarding houses.
  - *Tertiary homelessness* refers to people staying in boarding houses on a medium to long-term basis, defined as 13 weeks or longer. They do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; and they do not have security of tenure provided by a lease.<sup>1</sup>
- 11.2.3 Homelessness is difficult to measure. A census of young people aged 12 to 18 years conducted by the Australian Government reported that there were 400 homeless young people in the ACT in 2001, and 307 homeless young people in the ACT in 2006.<sup>2</sup>
- 11.2.4 During the 2008-2009 reporting year, just under 450 individual young people aged 16 to 21 years accessed specialist homelessness services funded by SAAP in the ACT. This number does not include young people who were sleeping rough,

<sup>1</sup> David MacKenzie and Chris Chamberlain, (2008) *Youth Homelessness in Australia 2006*.

<sup>2</sup> Ibid.

or living with relatives and friends.<sup>3</sup> During the same period, SAAP services provided an average of 95 beds each night specifically for young people, out of a total of 300 funded beds in the ACT.<sup>4</sup>

- 11.2.5 A range of organisations provide accommodation for young people in the youth justice system in the ACT, including: Care and Protection Services, Housing ACT (incorporating two youth housing managers in the Housing for Young People Program) and community organisations. Currently 12 community organisations are funded by the Community Services Directorate (CSD) to provide youth homelessness services in the ACT.<sup>5</sup> A further group of organisations are funded to provide residential care for children and young people in out of home care.
- 11.2.6 Accommodation needs are particularly high among children and young people in the youth justice system.<sup>6</sup> Indeed, given the significant challenges they face, arguably young people who come into contact with the youth justice system are in greater need of stable accommodation than the youth population as a whole.<sup>7</sup>
- 11.2.7 In England and Wales during the late 1990s, the agency administering the youth justice system, the Youth Justice Board (YJB), began measuring their performance in engaging young people under youth justice supervision or on release from detention in suitable accommodation. Suitable housing is defined by the YJB as that which takes into account young people's needs, views and wishes. In reviewing the YJB, the Centre for Crime and Justice Studies recommended that the Government of England and Wales go further, by committing to provide medium-term or long-term accommodation for young people in the youth justice system, and to measure the period of time during which the young person remains in stable accommodation.<sup>8</sup>
- 11.2.8 Translating to the ACT context, we might conclude that 'suitable' housing for young people in the youth justice system is that which:
- Takes into account the young person's needs (including health, mental health, disability, education/employment);
  - Takes into account the young person's views and wishes; and
  - Is medium term or long term.
- 11.2.9 The nature of suitable housing will depend on the needs and circumstances of the particular young person, but could include:
- Living with parents or other family members;
  - An out of home care placement with a foster carer or residential institution;
  - A placement in a supported accommodation service; or
  - A lease with Housing ACT.

### 11.3 Housing and early intervention

- 11.3.1 Safe, affordable and secure housing can contribute to early intervention and crime prevention. However, the current circumstance in the ACT and other Australian jurisdictions is that homelessness remains a contributing factor for involvement in the youth justice system.
- 11.3.2 There are established links between homelessness and youth justice. Many children and young people who enter the youth justice system will do so having experienced well known risk factors. Such factors include family 'dysfunction', intellectual disability, poor mental health, dislocation from education, and homelessness, and they often emerge early in the child's life.<sup>9</sup> Homelessness, particularly among young people and people with an intellectual disability or mental illness, is a major risk factor for a young person becoming a perpetrator or victim of crime.<sup>10</sup>
- 11.3.3 English research into the housing needs and experiences of 152 young people, who had been convicted of an offence and were either in custody or community supervision, found that all of the young people in the group were in housing need. Three-quarters (75%) 'had lived with someone other than a parent at some time' and 40% 'had been homeless or had sought formal housing provision and/or support'. The research also discovered that two-thirds of the group had moved at least twice in the previous 12 months; 17% of these young people had moved between five and 14 times in the previous 12 months.

3 ACT Government Department of Disability Housing and Community Services, (2011) *Discussion Paper: Modernising youth housing and homelessness services in the ACT*.

4 Ibid.

5 Ibid.

6 Youth Justice Board, (2007) *Accommodation Needs and Experience*.

7 Enver Solomon and Richard Garside, Centre for Crime and Justice Studies, (2008) *Ten years of Labour's youth justice reforms: an independent audit*.

8 Ibid.

9 Noetic Solutions, (2010) *A Review of the NSW Juvenile Justice System*, p.vii

10 NSW Legislative Council, Standing Committee on Law and Justice, (2000) *Crime prevention through social support*, Parliamentary paper no. 437.

The most common factor underlying their housing need was relationship breakdown with parents or family. Other factors included concerns about safety, leaving custody and leaving care.<sup>11</sup>

- 11.3.4 While there are established links between homelessness and youth justice, the nature of the correlation is complex and not easy to resolve. For any particular young person, crime may occur prior to becoming homeless, it may accompany the experience of homelessness, or it may be an outcome of homelessness.<sup>12</sup>
- 11.3.5 In reviewing the NSW youth justice system, Noetic Solutions found that:  
*'Given the high numbers of children and young people either homeless or in out-of-home care and the known risks around increased likelihood of entry into juvenile justice, the [government] needs to do all it can to provide suitable accommodation.'*<sup>13</sup>
- 11.3.6 The Commission heard views expressed by many people that there are insufficient accommodation options for young people at risk of involvement in the youth justice system in the ACT. CSD are currently redesigning the funding structure for the ACT youth housing and homelessness sector, which could offer potential for systemic improvement.<sup>14</sup> The Commission recommends CSD measure the level of unmet need for out of home care placements and supported accommodation services, and provide adequate resources to address this need.

**Recommendation 11.1:** The ACT Strategic Board sub-committee on vulnerable children, young people and their families make a commitment that every vulnerable young person in the ACT will have their housing needs met in a way that serves their best interests.

**Recommendation 11.2:** The Community Services Directorate measure the level of unmet need for out of home care placements and supported accommodation placements, and provide adequate resources to address this need.

**Recommendation 11.3:** The Community Services Directorate identify and resource a wider range of supported accommodation options that are proven to meet the needs of young people with challenging behaviours and complex needs.

- 11.3.7 See Chapter 7 (prevention and diversion) for further discussion about early intervention.

## 11.4 Housing and diversion

### *Accommodation options for young people on bail*

- 11.4.1 For some young people in the youth justice system, placement in suitable housing can allow them to be diverted from custody. However, the current situation in the ACT and other Australian jurisdictions is that there is an increasing proportion of young people on remand, and many people claim the underlying cause of this increase is a lack of suitable housing in the community.
- 11.4.2 National statistics show that the proportion of young people in detention who are remanded (rather than sentenced) has increased substantially in the past three decades. At 30 June 1981, 21% of all young people in detention in Australia were on remand, compared with 59.6% of all detained young people at 30 June 2008. This is due to an increase in the numbers of young people placed on remand, and an increase in the average length of remand episodes.<sup>15</sup> The most recent data from the ACT shows that, at a census count on 30 June 2009, two-thirds (66%) of young people in Bimberi were being held on remand.<sup>16</sup>

11 Youth Justice Board, above n 6.

12 P Crane and J Brannock, (2009) *Homelessness among young people in Australia, Early intervention & prevention*, National Youth Affairs Research Scheme, p.7

13 Noetic Solutions, above n 9.

14 ACT Government, Community Services Directorate, (2011) *Modernising Youth Housing and Homelessness Services in the ACT: feedback to the community consultation*; ACT Government, Department of Disability Housing & Community Services, (2010) *Discussion Paper: Modernising youth homelessness services in the ACT*.

15 Kelly Richards, (2011) *Trends & Issues in Crime and Criminal Justice no.416*, Australian Institute of Criminology.

16 Kelly Richards, Lisa Rosevear and Mathew Lyneham, (2011) *Juvenile's contact with the criminal justice system in the ACT: and overview*. For full text see Appendix A.

- 11.4.3 The increase in the remand population is concerning and problematic because only a very small proportion of remand episodes result in a young person being convicted and sentenced to custody. This means that the majority of young people may be in custody unnecessarily. Further, periods of remand represent *'missed opportunities to intervene in young people's lives with constructive and appropriate treatment'* in the community.<sup>17</sup>
- 11.4.4 Bimberi is similar to most other detention centres in finding it difficult to plan and provide appropriate programs for young people on remand, because of the uncertainty about their length of detention. Some young people in Bimberi on remand would receive greater benefit from intensive individualised support that can more easily (and more cheaply) be provided in a supported accommodation service in the community.
- 11.4.5 Nationally, two primary explanations are put forward for the increase in remand: more restrictive bail legislation, and lack of appropriate accommodation options for young people experiencing homelessness.<sup>18</sup>
- 11.4.6 During the Review, the Commission heard many reports of young people being remanded into custody in Bimberi, not due to the nature of their offence or their risk to the community, but due to:
- A shortage of placements in residential institutions providing out of home care services, and supported accommodation services in Canberra; or
  - A young person's inability or refusal to participate in housing options that were offered or created for them, with the consequence that they breached their bail conditions.
- 11.4.7 While it is difficult to measure the dimensions of the problem, we can conclude that some young people are placed in Bimberi due to lack of suitable housing options in the ACT community. Even a reported refusal by some young people to stay in particular residential placements suggests that, though a housing option was technically available to them, it was perhaps not really suitable for those young people at that time in their lives.

### **Access to supported accommodation placements**

- 11.4.8 Some participants told the Commission that it is difficult to access supported accommodation services. The centralised intake service for supported accommodation services (First Point) is unavailable on Saturday morning, which means young people appearing at the Childrens Court to apply for bail on that day may be remanded in detention because they are unable to confirm a placement in a supported accommodation service for that evening. A few participants said they had difficulty contacting First Point at other times, and had to wait a period of hours for a return phone call. One participant expressed the view that the decision by some supported accommodation services to ask young people to leave the premises between 8am and 3pm:
- 'gives young people nowhere to go and increases their chance of getting into trouble.'*

### **Investment in a wider range of accommodation options for young people on bail**

- 11.4.9 Greater resourcing is needed for supported accommodation options in the ACT. CSD are currently redesigning the funding structure for the ACT youth housing and homelessness sector, which could offer potential for systemic improvement.<sup>19</sup> Greater resourcing would allow the system to be flexible and better able to meet individual young people's needs, through:
- A wider range of supported accommodation options, particularly for young people with challenging behaviours and complex needs;
  - An increased number of supported accommodation placements; and
  - Consistent and intensive provision of individualised support.
- 11.4.10 While investment in supported accommodation involves expense, the current situation – where some young people are being detained on short periods of remand because of a shortage of accommodation options in the community – is both costly for the community and detrimental for the young people involved. As discussed above in the section on early intervention, the Commission makes three recommendations to improve the availability and suitability of housing options for young people with high and complex needs.
- 11.4.11 In the recent discussion paper *Towards a Diversionary Framework for the ACT*, the ACT Government raised the possibility of an intensive bail support program with crisis accommodation.<sup>20</sup> Some participants in the Review have suggested there should be a 'bail hostel' or residential bail support program in the ACT, which would prevent young people on short periods of remand being detained in Bimberi. Such services do exist in other jurisdictions, such as Queensland, and there has been

17 Richards, above n 15.

18 UnitingCare Burnside, (2009) *Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales*.

19 ACT Government, Community Services Directorate, above n 14.

20 ACT Government, Department of Disability Housing and Community Services, (2011) *Towards a Diversionary Framework for the ACT* p.17.

support for such a service in NSW.<sup>21</sup> They aim to provide courts with suitable supported accommodation as an alternative to remanding young people in custody.

- 11.4.12 However, researchers have argued that better outcomes for young people, and greater value for money, would be obtained by increasing funding to existing accommodation service providers. In reviewing the NSW youth justice system, Noetic Solutions suggested that some previous attempts at 'bail hostels' in NSW failed because they grouped at risk young people together, and were highly resource intensive (*'less than custody, but more so than funding existing service providers'*). Instead, Noetic Solutions recommended that the government increase funding to existing supported accommodation services to provide a higher number of guaranteed beds for young people on bail.<sup>22</sup> The Commission similarly suggests this approach.

**Recommendation 11.4:** The Community Services Directorate increase funding to supported accommodation services to provide a higher number of dedicated places for young people on bail.

### *Therapeutic Protection Orders*

- 11.4.13 When discussing diversion, it is important to note that there is provision in the *Children & Young People Act 2008* (CYP Act) for Therapeutic Protection Orders (TPOs) and the declaration of Therapeutic Protection Places (TPPs). A TPO is an order which directs that a young person be confined for a certain period in a TPP for the implementation of a therapeutic plan (including therapy, counselling, education or other services). Although the legislative provisions have been in place for several years, they have not yet been used. Some stakeholders in the youth justice system have highlighted that many young people are placed in Bimberi in response to care or welfare issues. They suggest that TPOs could be used to prevent some young people entering Bimberi, by providing for their care and therapeutic needs to be addressed in the community.
- 11.4.14 Due to legislative change in 2008, now only the Director-General of CSD can apply for a TPO. The Commission understands that CSD is currently building a TPP facility and designing a TPO service, but it is unclear when this facility is expected to be operational. However, there is scope for a wider range of places to be declared as TPPs, according to the best interests of individual young people. The Commission recommends that the CYP Act be amended to allow the Public Advocate, or another party with leave of the court, to apply for a TPO. We also recommend CSD progress the implementation of the proposed TPP facility, and also consider the possibility of TPOs being applied in the context of other residential settings when in the best interests of a particular young person.

**Recommendation 11.5:** The ACT Government amend the *Children and Young People Act 2008* to allow the Public Advocate, or another party with leave of the court, to apply for a Therapeutic Protection Order.

**Recommendation 11.6:** The Community Services Directorate progress the implementation of the proposed Therapeutic Protection Place facility, and also consider the possibility of Therapeutic Protection Orders being applied in the context of other residential settings when in the best interests of a particular young person.

### *Residential institutions contracted to provide out of home care placements*

- 11.4.15 The Commission heard concerns expressed about the practices of some residential institutions contracted by CSD to provide out of home care services. Several participants believed some institutions too readily report an alleged breach of bail conditions following relatively minor actions by a young person, such as refusal to comply with instructions. These participants formed the view that such institutions should be highly trained and resourced, and able to work with young people exhibiting challenging behaviour without invoking legal processes to manage non-criminal behaviour.
- 11.4.16 The Commission heard an allegation of inappropriate use of force in one particular residential institution contracted to provide out of home care services. It was claimed that young people are restrained in inappropriate circumstances, and without legal authority. Allegedly, during one restraint a young person was 'sat on' by a worker for 45 minutes.

<sup>21</sup> Australian Institute of Health and Welfare, (2011) *Juvenile justice in Australia, 2008-09* Juvenile justice series no.7; UnitingCare Burnside above n 19.

<sup>22</sup> Noetic Solutions, above n 9, para 241.

- 11.4.17 These issues are outside the terms of this Review, however, given the potential significance of the first allegation, and the potential seriousness of the second, the Commission recommends a review of residential institutions contracted to provide out of home care services for vulnerable and high risk young people.


**Recommendation 11.7:** The Community Services Directorate undertake a review of residential institutions contracted to provide out of home care services for young people, particularly in relation to their practices regarding use of force and enforcement of bail conditions.

- 11.4.18 For further discussion of diversion see Chapter 7 (prevention and diversion).

## 11.5 Housing, throughcare and aftercare

- 11.5.1 Suitable housing can help contribute to young people achieving positive outcomes and avoiding recidivism when they leave detention. However, there are indications of barriers to young people accessing suitable housing on release from Bimberi: there is limited pre-release planning at Bimberi; it is difficult to find suitable housing options for some young people, the transition from Bimberi to housing in the community is not always well managed; and there are some concerns about the provision of follow-up support and aftercare.
- 11.5.2 The Commission heard numerous stories of young people being released from Bimberi to apparently inadequate or unsupported housing situations or, indeed, to homelessness. These accounts included claims of: a young person with an intellectual disability waiting in Bimberi reception for more than an hour to be collected, then leaving with someone unknown to the Centre; a young person moving from their intended placement to another house where a worker feared they were at risk of exploitation; and a young person not making it to their new accommodation, but reoffending and being detained again within a short period of time. While we cannot confirm all the accounts we received, they indicate a widespread belief that the community needs to provide better planning and support for young people before, during and after their transition from Bimberi to the community.
- 11.5.3 In relation to transition planning and throughcare, there are three aspects to the claims made to the Commission:
- For some young people with complex needs, workers report that there are no accommodation services available to meet their needs.
  - For other young people, who did have prior connections with community based accommodation support services before custody, workers reported difficulty gaining permission to visit Bimberi to maintain a relationship with the young person during their detention.
  - For a third group of young people, who are introduced to new accommodation support services when they are released from Bimberi, workers feel they should be engaged much earlier in the preparation for release, and be permitted to develop a relationship with the young person over several weeks or months before release.
- 11.5.4 The Commission also heard reports of inadequate follow-up and aftercare support following release from Bimberi. The phrase 'set up to fail' was used by several people. Many participants described difficult challenges experienced by young people when they were released from custody into the family home or independent living. For example, a family member said their young person was put in a flat without enough supervision and support. One young person and several family members said that the organisations that promised to support them when they left Bimberi were not there when they needed them most.
- 11.5.5 For young people to achieve their goals and thrive when they leave Bimberi, it is important that they move immediately into suitable and supported housing. Without a stable accommodation base, the other challenges they are confronted with can be too difficult to manage.
- 11.5.6 CSD does fund a number of non-government organisations to deliver accommodation and supported independent living services to young people transitioning from custody. However, the Review heard widespread reports of a shortage of supported accommodation in the ACT for young people who are involved in the youth justice system. As mentioned above, CSD are currently redesigning the funding structure for the ACT youth housing and homelessness sector, which could offer potential for systemic improvement.<sup>23</sup>
- 11.5.7 The Commission has been told that better transition to housing is provided at the adult detention facility than the youth detention centre. The Alexander Maconochie Centre (AMC) accommodates young people aged 18 to 25 years on remand

23 ACT Government, Community Services Directorate, above n 14.



or custodial sentence. Young people leaving the AMC experience similar challenges to the young people leaving Bimberi. However, it was reported to the Review that the AMC organises pre-release conferences for young people several weeks or more before their release date. Workers assisting the young person in different realms of their life (including housing, mental health, drug and alcohol) are invited to the meeting, where they have the opportunity to meet each other and discuss case coordination. Some workers who support young people leaving Bimberi and AMC believe that the earlier attention to planning at AMC, and involvement of all the workers supporting the young person, contributes to better outcomes for young people.

- 11.5.8 Several participants in the Review suggested a need for a transition facility between Bimberi and independent living. Bimberi is an institution in which young people are detached from many basic living skills such as grocery shopping, cooking, cleaning, paying bills, or putting the bins out. Young people who have been in custody for a long period of time need preparation to adjust to the change they will experience on release into the community. Some of the young people in Bimberi have grown up in environments where they did not have the opportunity to learn more complex living skills, such as relationship skills, handling conflict, and budgeting. There is an opportunity to assist them to develop these skills while they are in Bimberi. These issues are further discussed in Chapter 9 (programming) and Chapter 12 (education). The Commission understands that Bimberi management is currently developing plans for a transition unit, and we encourage CSD to progress this work as a priority.
- 11.5.9 Further, the Commission recommends that, where possible, young people be granted conditional day leave to visit their proposed accommodation in the preparation for release, to develop relationships and minimise the stress of transition.

**Recommendation 11.8:** The Community Services Directorate continue to improve transition planning for young people leaving Bimberi by:

- Progressing plans for a Transition Unit to help young people prepare for release into the community
- Organising pre-release conferences at least several weeks before the young person's date of release, to facilitate case coordination between the agencies supporting the young person
- Utilising conditional day release to allow young people to visit their proposed accommodation and develop relationships and familiarity before they exit Bimberi
- Building relationships with supported accommodation service providers to strengthen communication and partnerships.

### *Measuring and reporting young people's engagement in suitable housing*

- 11.5.10 Given the potential negative impact of unsuitable housing on young people's rehabilitation, the Commission believes there would be benefit if CSD were to measure and report on:
- The number of young people under Community Youth Justice supervision who are in suitable housing; and
  - The number of young people released from Bimberi who are in suitable housing on release, after three days, one week, three weeks, three months, and six months.
- 11.5.11 By measuring and setting targets for suitable accommodation of young people in the youth justice system, CSD can understand the scope and nature of the reported housing problem, and develop strategies to improve accommodation outcomes for young people. However, this suggestion is not a formal recommendation of this Review, due to the possibility that such reporting activity may be confused with monitoring of compliance with court orders. The intention of this suggestion is to measure CSD's success in placing and supporting young people in suitable housing, not to create a perverse outcome of unnecessarily restricting the places that a young person is permitted to live, and penalising the young person for moving to alternative suitable accommodation.