



Creating a future without youth homelessness

9 February 2011

NSW Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

Dear Members of the NSW Law Reform Commission,

Response to NSW Law Reform Commission Inquiry into Young People with Cognitive and Mental Health Impairments in the Criminal Justice System

Yfoundations appreciates the opportunity to submit to this inquiry as many young people who are homeless or at risk of homelessness are also involved with the criminal justice system and may have a cognitive or mental health impairment.

Yfoundations is the peak organisation for youth homelessness in New South Wales. Yfoundations is a state-wide network of over 100 member services and individuals who are directly working for young people who are experiencing or at risk of homelessness.

Our interest in this Inquiry relates to the interaction between homelessness and the juvenile justice system. Not only is homelessness a risk factor in entering the Juvenile Justice system but it also has a significant impact on a young person's ability to access bail and, as a result, has contributed to the increasing number of children and young people on remand in the NSW Juvenile Justice centres. As a result we will be responding specifically to the questions that refer to accommodation. In response to all other questions raised in the Inquiry, we support the submission by the Youth Justice Coalition.

Homelessness and Juvenile Justice

We know that currently, 22.8 percent of young people who enter custody were either homeless or were in unsettled or transient lodging prior to entry (according to a presentation given by Eric Heller from NSW Juvenile Justice at a Sydney Institute of Criminology forum on 11 November 2010). Furthermore, as identified in the recent Juvenile Justice review by Noetic, a large number of children and young people remain on remand in a Juvenile Justice Centre due to a lack of stable accommodation. They may either be homeless or be unable to return home due to family breakdown or safety concerns.

Children and young people who cannot return home often receive a 'reside as directed' order by the Court as part of their bail conditions. This order is to ensure that the child or young person does not return to unsafe or inadequate housing. The court order specifies that either Juvenile Justice or

Community Services must find appropriate accommodation for the young person and is not ordering that the child or young person remain on remand. However, due to a lack of accommodation options for children and young people, the order often effectively ensures that the child or young person remains on remand for a significant period of time.

This is unacceptable as a young person should not be refused bail simply because they are homeless or do not have safe accommodation to return to. However, the 'reside as directed' order has essentially turned homelessness into a crime as children and young people are required to remain on remand if they do not have access to accommodation. Unfortunately this affects a significant number of children and young people in contact with the Juvenile Justice system. A review of remand cases over a three month period, conducted by Juvenile Justice (and identified in the Noetic review), found that 90 percent of children and young people on remand were unable to meet their bail conditions and 95 percent of these children and young people had 'reside as directed' orders.

Are young people with cognitive and mental health impairments remanded or remaining in custody because of difficulty in accessing suitable accommodation or mental health or disability services?
As already identified by Juvenile Justice (presentation by Peter Muir at the National Juvenile Justice Summit 25-26 February 2010), the number of young people in custody that have a level of intellectual disability (IQ of under 70) is 13.5 percent and a further 32 percent have a borderline intellectual disability (IQ between 70 and 79). Furthermore, 39 percent of young people in custody have high or very high levels of psychological distress.

Because, as mentioned previously, 90 percent of children and young people in custody on remand were unable to meet their bail conditions, most frequently due to a lack of accommodation, we can assume that there is some level of parity between the number of children and young people in custody with an intellectual disability or psychological distress and the number of children and young people in custody who are homeless or unable to access appropriate accommodation and who also have a intellectual disability or psychological distress.

This is clearly a concern as a young person's ability to successfully navigate the legal system and advocate on their own behalf in order to access accommodation is severely diminished if they have a cognitive or mental health impairment, especially considering that it is already difficult for young people to access accommodation services when they are on remand.

Currently, the number of vacancies in specialist youth homelessness services in Sydney is around two to four vacancies per day. As a result, any number of children or young people in Sydney who are homeless may be trying to access the same vacancy in a crisis service. Children and young people with a cognitive or mental health impairment on remand in a juvenile justice centre may find it difficult to successfully communicate their need for the vacancy above the other children and young people in Sydney. This may be further complicated if they also have any sort of drug or alcohol issue or are on remand in relation to a violent crime.

However, the lack of crisis accommodation options, as provided by the non-government sector, should not result in a young person being effectively criminalised and remaining on remand due to their homelessness or inability to access appropriate accommodation. There must be

accommodation options for children and young people who remain on remand simply because they are homeless. The alleged accusation of a crime should not preclude them from being part of the community until their court hearing simply because they are unable to access stable accommodation. In effect the system is allowing homelessness to be grounds for refusal of bail for a child or young person – this is unfair as it is not the situation for adults.

Are additional legal and/or procedural measures required to avoid young people with cognitive and mental health impairments being held on remand because of problems accessing accommodation and/or services? If so, what measures should be implemented?

We know that something must be done to boost the accommodation options for young people who should be in the community on bail. The strategic review of Juvenile Justice by Noetic recommends that “Juvenile Justice establish service level agreements with existing accommodation service providers to guarantee placements for children and young people who would be held on remand if they were unable to find suitable accommodation” (recommendation 23). While we generally support this recommendation, it is unlikely to be effective in practice due to the existing demands on specialist youth homelessness services. As it is, the current specialist youth homelessness system (otherwise known as YSAAP) operates at almost full capacity every single day. Therefore, developing service level agreements without increasing the number of beds is not a practical solution. Furthermore, we do have concerns about the appropriateness of placing a young person into the homelessness sector as we believe that other accommodation options should be sourced before a child or young person is placed in the homelessness system.

However, it is important to note that many of the other accommodation options available to these young people are not feasible either. We know that Juvenile Justice Officers desperate to find a bed outside of a juvenile justice centre for a young person, will be pleased when they find a couch at a friend or relatives house for the young person to stay on. However, in the homelessness sector, we know that this is still homelessness, it is not a stable accommodation option and can potentially put the young person at further risk. So, while we support the establishment of service level agreements between Juvenile Justice and accommodation providers, this must include the increase in accommodation options because without this, any agreements will be unworkable.

We partially support recommendation 20 in the Noetic review that states that further support to Juvenile Justice to find appropriate accommodation should be provided through the Keep Them Safe reforms. However, we believe that this responsibility should not be placed solely on Juvenile Justice but should also include Community Services. We know that a large number of these young people are in the out-of-home care system, we can assume that an even larger number are known to Community Services, over 20 percent have experienced homelessness and of course we know that a high number have a cognitive or mental health impairment. Many of these children and young people are also without, or have limited, family support. All of these factors place them at risk of entering into long term homelessness. These children and young people are precisely those children and young people who should have access to the supports provided by Community Services.

We also support recommendation 21 in the Noetic review that states that Juvenile Justice should review the situation of every child and young person remanded in custody because of a lack of suitable accommodation every 48 hours to ascertain whether an accommodation option has become

available. However, as previously stated, without an increase in the available accommodation options, a review may not be very effective.

The Government's response to this recommendation referred to the introduction of a Bail Assistance Line. While we support the introduction of the Bail Assistance Line, we are concerned by its current availability and the apparent limited uptake. When the Bail Assistance Line was first introduced, it was stated that it is only available to police. While we are unaware if this has changed, we are nevertheless concerned that the Bail Assistance Line may not be available to those young people who have been placed on remand by the courts due to a lack of accommodation. The Bail Assistance Line and the accommodation and brokerage attached to it should also be available to those children and young people held on remand, not just those who receive bail from the police and do not enter a Juvenile Justice Centre.

Further solutions

As recommended by Noetic in the Juvenile Justice review, we believe that the NSW Juvenile Justice system should be committed to a policy of justice reinvestment. Justice reinvestment is "premised on diverting funds from the construction of additional juvenile justice facilities to investment in programs and services that address the underlying causes of crime in local communities" such as early intervention and prevention programs (Noetic Review 2010 p.175). Yfoundations believes that justice reinvestment presents the best opportunity to reduce the significant numbers of children and young people entering the NSW juvenile justice system and may, in turn, also reduce the number of children and young people in need of accommodation in a specialist youth homelessness service.

For further information, please contact Clare Blakemore, Research and Sector Development Officer

Regards,



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