Homelessness and the justice system

A. Adult homelessness and imprisonment

Current statistics show that 43% of all adult inmates who were released in 2005–06 returned to a correctional sanction within 2 years.¹

There are proven links between homelessness, offending and re-offending. Suitable, supported and stable housing is associated with staying out of prison. There is currently little in the way of systematic arrangements linking case-managed supported housing to adult prisoners preparing to leave prison. This is particularly the case for those with complex needs.

Finding safe, stable and affordable housing is one of the major challenges faced by prisoners on release. Unstable housing or homelessness along with alcohol or other drugs issues significantly increase the risk of reoffending. And stable housing plays a critical role in assisting ex-prisoners to make a successful transition from prison into the community.²

Further, women ex-prisoners face greater challenges in accessing housing and experience higher levels of homelessness, debt, depression, isolation and social exclusion than men. There is a dearth of appropriate post-release support services for women. They require assistance with accommodation, finances, employment and family reunification, and they are at a high risk of poor mental and physical health outcomes.

Many ex-prisoners have a poor rental history prior to incarceration, with problems compounded by a history of drug or alcohol dependency, gambling or violence. These issues have often contributed to their incarceration.

Failure to address housing arrangements prior to incarceration can also operate to increase the risk of homelessness upon release. For example, if a prisoner remains a leaseholder during incarceration, a rental debt may be incurred by another household member living in the premises, and yet it is the prisoner who acquires a rental debt and a poor tenancy record. This creates barriers to accessing accommodation in the private and social housing markets upon release.

A disproportionate number of Indigenous people are caught in the vicious cycle of prison, re-arrest and re-incarceration. Unsuitable housing or homelessness is likely to compound the risk of arrest and imprisonment, which in turn feeds back into housing problems.³ Indigenous people living on the streets have been identified as particularly vulnerable to police interference and harassment.⁴ A lack of effective pre- and post-release programs for Indigenous people leaving custody has been identified as contributing to this situation.⁵ Indigenous

² Walsh, T. 2007, ‘No Vagrancy: An examination of the impact of the criminal justice system on people living in poverty in Queensland’.
people are over-represented in all sectors of the homeless population in New South Wales, but most prominently in Supported Accommodation Assistance Program services (now known as specialist homelessness services) and amongst those living in improvised dwellings.\(^6\) Over-representation of Indigenous people in the criminal justice system represents one of the most significant gaps between the life outcomes of Indigenous and non-Indigenous Australians.

Imprisonment has a devastating impact on family life, immediately and in the long term. Young people whose parents have been imprisoned are more likely to enter the juvenile justice system; a recent analysis of young people within the juvenile justice environment identified that nearly half of the young people in custody had parents who had been in prison\(^7\).

The links between homelessness, imprisonment and re-imprisonment are unequivocal and warrant urgent action.

The policy framework

The Commonwealth Government’s homelessness white paper, *The road home: a national approach to ending homelessness*, identifies a policy of no exits into homelessness from statutory and custodial care.

The NSW Homelessness Action Plan, *A way home: reducing homelessness in NSW*, states that action will be taken to transition people exiting statutory care/correctional facilities into appropriate long-term accommodation and to help them maintain it.

The NSW State Plan, *A new direction for NSW*, identifies a target of reducing the proportion of offenders who reoffend within 24 months of being convicted by a court or having been dealt with at a conference by 10% by 2016.

The NSW Housing and Human Services Accord was established in 2005 to improve the planning, coordination and delivery of services to assist social housing tenants to sustain their tenancies, as well as to facilitate community building and to reduce social disadvantage in the larger public housing estates. Assisting the most vulnerable and disadvantaged households to live independently and maintain their tenancies involves clients having access to the support services they need. An Accord trial has been established, with some sites established specifically to work with ex-prisoners. A review of the trial is currently being undertaken.

Community Offender Support Program Centres

In 2008 the NSW Government established Community Offender Support Program (COSP) centres across New South Wales. COSPs offer temporary accommodation for up to 3 months for high risk offenders on parole or serving community orders, and crisis accommodation for up to 14 days. COSPs are staffed 24 hours a day, 7 days a week. They aim to assist recently released offenders, and offenders having difficulty adjusting to lawful community life, with reintegration and resettlement support through a structured program and other targeted services.\(^8\)

The Minister for Corrective Services and the Commissioner for Corrective Services identified COSPs as an important


\(^7\) Speech given by Peter Muir (NSW Juvenile Justice) at the National Juvenile Justice Summit, 25–26 February 2010.

accommodation option for sex offenders and prisoners on extended supervision orders made by the Supreme Court during a budget estimates hearing in September 2009.⁹

However, the introduction of COSPs was not based on any successful trials or models. That is, there was no evidence base for their rollout. Nevertheless, COSPs are a major initiative of NSW Corrective Services in meeting its commitment under the NSW State Plan to reduce reoffending in New South Wales by 10% by 2016.

The NSW Homelessness Action Plan also identifies COSPs as a key initiative of the NSW Government under the National Partnership Agreement on Homelessness, as a strategy to prevent prisoners becoming homeless on release from prison. The NSW Government has committed approximately $28.2 million of the NSW financial contribution under the National Partnership on Homelessness to the operation of COSPs.

COSPs have been operating for over 12 months at Malabar, Windsor, Penrith, Kempsey and Campbelltown, and more will be established in the coming months in Cooma, Broken Hill, Wagga Wagga, Grafton, Bathurst, Wollongong, Emu Plains, Dubbo and Tamworth.

The centres are co-located with existing or planned correctional facilities. Corrective Services posit that this has occurred in part because people do not want ex-prisoners living next to them.

Key issues

1. Lack of evidence that COSPs reduce reoffending and homelessness

Specialist homelessness services in metropolitan Sydney have reported that they are starting to see ex-prisoners referred to them by Probation and Parole staff as part of exit planning from COSPs.

In addition, specialist homelessness services located in regional and rural areas are reporting a significant increase in prisoners being exited from custodial care without an accommodation plan, arriving at the crisis service with nowhere else to go except to return to their previous residence prior to incarceration. This accommodation is often unsustainable, leading to homelessness within a very short time span. Many of these ex-prisoners have complex mental health, disability and drug or alcohol histories, and present with complex needs. This is made more difficult through lack of planning and communication with Corrective Services.

*NCOSS News* reports that a woman who mentors female prisoners described COSPs as ‘a prison outside of a prison’. She said that women who had resided in COSPs had described the support available as minimal, and the security and ‘stand over tactics’ as extreme.¹⁰

The Community Restorative Centre NSW (CRC), a specialist non-government organisation that works to support people affected by the criminal justice system, has identified a category of inmates who can find themselves as long-term residents of COSPs: inmates who are eligible for parole but are otherwise unable to be released from prison due to no suitable accommodation being available.

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⁹ General Purpose Standing Committee No. 3 2009, *Corrective Services, Public Sector Reform, Special Minister of State*, 15 September 2009.

¹⁰ ibid., p. 9.
Justice Action states that as statistics have not yet been released on program outcomes after more than 12 months of operation, the effectiveness of COSPs in reducing recidivism is so far unknown.\footnote{Justice Action 2009, ‘Prisoners set free into prison? Community Offender Support Program (COSP) Centres’, report, p. 12.}

We therefore question how effective COSPs have been at reducing recidivism and exits into homelessness. We also question whether COSPs provide an appropriate accommodation option for ex-prisoners. Further, we are concerned that the NSW Government is spending millions of dollars on a program that after 12 months of operation has no publicly available data to support claims of its effectiveness.

2. Need for more community-based interventions for ex-prisoners

Research from the UK, the USA, Victoria and South Australia tells us that community-based programs run by non-government organisations delivering comprehensive case management services work. The evidence shows their effectiveness in reducing recidivism and supporting re-engagement in community living.

That is, community-based interventions with offenders which promote restoration to the community and address the issues underlying offending behaviour have been proven to be effective.\footnote{Probation and Community Corrections Officers’ Association 2005, ‘NSW Criminal Justice Plans Revealed’, media release, 3 November 2005.} Baldry et al identified that the availability of supported accommodation from which the ex-prisoner does not have to move regularly is a vital aspect of such a program. Their study found that the more participants moved, the more likely they were to become homeless and to return to prison. They also identified that the support needed to be flexible depending on the individual’s circumstances; it was clear that bureaucratically-run services that were difficult to negotiate with and inflexible in the service they provided were less beneficial.\footnote{ibid., p. 12.}

Across Australia, there is growing interest in a recent development from the USA and the United Kingdom known as ‘justice reinvestment’\footnote{Aboriginal and Torres Strait islander Social Justice Commissioner 2009, Social justice report 2009, Australian Human Rights Commission, p.12.}. Justice reinvestment is a criminal justice policy strategy that diverts a portion of the funds earmarked for imprisonment to local communities where there are high concentrations of offenders. The money that would have been spent on incarceration is reinvested in programs and services in these communities to address the underlying causes of crime.

The justice reinvestment model still retains prison as a measure for dangerous and serious offenders, but it actively shifts the culture away from imprisonment and starts providing community-wide services that reduce the likelihood of offending. Justice reinvestment is not just about reforming the criminal justice system but also about trying to prevent people from getting there in the first place.

Such an approach should be supported not only on the grounds of social justice but also on the basis of cost-effectiveness. New research by the NSW Bureau of Crime Statistics has shown that modest reductions in the rate at which offenders are re-imprisoned would result in substantial savings in prisoner numbers and correctional outlays.\footnote{Weatherburn, D., Froyland, G., Moffatt, S. and Corben, S. 2009, ‘Prison populations and correctional outlays: the effect of reducing re-imprisonment’, Crime and Justice Bulletin, no. 138, NSW Bureau of Crime Statistics and Research, Sydney.} The Bureau estimated that a 10% reduction in the...
overall re-imprisonment rate would reduce the prison population by 829 inmates and save $28 million per year.

3. Need for improved collaboration between Corrective Services NSW and the community sector

Corrective Services NSW does not have a strong track record of working with the community sector to develop policy positions, service models and responses that aim to reduce the number of prisoners in New South Wales and reduce the level of recidivism.

We believe that by working collaboratively we can improve the outcomes for ex-prisoners, particularly in relation to reducing homelessness and the likelihood of re-offending.

B. Youth homelessness and juvenile justice

Homelessness increases the risk of entering the juvenile justice system; that is, homelessness has a significant impact on a young person’s ability to access bail and has contributed to the increasing number of children and young people on remand in juvenile justice centres.

Children and young people entering the juvenile justice system often have a number of similar characteristics. They are likely to:

- be or have experienced homelessness;
- be Aboriginal or Torres Strait Islander (almost half of all children and young people in custody in 2009 were Aboriginal or Torres Strait Islander);
- have an intellectual disability (13.5% of children and young people in custody were identified as having an intellectual disability and a further 32% had a borderline intellectual disability);
- have a mental illness (39% of children and young people entering custody presented with high or very high levels of psychological distress);
- be disengaged from school (63% of children and young people had not attended school in the last 6 months and 85% had been expelled from school);
- use alcohol or drugs (90% regularly used alcohol and 65% regularly used drugs before entering custody); and
- be in the out-of-home care system (30% in 2005).  

Another critical issue is that exiting juvenile justice facilities is a key transition point at which young people are at risk of homelessness. This is particularly so given the vulnerabilities of many of the children and young people in the juvenile justice system as stated above.

There is no single solution for addressing the risk of homelessness created by contact with the juvenile justice system, but urgent action is required. Some solutions must be implemented quickly in order to respond to a

16 Muir, P 2010 Speech at the National Juvenile Justice Summit 25-26 February 2010; UnitingCare Burnside 2009, Locked into Remand: Children and Young People on remand in NSW, UnitingCare Burnside, Parramatta.
system in crisis, and other solutions will take a longer time to implement.

Solutions must involve an increase in the number of accommodation options/support for children and young people with a ‘reside as directed order’, early intervention programs, a return to diversionary solutions and a commitment to justice reinvestment.

Any policy response faces an increasingly tough political environment as demonstrated by the NSW Government’s poor response to the strategic review of Juvenile Justice by Noetic.

Key issues

1. Increasing numbers of children and young people on remand

The increasing number of children and young people on remand in the state’s juvenile justice centres is one of the main issues facing the juvenile justice system. There are a number of risks and consequences as a result of this:

- increased recidivism – research suggests that time on remand is one of the most significant factors in increasing the likelihood of recidivism\(^\text{17}\); and
- increased safety risks for staff, and children and young people due to overcrowding.

Furthermore, a report released by the Bureau of Crime Statistics and Research indicates that there is no evidence to suggest that a custodial sentence is more likely to reduce re-offending than a community sentence.\(^\text{18}\)

Considering that remand and custodial penalties have a large number of negative impacts that appear to outweigh any positive outcomes, we think that the use of remand and custodial penalties should be used sparingly. However, we know that in 2008–09 in New South Wales, 4,634 children and young people were placed on remand in juvenile justice centres, while only 711 were placed in custody with a custodial penalty. Almost 80% of all children and young people in custody in 2008–09 were placed unnecessarily on remand in a juvenile justice centre and exposed to the risk factors and negative consequences discussed above.\(^\text{19}\)

There are three immediate issues contributing to the increasing number of children and young people on remand. These relate to:

- lack of stable accommodation;
- the Bail Act; and
- unworkable bail restrictions.

2. Lack of stable accommodation contributes to high remand levels

As identified in the recent Juvenile Justice review by Noetic, a large number of children and young people remain on remand in juvenile justice centres 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.\(^\text{20}\)

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

\(^\text{17}\) Holman and Zeidenberg 2006, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities, Justice Policy Institute, USA.


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, with the penalty being that homeless children and young people are required to remain on remand in juvenile justice centres. This is unfair as it is not the situation for adults.

Unfortunately, a significant number of children and young people in contact with the juvenile justice system are affected. A review of remand cases over a three month period, conducted by Juvenile Justice, found that 90% of children and young people on remand were unable to meet their bail conditions and 95% of these children and young people had ‘reside as directed’ orders21.

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.

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’.22 While we support this in principle, it is unlikely to be effective in practice due to the existing demands on specialist youth homelessness services. However, we support Noetic’s recommendation that further support be provided to Juvenile Justice and the community sector to find appropriate accommodation for children and young people through the Keep Them Safe reforms.

3. Changes to the Bail Act 1978 have reduced opportunities to apply for bail

Amendments to the Bail Act 1978, particularly the introduction of section 22A, have led to increasing numbers of children and young people remaining on remand in juvenile justice centres. Under section 22A, children and young people are limited in the number of applications they can make for bail, no matter what their offence. Since the introduction of section 22A, children and young people are now remaining on remand for a longer period of time, placing more pressure on an overloaded juvenile justice system.23 As the Bureau of Crime Statistics and Research suggests, ‘many young people who would have spent just a few days on remand (until mounting a successful bail application) are now staying on remand until the charges against them have been finalised by a court’.24

21 ibid.


4. Increasingly unworkable bail conditions

As acknowledged by Noetic, ‘more onerous conditions are being imposed on children and young people compared to adults’ (Noetic p.67). Children and young people released on bail are receiving bail conditions, including non-association orders, curfews and area restrictions, that are often too difficult for them to comply with or understand. These conditions, coupled with a policy of proactive policing of bail conditions, have resulted in a high rate of bail condition breaches.

5. Erosion of the original focus of the Young Offenders Act 1997 on diversion of children and young people from the juvenile justice system

The Young Offenders Act 1997 originally intended to divert the majority of young offenders away from the juvenile justice system through the use of warnings, cautions and youth justice conferencing. Only the most serious and/or persistent young offenders were to be funnelled through to the courts and to custody.25

Since the introduction of the Young Offenders Act, legislation and policies have been implemented that erode the initial intention of the Act to divert children and young people from the juvenile justice system. A focus on ‘risk’ rather than diversion has further contributed to the increasing number of children and young people in the juvenile justice system.26

We call for a commitment to returning to the original aim and purpose of the Young Offenders Act. Diversionary responses would largely dispense with the need for bail and therefore reduce the numbers of children and young people on remand. The Young Offenders Act ‘requires that the least intrusive most appropriate response be used whenever a child comes to police notice’ and ‘stipulates that criminal proceedings should not be used if there is an available and appropriate alternative’.27 A returned commitment to the original intention of the Young Offenders Act would result in increased warnings, cautions and referrals to youth justice conferencing and a lower number of children and young people who spend unnecessary time on remand in a juvenile justice centre.

6. Investment in capital at the expense of investment in early intervention programs

Due to the increase in the number of children and young people being held in the state’s juvenile justice centres, Juvenile Justice has had to expand the capacity of the juvenile justice centres, including opening the Emu Plains Juvenile Justice Centre. This is not to say that Juvenile Justice does not support some early intervention programs; however, it does not appear to be as significant as the amount being spent on capital works to increase the capacity of the juvenile justice centres. In 2008–09, $6.3 million was spent on opening Emu Plains Juvenile Justice Centre, $2.5 million was spent on ‘additional bunk accommodation at Cobham Juvenile Justice Centre’ and a total of $6.9 million was spent on additional accommodation units at Acmena and Orana.28

As discussed in the Juvenile Justice review by Noetic, early intervention programs for 9-17

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25 As explained in Bargen, 2010, Embedding diversion and limiting the use of bail in NSW: a consideration of the issues related to achieving and embedding diversion into juvenile justice practices, presentation at the National Juvenile Justice Summit 25-26 February 2010.
26 Ibid.
27 p. 16 in Bargen, 2010, Embedding diversion and limiting the use of bail in NSW: a consideration of the issues related to achieving and embedding diversion into juvenile justice practices, presentation at the National Juvenile Justice Summit 25-26 February 2010.
year olds must be increased. Any policy response should include significant investment in early intervention programs for children and young people at risk of entering the juvenile justice system, as this is the most cost-effective way of reducing the number of children and young people entering the juvenile justice system.\(^29\).

As recommended by Noetic in the Juvenile Justice review, 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’\(^30\) such as early intervention and prevention programs. Justice reinvestment presents the best opportunity to reduce the significant numbers of children and young people entering the NSW juvenile justice system.

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\(^{29}\) Noetic Solutions 2010.

\(^{30}\) p. 175 in Noetic Solutions 2010.

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**NSW Homelessness Community Alliance**

- Homeless Persons Legal Service
- Homelessness NSW
- NSW Council of Social Service
- NSW Federation of Housing Associations
- NSW Women’s Refuge Movement Inc
- Mental Health Coordinating Council
- Network of Alcohol & Drug Agencies
- Shelter NSW
- Welfare Rights Centre, NSW
- Yfoundations

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