

Special Inquiry into the experiences of children and young people in alternative care arrangements in NSW

Legal Aid NSW submission to
the NSW Advocate for Children
and Young People
November 2023



Legal Aid
NEW SOUTH WALES

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Acknowledgement

We acknowledge the traditional owners of the land we live and work on within New South Wales. We recognise continuing connection to land, water and community.

We pay our respects to Elders both past and present and extend that respect to all Aboriginal and Torres Strait Islander people.

Legal Aid NSW is committed to working in partnership with community and providing culturally competent services to Aboriginal and Torres Strait Islander people.

1. About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law.

Specialist services focus on the provision of Family Dispute Resolution Services, family violence services and the early triaging of clients with legal problems through the Family Law Early Intervention Unit.

Legal Aid NSW provides duty services at a range of courts, including the Parramatta, Sydney, Newcastle and Wollongong Family Law Courts, all six specialist Children's Courts and in some Local Courts alongside the Apprehended Domestic Violence Order lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and 20 regional offices. It focuses on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

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2. Executive Summary

Legal Aid NSW welcomes the opportunity to provide a submission to the NSW Advocate for Children and Young People on the experiences of children and young people (**CYP**) in alternative care arrangements (**ACAs**) in NSW.

Legal Aid NSW's civil, family and criminal law divisions all provide services to CYP involved in the care and protection system, who are generally among the highest users of our service and may require a broad range of assistance across many aspects of their lives. Our specialist Children's Legal Service (criminal defence service), Family Law Care and Protection team and Children's Civil Law Service assist children living in ACAs in a range of contexts.

Legal Aid NSW recognises that ACAs are currently a necessary option to meet the short-term needs of some CYP in emergency or temporary situations, given the gap in short term respite care alternatives available in the current OOHC system. For example, where a more stable placement is not yet available, and a CYP would remain in custody if an address is not immediately available, or a CYP from a remote/regional area would otherwise be moved off-country and/or away from family and support networks.

However, we consider that ACAs are generally unsuitable because they fail to provide CYP with a safe, stable home in line with the permanent placement principles contained in the *Children and Young Persons (Care and Protection) Act 1998* (NSW). We have observed that CYP are generally provided with a lower standard of care while in ACAs, and what is intended to be a short temporary arrangement often lasts many months. In our view the use ACAs may also be contrary to Articles of the United Nations Convention on the Rights of the Child.¹

We are concerned that ACAs are being used more often, in a growing range of circumstances, sometimes on multiple occasions for the same CYP and for longer periods, as reflected in the case studies included in this submission.

We consider that the practice of relying on ACAs to provide emergency and respite care is often not in the best interests of a CYP, nor is it sustainable, and should be urgently reconsidered before it becomes an entrenched and generally accepted practice.

We recommend that when a CYP is placed in ACA, this should be reviewed by a senior manager at the Department of Communities and Justice (**DCJ**) at least weekly,

¹ For example, Articles 12 and 27. Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

to justify continuing the ACA and bring attention to any lack of suitable support services or planning to transition the CYP to a longer-term placement.

Legal Aid NSW would welcome the opportunity to engage further regarding these issues if there is an opportunity to do so.

Background and broader context of Out of Home Care systems

Legal Aid NSW understands that a factor that has contributed to the use of ACAs is the outsourcing of Out of Home Care (OOHC) services following the 2008 Wood Special Commission of Inquiry into Child Protection Services. This led to the gradual transition of the majority of OOHC services to non-government organisations.

In our experience, this has led to a significant reduction in the number of home-based carers who will take urgent referrals for CYP and an increasingly complex system for placing children into OOHC. Whereas before DCJ had access to respite carers in the community who they could rely on at short notice to provide care for CYP in an emergency, now the care arrangements for CYP have to be negotiated on a case-by-case basis with service providers. Legal Aid NSW accepts that these negotiations and associated processes are an important part of diligent management by services providers. However, they also present an obstacle to CYP accessing carers at short notice and, as a result, there is now a gap in the provision of urgent respite services and emergency accommodation for vulnerable CYP.

Legal Aid NSW acknowledges that another contributing factor is the shortage of available carers and accepts that there will be other factors that have led to the current reliance on ACAs. We consider that these factors should be identified, with a view to winding back reliance on ACAs, and increasing the availability of respite carers in the community who can provide care to a CYP in an emergency.

We respond to the terms of reference below.

Recommendations

Recommendation 1

- ACAs should only be used for the shortest possible period and only, where all alternatives have been exhaustively considered, and placement in ACA would avoid greater detriment to the CYP, for example, where the CYP would otherwise remain in custody.

Recommendation 2

- NSW Government should review the availability of home-based emergency/respite accommodation and carers for vulnerable CYP across the State with the view to reducing reliance on ACAs, and increasing the availability of these carers.

Recommendation 3

- The placement of a CYP in an ACA should be subject to a regime of specialised reviews by DCJ at least weekly, to monitor the well-being of the CYP, and to ensure that finding a permanent placement continues to be prioritised, given the undesirability of the CYP remaining in the ACA.

Recommendation 4

- Use of ACAs should be carefully planned to ensure that the accommodation is:
 - a. available for the length of time the CYP is expected to need it, thus avoiding moving CYP from one motel to another, and
 - b. located in the same area, or within short distance of the area where the CYP attends school and has social connections and supports.

Recommendation 5

- CYP should be consulted in the process of being placed in an ACA and efforts made to comply with CYP's requests regarding staff who supervise them – for example, requests that staff be of particular gender to allow CYP to feel safe with the staff member.

Recommendation 6

- To reduce risk to CYP and staff, efforts should be made to limit the number of different staff members who supervise the CYP. Staff who supervise CYP in ACAs should also engage positively with CYP and be trained to support CYP to develop independent living skills.

Recommendation 7

- DCJ should put processes in place to ensure that CYP's case plans and goals continue to be supported while the CYP is in ACA, instead of being placed on hold.

Recommendation 8

- The *Joint Protocol to reduce the contact of young people in residential OOHC with the criminal justice system* should be amended to apply to CYP in all forms of OOHC, including ACAs.

Recommendation 9

- All service providers involved in the care of CYP in OOHC should improve the support they provide to CYP moving between placements and ensure that all relevant information regarding the CYP is communicated to their new service providers.

Recommendation 10

- CYP living in ACAs who are on bail should be supported to comply with their bail conditions by:
 - a. Ensuring their stay in ACAs is as short as possible, and they are moved to more stable and suitable accommodation at the earliest opportunity.
 - b. DCJ and the ACA provider notifying the CYP's legal representative of any change or proposed change of the CYP's address as soon as possible.
 - c. DCJ informing police or the court that a CYP is or will be living in ACAs so that the bail authority can take this into account when imposing the CYP's bail conditions.

3. Pathways to ACAs and transitions between placements (ToR A)

3.1 CYP with complex needs

CYP with complex needs, disability, neurodivergence, challenging psycho-social behaviour and experiences of trauma are more likely to be placed in ACAs because it is more difficult to find placements that can accommodate their needs, and previous placements are more likely to have broken down because of a failure to adequately assess and treat or accommodate their needs.

Whilst we appreciate that in some circumstances an ACA may be the only immediate option, we have observed that CYP often remain in ACA for extended periods of time, undermining the opportunities for the CYP to engage in pro-social environments, including education, and access interventions, treatment and support.

3.2 CYP in remote/regional areas

CYP living in remote or regional areas are more likely to be placed in ACAs due to the paucity of other local placement options, meaning the options available to DCJ are to move them hundreds of kilometres from their families and country, or place them in an ACA.

Case Study: Joe's story²

We assisted Joe, an Aboriginal young person living with mental health challenges and intellectual disability. Joe had connections to a major regional town, including being case managed by a service based there. Joe was on strict bail conditions which made it extremely difficult for him to be placed with other CYP.

Joe's case manager arranged for Joe to reside in an ACA at a motel out of town, believing this would distance him from the negative influences which had led to his offending behaviours. There was little to no negotiation or consideration given to the impact that this would have on Joe's overall health, loss of connection to his culture and ability to maintain connections. Being placed out of town dislocated Joe from his community, schooling, friends, relatives, mental health and disability supports.

The small regional town where he was placed offered little to no supports. It was detrimental to Joe's health and wellbeing to reside in a studio motel room with a paid worker 24/7 out of his home area.

Joe was unable to attend school in his new area and was forced to enrol in distance education. There was no gym available for Joe to join. Joe was not enrolled in any extracurricular activities in his new town.

Eventually, a full-time placement was located almost 600 kilometres from his home. While Joe was initially upset by being so far from his roots, he preferred this option to remaining in a motel for the foreseeable future.

Joe eventually relocated and began to establish a home for himself with a new agency.

3.3 Transitions between placements

In our experience CYP who are placed in ACA are often moved between different ACAs. This can be in the CYP's best interests, such as an alternative hotel becoming available closer to the CYP's family, or for reasons irrelevant to the CYP and potentially

² All case studies in this submission have been de-identified.

avoidable with improved planning, such as the availability of continued bookings during busy seasons like school holidays.

Case Study: Sam's story

We acted for Sam, a young Aboriginal person from South Sydney, who was supported by a NDIS provider also based in that area. DCJ placed Sam in a number of ACAs in different parts of the city a significant distance from his home community over a period in excess of 10 months. DCJ reported these were the only suburbs where accommodation was available.

Sam was evicted from some ACAs by the accommodation providers due to property damage/unsociable behaviour. Other times, he had to be moved from one accommodation provider to another in a completely different suburb because the initial accommodation was booked out. Some placements lasted only a few days.

Being moved between placements so frequently meant Sam's attendance at school and cultural programs was more difficult, as was maintaining relationships with friends and family, as neither he nor they could easily visit.

For a period, Sam's bail conditions included a requirement for him to be at his place of residence, an ACA, by 6 pm. On a number of occasions, he breached this condition as a result of lengthy and unreliable public transport journeys he took from South Sydney (his home community) where he was visiting friends, to his ACA in another part of Sydney. The breaches exposed Sam to a significant risk of receiving additional charges and spending additional time in custody. During this period, Sam also accrued a number of fines for travelling on trains without a ticket.

During the 10+ month period Sam spent in ACAs, DCJ raised the option of a few Intensive Therapeutic Care (ITC) placements, however, some of these were not suitable as they did not match his needs and another was located on the Central Coast, even further from Sam's family and support network than the ACAs.

3.4 CYP charged with offences

CYP who have been charged with offences are particularly likely to find themselves in ACAs because they may be considered unsuitable for many permanent placement options. This may be because of allegations of threats or violence against another CYP or carer in a previous placement, property damage to a previous placement, or offences of a sexual nature.

Case Study: Allan's story

We acted for Allan, a young Aboriginal person living with autism spectrum disorder and experiences of trauma. Allan's grandparent relinquished his care after Allan's other grandparent passed away and the remaining grandparent was unable to care for Allan alone. Allan was placed in a residential care property run by an OOHC provider, under a Temporary Care Agreement.

In that property, Allan was arrested and detained and charged with violent offending. The OOHC provider then refused to have Allan back at their residential care property, stating he was a risk to other CYP in their care. Allan was offered and agreed to being placed in an ACA because he had limited alternative options.

4. The decision-making process leading to an ACA (ToR B)

CYP are usually not consulted in the process of being placed in an ACA. In the rare cases where they are consulted, the CYP usually has minimal alternatives, for example, remaining in custody.

CYP who have been removed from the care of their families have, by definition, had challenging relationships with the adults in their lives and experienced trauma, usually at the hands of adults. Being placed in an ACA, usually the confined quarters of a hotel or motel room, with carers who are often adults unfamiliar to the CYP is a daunting prospect to any CYP, but even more so to CYP with traumatic histories.

Due to the challenges of staffing ACAs, there is often a high turnover of staff and staff are less likely to be culturally or gender appropriate for the CYP, or to have been trained in therapeutic care. This can lead to CYP feeling alienated or unsafe in the placement.

A CYP who has an alternative option, such as staying with a friend or acquaintance, will usually choose the alternative rather than an ACA placement. This can often lead to CYP choosing to place themselves in unsafe or undesirable situations to avoid an ACA, which they deem to be even more unsafe or undesirable.

Case Study: Rose's story

We acted for Rose, a 17-year-old Aboriginal woman living with intellectual disability, mental health challenges, and history of child sexual abuse.

A number of Rose's OOHC placements broke down because her disability and trauma history made it difficult for her to maintain relationships with the carers and other CYP she was placed with. Rose accrued several charges for violent offending when she lashed out against fellow residents and carers.

DCJ arranged a series of ACAs for Rose at motels across Sydney. DCJ had difficulty securing carers to supervise Rose because of her complex needs and history of violent offending.

Rose specifically requested female carers given her history of being sexually assault, however, the care provider struggled to source females so most of the carers she was placed with were adult men who Rose had never met before. We observed that both Rose and the carers often appeared unsettled in these placements. As a result, Rose consistently absconded from the ACAs, choosing to live with a series of friends and boyfriends who were not pro-social influences on Rose. During this time, Rose was the victim of physical, sexual, emotional and financial abuse.

5. The treatment of children and young people in ACAs (ToR C)

We are concerned that ACAs generally do not meet the cultural, psychological and physical needs of CYPs. There is also very limited capacity to tailor ACAs to meet the needs of CYPs, particularly vulnerable CYPs with highly complex needs.

5.1 Lower standard of care

ACAs are often managed by non-accredited agencies. The standards of these NGOs differ from those of accredited agencies. This may be acceptable if ACAs last only a few days, but many CYP spend months in ACAs with staff who lack the skills required to provide the level of therapeutic, trauma-informed care they require.

In our experience many staff meet the bare minimum requirements of supervising a CYP and make little effort to have a positive impact on the CYP's life. They cover their shift for the approximately 7 hours they are rostered to, then are unlikely to ever see the CYP again. Many CYP report staff being occupied on their mobile phones throughout the shift and barely engaging with the CYP. We consider that at a minimum, staff who supervise CYP in ACAs should be expected to engage positively with CYP, including being trained to support CYP to develop independent living skills such as personal hygiene, making a bed, keeping a house clean, cooking and washing.

As carers supervising ACAs are shift workers, CYP often have three different workers coming in and out of their placement every day. This can result in as many as 21 different unfamiliar adults spending time in the CYP's 'safe place' over the course of a week. We are concerned about the impact of this on CYP who are already highly vulnerable, and the high levels of uncertainty and anxiety it can create. Some CYP have told our lawyers of their distress about being dropped off at school in the morning not knowing who will pick them up that afternoon. They have expressed anxiety that a staff member coming on for the next shift would not know to pick them up from school and that they would be left waiting alone outside school.

Case Study: Kylie's story

We acted for Kylie, a 17-year-old Aboriginal woman.

Kylie was placed in an ACA at a motel in Sydney, supervised by an inexperienced young carer. Kylie expressed that she was bored and thinking of leaving the motel to meet a man she had met that day on Snapchat. The carer looked up from her own mobile phone to encourage Kylie to leave the placement and meet the man.

Kylie did so and was sexually assaulted by him later that evening.

5.2 Lack of continuity of care

The shift work nature of supervising an ACA means there is very little continuity from one worker to the next, making it difficult for CYP to have routine and learn independent living skills. Hotels do not generally have cooking facilities, so CYP often eat fast food meals during their time in an ACA.

In our experience, CYP's case plans and goals are often put on hold for the duration of their stay in ACA, despite many ACAs stretching out for months. The CYP's case worker is generally focussed on looking for a more stable placement option and once found, all resources are utilised to transition the CYP. In the meantime, the CYP could have been working towards goals/future planning, however this often does not occur.

Occasionally ACAs are staffed by a CYP's existing caseworkers, such as NDIS funded support workers. We have observed that in these circumstances CYP often have a more positive ACA experience, as they are supported by a more experienced and consistent team who have worked with the CYP for a longer period and have a stronger relationship of trust and familiarity. The caseworkers travel between the various ACAs with the CYP and continue progressing existing casework goals. Most CYP in ACAs do not have a casework team who can take on this role.

5.3 Location of ACAs

Hotels and motels where CYP are placed are usually not located where the CYP was residing prior to entering the ACA, often isolating the CYP from their friends, routines, community, and school. This can exacerbate any existing mental health challenges faced by the CYP. It can also cause friction between CYP and carers as CYP frequently abscond from ACA placements to go back to familiar areas. For young people with bail conditions requiring them to reside at the ACA, frequent absconding also places them in breach of bail and at risk of spending time in custody.

We have also been told of instances where CYP have stayed in DCJ offices with staff when there has been no accommodation available.

5.4 Contact with police and application of the Joint Protocol

We have observed that CYP living in ACAs have more involvement with police than CYP living in other forms of OOHC. The state-wide *Joint Protocol to reduce the contact of young people in residential OOHC with the criminal justice system* (the **Joint Protocol**) does not apply to ACAs, and CYP in ACAs report to our lawyers that their carers call police to manage the CYP's behaviour more frequently than in other types of placements. Legal Aid NSW considers that the Joint Protocol should be amended to apply to CYP in all forms of OOHC, including ACAs.

CYP are also more likely to display challenging behaviours in ACAs than longer term placements because they are unsettled, out of their ordinary routine and spending time with carers they do not have an ongoing relationship with. Carers are often casual, inexperienced and ill-equipped to deal with the complex young people who are most likely to be placed in ACAs. This combination of a distressed and vulnerable young person with complex needs and an inexperienced temporary carer is often fraught for both parties. This can lead to circumstances where the carer may feel they have no option but to call the police to help manage the CYP's behaviour.

In our experience bail is also much more complex for CYP placed in ACAs compared to other placements. CYP in ACAs can be more likely to abscond and if residing at the ACA is a condition of the CYP's bail, this will often lead to the CYP breaching their bail, being placed in custody and charged with further offences. As CYP living in ACAs are frequently relocated to different ACA addresses until more stable accommodation is available, their bail is also often subject to multiple variations, which can make it more difficult for the CYP to comply with.

5.5 Inappropriate form of accommodation for CYP

In our experience ACA settings are often inadequate in therapeutic support, safety, facilities, transport and comfort.

ACAs, which are usually hotel or motel rooms, generally lack suitable spaces for a CYP to play, relax, study and have privacy. For example, there is usually no backyard, separate television or gaming console for the CYP to engage in age-appropriate leisure activities. ACAs are generally smaller in size and more confined, which can exacerbate tensions and lead to allegations of threats or intimidation by the CYP towards staff.

Case Study: Dennis' story

We worked with Dennis, a 14-year-old Aboriginal young person experiencing depression and suicidal ideation after going into care because his family care had broken down.

While placed in an ACA in a hotel, Dennis was able to self-harm by taking a knife from the hotel kitchenette and cutting himself.

We believe this would have been less likely to happen in other types of placements which are tailored to suit the care of CYP, because, for example, there would be stricter controls on sharps or better supervision by more experienced staff.

Case Study: Billy's story

We acted for Billy, a young child under 10 years of age. Billy's carer sought respite care for Billy following a period where his behaviour was difficult to manage and his carer was concerned about the risk of harm to other children in the carer's home.

Billy was in respite care for a month, which consisted of a series of ACA placements in different Air BnB properties supported by varying paid carers. At one of these placements Billy alleged he was sexually assaulted by a carer.

Billy has complex diagnosis which require stability and was also adjusting to different medication. It is difficult to reconcile the way ACAs were used in this matter with Billy's interests and needs.

Case Study: Riley's story

We acted in proceedings regarding the care of Riley, a one year old baby who was placed in kinship care, and was accommodated in an ACA along with his kinship carer.

Riley and his kinship carer lived in a series of hotels for around 10 months while DCJ looked for permanent accommodation for them both.

The hotel environment and constant moves were difficult for both Riley and his kinship carer, who eventually relinquished care. It was also an inadequate and inappropriate environment for Riley to spend such a significant amount of his young life.

5.6 Inadequate follow-up care

Our CYP clients report limited support when transitioning out of ACAs and to different service providers. In some instances, there is no consistent caseworker or carer that assists the CYP to adjust to their new living arrangements, which may be a vastly different environment to the ACA and in a different geographical area.

Our clients also report that their transition out of the ACA can be disorganised and mismanaged, with key information, such as the CYP's court date, not communicated to their new service providers. We have also observed that issues that emerge during the ACA placement or earlier and require follow-up are often missed or significantly delayed because of a lack of communication between service providers.

Recommendation ???

- ACA service providers should improve the support they provide to CYP transitioning out of ACAs and ensure that all relevant information regarding the CYP is communicated to their new service providers.

6. The short, medium and long-term impacts of ACAs (ToR D)

6.1 Absconding from ACAs

Many CYP abscond or spend significant periods of time outside of their ACA placement, as it is often an alienating and uncomfortable experience with limited opportunities to connect with friends, family and other members of their community.

In our experience CYP in ACA placements are often accused of breaching curfew or non-compliance with directions as they want to be in the ACA setting for as little time as possible.

Case Study: Tye's story

We acted for Tye, a young person placed in an ACA for around five months.

Tye breached his bail conditions at least five times while in the ACA placement, until the court ultimately dispensed with bail because it felt the agency was utilising the bail conditions for behaviour management purposes.

Prior to dispensing with bail, on one occasion the carers called the police to the hotel when Tye refused to remain in the room which was the ACA placement. The furthest Tye had moved away from the unit was to the front of the hotel so he could smoke a cigarette (the room was a non-smoking room). When police arrived they searched Tye who was in the hotel lobby and he was arrested for the offence of custody of knife when a knife was located in his backpack.

The Children's Court Magistrate hearing Tye's matters requested Legal Aid NSW report the inappropriate use of bail conditions by Tye's carers to the care agency and DCJ and to remind both about the principles of Joint Protocol.³ This was not met with positive feedback from the agency responsible for Tye's care.

³ While the state-wide *Joint Protocol to reduce the contact of young people in residential OOHC with the criminal justice system* does not apply to ACAs, the principles that underpin it should be adopted in all OOHC settings.

Case Study: Keisha's story

We acted for Kiesha, who was placed in an ACA shortly after her parent relinquished care. Kiesha was placed in an ACA which was located about 40 minutes away from her parent. Kiesha had complex needs which were not adequately met while she was in the ACA.

Prior to being placed in the ACA, Kiesha had no matters on her criminal record and limited interactions with police and the justice system. This changed shortly after being placed in the ACA with Kiesha accruing many charges and spending significant periods of time in custody.

Ultimately, most of Kiesha's matters were finalised by way of mental health diversions. Kiesha was relocated several times to numerous locations across the state over the next 2 years, including being placed in ACAs at numerous points throughout her offending period. Her offending only ceased when Kiesha was placed in a secure facility.

Case Study: Russel's story

We acted for Russel, a 14-year-old Aboriginal boy from Northern NSW. At a very young age, Russel was placed in foster care with his younger brother with whom he shared a very strong bond.

When he was around 12 years old, Russel disclosed that he had been assaulted by his foster carer. DCJ removed him from his foster carer and placed him in various ACAs (often off country), but left his younger brother with the carer who Russel alleged had abused him.

Russel remained in ACAs in various hotel rooms for over six months. Russel would continually abscond from ACA and attempt to return to country and his younger brother. After absconding, he would commit property offences including shoplifting to feed himself and gain the funds he needed to return home.

Russel was arrested for these offences and granted bail multiple times, and placed back in an ACA. Russel told our lawyers he hated living in the ACAs and he would almost immediately abscond. The ACA provider reported Russel's breaches of bail to police and he would be arrested again. This cycle went on for over six months.

During this six month period Russel spent a total of 77 nights in custody while his matters were pending, sometimes due to delay in DCJ finding placements for him to be bailed to.

Legal Aid NSW eventually obtained a neuropsychological assessment for Russel which confirmed a diagnosis of FASD and indicated he was unfit to plead. All his charges were discharged.

Around that time DCJ agreed for Russel to reside with his Aboriginal mentor and Russel's offending and absconding ceased.

6.2 Challenging behaviour during placement in ACAs

In our experience, CYP are more likely to display challenging behaviours during the period of instability presented by an ACA, including property damage.

Case Study: Megan's story

We acted for Megan, a young Aboriginal person living with intellectual disability, challenging psycho-social behaviour, and experiences of trauma.

Megan was removed from her family in a small regional town in NSW. There were no residential care placements available there so she was moved 300 kilometres away, to a residential care home owned by DCJ in a larger regional town, while alternative placement options were investigated. When mice infested that property, she was moved into a series of ACAs in town, including a one-bedroom cabin in a caravan park and an Airbnb.

Her carers reported that Megan caused more than \$20,000 damage to the Airbnb property.

7. Alternatives to ACAs (ToR F)

Legal Aid NSW considers that ACAs should only be used for the shortest possible period and only where all alternatives have been exhaustively considered.

In addition, the placement of a CYP in an ACA should be subject to a regime of specialised reviews by DCJ at least weekly, to monitor the well-being of the CYP and to ensure that finding a permanent placement continues to be prioritised, given the undesirability of the CYP remaining in the ACA.

Legal Aid NSW accepts that ACAs currently play an important role in temporary and emergency situations where alternative placements are not yet available, such as where the CYP would otherwise remain in custody on remand. However we remain concerned that ACAs are used too often and inconsistently, as discussed further below.

In many instances we consider that it would be preferable for CYP to reside with home-based emergency/ respite carers in the community, and we suggest DCJ consider ways to increase the availability of these carers.

8. Other related matters (ToR G)

While ACAs are problematic for many reasons, they are currently a necessary emergency option where the inability to provide another type of accommodation will lead to a CYP spending unnecessary time in custody on remand.

In our experience there is significant inconsistency in how ACAs are used across the NSW. For example, in some parts of NSW CYP often languish in custody on remand for weeks subject to a condition under section 28 of the *Bail Act 2013*, where placement in an ACA would alleviate the lengthy time in custody. In other parts of NSW, CYP often spend 10+ months in ACAs for vague, unidentified reasons.

Case Study: Lamar's story

We acted for Lamar, a 14-year-old Aboriginal boy in the care of the state. Lamar was unable to apply for bail because DCJ were unable to provide a bail address. After several weeks of advocacy by Lamar's Legal Aid NSW civil and criminal solicitors, DCJ eventually provided a bail address.

The Magistrate hearing Lamar's bail application determined that by that time, it was too close to Lamar's sentence date, and refused to release Lamar. We consider that Lamar spent unnecessary time in custody because DCJ did not provide a bail address at an earlier stage.

Case Study: Callum's story

We acted for Callum, a 13-year-old charged with property damage and breaching an Apprehended Domestic Violence Order. The charges related to his mother who he ordinarily resided with. His mother relinquished care to DCJ as a result of the offending. Police arrested him and refused him bail as he had no address to be bailed to.

The court granted bail under section 28 of the Bail Act 2013, and his matter was relisted every two days for about two weeks for DCJ to report to the court about progress on securing accommodation for Callum. During this time, we communicated with DCJ regularly to stress the urgency of obtaining housing for Callum.

DCJ were reluctant to place Callum in an ACA, preferring him to remain in custody until an appropriate long-term placement could be found. Whilst long-term placement options are desirable, we considered that leaving Callum in custody was inappropriate. Callum had no criminal history, the charges were very minor and would not result in a custodial penalty if convicted, and the case against him was weak as police had no evidence rebutting *doli incapax*.

Callum's Legal Aid NSW lawyer eventually assisted Callum to apply for bail with a condition that Youth Justice staff transport him to the nearest DCJ office, which the Court ordered. DCJ then placed Callum in an ACA.

We have also observed that some CYP who live in ACAs over long periods show a reduced willingness and capacity to successfully live with other CYP, severely limiting accommodation options in the future. In our experience, in ACAs it is almost always a single child to an adult carer, and that a CYP can become used to this dynamic. Transitioning to a ITC residential placement with other children can be very difficult for some CYP and we have observed that there is often conflict with other young people, which can lead to involvement with the criminal justice system.



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