

SUBMISSION

Yfoundations' Submission

Authored by Natalia Gale

for the Inquiry into the
Protocol for Homeless People
in Public Places

Published by
Yfoundations Inc.

PO Box 3115
Redfern NSW 2016
Australia
ABN 20 512 756 029
Ph: (02) 8306 7900

www.yfoundations.org.au

Suggested citation: Natalia Gale, 'Yfoundations' Submission for the Inquiry into the Protocol for Homeless People in Public Places' (Submission, Yfoundations Inc, March 2020).

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License (CC BY-NC-ND 4.0). To view a copy of the license, visit <https://creativecommons.org/licenses/by-nc-nd/4.0/>

About Yfoundations

For over 30 years Yfoundations has been the NSW peak body representing young people at risk of and experiencing homelessness, as well as the services that provide direct support to children and young people.

Our vision: Creating a future without youth homelessness. We believe that all children and young people have the right to safety and stability, home and place, health and wellness, connections and participation, and education and employment (together these are the foundations of our organisation). We know these are the foundations for the prevention of, and pathways out of, homelessness.

Our values underpin all the work we do. We value:

- Young people;
- Justice and human rights;
- Diversity and inclusion;
- Optimism and hope;
- Courage and Integrity.

We know that homelessness is an interrelated issue. It requires a whole of government and service response. We need to be innovative, collaborative, and determined if we are going to end homelessness.

Safety and Stability



It is vital that all young people not only feel safe, but also are actually protected from risk factors that may impede their developmental process. During childhood and adolescence young people must receive the necessary support to ensure they develop a strong safety system, both internally and within their external networks. A strong and stable foundation will foster confidence and independence within a young person, which will promote active participation in community life.

Home and Place



It is vital that all young people have access to a safe, non-judgemental home and place. A comfortable place that they identify with and feel a strong connection to. A Home and Place should be an environment that promotes growth and fosters positive development.

Health and Wellness



It is vital that all young people, particularly during the formative stages of their growth and development, are physically, socially and emotionally well. To ensure this, young people must have access to all the necessary prerequisites for achieving health and wellness. Being well and feeling healthy, will promote self-worth, and ensure young people feel competent to participate in their communities.

Connections and Participation



It is vital that all young people are given the opportunity to develop and nurture the connections in their lives. Connections to friends, family, community and society promote resilience and social inclusion. Young people must be listened to and have the opportunity to influence outcomes. Positive connections and genuine participation in community life during the formative stages of childhood and adolescence enables a young person to build a strong positive foundation and prepares them for adult life.

Education and Employment



It is vital that all young people are given the opportunity to pursue their educational and professional goals. Education and training is crucial to the growth and development of young people. Education and training, including formal tuition and practical life skills, promotes self-confidence and independence and provides young people with the skills and competencies.

Introduction

Youth homelessness is a growing problem in Australia and with each Census comes an increase in the number of young people experiencing homelessness. We know however that the reality is much worse as many young people are 'hidden homeless' and not counted in official statistics. Hidden homelessness includes couch surfing, which is used to describe those couch surfing, living at a friend's or relative's place, or sleeping in temporary shelter, perhaps intermittently, but without guarantee of continued residency or permanency.¹

For the most part, young people experiencing homelessness are 'hidden homeless'. They move around from place to place looking for somewhere safe to sleep that night. During the 2016 Census, point-in-time data tells us that there were 1,279 young people sleeping rough across Australia, roughly 3%. It's important to recognise, however, that young people can transition in and out of homelessness or transition through different forms of homelessness over a given time period, including rough sleeping, and are therefore not captured in official statistics.²

The Protocol, part 6.3: Appropriate Responses to Children and Young People

The purpose behind the Protocol is to provide a framework for interactions between officials and homeless people in public places. The Protocol acknowledges that, like all other members of the public, homeless people have a right to be in public places and participate in public events.³

In recommending what an appropriate response to young people sleeping rough might look like, the Protocol highlights specific legal and policy requirements that apply, such as those professionals who have a legal obligation to make a report to the Child Protection Helpline, subject to factors such as their age, whether they are in out-of-home-care and whether they are at significant harm. The Protocol diverts signatories to relevant material that can provide further information on these matters, for example the 'keep them safe' website and the Children and Young Persons (Care and Protection) Act 1998.

This is not enough.

No young person under the age of 18 should be rough sleeping. It is a child protection concern as young people rough sleeping are likely to become the victims of crime or to put themselves in compromising situations to find a bed for the night. We know anecdotally that young girls in particular can fall prey to predatory behaviours by adult men. In the UK for example, many of the victims of grooming gangs were homeless.⁴

[1] J Fildes et al, 'Young People's Experiences of Homelessness: Findings from the Youth Survey 2017' (Report, Mission Australia, 2018) 4.

[2] Ibid, 12.

[3] Department of Family and Community Services, 'Protocol for Homeless People in Public Places: Guidelines for Implementation' (Protocol, NSW Government, May 2013) 5.

[4] Dawn Foster, It's Too Easy for Abusers to Prey on Girls with no Homes to Go To (4 March 2016) The Guardian

In Australia, online advertisements offer free accommodation in return for sex.⁵ Homelessness, including rough sleeping, is isolating, destabilising and traumatic, and its effects on young people whose development is not yet complete can be particularly devastating and long lasting. Homeless young people have been found to have much poorer physical and mental health than others their age. They have a notably higher incidence of reported self-injury and attempted suicide. They also have a greater likelihood of leaving school early, along with significantly higher unemployment rates than their peers.⁶ Simply put, the cost to society of failing to properly support young people experiencing homelessness is far greater than the investment in that support.⁷

What's more, the legal requirements highlighted in the Protocol are undermined by the current state of the child protection system and its limitations in responding to young people who are experiencing homelessness. For example, in 2017, just 32% of reports made to the Child Protection Helpline were allocated for a response by DCJ. Also, competing priorities – such as case complexity and vulnerability – may mean that a report 'screened in' as meeting the risk of significant harm threshold will not be allocated for a period of time, or will simply be closed.⁸

In addition, young people who sleep rough are not a homogenous group. Their characteristics are diverse in terms of age, gender, ethnicity, indigenous identity, nationality, disability, sexual orientation, and gender identity/expression, among others. This diversity means that each will have their own individual experiences of homelessness, risks and needs, and a one size fits all approach to responding to young people rough sleeping is inappropriate and fails to grasp individual complexities.

Lastly, when considering young people sleeping rough, the intent behind the Protocol - to respect the rights of those who rough sleep – is at odds with child rights enshrined within the United Nations Convention on the Rights of the Child (CRC). This states that:

- Children have the right to live a full life, Governments should ensure that children survive and develop healthily (art 6)
- Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them (art 19)
- Children who cannot be looked after by their own family must be looked after properly by people who respect their religion, culture and language (art 20)
- Children have the right to a standard of living that is good enough to meet their physical and mental needs (art 27)
- Children who have been neglected or abused should receive special help to restore their self-respect (art 39).

When a child rough sleeps, it represents a failure by the government to properly uphold the rights afforded to them under the CRC.

[5] ABC News, Online Ads Offering Housing in Exchange for Sex 'Exploitative' but Not Illegal' (18 September 2019)

[6] Fildes et al, above n 1, 4.

[7] David MacKenzie et al, 'The Cost of Youth Homelessness in Australia' (Research Brief, Swinburne Institute for Social Research, April 2016).

[8] NSW Ombudsman, 'More Than Shelter - Addressing Legal and Policy Gaps in Supporting Homeless Children' (Special Report to Parliament, NSW Ombudsman, June 2018) 11.

The Protocol is silent on the role signatories can take in diverting young people sleeping rough to support services. Key drivers of youth homelessness include domestic violence, relationship breakdown, substance abuse, and mental health concerns. Those sleeping rough are likely to suffer from complex trauma and need, not just accommodation, but intensive outreach support. It is essential, therefore, for there to be adequate availability of support services. Currently, many youth services are at capacity and there are few services that cater to the needs of young Aboriginal and Torres Strait Islander Australians.

A Child Rights Approach to Managing Rough Sleeping

In June 2017, the UN Committee on the Rights of the Child released authoritative guidance to signatory States – Australia is a signatory State – on developing comprehensive, long-term national strategies on young people experiencing primary homelessness using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child. This was informed by 327 young people across 32 countries.⁹

A child rights approach respects young people as right holders and recommends that decisions be made with the young person. It ensures respect for their dignity, wellbeing, health, development, participation, and non-discrimination. Key elements of the UN's Child Rights Approach include:

Legislative and Policy Review

The Protocol is undermined by legislation that directly contravenes the intent behind the Protocol. While the Protocol guides on what officials should do if they encounter people who appear to be homeless, “it does not override existing laws, statutory requirements or regulations. It does not reduce the power of organisations or their authority to enforce specific laws and regulations.”¹⁰ This means that those rough sleeping continue to be disproportionately impacted by legislation that restricts their right to enjoy public spaces.

In 2017, for example, the NSW Government passed laws granting police sweeping new powers to move on people occupying designated public spaces. The legislation was rushed through parliament, without proper scrutiny or consultation, to enable the state government to immediately dismantle Martin Place's ‘tent city’. The camp had served as a haven for people sleeping rough in the heart of Sydney's CBD for 12 months.¹¹

The government said that the new laws were necessary to ensure public safety, citing the presence of cooking utensils and gas canisters in the camp's open kitchen. However, the legislation itself makes no mention of public safety, and police need only show that a person's presence in a reserve materially interferes with the “reasonable

[9] UN Convention on the Rights of the Child, General Comment No. 21 (2017) on Children in Street Situations.

[10] Department of Family and Community Services, ‘Protocol for Homeless People in Public Places: Guidelines for Implementation’ (Protocol., NSW Government, May 2013) 6.

[11] Richard Clements and Lauren Stefanou, ‘New Police ‘Move On’ Powers’ (Briefing Paper, Redfern Legal Centre, September 2017) 1.

enjoyment” of the space by the public.¹²

Several community legal centres in NSW expressed concern about the disproportionate impact these laws have on people experiencing homelessness. As well as needlessly expanding the move on powers police already have, the legislation empowers police to seize belongings from homeless people and issue hefty fines for non-compliance.¹³

Young people, whether homeless or not, are often targeted by public space laws because of their visibility as a group in public spaces. However, we know anecdotally that the reason for this is that young people do not feel safe living alone on the streets and so tend to gather in groups and busy public spaces for better protection. This should come as no surprise given that it is well known that young people experiencing homelessness and living on the street are exposed to high levels of crime, especially violent crime. However, a gathering of young people may be seen as a ‘gang’, which may engender fear in others, while, ironically, the motivation was personal security to begin with.¹⁴ A Member shared an example of how young people can be targeted under these laws:

“There is a school in [location] where they have many marginalised kids. It does not have a playground or lunchroom. At break, the kids sit outside. The police are of the view that, collectively, these kids are a cause of crime in the area. They give move on directions with no basis but there is nowhere for [the young people] to go. The problem is that if you fail to comply, it’s an offence even if given without legal basis. One kid was with a kid who was issued a move on direction, the police then told them to move on as well, they said no, they said they weren’t doing anything. The police asked them for their details to charge them, so they ran away, and the police chased them and arrested them.”

Similarly, a report into the Suspect Targeting Management Plan, a police intelligence tool that uses risk assessment to identify suspects and a policing program that guides police interaction with individuals who are subject to the program, highlighted that it disproportionately targets young people, particularly Aboriginal and Torres Strait Islander young people, and has been used against children as young as ten.¹⁵

The NSW Government should assess how laws and policies can be improved to reflect their unintended impacts on young people experiencing homelessness and those rough sleeping and remove provisions that directly or indirectly discriminate against rough sleepers, and abolish offences that criminalise and disproportionately affect young people experiencing homelessness, such as breach of curfews.

The NSW Government should introduce legislation, or amend legislation to include provisions, for young people in rough sleeping situations. The act should be

[12] Ibid.

[13] Ibid.

[14] Monica Taylor et al, ‘Nowhere to Go: The Impact of Police Move-On Powers on Homeless People in Queensland’ (The University of Queensland, November 2006) 85.

[15] Vicki Sentas and Camilla Pandolfini, ‘A Study of the Suspect Targeting Management Plan’ (Report, Youth Justice Coalition, 2017) 1.

implemented by enabling policies, mandates, operating procedures, guidelines, service delivery, oversight and enforcement mechanisms, and developed in collaboration with key stakeholders, including young people.

Comprehensive Child Protection Systems

It is important to invest in the development and strengthening of the current child protection systems to ensure that they have the capacity to intervene early where there are child protection concerns, as well as to respond to young people sleeping rough. The system needs to provide a continuum of care across all relevant contexts including prevention, early intervention, street outreach, helplines, drop-in centres, residential care, family reunification, foster care and other short and long-term living options.¹⁶

Recently, the Tune Review of the Child Protection System in NSW found that there are a number of systems failures that contribute to poor outcomes for vulnerable families and children in OOHC. For example, vulnerable families and children have needs that cross the boundaries of government agencies and the lack of cohesion and overall strategy undermine the ability of government to achieve measurable outcomes. Instead, access to timely help remains a challenge. The system is characterised by gaps in service provision and great variability in the availability of services across locations, particularly rural and remote. What's more, many interventions are not aligned to the evidence base and as many as 67% of programs in place to protect vulnerable young people have not been evaluated.¹⁷

The NSW Government should ensure that the child protection system is client-centred, that funding and expenditure are aligned with required outcomes, collaborative and coordinated across relevant agencies and services, and preventative rather than crisis-driven.

Capacity Building

The NSW Government should invest in training on child rights, child protection and the local context of youth homelessness for all professionals who may come into contact with young people experiencing homelessness and sleeping rough, particularly for the police who are likely to be the first responders to young people sleeping rough. Current relations between the NSW Police Force and young people experiencing homelessness are characterised by intense distrust and a perception that the police are biased and discriminatory in their use of discretionary powers to regulate public space. These fraught relations are particularly acute for Aboriginal Australians.

Unfortunately, the unreasonable perception by society of young people as threatening is often echoed in police treatment of young people, and broad powers such as the move on powers facilitate this. Forsyth made the point that 'young people are typically cast as villains and occasionally victims, but not as community stakeholders with the

[16] UN Convention on the Rights of the Child, above n 9.

[17] David Tune, 'Independent Review of Out of Home Care in New South Wales' (Final Report, 2018).

rights to access public spaces freely and without harassment.’¹⁸

This training should draw on the expertise of not-for-profits and health professionals with experience in trauma-informed care and working with young people experiencing homelessness. Training should include attitudinal and behavioural change, knowledge sharing and skills development, and should encourage cross-sectoral cooperation and collaboration.

Service Provision

The Protocol must be underpinned by the adequate availability of services and the NSW Government should ensure the ability of young people to gain access to basic services such as refuge accommodation within a Specialist Homelessness Service, health supports including mental health, drug and alcohol rehabilitation and general practice, and education and culture, sport and information.

Currently in NSW, many of the above services are severely underfunded and overwhelmingly unable to keep pace with demand.¹⁹ Many of these services are heavily reliant on government funding to survive and function. With this comes a vulnerability to changes in government policy. Not only is there a need to ensure adequate funding to these core services, therefore, there is also a need to ensure greater stability of government funding.

Recommendations

Recommendation 1: The NSW Government to invest in and develop a Child Rights Approach to supporting young people experiencing homeless who are rough sleeping.

Recommendation 2: The NSW Government to assess how laws and policies can be improved to reflect their unintended impacts on young people experiencing homelessness and abolish offences that criminalise homelessness.

Recommendation 3: The NSW Government to introduce, or amend, legislation to include provisions for young people in rough sleeping situations.

Recommendation 4: The NSW Government to invest in the development and strengthening of the current child protection system to ensure that it has the capacity to respond to young people sleeping rough, as well as being a preventative tool.

Recommendation 5: The NSW Government to invest in training on child rights, child protection and the local context of youth homelessness for all professionals who may come into contact with young people rough sleeping.

[18] Monica Taylor et al, above n 14.

[19] AHURI, Two Thirds of Homelessness Services Don't Have Enough Funding to Meet Demand (9 May 2017).

Recommendation 6: The NSW Government to increase funding services that provide support to young people experiencing homelessness, as well as ensure greater stability of government funding for these services.