

# **A Viable Solution? Bail Hostels in the ACT**

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**Report prepared for the ANU Intern Program**

**August 2018**

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## I RECOMMENDATIONS

1. That data collection processes be established within ACT Corrective Services and the Justice and Community Safety Directorate (JACS) to provide targeted and accurate information regarding bail applications.
2. That three small houses or flats with three to four bedrooms each be acquired as bail hostels in the ACT, to mediate Alexander Maconochie Centre (AMC) overcrowding as a matter of priority.
3. That a private company, or a new office under ACT Corrective Services, be contracted or created to oversee these hostels.
4. That priority be given to remandees currently in the AMC who are eligible for bail with suitable accommodation.
5. That, prior to applying to the court to be referred to a bail hostel, confirmation be required from defendants not in the AMC, or their lawyers, that no alternate address is available.
6. That a feasibility assessment be conducted, which focuses on the systemic collection of useful data, to support a request for funding additional bail hostels in the ACT.

## II INTRODUCTION

This report will endeavour to answer whether, in practice, bail hostels offer an effective means of keeping individuals who are eligible for bail out of remand in custody, with a focus on the potential introduction of bail hostels in the ACT. In answering this question, a methodical approach will be taken. First, the overarching mandate of the ACT justice system will be considered, including barriers to its realisation and how bail hostels could answer these issues. Second, the success and related challenges of the well-established bail hostels in the United Kingdom will be explored. Third, any existing bail support schemes and accommodation assistance programs within Australian state and territory jurisdictions will be discussed. The report concludes that bail hostels should be established in the ACT, and gives recommendations

on what form these hostels should take, with reference to social, economic, and legal considerations.

### *A Limitations*

Wherever possible, current literature and statistics have been relied upon, however, this report identifies a lack of current international and national case analyses and reviews, and a significant absence of ACT-specific relevant data.

The number of people granted bail and the number of remandees in custody who are eligible for bail, but unable to meet conditions, is not accurately captured in the ACT. The rate of reoffending with a separate offence while on bail is not recorded. The marginal cost and admission cost of an extra person in the AMC is also unknown. These data holes prevent an exact cost-benefit analysis from being conducted in this report, however, enough information exists to make broader determinations about the desirability of bail hostels.

## III RATIONALE

### *A ACT Justice System*

The Alexander Maconochie Centre (AMC), opened on 30 March 2009, is the only prison facility for adults in the Australian Capital Territory (ACT).<sup>1</sup> The preamble of the *Corrections Management Act 2007* (ACT) states that ‘sentences are imposed on offenders as punishment, not for punishment’ and that ‘the rehabilitation of imprisoned offenders and their reintegration into society’ should be promoted in the management of all persons who are lawfully detained.<sup>2</sup> Further, section 19 of the *Human Rights Act (2004)* (ACT) requires that all persons deprived of liberty ‘be treated with humanity and with respect for the inherent dignity of the human person’,<sup>3</sup> and that an accused person ‘be treated in a way that is appropriate for a person who has not been convicted’.<sup>4</sup> The realisation of these mandates is impeded by the overcrowding of

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<sup>1</sup> Anita Mackay, ‘The Road to the ACT’s First Prison (The Alexander Maconochie Centre) was Paved with Rehabilitative Intentions’ (2012) 11(1) *Canberra Law Review* 33, 33.

<sup>2</sup> *Corrections Management Act 2007* (ACT) preamble ss (3), (4)(c).

<sup>3</sup> *Human Rights Act 2004* (ACT) s 19(1).

<sup>4</sup> *Human Rights Act 2004* (ACT) s 19(3).

the AMC and the detention of persons who are eligible for bail, but cannot meet accommodation requirements as discussed further below.

In the ACT, a presumption in favour of bail exists in relation to all minor offences attracting less than 6 months imprisonment or a fine.<sup>5</sup> However, charges for more serious offences do not have a presumption in favour of bail, and charges for murder and serious drug offences have a presumption against bail.<sup>6</sup> Where the accused is eligible for bail, the police or the court may impose conditions, including that they 'reside at a stated place'.<sup>7</sup> Conditions are used to reduce the risk of absconding, offending, harassing or endangering others' safety, or interfering with evidence prior to the court hearing.<sup>8</sup> According to the WA Auditor General's Report, the most difficult conditions to meet are providing surety and a residential address,<sup>9</sup> a finding which reflects anecdotal evidence in the ACT. Consequently, individuals may be eligible for bail, but unable to fulfil the condition of residing at a certain place.

## *B Impacts of Remand in Custody*

### *1 Theory*

In a 2005 observational study, Edith Cowan University in Western Australia collated research on the impacts of being held on remand in custody on the individual, their family and society as a whole.<sup>10</sup> Seven major adverse impacts are recorded in the study:<sup>11</sup>

1. A positive relationship between being held on remand in custody and pleading guilty, being found guilty or receiving a custodial sentence.
2. Loss of employment and accommodation, leading to a higher likelihood of being refused bail later, being unable to pay a fine or surety, and facing barriers to successful reintegration in society.

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<sup>5</sup> *Bail Act 2004* (ACT) s 8.

<sup>6</sup> *Ibid* ss 9, 9C.

<sup>7</sup> *Ibid* s 25(4)(c).

<sup>8</sup> *Ibid* s 22.

<sup>9</sup> Office of the Auditor General Western Australia, *Management of Adults on Bail*, Report No 10 (2015), 13.

<sup>10</sup> Alfred Allan et al, 'An Observational Study of Bail Decision-Making' (2005) 12(2) *Psychiatry, Psychology and Law* 319.

<sup>11</sup> *Ibid*, 320.

3. Adverse impacts on legal representation, such as being unable to afford legal fees and higher legal fees due to lawyers needing to undertake tasks that could otherwise be completed by the defendant.
4. Increased 'risk of physical and sexual assaults and of contracting communicable diseases'. This includes a higher prevalence of suicidal and self-harm tendencies.
5. Societal stigmatisation from being in custody and negative impacts on familial and community relationships, adversely affecting the financial and emotional integrity of the individual's family.
6. The possibility of higher rates of recidivism, due to exposure to 'hardened criminals' and not having access to constructive programs while on remand.
7. Higher rates of incarcerations and strain on prisons, increasing financial burdens on society.

Overcrowding also decreases living conditions in prisons, such as less visits, privacy and programs, and an increase in the risk of prison unrest and substandard conditions.<sup>12</sup> Due to these severe impacts, even measures to prevent unnecessary imprisonment which at first appear costly may ultimately benefit the economic and social welfare of the public and the individual.

## 2 Statistics

At 11 June 2018, the population of the AMC was 504 detainees, 107.9% of the design capacity,<sup>13</sup> and 10 to 15% more than the recommended capacity.<sup>14</sup> One hundred and ninety one (37.9%) of these 504 detainees were unsentenced or on remand in custody,<sup>15</sup> including 37 Indigenous men, and ten Indigenous women and 14 non-Indigenous women.<sup>16</sup> Fifty nine

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<sup>12</sup> See, eg, Donald Specter, 'Everything Revolves Around Overcrowding: The State of California's Prisons' (2010) 2(3) *Federal Sentencing Reporter* 194, 194-195; Mark Harvey, 'Living Conditions of Life in Prisons' (2018) 65(1) *Probation Journal* 101, 101-102.

<sup>13</sup> Office of the Inspector of Correctional Services Data, 'Survey of Remand-Only Detainees 11 June 2018'.

<sup>14</sup> Select Committee on the Closure or Downsizing of Corrective Services NSW Facilities, NSW Legislative Assembly, *The Closure or Downsizing of Corrective Services NSW Facilities* (14 June 2013) [2.8].

<sup>15</sup> Office of the Inspector of Correctional Services, above n 13.

<sup>16</sup> ACT Corrective Services Data, 'Remand and sentenced by demographic snapshot 5 June 2018'.

percent of the female population were on remand, compared with 39% of the male population. This data shows that a disproportionately high percentage of women than men are remanded while awaiting trial.

More specific data regarding attaining bail was gathered in July 2018, through the Office of the Inspector of Correctional Services (OICS) conducting a self-administered survey of 67 remand-only detainees at the AMC.<sup>17</sup> The survey included two questions about, in effect, whether the person had been granted bail but the person could not meet conditions. OICS advised that responses to the questions were somewhat inconsistent, suggesting that the wording of the questions was misunderstood by some respondents. The OICS' interpretation of the answers suggest that 3-5 female remandees and as many as 13 male remandees were being detained due to not being able to meet bail conditions. A total of 18 in all equates to about 27% of the survey respondents. Although speculative, if this percentage was extrapolated to the entire remandee population it would equate to about 60 detainees in this situation, or 12% of the prison population.

Comparatively, of all 8,151 admissions to WA prisons in 2014, 20% (1,663) were individuals who were eligible for bail, but unable to satisfy conditions.<sup>18</sup> These percentages reveal that the number of individuals unnecessarily incarcerated around Australia and in the AMC is substantial, and significantly impacts strain on prison resources.

Another consideration relates to individuals who are granted bail, but later breach their residence condition and become remanded in custody. In NSW, the third most likely condition to be breached is residence, at 8.6 per cent (607) of total breaches in 2016.<sup>19</sup> The proportion of breaches in this category by Indigenous people was higher than non-Indigenous, indicating that having a stable residence is a more pronounced issue for Aboriginal and Torres Strait Islander people.<sup>20</sup> Of all technical breaches, one in five defendants are consequently denied bail and remanded in custody,<sup>21</sup> indicating that approximately 120 defendants in NSW in 2016 were remanded in custody after breaching their residence condition. If these individuals had access

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<sup>17</sup> Office of the Inspector of Correctional Services, above n 13.

<sup>18</sup> WA Department of Justice Data, 'Adult Custodial Receptions – 1 Jan 2014 to 30 Jun 2018'; Office of the Auditor General Western Australia, *Management of Adults on Bail*, Report No 10 (2015), 13.

<sup>19</sup> Neil Donnelly and Lily Trimboli, 'The Nature of Bail Breaches in NSW' (Issue Paper No 133, NSW Bureau of Crime and Statistics, May 2018) 6.

<sup>20</sup> Donnelly, above n 19.

<sup>21</sup> Ibid 10.

to suitable accommodation when they were initially bailed, or could be bailed to a more stable address after breach, it is possible that the courts would remand less defendants in custody.

### *C Bail Hostels*

Bail hostels are ‘residential establishments that accommodate people as a condition of their bail’,<sup>22</sup> and are widely used in the United Kingdom. However, little research has been conducted into the effectiveness of these hostels in meeting stated objectives, and the majority of comprehensive reviews were carried out during the 1970s and 1980s.<sup>23</sup> The theory behind bail hostels, born out of the United Kingdom, is that prison overcrowding is exacerbated by the remandee population, half of whom are unlikely to receive a final custodial sentence.<sup>24</sup> A high proportion of remandees in custody are imprisoned for petty crimes which do not warrant a custodial sentence or for which they are not found guilty.<sup>25</sup> Further, the risk of re-entry into the justice system for individuals who have spent time in prisons is higher than those bailed back into the community, and studies have shown a mild causative link.<sup>26</sup>

The NSW Bureau of Crime Statistics and Research found that individuals convicted of non-aggravated assault, and to a smaller degree burglary, were ‘slightly more likely to reoffend’ if they received a custodial sentence,<sup>27</sup> but did not quantify the exact increase in risk associated with incarceration. This study took into account a considerable number of variables, such as other convictions, age, and prior prison experiences, in comparing recidivism rates. Among convicted criminals, therefore, research does show that incarceration increases the likelihood of reoffending. It is likely that this trend would also be evident in bailees and remandees, thus keeping people charged with an offence out of prison and reducing the likelihood of a custodial sentence furthers the justice reinvestment agenda.

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<sup>22</sup> Rowena Johns, *Bail Law and Practice: Recent Developments* (Briefing Paper No 15/02, Parliamentary Library, Parliament of New South Wales, 2002) 3.

<sup>23</sup> See, eg, P I Barrett, ‘An English Bail Hostel’ (1976) 20(3) *International Journal of Offender Therapy and Comparative Criminology* 272; Giles Payne, ‘Bail Hostels: Between Bail and Jail’ (1989) 36(1) *Probation Journal* 37.

<sup>24</sup> F A Watson, ‘Success or Failure? Outcomes of Bailees at Hope House Hostel’ (1994) 24 *British Journal of Social Work* 597, 597.

<sup>25</sup> *Ibid* 597-8.

<sup>26</sup> See, eg, Don Weatherburn, ‘The Effect of Prison on Adult Re-Offending’ (Issue Paper No 143, NSW Bureau of Crime and Statistics, August 2010).

<sup>27</sup> *Ibid* 1.



In theory, bailing eligible alleged offenders into hostels rather than remanding them in custody reduces prison overcrowding, upholds the principle of innocent until proven guilty, and minimises the risk of reoffending.

#### IV UNITED KINGDOM

The first hostel housing defendants in the United Kingdom opened in 1971.<sup>28</sup> The accommodation scheme has changed over the decades, now comprising two types of facilities for bailees.

##### *A Approved Premises*

Throughout England and Wales, the National Probation Service operates or oversees 101 Approved Premises housing around 2,200 beds, of which 112 beds are reserved for women.<sup>29</sup> According to the National Offender Management Service, the ‘main purpose of Approved Premises (APs) is to provide intensive supervision for offenders or defendants who present a high or very high risk of serious harm’.<sup>30</sup> Residents include persons released from prison on license, those serving community sentences or on suspended sentences, and in a smaller proportion, individuals on bail.<sup>31</sup> The focus is heavily on the role of APs as a ‘public protection measure’,<sup>32</sup> not as an accommodation option ‘for offenders primarily in need of a housing solution’.<sup>33</sup> Due to the intense 24 hour security and staffing requirements, APs are also expensive to operate.

In the context of the ACT and this report, APs do not address the issue of persons who are otherwise eligible for bail being held on remand in custody. Individuals housed in APs are not eligible to be released into the community, unless they reside at a high security premise.<sup>34</sup>

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<sup>28</sup> Watson, above n 24, 598.

<sup>29</sup> NOMS Agency Board (UK), *Approved Premises*, Service Improvement Instruction PI 32/2014(2014) 8

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid 4.

<sup>33</sup> Ibid 9.

<sup>34</sup> Ros Burnett and Guy Eaton, ‘Factors Associated with Effective Practice in Approved Premises’ (Report No 65/04, Home Office (UK), 2004) 3.

Therefore, they do not exist for the class of person this report aims to address and their operation will not be explored in depth.

## *B Bail Hostels*

The primary accommodation option for individuals who are eligible for bail but do not have suitable accommodation is administered under the Bail Accommodation and Support Service (BASS), which was established through contract by the British Labour Government in 2007.<sup>35</sup>

### *1 Ownership and Operation*

The initial contract was awarded to ClearSprings Ltd, a transport and accommodation provider, but was given to another private company, the Stonham branch of Home Group, from June 2010.<sup>36</sup> Stonham resolved not to bid for the 2018 tender, leading to a new contract with a third company, Nacro.<sup>37</sup> As handover of the service is still taking place, operations under the eight year contract with Stonham will be the focus of this analysis.

Home Group is a charitable organisation that provides almost 55,000 affordable houses to 120,000 people throughout the United Kingdom,<sup>38</sup> with only 657 places being offered through the BASS scheme under the Stonham branch.<sup>39</sup> The services provided by Stonham under the BASS are reviewed by the Ministry of Justice, and are also subject to internal audits and external review by The Tenants Services Authority.<sup>40</sup>

### *2 Facilities*

Two hundred properties are set aside for bailees in England and Wales.<sup>41</sup> They are either small houses or flats accommodating two to four people of the same gender, and are scattered throughout residential areas. As the properties are normal residential buildings, no planning

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<sup>35</sup> Pat Strickland, 'The Bail Accommodation and Support Service' (Briefing Paper No 05774, House of Commons, 2015) 3.

<sup>36</sup> Ibid.

<sup>37</sup> Home Group News, *Eight years of BASS success at Home Group* (23 March 2018) Home Group <<https://www.homegroup.org.uk/Media/News/Home-Group-news/Eight-years-of-success-with-BASS-at-Home-Group>>.

<sup>38</sup> Home Group, *It's Good to Be Home*, Annual Review (2015) 10.

<sup>39</sup> Strickland, above n 35, 4.

<sup>40</sup> Stonham, BASS, (2018) Home Group <[www.stonham-bass.org.uk/frnHomepage.aspx](http://www.stonham-bass.org.uk/frnHomepage.aspx)>.

<sup>41</sup> Stonham BASS, BASS, Impact Pathways <<http://www.impactpathways.org.uk/BASS/Pathway-Services/>>.

permission is required to build or repurpose them.<sup>42</sup> Within these homes, each defendant has a private bedroom, while the rest of the spaces are shared. Entire properties may be used by one bailee if they have dependent children living with them.

### *3 Services Provided*

Stonham provides ‘low to medium levels of support’ to alleged offenders, in addition to accommodation.<sup>43</sup> The underlying objectives of these additional services are to assist alleged offenders in complying with their bail conditions, reintegrating into the community, avoiding recidivism, finding future long-term accommodation, and providing any necessary additional support to women.<sup>44</sup>

Each service user is allocated a Support Officer, who they must meet for a minimum of half an hour each week as part of their bail conditions.<sup>45</sup> A tailored support plan is developed and periodically reviewed for each service user, who stay at the hostel for an average of seven to eight weeks.<sup>46</sup> Stonham staff monitor the behaviour of residents, ‘give formal warnings as necessary’, and issue court and appointment reminders.<sup>47</sup> However, there is no ‘live-in’ supervision, with support officers being available from 8am to 8pm, and attending residences at various planned and unplanned times. In their 2015 Annual Report, Home Group states that ‘this year alone we have successfully helped 97% [of BASS users] move onto secure accommodation and 91% achieve their objectives’.<sup>48</sup>

### *4 Eligibility*

Certain defendants and offenders will not be accepted into BASS accommodation:

- ‘Those convicted/charged with a sexual offence listed in schedule 3 to the Sexual Offences Act 2003 (UK);

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<sup>42</sup> Strickland, above n 35, 6

<sup>43</sup> NOMS Agency Board (UK), *Accommodation and Support Service for Bail and HDC*, Service Specification Instruction PI 10/2013 (2013) 16.

<sup>44</sup> Ibid 15.

<sup>45</sup> Ibid 17.

<sup>46</sup> Ibid 16.

<sup>47</sup> Strickland, above n 35, 7.

<sup>48</sup> Home Group, above n 38, 13.

- those who pose a significant risk to the public, to BASS staff or to others in a shared house;
- those under 18 years of age; or
- those unable to pay rent or claim housing benefit'.<sup>49</sup>

Service users are expected to contribute to rent, either from private funds or from their housing benefit. However, free temporary placements of two weeks will be considered for persons 'excluded from their previous home' and foreign individuals who are likely to be eligible for housing benefits, but have not yet secured their payments.<sup>50</sup>

### *C Benefits*

#### *1 Social*

In 1976, Barrett reported on the first six months of operation of an English bail hostel, Dickson House, established in December 1974.<sup>51</sup> Sixty men stayed at the hostel over the six months, with the duration of residence ranging between one day and 79 days.<sup>52</sup> A significant finding from the study was that apart from the unknown outcomes of the ten residents who broke bail, only two residents were given a custodial sentence at a detention centre and prison, respectively.<sup>53</sup> Barrett notes that 'had these residents been remanded in custody it is unlikely on past evidence that so many of them would have been dealt with by way of a non-custodial penalty'.<sup>54</sup> These outcomes promote the overarching goal of minimising the adverse impacts of imprisonment as outlined in the Edith Cowan University study, by reducing the number of people who are imprisoned both before and after conviction.

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<sup>49</sup> Strickland, above n 35, 5.

<sup>50</sup> NOMS Agency Board (UK), above n 43, 11.

<sup>51</sup> Barrett, above n 23.

<sup>52</sup> Ibid 257.

<sup>53</sup> Ibid 277.

<sup>54</sup> Ibid.

## 2 Economic

Using data from the United Kingdom, the cost per place per year in a public sector prison during 2016-17 was £22,839.<sup>55</sup> There is no corresponding data on the cost per place in bail hostels, however, a rough figure can be deduced. The new contract with Nacro cost £25 million for a period of three years.<sup>56</sup> The expected number of places to be provided under the contract is between 550 and 660.<sup>57</sup> The cost of the contract per year, divided by the number of beds, comes to roughly £12,600 to £15,100 per bed, per year. Therefore, a bed provided in a bail hostel costs the taxpayer between £7,700 to £10,000 less per year than a bed in a prison. In addition to this comparison, there is general consensus among the limited available scholarship that bail hostels are more cost effective than prisons.<sup>58</sup>

### D Limitations and Challenges

#### 1 Location

Balancing community safety and the presumption of innocence has proved difficult for the United Kingdom. In response to Parliamentary Questions on 15 January 2009, the Secretary of State for Justice stated that ‘we do not disclose the private addresses of defendants or offenders. The properties used in the Bail Accommodation and Support Service are the private rented homes of those receiving the service’.<sup>59</sup> However, the media drew attention to the use of bail hostels for convicted individuals being released on home detention curfew (HDC), rather than their primary use as accommodation for people on bail,<sup>60</sup> driving public pressure and criticism. The Government subsequently released the postcodes of the bail hostels.<sup>61</sup>

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<sup>55</sup> Her Majesty’s Prison and Probation Service (UK), ‘Costs per place and costs per prisoner by individual person’ (Annual Report and Accounts 2016-17, Ministry of Justice, 26 October 2017).

<sup>56</sup> Andy Ricketts, ‘Nacro Wins £25m Contract to Support Low-Risk Offenders’ *Third Sector* (online), 26 March 2018 <<https://www.thirdsector.co.uk/nacro-wins-25m-contract-support-low-risk-offenders/finance/article/1460469>>.

<sup>57</sup> Her Majesty’s Prison and Probation Service, ‘Freedom of Information Act (FOIA) Request – 112194’ (Ministry of Justice, 19 June 2017).

<sup>58</sup> Matthew Willis, ‘Bail Support: A Review of the Literature’ (Research Report No 4, Australian Institute of Criminology, 2017) 21.

<sup>59</sup> United Kingdom, *Parliamentary Debates*, House of Commons, 15 January 2009, col 911W (Mr Straw).

<sup>60</sup> James Kirkup, ‘150 Bail Hostels Built in Secret’, *The Telegraph* (online), 30 April 2008 <<https://www.telegraph.co.uk/news/uknews/1915831/150-bail-hostels-built-in-secret.html>>.

<sup>61</sup> United Kingdom, above n 59.

## 2 Employment

The Barrett study observed that while bail hostels are established to allow alleged offenders to maintain employment, just one of the sixty residents was already employed and maintained that employment, while only eighteen (30%) secured employment during their stay.<sup>62</sup> A key issue was the labouring job shortage arising from the economic recession, and that residents were predominantly unskilled.<sup>63</sup> Comparatively, a 2016 survey of 98 sentenced and unsentenced AMC detainees records that 44% were employed in the six months prior to incarceration, with occupations including ‘community and personal service, technician and trade, and professional positions’.<sup>64</sup> While the issue of unemployment is not as exacerbated in the ACT as it was in 1970s England, the experience of Dickson House should inform the inclusion of effective job-seeking support in a prospective ACT hostel.

In another study, bail hostel residents who were interviewed believed that living at the hostel impeded their ability to find employment, as prospective employers were less inclined to hire them when they recognised the address of the hostel.<sup>65</sup> Although a complex issue, the public should be reminded of the presumption of innocence of bailees, and that under s7(1) of the *Discrimination Act 1991* (ACT) it is unlawful to discriminate against someone on the basis of a charge that has not been finalised,<sup>66</sup> and where appropriate, the addresses of the hostels should be kept confidential.

## 3 Net-Widening

Pratt and Bray published a report in 1985 purporting that ‘hostel places were sometimes being used for residents who would otherwise have been bailed in the community and not for those who continued to be remanded in custody’.<sup>67</sup> Over a six month period, Pratt and Bray interviewed 59 of 64 residents who stayed at a hostel in Northern England. Fifteen per cent reported having no fixed address, while seven of the eight residents who had lived in the

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<sup>62</sup> Barrett, above n 23, 276.

<sup>63</sup> Ibid.

<sup>64</sup> J T Young et al, *Detainee Health and Wellbeing Survey 2016: Summary Results* (ACT Government, Canberra, 2017) 21.

<sup>65</sup> John Pratt and Kathryn Bray, ‘Bail Hostels – Alternatives to Custody?’ (1985) 25(2) *British Journal of Criminology* 160, 164.

<sup>66</sup> *Discrimination Act 1991* (ACT) s 7(1)(l).

<sup>67</sup> Pratt, above n 65, 161.

matrimonial home were accused of offences against other family members.<sup>68</sup> Additionally, the likelihood of offences being the “last straw” for parents’ is raised,<sup>69</sup> although this effect is not quantified. Therefore, at least 27% of residents either had no stable accommodation options, or their existing accommodation was unsuitable. Unfortunately, the report did not capture in depth the situation of other residents.

<i>Address previous to arrest</i>	<i>No. of residents</i>
Parents	19
Relatives	3
Marital Home	8
Friends	4
Lodgings	4
Rented accommodation	8
Hostel	4
No fixed address	9
<b>Total</b>	<b>59</b>

Pratt and Bray highlighted a systemic issue by asking residents ‘if there had been an alternative address available at the time bail was granted..., and, if so, why this had not been used’.<sup>70</sup> Of the 59 residents, 16 confirmed the existence of an alternate address, while only seven said it had been raised in court. As all residents were legally represented, Pratt and Bray drew the conclusion that defence lawyers used bail hostels as a more convenient, reliable tactic for securing bail for their clients, instead of attempting to secure bail at addresses ‘in suspect areas’ or where there was ‘some suspicion of home difficulties’.<sup>71</sup>

It is difficult to determine exactly how many of the residents would have been bailed into the community if not for the bail hostel. From the Pratt and Bray report, it appears that 27% would have been remanded in custody if they could not stay at the hostel, while it is likely that another 27% would have been bailed to an alternate address if the hostel was not an option. There is little indication of what may have happened with the other 46%.

## V AUSTRALIA

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<sup>68</sup> Ibid 164.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid 169.

<sup>71</sup> Ibid.

## *A Support Services Available in Australia*

An Australian Institute of Criminology (AIC) report, published in 2017,<sup>72</sup> provides a comprehensive overview of bail support programs offered in Australia. The majority of accommodation services are for children and young people, while support for adults is predominantly facilitating access to various services, such as drug and alcohol treatment, education, employment, and assisting with bail compliance. The work of the AIC can be accessed online and will not be repeated here.

### *1 Halfway Houses*

Halfway houses exist to accommodate individuals who have been released from prison and facilitate their reintegration into society. These services focus heavily on facilitating reintegration into society post-imprisonment, rather than supporting individuals in their preliminary dealings with the justice system.<sup>73</sup> While increasing accommodation at halfway houses for people on bail is an option, these services require more intensive support and supervision, and are already in high demand.<sup>74</sup> A survey undertaken by the South Australian Department for Correctional Services reveals that at least 10 per cent of people under community-based supervision 'were without safe, secure and stable housing'.<sup>75</sup> Halfway houses exist to address, among other issues, homelessness of ex-prisoners. While these services continue to be undersupplied for people exiting prison, expectations of assisting individuals on bail should not further strain their capacity.

## *B Accommodation Available in the ACT*

### *1 OneLink*

OneLink is a central intake service that provides a single point of contact to access and be referred to human services in the ACT, including the services discussed below. A key area of focus is linking individuals with housing and homelessness services.<sup>76</sup> During January to

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<sup>72</sup> Willis, above n 58.

<sup>73</sup> Matthew Willis, 'Ex-Prisoners, SAAP, Housing and Homelessness in Australia' (Final Report to the National SAAP Coordination and Development Committee, Australian Institute of Criminology, 2004) 147.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid 4.

<sup>76</sup> OneLink, 'How We Work', (2016) <<https://www.onelink.org.au/how-we-work>>.



March, 2018, individuals accessing accommodation and support services through OneLink faced an average waiting time of 19.5 days, before being placed in accommodation.<sup>77</sup> This wait time would prevent existing services from effectively assisting individuals requiring immediate accommodation to be granted bail.

## *2 Services under OneLink*

### *a) EveryMan*

EveryMan is a Canberra based organisation that provides various types of support to disadvantaged men.<sup>78</sup> The most relevant service for this discussion is the Men's Accommodation and Support Service, which is available to single men involved with the justice system and at risk of homelessness. EveryMan allocates participants a Housing ACT Social Housing property and provides 'intensive case management for approximately 12 months to support them through the transition', until transferring management of the property back to Housing ACT.<sup>79</sup>

### *b) Samaritan House*

Samaritan House, run by St Vincent de Paul Society, is another accommodation provider for single men in crisis. The twelve bedroom property is located in North Canberra and focuses on assisting 'men with complex and multiple needs', most often men with mental illness.<sup>80</sup> Demand for rooms at Samaritan House is extremely high.

### *c) Women's Shelters*

There are a number of women's shelters in the ACT, the majority of which support women and children escaping domestic violence.<sup>81</sup> Toora House, located in Western Creek, is one of the few women's shelters that offers accommodation for women in the justice system, however,

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<sup>77</sup> OneLink, *OneLink Quarterly Report Ending March 2018* (2018) 4.

<sup>78</sup> EveryMan, 'Who We Are and What We Do' <<http://www.everyman.org.au/about-us/>>.

<sup>79</sup> EveryMan, 'Early Intervention' <<http://www.everyman.org.au/services/?id=early-intervention>>.

<sup>80</sup> St Vincent de Paul Society, *Samaritan House* (2018)

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<sup>81</sup> Community Services, *Refuges* (16 July 2018) ACT Government

<[http://www.communityservices.act.gov.au/women/womens\\_directory/womens\\_refuges\\_and\\_crisis\\_accommodation](http://www.communityservices.act.gov.au/women/womens_directory/womens_refuges_and_crisis_accommodation)>.

only accommodates single women and not their children. Their Coming Home program provides wrap-around support specifically for women exiting the AMC after receiving a sentence, and is not available for women on remand or bail.<sup>82</sup> However, accommodation without wrap-around support is available for women on bail.

Further, over the course of the recently launched Bail Support Trial, Justice and Community Safety Directorate staff have identified that, at times, the rigid approach of shelters to rules of conduct can present a barrier to women successfully completing bail.<sup>83</sup> Women's shelters provide extremely important services in the ACT, but may at times lack the systems and flexibility to effectively support women in completing bail.

### *3 Existing Facilities*

#### *a) Ngunnawal Bush Healing Farm*

The Ngunnawal Bush Healing Farm is current an eight bed facility, with plans to expand to 16 beds, on the outskirts of Canberra and was originally built as a residential drug and alcohol facility for Aboriginal and Torres Strait Islander people.<sup>84</sup> However, the facility is not currently being used for accommodation, due to confusions around what drug and alcohol related services can be provided at the address under ACT zoning requirements.<sup>85</sup> While the premises could potentially be used as a bail hostel, it is widely agreed in the government and community that a drug and alcohol rehabilitation service for Indigenous people in the ACT is significantly overdue. Repurposing the site for use by individuals on bail could be felt by some as disrespectful to the Indigenous community, who have been expecting the rehabilitation facility since 2004.<sup>86</sup> However, while issues around zoning are resolved, the facility could temporarily be used to house Indigenous females on bail, and where applicable, their children.

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<sup>82</sup> Helen Watchirs et al, 'Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre' (ACT Human Rights Commission, April 2014) [9.2.12].

<sup>83</sup> Justice and Community Safety Directorate, Office Meeting, 12 July 2018.

<sup>84</sup> Access Canberra, 'Ngunnawal Bush Healing Farm' (20 March 2017) ACT Government <<http://health.act.gov.au/public-information/consumers/health-infrastructure-program/current-projects/ngunnawal-bush-healing>>.

<sup>85</sup> Katie Burgess, 'Canberra's Ngunnawal bush healing farm just a 'camp site' after confusion over land use: Winnunga CEO', *Canberra Times* (online), 9 May 2017 <<https://www.canberratimes.com.au/national/act/canberras-ngunnawal-bush-healing-farm-just-a-camp-site-after-confusion-over-land-use-winnunga-ceo-20170509-gw0qof.html>>.

<sup>86</sup> Ibid.

### *C South Australia: The Arches*

During a teleconference with the OICS, South Australian Department for Correctional Services communicated that various stakeholders within South Australia jointly identified the high rate of short-term remandees in custody without appropriate accommodation as an addressable issue.<sup>87</sup> After extensive community consultation, the Bail Accommodation and Support Program (BASP) was contractually established in May 2017 by the South Australian Department of Correctional Services (DCS), in partnership with AnglicareSA.<sup>88</sup> The program exists to provide accommodation to individuals who are eligible for bail, but do not have a suitable place to live. As the BASP is still in its initial stages, the first external review of the program is not yet available, and the operational information provided below should be considered in light of its preliminary and provisional nature.

#### *1 Type of Facility*

The purpose-built facility, named The Arches, comprises 30 self-contained units on several floors, with one floor reserved for female alleged offenders. The program also caters for male and female Aboriginal alleged offenders, with a visiting Aboriginal Liaison Officer service and partnerships developed between Anglicare and local Aboriginal organisations.

Unlike the bail hostels in the United Kingdom, the units at The Arches are not suitable for defendants with dependent children. There is a strict ‘no visitors’ policy, however, residents are able to meet family and friends in the foyer. This practice supports the underlying purpose of the accommodation, namely, for bailees to continue employment and maintain relationships off-site.

#### *2 Ownership, Operation and Services*

The property on which The Arches is located is owned by AnglicareSA. AnglicareSA staff the premises 24 hours a day through shift work, and oversee the daily operation of the hostel.<sup>89</sup> AnglicareSA’s ‘transition coordinators’ receive similar training to Community Corrections

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<sup>87</sup> Unless footnoted, information regarding The Arches was obtained from the South Australian Department for Correctional Services via Telephone Conference on 10 July 2018.

<sup>88</sup> AnglicareSA, *Stronger Together*, Annual Report (2017) 5.

<sup>89</sup> AnglicareSA, *Members’ Update* (June 2017) 1.

case managers, and assist residents in finding long-term accommodation, link them with community services, and remind them of their court dates and bail conditions.

In the first six months of operation, The Arches accommodated 100 participants.<sup>90</sup> There is no official figure on the number of residents who successfully moved to long-term accommodation, although it was reported that ‘some positive outcomes’ were achieved in this area.<sup>91</sup> The initial expectation of DCS and AnglicareSA was that the average length of stay would be ten days, however, it is anticipated that the present review will reveal this figure to be higher, ranging from ten days to one month.

While AnglicareSA staff provide the ‘wrap-around’ service to residents, DCS Community Corrections is closely involved with service users, as all residents must have a condition of DCS Supervision to be eligible to access the service. The intensity of supervision by DCS Case Managers ranges from monthly meetings, but in practice occurs at least weekly, with many defendants subject to electronic monitoring on home detention curfews.

### *3 Eligibility and Referral*

To be eligible for the BASP, defendants must be 18 years of age, or over. On commencement, there were no restrictions on accepted categories of alleged offenders. However, in early 2018, the BASP stopped accepting persons charged or convicted with child-related sex offences and individuals known to have affiliations with Outlaw Motorcycle Gangs. The Department of Correctional Services confirms that no specific incidents occurred to prompt this change.

Residents are expected to pay rent from their private income, with contributions ranging from \$13 to \$20 per night. As part of the support services provided by AnglicareSA, service users receive assistance to claim Centrelink and housing benefits. While rental contributions are expected, individuals are assessed case-by-case and are not denied access based on income.

Referrals to The Arches are made by the discretion of the Magistrate. Before requesting that the Magistrate consider referring the defendant to the BASP, defendants and their lawyers must

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<sup>90</sup> Government of South Australia, *10by20 Progress Report* (2018) 14.

<sup>91</sup> Sarah Graham, ‘New Bail Accommodation Provides Alternative to Custody’ (2017) 39(1) *Bulletin (Law Society of South Australia)* 12, 13.

complete a pre-entry checklist. The checklist questions the defendant's access to alternative accommodation and includes conditions, such as expected compliance with strict house-rules, to discourage individuals who may have access to an alternative address.

## VI CONCLUSIONS

### *A Should Bails Hostels be Established?*

Drawing from thin research and case analysis from other jurisdictions, it is *prima facie* more cost effective to house a defendant in a bail hostel than a prison. This economic advantage is in addition to the resulting social benefits, such as individuals maintaining employment and relationships, contributing to rent, and reducing recidivism. To accurately measure how many hostel places are required in the ACT, and to quantify the economic cost or benefit of their establishment, more data needs to be gathered. Data should be gathered on the number of individuals in the AMC who are eligible for bail, but lack suitable accommodation, as well as the marginal cost of an extra person in the AMC and the cost of admitting an extra person to the AMC.

Additional data from The Arches in South Australia would also be beneficial in putting forward a business case for bail hostels in the ACT, and it is possible that this information will be released upon completion of the external review of The Arches. Useful figures for comparison between hostels and prisons would be the total capital cost of The Arches, the net operating expenditure per defendant per day, and the marginal cost of an additional defendant. This information would provide a stronger basis to argue the economic preferability of bail hostels.

### *B Type and Size of Hostels*

Despite the lack of comprehensive ACT data, the remandee survey conducted by OICS, and statistics from other Australian and international jurisdictions, indicate that the number of people remanded who are eligible for bail with appropriate accommodation is significant. In anticipation of knowing exact figures, three small houses or flats with three to four bedrooms each should be acquired as bail hostels in the ACT. There are several key reasons for this conclusion.

First, the AMC is currently overcrowded, and using pre-existing houses will fast-track the establishment bail accommodation to mitigate this issue. Second, potential residents are individuals who would be bailed into the community if they had suitable accommodation. Their addresses would not be shared if they were returning home. Being bailed into a residential setting facilitates appropriate privacy of the individuals, increasing their likelihood of gaining employment and decreasing associated stigma to allow for successful (re)integration in the community.

Third, providing accommodation in three separate houses will allow more flexibility to separate alleged offenders who may not be able to live together, and dedicate one or two houses to female offenders. It also allows scope for one of the houses to develop more targeted support programs for specific defendants, for example, drug and alcohol support programs, or increased security measures to house alleged sex offenders.

Fourth, small houses are more conducive to maintaining links with children, either through children visiting the house, or children living at the residence. Providing three houses gives flexibility for one to be used by a single defendant and their children. Larger hostels cannot be used by a single defendant for obvious efficiency reasons, and would not be appropriate places for children to visit.

Fifth, with reference to the figure deduced from WA data, nine spaces would not be excessive, and could be increased once more data is gathered to support additional funding. However, due to the small size of the ACT, it is unlikely that a thirty bed hostel like The Arches, specifically for individuals who need bail accommodation, will be necessary. More problematically, there is not yet enough evidence to support funding for such a large premise. However, this should be reviewed once relevant data has been gathered.

### *C Operation and Support*

A new office under ACT Corrective Services should be established, or a private company should be engaged, to oversee the bail hostels. The majority of defendants who are eligible for bail, but do not have accommodation, would likely be relying on Legal Aid. Community Corrections highlighted the issue that lawyers working for Legal Aid do not have the capacity

to follow up external services for their clients.<sup>92</sup> A company or office dedicated solely to bail hostels would be able to provide timely, easily accessible information to lawyers on the availability of spaces at the hostels. Individuals applying for bail need immediate accommodation, and would be imprisoned if required to wait 20 days for OneLink services.<sup>93</sup> Consequently, defendants who are eligible for bail hostels should be able to contact the hostels immediately and directly.

Once defendants are placed in a bail hostel, the staff should contact OneLink to assist the defendant in finding long-term accommodation through existing services. OneLink's annual report suggests that although there is a waiting time for accessing housing support, clients are usually found accommodation after 18 to 26 days.<sup>94</sup> Consequently, it should be expected that defendants may require accommodation in bail hostels for 18 days to one month. Despite concerns of a housing shortage, recent research shows that the ACT has the second largest surplus of housing relative to existing stock of all Australian jurisdictions, at 4.4% of existing stock, or 6,700 dwellings.<sup>95</sup> Allowing direct contact with hostel management, then later connecting defendants to OneLink, will provide immediate accommodation for securing bail, but reduce overlapping with existing services.

In addition to connecting individuals with OneLink, staff dedicated to bailees can provide 'wrap-around' support, such as facilitating communications with welfare services, education and training, rebuilding or maintaining family relationships, and ensuring defendants understand their bail conditions. The Bail Support Trial currently being undertaken by Justice and Community Safety Directorate has also highlighted the need for tailored support to each defendant's complex needs.<sup>96</sup> Having staff dedicated to these individuals will allow them to be provided with the support they need to stay out of the AMC.

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<sup>92</sup> ACT Corrective Services, Office Meeting, 3 July 2018.

<sup>93</sup> OneLink, above n 76.

<sup>94</sup> Ibid.

<sup>95</sup> B Phillips and C Joseph, 'Regional Housing Supply and Demand in Australia' (Working Paper No 1/2017, The ANU Centre for Social Research & Methods, November 2017) 12-13.

<sup>96</sup> Justice and Community Safety Directorate, above n 82.

## D Risk Management

<i>Risk</i>	<i>How to Mitigate</i>
Net-widening	Bail hostels should be a voluntarily accessed service, and require referral from the court. Prior to applying to the court to be referred to a bail hostel, confirmation should be required from defendants or their lawyers that no alternate address is available. This will deter defendants and lawyers from using hostels for convenience, and prevent courts from incorporating hostel residence as a bail condition where the defendant has other accommodation.
Difficulties moving from hostels into long-term accommodation	Existing services can be accessed through OneLink, and should be able to assist defendants in moving to long-term accommodation in one month. The systems in place for securing long-term accommodation may require review after bail hostels have been established and any unforeseen issues and barriers have been identified. If attaining long-term housing proves difficult, this will strengthen the argument for requiring more affordable housing in the ACT.
Community backlash	Only individuals on bail should be housed in hostels, excluding people on Intensive Corrections Orders or on parole. The public should be educated on how this arrangement similar to bailing people to their own homes, and be reminded of the presumption of innocence.
Compliance with ACT zoning requirements	Using existing properties should mitigate zoning and land use issues, however, an ACT law firm that specialises in land use should be consulted.



Charged sex offenders	People charged with child sex offences and contact sex offences should not be accepted into bail hostels, at the preliminary stage, to assist in managing community backlash. Once bail hostels are more accepted by the community, it should be considered whether those charged with more serious sex offences should be accepted into hostels. Importantly, any person bailed to a hostel must be deemed a safe risk by the court and be eligible to be bailed to a different address once they find their own accommodation.
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### *E Conclusion*

Ultimately, bail hostels should be established in the ACT, as it is in line with the overarching mandate of the ACT justice system and the need that hostels would address is not covered by existing services. Further, the success of hostels in the UK supports their utility. Challenges and risks associated with running hostels can be adequately addressed, and further information on best practices and managing risks should be gathered once the review of The Arches is completed. The recommendations laid out at the start of this report should be actioned as a matter of priority, to immediately address AMC overcrowding and produce a business case to support required government funding for the roll-out of additional hostels.

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