

**Submission
No 4**

INQUIRY INTO THE ADEQUACY OF YOUTH DIVERSIONARY PROGRAMS IN NSW

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DIVERSIONARY PROGRAMS IN NSW
SUBMISSION OF MIYAY BIRRAY YOUTH SERVICE

BACKGROUND

Miyay Birray Youth Service (**Miyay Birray**) is a community organisation with 33 years experience providing youth diversionary services in regional New South Wales. Miyay Birray has direct and extensive experience with Moree's youth justice system.

Miyay Birray was founded by committee members and staff of the former Moree Children's Service and is primarily funded through the Department of Family and Community Services with some limited funding from the Department of Justice.

MIYAY BIRRAY'S SERVICES

Miyay Birray provides youth services with the overarching aim of improving the lives of young people and reducing juvenile offending.

Youth Get Wise Program

Miyay Birray's **Youth Get Wise Program** is a diversionary program which connects young people who have offended or are at risk of offending with specialist service providers, including:

- drug and alcohol rehabilitation and counselling,
- mental health assistance,
- anger management programs,
- Indigenous culture, family history and identity education programs; and
- employment programs.

The Youth Get Wise Program works on a referral basis. Young people are referred to the program by Juvenile Justice, the Department of Families and Community Services, Magistrates and family members.

Young people undertaking the Youth Get Wise program attend 4 weeks of sessions with specialist providers. On completion outcomes are reported through Miyay Birray to the local court and Juvenile Justice. The program carries a multidisciplinary approach similar



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to that of the Youth Koori Court at Parramatta Children's Court with the aim of reducing the likelihood of reoffending.

Case Study – Youth Get Wise

A young person with a history of incarceration and contact with Juvenile Justice attended the four week Youth Get Wise program.

On completion of the course he self referred and continued with anger management (a significant contributor to his offending behaviour). He has completed a TAFE course, is looking for long term employment and has had no police contact.

Miyay Birray provides support services to youths who are appearing in the Moree local court. Court Support Officers work with young people who require pre-court support. At times young people are unaware (and will need to be told) that they are required to appear. Court Support Officers will ensure that each young person has a legal representative and general support (pre and post court appearance). This includes explaining court processes and outcomes.

Miyay Birray's runs a Street Beat program to drive young people home at night. The program aims to reduce the opportunities that young people have to commit crime and come into police contact. Street Beat was initially funded under the Safe Aboriginal Youth program to run 7 nights per week but unfortunately has been scaled back due to a lack of funding.

Miyay Birray also runs holiday programs to keep youths who might otherwise be unsupervised out of trouble. Up to around 200 kids per day participate in these programs.

Miyay Birray provides case management and referral services outside the Youth Get Wise program. Youths referred to Miyay Birray who have not previously been assessed by another organisation are assessed for appropriate referral.

MIYAY BIRRAY'S INTERACTION WITH OTHER ELEMENTS OF THE JUVENILE JUSTICE SYSTEM (TERM OF REFERENCE A)

Aboriginal Community Liaison Officers

Miyay Birray has a strong relationship with the Aboriginal Community Liaison Officers (ACLOs) at the Barwon LAC in Moree.

Miyay Birray considers that the procedures in the *Young Offenders Act 1997* (NSW) (Act) are not applied consistently or at all. The Act provides for a system of warnings, cautions and youth justice conferences which are intended to be used in relation to a broad range



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of offences prior to and in preference to criminal charges.¹ Unfortunately, police are not utilising the Act and instead proceed straight to charging. For example, one Miyay Birray client who had no previous offences was arrested on suspicion of stealing a dog. Training especially for Probationary Officers is necessary to ensure the Act is being effectively administered.

Even when the procedures in the Act are used the potential isn't being fully realised. For instance, despite training regarding the issuing of cautions they are rarely used.

Miyay Birray submits the resistance in using cautions as diversion is largely due to the high turnover of Youth Liaison Officers (YLOs) in Moree, who typically arrange times for cautions and for support persons such as Miyay Birray staff to be present. It takes time to build trust and rapport with a YLO; when they leave, Miyay Birray has to start this training process again.

Declining positive community presence

Finally, the relationship between the community and the police has become strained due to the increase of Probationary Constables. These constables are not able to go out without a senior police officer and so are often not in the community. The positive presence of police in the community has significantly reduced.

JUVENILE JUSTICE

Underutilisation of Juvenile Justice workers in Moree

In late 2017, Juvenile Justice had a permanent staff of 5 caseworkers in Moree. At the same time, Miyay Birray understands that it had only 6 clients within the region.

Miyay Birray submits that this stems from the restrictive policies and procedures which Juvenile Justice workers are bound to follow. For instance, at risk youth must be referred to Juvenile Justice case workers by a court, however, not every youth facing court is referred. This reduces the contact between Juvenile Justice and a broader range of at-risk youth. It can also prevent Juvenile Justice from working with those already in the justice system but not at a referral stage. For instance, many youths do not make it to court due to an inability to travel or lack of family support. Juvenile Justice referrals are usually instigated during sentencing resulting in a lack of referral pathways during the early stages of proceedings.

Miyay Birray submits that Juvenile Justice workers and services should be permitted to take referrals from outside the court system through community providers who work with at risk youth and from the clients themselves.

Referrals from Juvenile Justice to Miyay Birray

¹ See, eg, *Young Offenders Act 1997* (NSW), ss 7(a), 7(c), 14, 21, 34.



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During late 2016 and early 2017 Juvenile Justice did not refer young people to the Youth Get Wise Program as they focused on using their own services. This resulted in young people missing out on the network of specialists linked to Miyay Birray. This pathway of referral has since improved and we have seen a rise in Juvenile Justice referrals. We consider the strength of the referral pathway is reliant on the relationship between Miyay Birray and Juvenile Justice workers which is impacted by high turnover at Juvenile Justice.

Joint Support Program tender process

A further issue related to the high turnover of Juvenile Justice staff arose during a tender process which took place in 2015.

Juvenile Justice outsources the Joint Support Program, which funds organisations to provide services to youth at risk of offending or re offending. The services which the program funds include those familiar to Miyay Birray, such as casework, employment support and mentoring.

The last open round of tendering to be a Joint Support provider occurred in 2015. At the time, despite Miyay Birray's presence in the community and demonstrated experience, it was not told about the opportunity or invited to tender. Instead, the tender was won by a specialist employment agency. Now, despite not receiving support to do so, Miyay Birray is still expected by Juvenile Justice and the community to provide, and does provide, the services which it always has in the relevant areas.

THE COURTS

High turnover of magistrates in Moree

In the past decade there have been about 5 different magistrates stationed at Moree's Local Court. Miyay Birray has experienced a number of difficulties arising from this relatively high turnover.

Each time a new magistrate starts it takes time for Miyay Birray to re-establish itself as a diversionary service provider. For instance, despite the Youth Get Wise program having been founded in partnership with a magistrate in Moree, it took 2 years before it became established again under a successor. Primarily, this has been due to a lack of opportunity for a face to face meeting with the magistrate. Face to face meetings are essential to build rapport.

Miyay Birray submit that each new magistrate should be given an induction to the local community leaders and diversionary service providers.

Transportation to and from Court

Moree's Local Court services a broad region which creates issues with youth travelling to court. Miyay Birray provides transport for local young people to get to court appearances but it cannot do this on every occasion. Families struggle to get to court due to



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transportation issues. If a child is arrested and brought to Moree and held until they are released on bail there is currently no established transport to take them home.

Miyay Birray submit that the Police who has the ability to track arrests and bails should return young people to their home as a matter of policy.

HOUSING

Youth homelessness and lack of emergency accommodation

Youth homelessness is a large issue in Moree. The nearest youth refuges is 250km away and has limited beds.

Young people released on bail are often in need of accommodation at short notice. Juvenile Justice can't organise accommodation for young people bailed after 4pm. Miyay Birray works to find accommodation which is often a motel room. Miyay Birray isn't able to adequately supervise the young people in motels which lead to issues with breaching bail.

Moree has a women's refuge however children above the age of 16 cannot stay with their mother at the women's refuge. Without emergency accommodation or a youth refuge, this results in those children facing an impossible choice of sleeping rough or returning to an unsafe home.

It is imperative that the crisis accommodation services in Moree be expanded or funding is established for a youth refuge.

Loss of community services roundtable

Miyay Birray's main contact with Housing NSW was at the former community service roundtable. A regular meeting that was held between service providers in Moree for the purpose of monitoring and co-ordinating support for youths that were on the police's radar.

Since the new superintendent took over at the Barwon LAC the community service roundtables have ceased. Miyay Birray is keen to reinstate these roundtable meetings.

SCHOOLS

The phenomenon of youths engaging in anti-social behaviour following a suspension from school is so well documented that it has been labelled the 'school-to-prison pipeline'.² Moree is no exception to this trend.

² See, eg, Sheryl A Hemphill, David J Broderick and Jessica A Heerde, 'Positive associations between school suspension and student problem behaviour: Recent Australian findings' (June 2017) 531 *Trends & Issues in Crime and Criminal Justice*, ISSN 0817-8542, accessible at <
http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi531.pdf>, 1.



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Miyay Birray submits that instead of suspending youths there should be in school suspension programs that would work towards reengaging students.

There are no schools in Moree that practice in-school suspensions. We consider that a move from solely out of school suspensions to in-school suspensions would not put pressure on teaching resources as there is already a high rate of absenteeism in Moree.

NON-GOVERNMENTAL ORGANISATIONS

Aboriginal Legal Service

Staffing and funding issues at the Aboriginal Legal Service (ALS) have a significant impact on young people in contact with the juvenile justice system and Miyay Birray.

High staff turnover affects young people who rely on ALS services. ALS currently have two solicitors in Moree with historically 8 lawyers working there over the past 5 years. It takes time to build trust with a new solicitor. Every time a different solicitor comes to Moree trust has to be rebuilt.

BAIL ISSUES (TERM OF REFERENCE F)

INAPPROPRIATE SETTING AND ENFORCEMENT OF BAIL CONDITIONS

Inappropriate setting and enforcement of bail conditions have a significant impact on young people, families and communities as a whole.

The inflexibility of bail residence conditions can make it incredibly difficult for young people, particularly Indigenous, to comply. If a young person is bailed to a particular address but has issues getting or remaining at that address they are often arrested on breach. Miyay Birray endorses the position advocated by NSW Police Commissioner Mick Fuller, and trialled in Dubbo, that Indigenous offenders should be able to nominate multiple addresses for the purpose of bail residence requirements.³

Inappropriate bail checks can impact on young people and their families. Bail checks for youth offenders are often excessive and carried out at inappropriate times. Checks should be kept to a minimum necessary to enforce any residency and curfew requirements. For instance, if a young person has an 8-pm to 8am curfew, police could attend their nominated address once just after 8pm, and again just before 8am the next morning. This could be achieved by a change in police practice, or by circumscribing the police's discretion in the bail conditions about when to conduct checks.

³

See, eg, Madeline Hayman-Reber, 'More lenient bail conditions for Aboriginal offenders' (10 November 2017) SBS *NITV*, accessible at <<https://www.sbs.com.au/nitv/nitv-news/article/2017/11/10/more-lenient-bail-conditions-aboriginal-offenders>>.



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CASE STUDY

One Miyay Birray client was arrested, charged with an offence, and granted bail. As a condition of bail the client was to reside at a particular address. That address was occupied by a working adult person and multiple young children. Despite this, police attended the address up to 3-4 times per night, often after midnight, to conduct bail checks. The adult occupant and children were woken on each occasion. This continued to occur for the entire 3 months that the young person was on bail.

OUTCOMES AND AREAS FOR IMPROVEMENT (TERM OF REFERENCE C)

Miyay Birray recommends the following:

- Policy changes to ensure that police (and especially Probationary Constables) administer the *Young Offenders Act 1997* (NSW);
- An increase in positive police presence in the community;
- Greater flexibility around the referral process to Juvenile Justice services for children coming into contact with the criminal justice system;
- Education for new magistrates on local youth diversionary programs;
- Increased transportation for young people going to and from court;
- Increase crisis accommodation or youth refuge services in Moree;
- Reinstatement of a community services roundtable used to track and coordinate the support of youth on police's radar;
- In school suspension programs to be developed in all schools to encourage student reengagement.
- More appropriate and considered bail conditions to avoid inevitable bail breaches.