

INQUIRY INTO THE ADEQUACY OF YOUTH DIVERSIONARY PROGRAMS IN NSW

Organisation: Macarthur Legal Centre
Name: Ms Laura Sutton
Position: Children's Court Assistance Coordinator
Date Received: 7 February 2018



MACARTHUR
Legal Centre

Supporting our community

7 February 2018

Mr Geoff Provest MP
Chair, Law and Safety Committee
Parliament House
Macquarie Street
Sydney, NSW 2000

Re: Inquiry into the adequacy of youth diversion programs in NSW

Dear Sir,

Macarthur Legal Centre welcomes the opportunity to comment on the Committee on Law and Safety's inquiry into the adequacy of diversionary programs to deter juvenile offenders from long-term involvement with the criminal justice system.

Macarthur Legal Centre (MLC) is a community legal centre, located south west of Sydney, which provides free legal advice, referrals and assistance to some of the most vulnerable and disadvantaged members of our community. 16% of our casework clients in 2015-16 identified as Aboriginal or Torres Strait Islander, the majority of whom obtained assistance in relation to child-related matters (such as family law and child protection).

In addition, MLC runs the Children's Court Assistance Scheme (CCAS) at Campbelltown Children's Court. The CCAS provides a range of services to young people who attend court for criminal matters, for example, explaining the court process, making referrals to community organisations and services and providing information about where to get assistance with accommodation, counselling and drug and alcohol issues. In addition, CCAS workers often assist young people who attend court alone by acting as their support person when they go before the Magistrate.

In 2015-16 the CCAS assisted 711 young people with criminal matters listed before the Campbelltown Children's Court. Of these, at least 24% identified as Aboriginal or Torres Strait Islander. We also assisted 420 parent/carers.

The young people who appear in the Children's Court for criminal charges are amongst the most vulnerable in our community, experiencing multi-dimensional disadvantage. A significant number have been placed in some form of out-of-home care. Many have experienced trauma and have inadequately managed behavioural or mental health issues. Moreover, a substantial number have language or learning deficiencies.

Promoting justice for children and families is a fundamental part of the work that we do. Our experience working with vulnerable young people, in particular in the Children's Court, informs this brief submission and we respectfully make the following recommendations.

P: 02 4628 2042

F: 02 4628 0771

E: macarthur_admin@maclegal.net.au

W: www.maclegal.net.au

ABN: 52 551 005 502

317 Queen Street
PO Box 798
Campbelltown, NSW 2560

MLC is accredited by NACLC

1. High levels of educational disengagement amongst young people appearing the Children's Court requires a whole of government response and should be addressed as a matter of urgency by the NSW Government.

Facilitating access to education for Australian children and young people is essential to their health, well-being and ability to participate productively in society. Access to quality education is a right that extends to *all* Australian children and young people, including those in contact with the criminal justice system, who, as noted above, are amongst the most vulnerable in our community.¹

Education can be one of the more effective means of addressing the risk factors associated with young offending. Problems at school and having been suspended or expelled from school are known "criminogenic" risk factors for young people (that is, risks associated with criminal behaviour).² It thus makes sense for governments to invest in targeted supports and services to link young offenders back into education and training in the hope that such interventions divert young people from contact with the youth justice system.

Our experience with the Children's Court Assistance Scheme reveals that a significant proportion of young people appearing in court for criminal matters are partially or totally disengaged from education. Many of compulsory school age are not enrolled in any educational setting. The primary reasons given by young people for lack of attendance include suspensions, bullying, psychological disorders, family dislocation/chronic homelessness and learning issues.

The following case study demonstrates the complexities in addressing one boy's disengagement from school.

Case study. A 15-year-old boy from a refugee background presented at the Children's Court for an Apprehended Domestic Violence Order (ADVO). The young person's mother was the protected person in the ADVO. He attended court with his mother (who spoke only basic English) and a caseworker.

The boy had attended several schools since Year 7 and had a history of suspensions arising from aggressive behaviour towards other students and school staff. The young person had not been to school for several months. The boy reported that he had been repeatedly bullied by other students at every school he attended. Not going to school became a major source of conflict between mother and son.

The boy had diagnosed ADHD, ODD and possibly Post Traumatic Stress Disorder. He appeared to be of normal intelligence and stated that he wanted to learn how to be a mechanic. He refused, however, to attend any school that resembled the ones he previously attended.

The caseworker reported that the boy received no meaningful support from his previous school to access another education pathway. The caseworker tried to assist the young person by arranging meetings at various schools, including behavioural schools. After multiple attempts, the caseworker gave up, having been unable to find a suitable alternative or anyone who could help. As the young person was not under court-ordered supervision, he wasn't the responsibility of the NSW Department of Juvenile Justice and thus not receiving case management from that organisation to address schooling issues.

¹ Australia has ratified the UN Convention on the Rights of the Child. The Convention recognises a child's right to education. Article 28 specifies that State Parties should, among other things, "make educational and vocational information and guidance available and accessible to all children" and "take measures to encourage regular attendance at schools and the reduction of drop-out rates."

² Youth on Track Social Outcomes Evaluation Final Report, April 2017 (citing NSW Bureau of Crime Statistics and Research, 2007)

The caseworker felt he had more urgent matters than school attendance to deal with, in particular, finding medical services to help manage the boy's challenging behaviours at home, which had reached a crisis point.

Like the boy in the case study, young people involved in youth justice often have complex needs, and they generally do not have the capacity or resources to navigate through the education system. Rather, it is our experience that they require accessible and tenacious advocates with knowledge of schools and procedures to find a suitable, supported education pathway for them. Without this specialized assistance, these vulnerable young people stand little chance of re-engaging in education or employment.

We believe that there is a critical gap in the provision of meaningful educational support services for young people who attend the Children's Court for criminal charges. This is especially true at the pre-sentencing stage of court proceedings, when a young person is not under the supervision of Juvenile Justice. In our view, this unmet need would be best addressed by a program that includes the regular presence of the Department of Education and Communities in the Children's Court.

We recommend that NSW law and policy makers consider the Victorian government's *Education Justice Initiative* (EJI), a program which has had success in addressing the high levels of educational disengagement amongst children and young people appearing before the criminal division of the Victorian Children's Court. The EJI model links schools, courts and welfare services and has been described by those who evaluated the program as a "circuit breaker" that has been able to link young people with education, in cases when previous efforts had failed.

The Department of Education and Training, through the EJI staff, firstly identifies which young people are not attending and/or not enrolled in school. The EJI does this by having staff present on the floor of the Children's Court, making contact fact-to-face with young people there. Referrals to EJI can also be made by a young person's solicitor, a Magistrate or Youth Justice. The EJI has a conversation with the young person about their past experience at school, why they no longer attend and what their future education preferences are, if any. The EJI also speaks to the young person's family/carer, solicitor, Youth Justice, and where relevant, the young person's caseworker. The EJI then contacts education providers and sets up meetings to discuss a young person's education and training options. The EJI continues to advocate for the young person's education needs, a process that may take a considerable amount of time.

The Victorian Institute, a research centre focused on inclusive education, published a lengthy evaluation of the Education Justice Initiative.³ The evaluation noted that "the key to the program's success is the specialist knowledge that [EJI] staff have about schools and procedures, and *their willingness to work for weeks or even months to identify the right schools and build relationships.*" (emphasis added)

Education can be an effective way of addressing youth offending, with the potential to divert young people from contact with police and the Children's Court. We therefore recommend that the NSW government devise a program to address educational disadvantage among young people involved in the juvenile justice system. We also recommend that any such program is approached as a whole of government issue requiring the ongoing commitment and cooperation from multiple

³ Te Riele, K and Rosauer, K., *Education at the Heart of the Children's Court: Evaluation of the Education Justice Initiative Final Report*, The Victoria Institute, December 2015.

systems including Education, Family and Community Services, Justice, Legal Aid, Aboriginal Legal Services and non-government education and training service providers.

2. Consideration should be given to establishing a culturally-relevant program, similar to the Youth Koori Court, for young people from Pacific communities, a population group which is significantly over-represented in the juvenile justice system.

At the Campbelltown Children's Court, we have observed that a significant proportion of young people who are charged with criminal matters come from New Zealand Māori and Pacific Islander backgrounds. Frequently, young people from this population group present at court without family or other support.

Concerned by the over-representation of these young people in the Campbelltown Children's Court, in early 2017 we sought the assistance of Youth off the Streets (YOTS) to provide culturally-informed support services. As a result, two Māori elders from YOTS now assist the CCAS worker by supporting young people from New Zealand Māori and Pacific Islander backgrounds who appear in the Children's Court. In addition, youth workers from YOTS also regularly assist the CCAS by attending Campbelltown Children's Court to take direct referrals for their youth programs.

We believe that the court support and youth programs delivered by YOTS provide a valuable service to youth from Pacific communities who attend the Campbelltown Children's Court. We believe, however, that a program which provides individualized interventions to assist young offenders from this population group, similar to the Youth Koori Court, would be a meaningful alternative to existing court diversion programs and meet an unmet need for culturally relevant alternatives to traditional Children's Court procedures.

There are several holistic features of the Youth Koori Court model that we believe would be beneficial and adaptable to Māori and Pacific Islander youth.

Specifically, the program aims to address the underlying reasons for offending, and it does so in a more culturally appropriate setting. The physical environment is less intimidating, with the young person sitting around a table with family, elders, representatives from the Judiciary, police, youth workers and solicitors. Crucially, the model provides supports to strengthen the young person's connections with family, culture and community.

In addition, the model connects the young person with support services to help them stay out of contact with the police. Drug or alcohol issues, if any, are addressed. Furthermore, the program works to re-engage the young person with school or employment.

Critical to the success of any such program would be the commitment and co-operation of a wide range of stakeholders including representatives from the Judiciary, Children's Legal Service, Police Prosecutors, Juvenile Justice, Justice Health, Family and Community Services, the Department of Education and Communities, Elders/respected persons and service providers from the NGO sector who have experience working with youth from Pacific communities.

We recommend that a carefully designed community-based diversionary program adapting some of key features of the Youth Koori Court be considered to address the high levels of police involvement and detention amongst young people from Pacific communities. We also suggest that

the Campbelltown region, where a large number of New Zealand Māori and Pacific Islander youth live, would be an appropriate location to pilot any such program.

3. The Youth Koori Court should be funded so that the model can be expanded to other areas in NSW with high rates of Aboriginal and Torres Strait Islander detention, including the Campbelltown region in South West Sydney.

The number of young people in detention in NSW since 2011 declined by about 25%. Yet, the level of over-representation of Aboriginal young people has actually increased in the same period. Although Aboriginal youth represent approximately 6% of the NSW population aged 10-17, they represent over 50% of 10-17-year olds in detention.⁴ Current statistics indicate that Indigenous youth are 26 times more likely to be incarcerated compared to other Australian youth.⁵

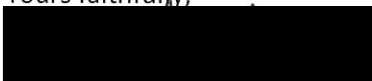
Consistent with NSW and national trends, Aboriginal and Torres Strait Islander youth are significantly over-represented amongst the young people who appear facing criminal charges in the Campbelltown Children's Court. Last year 24% of young people assisted by CCAS identified as Aboriginal or Torres Strait Islander.

We strongly support the establishment of the Youth Koori Court, a recent initiative piloted in the Parramatta Children's Court, which was developed to address the over-representation of Aboriginal and Torres Strait Islander youth in detention.

Furthermore, we recommend that the NSW Government fund the Youth Koori Court so that it can be expanded to the Campbelltown region in South West Sydney, as well as other locations with high rates of Aboriginal detention.

Thank you for considering our submission.

Yours faithfully,



Laura Sutton
Children's Court Assistance Coordinator
MACARTHUR LEGAL CENTRE

⁴ 2015 Young People in Custody Health Survey

<http://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>

⁵ Australia Institute of Health and Welfare 2016. Youth detention population in Australia 2016. AIHW bulletin no. 138. Cat. no. AUS 210. Canberra: AIHW.