

Doli incapax Working Group Report Quarter 1 | January to March 2020

1. Meeting of members of the NLAF Doli incapax Working Group

The working group met on 29 January 2020.

The members of the working group are: Legal Aid NSW (Chair); the Aboriginal Legal Service; Office of the Director of Public Prosecutions NSW; Children's Court of NSW; NSW Police Force including Youth and Crime Prevention Command; Youth Law (also representing Community Legal Centres NSW); the NSW Bar Association; and the Law Society of NSW.

The March 2020 working group meeting was postponed, due to capacity issues.

2. Activities and outcomes

The activities of the working group relating to the objectives set out in the terms of reference are set out below.

Objective 1 - Identify measures to support the consistent application of the presumption of doli incapax in NSW, in the exercise of police discretion about whether to proceed against a child under 14 years

Members welcomed representatives from the NSW Police Force (NSWPF) Youth and Crime Prevention Command to the Working Group meeting. The NSWPF representatives gave an overview of existing training materials and guidance for police on doli incapax, including for Youth Liaison Officers, Specialist Youth Officers and Police more generally, and identified opportunities where the working group could provide input to any revisions.

Working Group members agreed to collate questions about police training and the specific youth roles, for consideration by the NSWPF, and also provide additional information and case studies to the NSWPF on issues encountered by solicitors on the issue of police discretion about whether to proceed against a child under 14 years.

NSWPF representatives agreed to seek feedback from police officers on the ground, and from police prosecutions, on their experience of the operation of the presumption of doli incapax and provide an update at the next meeting.

Objective 2 - Identify measures to support the consistent application of the presumption of doli incapax in NSW, in its application in courts across NSW

The Children's Court Education Committee met and welcomed the consideration of a paper, prepared by a practitioner, on the application of the presumption of doli incapax for publishing on the Children's Court Website, noting that the current paper is outdated.

Members from Legal Aid NSW and ALS agreed to work with representatives from the Law Society of NSW and the Bar Association of NSW to prepare a more comprehensive paper for legal practitioners, which could also be accompanied by a CPD session for solicitors.

Working group members will also consider how to provide feedback to the Children's Court on possible amendments to the relevant sections of the Local Court Bench Book, on the application of the presumption of doli incapax.

Objective 3 - Develop protocols about obtaining evidence to rebut doli incapax

Working group members briefly discussed issues around the existing Memorandum of Understanding between the NSWPF and the Department of Education around the issue of statements from school and parents, and scope for updates. This issue will be discussed at a later meeting.

Objective 4 - Identify possible legislative reforms (including to the *Young Offenders Act 1997 (NSW)*) to assist the diversion of young people under 14 years from the criminal justice system

The working group noted that the Council of Attorneys-General met in November 2019, and noted [the following update](#) from the COAG Age of Criminal Responsibility Working Group:

(a) Noted that there is strong interest in the review of the age of criminal responsibility, and recognise the importance of the views, knowledge and expertise of interested stakeholders and individuals.

(b) Agreed that the COAG Working Group undertake targeted and public consultation as soon as practicable.

(c) Noted that the COAG Working Group will continue to progress the review, taking into account stakeholder contributions, and will provide a report with recommendations to the Council of Attorneys-General in 2020.

Legal Aid NSW made a submission to the WA Department of Justice supporting an increase to 14 years for the minimum age of criminal responsibility (October 2019), and will take the lead in drafting a National Legal Aid submission addressing the additional [consultation questions](#). (Update: NLA submission was sent 28 February 2020).

The **next meeting** is scheduled for 22 April 2020.

Anastasia Krivenkova, Manager, Strategic Law Reform Unit, Legal Aid NSW

Chair

17 March 2020