

## Doli incapax Working Group Report Quarter 4 | September to December 2020

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

The working group met on 19 November 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 Youth and Crime Prevention Command; Community Legal Centres NSW; Youth Law Australia; the NSW Bar Association; the Law Society of NSW; and the Office of the Director of Public Prosecutions NSW.

### 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. After its first 12 months, the working group is currently reviewing its terms of reference and objectives for the coming year, including the frequency of meetings.

#### **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**

The working group has invited the NSWPF Education and Training team to present at a future working group meeting, on the training that is being developed and provided to police on doli incapax.

#### **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 working group noted progress on the development of the online information hub for defence solicitors and barristers, including:

- summaries of key cases concerning the application of doli incapax in Australia from *RP v The Queen* onwards, prepared by the Law Society of NSW
- a guide or checklist for solicitors on doli incapax issues, to be adapted from resources developed by Victoria Legal Aid (VLA), and
- practice directions, to be drafted by the NSW Bar Association.

A sub-group has been formed to progress the development of the guide or checklist.

The working group also noted that the Judicial Commission of NSW has published updates to the Children's Court section on doli incapax of the Local Court Bench Book.

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

The working group has reached out to the Department of Education suggesting a meeting to discuss some of the issues raised by members about information sharing between a school and police. However, to date, the Department has said it is unable to meet because of capacity issues.

**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 potential reforms are underway, including review of the *Young Offenders Act 1997* (NSW) and consideration of raising the age of criminal responsibility, and will continue to monitor these developments.

The next meeting date will be confirmed once the frequency of meetings is agreed for 2021.

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

Chair

19 November 2020