

Doli incapax Working Group Report Quarter 1 | January to March 2021

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

The working group is scheduled to meet on 16 March 2021, but the outcomes of the meeting are not reflected in this report, as the meeting occurred after the due date for reports to the Plenary.

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. At its first meeting in 2021, the working group will review the proposed actions to be progressed by members over the coming year.

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. We also understand that the NSW Police Force is currently reviewing its education and training for some of its specialist youth roles, and there may be opportunities for the working group to provide feedback to this review.

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 continues to progress the development of the online information hub for defence solicitors and barristers, including:

- a guide or checklist for solicitors on doli incapax issues, to be adapted from resources developed by Victoria Legal Aid (a sub-group has been formed to progress the development of a checklist), and
- practice directions, to be drafted by the NSW Bar Association.

Solicitors from ALS and Legal Aid NSW are also looking at collating general psychological reports, that could be included in the information hub.

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. Legal Aid NSW will follow up on this in Q2, 2021, in consultation with the Law Society of NSW.

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 continues to monitor the outcome of the review of the *Young Offenders Act 1997 (NSW)* and consideration of raising the age of criminal responsibility by state and territory governments.

The working group has agreed to hold meetings quarterly, in March, May, August and November 2021.

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

Chair

8 March 2021