

Doli incapax Working Group Report Quarter 3 | July to September 2021

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

The members of the working group are: Legal Aid NSW (Chair), the Aboriginal Legal Service, Office of the Director of Public Prosecutions NSW, NSW Police Force, Community Legal Centres NSW, Youth Law Australia, the NSW Bar Association, and the Law Society of NSW.

The Q3 meeting was rescheduled to 30 September 2021. The working group has otherwise progressed work out of session

2. Activities and outcomes

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 a new representative from the NSWPF Education and Training team, who has agreed to provide an overview of any training that is being developed and provided to police on doli incapax, 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 working group is developing a guide/checklist for solicitors on doli incapax issues, which will be a document summarising the key doli principles and evidentiary matters, and can be referred to at all stages of the process. A sub-group, consisting of Legal Aid NSW, the NSW Bar Association and the Law Society of NSW is providing feedback on a draft checklist for defence practitioners, which will be considered at the September 2021 working group meeting.

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

Members of the working group from Legal Aid NSW and the Law Society of NSW will reach out to the Department of Education to organise a meeting with the Department and the NSW Police Force to discuss some of the issues raised by members about information sharing between schools and police.

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

No further update since Q2 - 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.

Anastasia Krivenkova, Manager, Strategic Law Reform Unit, Legal Aid NSW
Chair
3 September 2021