

## **Doli incapax Working Group Report Quarter 4 | October to December 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 (ALS), Office of the Director of Public Prosecutions NSW, NSW Police Force (NSWPF), 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 Q4 meeting has been rescheduled to 9 December 2021, to allow the working group to progress work since the last meeting.

### **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**

At the Q3 meeting, the new representative from the NSWPF Education and Training team provided an overview of training that is being developed and provided to police on doli incapax. The NSWPF representative agreed to follow up on matters raised by working group members during the presentation.

#### **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 develop 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. Due to limited capacity, the working group's discussion of the draft checklist has been delayed. We will attempt to progress this for the Q4 meeting, subject to members' capacity.

Legal Aid NSW has arranged a meeting with the Law and Justice Foundation and working group members for late November 2021 to discuss the scope of potential research regarding how doli incapax is assessed by courts.

#### **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 met with the Department of Education and NSWPF in late September 2021 to discuss some of the issues raised by members about information-sharing between schools and police and its impact on children in doli incapax matters, and any related information-sharing protocols or policies. Legal Aid NSW is preparing a summary of the issues and collating relevant case studies, to be shared with NSWPF and Education to progress their internal discussions. A follow-up meeting has been arranged between Legal Aid NSW, the Law Society of NSW, NSWPF, Education and the ALS for early December 2021.

**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.

Meagan Lee, Manager, Strategic Law Reform Unit, Legal Aid NSW  
Chair

23 November 2021