

Doli incapax Working Group Report Quarter 1 | January to March 2022

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.

At the Q1 meeting, working group members reviewed the working group's progress against actions in 2021, and agreed to a revised set of actions for 2022. The Chair noted the importance of strong and consistent attendance, participation, and involvement from all members, and suggested that members have two organisational representatives to attend meetings and receive emails.

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

NSWPF provided a response to working group members' earlier enquiries about training that is being developed and provided to police on doli incapax, which the working group discussed at the Q1 meeting. The NSWPF representative agreed to follow up on further matters raised by working group members.

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

A sub-group of the working group has developed a draft guide/checklist for solicitors on doli incapax issues, summarising the key doli principles and evidentiary matters, which can be referred to at all stages of the process. Members are currently providing feedback on the draft guide/checklist.

The working group has organised a CPD on doli incapax, to be provided by the Law Society NSW and delivered on 17 March 2022.

Working group members met with the Law and Justice Foundation (LJF) to discuss the scope of potential research to identify current practices regarding the application of doli incapax, including whether there is consistency among magistrates and courts in their application. We agreed that data collection and analysis by LJF would help to better understand the scale and distribution of the problem, and help us develop some guidelines and standards for the judiciary. The LJF has agreed to liaise with BOSCAR and courts, and will look at Justice Link, to review data and cases to get an understanding of the scale and distribution of the problem.

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

Working group members have prepared a summary of issues with case studies concerning information-sharing between schools and police and its impact on children in doli incapax matters,

and shared it 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 March 2022.

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
8 March 2022