

# **Submission to the NSW Sentencing Council regarding its Issues Paper *Weapons-related offences: Sentencing Young Offenders***

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## The NSW Young Lawyers Criminal Law Sub-Committee (**the Sub-Committee**) makes the following submission to the NSW Sentencing Council regarding its Issues Paper *Weapons-related offences: Sentencing Young Offenders* (**the Issues Paper**)

### **NSW Young Lawyers**

NSW Young Lawyers is a Committee of the Law Society of New South Wales that represents the Law Society and its members on issues and opportunities arising in relation to young lawyers i.e. those within their first five years of practice or up to 36 years of age. Through its 15 sub-committees, each dedicated to a substantive area of law, NSW Young Lawyers supports practitioners in their professional and career development by giving them the opportunity to expand their knowledge, advance their career and contribute to the profession and community.

### **The Criminal Law Sub-Committee**

The NSW Young Lawyers Criminal Law Sub-Committee (**'the Sub-Committee'**) is responsible for the development and support of members of NSW Young Lawyers who practice in, or are interested in, criminal law. The Sub-Committee takes a keen interest in providing comment and feedback on criminal law and the criminal justice system, and considers the provision of submissions to be an important contribution to the community. The Sub-Committee aims to educate the legal profession and the wider community about criminal law developments and issues through its events, and helps to develop the careers of aspiring criminal lawyers by providing a peer support network and a forum for young lawyers to discuss issues of concern. The Sub-Committee's members are drawn from prosecution, defence (both private and public), police, the courts and other areas of practice that intersect with criminal law.

## Summary of Recommendations

The Sub-Committee welcomes the opportunity to make a submission in relation to the Issues Paper and makes the following recommendations:

### Questions 2.1 and 2.2

1. The Sub-Committee is concerned about recent legislative changes whereby certain knife related crimes have been taken out of the *Summary Offences Act 1988* (and are therefore no longer eligible for a warning under *Young Offenders Act 1997* ('**YOA**')) and that the penalties for these offences have doubled prior to the completion of the Sentencing Council's current review. The Sub-Committee recommends that consideration be given to including an exception so that the offence of custody of a knife in a public place or school (now found in s. 931C of the *Crimes Act 1900*) may still be eligible for a warning in appropriate circumstances.
2. There may be circumstances where some weapons related offending currently excluded from the operation of the *Young Offenders Act 1997* could appropriately be dealt with by way of a Youth Justice Conference ('**YJC**'), either on referral from police or referral from a Court.

### Question 4.1

3. Common underlying factors leading to the prevalence of weapons related offending cited by the World Health Organisation in 2015 included: poor parental supervision; harsh and inconsistent discipline by parents; associating with troubled peers; exposure to violent media; exposure to interpersonal violent crimes; and fear for personal safety. The Sub-Committee supports developing a thorough understanding of these factors within NSW and across Australia, guiding the development of strategies and legislation aimed at deterring children and young people from engaging with weapons.
4. The Sub-Committee is concerned that gel blasters (which are characterised as toys in other jurisdictions like Queensland), meet the definition of air guns under the *Firearms Act 1996*. The Sub-Committee suggests that alternative ways of regulating gel blasters be investigated.

### **Question 5.1**

5. The Sub-Committee is of the opinion that the sentencing patterns for the three focus offences are appropriate, noting that the proportion of supervised community sentences and custodial sentences is highest for the most serious offence reviewed.
6. When assessing sentencing trends, it would be useful to have more detailed data as to sentencing patterns of specialist Children's Courts compared to Local Courts that sit as Children's Courts in areas where there is no specialised Children's Court.

### **Question 6.2**

7. The Sub-Committee emphasises the need for better education for young people in order to combat weapon-related offending, including increasing family support programs and wraparound, multi-agency services; improved access to and availability of mental health support services specially targeted for adolescents, particularly in regional areas where such services may be lacking; establishing carefully considered school-based initiatives and public safety campaigns to promote community wellbeing and crime prevention (and reviewing any existing initiatives and programs for their effectiveness).

### **Question 6.6**

8. The Sub-Committee does not support the introduction of knife crime prevention orders, and is concerned about the operation of orders that were piloted in the United Kingdom and their application to children.

### **Questions 6.8 and 6.9**

9. The Sub-Committee is generally supportive of YJCs. However, without addressing holistically the factors that lead young people to interact with the criminal justice system, there is a limit to the effectiveness of restorative justice mechanisms such as YJCs. The Sub-Committee supports the expansion, funding and support for wraparound services and multi-agency programs.
10. The Sub-Committee would welcome opportunities to explore how YJC processes could be modified to take into account particularly vulnerable young people (such as those with mental

health impairments or complex trauma backgrounds), for example by having specialist conference convenors with particular experience or training.

11. The Sub-Committee notes the role that Youth Justice play in relation to referring young people to suitable programs. The Sub-Committee is not aware, however, of any standalone rehabilitative programs specifically targeting weapons related offending (for example the equivalent of the Traffic Offenders Rehabilitation Program). The Sub-Committee would welcome research and funding into the creation and/or expansion of such programs to address concerns about the prevalence of weapon related offending as it relates to young people.

#### **Question 6.10**

12. The Sub-Committee agrees with the concerns articulated in the Issues Paper regarding introduction of random scanning by police. Young people in the community, particularly Aboriginal and Torres Strait Islander children, are already having negative experiences with the exercise of police powers and there has been limited data to suggest that the Queensland trial of similar laws was effective.
13. If the Sub-Committee's recommendation is not accepted and police powers are expanded to conduct random scans, police should be trained in trauma-informed and needs-assessment responses, with a specific focus on dealing appropriately with young people (including those exhibiting violent behaviour). Further any such random scans should be strictly limited to be used in a confined list of authorised places only, that does not include public transport.

**Question 2:1 Are there any issues related to pre-court warnings, cautions, and youth justice conferences under the *Young Offenders Act 1997 (NSW)*, and their application to weapons-related crime, that should be considered?**

**Question 2.2: Are there any issues related to court diversions under the *Young Offenders Act 1997 (NSW)* and their application to weapons-related crime, that should be considered?**

1. In relation to Question 2:1, the Sub-Committee notes that warnings may only be given for summary offences: see s. 13 of the YOA. Previously, custody of a knife in a public place or school was an offence contrary to s. 11C of the *Summary Offences Act 1988* and therefore could be eligible for a warning, although whether such an outcome was utilised in a particular case would have been dependent upon police discretion. However, this offence recently became an indictable offence found in the *Crimes Act 1900*, with a doubling of the maximum penalty to 4 years imprisonment, but to be dealt with summarily unless the prosecution or defence elects otherwise. This change has also occurred in relation to the offence of using or carrying knives in public places or schools (formerly s. 11C of the *Summary Offences Act 1988*, and now in s. 93IC of the *Crimes Act 1900*).
2. The Sub-Committee acknowledges that carrying a knife in a public place or school can be dangerous, even if such a knife is not intended to be used, and notes the high profile cases of knife-related crime to which the legislative change appears to be responding.<sup>1</sup>
3. Nonetheless, the Sub-Committee is concerned that this legislative change occurred prior to the outcome of the Sentencing Council's current review. The fact that the offence of custody of a knife is now an indictable offence means that it could no longer be eligible to be dealt with by way of a

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<sup>1</sup> Attorney General (NSW), 'NSW Government to double penalties for knife crimes' (Media Release, 20 June 2023) < <https://dcj.nsw.gov.au/news-and-media/media-releases/2023/nsw-government-to-double-penalties-for-knife-crimes.html#:~:text=The%20new%20legislation%20will%20also,wielding%20a%20knife%20to%20%2411%2C000>>.

warning, even though the offence could encompass a wide range of conduct. The definition of “knife” for the purposes of the *Summary Offences Act 1988* is an inclusive one, namely:

- a. *knife includes—*
- b. *(a) a knife blade, or*
- c. *(b) a razor blade, or*
- d. *(c) any other blade,*
- e. *but does not include anything that is of a class or description declared by the regulations to be excluded from this definition.*

4. Similarly, the definition of a knife for the new offences in the *Crimes Act 1900* (as per section 93IA) is:

**blade** includes a knife blade and a razor blade

**knife** includes a blade, but does not include a knife of a class prescribed by the regulations.

5. Both definitions encompass a wide range of knife blades and razor blades, from butter knives or cheese knives and box cutters, to much larger blades.

6. As a result, a hypothetical 14-year-old who comes to police attention for the first time and is found to be in possession of a small blade without being able to establish a reasonable excuse as set out in s. 93IB(3) of the *Crimes Act 1900* (proof of which would lie on the young person), would no longer be eligible to be dealt with by way of a warning if a police officer thought it otherwise appropriate to do so. Bearing in mind that some young people may not realise that carrying a knife without a reasonable excuse is an offence, and may not otherwise have any police record, the Sub-Committee is of the view that removing this discretion is a concern. The Sub-Committee recommends that the legislature consider making a particular exception so that the new offence of custody of a knife in a public place or school in s. 93IC of the *Crimes Act 1900* may still be eligible for a warning in appropriate circumstances, particularly if this was an unintended consequence of the legislative changes which were enacted relatively quickly.

7. In relation to both Questions 2.1 and 2.2, the Sub-Committee considers that there may be circumstances where some weapons related offending currently excluded from the operation of the YOA could appropriately be dealt with by way of a YJC, either on referral from police or referral

from a Court. Currently, strictly indictable offences such as robbery armed with an offensive weapon (commonly referred to as armed robbery) contrary to s. 97(1) of the *Crimes Act 1900* cannot be dealt with by way of a YJC due to the operation of s. 8(1)(b) of the YOA.

8. Whilst the Sub-Committee accepts that armed robbery offences are serious, and many such offences would **not** be appropriate to be dealt with by way of a YJC, there could be less serious examples of armed robbery committed by children who could greatly benefit from a YJC. For example, a situation could be envisaged where a young person uses a butter knife in a robbery. Whilst such behaviour is concerning, participation in a YJC could involve the young person sitting down with their support person, police, the victim (should they wish to attend), a conference convenor (and other persons as required/as appropriate), discussing their behaviour, apologising, and coming up with an Outcome Plan of steps the young person will need to take to prevent this behaviour from re-occurring. Outcome Plans can include measures such as attending programs or counselling. If the young person does not comply with the Outcome Plan, they can be brought back to court to be sentenced: see s. 41 of the *Children (Criminal Proceedings) Act 1987* (NSW) ('the **CCPA**'). Such a process can be lengthy, confronting and, despite potential public perceptions, is not an 'easy way out' for young people. The outcome plan can also involve referral to programs to address the young person's offending behaviour (see further discussion below in relation to Questions 6.8 and 6.9).

#### **4.1: What other issues are there around prevalence of weapons offences by children and young people?**

9. The Sub-Committee acknowledges that the prevalence of weapons offences among children and young people is intrinsically linked to various underlying social and political factors. In 2015, the World Health Organization released a manual titled, 'Preventing youth violence: an overview of the evidence,' employing an evidence-based approach and incorporating scientific studies to identify and address risk factors associated with youth violence including the use of weapons.<sup>2</sup> Common factors cited include, but are not limited to:

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<sup>2</sup> Butchart, Alexander and Berit Kieselbach, 'Preventing youth violence: an overview of the evidence' (27 October 2015) *World Health Organization*, ix.



- Poor parental supervision;
  - Harsh and inconsistent discipline by parents;
  - Associating with troubled peers;
  - Exposure to violent media;
  - Exposure to interpersonal violent crimes; and
  - Fear for personal safety.<sup>3</sup>
10. Academics in the United States and the United Kingdom have cited similar factors in their own independent studies and publications.<sup>4</sup>
11. The Sub-Committee supports developing a thorough understanding of these factors within NSW and across Australia, guiding the development of strategies and legislation aimed at deterring children and young people from engaging with weapons.
12. Finally, the Sub-Committee is concerned that gel blasters (which are characterised as toys in other jurisdictions like Queensland), meet the definition of air guns under s. 4 of the *Firearms Act 1996*. This means that young people who possess gel blasters that are brightly coloured and look like toys could still be charged with possessing or using an unauthorised pistol contrary to s. 7A of that Act as gel blasters are unable to be registered in NSW.<sup>5</sup> This could unnecessarily bring young people into contact with the criminal justice system and result in firearms offences appearing on their criminal records, which can have future implications. It can also lead to inflated numbers of firearms related offending for young people. The Sub-Committee suggests that alternative ways of regulating gel blasters be investigated – for example, in South Australia they are in the same category as paintball guns and are regulated.<sup>6</sup>

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<sup>3</sup> Butchart, Alexander and Berit Kieselbach, 'Preventing youth violence: an overview of the evidence' (27 October 2015) *World Health Organization*, 14.

<sup>4</sup> Farrington, David P and Friedrich Lösel, 'Direct protective and buffering protective factors in the development of youth violence' (2012) 43(2) *American Journal of Preventive Medicine*.

<sup>5</sup> See also 'Frequently Asked Questions - Firearms and Ammunition', *NSW Police Force*, (Web Page) <[https://www.police.nsw.gov.au/online\\_services/firearms/firearms\\_and\\_ammunition/frequently\\_asked\\_questions](https://www.police.nsw.gov.au/online_services/firearms/firearms_and_ammunition/frequently_asked_questions)>.

<sup>6</sup> South Australia Police, 'Do I need a firearms licence', *South Australia Police Safer Communities* (Web Page, 2021) <<https://www.police.sa.gov.au/services-and-events/firearms-and-weapons/do-i-need-a-firearms-licence>>.

## **5.1 Are the sentencing patterns for the three focus offences appropriate? Why or why not?**

13. The Sub-Committee is of the opinion that the sentencing patterns for the three focus offences are appropriate. The proportion of supervised community sentences and custodial sentences is highest for the most serious offence reviewed (robbery armed with an offensive weapon), followed by the next most serious offence (armed with intent). The low number of custodial and supervised sentences for the offence of custody of a knife is not surprising given in the relevant time period it was a summary offence, and it is difficult to envisage circumstances in which a custodial sentence would be appropriate for a young person found guilty of this offence.
14. The Sub-Committee notes that when dealing with matters under the *CCPA* - which excludes serious children's indictable matters and matters which are dealt with at law following the process in s. 31(3) of the *CCPA* - the threshold for a custodial order is higher than the threshold for sentence of imprisonment in s. 5 of the *Crimes (Sentencing Procedure) Act 1999*. The test is whether an order other than a control order would be "wholly inappropriate to deal with the person": see. s. 33(2) *CCPA*. The difference in these tests is appropriate given that children's brains are still developing. Furthermore, it is widely recognised that custodial settings can be an environment where young people are constantly exposed to other juvenile offenders, enabling them to develop and maintain criminal networks and learn new and improved offending strategies and skills.<sup>7</sup> This is particularly problematic as, due to their immaturity, young offenders are especially susceptible to being influenced by their peers.<sup>8</sup> These concerns are reflected in s. 6 of the *CCPA*. Sentencing patterns for the focus offences need to be viewed in this context.
15. When assessing sentencing trends, it would be useful to have more detailed data as to the sentencing trends of specialist Children's Courts, compared to Local Courts that sit as Children's Courts in areas where there is no specialised Children's Court. This would allow the Sentencing Council to assess consistency in outcomes for young people in catchment areas with specialised

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<sup>7</sup> See, eg, Kelly Richards, Australian Institute of Criminology, Australian Government, 'What Makes Juvenile Offenders Different from Adult Offenders?' (No.409, February 2011).

<sup>8</sup> *Ibid.*

courts and those in other catchment areas. It is important that young people in NSW receive consistent outcomes whether they are sentenced by a specialist Children's Magistrate or not.

16. Further, given that a custodial sentence for the offence of custody of a knife was very much the outlier when it was a summary offence, and the maximum penalty for this offence has now doubled, it may also be useful to reassess sentencing trends following the 2023 legislative reforms.

## **6.2: What responses could best help improve community safety, rehabilitation and other outcomes for young people?**

17. Dr Michael Carr-Greg, a psychologist specialising in adolescent mental health and parenting, emphasises the critical need for better education for young people in order to combat weapon-related offending.<sup>9</sup> The Sub-Committee is of the view that the following initiatives may to help achieve community safety, rehabilitation and other outcomes for young people:

- Increasing family support programs and wraparound, multi-agency services;
- Improved access to and availability of mental health support services specially targeted for adolescents, particularly in regional areas where such services may be lacking, or there may be a particular need for locally tailored mental health support;<sup>10</sup>
- Establishing school-based initiatives aimed at raising awareness and providing education regarding weapons related offending where such initiatives do not already exist, and reviewing the effectiveness of existing programs; and
- Launching public safety campaigns to promote community wellbeing and crime prevention.

18. Any education programs offered in schools, or public safety campaigns, need to be carefully considered, in consultation with relevant professionals. Noting the concerns set out in the Issues Paper at 6.86, there is a need to avoid fear-based education models that may create a misperception regarding the threat of violence and prevalence of knife ownership.

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<sup>9</sup> 'Surge in violence involving weapons must be combatted', *Les Twentyman Foundation* (Web Page) <<https://lftfoundation.com.au/surge-in-violence-involving-weapons-must-be-combatted/>>.

<sup>10</sup> 'Regional youth mental health help; is it tragically out of reach?', Charles Sturt University (24 June 2021, Web Page) <<https://news.csu.edu.au/opinion/regional-youth-mental-health-help-is-it-tragically-out-of-reach/>>; Christiane Klinner et. al, 'A qualitative exploration of young people's mental health needs in rural and regional Australia: engagement, empowerment and integration' (2023) *BMC Psychiatry* 745.

19. The Sub-Committee notes that Youth Justice NSW currently offers programs and initiatives aimed at educating and rehabilitating young offenders more generally. Examples include ‘Youth on Track’.<sup>11</sup> However, as is addressed further below in answer to Questions 6.8 and 6.9, there is opportunity for greater investment in targeted programs specifically addressing the use of weapons by young people.

## **6.6 Could knife crime prevention orders, or a version of them, be introduced to help deal with young offenders in relation to weapons? Why or why not?**

20. The Sub-Committee does not support the introduction of knife crime prevention orders, and is concerned that such orders piloted in the United Kingdom (as referred to in the Issues Paper at 6.23 – 6.28) can apply to children as young as 12 and can be imposed without a conviction (upon complaint by police) and without notice in certain circumstances. Whilst the minimum age of criminal responsibility in New South Wales is currently 10 years old, the presumption of *doli incapax* applies to children aged 10-13 years old and must be rebutted. The Sub-Committee notes increasing momentum for raising the minimum age of criminal responsibility to 14 across Australia,<sup>12</sup> with some states and territories committing to raise the age to 14,<sup>13</sup> and would strongly urge against the application of any such orders to children as young as 12.

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<sup>11</sup> ‘Youth on Track’ NSW Government (Web Page) <<https://www.nsw.gov.au/legal-and-justice/youth-justice/youth-on-track>>.

<sup>12</sup> See eg Chris Cunneen, ‘Ten-year olds do not belong in detention. Why Australia must raise the age of criminal responsibility’, *The Conversation* (Online at 23 July 2020) <<https://theconversation.com/ten-year-olds-do-not-belong-in-detention-why-australia-must-raise-the-age-of-criminal-responsibility-142483#:~:text=The%20fact%20that%20young%20children,impact%20on%20a%20child%27s%20development>>. See also Law Council of Australia, *Responses to Children under the Minimum Age of Criminal Responsibility Position Paper Addendum to the Policy Statement on the Minimum Age of Criminal Responsibility* (Position Paper, 25 June 2022) <<https://lawcouncil.au/publicassets/6fdc725a-60f7-ec11-945c-005056be13b5/Position%20Paper%20-%20Responses%20to%20children%20under%20the%20MACR.pdf>>.

<sup>13</sup> Both the Australian Capital Territory and Tasmania have committed to raising the minimum age of criminal responsibility to 14 – see Shane Rattenbury, MLA, Rachel Stephen-Smith, MLA and Emma Davidson, MLA, ‘The ACT is raising the minimum age of criminal responsibility to 14’ (Media Release, 8 May 2023) and Tasmanian Government Department for Education, Children and Young People, *Tasmania Youth Justice, Blueprint 2024-2034 Keeping children and young people out of the youth justice system* (Report, December 2023) 5.

21. The Sub-Committee also echoes the concerns set out in the Issues Paper at 6.29 - 6.30. In addition, an article published in *The Independent* on 7 October 2023 noted that whilst official results from the trial have not yet been published, data obtained by StopWatch, “a research and campaign group focussed on stop and search tactics and policing of marginalised communities, revealed that “138 KCPOs had been imposed as of February 2023 – with the youngest recipient just 13”. Further “the majority of recipients were Black (64 per cent), while 25 per cent were white, almost 6 per cent were Asian and a similar number were Arabic.<sup>14</sup>
22. The potential for Aboriginal and Torres Strait Islanders young people to be disproportionately affected by targeted police orders has been recently illustrated (albeit in a slightly different context) by a recent review of Suspect Target Management Plans by the Law Enforcement Conduct Commission. Findings of the review included that “The STMP target selection process likely contributed to the gross overrepresentation of young Aboriginal STMP targets” and “this was unreasonable, unjust, oppressive and may have been improperly discriminatory in its effect”.<sup>15</sup>
23. Instead, if upon a finding of guilt or following a guilty plea, there are concerns regarding a young person’s involvement in knife related offending, these could be more effectively be dealt with by way of a YJC, or supervision by Youth Justice and participation in programs (see below in relation to questions 6.8 and 6.9).

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<sup>14</sup> Amy-Clare Martin, ‘Ministers urged to scrap knife-crime ‘ASBOs’ after Black men and boys disproportionately hit’, *The Independent* (online, 7 October 2023) <<https://www.independent.co.uk/news/uk/crime/knife-crime-asbo-pilot-flawed-b2423347.html#>>.

See also the concerns set out in Georgia-Mae Chung, ‘Knife Crime Prevention Orders A Review of Associated Practical Issues’ (Report, Sentencing Academy / Kalisher Trust Intern, March 2023) <<https://www.sentencingacademy.org.uk/wp-content/uploads/2023/08/Knife-Crime-Prevention-Orders-A-Review-of-Associated-Practical-Issues.pdf>> and Jennifer Hendry, “‘The Usual Suspects’: Knife Crime Prevention Orders and the ‘Difficult’ Regulatory Subject’ (2022) 62(2) *The British Journal of Criminology*, 378–395.

<sup>15</sup> Tamsin Rose, ‘Highly Intrusive: NSW Police Dump proactive policing of children after watchdog warns it could be unlawful’, *the Guardian* (online), 30 October 2023, <<https://www.theguardian.com/australia-news/2023/oct/30/nsw-police-dump-suspect-targeting-management-plan-children-proactive-policing-lecc-potentially-unlawful#:~:text=The%20STMP%20policy%20was%20designed,visiting%20them%20at%20their%20homes>>.

**Question 6.8 What changes, if any, should be made to encourage the use of targeted rehabilitation or diversion programs?**

**Question 6.9 What changes, if any, should be made to the availability, scope and content of restorative justice programs for young offenders who commit weapons offences?**

24. In NSW, restorative justice programs for young offenders often take the form of a referrals to a YJC. A young offender can be referred to a YJC by the investigating police officer, the Director of Public Prosecutions or a court, with conference administrators throughout New South Wales.<sup>16</sup> The Sub-Committee is generally supportive of YJCs, and a 2013 study conducted by Moore & Moffatt indicated that YJCs have been quite effective in diverting both Indigenous and non-Indigenous young people away from custody.<sup>17</sup> As a YJC involves the creation of an Outcome Plan that must be provided to the Court, there are opportunities for young offenders to be referred to programs aimed at addressing their offending behaviours and attitudes. Thus, YJCs present an opportunity to try to address weapons related offending, assuming that the offences are eligible for referral to a YJC (see above in response to questions 2.1 and 2.2).

25. The Sub-Committee notes with some concern that a study of YJCs completed in 2007 found that they were not necessarily any more effective than other penalties imposed by the NSW Children’s Court in reducing juvenile re-offending amongst young people in the period 2007 – 2010.<sup>18</sup> BOCSAR’s 2012 study queried the reasons for these results, and posited that “one possible explanation is that YJCs do not address the underlying causes of juvenile offending (e.g. drug and alcohol use, parental neglect and abuse, poor school performance, boredom and

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<sup>16</sup> State Library of New South Wales, *Court Diversion Programs*, Find Legal Answers <<https://legalanswers.sl.nsw.gov.au/hot-topics-courts-and-tribunals/court-diversion-programs#:~:text=The%20scheme%20is%20established%20by,administrators%20throughout%20New%20South%20Wales>>.

<sup>17</sup> Jacqueline Joudo Larsen, ‘Restorative Justice in the Australian Criminal Justice System’ (Australian Institute of Criminology Reports: Research and Public Policy Series, no. 127, 2014) 7.

<sup>18</sup> NSW Bureau of Crime Statistics and Research, ‘The effect of Youth Justice Conferencing on re-offending’ (Media Release, 15 March 2012) <[https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2012/bocsar\\_mr\\_cjb160.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2012/bocsar_mr_cjb160.aspx)>.

unemployment’).<sup>19</sup> The study noted however that YJC participants found them to be “very rewarding”.<sup>20</sup>

26. This particular study could now be considered somewhat historical as it dates from 2007 - 2010. Nonetheless, the Sub-Committee agrees that without addressing holistically the factors that lead young people to interact with the criminal justice system, there is a limit to the effectiveness of restorative justice mechanisms such as YJCs. The Sub-Committee welcomes the introduction of wraparound services such as the A Place to Go Program, “a multiagency program that uses a young person’s contact with the Police and/or the court as an opportunity to intervene early by linking them with appropriate community supports and services. A dedicated coordinator leads cross-agency collaboration and acts as a central point of contact for agencies to coordinate a multidisciplinary response for young people”.<sup>21</sup> Anecdotally, Sub-Committee members have noticed improvements in the behaviour of young people engaged with A Place To Go, and would welcome increased funding for, and expansion of, such programs so that they can be made available to a wider range of geographical areas.

27. In terms of improvement to the YJC process, the Sub-Committee observes that, whilst the Children’s Court is empowered to deal with young people suffering from a mental health impairment or cognitive impairment under s. 14 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, this will not be appropriate or available for all young people who may have mental or cognitive impairments. Unfortunately, diversionary options such as YJCs may also not be open to these young people because, due to such conditions, they may not be able to engage properly in the ‘story telling’ phases of the programs or be able to offer a written or verbal apology to the victim. More general studies have indicated that rehabilitative programs to date have not accounted for the needs of young offenders who are not comfortable expressing themselves orally as restorative justice processes ordinarily require a great deal of talking.<sup>22</sup>

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<sup>19</sup> NSW Bureau of Crime Statistics and Research (n 18).

<sup>20</sup> Nadine Smith and Don Weatherburn, NSW Bureau of Crime Statistics and Research, *The effect of Youth Justice Conferencing on re-offending’ Youth Justice Conferences versus Children’s Court: A comparison of re-offending* (Crime and Justice Bulletin No 160, February 2012), 2 and 16.

<sup>21</sup> Youth Justice NSW, ‘A Place to Go overview and referrals’, NSW Government (Web Page, 2023) <<https://www.nsw.gov.au/legal-and-justice/youth-justice/programs-and-services/service-providers/program-specifications/a-place-to-go-overview-and-referrals>>.

<sup>22</sup> Masahiro Suzuki and William R Wood, ‘Is restorative justice conferencing appropriate for youth offenders?’ (2017) 18(4) *Criminology & Criminal Justice*.

28. Such young offenders may lose the benefit of the option to participate in a YJC, successful completion of which is recorded on a Court Alternatives History rather than a Criminal History, and can only be disclosed in limited circumstances: see s. 68 of the YOA. The Sub-Committee would welcome opportunities to explore how YJC processes could be modified to accommodate such vulnerable young people, for example by creating roles for specialist conference convenors with particular training, skills and experience (assuming that these positions do not already exist).

29. The Sub-Committee also supports initiatives such as the Youth Koori Court. At a recent Sub-Committee event that featured a practitioner's perspective of the Youth Koori Court, it was discussed that the Youth Koori Court is often a lengthy process due to the development of an action and support plan in collaboration with the young person, and regular observations of the young person's commitment to that plan over a period of many months. It was observed that many young people ultimately find it is this ongoing connection to the Court, elders and intensive supports that helps them rehabilitate.

30. The Sub-Committee further notes that, due to the operation of the principles of s. 6 of the CCPA, there is still a significant emphasis on rehabilitation and reintegration for young offenders who are dealt with under the CCPA rather than the YOA. Therefore, many young offenders who are not eligible for, or do not wish to participate in, YJCs can still have the benefit of targeted rehabilitation or diversion programs. For example, if a Court imposes supervision by Youth Justice NSW (which can be added as a condition of a bond imposed under s. 33(1)(a)(ii), s 33(1)(b) or as a condition of probation under s. 33(1)(e) of the CCPA), a young person can be referred to engage in rehabilitative programs. Information provided on Youth Justice's website sets out the following services that Youth Justice can assist with:

- *delivering intervention programs that target young people's offending behaviour*
- *arranging specialised services from psychologists, such as psychological assessments and counselling*
- *linking young people to services in their local community including drug and alcohol, mental health, mentoring services, social and sporting programs*
- *helping young people remain in school or start other education courses, such as NSW TAFE courses*
- *helping young people find employment using local employment services*
- *finding accommodation for young people experiencing homelessness or family breakdown*
- *connecting with a young person's cultural background and local community.*



*Youth Justice caseworkers can also help young people by referring them to take part in offence-focused intervention programs.*<sup>23</sup>

31. Further, under s. 33(c2) of the *CCPA*, the Children’s Court has the power to adjourn proceedings for the purpose of: assessing a person’s capacity and prospects for rehabilitation; allowing a person to demonstrate that rehabilitation has taken place; or for any other purpose the Children’s Court considers appropriate in the circumstances. An example of one such diversionary program is PALM (Adolescent Drug Treatment) through the Ted Noffs Foundation. However, the Sub-Committee is not aware of any programs specifically targeting weapons related offending (such as the equivalent to the Traffic Offenders Rehabilitation Program), as opposed to the underlying factors which may lead to such offending, for example drugs and alcohol use. The Sub-Committee would welcome research and funding into the creation (if such programs do not exist) and/or expansion of such programs that do exist to address concerns about the prevalence of weapon related offending and young people.

## **6.10 Would random scanning be effective in reducing weapons-related offending by young people offenders in NSW? Why or why not?**

32. The Sub-Committee agrees with the NSW Sentencing Council’s observations in the Issues Paper at 6.63 that “random scanning, by itself, does nothing to address the underlying causes of offending”, and at 6.59 that “there is limited evidence to suggest that increasing [police interventions] further reduces crime in any significant way”.

33. The Sub-Committee does not consider that random scanning will be more effective than making available a range of programs to address weapons-related offending by young people in NSW. The Sub-Committee notes converging evidence that indicates that young people are excessively policed,<sup>24</sup> and is concerned that expanded police powers will only serve to increase negative interactions between young people and police officers. Any such negative interactions could lead to more charges for offences such as offensive language, assault police, or resist arrest,

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<sup>23</sup> Youth Justice NSW, ‘What happens during supervision with Youth Justice?’, *NSW Government* (Web Page, 2023) <<https://www.nsw.gov.au/legal-and-justice/youth-justice/parents-guardians-carers/what-happens-during-supervision>>.

<sup>24</sup> Fabrice Crégut et al, ‘Replacing the Youth Justice System for Children aged 10-13 Years in NSW: A ‘Best Interests’ Response (UNSW CCLJ Centre for Crime & Justice Report, 2021) 35.

arising out of what may be viewed as unjustified police searches and scanning, further increasing contact between these young people and the criminal justice system, and potentially increasing mistrust of police.

34. As reflected in the Issues Paper at 6.58, Griffith Criminology Institute’s review of the scanning trial conducted in Queensland in 2022 found a number of issues, including that “scanning had been inconsistently used across different groups in the community...there was some evidence of the inappropriate use of stereotypes and cultural assumptions...”. There is no mention of how this issue would be combatted in the *Police Powers and Responsibilities (Jack’s Law) Amendment Bill 2022* (***Jack’s Law Amendment Bill 2022***). This Bill relates to a trial of hand-held scanners in Surfers Paradise and Broadbeach, Queensland, to detect unlawful possession of knives after the murders of two young men, in 2019 and 2020 respectively, by fatal stabbing. The Bill extended the geographical parameters of the random scanning beyond Surfers Paradise and Broadbeach to other areas including public transport stations and vehicles until 2025.<sup>25</sup>
35. Information released by Queensland police indicates that in the last eight months, over 39,000 individuals were scanned. Of these, 1070 individuals were charged with almost 1900 offences, predominantly related to weapon matters but also drug matters, with more than 400 weapons seized.<sup>26</sup> The Sub-Committee notes that only a small proportion of individuals who were scanned were charged with an offence, and an even smaller amount of weapons were seized.
36. Considering the current powers that police have with respect to young people, it is important to consider the main objectives of a random scanning power. For example, the statement of compatibility issued in relation to the *Jack’s Law Amendment Bill 2022* mentions the goal of achieving “the purpose of reducing the prevalence of knife crime in these areas and consequently ensuring the safety of other individuals in the community”.<sup>27</sup> The Sub-Committee agrees with the Issues Paper at 6.62, in that there appears to be many obstacles to achieving the above-

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<sup>25</sup> Statement of Compatibility, Police Powers and Responsibilities (Jack’s Law) Amendment Bill 2022 (QLD).

<sup>26</sup> QPS Media (Queensland Police) ‘Queensland Police seize 400 weapons under Jack’s Law since March’ (Media release, 15 December 2023) < [<sup>27</sup> Statement of Compatibility, Police Powers and Responsibilities \(Jack’s Law\) Amendment Bill 2022 \(QLD\).](https://mypolice.qld.gov.au/news/2023/12/15/queensland-police-seize-400-weapons-under-jacks-law-since-march/#:~:text=A%20staggering%20400%20weapons%20have,old%20Jack%20Beasley%20in%202019>.”</a></p></div><div data-bbox=)

mentioned goal, such as, “scanning may also encourage some young people to find alternative weapons that will not be detected”.

37. There is also literature to suggest that ‘police powers can influence police behaviours. Understanding the ways police ‘think’ – and especially, how they think about (alleged) offenders – is therefore vital’.<sup>28</sup> Recent research suggests that these police behaviours have translated to Aboriginal and Torres Strait Islander young people being more likely to be subject to stop and searches, name and address checks, move-on orders as well as strip searches.<sup>29</sup>

38. If young people in the community, particularly those who are Aboriginal and Torres Strait Islander, are already having negative experiences with police powers and there has been limited data to suggest that the Queensland trial of random scanning powers was effective, the Sub-Committee would recommend a different course of action. The Sub-Committee reiterates its calls for more focus on diversionary and rehabilitative programs discussed above, as well as services that address criminogenic factors.

39. Alternatively, a study conducted by UNSW’s CCLJ Centre for Crime & Justice has suggested that, since it is naive to believe that legislative measures for young people would exclude police powers, “police should be trained on child-friendly, trauma-informed and needs-assessment responses, with a specific focus on dealing appropriately with young children who demonstrate provocative or violent behavior...”,<sup>30</sup> as well as children who identify as Aboriginal or Torres Strait Islander. The NSW Police Force Youth Strategy 2023-2025 makes reference to the “operational application of police powers relevant to young people through the provision of training and educational materials to frontline officers”,<sup>31</sup> but it is unclear what this would entail and whether any training of this sort has been rolled out.

40. Further, if the Sub-Committee’s recommendation is not accepted and police powers are expanded, the Sub-Committee would be very concerned if such random scans were able to be conducted without limitation (accepting that there are some location limitations set out in *Jack’s*

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<sup>28</sup> Kelly Richards, ‘Police Officers’ Implicit Theories of Youth Offending’ 53(1) *Australian & New Zealand Journal of Criminology* 8-24.

<sup>29</sup> Crégut et al (n 25), 35.

<sup>30</sup> *Ibid*, 36.

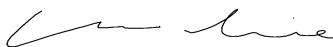
<sup>31</sup> Commissioner of Police, ‘NSW Police Force Youth Strategy’ (Strategic plan, 202) 22.

*Law Amendment Bill 2022*, including the requirement that a hand-held scanner authority be in effect). For example, the Sub-Committee views the proposed use of such scans in public transport stations or vehicles as far too broad and would likely still result in the problems set out above. As the Queensland Human Rights Commission has observed “Adding public transport to the places where searching may be conducted risks marginalising at-risk groups who rely on public transport to obtain essential services, attend work, and access health care. The extension of the power to search and scan to such situations is likely to limit additional human rights”.<sup>32</sup> Should such legislation be proposed, the Sub-Committee would welcome the opportunity to comment on the specific scope and application of the that proposed legislation.

## Concluding Comments

NSW Young Lawyers and the Sub-Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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<sup>32</sup> Queensland Human Rights Commission, *Police Powers and Responsibilities (Jack’s Law) Amendment Bill 2022 Submission to Community Support and Services Committee* (Submission, 13 January 2022).

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