



THE LAW SOCIETY  
OF NEW SOUTH WALES

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16 December 2025

Mr Edmond Atalla MP  
Committee Chair  
Legislative Assembly Committee on Law and Safety  
Parliament of New South Wales

Dear Mr Atalla,

### **COMMUNITY SAFETY IN REGIONAL AND RURAL COMMUNITIES: SUPPLEMENTARY QUESTIONS**

The Law Society thanks the Legislative Assembly Committee on Law and Safety (**Committee**) for the opportunity to give evidence at the public hearing into community safety in regional and rural communities on 24 November 2025. We set out our response to the Committee's supplementary questions below.

- 1. What support should be provided to police and/or local court magistrates to ensure the objectives of the *Young Offenders Act* are clearly understood and that suitable diversions are applied wherever appropriate?**

#### NSW Police

We suggest that all NSW Police officers would benefit from training on the appropriate use of diversions available under the *Young Offenders Act 1997* (NSW) (**YOA**). Our members advise that, in the past, specialist children's lawyers from Legal Aid NSW presented a course on the YOA to trainee police officers at Goulburn Police Academy. We suggest a similar course could be recommenced, to ensure all trainee officers are familiar with the YOA prior to commencing duties.

We suggest that police may be assisted by official guidelines or Standard Operating Procedures (**SOPs**) explaining the proper administration of the YOA. Police guidelines or SOPs should give effect to the intent and language of the Act, including making it clear that a child is "**entitled** to be dealt with" by way of YOA diversion,<sup>1</sup> unless there are countervailing considerations weighing against diversion, as set out in the Act.

Our members advise that NSW Police Youth Liaison Officers (**YLOs**) are typically very helpful in providing assistance to generalist officers, especially more junior officers, on appropriate matters for diversion under the YOA. Members note that often officers feel unsure about diverting a child unless they speak to a YLO for advice. In this regard, we support further training and additional recruitment of YLOs. It may be beneficial for NSW Police to ensure there is always a YLO available or on-call, especially in the evenings and at nighttime, to ensure that generalist officers can receive timely advice about diversion of children dealt with outside of business hours.

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<sup>1</sup> *Young Offenders Act 1997* (NSW), ss 14(1), 20(1) and 37(1).

We suggest that YOA diversion by police across NSW could be independently monitored, including police utilisation of youth justice conferences, cautions and warnings. In particular, we suggest that the number of Aboriginal young people diverted under the YOA should be specifically monitored, noting recent data demonstrating an 8.3% decline in the number of Aboriginal young people diverted by police.<sup>2</sup> Independent oversight and monitoring of YOA diversions may be able to identify Local Area Commands where diversion under the YOA is under-utilised and where officers may benefit from further training on the YOA.

We also suggest that information about the YOA could be incorporated into Aboriginal Action Plans. We understand that Aboriginal Action Plans are developed by the Police Aboriginal Consultative Committee and guide police in their contact with and policing of Aboriginal and Torres Strait Islander people. Explanation of the YOA and guidance as to appropriate diversion, set out within Aboriginal Action Plans, may better promote police understanding and utilisation of the YOA, specifically in relation to Aboriginal and Torres Strait Islander children.

### Magistrates

The Law Society supports the expansion of specialist Children's Court sittings presided over by specialist Children's Court magistrates, as preferable to the Local Court sitting as a Children's Court presided over by non-specialist magistrates. Members advise that non-specialist magistrates are often less familiar with the YOA and associated children's legislation. The Law Society suggests regular training sessions for non-specialist magistrates who preside over Local Courts which sit as Children's Courts, to ensure that all magistrates who exercise the jurisdiction of the Children's Court are appropriately trained in its laws and procedures.

## **2. What further changes to the *Young Offenders Act* are needed to improve its functionality?**

The Law Society commends the recent amendments to the YOA introduced by the Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025 (**Amending Act**), which has remedied several previously identified constraints with the YOA's functionality.

As a matter of principle, the Law Society supports measures to effectively divert children from the criminal justice system, noting that childhood contact with the criminal justice system is widely recognised as a key risk factor for future offending.<sup>3</sup> To this end, we suggest that amending the YOA to make all offences that can be dealt with by the Children's Court<sup>4</sup> eligible for diversion under the YOA would increase the capacity for children to be diverted from the criminal justice system.

It is important to note that *eligibility* for diversion under the YOA does not equate to *automatic* diversion. The Law Society supports police having a broad discretion to divert children, even those charged with strictly

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<sup>2</sup> NSW Bureau of Crime Statistics and Research, *NSW Closing the Gap quarterly update June 2025* available here: <[https://bocsar.nsw.gov.au/research-evaluations/2025/Closing\\_the\\_Gap\\_Quarterly\\_Mar\\_20251.html](https://bocsar.nsw.gov.au/research-evaluations/2025/Closing_the_Gap_Quarterly_Mar_20251.html)>.

<sup>3</sup> See, for example: Sentencing Advisory Council *Reoffending by Children and Young People in Victoria* (2016) p 53; Standing Council of Attorneys-General, 'Age of Criminal Responsibility Working Group Report' September 2023, p 23.

<sup>4</sup> That is, all offences, including strictly indictable offences, except for Serious Children's Indictable Offences as defined in *Children (Criminal Proceedings) Act 1987* (NSW) s 3.



indictable offences, noting that the conduct which can give rise to such charges may vary significantly in seriousness. Increased police discretion to divert children at the earliest opportunity will ensure the Children's Court's limited resources are reserved for matters which require judicial attention and will help reduce unnecessary contact between children and the criminal justice system.

Currently, offences ineligible for diversion are set out in section 8(2) of the YOA. As a matter of priority, we suggest that the ineligible offences be closely reconsidered, especially traffic offences, offences under the *Drug Misuse and Trafficking Act 1985* (NSW) and offences under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). These offences, in particular, can capture a broad range of conduct, including very minor or trivial behaviour, that may benefit from early diversion by police.

Other than the suggestions above, which are directed at broadening the scope of offences available for diversion, we make the following suggestions aimed at increasing the functionality of the YOA:

- While the Amending Act has made positive improvements by increasing the number of cautions available to young people (to three cautions in three years), we suggest that removing the limit on the number of cautions available would further facilitate diversion in appropriate matters.
- We suggest the YOA be amended to clarify that bail is dispensed with after a charge is referred to a Youth Justice Conference.
- Offences dealt with under the YOA should not appear on a child's criminal record, given that the matter has been diverted from the criminal justice system. However, in the experience of our members, YOA outcomes are, from time to time, incorrectly included on a child's criminal record. Inclusion of YOA outcomes on a child's record is both highly prejudicial and places the burden on the child to seek a correction to their record. We suggest the YOA be amended to make clear that YOA outcomes must not appear on criminal records.
- We support amendment to the YOA to enable participation of Aboriginal Controlled Community Organisations, Aboriginal Elders and respected community members in the Youth Justice Conferencing process.
- We note that section 7 of the YOA lists principles to guide the operation of the Act, including that "the over representation of Aboriginal and Torres Strait Islander children in the criminal justice system should be addressed by the use of youth justice conferences, cautions and warnings."<sup>5</sup> We suggest that the YOA could provide further guidance in relation to the administration of the YOA specific to Aboriginal and Torres Strait Islander children and young persons, similar to provisions in the *Children and Young Persons (Care and Protection) Act 1988* (NSW).<sup>6</sup>

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<sup>5</sup> *Young Offenders Act 1997* (NSW) s 7(h).

<sup>6</sup> See: *Children and Young Persons (Care and Protection) Act 1988* (NSW) Chapter 2, Part 2.



**3. We have heard of a pilot program at Surry Hills Children's Court where care practitioners attend proceedings to provide advice on care-related matters when relevant to the child. Do you have a view on this program and how its currently operating?**

The Law Society understands that the Surry Hills Children's Court Cross Over Pilot (**Pilot**) is a temporary referral pilot whereby Legal Aid NSW's Family Litigation team provide care and protection advice to children and young people who have matters before the Surry Hills Children's Court Crime List. This referral may be made by the magistrate, the child or young person's solicitor or the prosecuting solicitor. The child or young person must consent to the referral. In this Pilot program, care solicitors attend the Children's Court Crime List and are available to provide on-the-spot care advice to the child or young person. This can happen in the cells, meeting rooms, or at any alternative time or location convenient to the client.

Legal Aid NSW has advised the Law Society that common issues for advice include issues about placement, schooling, health, access to services and benefits, contact with family members, contact with former foster families, questions about care and protection proceedings and the final orders in place, restoration and leaving care plans. The type of assistance Legal Aid NSW provides depends on the client, their circumstances and their instructions, and includes advice (face to face, telephone or audio-visual link), minor assistance, extended legal assistance and casework assistance (on a grant of legal aid). When appropriate, the Pilot team will also directly refer clients to Legal Aid NSW's Children's Civil Law Team which can advise the client on, for example, issues related to Centrelink, victim's compensation, housing and other civil-related legal matters.

The Law Society understands that Legal Aid NSW developed the Pilot in response to the significant over-representation of children and young people in out-of-home care (**OOHC**) in children's criminal proceedings. This over-representation of children in OOHC in the criminal justice system is of significant concern to the Law Society also. The Law Society supports the Pilot as one avenue to ensure this vulnerable cohort of children can better access legal advice and support. We emphasise that children or young people receiving timely legal advice about care-related matters can make a significant difference to the safety, welfare and well-being of the child or young person.

While the Law Society supports the Pilot program, our members report that many practitioners are not aware of the Pilot. To increase practitioner awareness of the Pilot, we suggest that private practitioners on the Children's Legal Aid Panel should be informed so it can be utilised to its full potential. We also suggest that the Pilot may have further beneficial impact if it receives funding to expand beyond metropolitan Sydney, especially to regional locations. Further, noting the over-representation of Aboriginal children in both the care and crime jurisdictions, we support consideration of funding for the Aboriginal Legal Service (NSW/ACT) Ltd (**ALS**) to deliver a similar program for ALS clients at Surry Hill's Children's Court and other Children's Courts across NSW.

The Law Society also supports Legal Aid NSW's 'Your Voice – Children's Out of Home Advocacy Service' (**Your Voice**), which is a specialist service for children and young people in OOHC. Your Voice involves an interdisciplinary team including specialist youth caseworkers, Aboriginal Field Officers and lawyers with expertise in civil and care and protection law. The service provides socio-legal services to meet the needs of

children and young people in OOHC. The Law Society supports ongoing investment in Your Voice to ensure continued wraparound support for children in OOHC.

More generally, the Law Society highlights that our members often report poor communication between OOHC placements, the Department of Communities and Justice (**DCJ**) and the legal representatives who appear for children (who are in OOHC) in criminal proceedings. This lack of communication and poor information-sharing can significantly impair a legal representative's capacity to properly advocate for a child and the Court to make appropriate orders. Members report difficulty obtaining information from the OOHC placement and/or DCJ about the child's current placement, why they are in care, the length of time they have been care, specific supports for the child and the child's significant relationships (being details often difficult for a child to communicate). The Law Society emphasises the urgent need for improvement to information-sharing between OOHC placements, DCJ and children's legal representatives, so that lawyers have timely access to the necessary information to properly advocate for this vulnerable cohort of children in criminal proceedings.

**4. Some stakeholders have suggested that there needs to be a program for young people who commit reckless driving offences, particularly goading chases. What are your thoughts on this?**

Our members advise that children who engage in reckless or dangerous driving offences are typically disengaged, bored or lacking pro-social activities or programs in their communities. Therefore, as a starting point, we suggest that to most effectively reduce this category of offending behaviour in children, communities may benefit from investment in recreational and pro-social activities for youth, such as after-school youth hubs, music facilities and sport programs.

For those children who do engage in such behaviour, the Law Society supports the development of a specific driving program for children, similar to the Traffic Offender Intervention Program completed by adult offenders. We suggest that Youth Justice could deliver such a program as part of its Youth Justice Conferencing. We also suggest the driving offence program should be available to children of all ages and not only those old enough to legally hold a driver's licence. However, to effectively facilitate this proposal, eligibility for YOA diversion would need to be expanded to include referrals for children over the age of 16 charged with driving offences, who are currently excluded from being dealt with under the YOA.<sup>7</sup>

For Aboriginal children, we suggest any safe driving program should be designed and delivered in partnership with an Aboriginal Community-Controlled Organisation. We emphasise that a targeted, culturally safe and child-appropriate driving program would require sufficient funding and resourcing to ensure accessibility for all children across the state, especially in rural and remote areas.

However, we emphasise that a safe driving program will likely be most effective when completed alongside other supports and interventions for the child, addressing the underlying drivers of the offending behaviour and the child's other unmet needs. Factors contributing to a child engaging in reckless or dangerous driving

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<sup>7</sup> See: *Young Offenders Act 1997* (NSW), s 8(2)(b).



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offences may include, for example, boredom, disengagement from school, difficulties at home or with their family, or untreated mental or physical health issues. Programs focused on safe driving, without intervention and support directed to the underlying drivers of the child's offending behaviour, may have limited success in rehabilitating the child. We suggest any driving programs for children must be delivered alongside targeted support and redirection.

Thank you for the opportunity to respond to the Committee's further questions. Inquiries at first instance may be directed to Jade Fodera, Policy Lawyer, at (02) 9926 0218 or [Jade.Fodera@lawsociety.com.au](mailto:Jade.Fodera@lawsociety.com.au).

Yours sincerely,

**Jennifer Ball**  
President