

NSW Legislative Council
Select Committee on Youth Justice inquiry
Supplementary questions

(1) How has section 22C of the Bail Act affected bail outcomes for children in practice?

We would refer the Committee to Legal Aid NSW's submission for the statutory review of section 22C of the *Bail Act* (**attached**).

(2) Is it now easier for a child to be remanded in custody than to receive a custodial sentence following conviction?

Short term remand has been a long-standing issue for children in New South Wales. In every year this decade thus far, the median length of a stay in Youth Justice NSW custody when on remand has been 1 day¹, which clearly demonstrates an ongoing issue in New South Wales when it comes to short term remand. It is the view of Legal Aid NSW that, whilst this phenomenon is not novel, measures such as the introduction of section 22C of the *Bail Act* undermine work being undertaken by agencies to resolve short term remand, particularly noting the comments on the test made in our submission to the statutory review (noted above).

(3) Have you observed cases where children are held on remand and subsequently receive non-custodial outcomes or are found not guilty?

This is regularly observed by Legal Aid NSW staff and is one of the main criticisms our organisation would level at the section.

(4) Does the current bail framework create incentives for children to plead guilty in order to be released from custody?

See our response to (1).

(5) If the age of criminal responsibility were raised, what alternative legal or support pathways should be established for children who would otherwise be charged?

It is appreciated by Legal Aid NSW that any change to the Minimum Age of Criminal Responsibility (MACR) would also need to be accompanied by the development of

¹ Department of Communities and Justice, Youth Justice RPELive Database. Extracted 5 July 2025.

alternative pathways. At various points in our original written submission, we referred to the benefits of multi-agency approaches and programs which are capable of providing wraparound support for children. We also mentioned the place-based, community-led alternative approaches which have been delivered to communities such as Moree in our section 22C submission.

Furthermore, we note recommendation 6 from the *Independent review of the operation of doli incapax in NSW for children under 14 (the doli review)*, which recommended that:

The NSW Government should consider introducing, by any legislation necessary, a voluntary alternative intervention pathway for 10–13 year olds who are in contact, or who are at risk of contact, with the criminal justice system which:

- (1) Operates independently of criminal justice proceedings or outcomes.
- (2) Includes the following features:
 - (a) A scheme that can receive referrals, conduct assessments and develop support plans for children who have complex needs, for example through a multidisciplinary body or panel.
 - (b) A case management function to enable implementation of the support plan and coordinate service delivery.
 - (c) Restrictions on the admissibility in criminal proceedings against a child of statements made by the child while engaging in this pathway.

Programs or service models such as this may be seen as a suitable alternative to the current criminal justice response. We understand some consideration is being given to what a voluntary alternative intervention pathway might look like in New South Wales. The observations of our staff are that similar programs, such as Youth on Track, have had great success. Similarly, other mentoring initiatives such as the BackTrack program and similar services which run alongside this through the Tracker Network, have had positive outcomes. We refer to many of these and the reasons for their appeal in our original submission.

We would emphasise the need for these programs to be voluntary and would further emphasise our opposition to any kind of mandatory therapeutic orders (such as the kind which have also been proposed in the *doli* review). Ultimately, we would hold concerns about how an alternative model which is mandatory would operate distinctly from a criminal justice response and suggest that an alternative model which had mandatory requirements would be likely to have similar outcomes to a criminal justice response.

(6) To what extent does fare evasion act as an entry point for young people into the criminal justice system?

(7) Are current enforcement approaches to fare evasion disproportionately impacting disadvantaged young people?

(8) What are the long-term consequences for young people who accumulate significant fines at an early age?

Penalty notices are a common way through which children come into contact with the criminal justice system.² In NSW, section 53 of the *Fines Act 1996* stipulates that its penalty notice regime applies to children aged 10 years or over at the time they are alleged to have committed the penalty notice offence.

Children are generally financially unable to pay fines issued to them.³ If the penalty notice is not paid by the due date, the NSW Fines Commissioner can make an order for the enforcement of the amount payable under a penalty notice.⁴

The imposition of fines can be a contributing factor to entrenching long-term disadvantage for children. Children can accrue very serious amounts of fine debt at a time in their lives when they are not fully able to understand the consequences of the resulting debt. Fines also compound pre-existing disadvantage, causing disproportionate detriment to children who are already in vulnerable situations. Children experiencing homelessness and those living in unsafe home environments are particularly susceptible to both being issued fines and facing the additional consequences of their eventual default on those fines.⁵

A recent report into Children and Covid 19 Fines in NSW recommends ending the issuance of penalty notices to children in NSW entirely.⁶ The report outlines that the reasons for this recommendation include that children do not earn enough to pay fixed penalty notice fines, fine amounts are not adjusted to reflect the financial means of disadvantaged recipients, penalty notices are not an effective deterrent when children cannot, and often do not, pay the fines attached to them, fines compound disadvantage, and penalty notices are inconsistent with the juvenile justice objective of diverting children from the criminal justice system.⁷

Since 2009 in NSW, there has been a Work and Development Order (WDO) scheme which allows people to pay off their fines by doing unpaid work, undertaking a course

² David Brown, Chris Cunneen and Sophie Russell, “‘It’s All about the Benjamins’: Infringement Notices and Young People in New South Wales’ (2017) 42(4) *Alternative Law Journal* 253, 255.

³ NSW Sentencing Council, *The Effectiveness of Fines as a Sentencing Option: Court-imposed fines and penalty notices* (Interim Report, October 2006) 22.

⁴ *Fines Act 1996* (NSW) Div 4.

⁵ Julia Quilter, Luke McNamara, Elyse Methven, Grace Bowles, “*Children and COVID-19 Fines in NSW*” Impacts and lessons for the future use of penalty notices (2024)

⁶ *Ibid.*

⁷ *Ibid.*

or receiving treatment. The eligibility criteria captures people who are experiencing hardship, including children. The scheme offers an alternative method of paying off fines for people who cannot otherwise afford to pay. However, a person needs to engage with an approved WDO sponsor before they can undertake a WDO. This requirement creates barriers for children with limited supports, especially those living in regional areas where there are limited WDO sponsor options.

(9) Would measures such as free or subsidised public transport for children reduce contact with the justice system?

Legal Aid NSW supports measures to reduce unnecessary contact between children and the criminal justice system. By implementing free public transport for persons aged under 18, a common entry point for contact with the criminal justice system would potentially be removed. Our experience is indicative of numerous young people having negative interactions with NSW Police due to matters related to the use of public transport, including fare evasion. It may be that a policy change such as free public transport would likely reduce the frequency of those interactions. Any change is unlikely to be as significant if the proposed alternative model was subsidised public transport.

Revenue NSW reported in the 2025-26 financial year that the overwhelming majority of fines issued to children aged under 18 years, were issued due to 'travel or attempt to travel without valid ticket' (3,997 in total).⁸ Disadvantaged children often simply cannot afford to pay for public transport and can be disproportionately impacted by such fines. By providing free public transport, these already vulnerable children will not be further disadvantaged.

Further, free or subsidised public transport would reduce the barriers for at-risk children accessing pro-social activities such as school, employment opportunities, support services, sports and recreational activities.

Victoria introduced free public transport for children under 18 years in January 2026. The Victorian Council of Social Service CEO Juanita Pope welcomed the change, noting:

As well as good transport policy, this is a crime prevention measure: it will keep kids from getting sucked into the justice system through fines they can't afford to pay.⁹

Ms Pope added:

Access to free public transport will help improve school attendance and punctuality, and improve wellbeing by increasing access to support

⁸ NSW Government, Revenue NSW (2026)

<https://www.apps09.revenue.nsw.gov.au/customer_service/forms/dashboard/fines>.

⁹ Victorian Council of Social Service, VCOSS Initial State Budget Response (Web Page, 20 May 2025) [VCOSS initial State Budget response | VCOSS](#).

services, opportunities to work, attend sport and visit friends, and eliminate fines for fare evasion.¹⁰

For these reasons, we would encourage consideration of a free public transport system for children under 18.

However, we would also suggest that any change to public transport policy would also need to be accompanied by changes to policing patterns, which typically is reported to be at much higher levels at train stations and other public transport hubs. Our legal staff report numerous interactions between police and children and young people occurring at these locations, many of which have questionable legal bases and which can then lead to the escalation of the incident or further interactions between that child and police at a later time. Whilst fare evasion is one cause of those interactions, proactive policing will often involve interactions between police and children which have limited or no legal basis and are not undertaken due to any public transport-related issue.

(10) More broadly, do minor regulatory offences contribute to the criminalisation of poverty among young people?

See our responses to (6), (7), (8), (9).

(11) If the age of criminal responsibility is raised, what risks arise if broader system reform does not occur alongside it?

Legal Aid NSW notes the comments of the *doli* review about the shortcomings of the current system. Specifically, we note the following comments:

Police may arrest a child and refuse bail as a ‘circuit breaker’ (to interrupt offending behaviour and protect the community) or due to a lack of alternative options (such as available community services). However, when *doli incapax* cannot be rebutted and the child is released, the cycle often repeats. This approach may offer short-term relief for the community but fails to address a series of broader issues (including the child’s underlying issues), and increases the child’s exposure to the criminal justice system.¹¹

These concerns neatly and effectively articulate some of the shortcomings of the current system.

Whilst Legal Aid NSW accepts that there are risks associated with raising the MACR without broader system reform, we suggest that those risks already exist within the

¹⁰ Victorian Council of Social Service, *2025 Budget Response* (2025) 28-29.

¹¹ The Honourable Geoffrey Bellew SC and Mr Jeffrey Loy APM, *Review of the operation of doli incapax in NSW for children under 14* (Report, August 2025).

current system. Short-term relief for the community may provide a ‘circuit breaker’ but, in our experience, this period of time in custody can be highly disruptive and harmful. As noted in our submission on page 44, it exacerbates trauma, disrupts education, fuels community disconnection, and compounds vulnerability for already disadvantaged children. Furthermore, the current criminal justice response often leads to the imposition of bail conditions which typically have a strong welfare and protective focus. As such, children are often having interactions with the criminal justice system for more trivial incidents such as breaching their curfew. These repeated contacts with the criminal justice system increase the risk of ongoing criminalisation.

Legal Aid NSW proposes that the alternative strategies discussed in both our submission as well as at our response to question (5) would all lead to improved outcomes for children who are currently not having underlying concerns addressed in the current system.

(12) Should raising the age be accompanied by a legislated requirement to invest in early intervention and diversion services?

Legal Aid NSW wholeheartedly supports appropriate measures to improve the quality of support, intervention and resources available for children and young people at risk of entering the criminal justice system. This would include improving opportunities for appropriate early intervention and diversion. However, we would suggest those opportunities must be trauma-informed, culturally-safe and community-led to ensure they lead to results.

Our organisation has been advised of numerous reports where government agencies in particular have tried to deliver intervention and diversion but where those approaches have failed due to the applicable program or relevant agency (or agencies) not providing a service which meets the above criteria. Our position is that there will be a much higher failure rate for any measure which does not meet these requirements, as it is unlikely that those measures would be fit for purpose to its target audience.

(13) What does success look like five years after raising the age of criminal responsibility?

In New South Wales, there are already certain measures and targets which are used to measure how well the youth justice system is operating. These could be applied to addressing the question of success. More specifically, Target 11 of the National Agreement on Closing the Gap clearly provides a target to address the overwhelmingly disproportionate representation of First Nations children in the criminal justice system. In recent years, the proportion of First Nations young people in custody has been sitting above 50% and the number of First Nations children in

custody remains above the Closing the Gap target. Furthermore, we are already aware that the criminal justice system disproportionately captures children who have a disability, with mental health diagnoses and children in the child protection system.¹² Ideally, every child would have sufficient supports available to them to ensure they are not at risk of having contact with the criminal justice system, but any measures of success should particularly focus on how the criminal justice system is impacting on those cohorts already disproportionately impacted upon.

Beyond this, we would refer the Select Committee to our original written submission, the submissions of our colleagues and the answers above in response to this question.

(14) What is the single most important reform that should accompany raising the age to ensure better outcomes for children and community safety?

Legal Aid NSW does not hold the view that there is a single, specific reform which would ensure better outcomes for children and community safety. However, our organisation does note the positive outcomes and reports which continue to refer to developments arising from the funding the NSW Government has provided to certain regional communities and would certainly advocate for similar, community-led and place-based approaches for the entire state.

¹² For example, Susan Baidawi & Alex R. Piquero, 'Neurodisability among children at the nexus of the child welfare and youth justice system', (2021), vol 50 (4), *Journal of Youth & Adolescence*, pp 803-819.