



## **NSW Police Force submission on the 'Weapons-related offences: sentencing young offenders' issues paper**

The NSW Police Force (NSWPF) appreciates the opportunity to provide comment on the 'Weapons-related offences: sentencing young offenders' issues paper as part of the NSW Sentencing Council review of sentencing for firearms, knives and other weapons offences (the Review).

Our submission is structured according to the chapters and order of content within the issues paper. We are happy to discuss these comments and any material from our earlier submissions further. Please make requests to the contact person detailed at the end of this submission.

### **Chapter 2 - Diversion**

#### Diversion under the Young Offenders Act (Q2.1/2.2)

Diversions are a known strategy in reducing juvenile crime and preventing reoffending, and it is appropriate that some weapons-related offences are dealt with under the *Young Offenders Act 1997* (Young Offenders Act). Existing exceptions for indictable offences that cannot be tried summarily should remain in place given the gravity of these offences and risk to public safety they pose.

The NSWPF considers that both pre-court and court based diversion mechanisms under the Young Offenders Act are in general appropriately applied across the criminal justice system (subject to comments about repeat offenders below).

A specific benefit of the pre-court diversionary regime is that it facilitates engagement with the young person regarding offending drivers and consequences.

We make the following observations in relation to the diversion strategies available under the Young Offenders Act.

#### *Cautions*

When police deliver a caution there is a process which involves an open discussion with the young person, allowing the officer to build rapport with the young person, and assist them to understand the consequences of their actions. If the caution takes place in a courtroom though, the process of the caution is significantly different. In these instances, the young person may fail to understand the regular court process and that the caution being issued is a direct response to their previous actions.

#### *Youth conferences*

Youth conferences allow victims (if they choose) to take part in restorative justice measures such as providing impact statements or being involved in the development of the young person's action plan. This benefits the victim as well as the young person as it enables them to recognise the impacts of their offending and take responsibility for it.

#### Recidivist offending

Despite the benefits raised above, we have found that continued application of the Young Offenders Act, including issuing repeated cautions and youth conferences, lacks effectiveness when dealing with repeat offenders. These approaches do not appear to act as a deterrent and do not address factors that can lead to the behaviour, such as family circumstances, environment, mental health concerns or drug addiction issues.



In the circumstances of repeat offending, there is a greater need for stronger penalties and mechanisms to address offending, protect community safety and act as a deterrent, particularly in the context of weapons related crime which poses specific and high risks to the young offender, first responders and the community. We consider that increasing the maximum penalties for repeat offending in certain circumstances and introducing other initiatives such as a modified version of the Knife Crime Prevention Orders scheme in the United Kingdom should be considered. The NSWPF also recommends investigation of interventions which address the underlying causes of the behaviour and include monitoring and enforcement of outcomes.

### Mental health diversions (Q2.3)

Mental health diversions provide an additional and necessary strategy for reducing juvenile crime where a young person may require assistance to understand and participate in the process for cognitive reasons.

However, these processes can be difficult to manage and there is limited ability for enforcement of mental health diversions. The young person would be entered in a diversion arrangement such as attending sessions with a mental health clinician or potentially having to take medications, which cannot be enforced nor monitored (from a policing perspective). There is nothing to prevent the young person from failing to attend meetings or take their required medications. As such, the current scheme design may not be achieving the objectives. This should be considered further in the context of weapons related crime which present community safety risks. It should also be considered in the context of the rising numbers of young persons being diverted under the *Mental Health and Cognitive Impairment Forensic Provisions Act* (paragraph 4.18).

## **Chapter 3 - Sentencing practice and procedure**

As per our comments above, further consideration is needed as to the appropriateness of the range and type of penalties available for repeat higher risk young offenders in relation to summary, indictable and serious indictable weapons related offences. The NSWPF is concerned the current diversion and penalty regime may not be operating effectively for this cohort.

### Available penalties for summary disposals (Q3.1)

The NSWPF notes the Children's Court rarely issues fines since youths are often unlikely to have the means to pay, so this remains an infrequently used option in the Children's Court jurisdiction.

While the other avenues of summary disposal penalties available, such as control orders and juvenile probation orders, allow for the level of criminality and seriousness of the offence to be considered and factored accordingly, the issue remains as to who is responsible for enforcing the order.

### Sentencing principles applying to young offenders and weapons related crime (Q3.3)

The NSWPF supports the commentary and approach to sentencing of weapons related crime adopted by the judiciary in the United Kingdom which focuses on reduction of offending and public safety as paramount considerations. This is particularly important when sentencing young persons for indictable and serious indictable weapons related offences.



## **Chapter 4 - Young offenders and weapons**

The NSWPF notes the data does not appear to distinguish repeat offenders and suggests this would assist the analysis.

## **Chapter 6 - Reform options**

The NSWPF does not agree with the comment from Legal Aid NSW that many vulnerable individuals are “overpoliced” (paragraph 6.7).

### Sentencing reforms generally (Q6.1/6.2)

The NSWPF notes that New Zealand has in place strategies aimed at reducing knife crime, including increases in maximum penalties, programs for offenders including mentoring, conflict resolution and monitoring, and voluntary accords restricting sale. The NSWPF recommends these reforms be considered by the Sentencing Council.

Similarly, we view consideration of approaches in England and Wales in relation to custodial sentences for bladed knife and/or offences committed at a school and for ‘persistent offenders’ may have merit. In this instance, the child or young person could be classed as such, allowing options to be imposed such as:

- a youth rehabilitation order (YRO) with intensive supervision and surveillance when aged under 15,
- a YRO with fostering when aged under 15, and
- a detention and training order (DTO) when aged between 12 – 14 years old.

### Increasing maximum penalties (Q6.3)

The NSWPF considers the current penalties do not appear to be a sufficient deterrent and supports increases to maximum penalties for certain offences and repeat offending.

Higher maximum penalties allow for consideration of penalties that reflect the need to protect community safety for more serious offences. For example, increased penalties for possession of firearms by a prohibited person in line with Victorian firearms legislation should be considered. Increasing penalties for firearms offences for second or subsequent offences should also be considered. The Court could continue to flexibly apply the circumstances in each case, including the harm and community safety risk, and account for risk factors and other influences which contribute to a young person’s actions.

### Mandatory minimum sentences (Q6.4)

In general, we do not consider that mandatory minimum sentences should be introduced for young offenders for weapons offences. The Young Offenders Act currently allows for individual circumstances to be considered, including risk factors and other influences which contribute to a young person’s actions. Mandatory minimum sentencing for young persons would remove the flexibility of the Young Offenders Act and subjective circumstances of individual young people, particularly Aboriginal and Torres Strait Islander young people.

If mandatory minimum sentencing were to be considered, it may be appropriate for repeat knife offending in line with England and Wales legislation. This would both address their offending and act as a better deterrent than the current sentencing inconsistencies and variations being administered by judicial officers.



## Improving sentencing options (Q6.5)

The NSWPF supports increasing the sentencing options available for young persons under the *Children (Criminal Proceedings) Act 1987*. It is our view that often a young person is unable to associate a consequence with their actions, such as occurs with a good behaviour bond, compared to a restorative justice method. We therefore welcome exploring options which provide the opportunity for a young person to take responsibility for their actions and recognise the consequences and harm of their decisions, while benefitting the wider community.

Consideration should also be given to options available for recidivist offenders if their previous offences attributed to the escalation in behaviour and/or violence.

## Knife crime prevention orders (Q6.6)

The NSWPF supports measures that address the cause of a young person offending, provide restorative justice, and allow for engagement with the young person on drivers and consequences. This includes participation in programs that keep young persons out of detention and have a more integrated approach. The NSWPF also supports measures that deter repeat offending and operate to protect the safety of the community, the offender and first responders.

The NSWPF considers that a Knife Crime Prevention Order (KCPO) program should be considered for introduction in NSW as a tool to address and deter repeat offending, protect community safety, and promote rehabilitation. Careful consideration would be needed in relation to the parameters in NSW, for example a short temporary period may be appropriate. Noting that the KCPOs could be applied to a young person, there may need to be an option for all or certain aspects of the order to be removed or reintroduced based upon the young person's behaviour. For example, if the young person demonstrates good behaviour for 12 months, the limits to social media usage could be lifted, or conversely reintroduced for breaches of the KCPO.

## Penalty notices (Q6.7)

The issues paper explores whether penalty notices would be suitable for some weapons offending by young persons as an alternate way of dealing with less serious offences.

The NSWPF considers that weapons offences should not be eligible for a penalty notice and finds it unlikely to curb the behaviour of the young person. When a penalty notice is issued to a young person, they have less ability to pay the fine themselves and often the parent or guardian pays the fine, or no payment is made and no real 'penalty' or impost occurs to the young person.

We further note that with the repealing of sections 11C and 11E of the Summary Offences Act and enacting of new indictable offences with increased penalties, penalty notices can no longer be issued as the offences are indictable. The *Criminal Procedure Act 1986* (NSW) precludes issuing penalty notices for a person under 18 for offences listed in schedule 4 of the Regulation.

We consider there are more suitable diversionary options available to young people that avoid them encountering additional concerns resulting from unpaid fines (aligned with the issues paper paragraph 6.38).



## Alternate diversion programs

Chapter 6 of the issues paper discusses alternate diversion programs, restorative justice programs and integrated approaches. We make the following related observations:

- ***The London Knife Crime Strategy***: This focuses on the partnerships between law enforcement, public health, education, community and charity services. This initiative encompasses a variety of responses including law enforcement operations, increased police powers and media campaigns.
- ***The College of Policing – Knife Crime Problem Solving Guide***: This is a practical toolkit of tactics law enforcement agencies can use such as school interventions, weapon sweeps and focused deterrence.
- ***New Zealand Knife Crime Initiatives***: This is similar in nature to that which is being utilised in the United Kingdom. Initiatives include changes to the *Crimes Act 1961* to increase maximum penalties for offensive weapon possession, Fresh Start programs which work with serious offenders in learning other methods of conflict resolution, and voluntary accords to restrict the sale of knives to young person.

## Police powers to conduct random searches (Q6.10)

The NSWPF respectfully submits that the exercise of police powers prior to arrest and charge should not be in scope for the report by the Sentencing Council. The terms of reference for this review specifically relates to sentencing for firearms, knives and weapons related offences.

Contact: