

Issues  
Paper

# Weapons-related offences: sentencing young offenders

OCTOBER 2023

NSW  
Sentencing  
Council

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# Terms of reference

The Sentencing Council is asked to conduct a review of sentencing for firearms, knives and other weapons offences (focusing on but not limited to offences involving the use or carrying of firearms, knives and other weapons), and make any recommendations for reform that it considers appropriate.

In undertaking this review, the Sentencing Council should:

1. provide sentencing statistics for convictions and penalty notices (where relevant) over a five-year period;
2. provide information on the characteristics of offenders, sentence type and length;
3. provide background information, including:
  - a. the key sentencing principles and reasoning employed by sentencing judges;
  - b. the mitigating subjective features of offenders; and
  - c. any other significant factors considered in sentencing decisions that explain how courts come to their final decision on sentence (which may be done using case-studies or collation of predominate themes across cases);
4. consider whether the standard non parole periods where identified remain appropriate;
5. consider whether offences for which penalty notices are available remain appropriate;
6. consider whether the maximum penalties for the offences are appropriate with reference to other jurisdictions;
7. consider whether any existing summary offences should be made indictable offences;
8. consider any other matter the Council considers relevant.

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# 1. Introduction

## In brief

This chapter explains the background to the review and provides an outline of this issues paper. It also explains what we mean when we use the term “young offenders” in this paper.

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## Background to the review

- 1.1 On 4 November 2022, the Attorney General asked the Sentencing Council to review sentencing for firearms, knives and other weapons offences. The terms of reference are as follows:

The Sentencing Council is asked to conduct a review of sentencing for firearms, knives and other weapons offences (focusing on but not limited to offences involving the use or carrying of firearms, knives and other weapons), and make any recommendations for reform that it considers appropriate.

In undertaking this review, the Sentencing Council should:

- (1) provide sentencing statistics for convictions and penalty notices (where relevant) over a five-year period;
- (2) provide information on the characteristics of offenders, sentence type and length;
- (3) provide background information, including:
  - (a) the key sentencing principles and reasoning employed by sentencing judges;
  - (b) the mitigating subjective features of offenders; and
  - (c) any other significant factors considered in sentencing decisions that explain how courts come to their final decision on sentence (which may be done using case-studies or collation of predominate themes across cases);
- (4) consider whether the standard non parole periods where identified remain appropriate;

- (5) consider whether offences for which penalty notices are available remain appropriate;
  - (6) consider whether the maximum penalties for the offences are appropriate with reference to other jurisdictions;
  - (7) consider whether any existing summary offences should be made indictable offences;
  - (8) consider any other matter the Council considers relevant.
- 1.1 Our call for preliminary submissions on the terms of reference opened on 5 December 2022 for three months. We received 13 submissions (see appendix B), most of which are available on our website.
  - 1.2 We conducted three preliminary consultations with key stakeholders, specifically on the issue of knife-related offences. We also conducted one consultation with young people aged 15-20 years old who were incarcerated, and who had lived experience of weapon-related crime (see appendix C).
  - 1.3 We released a consultation paper on weapons-related offences and sentencing for adult offenders on 19 September 2023.<sup>1</sup> Submissions are due by 4 December 2023.
  - 1.4 The consultation paper contains further background information about the review.

## This issues paper

- 1.5 This issues paper seeks your views on the key issues that have been identified in relation to weapons-related offences and sentencing for young offenders.

### Outline

- 1.6 In **this chapter**, we provide some background about the review and explain what we mean by “young offenders”.
- 1.7 In **chapter 2**, we provide an overview of the diversion options available to young offenders who commit weapons-related offences. This includes pre-court and court diversion under the *Young Offenders Act 1997* (NSW), mental health diversions and penalty notice offences.
- 1.8 In **chapter 3**, we provide an overview of the sentencing practices, procedures principles and penalties that apply when finalising weapons-related offences committed by young offenders. This includes an explanation of the jurisdiction of the Children’s Court, the Youth Koori Court process, and the pathways by which young offenders may be sentenced by courts other than the Children’s Court.

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1. NSW Sentencing Council, *Weapons-Related Offences: Sentencing Adult Offenders*, Consultation Paper (2023).

- 1.9 In **chapter 4**, we provide some information about the prevalence of weapons-related offending by young offenders, including for three focus offences: custody of knife, armed with intent to commit an indictable offence, and robbery with an offensive weapon. It also explores the characteristics and the motivations of these offenders.
- 1.10 In **chapter 5**, we provide some information about the sentencing outcomes for weapons-related offending by young offenders for the three focus offences.
- 1.11 In **chapter 6**, we outline some reform options for addressing weapons-related offending by young offenders. These options consider sentencing-related reforms, broader criminal justice system responses and other integrated responses that go beyond the justice system.
- 1.2 The **appendices** are:
- A – list of questions
  - B – list of preliminary submissions
  - C – list of preliminary consultations, and
  - D – data tables.

## Young offenders

- 1.12 Different statutes use “children”, “young people” or “young offenders” in different ways and with different definitions. If we are summarising the provisions of a statute, we will use the terms and definitions in that statute.
- 1.13 Otherwise, when we refer to “young offenders” in this issues paper, we are referring to those who are between 10 and 17 years old at the time of the offence, and under 21 years old at the time they are being dealt with or sentenced for the offence.

### The age of criminal responsibility and *doli incapax*

- 1.14 In NSW, it is conclusively presumed that a child under the age of 10 cannot be guilty of an offence.<sup>2</sup>
- 1.15 While a child is aged 10 years and over, but under the age of 14 years, the rebuttable presumption of *doli incapax* applies. This means that the child cannot be criminally responsible unless the prosecution proves, beyond reasonable doubt, that the child knew that the act was “seriously wrong, as distinct from an act of mere naughtiness or mischief”.<sup>3</sup>

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2. *Children (Criminal Proceedings) Act 1987* (NSW) s 5.

3. *BP v R* [2006] NSWCCA 172 [27]. See also *RP v R* [2016] HCA 53, 259 CLR 641 [9].

- 1.16 Young people aged 14 to 17, like adults aged 18 or over, are criminally responsible for their actions, subject to exceptions around mental health and cognitive impairment.
- 1.17 We consider that issues around reforming the age of criminal responsibility and *doli incapax* are beyond the scope of the review.

## How to make a submission

- 1.18 We seek your responses to this issues paper. To tell us your views you can send your submission to:

sentencingcouncil@dcj.nsw.gov.au

or

NSW Sentencing Council, Locked Bag 5000, Parramatta NSW 2124, Australia.

- 1.19 The closing date for submissions is **4 December 2023**.

## Use of submissions and confidentiality

- 1.20 We generally publish submissions on our website and refer to them in our publications.
- 1.21 Please let us know if you do not want us to publish your submission, or if you want us to treat all or part of it as confidential.
- 1.22 We will do our best to keep your information confidential if you ask us to do so, but we cannot promise to do so. Sometimes the law or the public interest says we must disclose your information to someone else. In particular, we may be required to disclose your information under the *Government Information (Public Access) Act 2009* (NSW).

## 2. Diversion

### In brief

This chapter provides an overview of the diversionary options available to police and the courts when dealing with young offenders.

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- 2.1 Young offenders can be diverted from the court system at different stages. Police officers can redirect young offenders away from the court system through diversionary options available under the *Young Offenders Act 1997* (NSW) (*Young Offenders Act*) and through penalty notices. When young offenders have entered the court system, the court may divert them under the *Young Offenders Act* as well as through a range of diversionary options associated with mental health or the ability to understand and participate in the court proceedings.
- 2.2 Chapter 4 contains some data about diversions for three focus offences.

## Pre-court diversion under the Young Offenders Act

- 2.3 In NSW, police have discretionary powers to divert young offenders from the court system under the *Young Offenders Act*.
- 2.4 The *Young Offenders Act* applies to a person who was a child (aged 10 years or over but under the age of 18 years) when an offence was committed or alleged to have been committed, and who is under 21 when being dealt with under the legislation.<sup>4</sup> Throughout this chapter, where we outline the *Young Offenders Act* provisions, we will use the term child or children to refer to this cohort.
- 2.5 The *Young Offenders Act* provides police with three different strategies to divert children from court:
- a formal warning (part 3)
  - a formal caution (part 4), or
  - a youth justice conference (part 5).
- 2.6 The *Young Offenders Act* generally applies to summary offences and indictable offences that may be dealt with summarily under chapter 5 of the *Criminal Procedure Act 1986* (NSW) (*Criminal Procedure Act*).<sup>5</sup> Relevant summary offences include those relating to custody of an offensive implement in a public place or school.<sup>6</sup> Relevant indictable offences that may be tried summarily include use or possession of weapon to resist arrest.<sup>7</sup> There are other offences that are strictly indictable, such as robbery armed with an offensive weapon and wounding.<sup>8</sup> Further explanation of summary and indictable offences is found in our consultation paper.<sup>9</sup>
- 2.7 There are some offences that are excluded from the *Young Offenders Act*, including offences that result in the death of a person, domestic violence offences and some drug offences.<sup>10</sup> Other specific offence exclusions for the various diversion options under the *Young Offenders Act* are dealt with below.
- 2.8 The general principles of the scheme include that:
- the least restrictive form of sanction is to be applied

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4. *Young Offenders Act 1997* (NSW) s 4 definition of “child”, s 7A(1).

5. *Young Offenders Act 1997* (NSW) s 8(1).

6. *Summary Offences Act 1988* (NSW) s 11B.

7. *Crimes Act 1900* (NSW) s 33B(1).

8. *Crimes Act 1900* (NSW) s 98.

9. NSW Sentencing Council, *Weapons-Related Offences: Sentencing Adult Offenders*, Consultation Paper (2023) ch 6.

10. *Young Offenders Act 1997* (NSW) s 8(2).

- criminal proceedings are not to be instituted if there is an alternative and appropriate means of dealing with the matter, and
  - if it is appropriate in the circumstances, those who are alleged to have committed an offence should be dealt with in their communities in order to assist in their reintegration and to sustain family and community ties.<sup>11</sup>
- 2.9 Before police can commence criminal proceedings against a child they must decide:
- whether the offence is covered by the *Young Offenders Act*, and
  - whether the child should receive a warning, caution or be referred for a conference instead.<sup>12</sup>

## Warnings

- 2.10 A formal police warning may only be given for a summary offence, other than a graffiti offence or any other offence prescribed under regulations.<sup>13</sup>
- 2.11 Children who commit a summary offence are entitled to a warning, unless:
- the offence involves violence, or
  - the police officer investigating believes another course of action is more appropriate because it is not in the “interests of justice” to issue a warning.<sup>14</sup>
- 2.12 Police can issue a warning on-the-spot. Police can also give a single warning to a group of children.<sup>15</sup>
- 2.13 Police cannot attach conditions to a warning or impose additional penalties on the child once a warning has been given, however:
- they must try to make sure the child understands the “purpose, nature and effect” of the warning,<sup>16</sup> and
  - they may notify the parents of the child, unless this would pose an unacceptable risk to the wellbeing or safety of the child.<sup>17</sup>

## Cautions

- 2.14 A formal police caution against further offending is more serious than a warning, and it is available for more offences than warnings.

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11. *Young Offenders Act 1997* (NSW) s 7.

12. *Young Offenders Act 1997* (NSW) s 9(2).

13. *Young Offenders Act 1997* (NSW) s 13.

14. *Young Offenders Act 1997* (NSW) s 14(2).

15. *Young Offenders Act 1997* (NSW) s 15.

16. *Young Offenders Act 1997* (NSW) s 16.

17. *Young Offenders Act 1997* (NSW) s 16A.

- 2.15 Cautions may be given for any offence covered by the *Young Offenders Act*, other than a graffiti offence and any other prescribed offence.<sup>18</sup>
- 2.16 A caution may be given if the child admits responsibility for the offence, and consents to the giving of the caution.<sup>19</sup> Under the *Young Offenders Act*, children are entitled to a maximum of three cautions (whether for the same or different kind of offence, and whether given by a police officer, specialist youth officer, or the court).<sup>20</sup>
- 2.17 Police do not issue cautions on-the-spot. Rather, the child is given a notice of caution stating that a caution will be issued on a later date, at a particular time and place.<sup>21</sup>
- 2.18 In deciding whether it is appropriate to issue a caution, police are to consider:
- the seriousness of the offence
  - the level of violence involved in the offence
  - the harm caused to any victim, and
  - the number of offences the child committed and the number of previous times the child has been dealt with under the Act.<sup>22</sup>
- 2.19 No further action or additional penalties can be imposed on the child once a caution has been given.<sup>23</sup> However:
- police can request the child provide a written apology to any victim of the offence,<sup>24</sup> and
  - a record of the caution will appear on the Computerised Operational Policing System (COPS), which is a police database and is separate from a criminal history.<sup>25</sup>
- 2.20 Studies have indicated that young offenders who receive a caution are less likely to reoffend than if they had been referred to court.<sup>26</sup>

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18. *Young Offenders Act 1997* (NSW) s 18.

19. *Young Offenders Act 1997* (NSW) s 19.

20. *Young Offenders Act 1997* (NSW) s 20(7).

21. *Young Offenders Act 1997* (NSW) s 24.

22. *Young Offenders Act 1997* (NSW) s 20(3).

23. *Young Offenders Act 1997* (NSW) s 32.

24. *Young Offenders Act 1997* (NSW) s 29(4).

25. *Young Offenders Act 1997* (NSW) s 33; *Young Offenders Regulation 2016* (NSW) cl 15(2)–(3).

26. J J Wang and D Weatherburn, “Are Police Cautions a Soft Option? Reoffending among Juveniles Cautioned or Referred to Court” (2018) 52 *Australian and New Zealand Journal of Criminology* 334, 336–337.

## Youth justice conferences

- 2.21 If police determine that the circumstances warrant more than a caution, the matter can be referred to a specialist youth officer who may decide that a youth justice conference should be held.<sup>27</sup>
- 2.22 A conference may be held for any offence covered by the *Young Offenders Act*, other than an offence prescribed by the regulations.<sup>28</sup> The child must admit to the offence and consent to the conference.<sup>29</sup>
- 2.23 The purpose of a conference is to make decisions and recommendations about the child and develop an outcome plan.<sup>30</sup> The principles to guide the measures for dealing with children include that the conferences:
- promote the child’s acceptance of responsibility for their own behaviour
  - strengthen the child’s family
  - provide developmental and support services
  - are culturally appropriate, and
  - enhance the rights of, and have due regard to the interests of, any victim.<sup>31</sup>
- 2.24 The conference is supervised by a convenor at a location agreed by the participants. A conference is not to take place at a police station or courthouse.<sup>32</sup>
- 2.25 Participants in the conference can include the child, the person responsible for the child (a parent or guardian), police, respected community members (such as Indigenous elders), and the victim of the offence.<sup>33</sup>
- 2.26 Participants engage in a discussion to develop an outcome plan that may include matters with which the child must comply.<sup>34</sup> Outcomes might include:
- making an oral or written apology to any victim
  - making reparations to the community
  - attending appointments with a guidance counsellor, and
  - participating in rehabilitation or educational programs.<sup>35</sup>

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27. *Young Offenders Act 1997* (NSW) s 37(1)–(3), s 38(1).

28. *Young Offenders Act 1997* (NSW) s 8, s 35.

29. *Young Offenders Act 1997* (NSW) s 36.

30. *Young Offenders Act 1997* (NSW) s 34(2).

31. *Young Offenders Act 1997* (NSW) s 34(1).

32. *Young Offenders Act 1997* (NSW) s 46(1).

33. *Young Offenders Act 1997* (NSW) s 47.

34. *Young Offenders Act 1997* (NSW) s 48(1), s 52.

35. *Young Offenders Act 1997* (NSW) s 52(5).

An outcome plan must be realistic and cannot impose penalties which are more severe than those that might have been imposed by the court.<sup>36</sup>

### Question 2:1 Pre-court diversion under the Young Offenders Act 1997 (NSW)

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?

## Court diversion under the Young Offenders Act

2.27 Court-based diversions (cautions and youth justice conferences) are mostly available for the same offences as are eligible for pre-court diversion. These diversions must result in a “dismissal” by the court.<sup>37</sup> Other forms of dismissal, as a sentencing option (including dismissal with a caution), are described in chapter 3.

### Cautions

2.28 Like pre-court cautions issued by police, a court-issued caution may be given for any offence covered by the *Young Offenders Act*. However, a court can also give them in relation to graffiti offences. In either case, the offender must admit the offence.<sup>38</sup>

2.29 A court cannot give a caution if the offender has been dealt with by a caution under the *Young Offenders Act* on three or more occasions (whether for the same or different kind of offence, and whether given by a police officer, specialist youth officer, or the court).<sup>39</sup>

2.30 A court giving a caution under the *Young Offenders Act* must dismiss the offence in respect of which the caution is given.<sup>40</sup>

2.31 The *Young Offenders Act* provisions do not prevent a court giving a caution when dismissing a matter under the *Children (Criminal Proceedings) Act 1987* (NSW) (*Children (Criminal Proceedings) Act*).<sup>41</sup>

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36. *Young Offenders Act 1997* (NSW) s 52(6)(a).

37. *Young Offenders Act 1997* s 31(1A), s 57(2)

38. *Young Offenders Act 1997* (NSW) s 31(1).

39. *Young Offenders Act 1997* (NSW) s 31(5).

40. *Young Offenders Act 1997* (NSW) s 31(1A).

41. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(a)(i); *Young Offenders Act 1997* (NSW) s 31(3).

## Youth Justice conferences

- 2.32 The *Young Offenders Act* empowers the court to refer a young person to participate in a youth justice conference, provided the offence is eligible, the young person has admitted the offence, and the court believes that a youth justice conference should be held.<sup>42</sup> An eligible offence is a summary offence or indictable offence that can be dealt with summarily, but excludes certain offences such as offences resulting in the death of a person.<sup>43</sup>
- 2.33 When a court refers a matter to a youth justice conference, the conference convener must refer any agreed outcome plan to the court for approval or continuation of the proceedings.<sup>44</sup>
- 2.34 If the court does not make a finding of guilt, upon receiving a report of satisfactory completion of an outcome plan, the court must dismiss the offence.<sup>45</sup>

### Question 2.2: Court diversion under the Young Offenders Act 1997 (NSW)

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?

## Mental health diversions

- 2.35 The Children's Court has a few options if it wishes to divert a young person from the court system based on their mental health, mental illness, disability, cognitive impairment or limited ability to participate in and understand court proceedings.
- 2.36 The court must have regard to the principles under s 6 of the *Children (Criminal Proceedings) Act* when deciding whether to divert. One of those principles states that "children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance".<sup>46</sup> The principles are further explained in chapter 3.

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42. *Young Offenders Act 1993 (NSW)* s 40(1A).

43. *Young Offenders Act 1993 (NSW)* s 8(2)(c).

44. *Young Offenders Act 1997 (NSW)* s 54.

45. *Young Offenders Act 1997 (NSW)* s 57(2).

46. *Children (Criminal Proceedings) Act 1987 (NSW)* s 6(b).

## Fitness to plead or stand trial

2.37 Where a defendant is unable to understand the charges against them or the nature of the criminal proceedings, the court may not be able to conduct a fair trial or proceedings. Therefore, a defendant needs to be “fit” to stand trial or enter a plea.<sup>47</sup>

### Summary matters

2.38 The common law test for fitness is known as the “Presser test” and includes questions as to whether the defendant:

- understands the charges
- can enter a plea to the charge and exercise their right to challenge the charge
- understands the nature of the proceedings and following the proceedings
- understands the substantial effect of any evidence that might be given against the defendant
- can provide instructions to their lawyer, and
- can decide the defence to be relied upon.<sup>48</sup>

2.39 The question of fitness may arise for defendants (including children and young people) who have a disability, cognitive impairment, mental illness, or face language or communication barriers.<sup>49</sup>

2.40 Unlike criminal proceedings in the District and Supreme Courts, there is no legislation that creates a specific procedure for conducting a hearing on fitness or sets out the consequences of determining that a person is unfit in the Local Court and Children’s Court for summary matters.<sup>50</sup>

2.41 Therefore, if the Children’s Court believes that a child or young person is unfit for summary matters, its options are to:

- discharge the defendant in accordance with the diversionary options under section 14 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) (*Mental Health and Cognitive Impairment Forensic Provisions Act*), further explained below,

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47. *Eastman v R* [2000] HCA 29, 203 CLR 1 [64]; *R v Presser* [1958] VR 45, 48; *Mantell v Molyneux* [2006] NSWSC 955, 68 NSWLR 46 [33].

48. *R v Presser* [1958] VR 45, 48.

49. *Eastman v R* [2000] HCA 29, 203 CLR 1 [59].

50. *Police v AR* (Unreported, NSWChC, Marien J, 18 November 2009) [34]–[35]; *Mantell v Molyneux* [2006] NSWSC 955, 68 NSWLR 46 [28]; *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 35; T Davies and others, *Practitioners Guide for Mental Health: A Guide to Assist Lawyers and Registry Staff to Understand and Navigate the Mental Health Forensic Processes* (2022) 69; *Children (Criminal Proceedings) Act 1987* (NSW) s 27(2B); *Criminal Procedure Act 1986* (NSW) ch 3 pt 2.

- dismiss the charge and discharge the defendant,<sup>51</sup> or
  - order a permanent stay of the proceedings.<sup>52</sup>
- 2.42 In determining whether diversion is appropriate, the court may consider that the offence is too serious to justify diversion, and accordingly, dismiss the matter.<sup>53</sup> The court may decide to dismiss the matter on the basis that there is no way to ensure a fair hearing.<sup>54</sup>
- 2.43 If the Children’s Court dismisses a charge and discharges the defendant, the Director of Public Prosecutions can nonetheless file an indictment in the District Court.<sup>55</sup>

### **Indictable matters committed to the District and Supreme Court and serious children’s indictable offences**

- 2.44 There is more legislative guidance where the issue of fitness is raised for indictable matters committed to the District and Supreme Court and serious children’s indictable offences.<sup>56</sup> Chapter 3 explains these types of offences.
- 2.45 For these types of offences, legislation sets out the test for fitness.<sup>57</sup> It also contains the procedure if the question of fitness is raised in the District or Supreme Court for indictable offences.<sup>58</sup>
- 2.46 If the question of fitness is raised in relation to a serious children’s indictable offence during committal proceedings in the Children’s Court, the magistrate can commit the young person for trial so that a higher court can decide the question of fitness.<sup>59</sup> If the higher court finds that the young person is fit to be tried, it can

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51. *Mantell v Molyneux* [2006] NSWSC 955, 68 NSWLR 46 [53]; T Davies and others, *Practitioners Guide for Mental Health: A Guide to Assist Lawyers and Registry Staff to Understand and Navigate the Mental Health Forensic Processes* (2022) 69.

52. *Mantell v Molyneux* [2006] NSWSC 955, 68 NSWLR 46 [28], [49]; *Police v AR* (Unreported, NSWChC, Marien J, 18 November 2009) [59], [60]. These cases deal with orders under section 32 *Mental Health (Forensic Provisions) Act 1990* (NSW), which was the predecessor to orders under section 14 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW). T Davies and others, *Practitioners Guide for Mental Health: A Guide to Assist Lawyers and Registry Staff to Understand and Navigate the Mental Health Forensic Processes* (2022) 69.

53. *Police v AR* (Unreported, NSWChC, Marien J, 18 November 2009) [50]–[51].

54. *Mantell v Molyneux* [2006] NSWSC 955, 68 NSWLR 46 [33]–[36]; T Davies and others, *Practitioners Guide for Mental Health: A Guide to Assist Lawyers and Registry Staff to Understand and Navigate the Mental Health Forensic Processes* (2022) 69.

55. *Police v AR* (Unreported, NSWChC, Marien J, 18 November 2009) [32], [62].

56. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 35.

57. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 36.

58. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) pt 4.

59. *Criminal Procedure Act 1986* (NSW) s 93(1); *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) pt 4.

return the case back to the Children’s Court to continue the committal proceedings.<sup>60</sup>

## “Mental health impairment” or “cognitive impairment”

- 2.47 The *Mental Health and Cognitive Impairment Forensic Provisions Act* provides diversionary options to defendants in summary proceedings (including for indictable offences triable summarily) who have a “mental health impairment” or “cognitive impairment”.<sup>61</sup> A “mental health impairment” may arise from disorders including anxiety disorder, an affective disorder or a psychotic disorder.<sup>62</sup> A “cognitive impairment” may arise from conditions including an intellectual disability, borderline intellectual functioning, or an acquired brain injury.<sup>63</sup>
- 2.48 A magistrate may dismiss the charges and discharge the defendant:
- into the care of a responsible person (with or without conditions)
  - on the condition that the defendant goes to a specific place or sees a specific person for assessment, treatment, or support, or
  - unconditionally.<sup>64</sup>
- 2.49 A magistrate can make such an order at any point in the proceedings, regardless of whether the defendant has entered a plea.<sup>65</sup>
- 2.50 To make the order, it must appear to the magistrate that:
- the defendant has a mental health impairment, cognitive impairment, or both (or did at the time of the alleged offending), and
  - it would be more appropriate to divert the defendant than deal with them under the ordinary children’s criminal procedure.<sup>66</sup>
- 2.51 The second step requires the magistrate to balance the public interest in having defendants face the full weight of the law, against the public interest in treating individuals with mental health concerns so as to ensure community protection.<sup>67</sup>
- 2.52 In deciding whether to make an order, the magistrate can consider:

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60. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 52(1)–(2).

61. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 8(1), s 4 definition of “mental health impairment”, s 5 definition of “cognitive impairment”, s 14.

62. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 4(2).

63. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 5(2).

64. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 14(1).

65. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 9(1).

66. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 12.

67. *DPP (NSW) v El Mawas* [2006] NSWCA 154, 66 NSWLR 93 [74]; *Mantell v Molyneux* [2006] NSWSC 955, 68 NSWLR 46 [39].

- the nature of the defendant’s mental health impairment or cognitive impairment
- the nature, seriousness and circumstances of the charge
- the sentencing options if the defendant is found guilty
- any criminal history
- whether the defendant has been previously diverted under mental health diversion legislation
- any treatment or support plan
- the defendant’s risk of endangering themselves or someone else, and
- any other relevant factor.<sup>68</sup>

### “Mentally ill person” or “mentally disordered person”

2.53 At the time of summary proceedings (including for indictable offences triable summarily), a defendant who is a “mentally ill person” or a “mentally disordered person” under the definitions in the *Mental Health Act 2007* (NSW) may also be diverted.<sup>69</sup> In these circumstances, defendants are usually acutely unwell as “care, treatment or control is necessary” to protect them and others from serious harm.<sup>70</sup>

2.54 A magistrate may make one or more orders that the defendant:

- be detained in a mental health facility for assessment
- be detained in a mental health facility for assessment, and returned to court if they are assessed not to be a mentally ill disordered person, or
- be discharged, with or without conditions, into the care of a responsible person.<sup>71</sup>

#### Question 2.3: Mental health diversions

Are there any issues related to mental health diversions and their application to weapons-related offences committed by young offenders, that should be considered?

## Penalty notice offences

2.55 Penalty notices are an alternative way of dealing with offences that are considered less serious, particularly where they are high volume. Generally, once a penalty

68. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 8, s 15.

69. *Mental Health Act 2007* (NSW) s 14 definition of “mentally ill person”, s 15 definition of “mentally disordered person”; *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 18, s 19.

70. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 14, s 15.

71. *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) s 14.

notice is issued to a person, they may pay the penalty notice amount within the prescribed time or elect to have the matter determined by a court.<sup>72</sup> If the amount is paid, nobody is liable for any further proceedings for the alleged offence.<sup>73</sup>

2.56 Below we describe the application of penalty notices to weapons-related offences. Question 6.7 in chapter 6 contains questions about possible reforms around penalty notices and weapons-related offences.

## Penalty notices available for young offenders

2.57 Under the *Summary Offences Act 1988* (NSW) (*Summary Offences Act*), there is no prohibition on issuing penalty notices to a person under the age of 18 for an offence against that Act.

2.58 Before 23 October 2023, the summary offence of having custody of a knife in a school or public place was a penalty notice offence under the *Summary Offences Act*.<sup>74</sup> The prescribed penalty notice amount was \$550.<sup>75</sup> However, a penalty notice was not available for someone who has “previously been dealt with for a knife-related offence” (which means it was only available for the first offence).<sup>76</sup> A knife-related offence was:

- having custody of an offensive implement in a public place or school<sup>77</sup>
- having custody of a knife in a public place or school<sup>78</sup>
- using or carrying a knife in a public place or school,<sup>79</sup> and
- any other offence, whether in NSW or another Australian jurisdiction, punishable on conviction with 2 years’ imprisonment or more if a knife was used.<sup>80</sup>

2.59 A police officer could give a penalty notice to a person who appeared to have committed the summary knife custody offence. Before 23 October 2023, a police officer first had to consider whether the child can be diverted through a caution, warning or youth justice conference, before issuing a penalty notice for this offence.<sup>81</sup>

2.60 We explain below the changes to the law that began on 23 October 2023.

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72. *Fines Act 1996* (NSW) s 23A.

73. *Fines Act 1996* (NSW) s 22A(1).

74. *Summary Offences Act 1988* (NSW) s 11C(1) (repealed).

75. *Summary Offences Regulation 2020* (NSW) cl 14.

76. *Summary Offences Act 1988* (NSW) s 29A(6) (repealed).

77. *Summary Offences Act 1988* (NSW) s 11B.

78. *Summary Offences Act 1988* (NSW) s 11C (repealed).

79. *Summary Offences Act 1988* (NSW) s 11E (repealed).

80. *Summary Offences Act 1988* (NSW) s 29A(6)–(8) (repealed).

81. *Young Offenders Act 1997* (NSW) s 9(2)–(2A); *Young Offenders Regulation 2016* (NSW) cl 14(a).

## Penalty notices not available for young offenders

- 2.61 Penalty notices can be issued for certain offences under the *Criminal Procedure Act*.<sup>82</sup> Unlike the *Summary Offences Act*, penalty notices under the *Criminal Procedure Act* may not be issued to anyone under 18.<sup>83</sup>
- 2.62 On 23 October 2023 the *Criminal Legislation Amendment (Knife Crimes) Act 2023* (NSW) repealed the offences in s 11C and s 11E of the *Summary Offences Act* – custody of a knife and using or carrying a knife in a public place or school – and replaced them with indictable offences with increased penalties.<sup>84</sup>
- 2.63 The *Criminal Procedure Regulation 2017* (NSW) (*Criminal Procedure Regulation*) was also amended so that a police officer may issue a penalty notice to a person for the new knife custody offence if the person has not:
- received and paid a penalty notice for a knife-related offence before
  - been convicted of a knife-related offence before
  - received an order dismissing a charge of a knife-related offence before, or
  - received an order of a conditional discharge for a knife-related offence before.<sup>85</sup>
- 2.64 A “knife-related offence” under the amended *Criminal Procedure Regulation* is:
- the new offence of knife custody
  - the new offence of using or carrying a knife in a public place or school
  - the existing offence of having custody of an offensive implement in a public place or school, and
  - any other offence committed using a “knife” as defined under the new law and is punishable by at least 2 years’ imprisonment.<sup>86</sup>
- 2.65 The recent changes to the law do not amend the prohibition on issuing penalty notices to children.<sup>87</sup>
- 2.66 The impact of these reforms on young offenders is discussed in chapter 6.

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82. *Criminal Procedure Act 1986* (NSW) s 336; *Criminal Procedure Regulation 2017* (NSW) sch 4.

83. *Criminal Procedure Act 1986* (NSW) s 335(1).

84. *Summary Offences Act 1988* (NSW) s 11C (repealed), s 11E (repealed); *Crimes Act 1900* (NSW) s 93IB, s 93IC.

85. *Criminal Procedure Amendment (Penalty Notice) Regulation 2023* (NSW); *Criminal Procedure Regulation 2017* (NSW) sch 4 cl 2.

86. *Criminal Procedure Regulation 2017* (NSW) sch 4 cl 1.

87. *Criminal Procedure Amendment (Penalty Notice) Regulation 2023* (NSW); *Criminal Legislation Amendment (Knife Crimes) Act 2023* (NSW); *Criminal Procedure Act 1986* (NSW) s 335.

## Enforcement of fines against young offenders

2.67 The existing arrangements for the enforcement of fines (including those imposed by penalty notice) generally recognise that young people have less capacity to work and pay:

- an order allowing a person to work off fines by community service work is limited to 100 hours in the case of a young person (compared with 300 hours in the case of an adult)<sup>88</sup>
- enforcement costs under a fine enforcement order are \$25 if the fine defaulter was under 18 at the time of the alleged offence (compared with \$65 for adults)<sup>89</sup>
- driver licence disqualification is not an available enforcement option where the offence is not a traffic offence and the fine defaulter was under 18 at the time of the alleged offence.<sup>90</sup>

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88. *Fines Act 1996* (NSW) s 81(2).

89. *Fines Regulation 2020* (NSW) cl 4(1)(a).

90. *Fines Act 1996* (NSW) s 65(3).

# 3. Sentencing practice and procedure

## In brief

This chapter provides an overview of the practices, procedures, principles and penalties that are relevant to sentencing young offenders.

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## Jurisdiction of the Children’s Court

- 3.1 The Children’s Court deals with most weapons-related offences committed by young offenders given its wide jurisdiction. The Children’s Court has jurisdiction in the following circumstances:
- it can hear and determine any offence (whether summary or indictable), except for “serious children’s indictable offences” (SCIOs) and certain traffic offences,<sup>1</sup> and
  - the defendant must be a child (under 18 years old) on the alleged offence date and be under 21 years old at the charge date.<sup>2</sup>
- 3.2 The Children’s Court does not have jurisdiction to finalise SCIO matters as these types of matters must be dealt with by higher courts “according to law” (see [3.77]–[3.84]).<sup>3</sup>
- 3.3 The *Children (Criminal Proceedings) Act 1997* (NSW) (*Children (Criminal Proceedings) Act*) governs children’s criminal proceedings in the Children’s Court and other courts exercising its functions.

### Summary disposals

- 3.4 Summary disposal means that a court can impose penalties under the *Children (Criminal Proceedings) Act*.<sup>4</sup> The *Children (Criminal Proceedings) Act* provides that the Children’s Court will deal with all offences (both summary and indictable) summarily.<sup>5</sup> There are two exceptions: indictable offences that the Children’s Court commits to a higher court and all SCIOs (discussed later in this chapter).<sup>6</sup>

### Available penalties for summary disposals

- 3.5 The Children’s Court can only impose penalties available under the *Children (Criminal Proceedings) Act* when sentencing young offenders for a matter dealt with summarily.<sup>7</sup>
- 3.6 Where a higher court is sentencing a young offender for an indictable offence, it may choose to deal with the matter summarily and impose a penalty under the

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1. *Children (Criminal Proceedings) Act 1987* (NSW) s 3 definition of “serious children’s indictable offence”, s 28(1)(a), s 28(2); *JIW v DPP* (NSW) [2005] NSWSC 760 [32].

2. *Children (Criminal Proceedings) Act 1987* (NSW) s 28(1)(c)–(d).

3. *Children (Criminal Proceedings) Act 1987* (NSW) s 17; *JIW v DPP* (NSW) [2005] NSWSC 760 [28].

4. *Children (Criminal Proceedings) Act 1987* (NSW) s 32; *JIW v DPP* (NSW) [2005] NSWSC 760 [55].

5. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(1).

6. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(1), s 31(2), s 31(3), s 31(3B), 31(5).

7. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(1), s 32–38; *R v RI* [2019] NSWDC 129 [6].

*Children (Criminal Proceedings) Act* or remit the matter back to the Children’s Court for sentencing.<sup>8</sup>

- 3.7 The penalties under the *Children (Criminal Proceedings) Act* do not apply if the higher court decides it is more appropriate the young offender be sentenced “according to law”,<sup>9</sup> or if the offence is an SCIO.<sup>10</sup> The penalties for indictable offences dealt with at law and SCIOs are explained later in this chapter.
- 3.8 Diversionary options under the *Young Offenders Act 1997 (NSW)* are discussed in chapter 2.

### Juvenile control order

- 3.9 A control order requires a young offender to serve full-time custody in a detention centre for up to 2 years.<sup>11</sup> Such an order is only imposed if the other penalty options are “wholly inappropriate to deal with the person”.<sup>12</sup> It is possible to accumulate control orders but only up to 3 years.<sup>13</sup>
- 3.10 A court can set a non-parole period (the minimum time a young offender will spend in custody). However, it cannot set a non-parole period for a control order that is less than 6 months.<sup>14</sup>

### Suspended control order

- 3.11 A control order can be suspended on the basis that the young person is placed on a good behaviour bond.<sup>15</sup> A court must order the conditions listed at [3.23] and can order any other conditions that it considers appropriate, including the conditions listed at [3.24].<sup>16</sup>
- 3.12 If a young person fails to comply with the good behaviour bond, a court must terminate the bond, unless the failure to comply was trivial or there are good

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8. *Children (Criminal Proceedings) Act 1987 (NSW)* s 18, s 20, s 32.

9. *Children (Criminal Proceedings) Act 1987 (NSW)* s 18.

10. *Children (Criminal Proceedings) Act 1987 (NSW)* s 17, s 31(1); *R v WKR* (1993) 32 NSWLR 447, 448–449; *R v AR* [2022] NSWCCA 5 [14]; *R v Cole* [2022] NSWDC 238 [139].

11. *Children (Criminal Proceedings) Act 1987 (NSW)* s 33(1)(g).

12. *Children (Criminal Proceedings) Act 1987 (NSW)* s 33(2).

13. *Children (Criminal Proceedings) Act 1987 (NSW)* s 33A(4).

14. *Crimes (Sentencing Procedure) Act 1999 (NSW)* s 44, s 46; *Children (Criminal Proceedings) Act 1987 (NSW)* s 33C(1)(a).

15. *Children (Criminal Proceedings) Act 1987 (NSW)* s 33(1B).

16. *Children (Criminal Proceedings) Act 1987 (NSW)* s 33(1A)(c), s 33(7); *Children (Criminal Proceedings) Regulation 2021 (NSW)* cl 8(1).

reasons to excuse the failure to comply.<sup>17</sup> If the bond is terminated, the suspended control order no longer has effect and the young person enters full-time custody.<sup>18</sup>

## Children's community service order

- 3.13 If a court would impose a sentence of imprisonment or a control order on a young person, it can instead make an order that requires the young person to carry out community service work.<sup>19</sup> The maximum number of hours that can be required of a child under 16 years old is 100 hours, and for a person over 16 years old, the maximum ranges from 100 hours to 250 hours depending on the maximum penalty for the offence.<sup>20</sup>
- 3.14 The young offender will be assigned an officer responsible for the administration of the order.<sup>21</sup> The young offender must follow all reasonable directions of the officer or the supervisor.<sup>22</sup>
- 3.15 A community service order may be imposed alone or together with a juvenile probation order.<sup>23</sup>

## Juvenile probation order

- 3.16 A court can release a young offender on probation under a juvenile probation order for up to 2 years.<sup>24</sup>
- 3.17 The court can order any conditions that it thinks are suitable, including the conditions listed at [3.24].<sup>25</sup>
- 3.18 A probation order may be imposed together with a children's community service order and/or a fine.<sup>26</sup>

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17. *Children (Criminal Proceedings) Act 1987* (NSW) s 41A(1)–(2).

18. *Children (Criminal Proceedings) Act 1987* (NSW) s 41A(3)(a)–(b).

19. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(f); *Children (Community Service Orders) Act 1987* (NSW) s 5.

20. *Children (Community Service Orders) Act 1987* (NSW) s 13(2).

21. *Children (Community Service Orders) Act 1987* (NSW) s 16(1).

22. *Children (Community Service Orders) Act 1987* (NSW) s 17.

23. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(e), s 33(1)(f)–(f1).

24. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(e).

25. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(e), s 33(7); *Children (Criminal Proceedings) Regulation 2021* (NSW) cl 8.

26. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(c), s 33(1)(e)–(f1).

- 3.19 If a young offender breaches their probation order they may be required to attend court, where the court can deal with them in any way it could have when the initial order was made (for example, re-sentence the young offender).<sup>27</sup>

### **Order requiring compliance with an outcome plan**

- 3.20 A young offender may be released on condition that they comply with an outcome plan determined at a conference held under the *Young Offenders Act*.<sup>28</sup>
- 3.21 If a young offender has failed to comply with their outcome plan they may be required to attend court, where the court can deal with the person in any way it could have when the initial order was made (for example, re-sentence the young offender).<sup>29</sup>

### **Good behaviour bond**

- 3.22 A young offender may receive a good behaviour bond for a period not exceeding 2 years.<sup>30</sup>
- 3.23 A good behaviour bond:
- must contain a condition that the person come to court if required to do so at any time during the term of the bond
  - must contain a condition that the person will be of good behaviour, and
  - cannot require community service work or any payment (whether as a fine, compensation or otherwise).<sup>31</sup>
- 3.24 A good behaviour bond may also include conditions requiring the young offender to:
- attend school regularly
  - retain employment
  - refrain from committing further offences
  - reside at a particular address
  - undertake counselling or medical treatment
  - limit or abstain from associating with specified people
  - limit or abstain from attending specified premises

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27. *Children (Criminal Proceedings) Act 1987* (NSW) s 41.

28. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(c1).

29. *Children (Criminal Proceedings) Act 1987* (NSW) s 41.

30. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(b).

31. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1A), s 33(7).

- comply with the directions of a specified person in relation to the above conditions, and
- comply with any other condition the court considers appropriate (for example, supervision).<sup>32</sup>

3.25 If a young offender breaches their good behaviour bond they may be required to attend court, where the court can deal with the person in any way it could have when the initial order was made (for example, re-sentence the young offender).<sup>33</sup>

## Fine

3.26 A young offender may receive a fine. The fine cannot be more than the maximum fine for the offence or 10 penalty units (\$1,100), whichever is lesser.<sup>34</sup> In determining whether to give a fine, the court must consider the child's age, their ability to pay and the potential impact on their rehabilitation.<sup>35</sup>

3.27 We discuss the enforcement of fines, in the context of penalty notices, in chapter 2.

## Dismissal

3.28 The court may dismiss the charge:

- with or without a caution, or
- with or without a good behaviour bond that is not longer than 2 years.<sup>36</sup>

## Adjournment

3.29 A court can adjourn a young person's case for up to 12 months to allow for assessment of their capacity and prospects for rehabilitation, to allow them to demonstrate rehabilitation, or for any other purpose.<sup>37</sup>

### Question 3.1: Available penalties under the Children (Criminal Proceedings) Act 1987 (NSW)

What issues, if any, should be considered about available penalties when sentencing young offenders for weapons-related offences?

32. *Children (Criminal Proceedings) Act 1987 (NSW) s 33(7); Children (Criminal Proceedings) Regulation 2021 (NSW) cl 8.*

33. *Children (Criminal Proceedings) Act 1987 (NSW) s 41.*

34. *Children (Criminal Proceedings) Act 1987 (NSW) s 33(1)(c).*

35. *Children (Criminal Proceedings) Act 1987 (NSW) s 33(1AA).*

36. *Children (Criminal Proceedings) Act 1987 (NSW) s 33(1)(a).*

37. *Children (Criminal Proceedings) Act 1987 (NSW) s 33(1)(c2).*

## Youth Koori Court

- 3.30 The Youth Koori Court was established in January 2015 to address the over-representation of young Aboriginal people in custody.<sup>38</sup> The court, which is a modified process within the Children’s Court process, provides an alternative case management procedure for young Aboriginal and Torres Strait Islander people charged with criminal offences. It aims to increase compliance with court orders, reduce risk factors related to reoffending, and increase young Aboriginal and Torres Strait Islander peoples’ confidence in the criminal justice system.<sup>39</sup>
- 3.31 The court uses a deferred sentence model whereby the Children’s Court delays sentencing of an eligible young person, allowing them to address identified risk factors.<sup>40</sup>
- 3.32 An Aboriginal or Torres Strait Islander person who has pleaded guilty to, indicated a guilty plea or has been found guilty of, an offence that will be finalised by the Children’s Court, can apply for referral to the Youth Koori Court. In addition, they must be:
- aged 10 to 17 years at the time of the offending and under 19 years when proceedings commenced
  - willing to participate in the Youth Koori Court process, and
  - likely to receive a penalty that is a community-based order with supervision or a control order.<sup>41</sup>
- 3.33 If accepted, the defendant is assisted to take part in a Youth Koori Court conference that may involve the offender and their legal representative, as well as other participants such as available members of the young person’s family, elders or respected people nominated by the court, a case work co-ordinator, a representative from Youth Justice and other government and non-government support agencies, a police prosecutor, a court liaison officer and the presiding judicial officer.<sup>42</sup>
- 3.34 The conference develops an action and support plan. If the court accepts the action and support plan, sentencing of the young offender by the Children’s Court can be

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38. Children’s Court NSW, “Youth Koori Court” (26 July 2023) <<https://www.childrenscourt.nsw.gov.au/criminal/koori-court.html>> (retrieved 12 October 2023).

39. Children’s Court of NSW, *Practice Note 11: Youth Koori Court* (revised 17 March 2023) [1.2].

40. M Williams and others, *Youth Koori Court: Review of Parramatta Pilot Project* (2018).

41. Children’s Court of NSW, *Practice Note 11: Youth Koori Court* (revised 17 March 2023) [4.1]; Children’s Court of NSW, *Youth Koori Court*, Fact Sheet (2023) 1.

42. Children’s Court of NSW, *Practice Note 11: Youth Koori Court* (revised 17 March 2023) [7.1]–[7.3].

deferred for up to 12 months.<sup>43</sup> The Youth Koori Court monitors (and may revise) the action and support plan at intervals.<sup>44</sup>

- 3.35 At the successful conclusion of the plan, or termination for other reasons, including non-compliance, the Children’s Court must sentence the defendant, but the sentence shall not be more punitive than if they had not participated in the process.<sup>45</sup>
- 3.36 If a defendant does not comply with the action and support plan, the Youth Koori Court can discharge them from the Youth Koori Court process. The matter returns to the Children’s Court.<sup>46</sup>
- 3.37 A Bureau of Crime Statistics and Research study has shown that young people who participate in the Youth Koori Court are:
- 5.9% less likely to be sentenced to a juvenile control order, and
  - 7.6% less likely to be sentenced to a juvenile control order at re-conviction within 12 months of the previous finalisation (if they were not sentenced to a juvenile control order at that time).
- 3.38 The findings suggest an association between participation in the Youth Koori Court and reduced risk of imprisonment, without any adverse impact on re-offending rates. However, the research design was unable to rule out selection effects entirely.<sup>47</sup>

### Question 3.2 Youth Koori Court

What issues, if any, should be considered about the Youth Koori Court in relation to weapon-related offences?

## Sentencing principles for young offenders

- 3.39 When a court finds a child guilty, it sentences the young offender in accordance with general sentencing principles, including, for example, the purposes of

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43. Children’s Court of NSW, *Practice Note 11: Youth Koori Court* (revised 17 March 2023) [8.1]; *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(c2).

44. Children’s Court of NSW, *Practice Note 11: Youth Koori Court* (revised 17 March 2023) [8.1], [9.1]; Children’s Court of NSW, *Youth Koori Court*, Fact Sheet (2023) 2.

45. Children’s Court of NSW, *Practice Note 11: Youth Koori Court* (revised 17 March 2023) [12.1]–[12.2].

46. Children’s Court of NSW, *Practice Note 11: Youth Koori Court* (revised 17 March 2023) [10.1]–[10.6].

47. E J Ooi and S Rahman, *The Impact of the NSW Youth Koori Court on Sentencing and Re-Offending Outcomes*, Crime and Justice Bulletin No 248 (NSW Bureau of Crime Statistics and Research, 2022) 12–13, 17.

sentencing contained in the *Crimes (Sentencing Procedure) Act 1999* (NSW) (*Crimes (Sentencing Procedure) Act*).<sup>48</sup> Our consultation paper contains more detail.<sup>49</sup>

- 3.40 The principles are subject to some additional principles at common law and in statute that specifically concern children and young people which are explained below.

## Common law

- 3.41 There is a common law principle that rehabilitation is particularly important to the sentencing of young offenders as young people have the capacity to reform and adapt to society's norms.<sup>50</sup> The courts consider that there is a significant need to provide young people with an opportunity to rehabilitate.<sup>51</sup>
- 3.42 A court will balance the purposes of sentencing to determine the weight it will give to general deterrence and retribution. For young offenders, a court will emphasise rehabilitation more than general deterrence and retribution, unless the young offender has acted like an adult or has committed a crime of violence or considerable gravity.<sup>52</sup>
- 3.43 In considering whether a young person has acted like an adult, a court can assess a variety of factors, including the use of weapons or planning and any criminal history. The presence of these factors may mean that the need to protect the community is more prominent and the need for rehabilitation of the offender is reduced.<sup>53</sup>
- 3.44 A court can consider the offender's youth or maturity, not just their age.<sup>54</sup> It may give more weight to an offender's youth the younger they are,<sup>55</sup> and it can assess an offender's criminality to be less where their cognitive, emotional, and/or psychological immaturity played a significant factor in the offending.<sup>56</sup> In these circumstances, youth may reduce the need for denouncement, punishment and accountability.<sup>57</sup>

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48. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 3A; *BP v R* [2010] NSWCCA 159 [73].

49. NSW Sentencing Council, *Weapons-Related Offences: Sentencing Adult Offenders*, Consultation Paper (2023) ch 5.

50. *KT v R* [2008] NSWCCA 51 [22]; *R v GDP* (1991) 53 A Crim R 112, 115–116.

51. *KT v R* [2008] NSWCCA 51 [22].

52. *KT v R* [2008] NSWCCA 51 [25]; *LS v R* [2020] NSWCCA 120 [96].

53. *KT v R* [2008] NSWCCA 51 [25]; *LS v R* [2020] NSWCCA 120 [96].

54. *KT v R* [2008] NSWCCA 51 [23]; *LS v R* [2020] NSWCCA 120 [96].

55. *KT v R* [2008] NSWCCA 51 [26].

56. *KT v R* [2008] NSWCCA 51 [23]; *LS v R* [2020] NSWCCA 120 [96].

57. *R v BE* [2023] NSWSC 1007 [78].

3.45 While the significance of youth decreases as a young person matures, youth can remain a relevant consideration and does not disappear when a young person reaches the age of 18.<sup>58</sup> It is not expected that a court would treat a child that is almost 18 substantially different from a young person who is just over 18.<sup>59</sup> The courts have recognised that emotional maturity and impulse control continue to develop throughout adolescence and early adulthood, and may even finish development in a person’s early to mid-twenties.<sup>60</sup>

## Statutory principles

3.46 Section 6 of the *Children (Criminal Proceedings) Act* contains the following additional principles that are “legislative guidelines in the treatment of young offenders”:<sup>61</sup>

- (a) that children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard, and a right to participate, in the processes that lead to decisions that affect them,
- (b) that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance,
- (c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption,
- (d) that it is desirable, wherever possible, to allow a child to reside in his or her own home,
- (e) that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind,
- (f) that it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties,
- (g) that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions,
- (h) that, subject to the other principles described above, consideration should be given to the effect of any crime on the victim.

3.47 Some of these principles are based on common law principles, such as (b), (e) and (g).<sup>62</sup>

3.48 Any court exercising criminal jurisdiction and functions under the *Children (Criminal Proceedings) Act* must have regard to the s 6 principles.<sup>63</sup> Courts must consider these principles when sentencing young offenders irrespective of the nature of the

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58. *BP v R* [2010] NSWCCA 159 [5].

59. *KT v R* [2008] NSWCCA 51 [26]; *LS v R* [2020] NSWCCA 120 [96].

60. *BP v R* [2010] NSWCCA 159 [5].

61. *KT v R* [2008] NSWCCA 51 [21].

62. *IM v R* [2019] NSWCCA 107, 100 NSWLR 110 [43].

63. *Children (Criminal Proceedings) Act 1987* (NSW) s 4, s 6.

offence, even if the offence is an SCIO.<sup>64</sup> However, the courts must give “proper and adequate regard” to the principles and the extent to which they apply depends on the seriousness of the offending and the age and circumstances of the offender.<sup>65</sup>

- 3.49 For example, where the circumstances of a young offender indicate that general deterrence and retribution play a lesser role, the s 6 principles can have full relevance to the sentencing exercise. However, in line with common law (as explained above) the more serious an offence is, the less likely it is that the need for rehabilitation will outweigh considerations of retribution and deterrence. In these circumstances, the principles may have a minimal role to play in sentencing.<sup>66</sup>
- 3.50 There are other sentencing principles under the *Crimes (Sentencing Procedure) Act* that apply to the sentencing of young offenders, for example:
- mitigating and aggravating factors<sup>67</sup>
  - restrictions on penalties that can be imposed in a young offender’s absence,<sup>68</sup> and
  - guideline judgments.<sup>69</sup>

## Sentencing principles in England and Wales

- 3.51 By contrast with the approach to sentencing children in NSW, in England and Wales the Court of Appeal has considered that deterrence and protection of the public should be prioritised in sentencing for knife crimes. In 2008, the court held in *R v Povey* that magistrates should normally sentence offenders of knife possession offences at the “most severe end of the appropriate range of sentences” (as set out in the relevant sentencing guideline).<sup>70</sup> The court also said that the courts “must have in the forefront of their thinking that the sentences for [knife offences] should focus on the reduction of crime, including its reduction by deterrence, and the protection of the public”.<sup>71</sup>
- 3.52 In 2014 the Court of Appeal emphasised the Youth Court must follow *R v Povey*:

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64. *R v WKR* (1993) 32 NSWLR 447, 449; *R v BE* [2023] NSWSC 1007 [77]; *R v KS (No 1)* [2023] NSWSC 696 [121]–[122].

65. *R v RI* [2019] NSWDC 129 [34]; *R v ROK* [2021] NSWDC 448 [55]; *R v AN* [2022] NSWSC 1272 [224]; *SS v R* [2009] NSWCCA 114 [65].

66. *IE v R* [2008] NSWCCA 70 [16]; *IM v R* [2019] NSWCCA 107, 100 NSWLR 110 [55].

67. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A.

68. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 25.

69. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 42A.

70. *R v Povey* [2008] EWCA Crim 1261 [5]; UK, Sentencing Council, “Bladed Articles and Offensive Weapons: Having in a Public Place” (1 June 2018) <<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/bladed-articles-and-offensive-weapons-possession/>> (retrieved 12 October 2023).

71. *R v Povey* [2008] EWCA Crim 1261 [4].

it is important that the Youth Court plays the closest attention to the guidance given in *Povey*. Given the prevalence of knife crime among young persons, the Youth Court must keep a very sharp focus, if necessary through the use of more severe sentences, on preventing further offending by anyone apprehended for carrying a knife in a public place and to securing a reduction in the carrying of knives. ... [I]t is of great importance that the Youth Court maintains the sharp focus called for in *Povey* by imposing appropriate sentences that will contribute to preventing further offending and to a reduction in knife crime.<sup>72</sup>

- 3.53 In England and Wales, the Sentencing Council publishes sentencing guidelines (as opposed to the courts). The guidelines aim to promote more consistent sentencing approaches. Courts must follow any relevant sentencing guidelines, unless it is not in the interests of justice to do so.<sup>73</sup>
- 3.54 In 2018, the Sentencing Council published guidelines for sentencing children and young people for offences of possessing and threatening with bladed articles and offensive weapons.
- 3.55 The guidelines state that a custodial sentence may be justified if the offending involved possession of a bladed article (regardless of whether it was produced), or if the offence was committed at a school or other place where vulnerable people may be present.<sup>74</sup> Chapter 6 explores the laws on mandatory minimum sentences in England and Wales.
- 3.56 The guideline is to be read alongside the general guideline for sentencing children and young people which states that courts must have regard to the principal aim of the youth justice system (which is to prevent offending by children and young people) and the welfare of the young offender.<sup>75</sup> The guideline also recognises the

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72. *R v Monteiro* [2014] EWCA Crim 747 [18].

73. *Sentencing Act 2020* (UK) s 59; UK, Sentencing Council, “About Sentencing Guidelines” (2023) <<https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-sentencing-guidelines/>> (retrieved 12 October 2023).

74. UK, Sentencing Council, “Bladed Articles and Offensive Weapons (Having in Public/Education Premises and Threats): Children and Young People” (1 June 2018) <<https://www.sentencingcouncil.org.uk/offences/crown-court/item/bladed-articles-and-offensive-weapons-possession-and-threats-children-and-young-people/>> (retrieved 12 October 2023); UK, Sentencing Council, “Bladed Articles and Offensive Weapons (Having in Public/Education Premises and Threats): Children and Young People” (1 June 2018) <<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/bladed-articles-and-offensive-weapons-possession-and-threats-children-and-young-people/>> (retrieved 13 October 2023).

75. UK, Sentencing Council, “Sentencing Children and Young People” (1 June 2017) <<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/sentencing-children-and-young-people/>> (retrieved 12 October 2023) [1.1].

need for rehabilitation, the effect of youth and the lack of maturity on children’s conduct, and that custodial sentences should be a measure of last resort.<sup>76</sup>

### Question 3.3: Sentencing principles

- (1) Are the principles that currently apply to sentencing young people for weapons-related offences, appropriate? Why or why not?
- (2) Are there any principles relevant to sentencing young people for weapons-related offences that should be considered for introduction in NSW?

## Excluded provisions

3.57 Some sentencing laws do not apply to children. For example:

- the victim impact statement provisions apply to a more limited range of offences when the matter is dealt with in the Children’s Court (including some offences relating to firearms and dangerous weapons)<sup>77</sup>
- standard non-parole periods do not apply if the offender was under 18 when they committed the offence<sup>78</sup>
- the mandatory life sentence provisions that apply to the offence of murder in certain circumstances do not apply where the offender was under 18 at the time of the offence<sup>79</sup>
- intensive correction orders are not available for offenders who are under 18<sup>80</sup>
- the high risk offenders regime does not apply to offenders who are under 18,<sup>81</sup> and
- the statutory sentencing discount regime for guilty pleas to indictable offences does not apply to offenders who were under 18 when they committed the offence and under 21 when charged.<sup>82</sup>

3.58 However, where a young person is being sentenced under s 33 of the *Children (Criminal Proceedings) Act*, the court must take into account a guilty plea and its

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76. UK, Sentencing Council, “Sentencing Children and Young People” (1 June 2017) <<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/sentencing-children-and-young-people/>> (retrieved 12 October 2023) [1.2]–[1.3].

77. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 27(4A); *Criminal Procedure Act 1986* (NSW) sch 1 table 2 pt 4.

78. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 45(1B)(b), s 54D(3).

79. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 61(6).

80. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 7(3).

81. *Crimes (High Risk Offenders) Act 2006* (NSW) s 4A(a) definition of “offender”; *Terrorism (High Risk Offenders) Act 2017* (NSW) s 7(a) definition of “eligible offender”.

82. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 25A(1)(b).

timing and may exercise its discretion to reduce the penalty.<sup>83</sup> For matters sentenced according to law, the court can provide a sentencing discount for a guilty plea in accordance with the common law.<sup>84</sup>

## Indictable offences (other than serious children's indictable offences)

- 3.59 The Children's Court will generally deal with indictable offences summarily, unless it decides to commit an indictable offence to a higher court where the young person or child can be dealt with according to law.<sup>85</sup>
- 3.60 An example of an indictable offence within the scope of this review is the offence of being armed with a weapon with intent to commit an indictable offence.<sup>86</sup> Data for penalties imposed for this offence is provided in chapter 5.

### Decision to hold committal proceedings

- 3.61 The Children's Court may hold committal proceedings to determine whether an indictable offence should be committed to the District or Supreme Court. This differs from committal proceedings in the Local Court applicable to adults.<sup>87</sup>
- 3.62 There are four points at which the Children's Court may decide to hold committal proceedings:<sup>88</sup>
- (1) During or at the end of the prosecution's case, when the defendant informs the court that they wish for their trial to be conducted "according to law".<sup>89</sup> However, if the Children's Court finds that the evidence is not capable of satisfying a jury beyond reasonable doubt that an indictable offence was committed by the person, the court must discharge them.<sup>90</sup>
  - (2) After hearing all of the prosecution evidence, when the Children's Court comes to the view that a jury would find beyond reasonable doubt that the defendant committed an indictable offence and the court believes that the charge may not be properly disposed of in a summary manner.<sup>91</sup>

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83. *Children (Criminal Proceedings) Act 1987* (NSW) s 33B(1).

84. *R v EE* [2023] NSWSC 104 [88].

85. *Children (Criminal Proceedings) Act 1987* (NSW) s 31; *R v Patrick* [2023] NSWChC 4 [17]–[20].

86. *Crimes Act 1900* (NSW) s 114(1)(a).

87. *Criminal Procedure Act 1986* (NSW) s 260.

88. *R v CL* [2022] NSWChC 5 [5]–[6].

89. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(2).

90. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(2B).

91. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(3).

- (3) After the young person has entered a plea of guilty, when the Children’s Court, having regard to all the evidence before the court, believes that the charge may not be properly disposed of in a summary manner.<sup>92</sup>
- (4) In relation to a charge of child sexual assault, after the prosecution requests that the matter be dealt with according to law and the Children’s Court finds that a jury would be satisfied beyond reasonable doubt that the defendant committed a child sexual assault offence and that the charge may not be properly dealt with in a summary manner.<sup>93</sup>
- 3.63 There is limited legislative and judicial guidance as to when a charge can be properly dealt with in a summary manner.<sup>94</sup> The most significant consideration is the likely penalty a court would impose if the offence was proven, and the court’s first step is to make a preliminary assessment of the sentencing range.<sup>95</sup> Penalties available under the *Children (Criminal Proceedings) Act* are outlined above at [3.5]–[3.29].
- 3.64 Where a young person has pleaded not guilty, the preliminary assessment of sentencing range will be based on the prosecution’s evidence and without consideration of subjective material.<sup>96</sup> However, in practice the prosecution will tender the young person’s criminal antecedents.<sup>97</sup>
- 3.65 Where a young person has pleaded guilty, the court can have regard to any background report prepared under section 25 of the *Children (Criminal Proceedings) Act*, as well as any applicable sentencing discounts, in determining whether the matter can be properly dealt with summarily.<sup>98</sup>
- 3.66 If the Children’s Court believes that a control order is the only appropriate sentence, it must consider the length of the order. This includes examining any limitations, such as:
- the maximum length of an individual control order is 2 years<sup>99</sup>

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92. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(5); Children’s Court of NSW, *Practice Note 12, Criminal Proceedings in the Children’s Court* (18 May 2018) [6.1].

93. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(3A)–(3B).

94. *R v CL* [2022] NSWChC 5 [51].

95. *R v CL* [2022] NSWChC 5 [54], [56].

96. *R v CL* [2022] NSWChC 5 [56].

97. A Cook, “Applications under Section 31(3) Children (Criminal Proceedings) Act and Children’s Committals”, *Criminal CPD* (July 2004) <[https://criminalcpd.net.au/wp-content/uploads/2016/09/Applications\\_Under\\_s.313\\_CCPA\\_and\\_Childrens\\_Committals.pdf](https://criminalcpd.net.au/wp-content/uploads/2016/09/Applications_Under_s.313_CCPA_and_Childrens_Committals.pdf)> (retrieved 13 October 2023) [5].

98. *R v CL* [2022] NSWChC 5 [53].

99. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(g).

- the court cannot make a new control order if that would result in a continuous period of detention of more than 3 years (including any current control orders in place, but not including any parole period),<sup>100</sup> and
  - the court cannot impose a control order that is to be served alongside an existing term of imprisonment if the expiry of the new sentence is more than 5 years after the commencement of the existing sentence (including any parole period).<sup>101</sup>
- 3.67 In deciding whether the matter can be properly dealt with summarily, the Children’s Court must also consider the principles under s 6 of the *Children (Criminal Proceedings) Act*, the purposes of sentencing (such as deterrence and retribution) and any mitigating and aggravating factors under s 3 and s 21A of the *Crimes (Sentencing Procedure) Act*.<sup>102</sup>
- 3.68 The court can also use the factors under s 18(1A) of the *Children (Criminal Proceedings) Act* as guidance, which are:
- (a) the seriousness of the offence
  - (b) the nature of the offence
  - (c) the age and maturity of the young person at the date of the offence and sentencing
  - (d) the seriousness, nature and number of prior offences, and
  - (e) any other matters the court considers relevant.<sup>103</sup>
- 3.69 The maximum penalty of an offence is only one indicator of the nature and seriousness of the offence.<sup>104</sup> The younger and more immature a child is, the stronger the connection between their youth and alleged offending. In these circumstances it may be more appropriate for the court to impose a penalty under the *Children (Criminal Proceedings) Act*.<sup>105</sup>

## Committing the matter to a higher court

- 3.70 At committal proceedings, the Children’s Court must decide whether “there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence”. If the court comes to this view, it “must

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100. *R v CL* [2022] NSWChC 5 [54]–[55], [70]; *Children (Criminal Proceedings) Act 1987* (NSW) s 33A(5).

101. *Children (Criminal Proceedings) Act 1987* (NSW) s 33C; *Crimes (Sentencing Procedure) Act 1999* (NSW) s 53B, s 58(1); *R v Patrick* [2023] NSWChC 4 [23]–[27].

102. *R v CL* [2022] NSWChC 5 [56].

103. *JIW v DPP* (NSW) [2005] NSWSC 760 [30], [53].

104. *JIW v DPP* (NSW) [2005] NSWSC 760 [55].

105. *JIW v DPP* (NSW) [2005] NSWSC 760 [55].

commit the accused person for trial”.<sup>106</sup> Otherwise the court must immediately discharge the young person.<sup>107</sup>

- 3.71 If a young person pleads guilty during committal proceedings and the court accepts the plea, the court must commit the young person to the District Court or Supreme Court for sentence.<sup>108</sup> If the court rejects the plea, the committal proceedings continue as if the young person had not pleaded guilty.<sup>109</sup>

## Sentencing of indictable matters in higher courts

- 3.72 Where an indictable matter is committed to the District or Supreme Court and the court is to sentence the young person, it must decide whether the child will be sentenced “according to law” or subject to the penalties contained in the *Children (Criminal Proceedings) Act*.<sup>110</sup> In making this determination the court must consider the factors in s 18(1A) (see [3.68]).<sup>111</sup>
- 3.73 A court might decide that a young person be dealt with according to law where the offending is grave or serious and the young offender’s age and maturity does not warrant the benefit of being dealt with under the *Children (Criminal Proceedings) Act*. The court may also consider that it was not appropriate for the young offender to be detained in a youth detention centre, as opposed to a prison.<sup>112</sup>
- 3.74 If a court decides that it will deal with the matter in accordance with the *Children (Criminal Proceedings) Act*, that court exercises the functions of the Children’s Court.<sup>113</sup> The court may also transfer or “remit” the young person’s case back to the Children’s Court for sentencing in accordance with the *Children (Criminal Proceedings) Act* (provided that the person is under 21 years old).<sup>114</sup>
- 3.75 If the court decides to sentence the young offender “according to law” it must still have regard to the principles contained in s 6 of the *Children (Criminal Proceedings) Act*.<sup>115</sup>
- 3.76 If a court sentences the young person to imprisonment and they are under the age of 21, the court can direct that the whole or part of the imprisonment term be

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106. *Children (Criminal Proceedings) Act 1987* (NSW) s 31F(1).

107. *Children (Criminal Proceedings) Act 1987* (NSW) s 31F(2).

108. *Children (Criminal Proceedings) Act 1987* (NSW) s 31G, s 31H.

109. *Children (Criminal Proceedings) Act 1987* (NSW) s 31G(4).

110. *Children (Criminal Proceedings) Act 1987* (NSW) s 18(1).

111. *Children (Criminal Proceedings) Act 1987* (NSW) s 18(1A).

112. *R v WKR* (1993) 32 NSWLR 447, 451.

113. *Children (Criminal Proceedings) Act 1987* (NSW) s 18(2).

114. *Children (Criminal Proceedings) Act 1987* (NSW) s 20(1).

115. *Children (Criminal Proceedings) Act 1987* (NSW) s 4, s 6; *R v WKR* (1993) 32 NSWLR 447, 450–451; *R v DJD* [2023] NSWSC 1049 [88]–[89]; *R v SDM* [2001] NSWCCA 158, 51 NSWLR 530 [18].

served as a juvenile offender.<sup>116</sup> If a young person is over the age of 21, they may serve their sentence as a juvenile offender if their non-parole period or term of imprisonment ends within 6 months of turning 21 years old.<sup>117</sup>

#### Question 3.4: Indictable offences

What issues, if any, should be considered about the sentencing of young offenders for indictable weapons-related offences?

## Serious children's indictable offences

- 3.77 As mentioned above, the Children's Court does not have jurisdiction to finalise SCIOs. However, it can hear committal proceedings for SCIOs.<sup>118</sup>
- 3.78 SCIOs are not the same offences as "strictly indictable offences" which apply to adults. The defined list of SCIOs is homicide, an offence punishable by life or 25 years' imprisonment, aggravated sexual assault without consent (or attempt), assault with intent to have sexual intercourse (or attempt), *Firearms Act 1996* (NSW) offences relating to manufacture or sale of firearms that are liable to 20 years' imprisonment, and sexual assault by forced self-manipulation when the victim was under 10 years old.<sup>119</sup>
- 3.79 Based on this defined list, the following SCIOs are within the scope of this review:
- homicide if it involves a weapon
  - aggravated sexual assault involving a weapon or offensive implement
  - an offence under the *Firearms Act* relating to manufacture or sale punishable by 20 years' imprisonment, and
  - robbery while armed with a dangerous weapon (an offence punishable by 25 years' imprisonment).<sup>120</sup>

## Committal proceedings

- 3.80 Committal proceedings for SCIOs are conducted in accordance with the *Criminal Procedure Act 1986* (NSW).<sup>121</sup>

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116. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(1).

117. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(3).

118. *Children (Criminal Proceedings) Act 1987* (NSW) s 28(1)(b)-(d).

119. *Children (Criminal Proceedings) Act 1987* (NSW) s 3(1) definition of "serious children's indictable offence"; *Children (Criminal Proceedings) Regulation 2021* (NSW) cl 4.

120. *Crimes Act 1900* (NSW) s 97(2).

121. *Children (Criminal Proceedings) Act 1987* (NSW) s 27(2B); *Criminal Procedure Act 1986* (NSW) ch 3, pt 2.

3.81 Following committal proceedings, the case is sent to the District or Supreme Court where it will be finalised by trial (if necessary) and sentence.<sup>122</sup>

## Sentencing SCIOs

3.82 As SCIOs are to be sentenced “according to law”,<sup>123</sup> the penalties under the *Children (Criminal Proceedings) Act* are not available and they are dealt with in accordance with ordinary sentencing options.<sup>124</sup> However, courts must still have regard to s 6 of the *Children (Criminal Proceedings) Act* when sentencing for SCIOs.<sup>125</sup>

3.83 The principle that rehabilitation plays a more important role and general deterrence has a lesser role in the sentencing of young people, is subject to the seriousness of the offending.<sup>126</sup> This may have particular relevance to SCIOs because of their serious nature.

3.84 Where a court has imposed imprisonment for an SCIO, the young offender cannot serve the sentence in a youth detention centre after they have turned 18, unless there are “special circumstances” or the term will expire within 6 months after the offender has turned 18.<sup>127</sup> The special circumstances available are exhaustively listed in section 19(4) of the *Children (Criminal Proceedings) Act* and include illness or disability.

## Provisional sentencing for murder

3.85 For the offence of murder, a court may impose a sentence of imprisonment as a provisional sentence if:

- the offender was less than 16 years old when they committed the offence, and less than 18 years old at the time of provisional sentencing, and
- the court believes that it is inappropriate to impose an ordinary sentence because the material available before it does not allow it to assess properly whether the offender is likely to re-offend or be rehabilitated.<sup>128</sup>

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122. *Criminal Procedure Act 1986* (NSW) s 96, s 97(6); *Children (Criminal Proceedings) Act 1987* (NSW) s 20.

123. *Children (Criminal Proceedings) Act 1987* (NSW) s 17.

124. *R v WKR* (1993) 32 NSWLR 447, 449.

125. *R v WKR* (1993) 32 NSWLR 447, 449.

126. *SS v R* [2009] NSWCCA 114 [65].

127. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(3).

128. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 60B(1).

3.87 The court must review the offender periodically to determine whether it is appropriate to impose a final sentence.<sup>129</sup>

**Question 3.5: Serious children's indictable offences**

What issues, if any, should be considered about the sentencing of young people for weapons-related serious children's indictable offences?

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129. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 60E(1).

## 4. Young offenders and weapons

### In brief

This chapter looks at the prevalence of weapons-related offences among young people, including for three focus offences. It also considers their characteristics and the reasons for such offending.

<b>Prevalence of offences</b>	<b>40</b>
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4.1 We have identified three focus offences for this issues paper, based on the offences with the highest volumes in the Children’s Court from 2013 to 2002:

- custody of a knife<sup>1</sup>
- armed with intent to commit an indictable offence,<sup>2</sup> and
- robbery with an offensive weapon.<sup>3</sup>

1. *Summary Offences Act 1988* (NSW) s 11C (repealed). See [6.8]–[6.9].

2. *Crimes Act 1900* (NSW) s 114(1)(a).

3. *Crimes Act 1900* (NSW) s 97(1).

- 4.2 The focus of this chapter is on those offenders within the jurisdiction of the Children’s Court, that is, under 18 years at the time of the offence and under 21 at time of sentencing.
- 4.3 The number of young offenders dealt with outside the Children’s Court is relatively small. For example, in relation to the three focus offences, in the 10 years from 2013 to 2022, the Local and higher courts dealt with:
- robbery armed with an offensive weapon on eight occasions where the offender was aged 10–17 years (compared with 504 occasions where the Children’s Court dealt with such an offence)
  - custody of a knife in a public place (first offence) on two occasions where the offender was aged 10–17 years (compared with 401 occasions where the Children’s Court dealt with such an offence), and
  - being armed with intent to commit an indictable offence on no occasions where the offender was aged 10–17 years (compared with 670 occasions where the Children’s Court dealt with such an offence).<sup>4</sup>

## Prevalence of offences

- 4.4 There are different sources of data that illustrate the prevalence of offences. Reported crime and reported criminal incidents are recorded by the police and often relate to broader categories of offences. Sometimes other sources, including surveys of target populations, need to be looked at to gain a better view of offending behaviour, particularly where it is otherwise undetected by police. Proven charges come from court data and can be arranged by specific offences or groups of offences.
- 4.5 There is some evidence of a distinction between trends in carrying/possession and trends in various offences of violence involving weapons.

## Reported crime/criminal incidents

### Knife carrying or possession

- 4.6 We do not have available data on reported criminal incidents recorded by police for knife carrying or possession. However, there is some evidence that knife carrying or possession is widespread among young people. One study, conducted in 2007, surveyed young people ranging from 14 to 21 years through youth centres, crisis centres, and outreach services. Of these, 150 were “street youth”, who did not attend school and were relatively independent, and 184 were “school youth”, who attended school and lived with their families, in Sydney. The study found that:

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4. NSW Bureau of Crime Statistics and Research, ab23-22643.

- 57% of the street youth and 22.6% of the school youth reported carrying knives and other weapons
  - most young people from both samples knew others who carried knives in public, and
  - knife carrying generally began between 13 and 14, but a few reported that they started to carry knives as young as 5.<sup>5</sup>
- 4.7 There have been questions concerning the relationship between possession and use. For example, one publication noted that, in Victoria, while there had been an increase in relevant admissions to hospital as well as knife possession, there was no evidence that conclusively linked the two as most of those who carried knives were relatively young but most of those who used them were older.<sup>6</sup>
- 4.8 It has been suggested that some possession offences for young people arise incidentally to other police activities, such as stopping them in the street, dealing with them for travelling without a ticket, random drug tests, and other traffic stops. A young person may have an item meeting the definition of knife in a bag or backpack, or in a car glove box, without any particular purpose in mind and they may have forgotten to remove the item.<sup>7</sup>
- 4.9 In England and Wales it has been noted that not all, or only a small portion, of people who carry knives also use the knives to harm others.<sup>8</sup>

### **Violent incidents involving weapons**

- 4.10 The reported incidents of murders, attempted murders, assaults and robberies involving knives or firearms recorded by police have shown an overall downward trend over the past 20 years for both those under 18 and adults, as illustrated by figure 4.1 (knives) and figure 4.2 (firearms). Similar downward trends are illustrated in the data for particular proven offences – for robbery and armed with intent, outlined below.

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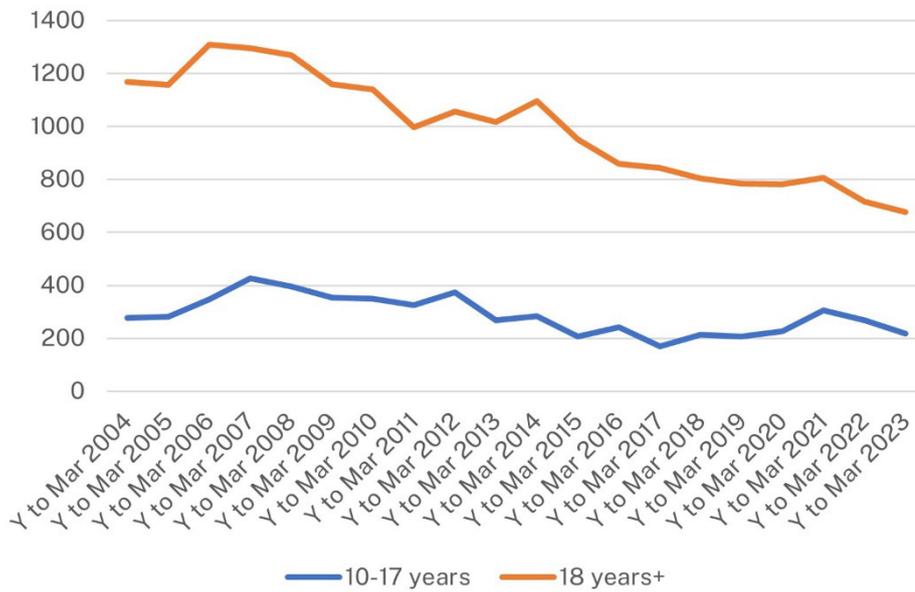
5. J Brown, “Protection or Attack? Young People Carrying Knives and Dangerous Implements” (2007) 17 *Australian Journal of Guidance and Counselling* 49, 57.

6. J Bondy, A Ogilvie and B Astbury, *Living on Edge: Understanding the Social Context of Knife Carriage among Young People* (RMIT University Press, 2005) vii.

7. Children and Young People Roundtable PWE03.

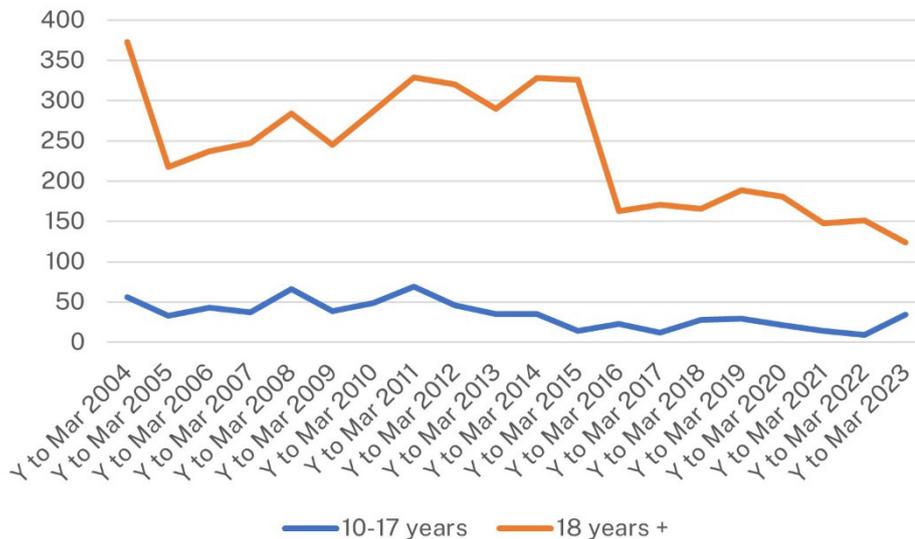
8. K D Browne and others, “Knife Crime Offender Characteristics and Interventions: A Systematic Review” (2022) 67 *Aggression and Violent Behavior* 1, 9; Youth Justice NSW, *Preliminary Submission PWE07*, 2.

**Figure 4.1: Age and number of people of interest for selected violence offences where a knife was recorded by NSW Police, Apr 2003–Mar 2023**



Source: NSW Bureau of Crime Statistics and Research, kf23-22578.  
The data tables for this figure are in Appendix D.

**Figure 4.2: Age and number of people of interest for selected violence offences where a firearm was recorded by NSW Police, Apr 2003–Mar 2023**



Source: NSW Bureau of Crime Statistics and Research, kf23-22578.  
The data tables for this figure are in Appendix D.

- 4.11 Two submissions pointed to the data in figure 4.1 as showing the number of violent incidents involving children and knives has reduced significantly.<sup>9</sup>
- 4.12 Of the selected offences of violence, those involving robbery showed the highest percentage of offenders as aged under 18. For example, in the year to March 2023, of the 378 relevant offenders, 147 (38.9%) were aged under 18. In all, for the 20-year period to March 2023, 34.1% of relevant offenders were under 18.<sup>10</sup> These high proportions of robbery offenders under 18 are also reflected in the proven offence data below.
- 4.13 Youth Justice NSW observed that:
- The data demonstrates that violent crimes involving firearms or knives where the person of interest or offender is 10–17 years old have been steadily decreasing over a twenty-year period from 2002–2022. The most frequently occurring most serious crime for young people with a control order where there is a weapons offence is robbery armed with an offensive weapon.
- Accordingly, the data would seem to indicate at least with respect to young people that there is no basis for increasing the severity of sentencing for crimes involving firearms and weapons given the low numbers and downward trends for young people and the recidivist impact of a control order on a young person.<sup>11</sup>

## Diversions from court

- 4.14 Not all incidents involving weapons-related offences go on to charges and court proceedings. There are a number of diversion options available under the *Young Offenders Act 1997* (NSW) (*Young Offenders Act*) as well under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) (*Mental Health and Cognitive Impairment Forensic Provisions Act*), as outlined in chapter 2.

## Diversions under the Young Offenders Act

- 4.15 Figure 4.3 shows the number of offenders aged 10–17 dealt with by the police for prohibited weapons and regulatory offences in 2010–2022. It shows that approximately half of the offenders received a caution under the *Young Offenders Act*, while around one quarter were sent to court. Very small numbers in each year were sent to youth justice conferences.

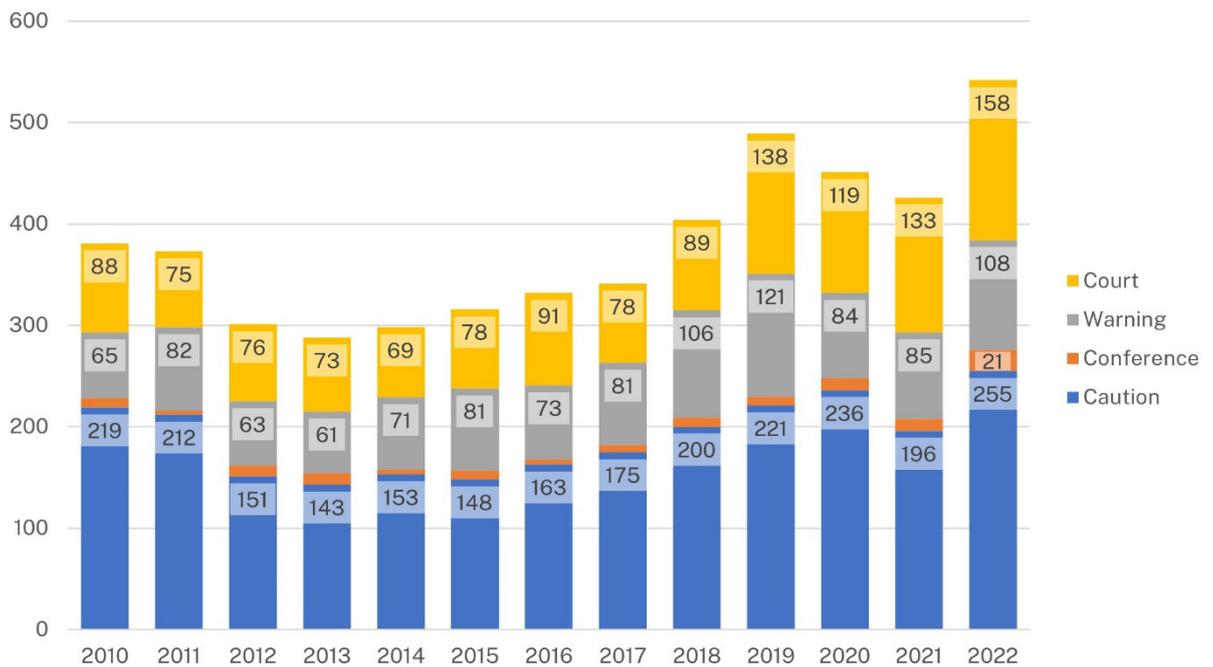
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9 Youth Justice NSW, *Preliminary Submission PWE07*, 1; NSW, Advocate for Children and Young People, *Preliminary Submission PWE10*, 1.

10. NSW Bureau of Crime Statistics and Research, Kf23-22578.

11. Youth Justice NSW, *Preliminary Submission PWE07*, 2.

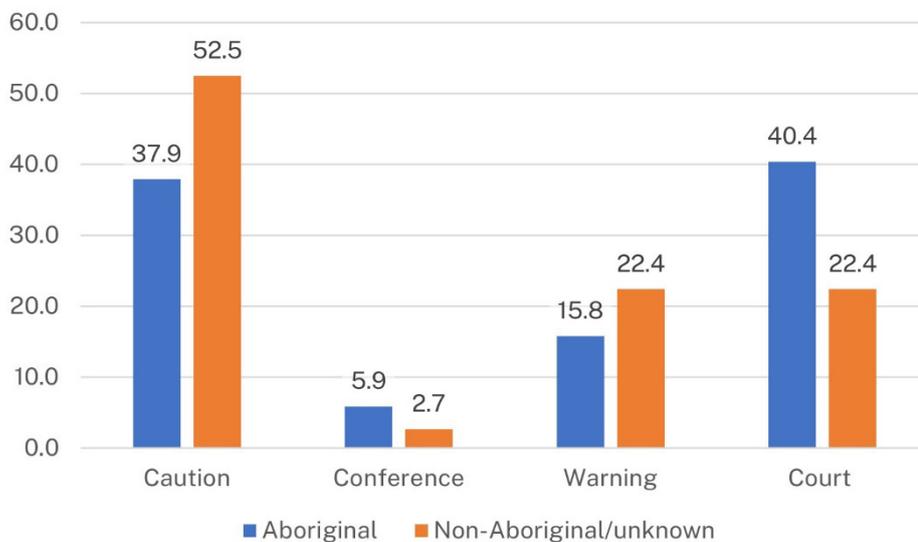
**Figure 4.3: Number of offenders aged 10–17 dealt with by the police for prohibited weapons and regulatory offences, by outcome, 2010–2022**



NSW Bureau of Crime Statistics and Research, reference st23-22884.  
The data tables for this figure are in Appendix D.

- 4.16 Figure 4.4 shows the proportion of Aboriginal offenders and other offenders aged 10–17 who received each outcome in 2022. Aboriginal offenders are less likely to get a caution or warning and more likely to go to a youth justice conference or to court.

**Figure 4.4: Proportion of Aboriginal and other offenders diverted, or referred to court in relation to weapons and regulatory offences, 2022**



NSW Bureau of Crime Statistics and Research, reference st23-22884.  
The data tables for this figure are in Appendix D.

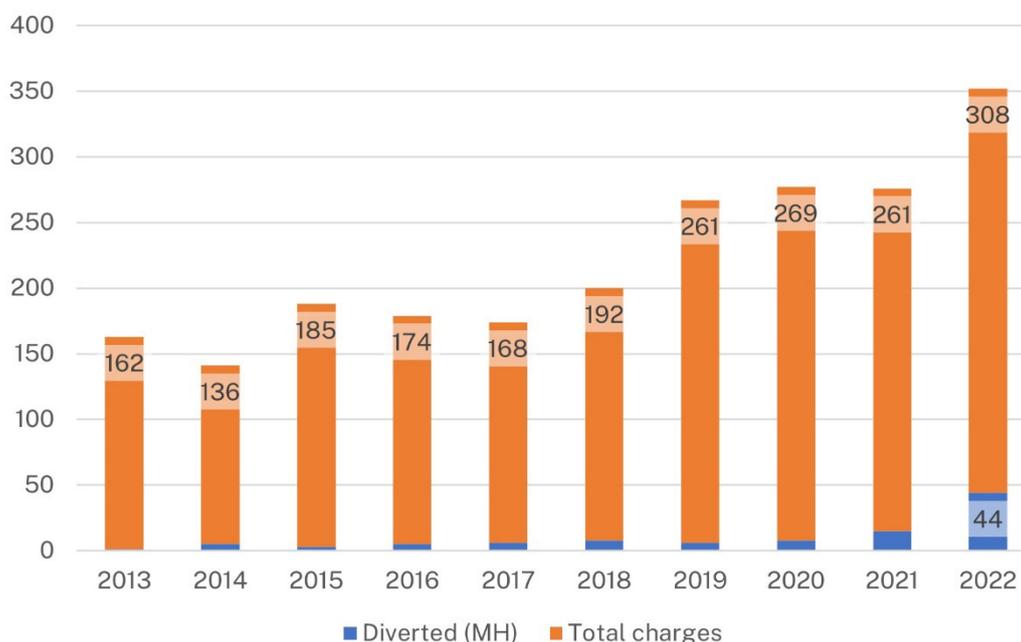
### **Diversions under the Mental Health and Cognitive Impairment Forensic Provisions Act**

- 4.17 As noted in chapter 2, the Children’s Court, as a lower court, can dismiss charges against a young offender on the ground that they have mental health or cognitive impairment or are mentally ill or disordered, under the *Mental Health and Cognitive Impairment Forensic Provisions Act*.
- 4.18 In 2022 for young offenders before the Children’s Court, there were 308 charges of custody of a knife in a public place or school (first and subsequent offence).<sup>12</sup> The court dismissed 44 of these charges (14.3%) under the relevant provisions.<sup>13</sup> This shows a substantial increase on previous years, as shown by figure 4.5. In 2021, 5.7% of charges were dismissed under the relevant provisions. In 2013 to 2020, the percentage of charges dismissed in this way ranged from 0.6% to 4.2%.

12. *Summary Offences Act 1988* (NSW) s 11C(1) (repealed). See [6.8]–[6.9].

13. NSW Bureau of Crime Statistics and Research, kf23-22711, table 3.

**Figure 4.5: NSW Children’s Court, number of charges of custody of a knife and number dismissed under Mental Health and Cognitive Impairment Forensic Provisions Act, 2013–2022**



Source: NSW Bureau of Crime Statistics and Research kf23-22711.

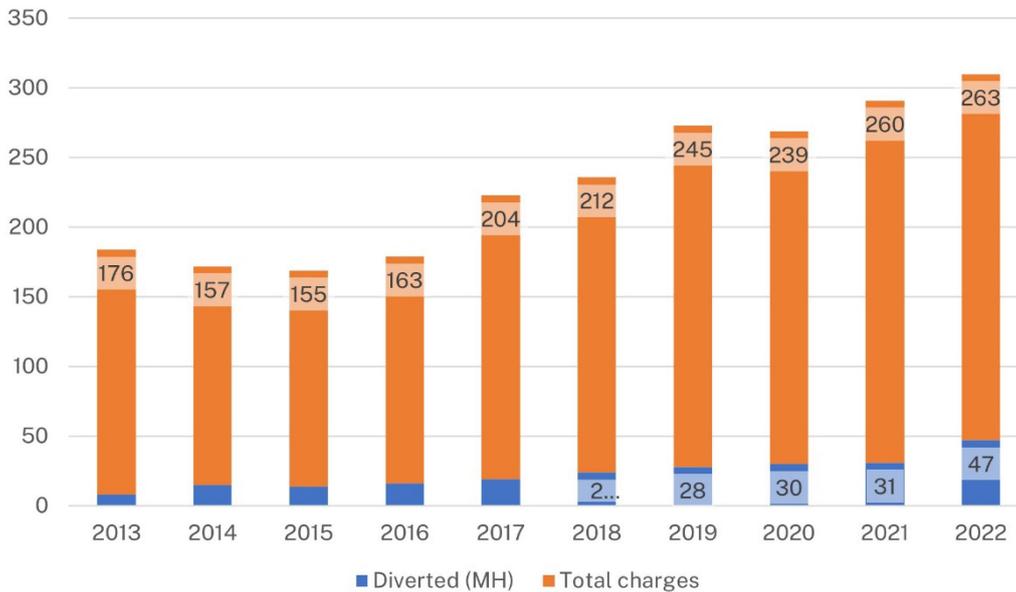
The data tables for this figure are in Appendix D.

4.19 In 2022 for young offenders before the Children’s Court, there were 263 charges of being armed with intent to commit an indictable offence.<sup>14</sup> The court dismissed 47 of these charges (17.9%) under the relevant provisions.<sup>15</sup> This shows a relatively steady increase compared with previous years, as shown by figure 4.6. In 2013, 4.5% of charges were dismissed under the relevant provisions. In 2021, 11.9% of charges were dismissed in this way.

14. *Crimes Act 1900* (NSW) s 114(1)(a).

15. NSW Bureau of Crime Statistics and Research, kf23-22711, table 3.

**Figure 4.6: NSW Children’s Court, number of charges of being armed with intent to commit an indictable offence and number dismissed under Mental Health and Cognitive Impairment Forensic Provisions Act, 2013–2022**



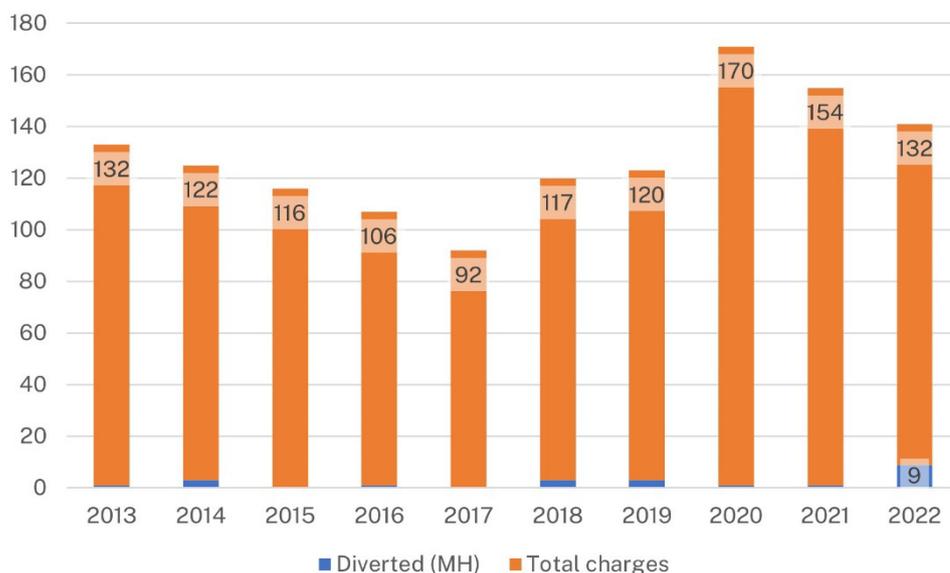
Source: NSW Bureau of Crime Statistics and Research kf23-22711.  
The data tables for this figure are in Appendix D.

4.20 In 2022 for young offenders before the Children’s Court, there were 132 charges of robbery with an offensive weapon.<sup>16</sup> The court dismissed 9 of these charges (6.8%) under the relevant provisions.<sup>17</sup> Figure 4.7 shows that the percentage of charges diverted in this way in 2022 is substantially different to previous years. In 2013 to 2020, the percentage of charges dismissed in this way ranged from 0.0% to 2.6%.

16. *Crimes Act 1900* (NSW s 97(1)).

17. NSW Bureau of Crime Statistics and Research, kf23-22711, table 3.

**Figure 4.7: NSW Children’s Court, number of charges of robbery with an offensive weapon and number dismissed under Mental Health and Cognitive Impairment Forensic Provisions Act, 2013–2022**



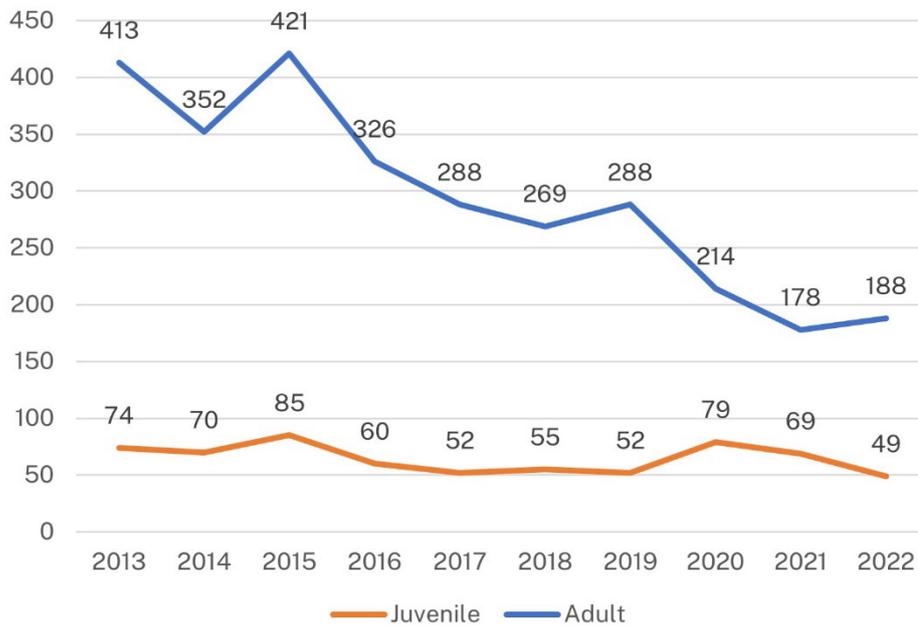
Source: NSW Bureau of Crime Statistics and Research kf23-22711.  
The data tables for this figure are in Appendix D.

## Proven charges

- 4.21 The following data looks at proven charges for select offences finalised by the courts by year and age of the offender at finalisation. Since we are dealing with finalised charges, it is possible there may be multiple charges for a single offender in some of the finalised matters. In the two less serious offences, the number of charges seems to be increasing for adult offenders more than young offenders.
- 4.22 For robbery with an offensive weapon,<sup>18</sup> figure 4.8 shows a slight decline in the proven charges finalised against young offenders and a substantial decline in the number of proven charges finalised against adult offenders over the same period.

18. *Crimes Act 1900* (NSW) s 97(1).

**Figure 4.8: Number of proven charges, by age, for robbery with an offensive weapon, 2013–2022**

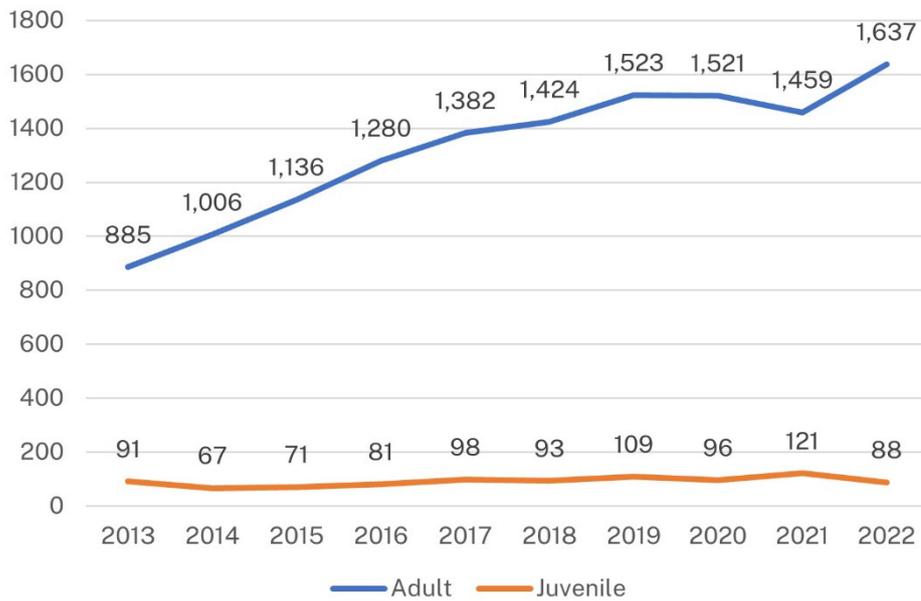


Source: NSW Bureau of Crime Statistics and Research, kf23-22711, table 1 and 3. The data tables for this figure are in Appendix D.

4.23 For the offence of being armed with intent to commit an indictable offence,<sup>19</sup> figure 4.9 shows a relatively stable number of proven charges finalised against young offenders, but an increasing number of charges for adults.

19. *Crimes Act 1900* (NSW) s 114(1)(a).

**Figure 4.9: Number of proven charges, by age, for being armed with intent to commit an indictable offence, 2013–2022**

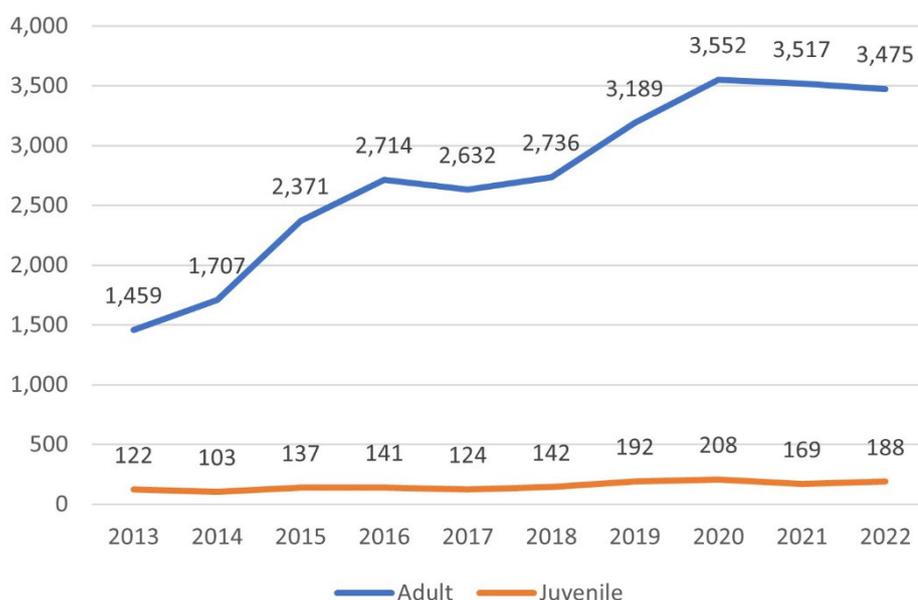


Source: NSW Bureau of Crime Statistics and Research, kf23-22711, table 1 and 3. The data tables for this figure are in Appendix D.

- 4.24 For the offence of custody of a knife,<sup>20</sup> figure 4.10 shows a slight increase in proven charges finalised against young people aged 10 to 18 and a substantial increase in proven charges finalised against adults aged 18 and over.

20. *Summary Offences Act 1988* (NSW) s 11C(1) (repealed). See [6.8]–[6.9].

**Figure 4.10: Number of proven charges, by age, for custody of a knife, 2013–2022**



Source: NSW Bureau of Crime Statistics and Research, kf23-22711, table 1 and 3. The data tables for this figure are in Appendix D.

## Community concern

- 4.25 Despite the general downward trend in weapons offences among 10–17 year olds, community concern about the incidence of young people committing weapons offences persists.
- 4.26 One submission pointed to community concern about knife crime and the “anxiety surrounding the amount of young people in possession of weapons, and then using those weapons to carry out serious violent crimes.” This submission also drew attention to recent media coverage of particular incidents and observed community concern that “sentencing laws are too light” and give “young people the impression that what they’re doing isn’t too serious”.<sup>21</sup>

### Question 4.1: Prevalence

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

21. Youth Against Violence, *Preliminary Submission PWE06*, 1.

## Characteristics of offenders

4.27 The data in the following paragraphs relates to those whose guilt has been determined in the Children’s Court for the three focus offences.

### General demographic information

4.28 The data for the most common weapons offences among offenders dealt with by the Children’s Court suggests that the offences are predominantly committed by men. Aboriginal people are also substantially overrepresented in the offender population given that they represented just 4.2% of the NSW population at the 2021 census.

### Gender

4.29 In the Children’s Court, in 2022:

- of the 72 instances where custody of a knife in public was the principal offence,<sup>22</sup> 68 (94.4%) involved a male offender
- of the 73 instances where being armed with intent to commit an indictable offence was the principal offence,<sup>23</sup> 61 (83.6%) involved a male offender, and
- of the 46 instances where robbery armed with an offensive weapon was the principal offence,<sup>24</sup> 40 (87.0%) involved a male offender.<sup>25</sup>

4.30 Studies elsewhere have also noted that young men are significantly over-represented as both offenders and victims, but this is also the case for offending more broadly.<sup>26</sup>

### Aboriginal status

4.31 In the Children’s Court in 2022:

- of the 72 instances where custody of a knife in public was the principal offence, 34 (47.2%) involved an Aboriginal offender
- of the 73 instances where being armed with intent to commit an indictable offence was the principal offence,<sup>27</sup> 47 (64.4%) involved an Aboriginal offender

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22. *Summary Offences Act 1988* (NSW) s 11C(1) (repealed). See [6.8]–[6.9].

23. *Crimes Act 1900* (NSW) s 114(1)(a).

24. *Crimes Act 1900* (NSW) s 97(1).

25. NSW Bureau of Crime Statistics and Research, ab23-22643, table 14.

26. J Bondy, A Ogilvie and B Astbury, *Living on Edge: Understanding the Social Context of Knife Carriage among Young People* (RMIT University Press, 2005) 5, 11.

27. *Crimes Act 1900* (NSW) s 114(1)(a).

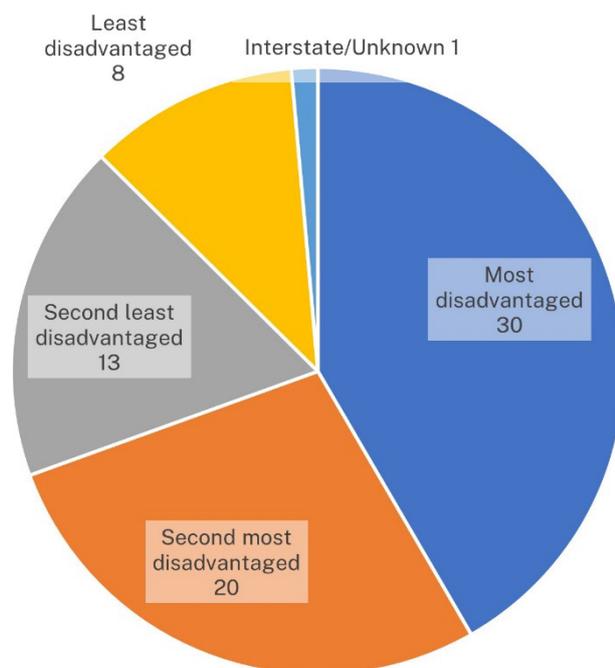
- of the 46 instances where robbery armed with an offensive weapon was the principal offence,<sup>28</sup> 24 (52.2%) involved an Aboriginal offender.<sup>29</sup>

4.32 The Aboriginal Legal Service reports that 16.1% of its clients charged with custody of a knife are under 18. In the experience of the Service’s solicitors, such a charge often relates to the possession of scissors.<sup>30</sup>

### Socio-economic status

4.33 Figure 4.11 shows that, in 2022, of the 72 instances where custody of a knife in public place was the principal offence proven in the Children’s Court,<sup>31</sup> at the time of charging, 30 offenders (41.7%) were in the most disadvantaged quartile. A further 20 (27.8%) were in the second most disadvantaged quartile.

**Figure 4.11: Socio-economic status of offenders where custody of a knife in public was the principal offence, Children’s Court, 2022**



Source: NSW Bureau of Crime Statistics and Research, ab23-22643, table 15. The data tables for this figure are in Appendix D.

4.34 Similar proportions apply to other offences also dealt with in the Children’s Court.

28. *Crimes Act 1900* (NSW) s 97(1).

29. NSW Bureau of Crime Statistics and Research, ab23-22643, table 14.

30. Aboriginal Legal Service (NSW/ACT) Ltd, *Preliminary Submission PWE13*, 2.

31. *Summary Offences Act 1988* (NSW) s 11C(1) (repealed). See [6.8]–[6.9].

- 4.35 For example, in relation to the 46 instances where robbery with an offensive weapon was dealt with as a principal offence,<sup>32</sup> in 17 cases (37.0%) the offender was in the most disadvantaged quartile and in a further 15 cases (32.6%) the offender was in the second most disadvantaged quartile.<sup>33</sup>
- 4.36 In relation to the 73 instances where being armed with intent to commit an indictable offence was dealt with as a principal offence,<sup>34</sup> in 37 cases (50.7%) the offender was in the most disadvantaged quartile and in a further 22 cases (30.1%) the offender was in the second most disadvantaged quartile.<sup>35</sup>

## Reported reasons for carrying or using knives

- 4.37 Our consultations with young offenders suggested that primary reasons for carrying knives were protection, although status and intent to use were also offered as reasons.<sup>36</sup> Ready availability and low cost were the main factors influencing the choice of knives over guns.<sup>37</sup>
- 4.38 Youth Justice NSW submitted that:
- Feedback from frontline Youth Justice staff indicates that most young people who carry knives say that they do so to protect themselves and that they assume everyone else is also carrying one. In some areas carrying a knife has become somewhat normalised. Staff believe that carrying a knife is more prevalent amongst young men, aged 15–17 in the Sydney Metropolitan areas.<sup>38</sup>
- 4.39 The fact that personal protection is a significant reason for carrying knives presents challenges for the likely deterrent effect of any penalties or even the likelihood of detection. In the UK, the Youth Select Committee observed:
- We find it hard to believe that a young person would be persuaded not to carry a knife due to the “perception of likelihood of getting caught”, when they feel like their life is in danger.<sup>39</sup>
- Similar views were expressed in consultations by young offenders.<sup>40</sup>
- 4.40 One respondent to the Select Committee’s survey commented:

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32. *Crimes Act 1900* (NSW) s 97(1).

33. NSW Bureau of Crime Statistics and Research, ab23-22643, table 15.

34. *Crimes Act 1900* (NSW) s 114(1)(a).

35. NSW Bureau of Crime Statistics and Research, ab23-22643, table 15.

36. *Preliminary Consultation PWEC04*.

37. *Preliminary Consultation PWEC04*.

38. Youth Justice NSW, *Preliminary Submission PWE07*, 2.

39. British Youth Council, Youth Select Committee, *Our Generation’s Epidemic: Knife Crime* (2019) [167].

40. *Preliminary Consultation PWEC04*.

The government should also help society to be less afraid of walking on the streets alone instead of just grouping the criminals together with the fearful.<sup>41</sup>

- 4.41 Observations in Victoria have included that carrying weapons was more prevalent in young men who had been victimised, exposed to violence, and engaged in risky behaviours. Other influencing factors were similar behaviour in peer and family groups, socioeconomic disadvantage, being involved in the illicit drug market, community disintegration, availability of weapons, and lack of educational and employment opportunities.<sup>42</sup>
- 4.42 Knife carrying appeared to be supported by the models of family and friends who also carried knives. Other factors influencing knife carrying included belief in the need for protection, and wanting to be in control or have more power. Many young people who carried knives had also been the objects of threats and assaults with knives by strangers, family, and friends.<sup>43</sup>
- 4.43 Research from the United States indicates that adolescents who have been subject to sexual violence are more likely to carry a weapon.<sup>44</sup> A study of 13,605 adolescents aged 12–18 years from across the United States revealed that adolescents who had experienced sexual violence in the preceding 12 months had 1.82 times higher odds of reporting that they had carried a weapon in the preceding 30 days.<sup>45</sup> The authors noted that this figure was determined after attenuation caused by symptoms of depression was taken into account.<sup>46</sup>
- 4.44 The study also found that the odds of weapon carrying were higher for adolescents who were: victims of school bullying (1.36 times higher); obese (1.27 times higher); using alcohol (1.60 times higher); and using cigarettes (2.00 times higher). Odds of weapon carrying were also higher for those who had ever misused prescription

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41. British Youth Council, Youth Select Committee, *Our Generation's Epidemic: Knife Crime* (2019) [167].

42. J Bondy, A Ogilvie and B Astbury, *Living on Edge: Understanding the Social Context of Knife Carriage among Young People* (RMIT University Press, 2005) viii.

43. J Brown, "Protection or Attack? Young People Carrying Knives and Dangerous Implements" (2007) 17 *Australian Journal of Guidance and Counselling* 49, 57.

44. Youth Justice NSW, *Preliminary Submission PWE07, 2*. See, eg, P Baiden, E Findley and H K Onyeaka, "History of Sexual Violence Victimization and Weapon Carrying Among Adolescents: Findings from the 2019 Youth Risk Behaviour Survey" (2022) 47 *American Journal of Criminal Justice* 877, 880

45. P Baiden, E Findley and H K Onyeaka, "History of Sexual Violence Victimization and Weapon Carrying Among Adolescents: Findings from the 2019 Youth Risk Behaviour Survey" (2022) 47 *American Journal of Criminal Justice* 877, 885.

46. P Baiden, E Findley and H K Onyeaka, "History of Sexual Violence Victimization and Weapon Carrying Among Adolescents: Findings from the 2019 Youth Risk Behaviour Survey" (2022) 47 *American Journal of Criminal Justice* 877, 885.

medication (1.65 times higher) and those who had ever used illicit drugs (1.81 times higher).<sup>47</sup>

- 4.45 A recent analysis of evidence within the UK from a range of literature, identified a number of studies that described poor mental health as a risk factor for knife crime. Peer influence was also identified as an important risk factor for knife crime. There were also links between previous victimisation and knife crime, as well as economic deprivation.<sup>48</sup>

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47. P Baiden, E Findley and H K Onyeaka, "History of Sexual Violence Victimization and Weapon Carrying Among Adolescents: Findings from the 2019 Youth Risk Behaviour Survey" (2022) 47 *American Journal of Criminal Justice* 877, 887.

48. S Haylock and others, "Risk Factors Associated with Knife-Crime in United Kingdom among Young People Aged 10–24 Years: A Systemic Review" (2020) 20 *BMC Public Health* 1, 9–10.

## 5. Sentencing outcomes

### In brief

This chapter provides sentencing outcomes for the three focus offences, which had the highest volumes of penalties in the Children’s Court 2013 to 2022.

<b>Custody of a knife</b>	<b>58</b>
<b>Armed with intent to commit an indictable offence</b>	<b>59</b>
<b>Robbery with an offensive weapon</b>	<b>60</b>

- 5.1 The three focus offences with the highest volumes of penalties imposed in the Children’s Court from 2013 to 2022, where the offence was the principal (most serious) offence, are:
- custody of a knife<sup>1</sup>
  - armed with intent to commit an indictable offence,<sup>2</sup> and
  - robbery with an offensive weapon.<sup>3</sup>
- 5.2 While the total volume of penalties is relatively low when compared to the number of penalties imposed on adults for the same offence, the volumes are sufficient to show general patterns of penalties in the Children’s Court.
- 5.3 The data shows the number of each group of penalties imposed where the relevant offence was the principal (most serious) offence. The penalties are grouped as follows:
- custody (which includes juvenile control order)
  - fine
  - supervised community sentence (which includes: supervised good behaviour bond; children’s community service order; supervised suspended control order; and supervised juvenile probation order)
  - unsupervised community sentence (which includes: unsupervised good behaviour bond; unsupervised suspended control order; and unsupervised juvenile probation order), and

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1. *Summary Offences Act 1988* (NSW) s 11C (repealed). See [6.8]–[6.9].

2. *Crimes Act 1900* (NSW) s 114(1)(a).

3. *Crimes Act 1900* (NSW) s 97(1).

- other (which includes: no action taken on a breach of bond; dismissed after youth justice conference, dismissal; and unknown).

5.4 We explain each of these penalty types in more detail in chapter 3.

## Custody of a knife

- 5.5 Until 22 October 2023, it was an offence under the *Summary Offences Act 1988* (NSW) for a person to have custody of a knife in a public place or a school, without a reasonable excuse.<sup>4</sup> From 23 October 2023, the offence is now under the *Crimes Act*.<sup>5</sup> A reasonable excuse includes, but is not limited to, carrying a knife for a person's job, preparing food or drink and participation in lawful entertainment or sport.<sup>6</sup>
- 5.6 Before 23 October 2023, the offence carried a maximum penalty of 2 years' imprisonment or \$2,200 (20 penalty units) or both.<sup>7</sup>
- 5.7 Figure 5.1 shows the penalties imposed by the Children's Court where custody of a knife<sup>8</sup> was the principal (most serious) offence in the 10 years from 2013 to 2022. The most frequent outcome (with percentages ranging between 40.5% and 61.4%) was "other", which includes: dismissed after a youth justice conference; and juvenile offence proved, dismissed.
- 5.8 Custody was ordered in very few cases (once in 2013 and once in 2022).

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4. *Summary Offences Act 1988* (NSW) s 11C(1) (repealed).

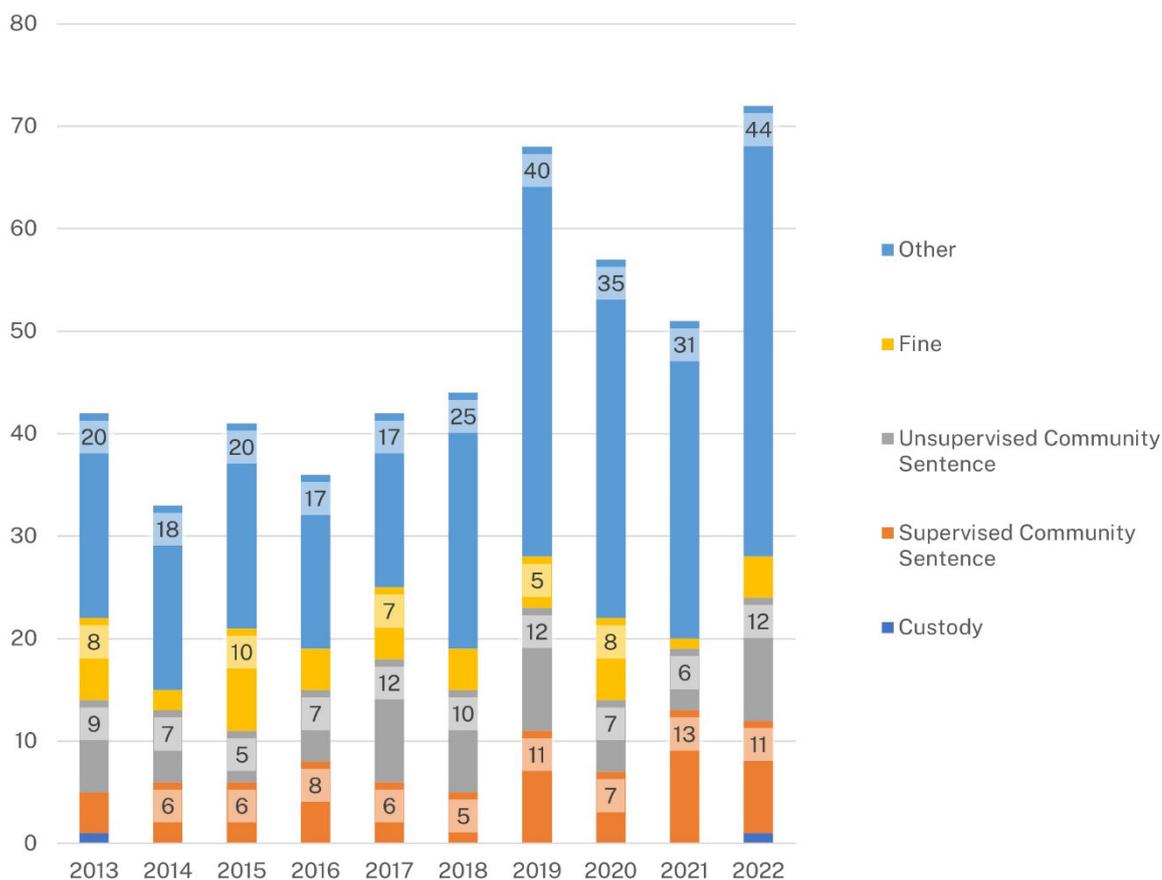
5. *Crimes Act 1900* (NSW) s 93IB. See [6.8]–[6.9].

6. *Summary Offences Act 1988* (NSW) s 11C(2) (repealed). See now *Crimes Act 1900* (NSW) s 93IB(3).

7. *Summary Offences Act 1988* (NSW) s 11C(1) (repealed).

8. *Summary Offences Act 1988* (NSW) s 11C(1) (repealed).

**Figure 5.1: Penalties imposed by the Children’s Court where custody of a knife was the principal (most serious) offence 2013–2022**



Source: NSW Bureau of Crime Statistics and Research, ab23-22643 – table 10. The data tables for this figure are in Appendix D.

## Armed with intent to commit an indictable offence

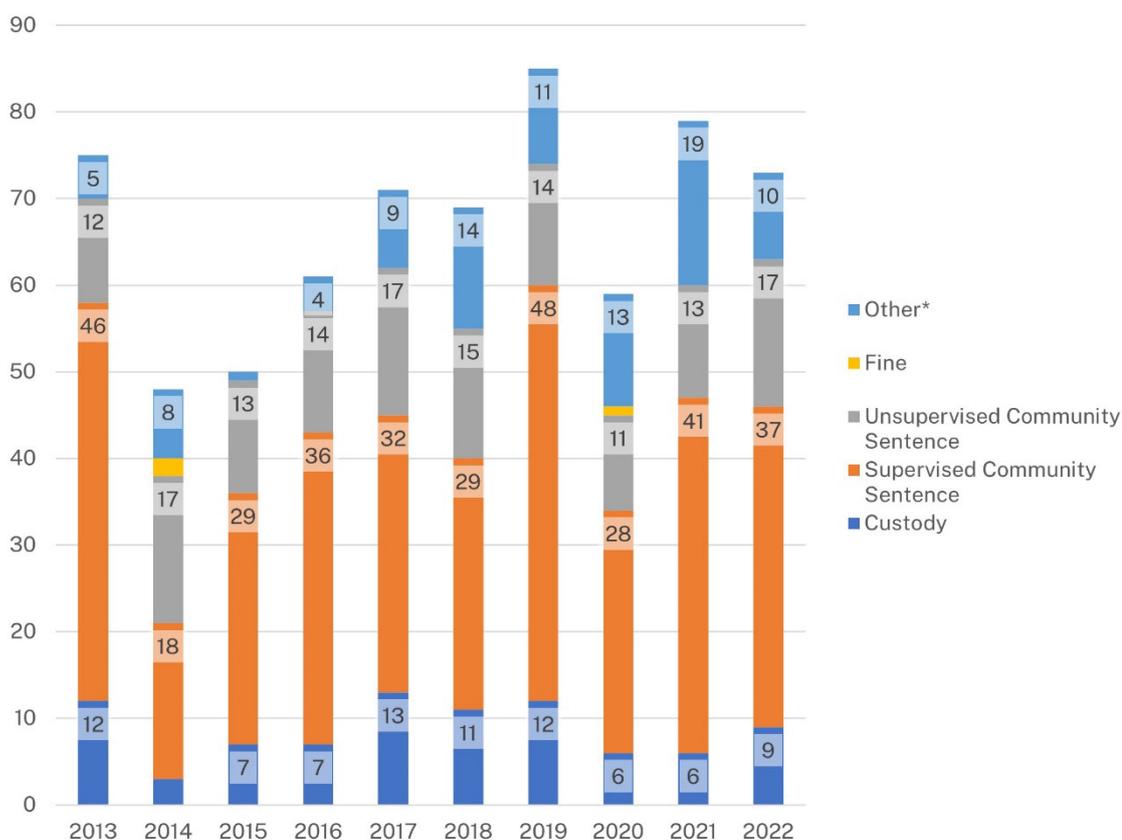
- 5.9 It is an offence under the *Crimes Act 1900* (NSW) (*Crimes Act*) for a person to be armed with a weapon or instrument with intent to commit an indictable offence.<sup>9</sup> The offence carries a maximum penalty of 7 years’ imprisonment.<sup>10</sup>
- 5.10 Figure 5.2 shows the penalties imposed by the Children’s Court where being armed with intent to commit an indictable offence<sup>11</sup> was the principal (most serious) offence in the 10 years from 2013 to 2022. The most frequent outcome was a supervised community sentence (with percentages ranging between 37.5% and 61.3%). Fines were ordered on very few occasions (twice in 2014 and once in 2020).

9. *Crimes Act 1900* (NSW) s 114(1)(a).

10. *Crimes Act 1900* (NSW) s 114(1).

11. *Crimes Act 1900* (NSW) s 114(1)(a).

**Figure 5.2: Penalties imposed by the Children’s Court where being armed with intent to commit an indictable offence was the principal (most serious) offence 2013–2022**



Source: NSW Bureau of Crime Statistics and Research, ab23-22643 – table 10. The data tables for this figure are in Appendix D.

## Robbery with an offensive weapon

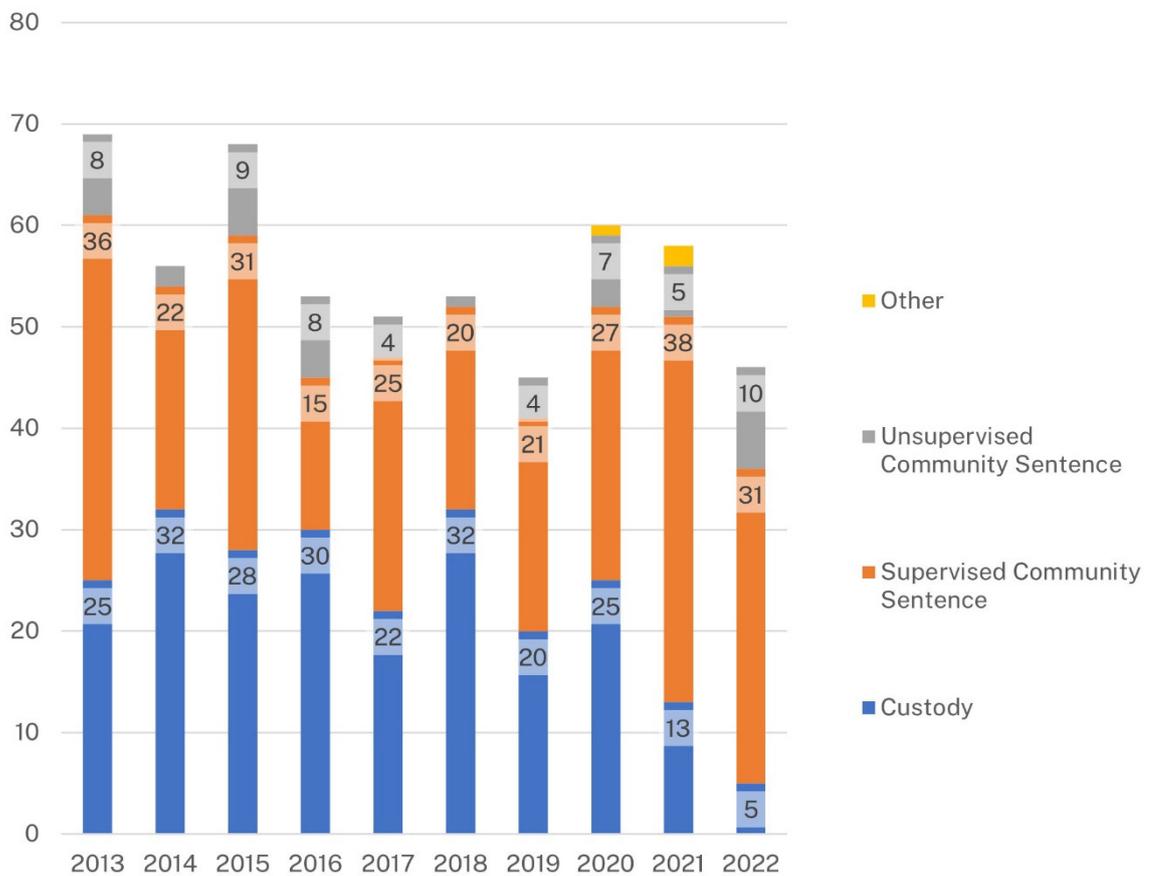
- 5.11 It is an offence under the *Crimes Act* for a person armed with an offensive weapon or instrument to rob, or assault with intent to rob, any person.<sup>12</sup> The offence carries a maximum penalty of 20 years’ imprisonment.<sup>13</sup>
- 5.12 Figure 5.3 shows the penalties imposed by the Children’s Court where robbery with an offensive weapon<sup>14</sup> was the principal (most serious) offence in the 10 years from 2013 to 2022. The vast majority of outcomes involved custody or a supervised community sentence, with considerable variation between proportions in each year. Reflecting the seriousness of the offence, a fine was not ordered at all, and relatively few unsupervised community sentences were imposed.

12. *Crimes Act 1900* (NSW) s 97(1).

13. *Crimes Act 1900* (NSW) s 97(1).

14. *Crimes Act 1900* (NSW) s 97(1).

**Figure 5.3: Penalties imposed by the Children’s Court where robbery with an offensive weapon was the principal (most serious) offence 2013–2022**



Source: NSW Bureau of Crime Statistics and Research, ab23-22643 – table 10. The data tables for this figure are in Appendix D.

5.13 Youth Justice NSW has reported that there are low numbers of young people in detention for offences involving weapons offences. In 2016–2017, there were 60 young people who received a control order where at least one of the offences was a weapons offence. In 2021–2022, there were 41 such admissions. Robbery armed with an offensive weapon was the most serious offence for young offenders entering detention – 13 admissions in 2016–2017 and 20 admissions in 2020–2021.<sup>15</sup>

**Question 5.1: Sentencing patterns for focus offences**

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

15. Youth Justice NSW, *Preliminary Submission PWE07*, 1.



## 6. Reform options

### In brief

This chapter sets out various options for reform in the areas of sentencing, criminal justice system responses, and other integrated responses that go beyond the justice system. We also invite other

<b>Increasing penalties and/or making some summary offences indictable</b>	<b>64</b>
<b>Mandatory minimum sentences</b>	<b>66</b>
<b>Improving some sentencing options</b>	<b>67</b>
<b>Knife crime prevention orders (UK)</b>	<b>68</b>
<b>Making penalty notices available for some offences</b>	<b>70</b>
<b>Targeted rehabilitation and diversion programs</b>	<b>72</b>
<b>Greater use of restorative justice programs</b>	<b>73</b>
<b>Police powers to conduct random searches</b>	<b>75</b>
<b>An integrated approach</b>	<b>77</b>
Public education	81
General public	82
School-based programs	83
Role models and mentoring	83
Sport, employment and other activities	84

- 6.1 This chapter sets out a selection of reform options. It is not an exhaustive list of options.
- 6.2 In addition to considering a number of sentencing and sentencing-related measures, later in the chapter we consider some non-sentencing measures. These may merit further examination to ensure a safer community and promote rehabilitation, in particular by deterring and changing young people's behaviour in relation to weapons. Although many of these measures are outside our expertise as a sentencing council, we put them forward for consideration as potentially effective ways of addressing weapons-related offending by young people.
- 6.3 We are open to receiving suggestions for changes to existing options that have not yet been raised, as well as options not otherwise covered in this chapter.

### Question 6.1: Sentencing reforms generally

What reforms, other than those outlined below, could be made to help deal with young offenders in relation to weapons?

- 6.4 When considering the suitability of the options outlined below or any other alternatives, a general question to keep in mind is, what responses could best help improve community safety, rehabilitation and other outcomes for young people?

### Question 6.2: Improving outcomes for young people

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

## Increasing penalties and/or making some summary offences indictable

- 6.5 This section does not deal specifically with calls for general changes to maximum penalties, or making summary offences indictable, as these apply to all offenders and are covered in the consultation paper.<sup>1</sup>
- 6.6 However, we note concerns about the impact of changes in maximum penalties on young offenders. Some submissions called for caution and a consideration of the impact of legislative reform particularly on children and young people.<sup>2</sup> One consultation noted that generally, increases in penalties don't serve as an effective deterrent.<sup>3</sup>
- 6.7 In particular, Legal Aid NSW did not support summary knife and weapons offences being made indictable because of the "disproportionate impact" on vulnerable individuals (including children and young offenders) "many of whom are overpoliced".<sup>4</sup>
- 6.8 The *Criminal Legislation Amendment (Knife Crimes) Act 2023* (NSW) commenced on 23 October 2023. It repealed the offences in s 11C and s 11E of the *Summary Offences Act 1988* (NSW) (*Summary Offences Act*) and enacted new indictable offences with increased penalties:

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1. NSW Sentencing Council, *Weapons-Related Offences: Sentencing Adult Offenders*, Consultation Paper (2023) ch 3 [6.30]–[6.44].

2. Youth Justice NSW, *Preliminary Submission PWE07*, 1; NSW, Advocate for Children and Young People, *Preliminary Submission PWE10*, 1.

3. Children and Young People Roundtable, *Preliminary Consultation PWEC03*.

4. Legal Aid NSW, *Preliminary Submission PWE12*, 1.

- having custody of a knife in a public place or school (with a new maximum penalty of 4 years and/or 40 penalty units),<sup>5</sup> and
  - using or carrying a knife in a public place or school (with a new maximum penalty of 4 years and/or 100 penalty units).<sup>6</sup>
- 6.9 The offences are table offences, to be dealt with summarily unless the prosecutor or the defendant elects for them to be tried on indictment.
- 6.10 Since these offences may be tried on indictment, the Children’s Court can allow them to be dealt with “according to law”. Chapter 3 contains more detail about this process.
- 6.11 Another consequence of making the custody of knives offences indictable is that, unless a specific regulation is made, indictable offences are not available for official warnings under the *Young Offenders Act 1997 (NSW) (Young Offenders Act)*<sup>7</sup> (see chapter 2 for more detail on warnings). We particularly note that, in 2022, of all those dealt with by the police for prohibited weapons and regulatory offences, 108 (19.9%) received a formal warning.<sup>8</sup>
- 6.12 A review of knife crime evidence and policy by the Centre for Crime and Justice Studies in the United Kingdom (UK) looked at the potential impact of increased maximum penalties from two to four years for carrying a knife in public, that were introduced in 2006.<sup>9</sup> It considered that increased penalties would have an uncertain deterrent effect because knife carrying is hard to detect. It also observed that, in the UK, knife carrying was most common among those aged 16 and 17 and that increased penalties “may well result in children and young people going to prison for longer”. However, it would be unlikely to impact on knife carrying because children and young people “are less likely to foresee the consequences of their actions, less likely to appreciate cause and effect and are most likely to be the victims of violent crime”.<sup>10</sup>

### Question 6.3: Increased penalties

- (1) What changes, if any, should be made to the maximum penalties for weapons offences committed by young offenders? Why?

5. Crimes Act 1900 (NSW) s 93IB.

6. Crimes Act 1900 (NSW) s 93IC.

7. Young Offenders Act 1997 (NSW) s 13.

8. NSW Bureau of Crime Statistics and Research, reference st23-22884.

9. Violent Crime Reduction Act 2006 (UK) s 42, amending Criminal Justice Act 1988 (UK) s 139(6)(b), s 139A(5)(c); C Eades and others, “Knife Crime”: A Review of Evidence and Policy (Centre for Crime and Justice Studies, 2nd ed, 2007).

10. C Eades and others, “Knife Crime”: A Review of Evidence and Policy (Centre for Crime and Justice Studies, 2nd ed, 2007) 29.

(2) What changes, if any, should be made to the indictable or summary status of weapons offences committed by young offenders? Why?

## Mandatory minimum sentences

- 6.13 In England and Wales, mandatory minimum sentences apply to young people aged 16 and 17 years for:
- the offences of threatening with an offensive weapon in public<sup>11</sup> and threatening with a bladed article or offensive weapon<sup>12</sup> (a 4-month “custodial” detention and training order),<sup>13</sup> and
  - second or subsequent offences of possessing offensive weapons or bladed articles<sup>14</sup> (a 4-month “custodial” detention and training order).<sup>15</sup>
- 6.14 The mandatory minimum sentences were introduced in 2020, adding to the increased maximum penalties for possessing offensive weapons, that were introduced in 2006.<sup>16</sup>
- 6.15 The minimum sentence applies unless there are “exceptional circumstances” that would make the sentence unjust.<sup>17</sup> The relevant sentencing guideline states that in considering whether there are “exceptional circumstances”, the court has a statutory obligation to have regard to the welfare of the young person, and that in “certain cases the concerns about the welfare of the young person may be so significant that the court considers that this gives rise to exceptional circumstances”. Exceptional circumstances also include where the imposition of the minimum term would “result in an arbitrary and disproportionate sentence” for the young offender.<sup>18</sup>
- 6.16 If the condition for a mandatory minimum sentence is met, the court cannot make a community-based order or a youth rehabilitation order.

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11. *Prevention of Crime Act 1953* (UK) s 1A.

12. *Criminal Justice Act 1988* (UK) s 139AA.

13. *Sentencing Act 2020* (UK) s 312.

14. *Prevention of Crime Act 1953* (UK) s 1(1); *Criminal Justice Act 1988* (UK) s 139(1), s 139A(1)–(2).

15. *Sentencing Act 2020* (UK) s 315.

16. See [6.12].

17. UK, Crown Prosecution Service, “Offensive Weapons, Knives, Bladed and Pointed Articles” (19 April 2023) <<https://www.cps.gov.uk/legal-guidance/offensive-weapons-knives-bladed-and-pointed-articles>> (retrieved 17 October 2023).

18. England and Wales, Sentencing Council “Bladed Articles and Offensive Weapons (Possession and Threats): Children and Young People” (1 June 2018) <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/bladed-articles-and-offensive-weapons-possession-and-threats-children-and-young-people/> (retrieved 17 October 2023).

- 6.17 One preliminary submission suggested that mandatory minimum sentencing should also be introduced in NSW for repeat knife offences.<sup>19</sup>
- 6.18 A review of the UK laws observed that it was not clear that a more punitive approach involving immediate custody for possession offences and longer custodial terms “has a deterrent effect on levels of knife carrying”.<sup>20</sup>

#### Question 6.4: Mandatory minimum sentences

- (1) Could mandatory minimum sentences be introduced for young offenders in relation to weapons offences? Why or why not?
- (2) If yes, what offences could be subject to mandatory minimum sentences?

## Improving some sentencing options

- 6.19 The penalties available under the *Children (Criminal Proceedings) Act 1987* (NSW) (*Children (Criminal Proceedings) Act*) in some respects are closer to the penalties that were available for adults before the 2018 sentencing reforms. The 2018 reforms introduced more flexible options that could better accommodate program participation and other activities, as well as further options for supervision.<sup>21</sup> It is possible that some of the options for penalties under the adult regime could be introduced to the children’s regime to assist in dealing with weapons offending.
- 6.20 For example, electronic monitoring, which is an option under an intensive correction order (ICO),<sup>22</sup> is not available among the conditions that attach to orders for young offenders. Electronic monitoring could be a way of keeping some young offenders away from areas where knife crime is known to be a problem. There have been some limited electronic monitoring trials for young offenders in Queensland. One was held in 2021 in certain locations for offenders aged 16 and 17 years.<sup>23</sup> Another has been announced for offenders aged 15 years and over.<sup>24</sup>
- 6.21 However, a regime that allows for greater flexibility to participate would require programs, such as ones designed to impact on attitudes to knife carrying, to be available.

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19. Confidential, *Preliminary Submission PWE11*, 2.

20. R Grimshaw and M Ford, *Young People, Violence and Knives: Revisiting the Evidence and Policy Discussions*, UK Justice Policy Review Focus Issue 3 (Centre for Crime and Justice Studies, 2018) 13.

21. See *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (NSW).

22. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 73A(2)(b).

23. Queensland, Department of Children, Youth Justice and Multicultural Affairs, *Electronic Monitoring Trial* (2022)1.

24. Queensland, Department of Children, Youth Justice and Multicultural Affairs, *Electronic Monitoring Devices: Information for Legal Stakeholders* (2023).

- 6.22 A general review of the options and conditions available when sentencing young offenders is beyond the scope of this review. However, there may be some adjustments that could be effective particularly in relation to weapons offences.

**Question 6.5: Sentencing options under the Children (Criminal Proceedings) Act 1987 (NSW)**

What changes, if any, could be made to the sentencing options available under the *Children (Criminal Proceedings) Act 1987* (NSW) to assist in dealing with weapons-related offending by young offenders?

## Knife crime prevention orders (UK)

- 6.23 Knife crime prevention orders (KCPOs) were introduced in England and Wales<sup>25</sup> as a “preventative” mechanism with the aim of diverting young people away from crime.<sup>26</sup> They can be made at different stages. However, we understand that they are principally made upon conviction for a relevant offence.
- 6.24 KCPOs were piloted from July 2021 in London, initially for a period of 14 months. The pilot was extended and recently ended on 31 March 2023. An 18-month long evaluation of the program is currently taking place.<sup>27</sup> Further details of the evaluation have not yet been released.
- 6.25 KCPOs may contain a range of conditions including the requirement to participate in a restorative justice activity, attend counselling or youth mentoring or to obey a curfew or non-association orders.<sup>28</sup>
- 6.26 KCPOs can be made against any person from the age of 12.<sup>29</sup> KCPOs can be made:
- on conviction for a relevant offence
  - upon complaint by the police (without a conviction), and

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25. *Offensive Weapons Act 2019* (UK) s 19.

26. UK Home Office, *Knife Crime Prevention Orders (KCPOs): Practitioners’ Guidance* (2021) 4.

27. UK, UCL, “Evaluating New Legislation Piloted to Help Knife-Enabled Violence” *UCL Jill Dando Institute of Security and Crime Science* (17 August 2021) <<https://www.ucl.ac.uk/jill-dando-institute/news/2021/aug/evaluating-new-legislation-piloted-help-prevent-knife-enabled-violence>> (retrieved 18 October 2023); London Assembly, “Knife Crime Prevention Orders 2022/3128” (15 September 2022) <https://www.london.gov.uk/who-we-are/what-london-assembly-does/questions-mayor/find-an-answer/knife-crime-prevention-orders-3>> (retrieved 18 October 2023); UK, Crown Prosecution Service, “Offensive Weapons, Knives, Bladed and Pointed Articles” (19 April 2023) <<https://www.cps.gov.uk/legal-guidance/offensive-weapons-knives-bladed-and-pointed-articles>> (retrieved on 18 October 2023).

28. UK Home Office, *Knife Crime Prevention Orders (KCPOs): Practitioners’ Guidance* (2021) 17–18.

29. UK Home Office, *Knife Crime Prevention Orders (KCPOs): Practitioners’ Guidance* (2021) 5; *Offensive Weapons Act 2019* (UK) s 14(1), s 19(1)(a).

- without notice (also without a conviction) in exceptional or urgent circumstances.<sup>30</sup>
- 6.27 In relation to KCPOs made upon complaint by the police, the court must be satisfied of various conditions, including that the defendant, on the balance of probabilities, has had a bladed article in a relevant place without good reason or lawful authority on at least two occasions.<sup>31</sup>
- 6.28 Breaching a KCPO is a criminal offence and carries a maximum penalty of 2 years' imprisonment.<sup>32</sup>
- 6.29 Despite the police generally welcoming KCPOs, civil society actors, such as the Standing Committee for Youth Justice have expressed disappointment that KCPOs fall short of a public-health approach to knife crime (see below).<sup>33</sup>
- 6.30 One criminologist has argued that KCPOs are an “ideologically driven policy” and are “disproportionality employed to regulate the behaviour of ‘difficult’ populations”, such as “black children”.<sup>34</sup> In response to a freedom of information request (date unknown), the Metropolitan Police released statistics indicating that 49 orders had been granted at the time and 57% of orders were against “black” people.<sup>35</sup> As at May 2022 40% of KCPOs were imposed on children (18 out of 45).<sup>36</sup>
- 6.31 One preliminary submission expressed support for the introduction of KCPOs in NSW.<sup>37</sup>
- 6.32 One consultation considered the need for orders with meaningful interventions and drew a comparison with community clean up orders under the *Graffiti Control Act*

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30. UK Home Office, *Knife Crime Prevention Orders (KCPOs): Practitioners' Guidance* (2021) 5–6; *Offensive Weapons Act 2019* (UK) s 14, s 19.

31. UK Home Office, *Knife Crime Prevention Orders (KCPOs): Practitioners' Guidance* (2021) 5; *Offensive Weapons Act 2019* (UK) s 14(3).

32. UK, Crown Prosecution Service, “Offensive Weapons, Knives, Bladed and Pointed Articles” (19 April 2023) <<https://www.cps.gov.uk/legal-guidance/offensive-weapons-knives-bladed-and-pointed-articles>> (retrieved 18 October 2023); *Offensive Weapons Act 2019* (UK) s 29(1)–(2).

33. J Hendry, “‘The Usual Suspects’: Knife Crime Prevention Orders and the ‘Difficult’ Regulatory Subject” (2022) 62 *British Journal of Criminology* 378, 380.

34. J Hendry, “‘The Usual Suspects’: Knife Crime Prevention Orders and the ‘Difficult’ Regulatory Subject” (2022) 62 *British Journal of Criminology* 378, 379.

35. UK, Metropolitan Police, “Knife Crime Prevention Orders (KCPOs) and Serious Violence Reduction Orders (SVROs)” <<https://www.met.police.uk/foi-ai/metropolitan-police/d/may-2022/knife-crime-prevention-orders-kcpos-and-serious-violence-reduction-orders-svros/>> (retrieved 18 October 2023).

36. G-M Chung, *Knife Crime Prevention Orders: A Review of Associated Practical Issues* (Sentencing Academy, 2023) 6–7.

37. Confidential, *Preliminary Submission PWE11*, 3.

2008 (NSW) noting, however, that these were more punitive than educative.<sup>38</sup> Currently the community clean up work must, “if practicable”, include at least two hours participation in a graffiti prevention program which is “a personal development, education or other program the object of which is to prevent offenders from engaging in unlawful graffiti activities”.<sup>39</sup>

- 6.33 Our consultation paper outlines a number of schemes that operate in NSW and apply to adults. They include some elements of the KCPO scheme, although they target more serious offending and may or may not have a rehabilitative component (in addition to supervision).<sup>40</sup>
- 6.34 It is possible that the conditions of a KCPO could be imposed as part of a non-custodial juvenile penalty. We discuss the question of the adequacy of existing sentencing options for young offenders above.

#### Question 6.6: Knife crime prevention orders

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?

## Making penalty notices available for some offences

- 6.35 Penalty notices are an alternative way of dealing with offences that are considered less serious, particularly where they are high volume.
- 6.36 In chapter 2, we noted that penalty notices may be imposed on young offenders in a small number of summary weapons offences. While some offences under the *Summary Offences Act* are available as penalty notice offences for young offenders, there is a recognition that some other offences are generally not appropriate as penalty notice offences for children (and by implication, more suitable for diversion under the *Young Offenders Act*).
- 6.37 It was observed in one consultation that, while penalty notices were a practical way of getting people out of court, they were not a perfect solution.<sup>41</sup>
- 6.38 Other known issues with penalty notices being issued to young offenders include:

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38. Children and Young People Roundtable, *Preliminary Consultation PWEC03*.

39. *Graffiti Control Act 2008* (NSW) s 9H.

40. NSW Sentencing Council, *Weapons-Related Offences: Sentencing Adult Offenders*, Consultation Paper (2023) [6.100]–[6.105].

41. Defence Roundtable, *Preliminary Consultation PWEC02*.

- limited capacity to pay (including limited capacity to earn money because of schooling requirements or unemployment),<sup>42</sup> and
  - the limited deterrent effect of penalty notices on young people because of their lesser ability to plan ahead and understand the consequences of their actions.<sup>43</sup>
- 6.39 One option for dealing with some of the issues outlined above could be to have lower penalty amounts for penalty notices imposed on young offenders.<sup>44</sup> The NSW Law Reform Commission, in 2012, recommended that, in general, the amounts for penalty notice offences should be set at 25% of the adult penalty.<sup>45</sup> By way of comparison, the *Children (Criminal Proceedings) Act* has placed a cap on the amount of a fine that can be imposed on a young person of 10 penalty units.<sup>46</sup>
- 6.40 Another option could be to make more minor offences penalty notice offences that are available to young offenders, in an effort to divert young offenders from the criminal justice process.
- 6.41 The commencement of the *Criminal Legislation Amendment (Knife Crimes) Act 2023* (NSW) and the repeal of the custody and use of knives offences in the *Summary Offences Act* has had two key impacts on the availability of penalty notices for young people.<sup>47</sup>
- 6.42 First, it appears that penalty notices will no longer be available for the custody of knife offences that have been made indictable, because the *Criminal Procedure Act 1986* (NSW) precludes penalty notices for a person who is under 18 for penalty notice offences listed in schedule 4 of the *Criminal Procedure Regulation 2017* (NSW).<sup>48</sup> One option for reform could be to ensure the availability of penalty notices for people under the age of 18 years in relation to the custody of a knife offence, and to consider whether this option should be available for other offences.
- 6.43 Secondly, in respect of the custody of a knife offence that was available under the *Summary Offences Act*, a police officer, before issuing a penalty notice to a young person, had to determine whether they should, instead, receive a warning, a caution or a referral to a youth justice conference.<sup>49</sup> Since 23 October 2023, this requirement now applies only to issuing a penalty notice to a young person for

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42. NSW Law Reform Commission, *Penalty Notices*, Report 132 (2012) [12.9]–[12.12].

43. NSW Law Reform Commission, *Penalty Notices*, Report 132 (2012) [12.14]–[12.18].

44. NSW Law Reform Commission, *Penalty Notices*, Report 132 (2012) [12.13].

45. NSW Law Reform Commission, *Penalty Notices*, Report 132 (2012) [12.48]–[12.55], rec 12.2.

46. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(c).

47. See [2.55]–[2.66], [6.8].

48. *Criminal Procedure Act 1986* (NSW) s 335(1); *Criminal Procedure Regulation 2017* (NSW) sch 4.

49. *Young Offenders Act 1997* (NSW) s 9(2A); *Young Offenders Regulation 2016* (NSW) cl 14(a).

failure to comply with a police direction, and to no other penalty notice offence.<sup>50</sup> This requirement could be extended to any weapons-related offence that is made a penalty notice offence.

#### Question 6.7: Penalty notice offences

- (1) What weapons offences, if any, should be subject to penalty notices for young offenders? Why?
- (2) If penalty notices were to be set for any weapons offences for young offenders, what adjustments should be made, including to the penalty notice amount?

## Targeted rehabilitation and diversion programs

- 6.44 Programs can be delivered as part of a diversion or sentencing option or can be delivered to offenders once they are in custody.
- 6.45 The Youth Justice Coalition NSW, in a 2017 report, recommended that children suspected of being at medium or high risk of reoffending should be considered for diversion to evidence-based prevention programs. These address the causes of reoffending such as through Youth on Track, Police Citizens Youth Clubs NSW or locally based programs developed in accordance with Just Reinvest NSW.<sup>51</sup>
- 6.46 A related question is whether there are sufficient opportunities for diversion to appropriate programs within the existing system under the *Young Offenders Act* and the *Children (Criminal Proceedings) Act*.
- 6.47 One submission recommended an ongoing focus on alternative approaches, including diversion of offenders.<sup>52</sup> It also drew attention to some programs delivered in youth justice centres that offenders have referred to positively as supporting their rehabilitation and behaviour change (although they do not deal specifically or solely with weapons offences):
- Confit Pathways, a bespoke program delivered by a not-for-profit organisation based around developing close bonds with young people through fitness and mentorship by individuals with lived prison experience, and
  - PASIFIKA initiative, at Cobham Youth Justice Centre, provides a wrap-around culturally responsive service to Pacific Islander young people in custody.<sup>53</sup>

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50. *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 199; *Young Offenders Regulation 2016* (NSW) cl 14(b).

51. V Sentas and C Pandolfini, *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan* (Youth Justice Coalition NSW, 2017) rec 1.

52. NSW, Advocate for Children and Young People, *Preliminary Submission PWE10*, 2.

53. NSW, Advocate for Children and Young People, *Preliminary Submission PWE10*, 2–3.

- 6.48 One consultation also identified opportunities in youth detention as providing a way for young offenders to change their lives.<sup>54</sup>
- 6.49 One submission considered that rehabilitation programs for inmates who have committed violent crimes involving weapons were “crucial” to reducing reoffending.<sup>55</sup>

### Questions 6.8: Targeted rehabilitation and diversion programs

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

## Greater use of restorative justice programs

- 6.50 The restorative justice approach seeks to restore relationships between victims, offenders and the community. Restorative justice programs can be employed before, during and after criminal proceedings. Aspects of restorative justice may be seen in youth justice conferences and the Youth Koori Court described in chapters 2 and 3.
- 6.51 A 2022 review of restorative justice studies across the world concluded that “restorative justice and restorative practice can form an important part of an overall policing strategy to help reduce both the incidents of youth violence as well as the longer-term impacts of that violence when it has taken place”.<sup>56</sup> It also concluded that:
- in order to maximise the impact of these approaches in policing and the criminal and youth justice system more widely, it is important to adopt a whole-system approach in which restorative justice and practice is embedded into the organisational culture of schools, youth justice services, police forces, and other agencies that deal with victims, young perpetrators, and the communities in which they live. Such approaches, when conducted properly, can aid in breaking the “school to prison pipeline”, can improve victim satisfaction and wellbeing, and can support young perpetrators of violent crime in gaining a greater awareness of the impact of their behaviour.<sup>57</sup>
- 6.52 The review noted that there was robust evidence of the benefits of restorative justice for victims of violent crimes, including:
- empowerment through giving individuals confidence they can keep themselves safe

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54. Children and Young People Roundtable, *Preliminary Consultation PWEC03*.

55. Youth Against Violence, *Preliminary Submission PWE06*, 5.

56. J Hobson and others, “Restorative Justice, Youth Violence, and Policing: A Review of the Evidence” (2022) 11 *Laws* 1, 16.

57. J Hobson and others, “Restorative Justice, Youth Violence, and Policing: A Review of the Evidence” (2022) 11 *Laws* 1, 17.

- improved feelings of self-worth
- better communication skills
- “greater awareness of self and of situational contexts”, and
- “better recognition of personal strengths”.<sup>58</sup>

However, the review also noted that one of the greater challenges for restorative justice programs was engaging with victims, especially where the victim is also a young person.<sup>59</sup>

- 6.53 In England and Wales, the *Serious Violence Strategy* identifies restorative justice interventions, when tailored to the individual, as a successful way of preventing reoffending.<sup>60</sup> The UK Youth Select Committee, in a 2019 report on knife crime, recommended that the next version of the government’s serious violence strategy should include “a larger focus on restorative justice and other informal criminal responses as a first step”.<sup>61</sup> The committee considered that restorative justice interventions, where suitable for the offender and victim, “can be an effective alternative to short custodial sentences or other formal criminal justice interventions”.<sup>62</sup>
- 6.54 The committee particularly noted that restorative justice can also be positive for victims by decreasing the chances of their carrying knives and subsequently offending themselves.<sup>63</sup> Some data from the UK suggests that children who have been victims of crime are more likely to carry a knife than those who have not been victims.<sup>64</sup>

#### Question 6.9: Restorative justice programs

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

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58. J Hobson and others, “Restorative Justice, Youth Violence, and Policing: A Review of the Evidence” (2022) 11 *Laws* 1, 14.
59. J Hobson and others, “Restorative Justice, Youth Violence, and Policing: A Review of the Evidence” (2022) 11 *Laws* 1, 14.
60. UK, Government, *Serious Violence Strategy* (2018) 43.
61. British Youth Council, Youth Select Committee, *Our Generation’s Epidemic: Knife Crime* (2019) [195].
62. British Youth Council, Youth Select Committee, *Our Generation’s Epidemic: Knife Crime* (2019) [193].
63. British Youth Council, Youth Select Committee, *Our Generation’s Epidemic: Knife Crime* (2019) [193], [196].
64. C Eades and others, “*Knife Crime*”: *A Review of Evidence and Policy* (Centre for Crime and Justice Studies, 2nd ed, 2007) 21.

## Police powers to conduct random searches

- 6.55 As we noted in the adult offenders consultation paper, one suggestion has been to give the police power to conduct random searches of the public with metal detectors or hand-held scanning devices (or “wands”) to detect knives and other weapons in designated public areas.<sup>65</sup> There is currently no such power in NSW.
- 6.56 Most other Australian jurisdictions have a version of such a power, with various restrictions on operation relating to location and time.<sup>66</sup> We are focusing on Queensland in this paper because the relevant provisions were introduced as a specific response to youth crime. While the scheme allows for the scanning of people of all ages, the explanatory statement for the original bill for the trial scheme framed it in the context of the need to police young people:
- The Queensland Police Service advises that youths as young as 10 years of age coming to the attention of police are found in possession of a knife and that this behaviour peaks in the 15- to 16-year-old age cohort. This is supported by research from other jurisdictions. We know there is a tendency for some young people to carry knives in public spaces. This places the community and the youths themselves at risk of serious harm or death. Enabling police to quickly identify and seize these knives not only prevents them being used to cause harm but also creates a strong disincentive for people to carry them in the first place.<sup>67</sup>
- 6.57 The Legal Affairs and Safety Committee of the Queensland Parliament produced a report in 2021 that recommended passing the original bill. The report noted concerns about the wandering trial. Those relevant to young offenders included that:
- There is a lack of appropriate safeguards applying to the powers, for example, that no warrant or reasonable suspicion that a person is carrying a knife is required for the use of hand held scanners to occur.<sup>68</sup> Without such safeguards, wandering powers may be exercised arbitrarily or with bias, thus heightening tensions between young persons and police.<sup>69</sup>
  - The trial is based on a perceived threat regarding young people and knives, rather than an evidence-based threat.<sup>70</sup>

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65. NSW Sentencing Council, *Weapons-Related Offences: Sentencing Adult Offenders*, Consultation Paper (2023) [6.77].

66. NSW Sentencing Council, *Weapons-Related Offences: Sentencing Adult Offenders*, Consultation Paper (2023) [6.77].

67. Queensland, *Parliamentary Debates*, Legislative Assembly, Second Reading Speech, 25 February 2021, 238–239.

68. Queensland Parliament, Legal Affairs and Safety Committee, *Youth Justice and Other Legislation Amendment Bill 2021*, Report no 7 (2021) 50.

69. Queensland Parliament, Legal Affairs and Safety Committee, *Youth Justice and Other Legislation Amendment Bill 2021*, Report no 7 (2021) 51. See also Defence Roundtable, *Preliminary Consultation PWEC02*.

70. Queensland Parliament, Legal Affairs and Safety Committee, *Youth Justice and Other Legislation Amendment Bill 2021*, Report no 7 (2021) 51.2021 Report p 51

- 6.58 The Griffith Criminology Institute reviewed the operation of the scanning trial. One of the findings was that the scanning had been inconsistently used across different groups in the community. While targeting young people was intended under the legislation, and there was an evidence base supporting the selection of more males than females, there was some evidence of the inappropriate use of stereotypes and cultural assumptions by a small number of police officers in determining who to select for wandering.<sup>71</sup>
- 6.59 Research in the UK and the United States (US) suggests that care needs to be taken with policing interventions such as stop and search. While everyday policing, including stop and search, is shown to reduce crime, there is limited evidence to suggest that increasing such activity further reduces crime in any significant way.<sup>72</sup> In fact, some literature has suggested that increased policing may intensify the problem through deteriorating police-youth relations.<sup>73</sup> This was also the conclusion of the UK Youth Select Committee:
- If the response to this knife crime crisis is an increased police presence, stop and searches and knife crime prevention orders, we are very concerned about the effect this may have on young people’s trust in the police. Stop and search disproportionately targets young people of certain ethnic groups, specifically Black men, and until this disparity is rectified, stop and search powers should not be expanded.<sup>74</sup>
- 6.60 Participants in some consultations agreed that random scanning could be counterproductive if young people felt that they were being targeted.<sup>75</sup>
- 6.61 Another possible outcome of scanning is that, if it applies to particular areas, some groups may be displaced to areas that are not policed in this way. Opinion amongst police officers as to whether the Queensland trial had led to a displacement effect was varied: some officers thought that young people were diverted to other areas including Southport, Coomera, and the Pacific Fair Shopping Centre, while others considered that no displacement effect occurred.<sup>76</sup>

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71. J Ransley and others, *Review of the Queensland Police Service Wandering Trial*, Report (Griffith Criminology Institute, 2022) 71, 73.

72. A McNeill and L Wheller, *Knife Crime: Evidence Briefing* (College of Policing, 2019) 5; C Eades and others, *“Knife Crime”: A Review of Evidence and Policy* (Centre for Crime and Justice Studies, 2nd ed, 2007) 28.

73. J Bondy, A Ogilvie and B Astbury, *Living on Edge: Understanding the Social Context of Knife Carriage among Young People* (RMIT University Press, 2005) 25; A McNeill and L Wheller, *Knife Crime: Evidence Briefing* (College of Policing, 2019) 5.

74. British Youth Council, Youth Select Committee, *Our Generation’s Epidemic: Knife Crime* (2019) [152].

75. Defence Roundtable, *Preliminary Consultation PWEC02*; Children and Young People Roundtable, *Preliminary Consultation PWEC03*.

76. J Ransley and others, *Review of the Queensland Police Service Wandering Trial*, Report (Griffith Criminology Institute, 2022) 51.

- 6.62 Scanning may also encourage some young people to find alternative weapons that will not be detected. This was a view held by some participants in our consultations with young offenders.<sup>77</sup>
- 6.63 Random scanning, by itself, does nothing to address the underlying causes of offending. It therefore may not be effective if it simply results in greater detection of knife carrying and more young people entering court or diversion schemes. It could be more effective if those detected were referred to programs that assisted them in changing behaviour and building resilience.

#### Question 6.10: Police powers to conduct random searches

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

## An integrated approach

- 6.64 Another option is to take an integrated approach, involving early intervention, targeted responses and collaboration between agencies.
- 6.65 In preliminary submissions and consultations, there was broad support for holistic responses to address the root causes of knife crime amongst young people.<sup>78</sup>
- 6.66 Some literature has also suggested measures to address underlying motivations and risk factors.<sup>79</sup>
- 6.67 Others have observed that legislative measures need to be accompanied by social policy, such as media campaigns, parent education, and support services, to be effective.<sup>80</sup>
- 6.68 Submissions from Youth Justice NSW and the Advocate for Children and Young People focus on targeted early intervention, mentoring, and support programs.<sup>81</sup> The Advocate for Children and Young People preferred these approaches to “more

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77. Young People with Lived Experience, *Preliminary Consultation PWEC04*.

78. P White, *Preliminary Submission PWE01*, 1; Youth Against Violence, *Preliminary Submission PWE06*, 6; Youth Justice NSW, *Preliminary Submission PWE07*, 2; NSW, Advocate for Children and Young People, *Preliminary Submission PWE10*, 1–2; Prosecutors’ Roundtable, *Preliminary Consultation PWEC01*; Defence Roundtable, *Preliminary Consultation PWEC02*; Children and Young People Roundtable, *Preliminary Consultation PWEC03*.

79. J Bondy, A Ogilvie and B Astbury, *Living on Edge: Understanding the Social Context of Knife Carriage among Young People* (RMIT University Press, 2005) 127–128.

80. L Bartels, “*Knife Crime*” in *Australia: Incidence, Aetiology and Responses*, Technical and Background Paper No 45 (Australian Institute of Criminology, 2011) 36.

81. NSW, Advocate for Children and Young People, *Preliminary Submission PWE10*, 2; Youth Justice NSW, *Preliminary Submission PWE07*, 2.

punitive responses” such as increased sentences, “which have been shown to be ineffective in preventing crime and risk criminalising young people at an early point”.<sup>82</sup>

- 6.69 One consultation identified schools as playing an important role in supporting children and young people, particularly in relation to those who are suspended, who often have a history of domestic violence, homelessness and unstable housing.<sup>83</sup>
- 6.70 Youth Justice NSW has drawn attention to research from the UK which suggests that prevention strategies enacted in the US and UK such as stop and search, knife amnesties, media campaigns, and curfews did not significantly impact youth knife crime. More effective strategies were those that increased offenders’ access to supports such as housing, education, and employment which reduced rates of weapon carrying.<sup>84</sup> One study found that offenders who received such support were almost twice as likely to reduce knife carrying as a control group.<sup>85</sup>
- 6.71 Scotland has developed an approach that involves the police, social services, youth and community services, offending and probation teams, the National Health Service and local voluntary organisations. The Scottish Violence Reduction Unit, which was established in 2005, adopts a “public health approach” to violent crime. In theory, this approach treats violence like an infectious disease in which scientific evidence is used to identify its causes, as well as interventions to stop its spread.<sup>86</sup> The four steps to apply a public health approach have been identified as:
1. Define the problem through the systematic collection of information and data.
  2. Establish the causes of violence and what factors could be changed through intervention.
  3. Design, implement and evaluate interventions.
  4. Scale-up effective interventions to have as wide an impact as possible.<sup>87</sup>

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82. NSW, Advocate for Children and Young People, *Preliminary Submission PWE10*, 2.

83. Children and Young People Roundtable, *Preliminary Consultation PWEC03*.

84. Youth Justice NSW, *Preliminary Submission PWE07*, 2; K D Browne and others, “Knife Crime Offender Characteristics and Interventions: A Systematic Review” (2022) 67 *Aggression and Violent Behavior* 1, 9.

85. D J Williams and others, “Addressing Gang-Related Violence in Glasgow: A Preliminary Pragmatic Quasi-Experimental Evaluation of the Community Initiative to Reduce Violence (CIRV)” (2014) 19 *Aggression and Violent Behavior* 686, 688–689.

86. J Brown, “How is the Government Implementing a ‘Public Health Approach’ to Serious Violence?” *House of Commons Library* (22 July 2019) <<https://commonslibrary.parliament.uk/how-is-the-government-implementing-a-public-health-approach-to-serious-violence/>> (retrieved 18 October 2023).

87. G Hassan, *Violence is Preventable, not Inevitable: The Story and Impact of the Scottish Violence Reduction Unit* (2020) 7.

- 6.72 Data suggests that the number of people convicted in Scottish courts of a main charge of handling offensive weapons, has fallen by half between 2008 and 2021.<sup>88</sup> Since 2011–2012, the proportion of those aged 18–21 has reduced from 23% to 14% in 2020–2021 and the proportion of those aged under 18 has reduced from 9% to 4%.<sup>89</sup>
- 6.73 In 2019, the UK government also moved towards adopting a “public-health approach” to violent crime in England and Wales, with some emphasis on young people.<sup>90</sup> The government’s implementation of this approach involves:
- establishing Violence Reduction Units to bring together a range of actors, such as police, health, corrections and criminal justice agencies to offer leadership and strategic coordination of local responses to serious violence<sup>91</sup>
  - providing grants to organisations that target early intervention with young people), and establishing a Serious Violence Taskforce to provide oversight of this spending,<sup>92</sup> and
  - introducing two new legal duties on specific local public service providers, including police, justice services, fire and rescue, certain health authorities, and specific local councils.<sup>93</sup>

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88. *Criminal Law (Consolidation) (Scotland) Act 1995* (UK) s 47, s 49; Scottish Government, *Violence Prevention Framework: Evidence Supplement* (2023) 11.

89. Scottish Government, National Statistics, *Criminal Proceedings in Scotland, 2020–21* (2022) 39–40.

90. J Brown, “How is the Government Implementing a ‘Public Health Approach’ to Serious Violence?” *House of Commons Library* (22 July 2019) <<https://commonslibrary.parliament.uk/how-is-the-government-implementing-a-public-health-approach-to-serious-violence/>> (retrieved 18 October 2023); S Javid, “New Public Health Duty to Tackle Serious Violence” (14 July 2019) *UK Home Office* <<https://www.gov.uk/government/news/new-public-health-duty-to-tackle-serious-violence>> (retrieved 19 October 2023).

91. UK, Home Office, “Serious Violence Duty: Draft Guidance for Responsible Authorities” (30 March 2023) <<https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-draft-guidance/serious-violence-duty-draft-guidance-for-responsible-authorities-accessible-version>> (retrieved 19 October 2023) [32].

92. J Brown, “How is the Government Implementing a ‘Public Health Approach’ to Serious Violence?” (22 July 2019) *House of Commons Library* <<https://commonslibrary.parliament.uk/how-is-the-government-implementing-a-public-health-approach-to-serious-violence/>> (retrieved 19 October 2023).

93. J Brown, “How is the Government Implementing a ‘Public Health Approach’ to Serious Violence?” (22 July 2019) *House of Commons Library* <<https://commonslibrary.parliament.uk/how-is-the-government-implementing-a-public-health-approach-to-serious-violence/>> (retrieved 19 October 2023); UK Home Office, “Serious Violence Duty: Draft Guidance for Responsible Authorities” (30 March 2023) <<https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-draft-guidance/serious-violence-duty-draft-guidance-for-responsible-authorities-accessible-version>> (retrieved 19 October 2023) [4].

- to “collaborate and plan to prevent and reduce serious violence”,<sup>94</sup> and
  - to consider “serious violence” when generating strategies as part of Community Safety Partnerships.<sup>95</sup>
- 6.74 The UK Government Serious Violence Strategy has observed that programs that are effective for young people tend to be tailored to individual needs and use multi-agency approaches:
- Young offenders often come from disadvantaged backgrounds and have very complex needs such as homelessness, poor educational attainment, lack of employable skills, mental health issues etc. Addressing just one of those may not make a significant difference on its own.<sup>96</sup>
- 6.75 In 2022, the UK Inspectorate of Probation interviewed those who had experience in dealing with knife crime and found that responses to knife crime needed to:
- be broad in their approach, working with local communities
  - be individualised, responding to the child rather than the offence, with a focus on building trusting relationships
  - be delivered in the context of good multi-agency working and a public health approach.<sup>97</sup>
- 6.76 The Northern Territory has recently announced a strategy to reduce knife crime, building on existing research from Australia and overseas for an holistic approach to addressing knife crime, including targeting violent crime generally (rather than focusing solely on knife crime).<sup>98</sup> Actions include developing uniform practice for security of knives and weapons to prevent theft, developing an evidence-informed violence awareness campaign, and continuing to partner across agencies to develop de-escalation training for schools and service providers.<sup>99</sup>
- 6.77 One submission called for the introduction of a violence reduction unit in NSW, based on the English model, which it says “has proven to be effective in engaging young people and lowering the youth crime rates”.<sup>100</sup>

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94. J Brown, “How is the Government Implementing a ‘Public Health Approach’ to Serious Violence?” (22 July 2019) *House of Commons Library* <<https://commonslibrary.parliament.uk/how-is-the-government-implementing-a-public-health-approach-to-serious-violence/>> (retrieved 19 October 2023).

95. J Brown, “How is the Government Implementing a ‘Public Health Approach’ to Serious Violence?” (22 July 2019) *House of Commons Library* <<https://commonslibrary.parliament.uk/how-is-the-government-implementing-a-public-health-approach-to-serious-violence/>> (retrieved 19 October 2023).

96. UK, Government, *Serious Violence Strategy* (2018) 43.

97. J Phillips and others, *Promising Approaches to Knife Crime: An Exploratory Study*, Research and Analysis Bulletin 2022/03 (Her Majesty's Inspectorate of Probation, 2022) 39.

98. Northern Territory Government, *Knife Crime Reduction Strategy* (2023) 1.

99. Northern Territory Government, *Knife Crime Reduction Strategy* (2023) 4.

100. Youth Against Violence, *Preliminary Submission PWE06*, 6, rec 7.

6.78 Youth Justice NSW submitted that, in light of the fact the knife carrying has become normalised in some areas, including in the Sydney Metropolitan area:

This would tend to suggest that place-based, locally designed, targeted interventions are likely to be effective with respect to young people who are carrying and/or using knives. Youth Justice will pilot Violence Reduction Units in Penrith and Wagga Wagga as an opportunity for appropriate place based early intervention.<sup>101</sup>

6.79 A review of literature emphasised that a “multi-agency approach demands cooperation, and the careful balancing of the measures used by each agency”:

the involvement and support of other agencies, not least agencies of the voluntary sector have an important part to play. It is essential then that roles of each agency within this multi-agency approach, are balanced appropriately, so that the approaches used by each, complement, rather than conflict with one another.<sup>102</sup>

6.80 There are an almost endless array of early intervention and support services that would help, in different ways, to address the root causes of youth knife crime. Many of these are far removed from sentencing-related efforts to deal with the problem. The following paragraphs highlight some possible elements of an integrated approach that have been raised in submissions and consultations, including public education, role models and mentoring, and sport.

## **Public education**

6.81 Consultations and submissions raised the need for public education around weapons offences, particularly in relation to young people and the possession of knives. Suggestions have been in relation to general public education as well as programs delivered through schools.

6.82 In consultations, some young offenders said they and some peers were not aware of the consequences of, or penalties for knife custody offences until they were in the criminal justice system.<sup>103</sup>

6.83 An example of a public education approach can be seen in Queensland in 2021, where there was a state-wide crime prevention campaign led by the Queensland Police Service called *I live my life... without a knife*, providing community awareness of the risks and penalties of knife carrying in public places through advertising,

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101. Youth Justice NSW, *Preliminary Submission PWE07*, 2

102. R Foster, *Knife Crime Interventions: “What Works?”* Report No 4/2013 (Scottish Centre for Crime and Justice Research, 2013) 13.

103. Young People with Lived Experience, *Preliminary Consultation PWEC04*.

community events and engagement, as well as school presentations. Elements of this campaign were delivered in conjunction with the Jack Beasley Foundation.<sup>104</sup>

6.84 In one consultation it was noted that education was an easy option. However, because of underlying social drivers that encourage children into such behaviour, education programs needed to be accompanied by social support, programs in the community and positive interaction with the police.<sup>105</sup>

6.85 In a review of relevant literature, the Scottish Centre for Crime and Justice Research identified some elements of successful education programs, including:

- a recognition of the fear that leads young people to carry weapons together with reassurance about strategies to keep them safe
- informal approaches to education to engage those with different experiences of education, and
- ensuring that those who deliver programs “have a healthy knowledge of the issue” to ensure respect from recipients.<sup>106</sup>

6.86 On the other hand, reviews have expressed caution around the effectiveness of fear-based education models, with evidence suggesting that some such models have in fact increased offending.<sup>107</sup> One review noted that there may be an adverse effect if the education creates a misperception regarding the threat of violence and prevalence of knife ownership and so encourages participants to carry.<sup>108</sup>

### **General public**

6.87 One submission called for a “public and proactive ad campaign” to encourage young people “to drop their knives and remember the consequences of carrying a knife”.<sup>109</sup>

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104. Queensland Police, “New Campaign to Tackle Youth Knife Crime” (10 May 2021) <<https://mypolice.qld.gov.au/news/2021/05/18/new-campaign-to-tackle-youth-knife-crime/>> (retrieved 19 October 2023).

105. Defence Roundtable, *Preliminary Consultation PCEC02*.

106. R Foster, *Knife Crime Interventions: “What Works?”* Report No 4/2013 (Scottish Centre for Crime and Justice Research, 2013) 8–11.

107. UK, College of Policing, “Scared Straight Programmes” (19 February 2015) <<https://www.college.police.uk/research/crime-reduction-toolkit/scared-straight>> (retrieved 19 October 2023); P M Klenowski, K J Bell and K D Dodson, “An Empirical Evaluation of Juvenile Awareness Programs in the United States: Can Juveniles be ‘Scared Straight?’” (2010) 49 *Journal of Offender Rehabilitation* 254, 268; H Gaffney, D Jolliffe and H White, *Knife Crime Education Programmes*, Toolkit Technical Report (Youth Endowment Fund, 2023) 3.

108. H Gaffney, D Jolliffe and H White, *Knife Crime Education Programmes*, Toolkit Technical Report (Youth Endowment Fund, 2023) 3, 7, 9.

109. Youth Against Violence, *Preliminary Submission PWE06*, 6.

- 6.88 There was some support in consultations for community legal education about the extent of knife offences and the consequences of being detected.<sup>110</sup>

### **School-based programs**

- 6.89 One submission suggested there should be more education in schools about the impact on victims and families of weapons crimes.<sup>111</sup>
- 6.90 Another submission called for funding for “early-intervention, prevention and education programs that educate primary and high school students about the consequences of possessing a knife or using a knife as well as deterring young people from violent offences involving weapons”.<sup>112</sup>
- 6.91 One submission highlighted the 2022 “Anti-Violence Campaign” developed by NSW Police and the NSW Rugby League in partnership with Police Citizen Youth Clubs, the NSW Department of Education and the Advocate for Children and Young People:

The education and awareness campaign involved the development of a short video featuring sporting ambassadors and public influencers who detail their personal experiences and call for change. The aim was for the video to be shown in all public secondary schools for students in grades seven to 10. The program was to be delivered by around 170 youth engagement officers from NSW police, helping to build on existing partnerships between local schools and police.<sup>113</sup>

### **Role models and mentoring**

- 6.92 There is some support for the effectiveness of schemes for mentoring or otherwise providing role models for young people.<sup>114</sup> In Scotland, the Mentors in Violence Prevention program trains senior students in a large number of schools to deliver sessions to younger students to empower them to challenge violence and abuse safely and effectively.<sup>115</sup> There is some evidence that this program has shown positive effects in changing participants’ attitudes,<sup>116</sup> and that, in general, mentoring programs have a moderate impact on violent crime.<sup>117</sup>

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110. Defence Roundtable, *Preliminary Consultation PWEC02*.

111. P White, *Preliminary Submission PWE01*, 2.

112. Youth Against Violence, *Preliminary Submission PWE06*, 6.

113. NSW, Advocate for Children and Young People, *Preliminary Submission PWE10*, 1–2.

114. Young People with Lived Experience, *Preliminary Consultation PWEC04*.

115. G Hassan, *Violence is Preventable, not Inevitable: The Story and Impact of the Scottish Violence Reduction Unit (2020)* 13.

116. K Russell, *What Works to Prevent Youth Violence: A Summary of the Evidence* (Scottish Violence Reduction Unit, 2021) 38–39.

117. Youth Endowment Fund, “Mentoring” (2023) <https://youthendowmentfund.org.uk/toolkit/mentoring-2/> (retrieved 19 October 2023); UK, Her Majesty’s Inspectorate of Probation, *Promising Approaches to Knife Crime: An Exploratory Study*, Research and Analysis Bulletin 2022/03 (2022) 26–27.

- 6.93 The UK Youth Select Committee, which is drawn from England and Wales, has emphasised the need to have relatable role models:

We recommend that the Government amend their approach to role models to focus on people with lived experiences, or people from troubled areas who have been successful in their own lives, who may be best able to inspire vulnerable young people. The relevant role models will be different for different local areas. It is important that individuals acting as role models for young people are drawn from all walks of life and are active in a range of professions, not just rappers and athletes. The Government should seek to encourage relatable role models to positively inspire young people, for example through funding mentoring programmes.<sup>118</sup>

## **Sport, employment and other activities**

- 6.94 Consultations with young offenders raised the positive potential for sport participation as well as employment programs.<sup>119</sup>
- 6.95 One recent UK review noted that one of the identified causes of knife crime was the lack of positive activities for children, particularly resulting from the closure of youth clubs and the de-funding of sport and related activities. Participants in the review considered that participation in such activities could aid deterrence and act as a distraction from “more harmful behaviour”. It was also noted that such activities could give young people a “sense of purpose” and “increase self-esteem through a sense of achievement”.<sup>120</sup>
- 6.96 The Scottish Centre for Crime and Justice Research has identified literature pointing to the positive influence of sport, including its potential to “help young people keep busy with a positive distraction”, giving them “a greater sense of control, direction and respect”.<sup>121</sup> It has also noted the suggestion that team membership “can generate some of the same positive feelings as membership of a gang can produce”.<sup>122</sup>

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118. British Youth Council, Youth Select Committee, *Our Generation’s Epidemic: Knife Crime* (2019) [35], [121].

119. Young People with Lived Experience, *Preliminary Consultation PWEC04*.

120. UK, Her Majesty’s Inspectorate of Probation, *Promising Approaches to Knife Crime: An Exploratory Study*, Research and Analysis Bulletin 2022/03 (2022) 24–26.

121. R Foster, *Knife Crime Interventions: “What Works?”* Report no 4/2013 (Scottish Centre for Crime and Justice Research, 2013) 8.

122. R Foster, *Knife Crime Interventions: “What Works?”* Report no 4/2013 (Scottish Centre for Crime and Justice Research, 2013) 8.

6.98 Consultations with young offenders also raised problems with accessibility to sports teams, including the costs of registration for formal competition as well as the risks associated with travel by public transport to sporting venues in other districts.<sup>123</sup>

#### Question 6.11: An integrated approach

- (1) How could an integrated approach to young offenders who commit weapons-related offences be developed in NSW?
- (2) What elements could be included in any such integrated approach?

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123. Young People with Lived Experience, *Preliminary Consultation PWEC04*.



# Appendix A: Questions

## 2. Diversion

### **Question 2:1 Pre-court diversion under the Young Offenders Act 1997 (NSW)**

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: Court diversion under the Young Offenders Act 1997 (NSW)**

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?

### **Question 2.3: Mental health diversions**

Are there any issues related to mental health diversions and their application to weapons-related offences committed by young offenders, that should be considered?

## 3. Sentencing practice and procedure

### **Question 3.1: Available penalties under the Children (Criminal Proceedings) Act 1987 (NSW)**

What issues, if any, should be considered about available penalties when sentencing young offenders for weapons-related offences?

### **Question 3.2 Youth Koori Court**

What issues, if any, should be considered about the Youth Koori Court in relation to weapon-related offences?

### **Question 3.3: Sentencing principles**

- (1) Are the principles that currently apply to sentencing young people for weapons-related offences, appropriate? Why or why not?
- (2) Are there any principles relevant to sentencing young people for weapons-related offences that should be considered for introduction in NSW?

### **Question 3.4: Indictable offences**

What issues, if any, should be considered about the sentencing of young offenders for indictable weapons-related offences?

### **Question 3.5: Serious children's indictable offences**

What issues, if any, should be considered about the sentencing of young people for weapons-related serious children's indictable offences?

## 4. Young offenders and weapons

### Question 4.1: Prevalence

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

## 5. Sentencing outcomes

### Question 5.1: Sentencing patterns for focus offences

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

## 6. Reform options

### Question 6.1: Sentencing reforms generally

What reforms, other than those outlined below, could be made to help deal with young offenders in relation to weapons?

### Question 6.2: Improving outcomes for young people

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

### Question 6.3: Increased penalties

- (1) What changes, if any, should be made to the maximum penalties for weapons offences committed by young offenders? Why?
- (2) What changes, if any, should be made to the indictable or summary status of weapons offences committed by young offenders? Why?

### Question 6.4: Mandatory minimum sentences

- (1) Could mandatory minimum sentences be introduced for young offenders in relation to weapons offences? Why or why not?
- (2) If yes, what offences could be subject to mandatory minimum sentences?

### Question 6.5: Sentencing options under the Children (Criminal Proceedings) Act 1987 (NSW)

What changes, if any, could be made to the sentencing options available under the *Children (Criminal Proceedings) Act 1987* (NSW) to assist in dealing with weapons-related offending by young offenders?

### Question 6.6: Knife crime prevention orders

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?

### Question 6.7: Penalty notice offences

- (1) What weapons offences, if any, should be subject to penalty notices for young offenders? Why?
- (2) If penalty notices were to be set for any weapons offences for young offenders, what adjustments should be made, including to the penalty notice amount?

**Questions 6.8: Targeted rehabilitation and diversion programs**

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

**Question 6.9: Restorative justice programs**

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

**Question 6.10: Police powers to conduct random searches**

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

**Question 6.11: An integrated approach**

- (1) How could an integrated approach to young offenders who commit weapons-related offences be developed in NSW?
- (2) What elements could be included in any such integrated approach?



# Appendix B:

## Preliminary submissions

- PWE01** P White, 17 January 2023
- PWE02** F Arakelian, 10 February 2023
- PWE03** V Evans, 14 February 2023
- PWE04** L Henderson-Lancett, 1 March 2023
- PWE05** Law Society of NSW, 1 March 2023
- PWE06** Youth Against Violence, 3 March 2023
- PWE07** Youth Justice NSW, 3 March 2023
- PWE08** NSW Office of the Director of Public Prosecutions, 3 March 2023
- PWE09** Local Court of NSW, 10 March 2023
- PWE10** NSW Advocate for Children and Young People, 11 March 2023
- PWE11** Confidential, 17 March 2023
- PWE12** Legal Aid NSW, 20 March 2023
- PWE13** Aboriginal Legal Service NSW/ACT Pty Ltd, 24 March 2023



# Appendix C:

## Preliminary consultations

### Prosecutors' roundtable (PWEC01)

**27 June 2023**

Sonya Tabor, Acting Assistant Commissioner, NSW Police Force

Senior Sergeant Jason Murdoch, Operational Legal Advice Command, NSW Police Force

Duane Carey, Commander, Police Prosecutions Command, Police Prosecutions and Licensing Enforcement Command, NSW Police Force

Tatiana Barisa, Policy Manager, Legislation and Policy Branch, NSW Police Force

Ken McKay SC, Acting Deputy Director of Public Prosecutions Office of the Director of Public Prosecutions

Brett Hatfield, Acting Deputy Senior Crown Prosecutor, Office of the Director of Public Prosecutions

James Dorney, Principal Legal Adviser, Director's Chambers, Office of the Director of Public Prosecutions

### Defence roundtable (PWEC02)

**30 June 2023**

Shaun Mortimer, Acting Principal Solicitor, Criminal Law, Aboriginal Legal Service NSW/ACT

Grace Worthington, Closing the Gap Policy Officer, Criminal Justice, Aboriginal Legal Service NSW/ACT

Robert Hoyles, Director, Crime, Legal Aid NSW

Rhiannon McMillan, Senior Legal Project Officer, Crime, Legal Aid NSW

Jonathon Paff, Criminal Lawyer and Summary Courts Manager, Legal Aid NSW

Belinda Rigg, Senior Public Defender

## **Children and young people roundtable (PWEC03)**

**4 July 2023**

Zoe Robinson, Advocate for Children and Young People

Shannon Longhurst, Senior Policy Advisor, Office of the Advocate for Children and Young People

Kyzar Jing, Lived Experience Officer, Office of the Advocate for Children and Young People

Magistrate Paul Hayes, Children's Court of NSW

Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre

Annika Ross, Manager, Strategic Projects Unit, Youth Justice NSW

Natalie David, Senior Policy and Project Officer, Strategic Projects Unit, Youth Justice NSW

## **Young people with lived experience consultation (PWEC04)**

**1 September 2023 at Cobham Youth Justice Facility**

Zoe Robinson, Advocate for Children and Young People

Kyzar Jing, Lived Experience Officer, Office of the Advocate for Children and Young People

Various young people aged 15-20 who were in custody and who had lived experience of weapon-related crime

# Appendix D:

## Data tables

**Figure 4.1: Age and number of people of interest for selected violence offences where a knife was recorded by NSW Police, Apr 2003–Mar 2023**

	10-17 years	18 + years
Y to Mar 2004	278	1168
Y to Mar 2005	282	1158
Y to Mar 2006	348	1308
Y to Mar 2007	427	1296
Y to Mar 2008	395	1269
Y to Mar 2009	354	1160
Y to Mar 2010	349	1140
Y to Mar 2011	326	998
Y to Mar 2012	374	1057
Y to Mar 2013	269	1017
Y to Mar 2014	283	1095
Y to Mar 2015	206	951
Y to Mar 2016	243	859
Y to Mar 2017	169	844
Y to Mar 2018	213	804
Y to Mar 2019	208	785
Y to Mar 2020	226	781
Y to Mar 2021	305	806
Y to Mar 2022	269	716
Y to Mar 2023	217	677

Source: NSW Bureau of Crime Statistics and Research, kf23-22578.

**Figure 4.2: Age and number of people of interest for selected violence offences where a firearm was recorded by NSW Police, Apr 2003– Mar 2023**

	10-17 years	18 + years
Y to Mar 2004	56	373
Y to Mar 2005	33	218
Y to Mar 2006	43	237
Y to Mar 2007	37	247
Y to Mar 2008	66	284
Y to Mar 2009	39	245
Y to Mar 2010	49	287
Y to Mar 2011	69	329
Y to Mar 2012	46	320
Y to Mar 2013	35	290
Y to Mar 2014	35	328
Y to Mar 2015	14	326
Y to Mar 2016	23	163
Y to Mar 2017	12	171
Y to Mar 2018	28	166
Y to Mar 2019	29	189
Y to Mar 2020	21	181
Y to Mar 2021	14	148
Y to Mar 2022	9	151
Y to Mar 2023	34	124

Source: NSW Bureau of Crime Statistics and Research, kf23-22578.

**Figure 4.3: Number of offenders aged 10–17 dealt with by the police for prohibited weapons and regulatory offences, by outcome, 2010–2022**

	Caution	Conference	Warning	Court	Total proceedings
2010	219	9	65	88	381
2011	212	4	82	75	373
2012	151	11	63	76	301
2013	143	11	61	73	288
2014	153	5	71	69	298
2015	148	9	81	78	316
2016	163	5	73	91	332
2017	175	7	81	78	341
2018	200	9	106	89	404
2019	221	9	121	138	489
2020	236	12	84	119	451
2021	196	12	85	133	426
2022	255	21	108	158	542

NSW Bureau of Crime Statistics and Research, reference st23-22884.

**Figure 4.4: Proportion of Aboriginal and other offenders diverted, or referred to court in relation to weapons and regulatory offences, 2022**

	Aboriginal	Non-Aboriginal/ unknown
Caution	37.9%	52.5%
Conference	5.9%	2.7%
Warning	15.8%	22.4%
Court	40.4%	22.4%

NSW Bureau of Crime Statistics and Research, reference st23-22884.

**Figure 4.5: NSW Children’s Court, number of charges of custody of a knife and number dismissed under Mental Health and Cognitive Impairment Forensic Provisions Act, 2013–2022**

	Diverted (MH)	Total charges
2013	1	162
2014	5	136
2015	3	185
2016	5	174
2017	6	168
2018	8	192
2019	6	261
2020	8	269
2021	15	261
2022	44	308

Source: NSW Bureau of Crime Statistics and Research kf23-22711.

**Figure 4.6: NSW Children’s Court, number of charges of being armed with intent to commit an indictable offence and number dismissed under Mental Health and Cognitive Impairment Forensic Provisions Act, 2013–2022**

	Diverted (MH)	Total charges
2013	8	176
2014	15	157
2015	14	155
2016	16	163
2017	19	204
2018	24	212
2019	28	245
2020	30	239
2021	31	260
2022	47	263

Source: NSW Bureau of Crime Statistics and Research kf23-22711.

**Figure 4.7: NSW Children’s Court, number of charges of robbery with an offensive weapon and number dismissed under Mental Health and Cognitive Impairment Forensic Provisions Act, 2013–2022**

	Diverted (MH)	Total charges
2013	1	132
2014	3	122
2015	0	116
2016	1	106
2017	0	92
2018	3	117
2019	3	120
2020	1	170
2021	1	154
2022	9	132

Source: NSW Bureau of Crime Statistics and Research kf23-22711.

**Figure 4.8: Number of proven charges, by age, for robbery with an offensive weapon, 2013–2022**

	Juvenile	Adult
2013	74	413
2014	70	352
2015	85	421
2016	60	326
2017	52	288
2018	55	269
2019	52	288
2020	79	214
2021	69	178
2022	49	188

Source: NSW Bureau of Crime Statistics and Research, kf23-22711, table 1 and 3.

**Figure 4.9: Number of proven charges, by age, for being armed with intent to commit an indictable offence, 2013–2022**

	Adult	Juvenile
2013	885	91
2014	1,006	67
2015	1,136	71
2016	1,280	81
2017	1,382	98
2018	1,424	93
2019	1,523	109
2020	1,521	96
2021	1,459	121
2022	1,637	88

Source: NSW Bureau of Crime Statistics and Research, kf23-22711, table 1 and 3.

**Figure 4.10: Number of proven charges, by age, for custody of a knife, 2013–2022**

	Adult	Juvenile
2013	1,459	122
2014	1,707	103
2015	2,371	137
2016	2,714	141
2017	2,632	124
2018	2,736	142
2019	3,189	192
2020	3,552	208
2021	3,517	169
2022	3,475	188

Source: NSW Bureau of Crime Statistics and Research, kf23-22711, table 1 and 3.

**Figure 4.11: Socio-economic status of offenders where custody of a knife in public was the principal offence, Children’s Court, 2022**

	Number	Percentage
Most disadvantaged	30	41.7
Second most disadvantaged	20	27.8
Second least disadvantaged	13	18.1
Least disadvantaged	8	11.1
Interstate/Unknown	1	1.4

Source: NSW Bureau of Crime Statistics and Research, ab23-22643, table 15.

**Figure 5.1: Penalties imposed by the Children’s Court where custody of a knife was the principal (most serious) offence 2013–2022**

	Custody	Supervised Community Sentence	Unsupervised Community Sentence	Fine	Other
2013	1	4	9	8	20
2014	0	6	7	2	18
2015	0	6	5	10	20
2016	0	8	7	4	17
2017	0	6	12	7	17
2018	0	5	10	4	25
2019	0	11	12	5	40
2020	0	7	7	8	35
2021	0	13	6	1	31
2022	1	11	12	4	44

Source: NSW Bureau of Crime Statistics and Research, ab23-22643 – table 10.

**Figure 5.2: Penalties imposed by the Children’s Court where being armed with intent to commit an indictable offence was the principal (most serious) offence 2013–2022**

	Custody	Supervised Community Sentence	Unsupervised Community Sentence	Fine	Other
2013	12	46	12	0	5
2014	3	18	17	2	8
2015	7	29	13	0	1
2016	7	36	14	0	4
2017	13	32	17	0	9
2018	11	29	15	0	14
2019	12	48	14	0	11
2020	6	28	11	1	13
2021	6	41	13	0	19
2022	9	37	17	0	10

Source: NSW Bureau of Crime Statistics and Research, ab23-22643 – table 10.

**Figure 5.3: Penalties imposed by the Children’s Court where robbery with an offensive weapon was the principal (most serious) offence 2013–2022**

	Custody	Supervised Community Sentence	Unsupervised Community Sentence	Other
2013	25	36	8	0
2014	32	22	2	0
2015	28	31	9	0
2016	30	15	8	0
2017	22	25	4	0
2018	32	20	1	0
2019	20	21	4	0
2020	25	27	7	1
2021	13	38	5	2
2022	5	31	10	0

Source: NSW Bureau of Crime Statistics and Research, ab23-22643 – table 10.

