

Weapons Related Offences – sentencing Young Offenders Issues Paper

The NSW Sentencing Council has developed an issues paper on the sentencing of ‘**Young Offenders**’ for **weapons-related offences** and is seeking submissions on the paper by **4 December 2023**. This issues paper poses the questions set out in the table below.

The NSW Sentencing Council has also developed a consultation paper in relation to Weapons Related Offences sentencing of adults. There is one section in the adult consultation paper that may have particular relevance for young people – starting on **p49** in relation to **gel blasters**.

Youth Justice NSW believes that while detection and change of the nature of the offence is unlikely to be detrimental to young people in contact with Youth Justice, there is established literature to demonstrate that increased punitive measures extend the length and severity of criminal lifestyles for young people, accordingly increasing the punitive measures for carrying weapons is likely to increase the criminalisation process and lengthen the ‘criminal careers’ of young people, particularly those under 14 years old.

provides the following feedback:

#	Page/section reference	Question	Youth Justice NSW feedback
1.	p10, section 2	Q2.1 Are there any issues related to pre-court warnings, cautions, and youth justice conferences under the <i>Young Offenders Act 1997</i> (NSW), and their application to weapons-related crime, that should be considered?	Youth Justice does not raise any specific issues with respect to Youth Justice Conferences, there are no eligible weapons related offences. Youth Justice Conferences continue to be a good diversionary option for young people.
2.	p11, section 2	Q2.2 Are there any issues related to court diversions under the <i>Young Offenders Act 1997</i> (NSW) and their application to weapons-related crime, that should be considered?	As above
3.	p15, section 2	Q2.3 Are there any issues related to mental health diversions and their application to weapons-related	No additional issues

		offences committed by young offenders, that should be considered?	
4.	p24, section 3	Q3.1 What issues, if any, should be considered about available penalties when sentencing young offenders for weapons-related offences?	No additional issues
5.	p26, section 3	Q3.2 What issues, if any, should be considered about the Youth Koori Court in relation to weapon-related offences?	There are no additional specific considerations with respect to Youth Koori Court except to note that minimum sentences for weapons offences would undermine the Youth Koori Court process which gives the young person the opportunity to positively affect their subsequent sentencing.
6.	p31, section 3	Q3.3 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?	Nil comment
7.	p36, section 3	Q3.4 Indictable Offences What issues, if any, should be considered about the sentencing of young offenders for indictable weapons-related offences?	Nil comment
8.	p38, section 3	Q3.5 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?	Nil comment
9.	p51, section 4	Q4.1 What other issues are there around prevalence of weapons offences by children and young people?	Nil further
10.	p61, section 5	Q5.1 Are the sentencing patterns for the three focus offences appropriate? Why or why not? [The three focus offences with the highest volumes of penalties imposed in the	Nil comment

		<p>Children’s Court from 2013 to 2022, where the offence was the principal (most serious) offence, are:</p> <ul style="list-style-type: none"> • custody of a knife • armed with intent to commit an indictable offence • robbery with an offensive weapon] 	
11.	p64	<p>Q6.1: What reforms, other than those outlined below, could be made to help deal with young offenders in relation to weapons (to improve community safety, rehabilitation and other outcomes for yp)?</p>	<ul style="list-style-type: none"> • Given what Youth Justice understands about the prevalence of young people carrying knives in particular disadvantaged areas and the current use of warnings by police for young people, Youth Justice supports the ongoing availability of the Young Offenders Act for young people who are charged with carrying/custody of knives offences. • Youth Justice also believes that the deterrent effect of increased maximum penalties for young people is questionable.
12.	p64	<p>Q6.2: What responses could best help improve community safety, rehabilitation and other outcomes for young people?</p>	<p>Youth Justice supports a place-based, whole of government response to provide critical wrap around support and encourage desistance rather than relying on the justice system and a justice response alone. A justice response largely precludes prevention and early intervention.</p> <p>A suite of options rather than one primary response provides the ability to respond to the age diversity, cultural background, development capacity, lived experience, risks and protective factors for individual young people.</p> <p>A targeted and tailored response would require courage, investment and coordination and should include the following elements:</p>

- wholistic, young person centred, multidisciplinary place-based services that deliver evidence-based programs including ones that focus on offending which would provide police and courts with greater opportunity for effective early intervention and diversion. This needs to be led and co-designed by the communities that are considered 'hot spots'.
- Greater use of peer mentoring for young people may also be effective in supporting rehabilitation for young people (for example the Boost program for young people with ADVOs).
- Cross government collaboration with NSW Police to develop positive, community engagement-based education strategies. Young people consulted told Youth Justice that Police can be a deterrent to their decision to carry knives; building strengths-based relationships with local police in targeted areas is considered key to ensuring sustainable change is implemented, rather than proactive policing that increases arrests, draws more young people into the criminal justice system and challenges community confidence that their local area is safe. A police response might also include specifically tailored cautions which might allow young people to surrender knives/weapons and receive a caution rather than a penalty, instead of waiting to be searched and then penalised.
- Redesigning the narrative around young people who carry weapons and acknowledging the duality that they are also often victims of violence as well.
- Collaboration with young people from a behavioural insights and outcomes platform to develop insights into what interventions may change young people's

			<p>behaviours and attitudes towards carrying weapons. Test and pilot these strategies in key ‘hot spot’ areas. Young people may provide insights around regular police wandering in certain areas to reduce general weapons possession in those areas, which if introduced with a cautions regime could reduce possession of weapons without widening the net into the criminal justice system for young people in disadvantaged areas.</p> <ul style="list-style-type: none"> • Early intervention possible through schools in ‘hot spot’ areas to provide education with respect to carrying knives, consequences, penalties etc which would include Youth Justice and Police.
13.	p65	<p>Q6.3: (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?</p>	<p>Youth Justice does not support the introduction of higher maximum penalties for young people in relation to weapons offences as it is unlikely to have a deterrent effect (given young people’s knowledge of specific penalties, understanding and consideration of consequences and reasons that they say they carry knives). In addition, young people’s weapons offences have not increased and the concerns are rather in concentrated places where targeted place-based responses are likely to have a greater impact.</p>
14.	p67	<p>Q6.4: (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?</p>	<p>Youth Justice does not support the introduction of mandatory minimum sentences for young people in relation to weapons offences as it is unlikely to have a deterrent effect (given young people’s knowledge of specific penalties, understanding and consideration of consequences and reasons that they say they carry knives). Any solution should be easy for a young person to understand and follow.</p>
15.	p68	<p>Q6.5:</p>	<p>Whilst these conditions are seeking to directly respond to the relevant behaviours they might further perpetuate a</p>

		<p>What changes, if any, could be made to the sentencing options available under the <i>Children (Criminal Proceedings) Act 1987</i> (NSW) to assist in dealing with weapons-related offending by young offenders?</p>	<p>non-compliance/breach culture if orders contain prohibition orders, other than 'no' conditions. Several initiatives underway at Youth Justice (for example Voice2Action report, Short Term Remand program; Disability Action Plan; Domestic and Family Violence Strategy) demonstrate that many young people have difficulty understanding conditions, understanding the consequences of breaching conditions and/or retaining conditions. As a consequence, any solutions have to be simple, easy to understand, directly consequential and developed for young people given the known level of developmental competency of young people in contact with the justice system.</p>
16.	p70	<p>Q6.6 Could knife crime prevention orders, or a version of them, be introduced to help deal with young offenders in relation to weapons? Why or why not?</p>	<p>There have been several criticisms/concerns documented in relation to the introduction of KCPOs in the UK:</p> <p>Disproportionate measures: measures imposed by KCPOs, including custodial sentences for breaches, are seen as disproportionate. Researchers/advocates argue that subjecting young people (from as young as 12), to severe consequences for potential breaches is excessive and contributes to 'stealth' criminalisation of disadvantaged young people and further perpetuates non-compliance/breach culture.</p> <p>Low threshold for implementation of the orders: KCPOs are argued to be the most prominent current example of orders that make young people subject to onerous conditions with a low threshold for their implementation, especially when compared to other ancillary orders like Sexual Harm Prevention Orders. Unlike these orders, KCPOs don't require a previous criminal conviction or caution. There is a concern that a police officer's suspicion might be enough evidence to impose a restrictive order with criminal sanctions if breached.</p>

Pre-emptive designation of deviance: young people subjected to KCPOs are pre-emptively assigned as deviant/difficult to control. i.e., 'status criminalisation' where young people are judged based on *perceived* bad character rather than actual behaviour.

Over-policing of disadvantaged communities and minority ethnic groups: concerns are raised about the potential for over-policing, particularly within minority ethnic communities, through police surveillance and heightened stop-and-search techniques. The introduction of KCPOs may worsen existing overrepresentation of Indigenous and ethnic minority groups in the justice system – consideration of the intersections of gender, class, race, and ethnicity are crucial to create a clear picture of disadvantage and those who are disproportionately targeted by these orders.

Instrumentalised interventionism: critics argue that KCPOs have not been introduced with the sole focus of addressing the immediate issue of knife crime, but is influenced by public opinion and political expediency, which compromise established principles within the justice system e.g., due process, proportionality and special protections traditionally afforded to young people.

When considering the criticisms of Knife Crime Prevention Orders (KCPOs) in the context of desistance, several connections and tensions arise:

Stigmatisation and Identity Change: Critics argue that KCPOs, with their low threshold for implementation and potential for severe consequences, may contribute to the stigmatisation of individuals, especially young people. Desistance often involves a positive transformation of identity, and measures perceived as punitive, or labelling may hinder this process.

			<p>Preventive Measures vs. Desistance: In the UK, KCPOs are framed as preventive measures, aiming to stop potential criminal behaviour before it occurs. Desistance, on the other hand, often involves individuals moving away from criminal behaviour through personal growth and positive influences. The preventive nature of KCPOs may conflict with the principles of desistance, which focus on positive change rather than punishment.</p> <p>Low Threshold and Desistance: The low threshold for implementing KCPOs, which allows their application to young people with no prior convictions, could be seen as an obstacle to the desistance process. Desistance often involves acknowledging and rewarding positive behavioural changes, while KCPOs may target individuals based on potential risk rather than past behaviour.</p> <p>Impact on Life Trajectory: KCPOs, despite their preventive intent, have the potential to significantly impact the lives of young people subjected to them. In the context of desistance, this could be counterproductive, as positive life trajectories may be hindered by the imposition of restrictive orders and potential criminal consequences for breaches.</p> <p>The likelihood of young people facing the harshest sentences for KCPO breaches is considered low. However, this does not necessarily align with the desistance principle that emphasises rehabilitation and support for positive change among young offenders. For desistance to be effective, interventions should be supportive of positive changes and the reintegration of individuals into society, rather than relying on punitive measures that might hinder the desistance process.</p>
17.	p72	Q6.7	Youth Justice does not believe that penalty notices will have an impact on the prevalence of lower-level weapons

		<p>(1) What weapons offences, if any, should be subject to penalty notices for young offenders? Why?</p> <p>(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?</p>	<p>offences that would be the target of this response. Young people feel they would continue to use knives as a way of feeling safe and to protect themselves (which is the justification provided to Youth Justice during assessments, supervision).</p>
18.	p73	<p>Q6.8 What changes, if any, should be made to encourage the use of targeted rehabilitation or diversion programs?</p>	<p>Given the evidence in section 4 in relation to overall weapons crime, Youth Justice supports much more focused early intervention and diversion of young people to evidence-based programs that address the causes of offending whilst also addressing other social welfare needs of the young person.</p> <p>This would require courage and investment as these programs are not consistently available across the state and should include diversion and early intervention and education.</p>
19.	p74	<p>Q6.9 What changes, if any, should be made to the availability, scope and content of restorative justice programs for young offenders who commit weapons offences?</p>	<p>Expanding access to restorative justice programs for offenders committing weapons offences is supported by Youth Justice.</p> <p>Restorative Justice programs provide clear benefits to the community, young people and victims. Restorative Justice requires young people to take responsibility, understand the impact of their offence and make amends. Victim surveys (in NSW and more broadly) consistently indicate satisfaction with the process and provide opportunities for victims to explain the impact of the offence and seek answers. Lastly, Restorative Justice programs are generally more cost-effective, providing the community with cost-savings that can be directed into other areas.</p>
20.	p77	<p>Q6.10 Would random scanning be effective in reducing weapons-related offending by young people offenders in NSW? Why or why not?</p>	<p>This may result in over policing of vulnerable communities and net widening for disadvantaged young people and is not supported by Youth Justice without very significant</p>

			safeguards to prevent arbitrary use, especially given recent findings in relation to the use of STMPs by police. Scanning does not respond to the underlying causes of knife carrying by young people. It should be noted that some young people who participated in the Youth Justice survey felt this would work.
21.	p85	<p>Q6.11</p> <p>(1) How could an integrated approach to young offenders who commit weapons-related offences be developed in NSW?</p> <p>(2) What elements could be included in any such integrated approach?</p>	Youth Justice supports an integrated approach that involves early intervention and diversion with targeted evidence based responses that involve multidisciplinary support to the young person and collaboration between agencies
22.	p49 of the <u>adult consultation paper</u> (Tab B)	<p>Question 3.5: Maximum penalties for gel blasters and imitation firearms</p> <p>(1) Are the maximum penalties for gel blaster use or possession in NSW appropriate?</p> <p>(2) If gel blasters should be dealt with separately from firearms and imitation firearms, what would be the appropriate way to do so and what would be the appropriate maximum penalties?</p> <p>(3) Are the maximum penalties for imitation firearm use/possession in NSW appropriate?</p> <p>(4) If imitation firearms should be dealt with separately from firearms, what would be the appropriate way to do so and what would be the appropriate maximum penalties?</p>	The penalties for gel blasters in NSW are significant and can draw young people who otherwise have no contact with the criminal justice system into it. Perhaps consideration should be given to allowing the possession of gel blasters by young people to be included in the Young Offender's Act and for there to be a greater awareness campaign for young people in NSW, particularly given the differences in the laws relating to gel blasters across Australia. Youth Justice provides a case study below with respect to gel blasters, the consideration of which should be included in the issues paper for young people, given the potential for them to be acquired by young people.

Attachments

Tab	
A	Weapons Related Offences – sentencing of Young Offenders - Issues Paper
B	Weapons Related Offences – sentencing of adults – Consultation Paper
C	The young person’s account of being charged with possession of a firearm as a result of purchasing gel blasters online.

Approval

Role	Electronic approval by	Date
		4 December 2023
		4 December 2023