

MEDIA RELEASE



NEW SOUTH WALES
BAR ASSOCIATION

Statement on the review of the operation of *doli incapax* in NSW for children under 14

27 October 2025

The NSW Bar Association welcomes the release of the “[Review of the operation of *doli incapax* in NSW for children under 14](#)” by the Honourable Geoffrey Bellew SC and Mr Jeffrey Loy APM.

The review involved substantive consideration of the relevant issues concerning *doli incapax* and the report makes several recommendations for the NSW Government’s consideration. Some recommendations will require further consideration, and the NSW Government’s commitment to further consultation is welcome.

The report has importantly supported the current common law principle of *doli incapax* as expressed in the High Court of Australia’s decision in *RP v The Queen* [2016] HCA 53 and has recommended that any legislative reform should be consistent with that position.

The long-standing presumption of *doli incapax* is an important safeguard which must be protected in the absence of the age of criminal responsibility being raised to 14 years of age. *Doli incapax* recognises that, at a young age, the brains of children are still developing, and that children lack the maturity required properly to appreciate the significance of their actions.

In NSW, a child under 10 years of age cannot commit a criminal offence. The common law presumption of *doli incapax* presumes that children aged between 10 and 14 years are also incapable of committing a crime because they lack an understanding of the wrongness of their conduct. It is a rebuttable presumption. It can be rebutted if there is evidence establishing that the child knew at the time that what they were doing was seriously wrong.

The High Court of Australia’s decision in *RP v The Queen* [2016] HCA 53 clarified the common law in relation to *doli incapax*. The prosecution bears the onus of proof to present evidence, beyond the circumstances of the offence, to rebut the presumption to the criminal standard. That is, “the presumption cannot be rebutted merely as an inference from the doing of that act or those acts”. The onus is not, and should never be, upon the child to prove *doli incapax*.

The NSW Bar Association looks forward to the opportunity to assist the NSW Government in its consideration of this careful and considered report.

The NSW Bar Association’s submission to the “Review of the operation of *doli incapax* in NSW for children under 14” is [available here](#).

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