

Quarterly Highlights Report January to March 2019

This Quarterly Highlights Report provides a summary of what has been happening over the first few months of 2019.

*The New South Wales Legal Assistance Forum (NLAF) plenary group meeting was held on **20 March 2019**. It was chaired by Brendan Thomas, Chief Executive Officer of Legal Aid NSW.*

Guest Speaker at the Meeting

Raising the Age of Criminal Responsibility

Amnesty International's Indigenous Rights Advocate, Joel Clark, presented the findings from [The Sky is the Limit report](#) which focuses on keeping young children out of prison by raising the age of criminal responsibility.

In brief, the report makes three recommendations to the Australian Government to:

1. raise the age of criminal responsibility to at least 14 years old with no limitations (e.g. *doli incapax*), and transition all children out of prison within a year;
2. fund psychologists and other age-appropriate health services, as well as neurocognitive testing and other health testing to address issues faced by children; and
3. increase funding for Indigenous community-led and controlled organisations to support appropriate preventative programs to address issues faced by children at risk of entering the justice system.

Mr Clark talked about the evidence which show that the likelihood to reoffend increases three-fold if a child is arrested before they are 14 years old compared to if they are arrested after. Australia has been criticised by the United Nations, including the United Nation Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination, for failing to reform the current minimum age of criminal responsibility.

The development of neurological pathways that enable children to appreciate consequences and impact, the symptoms of Foetal Alcohol Spectrum Disorder, and behavioural problems stemming from ear disease are all factors that need to be considered when looking at this issue.

There is also some evidence in Victoria that the threshold for rebutting the legal presumption of *doli incapax* has lowered significantly in practice. In some cases, the onus has shifted to the defence to prove a child's incapacity to understand that their actions were seriously wrong. NLAF will further investigate the current threshold of *doli incapax* in practice in NSW.

In the section below, we highlight some of the work that NLAF Working Groups are doing in their respective areas.

Collaborative Service Planning Working Group

Further consultation on catchment areas

The Collaborative Service Planning working group is consulting stakeholders on proposed catchment areas for service planning across NSW.

There are currently no agreed catchment areas for service planning in the legal assistance sector. The working group has developed proposed catchments (and sub catchments) based on those of the Department of Premier and Cabinet, with variations to recognise local needs. Once all stakeholder comments have been received, the catchments will be refined and NLAF will be asked to approve them. The catchment areas will then be used to conduct legal needs analyses, and to pilot the more comprehensive approach to collaborative service planning. The [Discussion Paper on Proposed Catchments for Service Planning](#) can be found on the NLAF website.

Prisoners Forum

Alcohol and Drug Assessments for prisoners

Some members were concerned that prisoners find it difficult to access drug and alcohol assessments for residential rehabilitation. Corrective Services NSW will no longer be facilitating drug and alcohol assessments due to the lack of resources.

The Local Court has already ceased ordering them, and the Supreme Court will stop ordering them as of 9 June 2019. Practitioners will be required to arrange assessments on behalf of their clients, and self-represented litigants will be required to arrange their own assessments. Once the assessment has been arranged, prisoners can speak to the residential rehabilitation providers through Just Connect. The Prisoners Forum will monitor the impact of this change on prisoners' access to alcohol and drug assessments.

Fines and Traffic Law Working Group (FTLWG)

Repeat Traffic Offenders

The NSW Sentencing Council is reviewing the sentencing of recidivist traffic offenders who may pose an ongoing risk to the community. It aims to make recommendations for reform to promote road safety. The Fines and Traffic Law Working Group assisted NLAF in preparing a detailed submission to the Sentencing Council. Key comments include the following:

- Sentencing should be individualised and should consider social disadvantage,
- Maximum penalties should be proportionate to levels of impairment,
- There needs to be greater availability of programs that address repeat traffic offending,
- There is a risk of denying the accused of natural justice in immediate suspensions for low-range PCA and drug related driving offences by transferring court discretions to the police,
- The vehicle sanction system, including imposition of mandatory alcohol interlock, has a disproportionate and unintentionally negative impact on remote and disadvantaged communities,
- The fines system is generally ineffective in reducing recidivism and has an unintended and undesirable outcome of funnelling disadvantaged people into acute hardship.

Aboriginal Incarceration Working Group

BOCSAR presented data relating to Aboriginal people in the NSW criminal justice system, and noted

- Increases in Aboriginal adult population (both remand and sentenced prisoners populations)
- Increases in Aboriginal adults charged, and increase in bail refusals at first court appearance
- Increases in bail breaches and increases in bail refusals after bail breaches
- Two thirds of established bail breaches relate to breach of conditions rather than further offence, e.g. curfew, reporting, residence and place restriction.

The Aboriginal Unit of the NSW Department of Justice provided an overview of the Department's current relevant initiatives which address the issue of Aboriginal overrepresentation, including the Dubbo Overrepresentation Committee, and the *What's Your Plan* trial program.

The working group is seeking further data on reasons for bail refusals after breach of bail, bail breaches for the general population for comparison, and remandees by outcome (e.g. how many remandees are not ultimately sentenced to imprisonment). The group is also making enquiries about the recording of police discretions when they are exercised.

Collaborative Legal Services Delivery (CLSD) Unit

The Cooperative Legal Service Delivery Program is operated by the CLSD Unit at Legal Aid NSW. It comprises twelve justice partnerships in regional and remote NSW. These partnerships are a coalition of legal and non-legal services (see website for list). Each partnership works to address unmet legal need and to achieve better outcomes for vulnerable and disadvantaged people in regional, rural and remote NSW. They have identified several emerging systemic issues:

- the negative impact on young people of suspensions/expulsion from schools,
- insufficient legal information and assistance for defendants to apprehended domestic violence orders,
- insufficient access to drug and alcohol rehabilitation and court diversion programs; and
- inconsistent use of the Young Offenders Act 1997.

Several CLSD Program partnerships have raised concerns about the suspension and exemption of students from schools in their region. The evidence indicates a direct link between school disengagement and an increased risk of interaction with the criminal justice system. One challenge is the need for support for students to transition back to school following a suspension or exemption. The CLSD Unit has obtained some data from the Centre for Education Statistics and Evaluation to help them inform their work in this area.

NLAF Website (nlaf.org.au)

Quarterly working group reports tabled at the NLAF meetings and NLAF Highlight Reports are posted on our website. In addition, the NLAF News page is updated weekly with links to NLAF member updates and news items.

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