

**NLAF Aboriginal Incarceration Working Group  
Report to NLAF – February 2019**

The NLAF Aboriginal Incarceration Working Group (AIWG) held its inaugural meeting on 20 February 2019.

AIWG aims to develop strategies and plans to address the problem of Aboriginal overrepresentation in NSW adult prisons by focusing on breaches of conditional liberty. Its Terms of Reference have been accepted by AIWG members, who currently comprise of the following organisations:

- Aboriginal Legal Service NSW/ACT
- Bureau of Crime Statistics and Research (BOCSAR)
- Community Legal Centres NSW
- Law and Justice Foundation of NSW
- Law Society of NSW
- Legal Aid NSW
- NSW Bar Association
- NSW Department of Justice
- Public Interest Advocacy Centre

**BOCSAR: Data on Aboriginal people in the NSW Criminal Justice System**

Jackie Fitzgerald, BOCSAR, presented data relating to Aboriginal people in the NSW criminal justice system. She noted the following for the period December 2014 to December 2018:

- Increases in Aboriginal adult population including both Aboriginal adult remand prisoners population (up 50%) and the Aboriginal adult sentenced prisoners population (up 13%).
- Increases in Aboriginal adults being charged (up 29%) and increases in bail refusals at first court appearance (up 23%).
- Increases in bail breaches and increases in imprisonment due to bail breaches.
- It appears from the data that Aboriginal people are being bail refused after bail breaches.
- Two thirds of established bail breaches relate to breach of conditions other than further offence. These include conditions relating to curfew (21.9%), reporting (15.7%), residence (10.3%) and place restriction (6.5%).
- Most popular conditions that are applied in bail orders of Aboriginal persons include: residence (84.5% of bail orders), reporting (53.7%), non-contact (37.3%), place restriction (33.8%), and curfew (29.6%).

**Department of Justice: Current Relevant Initiatives**

Edwina Crawford, 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:

- Dubbo Overrepresentation Committee – devised that, at the point of police bail, bail conditions are set with the help of a community liaison officer to ensure suitability of conditions (e.g. accurate residence), and where a person is at risk of breaching bail conditions, they are made aware of the possibility to vary bail conditions where reasonable.
- What's Your Plan trial program – uses behavioural science insights to help ADVO offenders to prevent breaches of conditions.

**Next Steps**

Further data is being sought from BOCSAR in relation to: reasons for bail refusals (e.g. new offence vs. breach for other reason), number of conditions per order, bail breaches for the general

population for comparison, and remandees by outcome (e.g. how many remandees are not ultimately sentenced to imprisonment). The AIWG is also making enquiries about the recording of police discretions when exercised. Members were encouraged to consider, for discussion at the next meeting, what other practical difficulties under the *Bail Act 2013* can be amended.

The next AIWG meeting will be held on 16 May 2019.

**Brendan Thomas**

Chair, NLA Aboriginal Incarceration Working Group

March 2019