

## NLAF Aboriginal Incarceration Working Group Report

The Aboriginal Incarceration Working Group met on 16 May 2019. We welcomed Corrective Services NSW as a new member of the working group.

### BOCSAR – Further Data on Bail Conditions and Bail Breaches

In response to the actions from the previous meeting, Jackie Fitzgerald from BOCSAR provided further data on bail conditions and bail breaches in NSW. The data show the following:

- **Number of bail conditions** are similar in Aboriginal and non-Aboriginal people:
  - o Most people receive 3 or more bail conditions imposed by courts;
- **Breaches of bail** are mostly recorded by the courts:
  - o There is a significantly higher number of bail breaches in Aboriginal people compared to non-Aboriginal people;
  - o The total number of “technical” breaches are higher than “further offence” breaches. These technical breaches include (in order of frequency) curfew, reporting, residence, and place restrictions.
  - o Of the bail conditions breached by Aboriginal people, breaches of the condition of “further offence” account for only about one third of the conditions.
- **Reasons for bail refusals** where a breach of bail has been established and the breach is recorded in Aboriginal people:
  - o Most of bail refusals are related to “technical” breaches rather than “further offence” breaches.
- **Remand decisions** do not match the outcome of sentences:
  - o In 2018 over 35% of female and 25% of male Aboriginal defendants who were on remand at the time of finalisation received a non-custodial penalty.

The working group discussed these data and explored ways to address the issues (see “Next Steps” below).

Some members raised concerns that the new Supreme Court Practice Note 11 will cause great difficulty for defendants with less resources to apply for bail.

### Next Steps

1. Write to the Police Commissioner, Chief Magistrates and the NSW Attorney General to raise concerns about the application of the following:
  - a. Police officers’ discretions at the time of suspected breach of bail to exercise options other than to arrest and bring accused persons to court, pursuant to s 77 of the *Bail Act 2013* (NSW).
  - b. Courts have the discretion to impose reasonable and appropriate bail conditions that are no more onerous than necessary to address any bail concerns.

2. Find ways to simplify the process of modifying bail conditions to increase accessibility and efficiency. If there is an easy process to have bail conditions varied, it may have an impact on defendants' risk-taking behaviour.

Members were encouraged to consider, for discussion at the next meeting, what a new bail system would look like if such a hypothetical opportunity arises.

The next Aboriginal Incarceration Working Group meeting will be held on 15 August 2019.

**Brendan Thomas**

Chair, NLAF Aboriginal Incarceration Working Group  
June 2019