

NLAF Aboriginal Incarceration Working Group Report

The Aboriginal Incarceration Working Group met on 15 August 2019.

Discussion with Police Commissioner about BOCSAR data on bail

Further to discussions by the group on data provided by BOCSAR, the Chair has met with the Police Commissioner, to discuss the issue of the disproportionate growth in the number of Aboriginal people being remanded on bail and the related issue around the increased enforcement of breach of bail conditions by Aboriginal people. The Police Commissioner is happy to work with the AIWG on these issues.

Diversion under Young Offenders Act 1997

The group discussed the need to seek commitment from police and courts to increase the use of diversion under the Young Offenders Act 1997. Young people can be issued cautions by the police but are going to court and Youth justice conferences are not being used as much as they could, particularly in regional areas. While children aged 10-14 are getting referred the same is not true of those aged 15-17 and there is a huge variation in practice across the courts across the courts. The group discussed where things are working well, for example Mt Druitt Just Reinvest which might make a good case study.

Next steps: The Chair proposed that the AIWG make a recommendation to the NSW Attorney General that referrals for young offenders to diversionary programs be reinvigorated and increased.

Bail and how to reduce the high volume of breaches of bail conditions

The group have discussed bail conditions being imposed and why so many breaches are occurring; the nature of those breaches and how the issue can be addressed. In Dubbo for example, bail is proportional - the data shows there were 200 bail reviews performed by the Magistrate in Dubbo.

One of the challenges is how to educate people about how to get bail conditions reviewed and this is a particular issue in regard to curfews. Bail conditions are initially set by police but then once the person comes before the court, they can be reviewed by the magistrate.

NSW Corrections noted that greater flexibility in relation to conditions has been working, to reduce the number of breaches. There may be different ways to manage bail; for example, sending text messages to people before their court appearance to increase attendance. The practice around bail needs to change from lawyers through to police, magistrates and clients, noting:

- Setting and enforcing the conditions is key;
- Conditions need to be appropriate;
- Number of conditions must be reasonable; and
- Conditions set must be realistic in terms of how they affect people.

PIAC spoke about the over-policing of bail conditions/curfews, referring to the New Zealand “reverse curfew” approach where a person is not allowed in a certain place at a certain time. This approach could be a solution to over-policing of bail conditions in NSW for example, overnight curfews being set. Bail conditions should match the offence, so for example, where an alleged offence has been committed at lunchtime, a curfew of 6pm should not be set.

The importance of realistic and achievable bail conditions and curfews was discussed along with concerns about enforcement by the police. There is an opportunity when a person appears in court for the magistrate to intervene and review and make changes to the conditions, but this is not happening in practice.

Next steps:

- 1) AIWG to participate in half day workshop with assistance from Behavioural insights, Department of Justice NSW, to examine how the enforcement of bail conditions could be done differently.
- 2) AIWG to produce a list of recommendations for chair to facilitate discussions with the NSW Attorney General.

BOCSAR reporting:

- 3) New South Wales Custody Statistics Quarterly Update June 2019

From this report, the AIWG noted:

- The very short periods of remand;
- The adult male population was in decline but has increased again;
- The Aboriginal adult female prison population (sentenced) has reduced to an average of 24 days in custody
- Whether the reason for the recent decline is the number of Intensive Corrections Orders (ICOS) being issued; noting that ICOs are used in some places but not others;
- The AVO breach rate was 28% but has dropped to 20% after What's Your Plan project.

- 4) BOCSAR Aboriginal over-representation in prison reports

The group reviewed the BOCSAR snapshots of Aboriginal over-representation in prison. It was agreed that real structural change to juvenile detention needs to occur. Young people need to be moved away from Corrective Services facilities into smaller facilities closer to the community.

Diversionary programs need to be put in place and used. There are successful programs involving elders, mentors, strong case plans. Rather than being placed in a facility, young people are given access to programs/TAFE.

NSW Corrections spoke about the Aboriginal women in custody program, in particular the Aboriginal mums and bubs program. Women are given support to understand the orders that have been made and get their children back. Cultural strength is very much needed and is a big focus.

Next steps:

- 1) AIWG to request data:
 - a. From BOCSAR broken down by place/post code/local area command location and Data on Aboriginal people end of year report (broken down by offence);
 - b. From Corrective Services dashboards/BOCSAR on women's imprisonment rates.

Other actions: Department of Justice have appointed Paul O'Reilly as the new Executive Director of Youth Justice NSW. Paul will be invited to attend next AIWG meeting on 7 November 2019.

The next Aboriginal Incarceration Working Group meeting will be held on 7 November 2019.

Brendan Thomas

Chair, NLAF Aboriginal Incarceration Working Group
September 2019