

Quarterly Highlights Report June to September 2018

The New South Wales Legal Assistance Forum (NLAF) plenary group meeting was held on **12 September 2018**, and was chaired by Brendan Thomas, CEO of Legal Aid NSW.

Guest Speakers at the Meeting

Aboriginal Incarceration Data and Insights

In response to the recent Australian Law Reform Commission *Pathways to Justice* report, which highlighted the staggering rates of indigenous incarcerations, NLAF invited the NSW Bureau of Crime Statistics and Research (BOCSAR) to present the data and any insights drawn from these data regarding Aboriginal incarceration.

Jackie Fitzgerald, Director of BOCSAR, presented data on custodial population over time, by Aboriginality and by gender; increased rate of imprisonment in Aboriginal population relative to general population; increased number of bail refusal; increased number of Aboriginal offenders in court; increased remand rates; increased number of bail breaches resulting in bail revocation; more severe sentencing. Data on unrepresented defendants were also provided. NLAF will use this data and BOCSAR's insights to shape the Terms of Reference for a new Working Group on Aboriginal Incarceration.

Pro Bono Expert Witness

Dr Lauren Monds, Academic Fellow from the Discipline of Addiction Medicine and Health at the University of Sydney, presented to the NLAF on the idea of a Pro Bono Expert Witness database. The idea stemmed from the need to compile a database of willing experts in a range of expertise, who may be willing to provide pro bono services. Challenges, successes and learnings from NLAF members were discussed.

Key NLAF Issues

New: Collaborative Service Planning Working Group

A new NLAF working group has been established and will focus on Collaborative Service Planning. Members of the group, which includes Aboriginal Legal Service NSW/ACT, Community Legal Centre NSW, Department of Justice, Law and Justice Foundation of NSW, LawAccess NSW, and Legal Aid NSW, met for the first time this quarter. The Terms of Reference and Planning Principles are being finalised. It is intended that, once these documents are settled, conversations about what data is required for collaborative service planning will begin.

Success: WDOs in custody and Victims Restitution Order (VRO) Debts

We had been advised that WDOs could not be undertaken for VRO debts in custody. A letter was sent on 30 May 2018 to Corrective Services regarding this issue by the acting Chair of NLAF, asking that this policy be reviewed. NLAF was pleased to receive a response from Corrective Services NSW, on 6 July 2018, noting that Corrective Services NSW has now reconsidered its decision and that WDOs will now include VRO debts for prisoners in custody.

Below are the key issues raised by the groups that report to NLAF.

Fines and Traffic Law Working Group (FTLWG)

Driver Disqualification Reform Implementation update

The Legal Aid NSW Driver Reform Implementation Team is continuing with activities to educate both the general community and legal practitioners in the Driver Licence Disqualification Removal Scheme that commenced in October 2017. At the FTLWG meeting this quarter, members heard that any person who obtains a provisional licence after a period of licence disqualification will be subject to an additional passenger restriction condition. This additional condition restricts the driver from carrying any more than one passenger for the first 12 months. This restriction applies 24 hours a day and regardless of the age of the passenger. It applies regardless of whether the provisional licence is issued after disqualifications were served in full or after they were removed under section 221B of the *Road Transport Act 2013*.

The FTLWG is concerned that this restriction will result in compounding the incidence of fines being issued to new drivers who are unaware of the restriction. Members are discussing with Roads and Maritime Services about the methods they are using or propose to use to avert new drivers to this requirement.

Bicycle Fines update

NLAF wrote to the Minister of Roads, Maritime and Freight raising concerns about the disproportionate impact of fines on young people. A response was received from the Parliamentary Secretary for Regional Roads, Maritime and Transport, on her behalf of the Minister. The response notes that the government does not have any current plans to scale cycling offence fines. It also notes that the Transport for NSW's Centre for Road Safety's review of cycling penalties ("review") was developed with input from the Justice cluster. The letter states that individual police officers, when issuing penalty notices, are bound by a framework, and cites the Caution Guidelines under the *Fines Act 1996*. Members of the FTLWG are concerned that the Justice Cluster consulted did not include Legal Aid NSW, Aboriginal Legal Service NSW/ACT and Community Legal Centres NSW. Moreover, they raised concerns that since the Caution Guidelines do not apply to NSW Police, the issue raised in NLAF's letter has not been addressed. The NLAF FTLWG will prepare a reply to the Parliamentary Secretary's letter.

Sentencing Council

The Policy Manager of the Law Reform and Sentencing Secretariat of the Department of Justice spoke to the FTLWG about the terms of reference of an upcoming review into recidivist traffic offenders who may pose an ongoing risk to the community. The aim of the review is to promote road safety and to focus on offending behaviour and sentencing where there is an ongoing risk to the community. The focus of the Inquiry is on offences that cause death and/or serious injury. Members provided their views on the four focus questions which were tabled by the Secretariat for discussion. The Sentencing Council will release their discussion paper at the end of September. FTLWG will provide a submission before the end of the year.

Prisoners Forum

Closure of Nara Ngura Program at Long Bay Correctional Centre

Kingsford Legal Centre (KLC) reported to the Forum that the Nara Ngura drug and alcohol program at Long Bay Correctional Centre is being shut down. The program has been running for around 15 years and involves an intensive three-month therapeutic program with daily group meetings for prisoners, twice a week counselling and one on one sessions. Anecdotal evidence suggest that it has been very successful. Concerns were raised that there is no replacement planned for prisoners at Long Bay Correctional Centre following the closure of this program. Representatives from Corrective Services NSW will investigate and report back on this issue at the next meeting.

NLAF Joint Subcommittee on Prisoners and Drivers Licences

As noted in the last report in May 2018, an MOU exists between Roads and Maritime Services and Corrective Services NSW to assist prisoners to exit custody having completed the relevant written test as a first step to obtain their L plate drivers licence. This does not address, however, the legal issues that arise where the prisoner's licence has been disqualified. Prisoners also must have a birth certificate to obtain a drivers licence. It should be noted that the Corrective Services program which assists Aboriginal prisoners to obtain a birth certificate is continuing. A subcommittee has been formed to address the issue of prisoners and drivers licences, comprised of members from the NLAF Prisoners Forum and the NLAF Fines and Traffic Law Forum, as well as relevant staff from RMS, Births Deaths and Marriages and Corrective Services NSW.

Confidentiality of AVLs and lawyer and prisoner face-to-face meetings

An issue was raised regarding the lack of confidentiality of AVLs and face-to-face lawyer and prisoner meetings in correctional facilities. This is because both the AVL suites and meeting rooms are not sufficiently noise proof. Prisoners are also provided with a phone to speak to their lawyers in a communal space on occasion at some facilities. It was acknowledged that Corrective Services staff do what they can within the physical environment to ensure confidentiality, and that the buildings and facilities are pre-existing and the extent to which they can be modified is limited. This issue will be addressed by Corrective Services NSW at the next meeting.

Cooperative Legal Services Delivery (CLSD) Program operated by Legal Aid NSW

Below are two salient issues raised by the CLSD Program:

Schooling: there is an ongoing issue reported by numerous regions of NSW that school retention and suspensions (including partial exemptions) appear to be far higher in areas with large Aboriginal populations. Concern is also raised that young people with disability are being suspended unfairly, and victims of bullying are put on partial exemptions as a solution to bullying. As there is a direct link between school disengagement and interaction with the criminal justice system, Legal Aid NSW considers this issue as a strategic priority. JustReinvest NSW has also started a Working Group on this issue.

Driving offences: CLSD noted that there is a very high volume of driving offences across NSW, with a disproportionate rate of Aboriginal offenders with "drive never licenced" relative to non-Aboriginal offenders. Linked issues include lack of birth certificates, low literacy and low access to vehicles.

[NLAF Website \(nlaf.org.au\)](http://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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