

Data insights in justice

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Locating legal assistance demand

Using courts data to support legal service planning for First Nations people in NSW

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This project aimed to support service planning for the Aboriginal Legal Service (NSW/ACT) Ltd (ALS) by sourcing and analysing relevant data and devising a proxy indicator for demand for legal assistance in criminal courts settings. The study used criminal courts statistics on finalisations with Aboriginal defendants to analyse and map the distribution of potential demand for services across all court locations in NSW.

Key messages

- This research demonstrated that criminal finalisations data can be used to usefully inform the planning and structuring of legal services to support those who require legal assistance in criminal proceedings.
- Over the period 2012 to 2016 in NSW, the total number of finalisations with Aboriginal defendants increased by 19.5 per cent. While counts of finalisations were generally higher in courts in Greater Sydney, the *increase* in finalisations over the 5-year period occurred in most courts and was greater in regional areas of NSW.
- An 'index' was created to reflect the number of charges per finalisation and to allow consideration of the varying degrees of complexity of cases. Further research would be useful to improve the indicator for a more nuanced understanding of the legal services required.
- The project was undertaken in 2018 and used 2012–2016 courts data. The numbers in this report should be interpreted as illustrative of the type of analysis and insights that can be drawn from such a methodology. Planning or assessment of resource requirements using this model should be based on the most recent available data.
- Together with other data sources, the use of criminal finalisations data cost-effectively contributes to a better understanding of legal needs in the community and may inform strategic planning to address those needs. Improved recording of Indigenous status within police and courts statistics will assist our understanding of how Aboriginal and Torres Strait Islander people navigate the criminal justice system.



Introduction

In 2017, the **Aboriginal Legal Service (NSW/ACT) Ltd (ALS)** approached the Law and Justice Foundation of NSW (the Foundation) to obtain, analyse and report on best available data to assist with planning the location and delivery of their services. In particular, faced with an environment where the demand for their services outstripped their capacity for providing those services, the ALS was interested in data that would allow them to optimally locate offices and staff across NSW in order to meet as much of the legal need as possible, and as efficiently as possible.¹ In order to achieve this, and in addition to the data and trend analysis, the ALS also expressed an interest in having the Foundation map the geographic distribution of matters involving defendants who identified as Aboriginal and/or Torres Strait Islander coming before the different levels of criminal courts across NSW.

Although the ALS provides some assistance with family and civil law matters (including care and protection matters and coronial inquiries), the overwhelming majority of the workload undertaken by the ALS involves legal assistance for Aboriginal defendants brought to court with criminal charges.² For example, an analysis of ALS service delivery data undertaken as part of the ATSILS National Picture report shows that, during the 2018–19 financial year, 87.5 per cent of new services provided by the ALS in NSW were either representation or duty services, and 98.2 per cent of those were for criminal matters.³

Further, it is widely recognised that Aboriginal and Torres Strait Islander people experience multiple types of socio-economic disadvantage.⁴ In the justice sector, the significant overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system is well documented,⁵ and there is also empirical evidence that particularly disadvantaged Aboriginal and Torres Strait Islander people face greater barriers to resolving legal problems more broadly, including criminal, family and civil law problems, often requiring expert legal assistance.⁶ It is therefore reasonable to assume that a sizeable majority of Aboriginal defendants brought to court for criminal charges in NSW require legal assistance, although some of that demand may be met by providers other than the ALS, such as Legal Aid NSW. There is currently insufficient reliable data on how, by whom and to what extent this demand is met, or not.⁷

1 The ALS has responsibility for both NSW and the ACT, however this analysis focused only on NSW for reasons of data availability.

2 In this report, the term 'Aboriginal defendants' is used to refer to defendants who ever identified as Aboriginal, Torres Strait Islander, or both, as per the Indigenous status recorded in BOCSAR data.

3 Delphine Bellerose and Geoff Mulherin, 2020. In the NSW jurisdictional profile, Table 3 p.63 shows that 4.8% of new services were duty services and 82.7% were representation services. Table 4 p.64 shows that 98.3% of duty and 98.2% of representation services were in relation to criminal law matters.

4 See, for example, Steering Committee for the Review of Government Service Provision (SCRGSP), 2020, or Department of the Prime Minister and Cabinet, 2019; 2020.

5 Andrew Bushnell, 2017, Australian Law Reform Commission, 2017, Monica La Macchia, 2016 and Australian Bureau of Statistics, 2020.

6 Zhigang Wei and Hugh M. McDonald, 2018, Zhigang Wei, Hugh M McDonald, and Christine Coumarelos, 2015.

7 We also note that the National Strategic Framework for Legal Assistance outlines the principle of self-determination by which Aboriginal community-controlled organisations are the preferred providers of culturally appropriate legal assistance services, while acknowledging that Aboriginal and Torres Strait Islander people should have a meaningful choice in which legal assistance services they access.

Therefore, and in the absence of any other known reliable measure of demand for criminal legal assistance by area, criminal courts statistics were used in this project to devise a proxy measure indicating potential demand for ALS services across NSW.

The Foundation reported its findings, including a focus on regional maps, to the ALS in 2018, and the data was uploaded to the Foundation's website. Since then, there has been an increased focus on collaborative service planning, reinforced by the introduction of the National Legal Assistance Partnership (NLAP), and the further development of the planning tool. As a result, it was decided to make this work more widely available as an example of the type of insights that can be drawn from such data using this methodology to inform and support evidence-based service planning for the sector.

This present report outlines how the data was accessed and compiled for subsequent analysis and mapping. It provides an example of how existing data can be used to help better understand the extent, nature and location of legal need, and, therefore, support the planning of legal assistance services. The model described in this report provides a framework for evidence-based decision making when planning the provision of ALS services to assist defendants in criminal matters.

The analysis presented here is only for the purpose of describing potential demand for legal assistance. It is not possible to draw any conclusions regarding differential police, prosecution or court activity from these findings.

Acknowledgments

The Foundation wishes to acknowledge the Aboriginal and Legal Service (NSW/ACT) Ltd for their commitment to sourcing and using the best evidence available to support their operations, and thus for initiating and supporting this project. We also acknowledge the NSW Bureau of Crime Statistics and Research for providing the data for this project.

Methodology

Finalisations as a proxy indicator for potential demand

At the onset of this project, it was agreed that the Foundation would investigate the availability and usability of data in relation to Aboriginal defendants facing criminal court. The first step was therefore for the Foundation to approach the NSW Bureau of Crime Statistics and Research (BOCSAR) to determine which if any of its collections of court-based offender data might be relevant to the proposed task.

BOCSAR was able to provide data sets of interest and the Foundation has been able to re-process the data so the mapping could proceed. The BOCSAR data used for this analysis was criminal courts statistics on finalised matters with Aboriginal defendants brought to court with criminal charges.

There are important caveats and limitations in using this data to investigate potential demand for ALS services:

- **Does not reflect broader family and civil law needs.** As previously mentioned, criminal courts data only tells us about potential need in relation to criminal matters. It does not reflect the demand for services in the areas of civil or family law.

- **Only court-based services.** Finalisations reflect potential demand for court-based services, such as duty or representation, and do not reflect demand for other types of services such as legal advice.
- **Not necessarily actual demand for services.** Finalisations with Aboriginal defendants may not necessarily translate into actual demand for ALS services: defendants may not be eligible for such service or may choose to self-represent, and if they are eligible, they may choose to access services from another provider.
- **Complexity of matters hidden.** ‘Finalisations’, as a unit of measure, actually conceals the different complexities and durations of different criminal cases in different circumstances, and therefore different amounts of legal assistance (or volume of work) potentially required. As a means of understanding workload to inform ALS planning, criminal courts *appearances* arguably might provide an even better proxy measure of potential workload than finalisations. However, reliable appearance data was not readily available in NSW.

For the purpose of informing service planning for their criminal practice, it was agreed with the ALS that, despite the limitations, court finalisations would be a suitable proxy to reflect service provision activity of relevance to ALS legal officers.

The development of a new database from the source materials has been undertaken within the Foundation using Microsoft Excel software. All tables, graphs and maps presented in this report were created by the Foundation based on data sourced from BOCSAR. We were able to acquire data on criminal courts finalisations, broken down by the following variables:

- Year: across a five-year period, from 2012 to 2016 (most recent available data at the time of the study)
- Indigenous status: recorded as Aboriginal and/or Torres Strait Islander, non-Indigenous or unknown
- Type of courts: Local Court, Children’s Court, District Court and Supreme Court
- Court location: at 145 locations throughout NSW
- Number of charges: from one to five or more

It is important to note that given that more recent data is available, the data in this report should be interpreted as being illustrative of the type of analysis and insights that can be drawn from such a mapping exercise. Updated data has since been released and it is recommended that any further work using this model should be based on the most recent available data.

It is also worth noting that numbers used in this analysis represent finalised matters, or finalised charges. Finalisations are not a person count. If a person had more than one finalised criminal matter in a given year, that person would be counted in the data multiple times.⁸

Recording Indigenous status

In Australia, the method for collecting information about Aboriginal and Torres Strait Islander people is through self-identification questions. The ABS Standard Indigenous Question (SIQ) is used in all ABS data collections and also across a wide range of government agencies and Australian Aboriginal and Torres Strait Islander organisations. The ‘Indigenous status’ statistical variable

⁸ NSW Bureau of Crime Statistics and Research, 2018.

obtained via the SIQ is the accepted national standard, with endorsement by the Ministerial Council of Immigration and Multicultural Affairs and the Council of Australia Governments.⁹

In the criminal justice sector, the SIQ is used for self-identification of Aboriginal and Torres Strait Islander people when they come into contact with police. This information is then transferred from the police to the criminal courts systems when the defendant's matter is lodged in court. This process has several implications for the reliability of the recording of Indigenous status in criminal courts statistics. The voluntary nature of the SIQ means that sometimes data will be missing on Indigenous status simply because individuals will choose not to disclose whether they are Aboriginal, Torres Strait Islander, both or neither. In addition, gaps in Indigenous status data can also occur as a result of the processes used to collect and record such data, for example due to a lack of training or resources or for other reasons. The transfer of data from police to the courts systems can lead to further loss of data, in part due to a lack of compatibility between the police and courts data collection systems. Further, in the case of criminal courts data more specifically, some defendants may come before the courts for offences issued by infringement notices where there may have been no contact with police, such as some traffic offences and breaches. In such cases there may not have been an opportunity or a systematic process for recording Indigenous status. This might lead to missing data, where Indigenous status is unknown, and this impacts the reliability of analyses.

In early 2018, BOCSAR amended their processes to improve the reliability of Indigenous status for court finalisation data by cross-checking with information stored in their Reoffending Database. This amended process means that an individual who has identified and who therefore has been recorded as an Aboriginal and/or Torres Strait Islander at *any point* in the criminal justice system since 1994 will have their status updated to 'Indigenous' as required. As a result, figures pertaining to Aboriginal people reported in this report might not be directly comparable to previously published reports.¹⁰

In the dataset provided by BOCSAR, it was found that Indigenous status was not known for 12.1 per cent of all finalisations across the five-year period. There is no exact threshold that dictates what a tolerable proportion of missing data might be: it very much depends on the context and purpose of the analysis, what other information might be available and how the findings are used. However, missing data for more than 10 per cent of cases is a reasonable guide for what might be cause for concern, especially so in this context where the Aboriginal population represents only 3.4 per cent of the NSW population.¹¹ After discussion with the ALS, it was decided to pursue the analysis using BOCSAR data as the proportion of unknown was only slightly above 10 per cent and this was the best available data. It was also agreed that the proportion of finalisations with unknown Indigenous status would be clearly stated with appropriate caveats.

⁹ Australian Bureau of Statistics, 2014.

¹⁰ Indigenous status in BOCSAR data is determined by self-identification. This data is sourced from the latest version of BOCSAR's Reoffending Database (ROD) and applied to all years. ROD contains 'ever-identified' which is set for any person who had identified as being of Aboriginal and/or Torres Strait Islander origin at any court appearance since 1994 (Bureau of Crime Statistics and Research, NSW Criminal Courts Statistics July 2015 to June 2020, Sydney, Explanatory notes). The change in data processing pertaining to defendants' *Indigenous status* was applied retrospectively to the whole dataset and therefore does not impact observations over the study period for this analysis.

¹¹ Australian Bureau of Statistics, 2018.

Index of finalised charges

Data provided also included detail of the number of charges at finalisations, categorised from one to ‘five or more’ charges. A ‘charge’ in this context refers to each separate offence, also referred to as ‘sequence’, that was finalised at a single court appearance.

For the purpose of this analysis, it was important to take into consideration that not all court finalisations are ‘equal’ in terms of service involvement, or potential workload for ALS solicitors and staff. Highly complex cases where defendants appear in court for multiple charges, or ‘sequences’, might require a higher level of assistance than other, perhaps simpler, cases with a single charge. While this is, of course, not true in every circumstance and may be a rather crude assumption, it was agreed after consultation with the ALS that factoring in the number of charges to give more weight to finalisations with multiple charges (and thus devise a more accurate proxy measure of the demand for services) was appropriate.

The indicator was therefore refined by multiplying the number of finalisations by the number of charges at finalisation. This calculation is referred to as the **index of finalised charges**. The example below shows a fictional number of finalisations at two court locations, A and B. While the total number of finalisations is the same at both locations (100), a higher number of more complex cases were finalised at Court B. The calculated index of 260 at Court B, compared to 160 at Court A, reflects a greater potential demand for services at Court B.

Table 1: Example of calculation of the index of finalised charges

Number of charges at finalisation	Count of finalisations at Court A	Index A	Count of finalisations at Court B	Index B
1	65	$65 \times 1 = 65$	40	$40 \times 1 = 40$
2	20	$20 \times 2 = 40$	20	$20 \times 2 = 40$
3	10	$10 \times 3 = 30$	5	$5 \times 3 = 15$
4	0	$0 \times 4 = 0$	10	$10 \times 4 = 40$
5 or more	5	$5 \times 5 = 25$	25	$25 \times 5 = 125$
TOTAL	100	160	100	260

The number of charges at finalisation is recorded as ‘1’, ‘2’, ‘3’, ‘4’ or ‘5 or more’ in BOCSAR data, therefore finalisations with more than five charges are treated as those with five charges for the calculation of the index.

Mapping to the ALS service delivery structure

Court finalisation data was analysed by criminal courts location and level of criminal court, with the ALS service structure added as an overlay to generate maps at geographic levels relevant to the ALS. This mapping exercise allowed examination of the distribution of ALS services compared to the distribution of finalised criminal matters.

Data from each court location was mapped to the specific ALS office servicing that location. For the purpose of this report, reference to “ALS office” means finalisations at courts serviced by that particular office. This mapping exercise was done using maps and information provided to the Foundation by the ALS and was based on the ALS service structure at the time of the analysis in order to inform future decisions. This means that the Taree office, closed in July 2017, is not listed

in this report (court locations previously serviced by the Taree office and subsequently serviced by other offices, for example the Kempsey office, are shown as such on the maps).¹²

It is important to reiterate that BOCSAR data is for NSW courts only. The ALS has responsibility for both NSW and the Australian Capital Territory (ACT) and has an office in Canberra. That office services the ACT courts as well as some proximate NSW courts. For the purposes of this report, reference to the Canberra ALS office means finalisations from those NSW courts only.

Findings

Overview of trends, 2012 to 2016

Table 2 presents a count of finalisations with Aboriginal defendants as well as the calculated index, by year. There was a total 122,995 court finalisations with Aboriginal defendants in NSW over the 5-year period 2012 to 2016. Finalisations increased from 22,773 in 2012 to 27,214 in 2016, which is a 19.5 per cent increase over 5 years. The index of finalised charges increased by 22.7 per cent between 2012 and 2016, from 53,308 in 2012 to 65,435 in 2016.

Although it was beyond the scope of this study to further investigate the factors behind this increase, it is important to note that, between the 2011 and 2016 Censuses, the estimated Aboriginal and/or Torres Strait Islander population increased by 19.2 per cent nationally, and by 27.4 per cent in NSW.¹³ So, it is likely that the increase in finalisations is largely driven by population growth. However, additional research is required to adequately explore this further.

The proportion of finalised matters for which the Indigenous status of the defendant was not known was 12.1 per cent overall. As stated earlier, this percentage is relatively high and certainly is a cause for concern when analysing data in relation to Aboriginal defendants. Further, the completeness and accuracy of data collection does not appear to improve over time as the percentage increased each year, from 11.3 per cent in 2012 to 12.6 per cent in 2016. Further research would be required to better understand the gaps and barriers to achieve more complete, accurate and reliable data.

As shown in Table 3, 83.5 per cent of finalisations with Aboriginal defendants occurred in the Local Court, 13.1 per cent in the Children's Court and 3.3 per cent in the Higher Courts (District and Supreme Courts).

¹² Whether or not court locations are serviced by the ALS, and which specific ALS office services which locations is something that may change over time for various reasons. Note that numbers for Woy Woy (Local Court and Children's Court) are mapped to the Newcastle ALS Office as per the initial map provided to the Foundation. We have been informed that, at some point after the data period, the Woy Woy Local Court may have begun sitting as a Children's Court only, and it is now jointly serviced by specialist solicitors from the Redfern and Parramatta ALS offices, which is not reflected in this report. This change does not impact the overall analysis.

¹³ Australian Bureau of Statistics, 2013, 2018.

Table 2: Total number of finalisations with Aboriginal defendants, index of finalised charges and percentage of finalisations with Indigenous status not known, by year, 2012 to 2016

Year	Finalisations with Aboriginal defendants		Index of finalised charges		% unknown Indigenous status
	N		N		%
2012	22,773		53,308		11.3
2013	23,328		55,144		11.8
2014	24,262		56,958		12.1
2015	25,418		60,870		12.4
2016	27,214		65,435		12.6
<i>5-year total</i>	<i>122,995</i>		<i>291,715</i>		<i>12.1</i>
<i>% increase over 5-year period</i>	<i>19.5</i>		<i>22.7</i>		

Based on data from the NSW Bureau of Crime Statistics and Research

Table 3: Total number of finalisations with Aboriginal defendants, index of finalised charges and percentage of finalisations with Indigenous status not known, by level of court, 2012 to 2016

Level of Court	Finalisations with Aboriginal defendants		Index of finalised charges		% unknown Indigenous status
	N	%	N	%	%
Local	102,738	83.5	235,843	80.8	12.9
Children	16,153	13.1	45,247	15.5	1.5
Higher	4,104	3.3	10,625	3.6	5.3
Total	122,995	100	291,715	100	12.1

Based on data from the NSW Bureau of Crime Statistics and Research

Matching service structure with potential demand

As explained earlier, the mapping of court locations to the ALS service structure at the time of the study was to identify potential demand for legal assistance from the different ALS offices throughout NSW. Numbers of finalisations by ALS office, or “cluster” of offices, do not mean that all these cases were in fact managed by the ALS (or that they should be): they simply represent the number of matters with Aboriginal defendants that were finalised at court locations that were serviced by the specified ALS office.

Due to constrained resources, the ALS is not in a position to service every court location in NSW. Of 145 court locations for which data was available, 35 were not serviced by the ALS in 2018, predominantly in the Greater Sydney area.¹⁴

At the time of the study (in 2018) the ALS was operating from 21 offices. Those offices were grouped into 11 clusters, with at least one managing solicitor in each cluster covering one or several offices. Clusters can be of varying size and composition, whether in terms of geographical area or numbers of staff employed, and may change over time. Each cluster comprised between one and four offices, with nearly half (5 out of 11) being single office ‘clusters’. The 35 court

¹⁴ Greater Sydney (Greater Capital City Statistical Area), as classified by the Australian Bureau of Statistics in the Australian Statistical Geography Standard (ASGS), extends from Wyong and Gosford in the north to the Royal National Park in the south. Towards the west, the area includes the Blue Mountains, Wollondilly and Hawkesbury. www.abs.gov.au

locations not serviced by the ALS at the time of the study were also grouped into their own cluster for the purpose of this analysis.

Table 4 and Figure 1 show the index of finalised charges by cluster over the five-year period. Figure 2 compares the index of finalised charges between 2012 and 2016. Some key findings include:

- The trend of increasing *index of finalised charges* noted at state level is reflected across all clusters, with the exception of the Broken Hill cluster.
- The highest number of finalised charges in 2016 was in the Lismore-Grafton-Kempsey-Coffs Harbour cluster (with an index of 9,326).
- The largest percentage increase in the index of finalised charges over the period was in the Wagga Wagga-Griffith cluster (51.3%, from 3,388 in 2012 to 5,126 in 2016), followed by the court locations not serviced by the ALS (42%).

Table 4: Index of finalised charges by ALS cluster, 2012 to 2016

Cluster	2012	2013	2014	2015	2016	5-year Total	% change 2012–2016
	N	N	N	N	N	N	%
Bourke-Moree-Walgett	4,018	4,089	4,451	4,577	4,606	21,741	14.6
Broken Hill	1,202	1,137	1,066	1,109	1,083	5,597	-9.9
Canberra*	679	647	709	910	945	3,890	39.2
Dubbo-Bathurst	5,311	5,124	5,501	6,227	6,728	28,891	26.7
Lismore-Grafton-Kempsey-Coffs Harbour	6,935	7,738	7,938	8,350	9,326	40,287	34.5
Newcastle	4,780	5,130	5,258	5,615	6,074	26,857	27.1
Nowra-Wollongong-Moruya	6,316	5,905	5,455	5,855	6,448	29,979	2.1
Parramatta	6,572	6,329	6,434	6,753	7,190	33,278	9.4
Redfern	5,467	5,754	5,736	6,074	6,439	29,470	17.8
Tamworth-Armidale	3,100	3,396	3,417	3,423	3,604	16,940	16.3
Wagga Wagga-Griffith	3,388	3,816	4,276	4,481	5,126	21,087	51.3
Not serviced by ALS	5,540	6,079	6,717	7,496	7,866	33,698	42.0

Based on data from the NSW Bureau of Crime Statistics and Research

* Data is for NSW courts only, numbers do not represent the full reach of the Canberra office that also services ACT courts.

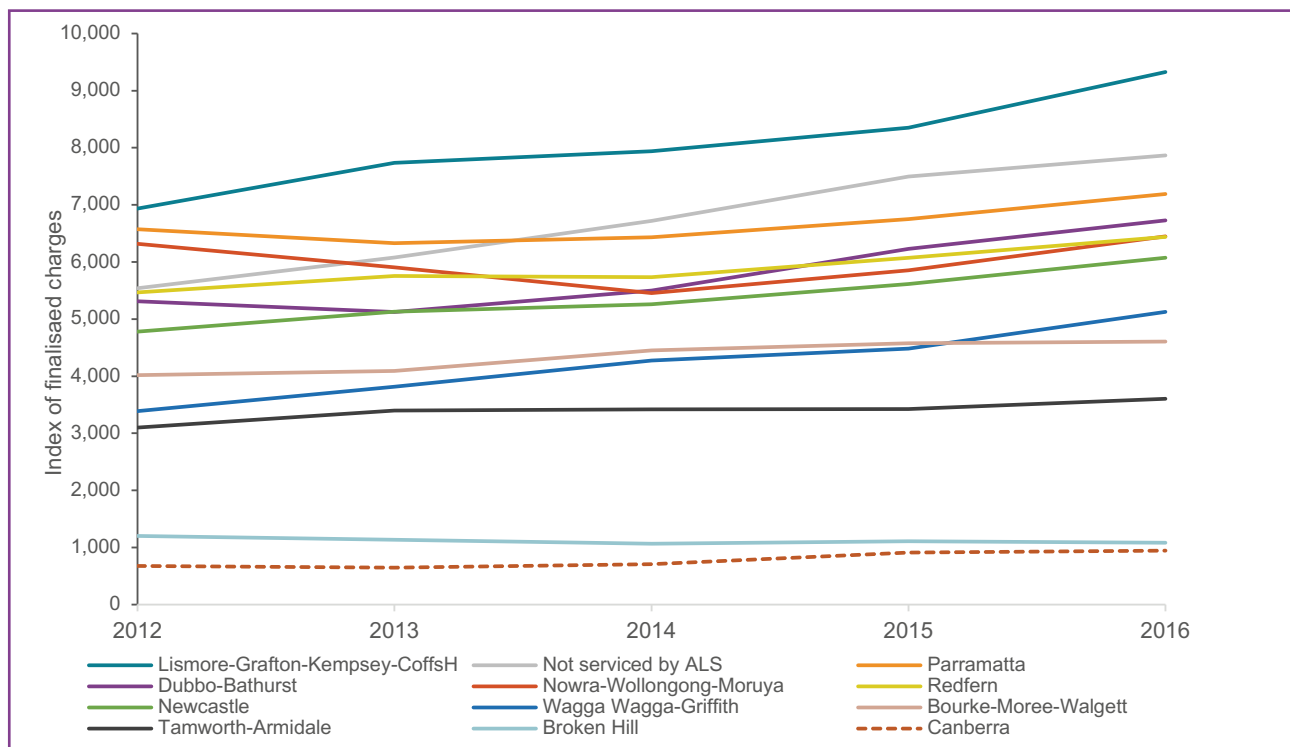
Table 5 presents the total count of finalisations and the index for the 5-year period, as well as the percentage change between 2012 and 2016, by ALS office.¹⁵

Over the 5-year period, the highest number of *finalisations* occurred in court locations serviced by the Parramatta ALS office (13,805 finalisations), followed by the Redfern office (12,649 finalisations) and the Newcastle office (10,936 finalisations).

The *index* of 33,698 for court locations not serviced by the ALS represents a total of 14,851 *finalisations*, or 12.1 per cent of all finalisations with Aboriginal defendants in NSW during the period.

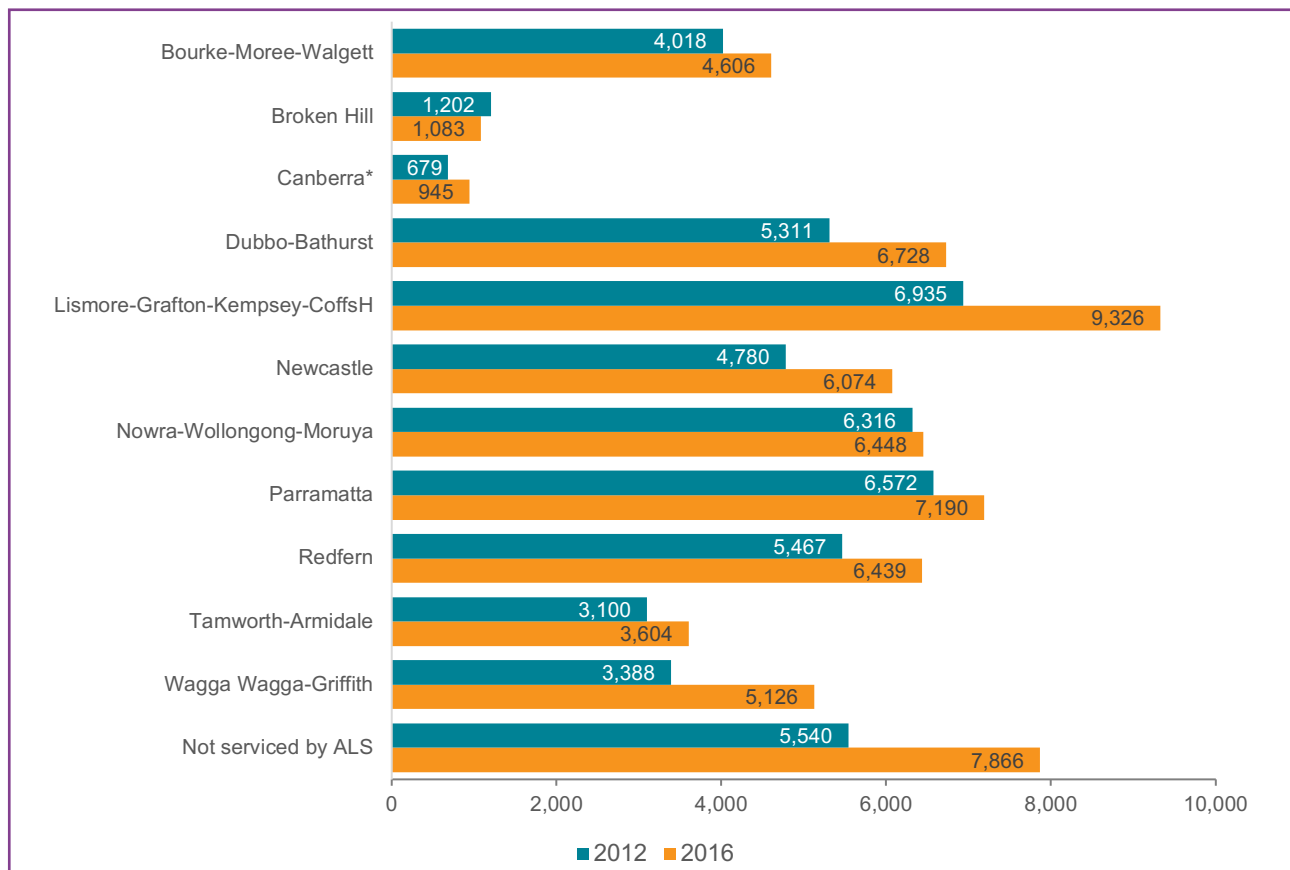
¹⁵ Detailed counts of finalisations and index by year and by ALS office is provided in Table 6 in Appendix.

Figure 1: Index of finalised charges by ALS cluster, totals by year from 2012 to 2016



Based on data from the NSW Bureau of Crime Statistics and Research
 Data is for NSW only, numbers do not represent the full reach of the Canberra office that also services ACT courts.

Figure 2: Index of finalised charges by ALS cluster, 2012 and 2016



Based on data from the NSW Bureau of Crime Statistics and Research
 * Data is for NSW only, numbers do not represent the full reach of the Canberra office that also services ACT courts.



Table 5: Total number of finalisations with Aboriginal defendants and index of finalised charges during 2012–2016, with percentage change over 5-year period, and percentage of finalisations with unknown Indigenous status, by ALS office

ALS Office	Finalisations with Aboriginal defendants		Index of finalised charges		% Indigenous status not known
	2012–16 total	% change over 5 yrs	2012–16 total	% change over 5 yrs	% over 5-yr total
Armidale	3,124	23.7	7,480	29.6	10.4
Bathurst	4,846	25.6	11,052	23.2	10.9
Bourke	2,849	-5.6	6,708	3.4	7.4
Broken Hill	2,355	-2.9	5,597	-9.9	11.2
Canberra*	1,760	31.1	3,890	39.2	22.2
Coffs Harbour	2,281	53.7	5,471	66.1	8.1
Dubbo	7,130	27.8	17,839	28.9	10.4
Grafton	1,868	26.3	4,475	21.3	9.5
Griffith	3,248	26.3	7,712	34.9	12.6
Kempsey	7,462	3.2	16,426	6.5	8.2
Lismore	5,846	54.5	13,915	66.2	11.5
Moree	3,529	33.9	8,553	44.7	11.9
Moruya	1,853	-2.5	4,321	-2.4	9.8
Newcastle	10,936	20.0	26,857	27.1	11.3
Nowra	2,519	0.2	6,204	-1.6	13.1
Parramatta	13,805	10.5	33,278	9.4	10.2
Redfern	12,649	15.4	29,470	17.8	12.2
Tamworth	3,787	5.4	9,460	6.6	10.2
Wagga Wagga	5,513	61.8	13,375	62.0	12.6
Walgett	2,848	-7.6	6,480	-6.3	7.0
Wollongong	7,936	2.1	19,454	4.3	8.4
Not serviced by ALS	14,851	34.4	33,698	42.0	14.7

Based on data from the NSW Bureau of Crime Statistics and Research

* Data is for NSW courts only, numbers do not represent the full reach of the Canberra office that also services ACT courts.

The largest increase in the *index* of finalised charges over the 2012–2016 period was in locations serviced by the Lismore office, followed by Coffs Harbour and Wagga Wagga offices. The areas serviced by the Broken Hill, Walgett, Moruya and Nowra offices show a decrease in the *index* of finalised charges over the period.

The percentage of finalisations where the defendant's Indigenous status was not known was highest in NSW court locations serviced by the Canberra office (at 22.2%), followed by court locations serviced by the Griffith, Wagga Wagga (both 12.6%) and Redfern offices (12.2%).

Mapping state-wide variations in potential demand

In order to support service planning at a local level, several detailed maps by regions and by ALS office clusters were compiled and provided to the ALS for their consideration. For the purpose of this report, only the maps providing an overview at state level are included to further illustrate the model used in this study.

It is important to note that the scale used for mapping the index of finalised charges in this instance is not of equal intervals on each map, meaning that the increase in circle size represents an exponential (rather than linear) increase in the index. For example, the smallest and second smallest circles represent a relatively small variation in the index (of a few hundred at the most), whereas the second largest and largest circles represent a much larger variation (of several thousands). Refer to the legend for the counts represented by each circle size. This is to maintain readability of the maps while showing sufficient granularity to differentiate between court locations with low or very low numbers of finalisations.

Map 1 – Index of finalised charges with Aboriginal defendants by court location and ALS cluster in NSW – Totals for the period 2012–2016

This map provides an overview of the distribution of the index across all court locations in NSW.

- The size of the circles increases with the total number of finalised charges for Aboriginal defendants over the period 2012–2016 (Local, Children’s and District Courts combined, based on the calculated index).
- The colour of the circles relates to geographical clusters of ALS offices, as defined by the ALS. It does not mean that all these cases were indeed managed by the ALS: the clustering represents finalisations that occurred at court locations serviced by the specified ALS office(s).

The court locations with the highest index (>10,000) were Sydney Downing Centre, Parramatta, Campbelltown and Dubbo.

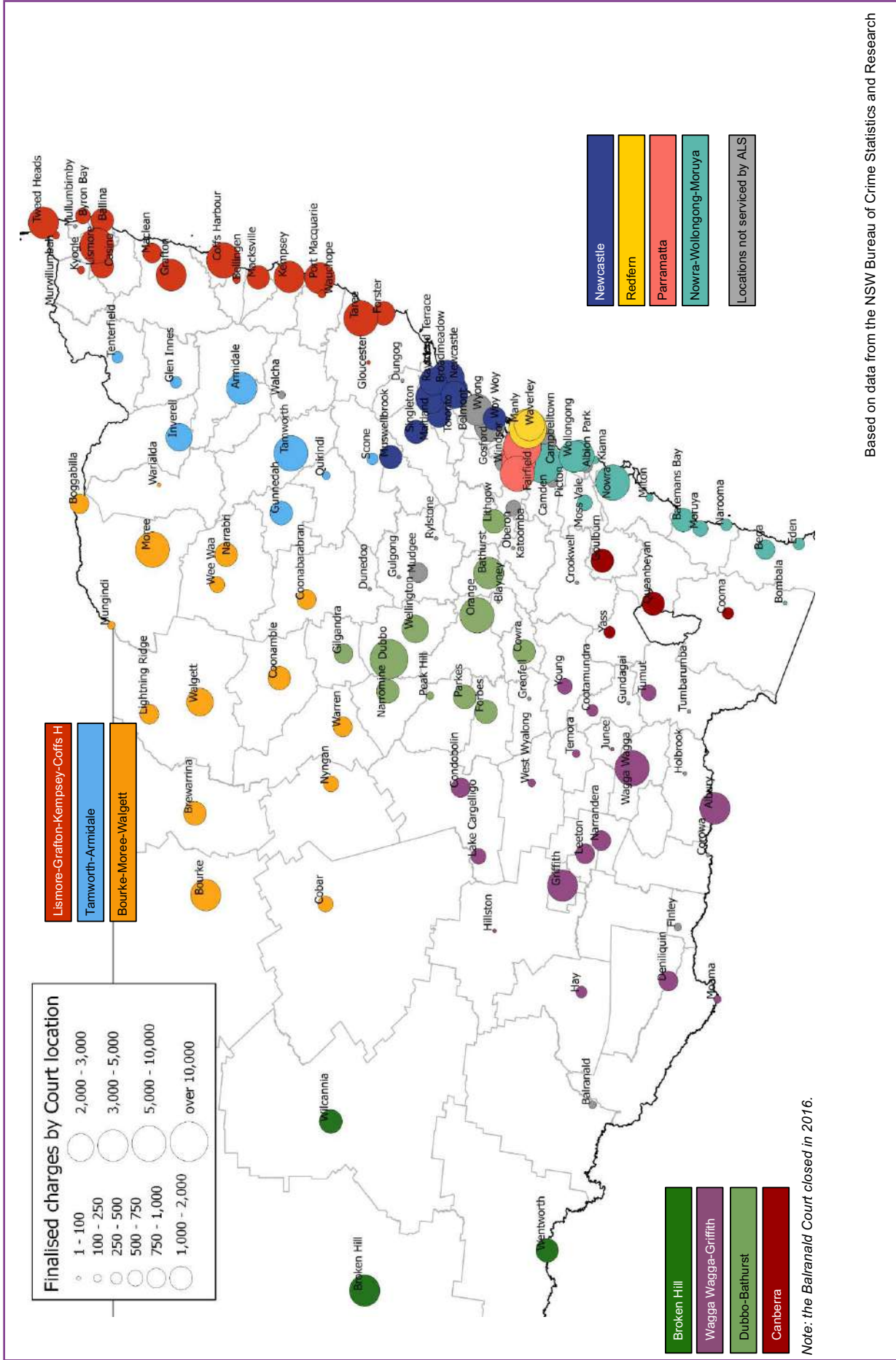
Map 2 – Index of finalised charges with Aboriginal defendants: percentage change over the period 2012–2016, by ALS office

This map provides a visual representation of the percentage increase of the index in locations serviced by each ALS office, over the five-year period.

- The size of the circles relates to the difference between the index of finalised charges in 2016 compared to that number in 2012 (the higher the increase, the larger the circle).
- Labels show the index of finalised charges in 2012 and in 2016.
- The colour of the circles differentiates between a decrease, an increase that is lower than the NSW average or an increase that is higher than the NSW average.

While there were higher numbers of finalisations, and higher indexes, in court locations situated in more populous areas (especially in the Sydney metro area), the highest percentage increases over the period occurred in regional NSW, especially in court locations serviced by the Lismore, Coffs Harbour and Wagga Wagga ALS offices.

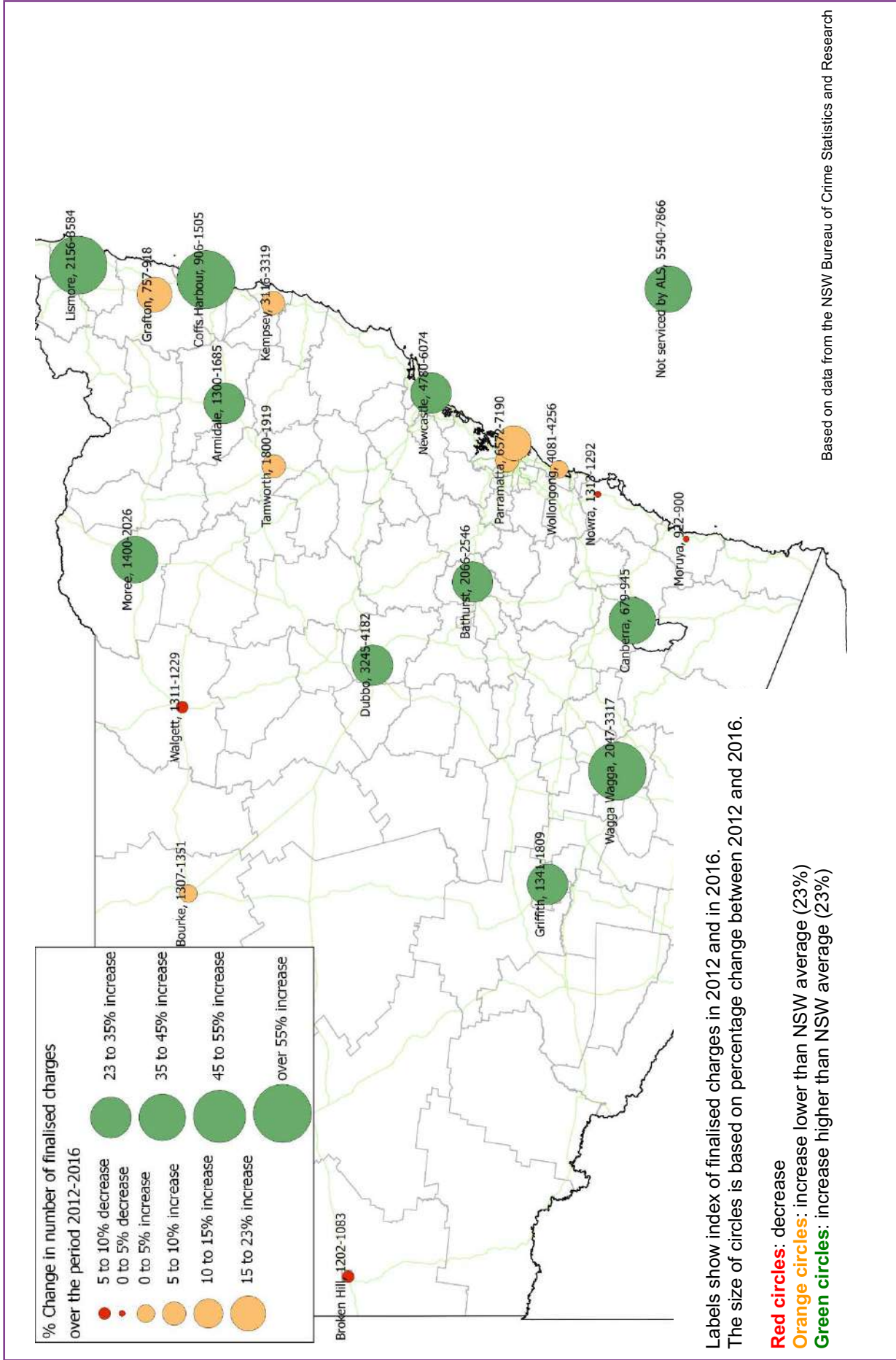
Map 1 – Index of finalised charges with Aboriginal defendants by court location and ALS cluster for the period 2012 – 2016



Based on data from the NSW Bureau of Crime Statistics and Research



Map 2 – Index of finalised charges with Aboriginal defendants: percentage change over the period 2012–2016, by ALS office



Interactive online database

In addition to providing a report outlining key findings and several maps, the Foundation developed an online interactive database, made available in Tableau Public, to provide the ALS with a flexible tool. The database allows filtering the data by level of court, by location or using the ALS structure of offices and clusters for tailored and more refined analysis.

The **online database** is available from the Foundation’s website at www.lawfoundation.net.au.

Making the data available online also has the benefits of a dynamic resource that can be updated as required. The database was subsequently updated in February 2019 to include 2017 data.¹⁶

Number of matters involving Aboriginal and/or Torres Strait Islander defendants finalised in the NSW criminal court between 2012 and 2017

Select locations and levels of court from the fields below to filter the data shown.
Data by court location is linked to the ALS service structure as at January 2019. It does not reflect changes that may have occurred during the period 2012-2017.

ALS region: (All) | ALS cluster: (All) | ALS office: (All)

Level of court: Childrens | Court location: (All)

	A def 12-17	Index 12-17	Unkwn 12-17	Change A def 12-17	Change Index 12-17	A def 2017	Index 2017	Unkwn 2017	A def 2016	Index 2016	Unkwn 2016	A def 2015	Index 2015	Unkwn 2015	A def 2014	Index 2014	Unkwn 2014
NSW 2012 - 2017	155,573	371,332	11.9%	19.4%	23.6%	28,108	88,367	12.0%	28,152	87,557	12.2%	26,393	83,412	12.0%	25,165	59,273	11.7%
Selected data 2012 - 2017	19,659	55,495	1.5%	-18.3%	-14.2%	2,955	8,596	2.3%	3,009	8,559	1.7%	3,281	9,453	1.4%	3,313	9,207	1.1%

Court location	Court type	ALS office	ALS cluster	ALS region	A def 2017	Index 2017	Unkwn 2017	A def 2016	Index 2016	Unkwn 2016	A def 2015	Index 2015	Unkwn 2015	A def 2014	Index 2014	Unkwn 2014
Albion Park	Childrens	not serviced by ALS	not serviced by ALS	Central South Eastern	0	0	0.0	0	0	0.0	3	10	0.0			
Albury	Childrens	Wagga Wagga	Wagga Wagga-Griffith	Western	52	124	0.0	51	147	3.4	77	195	1.7	8		
Armidale	Childrens	Armidale	Tamworth-Armidale	Northern	56	171	1.5	89	227	2.3	55	165	3.2	7		
Ballina	Childrens	Lismore	Lismore-Grafton-Kempsey-CoffsH	Northern	15	46	7.4	25	83	2.9	28	68	4.8			
Bairnsdail	Childrens	Broken Hill	Broken Hill	Western	0	0	0.0	0	0	0.0	1	4	0.0			
Bankstown	Childrens	not serviced by ALS	not serviced by ALS	Central South Eastern	0	0	0.0	0	0	0.0	0	0	0.0			
Batemans Bay	Childrens	Meruya	Nourra-Wollongong-Meruya	Central South Eastern	19	54	0.0	10	22	4.8	13	43	0.0	1		

Data Source: NSW Bureau of Crime Statistics and Research (BOCSAR).
The Law and Justice Foundation of NSW and Aboriginal Legal Service (NSWI/ACT) Limited.

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Last updated: February 2019

16 Delphine Bellerose, 2019.



Conclusion

This study aimed to support service planning for the ALS by sourcing and analysing relevant data and devising a proxy indicator for demand for legal assistance in criminal courts settings. The Foundation used criminal courts statistics on finalisations with Aboriginal defendants to analyse and map the distribution of potential demand for services across all court locations in NSW. The research demonstrated that such data could be used to usefully inform the planning and structuring of legal services to support those who require legal assistance in criminal proceedings.

The analysis revealed that the total number of finalisations with Aboriginal defendants increased by 19.5 per cent over the period 2012 to 2016. Given that the largest part of the workload for ALS solicitors is typically in providing assistance to Aboriginal people facing criminal charges, this increase in finalisations indicates a sizeable increase in the likely demand for ALS services over the five-year period. Further, if the current trend continued, demand for legal assistance for criminal matters would be likely to continue to increase into the future.

While counts of finalisations were generally higher in court locations situated in the more populous area of Greater Sydney, the analysis showed that the *increase* in finalisations over the 5-year period was greater in regional areas of NSW, especially along the north coast (in court locations serviced by the Lismore and Coffs Harbour ALS offices) and in the area of Wagga Wagga. It is also worth noting that while the overall count of finalisations with Aboriginal defendants has increased in most courts, this increase has been substantial in court locations that were not serviced by the ALS at the time of the study. Whilst beyond the scope of this study, the implication may be that an increasing portion of the need for legal assistance for Aboriginal criminal defendants is either not being met or has shifted to other service providers, such as Legal Aid.

The 'index' was created to reflect the number of charges per finalisation and to allow consideration of the varying degrees of complexity of cases, and thus perhaps the particular demand on legal services, to some extent. The index analysis did not reveal substantial differences compared to the analysis of counts of finalisations. However, at the regional and local levels, an index analysis may reveal greater variation, and thus may provide a more refined understanding of the extent and nature of potential demand for services in particular areas. Further research would be useful to improve the indicator for a more nuanced understanding of the legal services required. Considering the impact of different types of offences, for example, might be one avenue to explore.

The recording of Indigenous status within courts statistics ideally could be improved for more accurate and reliable analysis of legal needs, and for a deeper understanding of how Aboriginal and Torres Strait Islander people navigate the criminal justice system. The NSW criminal courts data included 12.1 per cent of finalisations where the defendant's Indigenous status was not known. This relatively high percentage should be addressed to ensure more accurate analyses in the future.

The present model of using criminal courts statistics to assist planning of legal assistance services for Aboriginal people brought to court shows that official administrative data can be used as a tool to provide useful evidence-based insights into specific legal needs of the community. Together with other data sources, this model is a cost-effective component that contributes to piecing together the bigger picture of legal needs in the community and help inform strategic planning to address those needs.

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Appendix

Table 6: Total number of finalisations with Aboriginal defendants and index of finalised charges, by ALS office, 2012 to 2016

ALS Office	Finalisations with Aboriginal defendants					Index of finalised charges				
	2012	2013	2014	2015	2016	2012	2013	2014	2015	2016
Armidale	548	658	661	579	678	1,300	1,568	1,537	1,390	1,685
Bathurst	902	848	900	1,063	1,133	2,066	1,895	2,037	2,508	2,546
Bourke	591	563	565	572	558	1,307	1,241	1,363	1,446	1,351
Broken Hill	491	465	451	471	477	1,202	1,137	1,066	1,109	1,083
Canberra*	318	287	309	429	417	679	647	709	910	945
Coffs Harbour	378	403	454	465	581	906	933	1,025	1,102	1,505
Dubbo	1,311	1,300	1,393	1,451	1,675	3,245	3,229	3,464	3,719	4,182
Grafton	320	391	382	371	404	757	980	893	927	918
Griffith	589	628	614	673	744	1,341	1,396	1,582	1,584	1,809
Kempsey	1,442	1,564	1,504	1,464	1,488	3,116	3,463	3,322	3,206	3,319
Lismore	935	980	1,154	1,332	1,445	2,156	2,362	2,698	3,115	3,584
Moree	602	633	740	748	806	1,400	1,534	1,713	1,880	2,026
Moruya	395	380	322	371	385	922	912	726	861	900
Newcastle	1,981	2,099	2,200	2,279	2,377	4,780	5,130	5,258	5,615	6,074
Nowra	531	467	504	485	532	1,313	1,173	1,225	1,201	1,292
Parramatta	2,718	2,655	2,642	2,786	3,004	6,572	6,329	6,434	6,753	7,190
Redfern	2,363	2,475	2,471	2,614	2,726	5,467	5,754	5,736	6,074	6,439
Tamworth	728	747	759	786	767	1,800	1,828	1,880	2,033	1,919
Wagga Wagga	841	965	1,152	1,194	1,361	2,047	2,420	2,694	2,897	3,317
Walgett	567	597	639	521	524	1,311	1,314	1,375	1,251	1,229
Wollongong	1,683	1,572	1,451	1,511	1,719	4,081	3,820	3,504	3,793	4,256
Not serviced by ALS	2,539	2,651	2,995	3,253	3,413	5,540	6,079	6,717	7,496	7,866

Based on data from the NSW Bureau of Crime Statistics and Research

* Data is for NSW only, numbers do not represent the full reach of the Canberra office that also services ACT courts.

Shortened forms

ABS	Australian Bureau of Statistics
ALS (NSW/ACT)	Aboriginal Legal Service NSW/ACT Ltd
ATSILS	Aboriginal and Torres Strait Islander Legal Service
BOCSAR	NSW Bureau of Crime Statistics and Research
NLAP	National Legal Assistance Partnership Agreement 2020-2025
SCRGSP	Steering Committee for the Review of Government Service Provision
SIQ	ABS Standard Indigenous Question

Topics for further research and analysis are invited.
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The Foundation acknowledges the Australian Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the Traditional Custodians of the lands in which we conduct our business. We pay our respects to ancestors and Elders, past, present and emerging.