Data insights in justice

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Using court data to support planning legal assistance for First Nations people

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This report presents the findings of a study that explored the possibility of using courts statistics as a proxy indicator of potential demand for legal assistance in criminal court settings across Australian jurisdictions.

Key messages

- This report demonstrates that the model of using criminal courts data to inform the planning of criminal legal assistance services in NSW is applicable in other jurisdictions.
- This report outlines a methodology to analyse and map criminal courts statistics and provides examples of the types of conclusions that can be drawn from such analysis. Numbers in this report should be interpreted as indicative and further work using this model should be based on the most recent available data.
- At the time of this review there were inconsistencies and limitations in the available data across jurisdictions. Overall, not enough is known about the what, where and why of Aboriginal and Torres Strait Islander people as they navigate the criminal justice system, and what this might mean in terms of legal needs. Accurate recording of Indigenous status at key points of contact with the criminal justice system, from contact with the police through all stages of court processes, is essential for the effective planning of legal assistance services for Aboriginal and Torres Strait Islander people.
- As criminal courts are largely the responsibilities of states and territories, improvement in the availability, accuracy and consistency of data concerning the pathways of Aboriginal and Torres Strait Islander people through the criminal justice system would benefit from a nationally consistent approach. The Commonwealth may be best placed to coordinate such a process, not just because of its national perspective, but also as it is currently largely responsible for the funding of Aboriginal and Torres Strait Islander legal assistance services.
- As systems are revised, First Nations people should have a voice in what and how such data is collected, interpreted and used.

Introduction

To enable legal assistance services to appropriately structure available resources and plan most effectively to support Aboriginal and Torres Strait Islander people in the justice system, it is important to understand the extent and nature of the legal needs to be addressed, and where these needs are located.

In 2018, the Law and Justice Foundation of NSW (the Foundation) developed a model to provide useful data analysis and mapping to assist the Aboriginal Legal Service (NSW/ACT) Ltd (ALS NSW/ACT) to effectively and efficiently target appropriate services to meet the legal needs of Aboriginal and Torres Strait Islander people in the criminal justice system.[1]

The model postulates that criminal courts statistics can be used as an indicator of potential demand for criminal legal assistance services across geographic areas. While this proxy measure of demand for services is one of many factors or indicators to take into consideration in service planning, the data analysis and mapping undertaken by the Foundation shows where potential demand is, how this demand fits with the existing legal assistance service structure, and how it changes over time. As such, the model provides a framework for evidence-based decision-making regarding the planning of services relating to the needs of defendants in criminal matters.

In recognition of the potential of applying the model developed by the Foundation for NSW to the national level, the Commonwealth Attorney-General's Department commissioned the Foundation to explore the wider application of this approach by undertaking a pilot study that aimed to test the feasibility of the model developed for NSW in at least one other jurisdiction.

The present report provides the results of this pilot study conducted in 2018 and early 2019. The study explored whether the available data was sufficiently robust in other jurisdictions to conduct similar data analysis and mapping to assist Aboriginal and Torres Strait Islander legal services (ATSILSs)[2] to plan their operations to meet the potential demand for legal assistance in criminal law matters across geographic areas in that jurisdiction.[3]

This report includes preliminary findings on the availability and limitations of relevant data in each jurisdiction as well as in official national reporting. It then goes on to outline findings from applying the model to Queensland with an analysis and mapping of criminal courts statistics for that jurisdiction, using data from 2013-14 to 2017-18.

It is important to note that some specific findings and conclusions from this analysis relate to the data available in 2018-19 and may no longer be as relevant in 2021. The importance of this report, however, is that it outlines a methodology and provides examples of the types of conclusions that can be drawn, and how they might be useful for planning purposes. It also highlights key areas for improvement of data collection and reporting to facilitate better understanding of the need for criminal legal assistance for Aboriginal and Torres Strait Islander people.

1 Delphine Bellerose et al., 2021.

2 Aboriginal and Torres Strait Islander legal services operate under slightly different names in each state and territory (see Table 1). The acronym 'ATSILS' (or in its plural form 'ATSILSs') hereafter refers to these services in any or all states/territories.

3 It should be noted that ATSILSs also dedicate resources to providing services in relation to family and civil law problems, such as Domestic Violence Order or Child Protection related matters, and the proportion of such services varies across jurisdictions. Nevertheless, a large majority of services provided by ATSILSs is in relation to criminal matters, and therefore assessing legal needs for criminal legal assistance remains a relevant exercise in service planning for all jurisdictions.

Box 1: The model – a summary of the NSW study for the ALS NSW/ACT[4]

Although the ALS NSW/ACT provides some assistance with family and civil law matters, the overwhelming majority of the workload undertaken by ALS NSW/ACT solicitors involves legal assistance for Aboriginal and Torres Strait Islander defendants brought to court with criminal charges. An analysis of ALS NSW/ACT service data shows that 98.2 per cent of duty and representation services provided in 2018–19 was for criminal matters.[5]

For this reason, the Foundation used criminal courts statistics on finalised matters with Aboriginal and/or Torres Strait Islander defendants sourced from the NSW Bureau of Crime Statistics and Research (BOCSAR) to devise a proxy measure indicating potential demand for ALS services across NSW.[6] Note that although criminal court *appearances* arguably might provide an even better proxy measure of the potential *workload* for the ALS NSW/ACT than criminal court finalisations, appearance data was not readily available from BOCSAR at the time. Thus, court finalisation data was analysed by criminal court location and level of criminal court, with the ALS NSW/ACT service structure added as an overlay to generate maps at geographic levels relevant to the ALS NSW/ACT.

This mapping exercise allowed the ALS NSW/ACT to examine the distribution of their services compared to the distribution of finalised criminal matters. The number of charges within each finalisation was used to further refine the indicator for potential service demand.[7]

Acknowledgments

The Foundation wishes to acknowledge the Commonwealth Attorney-General's Department for providing support for this work, including through their financial contribution. We also acknowledge the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) for their consideration and endorsement of the project concept.

We would also like to acknowledge staff at the justice departments of states and territories for providing support and information, including by ensuring that our data request was directed to the right people. In particular, we thank the Courts Performance and Reporting Unit at Queensland Courts and the Courts Administration Authority of South Australia for providing us with their relevant data.

Finally, we also wish to thank the peers and stakeholders who provided feedback on earlier drafts of this report.

4 Delphine Bellerose, 2019.

5 Delphine Bellerose and Geoff Mulherin, 2020.

6 Although the ALS NSW/ACT has an office in Canberra that services the Australian Capital Territory (ACT) criminal courts, the data analysis was conducted on NSW data only as the scope of the project had a focus on regional areas of NSW.

7 An *Index* was created by multiplying the number of finalisations by the number of charges at finalisation. Based on the assumption that more complex cases with multiple charges are more likely to require more extensive legal assistance, the *Index* likely provides a more accurate measure of potential workload for services by giving more weight to more complex cases (i.e. finalisations with multiple charges).

Methodology

At the outset of the current project, National Aboriginal and Torres Strait Islander Legal Services (NATSILS), the national peak body for ATSILSs, was contacted to introduce the project and seek their support and input, especially around their perspective on the choice of jurisdiction for the feasibility study. A letter was sent to the NATSILS office, followed by contacts over the phone and leading to an invitation for the Foundation to present the project at the NATSILS Forum held in October 2018. As a result of this engagement, NATSILS supported the project concept.

Data requirements

The analysis completed for NSW relied on the availability of two sets of information: criminal courts statistics broken down by Indigenous status[8] and the relevant ATSILS service delivery structure (see next page for details on what is meant by service structure in this context).

Importantly, though, the project methodology meant that the criminal courts statistics from other jurisdictions needed to be assessed first. The availability of good quality Indigenous status data in terms of both completeness and accuracy is critical for the present analysis. Although information on Indigenous status is routinely collected in all Australian states and territories, it is not always adequately recorded to report reliably on the interaction of the Aboriginal and Torres Strait Islander population with the justice system. Thus, a key aspect of the feasibility of applying the model developed for NSW to another jurisdiction depends on the reliability of Indigenous status in the criminal courts' statistics. Only if it was of sufficient quality and completeness would the next set of information – the ATSILS service delivery structure – be requested.

Criminal courts statistics

In requesting courts statistics from all Australian state and territory justice departments (or equivalent) other than NSW, the number of criminal court *appearances* rather than criminal court *finalisations* was preferred at the time, given that, as noted above, court appearances may provide a better indication of the workload involved in providing legal assistance and, therefore, a more accurate measure of potential demand for ATSILSs criminal services.

There is, of course, no perfect indicator. Two separate appearances or finalisations may reflect very different realities, and there will be differences between representing a client appearing on a single charge and another appearing on multiple charges. Similarly, the types of offences defendants are charged with will also have an impact on the type or the extent of legal assistance required. Therefore, data on criminal court finalisations was considered an acceptable option for the present study if information on appearances was not available. In addition, data on the number of charges at finalisation was requested so that it could be used to refine the indicator, as was done for NSW.

A key requirement was for criminal appearance or finalisation data to be broken down by three different variables:

- Indigenous status (with at least three categories: Aboriginal and/or Torres Strait Islander, non-Indigenous and not known)

8 In this report, the term Indigenous is used only in reference to the *Indigenous status* data variable. *Non-Indigenous* refers to people who did not identify as either Aboriginal or Torres Strait Islander. People who self-identified as Aboriginal, Torres Strait Islander or both are described as *Aboriginal and/or Torres Strait Islander people*.

- Level of court (Children's/Youth, Local/Magistrates, District/County and Supreme Courts)
- Court location.

Finally, data was requested for the most recent five years available, either financial or calendar years. For planning the potential workload of ATSILSs, both the most recent numbers of Aboriginal and Torres Strait Islander criminal court events in different locations and also any increasing or decreasing trends in these numbers are relevant. Given that the number of finalisations can fluctuate over time, it was considered important to interrogate data over multiple successive years as this facilitates identifying and accounting for atypical spikes and troughs in court events which may not reflect longer-term trends, thus providing a more reliable analysis.

ATSILS structure

One of the benefits of the model being piloted is in overlaying criminal appearances or finalisations with the relevant ATSILS structure operating in the jurisdiction. The analysis of such information highlights how well positioned services are to meet the potential demand across geographic areas, where the gaps may be and what service structure may offer the most effective use of available resources.

In order to undertake this analysis, the information needed from ATSILSs was a detailed outline of their service structure, including:

- a list of offices and their locations
- office type if applicable – for example, regional versus satellite offices
- office structure – for example, whether some offices operate as part of a cluster
- 'regions' or any other relevant geographic grouping of offices
- a list of court locations serviced by each office.

Preliminary review

As detailed below, the Foundation conducted an overall scan of relevant information available online, including information on the nature and distribution of ATSILSs, published reporting of criminal courts statistics by Indigenous status, and criminal courts data collection, maintenance and request processes.

ATSILSs

A list of ATSILS organisations in each state/territory was compiled from the NATSILS' and organisations' websites, along with their respective office locations and other useful information in relation to their services, such as the areas of law or types of problem for which they provide assistance, whether assistance is in the form of legal information, advice or representation, whether outreach services are also offered, etc. Table 1 shows a summary of organisation names and number of offices in each state/territory at the time of the research.

Table 1: ATSILS organisations and number of offices by state/territory

State/territory	Organisation	Offices
New South Wales/ Australian Capital Territory	Aboriginal Legal Service (NSW/ACT) Limited (ALS NSW/ACT)	21
Northern Territory	North Australian Aboriginal Justice Agency (NAAJA)	4
Queensland	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld)	26
South Australia	Aboriginal Legal Rights Movement Inc. (ALRM)	3
Tasmania	Tasmanian Aboriginal Legal Service (TALS)	2
Victoria	Victorian Aboriginal Legal Service Co-operative Limited (VALS)	9
Western Australia	Aboriginal Legal Service of Western Australia Limited (ALSWA)	12
National	National Aboriginal and Torres Strait Islander Legal Services (NATSILS)	-

National reporting

Relevant reports published by national agencies were reviewed to assess the likely availability of the data required for the present study at state/territory level, identify measures that are more commonly reported, and to get an indication of high level statistics and how those might differ depending on the source.

Australian Bureau of Statistics (ABS): The ABS publishes a Criminal Courts report[9] on an annual basis with top-level statistics on total number of finalisations from all Australian state and territory criminal courts, broken down by level of court but not by court location. A trusted source, the ABS report has the advantage of providing a snapshot of all states and territories' data in a comparable form. A breakdown of criminal courts statistics by Indigenous status is also included in the report, but only for NSW, Queensland (Qld), South Australia (SA) and the Northern Territory (NT). Based on the ABS' assessment, Indigenous status data for defendants in other jurisdictions was not of sufficient quality and/or did not meet ABS standards for self-identification for national reporting.[10] It is also worth noting that the dataset used to show a breakdown by Indigenous status excludes traffic-related offences because Indigenous status of the defendant is not recorded for the majority of such cases.[11]

Productivity Commission, Report on Government Services (ROGS): In its annual ROGS publication, the Productivity Commission dedicates a chapter to courts statistics and reports on both number of lodgements and number of finalisations by level of court. Indigenous status is reported for the ACT, NSW (for the Supreme Court only), the NT, Qld, SA and Western Australia (WA), and is only presented as a proportion of all criminal court finalisations. For other jurisdictions, and for other levels of court in NSW, information on Indigenous status was unavailable or was judged by the Productivity Commission to be of insufficient quality for publication. Further, for both NSW and the ACT, a cautionary note states that 'data may reflect an undercount due to Indigenous status not being available for all defendants'.[12]

9 Australian Bureau of Statistics, 2021.

10 Explanatory note on *Indigenous status* from ABS, Criminal Courts, Australia methodology.

11 The ABS states that defendants proceeded against for traffic offences often do not have Indigenous status information recorded (due to these offences usually being dealt with via fines issued by road traffic authorities). As such, Dangerous or negligent operation of a vehicle (ANZSOC Subdivision 041) and Traffic and vehicle regulatory offences (ANZSOC Division 14) are excluded from Indigenous status tables and associated commentary. (ABS, Criminal Courts, Australia methodology, explanatory note on Indigenous status).

12 Steering Committee for the Review of Government Service Provision (SCRGSP), 2018; 2019; 2020. 2021. PART C Justice, Chapter 7, Table 7.5. We note that data for NSW is only for the Supreme Court and therefore covers a very small proportion of all finalisations that occurred in the state across all levels of court.

Australian Institute of Criminology: The Australian Institute of Criminology's research program focuses on specific aspects of crime, such as identity crime or domestic violence, or other topics in relation to the criminal justice system such as drug use among police detainees, deaths in custody, etc. While many of the Institute's publications touch on the issue of Indigenous overrepresentation in the criminal justice system, the Institute does not appear to publish crime or criminal courts statistics by Indigenous status.

None of the above national agencies report criminal courts data involving Aboriginal and/or Torres Strait Islander defendants by court location, which was the requirement for the present analysis. Nonetheless, their national reporting provides an overview of the order of magnitude of the annual number of criminal finalisations in each state/territory, as well as an indication of the number of finalisations involving Aboriginal and/or Torres Strait Islander defendants in some jurisdictions. Counts of finalisations appear to be the most common measure for reporting on criminal court activity across jurisdictions.

Box 2: Use of court data: differences between the ABS and ROGS reports

Indigenous status: availability and quality assessment. It is noteworthy that there were some differences in the jurisdictions assessed separately by the ABS and Productivity Commission as having sufficiently robust data for their reporting purposes. NSW courts data (other than the Supreme Court) is only included in the ABS report while ACT and WA are only included in the ROGS report. However, both the ABS and Productivity Commission assessed that the data for Victoria (Vic) and Tasmania (Tas) was unavailable or of insufficient quality for reporting.

Criminal finalisations: definitions and counting rules. The ABS and ROGS reports also differ in their counting methods. The ABS uses the 'merged finalised defendant' rule whereby a defendant with more than one case finalised on the same date in the same court level is counted as a single record. Defendants who transfer from one Higher Court level to another are considered as finalised only once by the ABS whereas ROGS counts those as finalised in both levels of court (the Intermediate or District Court and the Supreme Court).[13]

Differences in these two recognised sources of national criminal courts statistics highlight the need for appropriate caveats to be placed on any analysis, and other useful points to consider in collating and analysing criminal courts data from various jurisdictions, such as the different definitions used, methods or decisions to include or exclude specific categories of offences.

The issue of the reliability of Indigenous status data for the purpose of reporting on the interaction of the Aboriginal and Torres Strait Islander population with the criminal justice system is further discussed later in a separate section of this report, *Recording Indigenous status*.

13 Australian Bureau of Statistics, 2021., explanatory note on comparisons to non-ABS sources/Report on Government Services.

State/territory reporting

A more in depth and systematic online search was then conducted with the aim of answering the following questions for each state/territory.

- What data is available online?
- What data may be available upon request? Is there a data request process/form available online?
- What agency/organisation is most likely to collect/hold that data?
- What general information on levels of court is available? And what more specific information relevant to Aboriginal and Torres Strait Islander defendants and/or Indigenous courts is available?
- What are the court locations by level of court?

The following sources were examined for each state/territory:

- Department of Justice / specific division within the Department
- courts services (at state/territory level and/or for each level of court)
- government data directories
- statistics agencies
- any other websites or published reports cited by the above organisations or found through keyword search.

The online search painted an overall picture of the criminal court scene at state/territory level, providing information on statistics, organisations, and geographic considerations. It helped identify which organisation or division within the Department of Justice might be best to contact to start the data request process. More specific data request procedures and forms were also identified, as was the case for Qld and WA.

Choosing a jurisdiction

Supportive of the project in principle, NATSILS did not specify any preference about the jurisdiction to choose for the pilot study. Based on preliminary information gathered from the online research, a 'priority list' of jurisdictions (other than NSW) was established by the Foundation based on the following considerations:

- number of ATSILS offices
- number of court locations
- number and proportion of Aboriginal and Torres Strait Islander population
- likely availability of reliable data on Indigenous status (as per ABS and ROGS).

On this basis, Queensland and WA were identified as the jurisdictions of most interest, followed by Victoria and SA. Queensland and WA have the greatest number of ATSILS offices (26 and 12, respectively),[14] numerous court locations and sizeable Aboriginal and Torres Strait Islander populations, and were included in at least one of the ABS and ROGS reports.

A staged approach to contacting the relevant government, court or other agency in each state/territory was initially adopted. In each case, a letter introducing the project and detailing our data

14 Excluding NSW.

requirements was sent to the organisation identified as being most likely to be able to respond to our data request.[15] However, given the tight project timeline and the inherent delays in data request processes, it was subsequently decided to contact the remaining states/territories concurrently. This approach had the double benefit of not only increasing the chances of obtaining adequate data within the allotted timeframe, but also of providing a broader picture of what further analysis might be feasible at the national level.

In addition to the considerations already listed above, and depending on the responses received from the states/territories, the jurisdiction for analysis in the present study was chosen based on the following criteria:

- timeliness of the data received
- sufficiently reliable data, including on Indigenous status
- interest in the analysis from the relevant ATSILS.

Findings on data availability and quality

Responses from states and territories

Below is a description of the responses received from each state/territory to our data request.

Box 3: Data availability at the time of request in 2018

It is important to note that this description relates to responses received at the time of the study, between August 2018 and February 2019. The Foundation recognises that data recording practices and processes do change over time, and is aware that at least one jurisdiction has taken positive steps to improve their data collection and reporting since this project. Therefore, it is possible that the availability and quality of data has since improved and that a similar request in 2021 may yield different responses.[16]

Australian Capital Territory

As noted earlier, the ALS NSW/ACT services both NSW and ACT criminal courts, but the scope and timeframe of the previous project (NSW 2018) did not allow for ACT criminal courts data to be sourced and analysed alongside NSW data. Consequently, for the present study, it was decided to request ACT courts data with the aim of updating the initial analysis conducted for the ALS NSW/ACT by combining ACT and NSW data and thus providing the ALS NSW/ACT with a complete picture encompassing the potential reach and activity of all their services, including the Canberra office.

Indigenous status data was not, however, available from the ACT courts case management system for the requested period. Changes were implemented in late 2018 to improve data collection and linkage from the police to the courts and data may be available for future updates.[17]

15 See the Appendix for a copy of the template letter and a list of the organisations contacted.

16 As stated earlier, some data from NSW and ACT has been included in more recent ROGS reports while it was not available in the 2018 and earlier iterations of the report.

17 Letter dated 20 February 2019 from Deputy Director General – Justice at Justice and Community Safety Directorate, ACT Government to the Foundation.

Northern Territory

The Criminal Justice Research and Statistics Unit of the Department of the Attorney-General and Justice in the NT informed the Foundation that they *"do not collate and publish the information [the Foundation] have requested"* and referred the Foundation to the ABS for further information.[18] However, upon enquiry, the ABS could not provide Indigenous status broken down by each court location, which was a requirement of the present analysis.

Queensland

Upon submission of a completed Data Request Form to Queensland courts, the Courts Performance and Reporting Unit provided the Foundation with data on criminal court appearances. Only 4.3 per cent of appearances on average each year had missing information on Indigenous status – a low level of missing data that therefore does not seriously impact the accuracy of the analysis for this project.

South Australia

The Courts Administration Authority of South Australia (CAA) responded favourably to our initial request and provided the data within our time requirements. However, the data, broken down by the categories requested, was not readily available and required some labour-intensive preparation by the CAA, generating delays due to limited resources.[19] When data was obtained, the high proportion of missing information regarding Indigenous status (i.e. an annual average of 25.1%) unfortunately rendered the data unreliable for the present analysis (see discussion below in the section *Recording Indigenous status*).

Tasmania

In response to our initial request, the Department of Justice informed the Foundation that, *"owing to data collection limitations, the Indigenous status data for defendants in Tasmania is not of sufficient quality to report nationally and the Department is unable to provide data at this level"*.[20]

Victoria

Initial contact was made with the Crime Statistics Agency in Victoria. While there was interest and support in principle for the project, the timeframe required to seek approval from interested parties and obtain data were beyond this project's timeframe.

Western Australia

Upon submission of a completed Research Application Form to the Research Application and Advisory Committee (RAAC) at the Department of Justice in WA, the Committee responded that the application for provision of data was successful subject to two conditions: that the Foundation submits evidence of appropriate ethics approval and evidence of support for this project from the Aboriginal Legal Service of Western Australia (ALSWA). Unfortunately, the timeline for going through an ethics committee process as an external applicant was beyond the project timeframe and thus the Foundation could not meet the first condition in the available time.[21]

As Queensland was the only state/territory that provided sufficiently reliable data within our timeframe, Queensland was chosen as the jurisdiction for analysis.

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18 Email correspondence from the Director of the Criminal Justice Research and Statistics Unit of the Department of the Attorney-General and Justice in the NT to the Foundation on 23/11/2018.

19 We are very grateful to the CAA in South Australia for their efforts to meet our request.

20 Letter dated 2 October 2018 from Acting Secretary at the Department of Justice to the Foundation.

21 National Health & Medical Research Council, 2018. The present study meets the criteria for exemption from ethical review as stipulated in the National Statement on Ethical Conduct in Human Research 2007 (Updated 2018). However, RAAC requires evidence of a formal ethics process for all applications before they can be considered by the Committee. See Appendix for more details on ethical considerations for this study.

Recording Indigenous status

Undoubtedly one of the most critical limitations of this analysis is that there are sizeable number of defendants coming before the criminal courts for whom Indigenous status is not recorded.

It is widely recognised that Aboriginal and Torres Strait Islander peoples experience multiple types of socio-economic disadvantage across numerous life areas.[22] Accurate data identifying Aboriginal and Torres Strait Islander people across all government and human service sectors is therefore critical in order to facilitate the effective design and delivery of services to achieve positive social and economic outcomes.[23] In the justice sector, the significant overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system (particularly through incarceration rates) is well documented.[24] There is also empirical evidence that suggests that disadvantaged Aboriginal and Torres Strait Islander people may face particular barriers and lack sufficient legal capability to resolve their legal problems, including criminal, family and civil law problems, without expert legal assistance.[25]

More recently, the National Agreement on Closing the Gap (the National Agreement), developed in partnership between Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and agreed in July 2020, corroborates the crucial need for reforms to overcome the inequality experienced by Aboriginal and Torres Strait Islander people. Four of the 17 national socio-economic targets set by the National Agreement relate to access to justice, with two of them directly addressing overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.[26]

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 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.[27] However, despite the national standard of the SIQ, there have been problems in establishing and maintaining standard practice in the collection of Indigenous status in differing contexts, resulting in the under-identification of Aboriginal and Torres Strait Islander people in key national data sets.[28]

In the criminal justice sector, the Indigenous status of defendants is not usually directly collected by the courts. Rather, this information is collected through self-identification of Aboriginal and Torres Strait Islander people when they come into contact with police and it is then transferred from the police to the criminal courts systems when the defendant's matter is lodged in court (although Indigenous status information may be updated at court or in subsequent data cleaning in some instances).

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

23 See, for example, Australian Bureau of Statistics, 2014.

24 See, for example, Andrew Bushnell, 2017., Australian Law Reform Commission, 2017., Monica La Macchia, 2016. and Australian Bureau of Statistics, 2020.

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

26 Joint Council on Closing the Gap, 2020. See also Box 4.

27 Australian Bureau of Statistics, 2014.

28 Australian Institute of Health and Welfare, 2010.

Box 4: National Agreement on Closing the Gap: Justice related targets and the importance of understanding legal need

Target 10 – Aboriginal and Torres Strait Islander adults are not overrepresented in the criminal justice system: reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031.

Target 11 – Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system: reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by 30 per cent by 2031.

Target 12 – Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system: reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent by 2031.

Target 13 – Aboriginal and Torres Strait Islander families and households are safe: reduce the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by at least by 50 per cent by 2031.

If legal assistance services are to play an effective role in supporting and representing Aboriginal and Torres Strait Islander people, whether this be when confronting civil and family problems or during the process from contact with police through to criminal trial and beyond, it is essential to understand precisely where the legal need is, and plan and provide services accordingly.

This process has several implications for the reliability of 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 due to a lack of compatibility between the two systems or to poor processes. Such potential challenges are possible in any data collection and transfer process. In the case of criminal courts data, for defendants coming before the courts for offences issued by infringement notice where there may be no contact with police, such as some traffic offences and breaches, there may not be an opportunity or a systematic process for recording Indigenous status.[29]

Different practices by organisations holding criminal courts data in different jurisdictions also lead to disparities in the completeness and accuracy of the data. In NSW, BOCSAR reports on NSW criminal courts statistics and amended their processes in 2018 to improve the reliability of Indigenous status for court finalisation data by cross-checking with information stored in their

29 Indigenous status data are based on information collected and recorded by police and transferred from the police to courts systems (upon defendant initiation in the courts). The police information is based upon self-identification by the individual (or via a response from next of kin/guardian). As such, the quality of the Indigenous status data (…) is dependent on police seeking and recording this information, and whether it can be transferred to the courts administrative systems. Australian Bureau of Statistics, 2021, explanatory note on Indigenous status.

Reoffending Database.[30] This amended process means that an individual who has identified and thus 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.

In SA in 2018, data on Indigenous status was also based on the SIQ asked by police and transferred to the Magistrates' court system. However, once matters are committed to the higher courts, the ability to map the SIQ information to the court record could be lost. A separate indicator of ethnicity was maintained in the criminal courts system, which was updated by the Aboriginal Justice Officers where defendants were known to be Aboriginal and/or Torres Strait Islander. Unfortunately, both the SIQ and ethnicity indicators held incomplete information, with proportions of unknowns too high to allow for reliable data analysis.[31]

The present study found that the proportion of missing data on Indigenous status in criminal courts statistics was 4.3 per cent in Queensland, 12.1 per cent in NSW and 25.1 per cent in SA. The incomplete or inconsistent recording of Indigenous status was also the reason why the Department of Justice in Tasmania had concerns about their data quality and hence did not provide us with their data. 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 is likely to be cause for concern.[32]

Considering that the Aboriginal and Torres Strait Islander population represents only around three per cent of the Australian population,[33] high percentages of unknown Indigenous status preclude reliable analysis of the number and distribution of criminal court matters involving Aboriginal and/or Torres Strait Islander defendants within a jurisdiction. For example, the number of finalisations may be underestimated if there are considerable instances where Indigenous status is either not collected or Aboriginal and/or Torres Strait Islander people do not self-identify. Further, conclusions about the relative distribution of criminal court finalisations with Aboriginal and Torres Strait Islander defendants across different court levels or geographic areas may be inaccurate. For example, there may be differences across court types or areas in both the willingness of people to disclose their Indigenous status as well as in the processes used to record Indigenous status.

30 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. NSW Bureau of Crime Statistics and Research, 2020. Explanatory Notes.

31 Data processing was clarified in personal email communication with senior staff at the Business and Financial Services Branch of the Courts Administration Authority of South Australia on 13 December 2018.

32 After discussion with the ALS NSW/ACT, it was decided to pursue the analysis for NSW using BOCSAR data as the proportion of unknown was only slightly above 10 per cent and this was the best available data.

33 Aboriginal and/or Torres Strait Islander people represented 2.8 per cent of the general population as per the ABS 2016 Census. The ABS also releases numbers for Estimated of Resident Population (ERP) as at 30 June of each Census year. These population estimates are based on Census counts, adding back Australian residents temporarily overseas, backdating from Census night to 30 June using births, deaths and migration data, and adjusted for Census net undercount as measured by the Post Enumeration Survey. The Aboriginal and Torres Strait Islander ERP at June 2016 was 798,400 or 3.3% of the general ERP population. Australian Bureau of Statistics, 2018.

Box 5: Identifying Aboriginal and Torres Strait Islander people within the criminal legal system

It is beyond the scope of this paper to discuss the many factors of disadvantage, exclusion and poverty that contribute to the present situation of Aboriginal and Torres Strait Islander people's overrepresentation in incarceration. Many areas of government and social/public policy have roles to play in addressing these inequalities. Justice is, of course, one of them but others include health, housing, education and employment. Notwithstanding the recognised need for holistic solutions and cross-portfolio collaboration to deliver them, criminal justice policy and justice departments are responsible not only for the incarceration policy and practice, but also for the processes, beginning with contact with the police through to arrest and trial, that precede incarceration.

However, while statistics on adult imprisonment and youth detention exist, and can be used as baseline data and progress measures for Targets 10 and 11 of the National Closing the Gap Agreement, less is known about the what, where and why of Aboriginal and Torres Strait Islander people as they navigate the criminal justice system between contact with the police and incarceration,[34] and what this might mean in terms of legal needs, especially at the local level. A better understanding of the specific need for criminal legal assistance for Aboriginal and Torres Strait Islander people is an important step towards identifying ways that legal assistance can contribute most effectively to the achievement of the National Agreement's targets.

Notwithstanding the crucial need, and the urgency, to address the deeper causes of multiple disadvantage experienced by Aboriginal and Torres Strait Islander people, evidence-based service planning for legal assistance when they come in contact with the criminal justice system is part of the overall challenge to achieve the outcome of reducing the rate of incarceration.

Applying the model to Queensland

As already noted, only data from Queensland and SA was received within the present project timeline. In light of their low percentage of missing Indigenous status data, the decision was made to pursue the analysis using Queensland data for the purpose of this pilot study. Over the study period, the ATSILS Qld service structure had not been provided to the Foundation. Thus, the data analysis and mapping provided in the present report focuses on the distribution of court appearances by court location, but does not include the ATSILS service structure overlay as was done for NSW.

Data and method

The Queensland Courts Service provided the Foundation with data on criminal court events, broken down by level of court, court location and by Indigenous status, for the financial years 2013-14 to 2017-18. A criminal court event is where a defendant's matter appears before the court, which means that numbers reported represent court appearances rather than finalisations.

34 Note that BOCSAR in NSW provides jurisdictional level data on a range of relevant variables. NSW Bureau of Crime Statistics and Research, 2020.

The data includes appearances before all levels of the criminal court: Magistrates Court, District Court and Supreme Court. It also includes data from the Magistrates Children's Court and the Children's Court of Queensland (CCQ).[35] Numbers were reported for all court locations across Queensland – a total of 116 locations.

The data was extracted from criminal courts statistics and therefore includes all criminal offences, including traffic offences that are criminal in nature. Breaches considered a criminal offence, such as breaches of domestic violence orders (DVOs), are therefore included. Although ATSILSs provide legal assistance in relation to non-criminal matters, including DVO applications, non-criminal matters were not included.[36] As is standard practice in criminal courts statistics reporting, appeals were excluded from this data.

Indigenous status was recorded as per the following categories:

- Aboriginal
- Aboriginal and Torres Strait Islander
- Torres Strait Islander
- Neither
- Not provided
- Refused.

In this analysis, and unless specified otherwise, defendants who identified as Aboriginal, Torres Strait Islander or both were grouped together into one category. Records where Indigenous status was either 'not provided' or 'refused' were also combined into a single category reflecting unknown Indigenous status.

Data was supplied in a Microsoft Excel spreadsheet format and further manipulated to combine categories and compute statistics such as totals, averages and percentage changes before being analysed using pivot tables.

For confidentiality reasons, where the number of court appearances was less than five in any cell, the actual number was replaced with a '<5' label in the spreadsheet provided by Queensland Courts Services. In order to calculate subtotals for various cell combinations, any cell labelled <5 was then replaced with calculated averages as part of the data processing undertaken at the Foundation.[37] These averages were calculated on the relevant levels of the data (i.e. for each combination of court location, level of court, Indigenous status and year, as required) to ensure the highest degree of accuracy possible. In order to maintain confidentiality, further rules were applied so that small numbers (<5) are not displayed in project outputs or any published information.

35 In Queensland, matters involving children are dealt with in either a special Magistrates Court or the District Court, depending on the type of matter. Magistrates Court matters involving juveniles are dealt with in a special court known as the Children's Court. The Children's Court of Queensland (CCQ) is a special form of District Court that deals with juveniles who commit serious criminal offences. (www.courts.qld.gov.au/courts/childrens-court).

36 A large majority of services provided by ATSILS Qld in 2018-19 were in relation to criminal matters (83.1%). Bellerose and Mulherin, 2020.

37 The process involved calculating mathematical averages and made sure that confidentiality would not be compromised. Numbers smaller than 5 in any cell are not actual numbers, they are only used to maintain a degree of accuracy for calculated totals and they are not published or made available in any way.

Each of the 116 court locations was geocoded with longitude and latitude coordinates retrieved from the courthouse locations file available from Queensland Government data[38] and from an online Global Positioning System (GPS) location website.[39] Data was then imported into QGIS software, an open source geographic information system, to generate maps.[40]

Court appearances by year and court level

Box 6: Insights drawn from this particular analysis and data updates

It is important to note that some specific findings and conclusions from this analysis and mapping exercise using data up to 2017-18 may no longer be as relevant in 2021. As with most research, some time lag between the collation of data, analysis and publication of findings is inevitable. The importance of this report, however, is that it outlines a methodology and provides examples of the types of conclusions that can be drawn. For this reason, and to adequately inform and support service planning into the future, it is recommended the analysis be repeated using the most recent available data.

The data spans a total of over 4,384,000 court appearances (including both Aboriginal and/or Torres Strait Islander defendants and non-Indigenous defendants) that occurred in 116 Queensland court locations over the five-year period 2013-14 to 2017-18. The total number of appearances per year increased by 24.4 per cent in that period (see Table 2).

Court appearances where the defendant identified as Aboriginal and/or Torres Strait Islander represented 21.4 per cent of all appearances on average, although that proportion was higher in 2017-18 at 23.2 per cent. According to the 2016 Census, the estimated Queensland Aboriginal and Torres Strait Islander population aged 10 and over represented 4.0 per cent of the estimated general Queensland population aged 10 and over.[41] This finding is in line with other reports and statistics outlining the overrepresentation of Aboriginal and/or Torres Strait Islander people in the criminal justice system.[42]

The number of court appearances with Aboriginal and/or Torres Strait Islander defendants increased by 36.4 per cent in the period under review, from 159,208 in 2013-14 to 217,225 in 2017-18, showing a fairly steady increase from year to year (with an average annual increase of approximately 14,500 appearances per year). This increase in the number of court appearances indicates a considerable increase in the likely demand for ATSILS Qld services over the five-year period. It is worth noting that the estimated Queensland Aboriginal and Torres Strait Islander population aged 10 and over increased by 18.6 per cent between the 2011 and 2016 Census.[43]

38 Queensland Government data, List of Queensland Courthouse locations, available from **www.data.qld.gov.au/dataset/courthouse-locations**.

39 www.gps-coordinates.net

40 QGIS is a professional free and open source geographic information system (GIS) application. **www.qgis.org**

41 This is the age from which individuals can be charged with a criminal offence in Qld.

42 Although estimated Aboriginal and/or Torres Strait Islander population represents 3.3 per cent of the Australian resident population (Australian Bureau of Statistics, 2018.), as at June 2020 they accounted for over a quarter (29%) of the total Australian prisoner population (ABS, 2020.). In 2019-20, the proportion of total defendants (excluding transfers) who identified as Aboriginal or Torres Strait Islander was 18% in NSW, 79% in the NT, 23% in Qld and 23% in SA. (ABS, 2021.).

43 Australian Bureau of Statistics, 2013; 2018.

Table 2: Number of criminal court appearances by year for all defendants and for Aboriginal and/or Torres Strait Islander defendants, Queensland

Court appearances	2013-14	2014-15	2015-16	2016-17	2017-18	5-year total	Annual average	% change over period
	N	N	N	N	N	N	N	%
All defendants (N)	751,762	805,730	923,510	967,979	935,323	4,384,301	876,860	24.4
Aboriginal and Torres Strait Islander defendants (N)	159,208	168,342	188,110	203,854	217,225	936,746	187,349	36.4
Percentage (%)	21.2	20.9	20.4	21.1	23.2	21.4	21.4	

Based on data from Court Services Queensland, Courts Performance and Reporting Unit

As previously mentioned, Queensland appears to be one of the jurisdictions with better practice regarding the recording of Indigenous status in criminal courts statistics. The proportion of missing data is lower and distinguishes between a refusal to answer the SIQ question and the information not being recorded. It is interesting to note that the number of court appearances where the defendant had refused to answer the SIQ question gradually decreased over the five-year period (by 43.6% in total; see Table 3). While numbers where Indigenous status was not provided also decreased over the five-year period as a whole, the most sizeable decrease was in 2017-18. As is perhaps more relevant in Queensland, the Indigenous status also distinguishes between those who identify as Aboriginal, Torres Strait Islander or both.

Table 3: Number of criminal court appearances by year and Indigenous status of defendants, Queensland

Indigenous status	2013-14	2014-15	2015-16	2016-17	2017-18	5-year total	Annual average	% change over period
	N	N	N	N	N	N	N	%
Aboriginal	141,643	149,654	167,926	181,093	192,560	832,879	166,576	35.9
Torres Strait Islander	6,901	7,994	8,005	9,355	9,989	42,246	8,449	44.7
Aboriginal & Torres Strait Islander	10,664	10,694	12,179	13,406	14,676	61,621	12,324	37.6
Neither	546,846	594,300	695,777	728,434	691,623	3,256,975	651,395	26.5
Refused	42,871	40,503	36,193	32,561	24,195	176,319	35,264	-43.6
Not provided	2,838	2,585	3,431	3,130	2,280	14,261	2,852	-19.7
Total	751,762	805,730	923,510	967,979	935,323	4,384,301	876,860	24.4

Based on data from Court Services Queensland, Courts Performance and Reporting Unit

Table 4 shows a breakdown of criminal court appearances with Aboriginal and/or Torres Strait Islander defendants by level of court. The vast majority of criminal matters are finalised in the Magistrates Court. On average, just under 150,000 appearances occurred in the Magistrates Court, which represent 79.9 per cent of all criminal court appearances. A further 32,000 on average were appearances before the Children's Court (Magistrates Court) and the Children's Court of Queensland combined.

The number of appearances before the Children's Court (Magistrates) accounted for the highest percentage increase over the period, with a particularly sharp increase in the last two years, from just under 26,000 in 2015-16 to 42,000 in 2017-18. In 2017-18, court appearances with juvenile defendants (at the Magistrates and District levels of court) accounted for 20.0 per cent of all appearances with Aboriginal and/or Torres Strait Islander defendants, compared with 17.3 per cent in 2013-14. This finding suggests increasing demand for ATSILS services from young people over this period.

Table 4: Number of criminal court appearances with Aboriginal and/or Torres Strait Islander defendants by year and level of court, Queensland

Level of court	2013-14	2014-15	2015-16	2016-17	2017-18	5-year total	Annual average	% change over period
	N	N	N	N	N	N	N	%
Magistrates	126,886	135,394	155,096	163,872	166,951	748,205	149,641	31.6
Children's (Magistrates)	26,260	26,776	25,940	32,591	42,032	153,599	30,720	60.1
Children's (CCQ)	1,313	1,095	1,173	1,200	1,320	6,101	1,220	0.5
District	4,426	4,748	5,436	5,659	6,419	26,687	5,337	45.0
Supreme	323	330	465	531	504	2,153	431	56.2
Total	159,208	168,342	188,110	203,854	217,225	936,746	187,349	36.4

Based on data from Court Services Queensland, Courts Performance and Reporting Unit

Court appearances across Queensland

Before presenting maps and analysing the distribution of criminal court appearances across Queensland, it is useful to better understand how the Aboriginal and Torres Strait Islander population aged 10 and over is distributed across the state.[44]

Aboriginal and Torres Strait Islander population across Queensland

Table 5 presents the Aboriginal and Torres Strait Islander population aged 10 and over in different areas in Queensland at the time of the 2016 Census. The table shows that over a third (34.6%) of the Aboriginal and Torres Strait Islander population aged 10 and over in Queensland resides outside what the ABS defines as 'Significant Urban Areas' (SUA), or in what has been termed 'other regional or remote areas' for the purpose of this study.[45] The remaining 65.4 per cent reside in the 18 Significant Urban Areas of Queensland, with the largest proportion (27.0%) living in the Brisbane SUA. In keeping with their larger total populations, the SUAs of Brisbane, Cairns, the Gold Coast–Tweed Heads and Townsville have the *highest numbers* of Aboriginal and Torres Strait Islander people.

In addition, Table 5 shows that the Aboriginal and Torres Strait Islander population aged 10 and over represents 3.5 per cent of Queensland's population aged 10 and over. However, the Aboriginal and Torres Strait Islander population is not evenly spread across Queensland, constituting considerably higher proportions of the general population in some areas. The areas with the highest proportions of Aboriginal and Torres Strait Islanders aged 10 and over are

44 This is the age from which individuals can be charged with a criminal offence in Qld.

45 The Significant Urban Area (SUA) structure of the Australian Statistical Geography Standard (ASGS) represents significant towns and cities of 10,000 people or more. They are based on the Urban Centres and Localities (UCLs) but are defined by the larger Statistical Areas Level 2 (SA2s). A single SUA can represent either a single Urban Centre or a cluster of related Urban Centres. Australian Bureau of Statistics, 2017.

Mount Isa (14.9%), Cairns (7.8%), regional and remote areas outside SUAs (7.6%), Townsville (6.3%) and Rockhampton (6.2%). Note that although the populous areas of Brisbane and the Gold Coast–Tweed Heads are in the top three areas in terms of having the highest *numbers* of Aboriginal and Torres Strait Islander people, they have relatively *low proportions* of Aboriginal and Torres Strait Islanders (2.0% and 1.7%, respectively).

Table 5: Aboriginal and/or Torres Strait Islander population and Queensland population aged 10 and over by Significant Urban Area, 2016 Census

Significant Urban Area	Indigenous population (10+ years)	Percentage of Qld Indigenous population	Percentage of area population	Total population (10+ years)
	N	%	%	N
Brisbane	38,932	27.0	2.0	1,900,755
Cairns	9,766	6.8	7.8	125,004
Gold Coast - Tweed Heads	9,564	6.6	1.7	548,942
Townsville	9,457	6.6	6.3	149,713
Sunshine Coast	4,428	3.1	1.6	272,166
Rockhampton	4,091	2.8	6.2	66,113
Toowoomba	3,809	2.6	3.4	112,987
Mackay	3,212	2.2	4.7	67,671
Mount Isa	2,264	1.6	14.9	15,223
Bundaberg	2,230	1.5	3.7	60,862
Hervey Bay	1,540	1.1	3.3	46,424
Gladstone - Tannum Sands	1,419	1.0	3.8	36,962
Maryborough	1,024	0.7	4.3	23,845
Yeppoon	620	0.4	3.9	15,934
Warwick	611	0.4	4.7	13,089
Gympie	594	0.4	3.3	18,252
Emerald	350	0.2	3.2	11,000
Kingaroy	347	0.2	3.9	8,810
Other regional or remote areas*	49,918	34.6	7.6	660,640
Total Qld	**144,189**	**100.0**	**3.5**	**4,154,409**

* Includes all areas that are not included in a Significant Urban Area in the ABS Australian Statistical Geography Standard, including smaller urban areas.

Maps of court appearances by court location

Figures 1 and 1A present the **average annual number** of criminal court appearances with Aboriginal and/or Torres Strait Islander defendants at Queensland court locations over the period 2013-14 to 2017-18. Figure 1A shows a zoomed-in view of Brisbane and the surrounding area.

Each circle represents a court location, with the size of the circle representing the average annual number of criminal court appearances involving Aboriginal and/or Torres Strait Islander defendants. Thus, the larger the circle for a given location, the higher the number of Aboriginal and/or Torres Strait Islander court appearances.[46] Where different levels of court sit at the same location, numbers

46 The classification method used to assign a range of appearance numbers to each circle size was the Jenks optimisation method, also known as 'natural breaks'. This data clustering method is designed to determine the 'best' arrangement of values into classes by reducing the variance within each class and maximising the variance between classes. Class breaks were rounded to the nearest hundred for a more reader-friendly legend.

represent all levels of court combined, including the Children's Court (Magistrates and CCQ). Table 8 in the Appendix provides the precise average annual numbers on which Figures 1 and 1A are based.[47]

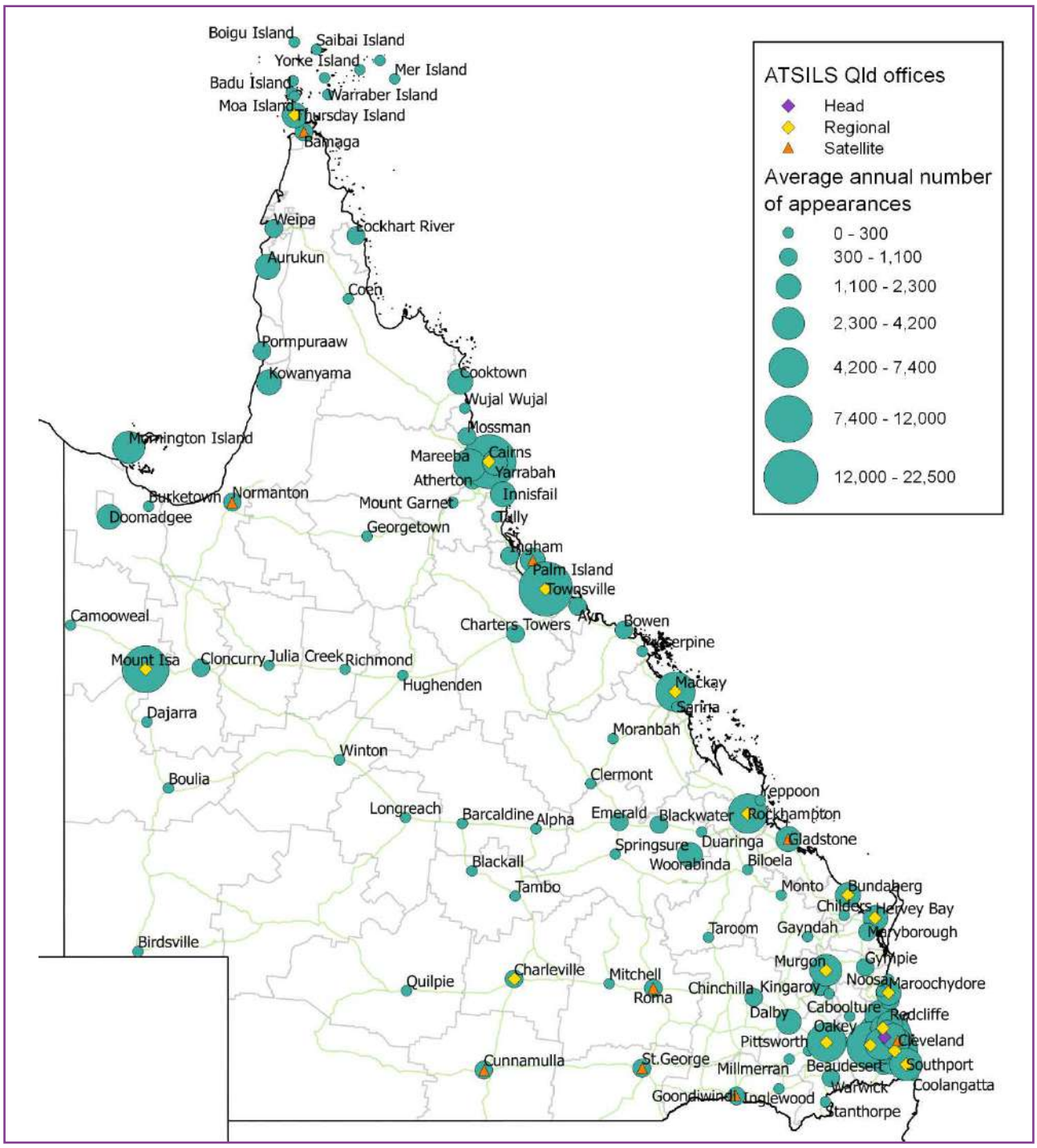
ATSILS Qld offices are also indicated on the map by a diamond-shaped marker (purple for head office and yellow for regional offices) or an orange triangle-shaped marker (for satellite offices), as per information found on the ATSILS Qld website at the time of the study.

As one could expect, the higher average numbers of Aboriginal and Torres Strait Islander court appearances generally occurred in court locations in more populous areas that have relatively large Aboriginal and Torres Strait Islander population numbers. Brisbane, Townsville and Cairns were the court locations with the highest number of court appearances with Aboriginal and/or Torres Strait Islander defendants, that number being over 20,000 on average each year. They were followed by Beenleigh, Mount Isa, Ipswich and Rockhampton with numbers ranging between 7,400 and 12,000 (see Figures 1 and 1A).

It is worth noting that criminal court activity, in terms of number of appearances, is heavily concentrated in only a very few court locations: more than a third of appearances (35.2%) were in the top three locations of Brisbane, Townsville and Cairns. However, the remaining appearances were spread over a large number of court locations. In over two-thirds of all Queensland court locations (80 out of 116), the average annual number of court appearances with Aboriginal and/or Torres Strait Islander defendants was much lower (at less than 1,000) and, among those, the average was as low as 100 or less in 38 court locations, or a third of all court locations in Queensland. While low, these numbers are not, however, insignificant. For this reason, and from the perspective of service planning at local, regional or state levels, it is important to not simply focus on the larger numbers but to also look at the smaller numbers in regional and remote locations.

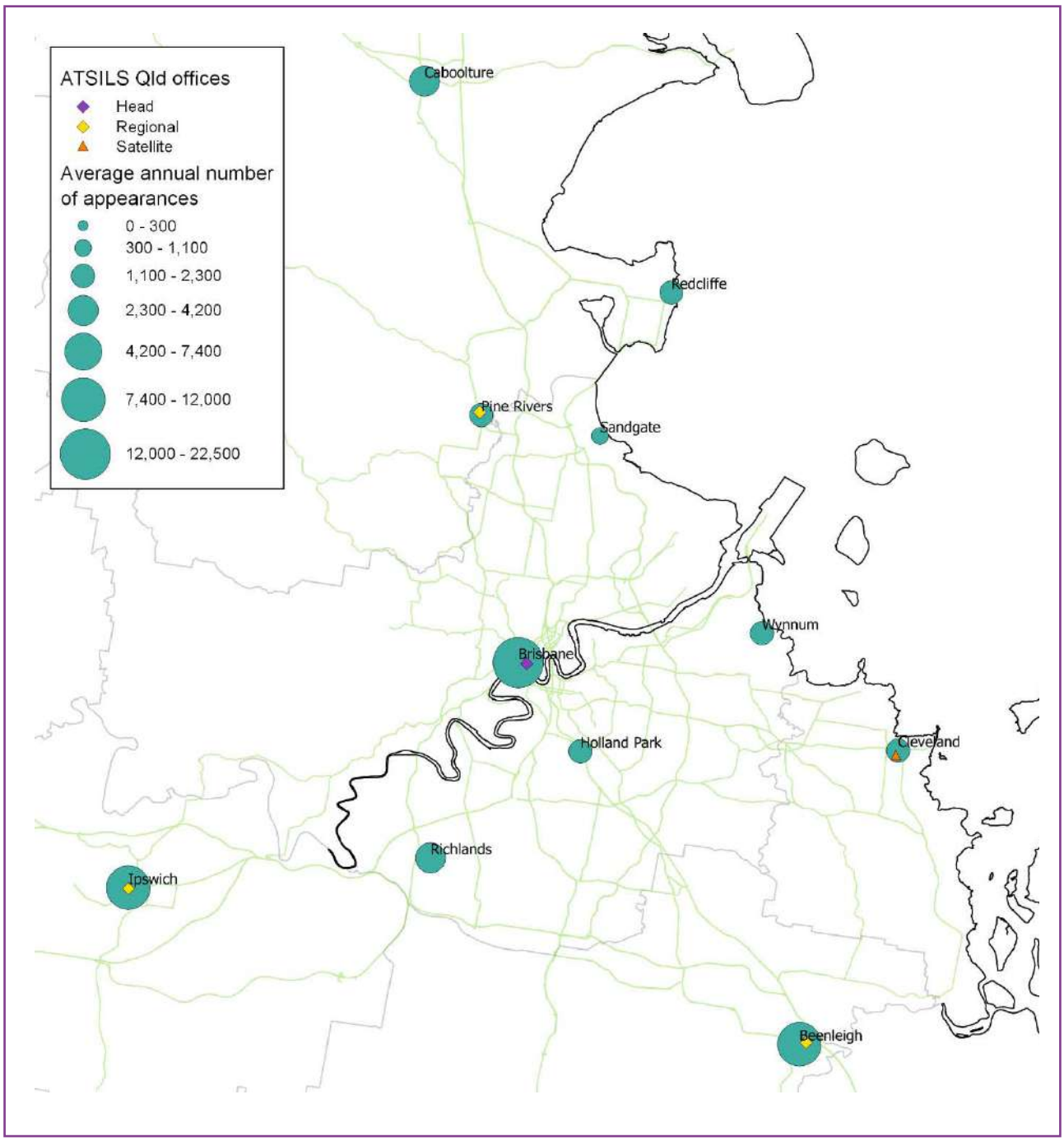
47 Table 8 in the Appendix also provides the annual number of Aboriginal and Torres Strait Islander court appearances in each financial year within the period.

Figure 1: Average annual number of criminal court appearances with Aboriginal and Torres Strait Islander defendants, 2013-14 to 2017-18, Queensland



Based on data from Court Services Queensland, Courts Performance and Reporting Unit

Figure 1A: Average annual number of criminal court appearances with Aboriginal and Torres Strait Islander defendants, 2013-14 to 2017-18, Brisbane and surrounding area



Based on data from Court Services Queensland, Courts Performance and Reporting Unit

Figures 2 and 2A present the **average annual change** (i.e. increase or decrease) in the number of criminal court appearances with Aboriginal and Torres Strait Islander defendants at Queensland court locations between 2013-14 and 2017-18. Figure 2A shows a zoomed-in view of Brisbane and the surrounding area. The teal circles represent court locations where there has been an increase, while the red circles represent court locations where there has been a decrease. The larger the circle, the larger the average annual change (increase or decrease) in number.[48] Table 8 in the Appendix shows the precise numbers on which Figures 2 and 2A are based.

As already noted, Figures 1 and 1A show that the highest volumes of criminal court appearances involving Aboriginal and/or Torres Strait Islander defendants generally occurred in court locations in more populous areas. Similarly, and not surprisingly, Figures 2 and 2A show that the highest average annual increase in number (i.e. the largest teal circles) occurred in the more populous metropolitan areas of Brisbane, Townsville and Cairns, that have relatively large Aboriginal and Torres Strait Islanders population numbers. These court locations were followed by Ipswich, Toowoomba, Mount Isa, Rockhampton and Mackay, which also constitute relatively populous urban areas.[49]

Many of the court locations in small, remote towns in the centre of Queensland, which had relatively small annual numbers of Aboriginal and Torres Strait Islander court appearances (see Figure 1) saw that number decreasing over the five-year period (see Figure 2).

However, a comparison of Figures 1 and 2 reveals variation in the change experienced among some less populous locations. For example, although the following court locations had similar annual average numbers of Aboriginal and Torres Strait Islander court appearances, some experienced an increase in these numbers over the five-year period, while others experienced a decrease:

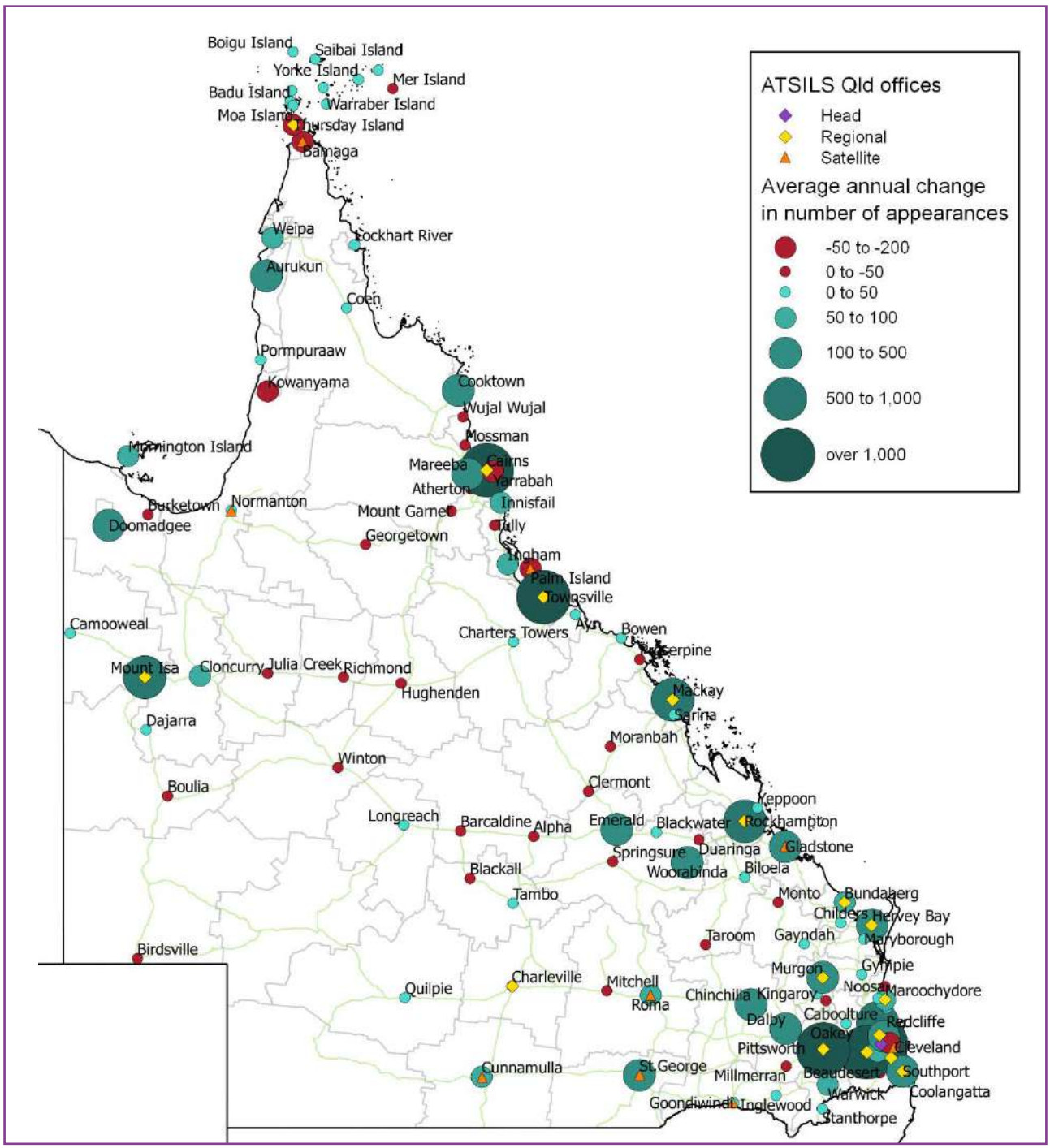
- Aurukun, Doomadgee and Gladstone experienced an increase
- Kowanyama, Palm Island and Yarrabah experienced a decrease.

Increasing versus decreasing trends in the number of Aboriginal and Torres Strait Islander criminal court appearances at different court locations are one useful consideration when planning service provision across regions. Large increases in volumes of court appearances at certain locations may indicate a need for increased resourcing to meet increases in potential demand for services, but this information should be examined in light of other sources of information and contextual factors (such as the availability of other service providers, other types of service provision through digital innovation, etc.).

48 Note that numbers of court appearances can sometimes fluctuate from one year to the next without constituting ongoing trends. As a result, it was more appropriate to map the average annual change in numbers rather than the change in numbers from the start to the end of the five-year period to more accurately represent longer-term trends.

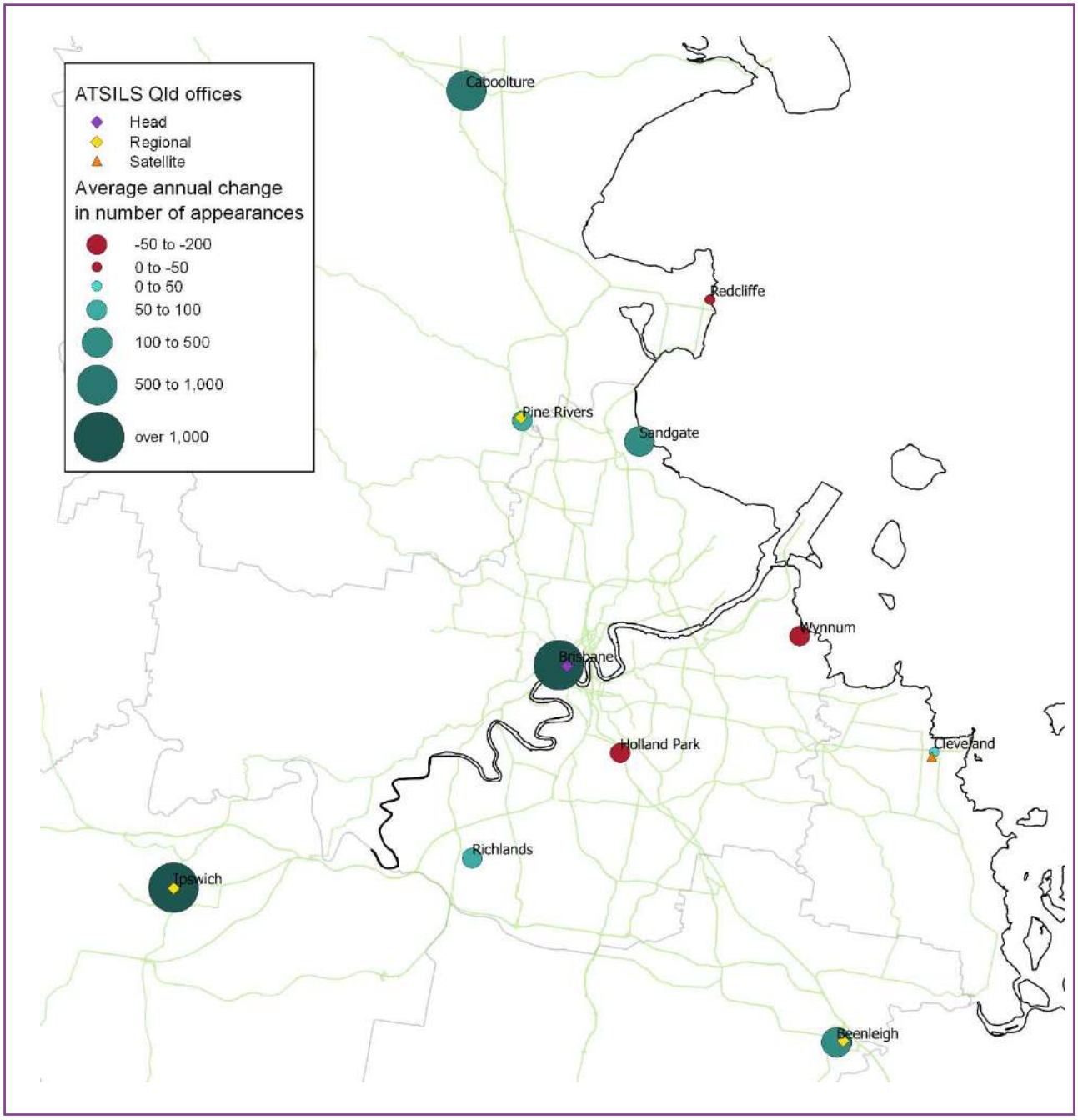
49 Toowoomba, Mount Isa, Rockhampton and Mackay are all 'significant urban areas', while Ipswich falls within the Brisbane 'significant urban area' according to the ABS (see Table 5 and Appendix Table 8).

Figure 2: Average annual change in number of criminal court appearances with Aboriginal and Torres Strait Islander defendants, 2013-14 to 2017-18, Queensland



Based on data from Court Services Queensland, Courts Performance and Reporting Unit

Figure 2A: Average annual change in number of criminal court appearances with Aboriginal and Torres Strait Islander defendants, 2013-14 to 2017-18, Brisbane and surrounding area



Based on data from Court Services Queensland, Courts Performance and Reporting Unit

Figures 3 and 3A present the **percentage change** (i.e. percentage increase or decrease) in the number of criminal court appearances with Aboriginal and Torres Strait Islander defendants at Queensland court locations from 2013-14 to 2017-18. Figure 3A shows a zoomed-in view of Brisbane and the surrounding area. See Table 8 in the Appendix for the precise percentage changes on which Figures 3 and 3A are based.

As Figure 2 is based on average changes in the number of court appearances, lower-volume courts in more rural and remote areas with smaller population numbers tend not to feature in this map as having large increases when compared to high-volume courts in metropolitan areas. However, given that over one-third (34.6%) of Queensland's Aboriginal and Torres Strait Islander population live outside SUAs (see Table 5), it would be useful to be able to see, at a glance, where the main increases in less populous regional and remote areas are located. Figure 3 is useful for quickly highlighting any increases in regional and remote court locations as it is based on percentage change in numbers, so it will, for example, highlight regional and remote areas were numbers have doubled or tripled, even though the overall volumes are still considerably smaller than in major metropolitan areas.[50]

Identifying increases in Aboriginal and Torres Strait Islander court appearances in less urban areas is important for services planning for a number of reasons. First, accessibility to legal services in more remote areas is particularly important given that some of Australia's most disadvantaged Aboriginal and Torres Strait Islanders who are most in need of legal (and other human) services live in remote areas.[51] Second, the resourcing required to provide legal services to different areas may depend on more than just the volume of people requiring assistance. For example, providing legal advice services via outreach to remote locations where large distances are involved is likely to be more resource-intensive than providing similar advice services in metropolitan areas. Thus, in terms of planning service delivery, an increase of a hundred court appearances in a remote area, for example, may require extra resourcing while the same increase in volume in a large metropolitan area may be met with a smaller resource increase. Similarly, large percentage increases in mid-volume courts in regional areas may also require additional resourcing, even though the increase in volumes in these regional areas may be smaller than in the most populous areas.

Figure 3 shows that the populous metropolitan areas of Brisbane, Townsville and Cairns did not have the highest percentage increases in Aboriginal and/or Torres Strait Islander court appearances despite having the largest average annual increases in volume (see Figure 2). Their percentage increases in appearances over the five-year period were 66.4, 32.7 and 29.1 per cent, respectively. The areas with the highest percentage increases, where numbers more than doubled over the period, were:

- Darnley Island (716.7%)
- Chinchilla (261.7%)
- Emerald (139.2%)
- Coen (127.0%)
- Dalby (125.3%)
- Stanthorpe (122.2%)

50 For example, an additional 40 appearances in a low-volume court with only 20 appearances annually would represent a percentage increase of 200.0 per cent, but would represent only a 2.0 per cent increase in a court with 2,000 appearances.

51 Wei, McDonald, and Coumarelos, 2015.

- Sandgate (119.1%)
- Quilpie (115.4%)
- Blackwater (114.7%)
- Gatton (101.3%)
- Badu Island (100.3%).

High percentage increases or decreases are useful to pinpoint areas that may warrant closer examination. As mentioned earlier, however, it is important to examine the volumes behind high percentage figures, together with the service context, to determine what the implications for service planning may be. Not all areas with high percentage changes will necessarily require changes to service delivery.

For example, in remote locations with very small numbers of appearances, a very high percentage increase may reflect only a small number of additional appearances. Such is the case in most court locations in the Torres Strait Islands, with numbers in Darnley Island increasing from 12 to 98 appearances, and in Quilpie where numbers increased from 13 to 28. Nonetheless, information about such increases in less urban areas may be valuable at a local level for considerations around regular outreach services or the implementation of videoconferencing facilities.

Another example to consider is the high percentage increase at the Coen court, representing an increase from 66 appearances in 2013-14 to 149 appearances in 2017-18. Although this is a relatively small increase in numbers compared to major metropolitan areas, it may still be sizeable enough for service providers to consider what its potential impact on service delivery may be. In addition, Coen is relatively close to Aurukun, a court location with 2,672 Aboriginal and Torres Strait Islander appearances in 2017-18, that also saw that number increasing considerably (by 75%) over the five years of this study. Thus, the map shows that the potential demand for legal assistance has likely increased in the Cape York peninsula – an isolated area where legal assistance offices are located long distances away.[52]

Figure 3 also highlights another couple of clusters of court locations with high percentage increases that are worth noting. Chinchilla and Dalby courts are just over 80 km apart, west of Toowoomba. The number of Aboriginal and Torres Strait Islander appearances more than doubled over the 5-year period in both of these locations, from 209 to 756 in Chinchilla and from 720 to 1,622 in Dalby. A similar trend occurred in Emerald and Blackwater, two court locations situated about 200 km west of Rockhampton where, again, the number of Aboriginal and Torres Strait Islander appearances more than doubled in that period. Such increases in locations that are within close distance reveal an increase in potential demand for legal assistance services which may possibly place pressure on existing services in the area.

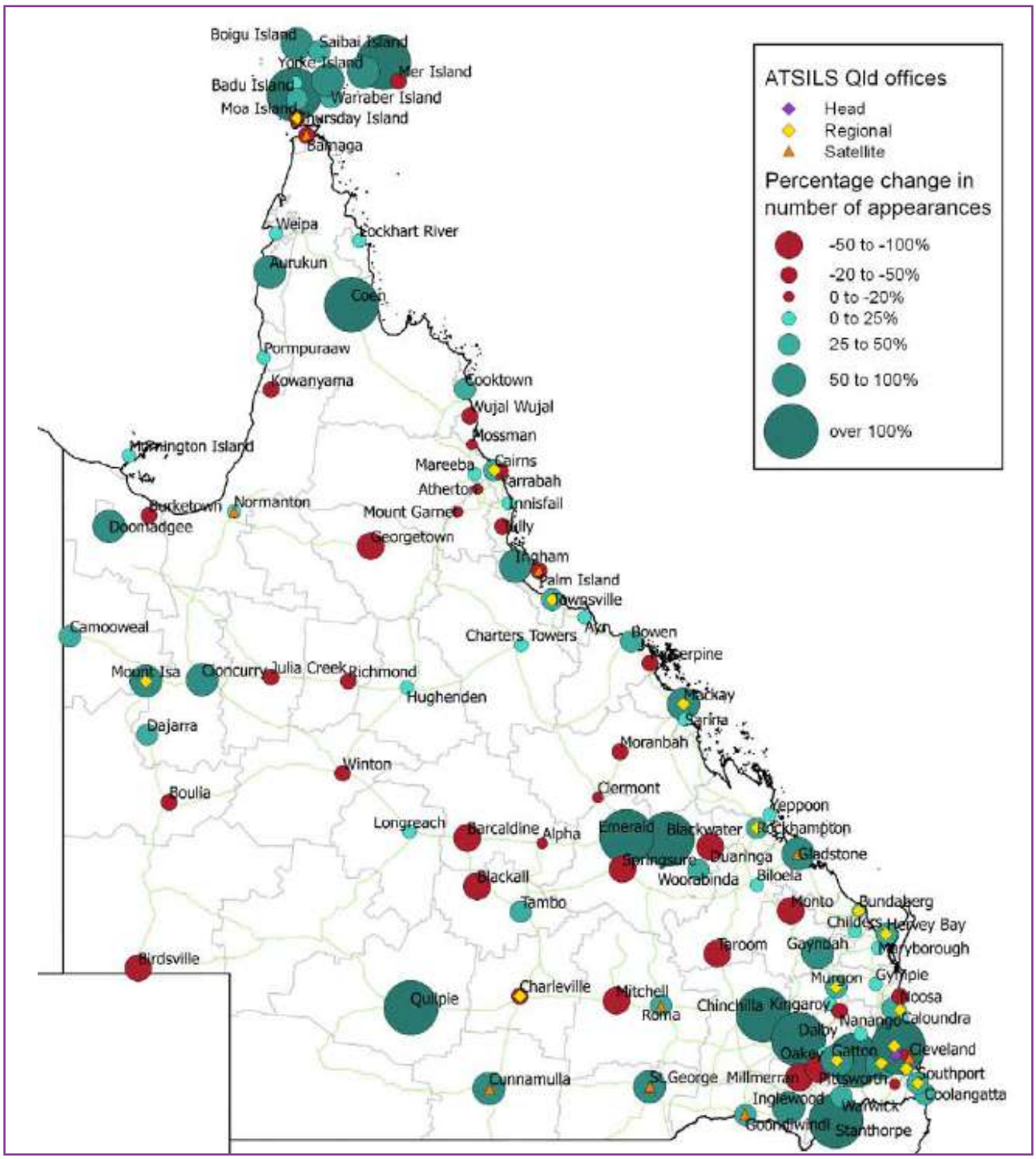
These are just some examples of how the analysis and the maps can provide useful insights into potential demand for services. Increases in court appearances at different locations should also be considered in light of the broader service context, including the types of services needed and the resourcing required to provide these services. Service provision may be more labour-intensive per client for some locations than others, if, for example, long-distance outreach is involved, matters are more serious, clients have multiple, interconnected legal problems or clients have lower

52 ATSILS Qld has a satellite office in Bamaga (440 km from Coen). Cairns is the closest major city (550 km from Coen) with services including ATSILS Qld, Legal Aid Qld and Cairns Community Legal Centre.

capability. Thus, the resourcing required to provide legal assistance per additional appearance (or defendant) may be higher for some areas compared to others.

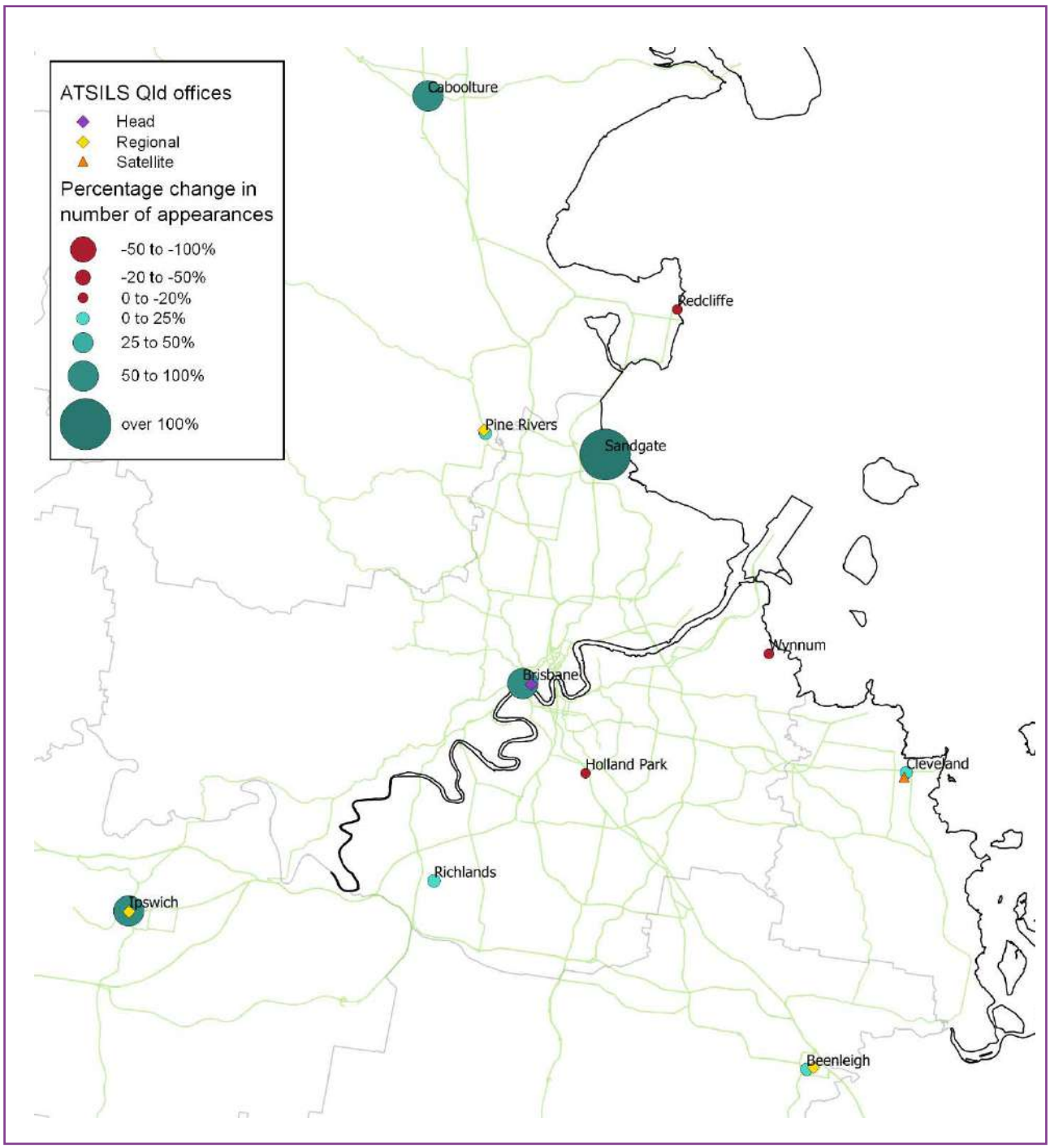
In summary, Figures 1, 2 and 3 and Table 8, considered together with other relevant information about legal needs and service delivery, potentially provide some data relevant to planning service delivery. Figure 1 shows the criminal courts with high-volumes of Aboriginal and Torres Strait Islander appearances, while Figure 2 shows the courts with the highest increases in the volumes of these appearance over recent years. Both of these figures will typically highlight high-volume courts in more populous urban areas. Figure 3, which presents the percentage change in appearances, is useful in highlighting any increases in lower-volume courts in less populous areas.

Figure 3: Percentage change in number of criminal court appearances with Aboriginal and Torres Strait Islander defendants, 2013-14 to 2017-18, Queensland



Based on data from Court Services Queensland, Courts Performance and Reporting Unit

Figure 3A: Percentage change in number of criminal court appearances with Aboriginal and Torres Strait Islander defendants, from 2013-14 to 2017-18, Brisbane and surrounding area



Based on data from Court Services Queensland, Courts Performance and Reporting Unit

Conclusion

This project aimed to test the feasibility of extending the model developed for the ALS NSW/ACT to inform their service planning (in NSW) to other Australian jurisdictions, by assessing the availability of necessary data in other jurisdictions and by seeking to conduct a similar data analysis in a second state/territory. As a result of the availability, timeliness and quality of the criminal courts data received within the project's timeframe, the analysis was conducted using Queensland data. The Queensland data had little missing information – Indigenous status was unknown for only 4.3 per cent of criminal court appearances overall. Consequently, the original model developed in NSW using criminal courts data was successfully extended to Queensland in the present study.[53]

Queensland findings

The present findings for Queensland were consistent with existing evidence of the considerable overrepresentation of the Aboriginal and/or Torres Strait Islander population in the criminal justice system. Over the five-year period examined, criminal court appearances with Aboriginal and/or Torres Strait Islander defendants accounted for 21.4 per cent of all appearances on average, despite only comprising about 3.5 per cent of the Queensland population aged 10 and over.

The analysis revealed that the total number of all appearances in Queensland criminal courts increased by 24.4 per cent over the period 2013-14 to 2017-18, while the total number of court appearances involving Aboriginal and/or Torres Strait Islander defendants increased by 36.4 per cent. Given that the largest part of the workload for ATSILSs is typically in providing assistance to Aboriginal and/or Torres Strait Islander people facing criminal charges,[54] this sizeable increase in criminal court appearances indicates a considerable increase in the likely demand for ATSILS Qld services over the five-year period. Further, if the current trend continues, demand for ATSILS Qld services for criminal matters would be likely to continue to increase into the future.

The large majority of criminal court appearances involving Aboriginal and/or Torres Strait Islander defendants were before the Magistrates Court in each year of the period examined. Appearances involving juvenile defendants, either before the Children's Court (Magistrates Court) or the Children's Court of Queensland (District Court), accounted for the next highest volume of appearances, showing the highest percentage increase over the five-year period. Court appearances in the combined Children's Court (at the Magistrates and District levels) accounted for 17.3 per cent of all appearances in 2013-14 but 20.0 per cent of all appearances in 2017-18. These figures suggest that legal assistance services are likely to have experienced increased demand from young Aboriginal and/or Torres Strait Islander people during the five-year period, and may experience further increased demand for such assistance in the future if the current trend persists.

In keeping with their location in relatively populous areas, Brisbane, Townsville and Cairns were the court locations with the highest number of criminal court appearances with Aboriginal and/or Torres Strait Islander defendants, followed by Beenleigh, Mount Isa, Ipswich and Rockhampton. These populous areas continued to account for the vast majority of criminal court appearances with Aboriginal and/or Torres Strait Islander defendants throughout the five-year period. Nonetheless,

53 The only difference was that the Qld maps did not include an overlay of the ATSILS Qld service structure, as this information was not provided to the Foundation within the project timeframe.

54 The ATSILS Qld Annual Report 2016-17 shows that nearly 90% of case and duty lawyer matters handled by ATSILS Qld staff in 2016-17 were criminal matters. The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, 2017. The Qld profile of the ATSILS National Picture 2018-19 also shows that 83.1% of new services provided by ATSILS Qld in 2018-19 were for criminal matters.

the analysis also showed that the size of the increase in criminal court appearances involving Aboriginal and/or Torres Strait Islander defendants was not uniform across the state, with some regional and rural areas recording high percentage increases, providing further useful information that could be considered together with other relevant factors when planning legal assistance services across the state.

As stated earlier, these findings are based on data from 2017-18 and, ideally, an updated analysis using the most recent available data would be recommended to adequately inform service planning. Nevertheless, the overall picture that emerged from this analysis, as well as the trends identified over the five-year period, are likely to be still relevant in the current context, and may remain so for the immediate future.

General findings of the feasibility study

A key finding of the present feasibility study was that, at the time of our request, criminal courts data on Indigenous status in a number of states/territories was of insufficient quality, both for reliable analysis of the potential demand of ATSILS services and, more broadly, for accurate reporting on the more basic question of the number of criminal court matters involving Aboriginal and Torres Strait Islanders. This highlights the need for a better, more integrated and more systematic data collection process on Indigenous status in the criminal justice sector.[55]

Box 7: Data collection in courts settings

The accurate recording of Indigenous status is critical in not only precisely monitoring the level of overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system, but in particular to be able to plan legal assistance services to appropriately respond to this overrepresentation and ensure improved access to justice for Aboriginal and Torres Strait Islanders.

The challenges and limitations of having to rely on data collected by the police that is then transferred to the courts are mentioned in this report. A key element of improvement going forward would be for the courts to work collaboratively on the development of consistent data collection, and in particular on the Indigenous status of all defendants. This might help in overcoming issues of system compatibility, around self-identification in a police setting, or incomplete data when defendants appear in court without prior personal contact with police.

While criminal law is largely the responsibility of states and territories, a collaborative process to achieve better and more consistent data may be an area where the Commonwealth would be in a position to provide greater leadership, particularly as the Commonwealth is currently largely responsible for the funding of Aboriginal and Torres Strait Islander legal assistance services. The challenges associated with improved data consistency and reliability warrant a broad approach as part of a national legal sector data strategy to be better equipped in understanding and addressing the critical issue of Aboriginal and Torres Strait Islander overrepresentation in the criminal justice system.

55 Again, it is recognised that processes do change over time and it is possible that the availability and quality of data has improved since jurisdictions were first contacted for the purpose of this study.

Some thoughts on useful next steps for further exploring the current limitations with the recording of Indigenous status in criminal courts statistics are provided in the section below on *Next steps in a national planning tool for ATSILS services*.

The present model to assist planning of ATSILS services for criminal matters could potentially be refined to take into account differences in how ATSILSs are structured and the types of services they provide for criminal matters in different jurisdictions. This may include further refining the indicator using data on number of charges and/or offence types if and when it is available. Tailoring the planning tool for criminal matters to the specific work of each ATSILS in this way could be envisaged with the support and collaboration from the relevant ATSILSs services and with reliable administrative service data.

It may also be beneficial to further refine the planning model to include family and civil law matters, such as DVO applications, care and protection matters or coronial enquiries, to more comprehensively encompass the scope of matters for which ATSILSs provide assistance. However, there are likely to be several challenges with expanding the model to non-criminal matters. First, as was the case with criminal court matters, Indigenous status may not always be well enough recorded in family and civil court matters for reliable analysis. Second, it is likely that such expansion would also require specifically tailoring the model to suit the particular family and civil court matters relevant to each ATSILS, with their support and collaboration, rather than using a one-size-fits-all approach. Third, a further challenge is that Family Court and Civil Court statistics are less available in a readily usable form than criminal court statistics in a number of states/territories. For example, in NSW, while BOCSAR collates, cleans and reports annually on criminal courts statistics in NSW, there is no equivalent NSW body that holds and reports routinely on civil court and family court data. Thus, data for a given jurisdiction may need to be sourced from a variety of bodies, which may have data in non-comparable forms with different strengths and weaknesses, likely requiring a labour-intensive process to combine the data into a usable form.

Given these likely challenges with refining the present ATSILS planning model to include information on types of assistance provided for non-criminal matters, it is sensible to first focus on refining the model using criminal matters only.

Box 8: Report from the Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody to the NSW Parliament – Recommendation 7

In its report tabled in the NSW Parliament in April 2021, the Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody examined a range of available data with regards to the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system including imprisonment rates, nature of offences, court finalisations, custodial length and more. The report highlights many limitations and concerns in relation to the completeness, accuracy and reliability of such data, and this despite the valuable support of an agency like BOCSAR that collates and analyses a range of data from various sources. The Committee further recommends *that BOCSAR lead a project to identify ways in which data collection and reporting could be enhanced in relation to the contact First Nations people have with the criminal justice system, with input from the NSW Police Force, Corrective Services NSW and the NSW Courts*.[56]

56 Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, 2021.

Next steps in a national planning tool for ATSILS services

The present study requested criminal courts data from six states/territories – Qld, SA, WA, Vic, Tas and NT. Although ACT data was also requested, this request was for the purpose of providing further information to support planning of ALS NSW/ACT services rather than to test the model for another ATSILS. Data was received within the timeframe for the study from two of these states – Queensland and SA, although data may have been available from other jurisdictions (WA and Vic) had the Foundation proceeded with the requested ethics approval and/or be in a position to extend the study's timeframe. While the model was successfully extended to Queensland, examination of the SA data revealed that there was too much missing data on Indigenous status to reliably extend the model to this state using all criminal court matters. In addition, the response from Tasmania stated that their Indigenous status data was of insufficient quality for reporting.

To further examine the feasibility of extending this model using criminal courts data to jurisdictions other than NSW and Queensland, an examination of the criminal courts data in other states/territories would be a first step. The model could then be extended to any states/territories that have reliable enough criminal courts data, including sufficiently reliable information on Indigenous status.

For any states/territories whose criminal courts data on Indigenous status is not recorded well enough to support extending the present model to that jurisdiction, further exploration of the nature of the cases where Indigenous status is unknown would be useful. For example, it would be worthwhile to examine whether the high proportion of missing information on Indigenous status is generally evident across all courts or is more concentrated in some courts in that state/territory, such as at some levels of court or some geographic locations. Such an examination would help identify where in particular collection practices on Indigenous status could be improved.

The SIQ as devised by the ABS has a single category, 'not stated', for all instances where Indigenous status is unknown. However, the Queensland courts data has separate categories for:

- 'Refused', where the individual has been asked their Indigenous status but was not willing to disclose it, and
- 'Not provided', where the courts data has no information on Indigenous status.

If other state/territories similarly have separate categories for the reason why Indigenous status is unknown in their criminal courts statistics, such information would help identify the types of strategies that may be useful for improving data on Indigenous status. For example, strategies to encourage self-identification or strategies to improve data collection processes, or both, may be useful, and again, the type of strategy needed may vary by court level or location.

The accurate recording of Indigenous status is obviously critical in not only monitoring the level of overrepresentation of Aboriginal and/or Torres Strait Islander people in the criminal justice system, but in particular to be able to plan legal assistance services to appropriately respond to this overrepresentation and ensure improved access to justice for Aboriginal and Torres Strait Islanders.

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Appendix

Sample from initial study for the ALS NSW/ACT

Table 6 below shows an example of top-level information provided to the ALS NSW/ACT as part of the initial study conducted for NSW in 2018. Each court location in NSW was linked to the ALS NSW/ACT office servicing that location, if there is one. ASL NSW/ACT offices are further grouped into clusters. This table shows a total of finalisations that occurred in court locations serviced by each cluster of ALS NSW/ACT offices, including the sum of finalisations that occurred in court locations not currently serviced by the ALS NSW/ACT.

Table 6: Total number of finalisations with Aboriginal and/or Torres Strait Islander defendants, index of finalised charges and percentage of finalisations with Aboriginal status not known, in court locations serviced by each cluster of ALS offices, 2012 to 2016, NSW

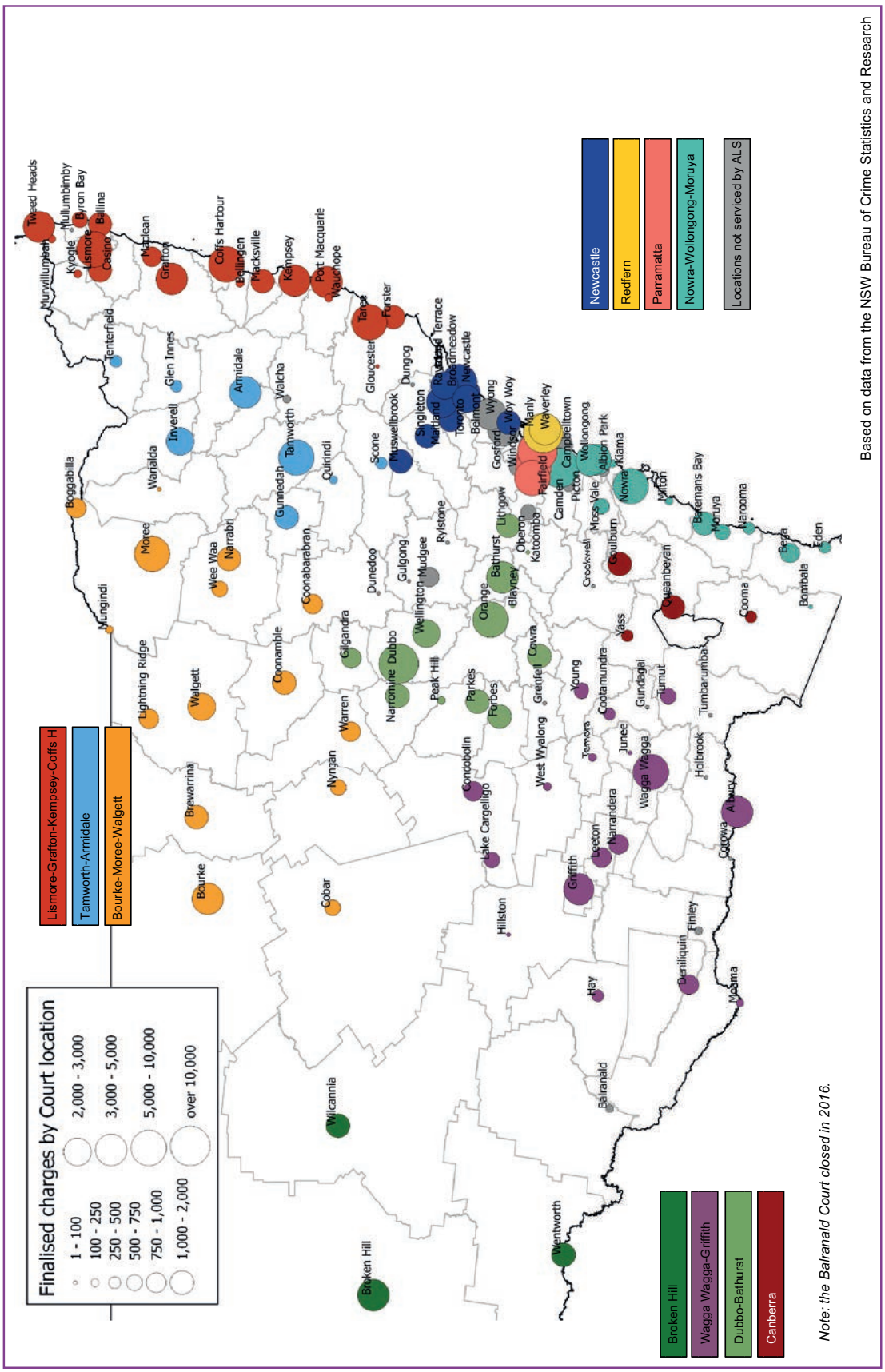
	2012			2013			2014			2015			2016			Total 2012-2016				
Cluster	Aboriginal	Index	%NK	Aboriginal	Index	%NK	Aboriginal	Index	%NK	Aboriginal	Index	%NK	Aboriginal	Index	%NK	**Aboriginal**	**Index**	**%NK**	**%Abor**	**%Index**
Bourke-Moree-Walgett	1,760	4,018	7.6	1,793	4,089	7.2	1,944	4,451	9.4	1,841	4,577	9.7	1,888	4,606	11.9	**9,226**	**21,741**	**9.2**	**7.3**	**14.6**
Broken Hill	491	1,202	9.5	465	1,137	9.6	451	1,066	11.2	471	1,109	12.4	477	1,083	12.8	**2,355**	**5,597**	**11.2**	**-2.9**	**-9.9**
Canberra*	318	679	16.2	287	647	21.8	309	709	24.5	429	910	21.9	417	945	25.3	**1,760**	**3,890**	**22.2**	**31.1**	**39.2**
Dubbo-Bathurst	2,213	5,311	8.2	2,148	5,124	10.4	2,293	5,501	10.7	2,514	6,227	12.4	2,808	6,728	11.4	**11,976**	**28,891**	**10.7**	**26.9**	**26.7**
Lismore-Grafton-Kempsey-CoffsH	3,075	6,935	9.1	3,338	7,738	8.4	3,494	7,938	8.9	3,632	8,350	10.4	3,918	9,326	11.4	**17,457**	**40,287**	**9.7**	**27.4**	**34.5**
Newcastle	1,981	4,780	10.6	2,099	5,130	10.9	2,200	5,258	11.4	2,279	5,615	12.3	2,377	6,074	11.3	**10,936**	**26,857**	**11.3**	**20.0**	**27.1**
Nowra-Wollongong-Moruya	2,609	6,316	8.4	2,419	5,905	9.3	2,277	5,455	9.6	2,367	5,855	9.9	2,636	6,448	10.1	**12,308**	**29,979**	**9.5**	**1.0**	**2.1**
Parramatta	2,718	6,572	8.8	2,655	6,329	10.0	2,642	6,434	10.2	2,786	6,753	10.9	3,004	7,190	10.8	**13,805**	**33,278**	**10.2**	**10.5**	**9.4**
Redfern	2,363	5,467	11.7	2,475	5,754	11.4	2,471	5,736	12.3	2,614	6,074	12.5	2,726	6,439	13.0	**12,649**	**29,470**	**12.2**	**15.4**	**17.8**
Tamworth-Armidale	1,276	3,100	9.8	1,405	3,396	10.9	1,420	3,417	9.8	1,365	3,423	10.9	1,445	3,604	10.2	**6,911**	**16,940**	**10.3**	**13.2**	**16.3**
Wagga Wagga-Griffith	1,430	3,388	10.3	1,593	3,816	12.5	1,766	4,276	12.8	1,867	4,481	13.9	2,105	5,126	13.0	**8,761**	**21,087**	**12.6**	**47.2**	**51.3**
Not serviced by ALS	2,539	5,540	15.2	2,651	6,079	15.3	2,995	6,717	14.8	3,253	7,496	13.9	3,413	7,866	14.3	**14,851**	**33,698**	**14.7**	**34.4**	**42.0**

** Numbers for Canberra only include data for the NSW Courts*

Figure 4 shows a map of NSW with the index of finalised charges for each court location. The size of the circles increases with the index, and the colour of the circles relate to the ALS NSW/ACT clusters of offices.

Refer to the Foundation's website on **www.lawfoundation.net.au/research** for more background information, as well as definitions and notes of caution when using this data.

Figure 4: Index of finalised charges with Aboriginal and/or Torres Strait Islander defendants by court location in NSW – Totals for the period 2012-2016



Data requests

The following template letter was used to introduce the project and make initial data requests.

LAW AND JUSTICE FOUNDATION

Dear [***contact name***],

Criminal court data for planning legal assistance services for Aboriginal and Torres Strait Islander people

The Law and Justice Foundation of NSW is an independent research organisation with a statutory mandate to improve access to justice, especially for socially and economically disadvantaged people. Over time, the Foundation's research has had a significant influence on legal service policy and delivery. Through our data analysis and mapping work, in particular, we assist legal assistance services with planning client-centred service delivery through identifying and mapping legal need.

At the request of the Aboriginal Legal Service (NSW/ACT) Ltd (ALS), the Foundation has recently completed a data project to assist with planning for their Criminal Law services. Utilising criminal court statistics on finalised matters with Indigenous defendants sourced from the NSW Bureau of Crime Statistics and Research (BOCSAR), the Foundation devised a proxy measure to indicate potential demand for ALS services in NSW. We have developed a database which allows users to search by court type and location, or by relevant level of ALS service structure, that is available from our website: www.lawfoundation.net.au/reports/alsdata.

The Board of the ALS is very happy with the planning 'tool' provided. In particular, it provides important planning data to enable the ALS to most effectively target their resources to support Indigenous clients in the criminal justice system – an essential element in any strategy to address Indigenous overrepresentation in custody.

In recognition of the potential of the Foundation's ALS data project at a national level, the Attorney-General's Department has commissioned the Foundation to explore the wider application of this approach by seeking to undertake a similar study in another Australian jurisdiction. For this purpose, we have contacted NATSILS for their input. However, as the project requires criminal court data, we are writing to you to enquire about the availability of this data in [***State/Territory***], as the project could not proceed in [***State/Territory***] without it.

Our approach is to determine what might be the best available proxy measure for potential demand for legal assistance services in a specific area of interest. In NSW, we used counts of criminal matter finalisations with Indigenous defendants (also examining matters where Indigenous status was not recorded), largely because appearance data was not available. However, we are keen to discuss with you what data might be particularly relevant, and available for this task.

At the outset, then, we would like to enquire about the availability of the following data in your jurisdiction:

- number of **court appearances** (including for breaches and AVOs) in the Children's, Local/Magistrate's and higher courts:
  - by court (jurisdiction) and by court location,
  - by Indigenous status (including where it is not known)
  - for the most recent data, preferably for the most recent five-year period available. (Data for multiple years would be preferred as it allows analysis to identify and account for unusual confounding events, etc.)
- a **count of finalisations** with the above breakdown, preferably with additional information on the **number of charges** (as we used in NSW).

Is this information collected in [***State/Territory***]? If it is, we would appreciate advice as to the process by which we might obtain access to that data. If it is not, we would be keen to discuss with you possible other options. We identified [***insert dept/agency***] as potentially being the best contact to answer our query, however if this is not the case we would be grateful if you could let us know who we should contact.

I will be in touch in the coming days to discuss this request with you and I am happy to provide additional information if you require more detail. I look forward to speaking to you and I can be contacted on 02 8227 3200 or gmulherin@lawfoundation.net.au or our researcher, Delphine Bellerose can be contacted at dbellerose@lawfoundation.net.au.

Yours sincerely

Geoff Mulherin
Director

Minor amendments were made based on specific circumstances and information gathered from the preliminary review, and the letter was then posted or emailed to the following recipients. When a data request form was available online, the completed form was attached to the letter.

Table 7: List of contacts who were sent the data request

State/ Territory	Contact
NT	Mr Greg Shanahan Chief Executive NT Department of the Attorney-General and Justice
Qld	Queensland Courts Services Courts Performance and Reporting Unit
SA	Ms Julie-Anne Burgess State Courts Administrator Courts Administration Authority of South Australia
Tas	Ms Kathrine Morgan-Wicks Secretary of the Department of Justice
WA	Research Application and Advisory Committee Department of Justice
ACT	Mr Richard Glenn Deputy Director-General, Justice Justice and Community Safety Directorate
Vic	Mr Peter Fitzgerald Director of Strategy, Policy and Research Court Services Victoria Contact was made through Ms Fiona Dowsley Chief Statistician at the Crime Statistics Agency

Ethical considerations

Formal ethics approval has not been sought for this research project for the following reasons:

- While this study falls under the definition of “human research” in that it requires accessing information that relates to people, it does not involve any interaction with participants.
- The foreseeable impact on the community of any published research output presents minimal risk but carries potential benefit in informing service delivery to the community.
- The study is solely based on existing data sets, the data for which is based on information that is publicly available. Such data (counts of finalisations by year and levels of court) is already available in the public domain through Annual Reports, statistical summary reports published by the Department of Justice or the ABS.
- Our request includes additional information by court locations, count of charges and Indigenous status, but the data remains aggregated and unidentified.

For these reasons, and in due consideration of ethical values and principles outlined in the National Statement on Ethical Conduct in Human Research 2007 (Updated 2018), it was assessed that this research only carries negligible risk. As such, we have assessed this research project as exempted from ethical review as per section 5.1.22 of the National Statement on Ethical Conduct in Human Research that stipulates:

5.1.22 Institutions may choose to exempt from ethical review research that:

(a) is negligible risk research (as defined in paragraph 2.1.7); and

(b) involves the use of existing collections of data or records that contain only non-identifiable data about human beings.

Queensland data

Table 8: Criminal court appearances with Aboriginal and/or Torres Strait Islander defendants by court location, 2013-14 to 2017-18, Queensland

Court location	Significant Urban Area / other regional or remote*	2013-14 N	2014-15 N	2015-16 N	2016-17 N	2017-18 N	Annual average N	Average annual change N	% change over period %
Atherton	Other regional or remote	728	842	992	1,026	702	858	-7	-3.6
Aurukun	Other regional or remote	1,527	1,592	1,799	1,759	2,672	1,870	286	75.0
Ayr	Other regional or remote	690	594	653	630	729	659	10	5.7
Badu Island	Other regional or remote	73	119	118	90	146	109	18	100.3
Bamaga	Other regional or remote	958	905	806	835	680	837	-70	-29.0
Barcaldine	Other regional or remote	52	17	9	23	10	22	-11	-80.8
Beaudesert	Other regional or remote	392	432	334	323	386	373	-2	-1.5
Beenleigh	Brisbane	10,825	13,143	11,780	11,896	12,278	11,984	363	13.4
Biloela	Other regional or remote	213	153	156	214	262	199	12	23.3
Birdsville	Other regional or remote	<5	<5	<5	<5	<5	<5	-1	-100.0
Blackall	Other regional or remote	21	10	14	22	9	15	-3	-57.1
Blackwater	Other regional or remote	167	302	571	582	359	396	48	114.7
Boigu Island	Other regional or remote	29	60	50	46	45	46	4	55.2
Boulia	Other regional or remote	34	20	20	20	22	23	-3	-35.3
Bowen	Other regional or remote	273	289	416	575	376	386	26	37.7
Brisbane	Brisbane	17,792	17,779	21,802	25,328	29,610	22,462	2,955	66.4
Bundaberg	Bundaberg	1,768	1,806	1,256	2,118	2,111	1,812	86	19.4
Burketown	Other regional or remote	64	173	32	81	42	78	-6	-34.4
Caboolture	Brisbane	2,842	3,209	3,871	5,390	5,017	4,066	544	76.5
Cairns	Cairns	18,517	19,750	21,887	22,714	23,914	21,356	1,349	29.1
Caloundra	Sunshine Coast	373	399	453	454	444	424	18	19.0
Camooweal	Other regional or remote	56	26	47	50	80	52	6	42.9
Charleville	Other regional or remote	562	660	597	712	437	594	-31	-22.2
Charters Towers	Other regional or remote	438	631	627	544	486	545	12	11.0
Cherbourg	Other regional or remote	729	820	1,081	816	470	783	-65	-35.5
Childers	Other regional or remote	26	23	32	19	30	26	1	15.4
Chinchilla	Other regional or remote	209	244	504	659	756	474	137	261.7
Clermont	Other regional or remote	16	15	<5	8	15	12	0	-6.3
Cleveland	Brisbane	1,632	1,706	1,879	1,701	1,718	1,727	22	5.3
Cloncurry	Other regional or remote	279	467	440	650	505	468	57	81.0
Coen	Other regional or remote	66	132	204	180	149	146	21	127.0
Cooktown	Other regional or remote	1,204	1,319	1,376	1,776	1,803	1,496	150	49.8
Coolangatta	Gold Coast - Tweed Heads	118	137	199	104	164	144	12	39.0
Cunnamulla	Other regional or remote	531	528	777	1,039	830	741	75	56.3
Dajarra	Other regional or remote	24	12	6	15	33	18	2	37.5
Dalby	Other regional or remote	720	1,013	1,198	1,425	1,622	1,196	226	125.3
Darnley Island	Other regional or remote	12	64	34	67	98	55	22	716.7
Doomadgee	Other regional or remote	1,373	2,227	2,166	2,416	2,389	2,114	254	74.0
Duaringa	Other regional or remote	8	<5	<5	<5	<5	<5	-2	-100.0

Court location	Significant Urban Area / other regional or remote*	2013-14 N	2014-15 N	2015-16 N	2016-17 N	2017-18 N	Annual average N	Average annual change N	% change over period %
Emerald	Emerald	313	290	593	686	748	526	109	139.2
Gatton	Other regional or remote	149	148	215	297	299	222	38	101.3
Gayndah	Other regional or remote	98	154	129	147	185	142	22	88.3
Georgetown	Other regional or remote	22	7	5	12	8	11	-4	-63.6
Gladstone	Gladstone	1,295	1,329	1,262	1,824	2,191	1,580	224	69.2
Goondiwindi	Other regional or remote	405	318	420	476	578	439	43	42.7
Gympie	Gympie	509	661	948	789	598	701	22	17.4
Hervey Bay	Hervey Bay	1,045	1,018	1,257	1,381	1,528	1,246	121	46.2
Holland Park	Brisbane	1,409	1,288	1,659	1,395	1,188	1,388	-55	-15.7
Hughenden	Other regional or remote	49	68	55	59	49	56	0	1.0
Ingham	Other regional or remote	399	543	678	694	616	586	54	54.4
Inglewood	Other regional or remote	9	14	6	21	16	13	2	80.6
Innisfail	Other regional or remote	1,406	1,530	1,826	1,888	1,721	1,674	79	22.4
Ipswich	Brisbane	7,664	8,768	7,327	10,515	12,709	9,397	1,261	65.8
Julia Creek	Other regional or remote	<5	<5	7	<5	<5	<5	0	-33.3
Kingaroy	Kingaroy	816	813	592	543	874	728	15	7.2
Kowanyama	Other regional or remote	1,521	1,858	2,433	1,451	875	1,627	-162	-42.5
Lockhart River	Other regional or remote	358	413	671	605	366	483	2	2.2
Longreach	Other regional or remote	115	102	208	149	131	141	4	13.9
Mabuiag Island	Other regional or remote	16	9	41	23	20	22	1	25.0
Mackay	Mackay	2,843	3,071	4,006	5,627	5,662	4,242	705	99.2
Mareeba	Other regional or remote	2,590	2,704	2,973	2,893	3,106	2,853	129	19.9
Maroochydore	Sunshine Coast	1,764	1,812	1,708	1,549	2,058	1,778	74	16.7
Maryborough	Maryborough	711	681	704	858	804	751	23	13.0
Mer Island	Other regional or remote	35	34	19	26	25	28	-2	-27.5
Millmerran	Other regional or remote	12	10	8	6	<5	8	-3	-83.3
Mitchell	Other regional or remote	66	68	52	36	29	50	-9	-56.1
Moa Island	Other regional or remote	46	81	86	47	59	64	3	29.7
Monto	Other regional or remote	<5	<5	6	<5	<5	<5	-1	-71.4
Moranbah	Other regional or remote	54	40	63	84	39	56	-4	-27.8
Mornington Island	Other regional or remote	1,797	2,452	2,598	2,661	2,019	2,305	56	12.4
Mossman	Other regional or remote	728	599	498	674	662	632	-17	-9.1
Mount Garnet	Other regional or remote	39	45	28	27	36	35	-1	-7.7
Mount Isa	Mount Isa	7,428	8,526	11,294	9,694	11,395	9,667	992	53.4
Murgon	Other regional or remote	1,899	1,730	2,446	2,834	2,785	2,339	222	46.7
Nambour	Sunshine Coast	105	128	126	150	149	132	11	41.9
Nanango	Other regional or remote	92	43	95	91	64	77	-7	-30.4
Noosa	Sunshine Coast	125	114	134	120	83	115	-11	-33.6
Normanton	Other regional or remote	725	927	848	1,225	863	918	34	19.0
Oakey	Other regional or remote	84	75	106	154	91	102	2	8.3
Palm Island	Other regional or remote	2,104	1,770	2,152	1,511	1,466	1,801	-160	-30.3
Pine Rivers	Brisbane	1,998	2,034	2,584	2,416	2,387	2,284	97	19.5

Court location	Significant Urban Area / other regional or remote*	2013-14 N	2014-15 N	2015-16 N	2016-17 N	2017-18 N	Annual average N	Average annual change N	% change over period %
Pittsworth	Other regional or remote	23	6	31	7	6	15	-4	-73.9
Pormpuraaw	Other regional or remote	404	424	615	650	418	502	4	3.5
Proserpine	Other regional or remote	206	338	382	339	159	285	-12	-22.8
Quilpie	Other regional or remote	13	8	18	24	28	18	4	115.4
Redcliffe	Brisbane	1,983	2,013	2,301	2,101	1,929	2,065	-14	-2.7
Richlands	Brisbane	3,893	3,121	3,665	3,485	4,162	3,665	67	6.9
Richmond	Other regional or remote	15	12	11	11	10	12	-1	-33.3
Rockhampton	Rockhampton	6,577	5,134	6,377	9,251	9,624	7,392	762	46.3
Roma	Other regional or remote	619	724	986	984	857	834	60	38.4
Saibai Island	Other regional or remote	29	41	52	70	37	46	2	27.6
Sandgate	Brisbane	523	738	1,293	932	1,146	926	156	119.1
Sarina	Other regional or remote	96	93	109	175	105	116	2	9.4
Southport	Gold Coast - Tweed Heads	2,590	3,312	4,102	3,730	3,403	3,427	203	31.4
Springsure	Other regional or remote	<5	0	0	0	0	0	0	-100.0
St.George	Other regional or remote	792	857	950	1,293	1,446	1,068	164	82.6
Stanthorpe	Other regional or remote	68	106	119	120	150	113	21	122.2
Tambo	Other regional or remote	6	9	<5	<5	8	5	1	33.3
Taroom	Other regional or remote	8	5	<5	8	<5	<5	-2	-75.0
Thursday Island	Other regional or remote	1,408	1,459	1,181	1,165	1,125	1,268	-71	-20.1
Toogoolawah	Other regional or remote	51	18	27	56	59	42	2	15.7
Toowoomba	Toowoomba	4,920	5,031	5,875	7,483	9,332	6,528	1,103	89.7
Townsville	Townsville	19,844	19,935	21,411	22,830	26,327	22,069	1,621	32.7
Tully	Other regional or remote	272	233	295	184	190	235	-21	-30.1
Warraber Island	Other regional or remote	19	27	17	28	24	23	1	26.3
Warwick	Warwick	642	779	1,021	1,117	946	901	76	47.4
Weipa	Other regional or remote	1,180	987	794	945	1,432	1,068	63	21.4
Winton	Other regional or remote	24	38	45	20	15	28	-2	-37.5
Woorabinda	Other regional or remote	1,223	1,315	2,247	1,908	1,626	1,664	101	33.0
Wujal Wujal	Other regional or remote	220	149	131	167	132	160	-22	-40.0
Wynnum	Brisbane	1,432	1,714	1,379	1,511	1,202	1,448	-58	-16.1
Yam Island	Other regional or remote	19	9	21	27	29	21	3	52.6
Yarrabah	Other regional or remote	1,683	1,512	1,343	1,023	1,150	1,342	-133	-31.7
Yeppoon	Yeppoon	207	224	198	227	219	215	3	5.8
Yorke Island	Other regional or remote	28	78	57	37	42	48	4	52.7
Total	Other regional or remote	159,208	168,342	188,110	203,854	217,225	187,349	14,504	8.1

Based on data from Court Services Queensland, Courts Performance and Reporting Unit

* Significant Urban Areas (SUA) are as defined by the ABS. The SUA structure of the Australian Statistical Geography Standard (ASGS) represents significant towns and cities of 10,000 people or more. They are based on the Urban Centres and Localities (UCLs) but are defined by the larger Statistical Areas Level 2 (SA2s). A single SUA can represent either a single Urban Centre or a cluster of related Urban Centres.

'***Other regional or remote***' includes all areas that are not included in a SUA in the ABS ASGS, including smaller urban areas.

Shortened forms

ABS	Australian Bureau of Statistics
ALRM	Aboriginal Legal Rights Movement Inc.
ALS (NSW/ACT)	Aboriginal Legal Service NSW/ACT Ltd
ALSWA	Aboriginal Legal Service of Western Australia
ANZSOC	The Australian and New Zealand Society of Criminology
ATSILS	Aboriginal and Torres Strait Islander Legal Service
ATSILS Qld	Aboriginal and Torres Strait Islander Legal Service Qld Ltd
BOCSAR	NSW Bureau of Crime Statistics and Research
CAA	Courts Administration Authority of South Australia
CCQ	Children's Court of Queensland
DVO	Domestic Violence Orders
ERP	Estimated Resident Population
NAAJA	North Australian Aboriginal Justice Agency
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
RAAC	Research Application and Advisory Committee
ROGS	Report on Government Services
SCRGSP	Steering Committee for the Review of Government Service Provision
SIQ	ABS Standard Indigenous Question
SUA	Significant Urban Areas
TALS	Tasmanian Aboriginal Legal Service
VALS	Victorian Aboriginal Legal Service Co-operative Limited

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.