



SUPPLEMENTARY SUBMISSION

Portfolio Committee No. 4 – Regional New South Wales, Water and Agriculture inquiry into the failure to proclaim the commencement of Schedule 1 of the Fisheries Management Amendment Act 2009 concerning Aboriginal cultural fishing

INDIGENOUS IDENTIFICATION

One overall issue with the Bureau of Crime Statistics and Research (BOCSAR) data is that Indigenous status is not always provided. This is a minor issue with severe penalties such as jail terms and non-custodial alternatives but is more common for lesser penalties such as fines. Oxfam has relied on quoting the Aboriginal percentage as a share of the Indigenous and non-Indigenous aggregate, thereby excluding figures for charges and penalties when the Indigenous status is unknown.

DATA ON CASES NOT PROCEEDING

The attached BOCSAR data provides further insights into the number of cases brought against Aboriginal people in NSW for fisheries offences that do not proceed. This issue emerged in evidence and questions from MLCs.

On Sheet 1 (Charges), the data for finalised charges shows that 186 charges resulted in an outcome other than guilty or not guilty (Referred to as 'Other', See Row 7). This generally means the finalised charges were later withdrawn by the prosecution. This represents 33 per cent of all charges, more than double the equivalent for non-Indigenous people. This practice appears to have intensified in recent years, with 83 charges or 45 per cent of the total since 2009 withdrawn in 2020 and 2021 alone (see the cells in red on row 7). This practice undoubtedly causes defendants immense anxiety and financial stress.

COMMENTS ON DATA IN GOVERNMENT SUBMISSION

It is possible that the Government sought to lower the apparent incidence of Aboriginal prosecutions by including numbers for when no Indigenous status is given, and by selecting 2016 as the starting point for comparison. But even so, the data shows that Aboriginal people are greatly over-represented in the overall incidence of fisheries-related prosecutions. The claim that Aboriginal people account for only 7 per cent of prosecutions is not supported by the BOCSAR data.

The data shows that since 2009, the Indigenous share of finalised charges brought before NSW's criminal courts is 34 per cent (Sheet 1, Row 8), and 31 per cent for defendants found guilty (Sheet 2—Penalties—Row 12).

The claim that the proportion of penalty notices (fines) is only 1.5 per cent is also not supported by the BOCSAR data. The Aboriginal share of people whose status is known amounts to 20 per cent (Sheet 2, Row 8), and even when people with unknown Indigenous status are included, the Aboriginal share is 10 per cent (Sheet 2, Row 37).

SCREENSHOT OF CORRECTIONS TO HANSARD

PAUL CLEARY: Yes. I've got the Bureau of Crime Statistics and Research research here in a spreadsheet. I found it extraordinary—the Government chose the year 2016 for some reason, I think because that might have been a low point. They claim that 7 per cent of the prosecutions involve Aboriginal people. I went back and looked at the data from BOCSAR. It's 36 per cent. What's interesting is that the overrepresentation of Aboriginal people increases with the severity. You start with about four times for fines and then you go up to 20 times for jail sentences. The more severe penalties are skewed towards Aboriginal people. The Government says here:

The proportion of penalty notices (fines) ... is 1.5% ...

20 per cent

The BOCSAR data shows it's 13 per cent. They say in the submission, "Our data". I don't know what data they're using, but they're not using the crime statistics data. It's pretty clear. But I'll follow up on that and I'll give you the spreadsheet with a bit of analysis.

more than
30 per
cent of
defendant
s whose
Indigenou
s identity
is given.

The Hon. PETER PRIMROSE: We may ask what our data is.

The Hon. MICK VEITCH: We could pose that this afternoon, I'd suggest.

PAUL CLEARY: Yes.

The Hon. MICK VEITCH: Dr Cleary, the recommendations at the end of the submission from Oxfam—there are two elements I'd like to pick up. One continues on that line of questioning I had with the earlier panel around communication and who is responsible for the communication. You talk about that you require the DPI to immediately involve Aboriginal people in all decision-making bodies that deal with fisheries management. Do you think the communication amongst all stakeholders could be improved in New South Wales, and do you see that as the way of doing it? Or is that just one way of doing it?

NSW Criminal Court Statistics 2009 to 2021

Number of finalised charges* under the Fisheries Management Act 1994 by Aboriginality and outcome

OXFAM CALCULATIONS

		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL	% ABORIGINAL*	
Fisheries Management Act 1994	Aboriginal	Guilty	47	30	54	78	62	25	1	7	7	15	2	6	25	359	28
		Not Guilty	9	3	3	0	0	3	0	0	0	0	0	0	0	18	41
		Other^	5	12	7	13	21	22	1	6	3	5	8	45	38	186	53
		Total	61	45	64	91	83	50	2	13	10	20	10	51	63	563	34
	Non-Aboriginal	Guilty	122	76	90	39	69	77	71	28	90	62	93	68	40	925	
		Not Guilty	2	8	1	4	2	1	0	2	3	1	1	0	0	25	
		Other^	6	8	6	6	40	40	22	3	5	5	7	12	4	164	
		Total	130	92	97	49	111	118	93	33	98	68	101	80	44	1114	
	Unknown	Guilty	154	54	60	51	74	82	56	33	92	75	69	61	95		
		Not Guilty	3	2	0	3	0	2	1	1	0	0	1	0	0		
		Other^	16	4	9	14	8	3	1	8	9	14	2	38	2		
		Total	173	60	69	68	82	87	58	42	101	89	72	99	97		
	Company	Guilty	4	0	0	0	0	0	2	0	72	2	2	3	2		
		Not Guilty	0	0	0	0	0	0	0	0	8	0	0	0	0		
		Other^	0	0	0	1	0	0	13	0	1	0	0	0	0		
Total		4	0	0	1	0	0	15	0	81	2	2	3	2			
Total	Guilty	327	160	204	168	205	184	130	68	261	154	166	138	162			
	Not Guilty	14	13	4	7	2	6	1	3	11	1	2	0	0			
	Other^	27	24	22	34	69	65	37	17	18	24	17	95	44			
	Total	368	197	230	209	276	255	168	88	290	179	185	233	206			

*These figures are the number of charges brought, rather than the number of persons charged. A charge refers to an instance of a particular type of offence being charged against a person.

^Other includes dismissed by lower courts due to mental illness, withdrawn by prosecution, and otherwise disposed of (eg transferred to Drug Court, deceased)

Source: NSW Bureau of Crime Statistics and Research

Reference: ak22-21738

Please retain this reference number for future correspondence

NOTE 1: Data sourced from the NSW Bureau of Crime Statistics and Research must be acknowledged in any document (electronic or otherwise) containing

[NOTE 2: For information about Criminal Courts crime data please see our 'Criminal Courts - Glossary' webpage.](#)

Number of proven court appearances where the principal offence* was an offence under the Fisheries Management Act 1994 by Aboriginality and penalty

OXFAM CALCULATIONS

		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL	% ABORIGINAL
Aboriginal	Custody	1	3	2	10	3	5	0	0	1	0	0	0	0	25	80
	Custodial alternatives	1	1	0	4	0	3	0	0	0	1	1	0	5	16	61
	Non-custodial community based orders	9	5	8	8	9	0	0	1	1	0	1	0	1	43	47
	Fines	10	5	9	12	12	4	1	2	1	4	0	3	1	64	20
	Conviction only	0	0	0	0	1	0	0	0	0	0	0	0	0	1	25
	Conditional release without conviction	2	0	1	0	0	0	0	0	0	0	0	1	1	5	22
	No conviction recorded	0	0	1	0	0	0	0	0	0	0	0	0	0	1	6
	Total found guilty	23	14	21	34	25	12	1	3	3	5	2	4	8	155	31
Non-Aboriginal	Custody	1	1	0	0	1	1	0	1	1	0	0	0	0	6	
	Custodial alternatives	1	0	2	1	0	3	0	1	0	1	1	0	0	10	
	Non-custodial community based orders	4	2	9	6	5	3	2	1	3	3	5	3	2	48	
	Fines	43	27	19	11	25	19	15	10	15	16	25	12	11	248	
	Conviction only	0	0	1	1	0	0	0	0	1	0	0	0	0	3	
	Conditional release without conviction	4	3	1	0	1	4	0	0	0	1	1	3	0	18	
	No conviction recorded	5	4	1	1	1	0	0	0	2	0	0	1	1	16	
	Other^	0	1	0	0	0	0	0	0	0	0	0	0	0	1	
Total found guilty	58	38	33	20	33	30	17	13	22	21	32	19	14	350		
Fisheries Management Act 1994	Unknown															
	Custody	0	0	0	0	0	0	0	0	1	0	1	0	0		
	Custodial alternatives	0	0	0	1	0	0	0	0	3	0	0	0	1		
	Non-custodial community based orders	0	0	1	2	5	3	1	2	1	3	2	1	1		
	Fines	66	27	25	21	24	30	24	11	25	16	23	20	15		
	Conviction only	1	0	1	0	0	0	0	0	1	2	1	0	0		
	Conditional release without conviction	13	3	6	0	5	4	1	1	5	3	4	3	0		
	No conviction recorded	8	7	4	2	7	1	2	2	8	6	1	0	0		
Other^	0	0	0	1	0	0	0	0	0	0	0	0	0			
Total found guilty	88	37	37	27	41	38	28	16	44	30	32	24	17			
Company	Fines	3	0	0	0	0	0	1	0	1	1	1	1	1		
	No conviction recorded	0	0	0	0	0	0	0	0	0	0	0	0	0		
	Total found guilty	3	0	0	0	0	0	1	0	1	1	1	1	1		
Total	Custody	2	4	2	10	4	6	0	1	3	0	1	0	0		
	Custodial alternatives	2	1	2	6	0	6	0	1	3	2	2	0	6		
	Non-custodial community based orders	13	7	18	16	19	6	3	4	5	6	8	4	4		
	Fines	122	59	53	44	61	53	41	23	42	37	49	36	28	648	10
	Conviction only	1	0	2	1	1	0	0	0	2	2	1	0	0		
	Conditional release without conviction	19	6	8	0	6	8	1	1	5	4	5	7	1		
	No conviction recorded	13	11	6	3	8	1	2	2	10	6	1	1	1		
	Other^	0	1	0	1	0	0	0	0	0	0	0	0	0		
Total found guilty	172	89	91	81	99	80	47	32	70	57	67	48	40			

*Where a person has been found guilty of more than one offence, the offence which received the most serious penalty is the principal offence.

^Other penalties' includes No action taken on a breach of bond, Dismissed after Youth Justice Conference, Juvenile offence proved, dismissed, and Unknown penalties

Source: NSW Bureau of Crime Statistics and Research

Reference: ak22-21738

Please retain this reference number for future correspondence

NOTE 1: Data sourced from the NSW Bureau of Crime Statistics and Research must be acknowledged in any document (electronic or otherwise) containing that data. The acknowledgement should take the form of **Source:**

[NOTE 2: For information about Criminal Courts crime data please see our 'Criminal Courts - Glossary' webpage.](#)

Note 3: The persons included in the table above are not a count of unique people. Each person appears only once for each finalised court appearance (for their principal offence) but if a person has more than one finalised court appearance in the reference period they will appear in the table multiple times.