



NSW Bureau of Crime
Statistics and Research

What is contributing to Aboriginal incarceration in NSW?

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Acknowledgement of Country

BOCSAR acknowledge the Traditional Custodians of the lands and their continuing connection to Country, culture and community. We pay our respects to Elders past, present and emerging.

Over the past decade in NSW, the **total** number of adults on **remand** has increased by **88%**...

During the **same period**, the number of **Aboriginal adults on remand** has risen **150%**



Legal scholars have argued that **access to bail** is increasingly **restrictive**



In January 2015, a presumption **against** bail for **‘show cause’** offences was introduced...

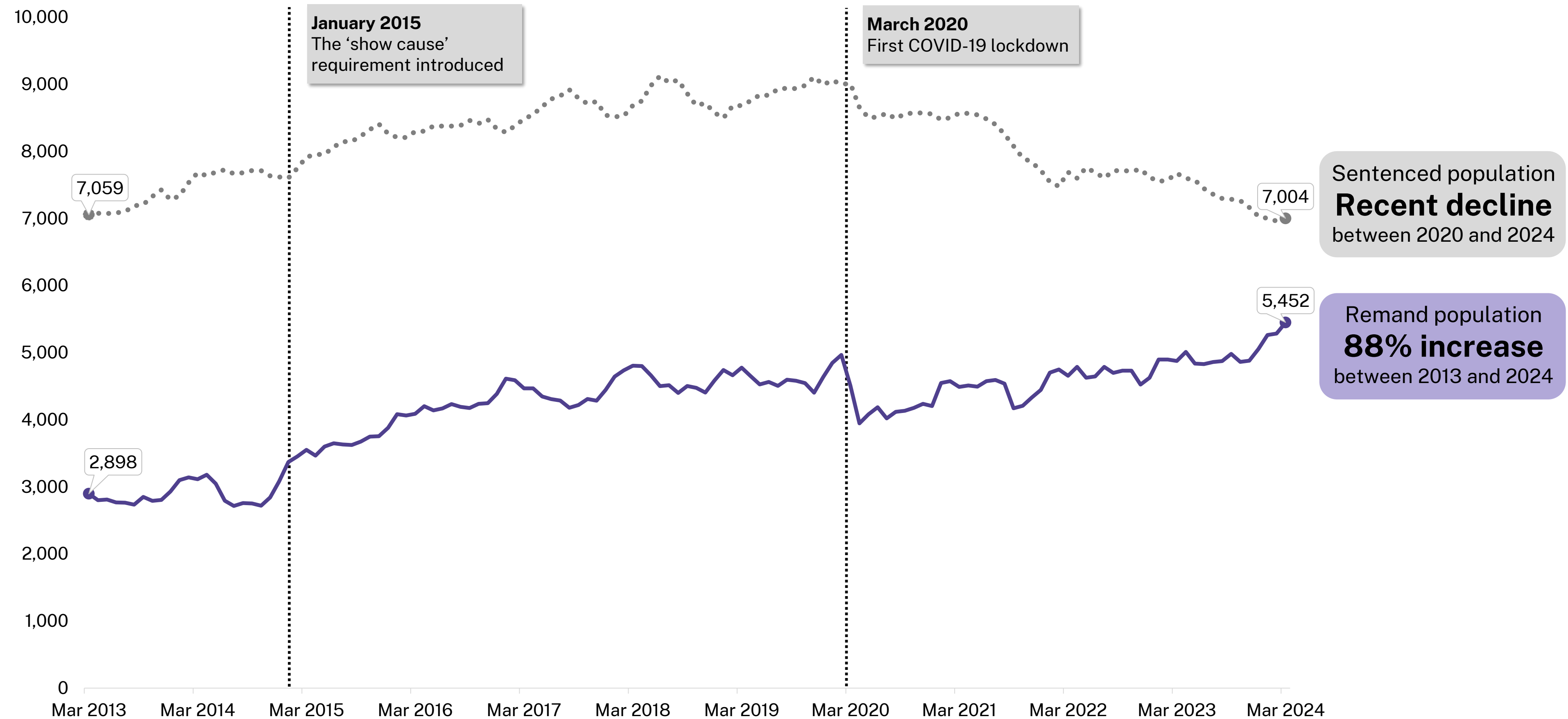
“A bail authority... must refuse bail unless the accused person shows cause why his or her detention is not justified.”

- Section 16A(1) of the *Bail Act 2013* (NSW)



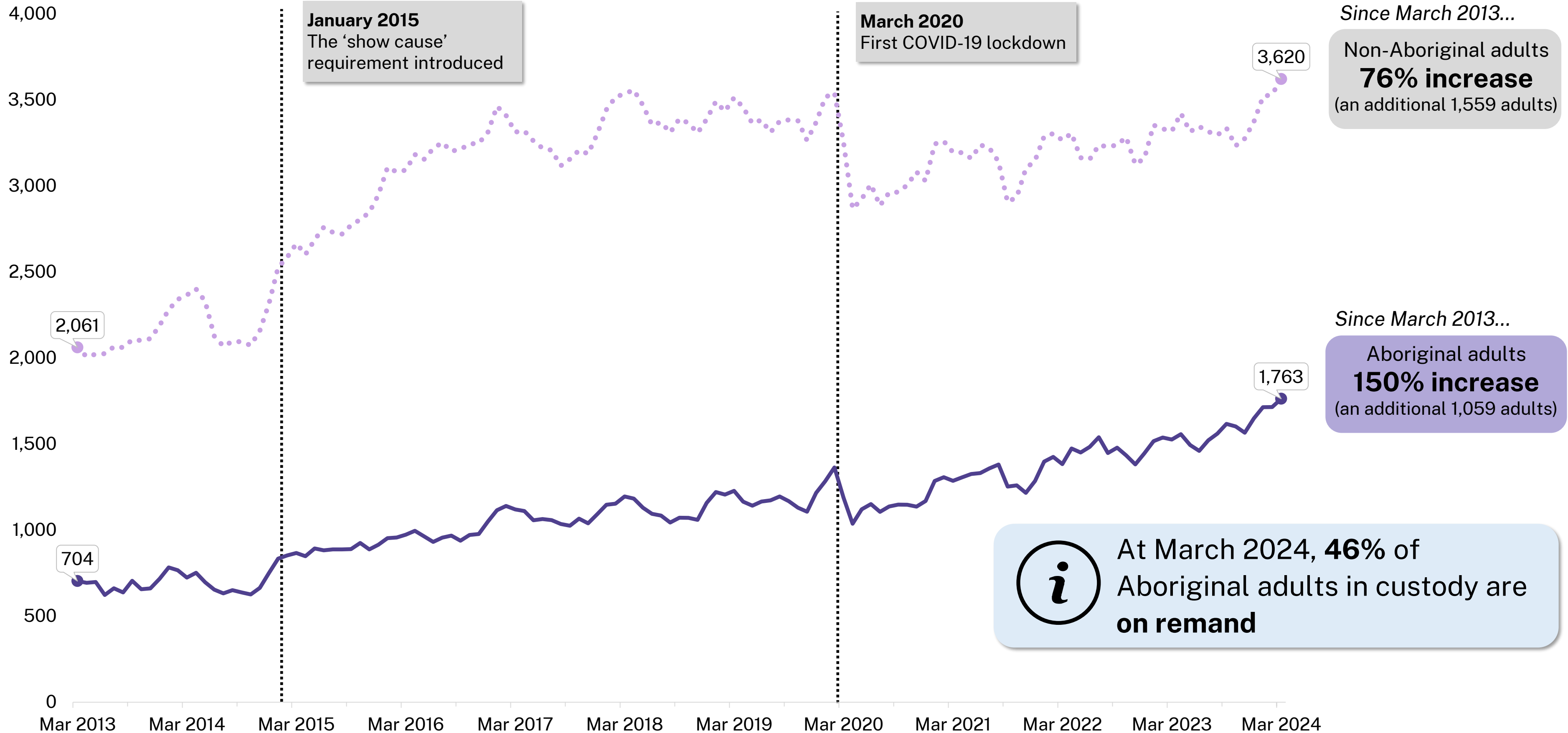
NSW prison population

Over the past decade in NSW, the **remand** population has **increased**.
The **sentenced** population grew earlier in the decade but has **recently declined**.



NSW remand population

Over the past decade in NSW, the number of **Aboriginal adults** on remand has **increased substantially**





In 2020, NSW committed to the new National Agreement on **Closing the Gap**

Target 10: Adults are not overrepresented in the criminal justice system



By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by **at least 15 per cent** (based on 2019)

‘NSW no longer on track to meet Closing the Gap target with “record high” Indigenous incarceration numbers’

- *National Indigenous Times*, 14 May 2024



What could be **contributing** to the increase in Aboriginal remandees in NSW?



Question 1.

How has the trend in **court legal action** changed over the past decade?



Question 2.

Did the **show cause** requirement impact **access to bail** for Aboriginal adults?



Question 3.

Are Aboriginal adults **increasingly** more likely to have their **bail revoked**?



Question 4.

Has the trend in the **offence profile** changed over the past decade?



What **magnitude of changes** are required in NSW to reduce Aboriginal overrepresentation?

How has the trend in **court legal action** changed over the past decade?

How has the trend in **court legal action** changed over the past decade?

How did we answer this?



Examine the **annual trend** in the number of adults who are **proceeded against** by NSW Police

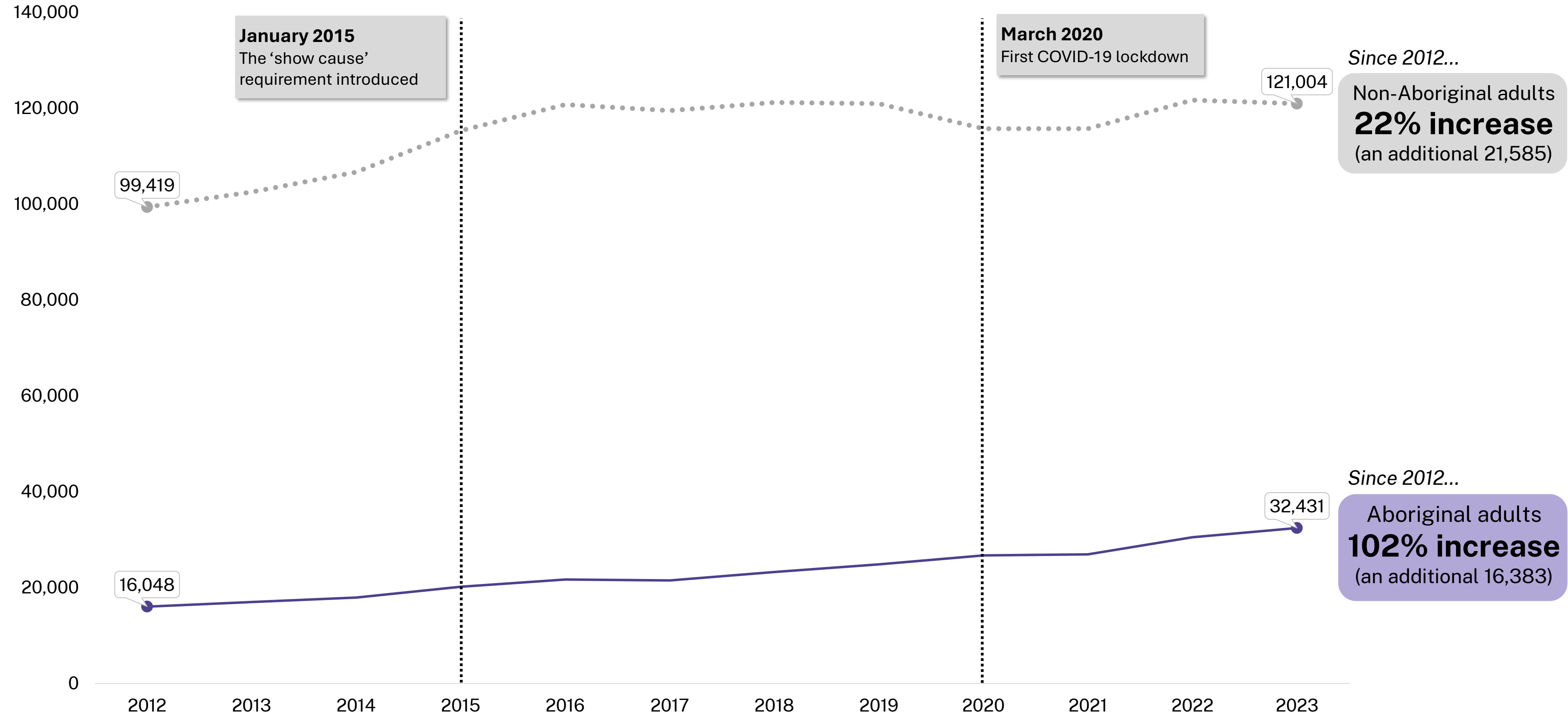


Measure the trend for **Aboriginal and non-Aboriginal adults** between 2012 and 2023



Trend in court legal action

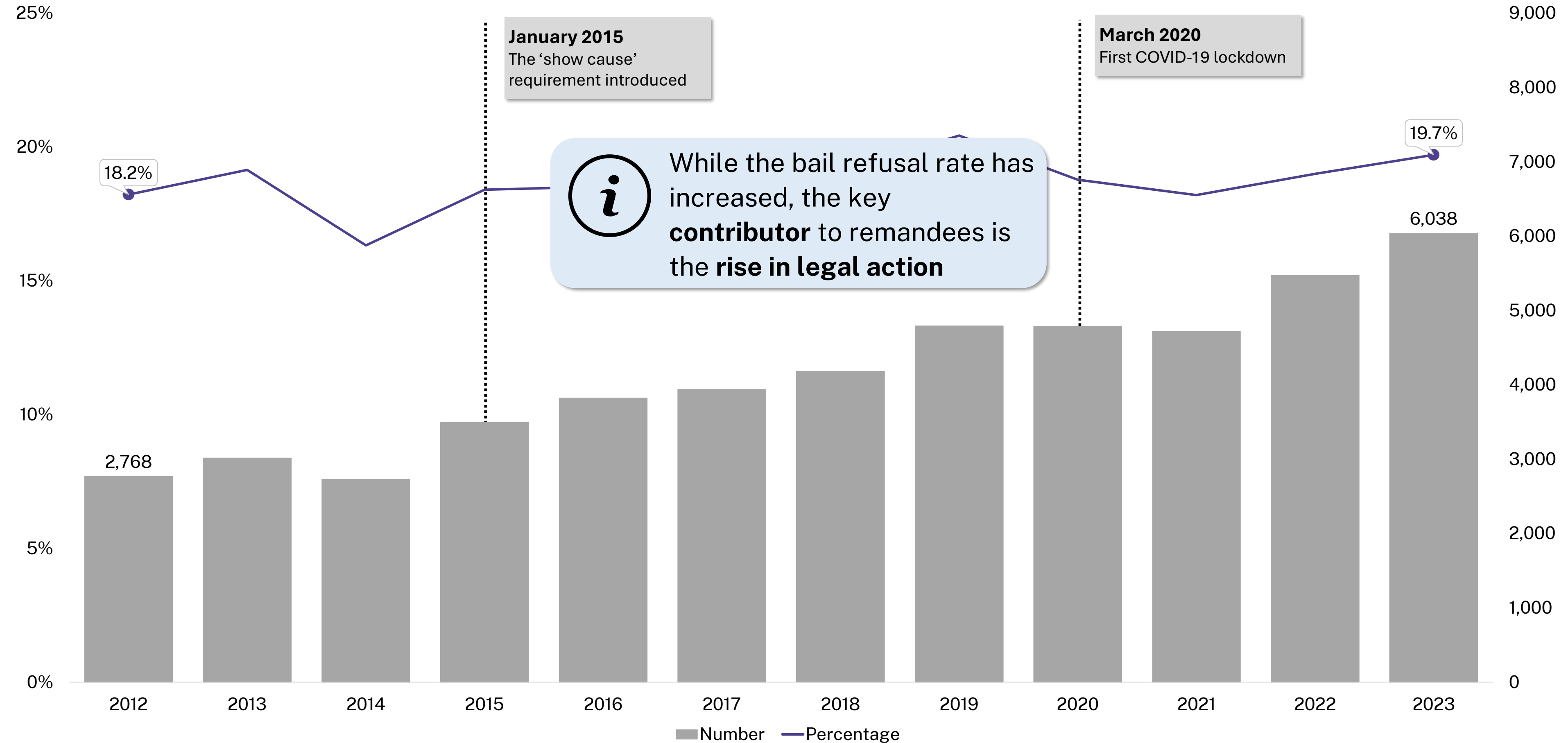
The trend in the number of **Aboriginal and non-Aboriginal adults** proceeded against by NSW Police between 2012 and 2023



Did **show cause** impact **access to bail**
for Aboriginal adults?

Court bail refusal

The **trend** in **court bail refusal** among Aboriginal adults between 2012 and 2023



Did the **show cause** requirement impact **access to bail** for Aboriginal adults?

How did we answer this?



Measure the **likelihood** of being refused bail **one year before-and-after** the introduction of the ‘show cause’ requirement

“A bail authority... must refuse bail unless the accused person shows cause why his or her detention is not justified.”

- Section 16A(1) of the *Bail Act 2013* (NSW)

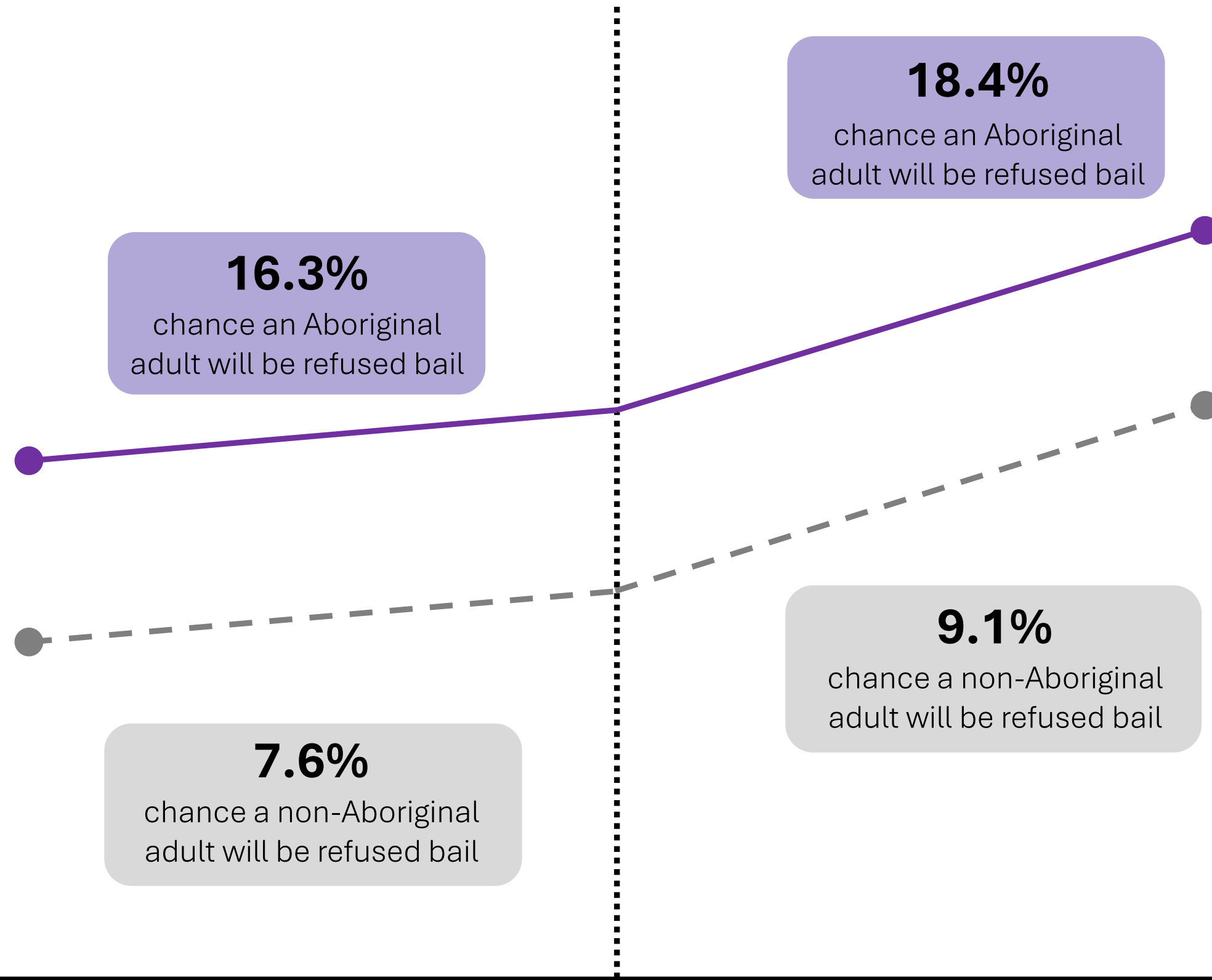


Estimate the change for **Aboriginal and non-Aboriginal adults** who have a **Court** bail hearing



'Show cause' and access to bail

The **likelihood** of being remanded **one year before-and-after** the introduction of the show cause requirement



One year before

28 January 2015
Show cause introduced

One year after

Are Aboriginal adults **increasingly**
more likely to have their **bail revoked**?



Are Aboriginal adults **increasingly** more likely to have their **bail revoked** over time?

How did we answer this?



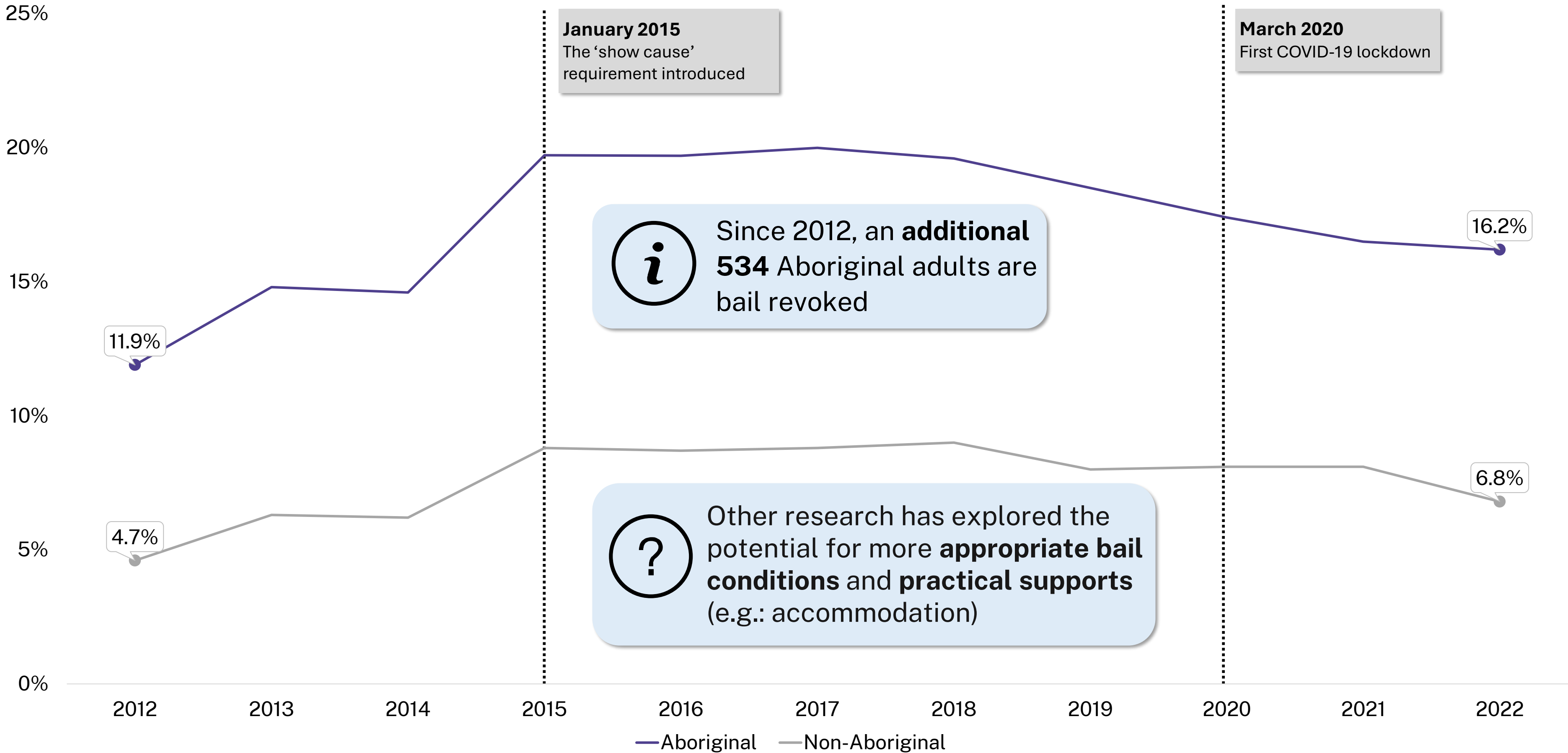
Among adults **granted bail** by the Court, we measure the **likelihood** of being held on **remand at finalisation**



Estimate the **annual trend** in the likelihood among **Aboriginal and non-Aboriginal adults** between 2012 and 2022

Bail revocation over time

The **likelihood** of bail revocation among **Aboriginal and non-Aboriginal adults** between 2012 and 2022



Has the trend in the **offence profile** changed over the past decade?

Has the trend in the **offence profile** changed since 2016?

How did we answer this?



Examine the **trend** in the **offence profile** among Aboriginal adults on **remand** between 2016 and 2022



We considered the following **DV-related offending**:

1. **Any** DV-related charge(s)
2. A **breach of an ADVO** with **concurrent** DV-related charge(s)



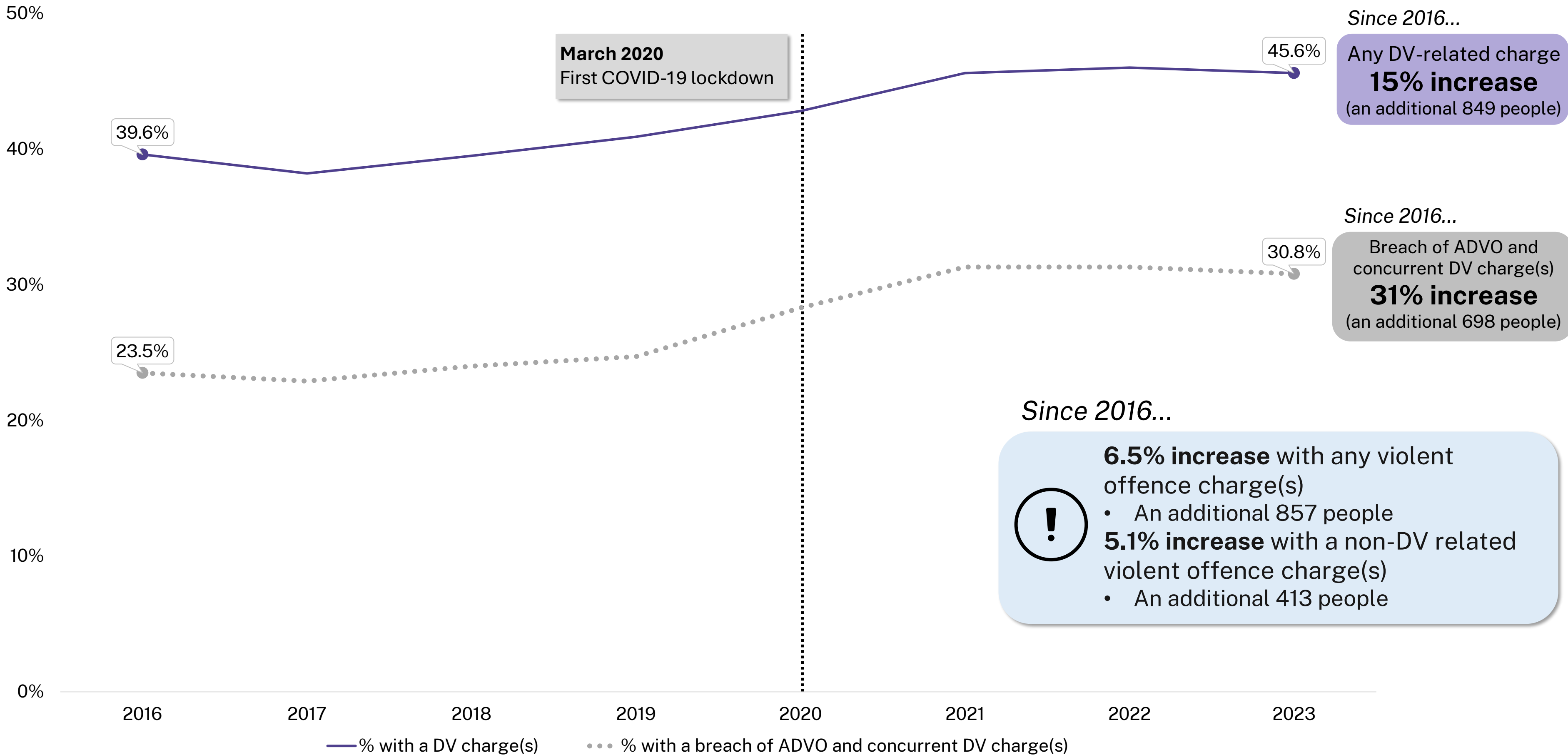
We also considered **violent offending**:

3. Any **violent** offence charge(s)
4. A **non-DV violent** offence charge(s)



Trend in the offence profile

The **proportion** of Aboriginal adults **bail refused at finalisation** with any DV-related charge between 2016 and 2023



**Reducing the remand
population**



Summary

Since 2013, the number of Aboriginal adults on remand has increased **150%**



The number of Aboriginal adults **proceeded against** by NSW police has **increased 102%** between 2012 and 2023



The introduction of the **show cause** requirement **reduced access to bail**



Aboriginal adults are **consistently more likely** to have their **bail revoked**



Since 2016, the proportion of Aboriginal adults on remand with **DV-related** or **violent offences** has **increased**

Closing the Gap Target 10

What we could do **per year** to remove **50** Aboriginal adults from prison

This represents 10% of the Target 10 reduction



At March 2024...
1,763 remanded
2,078 sentenced
3,841 in total



Legal action

Avoid 400 court legal actions
per year

Potential strategies include...

- Reducing entry into the criminal justice system (e.g.: crime prevention, diversion, response to risk factors)



Bail

Court bail refuse 240 fewer
Aboriginal adults per year

Potential strategies include...

- Addressing the rise of bail refusal and the barriers to Aboriginal adults accessing bail

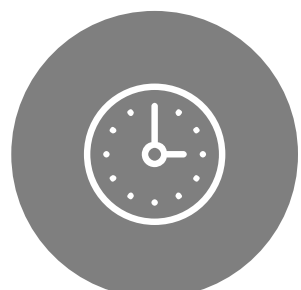


Remand

Grant court bail to 320 more Aboriginal
adults per year who will otherwise be
remanded until finalisation

Potential strategies include...

- Redirect from remand to bail, or alternatives to prison-based remand



Court delay

Reduce time to finalisation by 8
days for defendants on remand at
finalisation

Potential strategies include...

- Faster Court processes

THANK YOU

