5 APPENDICES

A EXPLANATORY NOTES

CRIMINAL JUSTICE IN SOUTH AUSTRALIA

Most serious criminal offences in this State are defined in the *Criminal Law Consolidation Act*, the *Summary Offences Act* and the *Controlled Substances Act.* However, recorded crime and offender data in *Crime and Justice* reports are not confined to this legislation. Serious breaches of Commonwealth or State Acts (e.g. drink-driving contraventions of the *Road Traffic Act*) are also included. Readers requiring detailed information on specific Acts covered by the *Crime and Justice* report are advised to contact the Office of Crime Statistics and Research.

In the case of adults[16], once police officers become aware of the identity of an alleged offender they may initiate proceedings either by effecting an arrest or by filing a report that may later result in a summons[17]. An arrest generally implies that a person is detained by a law enforcement officer and that he or she is taken to a police station. A summons involves the alleged offender being sent a legal document detailing the charges and requiring attendance at court at a specified time.

To prosecute alleged adult offenders, a hierarchy of courts of criminal jurisdiction is available, details of which are discussed below.

Magistrates Courts of South Australia (see Section 2 of this report) constitute those courts that are in most cases presided over by a magistrate and do not have juries. Justices of the peace can preside in these courts and judges of higher courts (see below) can sit as justices in summary courts when necessary.
District Courts and the Supreme Court (see Section 3) are presided over by a judge and can hear defended matters before a judge and jury, or by judge alone if an accused elects to have a trial in that form.

Once an adult (ie a person aged eighteen years or over at the time of offence) has been charged, the nature of the most serious offence alleged determines which court will deal with the matter. Legislation divides offences into the following three major classes.

(i) Major Indictable offences
These are generally the more serious crimes (for example, murder). Indictable offences can themselves be further divided into:

- *Group 1 offences* - those with a maximum term of imprisonment exceeding fifteen years;
- *Group II* - those with a maximum term of imprisonment exceeding five years but not exceeding fifteen years;
- *Group III offences* - those with a maximum term of imprisonment not exceeding five years.

[16] Information relating to alleged juvenile offenders is presented in a different report (see *Crime and Justice in South Australia: 2007: Juvenile Justice).* The majority of juveniles are dealt with either by way of a police caution or by a family conference or the Youth Court. However, under some circumstances, an indictable matter involving a young person aged under 18 years may be transferred to the District or Supreme Court either for trial or sentencing, and that court may choose to deal with him or her as an adult. Youths charged with homicide are automatically transferred to a higher court if a committal hearing in the Youth Court finds there is a case to answer. The Director of Public Prosecutions or a police prosecutor may also apply for the youth to be dealt with in higher court, either because of the gravity of the offence or because the offence is part of a pattern of repeat offending. Finally, a youth charged with an indictable offence may request a hearing in an adult court. Only youths whose cases were finalised in a higher court in 2007 are included in this report.
[17] A third option - issuing an expiation notice - may be used for adults involved in some traffic or simple cannabis offences.

There is no time limit within which a charge for an indictable offence must be laid.

Group I offences are dealt with by the Supreme Court.

Group II offences are dealt with by either the District Court or the Supreme Court, depending on such matters as the gravity of the offence and the complexity of evidence.

Group III offences are dealt with in the District Court.

Before people charged with major indictable offences can be tried or sentenced there must generally be a preliminary hearing - known as a 'committal' - in a Magistrates Court, at which evidence against them is presented.

(ii) 'Summary' offences

These offences are generally less serious offences than indictable offences - e.g. disorderly behaviour, willful damage to property - and are heard and decided by a magistrate in a Magistrates Court. There is a time limit of six months within which most complaints must be laid.

(iii) Minor Indictable offences

Minor indictable offences fall between major indictable and summary offences and are the less serious types of indictable offences, e.g. possessing prohibited drugs, or simple larceny where the value of the property does not exceed $30,000.

An adult charged with a minor indictable offence can choose to have the matter dealt with in the Magistrates or the District Court.

On 6 July 1992 a number of pieces of legislation came into effect, altering the coverage and processing of cases in these courts. The changes were designed to streamline the processing of cases, in order to reduce both costs and delays. The strategy has been to hear as many cases as possible at the less expensive levels of court and to introduce procedural changes which maximise the proportion of the court's time spent in dealing with the substantive issues of the case.

New rules of practice came into effect at the same time, which were designed to streamline the processing of cases involving indictable offences. They require more setting out of positions by both prosecution and defence at as early a stage as possible, on paper and outside of court where possible. This is intended to allow the court to spend less of its time identifying the issues and more on deciding upon them.

The criteria for assessing whether to commit a matter for trial have been tightened. The previous rule of whether there was a *prima facie* case has been changed to whether the evidence is sufficient to prove every element of the offence. This is designed to reduce the number of cases that have little chance of a conviction reaching trial in a higher court.

The jurisdiction of each level of court is set out below.

Magistrates Court

The cases dealt with by these courts are :

- committal hearings for major indictable offences;
- hearing and determination of charges involving minor indictable offences;
- hearing and determination of charges involving summary offences.

Although it was intended that as many minor indictable offences as possible would be heard in Magistrates Courts, defendants have the right to elect to a trial by a judge, but in general this must be done as early as possible.

District Court

This court is designed to hear the majority of cases not heard by the Magistrates Court. It can try any charge except:

- treason;
- murder;
- attempts, conspiracies or assaults with intent to commit these offences.

Supreme Court

This hears the cases which the District Court cannot hear (defined above) and any cases deemed by a Magistrate or District Court judge to be of an unusually serious nature or likely to involve very difficult issues of fact or law. Both the Supreme Court and the District Court may transfer cases between them as they see fit.

Minor indictable offences include:

- those not punishable by imprisonment but for which the fine is more than twice that set for a Division One offence;
- those for which the term of imprisonment does not exceed five years;
- those for which the term of imprisonment exceeds five years and which involve
  - an offence against Part 5 (other than Division 3) of the Criminal Law Consolidation Act 1935, not being an offence of violence and involving $30,000 or less;
  - an offence involving interference with, damage to or destruction of property where the resultant loss does not exceed $30,000;
  - malicious wounding or assault occasioning actual bodily harm;
  - indecent assault;
  - a serious criminal trespass offence where the intended offence is an offence of dishonesty (not being an offence of violence) involving $30,000 or less.

A major indictable offence is an indictable offence not included in the above list.

Summary offences are offences which:

- are not punishable by imprisonment, or
- are punishable by imprisonment of two years or less, or
- is an offence against Part 5 of the Criminal Law Consolidation Act involving $2,500 or less not being an offence of dishonesty against Division 3 (robbery) or an offence of violence or an offence that is one of a series of the same or a similar character involving more than $2,500 in aggregate. Further information regarding the classification of offences can be found in the Summary Procedure Act (section 5).

On 1 August 1994 the *Statutes Amendment (Truth in Sentencing) Act* 1994 came into operation. This Act introduced two main changes to the sentencing system in South Australia. Firstly, by repealing parts of the *Correctional Services Act* 1982 it abolished the system of sentence remissions. Secondly, it required prisoners serving a sentence of five years or more to apply for parole before being released. The new parole arrangements contrast with the previous system which allowed automatic release to parole at the expiry of the non-parole period minus up to one third for remissions. Different rules apply for determining time served. These depend on the length of sentence although, for all sentence lengths, remissions are no longer available. For prisoners with sentences of less than one year, non-parole periods are not required and if a non-parole period is not set, the prisoner is released at the end of the term of imprisonment. Those serving one or more years but less than five years are released at the end of their non-parole period. For all persons with sentences of one or more years, judges may decline to set a non-parole period,

in which case the entire term must be served unless a subsequent application to the Supreme Court results in a non-parole period being set.

The changes and their possible effect on sentence lengths were dealt with by the Court of Criminal Appeal on 21 April 1995 (Pight vs R, Judgement No. S5046) and readers are referred to this ruling for a detailed assessment. In essence, however, the court held that the method of the sentencing court in fixing a non-parole period should remain unaltered - and that the non-parole period should continue to represent the part of the head sentence actually to be served in prison. Given that remissions are no longer available this means that non-parole periods should reduce. With respect to parole it was held that a court should not be concerned with what the Parole Board may or may not do when it comes to consider a prisoner's application for release.

The final stage of the criminal justice system encompassed by this report is the corrections system. The Department for Correctional Services administers sentences and other orders imposed by the courts and the Parole Board on adult offenders. In administering these sentences and orders the Department operates the prisons and community correctional centres which are located throughout the State.

There are two main types of prison custody in South Australia. These are known as ‘remand’ and ‘under sentence’. Persons can be placed on remand at any point during the processing of their case, such as while awaiting trial or a verdict, or following conviction but awaiting sentence. Defendants convicted and sentenced to a term of imprisonment are known as prisoners ‘under sentence’. A range of community based sentencing programs (the main ones being probation and community service) can be ordered by courts and are managed by the Department for Correctional Services.

MAGISTRATES COURTS OF SOUTH AUSTRALIA

Introduction

This section contains information relating to criminal cases finalised during the 2007 reporting period in the Magistrates Court of South Australia. These courts, sometimes referred to as lower courts or courts of summary jurisdiction, are presided over by a magistrate or other justice.

Tables 2.1 to 2.35 in Section 2 of this report do not deal with all offences heard by the Magistrates Court. Many driving and traffic offences, except those of a more serious nature (e.g. *driving in a manner dangerous* and *drink driving*), most council matters (by-law breaches) and regulations are not included. Moreover, only finalised cases are counted. Cases where the defendant absconded indefinitely or the case did not continue for another reason (e.g. complaint to lie on file) are excluded, as are all adjournments.

Data sources

The data in these tables are extracted by the Office of Crime Statistics and Research (OCSAR) from the computerised data bases maintained by the Courts Administration Authority (CAA) for its own case management purposes. They reflect what was available on the data base at the time of extraction. Any changes to existing cases or additions of new cases relevant to the reporting period made by CAA after the date of extraction would not, in general, be available to OCSAR in time for these reports.

Once downloaded to OCSAR, the data relevant to these reports undergo intensive auditing. Any errors detected in the supplied data are corrected and missing information is located by checking the paper court files or records held in other departments. Because of this auditing process, there may be some discrepancies between the final OCSAR data files and the originating CAA files, but the OCSAR data are at least as accurate as the source data. Additional discrepancies with CAA data are due to the way in which OCSAR consolidates related matters into the same case (see below). This is in addition to consolidation done by CAA for internal case management purposes.

Data relating to defendant characteristics are extracted from police computer records.

For the purposes of these statistics, a case is regarded as a group of matters, involving the one defendant (co-defendants are assigned their own case), which were all finalised before the same magistrate or special justice in the same court on the same day. A case is not considered finalised until all criminal charges involved in that case are dealt with. For example, if a case involves five offences and two are finalised at one hearing while the remaining three are finalised at a subsequent hearing, the case is considered finalised on that second hearing date. Adherence to this definition leads to a smaller count of cases than would result from using a definition based on the number of matters assigned a distinctive file number by the court. For administrative purposes, as the prosecution refines its case, so the court may choose to list the same group of matters under a number of different file numbers.

The exception to the definition used by OCSAR to define a case relates to those instances where an application for a *restraining* or *domestic violence* or *paedophile restraining order* is heard in association with criminal charges (e.g. *common assault*). In such instances, the application for a restraining order is separated from the criminal charge(s) and, for statistical purposes, is treated as a distinct case.

Prior to 1994, multiple counts for the same offence were aggregated if all had the same plea and outcome. Thus if a defendant was charged with two counts of *assault*, pleaded guilty to both counts and was convicted of both, then the counts were amalgamated and the penalties combined. To illustrate, if the defendant received a $400 fine for one count and a $200 fine plus a 60 hour

community service order for the second count, then the penalty was recorded as a $600 fine and a 60 hour community service order. This approach meant that average penalties were determined without taking into consideration the number of counts involved. Minimum and maximum penalties appeared higher than the actual amounts. Commencing in 1994, however, the practice of aggregating counts ceased. As a result, penalty calculations are now based on each single count, rather than an aggregation of counts.

Finally, it should be noted that on 30 September 1992 the *Statutes Amendment (Sentencing) Act* 1992 introduced sentencing provisions for multiple offences. If a person found guilty of a number of offences is charged on the one complaint or information, the court may impose a single or 'global' penalty for all or some combination of these offences. The one proviso is that the total sentence cannot exceed the maximum penalties applicable for each of the separate offences to which the sentence relates. It is not possible to separately identify offences treated by the courts in this way at this time.

Definitions

(i) ***Higher court.*** Refers to Supreme and District Criminal Courts.

(ii) ***Lower court.*** Refers to Magistrates Court.

(iii) ***Major charge convicted or found guilty***. Tables 2.14 to 2.25 report on the major charge convicted or found guilty. This represents a change from *Crime and Justice* reports prior to 1997, where only those offences which resulted in a conviction were counted, while excluding those where there was a finding of guilt but no conviction was recorded. The decision to include the 'guilty, no conviction' offences was designed to bring the Magistrates Court tables into line with those produced for the Youth Court (see Volume 2 of *Crime and Justice in South Australia*) and the higher court. As a result, the tables contained in reports from 1997 onwards are not comparable with those in previous reports. The way in which this is derived is outlined above in (ii)(a) and (b) above. Of these two charges a conviction takes precedence over a 'found guilty' outcome.

(iv) ***Major offence charged***. Tables 2.1 to 2.13b detail the major offence charged. Commencing with the 1997 report some modifications were made to the way in which this charge was determined. In previous years, under step (a) outlined below, only those charges where a conviction was recorded were considered. However, in the 1997 and subsequent reports, all offences where a finding of guilt with or without a conviction was recorded were included. Hence, these tables are not directly comparable with those presented in *Crime and Justice* reports prior to 1997.

The major (or most serious) offence for which a defendant was charged (see Tables 2.1 to 2.13b in Section 2) is determined by the following procedure:

(a) Of the charges, if any, for which the defendant was convicted, select the one that received the highest penalty. If two charges received the same penalty and both had a conviction recorded, select the one for which the highest maximum penalty is prescribed in the statutes. If all statutory penalties are the same, select the first charge. The charge selected by this method is the 'major charge convicted'. The ranking of severity used by the Office of Crime Statistics and Research for this process is set out below under (v) Penalty.

(b) Of the charges, if any, for which the defendant was found guilty, select the one that received the highest penalty. If two charges received the same penalty and both had a finding of guilt recorded, select the one for which the highest maximum penalty is prescribed in the statutes. If all statutory penalties are the same, select the first charge. The charge selected by this method is the 'major charge found guilty'. The ranking of

(c) Of the charges, if any, for which the defendant was neither convicted nor found guilty, select the one with the highest maximum statutory penalty. If two or more charges not convicted or found guilty have the same maximum statutory penalty, select the first. The charge selected by this method is the 'major charge not convicted or found guilty'.

(d) From the 'major charge convicted', the 'major charge found guilty' and the 'major charge not convicted or found guilty', select the charge that has the higher maximum statutory penalty. If the 'major charge convicted' and the 'major charge found guilty' have the same maximum statutory penalty select the major charge convicted. If the major charge found guilty and the major charge not convicted or found guilty have the same maximum statutory penalty select the major charge found guilty. If no charge is found guilty or convicted and all charges receive the same maximum statutory penalty select the first charge. The charge selected by these rules becomes the major offence charged.

(vi) ***Major Penalty*.** Tables 2.14 to 2.25 detail the most serious penalty imposed for each major charge convicted or found guilty per case. The following penalties - listed in order of severity - may be imposed by the Magistrates Court once a defendant has been found guilty:

- immediate imprisonment;
- suspended imprisonment;
- community service order;
- bond with supervision;
- bond without supervision;
- suspension of driver's licence;
- monetary fine;
- other order (e.g. restitution, confiscation of drugs) and restraining order;
- sentenced to the rising of the court;
- no penalty.

With effect from 1996, an additional category of 'Restraining order' was introduced, which ranks with 'other order' in terms of severity. This category was added as a result of an amendment made to the *Criminal Law (Sentencing) Act* 1988 by the *Domestic Violence Act* 1994, whereby a Magistrates Court could issue a restraining order on a finding of guilt of on sentencing. Prior to the introduction of this legislation a restraining order could only be issued against the defendant by separate application under the *Summary Procedure Act* 1921 or by attaching 'restraining order type' conditions to a bond.

More than one of these penalties may be applied at once. A charge of *serious criminal trespass* may, for example, result in a suspended imprisonment plus a bond plus a community service order. However, only the most serious of these – the suspended imprisonment - are included in these tables.

It should be noted that the order of severity of penalties was changed in 1993. Prior to 1993 the following ranking was utilised:

- immediate imprisonment;
- suspended imprisonment;
- bond with supervision;
- bond without supervision;
- community service order;
- suspension of driver's licence;
- monetary fine;
- other order (e.g. restitution, confiscation of drugs);
- sentenced to the rising of the court;
- no penalty.

(v) ***Offence group***. To enable broad comparisons, offences have been grouped into twelve major types (see Table 2.1). These groups correspond to the JANCO classifications system implemented on the Justice Information System and administered by the Office of Crime Statistics and Research. JANCO is an adaptation of the Australian Bureau of Statistics' ANCO (Australian National Classification of Offences, 1985. Catalogue No. 1234.0) classification system. JANCO adheres to the most detailed level of ANCO and extends this to even more detailed levels to highlight items of interest obscured by the generality of ANCO. Although the tables in other sections of this report also adhere to JANCO, different sections show different amounts of detail according to factors such as the frequency of the offence and the relative interest or seriousness of the offence. The JANCO system was introduced in *Crime and Justice* in the 1992 issue when this became possible with the adoption of this system throughout the Justice Information System and the Courts Administration Authority. In most instances it will be apparent where offences have been placed from the older system used in previous reports, but readers wishing to know where particular offences are located in the old and the new systems should contact the Office of Crime Statistics and Research.

Tables 2.2 to 2.13b and 2.15 to 2.25 show offence categories contained in each of these twelve broader JANCO groups at a more detailed classification level. In some instances, additional lower levels of JANCO are used to distinguish particular subgroups of offences or to provide information on the characteristics of the victim (i.e. age group, sex), relationship between victim and offender, type of premises victimised, type of weapon used, etc. Each JANCO classification level generally contains a number of offences of the same type that may be located in either or both State and Commonwealth legislation. For example, the JANCO offence category of kidnapping includes offences of that type under State legislation (*Kidnapping Act, Criminal Law Consolidation Act*), Commonwealth legislation (*Crimes (Internationally Protected Persons) Act*) and common law. Further information regarding the legislation contained in each JANCO category is available from the Office of Crime Statistics and Research on request.

Most attempted felonies are dealt with under Section 270A of the *Criminal Law Consolidation Act*. Generally speaking, Tables 2.2 to 2.13b and 2.15 to 2.25 combine attempts with the offence attempted (e.g. an attempted armed robbery is grouped with armed robbery). Under the previous classification system in use prior to the 1992 report, inciting the commission of an offence (which is itself a common law offence) was included in the category of the offence incited, rather than being listed separately, as were accessories before or after the fact. Under the JANCO classification system, accessories, aiding and abetting and inciting the commission of offences are all grouped together under level 5496, regardless of the type of substantive offence involved.

Copies of the current version of JANCO and of the individual offences comprising each category and sub-category used in the tables are available from the Office of Crime Statistics and Research.

(iv) ***Outcomes.*** In Tables 2.1 to 2.13b the case outcome is defined as follows.

- *Committed for trial or sentence*. The defendant was committed for trial or sentence in the Supreme or District Criminal Court (see Part 4 of this report for details of penalties, etc., in these cases).

- *Convicted with penalty/without penalty.* The defendant was found guilty and a criminal conviction recorded. In most of these cases a penalty is imposed but in some situations, no penalty is handed down, although the defendant is required to pay court costs and a victim's levy.

- *Guilty without conviction.* The defendant was found guilty but no conviction was recorded. In these circumstances the defendant can be given a penalty, such as a bond, or a monetary fine. Before 1988, Section 4 of the *Offenders Probation Act* prohibited the imposition of a fine in these circumstances.

- *Acquitted on major charge.* The defendant pleaded not guilty to the major charge and was acquitted.

- *Not guilty: mentally incompetent*. Under the provisions of Parts 8 and 8a of the *Criminal Law Consolidation Act 1935* a person found mentally unfit to stand trial or mentally incompetent to commit the offence, becomes liable to supervision for a period not greater than that for which he or she might have been imprisoned, had they been convicted. At its discretion, the court may instead order unconditional release or release on licence. Alternatively, the court may order detention at an institution to be determined by the Minister of Health, who must provide the court during the period of supervision with regular reports on the person's condition and treatment.

- *Major charge withdrawn.* The major charge was withdrawn by the complainant or by prosecutor's application.

- *Major charge dismissed.* The magistrate decided, after hearing the evidence, that there was no case to answer and dismissed the charge, or dismissed the charge for want of prosecution.

- *Orders issued/varied/removed.* This is a category for non-offence matters. Previously, cases with this outcome were recorded under *'Guilty without conviction'*.

- *Other (e.g. 'defendant died').* The case was finalised when the defendant died or was found to be unfit to plead.

- *Withdrawn on completion of mental health diversion program.* For those defendants who are accepted onto and successfully complete the Magistrates Court Diversion Program (colloquially referred to as the Mental Impairment court) police prosecutions may opt to withdraw all charges. This outcome was included in Crime and Justice reports for the first time in 2002.

The category 'guilty of lesser or other offence', which was included in previous reports, have been omitted from these tables since 1996.

(v) ***Plea***. Table 2.33 reports on the defendant's plea at the final court appearance. A defendant can enter:

- a *guilty plea*: in these cases a defendant may have a conviction recorded and/or a penalty imposed by the Magistrates Court. Alternatively, in cases involving a major indictable offence, (s)he may be committed for sentence in the Supreme or District Criminal Court;

- a *guilty 3 plea*: in these cases the defendant sends the court a 'Guilty 3' form (formerly a 'Guilty 4A' form) which admits guilt, and sentence is passed without the defendant being required to appear in court (see Section 57A of the *Summary Procedure Act* for details of this procedure);

- a *not guilty plea*: in these cases a trial takes place before a magistrate who determines both outcome and sentence. Alternatively, if the defendant wishes to be tried before a judge he or she can be committed for trial in the Supreme or District Criminal Court;

- *no plea*: in these cases either the complainant has withdrawn the charge, or a magistrate finds no case to answer, or no plea was entered on the court file;

- *ex parte*: subject to certain conditions, the court may proceed *ex parte* to adjudicate upon a matter where the defendant neither appears nor returns a written plea of guilty;

- *defence reserved*: in these cases the defendant has 'reserved' his or her defence and been committed to the Supreme or District Criminal Court;

- *plea not applicable:* in these cases the defendant is not required to enter a plea. This applies to applications for restraining, or domestic violence or paedophile restraining orders.

Tables

Tables 2.1 - 2.13a Case outcome by major offence charged

For each court appearance that was finalised during the twelve month period covered in this report, only the outcome for the major charge is recorded (see earlier definition of major charge).

Each table refers to appearances by individual defendants. For example, if four co-defendants were tried and jointly convicted or found guilty of an offence which they committed together, each would be recorded separately in the case outcome and penalty tables. An individual tried or sentenced on two separate occasions within the same reporting period would be recorded twice. It is also possible that in some instances (namely committals) the Crown may have formulated charges against an individual, withdrawn them, but then subsequently re-charged the same person for the same or additional offences. These cases also would appear more than once in the tables.

In Tables 2.1 to 2.13a where defendants have not been convicted or found guilty of the major charge but were convicted or found guilty of another or less serious charge, the number of cases where a lesser or other charge was found guilty is shown in brackets. Some of those lesser or other charges may be for offences in groups other than the major charge - e.g. a person charged with *assault* (an offence against the person) may eventually be found guilty only of *offensive language*. The method of interpreting the numbers depicted in brackets was changed in 1996, which means that care must be taken when comparing these tables with those presented in reports prior to 1996.

The simplest way to explain the differences in presentation is to provide a specific example. In the 1995 report, the following entry appeared:

Major charge (grouped)	Guilty of lesser or other offence	Major charge withdrawn
Offences against the person	231	969 (156)

According to the method of reporting used in 1995, there were 969 cases where the major charge was withdrawn and where no conviction was recorded for a lesser or other offence. In addition, there were 156 cases (as indicated by the number in brackets) where the major charge was withdrawn but where there was a conviction recorded for a lesser or other offence. In total then, there were 1,125 cases in which the major charge was withdrawn, but to obtain this total, both sets of numbers in the column 'major charge withdrawn' had to be summed. The 156 cases in brackets were actually counted as part of the 231 listed under the heading 'guilty of lesser or other offence'.

However, when the new counting methods introduced in 1996 are applied to the above example, the following presentation results:

Major charge (grouped)	Major charge withdrawn
Offences against the person	1,125 (156)

The column headed 'guilty of lesser or other offence' has been completely omitted. Under the heading 'major charge withdrawn', the number in brackets has been retained but has actually been counted in the total figure listed in that column. The table now indicates that there were 1,125 cases in which the major charge of *offence against the person* was withdrawn but of those 1,125 cases, 156 involved a conviction for a lesser or other offence. To identify how many cases involved a conviction for a lesser or other offence, it is now necessary to add all numbers in brackets across the table to get the total.

As noted earlier, in those instances where defendants were not convicted of the major charge but were convicted or found guilty of another or less serious charge, that less serious charge may be for offence in a group other than the major charge - e.g. a person charged with *assault* (an offence against the person) may only be convicted or found guilty of *offensive language*. In the example given, the case would appear in the outcome tables (Tables 2.1 to 2.13a) for *offences against the person*, but in the penalty tables (Tables 2.14 to 2.25) for *offences against good order*. This is a change from reports prior to July-December 1985, when cases always appeared in the same offence group for both outcome and penalty tables. This means that it is no longer possible to compare totals in corresponding outcome and penalty tables except for overall totals in the two summary tables (Tables 2.1 and 2.14).

As a means of identifying *restraining*, *domestic violence* or *paedophile restraining orders* such applications have been separated from any other criminal charges heard at the same time and are treated as a separate case. Thus if a defendant was charged with *common assault* and is also answering a restraining order application, the details relating to the *common assault* charge would be treated separately and recorded under *offences against the person*. The outcome of the order application would be recorded under a *non-offence* matter. Since the granting of an application for such an order does not constitute a conviction for a criminal offence, such cases are recorded in the column 'Guilty without conviction'. Breaches of r*estraining* or *domestic violence* or *paedophile restraining orders* are included under *offences against good order*.

As in 1996 and subsequent reports, Table 2.3 relating to *sexual offences* has been considerably expanded in this report to provide more detailed information on the age and sex of the victim and to differentiate, where appropriate, between completed and attempted offences. (It should be noted, however, that in many cases information relating to the victim's age was not available.) In addition, there is now greater offence specificity, with charges such as *unlawful sexual intercourse by a teacher/guardian* being presented as a separate category rather than, as in reports prior to 1996, being combined under the general category of *unlawful sexual intercourse*.

Table 2.13a (*non-offence matters*) was expanded in 1995 following improvements in Office of Crime Statistics and Research data collection and extraction methods.

Table 2.13b Disposition of cases involving persons declared to be liable to supervision on grounds of mental incompetence

Table 2.13b was included for the first time in 2000. The identification of cases involving at least one offence with this outcome has been made possible by the creation of new outcome types for the Magistrates Court by the Courts Administration Authority, following the commencement of the *Criminal Law Consolidation (Mental Impairment) Amendment Act 2000* on October 29th 2000. Unlike Table 2.1 to 2.13a it includes all cases where at least one offence had this outcome, rather than only those cases where the outcome was attached to the major charge.

Tables 2.14 - 2.25 Major penalty for major charge convicted or found guilty

For each defendant convicted or found guilty, the most serious penalty is recorded (order of severity given earlier). The numbers receiving each type of penalty are recorded, as well as the minimum, average and maximum for direct imprisonment (weeks) and monetary fines (dollars).

The penalty category 'community service order' was new in 1989. Before the introduction of the *Criminal Law (Sentencing) Act*, community service orders were given as conditions of bonds and thus did not constitute a major penalty (as the bond is regarded as more serious - see earlier explanation of major penalty). Since 1989 it has been possible to give a stand-alone community service order. To avoid making the tables too cumbersome, the two categories of 'bond with supervision' and 'bond without supervision' have been combined.

Again, Table 2.16 has been expanded as outlined above for Table 2.3.

Tables 2.26 - 2.27 Penalties imposed for cases involving offenders convicted or found guilty of driving with more than the prescribed content of alcohol (PCA)

These two tables summarise the penalties imposed, and the blood alcohol content, of persons convicted or found guilty of PCA offences. (Some cases of driving under the influence while holding a probationary licence are also included). Again, it should be stressed that these tables differ from those in *Crime and Justice* reports released prior to 1997. In these earlier reports, only those PCA offences which resulted in a conviction were included, while those where there was a finding of guilt without conviction were excluded. In 1997, for the first time, all offences proved were counted, irrespective of whether a conviction was recorded. The tables in this report are therefore not comparable with the corresponding tables in reports prior to 1997.

Blood alcohol content (BAC) is broken down into: 0.001 up to 0.049; 0.050 up to 0.079; 0.080 up to 0.099; 0.100 up to 0.149; 0.150 up to 0.199; 0.200 up to 0.249; 0.250 and over; and unknown BAC. The average duration of licence suspension is calculated without taking into account the 'until further order' category.

Table 2.26 gives the penalties for those defendants with no previous convictions within the last five years for such an offence while Table 2.27 is for those who have had one or more prior convictions for a drink drive offence within the last five years. The *Road Traffic Act* sets different penalties for first offenders and those with prior drink-drive convictions within the last five years. Before 1995 this table did not distinguish between convictions more and less recent than five years prior. System enhancements in 1995 made this distinction possible while further refinements were introduced in 1996. The modifications in the method used to calculate prior convictions for this current report are outlined below.

Tables 2.28 - 2.29 Sex, age, and Aboriginal appearance of the defendant

This section contains background details of offenders. Cases are classified according to the offence group of the major charge.

As noted earlier, since 1994 background data on defendants processed through the Magistrates Court have been obtained by electronic transfer of data from the Police Department's computer system, using the apprehension number as the unique reference point for matching a particular court file with the appropriate police file. Much of this matching is done by the Police Offender History Unit, which also provides OCSAR with the raw data from which information on prior convictions is derived. Background data, such as sex and Aboriginal appearance, is obtained from SAPOL's Statistical Services Unit.

One entry appears in each of these tables for each appearance by a defendant. These background items refer to the status of the defendant at the time of apprehension (as recorded by the Police Department). Prior to 1996, the *Crime and Justice* report contained tables relating to the occupational status, marital status and birthplace of defendants were included. However, because these tables always contained a high proportion of cases in which the relevant information was missing, their usefulness was highly questionable. For this reason, all three were omitted since 1996.

As an alternative to the birthplace table, a table detailing the Aboriginal appearance of the defendant has been included. This table distinguishes defendants with Aboriginal backgrounds from all other defendants. The classification of an alleged offender as 'Aboriginal' or 'non-Aboriginal' is determined by police and records the opinion of the apprehending officer as to the appearance of the apprehended person rather than on the person's own definition of their Aboriginal identity.

Tables 2.28 to 2.29 also give a rate of appearance per 1,000 relevant South Australian population. The population figures used in calculating the rates listed in Table 2.28 are based on the ABS population by age and sex figures as of 30 June 2007 (ABS Catalogue No. 3201.0). The rates presented in Table 2.29 are derived from the 2006 Census because no estimates are provided for the Aboriginal population in non-census years.

Table 2.30 Prior criminal convictions and prior imprisonments by major offence charged

For each appearance by a defendant, a summary is given of that defendant's previous convictions and previous imprisonment. Prior to 1994, defendants with 100 or more previous convictions were recorded as 99. Commencing in 1994 all previous convictions were recorded. A defendant's previous convictions include both adult and juvenile offences in South Australia, and, if the South Australian Police are advised of them, interstate and Commonwealth offences.

For the 1996 and subsequent reports, a number of enhancements were made to this table, as follows:

- Convictions subsequently quashed at appeal or rehearing were excluded.
- Terms of imprisonment that were suspended were omitted from the number of previous imprisonments. However, where the suspension was subsequently revoked, the imprisonment was counted.
- To bring the counting rule more in line with the other tables in this report, the number of counts of offences were summed, rather than just the number of offences as in previous years. In the other tables in this report, if a person was convicted on three counts of *assault*, this is represented in the tables as three *assaults*. Prior to 1996, those same three *assaults* would have been counted in the prior convictions tables as one *assault*. From 1996 onwards they are counted as three *assaults* in the prior convictions table. This last enhancement has tended to balance the effects of points one and two, resulting in only minor changes to the overall numbers in the table.

The calculation of prior drink driving convictions, as set out in the *Road Traffic Act*, has been further refined, with particular emphasis on the type of offences which qualify as prior drink driving offences. Further information may be obtained from OCSAR on request.

Tables 2.31 and 2.32 Bail status and legal representation at final court appearance by major offence group

'Bail status' is at the final court appearance. For defendants with only one court hearing, this refers to police bail. For those with two or more hearings the bail status has been determined by the court. 'Legal representation' refers to whether the defendant was legally represented at the final court appearance. The term 'Duty solicitor' refers to solicitors rostered to service courts under the Law Society's Duty Solicitor Scheme, and to solicitors from Legal Services Commission and the Aboriginal Legal Rights Movement who also provide a duty solicitor service. 'Other' legal representation refers to solicitors from legal aid organisations appearing on occasions other than as duty solicitors, and private solicitors. Tables 2.31 and 2.32 distinguish between cases that required only one court hearing, those needing two or more court appearances, and defendants committed for trial or sentence.

Table 2.33 Plea at final court appearance by major offence group

The 'final plea' refers to the plea entered to the major charge at the final court appearance. This can be either 'Guilty', 'Guilty 3', 'Not guilty', 'Defence reserved' or 'No plea'. (More detailed definitions of the meaning of each of these terms has already been provided). Table 2.33 distinguishes pleas given by defendants committed for trial or sentence.

SUPREME AND DISTRICT CRIMINAL COURTS

Introduction

Tables 3.1 to 3.30 in Section 3 of this report cover all criminal cases finalised in the Supreme and District Courts during the reporting period. These cases have in most instances been committed for trial or sentence by a magistrate or other justice after committal proceedings. Other cases are committed *ex-officio* by the Crown through the DPP or, rarely, by the Attorney-General. Cases appearing before the Supreme and District Courts are generally those of a more serious nature, and the classes of offences covered are explained earlier in this appendix. A matter is finalised when it is removed from the lists of a particular court by having all charges finalised. A charge is regarded as finalised when it is dealt with in one of the following ways:

- it is found proved and a sentence imposed;
- the defendant is found not guilty of the charge;
- a *nolle prosequi* is entered by the prosecution, or the DPP declines to file an Information;
- the DPP replaces the charge with another by laying a fresh Information. The original charge is shown as being *not proceeded with;*
- the court finds a fault in the charge and quashes it;
- the defendant dies;
- there is a 'hung jury' at a trial (that is, the jury cannot reach a verdict);
- no verdict was taken at a trial;
- the court finds it has no jurisdiction in the matter; or
- a youth has been found guilty but is remanded to the Youth Court for sentencing.

Instances where all charges are shown as having been not proceeded with by the DPP are generally assumed to have had a fresh Information laid to replace the original charges. Any instances of this are checked manually to ensure that subsequent replacement charges are detected. However, if the delay between not proceeding and the laying of a fresh information is sufficient to place it beyond the date set as the cut-off for preparation of this report (generally three months after the close of the reporting period, to allow for late entry of data onto the CAA computer), such cases will be shown as having all charges 'not proceeded with' (these are assigned to the *major charged dropped – no other charge guilty* group in Tables 3.1 to 3.11). However, they will be counted again in a subsequent year when the charges on the new Information are finalised. Every effort is made to avoid such instances and based on experience, this effort is generally successful. For example, a retrospective audit of the 1995 data showed that by not closing off the data base until the end of March, 1996 it was possible to identify all such cases and remove them from the 1995 statistics prior to publication.

Cases transferred to another court are not regarded as finalised unless one or more charges were finalised beforehand. (In such circumstances the case effectively splits in two.) Similarly, cases remitted to a higher or a lower jurisdiction are not regarded as finalised; these are counted at the court to which it was sent (so long as it is finalised at that venue). Similarly, a file which is consolidated by court staff to another file, leaving no counts finalised prior to this are not counted. These rules are designed to avoid counting the same matter more than once.

Matters in which a conviction is still awaiting sentence are not counted until a sentence is imposed, although a case convicted but in which no sentence was given due to a successful appeal against conviction will be counted. Matters which are joined with one or more others on another file, and in which no hearings before a judge occur are not counted[18]. Other types of matters not counted

[18] This can occur when the CAA raises a file on a matter and, without there being any court proceedings, records that the matters are not proceeded with because a fresh Information is to be laid joining the current matters with those on another file. It is recorded on the computer system as though a hearing was held, but in front of a member of the Registry staff. Such cases are excluded on the grounds that they do not reflect actual court hearings, merely court Registry activities involving the lodgment of documents and the arrangement of future groupings of matters for hearing. However there are instances in which initial hearings have been held before one or more judges before the case is dealt with in this manner, with the final 'hearing' being recorded as having been held before a

include applications to set a non-parole period, applications to vary a condition of a bond or order or to grant, revoke or alter bail. The intent of this collection is to include only proceedings whose purpose is to determine the outcome of criminal charges or to set sentences in relation to them.

For the purposes of these statistics, a finalised case is regarded as a group of matters involving the one defendant (co-defendants are assigned their own case), which were all finalised in related proceedings. A case is not considered finalised until all criminal charges involved in that case have been dealt with. For example, if a case involves five offences, and two are finalised at one hearing while the remaining three are finalised at a subsequent hearing, the case is considered finalised on that second hearing date. Adherence to this definition leads to a smaller count of cases than when using as the criterion of a 'case' all the matters assigned the same file-number by the court. Administrative convenience can lead to the same group of matters being listed under a number of different file-numbers as the prosecution refines its case. Each time the DPP lays a fresh Information to replace a set of charges already laid, a new file-number may be generated by court staff. The maximum number of file-numbers relating to the one individual and which are consolidated using the above rule can be over a dozen in a few circumstances. Matters which are re-tried are not counted separately if they form a contiguous series not resulting from an appeal. Thus a re-trial resulting from a mis-trial or the withdrawal of jurors would not be counted as a second instance, whilst one ordered by the Court of Criminal Appeal would be counted separately.

Data sources

The data in these tables are extracted from the computer used by the Courts Administration Authority for its own case-management purposes. The data reflect what was available on the database at the time of extraction and are at least as accurate as the original data. Discrepancies may result from correction by the Office of Crime Statistics and Research to errors detected in the supplied data or where omissions are rectified by locating the missing information in paper court files or in records held by other departments. Apparent discrepancies with court records may result from the consolidation of cases by the Office of Crime Statistics and Research because they are related matters (see below). Any changes to existing cases or addition of new cases relevant to the reporting period made by Courts Administration Authority staff after the date of extraction will not in general be available to the Office of Crime Statistics and Research in time for these reports. Data relating to defendant characteristics are extracted mainly from police records. In a small number of instances data are extracted from the records of the Department for Correctional Services or the Director of Public Prosecutions where court records do not show the new total sentence for defendants who receive a period of imprisonment cumulative on an existing sentence.

Definitions

(i) ***Higher court.*** Refers to Supreme and District Courts.

(ii) ***Lower court.*** Refers to Magistrates Courts of South Australia.

(iii) ***Major charge.*** The 'major charge' in Tables 3.1 to 3.22 is the major offence for which a defendant was charged or convicted[19]. This is determined by the following procedures:

(a) Out of the charges, if any, for which the defendant was found guilty, select the one that received the highest penalty. If two charges received the same (highest) penalty, select the one for which the highest maximum penalty is prescribed in the statutes. If all statutory penalties are the same, select the first charge listed. The charge selected by this method is the 'major charge found guilty'. The ranking of severity used by the Office of Crime Statistics for this process is set out below under (*v) Penalty*.

Registry staff member. This type of case is counted as it involves hearings before a judge and is shown as having outcomes of *not proceeded with* on all counts.

[19] A charge may in rare circumstances be found guilty without a conviction being recorded. Such instances are not distinguished for the purposes of determining the major charge.

(b) Out of the charges, if any, for which the defendant was *not* found guilty, select the one with the highest maximum statutory penalty. If two or more such charges have the same maximum statutory penalty, select the first listed. The charge selected by this method is the 'major charge not convicted'.

(c) From the 'major charge found guilty' and the 'major charge not convicted', select the charge that has the higher maximum statutory penalty. If the 'major charge found guilty' and the 'major charge not convicted' have the same maximum statutory penalty select the major charge found guilty. The charge selected by these rules becomes the *major charge.*

(iv) ***Major penalty.*** The major penalty is the most severe penalty handed down for the major offence proved. This does not include other penalties made cumulative upon it or in any other way additional to it. However, it should be noted that under global sentencing provisions, the penalty applied to the major offence proved may also apply to other offences found proved within the same case.

(v) ***Non parole period.*** When a prison sentence is given, the judge may also specify the period which the prisoner must serve before being eligible for parole. Where a prisoner was already serving a sentence, a new non-parole period must be set if the sentence was extended. In such circumstances the non-parole period shown in the tables is the new non-parole period. This can lead to some apparently very long non-parole periods for offences where one would not expect to find them. An example of this is when a prisoner, already serving a very long sentence, is convicted of a further offence of a less serious nature than the original offence. In the 1992 report, for example, a prisoner serving a life sentence with a 32-year non-parole period was convicted of *common assault.* He received a further sentence of two years concurrent with the life sentence, and his non-parole period was extended by 18 months. He thus received a sentence of two years on the major charge found guilty, but his non-parole period was 33 and a half years. His total effective sentence was life imprisonment. Persons who commit offences whilst on probation may have their suspension revoked and any non-parole period applicable to the suspended sentence added to that for the new offence. In all instances where a non-parole period is extended, the amount shown in these tables is the final non-parole period, not the amount by which the existing non-parole period was extended.

(vi) ***Offence codes.*** Offence codes are based on the Act and Section under which the defendant was charged and represent the finest level of detail about the offence. Sometimes the same Act and Section will be further subdivided into several offence codes to convey additional information about the offence, e.g. age of victim, type of premises broken into, type of weapon used in robbery.

(vii) ***Offence group.*** To enable broad comparisons, offences have been grouped into ten major types (see Table 3.1). These groups are based on the JANCO (offence codes) classifications system implemented on the Justice Information System and administered by the Office of Crime Statistics. JANCO is an adaptation of the Australian Bureau of Statistics' ANCO (*Australian National Classification of Offences, 1985.* Catalogue No. 1234.0) classification system. JANCO adheres to the most detailed level of ANCO and extends this to even more detailed levels to highlight items of interest obscured by the generality of ANCO. Although the tables in other sections of this report also adhere to JANCO, different areas show different degrees of detail according to factors such as the frequency of the offence in that section of JANCO and the relative interest or seriousness of the offence. The additional data (e.g. the age or sex of the victim, value of property damaged etc) originate in the data collection systems of the Courts Administration Authority and are based on information contained in the wording of the Informations laid by the Director of Public Prosecutions. Where these items are not mentioned or where court officers have omitted to enter them, the offence will be classified to one of the 'Unknown' sub-groups. Use of these broader categories means that in some instances, details coded by the Office of Crime Statistics and Research cannot be

Less detail is given in the Supreme and District Courts on minor offences than is given in the Magistrates Courts since the numbers are negligible in the former. The JANCO system was introduced in the 1992 issue of *Crime and Justice* when this became possible with the adoption of this system throughout the Justice Information System and the Courts Administration Authority. In most instances it will be apparent where offences have been placed from the older system used in previous reports, but readers wishing to know where particular offences are located in the old and the new systems should contact the Office of Crime Statistics and Research.

Tables 3.2 to 3.11 and 3.13 to 3.22 shows the specific offence categories contained in each of these broader types. As mentioned in (I) above, the Office of Crime Statistics and Research codes the Act and Section for each charge finalised in a Supreme or District Court. Offence categories used in Tables 3.2 to 3.11 and 3.13 to 3.22 correspond roughly to these codes, but in some instances a single category includes two or three more Acts and Sections (e.g. *Other Assault* includes both *CLCA 39 - Common assault* - and *CLCA 43 - Assault with intent to resist apprehension).*

Most attempted felonies are dealt with under Section 270 of the *Criminal Law Consolidation Act*. In general terms, Tables 3.2 to 3.11 and 3.13 to 3.22 group attempted offences with completed offences of the same type (e.g. an *attempted armed robbery* is grouped with *armed robbery*). Under the classification system in use prior to the 1992 report, inciting the commission of an offence (which is itself a common law offence), was included in the category of the offence incited, rather than being listed separately, as were accessaries before or after the fact. Under the JANCO classification system, accessaries, aiding and abetting and inciting the commission of offences are all grouped together under level 5496, regardless of the type of substantive offence involved.

- Copies of the current version of JANCO and of the individual offences comprising each category and sub-category used in the tables are available from the Office of Crime Statistics and Research and are also available on the website (www.ocsar.sa.gov.au).

(viii) ***Penalty.*** Once a defendant has been found guilty, the following penalties - listed in order of severity - can be imposed:

- immediate imprisonment;
- suspended imprisonment;
- community service order;[20]
- bond with supervision;
- bond without supervision;
- suspension of driver's licence;
- monetary fine;
- other order (e.g. restitution, confiscation of drugs)
- sentenced to the rising of the court;
- no penalty.

More than one of these can be imposed at once, e.g. suspended imprisonment, plus a bond and a community service order.

Defendants can also be referred to a Youth Court for sentencing. These cases are not included in the penalty tables. On rare occasions a conviction may occur but a successful appeal is lodged prior to a penalty being set.

(ix) ***Plea***. Pleas in Tables 3.1 to 3.11 are the final plea entered, if the defendant changes his or her plea. The plea may have been entered at the committal hearing or may not be entered until the case reaches the Supreme or the District Court.

[20] Prior to the report for 1993, community service orders were ranked after bonds.

A defendant can plead:

- *guilty*, in which case he or she appears for sentence;
- *not guilty*. A trial then commences;
- no plea. This occurs if the DPP enters a *nolle prosequi* or lays a fresh Information prior to the defendant entering a plea, the accused dies, etc. Where a defendant faces an allegation of breaching a good behaviour bond, the defendant is required to show cause (usually expressed as 'shew cause' in court documents) why the bond should not be regarded as breached. In almost all instances of a breach of bond the plea is recorded as 'did not show cause' and in such instances is allocated to the 'no plea' category.

(x) ***Pleas and outcomes.*** In Tables 3.1 to 3.11, pleas and outcomes for major charges are defined as follows:

- *Guilty plea.* These two groups do not involve trials[21].

  Guilty as charged. The accused pleads *guilty* to, and is sentenced for, the major charge.

  Guilty of other offence. The accused pleads *guilty* to, and is sentenced for, an offence other than the major charge. In this type of case, the major charge is not proceeded with, nor is a *nolle prosequi* entered by the Crown. Frequently the accused has pleaded *not guilty* to the major offence, but a plea of *guilty* to another offence has been accepted by the prosecution in satisfaction of the original Information.

- *Not guilty plea (trial).* These six groups comprise instances in which a trial was held. It is possible for there to have been a trial on a matter other than the major charge even though the major charge itself did not involve a trial. For this reason a precise figure for the number of trials is not obtainable and readers should contact the Office of Crime Statistics and Research for this information.

  Pleads guilty. The accused pleads *guilty* to the major charge. In most instances this is because the defendant changed their plea to *guilty* after the commencement of the trial, although in a small number of instances the plea was *guilty* from the outset, but a trial was held on a charge other than the major charge. This category was introduced in 1996. Before then such cases were included under the 'guilty as charged' category. Prior to 1994, the plea of *guilty* took precedence over the fact that there was a trial for another or lesser offence in the case and such cases were assigned to the *Guilty plea - guilty as charged* category.

  Guilty as charged. The accused pleads *not guilty*, goes to trial, is found guilty of the major charge and a sentence is handed down.

  Guilty of lesser offence. The accused is found not guilty of the major charge (e.g. *murder*) but guilty of a lesser offence (e.g. *manslaughter*) and a sentence is handed down.

  Guilty of other offence. The accused is found not guilty of the major charge (e.g. *rape*) but is found guilty as charged of another offence (e.g. *indecent assault*). In these cases, the accused has been charged with a number of offences, has been

[21] Prior to 1994, it was the practice that if a trial was commenced and the accused changed his or her plea to *guilty* to the major charge, the outcome was assigned to the first of the two subgroups under guilty plea and was not counted as a trial. If a plea of *guilty* to an offence other than the major charge was accepted by the Crown after a trial commenced, the outcome was assigned to the second subgroup. Beginning with 1994, these have been grouped with trials, initially under *guilty as charged,* and from 1996 onwards under *pleads guilty.*

acquitted of the major charge but still has been found guilty of another less serious offence.

Not guilty-mentally incompetent. Previously this column was headed 'Not guilty on the grounds of insanity', reflecting the law as it stood prior to March, 1996 (see below for a discussion). Prior to March, 1996, this column included instances where the defendant had been found not guilty of the major charge (e.g. *murder*) on the grounds of insanity. The defendant was then detained "until the Governor's pleasure be known", that is, until it was determined that he or she was fit to be released on licence. Persons found unfit to plead, on the grounds that they were insane, were also grouped with these cases. Since March, 1996, the concept has been altered to a more general one of being mentally impaired rather than referring solely to people whose responsibility was diminished by being insane, and now includes causes such as mental illness, intellectual disability and senility-induced mental impairment. Under the new provisions (*S 269* of the *Criminal Law Consolidation Act*) a person found mentally unfit to stand trial or mentally incompetent to commit the offence, may become liable to supervision for a period not greater than that for which he or she might have been imprisoned, had they been convicted. Alternatively at its discretion, the court may instead order unconditional release or release on licence or the court may order detention at an institution to be determined by the Minister of Health, who must provide the court during the period of supervision with regular reports on the person's condition and treatment. As mentioned before, this period is set by the judge and can be no greater than the period of imprisonment which would have been given if *S 269* had not applied.

Acquitted. The accused has pleaded not guilty, gone to trial and been acquitted on all charges.

- *Crown drops the major charge.*

In this context, dropping the charge means that the DPP ceases to prosecute the major charge by means of either:

- entering a *nolle prosequi*,
- not proceeding with the charge,
- declining to file an Information (pursuant to S 276(2) of the Criminal Law Consolidation Act) or,
- by withdrawing the charge.

Where the DPP does not proceed with a charge, it may be because they have laid a fresh Information which supersedes the one which included the major charge, or it may be because they have accepted a plea of *guilty* to another charge in satisfaction of the major charge. In the majority of cases, the means employed is a *nolle prosequi*, and for this reason, the group was characterised in this way prior to 1997. When this series of *Crime and Justice* reports began it was rare for charges to be dropped by any means other than a *nolle prosequi*. However, in order to make the title more accurate and to better reflect current practices, the title was changed to this more general form for the 1997 and subsequent reports.

Guilty of other offence. The DPP has dropped the major charge (e.g. *possess Indian hemp for sale*) but the accused has pleaded *guilty* to another charge (e.g. *possess Indian hemp for own use*) which the DPP accepts in satisfaction of the major charge.

No other charge guilty. The DPP has dropped the major charge and no other charge within the case resulted in an outcome of *guilty*. The accused is then discharged. The other charges may have resulted in an acquittal, a finding of not guilty on the grounds of mental incompetence, been dismissed or withdrawn (if they were summary matters brought up from a magistrates' court), not proceeded with or a *nolle prosequi* entered. As an indication of the typical profile of outcomes, between 1997 and 2000 inclusive, over 80% of the counts in the two groups under the heading 'major charge dropped' were terminated by means of a *nolle prosequi*.

- *Other outcome*

Other outcomes that can occur are:
- the accused died;
- no verdict taken;
- a 'hung jury', i.e. the jury was unable to return a verdict;
- a juvenile defendant is referred to a Youth Court;
- the court finds it has no jurisdiction in the matter; or
- the court quashes the Information laid by the Crown.

With the exception of refusals to file Informations, reports before 1990 did not include these outcomes in Tables 3.1 to 3.11. Similarly, prior to 1992, these reports did not count cases where the matters solely concerned breaches of bonds or of bail. These are now included under their own category in Tables 3.9 and 3.20.

(xi) ***Total sentence.*** The total sentence (also known as the 'head sentence') is the overall period of imprisonment imposed on the defendant for all the charges convicted, plus any existing term of imprisonment. Prison sentences can be either cumulative (ie one commences when the other expires) or concurrent (ie two or more are served at the same time). A sentence also can be served at the expiration of a sentence already being served. In such instances the total sentence will show the total of the original sentence plus whatever was added in the current case. When a person is imprisoned for an offence committed whilst on parole, the unexpired parole must be served prior to commencing the new sentence, and the total sentence will then be the sum of the unexpired parole and the new term of imprisonment. Total sentence is shown in Table 3.23.

Tables

Tables 3.1 - 3.11 Case outcome by major offence charged

For each court appearance which was finalised during the twelve month period covered in this report, only the outcome for the major charge is recorded (see earlier definition of major charge).

Each table refers to appearances by individual defendants. For example, if four co-defendants were tried and convicted jointly for an offence which they committed together, each would be recorded separately in the case outcome and sentencing tables. An individual tried or sentenced for different sets of charges on two separate occasions within the same reporting period would be recorded twice. Convictions subsequently overturned by appeals are still shown and the appeals themselves are not included. This can lead to there being fewer cases in the penalty tables than would be expected from the number of cases convicted in the outcome tables.

Tables 3.12 - 3.22 Major penalty for major charge found guilty

The 'major charge found guilty' is the charge for which the highest penalty was received. (See earlier definition for the severity of penalties.) If two or more offences received the same penalty, the 'major charge found guilty' is the one with the highest penalty in the statutes. If statutory penalties are the same, the first charge within the case is selected. The penalty shown is the final penalty given by the sentencing judge and does not take account of reductions due to subsequent appeals.

In some instances a so-called 'global penalty' is handed down, in which one penalty (or group of penalties) is applied to more than one count. In such instances the charge selected as the major offence found guilty will show the penalty as if it were applied to it alone.

Major penalty tables are grouped according to the major charge found guilty. This need not necessarily be the same offence type as the major offence charged, because an accused can be found guilty of an 'other' or a 'lesser' offence (e.g. the major charge may have been *cause injury by negligent driving*, but the defendant was convicted of *driving in a manner dangerous*). As a result, numbers of convictions in outcome tables are not always equal to numbers in penalty tables for the same offence group or subgroup. Other circumstances in which the major offence charged and the major offence found guilty are not the same are where (1) the major offence charged does not result in a conviction or, (2) the defendant is convicted of other offences which receive heavier penalties than received for the major offence charged.

The major penalty is defined as the most serious penalty handed down. For example, if the accused received a six-month suspended sentence *and* was placed on a two-year bond *and* received a fine for the major offence, the major penalty would be the suspended sentence, and only this penalty would be included in the table.

Note that the 'average sentence' in Tables 3.12 to 3.22 refers *only* to the sentence for the *major charge found guilty*. Thus sentences for other charges are not included. The total sentence is shown in Table 3.23 (see below). However, non-parole periods are not subdivided into components attributable to individual charges, and hence a case receiving a number of cumulative penalties may have a non-parole period longer than the sentence for the major charge found guilty. Occasionally a small number of cases receiving particularly long non-parole periods relative to the sentence for the major charge found guilty can affect the average non-parole period to the extent that it exceeds the average sentence for the major charge.

Cumulative sentences can be received by defendants who are serving an existing sentence or, by those who upon being convicted of fresh offences, have breached either parole or a bond. For persons receiving a sentence of imprisonment for offences committed whilst on parole, the un-expired period of their non-parole period must be served before commencing the fresh imprisonment period.

Table 3.23 Total head sentence and non-parole period for all imprisonments

This table tabulates non-parole periods and total terms of imprisonment (head sentence) for all charges. Note that the head sentence and the non-parole period are for the *total* sentence, not just the sentence for the major charge found guilty. This table may show more life sentences than are shown in Table 3.12 if someone serving a life sentence receives a further sentence. This can happen when their new sentence is less than life imprisonment; in such a case the penalty for the major offence found guilty (the new sentence) will be shown in Tables 3.12 to 3.22 as something other than life imprisonment, but the total effective term will be life imprisonment and will be shown as such in Table 3.23. Sentences of indefinite imprisonment (formerly known as 'imprisonment until the Governor's pleasure be known') are included with life imprisonment in this table, but are grouped with those for which a non-parole period was not set. The instances in which a non-parole period was not set include indefinite imprisonments, and those whose period of imprisonment was less than the length for which setting a non-parole period is required (twelve months for offences against South Australian statutes and three years in the case of Commonwealth

laws). Also included are those cases where, pursuant to *S 32 (5)(c)* of the *Criminal Law (Sentencing) Act*, the judge declines to set a non-parole period, plus sentences of detention for juveniles, for which non-parole periods are not set.

Tables 3.24a,b,c Age and sex by major offence charged

Age is at date of alleged offence. Prior to the report for 1993, age was calculated at the date of the earliest offence; since then age is at the date of the major offence charged. Defendants who appear more than once in the year, and whose cases have been counted separately, will also appear once for each case in these tables.

Table 3.25 Aboriginal appearance of defendant by major offence charged

Information on Aboriginal appearance is derived from police Apprehension Reports and reflects the appearance of the person as judged by the apprehending police officer. It may slightly underestimate the true number where the person's appearance is not obviously Aboriginal. Rates are based on the latest Census figures because no estimates are provided for the Aboriginal population in non-census years.

Note: With effect from 3 July 2007, SAPOL introduced the standard Australian Bureau of Statistics questions on Aboriginal and Torres Strait Islander (ATSI) identification and this information is now being collected in relation to accused persons. As the data on ATSI identification is incomplete for 2007 these tables present information based on Aboriginal appearance only.

Table 3.26 Prior criminal convictions and prior imprisonments of defendant by major offence charged

For each accused, a summary is given of the number of previous convictions and the number who have previously been imprisoned.

Tables 3.27 - 3.28 Bail status and final plea by major offence charged

These two tables are based on one entry for each accused for each case counted. The last bail status recorded for the case is given since this is the most clearly and accurately recorded entry on bail in higher court files. The plea of the accused was the final plea entered at a higher court appearance.

Table 3.29 - 3.30 Month case finalised by final plea for the Supreme and District Courts

The month of court disposition is the month in which the case was disposed of (ie the accused was sentenced, acquitted, etc). The disposition month is not necessarily the court session month, since most defendants are remanded for sentence after being found guilty. The totals for each month are also broken down according to the final plea entered. Defendants whose major charge was a breach of bond are assigned to the 'no plea' category. Other circumstances in which cases are assigned to the 'no plea' category are where the major charge is dropped prior to a plea being entered.

In *Crime and Justice* reports prior to 1987, tables showing duration of proceedings were included. Due to the difficulty in obtaining sufficiently accurate information on all stages of proceedings and the fact that there was no indication of any interest in these tables, the practice of collecting and tabulating the information was discontinued. If sufficient interest is shown in having these data, consideration will be given to reinstating them.

CORRECTIONAL SERVICES

Introduction

Correctional Services statistics, which cover persons in prison and under community corrections supervision, were extracted from the Justice Information System (JIS) by the Strategic Services Division of the Department for Correctional Services. In 1996, the number of tables presented in the *Crime and Justice* report was increased and their content enhanced. Further tables and enhancements were made to the 1997 report. In particular, a range of tables were added which detailed the number of prison discharges by the major offence under which the person was being held at the time of release. No additional tables have been included in 2007.

It should be stressed that, as in previous years, the figures count only those persons for whom the Department for Correctional Services was responsible. Persons whose total period of remand or sentence was served in the custody of police or the Courts Administration Authority are not included. The term 'prison' includes the Adelaide Remand Centre. In addition, the figures include prisoners who are temporarily located outside of legally proclaimed custodial facility for adult offenders such as in hospitals or on unaccompanied leave.

The Correctional Services tables span the following key areas:

- prison receptions;
- daily averages;
- persons in custody on 31 December 2007;
- prison discharges; and
- community corrections, including the types of supervision orders commenced and the types completed during 2007.

Tables

Tables 4.1 to 4.6 Prison receptions: sex, age, Aboriginal identity and employment status by legal status

These tables are based on all new prison receptions during the reporting period. Prisoners who were admitted to custody prior to the commencement of the reporting period are not counted, even if their legal status changes during the period under analysis. For example, prisoners already in custody prior to 1 January 2007 who, during the reporting period, subsequently change from being a remand prisoner to a sentenced prisoner are not included unless they were physically discharged and later re-admitted to prison. Similarly, those who complete one sentence and immediately begin serving a new sentence without being discharged are excluded. Prisoners who are transferred from one prison to another are also excluded from these tables, but those who are transferred from the custody of another authority (e.g. an interstate department) are included. Finally, it includes only those persons in the custody of the Department for Correctional Services.

The legal status of a prisoner is at the time of reception. In *Crime and Justice* reports prior to 1996, only two categories were used: remand and sentenced. Fine defaulters were included with the sentenced prisoners. Beginning with the 1996 report, fine defaulters now constitute a separate category. As a result of this change, direct comparisons between the current and pre-1996 reports are possible only for remand prisoners and for fine default/sentenced prisoners combined.

It is also noted that legislative changes (the *Statutes Amendment (Fine Enforcement) Act*) implemented from March 2000 removed the option of serving a term of imprisonment in lieu of a fine or expiation notice. The number of prison receptions for fine defaulters in 2001 refers to receptions that occurred prior to the implementation of the legislation.

For the purpose of these tables, prisoners being held under a dual order are counted only once, according to the most serious legal order applicable to them. The order of seriousness (from most to least serious) is as follows:

- sentenced;
- fine default;
- remand.

This means that the remand category covers prisoners serving a remand order only. A prisoner who is on remand and who also chooses to 'cut out' a fine at the same time is counted as a fine defaulter, and does not appear in the remand category. Similarly, a person serving a prison sentence who is also 'cutting out' a fine and/or is being held on remand for other charges will be counted only within the sentenced category.

Table 4.2 Prison receptions: age and sex by legal status

Age refers to the prisoner's age at the date of reception.

Table 4.3 to 4.5 Prison receptions: sex, age and Aboriginal identity by legal status

In these tables, the Aboriginal identity of the prisoner is generally as stated by the prisoner at the time at which they are received into custody. Age refers to the prisoner's age at the date of reception. Table 4.5 was included for the first time in the 1997 *Crime and Justice* report.

Table 4.6 Prison receptions: employment status and sex by legal status

Employment status refers to the prisoner's status immediately prior to reception into prison. This table equates with Table 5.5 in pre-1997 *Crime and Justice* reports. The table listed as Table 5.6 in the 1996 report has been deleted.

Tables 4.7 to 4.9 Daily averages in custody: month, sex and Aboriginal identity by legal status

These tables give a snapshot of the total prison population for each day, averaged over each month (as in Table 4.7) or over the whole twelve month period (as in Tables 4.8 and 4.9). The daily averages are obtained by adding each day's population for the reporting period (whether it be a month or a year) and then dividing by the number of days in that reporting period. These daily averages are rounded to the nearest whole number. Each day's population is calculated at midnight of that day.

For the purpose of these tables, prisoners being held under a dual order are counted only once, according to the most serious legal order applicable to them. The order of seriousness (from most to least serious) is as follows:

- sentenced;
- fine default;
- remand.

Prisoners serving fine warrants concurrent with remand warrants are included in the 'fine default' count only. Persons serving concurrent fine warrants and a prison sentence are counted in the sentenced category only, as are those who are on remand and who are also serving a prison sentence.

The Aboriginal identity of the prisoner is as stated by the prisoner at the time at which they are received into custody.

The rate per 1,000 adult population (Table 4.8) is derived using estimated resident population for 30 June 2007 (ABS catalogue no. 3201.0).

Tables 4.10 to 4.15 Persons in custody at 31 December 2007: sex, age and Aboriginal identity by legal status

These tables contain a snapshot of the total prison population on the last day of the reporting period. It includes all persons who were in prison at midnight on 31 December 2007. The Aboriginal identity of the prisoner is as stated by the prisoner on the original admission date for the current episode. 'Age' refers to the prisoner's age on the date of the census. The rate per 1,000 adult population is derived using estimated resident population for 30 June 2007 (ABS catalogue no. 3201.0).

For the purpose of these tables, prisoners being held under a dual order are counted only once, according to the most serious legal order applicable to them. The order of seriousness (from most to least serious) is as follows:

- sentenced;
- fine default;
- remand.

Tables 4.14 and 4.15 were first included in the *Crime and Justice* report in 1997.

Table 4.16 Prisoner escapes, 2007

This table, presented for the first time in the 1996 *Crime and Justice* report, details the number of prisoner escapes in 2007, according to the institution from which the prisoner escaped. However, unlike the corresponding table in the 1996 report, in recent reports, prisoner escapes have been differentiated on the basis of whether that escape took place from an institution or while the prisoner was under escort outside of an institution. In pre-1997 *Crime and Justice* reports, such escapes were recorded against the prison responsible for the escort. As from 1997, primary responsibility for escorting prisoners was contracted to Group 4, a private organisation. This could include escapes by prisoners from hospital. The escape rate is calculated by dividing the number of prisoners by the daily average prisoner population in that centre and multiplying by 100 to give a rate per 100 prisoners.

Tables 4.17 to 4.25 Prison discharges

This section, which was first included in 1997, provides details on all prisoners released from custody in 2007. The only table on discharges included in pre-1997 reports (see Table 5.14 in these earlier reports) has been omitted because of some concerns about the accuracy of the information relating to the type of discharge. In its place, a range of tables relating to time served and the aggregate (head) sentence recorded for those persons discharged in a given year have been added. Each occasion on which a person is discharged from prison is counted as a distinct case. Hence, if the same person is discharged three times in 2007, this represents three entries in these tables. Transfers to other prisons within the State are not counted as discharges but prisoners transferred to the custody of another authority (e.g. an interstate department) are counted. Prisoners who change legal status during the reporting period (for example, who shift from being remanded to sentenced) or who complete one sentence and immediately begin serving another without any period of discharge in between are not counted as discharges.

It is also noted that legislative changes implemented from March 2000 removed the option of serving a term of imprisonment in lieu of a fine or expiation notice. The number of prisoners discharged during 2007 with a legal status of fine default refers to those prisoners whose legal status was determined prior to the implementation of the legislation.

Tables 4.17 to 4.21 Prison discharges: sex, age and Aboriginal identity by legal status

Age refers to the prisoner's age at the date of discharge. The Aboriginal identity of the prisoner is as stated by the prisoner at the time at which they are discharged from custody.

For the purpose of these tables, prisoners being held under a dual order are counted only once, according to the most serious legal order applicable to them at the time of discharge. The order of seriousness (from most to least serious) is as follows:

- sentenced;
- fine default;
- remand.

Tables 4.22 to 4.23 Prison discharges: time served by major offence for sentenced prisoners

These tables detail, for males and females, and for Aboriginal and non-Aboriginal prisoners, the time served by sentenced prisoners at the point of discharge. This information is cross-tabulated by the major charge under which prisoners were being held at the time of discharge.

Sentenced prisoners are defined as prisoners who have a 'sentenced' status at the time of discharge. Prisoners may be held under different authorities during each 'episode' of imprisonment. For example, a person may be admitted on remand but then, after a court hearing, change status to that of 'sentenced' prisoner. Only that authority applying at the time of discharge is used in preparing these tables. Prisoners may also be held under dual (ie more than one) authority at the time of discharge. In these tables they are classified according to the most serious authority applicable to them at that time. The order of seriousness (from most to least serious) is as follows:

- sentenced;
- fine default;
- remand.

Thus, a prisoner who, just prior to discharge, is serving a prison sentence and is also 'cutting out' a fine will be counted as a sentenced prisoner and so will be included in Tables 4.22 and 4.23.

The time served relates only to the amount of time which has elapsed between the date of intake and the date of discharge. It does not refer to the total (or aggregate) time spend in prison by any given individual. To illustrate, a sentenced prisoner who, during 2007 is released on parole and then, as a result of a breach of that parole, is readmitted and later re-released when the remainder of the sentence has been served will be counted twice in these tables. The time spent in prison on each of these two occasions is also recorded separately. In the above example, if the prisoner served five months before being released on parole and then, after breaching parole, served a further three months before final discharge, the time served will be recorded as five months and three months respectively, even though, in effect, the individual in question actually served a total (or aggregate) of eight months.

The major offence refers to that offence which received the longest period of imprisonment. If a prisoner was sentenced on two charges, with each charge having the same period of imprisonment, then the JANCO codes assigned to these offences would be used to determine the most serious one. A prisoner may be held under one or more authorities during any given stay in prison (for example (s)he may be admitted as a remand prisoner but then change status to that of sentenced). The major charge is selected from those offences listed against the most serious authority under which the prisoner was held during his/her current period in prison. The order of seriousness (from most to least serious) is as follows:

- sentenced;
- fine default;
- remand.

As a result, there is no one-to-one relationship between the time served and the major offence. Time served may include periods of imprisonment relating to authorities other than the one

involving the major charge. To illustrate, a prisoner may be held on remand for a series of offences, and then, without being released, be sentenced to a period of imprisonment for one of those charges. The time served will be the sum of the time spent on remand and the time spent as a sentenced prisoner. In determining the major charge, priority would be given to the one for which (s)he was sentenced. To take another example, if a prisoner has been sentenced for two offences, with one (for example, *serious criminal trespass*) receiving a sentence of nine months and the second (for example, *assault*) receiving five months which is to be served cumulatively, the major offence will be recorded as *serious criminal trespass* (because it received the longest sentence) , but the total time served will be listed in these tables as 14 months, which will be recorded against the *serious criminal trespass* offence. In summary then, the time served relates to the total amount of time spent in prison on that particular occasion, not to the term of imprisonment applied specifically to the major offence.

The offence categories listed in these tables are the same as those used by the Australian Bureau of Statistics in their annual census of prisoners in Australia.

The Aboriginal identity of the prisoner is as stated by the prisoner at the time at which they are discharged.

Tables 4.24 to 4.25 Prison discharges: aggregate (head) sentence by major offence for sentenced prisoners

These tables detail, for males and females, and for Aboriginal and non-Aboriginal prisoners, the aggregate or head sentence recorded for those sentenced prisoners discharged during 2007. Details on the head sentence for fine defaulters and remandees are not included because the concept of a 'head' sentence does not apply to them. This information is cross-tabulated by the major charge under which sentenced prisoners were being held at the time of discharge.

Sentenced prisoners are defined as prisoners who have a 'sentenced' status at the time of discharge. Prisoners may be held under different authorities during each 'episode' of imprisonment. For example, a person may be admitted on remand but then, after a court hearing and without release from prison, change status to that of 'sentenced' prisoner. Only those listed as 'sentenced' at the time of discharge are included in these tables. Prisoners may also be held under dual (ie more than one) authority at the time of discharge. To be included in these tables, the dual order must include a 'sentenced' component.

The major offence refers to that offence per case which received the longest period of imprisonment. If a prisoner was sentenced on two charges, with each charge having the same period of imprisonment, then the JANCO codes assigned to these offences would be used to determine the most serious one.

The offence categories listed are the same as those used by the Australian Bureau of Statistics in their annual census of prisoners in Australia.

The head sentence refers to the maximum period which the person may be required to serve at the commencement of this particular entry into prison. In South Australia, persons sentenced to periods of less than 12 months are required to serve the entire period. Hence, the head sentence is the same as the time served for that offence. However, for periods of 12 months and over, the court sets both a head or maximum sentence and a non-parole period (ie the minimum which must be served before the person becomes eligible for release on parole). In these situations, if the person is paroled before the head sentence has expired, then the time served at the point of parole may be different from the head sentence.

The calculation of head sentence for each discharge recorded in 2007 becomes complex if a person is released on parole and then subsequently breaches that parole. To take a specific example: if a person is sentenced to 14 months imprisonment for *serious criminal trespass* with a non-parole period of six months, and if (s)he is released once the six months has expired, then in Tables 4.24

and 4.25 one discharge will be recorded with a head sentence of 14 months and this will be listed against the major offence of *serious criminal trespass*. If, having spent two months out of gaol, that person breaches parole in a way which does not involve further offending, and is readmitted to prison, then the head sentence will not be the maximum originally imposed by the court but rather, the total time which he/she ***still has left to serve*** of that original sentence. In addition, the major offence will no longer be recorded as *serious criminal trespass* but as an *offence against justice procedures* (namely, *breach of parole*). If, however, the person breaches parole by re-offending, and the court imposes an additional period of imprisonment for the fresh matters, then the head sentence is the maximum sentence imposed by the court for these new charges together with the outstanding period still left to be served for the original matters. The major offence also changes: it now becomes that fresh offence dealt with which resulted in the longest period of imprisonment.

In these tables, the Aboriginal identity of the prisoner is as stated by the prisoner at the time at which they are discharged.

Table 4.26 to 4.27 Community-based correction orders: sex and Aboriginal identity by type of supervision order commenced

Tables 4.26 and 4.27 (which are the equivalent of Tables 5.16a to 5.16d in the 1996 *Crime and Justice* report) shows the number of community-based correction orders commenced during 2007 for which the Department for Correctional Services had supervisory responsibility. These orders allow the offender to remain in the community rather than being placed in prison. Probation, community service orders and parole are types of agreements between an offender and either a court or the Parole Board which requires the offender to abide by one or more conditions. Probation and community service orders are often used by the court as alternative penalties to imprisonment whereas parole allows prisoners to be released from prison to complete their sentences under the supervision of a parole officer.

For convenience, the term ‘order’ is applied to post prison ‘home detention’ supervision even though it is not an order of the court but is instead, an administrative arrangement. In 1996, a new category - home detention bail - was added. This option, which refers to bail orders with a court imposed condition of home detention, had been in existence for a number of years but the method of data collection had not been sufficiently detailed to allow separate reporting for this category. Prior to the 1996 report, offenders on a home detention bail order were counted within the bail category.

Legislative changes (the *Statutes Amendment (Fine Enforcement) Act*) introduced from March 2000 have had a further impact upon the community service categories with the introduction of the Fine Enforcement Scheme. This scheme replaced the Fine Option Community Service Scheme, Expiation Community Service and imprisonment as the primary enforcement for default on a pecuniary sum. In effect the legislation removed the option of undertaking community service in lieu of a fine or expiation notice, without returning to court.

The category of Interstate Orders was included in these tables for the first time in 2001. This category refers to orders made in other jurisdictions but supervised in South Australia.

'Home detention bond' was detailed in this table for the first time in 1999, in response to an amendment of the *Criminal Law (Sentencing) Act* 1988. Under S38 (2c) of that Act, the court can now suspend a sentence of imprisonment in those circumstances where it considers that, because of the defendant’s ill health, disability or frailty it would be unduly harsh for the offender to spend time in prison. In suspending that sentence, the defendant is required to enter into a bond which, in these circumstances, may include a home detention condition.

With the exception of the last row in these tables, all figures presented relate to the number of orders being supervised. If the same person receives two or more probation orders during the reporting period, each of these orders will be counted separately. Similarly, a prisoner who successfully completes home detention and then transfers to parole supervision will be counted in

both categories if both are commenced during the reporting period. If a person is subject to a dual order, both elements of that order will be counted. These dual orders, introduced as a result of the *Criminal Law (Sentencing) Act* which came into effect on January 1 1989, require offenders to undergo probation supervision as well as perform a specified number of hours in unpaid community service projects.

The final row in these tables uses a different counting unit. The figures in this row indicate the total number of unique individuals supervised by the Department for Correctional Services during 2007, irrespective of the number of orders for which they were supervised during the twelve month period. For example, an offender who, at different times during the twelve month reporting period, is required to perform two separate community service orders, or a community service order and undergo home detention as a condition of bail, will be counted only once in the final row. An offender serving a dual order will also be counted only once. Because a single individual may appear in more than one category, this 'individuals' total is less than the total for all orders.

The Aboriginal identity of the offender is as stated by the offender at the time at which they are received into community corrections.

Table 4.28 to 4.29 Number of persons supervised under each type of community-based correction order at 31 December 2007: sex and Aboriginal identity by type of supervision order

These tables (which equate to Table 5.17a to 5.17d in the 1996 *Crime and Justice* report) detail the number of persons supervised within each supervision category on the last day of the reporting period. This means that an individual who, on 31 December 2007, is serving two community service orders will be counted only once in that category. However, an individual who is being supervised under more than one type of order (notably probation and community service order) will be counted separately under each order. These counting rules differ from those used in Tables 4.26 and 4.27, which count the number of orders per order type. Under these rules, an individual who is being supervised for two community service orders would be counted twice within the community service order category in Tables 4.26 and 4.27, rather than once, as in Table 4.28.

The final row in these tables indicates the total number of discrete individuals under supervision on 31 December 2007. Because a single individual may appear in more than one category (e.g. a person may be under probation supervision and also be supervised under a community service order) this total is less than the total for the individual categories. Individuals serving such 'dual' orders are included in each of the 'probation' and 'community service order' categories but appear only once in 'total individuals' category.

As was the case for Tables 4.26 and 4.27, the category – community service order (expiation notice) – was added in 2001 as a result of the implementation of the *Statutes Amendment (Fine Enforcement) Act in March 2000.*

'Home detention bail' was detailed separately in this table for the first time in 1996. Previously, this category was included under the general heading of 'bail'.

The category of Interstate Orders was included in these tables for the first time in 2001. This category refers to orders made in other jurisdictions but supervised in South Australia.

'Home detention bond' was detailed separately in this table for the first time in 1999, in response to an amendment of the *Criminal Law (Sentencing) Act* 1988. Under S38 (2c) of that Act, the court can now suspend a sentence of imprisonment in those circumstances where it considers that, because of the defendant's ill health, disability or frailty it would be unduly harsh for the offender to spend time in prison. In suspending that sentence, the defendant is required to enter into a bond which, in these circumstances, may include a home detention condition.

The Aboriginal identity of the offender is as stated by the offender on at the time at which they commenced community corrections supervision for the current episode.

Tables 4.30 to 4.32 Community-based correction orders completed during 2007; manner of completion, sex and Aboriginal identity by type of supervision order

These tables (which are equivalent to Tables 5.18 and 5.19 in the 1996 *Crime and Justice* report) show the number of community-based correction orders completed in 2007 for which the Department for Correctional Services had supervisory responsibility. A person who completed two or more orders during the reporting period (such as two probation orders) will be counted separately each time. Similarly, a person who successfully completes home detention and then transfers to and completes parole supervision will be counted in both categories if both are completed during the reporting period. Dual orders are counted under each category.

The final row in Tables 4.31 and 4.32 indicates the number of unique individuals who completed a supervision order within each 'manner of completion' category, irrespective of the number of orders which they completed within the reporting period. Thus, if the one individual successfully completed one community service order undertaking, but had a second order revoked or estreated, (s)he would be counted in each of these two 'completion' categories.

'Successful' refers to orders which were successfully completed. For example, in the case of probation, this would involve the expiration of the order. In the corresponding tables in previous *Crime and Justice* reports, the term 'expired' was used to designate successful completions.

'Other' includes those discharged administratively or through court-ordered variation to the order, interstate transfers or death.

'Home detention bail' was detailed separately in this table for the first time in 1996. Previously, this category was included under the general heading of 'bail'.

As in the previous tables, the category of Financial Penalty expiated through Community Service was added for the first time in 2001.

The category of Interstate Orders was included in these tables for the first time in 2003. This category refers to orders made in other jurisdictions but supervised in South Australia.

'Home detention bond' was detailed in this table for the first time in 1999, in response to an amendment of the *Criminal Law (Sentencing) Act* 1988. Under S38 (2c) of that Act, the court can now suspend a sentence of imprisonment in those circumstances where it considers that, because of the defendant's ill health, disability or frailty it would be unduly harsh for the offender to spend time in prison. In suspending that sentence, the defendant is required to enter into a bond which, in these circumstances, may include a home detention condition.

B LIST OF CONTRIBUTING COURTS (MAGISTRATES COURTS OF SOUTH AUSTRALIA COLLECTION)

Metropolitan Adelaide

Adelaide
Christies Beach
Elizabeth
Holden Hill
Mount Barker
Port Adelaide

Country[22]

Berri
Ceduna
Coober Pedy
Kadina
Mount Gambier
Murray Bridge
Naracoorte
Port Augusta
Port Lincoln
Port Pirie
Tanunda
Victor Harbor
Whyalla

[22] These courts serve as administrative centres for other smaller country courts where sittings are held only when required.