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ABORIGINAL PEOPLE AND THE CRIMINAL JUSTICE SYSTEM

Comparison of Aboriginal and Non-Aboriginal cases finalised in the Magistrates Court and Higher Courts of South Australia 1998

Data extracted by:
Carol Castle
Adrian Barnett

This Information Bulletin discusses the extent, nature and outcomes associated with Aboriginal involvement in the Magistrates Court and the Higher Courts of South Australia.

INTRODUCTION

In 1995 the Office of Crime Statistics produced a report entitled 'Aboriginal People and the Criminal Justice System: comparison of Aboriginal and non-Aboriginal cases finalised in the Magistrates Court of South Australia.'. That report was the beginning of a long term project to monitor the extent, nature and outcomes of Aboriginal involvement with the South Australian criminal justice system. The present report is a continuation of that project and aims to update the information reported in 1995 and in addition, to include an overview of how Aboriginal defendants fare in the Higher Courts system.

The Magistrates Court

In South Australia there are four distinct court systems which deal with criminal matters. One of these, the Youth Court, deals only with juvenile offenders. The three other courts, the Magistrates Court, the District Court, and the Supreme Court, all deal with adults according to the seriousness of the offence involved. The Magistrates Court is at the lowest level and is presided over by a magistrate who has the power to hear and determine matters involving summary offences and minor indictable offences. There are no jury trials at this level. Instead, if a defendant pleads not guilty to a summary offence, the trial is heard by the magistrate alone and it is his or her responsibility to determine guilt or innocence. The same applies to denials of minor indictable offences, although in these cases a defendant may elect for trial by a judge in a Higher Court.

The overwhelming majority of adult defendants have their cases finalised in the Magistrates Court because most offences committed in South Australia fall within the summary or minor indictable range. Even major indictable offences such as rape, murder, and serious break and enters have their beginnings in the Magistrates Court with a preliminary or committal hearing. If at that hearing the defendant pleads guilty, the matter is then transferred to a Higher Court for trial or sentencing.

The Higher Courts

The District Court and the Supreme Court make up the Higher Courts in South Australia. The District Court is designed to hear the majority of cases not heard by the Magistrates Court. It can try any charge except treason, murder, and attempts, conspiracies or assaults with intent to commit these offences. The Supreme Court hears the cases which the District Court cannot hear 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.

In general, the offences involved in cases before these courts are of a more serious nature than those in the Magistrates Court and are referred to as indictable offences. Indictable offences are further broken down into major and minor types, which were formerly known as felonies and misdemeanours. The Higher Courts are presided over by a judge and can hear defended matters before a judge and jury, or by a judge alone if an accused elects to have a trial in that form.

Some Methodological Issues

The information in this report provides details on the 28,363 criminal cases processed by the Magistrates Court and the 921 cases finalised in the Higher Courts in 1998. For the purposes of this report, a case is defined as a group of charges involving the one defendant

which are all finalised on the same day before the same magistrate or judge. If one person has more than one case finalised in the 12 month period, he or she will be counted separately each time. The number of cases finalised in a given year is therefore greater than the number of discrete individuals who are actually dealt with in that time frame.

One case may also involve more than one offence. For example, a defendant may appear before the court on charges of *illegal use of a motor vehicle*, *assault* and *disorderly behaviour*. For the purpose of this report, analysis will focus only on the most serious offence dealt with in that case[1]. It should also be noted that when determining the major charges in Magistrates Court cases not all offences entered on the data files are considered. In particular, the majority of traffic offences (other than the most serious ones of *driving in a dangerous manner* and *drink driving*) are excluded, as are most breaches of council by-laws and regulations. In contrast, all offences finalised in the Supreme and District Courts are included for the purpose of determining major charges.

One final issue which requires clarification is the term 'Aboriginal'. The computerised data files maintained by the Courts Administration Authority do not contain any information on the racial identity of the defendant. The only way to obtain this information is to link each court file with its corresponding police apprehension (AP) report using the AP number listed on the court file. If that AP number is missing, then in most cases the defendant's racial identity will be unknown. An inability to match court files with the originating apprehension reports is largely responsible for the number of cases where racial identity is listed as unknown.

Even when a successful match between court file and AP number is obtained, there is no guarantee that the information on racial identity thus accessed is accurate. At the point of apprehension, police do not generally ask suspects whether they are Aboriginal or not. Instead they base their decision on the person's physical appearance and presumably on other factors, such as whether the individual has a recognisable Aboriginal surname. The accuracy of information thus recorded may be somewhat questionable. Nevertheless, in the absence of any other source of data, there is no alternative but to use it for the type of analysis contained in this report.

EXECUTIVE SUMMARY

Extent of Aboriginal involvement in the Magistrates Court, 1998

- In 1998, 28,363 cases were finalised in the Magistrates Court of South Australia, with information on racial identity available for 25,468 (89.8%) of these cases.
- Of these 25,468 cases, 2,895 (11.4%) involved persons identified by police as Aboriginal.
- Given that Aboriginal people account for only 1.05% of the State's adult population, the extent of Aboriginal involvement in the Magistrates Court was 10.9 times higher than would be expected on a per capita basis.

[1] For details of how the most serious offence is determined, see Appendix 1.

- Male defendants accounted for the majority of cases finalised in the Magistrates Court for both Aboriginal and non-Aboriginal groups. Proportionately speaking, Aboriginal women were more over represented in the Magistrates Court than their male counterparts. Female defendants accounted for 24.1% of Aboriginal cases and 17.0% of non-Aboriginal cases finalised before the Magistrates Court.
- The age profiles of Aboriginal and non-Aboriginal defendants were similar, with 24.5% and 23.4% respectively aged between 20 and 24 years.
- *Offences against the person* and *offences against good order* accounted for more than half of all major charges listed for Aboriginal defendants. In contrast, proportionately few Aboriginal cases involved *drugs* (1.1%), *robbery and extortion* (1.1%), or *sexual offences* (1.1%) as the major charge.
- In comparison with non-Aboriginal defendants, a higher proportion of Aboriginal cases involved the major charge of *offences against good order* (28.4% compared with 20.1% respectively) and *offences against the person* (24.3% and 13.8% respectively). Conversely, a lower proportion involved *driving offences* (16.2% and 31.4% respectively).
- The majority of cases finalised in the Magistrates Court resulted in a conviction for the major charge for both Aboriginal and non-Aboriginal defendants (62.4% and 63.1% respectively).
- Just under one quarter (23.6%) of Aboriginal defendants were not found guilty of either the major charge or any other offence, while a very small proportion were committed to a Higher Court for trial or sentence (1.5%).
- For cases where an *offence against good order* was the major charge, a higher proportion of Aboriginal defendants were convicted but had no penalty imposed (14.3% compared with only 5.2% of non-Aboriginal defendants). In contrast, a much lower proportion of Aboriginal defendants were found guilty but had no conviction recorded (8.9% compared with 23%).
- For cases where an *offence against the person* was the major charge, proportionately more Aboriginal defendants were convicted of the major charge compared with their non-Aboriginal counterparts (43.8% compared with 35.9% respectively). A smaller percentage were found guilty but had no conviction recorded (5.5% compared with 11.9% respectively).
- Fines constituted the most serious penalty for both Aboriginal and non-Aboriginal defendants (40.3% and 34.4% respectively).
- Imprisonment was the most serious penalty issued in 11.2% of Aboriginal cases and 5.3% of non-Aboriginal cases. In contrast, 'no penalty' was recorded proportionately more often for Aboriginal defendants than non-Aboriginal defendants (8.9% and 5.4% respectively).
- The most commonly imposed penalty for the major charge of an *offence against the person* was that of a fine for both Aboriginal and non-Aboriginal defendants. However, a large difference between the two racial groups was found in the sentencing of defendants to imprisonment, where Aboriginal defendants (21.0%) were almost four times as likely to be sentenced to a term of imprisonment compared to non-Aboriginal defendants (5.6%).
- The average length of imprisonment for the major charge convicted or found guilty in Aboriginal cases was 20 weeks, which was five weeks less than that of non-Aboriginal defendants.

- A higher proportion of Aboriginal than non-Aboriginal defendants were legally represented at their final court appearance (89.3% compared with 64.4% respectively).
- A higher proportion of Aboriginal than non-Aboriginal defendants were either on bail or in custody at the time of their final appearance (43.9% compared with 31.5% respectively).
- The overwhelming majority of cases involved persons who had at least one prior conviction.
- Of the 2,895 Aboriginal cases finalised in 1998, 86.9% involved defendants who had at least one prior conviction, while over half had 10 or more priors. The figures were lower for non-Aboriginal cases, with 70.1% involving defendants with at least one prior conviction and just over one quarter had 10 or more priors.
- Of the 2,895 Aboriginal cases finalised in the Magistrates Court in 1998, just under one half (46.2%) involved defendants who had experienced at least one prior imprisonment. The figure for non-Aboriginal cases was considerably lower – 18.6%.

This report has shown that, despite the findings of the Royal Commission into Aboriginal Deaths in Custody and the subsequent implementation of many of its recommendations, Aboriginal people continue to be over-represented in the Magistrates Court of South Australia. The statistical data presented in the report highlights some important differences between Aboriginal and non-Aboriginal cases in the areas of charge profiles, case outcomes and penalties imposed.

Extent of Aboriginal involvement in the Higher Courts, 1998

- In 1998, 921 cases were finalised in the Supreme Court (81) and the District Court (840) of South Australia with information on racial identity available for 840 (91.2%) of these cases.
- Of these cases, 99 (10.8%) involved persons identified by the police as Aboriginal.
- The Indigenous level of contact with the Higher Courts was similar to that of the Magistrates Court with a level of contact 10.2 times greater than would be expected on a per capita basis.
- Males accounted for the majority of cases finalised in the Higher Court for both Aboriginal and non-Aboriginal defendants. However, in contrast to the Magistrates Court, females accounted for a smaller proportion of Aboriginal than non-Aboriginal appearances. Aboriginal females were therefore less over-represented than their male counterparts, but the extent of their involvement was still higher than one would expect on the basis of population estimates.
- Proportionately speaking, approximately one quarter of Aboriginal and non-Aboriginal defendants fell within the 20 to 24 year age bracket (25.3% and 23.6% respectively). Within the 18 to 19 year old bracket there were proportionately more Aboriginal (19.9%) than non-Aboriginal (10.2%) defendants. The opposite trend was found in the 40 to 49 year old age bracket where proportionately more non-Aboriginal (14.5%) defendants appeared compared to Aboriginal (6.1%) defendants.
- *Offences against the person* accounted for the largest proportion of major charges recorded against Aboriginal defendants, followed by *robbery and extortion*. In contrast, no *fraud, forgery, and false pretences* or *property damage offences* were listed as the major charge.

- Aboriginal cases were more likely than non-Aboriginal cases to involve *robbery and extortion* (20.2% compared with 13.0% respectively), *burglary and break and enter* (14.1% compared with 5.3%), and *offences against good order* (16.2% compared with 9.3%).
- Almost a third of the major charges against Aboriginal defendants were for *offences against the person*. In contrast, nearly a third of the major charges against non-Aboriginal defendants involved *drug offences* but only 3% of Aboriginal defendants fell within this major charge category.
- Aboriginal defendants were slightly less likely to be found guilty of at least one charge than non-Aboriginal defendants (73.7% and 78.8% respectively) but were slightly more likely to have no finding of guilt for any charge compared to non-Aboriginal defendants (26.3% and 20.6% respectively).
- Aboriginal defendants were also somewhat less likely than non-Aboriginal defendants to undergo a trial (19.2% compared with 24.7% respectively), but were slightly more likely to have the major charged dropped (19.2% compared with 14.2% respectively).
- The majority of both Aboriginal and non-Aboriginal defendants received either a prison sentence or suspended prison sentence as their major penalty (75.3% and 80.3% respectively).
- Over half of all Aboriginal defendants (53.4%) received an immediate prison sentence compared to 43.3% of non-Aboriginal defendants. However the average sentence length was shorter for Aboriginal than non-Aboriginal defendants (35.6 and 40.9 months respectively).
- The overwhelming majority of defendants had some form of legal representation with only six recorded cases of non-representation. Two Aboriginal and four non-Aboriginal cases were finalised without a legal representative.
- At their final Higher Court hearing, all defendants were either on bail or in custody.
- Aboriginal defendants were less likely than non-Aboriginal defendants to have been granted bail and were more likely to be in custody at their first Higher Court appearance following committal from the Magistrates Court. At that final hearing, over half of Aboriginal defendants (55.3%)were in custody compared with just over one quarter (28.4%) of non-Aboriginal defendants.
- A higher proportion of Aboriginal than non-Aboriginal defendants had at least one prior conviction and one prior imprisonment.
- The majority of Higher Court cases involved persons who had at least one prior conviction regardless of racial identity. A higher proportion of Aboriginal defendants had prior records (and comparatively extensive prior records) than was the case for non-Aboriginal defendants.

As in the Magistrates Court, Aboriginal involvement in the Higher Courts is at a level higher than that expected on a per capita basis. Within the Higher Courts judicial system differences are evident between Aboriginal and non-Aboriginal defendants with respect to major charges faced, outcomes and penalties. However some caution must be exercised when making comparisons due to the relatively small number of cases involving Aboriginal defendants heard at this level.

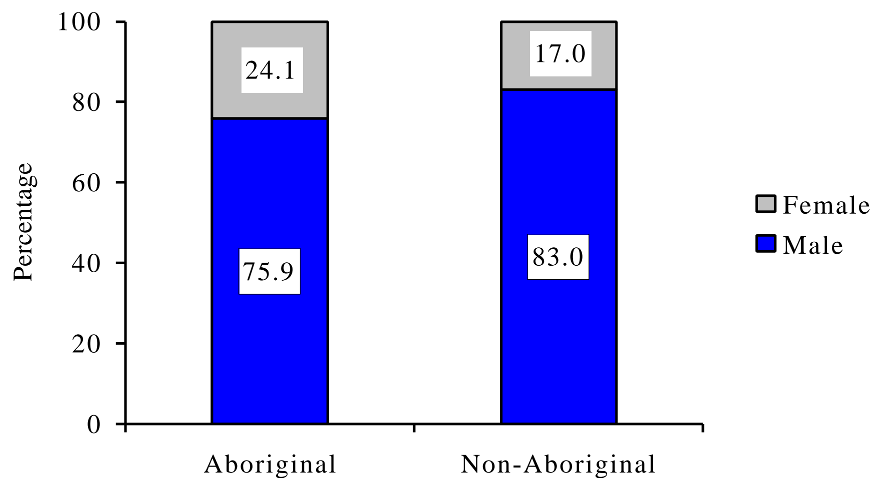
THE MAGISTRATES COURT

Demographic Profiles
In 1998, 28,363 cases were finalised in the Magistrates Court of South Australia. Of those cases, 2,895 involved individuals identified by the police as Aboriginal, 22,618 were identified as non-Aboriginal, while the remainder were racially undetermined (2,850 or 10.0%). Of the 25,468 cases in which racial identity was known, Aboriginal people made up 11.4% of defendants. Within South Australia, Aboriginal people make up 1.05% of the State's adult population (1996 ABS Census) indicating that the Indigenous level of contact with the Magistrates Courts was 10.9 times higher than would be expected on a per capita basis.

Sex
Male defendants accounted for the majority of cases finalised in the Magistrates Court, for both Aboriginal and non-Aboriginal defendants (see Figure 1). Proportionally speaking, there were more female Aboriginal defendants than female non-Aboriginal defendants. The reverse was true for the male defendants who made up 83.0% of all non-Aboriginal cases, compared with 75.9% of Aboriginal cases.

Figure 1.

Cases finalised by the Magistrates Court in 1998: racial identity by sex.



The fact that Aboriginal women were more over represented in the Magistrates Court than their male counterparts, despite being the least represented group in terms of actual number of cases appearing before the Magistrate Court, is illustrated more clearly in Table 1. As shown, Aboriginals accounted for 15.4% of all female defendants but only 10.5% of all male defendants.

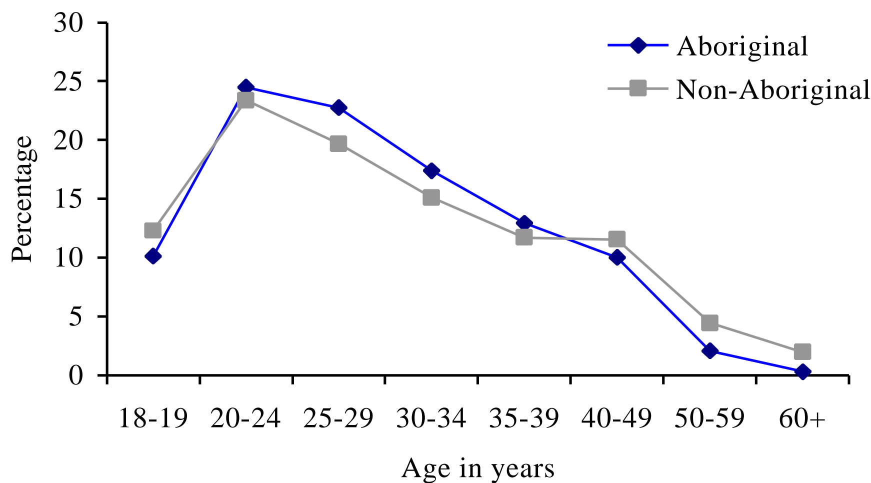
Table 1.
Cases finalised by the Magistrates Court in 1998: racial identity by sex.

Racial identity	Females		Males	
	n	**%**	**n**	**%**
Aboriginal	699	15.4	2,196	10.5
Non-Aboriginal	3,852	84.6	18,766	89.5
Total	4,551	100.0	20,962	100.0

Age

An age breakdown of Aboriginal and non-Aboriginal defendants appearing before the Magistrates Court is presented in Figure 2. Overall the average age of Aboriginal defendants was 29.3 years while the average age of non-Aboriginal defendants was slightly higher at 30.5 years. A similar age profile is evident for the two groups. The 20 to 24 year old age bracket contained more Aboriginal (24.5%) and non-Aboriginal defendants (23.4%) than any other bracket. At the other end of the scale, very few defendants from either group fell within the older age brackets of '50-59' and '60 and over'.

Figure 2.
Magistrates Court appearances in 1998: age by racial identity

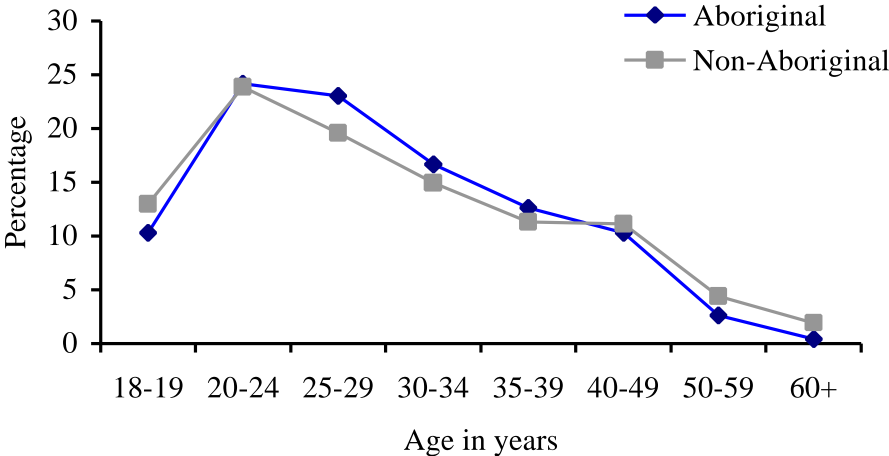


Age and Sex

The age profiles of males and females were also very similar both within and between the Aboriginal and Non-Aboriginal groups. Figure 3 illustrates the similarities between

Aboriginal and non-Aboriginal male defendants. The greatest difference between these two groups is in the 25 to 29 year old age bracket, with a slightly higher proportion of male Aboriginal (23.1%) defendants falling within this category than for non-Aboriginal male defendants (19.6%).

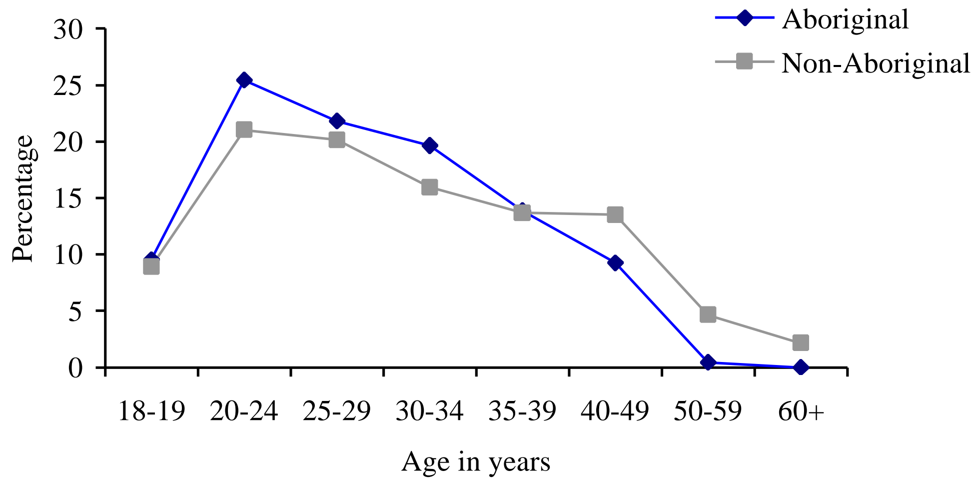
Figure 3.
Cases involving male defendants only finalised by the Magistrates Court in 1998: age by racial identity.



Slightly more pronounced differences can be found in the profiles of female Aboriginal and non-Aboriginal defendants, although the age profile for both groups is still very similar (see Figure 4). There was a higher proportion of Aboriginal than non-Aboriginal women in the first five age categories but noticeably fewer in the older age groups of 50 and above. Overall, Aboriginal female defendants were slightly younger, on average, than non-Aboriginal female defendants (28.8 years compared with 31.6 years respectively).

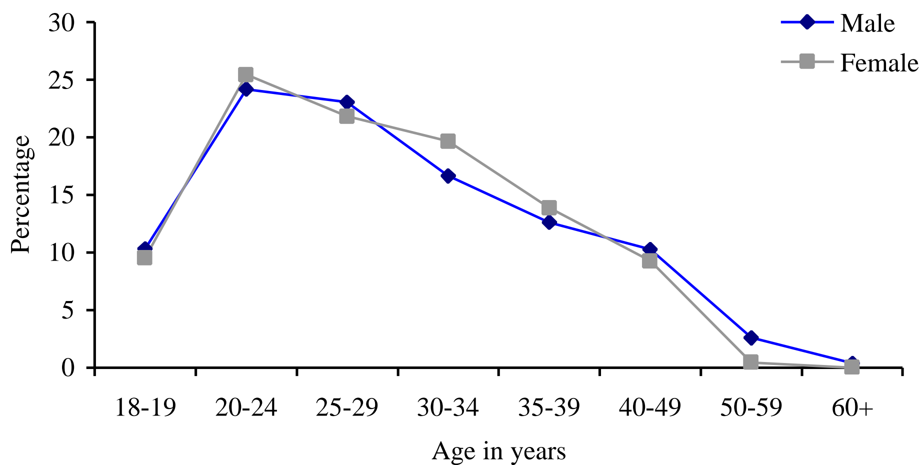
Figure 4.

Cases involving female defendants only finalised by the Magistrates Court in 1998: age by racial identity.



When the age profiles of males and females within each racial group were compared, no substantial differences were found. Figures 5 and 6 reveal the same overall pattern with the majority of defendants, regardless of sex or racial identity, appearing in the 20 to 29 year old age category, and the lowest proportions coming within the 50 and over brackets.

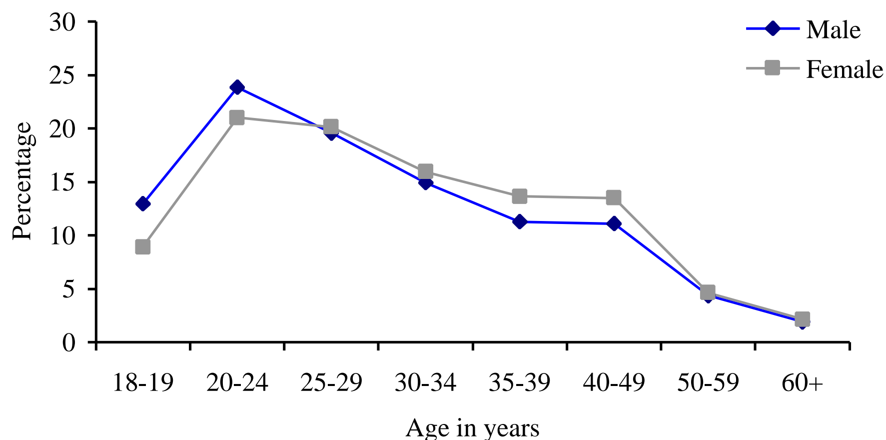
Figure 5.



Aboriginal cases finalised by the Magistrates Court in 1998: age by sex.

Figure 6.

Non-Aboriginal cases finalised by the Magistrates Court in 1998: age by sex.

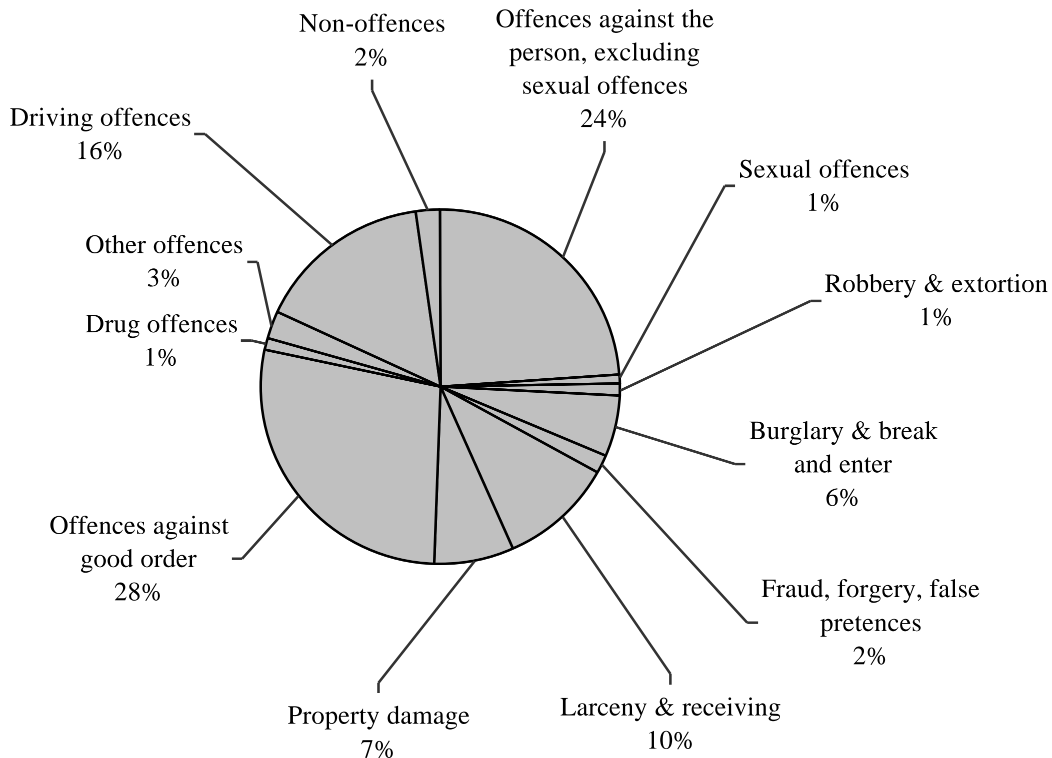


Charge Profiles

The following section details information about the major charge for each case finalised in the Magistrates Court in 1998. As each finalised case may contain more than one charge only the most serious is included in the ensuing discussion. A breakdown of the type of major charges involved in cases containing Aboriginal defendants is presented in Figure 7.

Figure 7.

Cases finalised by the Magistrates Court in 1998: major charges for Aboriginal defendants.



Taken together, *offences against the person* and *offences against good order* accounted for more than half of all major charges listed for Aboriginal defendants. In contrast, proportionately few Aboriginal cases involved *drugs*, *robbery and extortion*, or *sexual offences* as the major charge.

A comparison of the major charges, excluding non-offence matters, listed against Aboriginal and non-Aboriginal defendants appearing before the Magistrates Court is presented in Figure 8 and Table 2. In broad terms the profiles are generally similar, with the same four offence categories (*against the person, against good order*, *larceny/receiving* and *driving offences*) accounting for 79.3% and 80.0% of all Aboriginal and non-Aboriginal cases respectively. Nevertheless some differences were evident. A higher proportion of Aboriginal than non-Aboriginal cases involved the major charge of *offences against good order* (28.4% compared with 20.1% respectively) and *offences against the person* (24.3% and 13.8% respectively). Conversely, a lower proportion involved *driving offences* (16.2% and 31.4% respectively). As a result, while the offences most frequently listed as the major charge for Aboriginal defendants were *offences against good order*, *offences against the person*

and *driving offences*, for non-Aboriginals it was *driving, offences, against good order* and *larceny and receiving*.

Figure 8.
Cases finalised by the Magistrates Court in 1998: most serious charge per case by racial identity.

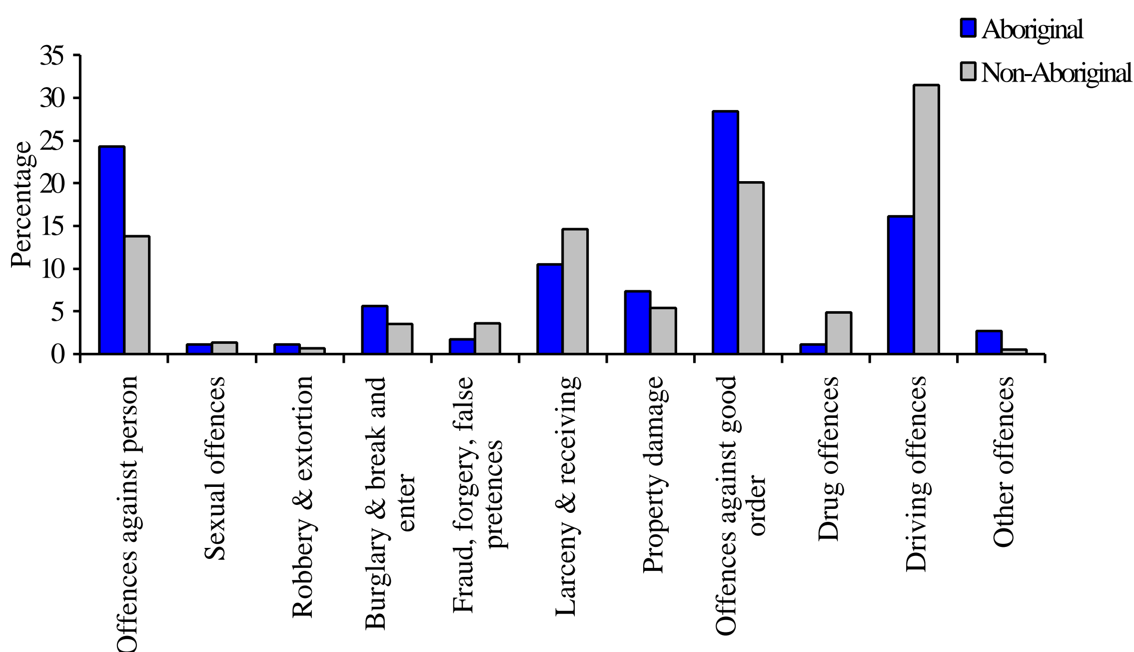
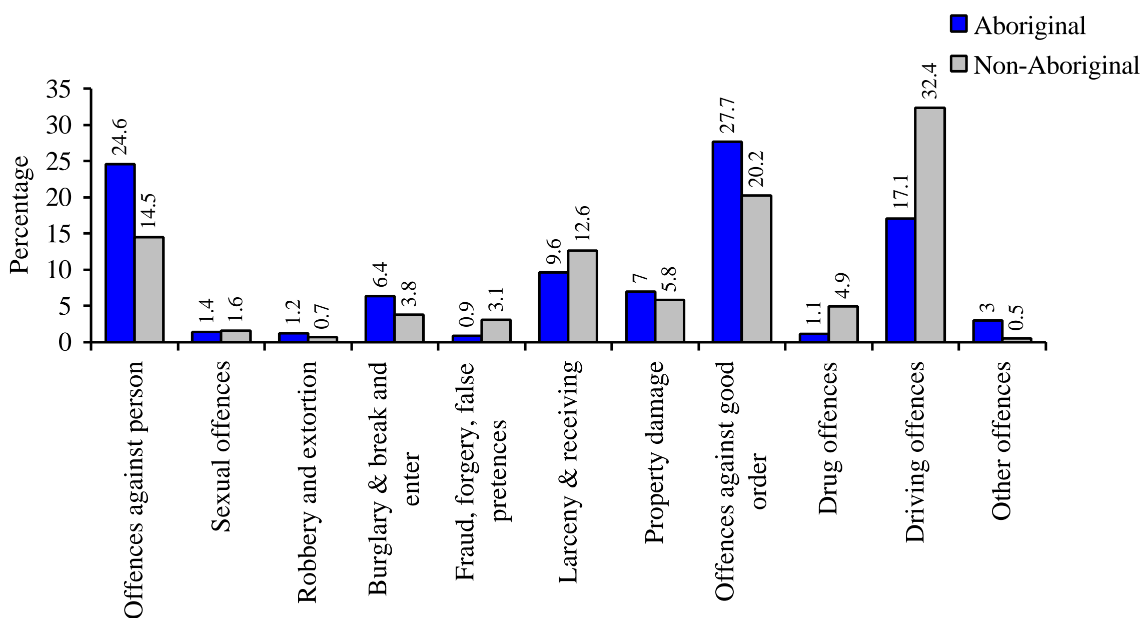


Table 2.
Cases finalised by the Magistrates Court in 1998: most serious charge per case by racial identity.

Major charge	Aboriginal		Non-Aboriginal	
	n	%	n	%
Offences against person	687	24.3	2,985	13.8
Sexual offences	31	1.1	291	1.3
Robbery & extortion	32	1.1	143	0.7
Burglary & break and enter	159	5.6	761	3.5
Fraud, forgery, false pretences	47	1.7	799	3.7
Larceny & receiving	295	10.4	3,174	14.7
Property damage	205	7.3	1,170	5.4
Offences against good order	801	28.4	4,354	20.1
Drug offences	31	1.1	1,070	4.9
Driving offences	457	16.2	6,806	31.4
Other offences	80	2.8	111	0.5
Total	2,825	100.0	21,664	100.0

Sex by major charge
An analysis of the major charge categories, excluding non-offence matters, by sex reveals some interesting differences between male Aboriginal and non-Aboriginal defendants and female Aboriginal and non-Aboriginal defendants. Figure 9 presents the most serious charge per case by racial identity for male defendants.

Figure 9.
Cases finalised by the Magistrates Court in 1998: most serious charge per case by racial identity for male defendants.

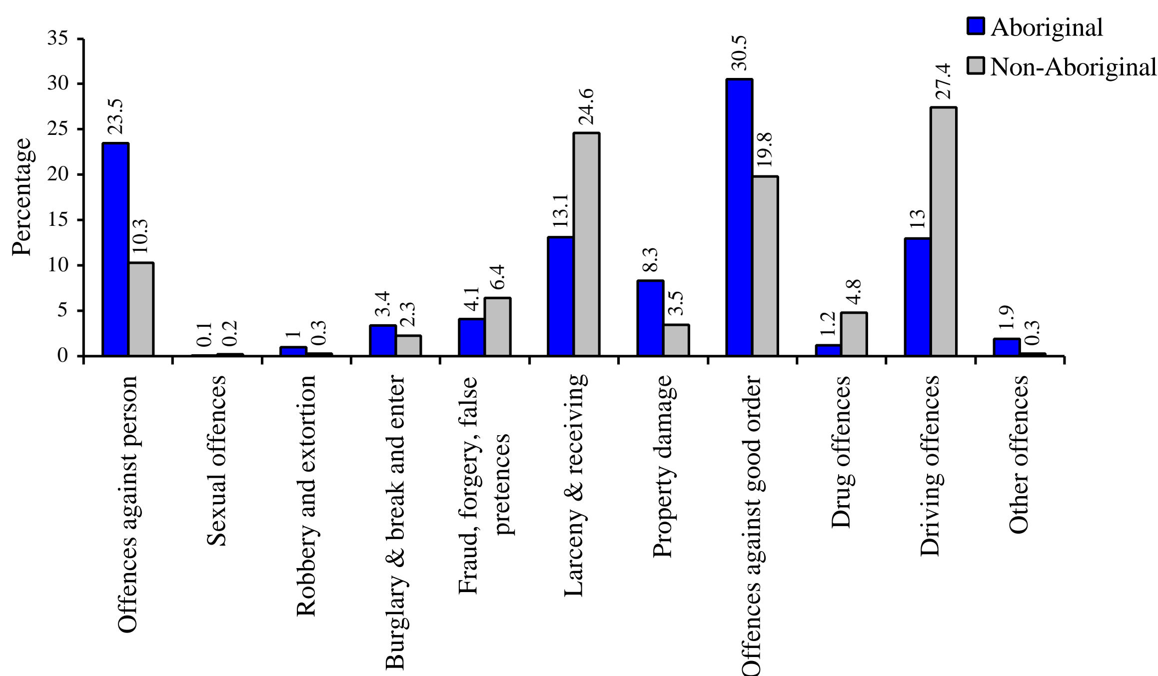


Similar to the major charge profile for all defendants, the greatest differences between Aboriginal and non-Aboriginal males occur within the charge categories of *offences against the person*, *offences against good order*, and *driving offences*. More specifically, *offences against the person* and *offences against good order* were still listed as the major charge in a higher proportion of Aboriginal than non-Aboriginal cases (24.6% and 14.5% and 27.7% and 20.2% respectively) while the opposite was true for *driving offences* (17.1% and 32.4% respectively).

In contrast to the situation for male defendants, there was considerably more variation in charge profiles between female Aboriginal and female non-Aboriginal defendants. As Figure 10 shows, proportionately more Aboriginal than non-Aboriginal females faced, as their most serious charge, an *offence against good order* charge (30.5% and 19.8% respectively), or *an offence against the person* charge (23.5% and 10.3% respectively). In contrast, proportionately twice as many non-Aboriginal females faced *larceny and receiving*

charges (24.6% and 13.1% respectively), and *driving* related charges (27.4% and 13.0% respectively).

Figure 10.
Cases finalised by the Magistrates Court in 1998: most serious charge per case by racial identity for female defendants.



Age by major charge

As indicated previously, the age profiles of Aboriginal and non-Aboriginal defendants appearing before the Magistrates Court in 1998 were very similar, with an average age of 29.3 years and 30.5 years respectively. A comparison of the average ages for each major charge category is presented in Table 3. The greatest age difference occurred in the major charge categories of *larceny and receiving* and *sexual offences*. Aboriginal defendants charged with these two offences were much younger than their non-Aboriginal counterparts. For the remaining offences, the average ages for the two groups are similar, with the majority falling within the narrow band of 25 to 30. For Aboriginals, the average age ranged from 24.6 for defendants charged with *robbery and extortion* to 32.0 for *fraud, forgery and false pretences* cases. For non-Aboriginals, the range was only slightly broader, from 25.2 for *robbery and extortion* to 37.0 for *'sexual'* offences.

Table 3.
Cases finalised by the Magistrates Court in 1998: Average age per major charge group by racial identity.

Major charge	Aboriginal	Non-Aboriginal
Offences against person	29.4	31.1
Sexual offences	30.5	37.0
Robbery & extortion	24.6	25.2
Burglary & break and enter	25.3	26.1
Fraud, forgery, false pretences	32.0	31.5
Larceny & receiving	26.3	30.7
Property damage	28.4	27.6
Offences against good order	29.8	28.8
Drug offences	28.2	31.3
Driving offences	31.6	31.4
Other offences	29.4	34.6

Age and sex by major charge

The average ages of male and female Aboriginal and non-Aboriginal defendants per major charge category (see Table 4) were very similar to the overall averages presented above. Both male and female Aboriginal defendants were generally younger than their non-Aboriginal counterparts for the majority of the major charge categories. Exceptions of note include the major charge categories of: *larceny and receiving* where both male and female Aboriginal defendants were, on average, several years younger than non-Aboriginal defendants; *sexual offences* where male Aboriginal defendants were, on average, seven years younger than both male and female non-Aboriginal defendants as well as female Aboriginal defendants; and *drug offences*, where female Aboriginal defendants were, on average, four to five years younger than non-Aboriginal defendants.

Table 4.
Cases finalised by the Magistrates Court in 1998: average age per major charge group by racial identity and sex.

Major charge	Aboriginal		Non-Aboriginal	
	male	female	male	female
Offences against person	29.5	29.3	31.1	30.6
Sexual offences	30.3	37.0	37.0	36.8
Robbery & extortion	24.9	23.6	25.3	24.9
Burglary & break and enter	25.3	25.1	26.1	26.5
Fraud, forgery, false pretences	35.1	29.9	31.8	30.8
Larceny & receiving	25.4	28.4	29.3	34.1
Property damage	27.6	30.4	27.3	29.7
Offences against good order	30.2	28.8	28.4	30.5
Drug offences	28.6	27.1	31.1	32.0
Driving offences	32.2	28.8	31.4	31.3
Other offences	29.8	27.2	35.1	30.4

Outcomes for the Major Charge

When a case is finalised in the Magistrates Court, a number of outcomes are possible. The key outcomes relevant to the major charge categories examined so far are as follows;

- The defendant may admit guilt or, after a trial, be found guilty of the major charge. A formal conviction may be recorded and a penalty may be imposed or alternatively, the magistrate may choose not to record a conviction and/or could decide not to impose a penalty.
- The defendant may be found not guilty of the major charge but, if facing multiple charges, be found guilty of a lesser or other charge.
- The defendant may be found not guilty of any other charge, or the magistrate may dismiss the case (e.g. lack of evidence), or the prosecution may withdraw the matter prior to finalisation.
- The defendant may also be referred to the Higher Court for sentencing or trial.

In the ensuing section, the outcome for the major charge will be presented for Aboriginal and non-Aboriginal defendants, followed by a closer examination of outcomes for the three most frequently occurring major charges brought before the Magistrates Court; *offences against good order*, *offences against the person*, and *driving offences*. Table 5 details the outcome for the major or most serious charge per case finalised in the Magistrates Court in 1998 excluding non-offence matters. In proportionate terms the outcomes for Aboriginal defendants were similar to those for non-Aboriginal defendants. The majority of cases resulted in a conviction for the major charge for both Aboriginal and non-Aboriginal defendants(62.4% and 63.1% respectively). A comparison between the two groups reveals some small differences. Most notably, Aboriginal defendants were more likely to have no finding of guilt for any charge compared to non-Aboriginal defendants (23.6% and 18.0% respectively). Other small differences include the greater proportion of Aboriginal defendants who were convicted of the major charge without penalty and the lower proportion who were convicted with penalty or who were found guilty but had no conviction recorded.

Table 5.
Cases finalised in the Magistrates Court in 1998: outcomes for major charge by racial identity.

Outcomes	**Aboriginal**		**Non-Aboriginal**	
	n	**%**	**n**	**%**
Convicted of major charge				
- with penalty	1,620	57.3	13,289	61.3
- without penalty	144	5.1	380	1.8
Guilty of major charge,				
- no conviction	185	6.5	2,692	12.4
Guilty of other/lesser charge	164	5.8	1,038	4.8
Guilty of at least one offence	**2,113**	**74.8**	**17,399**	**80.3**
Acquitted of all charges	1	0.0	17	0.1

Major charge withdrawn				
- no finding of guilt to lesser	373	13.2	2,343	10.8
Major charge dismissed				
- no finding of guilt to lesser	293	10.4	1,534	7.1
No finding of guilt for any charge	**667**	**23.6**	**3,894**	**18.0**
Other outcome	3	0.1	11	0.1
Committed for trial/sentence	42	1.5	360	1.7
Total	**2,825**	**100.0**	**21,664**	**100.0**

In 1998, there were 801 Aboriginal and 4,354 non-Aboriginal cases finalised in the Magistrates Court where the major charge was an *offence against good order*. An examination of the outcomes for these offences is presented in Table 6. Overall, the majority of cases resulted in a conviction for the major charge for both Aboriginal (73.1%) and non-Aboriginal (63.8%) defendants. Two points to note though, are the discrepancies between the two groups in the percentage of cases convicted without penalty and the percentage where the defendant was found guilty but had no conviction recorded. A much higher proportion of Aboriginal defendants were convicted of an *offence against good order* but had no penalty imposed (14.3% compared with only 5.2% of non-Aboriginal defendants), while a much lower proportion were found guilty but had no conviction recorded (8.9% compared with 23.0%). It is also worth noting that, in percentage terms, more Aboriginals were not found guilty of any charge (16.0% compared with 10.4% of non-Aboriginals).

Table 6.

Cases finalised in the Magistrates Court in 1998 where an *offence against good order* was the major charge: outcomes by racial identity.

Outcome	Aboriginal		Non-Aboriginal	
	n	%	n	%
Convicted of major charge				
- with penalty	471	58.8	2,551	58.6
- without penalty	115	14.3	228	5.2
Guilty of major charge,				
- no conviction	71	8.9	1,003	23.0
Guilty of other/lesser charge	15	1.9	106	2.4
Guilty of at least one offence	**672**	**83.9**	**3,888**	**89.3**
Acquitted of all charges	0	0	2	0.0
Major charge withdrawn				
- no finding of guilt to lesser	107	13.4	374	8.6
Major charge dismissed				
- no finding of guilt to lesser	21	2.6	77	1.8
No finding of guilt for any charge	**128**	**16.0**	**453**	**10.4**
Other outcome	0	0	2	0.0
Committed for trial/sentence	1	0.1	11	0.3
Total	**801**	**100.0**	**4,354**	**100.0**

Table 7 presents the outcomes for the major charge of *offences against the person*. A comparison between the two racial groups reveals some minor differences within a broadly similar pattern of outcomes. Proportionately more Aboriginal defendants were convicted of the major charge compared with their non-Aboriginal counterparts (43.8% compared with 35.9% respectively), while a smaller percentage were found guilty but had no conviction recorded (5.5% compared with 11.9% respectively). The proportion of cases where there was no finding of guilt to either the major or another charge was similar for both groups.

Table 7.
Cases finalised in the Magistrates Court in 1998 where an *offence against the person* was the major charge: outcomes by racial identity.

Outcome	Aboriginal		Non-Aboriginal	
	n	%	n	%
Convicted of major charge				
- with penalty	289	42.1	1,055	35.3
- without penalty	12	1.7	18	0.6
Guilty of major charge,				
- no conviction	38	5.5	356	11.9
Guilty of other/lesser charge	71	10.3	307	10.3
Guilty of at least one offence	**410**	**59.7**	**1736**	**58.2**
Acquitted of all charges	1	0.1	10	0.3
Major charge withdrawn				
- no finding of guilt to lesser	108	15.7	579	19.4
Major charge dismissed				
- no finding of guilt to lesser	154	22.4	582	19.5
No finding of guilt for any charge	**263**	**38.3**	**1,171**	**39.2**
Other outcome	0	0	5	0.2
Committed for trial/sentence	14	2.0	73	2.4
Total	**687**	**100.0**	**2,985**	**100.0**

Table 8.
Cases finalised in the Magistrates Court in 1998 where a *driving offence* was the major charge: outcomes by racial identity.

Outcome	Aboriginal		Non-Aboriginal	
	n	%	n	%
Convicted of major charge				
- with penalty	397	86.9	6,224	91.4
- without penalty	1	0.2	12	0.2
Guilty of major charge,				
- no conviction	1	0.2	28	0.4
Guilty of other/lesser charge	5	1.1	122	1.8
Guilty of at least one offence	**404**	**88.4**	**6,386**	**93.8**
Acquitted of all charges	0	0	2	0.0
Major charge withdrawn				
- no finding of guilt to lesser	48	10.5	379	5.6
Major charge dismissed				
- no finding of guilt to lesser	5	1.1	38	0.6
No finding of guilt for any charge	**53**	**11.6**	**419**	**6.2**
Other outcome	0	0	1	0.0
Committed for trial/sentence	0	0	0	0
Total	**457**	**100.0**	**6,806**	**100.0**

Table 8 again reveals only small differences between Aboriginal and non-Aboriginal defendants' outcomes for cases where the major charge is a *driving offence*. The vast majority of both Aboriginal and non-Aboriginal defendants were convicted of the major charge and received some form of penalty. However, as was the case for *good order offences,* a higher proportion of Aboriginal than non-Aboriginal defendants had no finding of guilt for any charge.

In summary, almost six in ten Aboriginal defendants were convicted of the major charge and given a penalty by the Magistrates Court. However, this proportion varied significantly depending on the nature of the major charge, with 86.9% of Aboriginal defendants convicted with penalty for *driving offences* compared with 58.8% convicted with penalty for an *offence against good order* and 42.1% convicted with penalty for an *offence against the person*. The profiles of Aboriginal and non-Aboriginal outcomes are very similar with only minor differences in relation to the proportion of defendants having no conviction recorded for a finding of guilt on the major charge, and the proportion where there was no finding of guilt for any charge.

Most serious penalty per case

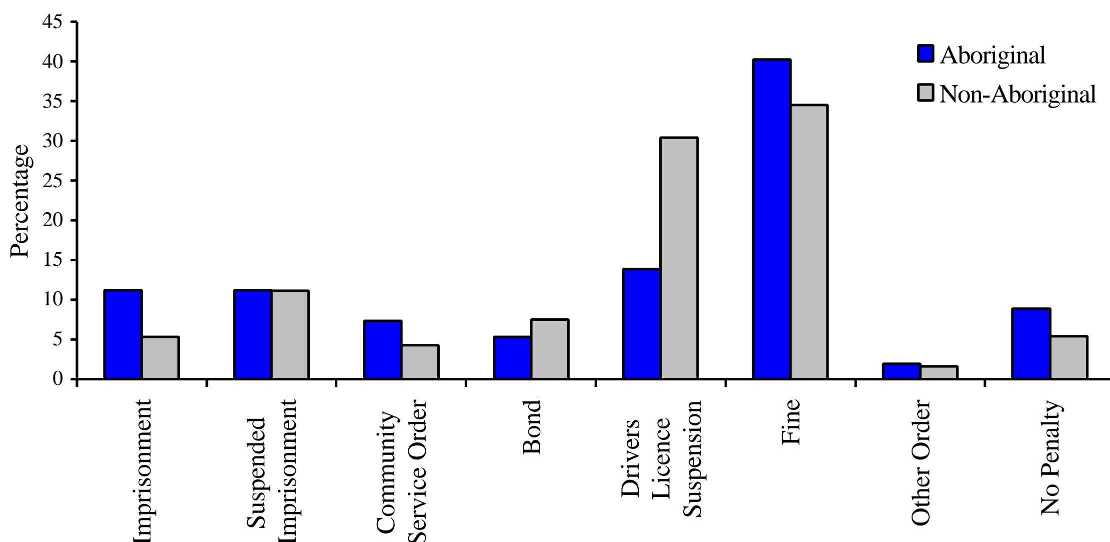
The following section will focus on the single most serious penalty imposed in those cases where there was a conviction or a finding of guilt for at least one offence. The penalties listed do not represent all penalties which may have been imposed in a case. Multiple penalties may be imposed for cases containing multiple charges. In addition two or more penalties may be imposed for one charge (e.g., suspended sentence and a bond). In determining penalty severity, the following rank order was used, beginning with the most serious;

- imprisonment
- suspended imprisonment
- community service order
- bond
- driver's licence suspension
- fine
- other order (including restraining orders)
- no penalty

Figure 11 shows the most serious penalty imposed per case for Aboriginal and non-Aboriginal defendants appearing before the Magistrates Court in 1998. The majority of both Aboriginal and non-Aboriginal defendants received a fine as the most serious penalty, with the next most frequent penalty being suspension of a driver's licence. Overall, Aboriginal defendants were more likely than non-Aboriginal defendants to receive a fine and were also more likely to receive a penalty of imprisonment or a community service order. In contrast, Aboriginal defendants were less likely to receive a good behaviour bond or have their driver's licence suspended.

Figure 11.

Cases finalised by the Magistrates Court in 1998 resulting in a conviction or finding of guilt: most serious penalty imposed by racial identity.



The data in Table 9 shows that some of these differences were quite pronounced, particularly with respect to the penalty of suspending a driver's licence, where the likelihood of Aboriginal defendants having their licences suspended was half that of non-Aboriginal defendants. In contrast, Table 9 reveals that Aboriginal defendants were twice as likely to receive a penalty of imprisonment compared with non-Aboriginal defendants.

Table 9.
Cases finalised by the Magistrates Court in 1998 resulting in a conviction or a finding of guilt: most serious penalty imposed by racial identity.

Most serious penalty	**Aboriginal**		**Non-Aboriginal**	
	n	**%**	**n**	**%**
Imprisonment	237	11.2	922	5.3
Suspended imprisonment	237	11.2	1,930	11.1
Community service order	154	7.3	746	4.3
Bond	112	5.3	1,301	7.5
Driver's license suspension	294	13.9	5,290	30.4
Fine	853	40.3	5,994	34.4
Other order	41	1.9	285	1.6
No penalty	188	8.9	935	5.4
Total	2,116	100.0	17,403	100.0

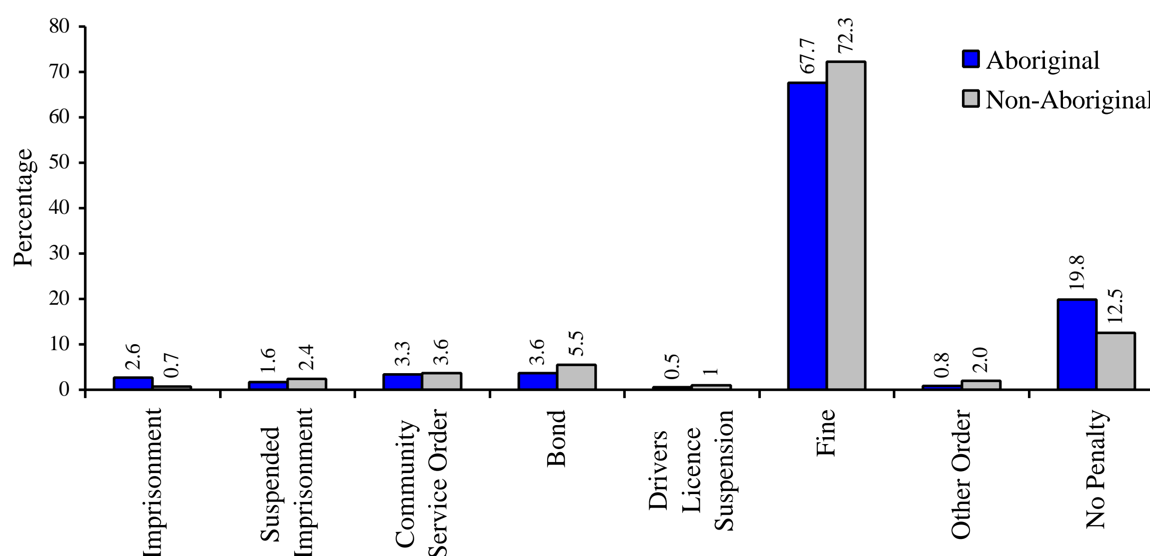
For Aboriginal defendants, a total of 853 fines were issued as the most serious penalty in 1998, with an average value of $150.00. The minimum fine imposed was just $20.00 while the maximum was $850.00. In contrast, 5,994 non-Aboriginal defendants received a fine as their most serious penalty. The average value was $196.00, the minimum imposed was $10.00 while the maximum was $3,000.00. So overall, a higher proportion of Aboriginal defendants received a fine but the fines were lower in value than those imposed on non-Aboriginal defendants.

An examination of the length of prison sentence imposed also revealed some differences. Overall, 237 Aboriginal defendants were sentenced to imprisonment, with an average length of 20 weeks. The minimum sentence was one week while the maximum was 104 weeks. In contrast, 922 non-Aboriginal defendants were sentenced to a term in prison. The average sentence was 25 weeks, the minimum was one week while the maximum was 468 weeks. Once again, proportionately more Aboriginal defendants received imprisonment sentences but the average length of the sentences was five weeks less than that received by their non-Aboriginal counterparts.

As with the earlier presentation of the outcomes for cases finalised in the Magistrates Court in 1998, the following analysis will focus on the charge categories which most frequently attracted the major penalty, namely *offences against good order*, *offences against the*

person, *drug offences* and *larceny and receiving*. Figure 12 shows the penalties issued for the first of these charges, namely *offences against good order*. For Aboriginal and non-Aboriginal defendants the majority of penalties issued for *offences against good order* were fines (67.7% and 72.3% respectively). Compared to Aboriginal defendants, proportionately more non-Aboriginal defendants received a penalty. Overall, in those cases where the most serious penalty was imposed for an *offence against good order*, just over one tenth of non-Aboriginal defendants received no penalty compared to one fifth of Aboriginal defendants.

Figure 12.
Cases finalised by the Magistrates Court in 1998 where an *offence against good order* was the major charge convicted or found guilty[2]: most serious penalty imposed by racial identity.



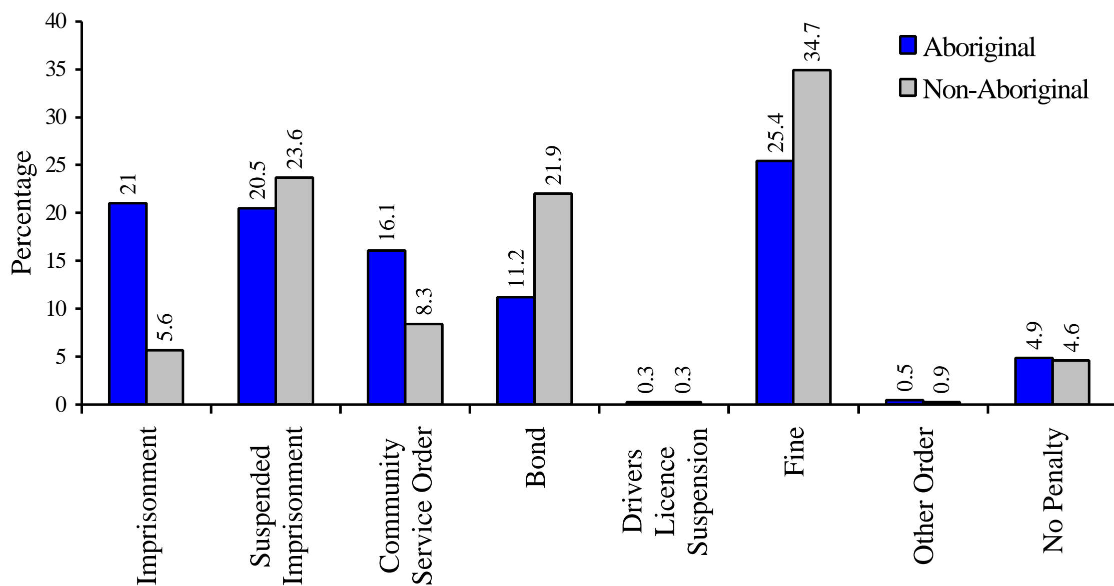
For those Aboriginal defendants for whom the most serious charge for which they were convicted or found guilty was an *offence against good order*, a total of 495 fines were issued. These had an average value of $136.00. The minimum fine imposed was just $20.00 while the maximum was $850.00. Their non-Aboriginal counterparts were issued with a total of 3,036 fines. The average value of these fines was $145.00, the same as for Aboriginal defendants. However, the range was much greater, with the minimum fine imposed being $10.00 and the maximum being $2,000.00.

Of the 19 Aboriginal defendants who received a prison sentence for an *offence against good order*, the average length was nine weeks, the minimum term was one week while the maximum term was 52 weeks. Thirty non-Aboriginal defendants received a prison sentence with the average length and the minimum term being the same as for the Aboriginal defendants (nine weeks and one week respectively) but a maximum term being much greater for this offence (104 weeks).

[2] For details of how the major charge convicted or found guilty is determined see Appendix 2.

The most serious penalty imposed against Aboriginal and non-Aboriginal defendants for whom the major charge convicted or found guilty was an *offence against the person* are presented in Figure 13. Once again, the most commonly imposed penalty was that of a fine. However, unlike the situation for *offences against good order*, there was a more even distribution across a broader range of penalties for this major charge. The greatest difference between the two racial groups was found in the sentencing of defendants to imprisonment where Aboriginal defendants were four times more likely to be sentenced to a term of imprisonment compared to non-Aboriginal defendants (21.0% compared with 5.6%). Aboriginal defendants were also more likely to receive a community service order than their non-Aboriginal counterparts (16.1% compared with 8.3% respectively). In contrast, proportionately more non-Aboriginal defendants received suspended prison sentences, bonds and fines.

Figure 13.
Cases finalised by the Magistrates Court in 1998 where an *offence against the person* was the major charge convicted or found guilty: most serious penalty imposed by racial identity.



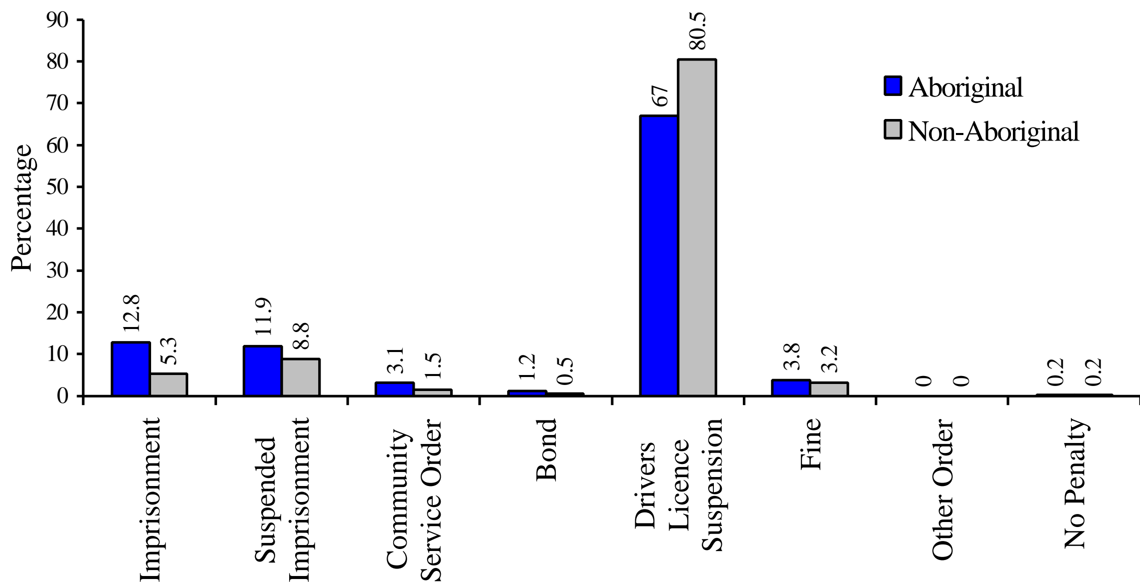
A closer examination of the penalties reveals further differences between the two groups. For Aboriginal defendants, a total of 93 fines were issued where an *offence against the person* was the most serious charge convicted or found guilty. The average value was $238.00, the minimum was $50.00 while the maximum was $800.00. Non-Aboriginal defendants were issued with a total of 536 fines, with an average value of $288.00, a minimum of $20.00 and a maximum of $1,000.00.

With respect to the length of prison sentence imposed the 77 imprisonments imposed on Aboriginal defendants involved an average sentence length of 18 weeks, a minimum sentence of one week and a maximum of 104 weeks. In contrast, the 87 non-Aboriginal

defendants imprisoned for an *against the person offence* recorded a higher average sentence length of 26 weeks. The minimum sentence was one week while the maximum was 130 weeks.

The third charge to be examined is the category of *driving offences*. The penalties imposed for Aboriginal and non-Aboriginal defendants for whom a *driving offence* was the most serious charge convicted or found guilty are presented in Figure 14. As would be expected, the most commonly imposed penalty was that of a driver's licence suspension. Eighty percent of non-Aboriginal and 67% of Aboriginal defendants received a driver's licence suspension as the most serious penalty in the Magistrates Court. The greatest difference between the two racial groups was found in the sentencing of defendants to imprisonment, where Aboriginal defendants were twice as likely to be sentenced to a term of imprisonment compared to non-Aboriginal defendants (12.8% and 5.3% respectively).

Figure 14.
Cases finalised by the Magistrates Court in 1998 where a *driving offence* was the major charge convicted or found guilty: most serious penalty imposed by racial identity.

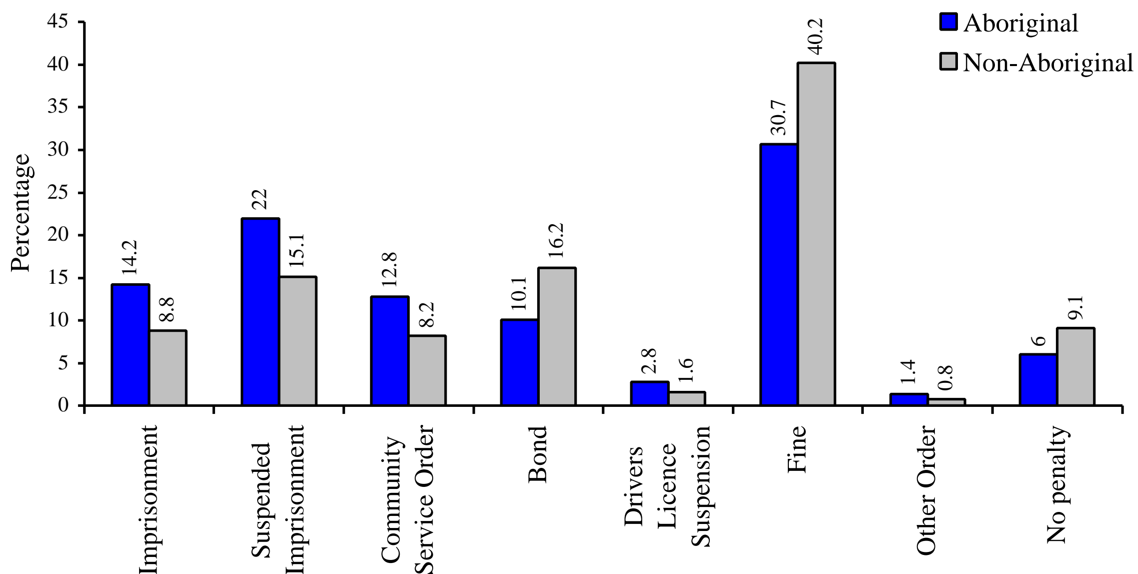


For Aboriginal defendants for whom the major charge convicted or found guilty was a *driving offence*, a total of 16 fines were issued. These had an average value of $189.00. The minimum fine imposed was just $80.00 while the maximum was $500.00. Their non-Aboriginal counterparts were issued with a total of 207 fines with an average value of $286.00. The minimum fine imposed was $50.00 while the maximum was $1,500.00.

Of the 54 Aboriginal defendants who received a prison sentence for a *driving offence*, the average length was eight weeks, the minimum term was one week while the maximum term was 43 weeks. The average term imposed on the 340 non-Aboriginal defendants who received a prison sentence was slightly lower (six weeks), while the minimum term was one week and the maximum term 125 weeks.

The final charge to be examined is the category of *larceny and receiving*. The penalties imposed for Aboriginal and non-Aboriginal defendants for whom a *larceny and receiving offence* was the most serious charge convicted or found guilty are presented in Figure 15. The most serious penalty imposed in the Magistrates Court for both Aboriginal and non-Aboriginal defendants was a fine. However, Aboriginal defendants were proportionately less likely to receive a fine than their non-Aboriginal counterparts (30.7% and 40.2% respectively).

Figure 15.
Cases finalised by the Magistrates Court in 1998 where a *larceny and receiving offence* was the major charge convicted or found guilty: most serious penalty imposed by racial identity.



A much higher proportion of Aboriginal than non-Aboriginal defendants received a prison sentence (14.2% compared with 8.8% respectively), a suspended prison sentence (22.0% compared with 15.1% respectively), or a community service order (12.8% compared with 8.2% respectively). In contrast, non-Aboriginal defendants were proportionately more likely than Aboriginal defendants to receive a bond (16.2% compared with 10.1%) or no penalty (9.1% and 6.0% respectively).

A closer examination of the penalties reveals further differences between the two groups. For Aboriginal defendants, a total of 67 fines were issued where *larceny and receiving* was the most serious charge convicted or found guilty. The average value was $186.00, the minimum was $50.00 while the maximum was $700.00. In contrast, non-Aboriginal defendants were issued with a total of 1013 fines, with an average value of $196.00, a minimum of $10.00 and a maximum of $2,000.00.

With respect to the length of prison sentence imposed, the 31 imprisonments imposed on Aboriginal defendants involved an average sentence length of 19 weeks, a minimum sentence of two weeks and a maximum of 104 weeks. In contrast, the 222 non-Aboriginal defendants imprisoned for an *offence against the person* recorded a higher average sentence length of 26 weeks, and a higher maximum of 468 weeks. The minimum sentence imposed was one week.

Legal Representation and Bail Status

The following section will focus on two issues; whether or not the defendant was legally represented at the final court appearance and their bail status at final appearance. It should be noted that information on legal representation and bail status was not available for all defendants and the following section includes cases involving non-offence matters.

Legal representation

Legal representation information was unavailable for 14.8% (428) of Aboriginal defendants and 21.5% (4,862) of non-Aboriginal defendants. Table 10 shows the legal representation status for those defendants whose cases were finalised in the Magistrates Court in 1998 for whom such data were available. A higher proportion of Aboriginal defendants were legally represented in their final court appearance compared to non-Aboriginal defendants, perhaps highlighting the accessibility of Indigenous legal services.

Table 10.

Cases finalised by the Magistrates Court in 1998: legal representation at final hearing by racial identity.

Legal representation	Aboriginal		Non-Aboriginal	
	n	%	n	%
Legal representation	2,202	89.3	11,435	64.4
No legal representation	265	10.7	6,321	35.6
Total	2,467	100.0	17,756	100.0

As shown in Table 11, as the number of hearings required to finalise a case increased, so too did the level of legal representation. For both groups, it was lowest for those cases finalised at the first hearing and highest for those matters referred to a Higher Court for trial or sentence. This latter situation is to be expected given the more complex and serious

nature of matters referred to the Higher Courts. Yet even here, the level of legal representation for Aboriginals was noticeably higher than for non-Aboriginals, particularly for those cases finalised at the first hearing.

Table 11.
Cases finalised by the Magistrates Court in 1998: number of hearings required to finalise the matter by legal representation by racial identity.

Legal representation	Aboriginal		Non-Aboriginal	
	n	**%**	**n**	**%**
One court hearing				
Legal representation	598	84.0	1,998	36.6
No legal representation	114	16.0	3,464	63.4
Total	712	100.0	5,462	100.0
Two or more court hearings				
Legal representation	1,563	91.2	9,102	76.2
No legal representation	150	8.8	2,839	23.8
Total	1,713	100.0	11,941	100.0
Committed for trial/sentence				
Legal representation	41	97.6	335	94.9
No legal representation	1	2.4	18	5.1
Total	42	100.0	353	100.0

Bail status
Bail status at final hearing includes two types of bail. Firstly, for those defendants who had their cases finalised at the first court hearing bail status refers to police bail. Second, for those defendants who had cases requiring more than one hearing before finalisation bail status refers to court bail. Table 12 presents the findings with respect to bail status for Aboriginal and non-Aboriginal defendants in all cases finalised in the Magistrates Court in 1998.

Table 12.
Cases finalised by the Magistrates Court in 1998: bail status at final court appearance by racial identity.

Bail status	Aboriginal		Non-Aboriginal	
	n	%	n	%
Bail not required	1,624	56.1	15,492	68.5
Bail required				
Bailed	1,069	36.9	6,590	29.1
Not bailed - in custody	202	7.0	536	2.4
Total	2,895	100.0	22,618	100.0

A higher proportion of non-Aboriginal than Aboriginal defendants did not require bail at their final court appearance. For those cases where bail was required, Aboriginal defendants were less likely to be granted bail than non-Aboriginal defendants. More specifically, of the 1,271 Aboriginal cases requiring bail, 84.1% were bailed while 15.9% were held in custody. Of the 7,126 non-Aboriginal defendants requiring bail 92.5% were bailed while only 7.5% were in custody.

An examination of the bail status of the defendants by the number or type of appearance reveals some interesting differences between Aboriginal and non-Aboriginal defendants (see Table 13). Irrespective of whether the matter was finalised at the first hearing or required two or more hearings to complete, a higher percentage of Aboriginals were either on bail or held in custody. For those committed for trial or sentence, all defendants, irrespective of racial identity, were under some constraint imposed by the court. Within this group though, Aboriginal defendants were two and a half times more likely to be remanded in custody than non-Aboriginal defendants. Concomitantly they were less likely to be on bail at the time of finalisation.

Table 13.
Cases finalised by the Magistrates Court in 1998: number of hearings required to finalise the matter by bail status at final court appearance by racial identity.

Bail status	Aboriginal		Non-Aboriginal	
	n	%	n	%
One court hearing				
Bail not required	767	84.6	7,365	93.9
Bail granted	116	12.8	431	5.5
In custody	24	2.6	51	0.6
Total	907	100.0	7,847	100.0
Two or more court hearings				
Bail not required	857	44.0	8,127	56.4
Bail granted	930	47.8	5,863	40.7

In custody	159	8.2	421	2.9
Total	1,946	100.0	14,411	100.0
Committed for trial/sentence				
Bail not required	0	0	0	0
Bail granted	23	54.8	296	82.2
In custody	19	45.2	64	17.8
Total	42	100.0	360	100.0

Prior convictions

As indicated in Table 14, the overwhelming majority of cases involved persons who had at least one prior conviction. This applied irrespective of the racial identity of the defendant. Nevertheless, a higher proportion of Aboriginal defendants had prior records (and comparatively extensive prior records) than was the case for non-Aboriginal defendants. Of the 2,895 Aboriginal cases finalised in 1998, 86.9% involved defendants who had at least one prior conviction, while over half had 10 or more priors. The figures were lower for non-Aboriginal cases, with 70.1% involving defendants with at least one prior conviction and just over one quarter having 10 or more priors. In detailing these results, however, it should be stressed that prior convictions is based on offences and does not equate to the number of previous finalised court appearances experienced by that person. At the one finalised hearing, for example, a defendant may be convicted of five offences. This would be counted as five in Table 14. Similarly, a person who had five finalised court appearances but was only convicted of one offence at each of these hearings would still be counted as having five prior convictions.

Table 14

Number of prior offences where a conviction was recorded.

Number of prior offences	**Aboriginal**		**Non-Aboriginal**	
	n	**%**	**n**	**%**
None	379	13.1	6,774	29.9
1	125	4.3	2,019	8.9
2 to 4	302	10.4	4,074	18.0
5 to 9	360	12.4	3,378	14.9
10 to 49	1,224	42.3	5,572	24.6
50 and over	505	17.4	810	3.5
Total	2,895	100.0	22,618	100.0

As indicated in Figure 16, the proportion of Aboriginal cases involving defendants with prior convictions remained consistently high, irrespective of the nature of the major charge currently being dealt with. At the lowest end of the scale, 80.6% of defendants facing a *sexual offence* as their most serious charge had at least one prior conviction (for any offence)

while at the other end of the scale, 93.5% of those facing a *drug offence* had at least one prior. Figures for non-Aboriginal cases were consistently lower across all offence categories. For example, 58.1% of non-Aboriginal defendants currently facing a *sexual offence* had at least one prior, while at the other extreme, 81.6% of *robbery and extortion* cases involved defendants with at least one prior conviction.

Prior imprisonments

Of the 2,895 Aboriginal cases finalised in the Magistrates Court in 1998, just under one half (46.2%) involved defendants who had experienced at least one prior imprisonment. The figure for non-Aboriginal cases was considerably lower – 18.6%. These differences between the two racial groups applied irrespective of the nature of the major charge currently being faced by the defendants. As shown in Figure 17, the proportion of Aboriginal cases involving defendants with at least one prior imprisonment varied from 32.5% of those currently facing an *'other'* charge, to 68.8% of those currently before the court for a *robbery and extortion* charge. For non-Aboriginal case, figures ranged from 14.4% for those defendants currently facing a *sexual offence* as their most serious charge to 40.6% for those facing a *robbery and extortion* matter, and 41.9% for those with a *burglary and break, enter* offence as their major charge.

Figure16.

Proportion of Aboriginal and non-Aboriginal cases involving a defendant with at least one prior conviction by current major charge

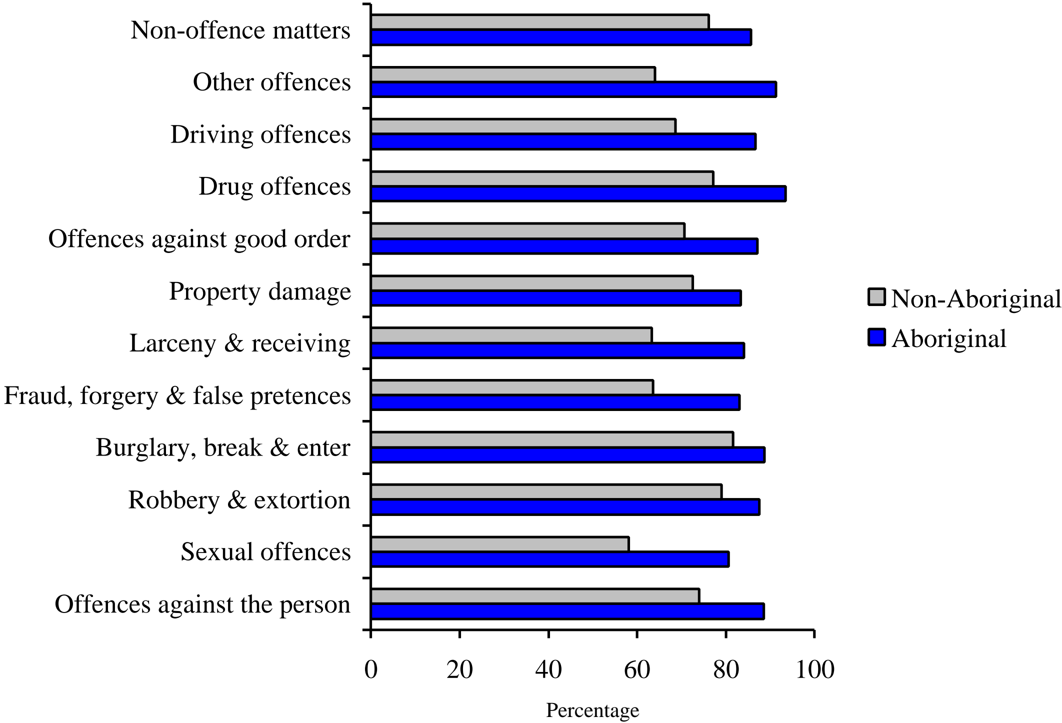
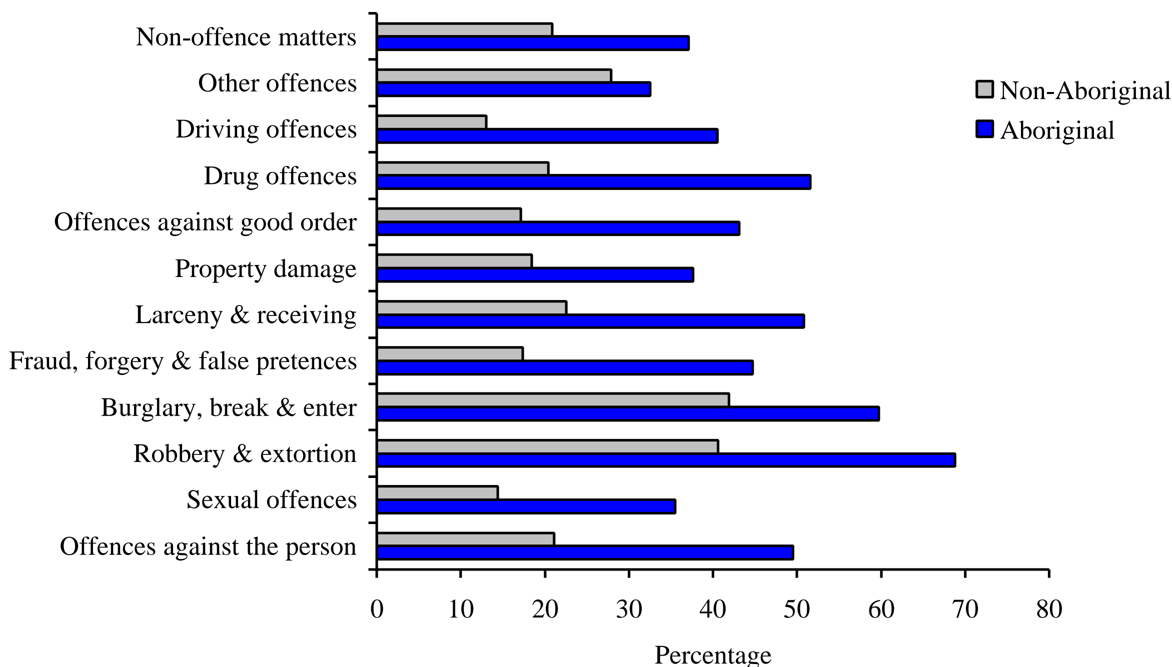


Figure 17.
Proportion of Aboriginal and Non-Aboriginal cases involving defendants with at least one prior imprisonment



THE HIGHER COURTS

Demographic profiles
In 1998, 921 cases were finalised in the Supreme Court (81) and the District Court (840) of South Australia. Of those cases, 99 involved an Aboriginal defendant, 741 were non-Aboriginal, and 81 were undetermined. Aboriginal people made up 10.8% of those defendants, representing an Indigenous rate of contact with the Higher Courts 10.2 times greater than would be expected on a per capita basis. This figure is very similar to that reported for contact with the Magistrates Court.

Sex
In 1998, males accounted for the majority of cases finalised in the Higher Courts, for both Aboriginal and non-Aboriginal defendants (see Figure 18). The dominance of males at this level of the judicial system was even more pronounced than that observed for the Magistrates Court, with females accounting for approximately 10% of all Aboriginal and non-Aboriginal Higher Court cases compared with approximately 20% in the Magistrates Court.

Figure 18.
Cases finalised by the Higher Courts in 1998: racial identity by sex.

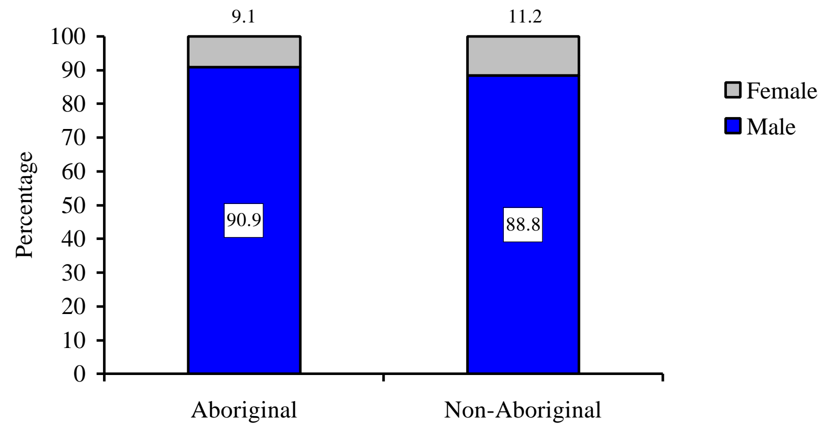


Table 15 presents the breakdown of male and female Aboriginal and non-Aboriginal defendants. In contrast to the situation in the Magistrates Court, Aboriginal females were less over-represented than were Aboriginal males. However, both male and female Aboriginal defendants are still represented at a rate higher than one would expect on the basis of population estimates.

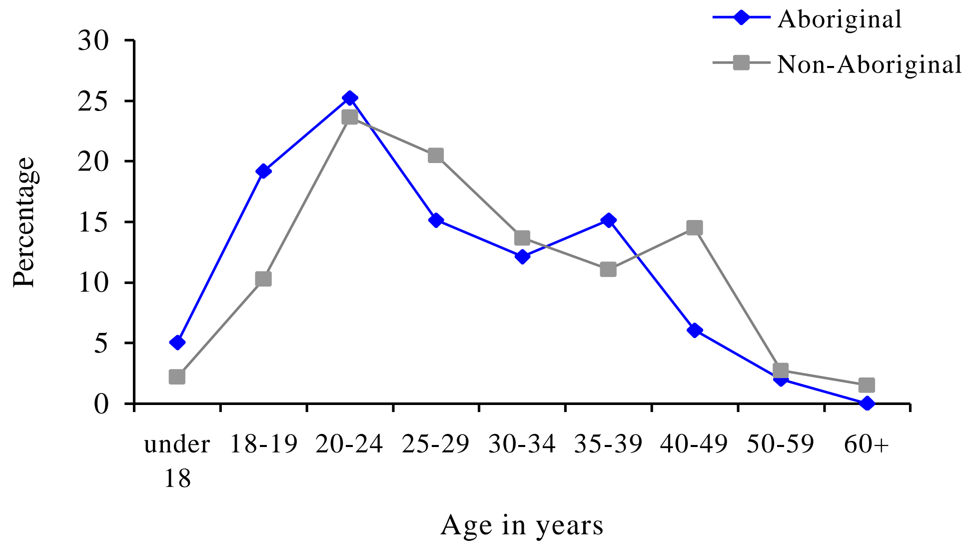
Table 15.
Cases finalised by the Higher Courts in 1998: racial identity by sex.

Racial identity	Females		Males	
	n	%	n	%
Aboriginal	9	9.8	90	12.0
Non-Aboriginal	83	90.2	658	88.0
Total	92	100.0	748	100.0

Age

The breakdown of Aboriginal and non-Aboriginal defendants by age group for those who appeared before the Higher Courts during 1998 is presented in Figure 19. Once again, a generally similar age profile is evident for the two groups. The 20 to 24 year age bracket contains the highest proportion of Aboriginal (25.3%) and non-Aboriginal defendants (23.6%), with proportions diminishing from that age group onwards.

Figure 19.
Higher Court appearances in 1998 : Age by racial identity

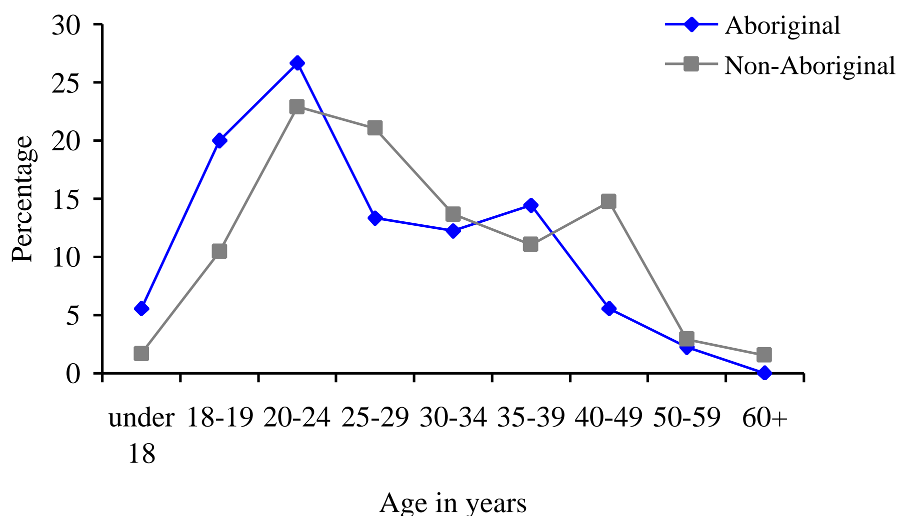


Unlike the age profiles found in the Magistrates Court, Aboriginal and non-Aboriginal defendants appearing in the Higher Courts evidence some differences. A higher proportion of Aboriginal than non-Aboriginal defendants fell in the youngest age categories of under 18 through to 24, while a lower proportion fell within the older age groups. The greatest differences occurred in the 18 to 19 and the 40 to 49 year age brackets. The 18 to 19 year old group accounted for proportionately twice as many Aboriginal (19.2%) than non-Aboriginal (10.2%) defendants. The opposite was true in the 40 to 49 year age bracket. The proportion of non-Aboriginal defendants falling within this age group was more than double that for Aboriginal defendants (14.5% compared with 6.1% respectively). As a result of these differences, the average age of Aboriginal defendants was 27.6 years while the average age of non-Aboriginal defendants was much higher at 30.7 years. In comparison with the average age of defendants appearing before the Magistrates Court, Aboriginal defendants in the Higher Court were slightly younger (27.6 compared with 29.3 years respectively) while no difference was observed for non-Aboriginal defendants (30.7 compared with 30.5 years respectively).

Age and sex

Within the Higher Courts, the average age of male Aboriginal defendants was 27.3 years compared with 30.9 years for non-Aboriginal males. Given that males feature in the overwhelming majority of all Higher Court cases, it is inevitable that the age profiles of males will closely resemble the age profiles of all defendants. As shown in Figure 20, the proportion of male Aboriginal defendants within the 18 to 19 year old age bracket was almost twice that of non-Aboriginal defendants (20.0% compared with 10.4% respectively). The opposite was true within the 40 to 49 year old age bracket, 14.7% of non-Aboriginal defendants compared with 5.6% of Aboriginal defendants.

Figure 20.
Higher Court appearances in 1998: age by racial identity for male defendants.

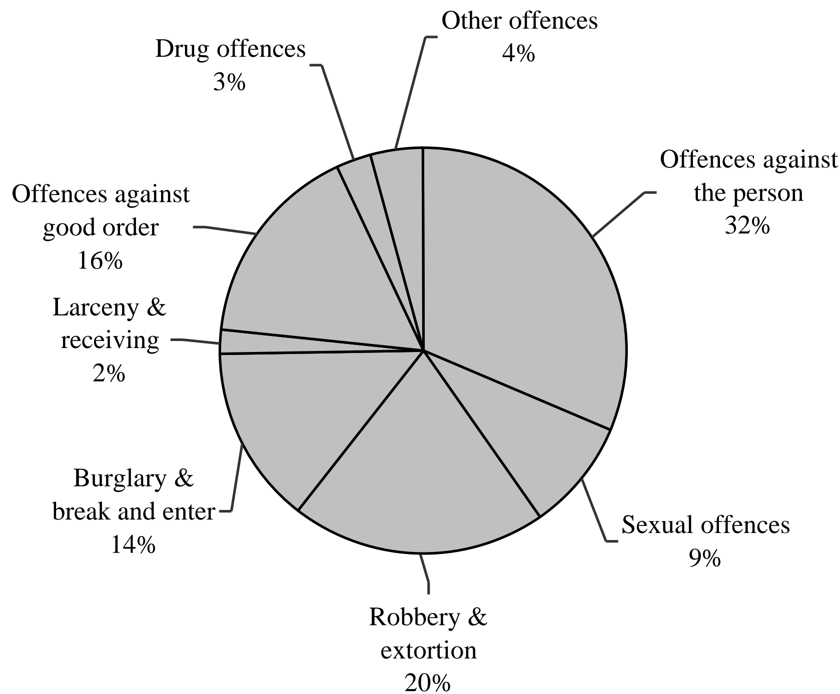


A detailed comparison between female Aboriginal and non-Aboriginal defendants is inappropriate given that there were only nine female Aboriginal defendants compared to 81 non-Aboriginal females for whom age was recorded. The average age of the nine Aboriginal defendants was 30.2 years which was only slightly above the average age (29.1 years) recorded for the non-Aboriginal females.

Charge Profiles
A breakdown of the major or most serious charge involved in all Aboriginal cases finalised in the Higher Courts in 1998 is presented in Figure 21. Overall, *offences against the person* accounted for the largest proportion of major charges recorded against Aboriginal defendants, followed by *robbery and extortion*. In contrast, no *fraud, forgery, and false pretences* or *property damage offences* were listed as the major charge.

Figure 21.

Cases finalised by the Higher Courts in 1998: major charges for Aboriginal defendants.



A comparison of the major charge profiles of Aboriginal and non-Aboriginal defendants are shown in Figure 22 and Table 16. There are some obvious differences between the two groups. In proportionate terms, Aboriginal cases were more likely to involve *robbery and extortion* (20.2% compared with 13.0% respectively), *burglary and break and enter* (14.1% compared with 5.3%), and *offences against good order* (16.2% compared with 9.3%). Moreover, three in ten major charges against Aboriginal defendants were for *offences against the person* compared with only two in ten non-Aboriginal charges. In contrast, nearly a third of the major charges against non-Aboriginal defendants involved *drug offences* but only 3% of Aboriginal defendants fell within this major charge category.

Figure 22.
Cases finalised by the Higher Courts in 1998: most serious charge by racial identity.

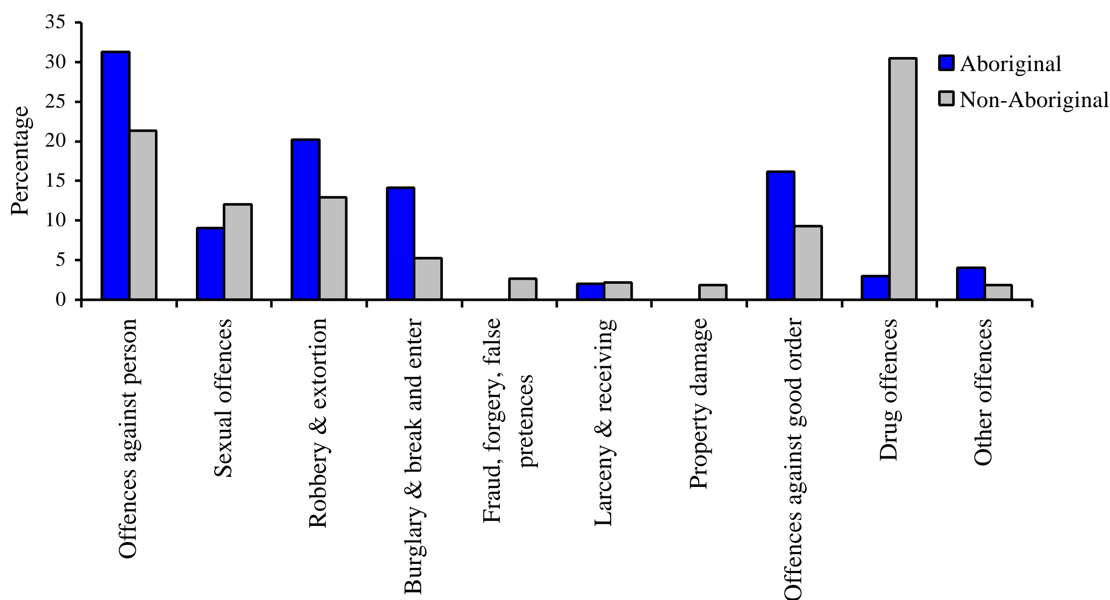


Table 16.
Cases finalised by the Higher Courts in 1998: major charge by racial identity.

Major charge	Aboriginal		Non-Aboriginal	
	n	**%**	**n**	**%**
Offences against person	31	31.3	158	21.3
Sexual offences	9	9.1	89	12.0
Robbery & extortion	20	20.2	96	13.0
Burglary & break and enter	14	14.1	39	5.3
Fraud, forgery, false pretences	0	0	20	2.7
Larceny & receiving	2	2.0	16	2.2
Property damage	0	0	14	1.9
Offences against good order	16	16.2	69	9.3
Drug offences	3	3.0	226	30.5
Other offences	4	4.0	14	1.9
Total	99	100.0	741	100.0

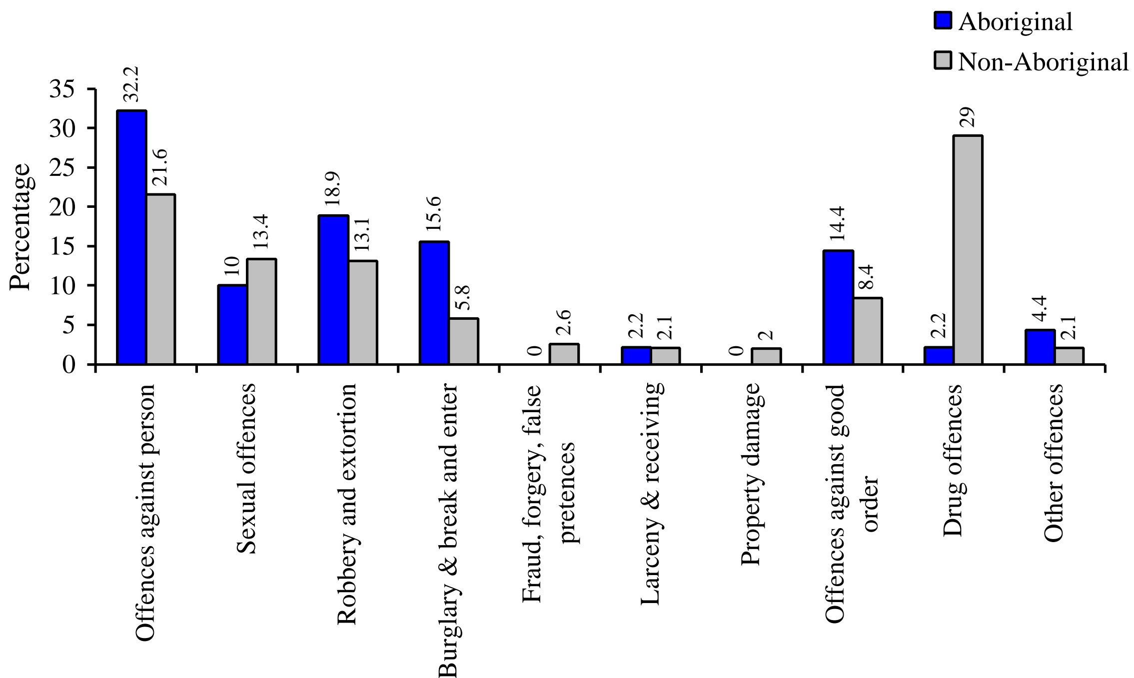
Sex by major charge

Figure 23 compares the most serious charge per case for Aboriginal and non-Aboriginal male defendants. Given that males accounted for 90% of all the Higher Court cases, the racial differences in charge profiles for males were the same as those observed for all

defendants. The greatest differences between the two groups occurred within the charge categories of *drug offences*, *offences against the person*, *offences against good order*, and *burglary and break and enter* offences. More specifically, proportionately more Aboriginal than non-Aboriginal males faced an *offence against the person* (32.2% compared with 21.6%), an *offence against good order* (14.4% compared with 8.4%), and *burglary and break and enter offences* (15.6% compared with 5.8%). In contrast, proportionately fewer Aboriginal defendants faced drug charges (2.2% compared with 29.0%).

A comparison of the charges laid against Aboriginal and non-Aboriginal women dealt with in the Higher Court cannot be undertaken because of the small numbers involved. However, it is worth noting that there were nine cases containing an Aboriginal female defendant and 83 cases with a non-Aboriginal defendant. Of these nine Aboriginal cases, two involved an *offence against the person*, three involved *robbery and extortion*, three involved an *offence against good order* and one involved a *drug offence* as the most serious charge.

Figure 23.
Cases finalised by the Higher Court in 1998: Most serious charge per case by racial identity for male defendants.



Age by major charge
A comparison of the average age of Aboriginal and non-Aboriginal defendants for each major charge category is presented in Table 17. The greatest age difference occurred for *sexual offences*, where Aboriginal defendants were, on average, much younger than their non-Aboriginal counterparts. The same applied to *offences against good order* and *'other' offences*. It should be stressed, however, that because the number of Aboriginal cases dealt with in the Higher Courts is relatively small (99 in 1998) these figures should be interpreted with caution.

Table 17.
Cases finalised by the Higher Courts in 1998: average age per major charge group by racial identity.

Major charge	Aboriginal	Non-Aboriginal
Offences against person	31.9	29.8
Sexual offences	27.2	35.7
Robbery & extortion	26.3	25.5
Burglary & break and enter	26.5	27.8
Fraud, forgery, false pretences	-	37.2
Larceny & receiving	26.2	29.5
Property damage	-	26.4
Offences against good order	22.3	28.5
Drug offences	34.4	32.7
Other offences	21.4	27.5

Age and sex by major charge
There are too few cases per age category to allow an analysis of age by sex trends for Aboriginal and non-Aboriginal defendants in the Higher Courts.

Outcomes for the Major Charge
As in the Magistrates Court, there can be a number of different outcomes for defendants appearing in the Higher Courts. Table 18 lists the outcomes for the most serious charge per case finalised in the Higher Courts in 1998. Overall the outcome profiles for Aboriginal and non-Aboriginal defendants were quite similar. However, some differences can be identified. Aboriginal defendants were somewhat less likely than non-Aboriginal defendants to undergo a trial (19.2% compared with 24.7% respectively) but were slightly more likely to have the major charge dropped without a plea being entered or a trial taking place (19.2% compared with 14.2% respectively).

Table 18.
Cases finalised in the Higher Court in 1998: outcomes for all major charges by racial identity.

Major charge outcome	Aboriginal		Non-Aboriginal	
	n	%	n	%
Guilty plea				
guilty as charged	49	49.5	407	54.9
guilty of other offence	12	12.1	42	5.7
sub-total	**61**	**61.6**	**449**	**60.6**
Trial				
pleads guilty	1	1.0	18	2.4
guilty as charged	5	5.1	65	8.8
guilty of lesser/other offence	4	4.0	31	4.2
not guilty mental incompetence	1	1.0	13	1.8
acquitted	8	8.1	56	7.6
sub-total	**19**	**19.2**	**183**	**24.7**
Major charge dropped				
guilty of other offence	2	2.0	21	2.8
no other charge found guilty	17	17.2	84	11.3
sub-total	**19**	**19.2**	**105**	**14.2**
Other	0	0	4	0.5
Total	**99**	**100.0**	**741**	**100.0**

Due to the limited number of Aboriginal cases coming before the Higher Court the outcomes have been organised into a smaller subset of three broad categories in order to identify any further potential differences between Aboriginal and non-Aboriginal defendants. Table 19 indicates that non-Aboriginal defendants were slightly more likely to be found guilty of at least one offence (78.8% compared with 73.7% of Aboriginal defendants respectively). In contrast Aboriginal defendants were slightly more likely to have no finding of guilt for any charge compared to non-Aboriginal defendants (26.3% and 20.6% respectively).

Table 19.
Cases finalised in the Higher Court in 1998: summary of outcomes by racial identity.

Major charge outcome	Aboriginal		Non-Aboriginal	
	n	%	n	%
Guilty of at least one offence	73	73.7	584	78.8
No finding of guilt for any charge	26	26.3	153	20.6
Other outcome	0	0	4	0.5
Total	**99**	**100.0**	**741**	**100.0**

Due to the extremely small number of Aboriginal defendants appearing before the Higher Courts a comparison with non-Aboriginal defendants on the basis of the outcomes for specific types of major charge is not possible. However, it is worthwhile noting the outcomes for the three most common major charges for Aboriginal defendants. Of the 31 cases where the major charge was an *offence against the person*, 12 Aboriginal defendants pleaded guilty or were found guilty of the major charge, eight were found guilty or pleaded guilty to a lesser or other charge and 11 had no guilty finding recorded. Of the 20 *robbery and extortion* charges 10 defendants pleaded guilty or were found guilty of the major charge, four were found guilty or pleaded guilty to a lesser or other offence, and six had no guilty finding recorded. Of the 16 cases involving an *offence against good order* as the major charge 14 defendants pleaded guilty or were found guilty, one defendant was found guilty of a lesser or other offence while one defendant had a no guilty finding recorded.

Most serious penalty imposed per case

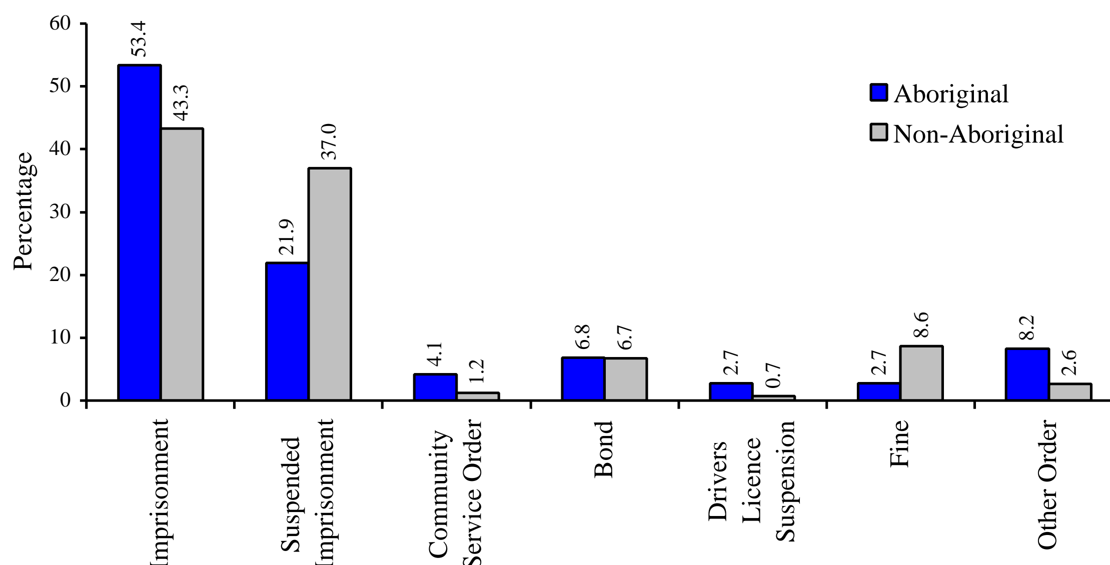
In 1998 there were 657 racially identifiable cases in which at least one charge resulted in either a finding of guilt or a guilty plea. Aboriginal defendants accounted for 73 of these cases while non-Aboriginal defendants appeared in the remaining 584. The penalties discussed in this section refer to these cases. As with the Magistrates Court penalties, only the most serious penalty listed for each case coming before the Higher Courts is included here. These do not represent all penalties which may have been imposed in a single case. Multiple penalties may be imposed for cases containing multiple charges. In addition two or more penalties may be imposed for one charge (e.g., suspended sentence and a bond). In determining penalty severity, the following rank order was used, beginning with the most serious;

- imprisonment
- suspended imprisonment
- community service order
- bond
- driver's licence suspension
- fine
- other order

Figure 24 presents the most serious penalty for cases finalised by the Higher Courts in 1998 which resulted in a conviction. The majority of both Aboriginal and non-Aboriginal defendants received either a prison sentence or suspended prison sentence as a major penalty (75.3% and 80.3% respectively). Over half of all Aboriginal defendants (53.4%) received an immediate prison sentence compared to a lower proportion of non-Aboriginal defendants (43.3%). However the average sentence length was shorter for Aboriginal than non-Aboriginal defendants (35.6 and 40.9 months respectively).

A breakdown of the penalties issued by major charge for Aboriginal defendants is problematic due to the small numbers involved. As a result no further useful information can be gained by presenting these results.

Figure 24.
Cases finalised by the Higher Courts in 1998 resulting in a conviction: Most serious penalty imposed by racial identity



Legal Representation and Bail Status

Information on legal representation was available for 721 (85.8%) of the 840 racially identifiable defendants appearing before the Higher Courts in 1998. The overwhelming majority of these defendants had some form of legal representation with only six recorded cases of non-representation. Two Aboriginal and four non-Aboriginal cases were finalised without a legal representative. Of the 99 cases involving an Aboriginal defendant, 75 were identified as having legal representation, two were recorded as having no legal representation, while the remainder (22) did not have any information recorded about legal representation. For the 741 cases with a non-Aboriginal defendant, 580 had legal representation, four had no legal representation, one case occurred where the defendant declined representation, and 156 cases had no information recorded about legal representation.

As with the information on legal representation, the records on bail status were incomplete. Information was unavailable for five Aboriginal defendants (5.1%) and 57 non-Aboriginal defendants (7.7%). Table 20 presents the bail status of Aboriginal and non-Aboriginal defendants at their first appearance in the Higher Courts in 1998 following their committal from the Magistrates Court. At this Higher Court hearing, all defendants were either on bail or in custody, a finding which reflects the more serious nature of cases dealt with at this level of the judicial system. Overall, though, Aboriginal defendants were less likely to have been granted bail and were more likely to be in custody compared with non-Aboriginal defendants. In fact, at their first hearing, over half of Aboriginal

defendants were in custody compared with just over one quarter of non-Aboriginal defendants.

Table 20.
Cases finalised by the Higher Courts in 1998: bail status at first court appearance following committal from the Magistrates Court by racial identity.

Bail status	Aboriginal		Non-Aboriginal	
	n	%	n	%
Bail granted	42	44.7	490	71.6
In custody	52	55.3	194	28.4
Total	94	100.0	684	100.0

Prior convictions and imprisonments
The majority of Higher Court cases involved persons who had at least one prior conviction (see Table 21) a finding true of both Aboriginal and non-Aboriginal defendants. Nevertheless, a higher proportion of Aboriginal defendants had prior records (and comparatively extensive prior records) than was the case for non-Aboriginal defendants. Of the 99 Aboriginal cases, 94.9% involved defendants who had at least one prior conviction, while over two thirds had 10 or more priors. The figures were lower for non-Aboriginal cases, with 76.4% involving defendants with at least one prior conviction and just over one third having 10 or more priors. As with the Magistrates Court data, it should be stressed that prior convictions is based on offences and does not equate to the number of previous finalised court appearances experienced by that person.

Table 21
Number of prior offences where a conviction was recorded.

Number of prior offences	Aboriginal		Non-Aboriginal	
	n	%	n	%
None	5	5.1	175	23.6
1	2	2.0	57	7.7
2 to 4	10	10.1	119	16.1
5 to 9	13	13.1	120	16.2
10 to 49	46	46.5	226	30.5
50 and over	23	23.2	44	5.9
Total	99	100.0	741	100.0

A higher proportion of Aboriginal than non-Aboriginal defendants also had at least one prior imprisonment. Of the 99 Aboriginal cases finalised in the Higher Courts in 1998, 67

(67.7%) involved defendants who had been imprisoned before, compared with only 29.1% of the 471 non-Aboriginal cases.

CONCLUSION

This report has provided an insight into Aboriginal involvement in the South Australian judicial system. In comparison to their non-Aboriginal counterparts in 1998, Aboriginal defendants were shown to be over-represented at both the Magistrates Court and Higher Court levels. In addition, differences between the groups with respect to the type of major charge faced, court outcomes and penalties were identified.

An analysis of the most serious charge faced in the Magistrates Court identified two major charges in which, proportionately speaking, Aboriginal defendants outnumbered non-Aboriginal defendants. Specifically, these were for major charges arising from *offences against good order* and *offences against the person*. In the Higher Courts, the same two offence types again featured as the major charge in a higher proportion of Aboriginal than non-Aboriginal appearances. A similar finding applied *to robbery and extortion* and *burglary and break and enter offences*. In contrast, proportionately few Aboriginal defendants appeared in cases where the most serious charge involved *drug offences*, *driving offences*, or *sexual offences* when compared to non-Aboriginal defendants.

The outcomes recorded for Aboriginal defendants in the Magistrates Court were similar overall to the outcomes recorded for non-Aboriginal participants, with minor differences emerging when individual charges were examined. In the Higher Courts a similar picture was evident.

Fines constituted the most serious penalty for both Aboriginal and non-Aboriginal defendants in the Magistrates Courts while in the Higher Courts the majority of both Aboriginal and non-Aboriginal defendants received either a prison sentence or suspended prison sentence as the major penalty. Although relatively few cases in the Magistrates Court resulted in imprisonment, this penalty was imposed in a higher proportion of Aboriginal than non-Aboriginal cases.

In conclusion, it should be stressed that no attempt has been made to explain the differences outlined above. Such explanations are beyond the scope of the present report as many factors, alone or in combination, may have contributed to the results. For example, it is not known whether the higher rates of imprisonment for Aboriginal defendants is due to their involvement in more serious offences, or to longer prior criminal records, or to systemic factors associated with the judicial process itself.

APPENDIX

1. The major (or most serious) offence for which a defendant was charged 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'.

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'.

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.

2. The major charge convicted or found guilty is derived from a) and b) above. Of these two charges a conviction takes precedence over a 'found guilty' outcome.