

Criminal Courts

Australia 2004/05 (ABS, 4513.0):

Key findings for South Australia

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Introduction

The following briefing outlines the key findings from the Australian Bureau of Statistics (ABS) *Criminal Courts Australia 2004/05* publication (4513.0) released on 25 January 2006. The publication provides an overview of the characteristics of defendants dealt with by the Criminal Courts, including offence and sentence types, for the period 1 July 2004 to 30 June 2005.

While originally containing data from the Higher Courts only, for the second year, the ABS *Criminal Courts* report includes data from the Magistrates Court in the main body (previously experimental data were included in an appendix). Further, for the first time, the 2004-2005 publication includes, in an appendix, experimental data from the Children's Criminal Court. However, the Children's Court data are not included in this briefing paper because there are still some data quality and coverage issues to be addressed by the ABS. Instead this paper provides an overview of the key findings for the South Australian Higher and Magistrates Courts only.

Aside from the inclusion of the Youth Court information noted above, over recent years there has been a number of changes made to the *Criminal Courts* publication to reduce its complexity. For example:

- the focus has shifted to finalised and adjudicated defendants, with no information provided on the number of initiated defendants and the method of initiation;
- no information is provided on the median duration from initiation to finalisation;
- no information is included on change of plea; and
- only limited data on the age and sex of defendants is included (particularly at a state level).

In interpreting the data presented in the remainder of this paper caution should be used when comparing South Australia to other jurisdictions. In particular, there may be considerable variation in the types/level of offences that the different courts across

Australia are able to finalise, which will impact upon both the method of finalisation and the principal sentence.

Key findings - Higher Courts

Finalised defendants and method of finalisation

Number

- The number of defendants *finalised*¹ in the South Australian higher courts during 2004-05 increased by 8% (941 compared with 869 in 2003-04).
- In contrast, the number of higher court finalisations decreased nationally, by 5%.

Method of finalisation

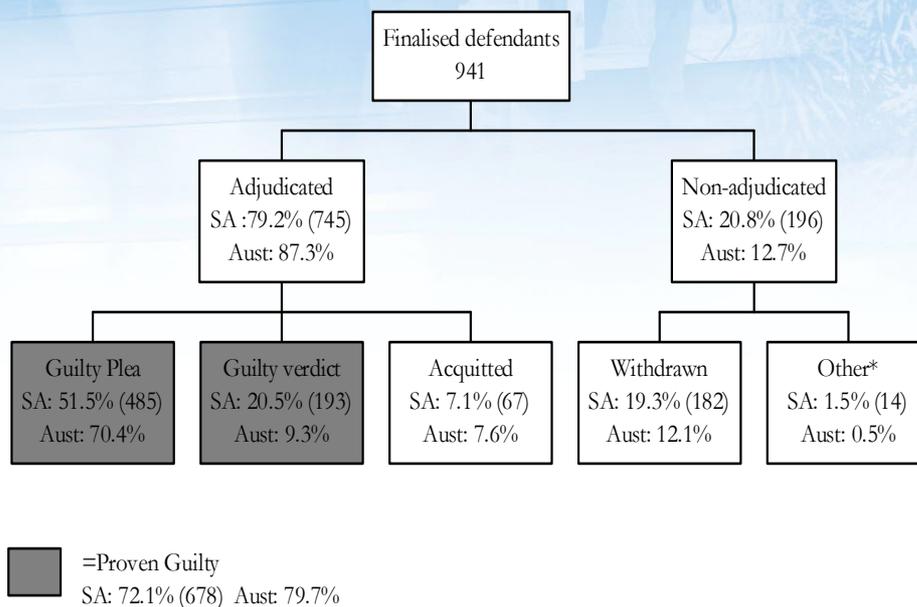
- As Figure 1 indicates, in 2004-05, 745 higher court defendants were finalised by way of adjudication (ie where the defendant pleaded guilty, or was found guilty or acquitted at trial), representing 79.2% of all higher court finalisations in that period (compared with 77.7% in 2003-04). The proportion of finalisations that were adjudicated in the South Australian higher courts was the lowest in Australia and was lower than the national average (87.3%).
- Conversely, the proportion of finalisations that were non-adjudicated (ie where the matter was considered finalised without a determination of guilt, including withdrawn by the prosecution or where the defendant was unfit to plead or the matter was transferred to another court level) was the highest in Australia and was much higher than the national average (20.8% compared with 12.7%). These figures were comparable with those recorded in 2003-04 (22.3% in South Australia and 13.4% nationally).²
- As shown in Figure 1, the proportion of South Australian higher court defendants who were acquitted was comparable with the national figure (7.1% compared with 7.6% respectively). The proportion of South Australian defendants who were acquitted in 2004-05 was comparable with the 2003-2004 figure (7.4%).
- Of all Australian states, South Australia had the lowest proportion of higher court defendants who were proven guilty (ie pleaded guilty or were found guilty at trial). At 72.1%, it was also lower than the national figure of 79.7%.
- Although the majority of those defendants proven guilty actually pleaded guilty, in South Australia the figure was below the national average. Of the 678 defendants who were proven guilty in South Australian higher courts, 485 (71.5%) pleaded guilty (compared with 88.3% nationally) and the other 193 (28.5%) were declared guilty at trial (compared with 11.7% nationally).

¹ A person/organisation for whom all charges have been formally completed.

² OCSAR has previously undertaken research investigating these differences. For further information refer to Hunter, N. and Castle, C. (2004) "Explanations for the high proportion of South Australian matters classified by the ABS as withdrawn in 2001/02" *Technical Paper*. Adelaide: Office of Crime Statistics and Research (http://www.ocsar.sa.gov.au/docs/technical_papers/nolles.pdf)

- As Figure 1 indicates, in 2004-05, 19.3% of South Australian finalisations were withdrawn by the prosecution. This was the highest figure recorded in Australia and higher than the national average of 12.1%.

Figure 1 Finalised defendants in South Australian Higher Courts, 2004/05



* Includes defendants finalised by transfers to other court levels.

Time taken from initiation to finalisation

- The time taken from initiation to finalisation in the South Australian higher courts was generally longer than in Australia as a whole. For example, 42.1% of South Australian matters were finalised in under six months compared with 46.8% in Australia. In South Australia, 25.3% of matters took between six and 12 months to finalise compared with 30.0% for Australia, while 32.6% of South Australian matters were finalised in 12 months or more compared with 23.2% for Australia as a whole.
- As could be expected, the time taken from initiation to finalisation varied according to the method of finalisation. Over half (51.8%) of all South Australian higher court matters finalised by a guilty plea were completed in less than six months, compared with 10.9% of matters finalised by a guilty verdict and 17.9% finalised by acquittal. Conversely, 20.0% of matters finalised by guilty plea took more than 12 months to complete, compared with 66.3% of matters finalised by a guilty verdict and 49.3% of matters finalised by acquittal.

Adjudicated Defendants

- As indicated in Figure 1, of the 941 finalised higher court defendants, over three quarters (745) were finalised by adjudication (ie by guilty plea, guilty verdict or acquitted).

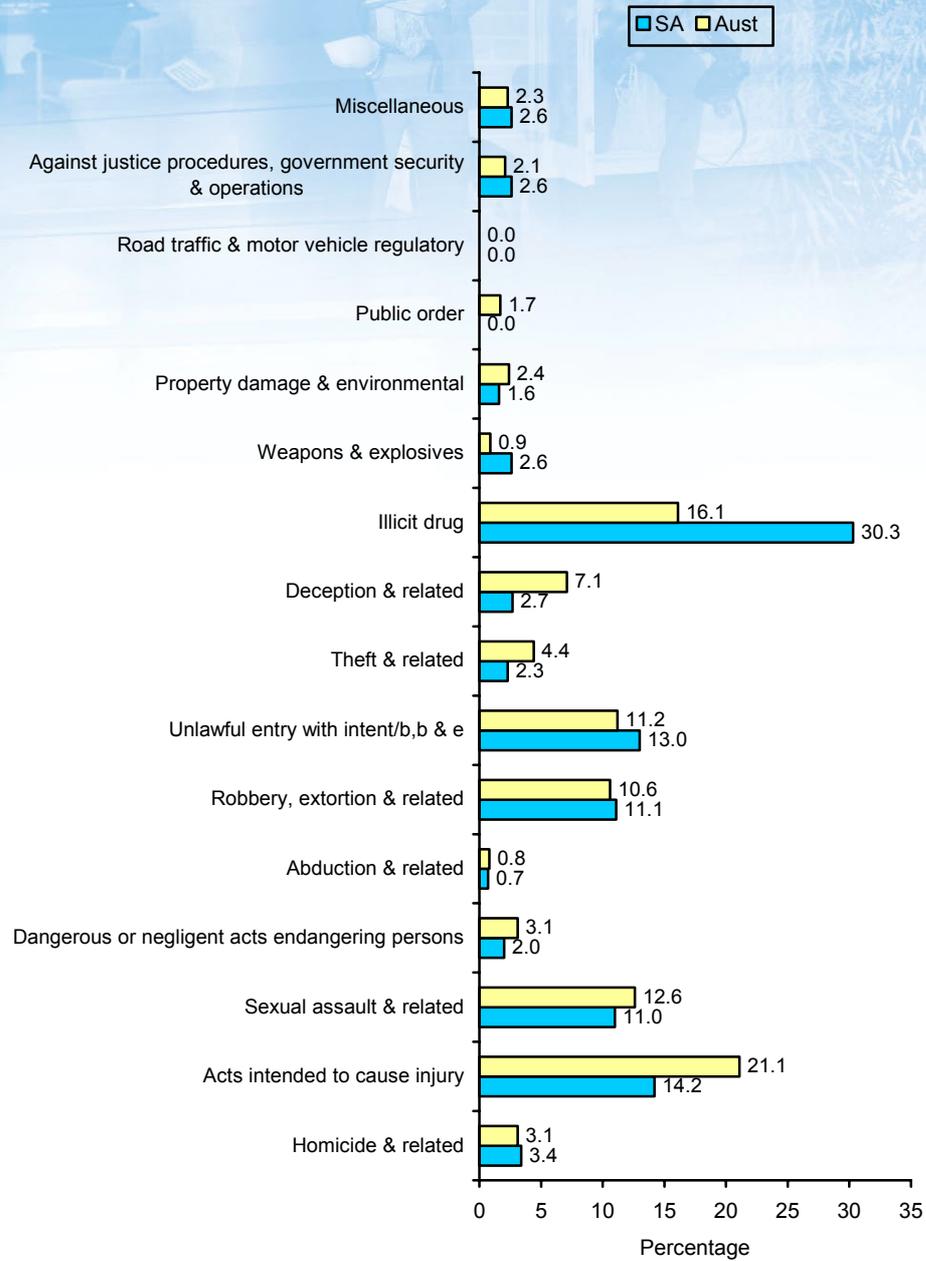
Sex and age of adjudicated defendants

- The proportion of male adjudicated defendants in South Australian higher courts was comparable to the national figure (89.0% compared with 88.0% respectively).
- South Australia had a higher proportion of adjudicated defendants aged between 25 and 44 years compared with Australia as a whole (61.6% compared with 53.6% respectively) and a lower proportion aged under 25 (22.8% compared with 30.5%). The proportion of adjudicated defendants aged 45 years and over was the same (15.6%).

Principal offence for adjudicated defendants

- The five most common principal offences for adjudicated defendants dealt with in South Australian higher courts were illicit drugs (30.3%), acts intended to cause injury (14.2%), unlawful entry with intent/burglary, break and enter (13.0%), robbery, extortion and related offences (11.1%) and sexual assault and related offences (11.0%), accounting for approximately 8 in 10 of all defendants adjudicated in South Australia's higher courts. These results are illustrated in Figure 2.
- This was broadly similar to the national profile, where the most common principal offences were acts intended to cause injury (21.1%), illicit drug offences (16.1%), sexual assault and related offences (12.6%), unlawful entry with intent (11.2%) and robbery and extortion (10.6%).
- However, while the top five offences were the same, the percentages which fell within each offence category in South Australia differed in several respects from the national figures. In particular, *illicit drugs offences* accounted for a higher proportion of adjudicated cases in South Australia than nationally, while *acts intended to cause injury* accounted for a lower proportion.
- While 30.3% of all South Australian adjudicated defendants had a principal offence type of *illicit drugs*, the proportion was particularly high for female defendants (43.9% compared with 28.7% for males). The comparable national figures were 18.2% for females and 15.8% for males.
- As in the previous year, the most common principal offence in 2004-05 varied across the states and territories. While in South Australia and New South Wales the most common principal offence was *illicit drugs*, in five jurisdictions (Victoria, Queensland, Tasmania, Northern Territory and ACT) it was *acts intended to cause injury* and in Western Australia it was *unlawful entry with intent/burglary, break and enter*.

Figure 2 Higher Courts defendants adjudicated 2004/05, principal offence



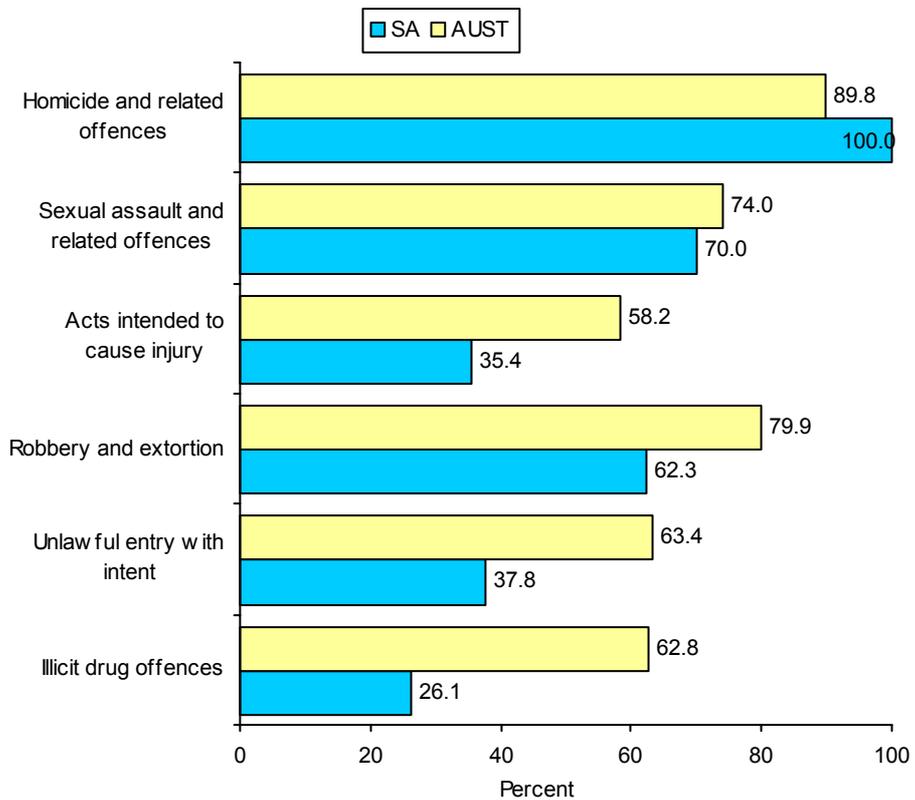
Principal sentence type

- Compared to Australia as a whole, in 2004-05 South Australia had a much higher proportion of suspended sentences (48.2% compared with 17.4%) and a much lower proportion of both custodial sentences (43.5% compared with 62.8%) and non-custodial orders (8.3% compared with 19.0%). While further investigation is required to explain these differences, one hypothesis is that the low proportion of defendants receiving custodial sentences and the relatively high proportion receiving suspended sentences in this state in comparison with some other jurisdictions could be due to variations in the use of partially suspended sentences. Sentences of this nature, where an individual serves part of their prison sentence and then is released on parole for the balance, are used rarely in South Australia and cannot be imposed if the sentence is for

more than 12 months. If other jurisdictions use these sentences more often and these are counted by the ABS in the custodial sentence category, this could partly explain the differences between the South Australian figures and those recorded in some other states.

- The proportion of suspended sentences in South Australia in 2004-05 was higher than in 2003-04 (48.2% compared with 37.7%), while the proportion of custodial sentences decreased from 49.2% to 43.5%.
- South Australia had a lower proportion of higher court defendants receiving a custodial sentence (excluding suspended) compared with the national average for most offence types, but particularly for the offences of *illicit drugs* (26.1% compared with 62.8% respectively) and *acts intended to cause injury* (35.4% compared with 58.2%). These results are illustrated in Figure 3.

Figure 3 Proportion of Higher Court defendants proven guilty in 2004-2005 who received a custodial penalty* by principal offence type**

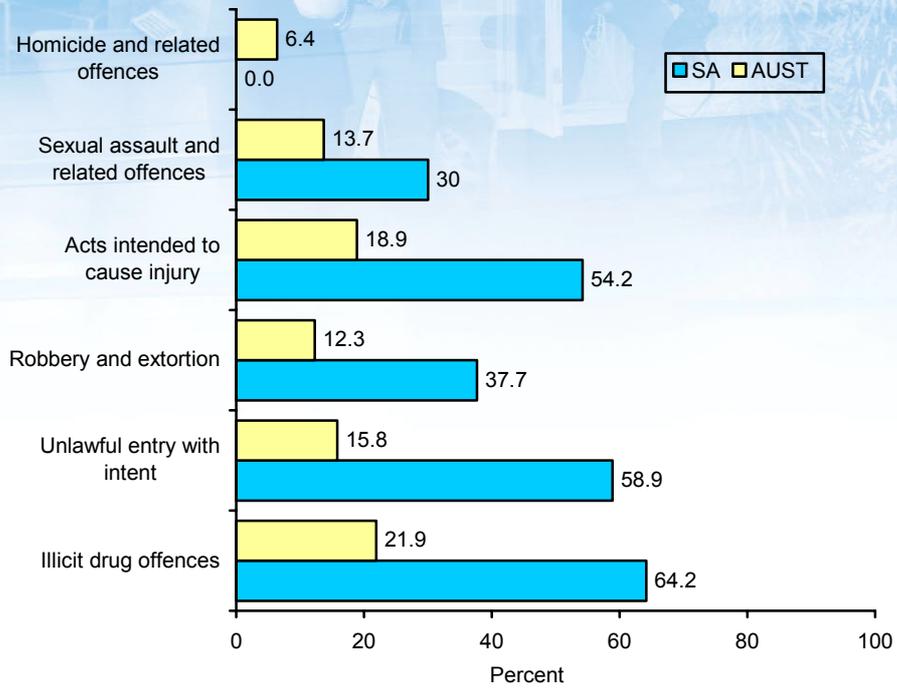


* Custodial penalty includes custody in corrections and custody in the community, but excludes suspended.

** Only those offence categories for which the South Australian numbers were 20 or more have been included.

- South Australia had a particularly high proportion of higher court defendants receiving suspended sentences for the offences of *acts intended to cause injury* (54.2% compared with 18.9% for the nation as a whole), *illicit drugs* (64.2% compared with 21.9%), *robbery and extortion* (37.7% compared with 12.3%) and *unlawful entry with intent* (58.9% compared with 15.8%). These results are illustrated in Figure 4.

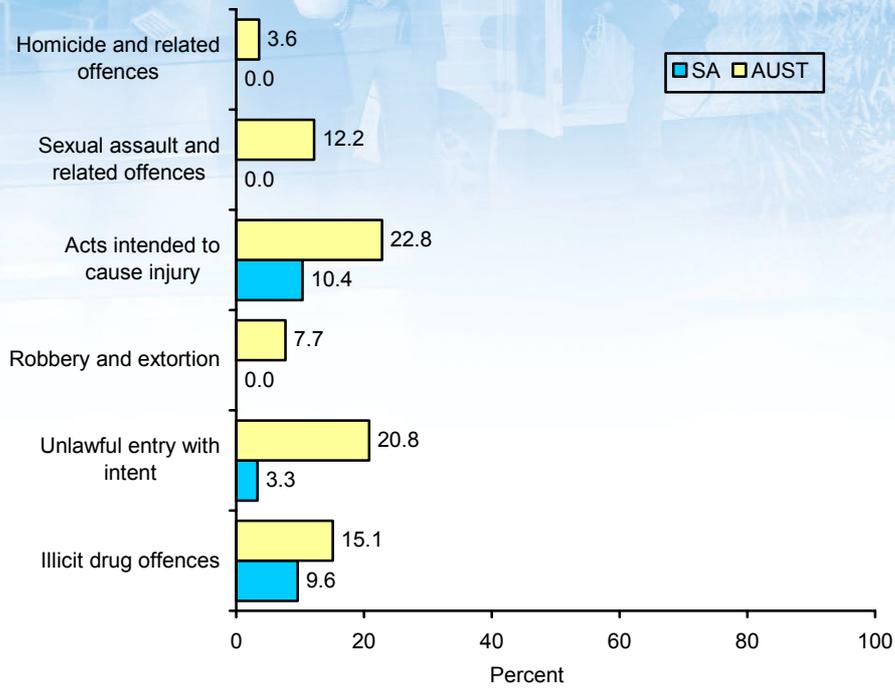
Figure 4 Proportion of Higher Court defendants proven guilty receiving a suspended sentence in 2004-2005 by principal offence type**



** Only those offence categories for which the South Australian numbers were 20 or more have been included.

- The proportion of South Australian higher court defendants receiving a non-custodial order was generally lower when compared with Australia as a whole, particularly for the offences of *unlawful entry with intent* (3.3% compared with 20.8% for Australia), *acts intended to cause injury* (10.4% compared with 22.8%) and *robbery and extortion* (none recorded compared with 7.7%). These results are illustrated in Figure 5.

Figure 5 Proportion of Higher Court defendants proven guilty receiving a non-custodial order in 2004/05 by principal offence type**



** Only those offence categories for which the South Australian numbers were 20 or more have been included.

Key findings - Magistrates Courts

Finalised defendants and method of finalisation

Number

- A total of 44,134 defendants were finalised in the South Australian Magistrates Courts in 2004-05.³ This is 2% higher than the 2003-04 figure (43,326).

Method of finalisation

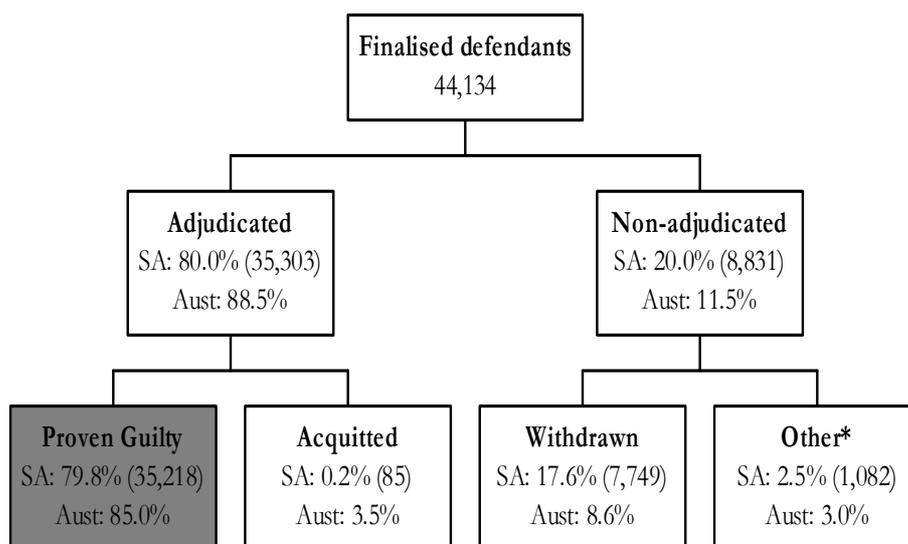
Figure 6 illustrates the number of Magistrate Court finalisations by method of finalisation. As shown,

- The proportion of Magistrate Court finalisations that were adjudicated (ie where the defendant was proven guilty or acquitted) in South Australia was much lower than the national average (80.0% compared with 88.5%) and was the second lowest figure in Australia behind the ACT (73.0%).
- The proportion of South Australian finalisations that were adjudicated in 2004-05 was slightly higher than the figure recorded the previous year (75.6%), while the Australian proportion remained unchanged.

³ Excludes children treated as adults.

- The proportion of finalisations that were non-adjudicated (ie where the matter was considered finalised without a determination of guilt including withdrawn by the prosecution or where the defendant was unfit to plead) was much higher than the national average (20.0% compared with 11.5%) and was the second highest in Australia.
- The proportion of South Australian Magistrate Court defendants finalised in 2004-05 who were acquitted was much lower than the national figure (0.2% compared with 3.5% respectively). Both the South Australian and national figures were comparable with those recorded in 2003-04 (0.1% and 3.6% respectively).
- Compared with Australia, South Australia also had a lower proportion of matters where the defendant was proven guilty (79.8% compared with a national figure of 85.0%).⁴ Overall, South Australia had the third lowest proportion of defendants who were proven guilty behind the ACT (69.5%) and Tasmania (79.5%).
- South Australia had a higher proportion of matters withdrawn by the prosecution than the nation as a whole (17.6% compared with 8.6% respectively).

Figure 6 Finalised defendants in South Australian Magistrates Court 2004/05



* Includes defendants finalised by transfers to other court levels.

Time taken from initiation to finalisation

- For South Australia, 50.4% of defendants were finalised in less than 13 weeks from their date of initiation, compared to 73.3% nationally. Conversely, 10.5% took over 12 months to finalise, compared with 3.5% for Australia as a whole.
- The time taken from initiation to finalisation varied according to the method of finalisation. Over half (56.8%) of all South Australian Magistrates Court proven guilty matters were finalised in less than 13 weeks, compared with 0.0% of matters finalised by acquittal. Conversely, 8.2% of proven guilty matters took more than 12 months to complete, compared with 37.6% of matters finalised by acquittal.

⁴ Proven guilty includes a guilty finding, guilty plea, guilty ex-parte and guilty n.f.d.

Adjudicated Defendants

As shown in Figure 6, of the 44,134 finalised Magistrates Court defendants, eight in ten were finalised by adjudication.

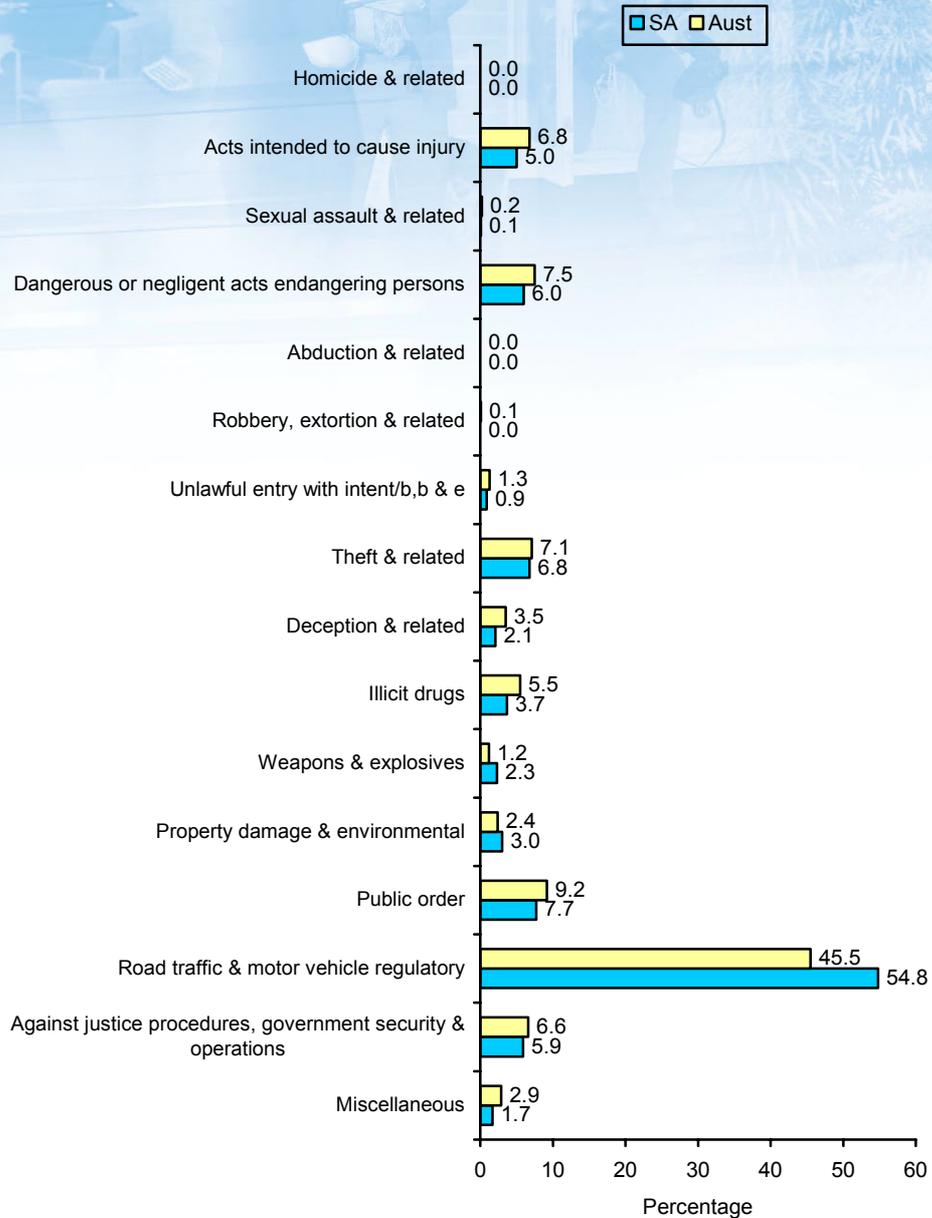
Sex and age of adjudicated defendants

- The proportion of male adjudicated defendants in South Australian Magistrates Courts was comparable with the national figure (79.2% and 77.6% respectively).
- South Australia had a higher proportion of adjudicated defendants aged between 25 and 44 compared with Australia as a whole (53.9% compared with 48.4%), but similar proportions aged under 25 (30.9% compared with 32.6%) and 45 and over (13.8% compared with 13.7%).

Principal offence for adjudicated defendants

- Consistent with national figures, the most common principal offences for adjudicated defendants in South Australian Magistrates courts were *road traffic and regularly offences* (54.8%), *public order offences* (7.7%), *theft and related offences* (6.8%), and *dangerous or negligent acts endangering persons* (6.0%). In combination, these accounted for approximately three quarters of all defendants adjudicated in South Australian Magistrates Courts (these data are presented graphically in Figure 7). This was consistent with the offence profile recorded in 2003-04.
- While the most common principal offence for both males and females in South Australian was *road traffic* offences, accounting for just over half of male and female adjudicated defendants, a higher proportion of adjudicated female defendants had *theft and related* offences as their principle offence (11.7% compared with 5.7% for males) while males were more likely to have *public order* offences (8.3% compared with 5.9% for females).
- The most common principal offence for all states and territories (with the exception of Western Australia) was *road traffic* offences, although proportions varied from 35.4% in the Northern Territory up to 79.1% in Tasmania.

Figure 7 Magistrates' Court defendants adjudicated 2004/05, principal offence



Principal sentence type

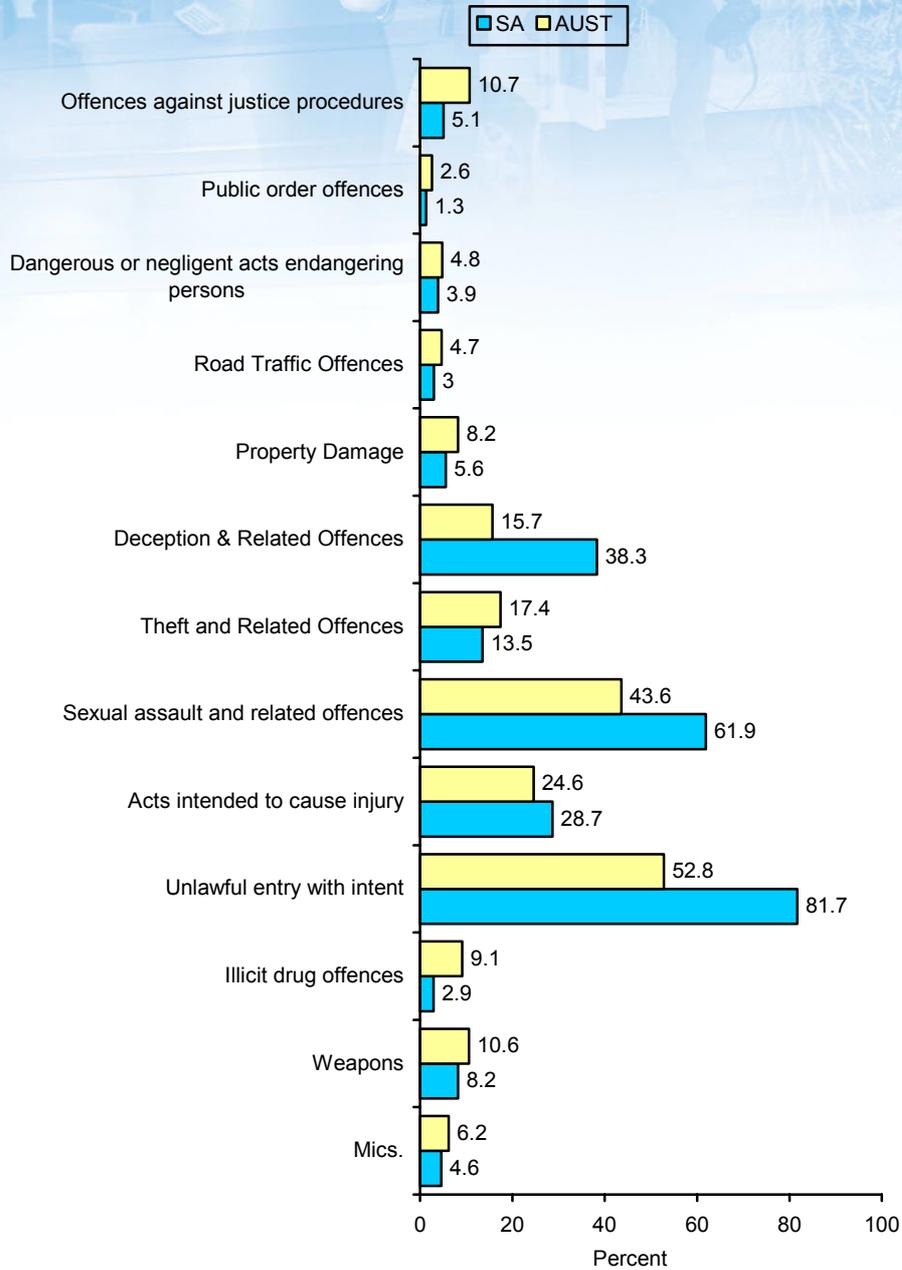
- In 2004-05 the most common principal sentence type was a monetary order, although South Australia had a higher proportion of defendants in this category compared with Australia (90.1% compared with 72.4% respectively). Both figures are comparable with those recorded in 2003-2004 (87.3% for South Australian and 72.2% nationally). It has been suggested that the high proportion of South Australian defendants with monetary penalties as the principal sentence could reflect the ABS sentence type classification hierarchy used to select the principal sentence in those instances where a defendant receives multiple sentences. According to this classification system (refer to Appendix 5 of the ABS 2004-05 *Criminal Courts (4513.0)* publication, page 73), a monetary order (defined as a fine, an order to compensate a victim as well as other types of monetary orders) has a higher ranking in the sentence classification hierarchy than some other

types of non-custodial order such as a good behaviour bond or licence disqualification. It has been posited that in this state a defendant who receives a good behaviour bond and is also required to pay a levy could be included by the ABS in the monetary order category because of the way in which the counting rules are applied, thus contributing to the high number/proportion of matters in this sentence category.⁵ It is unclear whether a similar situation occurs in other jurisdictions and hence further investigation is required.

- In the South Australian Magistrates Court 6.8% of defendants proven guilty in 2004-05 received a custodial penalty (immediate or suspended), which was slightly lower than the national figure of 8.7%. Again, both figures are almost identical to those recorded in 2003-04 (6.9% for South Australia and 8.9% for the national as a whole).
- South Australia had a much lower proportion of non-custodial sentences (excluding monetary orders) than the national figure (3.2% compared with 18.6%). These figures were also similar to those recorded in 2003-04.
- South Australia had a much higher proportion of defendants receiving a custodial sentence (immediate or suspended) compared with the national average for the offences of *unlawful entry with intent* (81.7% compared with 52.8%), *sexual assault* (61.9% compared with 43.6%) and *deception* (38.3% compared with 15.7% respectively). In contrast there was a lower proportion receiving a custodial penalty for *illicit drug* offences (2.9% compared with 9.1%). These results are illustrated in Figure 8.

⁵ In South Australia, the *Victims of Crime (Fund and Levy) Regulations 2003*, specifies the levy amounts payable in relation to expiable and other summary offences as well as for indictable offences, such of which attract twice the levy that would otherwise be payable.

Figure 8 Proportion of Magistrates Court defendants proven guilty in 2004/05 who received a custodial penalty* by principal offence type**

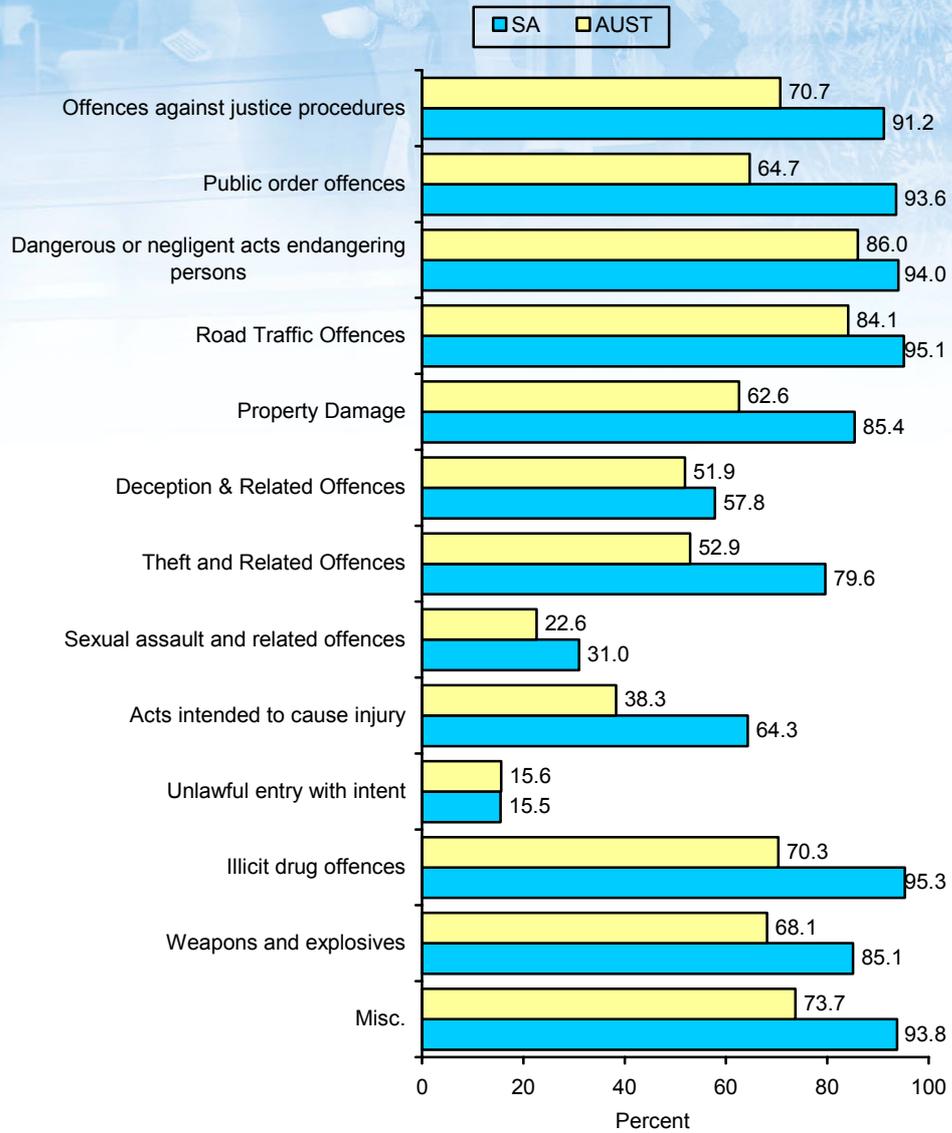


*Custodial penalty includes custody in corrections and custody in the community and, unlike the higher court graphs, also includes suspended imprisonment.

** Only those offence categories for which the South Australian numbers were sufficiently high to calculate percentages have been included.

- With the exception of *unlawful entry with intent* (where the figures were equal), South Australia had a higher proportion of defendants receiving a monetary order across all offence types. These results are illustrated in Figure 9.

Figure 9 Proportion of Magistrates Court defendants proven guilty in 2004/05 who received a monetary order* by principal offence type**

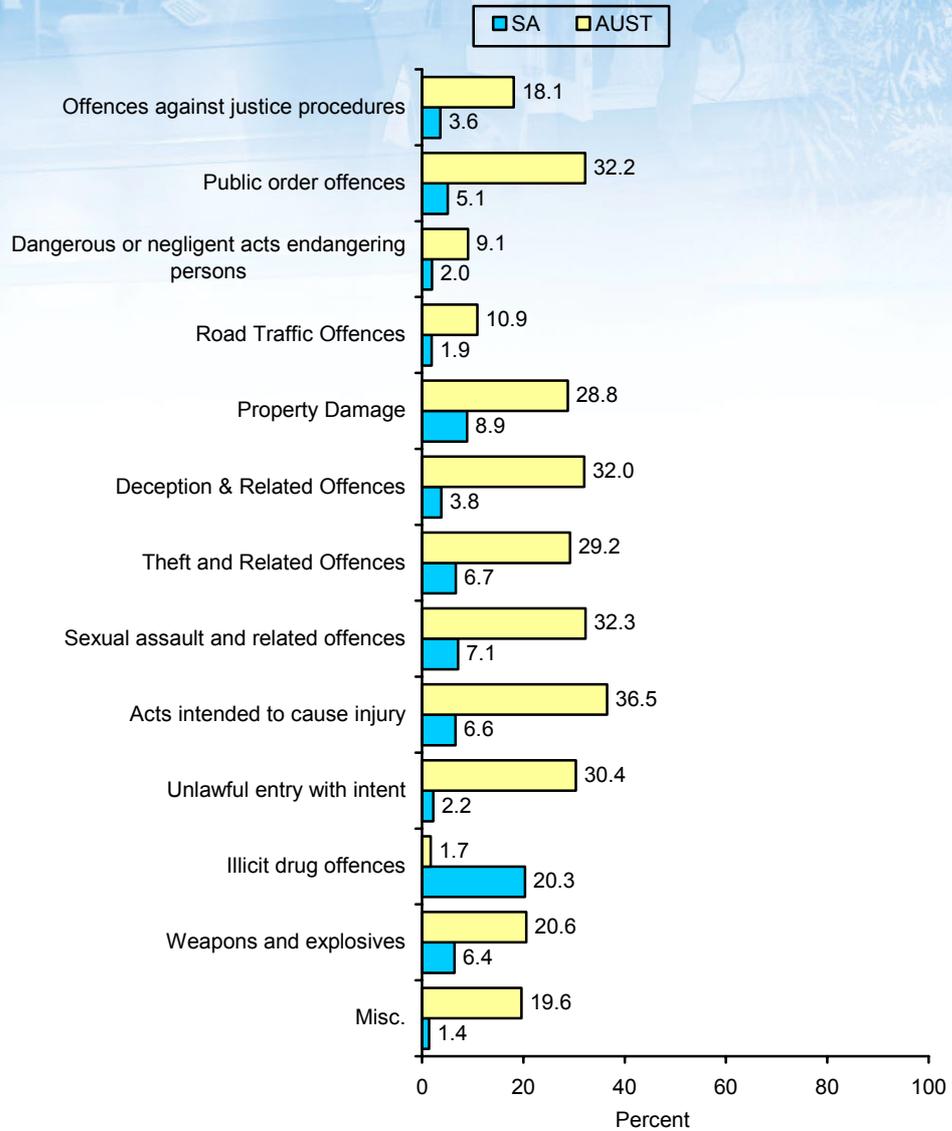


* Custodial penalty includes custody in corrections and custody in the community and, unlike the higher court graphs, also includes suspended imprisonment.

** Only those offence categories for which the South Australian numbers were sufficiently high to calculate percentages have been included.

- In contrast to monetary orders, South Australia generally had a much lower proportion of defendants receiving a non-custodial order (other) across all offence types. These results are graphed in Figure 10.

Figure 10 Proportion of Magistrates Court defendants proven guilty receiving a non-custodial order (other than monetary order) in 2004-2005 by principal offence type**



** Only those offence categories for which the South Australian numbers were sufficiently high to calculate percentages have been included.