Sentencing Profile

Connecting the dots: the sentencing of Aboriginal and Torres Strait Islander peoples in Queensland

March 2021



Queensland Sentencing Advisory Council

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The Queensland Sentencing Advisory Council acknowledges the input and advice provided by the Council's Aboriginal and Torres Strait Islander Advisory Panel in the production of this Sentencing Profile. Their insights, voices and stories provide a rich understanding of the available data presented in this report.

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Acknowledgement of Traditional Owners

We acknowledge and give our respects to the Traditional Owners and Custodians of this land, where they have performed age-old ceremonies of storytelling, healing, music, dance and celebration. We would also like to acknowledge and give our respects to Elders, past, present and emerging who hold the memories, traditions and knowledge of Aboriginal and Torres Strait Islander culture.

Aboriginal and Torres Strait Islander peoples are advised that this publication may contain words, names and descriptions of people who have passed away.

The Queensland Sentencing Advisory Council values Aboriginal and Torres Strait Islander peoples experience and culture and recognises and prioritises their needs to understand the drivers of their over-representation in Queensland's criminal justice system. Our Aboriginal and Torres Strait Islander corporate artwork *Overcoming Obstacles* by Casey Coolwell was commissioned to embody our commitment to addressing the over-representation of First Nation's peoples in the Queensland criminal system. To view the artwork, and the meaning behind it, please visit <u>our website</u>.



Summary

This research report is the first in a series of Sentencing Profiles which aim to investigate sentencing trends and patterns for specific groups of people in Queensland.

This report focuses on the sentencing of Aboriginal and Torres Strait Islander peoples in Queensland and was developed in consultation with the Council's Aboriginal and Torres Strait Islander Advisory Panel (the Advisory Panel). It provides a statistical overview of the people and offences sentenced, as well as the distribution of penalties imposed using data from the Queensland courts database between 2005–06 to 2018–19. Findings from published research and reflections from the Advisory Panel are presented throughout the report to provide broader context to the data presented. The <u>Technical Paper for</u> <u>Research Publications</u>, available on the Council's website, provides more information about the counting rules, methodology and terminology used in this series.

Patterns of offending

The number of unique Aboriginal and Torres Strait Islander offenders decreased over time

The number of unique Aboriginal and Torres Strait Islander offenders sentenced in court decreased over time (from 88.7 offenders per 1,000 population in 2005–06 down to 78.2 offenders per 1,000 population in 2018–19).

The number of sentenced cases and rate of imprisonment increased over time

While the number of unique offenders decreased over time, the number of sentenced cases involving Aboriginal and Torres Strait Islander offenders increased by 16.2 per cent between 2005–06 and 2018–19. The rate of imprisonment for Aboriginal and Torres Strait Islander peoples increased from 11.4 offenders per 1,000 population in 2005–06 up to 17.0 offenders per 1,000 population in 2018–19.

Remote areas and discrete communities had the highest rates of unique offenders for Aboriginal and Torres Strait Islander peoples

Remote areas had the highest rate of offenders per 1,000 population in 2018–19 at 191.6 per 1,000 population, followed by discrete communities at 175.2 per 1,000 population. Rates of offending in regional areas (85.2 per 1,000 population) and major cities (58.5 per 1,000 population) were much lower.

The most common age at the time of offence was 17 years

There were more offenders aged 17 years old (at the time of the offence) compared to any other age. The average age of offenders overall was 29.0 years.

The proportion of female offenders increased over time

Close to 2 in 3 sentenced Aboriginal and Torres Strait Islander offenders were men and just under a third were women (30.3%). The proportion of female offenders has steadily increased (from 28.8% in 2005–06 to 31.0% in 2018–19).

Children accounted for over 1 in 10 sentenced offenders

12.7 per cent of sentenced offenders were children.

Trends in offences and recidivism

Justice and government offences were the most common offences for sentenced Aboriginal and Torres Strait Islander peoples, closely followed by public order offences

The most common offence categories for which Aboriginal and Torres Strait Islander peoples were sentenced between 2005–06 and 2018–19 were justice and government (41.2%) and public order (38.6%) offences. Justice and government offences include breach of justice orders, offences against justice procedures and offences against government security and operations. The analysis excludes traffic and vehicle offences as Aboriginal and Torres Strait Islander status is frequently not recorded for these offences.

From these two offence categories, there was a considerable drop to the next most common offences – theft (18.4%), drugs (12.6%), acts intended to cause injury (10.5%) and property and environment (9.1%).

Public nuisance was the most common offence sentenced

Public nuisance was the most common offence for Aboriginal and Torres Strait Islander peoples (n=63,888). However, the proportion of cases involving public nuisance dropped considerably over the data period (down by 25.4%). This could be due to an increase in non-court actions for this type of behaviour, such as ticketing, cautioning, conferencing and referral to support services.

Other common offences included breach of bail (by failing to appear in court, n=33,544), assaulting or obstructing a police officer (n=31,489), contravening a direction of a police officer (n=29,007), and contravention of a domestic violence order (n=30,813).

Drug offences and breaches of domestic violence orders (DVOs) increased over time

The number of cases involving the possession of dangerous drugs and possession of drugs utensils increased. In 2005–06, cases involving possession of dangerous drugs and possession of drug utensils comprised 4.8 per cent and 4.2 per cent of cases, respectively. These proportions increased to 12.5 per cent and 11.4 per cent in 2018–19.

Cases involving the contravention of a DVO also increased considerably. In 2005–06, 8.1 per cent of cases involved the contravention of a DVO. This increased to 14.2 per cent of cases in 2018–19.

Over two-thirds of those sentenced were repeat offenders

An analysis of recidivism was undertaken, finding that 70.3 per cent of Aboriginal and Torres Strait Islander offenders sentenced over the 14-year period were repeat offenders.

Those sentenced for stealing, breach of bail, and wilful damage were the most likely to commit another offence (of any kind), while those sentenced for contravention of a domestic violence order (DVO) were most likely to commit the same offence

Individuals sentenced for stealing showed the highest rate of reoffending (that is, where the person committed another, but not the same offence), with 86.4 per cent committing a new offence within 2 years. This reoffending rate was similar to those sentenced for breach of bail (85.9%) and wilful damage (83.1%). When examining repeat offending (that is, people who committed the same offence within two years of release), contravention of a DVO was the offence with the highest rate, with 50.0 per cent of cases sentenced for another contravention of a DVO within 2 years.

Penalties and sentencing

Monetary penalties account for the majority of penalties imposed on adults, followed by custodial penalties

While sentences of imprisonment increased for Aboriginal and Torres Strait Islander adults over time, the most common penalties were monetary orders (60.1%). Custodial penalties were the second most common type of penalty for Aboriginal and Torres Strait Islander adults (19.4%).

Close to half of all adult offenders sentenced to imprisonment received a sentence of less than 6 months

The length of custodial sentences shows that nearly half of adults (46.8%) sentenced to imprisonment received a sentence of less than 6 months in prison, with another 28.2 per cent sentenced to between 6 and 12 months.

The use of custodial penalties increased over time

Custodial penalties imposed on Aboriginal and Torres Strait Islander peoples increased over the 14-year data period, from 12 per cent to 23 per cent in the Magistrates Courts and from 66 per cent to 75 per cent in the higher courts. At the same time, non-custodial penalties decreased over the same period.



The growth in the number of Aboriginal and Torres Strait Islander peoples sentenced to imprisonment has risen at different rates for male and female offenders. For male offenders, the number of cases resulting in imprisonment more than doubled over 14-years (from 1,393 cases in 2005–06 to 2,842 cases in 2018–19, an increase of 104.0%), whereas for women, cases resulting in imprisonment more than tripled (from 178 cases in 2005–06 to 576 cases in 2018–19).

For children, the most common penalty imposed was a community-based order, followed by a formal warning (reprimand)

The most common penalty for Aboriginal and Torres Strait Islander children was a community-based order (46.7%), followed by a reprimand (23.9%). One in 10 children received a custodial penalty (10.7%).

More than 6 in 10 children sentenced to detention received a sentence of less than 6 months

More than half of children (62.9%) sentenced to detention received a penalty of less than 6 months, with a further 25.9 per cent receiving a sentence of between 6 and 12 months.

The likelihood of receiving imprisonment was increased by the seriousness of the offence, prior offending, prior imprisonment, being sentenced for more than one offence, as well as being male and younger

A logistic regression analysis was undertaken to predict the likelihood of receiving a sentence of imprisonment for adult offenders in 2018–19. The analysis found that the seriousness of the offence was a significant predictor of a sentence of imprisonment, explaining 63.7 per cent of the variability.

Further, prior offences, prior imprisonment, being sentenced to more than one offence, being male and younger also increased the likelihood of receiving imprisonment. Remoteness was not a significant predictor in the model.

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Abbreviations

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ABS	Australian Bureau of Statistics
AIC	akaike information criterion
ANZSOC	Australian and New Zealand Standard Offence Classification
AOBH	assaults occasioning bodily harm
ASGS	Australian Statistical Geography Standard
ATSILS	Aboriginal and Torres Strait Islander Legal Service
ALRC	Australian Law Reform Commission
COP	court ordered parole
DJAG	Department of Justice and Attorney-General
DVO	domestic violence order
ERP	estimated resident population
FASD	Foetal Alcohol Syndrome Disorder
FTO	failure to appear
ICO	intensive correction order
MSO	most serious offence
NATSISS	National Aboriginal and Torres Strait Islander Social Survey
NFP	not further punished
NOI	National Offence Index
NSW	New South Wales
PDLR	prison/detention last resort
PPRA	Police Powers and Responsibilities Act 2000 (Qld)
PSA	Penalties and Sentences Act 1992 (Qld)
SPER	State Penalties Enforcement Registry
QCS	Queensland Corrective Services
QGSO	Queensland Government Statistician's Office
QPS	The Queensland Police Service
QWIC	Queensland-Wide Inter-linked Courts
ALY	Youth Justice Act 1992 (Old)

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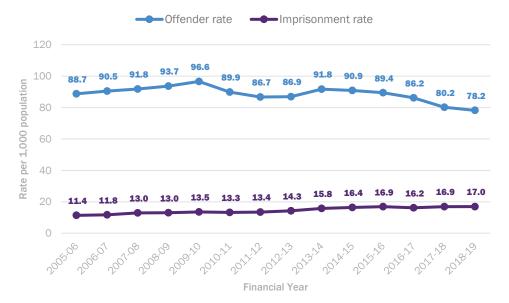


Introduction

In Australia, Aboriginal and Torres Strait Islander peoples are over-represented in all areas of the criminal justice system.¹ They are more likely than non-Indigenous people to be charged with a criminal offence, to be arrested and to appear before the courts.² Although Aboriginal and Torres Strait Islander peoples only comprise about two per cent of the total Australian population,³ they represent about 28 per cent of the national prisoner population.⁴ In the Queensland context, while people who identify as Aboriginal and Torres Strait Islander represent approximately 3.8 per cent of the population (aged 10 years and over), they account for 33 per cent of people in custody.⁵

Figure 1 shows the rate of unique Aboriginal and Torres Strait Islander offenders per 1,000 people aged 10 years and over and their rate of imprisonment between 2005–06 and 2018–19. While the rate of unique offenders has been decreasing over time, the rate of Aboriginal and Torres Strait Islander peoples sentenced to imprisonment is increasing. In other words, fewer people are committing offences overall, but of those who are, they are more likely to receive a sentence of imprisonment.

Figure 1: Offender and imprisonment rate of Aboriginal and Torres Strait Islander peoples over time



Data includes MSO, adult offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

- 1. Rates were calculated using the estimated resident population data aged 10 and over of the Aboriginal and Torres Strait Islander population from Australian Bureau of Statistics, Estimates and Projections, Aboriginal and Torres Strait Islander Australians, July 2019.
- 2. Imprisonment sentence also include offenders who received a partially suspended sentence.
- 3. Cases involving traffic and vehicle regulatory offences (ANZSOC Division 14) and dangerous or negligent operation of a vehicle (ANZSOC Subdivision 041) were excluded.

¹ Australian Law Reform Commission, Pathways to Justice— An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander People (Report No 133, December 2017) 93 <<u>https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-people-alrc-report-133/</u>>.

² Ibid 90-91; Chris Cunneen, Neva Collings and Nina Ralph, Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement (November 2005) xxii-xxv <<u>https://www.parliament.qld.gov.au/documents/TableOffice/TabledPapers/2006/5206T694.pdf</u>>; Jennifer Sanderson, Paul Mazerolle and Travis Anderson-Bond, Exploring Bail and Remand Experiences for Indigenous Queenslanders (January 2011) 8 <<u>https://www.premiers.gld.gov.au/publications/categories/reports/assets/exploring-bail-and-remand-experiences.pdf</u>>.

³ Although it is noted that the births of Aboriginal and Torres Strait Islander babies are registered at a significantly lower rate than non-Indigenous births in 'The Indigenous birth registration report' (Queensland Ombudsman 2018).

⁴ Australian Bureau of Statistics, *Prisoners in Australia* (December 2019) <<u>https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#aboriginal-and-torres-strait-islander-prisoner-characteristics</u>>.

⁵ Australian Bureau of Statistics, *Prisoners in Australia* (December 2019) <<u>https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20</u> Subject/4517.0~2019~Main%20Features~Queensland~23>.

Scope of the Sentencing Profile series

During 2019–20, the Council began development of a series of statistical research papers called Sentencing Profile that investigate emerging trends and patterns on the sentencing of specific cohorts in Queensland. This report is the first in this series and examines the sentencing of Aboriginal and Torres Strait Islander peoples in Queensland. Previous research on this topic have mostly examined the offending or sentencing disparities between Aboriginal and Torres Strait Islander and non-Indigenous offenders.⁶ This research aims to fill a gap by providing a publicly available, in-depth analysis of the Courts Database, focusing solely on Aboriginal and Torres Strait Islander peoples in Queensland.

This report contains data from the Queensland Courts Database, and commentaries from the Council's Aboriginal and Torres Strait Islander Advisory Panel to provide a broader context to the findings of the data analysis. The purpose of this research is two-fold: firstly, to gain an understanding of the emerging sentencing trends of Aboriginal and Torres Strait Islander peoples in Queensland's courts and to make this analysis available to the public, and secondly, to provide insight into some of the factors that contribute to the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

Methodology

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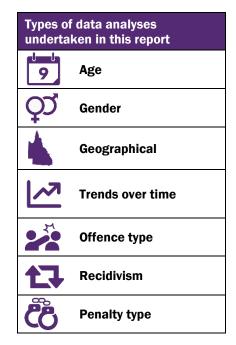


Court Services Queensland administrative data

This report uses data that has been collected from administrative information systems used by the Department of Justice and Attorney-General (DJAG). The Courts Database is maintained by the Queensland Government Statistician's Office (QGSO), Queensland Treasury. The Courts Database comprises data extracts obtained from the administrative system used by Court Services Queensland to record information about court events. This system is known as 'QWIC' or the Queensland-Wide Interlinked Courts system. An extract of the Courts Database was provided to the Council in November 2019 and includes cases sentenced in Queensland courts from 1 July 2005 to 30 June 2019 — this data forms the basis of the statistical analysis contained in this report.

The data reported in this paper may differ from information published by other agencies, primarily due to differences in the counting rules applied. The data in this report relates to finalised court appearances that resulted in a sentencing outcome. Cases that did not result in a sentence (such as cases involving charges that were withdrawn or defendants found not guilty) have been excluded. For more information on the counting rules, methodologies and terminology used in this report, a separate technical paper is available on the Council's website.

A defendant's Aboriginal and Torres Strait Islander status is based on one of the following four options: 1) neither Aboriginal nor Torres Strait Islander (non-Indigenous), 2) Aboriginal, 3) Torres Strait Islander, and 4) both Aboriginal and Torres Strait Islander.



⁶ For example Christine Bond, Samantha Jeffries and Heron Loban, *Exploring Indigenous and non-Indigenous Sentencing in Queensland* (May 2011) <<u>https://researchonline.jcu.edu.au/20896/3/exploring-sentencing.pdf</u>>; Cunneen, Collings, Ralph (n 2).

The Courts Database includes information about the offender including age, gender and information about the offence (e.g., offence type, when and where the offence occurred). Data is available from 2005–06 to 2018–19 which allows an examination of trends over time. Cases involving traffic and vehicle regulatory offences⁷ (ANZSOC Division 14) and dangerous or negligent operation of a vehicle (ANZSOC Subdivision 041) were excluded from all data analysis and associated commentary presented in this report. Defendants proceeded against for these offences often do not have Aboriginal and Torres Strait Islander status recorded (due to these offences usually being dealt with outside the court process via fines issued by road traffic authorities).

When appropriate, offender rates were calculated using Estimated Resident Population (ERP) data (derived from the Australian Bureau of Statistics (ABS) publication 'Estimates and Projections, Aboriginal and Torres Strait Islander Australians') and expressed as the number of offenders per 1,000 population aged 10 years and over. Where rates are presented by remoteness location, sex or age, the rates are calculated using the population of the relevant group. For example, the statement '88.7 offenders per 1,000 people' should be read as '88.7 offenders per 1,000 people in the relevant group aged 10 years and over'.

For the geographical data, the location where the offence took place was coded into three levels of remoteness based on the Australian Statistical Geography Standard (ASGS): Volume 5 - Remoteness Structure (as published by the ABS). Offences which occurred in discrete Aboriginal or Torres Strait Islander communities were coded as a separate category.

Offenders were classified as adults or children based on the penalty imposed. If the penalty was made pursuant to the *Youth Justice Act* 1992 (Qld), the offender was categorised as a child. If the penalty was imposed under the *Penalties and Sentences Act* 1992 (Qld), the offender was categorised as an adult.

Some of the analysis in the report looked at the most serious offence (MSO). The MSO is the offence receiving the most serious penalty, as ranked by the classification scheme used by the Australian Bureau of Statistics (ABS). An offender records one MSO per court event. Where data were analysed by offence categories, the offences listed reflect the classifications assigned by the Australian and New Zealand Standard Offence Classification (ANZSOC) scheme. This classification scheme aims to provide 'a uniform national statistical framework for classifying offences used by criminal justice'.

Consultation with the Council's Aboriginal and Torres Strait Islander Advisory Panel

The Council's Aboriginal and Torres Strait Islander Advisory Panel comprises up to eight independent members who provide expert advice to the Council as it works to understand the over-representation of Aboriginal and Torres Strait Islander peoples in Queensland's criminal justice system.

The Panel observed that a limitation of focusing solely on administrative data is that it does not provide insight into the individual profile of offenders and does not provide contextual information on offending. The Panel recommended that this report includes statistical analysis of data from other domains to provide a more complete picture of the factors contributing to the over-representation.

Members of the Panel have also shared stories about individuals who have had contact with the criminal justice system to illustrate some of the issues faced by people from their communities and commentary on the findings raised in this report. This information has proved invaluable in providing context to the issues faced by Aboriginal and Torres Strait Islander peoples in relation to their involvement in the criminal justice system.

Findings from published research

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In addition to reviewing the contextual information on offending, this report includes a review of other studies that have looked at sentencing outcomes of Aboriginal and Torres Strait Islander peoples within the Queensland context. The review was conducted to determine what is already known about the sentencing of Aboriginal and Torres Strait Islander peoples in Queensland and identify any trends or patterns that emerge across various studies. Given the extensive literature on this area, the information presented was not intended to provide a comprehensive analysis of all relevant published research. Rather, a brief overview was included to provide context to the data presented in this report.

Structure of the research report

The report is divided into four sections. The first section will begin by discussing some of the factors that contribute to the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system. Section two will present the descriptive analysis on the profile of Aboriginal and Torres Strait Islander peoples sentenced in Queensland Courts over the 14-year data period — including an analysis of offender characteristics, geographical patterns and trends over time. Section three will explore trends in common offences and recidivism. Lastly, section four will present an analysis of the penalties and sentencing outcomes imposed on this cohort.

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⁷ The traffic and vehicle offence division includes offences relating to vehicles and most forms of traffic, including offences pertaining to the licensing, registration, roadworthiness or use of vehicles, bicycle offences and pedestrian offences.

Section 1 Contextual information and overview

This section aims to provide context on the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system based on published research and data on socio-economic and cultural factors. This section will also briefly discuss the Murri Courts and their role in sentencing Aboriginal and Torres Strait Islander peoples in Queensland.

1.1 Context

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Traditionally in criminological literature there have been two leading perspectives when discussing the cause of overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system (see Figure 2). While each view focuses on different mechanisms that underlie the cause of over-representation, both perspectives recognise the chronic social, economic and cultural disadvantage and marginalisation experienced by Aboriginal and Torres Strait Islander peoples.





The first view focuses on the role of socio-economic and cultural factors as the explanation for over-representation (e.g., Weatherburn and colleagues)⁸ while the other view focuses on the differential treatment that Aboriginal and Torres Strait Islander peoples receive from the criminal justice system (e.g., Blagg and colleagues).⁹ These two views are briefly discussed below.

1.1.1 Socio-economic and cultural factors

Employment, education and housing

The links between poverty, low socio-economic status, lack of employment and educational attainment and contact with the criminal justice system are well-established. Weatherburn and colleagues argue that disadvantaged communities are characterised by 'neighbourhood disorganisation, high poverty and unemployment rates, poor resources and infrastructure' and are sources of risk for offending due to the negative impacts on children of growing up in this environment.¹⁰

Homelessness is another form of disadvantage that has been recognised as being 'both a cause and consequence of involvement with the criminal justice system'.¹¹ Homeless people are overrepresented in the prison population, and those exiting prison are also at increased risk of homelessness.¹² In the 2014–15 National Aboriginal and Torres Strait Islander Social Survey (NATSISS), one-third of the participants experienced homelessness in their lifetime and two-thirds were aware of problems in their neighbourhood.¹³

⁸ Don Weatherburn, Lucy Snowball and Boyd Hunter, The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey (Report No 104, October 2006) 2 < https://www.bocsar.nsw.gov.au/Publications/CJB/cjb104.pdf>.

⁹ Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, Systemic racism as a factor in the overrepresentation of Aboriginal people in the Victorian criminal justice system (September 2005).

¹⁰ Weatherburn, Snowball and Hunter (n 8) 2.

¹¹ NSW Public Defenders, 'Homelessness', The Bar Book Project (2020) 9 [43] citing Public Interest Advocacy Centre, 'Facing the Outside World: The Voices of Those Who Exit the Prison into Homelessness' (2017).

¹² Ibid [3]-[4] citing Australian Institute of Health and Welfare, Specialist Homelessness Services Annual Report 2017–18 (February 2019); Justice Health and Forensic Mental Health Network, 2015 Network Patient Health Survey Report (May 2017); and Australian Institute of Criminology, Ex-Prisoners, SAAP, Housing and Homelessness in Australia: Final Report to the National SAAP Coordination and Development Committee (Report, 2004) vi.

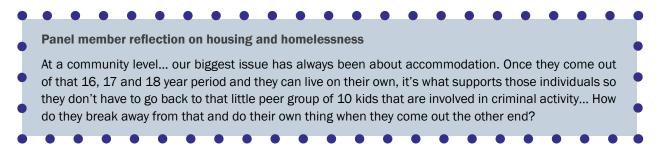
¹³ Australian Bureau of Statistics, National Aboriginal and Torres Strait Islander Social Survey, 2014-15 (2015) 5 <<u>https://www.ausstats.abs.gov.au/</u> Ausstats/subscriber.nsf/0/08E3E3C7DA59D676CA2580ED0012B307/\$File/47140do10.pdf>.

In the 2016 census, Aboriginal and Torres Strait Islander Queenslanders were less likely to have completed Year 12 or equivalent compared to non-Indigenous Queenslanders across all age groups. Only 37.9 per cent of Aboriginal and Torres Strait Islander Queenslanders aged 15 and over (who were no longer attending school) reported that Year 12 (or equivalent) was the highest year of school they had completed compared to 56.4 per cent of their non-Indigenous counterparts.¹⁴ In addition, just over half (54.7%) of Aboriginal and Torres Strait Islander peoples aged 15 years and over stated they were participating in the labour force. Of these, only 46.8 per cent were employed full-time (see Figure 3).





Source: Australian Bureau of Statistics, 'Census of Population and Housing: Aboriginal and Torres Strait Islander Peoples Profile', 2016, Table 114. Notes: 'Away from work' means employees, employers or managers who had a job, business or farm, but were not at work. For more information please see Australian Bureau of Statistics, *Labour Statistics: Concepts, Sources and Methods, Feb 2018*.



The differences in educational attainment between male and female Aboriginal and Torres Strait Islander peoples were also notable. As shown in Figure 4, the gender gap in education between pre-school to secondary school was non-existent. However, when post-secondary education was examined, the gender gap became clear. There were more than twice as many women as men studying at university or another tertiary institution. Women were also more likely to attend a technical institution compared to men.

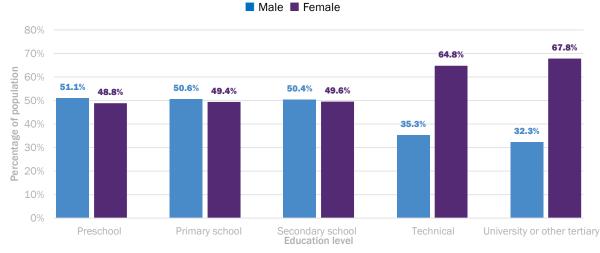
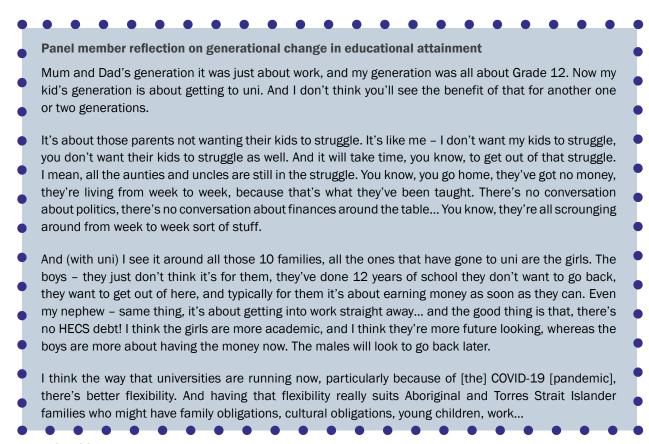


Figure 4: Level of education by gender for Aboriginal and Torres Strait Islander peoples

Source: Australian Bureau of Statistics, Census of Population and Housing: Aboriginal and Torres Strait Islander Peoples Profile, 2016 (Table 105). Notes: Technical institutions include Technical or Further Educational Institution (including TAFE Colleges).

14 Queensland Government Statistician Office, Aboriginal and Torres Strait Islander people in Queensland, Census 2016 (2017) 7 <<u>https://www.qgso.qld.gov.au/issues/2796/aboriginal-torres-strait-islander-peoples-qld-census-2016.pdf</u>>.

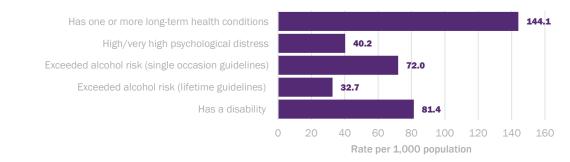
5



Health and disability

Other research has also noted the connection between health issues and high incarceration rates.¹⁵ The Australian Medical Association, in its 2015 Indigenous Health Report Card, identifies health issues (such as mental health conditions, alcohol and substance abuse and cognitive disabilities) as being among the main drivers of the incarceration rates of Aboriginal and Torres Strait Islander peoples.¹⁶ According to the 2014–15 NATSISS, 64 per cent of Aboriginal and Torres Strait Islander peoples reported having a chronic health condition and 28 per cent responded to having experienced a mental health condition.¹⁷ Many of the submissions to the Australian Law Reform Commission's (ALRC) *Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander peoples* on mental health, in exacerbating the risk factors for incarceration.¹⁸

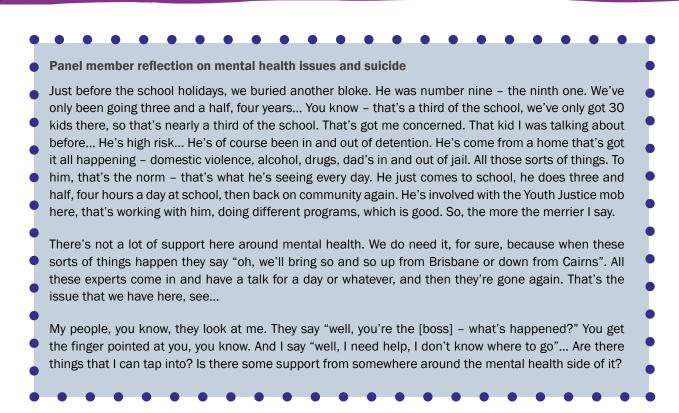
Figure 5: Selected health indicators from the National Aboriginal and Torres Strait Islander Health Survey



Source: Australian Bureau of Statistics, National Aboriginal and Torres Strait Islander Health Survey, Queensland, 2018–19 (Table 3.1).

15 Australian Medical Association, 2015 AMA Report Card on Indigenous Health (2015) 3 < <u>https://ama.com.au/sites/default/files/documents/2015%20</u> <u>Report%20Card%20on%20Indigenous%20Health_0.pdf</u>>.

- 16 Ibid.
- 17 Australian Bureau of Statistics (n 13) 5.
- 18 Australian Law Reform Commission (n 1) section 2.94.



Cognitive impairment also increases the risk of criminal behaviour. For instance, foetal alcohol spectrum disorder, or FASD, refers to a range of effects that can result from pre-natal exposure to alcohol during pregnancy. FASD impacts cognitive functioning and behaviour in children that continues throughout adulthood. Often described as 'invisible', individuals with FASD may not show outwards signs of disability and are often under-diagnosed. Research shows that the proportion of children with FASD was higher among Aboriginal and Torres Strait Islander peoples compared to non-Indigenous Australians.¹⁹ Data on the relationship between criminal behaviour and FASD is scarce, however, some studies have shown that FASD may be a contributing factor to the incarceration rates of Aboriginal and Torres Strait Islander peoples.²⁰

There is a general consensus that alcohol misuse is one of the leading causes of health and social harms (which includes offending and incarceration).²¹ Several studies have identified the link between alcohol misuse and criminal convictions of Aboriginal and Torres Strait Islander peoples.²² Bond and Jeffries' interviews with judicial officers and police prosecutors showed that, circumstances of alcohol and substance misuse were more frequently seen in cases involving Aboriginal and Torres Strait Islander offenders compared to non-Indigenous offenders, along with family dysfunction, disadvantage and low socio-economic status and/or unemployment.²³

An action research study led by Dawes in 2016 looked at risk factors for re-offending in two discrete Aboriginal and Torres Strait communities in Doomadgee and Mornington Island in North-West Queensland.²⁴ Dawes found that within these communities, excessive use of alcohol and marijuana were the primary triggers for involvement in domestic and family violence.²⁵

¹⁹ Harry Blagg, Tamara Tulich and Zoe Bush, 'Placing country at the centre: decolonising justice for indigenous young people with foetal alcohol spectrum disorders (FASD)' (2015) 19(2) Australian Indigenous Law Review.

²⁰ Ibid.

²¹ Australian Law Reform Commission (n 1) section 8.5.

 ²² Australian Law Reform Commission (n 1) section 8.5; Glen Dawes, Keeping on Country: Doomadgee and Mornington Island Recidivism Research Report (2016) 6 <<u>https://www.nwrh.com.au/wp-content/uploads/2016/12/Keeping-Country-Report-Complete.pdf</u>>; Bond, Jeffries, Loban (n 6) 80.
 23 Bond, Jeffries, Loban (n 6) 97.

²⁴ Dawes (n 22) 36.

²⁵ Ibid.

Panel member reflection on Foetal Alcohol Spectrum Disorder I have worked with "my kids" for the past 23 years purely as an advocate, a friend and sometimes a carer. All my kids were exposed to alcohol and tobacco in utero, and one also to cannabis. The smallest of my kids is Troy [a pseudonym], who is now a 27-year-old man whose early childhood experiences included the suicide of his alcoholic father, uncles and an aunt, and the suicide of peers throughout his adolescence and adulthood. Troy was diagnosed with FASD in 2002 while he was in youth detention. The child development specialist said: "[Troy] appears to have little insight into his own predicament. His capacity for planning is limited and he lives in a perpetual present. His behaviour is often impulsive... he had little sense of long-term future direction. His background has been highly prejudicial. There is a mixture of sniffing, alcohol, abuse, neglect, inconsistency and a variety of other factors all known to be causal for the problems he is currently experiencing... If [Troy] was a Caucasian child presenting with the same spectrum of problems we would classify him as extremely disabled." From the age of 11, Troy has been involved with the legal system with frequent incarceration totaling more than 10 years, including months in solitary confinement. He has been the victim of sexual abuse in care and in custody. As I finish this reflection on the experience of caring for someone with FASD, Troy has served his sentence and has been released from prison. Because he never succeeded on parole.

- he has no supervision and is back on drugs. I have no doubt it won't be long before he is back in prison,
 which is now the only place he can function, where he is under supervision at all times and where
- he must follow the rules. Perhaps if an appropriate intervention had been made early, he could have learned some skills, but sadly I worry that it is now too late for him.
- I recall him phoning me from the prison several months before he was released. Back then, he said when he got out, he wanted a job, a dog, maybe to do some surfing, a bit of cooking, some fishing
- and to help me in the garden. I was touched by the simplicity of his needs he really is a wonderful young man.

1.1.2 Interactions with the criminal justice system

In addition to the criminogenic factors deriving from socio-economic and cultural disadvantage discussed above, the overpolicing of Aboriginal and Torres Strait Islander peoples has been identified as resulting in higher incidences of arrest, conviction and imprisonment.²⁶

In an evaluation of Queensland's *Aboriginal and Torres Strait Islander Justice Agreement*, Cuneen, Collings and Ralph²⁷ asserted that Aboriginal and Torres Strait Islander over-representation can be explained by a number of factors, including that certain legislation and factors in judicial decision-making systematically increase the criminalisation of Aboriginal and Torres Strait Islander peoples. For example, legislation governing public places and alcohol give rise to indirect discrimination while factors in judicial decision-making, such as the weight given to prior offending and the availability of non-custodial orders, disproportionately affect Aboriginal and Torres Strait Islander peoples.

In Bond and Jeffries' interview with community justice groups in Queensland,²⁸ participants noted a lack of community-based sentencing alternatives, diversionary options and rehabilitation programs — particularly with alcohol and drug rehabilitation and support. Participants also suggested that the accumulation of criminal histories due to racially disparate policing practices increases the likelihood of imprisonment for Aboriginal and Torres Strait Islander peoples. One participant stated that, according to their cultural practices, once punishment has been imposed, 'you get a clean slate'.²⁹ Bond and Jeffries suggested that the process of accumulating offending behaviour over time is a 'euro-centric'³⁰ view of justice, and continually being punished for previous behaviour prevents reintegration into communities. Some studies have observed that the process of charging an individual for an offence can be biased against Aboriginal and Torres Strait Islander peoples. In Dawes' 2016 study of Aboriginal and Torres Strait Islander peoples. In Dawes' 2016 study of Aboriginal and Torres Strait Islander peoples and who had spent time in custody, participants expressed concerns that: 'they were not adequately supported in court to defend the charges and were

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²⁶ Blagg, Morgan, Cunneen, Ferrante (n 9).

²⁷ Cunneen, Collings, Ralph (n 2) 16.

²⁸ Christine, Samantha Jeffries and Heron Loban, 'Inequities, alternatives and future directions: Inside perspectives of Indigenous sentencing in

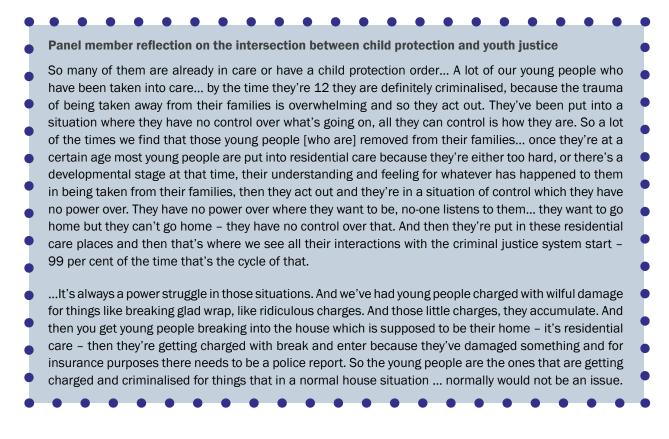
Queensland' (2013) 20(6), Psychiatry, Psychology and Law.

²⁹ Ibid 820. 30 Ibid.

advised to plead guilty as a means of expediency'.³¹ It was found that the technical language used within the justice system is difficult to understand, leading to several offenders 'pleading guilty without fully understanding the nature of the charges'.³²

Additionally, the impact of colonial policies such as the forced removal of Aboriginal and Torres Strait Islander children has intergenerational and ongoing impacts.³³ Aboriginal and Torres Strait Islander children are known to be disproportionately represented within both the child protection and criminal justice systems in Queensland. Compared to their non-Indigenous counterparts, Aboriginal and Torres Strait Islander children were found to be 8.5 times more likely to be placed in out-of-home care in 2018³⁴ and 21 times more likely to be in detention on an average night between December 2015 and March 2019.³⁵

A national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families found that underlying the criminal behaviour of individuals was a lack of identity with culture, intergenerational trauma, and mental health issues associated with forced separation.³⁶



³¹ Dawes (n 22) 39.

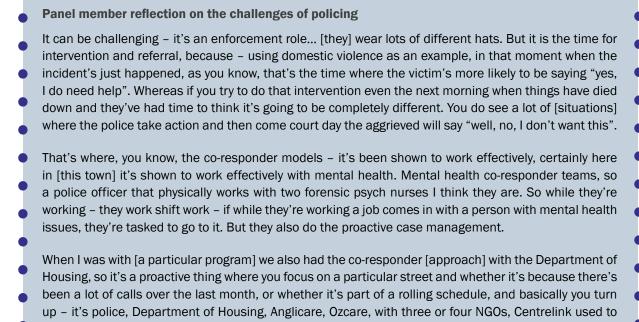
³² Dawes (n 22) 39.

³³ Cunneen, Collings, Ralph (n 2) 17.

³⁴ Australian Institute of Family Studies, Child protection and Aboriginal and Torres Strait Islander children (January 2020) <<u>https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children#footnote-001</u>>.

³⁵ Australian Institute of Health and Welfare, Youth detention population in Australia (Bulletin 148, February 2020) 2 <<u>https://www.aihw.gov.au/getmedia/c3ba6d29-7488-4050-adae-12d96588bc37/aihw-juv-131.pdf.aspx?inline=true</u>>.

³⁶ Australian Human Rights Commission, Bringing them home (April 1997) < https://humanrights.gov.au/our-work/bringing-them-home-chapter-11>.



- come as well. So it's a knock on the door... it was a good way of being proactive, to keep on top of issues.
 Maybe that's something to think about with domestic and family violence incidents is that co-responder
- model. Like, you have DFV support services with police officers.

1.2 Murri Courts

In some jurisdictions, eligible Aboriginal and Torres Strait Islander defendants can go to a specialist court that follows Australian criminal laws and procedures but allows Elders and Respected Persons to be involved in the process. In Queensland, these courts are known as Murri Courts.³⁷

Murri Courts aim to deliver a culturally appropriate court process for offenders who have entered a plea of guilty, or who have indicated an intention to plead guilty in Queensland. Court practices focus on community participation and dialogue resulting in a greater understanding between offenders and magistrates, and a higher degree of accountability for offenders. Studies have found that offenders who were sentenced in Aboriginal and Torres Strait Islander courts perceived their sentences to be fair and appropriate.³⁸





Source: 'What is Murri Court' video from the Queensland Courts.

37 For more information, please see 'Murri Court', *Queensland Sentencing Advisory Council* (Web Page, 6 October 2020) <<u>https://www.sentencingcouncil.gld.gov.au/about-sentencing/doing-justice-differently/murri-court></u>; 'Murri Court', <<u>https://www.courts.qld.gov.au/courts/murri-court></u>.
 38 Anthony Morgan and Erin Louis, *Evaluation of the Queensland Murri Court: Final report* (Technical and Background Paper 39, 2010) <<u>https://apo.org.au/sites/default/files/resource-files/2010-10/apo-nid23026.pdf</u>>; Further evaluation of the Murri Court is underway, see https://www.courts.qld.gov.au/data/assets/pdf_file/0006/573972/m-fs-murri-court;

Panel member reflection on the impact of Murri Court We've had some really good outcomes through Murri Court, the one that I've been involved with... Mainly because of the support they've got in court... So actually we've had a guy – a man, an adult – who's been having trouble at home, he's on drugs and alcohol and those sort of things, and of course then

- it boils over into domestic violence, and of course he's off to jail, and then the last time he was caught
 hanging from this tree, they just got him in time. They got him. He's ok, but now we've got him here in our men's program doing domestic violence counselling, getting him and his boys to come to our men's
- nights here, called our Goori circle where we sit around, make a big fire, cook a big feed up and then sit
- around... And it's not just for the men, it's for our boys as well...
- So he's come through our system now, he's come through the Murri Court, he's done his program, he's done his counselling, he's engaged here with the men's hub. And life seems to be going along ok now.
- He's back home, he's out of jail, we've given him support, he's back in the community with his family,
 helping his kids, bringing his boys down here to the men's group, and not just talking to his boys, talking
- to everyone. Standing up and talking to everyone about what happened to him in jail, what not to do,
 and what you should be doing and all these sorts of things. So when I sit back and see that that's a
- success story. I've seen a number of those sorts of people come through. It's been good to see how he's turned his life around. He's got a job, he's working... That's good.

Section 2 Patterns in offending

People who identify as Aboriginal and Torres Strait Islander represent approximately 3.8 per cent of Queensland's population aged 10 years and over.³⁹ Between 2005–06 and 2018–19, a total of 52,937 Aboriginal and Torres Strait Islander offenders were sentenced in Queensland's courts – accounting for 14.5 per cent of cases (n=321,669). This research report focuses primarily on those 321,669 cases involving Aboriginal and Torres Strait Islander peoples.

This section will provide an overview of the patterns in offending within this cohort, specifically looking at offender characteristics (i.e., age and gender) and the location of where the offences occurred based on remoteness.

2.1 Sentencing court

The vast majority of the cases involving an Aboriginal and Torres Strait Islander defendant were dealt with in the Magistrates Courts, representing 96.0 per cent (n=308,754) of the total cases between 2005–06 to 2018–19. The remaining cases were heard in the higher courts, with 3.8 per cent (n=12,310) of the cases heard in the District Court and 0.2 per cent (n=605) heard in the Supreme Court.

2.2 Number of cases over time

Figure 7 shows the number of cases involving Aboriginal and Torres Strait Islander offenders sentenced between 2005–06 and 2018–19. In 2005–06, there were 19,355 cases involving Aboriginal and Torres Strait Islander offenders — the lowest number of cases in any reported year. This increased to 22,485 sentenced cases in 2018–19, representing an increase of 16.2 per cent. The number of cases involving Aboriginal and Torres Strait Islander peoples reached its highest point in 2013–14 at 25,249 cases.



Figure 7: Number of sentenced cases for Aboriginal and Torres Strait Islander peoples over time

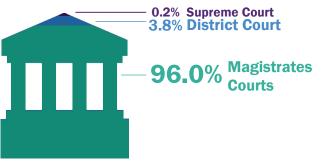
Data includes adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

39 As at 30 June 2015. See Queensland Government Statisticians Office (GovStats), Population estimates by Indigenous Status, LGAs, 2001 to 2015, available at <<u>http://www.qgso.qld.gov.au/subjects/demography/atsi-people/tables/pop-est-indigenous-status/index.php</u>> accessed 4 August 2017.

Focus of this report:

321,669 cases 52,937 unique offenders

involving **Aboriginal** and **Torres Strait Islander** peoples sentenced between **2005–06** and **2018–19**



2.3 Remoteness of offence location

The location of the offence was coded into three levels of remoteness based on the Australian Statistical Geography Standard (ASGS).⁴⁰ Offences that occurred in discrete Aboriginal or Torres Strait Islander communities were coded as a separate category.

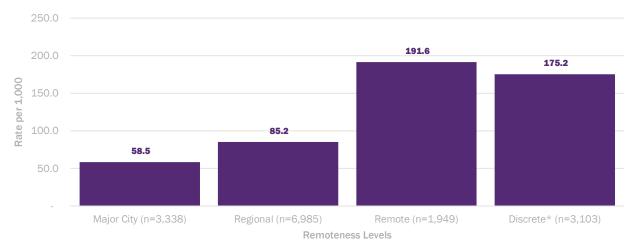
According to the 2016 census, it is estimated that over one-third of Aboriginal and Torres Strait Islander peoples residing in Queensland live in major cities (n=75,148, 34.0%) with nearly half living in regional areas (n=81,992, 49.5%). A smaller proportion live in remote areas (n=13,281, 6.0%).⁴¹

Within the 14-year reporting period, the largest proportion of cases (MSO) were observed in regional areas, accounting for nearly half of all cases (n=149,997, 48.2%). The smallest proportion of offences were committed in remote areas, accounting for 11.6 per cent of cases (n=36,119). The remaining offences were committed in discrete Aboriginal and Torres Strait Islander communities (n=58,281, 18.7%) and major cities (n=66.961, 21.5%).

Figure 8 illustrates the rate of unique offenders per 1,000 Aboriginal and Torres Strait Islander peoples aged 10 years and over by remoteness level using 2016 population estimates. Even though the smallest proportion of cases that involved offences committed in remote areas, when the rates were examined, remote areas had the highest rate of offending at 191.6 offenders per 1,000 Aboriginal and Torres Strait Islander peoples in 2015–16. This was closely followed by discrete communities at 175.2 per 1,000 Aboriginal and Torres Strait Islander peoples. These high rates are due to a larger proportion of Aboriginal and Torres Strait Islander peoples living in these areas.



Figure 8: Offender rate by remoteness level for Aboriginal and Torres Strait Islander peoples



Data includes MSO, adult and juvenile offenders, higher and lower courts, cases sentenced 2015–16 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

* Estimated population rates used for discrete communities were taken from very remote population aged 10 and over.

1. 114 cases were excluded as the offence suburb was either unknown or interstate.

2. Rates by remoteness level was calculated using estimated resident population data by remoteness area aged 10 and over of the Aboriginal and Torres Strait Islander population from Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2016*.

⁴⁰ Australian Bureau of Statistics, Correspondence, 2017 Locality to 2016 Remoteness Area (2018) <<u>https://www.abs.gov.au/AUSSTATS/abs@.nsf/</u> DetailsPage/1270.0.55.005July%202016?OpenDocument>.

⁴¹ Queensland Government Statistician Office, Population, Aboriginal and Torres Strait Islander Queenslanders, 30 June 2016 (2018) < https://www.qgso.gld.gov.au/issues/2791/population-aboriginal-torres-strait-islander-qlders-201606.pdf>.

Over time, the number of cases that involved offences committed in discrete Aboriginal and Torres Strait Islander communities has decreased, from 4,376 in 2005–06 to 3,295 in 2018–19, representing a 24.7 per cent reduction in cases. Conversely, cases sentenced in major cities have increased, from 3,769 in 2005–06 to 5,510 in 2018–19, representing a 46.2 per cent rise in cases. This upward trend was also observed in regional and remote areas.

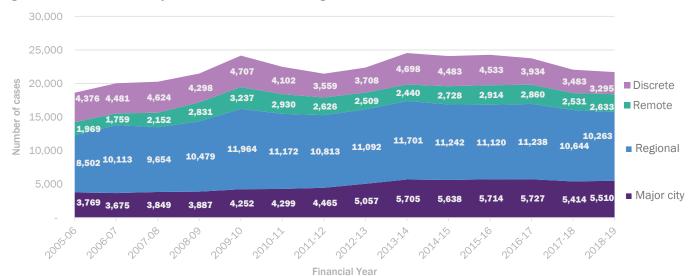


Figure 9: Number of cases by remoteness level for Aboriginal and Torres Strait Islander offenders over time

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Data includes MSO, adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: 114 cases were excluded as the offence location was either unknown or interstate.



2.4 Offender characteristics

2.4.1 Age and gender

In the 2016 census, 49.4 per cent of Aboriginal and Torres Strait Islander peoples in Queensland were men and 50.6 per cent were women. The median age was 22 years, which is younger than the non-Indigenous population (38 years).⁴² Aboriginal and Torres Strait Islander peoples generally have a younger age structure compared to the non-Indigenous population, with a larger number of young people and smaller proportions of older people which is linked to higher fertility and mortality rates than the non-Indigenous population.⁴³



Connecting the dots

15

Previous research has shown that Aboriginal and Torres Strait Islander offenders are quite young compared to non-Indigenous offenders.⁴⁴ Within the current courts dataset, at the time of committing the offence, the average age of sentenced Aboriginal and Torres Strait Islander peoples was 29.0 (median=26.7 years). The youngest Aboriginal and Torres Strait Islander person sentenced was 10 years old and the oldest was 89 years old. Figure 10 shows the offender's age at the time of committing the offence.

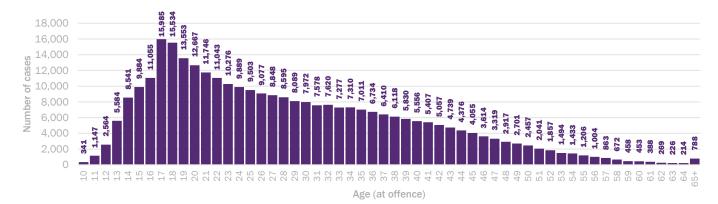


Figure 10: Age at time of offence for Aboriginal and Torres Strait Islander peoples

Data includes MSO, adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: 137 cases were excluded as the offender's age at time of offence was unknown.

⁴² Australian Bureau of Statistics, 2016 Census QuickStats (2016) <<u>https://quickstats.censusdata.abs.gov.au/census_services/getproduct/</u> census/2016/quickstat/3?opendocument>.

⁴³ Australian Bureau of Statistics, Estimates of Aboriginal and Torres Strait Islander Australians, June 2016 - Summary commentary (2016) <<u>https://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001</u>>; Australian Institute of Health and Welfare, The health and welfare of Australia's Aboriginal and Torres Strait Islander peoples (2015) section 2.2.

⁴⁴ Troy Allard et al, 'Police diversion of young offenders and Indigenous over-representation' (2010) 390, *Trends and Issues in Crime and Criminal Justice* 1 <<u>https://aic.gov.au/publications/tandi/tandi390</u>>; Christine Bond and Samantha Jeffries, 'Indigeneity and the likelihood of imprisonment in Queensland's adult and children's courts' (2012) 19(2) *Psychiatry, Psychology and Law* 177; Queensland Corrective Services, Rehabilitative needs and treatment of Indigenous offenders in Queensland, (November 2010) 26 <<u>https://www.premiers.qld.gov.au/publications/categories/reports/assets/rehabilitative-needs.pdf</u>>; While the analysis found that Aboriginal and Torres Strait Islander offenders were younger than non-Indigenous offenders, it is important to note that the average age of the Aboriginal and Torres Strait Islander population is younger in comparison to the non-Indigenous population.

Research has also shown that there is a higher proportion of Aboriginal and Torres Strait Islander male offenders than female offenders.⁴⁵ This is not surprising, given that most offenders, regardless of Aboriginal and Torres Strait Islander status, are men.⁴⁶

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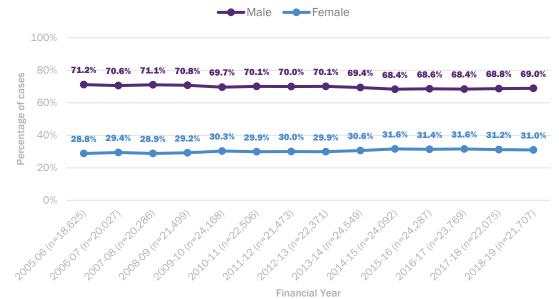
In the Council's analysis, there was a higher proportion of male Aboriginal and Torres Strait Islander offenders (n=216,940, 69.6%) than female offenders (n=94,494, 30.3%). However, it is important to note that Aboriginal and Torres Strait Islander women were still over-represented across the total female offender population.⁴⁷ For instance, ALRC reported that the rate of Aboriginal and Torres Strait Islander female prisoners in Queensland was 11 times higher than the rate of non-Indigenous female prisoners.⁴⁸

69.6% of cases (MSO) involved offences committed by men

Additionally, the number of female Aboriginal and Torres Strait Islander offenders has been steadily increasing over time, from 28.8 per cent in 2005–06 to 31.0 per cent in 2018–19 (see Figure 11). The

proportion of female offenders peaked in 2014–16 and in 2016–17, both representing 31.6 per cent of the total cases in those financial years.

Figure 11: Gender of Aboriginal and Torres Strait Islander offenders over time



Data includes MSO, adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: 38 cases were excluded as the gender of the offender was unknown.

45 Cunneen, Collings, Ralph (n 2).

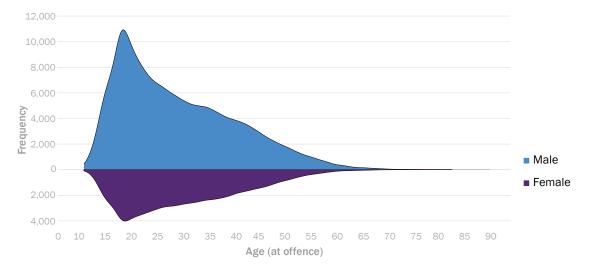
⁴⁶ Australian Bureau of Statistics, Recorded Crime – Offenders, 2018-19 (2020). <<u>https://www.abs.gov.au/AUSSTATS/abs@.nsf/</u> Lookup/4519.0Main+Features12018-19?OpenDocument>.

⁴⁷ Australian Law Reform Commission (n 1) 97; Lorna Bartels, Sentencing of Indigenous women (Brief 14, November 2012) 2 <<u>https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief014.v1.pdf</u>>.

⁴⁸ Australian Law Reform Commission (n 1) 97.

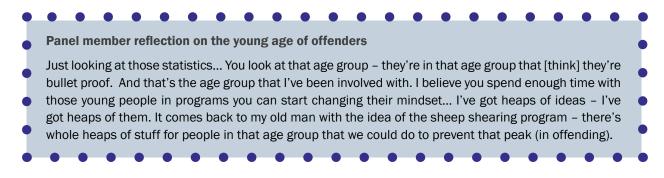
On average, female Aboriginal and Torres Strait Islander offenders were slightly older compared to male Aboriginal and Torres Strait Islander offenders (see Figure 12). The average age at the time of offence was 29.5 years for female offenders compared to 28.8 for male offenders. This difference was statistically significant.⁴⁹





Data includes MSO, adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland, age as at the time of the offence.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: 175 cases were excluded as the offender's age or their age at the time of offence was unknown.



2.4.2 Children

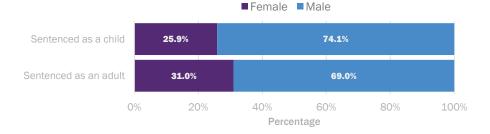
If, at the time of offence, an offender was aged 10–17 years, they may be dealt with as a child under the *Youth Justice Act* 1992 (Qld).⁵⁰ However, it is important to note that the inclusion of 17-year-old offenders in Queensland's youth justice system commenced only recently (February 2018).⁵¹ Because most of the data presented here was collected before this reform, this section of the report mostly focuses on children who were aged between 10 and 16 and were dealt with as a child under the *Youth Justice Act* 1992 (Qld) and will significantly under-count 17 year-olds.



Similar to the research findings for the adult offender population, Aboriginal and Torres Strait Islander children are more likely to be male. However, the most recent data from the Queensland Police Service (QPS) shows that one-quarter of Aboriginal and Torres Strait Islander children in 2018–19 were female⁵² and that this number has been increasing over time.⁵³

In the data period, there were 39,669 cases involving offences sentenced under the Youth Justice Act 1992 (Qld), representing 12.7 per cent of total cases. Within the reporting data period, the average age at first offence as a child was 14.7 years old.⁵⁴ As shown in Figure 13, the proportion of male offenders who were sentenced as a child was higher (n=29,400, 74.1%) than female offenders (n=10,269, 25.9%). This difference was statistically significant.⁵⁵

Figure 13: Gender and juvenile status of Aboriginal and Torres Strait Islander offenders



Data includes MSO, adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland, juvenile status determined by whether the offender was sentenced as a child or as an adult.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: 38 cases were excluded as the gender of the offender was unknown.

Panel member reflection on the young age of offenders These kids – they've got baggage. They've got drug issues, they've got sleeping dramas, there's a whole heap of stuff. When they're there for the first couple of weeks it's about changing habits, so that means trying to dry them out, trying to change sleep habits... Then around the 3 to 4 week mark they're getting homesick, so after that, about the fifth or sixth week their head would clear and you could start implementing some stuff that they can take on board. So for me, the longer the program, the more chance of success.

50 Sentencing laws are different for children, who are sentenced under the *Youth Justice Act* 1992 (Qld) (YJA). In contrast, the *Penalties and Sentences Act* 1992 (Qld) applies to the sentencing of adult offenders. For more information, see <u>https://www.sentencingcouncil.qld.gov.au/about-sentencing/</u> <u>sentencing-child-offenders</u>. The equivalent of imprisonment for a child is detention. The YJA sets different maximum detention periods for children depending on the level of the sentencing court and seriousness of the offence. The maximum sentence available to higher courts is generally lower than that applicable to adults. Relevant ages for children and criminal responsibility have changed. Until 12 February 2018, children aged between 10 and 16 were sentenced as children. From 12 February 2018, 17-year-olds are also treated as children.

51 'Inclusion of 17-year-olds in the youth justice system', Department of Youth Justice (Web page, 3 June 2020) <<u>https://www.youthjustice.qld.gov.au/</u> reform/inclusion-17-year-olds-youth-justice-system>.

52 Queensland Government Statistician Office, Crime Report, Queensland, 2018-19 (2020) < https://www.qgso.qld.gov.au/issues/7856/crime-reportqld-2018-19.pdf>.

54 It is important to note that the calculation of this average is restricted to the available data of the reporting period. This calculation only looked at offenders who were sentenced as a juvenile.

55 Pearson's chi-square statistic: $x^2(1) = 426.86$, p < 0.0001.

⁵³ Ibid 84.

2.5 Other characteristics

Studies typically look at age and gender when examining the demographic profile of Aboriginal and Torres Strait Islander peoples convicted of an offence, particularly when analysing administrative data, given that this information is required when processing offenders and is therefore relatively reliable.

Limited studies have looked at other offender characteristics. A study from the *Indigenous Criminal Justice Research Agenda*⁵⁶ conducted by Bond et al examined sentencing disparities between Aboriginal and Torres Strait Islander and non-Indigenous offenders in Queensland in 2012. Their study looked at other information (e.g. poor health, substance abuse) beyond the age and gender of offenders by coding sentencing remarks from the higher courts.

They found that, on average, sentencing remarks indicate that, for Aboriginal and Torres Strait Islander offenders.⁵⁷

- It is less likely for the offence to occur in a private residence.
- It is more likely that the offence was conducted with a degree of premeditation.
- Offenders were less likely to have childcare responsibilities.
- Offenders were less likely to be in employment.

It is important to note, however, that sentencing transcripts are only available in cases within the higher courts. Furthermore, there is a significant degree of variation in the number of factors explicitly mentioned in sentencing remarks.⁵⁸ For instance, historical social factors were only coded when the judge specifically commented on these issues.⁵⁹ These limitations should be taken into account when interpreting data derived from sentencing remarks.

⁵⁶ The Indigenous Criminal Justice Research Agenda was originally developed in response to the first independent Evaluation Report of the Queensland Aboriginal and Torres Strait Islander Justice Agreement.

⁵⁷ Bond, Jeffries and Loban (n 6) 53.

⁵⁸ Limitations discussed by Bond, Jeffries and Loban (n 6) include: 'findings may reflect differences in workload and thus the time to deliver fuller sentencing remarks; differential assessments by judges of the importance of these factors for Indigenous and non-Indigenous offenders; or are due to the existence of extensive social problems for certain groups of offenders being so typical that judges do not feel compelled to mention their existence', 53.

⁵⁹ If none of the sentencing remarks mention that Aboriginal and Torres Strait Islander offenders committed an offence in a private residence does not mean that no offences were ever committed in a private residence. It simply means that the judge did not mention this circumstance.

Section 3 Trends in offences and recidivism

This section aims to describe trends in the type of offences committed by Aboriginal and Torres Strait Islander peoples as well as to present trends on recidivism. It will start with a brief discussion of traffic and vehicle offences and the reason for excluding these offences from the analysis. Next, trends in offending patterns will be discussed. Lastly, research on recidivism and analysis of data from the Courts will be presented.

A note on Traffic and Vehicle Offences

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As noted in the earlier section on methodologies, cases involving traffic and vehicle regulatory offences⁶⁰ (ANZSOC Division 14) and dangerous or negligent operation of a vehicle (ANZSOC Subdivision 041) were excluded from all data analysis and associated commentary presented in this report. The reason for the exclusion of this data is that Aboriginal and Torres Strait Islander status is often missing from records pertaining to these offences.

In the current dataset, 7.5 per cent of all cases involving traffic and vehicle regulatory offences and 8.3 per cent of all cases involving dangerous or negligent operation of a vehicle had an unknown Aboriginal and Torres Strait Islander status. In comparison, 9.0 per cent of all cases involving traffic and vehicle regulatory offences and 10.6 per cent of all cases involving dangerous or negligent operation of a vehicle were reported to be committed by an Aboriginal and/or Torres Strait Islander person.

While cases associated with these offences were excluded from the report, it is important to note that previous studies have examined the impact of sentencing Aboriginal and Torres Strait Islander peoples for these offences.⁶¹ For instance, a submission to the ALRC's *Inquiry into the Incarceration rates of Aboriginal and Torres Strait Islander peoples* reported that: 'imprisonment by fine default has been identified as a key contributor to Aboriginal and Torres Strait Islander incarceration rates, which can be linked to fines from recurring driving offences'.⁶²

Between 2005–06 and 2018–19, there were 77,287 cases related to traffic and vehicle regulatory offence division and 14,256 cases related to dangerous or negligent operation of a vehicle that involved an Aboriginal and Torres Strait Islander offender.

Table 1 shows the top five most common offences under the traffic and vehicle regulatory offences and the subdivision of dangerous or negligent operation of a vehicle committed by Aboriginal and Torres Strait Islander peoples. This shows that 67.6 per cent (n=52,261) of these cases related to driving a vehicle without a driver licence. On the other hand, vehicle offences involving liquor or other drugs was the most common offence under the subdivision of dangerous or negligent operation of a vehicle.

Table 1: Top five traffic and vehicle offences (ANZSOC Division 14) and dangerous or negligent operation of a vehicle (ANZSOC Subdivision 041) involving Aboriginal and Torres Strait Islander peoples

Rank	Offence description	Cases			
Traffic	Traffic and vehicle offences (ANZSOC Division 14)				
1	Driving of motor vehicle without a driver licence	52,261			
2	Vehicle offences involving liquor or other drugs	20,659			
3	Vehicles used on roads must be registered	12,045			
4	Offence of driving uninsured vehicle etc.	10,398			
5	Offences involving registration certificates etc.	2,996			
Dangerous or negligent operation of a vehicle (ANZSOC Subdivision 041)					
1	Vehicle offences involving liquor or other drugs	10,434			
2	Dangerous operation of a vehicle	2,291			
3	Careless driving of motor vehicles	1,806			
4	Driver to have proper control of a vehicle	148			
5	Other road rules offence	70			

Data includes adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

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⁶⁰ Traffic and vehicle offence division includes offences relating to vehicles and most forms of traffic, including offences pertaining to the licensing, registration, roadworthiness or use of vehicles, bicycle offences and pedestrian offences.

⁶¹ Australian Law Reform Commission (n 1) chapter 12; Cunneen, Collings and Ralph (n 2).

⁶² Australian Law Reform Commission, 'Driving Offences & Incarceration Rates of Aboriginal and Torres Strait Islander People in Queensland', Submission to the Australian Law Reform Commission's Inquiry into the Incarceration rates of Aboriginal and Torres Strait Islander people <<u>https://www.alrc.gov.au/wp-content/uploads/2019/08/04.r curtis m gunawan s lord_and k taylor.docx</u>>.



63 Aboriginal and Torres Strait Islander Legal Service (QLD), NPA licensing muster initiative: Briefing Report 2019-2020, <<u>https://www.atsils.org.au/wp-content/uploads/2020/07/ATSILS_LicenceMuster_BriefingReport_V2_July2020.pdf</u>>.

3.1 Most common offences

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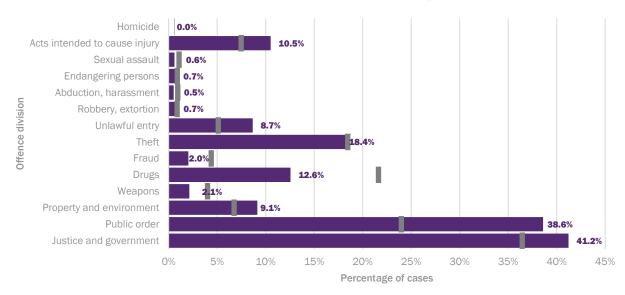
Using data from the Magistrates Courts in 2004 and the ANZSOC categories, Cunneen et al (2005) found that in the Magistrates Courts,⁶⁴ Aboriginal and Torres Strait Islander offenders were more likely to have a finalised court appearance for a public order offence and an offence against justice and government procedures compared to non-Indigenous offenders.⁶⁵ These two offence categories comprised half of all finalised appearances of Aboriginal and Torres Strait Islander offenders in Magistrates Courts in 2004.⁶⁶

Using the ANZSOC categories, the Council's analysis supports Cunneen et al's findings, with the two most common offences sentenced among Aboriginal and Torres Strait Islander peoples being justice and government offences and public order offences – see Figure 14. Note that these figures include all offences, not just MSOs.

Justice and government offences include breach of justice orders, offences against justice procedures and offences against government security and operations. Within the 132,611 cases related to justice and government offences, a quarter (25.3%, n=33,544) were related to a breach of bail (failure to appear) offence. Public order offences include offences relating to disorderly conduct and regulated public order activities. Of the 124,152 cases related to public order offences, over half (51.5%, n=63,888) involved a public nuisance offence. Aboriginal and Torres Strait Islander peoples were over-represented in both these offence categories, constituting 29.6 per cent of all people charged with breach of bail (failure to appear) and 31.9 per cent of all people charged with public nuisance.

The percentage of cases for ANZSOC categories among all offenders are also presented in Figure 14 for comparative purposes. As shown in Figure 14, the percentage of cases involving acts intended to cause injury and offences relating to unlawful entry, property and environment, public order and justice and government were higher among Aboriginal and Torres Strait Islander offenders compared to all offenders. In contrast, the proportion of cases that involve offences relating to fraud, drugs and weapons were lower among Aboriginal and Torres Strait Islander offenders. The rest of the offence categories were comparable between the two groups.⁶⁷

Figure 14: Most common offences sentenced for Aboriginal and Torres Strait Islander people compared to all offenders



Aboriginal and Torres Strait Islander All Offenders

Data includes adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Data includes adult and juvenile offenders in the lower and higher courts, cases sentenced 2005–06 to 2018–19. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

1. Cases involving companies, traffic and vehicle regulatory offences (ANZSOC Division 14) and dangerous or negligent operation of a vehicle (ANZSOC Subdivision 041) were also excluded from all offenders for direct comparison.

2. Totals do not add to 100% as some cases may involve multiple types of offences.

65 Cunneen, Collings and Ralph (n 2) reported that the proportion of 'unknowns' exceeds the percentage of those identified as Indigenous. Therefore, care should be taken when interpreting these results, 50.

66 Cunneen, Collings and Ralph (n 2) 55.

67 For more information on trends in offences that include comparison between Aboriginal and Torres Strait Islander people and non-Indigenous people in Queensland, see the Council's report on 'Community-based Sentencing Orders, Imprisonment and Parole Options (Final Report, July 2019)'. Section 2.2.2 provides a comparison of the ANZSOC offence categories between Aboriginal and Torres Strait Islander people and non-Indigenous people, https://www.sentencingcouncil.qld.gov.au/ data/assets/pdf_file/0004/623533/final-report-community-based-sentencing-and-parole.pdf.

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⁶⁴ Cunneen, Collings and Ralph (n 2) reported that adult higher courts 2004 data contained a large proportion of 'unknown' Indigenous status, and therefore deemed unreliable and not included in their analyses, 50.

Table 2 provides a list of the top 10 most common offences sentenced among Aboriginal and Torres Strait Islander offenders and Table 2 shows that within the public order category, public nuisance was the most common offence committed.⁶⁸ The four next most common offences were related to the justice and government category, in particular: breach of bail (failure to appear), assault or obstruct a police officer, contravention a domestic violence order and contravening a direction or requirement of a police officer. Two of the most common offences were related to drugs: possession of dangerous drugs and possession of drug utensils. Wilful damage, stealing and entering or being in premises and committing an indictable offence were also commonly sentenced among this cohort.

Table 2: Top 10 most common offences sentenced for Aboriginal and Torres Strait Islander peoples

Rank	Offence	Category	Offence Description	Cases
1	!@#\$	Public order	Public nuisance	63,888
2	∆1∆	Justice and government	Breach of bail (failure to appear)	33,544
3	∆ 1 ∆	Justice and government	Assault or obstruct police officer	31,489
4	∆ 1 ∆	Justice and government	Contravention of domestic violence order	30,813
5	∆ 1 ∆	Justice and government	Contravening a direction or requirement of police officer	29,007
6		Property and environment	Wilful damage	26,776
7		Drugs	Possession of dangerous drugs	24,622
8	Š	Theft	Stealing	23,953
9		Drugs	Possession of drug utensils	23,105
10	۶Í	Unlawful entry	Entering or being in premises and committing indictable offences	19,579

Data includes adult and juvenile offenders in the lower and higher courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

Panel member reflection on public nuisance offences
As you know, Aboriginal and Torres Strait Islander people, we congregate in groups, we have a laugh – and I wonder if that contributes to the public nuisance offences, being out in a public place. If you're [catching up] with people it's not done at someone's house, it's the local park...
And I dunno if this is just a thing in [this town], but the Department of Housing used to have this three-strike policy. So you'd come across people in the park consuming alcohol who had homes – who had a home address in [this town], but they'd be partying in the park with family or with other friends, and I used to wonder how much does that policy have to do with it? You know, I'm too scared to ask my family to come around because if we get too loud and the police get called and police report it to the Department of Housing, then... [the person is at risk of losing their housing]. So it's easier for me, and less hassle for me to go down the park. You wonder how much those sorts of things contribute...
Public nuisance – people get charged with that because they're fighting in the street. [But] in a small community... two people have a punch-up, you get a crowd around them, and then everyone knows and it gets reported to police – the family dynamics and things like that come into it.

68 See the Council's Sentencing at a glance on Public Nuisance for more information about this specific offence, https://www.sentencingcouncil.qld.gov. au/______data/assets/pdf_file/0009/636471/sentencing-at-a-glance-public-nuisance.pdf.





Table 3 shows the trends for offences in the Magistrates Courts between 2005–06 and 2018–19. It shows that public order offences were the only offence category that demonstrated a decreasing average annual percentage change – all other offence categories were increasing.⁶⁹

Cases involving public order offences dealt with by the Magistrates Courts have decreased considerably over time. From 2005–06 to 2018–19, public order offences decreased by 31.0 per cent (average annual de-crease of 1.3%). In contrast, the proportion of cases involving drug offences has increased substantially, jump-ing from 1,391 in 2005–06 to 3,981 in 2018-19, representing an increase of 186.2 per cent (average annu-al increase of 9.0%). Comparing this to all offenders, the number of cases involving drug offences only jumped by 94.3 per cent – from 14,204 in 2005–06 to 27,605 in 2018-19.

The offence categories that experienced the largest average annual percentage change in the Magistrates Courts were acts endangering persons (average annual increase of 18.7%) and abduction and harassment (average annual increase of 19.3%).

Table 3: Magistrates Court	s, change in offences	sentenced over time for	r Aboriginal and To	orres Strait Islander peoples

Offence (ANZSOC categories)	Offenders †	Cases ‡	Average annual percentage change in cases
Homicide*	-	-	
Acts intended to cause injury	17,004 (32.6%)	28,033 (9.1%)	3.5% 🔺
Sexual assault	410 (0.8%)	437 (0.1%)	10.2%
Acts endangering persons	1,718 (3.3%)	1,935 (0.6%)	18.7% 🔺
Abduction, harassment	1,098 (2.1%)	1,218 (0.4%)	19.3% 🔺
Robbery, extortion **	136 (0.3%)	138 (0.0%)	** 🔺
Unlawful entry	10,179 (19.5%)	25,242 (8.2%)	3.0% 🔺
Theft	18,852 (36.1%)	56,594 (18.3%)	4.9%
Fraud	4,754 (9.1%)	6,114 (2.0%)	10.0%
Drugs	17,275 (33.1%)	39,137 (12.7%)	9.0%
Weapons	5,122 (9.8%)	6,577 (2.1%)	9.0%
Property and environment	15,073 (28.9%)	27,692 (9.0%)	3.2%
Public order	33,606 (64.3%)	123,119 (39.9%)	-1.3% 🔻
Justice and government	33,912 (64.9%)	128,567 (41.6%)	2.7%

Data includes adult and juvenile offenders, lower courts, cases sentenced 2005-06 to 2018-19 in Queensland.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

- ** Caution small sample sizes. Magistrates Courts cannot sentence the offences of robbery or extortion, which must be ultimately dealt with by the higher courts. Lesser offences falling under this ANZSOC definition, such as demanding property with menaces with intent to steal (s 414 of the Criminal Code) are likely to be the offences making up this category.
- Totals do not add to 100% as some offenders may be sentenced for multiple types of offences.

Totals do not add to 100% as some cases may involve multiple types of offences.

Table 4 shows the trends for offences in the higher courts between 2005–06 and 2018–19. It shows that acts intended to cause injury was the only offence category that demonstrated a decreasing average annual percentage change in the number of sentenced cases – all other offence categories have increased.⁷⁰

Similar to the pattern in the Magistrates Courts, cases involving drug offences have increased considerably in the higher courts. The number of cases involving drug offences jumped from 36 in 2005–06 to 195 in 2018–19, representing a 441.7 per cent increase. Table 4 shows that drug offences exhibited the largest average annual change in volume compared to the other offences (average annual increase of 18.3%). In addition to drug offences, cases involving weapons offences (average annual increase of 12.7%) and homicide (average annual increase of 11.9% - although the small number of homicide cases must be noted) also demonstrated a large change in the average volume of cases over time.

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^{*} Homicide cannot be dealt with in the Magistrates Courts.

⁶⁹ A similar analysis was conducted by the Council as part of the final report on the terms of references on community-based sentencing orders, imprisonment and parole options (see Table 2-3 in section 2.2). While caution should be exercise due to some differences in analyses, Table 2-3 can be used as a comparison to see the differences in the findings on Aboriginal and Torres Strait Islander offenders compared to all offenders in Queensland, <<u>https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/623533/final-report-community-based-sentencing-and-parole.pdf</u>>70 Ibid Table 2-4.

Offence (ANZSOC categories)	Offenders †	Cases ‡	Average annual percentage change in cases
Homicide	118 (1.3%)	120 (0.9%)	11.9%
Acts intended to cause injury	4,926 (54.7%)	5,787 (44.8%)	-0.9%
Sexual assault	1,369 (15.2%)	1,499 (11.6%)	3.7%
Acts endangering persons	307 (3.4%)	315 (2.4%)	3.0%
Abduction, harassment	457 (5.1%)	467 (3.6%)	6.4%
Robbery, extortion	1,854 (20.6%)	2,178 (16.9%)	7.7%
Unlawful entry	2,136 (23.7%)	2,638 (20.4%)	1.0%
Theft	2,039 (22.7%)	2,583 (20.0%)	3.2%
Fraud	378 (4.2%)	410 (3.2%)	3.7%
Drugs	1,182 (13.1%)	1,264 (9.8%)	18.3%
Weapons	276 (3.1%)	289 (2.2%)	12.7%
Property and environment	1,541 (17.1%)	1,703 (13.2%)	1.6%
Public order	958 (10.6%)	1,033 (8.0%)	1.8%
Justice and government	3,181 (35.3%)	4,044 (31.3%)	2.3%

Data includes adult and juvenile offenders, higher courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

† Totals do not add to 100% as some offenders may be sentenced for multiple types of offences.

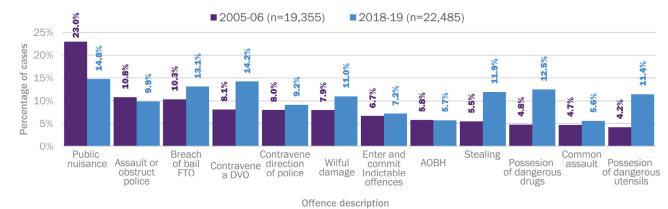
t Totals do not add to 100% as some cases may involve multiple types of offences.

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Figure 15 shows the 10 most frequently sentenced offences at the beginning of the data period (2005-06) ranked according to the percentage of cases for that offence compared to the latest available data period (2018-19) to compare the changes over time [Note: more than 10 offences are presented in Figure 15 since the top 10 offence in 2005-06 is different from the top 10 offences in 2018–19].

As shown in Figure 15, the proportion of cases involving public nuisance has decreased considerably between 2005–06 and 2018–19 (24.5%).⁷¹ Breach of bail (failure to appear), contravention of a domestic violence order, wilful damage, stealing and possession of drugs and drug utensils has increased between the two time periods. The two drug-related offences showed the highest increase in the proportion of cases. In 2005–06, possession of dangerous drugs and drug utensils only comprised 4.8 per cent and 4.2 per cent of the total cases, respectively. These proportions increased to 12.5 per cent and 11.4 per cent in 2018–19.

The proportion of cases that involve assault or obstruct a police officer, contravening a direction or requirement of a police officer, entering and being in premises and commit indictable offences, and assaults occasioning bodily harm has remained stable between 2005–06 and 2018–19.



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Figure 15: Changes in the 10 most common offences sentenced for Aboriginal and Torres Strait Islander peoples

Data includes adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

1. FTO: Failure to appear; DVO: Domestic violence order; AOBH: Assaults occasioning bodily harm.

2. Totals do not add to 100% as some cases may involve multiple types of offences.

71 This decrease could have been due to increases for ticketing for public nuisance offences in this time period.

Previous research has examined the differences in offending patterns between demographic groups. Bartels' 2012 research specifically examined Aboriginal and Torres Strait Islander female offenders. Using data from the ABS,⁷² Bartels found that Aboriginal and Torres Strait Islander women in Queensland accounted for 18 per cent of all cases involving women finalised in the higher courts and 28 per cent in the Magistrates Courts in 2010–11.⁷³ Bartels also analysed data from the Report on Government Services (ROGS) and found that Aboriginal and Torres Strait Islander women were over-represented in supervision orders (such as probation and parole) and reparation orders (such as community service orders) in Queensland in 2012.⁷⁴

Research by Douglas and Fitzgerald, on the other hand, specifically looked at contravention of domestic violence orders among Aboriginal and Torres Strait Islander peoples in Queensland.⁷⁵ They examined 6,888 unique defendants who were charged with contravention of a domestic violence order in 2013-14. Overall, Aboriginal and Torres Strait Islander peoples accounted for over one-third of all defendants. In particular, Aboriginal and Torres Strait Islander women accounted for nearly 40 per cent of the female defendants who were found guilty, which is higher than Aboriginal and Torres Strait Islander men (33.3% of all male defendants). Just over a quarter of all defendants received a custodial order, but this figure is higher compared to 43 per cent for Aboriginal and Torres Strait Islander peoples. A custodial sentence was also the most common sentence imposed on Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This large proportion of custodial orders for Aboriginal and Torres Strait Islander peoples. This l

Looking at the data from the Childrens Court, Cunneen et al found that the most common finalised appearances for young Aboriginal and Torres Strait Islander offenders were for theft and unlawful entry with intent.⁷⁷ Combined, these two offences comprised nearly half of all finalised appearances for Aboriginal and Torres Strait Islander children in the Childrens Court in 2004. Aboriginal and Torres Strait Islander children were more likely to commit unlawful entry with intent and justice and government offences, but less likely to commit road traffic offences and illicit drug offences compared with non-Indigenous children.⁷⁸ The same study found that Aboriginal and Torres Strait Islander children were more likely to cause injury, theft and offences against justice and government procedures compared to their non-Indigenous counterparts.

The Council's analysis of courts data shows that patterns of offending also differed depending on the gender and juvenile status of Aboriginal and Torres Strait Islander offenders. Figure 16 shows that public order and justice and government offences were common across all demographic groups. However, some differences were observed. Half of the cases involving girls included theft offences (n=5,245, 50.6%) while only 15.3 per cent (n=13,195) of these offences were observed among adult female offenders.

Nearly half of the cases among boys also involved theft (n=14,476, 48.4%) but only 13.5 per cent (n=26,259) of adult male offenders were sentenced for theft. Unlawful entry offences also comprised a large proportion of cases involving boys at 39.8 per cent (n=11,897). In addition to theft, public order and justice and government offences also comprised a sizeable proportions of cases involving girls were sentenced for this offence.

73 Bartels (n 47) 2.

74 Bartels (n 47) 2.

- 76 Ibid 46.
- 77 Cunneen, Collings and Ralph (n 2) 51.
- 78 Ibid.

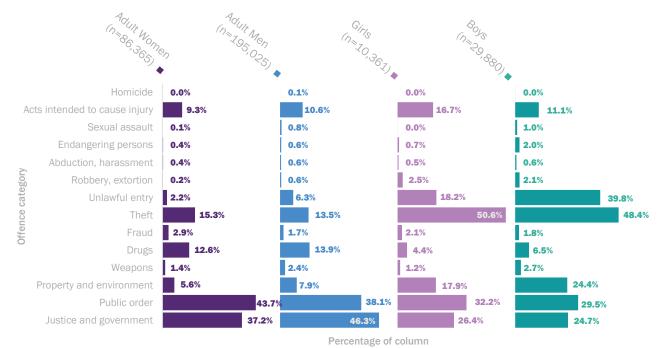
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⁷² Australian Bureau of Statistics, Criminal courts, Australia, 2010-11 (2012) < http://www.abs.gov.au/ausstats/abs@.nsf/mf/4513.0>.

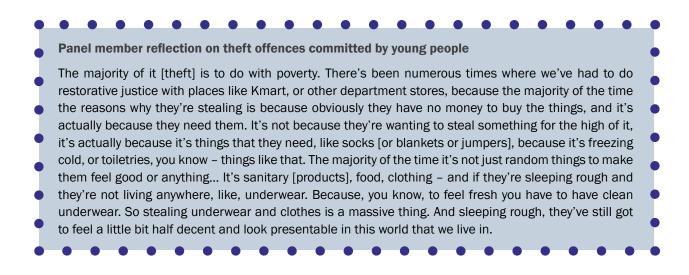
⁷⁵ Heather Douglas and Robin Fitzgerald. 'The domestic violence protection order system as entry to the criminal justice system for Aboriginal and Torres Strait Islander people' (2018) 7(3), International Journal for Crime, Justice and Social Democracy.



Figure 16: Types of offences sentenced by demographic group for Aboriginal and Torres Strait Islander peoples



Data includes adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: Totals do not add to 100% as some cases may involve multiple types of offences.



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The most common offence categories were further broken down to provide more detail about the offences committed by this cohort. Table 5 provides the five most common offences for each demographic group [Note: to ensure the top five most common offences were displayed for each demographic group, more than five offences have been displayed for some demographic groups].⁷⁹

For adults, public nuisance was the most common offence, regardless of gender. However, gender differences were observed among adult men and women, with a higher proportion of adult men committing offences related to contravening a domestic violence order, while adult women were more commonly sentenced for offences related to contravening a direction or requirement of a police officer.

Conversely, entering or being in premises and committing indictable an offence was the most common offence for boys, with one-third of cases involving boys for this offence. While public nuisance was still one of the top offences for girls, the proportion of cases involving stealing was higher at 22.3 per cent.

Table 5: Top five most common offences by demographic group for Aboriginal and Torres Strait Islander peoples

		Ac	lult	Children		
Offence		Women (n=86,365)	Men (n=195,025)	Girls (n=10,361)	Boys (n=29,880)	
!@#\$	Public nuisance	23.4%	19.5%	18.7%	12.4%	
513	Breach of bail (failure to appear)	9.6%	11.4%	7.9%	7.5%	
4	Assault or obstruct police officer	8.3%	10.3%	12.8%	11.7%	
44	Contravention of domestic violence order	5.8%	13.1%	0.3%	0.6%	
4	Contravening a direction or requirement of police officer	11.0%	9.3%	4.0%	3.3%	
	Wilful damage	4.6%	7.2%	16.7%	23.2%	
(?)~~~ 5	Stealing	6.2%	5.2%	22.3%	21.6%	
۶.	Entering or being in premises and committing indictable offences	1.2%	4.1%	13.5%	30.4%	
44	Possession of liquor in a restricted area	8.5%	6.0%	0.6%	0.4%	
Ś	Unlawful use or possession of motor vehicles, aircraft or vessels	1.5%	3.2%	13.0%	20.7%	
۶.	Burglary	1.1%	3.0%	7.5%	18.0%	
Ś	Unauthorised dealing with shop goods	4.5%	2.2%	16.8%	7.1%	

Data includes adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: Totals do not add to 100% as some cases may involve multiple types of offences.

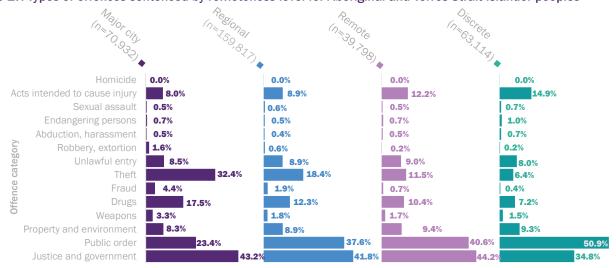
79 For instance, entering or being in premises and committing indictable offences was not in the top five most common offences for adult offenders (regardless of gender), however, it is in the top offence for boys, therefore, it was included in the table.

3.1.3 Differences in offending patterns by remoteness

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Patterns of offending also differed by the remoteness of the offence location. Figure 17 shows that public order and justice and government offences were common across all locations, regardless of remoteness levels. However, half of the cases in discrete communities involved a public order offence (n=31,828, 50.9%). This proportion is higher compared to other areas. There was also a higher proportion of cases related to theft sentenced in major cities (n=23,405, 32.4%) compared to other areas.

Figure 17: Types of offences sentenced by remoteness level for Aboriginal and Torres Strait Islander peoples



Percentage of column

Data includes adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

1. Totals do not add to 100% as some cases may involve multiple types of offences.

2. Some cases may also involve multiple offences which were committed at locations with different remote areas. offences.

Table 6 provides the top five most common offences by level of remoteness. Public nuisance was common across all categories and was the top offence in major cities, regional and remote areas. Possession of liquor in a restricted area was the top offence in discrete communities⁸⁰ at 24.6 per cent. Contravention of a domestic violence order was more common in regional, remote and discrete communities, while breach of bail, stealing and possession of dangerous drugs were more common in major cities.

Table 6: Top five most common offences by remoteness level for Aboriginal and Torres Strait Islander peoples

Offence		Major City (n=70,932)	Regional (n=159,817)	Remote (n=39,798)	Discrete (n=63,114)
!@#\$	Public nuisance	15.3%	21.0%	21.2%	17.9%
44	Breach of bail (failure to appear)	13.1%	10.5%	10.4%	6.3%
44	Assault or obstruct police officer	10.1%	9.6%	11.4%	8.6%
44	Contravention of domestic violence order	6.0%	9.2%	12.2%	11.8%
4	Contravening a direction or requirement of a police officer	11.2%	9.8%	9.0%	3.1%
Ś	Stealing	11.6%	8.4%	4.8%	1.8%
	Possession of dangerous drugs	10.8%	7.7%	6.0%	3.8%
	Possession of drug utensils	8.5%	7.1%	6.9%	4.9%
44	Possession of liquor in a restricted area	0.0%	0.0%	9.5%	24.6%

Data includes adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

Notes: 1. Totals do not add to 100% as some cases may involve multiple types of offences.

2. Some cases may also involve multiple offences which were committed at locations with different remote areas.

80 Some discrete communities are declared restricted in terms of alcohol use.

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Panel member reflection on Alcohol Management Plans In all of time prohibition has never worked anywhere. And people used to say to me "well, how come the Murri's just don't – why do they keep bringing alcohol in?" And I'd use the analogy of cigarettes. I'd say "if the government brought in a ban where they said "ok, everyone in [this town], you're no longer allowed to smoke cigarettes, that's it." And they don't go "well, here's some support", or "here's some rehab", or "this is how you break your habit" – I said: "well, that's what it's like." Doesn't matter whether you're Indigenous, non-Indigenous or whatever, if you have an addiction, an alcohol addiction and then you go "well, that's it, no more allowed in" – if you haven't been treated for your addiction, you'd do anything to get that alcohol. So with Alcohol Management Plans, you've got people that are being sent to court, having vehicles seized, all of those things, being criminalised because of this addiction. And I think that's where it's fallen over, and I know people will say "oh, the rate of violent offences has dropped, or the seriousness of violent offences aren't as bad". I've heard that as well: "yeah, we still have a high rate of offences, for example – still have high rates of AOBH but they're not as serious as...". I don't know how you judge that, how you measure it.

3.2 Recidivism

Aboriginal and Torres Strait Islander offenders are more likely to have a prior criminal history compared to non-Indigenous offenders.⁸¹ They are more likely to have been previously convicted, have a prior record of imprisonment, prior remand episodes and violations of justice orders.⁸² Additionally, they are more likely to have been imprisoned at a greater rate compared to non-Indigenous offenders.⁸³

Compared to non-Indigenous children, Aboriginal and Torres Strait Islander children are more entrenched in the juvenile justice system, having been incarcerated in detention centres from an earlier age.⁸⁴ Several studies have found that arrest is more common among Aboriginal and Torres Strait Islander children and that they are less likely to experience police diversion.⁸⁵

A 2010 study by Allard et al specifically looked at a Queensland-based offender cohort of children, aged under 17 years, born in 1990. The study examined this cohort's contact with the Queensland juvenile justice system between 2000 and 2007. They found that 62.6 per cent of all Aboriginal and Torres Strait Islander boys and 27.8 per cent of girls had an offending contact⁸⁶ by the age of 17 years. This compares to only 12.8 per cent of non-Indigenous boys having had contact and 6.9 per cent of non-Indigenous girls.⁸⁷ In other words, Aboriginal and Torres Strait Islander children within the general population were found to be 4.5 times more likely to have had contact, and more frequent contact, with the criminal justice system compared to non-Indigenous children.

Their study also found that Aboriginal and Torres Strait Islander children were more likely to appear in court for their first offence. Specifically, they were 2.9 times less likely to receive a caution than to appear in court and two times less likely to be referred by police for a youth justice conference than to appear in court. Aboriginal and Torres Strait Islander children are also 1.5 times less likely to be cautioned than attend a police conference.⁸⁸ These likelihood ratios are controlled for by examining first contacts only, by controlling for seriousness of offence⁸⁹ and by excluding traffic offences as they are not eligible for police diversion.

Cunneen et al (2005), on the other hand, examined regional variations in police cautioning in Queensland. It was observed that in the Brisbane-Moreton and northern regions, arrest was more common than cautioning for Aboriginal and Torres Strait Islander children. Cunneen et al also found a lower proportion of Aboriginal and Torres Strait Islander children being referred to a conference, noting that this is due to the 'limited support and availability of the Department of Communities in remote areas and perceptions of a conference backlog in urban areas'.⁹⁰ Arrests were more common than conferencing in the Brisbane-Moreton region.

82 Sanderson, Mazerolle, Anderson-Bond (n 2) 3.

89 Offence seriousness was controlled for by excluding all finalised court appearances that had a supervised order recorded as the most serious outcome. 90 Cunneen, Collings and Ralph (n 2) 62.

⁸¹ Allard (n 44) 3.

⁸³ Cunneen, Collings and Ralph (n 2) 99.

⁸⁴ Ibid 93.

⁸⁵ Ibid 61, Allard (n 44) 3.

⁸⁶ Defined as contact with the juvenile justice system. According to Allard et al, the nature of the first contact could be a caution, conference or in court, and this is determined by 'selecting the earliest event date; either the date of the caution event, conference event, or finalised court appearance event'.
87 Allard (n 44) 3.

⁰⁷ Allard (11 44) 5.

⁸⁸ Allard (n 44) 4.

Figure 18: Methodology for recidivism analysis

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Of the 52,937 offenders who were sentenced in Queensland courts between 2005-06 and 2018-19, 37,204 (70.3%) were repeat offenders — that is, they had been sentenced multiple times over the 14-year period.

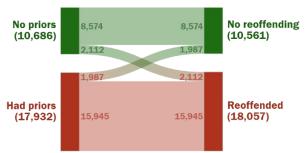
Those who were sentenced over the period 2010–11 to 2013–14 were examined in more detail to determine whether they had committed any other offences before or after this period.⁹¹ Prior and subsequent offending was operationalised as any sentencing event with an offence date that occurred within two years of an offender's expected release from custody – see Figure 18.

In 2010–11 to 2013–14, there were 93,577 cases sentenced, involving 28,618 unique offenders. Of these, over half had previously offended (n=17,932, 62.7%) and over half committed a new offence after being sentenced (n=18,057, 63.1%) — see Figure 19.

70.3%

repeat offenders





Data includes higher and lower courts, adult and juvenile cases sentenced between 2010–11 and 2013–14 in Queensland where reoffending occurred within two years of the offender's expected release from custody.

Connecting the dots

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Source: Queensland Government Statistician's Office, Queensland.

Just over one-third of Aboriginal and Torres Strait Islander offenders had no prior and no subsequent offence recorded (n=10,686, 37.3%). Only 7.4 per cent (n=2,112) of offenders who did not have a prior offence reoffended. Over half of offenders (55.7%) had a prior offence and also reoffended. Only 6.9 per cent of offenders who had a prior offence (n=1,987) did not have any subsequent offence recorded after being sentenced between 2010-11 and 2013-14.

Table 7 shows the prior and subsequent court events for offenders broken down by gender and juvenile status, showing that adult men, on average, had 3.5 prior court events. This was significantly greater than adult women, who had an average of 2.5 prior court events.⁹² There was also a statistically significant difference observed in reoffending, with adult male offenders also showing a higher average number of court events at 3.1 compared to adult women with 2.4.⁹³

For those sentenced as a child, a similar pattern emerged. Boys, on average, had 3.0 prior court events. This was significantly greater than girls, with an average of 2.3 prior court events.⁹⁴ There was also a statistically significant difference observed in reoffending with boys also showing a higher average number of court events at 5.2 compared to girls with 3.6.⁹⁵ Compared to other demographic groups, boys had the highest average number of subsequent court events.

94 Independent groups t-test: t(2,263.7) = -6.14, p < .0001, r = 0.13 (equal variances not assumed).

⁹¹ To calculate recidivism, offenders were linked across multiple court events to identify occurrences of prior offending and reoffending. This offender linkage was undertaken by the Queensland Government Statistician's Office, and involved both deterministic and probabilistic matching techniques to account for anomalies in data systems in relation to common administrative data errors relating to issues such as the use of nicknames and transposed details.

⁹² Independent groups t-test: t(21,227) = -15.14, p < .0001, r = 0.10 (equal variances not assumed).

⁹³ Independent groups t-test: t(20,162) = -13.30, p < .0001, r = 0.09 (equal variances not assumed).

⁹⁵ Independent groups t-test: t(2,222.8) = -8.44, p < .0001, r = 0.18 (equal variances not assumed).

Table 7: Prior and subsequent court events by demographic group for Aboriginal and Torres Strait Islander offenders

Offender type	N	No prior offences (%)	1 to 3 prior offences	4+ prior offences (%)	N	umber of co	ourt evei	nts
			(%)	(///	Avg	Median	Min	Max
Prior offending	30,079	37.0	33.5	29.5	3.1	1.0	0	147
Adult Women	9,061	45.1	32.7	22.1	2.5	1.0	0	105
Adult Men	17,330	33.3	33.5	33.3	3.5	2.0	0	147
Girls	1,078	40.4	35.6	23.9	2.3	1.0	0	27
Boys	2,610	32.4	35.1	32.6	3.0	2.0	0	30
Subsequent offending	30,079	35.9	33.4	30.7	3.1	1.0	0	109
Adult Women	9061	45.3	33.1	21.6	2.4	1.0	0	77
Adult Men	17330	34.7	34.0	31.3	3.1	1.0	0	109
Girls	1078	25.0	35.7	39.3	3.8	2.0	0	24
Boys	2610	15.7	29.8	54.4	5.2	4.0	0	52

Data includes higher and lower courts, adult and juvenile cases sentenced between 2010–11 and 2013–14 in Queensland where reoffending occurred within two years of the offender's expected release from custody.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

Notes: Cases where gender was unknown were excluded.

Table 8 shows the prior and subsequent court events for offenders broken down by remoteness level. Remoteness also has an impact on the number of prior offences⁹⁶ and subsequent reoffending.⁹⁷ Offenders who committed an offence in regional areas have the highest average of 3.4 prior court events, with the lowest in remote areas at an average of 2.6 prior court events. Similar trends were observed in subsequent reoffending.

Table 8: Prior and subsequent court events by remoteness level for Aboriginal and Torres Strait Islander offenders

Offender type		No prior	1 to 3 prior	4+ prior	Number of court events			
	N	offences (%)	offences (%)	offences (%)	Avg	Median	Min	Max
Prior offending	35,181	34.7	36.0	29.3	3.1	1.0	0	144
Major City	6,891	36.4	33.4	30.3	3.1	1.0	0	56
Regional	15,618	34.5	35.5	30.0	3.4	1.0	0	144
Remote	5,084	35.0	38.7	26.3	2.6	1.0	0	73
Discrete	7,588	33.2	37.6	29.2	2.8	1.0	0	58
Subsequent offending	35,181	34.1	35.6	30.3	3.1	1.0	0	100
Major City	6,891	33.9	34.0	32.1	3.2	2.0	0	55
Regional	15,618	34.6	34.6	30.8	3.3	1.0	0	100
Remote	5,084	34.7	38.5	26.9	2.6	1.0	0	57
Discrete	7,588	32.8	37.4	29.7	2.8	2.0	0	54

Data includes higher and lower courts, adult and juvenile cases sentenced between 2010–11 and 2013–14 in Queensland where reoffending occurred within two years of the offender's expected release from custody.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

Notes: Cases where remoteness was unknown were excluded.

Figure 20 shows the proportion of cases that resulted in reoffending within two years of release, by the top 10 most common offences. The darker bars show the proportion of cases in which the offender reoffended, while the lighter bars show the proportion of cases where the offender was a repeat offender – that is, where they reoffended by committing the same offence.

96 One way ANOVA: F(3, 16,365.1) = 48.56, p < .0001 (used Welch's correction as equal variances not assumed).

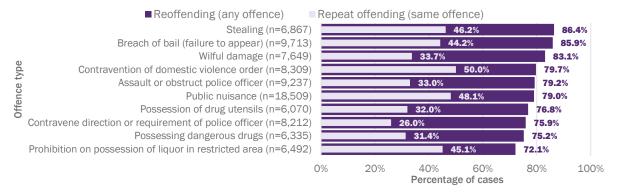
97 One way ANOVA: F(3, 16,009.4) = 49.07, p < .0001 (used Welch's correction as equal variances not assumed).

Those who were sentenced for stealing had the highest rate of reoffending, with 86.4 per cent of offenders committing a new offence within two years, of which almost half (46.2%) were for another stealing offence. Similarly, those who were sentenced for a breach of bail (failure to appear) had high levels of reoffending at 85.9 per cent.

The highest rate of repeat offending within the same offence was contravention of a domestic violence order with 50.0 per cent of the cases; that is, one in two cases that involved this offence were followed by a subsequent contravention of a domestic violence order within two years. Reoffending generally for a contravention of a domestic violence order was also high at 79.7 per cent. Repeat offending among cases involving public nuisance was the next highest at 48.1 per cent. Among the top 10 offences, prohibition on possession of liquor in a restricted area had the lowest reoffending rate at 72.1 per cent.

Figure 20: Reoffending for the top 10 most common offences for Aboriginal and Torres Strait Islander peoples

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Data includes adult and juvenile cases sentenced between 2010–11 and 2013–14 in Queensland where reoffending occurred within two years of the offender's expected release from custody. Source: OGSO, Oueensland Treasury – Courts Database, extracted November 2019.

Panel member reflection on how to address recidivism for domestic violence In [a discrete Queensland community], the men there were saying "we want a men's shelter". And [a discrete Queensland community] was another community where some of the men were saying that. It was really interesting, because they were saying there's a place for the women, because in [unnamed town] they've built a really nice women's shelter, and it's a really good facility, but some men told us stories about how they get in trouble for domestic and family violence. They do the courses as respondents, you know anger management or whatever they've got to do. They say you get to the point where – ok, things are escalating – I've got to go, I've got to leave here and they say their partner will follow them because the partner doesn't understand – so the men said "our women need to sit through the course", because one man said "my woman – when I walked away she was thinking I was going to find someone else, or go see another lady", and kept at him until he broke – got to the point where he broke and then he's breached the order.

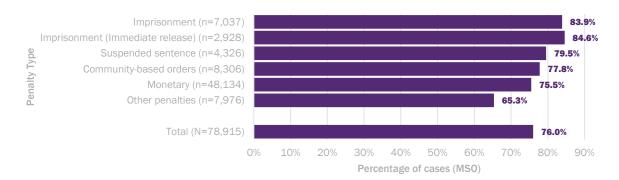
Figure 21 shows reoffending rates within two years of release by penalty type (MSO). It shows that the majority of adult offenders (76.0%) committed a new offence within two years of their release from custody. More than four-fifths of people who received an imprisonment sentence reoffended within two years of their release from custody (n=7,037, 83.9%). However, there was little difference in the likelihood of reoffending between those sentenced to imprisonment with immediate release⁹⁸ (84.6%) and those sentenced to actual time in custody (83.9%). Suspended sentences and community-based sentencing orders also had similar, but lower, levels of reoffending at 79.5 per cent and 77.8 per cent, respectively. Monetary fines had a reoffending rate of 75.5 per cent while other penalties (good behaviour, recognisance, convicted but not further punished and disqualification of driver licence) had a reoffending rate of 65.3 per cent.

• • • • Connecting the dots |

⁹⁸ Imprisonment (immediate release) refers to cases where an offender was sentenced to imprisonment but did not spend any time in custody postsentence. There are generally two situations in which this occurs: 1) the court may fix the day of sentence as the parole release date. In this situation, the offender will be released to parole on the date of sentence and will remain under parole supervision until the expiration of the head sentence. 2) the offender may have served time in jail on remand prior to being sentenced. In some cases, the offender may have fully served their sentence prior to the date of sentence. In this situation, the offender is immediately released on the day of sentence, having already fully served the term of imprisonment. For more information, please see *Penalties and Sentences Act* 1992 (Qld) s 160B.



Figure 21: Reoffending by penalty type for Aboriginal and Torres Strait Islander peoples



Data includes MSO, adult cases sentenced between 2010-11 and 2013-14 in Queensland where reoffending occurred within two years of the offender's expected release from custody.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Notes:

- 1. Community-based orders include: probation and community service orders.
- 2. Other penalties include: good behaviour, recognisance, convicted but not further punished and disqualification of driver's licence.

3. Intensive supervision order was excluded due to small number of cases.

Panel member reflectionon on reintegrating men who have left prison [A town in Queensland] is our closest jail. There's a lot of our guys are in there... they don't come back here. Some of them if they've got relations in the area... they'll come and hang around there, and occasionally sneak in. I know, we see them come in here. When we have our men's group, our yarning circle they say "I saw so-and-so - he's here", and I say "Oh, is that right? Keep talking..." They keep very quiet about it - they might sneak in to see the girlfriend, or the Mrs or the kids or whatever, then they'll sneak out again, hitchhike back to [unnamed town] or whatever. Until something happens. And then the wife's jumping up and down and saying something, or the girlfriend's saying so-and-so's here or whatever, reports him. Then of course he's breached his conditions and then it's back on again. And that's the issue with jail that I see - these guys that have got nowhere to come to and get a bit of support... That's one of the issues, they can't come back here, because there's no accommodation. So if we can get them here, get them back on country, we've got a nice spot picked out back on country. And then gradually reintegrate them back into community, back into family. They are all over the place - in Brisbane, everywhere, but they can't come back here. Which is sad - this is their home. They've got no permanent accommodation, they're couch-surfing in Brissie, and all of a sudden you hear "oh, so-and-so's back in jail". And you wonder why. And I reckon that's the reason why - they're not being supported when they get out of prison.

Risk factors for re-offending

An action research study by Dawes (2016) investigated recidivism within two discrete Aboriginal and Torres Strait Islander communities. His findings showed that difficulty in accessing employment after being imprisoned, stigma attached to having a criminal history and breaching parole conditions upon release are common factors identified for persistent offending in these communities.⁹⁹ Pressure from family or peers to drink alcohol while on parole and not attending parole appointments were identified risk factors for re-offending due to breaches of parole conditions.¹⁰⁰

⁹⁹ Dawes (n 22) 46-47. 100 Dawes (n 22) 49.

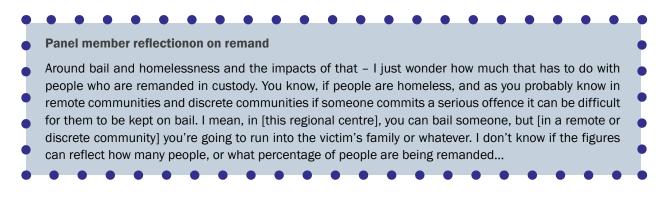
Generally, in sentencing under section 9(2)(a) of the *Penalties and Sentences Act* 1992 (Qld) (for adults), a court must have regard to the principles that imprisonment should only be imposed as a last resort, and a sentence that allows the offender to stay in the community is preferable. However, these principles do not apply for any offence that results in physical harm to another person or involves violence against another person. In such cases, a court must have primary regard to factors such as the risk of further harm to the community, and the personal circumstances of any victim of the offence.¹⁰¹

This section of the report will provide an analysis of the penalties and sentencing outcomes for Aboriginal and Torres Strait Islander peoples in the Queensland courts. It will start by providing research on remand. Then, the following section will discuss penalties imposed and sentencing outcomes for both adult and children. This section will primarily focus on cases with the most serious offence (MSO).

4.1 Remand

Aboriginal and Torres Strait Islander peoples are over-represented in the remand population.¹⁰² Some studies have found that the over-representation of Aboriginal and Torres Strait Islander offenders in custody is driven in part by a rise in the number of Aboriginal and Torres Straits Islander remandees.¹⁰³ This is problematic given that remandees in Queensland already spend a longer period of time incarcerated than in any other Australian jurisdiction.¹⁰⁴ One in 10 remandees spent more than 17 months in prison in Queensland, compared to the national average of 12.5 months.¹⁰⁵ Using unpublished data from Queensland Corrective Services (QCS), the Queensland Productivity Commission reported that 29 per cent of Aboriginal and Torres Strait Islander prisoners are currently on remand¹⁰⁶ and this proportion has been increasing over time.¹⁰⁷

As part of the Indigenous Criminal Justice Agenda, QCS conducted a study in 2011 finding the number of Aboriginal and Torres Strait Islander offenders on remand increased by 65 per cent between the period of December 2004 and December 2009 compared with a 24 per cent increase in the total prisoner population.¹⁰⁸ Bond and Jeffries also found that a greater number of Aboriginal and Torres Strait Islander offenders are on remand compared to non-Indigenous offenders in both the Magistrates Courts and the higher courts. ¹⁰⁹ The reasons for this disparity are unclear, although Sanderson et al suggest the disparity could be due to Aboriginal and Torres Strait Islander peoples having a greater prevalence of previous remand episodes, prior arrests, and previous failures to appear, resulting in a high risk of being held on remand and remaining in police custody for a longer period of time.¹¹⁰



Corrective Services <<u>https://qpc.blob.core.windows.net/wordpress/2020/01/FINAL-REPORT-Imprisonment-Volume-I-.pdf</u>>; Sanderson, Mazerolle and Anderson-Bond (n 2) 3.

36 💊 🔴

 ¹⁰¹ Penalties and Sentences Act 1992 (Qld), s 9(2A), and (3). For sentencing of children, see Youth Justice Act 1992 (Qld) ss 2, 3, 150 and Schedule 1.
 One of several differences is that it does not share the adult exclusion of imprisonment as a last resort for offences involving violence or physical harm.
 102 Queensland Productivity Commission: 'Inquiry into imprisonment and recidivism' (August 2018) 310 using Unpublished data from the Queensland

¹⁰³ Cunneen, Collings and Ralph (n 2) 79.

¹⁰⁴ Ibid 82.

¹⁰⁵ Ibid. However, it is important to note that this figure was from 2004.

¹⁰⁶ Queensland Productivity Commission (n 101) 310.

¹⁰⁷ Ibid 309.

¹⁰⁸ Queensland Productivity Commission (n 101) 310.

¹⁰⁹ Bond and Jeffries (n 44) 178.

¹¹⁰ Sanderson, Mazerolle and Anderson-Bond (n 2) 3-4.

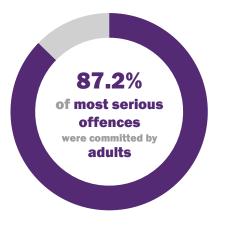
4.2 Sentencing outcomes

The following section will discuss penalties imposed and sentencing of adult and Aboriginal and Torres Strait Islander children.

From 2005–06 to 2018–19, there were 271,803 cases (MSO) involving adult offenders and 39,669 cases (MSO) involving children. As noted earlier, a different sentencing regime applies to children sentenced in Queensland under the *Youth Justice Act* 1992 (Qld) to that which applies to offenders sentenced as adults under the *Penalties and Sentences Act* 1992 (Qld). For this reason, the penalties imposed on adult offenders and child offenders are discussed separately.

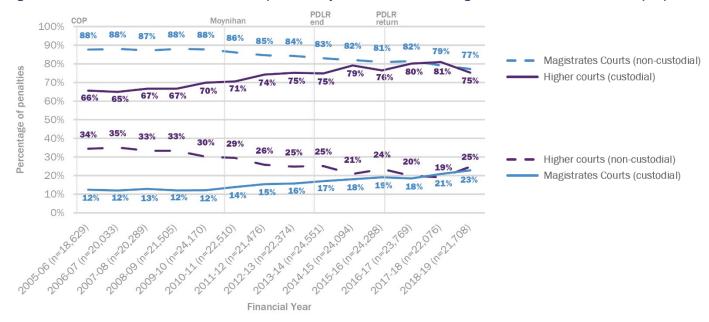
Overview

Figure 22 shows the use of custodial and non-custodial penalties¹¹¹ among Aboriginal and Torres Strait Islander peoples by court type between 2005–06 and 2018–19, showing that the use of custodial and non-custodial penalties has changed over time in both the Magistrates and higher courts.¹¹² In both court levels,



the use of custodial penalties has increased over the past 14 years, from 12 per cent to 23 per cent in the Magistrates Courts and from 66 per cent to 75 per cent in the higher courts. At the same time, the use of non-custodial penalties decreased from 88 per cent to 77 per cent per cent in the Magistrates Courts and from 34 per cent to 25 per cent in the higher courts.

Figure 22: Use of custodial and non-custodial penalties by level of court for Aboriginal and Torres Strait Islander peoples



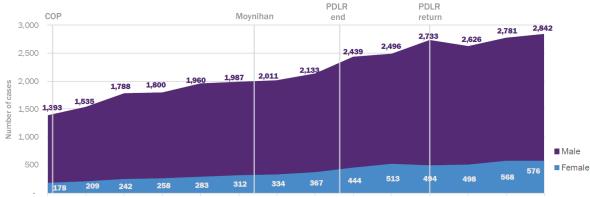
Data includes MSO, adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: The vertical line depicts reforms that could affect the data – COP refers to the introduction of court ordered parole in Queensland, Moynihan refers to legislative changes which expanded the jurisdiction of the Magistrates Courts and increased the District Court's general criminal jurisdiction, PDLR refers to the legislative requirement that courts should only impose imprisonment as a last resort and that a sentence allowing the person to stay in the community is preferable (with some legislative exceptions).

111 To know more about different penalty types, please refer to the Council's Queensland Sentencing Guide, see https://www.sentencingcouncil.qld.gov. au/ data/assets/pdf_file/0004/572161/queensland-sentencing-guide.pdf.

¹¹² For more information, please see Table 2-1 and Figure 2-1 of Queensland Sentencing Advisory Council's report on 'Community-based Sentencing Orders, Imprisonment and Parole Options (Final Report, July 2019)' <<u>https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/623533/</u> <u>final-report-community-based-sentencing-and-parole.pdf</u>>.

More male Aboriginal and Torres Strait Islander offenders entered custody compared to female Aboriginal and Torres Strait Islander offenders.¹¹³ However, this gender gap has been decreasing in recent years. As shown in Figure 23, the number of women being sentenced to imprisonment reached its highest at 576 in 2018–19, representing a 223.6 per cent increase since 2005-06. In contrast, between 2005–06 and 2018–19, the number of men receiving imprisonment increased from 1,393 to 2,842, a rise of 104.0 per cent.





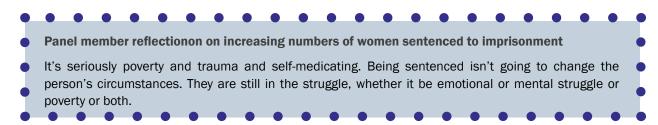
2005-06 2006-07 2007-08 2008-09 2009-10 2010-11 2011-12 2012-13 2013-14 2014-15 2015-16 2016-17 2017-18 2018-19

Financial Year

Data includes MSO, adult offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

- The vertical line depicts reforms that could affect the data COP refers to the introduction of court ordered parole in Queensland, Moynihan refers to legislative changes which expanded the jurisdiction of the Magistrates Courts and increased the District Court's general criminal jurisdiction, PDLR refers to the legislative requirement that courts should only impose imprisonment as a last resort and that a sentence allowing the person to stay in the community is preferable (with some legislative exceptions).
- 2. 3 cases were excluded as the gender of the offender was unknown.

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Previous research has shown that the proportion of adult Aboriginal and Torres Strait Islander peoples who received a community-based order was substantially lower than the proportion receiving a custodial sentence.¹¹⁴ The Council's analysis shows similar trends. For adults, there was a higher proportion of cases that received a custodial penalty (n=52,765, 19.4%) compared to cases that received community-based orders (n=29,416, 10.8% – see Figure 24). Among adult offenders, monetary penalties were most common at 60.1 per cent.

For children however, custodial penalties only represented 10.7 per cent of all penalties they received. community-based orders were the most common penalty type among Aboriginal and Torres Strait Islander children, representing nearly half of all cases (n=18,543, 46.7%). A reprimand was the second most common penalty type at 23.9 per cent. The least common penalty type was a monetary penalty at 1.4 per cent.

113 Queensland Corrective Services (n 44) 25. 114 Cunneen, Collings and Ralph (n 2) 87.



Figure 24: Sentencing outcomes for Aboriginal and Torres Strait Islander peoples

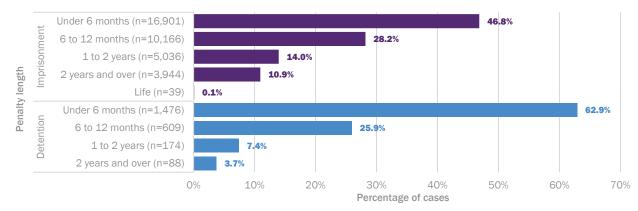


Data includes MSO, adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

- * nfp means not further punished.
- 1. Adult penalties. Custodial penalties include: imprisonment, suspended sentences, intensive correction order; Community-based orders include community service and probation orders; 5 cases (MSO) in the Magistrates Courts which received a licence disqualification were excluded in the analysis.
- 2. Juvenile penalties. Custodial penalties include: detention, conditional release orders and boot camp orders; Community-based orders include intensive supervision orders, community service, probation orders, court ordered conference and treatment programs.

Previous studies have also consistently found that, even though Aboriginal and Torres Strait Islander offenders are more likely to receive an imprisonment sentence, the length of these is generally short.¹¹⁵ The Council's analysis shows similar findings. Figure 25 shows the length of imprisonment and detention among adult and children offenders respectively. Figure 25 shows that 46.8 per cent of the adult offenders that received imprisonment were sentenced to under six months. Among children sentenced to detention, 62.9 per cent received a sentence of under six months.

Figure 25: Length of imprisonment and detention for Aboriginal and Torres Strait Islander peoples



Data includes MSO, adult and juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: Cases that received suspended sentences were excluded.

Experiences in custody

In Dawes' study of Aboriginal and Torres Strait Islander peoples living in two discrete communities who spent time in custody, he found that the most difficult issues these offenders faced were 'severing the emotional attachments to their loved ones as well as the connections to their country'.¹¹⁶ Some participants expressed a sense of ambivalence about going to prison as this experience is normalised within their communities. However, most participants reported that their initial apprehension about being in prison for the first time disappeared due to being incarcerated with family members or people from their own or other communities. Some considered prison as an opportunity to catch up with friends and relatives¹¹⁷ as well as an opportunity to experience good food and time to engage in education, training or work.¹¹⁸

115 Queensland Corrective Services (n 44) 29; Australian Law Reform Commission (n 1) section 3.65.

- 116 Dawes (n 22) 41.
- 117 Ibid.

¹¹⁸ Dawes (n 22) 63.



4.2.1 A detailed look at sentencing outcomes for adult offenders

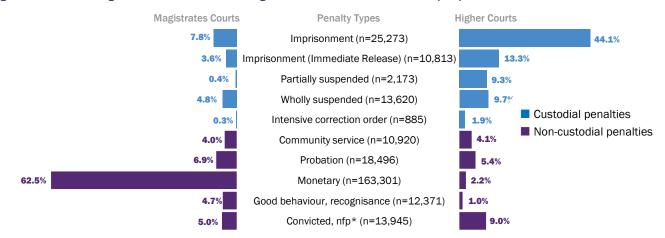
Figure 26 shows the breakdown of custodial and non-custodial penalties imposed on for Aboriginal and Torres Strait Islander adults from 2005–06 to 2018–19 in the Magistrates and higher courts. At first glance, the two most common penalties ordered for adult Aboriginal and Torres Strait Islander peoples were monetary penalties and imprisonment.

Monetary penalties were the most common penalty in the Magistrates Courts, imposed in 62.5 per cent of cases. Among custodial penalties, imprisonment with actual time spent in prison was the most common at 7.8 per cent. An additional 3.6 per cent received an imprisonment sentence with immediate release. As mentioned earlier, only a small proportion of adult cases received a community based order. Of the Magistrates Courts sentences, only 4.0 per cent resulted in a community service order and 6.9 per cent resulted in probation.

For the higher courts, imprisonment was the most common penalty, with 44.1 per cent of cases resulting in actual time spent in prison. An additional 13.3 per cent received a sentence of imprisonment with immediate release. Almost one-fifth (n=2,068, 19.0%) of adults received a suspended sentence of imprisonment (either wholly or partially suspended). A small percentage of cases received a community based order – 4.1 per cent received community service and 5.4 per cent received probation. Convicted and not further punished was the most common non-custodial penalty type imposed in the higher courts at 9.0 per cent.



Figure 26: Sentencing outcomes for adult Aboriginal and Torres Strait Islander peoples



Data includes MSO, adult offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes:

- * nfp means not further punished.
- 1. 5 cases (MSO) in the Magistrates Courts which received a licence disqualification were excluded.
- 2. Some cases have been excluded due to data quality issues.

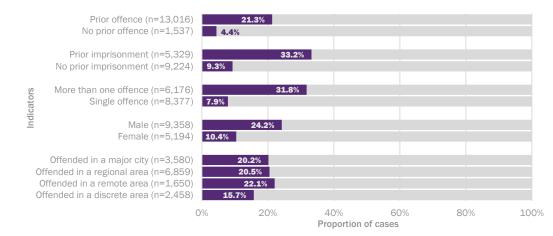
Likelihood of imprisonment

Further analyses were conducted to examine which factors increase the cohort's likelihood of receiving an imprisonment sentence. Those who committed homicide offences and those sentenced as a child were not included in the analysis.

Of the 18,153 cases in 2018–19, 3,600 (16.1%) received an imprisonment sentence.¹¹⁹ Figure 27 shows the proportion of cases that received an imprisonment sentence in 2018–19 based on prior imprisonment, prior offence, single or multiple offences,¹²⁰ gender and the location where the offence occurred (by remoteness). The darker bars indicate the proportion that received an imprisonment sentence in 2018–19.

The analysis shows that offenders who received an imprisonment sentence in 2018-19 were more likely to be male, or to have been sentenced to prior imprisonment or committed a prior offence or have been sentenced for multiple offences. There was a smaller proportion of offenders that have received an imprisonment sentence when they offended in a discrete community compared to other areas.

Figure 27: Proportion of cases that received imprisonment in 2018–19 by selected factors for Aboriginal and Torres Strait Islander peoples



■ Received an imprisonment sentence in 2018-19 ■ Did not receive an imprisonment sentence in 2018-19

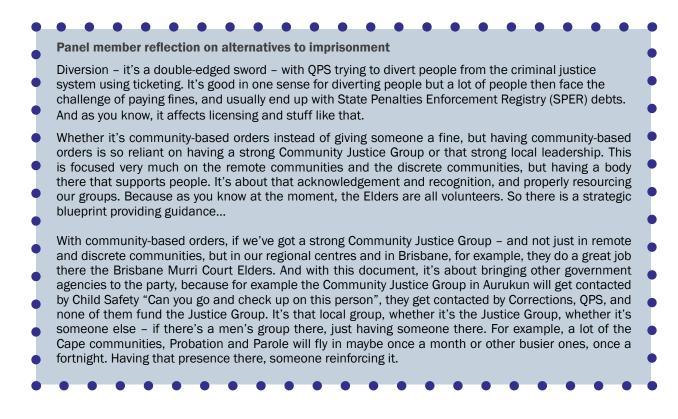
Data includes adult offenders, higher and lower courts, cases sentenced 2018–19 in Queensland.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

119 Those who receive an imprisonment sentence also include offenders who received a partially suspended sentence. 120 Multiple offences include cases where more than one offence was sentenced on the same sentencing event. A logistic regression¹²¹ was performed to predict the likelihood of receiving an imprisonment sentence in 2018–19 based on the factors listed above (with an addition being the age of the offender), while controlling for the seriousness of the offence.¹²²

The results of the model showed that offence seriousness explained 63.7 per cent of the variability in whether an offender received imprisonment or not. In other words, without the other factors, seriousness of the offence was a significant predictor of an imprisonment sentence.¹²³ When prior offence, prior imprisonment and having more than one offence were added to the model, the model's fitness (i.e., how well the model fit the data available) improved.¹²⁴ This finding suggests that the variables of prior offence, prior imprisonment and having more than one offence are also contributing factors. An offender having had a prior imprisonment sentence meant they were 5.8 times more likely to receive imprisonment compared to those without prior imprisonment.¹²⁵ Having been sentenced for a prior offence meant the offender was 3.4 times more likely to receive imprisonment compared to those without a prior offence.¹²⁶ Being sentenced for multiple offences meant the offender was 3.7 times more likely to receive an imprisonment sentence compared to those who were being sentenced for a single offence.¹²⁷

When gender, age and remoteness were added to the model,¹²⁸ being male¹²⁹ and being younger¹³⁰ increased the likelihood of receiving an imprisonment sentence. Compared to females, males were 1.5 times more likely to be imprisoned. Remoteness was not a significant predictor in the model.



¹²¹ Logistic Regression is a statistical model used in order to estimate the probability of an event occurring based on previous data. This particular modelling can help to understand how various factors could influence whether or not a person receives an imprisonment sentence.

- 124 A lower AIC is better. When prior imprisonment, prior offence and having more than one offence was added to the model, the AIC was:11,224.55.
- 125 No prior imprisonment versus has prior imprisonment, O.R. = 5.365 (95% C.I. = 4.827 5.962), b = 1.6798, p < .0001.
- 126 No prior offence versus has prior offence, O.R. = 3.518 (95% C.I. = 2.649 4.672), b = 1.2579, p < .0001.
- 127 Single offence versus more than one offence, O.R. = 3.518 (95% C.I. = 3.322 4.139), b = 1.3104, p < .0001.
- 128 The fitness of this model went slightly higher, suggesting that the factors added to this model may not necessarily improve the model's prediction of the outcome variable When gender, age and remoteness was included in the model, the AIC was 11753.43.

On the dots I

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- 129 Male versus female, O.R. = 1.496 (95% C.I. = 1.327 -1.686), b = 0.4028, p < .0001.
- 130 Offender's age, *b* = -0.00911, *p* < .0005.

¹²² There is a large range of factors that the courts may consider when sentencing an offender. It is impossible to measure and control for them all. For example, relevant variables such as remand was not examined due to the limitations of the data available from the Courts Database. Guilty pleas were also not included in the analysis due to a large number of unknown pleas. The selection of variables in the current model is guided by legal considerations and by a previous empirical research conducted by Lucy Snowball and Don Weatherburn 'Indigenous over-representation in prison: The role of offender characteristics' (September 2009), *NSW Bureau of Crime Statistics and Research*.

¹²³ With only seriousness of the offence as the only factor in the model, the model was significant, F = -1.851 (79), p < 0.001, Log Likelihood: 13,477.16, Akaike's Information Criterion (AIC): 13,481.16.

The Justice Report by the Queensland Government Statistician Office published in 2018–19 showed that the proportion of Aboriginal and Torres Strait Islander children being admitted to youth detention centres is higher compared to non-Indigenous children.¹³¹ In 2018–19, Aboriginal and Torres Strait Islander children children comprised 68.0 per cent of those admitted to detention.

Figure 28 shows the Council's breakdown of custodial and non-custodial penalties imposed on Aboriginal and Torres Strait Islander children from 2005–06 to 2018–19 in all courts. Unlike the penalties imposed on adult offenders, penalties for children are more varied. The most common penalty ordered for children was a reprimand, representing almost a quarter of all cases (n=9,486, 23.9%).

Within custodial penalties, detention was the most common at 5.9 per cent (n=2,347). Conditional release orders (0.2%) and boot camp orders (0.2%) were the least common penalties imposed on juveniles (it is important to note that boot camp orders were only in place for a short period between January 2013 and June 2016).

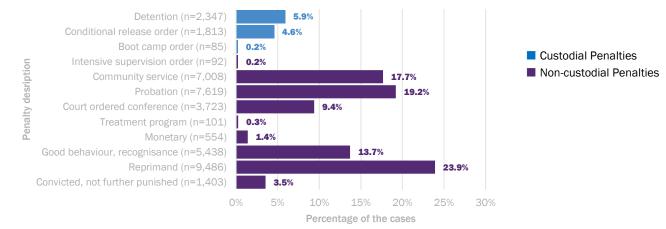
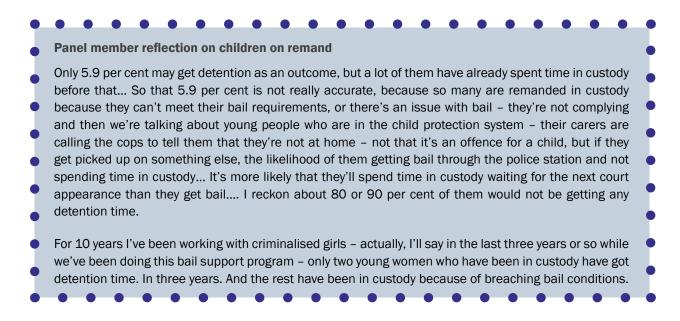


Figure 28: Sentencing outcomes for Aboriginal and Torres Strait Islander children

Data includes MSO, juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: * Boot camp orders were introduced on 31 January 2013 and were repealed from 1 July 2016. The orders were available in a limited number of geographic locations.



131 Queensland Government Statistician Office, Justice report, Queensland, 2018–19: Criminal justice statistics (2020) 80 <<u>https://www.qgso.qld.gov.au/</u> issues/7876/justice-report-qld-2018-19.pdf>

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4.2.3 Length of sentences

Figure 29 and Figure 30 illustrate the distribution of sentence lengths for cases sentenced in the Magistrates Courts and higher courts among adults, while Figure 31 illustrates the distribution of sentence lengths for cases involving children. For more information on the length and number of sentencing outcomes by gender and remoteness, please see the appendices (<u>Appendix 1</u> and <u>Appendix 2</u>).

Aboriginal and Torres Strait Islander adults sentenced in the Magistrates Courts

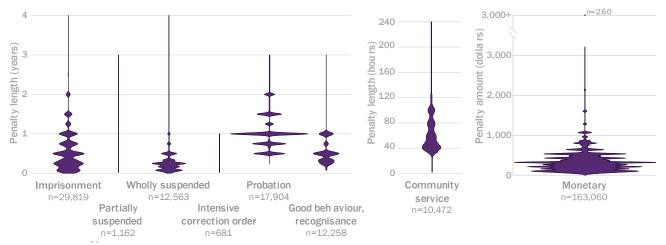
The average sentence length for adults sentenced to imprisonment in the Magistrates Courts was 7.0 months (median=6.0 months). The longest imprisonment sentence was 4 years.¹³² On average, men had longer imprisonment sentences (7.3 months) compared to women (5.3 months). Cases in regional areas received shorter imprisonment sentences on average (6.5 months) compared to other areas.

In the Magistrates Courts, the average head sentence for a partially suspended sentence was 7.2 months (median=6 months) and the longest head sentence was 3 years. The average length of wholly suspended sentences was 3.3 months (median=3.0 months) and the longest wholly suspended sentence was 4 years.

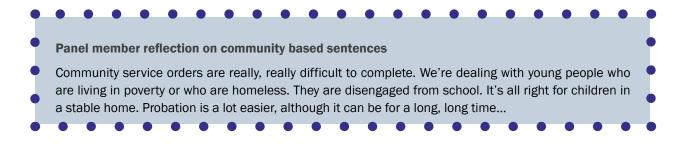
The average length of an intensive correction order was 7.5 months (median=6.1 months) in the Magistrates Courts. The longest intensive correction order was 1 year. For cases that were sentenced to community service, offenders were required to complete an average of 74.2 hours of unpaid community work (median=60 hours).

Probation orders ranged from 3 months to 3 years (the legal maximum), with an average sentence length of 1 year (median=12.0 months). The largest monetary penalty issued was \$59,795.7. On average, offenders who received a monetary penalty were required to pay \$347.1 (median=\$300). The average length of recognisance orders imposed was 1 year (median=6.0 months). The longest recognisance order was 3.0 years while the shortest was 1 month.

Figure 29: Magistrates Courts, distribution of sentence length for adult Aboriginal and Torres Strait Islander peoples



Data includes MSO, adult offenders, lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019. Notes: Some cases have been excluded due to data quality issues.



132 The maximum sentence that can be imposed in the Magistrates Court is three years' imprisonment (although a sentence of up to four years' imprisonment can be imposed by a Magistrates Court sitting as the Drug and Alcohol Court).

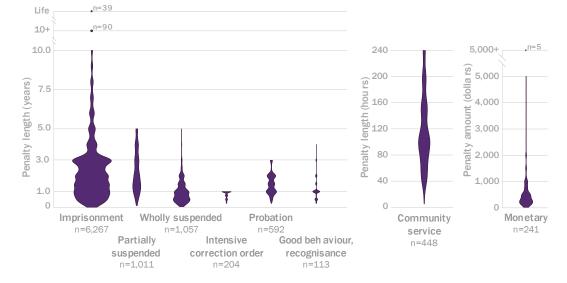
Aboriginal and Torres Strait Islander adults sentenced in the higher courts

In the higher courts, the average length of imprisonment sentence for adults was 2.4 years. Compared to the Magistrates Courts, similar gender differences in the sentence lengths were observed. Men received longer imprisonment sentences on average (2.6 years) than women (1.8 years). In the higher courts, however, cases in remote areas received the shortest average imprisonment sentence at 2.2 years.

When cases in the higher courts were analysed, the average head sentence for a partially suspended sentence was 2.5 years (median=2.0 years) and the longest head sentence was 5 years. The average length of wholly suspended sentences was 1 year (median=12.0 months) and the longest wholly suspended sentence was 4 years. The average length of an intensive correction order was 10.1 months (median=12.0 months), with the longest being 1 year.

Offenders were required to complete an average of 117.8 hours of unpaid community work (median=100 hours) when they were sentenced to a community service order. Similar to the Magistrates Courts, probation orders ranged from 3 months to 3 years. However, the average length was higher at 1.4 years (median=12 months). The largest monetary penalty issued in the higher courts was \$109,251.6. On average, offenders who received a monetary penalty were required to pay \$2,111.9 (median=\$400). The average length of recognisance orders imposed was 1.1 years (median=1.0 year). The longest recognisance order was 4 years while the shortest was 3 months.

Figure 30: Higher courts, distribution of sentence length for adult Aboriginal and Torres Strait Islander peoples



Data includes MSO, adult offenders, higher courts, cases sentenced 2005–06 to 2018–19 in Queensland.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

Aboriginal and Torres Strait Islander children sentenced in the Children Courts

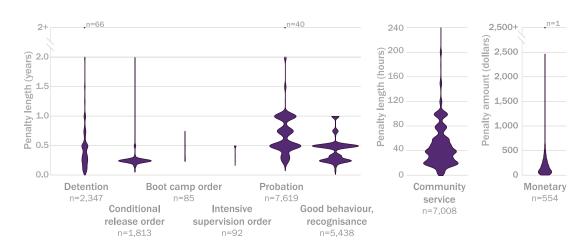
As mentioned earlier, the most common custodial penalty imposed on Aboriginal and Torres Strait Islander children was detention. The average sentence length for children sentenced to detention was 6.7 months (median=5 months). The longest detention sentence was 8 years while the shortest detention sentence was 2 days. On average, boys had slightly longer detention sentences (6.8 months) compared to girls (5.9 months). In cases where a conditional release order was issued, the average order had a head sentence of 3.3 months (median=3 months), and the longest sentence was for 2 years. There were a small number of boot camp orders and intensive supervision orders compared to the other custodial penalties. For boot camp orders, the average length was 4.2 months (median=4.0) and for intensive supervision orders, the average length was 4.8 months (median=5.0).

Probation was the most common non-custodial penalty imposed on children with an average length of 8.5 months (median=8,1). Community service was also a common penalty for this cohort. The average time of community service orders for children was 49.0 hours (median=55.0). The longest community service order was 240 hours and the shortest was 1 hour.

The largest monetary penalty issued was \$5,500. On average, children who received a monetary penalty were required to pay \$221.5 (median=\$100). The average length of recognisance orders imposed was 5.3 months (median=5.5 months). The longest recognisance order was 1 year while the shortest was 3 months.







Data includes MSO, juvenile offenders, higher courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

Concluding remarks

This report presents a statistical profile of Aboriginal and Torres Strait Islander peoples who are sentenced in Queensland's criminal courts. It provides a rich understanding of the available data by focusing on the relationships between different types of information from the courts, by analysing trends over time and by drawing on the broader criminological literature that addresses the sentencing of this cohort.

For too long, the issue of the over-representation of Aboriginal and Torres Strait Islander peoples has remained unsolved. Despite the best efforts of so many in government agencies, non-government agencies and individual communities, the numbers of our Aboriginal and Torres Strait Islander peoples in the criminal justice system seem intractably high. In fact, there is clearly an increasing rate of Aboriginal and Torres Strait Islander peoples being sentenced to imprisonment, despite the overall rates of Aboriginal and Torres Strait Islander offenders reducing over time.

However, this report is more than just a presentation of statistical information. Sitting behind the numbers are the individual stories and experiences of Aboriginal and Torres Strait Islander Queenslanders. Data can only get us so far in the quest to unravel the reasons and reality of over-representation. This report presents the lived experience of Aboriginal and Torres Strait Islander peoples through the eyes of the Council's Aboriginal and Torres Strait Islander Advisory Panel members, who so generously gave of their time to share their insights and stories.

This work delivers on the intention of the Queensland Sentencing Advisory Council to inform the community about sentencing for Aboriginal and Torres Strait Islander peoples, to get behind the statistics in order to understand what drives these sentencing patterns and to make this data publicly available. In doing so, it can be used to inform policy, and to provide government and non-government agencies and individual communities an understanding of how to address offending behaviour more effectively. The Council acknowledges the great energy and innovation so evident in the commentary offered by Advisory Panel members in discussing the complex and layered issues underlying the data analysis. Solutions such as the Murri Court clearly need to be tailored to individual situations and locations, and to build on the ideas already being discussed within Aboriginal and Torres Strait Islander communities.

While the service and program needs of Aboriginal and Torres Strait Islander communities are highlighted in this report, a common theme discussed by Advisory Panel members was the fundamental lack of understanding by many defendants of the legal terminology and language used in the criminal courts. This is one area where the Council and the Aboriginal and Torres Strait Islander Advisory Panel can help. The Council is committed to continuing the task of creating better communication tools for people attending Queensland courts and being sentenced. This work has already begun with the publication of the *Queensland Sentencing Guide*, and the work with the sentencing definitions video series which have been written and voiced by members of the Advisory Panel. There is more work that can be done to support people attending court to receive a clear understanding of what is required of them, and how to succeed once they have been sentenced. The Council is committed to being part of the solution.

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Appendix 1 Magistrates Courts and higher courts, sentence lengths by gender and remoteness levels for adult Aboriginal and Torres Strait Islander peoples

	Ad	ults - Mag	istrates Co	urts			Adult	s - Higher (Courts			
					Imprisonment	(months)						
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max		
Female	4,297	5.3	3.9	0	36	1,052	22.0	18.0	0	Life		
Male	25,520	7.3	6.0	0	48	5,214	30.8	24.0	0	Life		
Major City	6,185	7.5	6.0	0	48	1,779	30.7	24.0	0	Life		
Regional	14,886	6.5	5.6	0	46	2,676	30.1	24.0	0	Life		
Remote	3,316	7.6	6.0	0	36	557	25.8	24.0	0	Life		
Discrete	5,421	7.4	6.0	0	36	1,246	27.1	24.0	0	Life		
Total	29,819	7.0	6.0	0	48	6,267	29.3	24.0	0	Life		
				Pa	rtially suspend	led (mont	hs)					
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max		
Female	167	6.9	6.0	0	36	133	25.7	24.0	0	60		
Male	995	7.3	6.0	0	36	878	27.2	24.0	0	60		
Major City	236	8.0	6.0	0	36	208	31.6	30.0	3	60		
Regional	574	6.8	6.0	0	36	469	26.3	24.0	1	60		
Remote	151	6.6	6.0	0	24	123	25.8	18.1	3	60		
Discrete	201	7.8	6.0	1	36	210	24.6	21.0	4	60		
Total	1,162	7.2	6.0	0	36	1,011	27.0	24.0	1	60		
				w	holly suspende	ed (month	s)					
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Мах		
Female	2,749	3.1	2.9	0	48	318	12.2	12.0	1	60		
Male	9,812	3.4	3.0	0	36	739	12.2	12.0	0	60		
Major City	236	8.0	2.9	0	36	208	31.6	12.0	3	60		
Regional	574	6.8	3.0	0	36	469	26.3	9.1	1	60		
Remote	151	6.6	3.0	0	24	123	25.8	12.0	3	60		
Discrete	201	7.8	3.0	1	36	210	24.6	12.0	4	60		
Total	12,563	3.3	3.0	0	48	1,057	12.2	12.0	0	60		
				Intens	ive correction	on order (months)						
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Мах		
Female	123	7.4	6.1	2	12	54	8.9	9.0	3	12		
Male	558	7.5	6.1	0	12	150	10.5	12.0	3	12		
Major City	168	7.8	8.2	2	12	67	10.6	12.0	4	12		
Regional	308	7.4	6.1	2	12	82	10.3	12.0	3	12		
Remote	55	6.9	6.0	1	12	16	9.4	10.5	3	12		
Discrete	149	7.5	6.1	0	12	39	8.8	9.0	3	12		
Total	681	7.5	6.1	0	12	204	10.1	12.0	3	12		
				С	ommunity serv	vice (hours	s)					
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max		
Female	2,783	69.9	60.0	3	240	142	109.3	100.0	25	240		
Male	7,687	75.8	60.0	2	240	306	121.7	60.0	5	240		
Major City	1,604	76.4	60.0	5	240	119	128.9	120.0	5	240		
Regional	4,250	76.5	60.0	2	240	140	115.7	100.0	5	240		
Remote	1,496	68.4	60.0	5	240	51	115.6	100.0	50	240		
Discrete	3,112	72.7	60.0	5	240	137	110.5	100.0	25	240		
	1	74.2		2	240	448	117.8	100.0	5	240		

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	Adults - Magistrates Courts						Adult	s - Higher (Courts	
	Probation (months)									
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
Female	6,242	11.6	12.0	3	36	252	17.9	18.0	6	36
Male	11,661	12.3	12.0	3	36	340	17.8	18.0	3	36
Major City	3,269	12.8	12.0	3	36	182	19.5	18.0	3	36
Regional	7,935	12.2	12.0	3	36	218	17.8	18.0	6	36
Remote	2,659	11.8	12.0	4	36	56	17.8	15.0	6	36
Discrete	4,035	11.5	12.0	3	36	135	15.7	12.0	6	36
Total	17,904	12.1	12.0	3	36	592	17.9	12.0	3	36
					Monetary (d	lollars)				
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Мах
Female	55,640	\$328.2	\$250	\$2	\$59,795	65	\$3,739.4	\$300	\$40	\$79,650
Male	107,395	\$357.0	\$300	\$1	\$38,500	176	\$1,510.9	\$400	\$20	\$109,252
Major City	33,273	\$378.4	\$300	\$2	\$48,747	65	\$4,320.0	\$400	\$75	\$109,252
Regional	80,420	\$328.2	\$250	\$1	\$59,795	109	\$1,257.3	\$400	\$20	\$79,650
Remote	18,193	\$378.1	\$300	\$8	\$35,000	29	\$506.5	\$500	\$100	\$1,200
Discrete	31,127	\$343.1	\$300	\$9	\$35,186	37	\$2,058.0	\$300	\$100	\$62,435
Total	163,060	\$347.1	\$300	\$1	\$59,795	241	\$2,111.9	\$400	\$20	\$109,252
			G	ood b <u>e</u> h	aviour, recog	nisanc <u>e</u> (months)			
	N	Avg	Median	Min	Мах	N	Avg	Median	Min	Мах

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	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
Female	5,820	6.7	6.0	1	36	40	13.0	12.0	3	36
Male	6,433	6.6	6.0	1	36	73	13.7	12.0	3	48
Major City	3,479	6.3	6.0	1	36	19	12.0	12.0	3	24
Regional	5,068	6.5	6.0	1	36	41	14.5	12.0	3	48
Remote	1,497	7.0	6.0	1	36	18	14.1	12.0	3	36
Discrete	2,206	7.2	6.0	1	36	35	12.6	12.0	3	36
Total	12,258	12.1	6.0	1	36	113	13.4	12.0	3	48

Data includes MSO, adult offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019. 39 cases received life imprisonment.
 Some cases may have been excluded due to data quality issues.

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Appendix 2 All courts, sentence lengths by gender and remoteness for Aboriginal and Torres Strait Islander children

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	Children - All Courts										
	Detention (months)										
	N	Avg	Median	Min	Max						
Female	274	5.9	4.0	0	36						
Male	2,073	6.8	5.0	0	96						
Major City	314	9.4	6.0	0	72						
Regional	1,514	6.6	5.0	0	96						
Remote	229	4.9	4.0	0	36						
Discrete	290	5.5	4.0	0	54						
Total	2,347	6.7	5.0	0	96						
	Cond	litional rel	ease order	(months)						
	N	Avg	Median	Min	Max						
Female	259	3.1	3.0	1	12						
Male	1,554	3.3	3.0	1	24						
Major City	241	3.5	3.0	1	18						
Regional	1,077	3.2	3.0	1	24						
Remote	229	3.2	3.0	1	8						
Discrete	265	3.2	3.0	1	12						
Total	1,813	3.3	3.0	1	24						
		Boot camp	order (moi	nths)							
	N	Avg	Median	Min	Max						
Female	23	3.1	3.9	3	6						
Male	62	3.3	4.0	3	9						
Major City*	-	-	-	-	-						
Regional	82	4.2	4.0	3	9						
Remote*	-	-	-	-	-						
Discrete*	-	-	-	-	-						
Total	85	4.2	4.0	3	9						
	Intens	sive superv	vision order	(month	s)						
	N	Avg	Median	Min	Max						
Female*	-	-	-	-	-						
Male	86	5.5	6.0	3	6						
Major City*	-	-	-	-	-						
Regional	55	5.6	6.0	3	6						
Remote	13	5.3	6.1	2	6						
Discrete	19	5.1	6.0	3	6						
Total	92	4.8	6.0	2	6						
	C	Community	/ service (h	ours)							
	N	Avg	Median	Min	Max						
Female	1,377	43.3	40.0	1	200						
Male	5,631	50.4	40.0	1	240						
Major City	1,094	49.6	40.0	1	240						
Regional	3,873	49.3	40.0	1	200						
Remote	735	46.3	40.0	2	200						
				_							
Discrete	1,303	49.2	40.0	2	200						

	Children - All Courts										
		Probat	ion (months	i)							
	N	Avg	Median	Min	Max						
Female	2,023	8.1	6.1	1	36						
Male	5,596	8.6	8.0	1	36						
Major City	1,512	9.0	6.1	1	36						
Regional	3,963	8.3	6.1	1	36						
Remote	1,010	8.5	9.0	1	36						
Discrete	1,133	8.5	9.0	2	36						
Total	7,619	8.5	7.0	1	36						
		Monet	ary (dollars)							
	N	Avg	Median	Min	Max						
Female	130	\$163.0	\$80	\$0	\$1,550						
Male	424	\$239.5	\$150	\$0	\$5,500						
Major City	109	\$197.1	\$100	\$0	\$2,462						
Regional	325	\$224.0	\$115	\$0	\$5,500						
Remote	64	\$209.3	\$200	\$0	\$900						
Discrete	56	\$268.4	\$200	\$0	\$1,928						
Total	554	\$221.5	\$150	\$2	\$5,500						
	Good	behaviour, ı	recognisan	ce (mor	iths)						
	N	Avg	Median	Min	Max						
Female	1,674	5.2	6.0	0	12						
Male	3,764	5.4	6.0	1	12						
Major City	1,590	5.4	6.0	1	12						
Regional	2,684	5.3	6.0	0	12						
Remote	548	5.5	6.0	2	12						
Discrete	615	5.2	6.0	1	12						
Total	5,438	5.3	6.0	0	12						

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Data includes MSO, juvenile offenders, higher and lower courts, cases sentenced 2005–06 to 2018–19 in Queensland. Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019. Notes: * denotes small sample sizes (n <10) and statistics are not presented.





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Queensland Sentencing Advisory Council

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