



# **Exploring Bail and Remand Experiences for Indigenous Queenslanders**

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## **EXECUTIVE SUMMARY**

This report presents the findings of a comprehensive study on the bail and remand experiences of Aboriginal and Torres Strait Islanders in Queensland. The project specifically examined the factors influencing whether Aboriginal and Torres Strait Islander accused adults were refused bail and instead held in custodial remand, and identified ways to assist Indigenous people to comply with bail conditions. The project addressed four key objectives.

1. To identify the key decision making points as well as the factors and processes that affect the decision to bail or remand an Indigenous accused person;
2. To identify factors impacting on an Indigenous person's ability to meet bail conditions as well as best practice in bail programs;
3. To understand how government data can be used to better predict the granting of bail and compliance with bail conditions for Indigenous persons; and,
4. To cost program options aimed at reducing the Indigenous over-representation in custodial remand.

### **Methodology**

The project includes a comprehensive literature review on the bail and remand experiences of Indigenous Australians and makes use of information from a variety of qualitative and quantitative data sources. We consulted a range of key stakeholders including members of the Aboriginal and Torres Strait Islander community, police, legal practitioners, Magistrates, and staff from other criminal justice services. In addition, we analysed administrative data from the Queensland Police Service, Department of Justice and Attorney-General (Magistrates', District, and Supreme Courts) and Queensland Corrective Services.

### **Background**

Indigenous people are over-represented in all areas of the criminal justice system in every Australian jurisdiction including in police contacts, as defendants in the lower and higher courts, and in the prison population as both sentenced and unSENTENCED (remanded) detainees. In relation to custodial remand specifically, there has been

little research on the relationship between Indigenous status and custodial remand. However, Indigenous remandees appear to represent a particularly vulnerable, high risk sub-group within the remand population comprising individuals with higher levels of criminogenic needs and experiences than many sentenced prisoners.

Interventions addressing the over-representation of Indigenous people in custodial remand need to be aimed at both addressing the underlying causes of the offending behaviour and targeting bail decision-making and procedures in the criminal justice system. Research including both non-Indigenous and Indigenous remandees demonstrates that governments can influence custodial remand rates by a range of policy and practice initiatives which address the social welfare needs of offenders, provide alternatives to custodial detention in appropriate cases, increase the likelihood that defendants are offered bail, and then provide the necessary support to defendants to meet bail conditions and subsequently appear at court.

## **Consultations with key stakeholders**

As part of the project, a sample of key stakeholders from across the State were interviewed about the factors associated with the bail and custodial remand experiences of Aboriginal and Torres Strait Island Queenslanders and ways to increase the likelihood that they would be granted bail and successfully comply with bail conditions.

While interviewees differed in their opinions of the extent that Indigenous over-representation in custodial remand was influenced by either, (i) the differential treatment of Indigenous people by the criminal justice system, (ii) the conflict between their lifestyle and the “mainstream” system, or (iii) the nature of Indigenous offending and re-offending, all recognised the severe social, economic and cultural disadvantage that underlies much Indigenous offending. Bail-decision making was seen to be influenced by (i) legal variables including the legislative framework, nature of the offence, defendant’s criminal and bail history, and the need to protect victims and witnesses; (ii) offender characteristics, (iii) access to competent legal representation, (iv) the availability of suitable accommodation for offenders, and (v) the availability of bail and treatment programs and diversionary options. Not surprisingly, because of the decentralised nature of the state, smaller regional towns and remote locations most often had limited, or no access to accommodation or programs, and faced additional challenges in the provision of adequate legal representation. As a disproportionate number of Indigenous Queenslanders live in these regional towns and remote locations, this shortage of services has a negative impact on their criminal justice outcomes.

Several interviewees also maintained that compliance with bail conditions was often difficult for Indigenous people because of their

inability to comply with “standard” bail conditions (e.g. curfews, residence restrictions, reporting requirements and alcohol bans). Failure to comply with these conditions along with the stringent policing of minor breaches in some locations increased the risk of custodial remand for Indigenous defendants, with court delays then contributing to the length of time defendants remained in remand.

Interviewees offered a range of suggestions for decreasing custodial remand rates by increasing the likelihood that Indigenous offenders would be offered bail and successfully comply with any imposed bail conditions. Suggestions specifically related to (i) legislative changes, (ii) initiatives addressing Indigenous defendants’ accumulation of a bail history, (iii) the application of “thoughtful” bail conditions which address the offender’s criminogenic needs, (iv) less stringent policing of lower-level breaching of bail conditions, (v) increasing the availability of appropriate accommodation, diversion, and bail programs through co-ordinated services from criminal justice agencies, (vi) improving the access to, and quality of legal representation available to Indigenous people across the state, and (vii) implementing initiatives to minimise court delays (e.g. the use of video links).

Interviewees however maintained that the most important, long-term solution to Indigenous over-representation was to address the underlying factors which bring Indigenous people into contact with the criminal justice system (e.g. alcohol treatment programs, and, importantly, programs focusing on education, training and employment).

## **Key findings on trends and patterns in remand in police custody**

These analyses examined important characteristics and trends in police custodial remand in Queensland for Indigenous and non-Indigenous arrestees in the remand system over a ten-year period (1999-2008). The findings illustrate how Indigenous remanded adults compared with non-Indigenous remanded adults, as well as highlight factors that influence and predict remand outcomes in police decision-making. Analyses are based on an extraction of data from the Queensland Police Service custody database.

Indigenous males and females are over-represented in both arrests and remand in police custody. In relation to the risk of remand, Indigenous male arrestees are more at risk of remand than either Indigenous females, or non-Indigenous males and females.

In general, Indigenous males have a greater prevalence of previous remand episodes, prior arrests, and previous Failures to Appear (FTAs) – all characteristics we found to be important predictors of

remand. Therefore it is not surprising that Indigenous males are at higher risk of both being held in remand, and remaining in police custody for longer periods.

In separate regression analyses we examined the combined effect of gender and Indigenous status on the risk of remand as well as the length of time spent in police custody. The regression analyses compensated for the arrestees' demographic characteristics, offending history, and current offence type. In these analyses, the reference group was non-Indigenous females. Results showed that the only statistically significant relationship was for Indigenous males who had a higher risk of remand and served longer periods in police custody than non-Indigenous females.

However, weak community ties – particularly weak employment and family ties – have been shown to adversely influence remand decisions. Thus, if information on these characteristics had been available, and Indigenous arrestees (in particular, Indigenous males) had weaker average levels of employment and family responsibilities, it is possible that this “Indigenous male effect” might disappear, or at least be reduced.

Importantly, while only small numbers of arrestees were diverted during police processing, Indigenous males and females were more likely to be diverted than non-Indigenous males and females. For example, 10% of the arrests of Indigenous males and 11% of the arrests of Indigenous females involved alcohol diversion, compared to 0.3% of the arrests of non-Indigenous males and 0.2% of the non-Indigenous females.

## **Key findings on trends and patterns in court appearances**

These analyses examined important characteristics and trends for court-imposed remand for Indigenous and non-Indigenous defendants in the remand system over a six-year period (2004-2009). The findings illustrate how Indigenous remanded adults compare with non-Indigenous remanded adults, as well as highlight factors that influence and predict remand outcomes in court decision-making. Analyses are based on an extraction from the Queensland Wide Interlinked Courts system (QWIC), which is the administrative database of the Department of Justice and Attorney-General (DJAG). This data extract includes information on all Magistrates’ Courts and some District and Supreme Courts for Queensland.

Indigenous males and females are over-represented in the courts, relative to their proportion of Queensland’s population. They are also over-represented among the remandees, and this is particularly the case for Indigenous males.

Once again, the prior and current offending patterns of both Indigenous male and female defendants place them at greater risk of remand. Indigenous males and females had more violent offences, and current charges for failures to appear, bail violations (combining FTAs and non-FTAs), violations of justice orders, and violations of domestic violence orders than non-Indigenous males and females. In relation to prior history, both Indigenous male and female defendants also had a greater prevalence of prior remand episodes, prior convictions, previous failures to appear, previous non-FTA bail violations, and prior violations of justice orders than their same-sex non-Indigenous counterparts. For all of these factors, Indigenous males had even higher rates than those of Indigenous females.

Indigenous males also had a higher prevalence of mental health issues than Indigenous females, and non-Indigenous males and females. Both Indigenous males and females had higher rates of alcohol abuse than non-Indigenous males and females. In contrast, Indigenous defendants had a lower prevalence of drug abuse and substance abuse (unspecified), and drug offences. Indigenous defendants were also more likely to appear for less serious offences than non-Indigenous defendants.

The regression analyses which compensated for the average levels of demographic characteristics, offending history, and current offence characteristics, indicate that net of these available characteristics, Indigenous males are still more likely to be remanded in custody than non-Indigenous females. Indigenous females are also more likely to be held than non-Indigenous females – although not to the degree that Indigenous males are held.

As with the police custody data, we had no measure of community ties (e.g. employment stability and family ties) – factors which influence remand decisions. Thus, if information on these characteristics had been available for inclusion in the analyses, these additional characteristics may have negated the increased risk of Indigenous remand.

While Indigenous males and females were more likely to be remanded in custody, the length of time remandees remained in court-ordered custody was not adversely influenced by Indigenous status. Net of the characteristics included in the regression analyses, Indigenous males are held in remand for the same average length of time as non-Indigenous females, and Indigenous females are actually held for a shorter length of time.

Similar to police processing, both Indigenous male and female defendants were more likely to be diverted by the court than non-Indigenous males and females, though fewer were diverted than

during police processing. However, very few Indigenous persons were diverted to the Murri Court (less than 1%), Indigenous males were more likely to be transferred than Indigenous females. Consequently, few Indigenous defendants were receiving access to the Murri Court. As our cost-benefits analysis demonstrated – programs or initiatives which cost less than approximately \$1,700 for each Indigenous offender’s court appearance are likely to be cost effective for the Queensland Government.

## **Key findings on trends and patterns in remand in correctional institutions**

These analyses examined important characteristics and trends for Indigenous and non-Indigenous remandees in correctional institutions over the four-year period (2006-2009). The findings illustrate how Indigenous remanded adults compare with non-Indigenous remanded adults as well as highlighting factors that influence and predict the length of remand in correctional institutions. Analyses are based on an extraction of data provided by Queensland Corrective Services.

Relative to their proportion in the Queensland population, Indigenous males and females are over-represented in the remand population in correctional institutions. This was particularly the case for Indigenous males. When compared with non-Indigenous remandees, Indigenous remandees were younger on admission, more likely to be unemployed and more likely to be in a relationship.

Indigenous remandees were held for 9.84 days less than non-Indigenous remandees. Furthermore, within both Indigenous status groups, Indigenous and non-Indigenous males were held for longer periods in remand than their female counterparts. However, the difference in the average length of remand time is greatest between male and female non-Indigenous remandees (difference = 6.12 days) compared with only 1.79 days between Indigenous males and females. Overall the length of time remandees spend on remand appears to be decreasing from 2007-2009. While the majority of all remandees were held in remand only once between 2006-2009, Indigenous remandees were more likely to have been remanded multiple times than non-Indigenous remandees.

In relation to offences, non-Indigenous remandees (both males and females) had committed a greater number of offences for each remand episode than both Indigenous males and females. Within Indigenous status groups, males had committed a greater number of offences than females. In contrast, both male and female Indigenous remandees had committed more serious offences than non-Indigenous male and female remandees, with only a very small difference between Indigenous male and female remandees. For non-Indigenous remandees, males were more likely to have been remanded for more

serious offences than non-Indigenous females (12.06 point difference). Both Indigenous males and females were more likely to have committed violent offences and breaches of the Justice Act than non-Indigenous males and females.

The regression analyses which compensated for the average levels of demographic, individual, and offence characteristics indicate that net of these characteristics, neither Indigenous males nor females were remanded for longer than their non-Indigenous counterparts. Rather, the length of remand related to offending, with remandees who had committed violent offences held for longer (1.6 times longer), while those who had committed either domestic violence offences or Justice Act offences were held fewer days on remand.

## **Conclusions and Recommendations**

### ***Over-representation of Indigenous people***

Overall, our analyses of administrative data from the Queensland Police Service, Department of Justice and Attorney-General (Magistrates' Court, District Court, and Supreme Court), and Corrective Services showed that Indigenous Queenslanders were over-represented in relation to arrest, court appearances, and custodial remand in both police and Queensland Corrective Services custody. Even after considering the influence of legal variables on police decisions to remand, Indigenous males were at greater risk of both being held in remand, and remaining in custody for longer periods. In contrast, Indigenous females' increased likelihood of police remand was accounted for by legal variables (e.g. current and previous offending) and demographic characteristics.

In relation to court ordered remand, regardless of their current and former offending, both Indigenous males and females were at greater risk of custodial remand. Yet once remanded, they were not held for longer than their non-Indigenous counterparts, with Indigenous females actually held for shorter periods than non-Indigenous females.

The increased likelihood that Indigenous people will be remanded in custody may either reflect the differential treatment of Indigenous people, and particularly Indigenous males, by police and the courts, or Indigenous status may instead be a marker of underlying disadvantage, which itself is related to their increased likelihood of custodial remand.

Over time the percentage of Indigenous offenders who were arrested or held in court ordered remand has been declining. In contrast, the

percentage of offenders identifying as Indigenous who were remanded in police custody has been increasing since 2003, while there has been a decline in the percentage of non-Indigenous remandees during this same period. Police bail decision-making may be a particularly important intervention point to help decrease the over-representation of Indigenous people in custodial remand.

### ***Nature of offending by Indigenous people***

Current and previous offending influences bail decision-making with recidivist offenders with extensive criminal histories including failures to appear in court or violations of bail conditions, and prior remand experiences particularly vulnerable to being remanded. At both the police and court bail phase, compared with their non-Indigenous counterparts, both male and female Indigenous offenders were consistently more likely to have an offending history including previous arrests, failures to appear and other bail violations, court violations, justice order violations and former periods of remand in both police, and court ordered custody.

Similarly, when considering current offences at court appearance, Indigenous males and females were again consistently more likely to have current failures to appear, bail violations, breach of domestic violence orders, breach of justice orders and violent offences – all factors which are associated with an increased risk of bail refusal. Failure to appear in court and breaching bail conditions in particular increase the likelihood of a return to police and court ordered custody.

Therefore Indigenous offenders' pattern of current and prior offending and remand history makes it more difficult for them to access bail and meet bail conditions with a greater risk of remand in either police or court ordered custody. Importantly, social, economic and cultural disadvantage underlies much of the offending by Indigenous people. Certainly our analyses of the administrative data highlighted that in comparison with non-Indigenous offenders, Indigenous offenders were more likely to be unemployed, and be identified as having an alcohol problem. Indigenous remandees may be particularly vulnerable with even greater criminogenic needs than their non-remanded counterparts.

The most important, long-term solution to Indigenous over-representation is to provide programs addressing the social, economic, and cultural disadvantage experienced by Indigenous people by specifically targeting those areas thought to be most related to offending; low educational attainment, unemployment, and substance abuse (particularly alcohol abuse) by providing alcohol and drug treatment, and programs focused on education, training, and employment. Further, it is also important to consider the legislative framework for bail decision-making and to target interventions to

various points during police and court processing to increase the likelihood that Indigenous offenders will be offered bail, and increase their likelihood of bail compliance. Initiatives which (i) divert Indigenous offenders from further involvement in the criminal justice system, (ii) provide assistance so offenders can avoid the accumulation of a bail history, be adequately accommodated, and successfully complete bail conditions, and (iii) improve the quality of legal representation offered to Indigenous offenders are likely to decrease the likelihood that they will need to be remanded in custody. Also initiatives which address delays in court processing will affect the length of time defendants remain in custody.

Lastly, any initiatives to improve the likelihood that Indigenous offenders will be offered bail also need to include ongoing monitoring of changes in both their representation in the custodial remand population, and in the bail and custodial remand experiences of Indigenous offenders. The Queensland Police Service, Department of Justice and Attorney-General and Queensland Corrective Services keep extensive data on criminal justice clients but its use in guiding policy and service delivery is currently being under-utilised. To maximise the utility of the criminal justice data it would be beneficial for improvements to be made to the current data collection in relation to the identification of the individual within and across data systems, the provision of information regarding offences, social and economic status of the offender, and reasons for custodial remand decisions.

Twenty-four key recommendations to address the over-representation of Aboriginal and Torres Strait Islanders in custodial remand and enhance the likelihood of bail being granted were developed as a result of this research.

**Recommendation 1**

**That the Queensland Government continue with its efforts to address the social, economic and cultural disadvantage experienced by Aboriginal and Torres Strait Islander Queenslanders which underlies much Indigenous offending.**

**Recommendation 2**

**That the Queensland Government particularly focus on providing alcohol and substance abuse treatment and education, and training and employment initiatives for Indigenous offenders.**

**Recommendation 3**

**That the Queensland Government consider legislative amendments to remove minor offences from defendants' criminal history.**

**Recommendation 4**

**That the Queensland Government consider increasing the legislative options for dealing with breaches of bail conditions and failures to appear in court.**

**Recommendation 5**

**That the Queensland Government consider introducing alternate methods for dealing with public drunkenness.**

**Recommendation 6**

**That the Queensland Government increase the availability of diversionary options during both police and court processing.<sup>1</sup>**

**Recommendation 7**

**That the Queensland Government facilitate the wider dissemination of information about diversion programs among key stakeholders in the criminal justice system.**

**Recommendation 8**

**That the Queensland Government monitor the eligibility criteria of diversionary programs to ensure that Indigenous offenders most in need of treatment are not being systematically excluded from participation.**

**Recommendation 9**

**That the Queensland Government consider increasing the practical assistance offered to Indigenous defendants to attend court and ensure they understand their obligations to comply with bail conditions and appear at court.**

**Recommendation 10**

**That the Queensland Government consider having a specific worker whose duties include the identification of local accommodation options which are provided to the court.**

**Recommendation 11**

**That the Queensland Government consider increasing the availability of accommodation services tailored to the needs of offenders, where these services are cost effective.**

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<sup>1</sup>The Queensland Police Service have recently announced the state-wide roll out of public nuisance ticketing which offers police an alternate option to enforce public order offences in an attempt to divert people from the criminal justice system.

**Recommendation 12**

**That the Queensland Government increase the availability of bail programs to assist offenders to obtain bail, comply with bail conditions and attend court.**

**Recommendation 13**

**That the Queensland Government engage with the Magistrates' Court to consider mechanisms to increase referrals to the Murri Court.**

**Recommendation 14**

**That the Queensland Government identify successful local initiatives assisting Aboriginal and Torres Strait Islander offenders to attend court and comply with bail to investigate the possibility of their implementation in other locations.**

**Recommendation 15**

**That the Queensland Government facilitate the formalisation of effective local initiatives to enhance the likelihood that such efforts can be maintained over the long term.**

**Recommendation 16**

**That the Queensland Government investigate providing funding to Community Justice Groups to operate bail programs in their locality, and particularly in areas with limited service provision such as remote and rural areas and smaller regional towns.<sup>2</sup>**

**Recommendation 17**

**That the Queensland Government consider undertaking a financial review of the funding of the legal services to Aboriginal and Torres Strait Islander defendants through Legal Aid Queensland to increase the likelihood that Indigenous Queenslanders are provided with competent legal representation.**

**Recommendation 18**

**That the Queensland Government consider identifying possible alternate methods of service provision (e.g., video links) to**

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<sup>2</sup>We acknowledge that this proposal would need to be considered locally on a case by case basis as Community Justice Groups operate differently in various locations.

**improve Aboriginal and Torres Strait Islander defendants' access to their legal representatives.**

**Recommendation 19**

**That the Queensland Government support independent legal professional bodies in the development and implementation of protocols and training to improve the professional services provided to Aboriginal and Torres Strait Islanders.**

**Recommendation 20**

**That the Queensland Government improve data collection processes to provide a unique identifier for each individual that is consistently used both within agency records and across all criminal justice (QPS, DJAG, and QCS) and Queensland Health government databases and that these databases are integrated.**

**Recommendation 21**

**That the Queensland Police Service consider including an indication of offence category for each offender in its custody database.**

**Recommendation 22**

**That the Queensland Government consider including more precise information on failures to appear in all criminal justice databases.<sup>3</sup>**

**Recommendation 23**

**That the Queensland Government explore ways to include measures of social and economic status (e.g., employment status) and specific reasons for custodial remand in all criminal justice databases.<sup>4</sup>**

**Recommendation 24**

**That the Queensland Government consider undertaking regular analyses of their administrative data to identify trends, regional**

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<sup>3</sup> Currently, FTAs are frequently recorded under bail violations. It would be beneficial to have two separate categories: bail violations (excluding FTAs) and FTAs recorded in the data.

<sup>4</sup> Some of these measures are already included in the Queensland Corrective Services database. At present however, this information is not contained in the databases of the Queensland Police Service or Department of Justice and Attorney-General.

**variations and changes in bail decisions and custodial remand rates for Aboriginal and Torres Strait Islanders in Queensland.**

# **CHAPTER 1 INTRODUCTION AND LITERATURE REVIEW**

## **1.1 Introduction**

This report includes the findings of a detailed examination of the bail and remand experiences of Aboriginal and Torres Strait Islanders in Queensland. It specifically focuses on the factors that influence Aboriginal and Torres Strait Islander accused adults being refused bail, and examines ways to assist Indigenous people to comply with bail conditions. Of particular concern is the continuing over-representation of Indigenous people in the Queensland custodial remand population.

Our report is comprised of six chapters, which includes a detailed literature review (chapter 1), presentation of the key research findings based on the extensive consultations (chapter 2), an examination of administrative data from the Queensland Police Service (QPS) (chapter 3), the Department of Justice and Attorney-General (Magistrates', District and Supreme Courts) (chapter 4), and Queensland Corrective Services (chapter 5), and a discussion and conclusion section with recommendations for reform (chapter 6).

## **1.2 Overview of the literature review**

In the current chapter, we present a comprehensive literature review on the bail and remand experiences of Indigenous Australians. This chapter consists of eight sections: (i) background, (ii) the over-representation of Indigenous people within the criminal justice system, (iii) nature of offending by Indigenous people, (iv) social and economic disadvantage, (v) addressing the over-representation of Indigenous people within the criminal justice system, (vi) Indigenous people and custodial remand, and the use of (vii) diversion programs, and, (viii) bail programs to reduce custodial remand rates for Indigenous people.

## **1.3 Background**

Indigenous people are over-represented in all areas of the criminal justice system in every Australian jurisdiction. For example, in Queensland, Aboriginal and Torres Strait Islanders are over-represented in both police contacts, and as defendants in the lower and higher courts. Compared with non-Indigenous adults, Aboriginal and Torres Strait Islanders are more likely to be arrested, and less

likely to be summonsed or given a notice to appear in court (Baker 2001; Weatherburn et al. 2006).

Similarly, Indigenous people are over-represented in the prison population. Although Aboriginal and Torres Strait Islander people represent only approximately 2.5% of the national population, they were 25% of the prison population on 30 June 2009 (ABS 2009). Specifically in Queensland while only 3.6% of the population were identified as Aboriginal or Torres Strait Islanders, they comprised almost 28% of the prison population on 30 June 2009. Nationally, Indigenous persons were 14 times more likely than non-Indigenous persons to be in prison, though there was substantial variation between states and territories. Queensland had lower rates of imprisonment for Indigenous persons than the national rate, and below those for Western Australian, South Australian, Australian Capital Territory and New South Wales jurisdictions. In Queensland, Indigenous persons were just over 10 times more likely than non-Indigenous persons to be imprisoned (ABS 2006a; 2006b; 2009).

Incarcerated prisoners comprise both sentenced, and unsentenced (remanded) offenders who are either awaiting trial or sentencing. The percentage of unsentenced (remanded) prisoners has increased between 1999 and 2009 with remanded prisoners now nationally making up 21.8% of the adult incarceration figures, up from 14.9% in 1999 (ABS 2009). While there is limited historical data on Indigenous status and remand, Table 1.1 presents data from the annual prison census showing the percentage of remanded prisoners in Queensland by Indigenous status from 30 June 2005 to 30 June 2008<sup>5</sup>.

Although there has been little change in the percentage of Indigenous prisoners incarcerated in Queensland between June 2005 and June 2008, there has been an increase in the percentage of Indigenous prisoners who are held in custodial remand from 19% at 30 June 2005 to just over 24% at 30 June 2008. Admissions data in particular highlights the importance of custodial remand as an important driver of Indigenous incarceration and over-representation. For example, during 2003-04 approximately 36% of Indigenous prisoner admissions were unsentenced, and in 2004-05 37% were unsentenced (Cunneen et al. 2005).

Clearly remand is an important driver of the increasing incarceration of Aboriginal and Torres Strait Islander people. Efforts to reduce Indigenous over-representation in the criminal justice system need to therefore focus on reducing the over-representation of Indigenous persons in both sentenced and unsentenced (remand) prisoners (Cunneen et al. 2005).

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<sup>5</sup> Figures for 2009 could not be presented as these were not included in the Department of Community Safety's 2008-09 Annual Report.

**Table 1.1 Indigenous and Legal Status of Queensland Prisoners 2005-2008**

Year	Indigenous status	Legal status (number)		Total	% of total prisoners	% remanded
		Remand	Sentenced			
<i>30 June 2005</i>	<i>Indigenous</i>	253	1079	1332	24.9%	19%
	<i>Non-Indigenous</i>	852	3173	4025	75.1%	21.2%
<i>30 June 2006</i>	<i>Indigenous</i>	303	1203	1506	27.1%	20.1%
	<i>Non-Indigenous</i>	930	3126	4056	72.9%	23%
<i>30 June 2007</i>	<i>Indigenous</i>	365	1089	1454	26.1%	25.1%
	<i>Non-Indigenous</i>	937	3176	4113	73.9%	22.8%
<i>30 June 2008</i>	<i>Indigenous</i>	360	1135	1495	26.97%	24.1%
	<i>Non-Indigenous</i>	876	3173	4049	73.03%	21.6%

*Note.* Prison census data from Queensland Corrective Services Annual Reports 2007-08; 2006-07; 2005-06; 2004-05.

Access to bail is an important mechanism for reducing the over-representation of Indigenous offenders in custodial remand. However previous research has shown that Aboriginal and Torres Strait Islanders may be particularly disadvantaged by a range of cultural and lifestyle factors which impact on their ability to access bail, their capacity to successfully meet set bail conditions, and affect the offenders' capacity to appear at court at an appointed time (Aboriginal Justice Advisory Council (AJAC) 2001; Law Reform Commission of Western Australia 2005). Failure to appear in court often results in accused persons being remanded in custody. Also laws, policies and practices may operate in a manner that is detrimental to the interests of Aboriginal and Torres Strait Islanders (Blagg et al. 2005) (e.g. criminalisation of alcohol possession), and the nature of Indigenous offending which involves high rates of violent offences may place defendants at specific risk of having their bail denied (Snowball & Weatherburn 2006).

The Queensland Government has instigated a range of initiatives aimed at reducing the over-representation of Indigenous people in the criminal justice system through the framework in the *Partnerships Queensland: Future directions framework for Aboriginal and Torres Strait Islander policy in Queensland* and the *Queensland Aboriginal and Torres Strait Islander Justice Agreement (Justice Agreement)* (Queensland Government 2001; 2005). An evaluation of the *Justice*

*Agreement* in 2005 found that there had been some success in decreasing the over-representation of Indigenous persons, with Queensland having one of the lowest rates of Indigenous over-representation in Australia. Nevertheless, the over-representation of Indigenous people within the criminal justice system was still viewed as a significant problem which would require even more serious efforts to meet the Queensland Government's goal of achieving a 50% reduction in the rate of Aboriginal and Torres Strait Islander persons incarcerated in the Queensland criminal justice system by the year 2011 (Cunneen et al. 2005).

The remand population contributes to the over-representation of Indigenous persons in Queensland prisons. Understanding the factors resulting in the remand or bail of Indigenous offenders will assist the Queensland Government in developing policies and procedures to address the over-representation of Aboriginal and Torres Strait Islanders in the criminal justice system and in attempting to meet their goal of a 50% reduction in incarceration rates for Indigenous people by 2011.

### ***Project Overview***

The goal of this project is to identify the factors that influence Aboriginal and Torres Strait Islander accused adults being refused bail and instead held in custodial remand, and to examine ways to assist Indigenous people to comply with bail conditions. The methodological procedures utilised in the project were comprised of

- (1) interviews with key stakeholders from within government and non-government agencies involved in the criminal justice system, and
- (2) quantitative analyses on departmental administrative data on bail and custodial remand from the Queensland Police Service, Department of Justice and Attorney-General (Magistrates', District and Supreme Courts) and Queensland Corrective Services.

### ***Key objectives***

The project addressed four key objectives.

1. To identify the key decision making points as well as the factors and processes that affect the decision to bail or remand an Indigenous accused person;
2. To identify factors impacting on an Indigenous person's ability to meet bail conditions as well as best practice in bail programs;

3. To understand how government data can be used to better predict the granting of bail and compliance with bail conditions for Indigenous persons; and,
4. To cost program options aimed to reduce Indigenous over-representation in custodial remand.

## **1.4 Over-representation of Indigenous people within the criminal justice system**

Indigenous people are over-represented in every Australian jurisdiction in all areas of the criminal justice system including police contacts, as defendants in the lower and higher courts, and as prison detainees. The following presents a summary of Indigenous people's over-representation in relation to police contact and processes, judicial processes, and imprisonment.

### ***Police contact***

Despite recommendations for increasing diversionary options for Indigenous offenders in both the Bringing Them Home Report (Commonwealth of Australia 1997) and the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1991), Indigenous people are still less likely than non-Indigenous people to be diverted from the criminal justice system (Polk et al. 2003). Aboriginal and Torres Strait Islanders are more likely than non-Indigenous adults to be arrested, and less likely to be summonsed or given a notice to appear in court (Baker 2001; Weatherburn et al. 2006)). They are also more likely to be refused bail (AJAC 2001).

In 2002, nationally, Indigenous people were 17 times more likely than non-Indigenous people to be arrested and detained by police (see Table 1.2). They accounted for 26% of all custody incidents in Australia (Taylor & Bareja 2005). In Australia the median time Indigenous people spent in police custody was longer than for non-Indigenous people, both for public drunkenness and other offences. However there were jurisdictional variations, so that in Queensland, the time spent in custody for public drunkenness or other offences was not significantly different for Indigenous and non-Indigenous detainees (Taylor & Bareja 2005).

In sum, when compared with non-Indigenous persons, Indigenous persons were more likely to be arrested, spend longer in police custody, and were less likely to be diverted or to receive bail.

**Table 1.2 Number and Rates of Indigenous and Non-Indigenous Persons in Police Custody in October 2002**

	Number in police custody			Per cent	Rate*		Over-representation
	Non-Indigenous	Indigenous	Total	Indigenous	Non-Indigenous	Indigenous	
Jurisdiction							
New South Wales	8935	1738	10673	16.3	158.2	1693.2	10.7
Queensland	4387	1416	5803	24.4	141.4	1483.1	10.5
Western Australia	2072	1755	3827	45.9	128.4	3468.0	27.0
South Australia	1865	710	2575	27.6	142.4	3605.3	25.3
Victoria	2099	187	2286	8.2	49.9	861.1	17.2
Northern Territory	282	1250	1532	81.6	234.9	2841.9	12.1
Australian Capital Territory	151	36	187	19.3	54.7	1187.7	21.7
Tasmania	145	19	164	11.6	36.6	144.2	3.9
Australia	19936	7111	27047	26.3	119.6	2028.7	17.0

Source: Cunneen et al. (2005 p.38) from Taylor & Bareja (2005 pp. 22-23). \* Rate per 100,000 of the relevant population aged 10 years and over.

### ***Judicial processes***

As a consequence of their higher arrest rates, Indigenous people are more likely to appear in court. While they are slightly less likely to be convicted, when convicted they are more likely to be sentenced to incarceration, although this is typically for a shorter term (Baker 2001).

### ***Imprisonment***

Indigenous people are also consistently over-represented in the prison population (e.g.: see ABS 2006a; 2007; 2009). Although Aboriginal and Torres Strait Islander people represent only approximately 2.5% of the national population, they were 25% of the prison population on 30 June 2009 (ABS 2009). Nationally, Indigenous persons were 14 times more likely than non-Indigenous persons to be in prison, though there was substantial variation between states and territories.

Importantly, compared with their non-Indigenous peers, Indigenous persons are more likely to have further, and ongoing contact with the criminal justice system after their initial episode (Chen et al. 2005; Joudo 2008; Lynch et al. 2003).

### **Causes of over-representation**

To address the over-representation of Indigenous persons in the criminal justice system it is particularly important to understand the reasons why Indigenous Australians are more likely to be arrested and imprisoned (Weatherburn et al. 2006). Weatherburn et al. (2006) have argued this is a better basis for developing policies to address over-representation than the ‘intuition, guesswork and good intentions’ that guide many of the current efforts.

There are two predominant views of the cause of Indigenous over-representation in the criminal justice system. Both views recognise the chronic social, economic and cultural disadvantage and severe social marginalisation experienced by Indigenous people because of colonisation, dispossession and the separation of children from their families as an important underlying cause of offending (Baker 2001), though each view focuses on different mechanisms which lead to the over-representation. The first view focuses on the differential treatment of Indigenous persons by the criminal justice system, while the second explanation highlights the role of Indigenous offending and re-offending as an explanation for the over-representation of Indigenous people within the criminal justice system (e.g. Weatherburn et al. 2003; Snowball & Weatherburn 2006).

### ***Differential involvement within the criminal justice system vs. patterns of offending and re-offending***

Some researchers have highlighted the importance of institutional, or systemic racism in the criminal justice system's response to offending by Indigenous people. Suggestions of racial bias in the criminal justice system remain a recurring theme in the literature on Indigenous over-representation (e.g. Blagg et al. 2005; Craigie 1992 cited in Snowball & Weatherburn 2006; Cunneen 1992 cited in Snowball & Weatherburn 2006; Gale et al. 1990 cited in Snowball & Weatherburn 2006).

Proponents of this view maintain this racism is evidenced by the over-representation of Indigenous people at all levels of the criminal justice system (e.g. Blagg et al. 2005; Cunneen 2001) where over-policing, racism and discrimination toward Indigenous people by those within the criminal justice system (e.g. police, prosecutors, Magistrates, and judges) results in the higher arrest, conviction, and imprisonment rates experienced by Indigenous people.

At times the terms systemic or institutional racism are used in ways that do not suggest any intentional bias, but emphasise that even when criminal justice practitioners are not personally racist, or policies and practices have no intention to discriminate against Indigenous people, the criminal justice system itself is still a racist system(e.g. Blagg et al. 2005). The outcomes of criminal justice policies which result in the over-representation of Indigenous people within the criminal justice system is cited as evidence of this systemic racism which occurs because of an organisational failure to understand the impact of policies and procedures on Indigenous people. Hence, the over-representation of Indigenous people within the criminal justice itself is presented as evidence of systemic or institutional racism.

In contrast, Snowball and Weatherburn (2006) maintain that if this argument is accepted sentencing would be defined as systematically racist whenever any ethnic group was imprisoned at a higher rate than another ethnic group, regardless of the reason for this difference. The claims of systemic or institutional racism "create the impression that defendants are deliberately and systematically discriminated against by police, judicial officers and/or other officials within the system" (Snowball & Weatherburn 2006, p.2).

Instead, Snowball and Weatherburn (2006) argued the justice system can only be said to be systematically biased toward Indigenous defendants if they are treated more harshly than non-Indigenous defendants solely on the basis of their Indigenous status. Therefore, for example, imprisonment rates for Indigenous offenders can only be regarded as evidence of systemic racism if, (a) the rates of imprisonment cannot be explained by factors the court legitimately takes into account when sentencing prisoners (direct discrimination),

or, (b) can be shown to result from discriminatory treatment at earlier points in the criminal justice process (indirect discrimination).

After reviewing the existing literature, Snowball and Weatherburn (2006) concluded there was little support for the suggestion that Indigenous imprisonment resulted from racial discrimination in the criminal justice system. Most Australian studies found little, or no difference in the likelihood of imprisonment between Indigenous and non-Indigenous defendants once relevant legal variables were taken into account. In relation to indirect discrimination, they argued this remained “little more than unsupported speculation” (Snowball & Weatherburn 2006, p. 4).

Hence, Snowball and Weatherburn (2006) have instead drawn attention to the high rates of Indigenous offending and re-offending, and high prevalence of violent offences as explanations for their higher imprisonment rates (see also Harding et al. 1995; Weatherburn et al. 2003). Supporters of this view emphasise that higher imprisonment rates can actually be explained by legal factors, rather than a systemic, or institutional bias against Indigenous people.

For example, Baker (2001) examined data to identify the points of Indigenous over-representation in the different stages of processing through the New South Wales court system from appearance, conviction, to sentencing. Over-representation stemmed initially from the higher rates of court appearances by Indigenous people, which was then exacerbated by higher incarceration rates at sentencing. Indigenous offenders were more than 5 times more likely to appear in court than would be expected given the relative size of their population. Despite being slightly less likely to be convicted than their non-Indigenous counterparts, Indigenous offenders were then almost twice as likely to be sentenced to imprisonment as non-Indigenous offenders, although Indigenous offenders were slightly less likely to be imprisoned for a longer term.

However, the higher imprisonment rates of Indigenous offenders could be explained by their more extensive prior criminal histories and the serious violent nature of their offences which were more likely to attract a prison sentence (Baker 2001).

Furthermore, Snowball and Weatherburn (2006) investigated whether there was any evidence of direct racial bias in the sentencing of Indigenous adult offenders. To address this, they examined the specific influence of a wide range of legal variables including the seriousness of the principal offence (e.g. presence of violence), concurrent offences, prior criminal record including prior convictions, previous and concurrent breaches of court orders, previous sentencing to a community based sanction as an alternative to imprisonment, age, and gender of the offender on the likelihood that

Indigenous offenders would receive a custodial sentence. There was no evidence of an effect for Indigenous status on the probability of imprisonment. Indigenous offenders were more likely than non-Indigenous offenders to be sentenced to imprisonment because Indigenous persons were more likely to have longer criminal records, be convicted of serious violent, and multiple offences, have breached a previous court order, and were much more likely to have re-offended after receiving a suspended sentence or periodic detention sentence as an alternative to full-time imprisonment.

Similarly, in research conducted with Queensland juvenile offenders, while young people of Indigenous status were more likely to be held in custodial remand than non-Indigenous young people (63% versus 51% respectively), these higher rates of remand were explained by legal factors (e.g. current and prior offence details, case history), location, and child protection history. There was no evidence that Indigenous young people were remanded because of systemic discrimination within the juvenile justice system. Rather, the increasing juvenile remand population in Queensland for both Indigenous and non-Indigenous young people in recent years related to child protection and youth placement concerns with Indigenous young people more likely to be disadvantaged than their non-Indigenous peers (Mazerolle & Sanderson 2008). Henceforth, currently, there is no evidence of judicial bias in the sentencing or remanding of Indigenous offenders.

However it is important to note that this research does not address whether Indigenous people receive differential treatment in their earlier processing within the criminal justice system, before their court appearance. The level of policing activity, use of discretion by police and prosecution is likely to impact on the charges coming before courts. For example, offences against good order and justice which are more commonly committed by Indigenous persons are highly susceptible to policing activity and discretion. Also as Indigenous violence is more open and public it may be more likely to come to police attention (Baker 2001).

Police decision-making has an important influence on an individual's experiences with the criminal justice system as police are the gate-keepers, with the most opportunities to make discretionary judgments (Wortley 2003). For example, a police officer has discretion in deciding, firstly, whether to proceed against an individual, and secondly, what course of action to take. Research on police decisions to arrest suggests that overall legal characteristics such as the seriousness of the offence and having a prior record are considered the primary factors in arrest decision-making (Carrington & Schulenburg 2003). However in situations involving less serious offending, an officer's decision-making may also be influenced by extra-legal factors and community characteristics (Little 2007).

While Indigenous people are more likely to be arrested, currently there is no research investigating whether Indigenous status itself significantly contributes to the likelihood of arrest. However there is consistent evidence that Indigenous people themselves believe that discrimination is institutionalised within the criminal justice system. When questioned about discrimination, Indigenous people often describe experiences where they believed there was clear racist intent (Blagg et al. 2005). Indeed, for example, Indigenous people are over-represented for public order offences which are regarded as “police offences” as such charges are mainly generated by police on patrol (Crime & Misconduct Commission 2008; Taylor & Bareja 2005; Weatherburn et al. 2003). However there is disagreement as to whether this over-representation of Indigenous people occurs as a result of selective enforcement by police, the contested nature of “public space”, or because Indigenous persons spend more time in public spaces and are therefore more visible, leading to an increased likelihood of being charged (Crime & Misconduct Commission 2008).

Consequently, it is unclear whether there is systematic discrimination in the policing of Indigenous people. Yet interactions between police and Indigenous people do occur in the context of a long and protracted history of poor relations which results in particular challenges in policing which contribute to the over-representation of Indigenous people in the criminal justice system. For example, because of continuing distrust of police, Indigenous people are often unwilling to be interviewed by police, or to admit guilt for particular offences. Henceforth, police officers are then often unable to divert Indigenous offenders from further involvement in the criminal justice system (Joudo 2008; Mazerolle & Sanderson 2008).

In conclusion, the available evidence suggests that the nature of Indigenous offending and re-offending is an important cause of Indigenous over-representation in the criminal justice system. In contrast, while the influence of systematic or institutional racism is frequently cited as a cause of the over-representation of Indigenous people in the criminal justice system there is little current **evidence** to support this view, at least in relation to judicial processes. It is not possible to draw any definitive, evidence-based conclusions on the existence of systemic racism in the policing of Indigenous people.

## **1.5 Nature of offending by Indigenous people**

Given the important role of offending and re-offending as a cause of Indigenous over-representation in the criminal justice system, and particularly its impact on custodial remand rates, it is important to understand the dynamics of Indigenous offending. Despite this, little research has examined these issues (Weatherburn et al. 2006). A

summary of the major findings from the limited research is presented below in relation to the role of substance abuse in offending, the types of offences committed by Indigenous people, developmental pathway of offending, and the nature of re-offending.

### **Role of substance abuse**

Alcohol plays a major role in offending by Indigenous people and is regarded as the substance of primary concern (Joudo 2008). There is consistent evidence of a link between alcohol consumption and Indigenous arrest (e.g. National Aboriginal and Torres Strait Islander Social Survey (NATSISS) 1994; 2002 cited in Joudo 2008; Taylor & Bareja 2005). In one study Indigenous adult prisoners were two-and-a-half times more likely than non-Indigenous prisoners to have either used alcohol when committing their offence, or at the time of their arrest (Putt et al. 2005).

Information from the DUMA program also supported the link between substance abuse and Indigenous offending. Overall, 79% of Indigenous persons tested positive to any drug when they were detained in custody. Specifically, 72% of Indigenous participants tested positive for cannabis, 24% for benzodiazepines, and 29% for methylamphetamines. Overall, drug use rates were lower for non-Indigenous detainees with 67% testing positive for any drug use. Usage of cannabis was lower, with 54% of non-Indigenous detainees testing positive, while rates for benzodiazepines (22%) and methylamphetamines (26%) were similar to those of Indigenous detainees.

Inhalant use is also linked with offending, with one study finding inhalant abuse related to an increased likelihood of burglary, assault or wilful damage (Brady 1992 cited in Joudo 2008). Similarly, unpublished data from the DUMA program also indicated that Indigenous police detainees were more likely to self-report using inhalants. In 2004 and 2005 almost 7% of Indigenous detainees reported using inhalants in the previous 12 months compared with only 2% of non-Indigenous detainees (Joudo 2008).

### **Type of offences**

Information on the type of offences committed by Indigenous people is sourced from police custody and charging data as well as records of court appearances. The National Police Custody survey in 2002 revealed the reasons Indigenous people were most likely to be held in police custody (Taylor & Bareja 2005). Fifty-five percent of police custody incidents for Indigenous Australians were for arrests, and another 31% involved protective custody, with the majority of incidents involving public drunkenness. Those who were arrested were most likely to be charged with public order offences. Compared with

non-Indigenous detainees, Indigenous people were more likely to be in custody for incidents involving assault, break and enter, public order offences, and offences against justice. In contrast, non-Indigenous people were more highly represented for theft, fraud, drug, and road traffic offences (Taylor & Bareja 2005).

Public drunkenness was a major reason for detention in police custody for all detainees, but was much more likely to involve Indigenous people with 19% Indigenous events compared with 8% non-Indigenous incidents. There were also substantial variations in incidents of public drunkenness across jurisdictions. In Queensland 42% of incidents involved Indigenous people, compared with 83% in Western Australia, 92% in the Northern Territory, and 61% in South Australia. While public drunkenness remained an important cause of police incarceration, overall the proportion of incidents involving public drunkenness for both Indigenous and non-Indigenous people has been decreasing. For Indigenous participants incidents decreased from 34% in 1995 to 19% in 2002, while for non-Indigenous people from 15% in 1995 to 8% in 2002 (Taylor & Bareja 2005).

In relation to charged offences the most common serious offences Indigenous people were charged with, and imprisoned for, were violent and property offences. Indigenous offenders were more likely than their non-Indigenous counterparts to have a violent offence as their most serious offence (almost 60% of Indigenous defendants compared with fewer than 50% of non-Indigenous defendants) (Joudo 2008). Adult male Indigenous prisoners were also more likely to self-report being regularly violent, and being multiple offenders with rates of regular violent offending almost twice as high as amongst female Indigenous offenders (Johnson 2004 cited in Joudo 2008).

With regards to less serious offending, Indigenous people were more likely to be arrested, and appear for public order offences (e.g. Jochelson 1997; Weatherburn et al. 2003).

### **Developmental pathway of offending**

Indigenous people are more likely to be younger when they commit their first property or violent offence, and begin regular offending at younger ages (Makkai & Payne 2003; Putt et al. 2005). They are also more likely to have further contact with the criminal justice system after their initial episode. For example, young Indigenous male juvenile offenders are more likely than their non-Indigenous counterparts to enter the adult criminal justice system (Chen et al. 2005; Lynch et al. 2003).

Similarly, Indigenous adult prisoners are more likely to have been previously incarcerated (Joudo 2008). For example, in Queensland 41% of Indigenous prisoners had been previously incarcerated as

juveniles while 84% were previously imprisoned as adults. This contrasted with 14% and 56% of non-Indigenous prisoners with a history of juvenile and adult incarceration respectively (Kinner 2006 cited in Joudo 2008).

### **Re-offending**

Compared with non-Indigenous offenders, their Indigenous counterparts have higher rates of recorded re-offending, and hence higher numbers of average court reappearances. Indigenous offenders also have shorter times between court appearances. So for example, while the average time between first and second court appearances for non-Indigenous offenders is 4.4 years, for Indigenous offenders it is 1.5 years (Chen et al. 2005).

It is difficult to effectively address the over-representation of Indigenous people in the criminal justice system without an adequate understanding of the reasons that Indigenous Australians are more likely to be arrested and imprisoned. Therefore it is important to identify the factors underlying Indigenous offending and re-offending. Little research has specifically examined these issues but researchers have agreed that the chronic social, economic and cultural disadvantage suffered by Indigenous people underlies offending behaviour (e.g. Baker 2001; Cunneen et al. 2005).

## **1.6 Social and economic disadvantage**

Indigenous people are disadvantaged on an array of social and economic outcomes including in relation to education, employment, income, health, substance abuse, housing and transport.

### ***Education, employment and income***

When compared with the non-Indigenous population, Indigenous Australians have lower levels of education. Twenty-seven percent of Indigenous Australians reported Year 10 or 11 as their highest year of school completion compared with 19% for non-Indigenous people. Indigenous people were also more likely to finish their schooling in earlier years.

Educational disadvantage was greatest amongst Indigenous Australians living in remote areas. Compared with their Indigenous counterparts living in non-remote locations, those from remote areas were less likely to have completed schooling to years 9 and 12. Indigenous people also have higher rates of unemployment with consequent lower average incomes and more dependence on social welfare (2002 NATSISS cited in Joudo 2008).

Not surprisingly, economic stress from unemployment and low incomes has an impact on criminal behaviour, though this may be mediated through other factors (Joudo 2008).

### ***Health***

Comparatively, Indigenous Australians have poorer health than their non-Indigenous counterparts with a life expectancy 17 years lower than the general Australian population. They also have higher rates of chronic health conditions including asthma, diabetes, and renal failure and are more likely to have multiple health problems (ABS & AIHW 2008; Joudo 2008).

Importantly, while prison populations in general also suffer from poor health, Indigenous prisoners have even poorer physical and mental health than non-Indigenous inmates. Indigenous prisoners are more likely to be hospitalised for a range of health problems after release from prison including mental health disorders (Hobbs et al. 2006 cited in Joudo 2008) and diabetes (D'Souza et al. 2005).

### ***Substance Abuse***

Substance abuse is common within the Indigenous community with high rates of alcohol and drug use (ABS & AIHW 2008; National Drug Strategy Household Survey, AIHW 2005). Compared with non-Indigenous people, Indigenous people begin using substances at earlier ages (AIHW 1995; Gray et al. 1996), consume alcohol in higher quantities (ADCA 2000), and are more likely to consume alcohol at risky or high risk levels (National Drug Strategy Household Survey AIHW 2005). Illicit drug use was also more common amongst Indigenous respondents with 27% reporting recent drug use compared with 15% for non-Indigenous respondents (Joudo 2008). For Indigenous respondents to the National Drug Strategy Household Survey excess alcohol consumption was considered to be the most serious concern for Indigenous communities (27.1%), followed by inhalant use (26.9%), heroin (16.7%) and marijuana/cannabis use (13%).

### ***Other socioeconomic indicators***

The 2002 NATSISS (Joudo 2008) also found that Indigenous people face serious disadvantages in housing, access to transport, and the capacity to raise money. In relation to housing, Indigenous Australians were almost three times more likely to be living in rented accommodation, which was five-and-a-half times more likely to be rented from a state or territory housing authority. Many Indigenous respondents also reported they did not have access to a motor vehicle. Just over 40% reported not having access to a vehicle compared with

14.8% of non-Indigenous people. Just over 54% of Indigenous respondents reported they would have difficulty raising \$2,000 within a week compared with 13.6% of non-Indigenous people.

### ***Link between disadvantage and the criminal justice system***

However, to successfully address Indigenous over-representation in the criminal justice system, it is important for research to identify which facets of Indigenous disadvantage are specifically linked to contact with the criminal justice system. In one study Weatherburn et al. (2006) used data from the 2002 NATSISS to examine predictors of being charged with an offence, or imprisonment. The NATSISS offered an opportunity to compare Indigenous people who have had no contact with the criminal justice system with their counterparts with involvement in the system.

Indigenous people were more likely to have been charged with an offence if they were male, engaged in high-risk levels of consumption of alcohol and illicit substances, were unemployed or working in a Community Development Employment Projects (CDEP) scheme, had not finished grade 12, were, or had a relative who was a member of the 'stolen generation', belonged to a sole-parent family with dependents, were not involved in social activities, and lived in a remote, or a crime-prone area.

Similarly, those who had been imprisoned also suffered from severe social disadvantage. Indigenous people who had been imprisoned were more likely to be male, unemployed, have failed to complete year 12, lived in a crowded household, either were, or had a relative who was a member of the 'stolen generation', lived in a remote area, and engaged in high-risk consumption of alcohol and illicit substance abuse (Weatherburn et al. 2006).

Indigenous alcohol and drug use was an important cause of contact with the criminal justice system as the most powerful predictors of being charged or imprisoned were alcohol consumption and drug use. For example, in the 2002 NATSISS those who had been arrested were more than twice as likely to have engaged in high risk alcohol consumption than those who had not been charged with an offence (23.7% vs. 10.5% respectively) (Dodson & Hunter 2006). Indeed substance abuse, and particularly alcohol consumption underlies much Indigenous offending (Joudo 2008).

An earlier analysis on data from the 1994 NATSISS again supported the important role that alcohol plays in Indigenous offending, and particularly in specific types of offences. Alcohol consumption together with being a victim of physical attack or verbal threat were particularly important factors underlying arrests for drinking-related and assault charges for men, women, and for juveniles (Hunter 2001).

There is obviously a cycle of violence in Indigenous communities which is fuelled by alcohol consumption which underlies substantial incidents of Indigenous offending (Dodson & Hunter 2006).

Importantly, there is a particular social cost to involvement in the criminal justice system for Indigenous people. There are important feedback mechanisms where arrest reinforces the already apparent disadvantage Indigenous people face in relation to employment status and educational attainment, with arrest driving many of the poor employment outcomes and lower rates of educational participation of Indigenous people (Borland & Hunter 2000; Hunter 2001).

Importantly, the effect of arrest on employment is not simply a proxy for the general social disadvantage suffered by Indigenous people.

Arrest decreases the probability of employment by 18.3% for Indigenous males and by 13.1% for Indigenous females. The effect of arrest on unemployment accounted for a significant amount of the difference in employment status between Indigenous and non-Indigenous respondents to the 1994 NATSISS and the 1994 General Social Survey (GSS). In 1994, the difference between Indigenous and non-Indigenous employment was 19.5 percentage points, with the effect of arrest accounting for between 12 and 17 percentage points of this difference (Hunter & Borland, 1999).

## **1.7 Addressing the over-representation of Indigenous people in the criminal justice system**

Efforts to decrease the over-representation of Indigenous people can address factors underlying criminal behaviour (e.g. social and economic disadvantage) or specifically address areas of over-representation in the criminal justice system.

### ***Addressing the social and economic disadvantage underlying offending behaviour***

The current limited research on the link between Indigenous disadvantage and offending behaviour all highlight the importance of substance abuse, and particularly alcohol consumption and to a lesser extent inhalant use, poorer employment outcomes, lower levels of educational attainment and high rates of victimisation experienced by members of the Indigenous community as important factors underlying offending. Given the importance of social and economic disadvantage to the occurrence of criminal behaviour within the Indigenous community efforts to address the over-representation of Indigenous people within the criminal justice system are often conducted in the context of other programs aimed at addressing health problems, economic disadvantage and substance abuse (Joudo 2008).

Weatherburn et al. 2006 have suggested several methods for addressing the specific facets of social and economic disadvantage underlying Indigenous offending and re-offending.

- (1) **Reducing alcohol and drug abuse.** There is strong evidence that reducing the availability of alcohol and illicit drugs, or attendance in coerced drug treatment programs are effective in reducing offending (Gray et al. 2000 cited in Weatherburn et al. 2006; d'Abbs & Togni 2000 cited in Weatherburn et al. 2006; Moffatt et al. 2005 cited in Weatherburn et al. 2006; Lind et al. 2002 cited in Weatherburn et al. 2006).
- (2) **Improving educational attainment.** Improving Indigenous school performance and school retention is particularly likely to reduce arrest rates.
- (3) **Policies or programs to reduce unemployment.** Longitudinal studies usually find a strong association between unemployment and crime, particularly for low-socioeconomic status offenders (Farrington et al. 1986 cited in Weatherburn et al. 2006; Fagan & Freeman 1999 cited in Weatherburn et al. 2006). Similarly, involvement in CDEP is related to lower rates of involvement in the criminal justice system when compared with unemployment. So while those employed on the CDEP were more likely to have been charged or imprisoned than those who were in other employment, CDEP does still seem to provide a protective effect against the likelihood of being charged. Compared with those who were unemployed, those on CDEP were less likely to have been charged (Weatherburn et al. 2006).
- (4) **Decreasing welfare dependence.** Being on welfare increases the risk of both being charged and imprisoned. Yet researchers disagree about whether welfare dependence actually encourages Indigenous involvement in crime (Hughes 2005 cited in Weatherburn et al. 2006) or instead, that welfare dependence may simply be a proxy for poverty and other forms of social disadvantage which are related to criminal behaviour (Farrington 1997 cited in Weatherburn et al. 2006). Nevertheless, all agree that addressing Indigenous economic and social disadvantage is likely to reduce contact with the justice system.
- (5) **Improving social support networks.** Although social support was not a significant predictor of being charged or imprisoned, Weatherburn et al. (2006) argued it is probable that strengthening social support may decrease contact with

the criminal justice system because of its effect on other variables known to influence involvement in crime (e.g. child mistreatment).

### ***Addressing areas of over-representation in the criminal justice system***

Efforts to reduce over-representation can also target points in the criminal justice system where Indigenous people are more likely to be involved. Based on current evidence, Indigenous people are over-represented at the appearance and sentencing to incarceration stages within the court system. Therefore these are the points to intervene (Baker 2001). Suggestions for addressing over-representation at these phases of criminal justice processing are presented below.

(1) Reduce the rates of court appearances by Indigenous people by reducing the arrest rate for Indigenous people. This requires police to opt for alternatives to arrest (Dodson & Hunter 2006). Such alternatives could include

- The use of diversion for violent offenders. However this would need to be balanced with the responsibility to protect victims and communities (Baker 2001).
- Reducing the levels of Indigenous involvement in crime, and particularly violent crime (e.g. reduce alcohol and drug abuse) (Blagg et al. 2005; Cunneen & McDonald 1997).
- Reducing the rates of recidivism amongst Indigenous offenders and particularly by those who are placed on community-based orders (Blagg et al. 2005).

(2) Abolishing short term prison sentences and replace imprisonment for breaches of bail or non-custodial orders with non-custodial sanctions (Cunneen & McDonald 1997).

(3) Putting in place more culturally appropriate orders and providing more opportunities for offenders to be supervised by other Indigenous persons (Cunneen & McDonald 1997). Providing supervision from Indigenous persons may be particularly effective as it may reduce the number of breaches in the first instance.

(4) Reducing the number of Indigenous people who are held in custodial remand (Cunneen et al. 2005).

The next section of this literature review focuses on Indigenous over-representation in custodial remand.

## **1.8 Indigenous people and custodial remand**

In this section, we include information on the purposes and outcomes of custodial remand, key decision-making points in the remand decision, comparisons between jurisdictions on custodial remand rates, and factors which influence the rates of custodial remand. It is important to note that most research on custodial remand does not address differences between Indigenous and non-Indigenous remandees but rather treats remandees as a single group.

Remanding both Indigenous, and non-Indigenous offenders in custodial circumstances provides numerous challenges for government service delivery as well as for considerations of justice, offender rehabilitation, and recidivism. Custodial remand is of particular concern as detention occurs when offenders are still unsentenced, before their guilt or innocence has been established. There are also concerns to avoid any unnecessary incarceration of Indigenous people who are particularly vulnerable during imprisonment (RCIADIC 1991).

The remand population presents significant demands on the justice system not only in terms of the resources required to institutionalise remandees, but also in relation to the missed opportunities to intervene effectively to assess the critical criminogenic risks and needs of both Indigenous and non-Indigenous defendants that require appropriate treatment intervention. As custodial remand occurs before the guilt or innocence of a defendant is established it is difficult to provide intervention services. Custodial remand contributes to the over-representation of Indigenous people within the criminal justice system and efforts need to be directed to reducing the rates of remandees (Cunneen et al. 2005).

Recent reports and research however shows that rates of remand can be affected strategically by government departments investing resources to counteract some of the complex interactive effects between defendants' characteristics and the practices of courts (Sarre et al. 2006).

### ***Purposes of Custodial Remand***

According to Sarre and colleagues (2006) custodial remand fulfils three broad goals to:

- (1) Ensure the integrity and credibility of the justice system so that offenders will attend court, and protect witnesses and victims
- (2) Protect the community from the offender's re-offending
- (3) Assist the care and protection of the rights of the defendant

Whether these aims are achieved for either Indigenous or non-Indigenous offenders is unknown as the available data is often poor. The costs of bail violations are likely to be substantial and it is important to understand the relationship between remand and bail rates. Despite this, there is currently no research examining the relationship between the granting of bail and factors such as subsequent rates of failure to appear, reasons for failure to appear, offending on bail, or interference with witnesses for either Indigenous or non-Indigenous offenders (Sarre et al. 2006).

There is a clear tension between these three goals as they seek to balance the needs and rights of the community and court with those of defendants. Not surprisingly, in reality these goals conflict. While the emphasis of the adult justice system currently focuses more on the second goal of community protection (Sarre et al. 2006), there are particular concerns about the over-representation of Indigenous people and the specific risks they face when incarcerated. Hence, for Indigenous defendants there is also an emphasis on the care and protection of the defendant (Commonwealth of Australia 1997; RCIADIC 1991).

Concern has been expressed that custodial remand is not always used appropriately for both Indigenous, and non-Indigenous defendants. Some researchers argue that as many people, both Indigenous and non-Indigenous, who experience custodial remand do not go on to receive a detention sentence, remand is being used inappropriately. While this raises concerns about justice and the provision of needed interventions, it also suggests very expensive resources are not being used efficiently (e.g. Polk et al. 2003).

In contrast, while other researchers acknowledge that custodial remand may be used inappropriately on some occasions, at times it may be that remand “anticipates” the custodial sentence. Here, remandees are released after disposition as their remand time is regarded as equal to the custodial sentence appropriate for their offences (King et al. 2005).

To understand the purposes that custodial remand currently serves, additional data is needed to identify the number of remandees released after their period of custodial remand if this was equivalent to their period of sentenced detention. Taken together with the numbers of remandees who are subsequently sentenced, this would then provide a more accurate estimate of the extent of the inappropriate use of remand to detain people whose offences and criminal history did not justify this form of detention. The data currently reported by the Australian Institute of Criminology does not enable the accurate

identification of the total number of remandees who neither receive a custodial sentence, nor is their remand viewed as “time served”.

Current remand data does not allow for a clear understanding of how remand is actually being used. Rather, remand is currently treated as a unidimensional variable, despite evidence that remandees do not represent a homogeneous group, but instead have distinct differences in the reasons for their custodial remand (Mc Carthy 1987). All current systems fail to record the reasons for a person’s remand in custody. Therefore, it is unclear if both Indigenous and non-Indigenous defendants are placed in remand for appropriate legal reasons, or instead because of a lack of bail programs, or their inability to meet bail conditions. Remand data does not currently indicate the number of people who are in custody even though their offences and criminal history do not justify this form of detention. Anecdotal evidence does however suggest that Indigenous people are more likely to be remanded for “inappropriate” (i.e. non-legal) reasons than non-Indigenous remandees (Mazerolle & Sanderson 2008).

Even amongst non-Indigenous people, remandees represent a particularly vulnerable population. In research from the United Kingdom, both adult and juvenile remandees represented a high risk and particularly vulnerable population when compared with sentenced prisoners. Remandees were much more likely to have substance abuse and mental health problems, report higher rates of suicidal ideation and attempts, have poorer physical health, be under the care of their local authority, have lower levels of educational attainment, and were also less likely to have personal support and contact with family and friends while in prison. Because of their remand status it was difficult to plan and provide appropriate programs for these individuals as detention staff did not know how long they would be incarcerated, or the outcome of their charges. Consequently without access to services and programs remand time was “wasted time” (HM Inspectorate of Prisons 2000).

Queensland research with juvenile offenders also found evidence that remanded defendants were even more vulnerable than their non-remanded peers in all data sources used in the study (i.e. administrative data, consultations with key stakeholders, Magistrates’ survey and case files). For example, an examination of a sample of young offenders’ case files revealed that remanded youth were more likely to be younger, start offending earlier, be of Indigenous status, have higher rates of all types of child maltreatment and particularly neglect, have a record of truancy, and a history of problems at school. Overall, they had committed more offences, and specifically property and sexual offences. Remanded young people were also more likely to have a history of substance abuse and to be “using” at the time of committing their offences. They also had poorer mental health, with higher rates of suicidal ideation and more suicide attempts.

Remanded young people were also slightly more likely to associate with delinquent peers (Mazerolle & Sanderson 2008).

Similarly, Indigenous status was a marker of heightened vulnerability and serious social and economic disadvantage. Specifically, Indigenous young people were more likely to come from a disadvantaged background and have even more criminogenic risks and experiences than non-Indigenous young people. Indigenous youth were more likely to be living apart from their biological parents and to have less contact with both parents, who were both more likely to be unemployed. Compared with non-Indigenous youth, Indigenous young people were more likely to have been victimised. They had higher rates of exposure to domestic violence, were more likely to be victims of all types of child maltreatment, and particularly neglect, and accounted for most cases of sexual abuse. These young people also had more educational problems, with higher levels of truancy and more problems at school (Mazerolle & Sanderson 2008).

Indigenous young people had also commenced offending at younger ages. They were more likely to have a history of substance abuse, and particularly chroming, and to be using drugs or chroming at the time of their offences. Indigenous young people also had poorer mental health, with higher rates of suicidal ideation and more suicide attempts. They were also more likely to associate with delinquent peers (Mazerolle & Sanderson 2008).<sup>6</sup>

Because of the heightened level of criminogenic risks and experiences found for remanded and for Indigenous youth, remand status itself may be a marker of high risk, and may be a particularly important indicator of heightened risk for Indigenous individuals. Other evidence collected during the research from key stakeholders including police, legal practitioners, Magistrates and non-government service providers confirmed that Indigenous young people faced even greater challenges than their non-Indigenous peers. Many Indigenous young people came from seriously disadvantaged and dysfunctional families and communities marked by high rates of substance abuse, family violence and child neglect (Mazerolle & Sanderson 2008).

Analyses of administrative data revealed they were more likely to be remanded than non-Indigenous youth, although there was no evidence of systemic discrimination against Indigenous young people as Indigenous status did not significantly contribute to their likelihood of remand. Remand status was instead accounted for by other factors including current offences, prior criminal history and child protection history. Importantly, while the rate of remand was increasing over time for both Indigenous, and non-Indigenous young people, the rate

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<sup>6</sup> There was a high degree of overlap between remand status and Indigenous status.

of increase was greater for Indigenous young people (Mazerolle & Sanderson 2008).

### ***Outcomes of Custodial Remand***

Custodial remand is associated with legal, social and community outcomes.

#### **Legal outcomes**

Custodial remand is associated with particular justice outcomes for the individual including an

- increased likelihood of a plea of guilty,
- increased likelihood of the accused being convicted to a plea of not guilty, and an
- increased likelihood of receiving a sentence of detention (Doherty & East 1985 cited in Sarre et al. 2006).

Although these outcomes are associated with remand, the available evidence does not demonstrate that custodial remand “causes” accused persons to be more likely to plead guilty, be convicted, or be sentenced to detention. Other factors which are associated with custodial remand may better explain this relationship between remand and justice outcomes. For example, the strength of evidence against the person may be greater when they are remanded in custody and it is this evidence that would increase the likelihood that the accused person may plead guilty, or be convicted even in the absence of a guilty plea (Sarre et al. 2006).

#### **Social outcomes**

There are also negative social outcomes for remandees as they are removed from their usual social supports. Family and friends may be unable to make regular visits because the detention facility is too far away, and this isolation from social networks disrupts relationships and may increase the likelihood that the accused person will become institutionalised (Sarre et al. 2006). Removal from family and friends also interrupts the accused person’s capacity to assume their family and social responsibilities and places an individual into detention at a time of high vulnerability with a potential increase in the risk of physical and psychological self harm (Sarre et al. 1999). Such concerns are particularly prevalent in the case of Indigenous offenders who are also unable to fulfil their cultural and kinship obligations.

## **Community outcomes**

Custodial remand is also a costly exercise from a community perspective. A high custodial remand rate significantly contributes to the costs of imprisonment by increasing the overall detainee numbers and putting additional pressures on prisons. It also places additional demands on court time and resources in reviewing custodial remand decisions (e.g. hearing of bail applications) (Bamford et al. 1999).

### ***Key decision-making points in the custodial remand***

Bamford et al. (1999) outlined three process phases where decisions made at these key filter points influence the likelihood that an individual will be remanded in custody. These phases are discussed below and related to evidence on Indigenous representation.

- (1) ***Apprehension phase*** which involves the initial police contact when the officer can decide to caution, summons, or arrest an offender. While possibly the age, race and gender of those who come into contact with police during the apprehension phase influences those who are remanded in custody, there are few statistics to explore this relationship (Bamford et al. 1999).

### ***Indigenous representation***

In relation to police cautions, summons, or arrests, however, Indigenous people are less likely to be cautioned or summonsed, and more likely to be arrested than non-Indigenous offenders (Polk et al. 2003; Weatherburn et al. 2006).

- (2) ***Police Bail phase.*** When an individual has been arrested then a decision must be made about whether the person will be offered police bail or instead, be remanded in custody. Even those defendants who are offered bail may still be remanded in custody as they may be unable to accept the conditions of bail immediately, or not at all. Hence they will remain in custody until they can meet the bail conditions. There are also another group of offenders who may be held in custodial remand at this point, those who do not seek bail. Little is known about this group, although anecdotal evidence suggests that these individuals do not seek bail, either because they, or their legal representatives believe that bail would be refused (Bamford et al. 1999). Therefore three groups of offenders can be remanded during this phase: those who are refused, those who are unable to meet the bail conditions (e.g. provide a financial surety or a guarantor), and those who do not seek bail.

Even when bail is granted the conditions of bail will have an impact on the custodial remand process as any breaches of bail conditions will lead the offender to re-enter police custody. A high or low rate of granting police bail within a jurisdiction cannot be assumed to be of greater merit. Rather, it is important to evaluate the impact of granting, or not granting bail. So information is needed on whether an offender subsequently appeared at court as required, interfered with witnesses, or re-offended while on bail. Currently this data is not available (Bamford et al. 1999).

### ***Indigenous representation***

Compared with non-Indigenous people, Indigenous offenders are less likely to receive bail, and more likely to be remanded in custody (Denning-Cotter 2008). They are also more likely to fail to appear in court and breach bail conditions so they are more likely to re-enter police custody (Baker 2001; Weatherburn et al. 2006).

### **(3) Court Bail Phase.**

At this point, individual disputed bail matters are determined.

**Magistrates' Court.** The defendant's first, and any subsequent appearance is another key decision-making point where the decision to grant bail or remand in custody is reviewed. In cases where the prosecution (or police) and defendant agree on bail and any related bail conditions, Magistrates will not usually intervene. In contrast, normally a failure to appear in court results in the issuing of an arrest warrant, and restarts the process through the apprehension phase again (Bamford et al. 1999).

**Higher Courts.** Cases heard in the higher courts involve more serious, complex, offences so they require more time for preparation and hearing the case. The bail process in these courts therefore affects a smaller number of defendants but if an individual is remanded in custody this may be for a significant amount of time. If the defendant is subsequently convicted there may also be a period of custodial remand while they are awaiting sentencing (Bamford et al. 1999).

### ***Indigenous representation***

There is no published evidence on the effect of Indigenous status on contested bail matters.

### ***Comparing jurisdictions on key decision-making points in custodial remand***

When Bamford et al. (1999) made comparisons between Victoria, South Australia and Western Australia they found jurisdictional differences in outcomes at each of these three phases. Variations in police, prosecutorial, magisterial, legal, and correctional practices resulted in different percentages of offenders being remanded in custody at various stages in different jurisdictions. So for example, in Victoria there were policies and practices at all phases that favoured the granting of bail. Victoria appeared to have proportionately fewer defendants entering the custodial remand process at both the police, and court bail phases. Hence, in Victoria where those who were denied police bail must be brought before a bail justice or magistrate, 91.7% of arrestees received bail from the police.

Bamford et al. (1999) identified a series of policies and practices at each phase of the remand in custody decision-making process which appeared to affect remand outcomes.

#### **Apprehension Phase**

During this phase decisions to remand an offender in custody were influenced by

- the availability and use of diversionary schemes,
- policies making arrest the last resort,
- evidentiary practices which can provide an incentive to police to arrest if this represents a threshold for a variety of investigatory, or evidence-collection tools, and
- police administrative factors where a specific decision (e.g. to summon an offender) will have different consequences for the apprehending officer.

#### **Police Bail Phase**

Precise information on this phase was not well documented but Bamford et al. (1999) suggested that several factors may influence the likelihood of custodial remand including

- the nature of the behaviour leading to arrest (i.e. the decision concerning which offence the defendant is charged with, and how serious police view the behaviour for which the offender has been arrested),
- police administrative procedures detailing specific policies on bail decisions, and
- bail related processes (e.g. the factors to be considered when assessing granting bail as specified in Bail Acts, cultural expectation of bail).

## **Court Bail Phase**

As with the police bail phase, there is little research on decision-making in this stage as most often the reason for refusal of bail applications is not recorded on court files or entered onto electronic data files. However several factors can influence remand decisions.

- (1) Consistency between decisions on police bail and court bail. Observational studies from England and anecdotal evidence in Australia suggests that Magistrates agree with prosecution recommendations in 50 to 80 per cent of cases.
- (2) Conduct of contested bail hearings. Jurisdictions where these matters involve a substantial hearing have lower rates of custodial remand.
- (3) The role of police prosecutors in relation to their ownership of the case.
- (4) Use of sureties when granting bail. When financial sureties are required, significant numbers of defendants who are granted bail are unable to organise sureties.
- (5) Availability of options to custodial remand.
- (6) Delay in applying for court bail (Bamford et al. 1999).

## ***Factors influencing remand***

While differences in decision-making will affect remand decisions, several reports on custodial remand in adult and juvenile populations in various Australian jurisdictions have found that there are also complex legal and social dynamics which vary between jurisdictions and across time to influence the rates of custodial remand for both Indigenous and non-Indigenous offenders (Bamford et al. 1999; King et al. 2005; Mazerolle & Sanderson 2008; Sarre et al. 2006; Tresidder & Putt 2005). While it is difficult to specifically isolate the factors critical to rates of custodial remand at a specific time within a particular jurisdiction, factors influencing custodial remand are discussed below.

### **(1) Offence characteristics**

The seriousness of the offence/offences and particularly if the offence involved violence, as well as the strength of the evidence against the defendant will influence decision-making.

### **(2) Offender characteristics**

There are several defendant characteristics which particularly influence custodial remand rates. First, many arrestees are recidivist offenders with extensive criminal histories. When this history includes failures to appear in court or the violation of previous bail conditions, and particularly re-offending while on bail, the arrestees are more

likely to be remanded. Indigenous arrestees are more likely than non-Indigenous offenders to be recidivist offenders with a previous history of bail violations and failures to appear in court (Weatherburn et al. 2006). Second, some individuals prefer to be remanded in anticipation that they will receive a custodial sentence which will be backdated to include time already served in custodial remand, rather than delay starting, what they believe is their inevitable detention (Tresidder & Putt 2005). Third, some arrestees do not seek bail as they believe it will be denied. Lastly, over time there have been changes in defendant characteristics with more defendants now having substance abuse and mental health issues (Sarre et al. 2006). For example, in a 3-year study of remandees in Victoria, while the seriousness of the offences in offenders' criminal history had declined over the three years, remandees had increasingly severe drug, alcohol, and mental health problems during this time period (Frieberg & Ross 1999).

### **(3) Community setting**

Several community factors have been identified as influencing remand rates. First, social and economic factors in the community including offenders' profiles, the proportion of Indigenous people, and the unemployment rate in the jurisdiction influence decisions to remand. Second, law and order issues including the imprisonment rate, police numbers in the jurisdiction, apprehensions and charging practices, the crime rate generally, and especially the rates of violent crimes against the person and other offences which are more likely to attract a custodial sentence (Sarre et al. 2006). For example, Sarre et al. (2006) reported that differences in the crime rates between jurisdictions strongly affected remand rates.

Similarly, Fitzgerald (2000) found several factors contributed to the increasing remand population in New South Wales including an increase in the numbers of people appearing before the courts, police and Magistrates were less willing to grant bail, and remandees were being detained in custody for longer because of increased delays in Higher Court proceedings, and particularly if they defended the charges. However, the principle cause of the increasing number of adults held on remand was a result of an increase in the numbers of people who were being charged with offences with high bail refusals. More adults were appearing for a greater number of offences with high bail refusals such as robbery and break and enter.

Third, anecdotal evidence suggests that in some cases, Indigenous communities may request that a persistent offender be removed from the community to provide "respite" from their offending behaviour for the community. Lastly, there is also further anecdotal evidence that at times, Indigenous offenders need to be removed from their community because of the risk of a community backlash against the offender (Mazerolle & Sanderson 2008).

#### **(4) Legislation**

One specific feature of legislation is particularly important in influencing custodial remand: presumptions either for, or against, bail. For example, the Victorian Act contains reverse onus provisions which stipulate that unless a defendant can be taken before a court forthwith, police should grant bail unless there are persuasive reasons to the contrary. If police do refuse bail defendants must be advised of their right to be taken to a 'Bail Justice'. These provisions are not found in other jurisdictions.

However it is important to note that when Bamford et al. (1999) reviewed legislative variations in dealing with adult offenders across jurisdictions, while these legislative differences were important, they maintained that such variations were probably insufficient on their own to significantly influence remand rates. Evidence instead suggested that individual decision-makers interpreted the legislation differently.

In contrast, when Fitzgerald and Weatherburn (2004) specifically investigated the consequences of changes to the *Bail Act* in New South Wales there had been a significant impact on the number of bail refusals. In 2002, the presumption to bail for various types of repeat offenders was removed from the *Bail Act*. Subsequently, there was a general increase in the bail refusal rate for offenders with previous convictions by 7%. However the impact fell disproportionately on Indigenous offenders as the increase in bail refusals was greater for Indigenous adults (up 14.4%) than for non-Indigenous adults (7%) (Fitzgerald & Weatherburn 2004).

Other types of legislation which are not related to bail may also have indirect, and unintended consequences on Indigenous over-representation in the criminal justice system and hence on custodial remand rates.

#### **Alcohol Management Plans**

An example of the possible indirect effects of legislation on custodial remand rates can be seen in the Alcohol Management Plans (AMPs) present in many Queensland Aboriginal communities. The implementation has been associated with positive changes in alcohol-related incidents and violence within these communities with a decrease in domestic violence offences, a drop in serious assaults by 2% and other assaults by 16.7%, a decrease in injury levels and alcohol-related presentations to community health centres and fewer hospitalisations from assaults and other trauma (Cunneen et al. 2005).

There has also been a drastic increase (over 400%) in the number of Indigenous people being charged with liquor related offences. According to Cunneen et al. (2005) AMPs have resulted in the criminalisation of the possession of alcohol and alcoholism within the Indigenous community. So while AMPs have had a positive impact on violence and injury within these communities there have been unintended negative consequences on the over-representation of Indigenous people within the criminal justice system. Cunneen et al. (2005) argued that blanket prohibition had resulted in net-widening by now bringing people into contact with the criminal justice system, who except for the prohibition or restriction on alcohol would not be involved. Concerningly, the AMPs have resulted in a “significant new level of criminalisation which has not been offset by the decline in assault offences” with increased arrests, convictions, and in some cases, sentences of imprisonment, or excessive fines for charges under the *Liquor Act (1992)* (Cunneen et al. 2005, p. 157). In contrast, some government stakeholders point out that while the AMPs have resulted in an increase in the number of overall criminal charges, this is offset by the subsequent reduction in alcohol-related harm and crime in the discrete communities. They suggest the consequences of alcohol fuelled violence and crime are much more serious for both victims and communities than the penalties issued for breaches of the *Liquor Act (1992)*.

## **(5) Policies**

Two specific changes in policy have been found to be related to remand rates. Changes in criminal justice policy that increased numbers of imprisoned faster than the increase in the general population (Frieberg & Ross 1999), and changes in bail practices and policies affecting the probability of obtaining bail (Sarre et al. 2006).

## **(6) Decision-making processes of criminal justice personnel**

Factors which influence the decision-making processes used by key justice personnel are maintained to be important factors affecting the rates of custodial remand. While courts do have an influence on bail decision-making an analysis of the decisions made by non-judicial participants, and especially police decision-making is suggested to be a key to isolating the critical factors affecting remand trends (Bamford et al. 1999). Therefore judicial decision-making is hypothesised to be less important than that of police and prosecutors. Judges and Magistrates are both heavily reliant on information from police and legal representatives. Often the reasons given by Magistrates or judges for refusing bail are simply a restatement of the reasons provided by either the prosecution or police (Tresidder & Putt 2005).

### The Role of Police

While the importance of police decision-making is clearly recognised little is known about the processes specifically used in relation to the granting of bail, or at the judicial stage of proceedings (e.g. regarding decisions about the recommendations, or information police officers will provide to prosecutors and court officials) (Bamford et al. 1999). Research examining police decision-making in other contexts (e.g. leniency) has found that overall, legal characteristics are most influential in affecting decisions, and particularly when dealing with serious offences (Kraus & Hasleton 1982 as cited in Little 2007; Mastrofski, Snipes & Parks 2000; Mastrofski, Worden & Snipes 1995).

Research on police decision-making has also investigated factors influencing decisions to arrest. These decisions can have a significant impact on custodial remand rates. When police decisions to arrest are investigated, again legal variables such as the seriousness of the offence and having a prior record are considered the primary factors in arrest decision-making (Carrington & Schulenburg 2003). However when officers are dealing with less serious offending, an officer's decision-making may also be influenced by extra-legal factors such as the views of the complainant (Black & Reiss 1970; Smith et al. 1984; Terrill & Paoline, 2007), and involve a more subjective assessment of the suspect's demeanour, affiliations and characteristics (Novak 2005; Piliavin & Briar 1964) as well as the offender's familial characteristics and living conditions (Farrington & Bennett 1981; Fisher & Mawby 1982 cited in Little 2007; Landau & Nathan 1983 cited in Little 2007). Similarly, a range of community characteristics such as socio-economic status, crime rates and racial composition may also influence a decision to arrest (Elite 2005; Little 2007). Also, not surprisingly, more experienced police officers are less likely to resolve encounters through an arrest, and are more likely to utilise alternatives to formal processing (Finckenauer 1976; Finn & Stalans 2002; Little 2007).

### **(7) Service delivery to criminal justice clients**

Several facets of service delivery are related to an increased risk of custodial remand including

- a lack of alternative accommodation options, particularly for those with substance abuse or mental health problems,
- a lack of services (e.g. bail programs, treatment options) to support the arrestee while on bail,
- justice workers who had high case loads so they lacked the capacity to manage, supervise and provide the intensive support needed to maintain arrestees when they had been bailed to the community, and

- a lack of collaboration and co-ordination between government services (Mazerolle & Sanderson 2008; Tresidder & Putt 2005).

### **(8) Availability of competent legal representation**

Access to adequate legal representation is an important factor influencing custodial remand. For example, in a study of bail decision-making conducted in Western Australia, legal representation was a significant predictor of obtaining bail for both adults and juveniles (Allan et al. 2003). Similarly, in research with Queensland juveniles, poor legal representation was maintained to increase the likelihood of custodial remand (Mazerolle & Sanderson 2008).

### **(9) Court delays**

Court delays impact on the time defendants will spend in custodial remand (Sarre et al. 2006). For example, Fitzgerald (2000) found that court delays contributed to the increasing rates of custodial remand in New South Wales. Remandees were being detained in custody for longer periods because of increased delays in Higher Court proceedings, and particularly if they defended the charges. So the time on remand between committal and sentencing for defended hearings had risen steadily from 243 days in 1995 to 355 days in 1999. In contrast, when defendants plead guilty, the delay had increased from 114 days in 1995 to 135 days in 1999.

Court delays may occur because:

1. Cases may be adjourned for a variety of reasons including inadequate access to legal representation for the arrestee, or this representation may be perceived as inadequate.
2. Defence lawyers often need to wait for lengthy periods before they received details from the prosecution.
3. Negotiations are taking place between the defence and the prosecution.
4. The police need to conduct further investigations. This is particularly likely to occur when the arrestee has entered a not guilty plea.
5. Other matters are being investigated and further charges may be laid during the course of the original matter going before the court (Tresidder & Putt 2005).

### ***Explanations for jurisdictional differences in custodial remand rates in Australia***

As noted previously, custodial remand rates vary across different jurisdictions. To investigate the source of these variations, Sarre and colleagues (King et al. 2005; Sarre et al. 2006) examined differences between Victoria, which had the lowest rate of custodial remand, and

South Australia, which had the highest rate of adult remandees. Jurisdictional differences in custodial remand rates were accounted for by the interaction of the defendants' characteristics, and most importantly, the practices and policies of remand decision-makers (e.g. policies and practices of police, police custody sergeants and court bail authorities). Although there were higher remand rates for defendants with greater criminogenic needs, policy and practice differences between the two jurisdictions also impacted on the likelihood that these defendants would be placed in custodial remand.

Sarre and colleagues (King et al. 2005; Sarre et al. 2006) identified four critical policy and practice differences which influenced jurisdictional differences in custodial remand rates between Victoria and South Australia.

### **(1) Differences in bail legislation**

There were differences in bail legislation between the two jurisdictions. The *Victorian Act* distinguished between the grounds for remanding a defendant in custody and the particular information to be used in determining whether these grounds existed. The Act specifically contained reverse onus provisions so that defendants in certain circumstances had to overcome a presumption to bail, and there was also an immediate review of police bail decisions either in court or by a Bail Justice. The Victorian legislation reflected a culture with policies and practices that either promoted bail, or at the very least did not discourage granting bail.

### **(2) Accountability of bail authorities and review of remand decisions**

In Victoria there was greater transparency and accountability for remand decisions than in South Australia. While South Australia only used a telephone review process, the Victorian system had greater scrutiny of both contested bail matters and the risks the defendant would not comply with their bail conditions. So for example, while both Victoria and South Australia had similar percentages of contested matters (i.e. 40%), in Victoria these matters took longer to review, with a median time in Victoria of 18 minutes vs. only five minutes in South Australia. The increased time taken to review matters in Victoria increased the likelihood that defendants would receive bail.

### **(3) Agency operational procedures**

Bail decision making is a time pressured process which is influenced by the policy and cultural constraints of the various bail authorities and especially those of the police. There were differences in the operational ethos between South Australia and Victoria which were

linked to the custodial remand rates. In South Australia remand was more closely linked with operational policing objectives and strategies. So there were policies which encouraged arrest even where a summons might be appropriate, and custodial remand was being used as a crime reduction strategy under the rubric of ‘intelligence-led policing’.

#### **(4) Therapeutic justice and court resources**

While both jurisdictions had a wide variety of diversionary courts the trend in Victoria was for some Magistrates and judges to adopt a therapeutic jurisprudence, or therapeutic justice model to the bail process. Court officials used this time to explore opportunities to act as a therapeutic agent by using mental health and other related disciplines to obtain needed services for defendants. This approach occurred partly as a response to the increasing criminogenic needs of defendants in the custodial remand system. The therapeutic emphasis had enabled Victorian courts to attract a greater range of resources to assist defendants and so offered more alternatives to remand than available in South Australia.

Hence Sarre and his colleagues (King et al. 2005; Sarre et al. 2006) concluded that governments could influence remand rates over time by the strategic provision of resources and an emphasis on a particular philosophical approach to remand including

- Statements of principles, objectives and criteria guiding bail decision-making
- Clear definitions of the roles of bail authorities and their responsibilities. For example, it is easy for police to merge their role as bail decision-makers with their role as crime preventers and crime investigators, so that custodial remand may be employed to achieve other police goals (e.g. crime reductions). Clearer definitions would remove these ambiguities.
- Scrutiny of bail decision-making
- Legislative and practical disincentives for police and courts to deny bail, and enhanced police accountability for bail refusal
- Resourcing of support services for those who would for want of services be granted bail
- Improved feedback loops between courts and police
- Therapeutic model of justice which informs bail strategies
- Quality assurance mechanisms which involve
  - the collection of reliable, and publicly available data
  - better statistical services within, and between jurisdictions, using common terms and collection and collation processes so data can be compared and trends determined
  - the inclusion of performance indicators relating to bail decisions and processes in agency reporting, inter-agency

and intra-agency liaison between bail decision-makers. This would encourage the identification and addressing of problems as they arise and the development of innovative practices (King et al. 2005; Sarre et al. 2006).

Therefore, governments are able to influence the rates of custodial remand by the provision of needed services to meet the criminogenic needs of defendants and by the instigation of policies and practices which support the granting of bail. In relation to services, the provision of both diversion and bail programs will have an impact on the rates of custodial remand for both Indigenous and non-Indigenous defendants.

## **1.9 Use of diversion programs to reduce custodial remand rates**

Currently most jurisdictions have diversionary programs for offenders with substance abuse problems or mental illnesses. While the focus of these programs is for the provision of treatment, and not for supporting the offender on bail, diversionary programs are often set as bail conditions. Hence the provision of appropriate diversion programs may have an influence on custodial remand rates for both Indigenous and non-Indigenous offenders (Denning-Cotter 2008). However, despite recommendations for increasing diversionary options for Indigenous offenders in both the Bringing Them Home Report (Commonwealth of Australia 1997) and the RCIADIC (1991), Indigenous people are still less likely to be diverted than non-Indigenous people (Polk et al. 2003).

In 2008 Joudo reviewed all current pre-arrest, pre-trial, pre-, and post-sentence diversion programs operating in all states and territories in Australia. Most programs aimed at addressing the over-representation of Indigenous people within the criminal justice system were often conducted in the context of other programs aimed at addressing health problems, economic disadvantage and substance abuse. Many programs focused on a holistic approach dealing with areas of concern for participants (e.g. employment, housing). The majority of programs were pre-arrest and pre-trial, and related to drug diversion involving education, assessment, and/or treatment.

There were few Indigenous-specific diversion programs in Australia. While most diversion programs were mainstream and not aimed at Indigenous offenders, most jurisdictions had made efforts to ensure that programs were culturally appropriate for Indigenous participants. The available programs were almost exclusively targeted to offenders who had committed drug offences or whose offending was clearly

linked with their substance abuse. As most Indigenous programs were ‘holistic’, it was possible to refer participants to other types of treatment apart from their alcohol and drug use (Joudo 2008).

The majority of programs had not been evaluated but where evaluations existed, Indigenous people were less likely to have been referred and accepted by the programs. Anecdotal evidence on program completion for Indigenous participants was mixed. Some stakeholders indicated that Indigenous participants were just as likely to complete a program as their non-Indigenous counterparts. These stakeholders instead maintained that referral and acceptance rates were having a significant impact on Indigenous people’s access to programs. In contrast, other stakeholders reported that Indigenous offenders were much less likely to successfully complete diversion programs and attributed this higher failure rate to the lack of appropriate treatment services for Indigenous people (Joudo 2008).

Indigenous offenders who have been diverted from the criminal justice system were more likely than their non-Indigenous counterparts to re-offend following diversion. However, diversion programs did have some impact on re-offending rates (Joudo 2008). For example, reducing drug use had a positive impact on subsequent offending for Indigenous participants in select drug diversion programs (Urbis Keys Young 2003 cited in Joudo 2008).

Not surprisingly there were particular barriers to Indigenous people accessing diversion programs (Joudo 2008).

- (1) Indigenous people were less likely to admit guilt to police which was a necessary requirement for diversion.
- (2) There was limited information available to Indigenous people about diversion programs.
- (3) Because of continuing distrust of police and other authority figures Indigenous people were often reluctant to be interviewed by police who were then unable to divert offenders (e.g. Mazerolle & Sanderson 2008).
- (4) On occasions, police officers often forgot that diversion was an available option so there was a need for continuing police training.
- (5) Indigenous people were more likely to have multiple charges. For example, in the 2005 DUMA program, when compared with non-Indigenous detainees, Indigenous detainees were more likely to have two or more charges, and less likely to have one charge (37.7% of Indigenous offenders and 48.3% of non-Indigenous detainees had one offence). Similarly, recent research in New South Wales revealed that when compared with non-Indigenous offenders, Indigenous offenders

were twice as likely to be convicted of a concurrent breach offence, and one-and-a-half times more likely to have at least one concurrent conviction (Snowball & Weatherburn 2006).

(6) Indigenous people were more likely to have previous convictions and periods of incarceration, and particularly for violent offences. Indigenous people had higher rates of arrests for violent and serious theft offences. They were more likely to appear in court for violent offences such as sexual assault (11 times greater), aggravated assault (19 times greater), and robbery (17 times greater) (Snowball & Weatherburn 2006). More than half of Indigenous prisoners who were incarcerated at 30 June 2006 were imprisoned for violent offences compared with 37 percent of non-Indigenous prisoners (ABS 2006a).

Although some researchers have argued for an increased use of diversion for Indigenous offenders (e.g. Baker 2001), diversion is often not possible in many instances involving violent offences. First, such offenders are often excluded from programs. Second, it is inappropriate to divert offenders who have committed serious violent offences. For example, Joudo (2008) found there was a commonly held view that such offenders should be punished for these offences and they could instead receive appropriate treatment programs while in prison.

(7) Indigenous people were more likely to have drug misuse problems that were not addressed in the available drug diversion programs (i.e. alcohol and inhalants).

(8) Indigenous people were more likely to have a co-existing mental illness or cognitive disabilities. While there was a lack of reliable statistical data on the prevalence of cognitive disability in Indigenous communities, anecdotal evidence suggests that the extreme poverty and consequent poor health results in rates of disability twice as high as present in the non-Indigenous community (Simpson & Sotri 2004:6 cited in Joudo 2008). It may be difficult to identify Indigenous offenders with cognitive disabilities as these deficits may be masked by other factors of disadvantage (e.g. current substance abuse). Hence, there was a need to train police to identify offenders with cognitive disabilities (Joudo 2008).

(9) The remoteness of many Indigenous communities restricted their ability to access services as it was not economically feasible to run some programs in these areas.

(10) Many Indigenous populations were much more mobile than the general population so Magistrates may be reluctant to refer offenders to programs when they may be difficult to locate again (Joudo 2008).

While stakeholders maintained all these factors limited Indigenous people's access to diversion programs, eligibility criteria for programs were most often cited as a barrier to Indigenous access to programs (Joudo 2008).

Consequently, Joudo (2008) questioned whether the continuum of available diversion programs offered within jurisdictions is comprehensive enough to meet the needs of Indigenous people. She concluded that

- There was a need for programs which consider substance abuse problems specific to Indigenous offenders (e.g. alcohol and inhalants which generally fall outside the scope of many drug diversion programs).
- It is necessary for the wider dissemination of information about diversion programs among Indigenous communities and amongst Aboriginal Legal Service solicitors and client officers.
- Assessment for entry into diversion programs should be made on a case by case basis so that some offenders with offending histories, and particularly those including violent offences, may obtain entry into needed programs that they may be otherwise excluded from because of their criminal histories. These offenders are particularly likely to benefit from alcohol and drug treatment.
- It is important to understand the potential negative impact of eligibility criteria for Indigenous offenders, and review and amend these criteria where this is feasible.

## **1.10 Bail programs**

Access to bail is also an important mechanism for reducing the over-representation of Indigenous offenders in custodial remand as it provides an alternative to holding defendants in custody. Policies and practices on bail, and the availability of programs contribute to jurisdictional variations in remandee numbers across Australia (AIHW 2007). Bail support programs may be either voluntary or mandated as a condition for granting bail. Programs provide services, intervention or support to assist an offender to successfully complete their bail period. These programs aim to reduce re-offending while on bail, increase court appearance rates, and provide Magistrates and police with viable alternatives to custodial remand (Denning-Cotter 2008).

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC 1991) emphasised the importance of decreasing the over-representation of Indigenous people in the custodial remand population. To help achieve this aim, the RCIADIC made specific recommendations relating to bail for Indigenous people. Specifically,

- That Governments closely monitor the application of bail, and ensure that principles of bail legislation be enacted in practice;
- That people be informed of their rights to apply for bail;
- That Aboriginal Legal Service access is granted to people who have bail refused;
- That criteria for granting bail be revised;
- That legislation is amended to allow senior police to review bail decisions.

Despite these recommendations Indigenous people are still more likely to be refused bail and continue to be disadvantaged by a range of cultural and lifestyle factors which impact on their ability to access bail, and their capacity to successfully meet set bail conditions (AJAC 2001; Law Reform Commission of Western Australia 2005). For example, when the AJAC (2001) reviewed the bail decisions from local court appearances in New South Wales in 1999, when compared with non-Aboriginal defendants, Aboriginal people were more likely to have been refused bail (4% vs. 10% respectively). Also, Aboriginal defendants were less likely to have had their bail dispensed with (49.9%) than non-Aboriginal defendants (72%). Indigenous people are also more likely to breach their bail conditions so they are in greater need of support to meet bail conditions. For example, police “Person of interest” data from New South Wales in 2000 showed that 27% of those sought for breaching their bail conditions were Aboriginal people (AJAC 2001).

### ***Factors impacting on Indigenous people’s ability to access bail and meet bail conditions***

Previous research has identified a series of factors which impact on Indigenous people’s access to bail and their capacity to successfully meet bail conditions (AJAC 2001; Law Reform Commission of Western Australia 2005; Mazerolle & Sanderson 2008; RCIADIC 1991). These factors include offence and offender characteristics, social and cultural factors, access to bail support and supervision services, and jurisdictional legislation, policies and practices.

#### **Offence and offender characteristics**

A range of offence and offender characteristics make Indigenous offenders less likely to access bail. Compared to non-Indigenous offenders, Indigenous defendants are more likely to commit offences with high bail refusals (e.g. violent offences, multiple charges) and be arrested for offensive language and behaviour which has a clear link with further charges for resisting arrest and assaulting police. In research in New South Wales, Aboriginal people were 15 times more likely to face these charges than the general population, and more than 80 times more likely to face such charges in some locations.

Many argue these types of charges result from over-policing of the Indigenous community, or discriminatory policing practices (AJAC 2001).

Further, Indigenous offenders are also more likely to have previous bail records with earlier breaches and failure to appear at court. Many offenders also have failure to appear in court for their current offence so this often results in these accused persons being remanded in custody. Also Indigenous offenders are likely to have prior convictions. For example, in a review of a sample of cases in New South Wales, in almost 80% of the cases when bail was refused, prior criminal history was cited as a significant reason for this refusal (AJAC 2001).

Also at times it is necessary to remove the offender from their community. This may occur because their presence represents an ongoing risk to the victim, or a need for respite for the community from the defendant's offending. At times, offenders also may need to be removed from their community because of possible community backlash (AJAC 2001).

### **Social and cultural factors**

There are a range of social and cultural factors which impact on offenders' capacity to appear at court at an appointed time and to meet their bail conditions. Socio-economic hardship disadvantages many Indigenous offenders. First, it often makes it difficult for offenders to report regularly to police or return to court because of difficulties in accessing transport. Second, Aboriginal defendants may be transported long distances to the nearest court house to have their bail determined. Those who are granted bail often have no resources to return to their home town so they re-offend. Also when defendants need to have their bail conditions altered this is difficult when they live in a location where there is no Magistrate (AJAC 2001; Law Reform Commission of Western Australia 2005; Mazerolle & Sanderson 2008; RCIADIC 1991).

Indigenous defendants may also be disadvantaged by limited literacy and language skills. Consequently, they may not understand court and bail processes, and there may be communication barriers between Indigenous defendants and their legal representatives. Hence defendants are not fully aware of their bail conditions, what their responsibilities are in meeting these conditions, and the consequences of breaches. Indigenous people's lack of knowledge and understanding of bail conditions is maintained to account for significant numbers of defendants breaching their bail conditions. When Indigenous people do appear in court they are often intimidated and do not understand the court processes. Aboriginal defendants may also have physical or mental disabilities which further disadvantage their ability to meet bail conditions and appear in court at appointed times (AJAC 2001;

Law Reform Commission of Western Australia 2005; Mazerolle & Sanderson 2008; RCIADIC 1991).

### **Access to bail support and supervision services**

Often there are no local support and supervision services for courts to utilise to grant bail. A lack of bail accommodation and alcohol and drug treatment services is particularly problematic. Typically service provision is particularly problematic in smaller regional towns, and remote or rural communities where there are limited, or no, bail support and supervision services. Consequently Indigenous offenders are more likely to be remanded in custody (AJAC 2001; Law Reform Commission of Western Australia 2005; Mazerolle & Sanderson 2008; RCIADIC 1991). For example, in a Queensland study of juvenile offenders, lack of adequate bail support and supervision services were maintained to account for the custodial remand of many young people whose offences did not justify incarceration (Mazerolle & Sanderson 2008).

### **Legislation, Policies and Practices**

Legislation, policies and practices may operate in a manner that is detrimental to the interests of Aboriginal and Torres Strait Islanders (Blagg et al. 2005). Blagg et al. (2005) identified a series of factors which disadvantaged Indigenous Australians in the criminal justice system. First, when information is given to Indigenous people, it is often unclear and not presented in a manner which could be understood by Indigenous defendants. Second, Indigenous defendants frequently are not given adequate time to advise, and consult with, their legal representatives.

Third, often Magistrates and solicitors lack an understanding of the needs and concerns of the local Aboriginal people and the specific cultural, demographic or geographic circumstances that may impact on a person's ability to meet bail conditions. Consequently often inappropriate bail conditions which Indigenous people are unlikely to be able to meet are imposed on accused persons. For example, bail conditions often stipulate curfews which limit people's ability to perform their cultural responsibilities, or ban alcohol consumption for a defendant who has an alcohol addiction (Blagg et al. 2005).

Similarly, bail often involves the imposition of monetary conditions which may be particularly difficult for Indigenous people. For example, research in New South Wales found that monetary bail conditions were often employed. However, the amounts of money involved often appeared to be inappropriately high given the income of the Aboriginal residents in the areas. So for example, one court imposed financial conditions in 92% of the examined cases, with bail sureties routinely up to \$5,000. This occurred in an area where more than half of the Aboriginal residents had an income below \$300 per week, and 30%

had weekly incomes of less than \$150 (AJAC 2001; Blagg et al. 2005; Schwartz 2005).

Fourth, frequently there is very little involvement from the defendant's family or others who could provide useful information about the defendant and their likelihood of appearing at court. Often, little information is given to the court about the defendant and the offence. Information usually only includes the defendant's criminal history and the facts of the case as presented by police. Typically, the defence provides little, if any information for determining bail or bail conditions. Most often the court mirrors bail decisions suggested by the police, without seeking further independent information (AJAC 2001; Blagg et al. 2005).

Lastly, typically, no objective measure is used to assess the defendant's community ties. Even when definitions of community ties are stipulated in legislation, these often indirectly disadvantage Indigenous people. Instead many Magistrates use western concepts of community ties (e.g. employment, name on a lease, permanently reside in a specific house). Usually there is no consideration of the defendant's spiritual or family connections, and often no means for Magistrates to truly ascertain the views of the Aboriginal community (Blagg et al. 2005).

Despite legislation and policies for addressing the bail needs of Indigenous people these have not resulted in consistent practices within jurisdictions. For example, when the AJAC examined 100 bail cases from five NSW court locations in 2001 to review bail processes for Aboriginal defendants the type of bail imposed for similar offences varied greatly between different locations, and also within the same location. When monetary bail conditions were imposed there was inconsistency in the amount of the surety required between different courts, while bail decisions within a given court sometimes conflicted between similar cases. Particular courts appeared to impose bail conditions specific to that court, rather than particular to the offence, offender or local circumstances (Blagg et al. 2005).

Consideration needs to be given to whether more stringent bail practices and bail legislation are operating in an unfair and uneven manner for members of the Indigenous community (Blagg et al. 2005).

### ***Best practice in bail support programs***

After reviewing international research, Denning-Cotter (2008) identified five principles for best practice in bail support programs.

Ideally, programs should

- (1) Be based on voluntary participation rather than mandated, as a voluntary program takes into account the unconvicted status of the person.
- (2) Offer support and intervention rather than supervision or monitoring. Support and treatment programs are more effective in reducing recidivism (Amos et al. 2006 cited in Denning-Cotter 2008; Pritchard & Cox 1986 cited in Denning-Cotter 2008; WMPS 1997 cited in Denning-Cotter 2008).
- (3) Be holistic, involving a broad based needs assessment and response, with information, support and intervention as required. Not only are these types of programs more effective in reducing recidivism, but the time when a person receives bail is the optimal time for effective intervention (Kubiak et al. 2006 cited in Denning-Cotter 2008; MacKenzie 2002 cited in Denning-Cotter 2008).
- (4) Be co-ordinated and inter-agency, providing integrated service delivery across different systems (Allen 2001).
- (5) Be adaptable and responsive to local conditions (Victorian Law Reform Commission 2007). Given our vast geographical distances, Australia faces specific challenges in providing appropriate bail support programs which are both cost effective and meet local community needs. Specifically, given the decentralised nature of the state, Queensland faces particular challenges in effective service delivery.

According to Cunneen (2001 cited in Denning-Cotter 2008), Indigenous people also have specific needs in relation to bail programs which should adopt a holistic view of Indigenous health and wellbeing and include the meaningful, rather than tokenistic involvement of Indigenous people. It is also important that bail programs involve both the family and community and emphasise Indigenous culture, heritage and law. Lastly, programs need to assist in establishing and strengthening relationships with Indigenous people who can serve as mentors and role models for defendants (Cunneen 2001 cited in Denning-Cotter 2008).

While these suggestions represent guidelines for bail programs, the AJAC (2001) has previously identified a series of specific recommendations for improving access to bail for Indigenous adults.<sup>7</sup>

- (1) That a series of legislative amendments be enacted

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<sup>7</sup> The AJAC included two other recommendations which are not included here as one related specifically to juveniles which are not the focus of this report as it only relates to Indigenous adults. The second recommendation that was omitted related to the piloting of a program specific to New South Wales.

- (i) To remove reliance on employment and residence in assessing a person's community ties and instead include reference to family, place, and kinship ties,
  - (ii) Ensure that financial sureties are not unreasonable by defining financial sureties or security to be a "last resort", and determining these in proportion to a defendant's income or assets be enacted,
  - (iii) To remove the potential for over policing and discriminatory policing decisions to influence bail by providing automatic bail entitlement for offensive language and behaviour, and
  - (iv) To define prior history to exclude offensive language and behaviour, summary offences, and previous failures to appear more than five years old.
- (2) That the government include greater Aboriginal input into the bail process and provide equity of access for those living in remote locations. Aboriginal people should be employed and trained to act as bail justices, particularly in locations without courthouses or full time court staff.
- (3) That the number and type of accommodation options available for offenders, particularly in rural areas, be increased and a brokerage fund established to purchase accommodation for homeless defendants.
- (4) That specific training on Aboriginal community issues including connections to place, kinship and family ties, and reasons for breaching bail conditions, should be provided for Magistrates.
- (5) That the Government employ Aboriginal people to develop and provide "plain English" information on bail conditions and processes for amending conditions.
- (6) That Aboriginal Client Service Specialists be employed to compile and update information on local community bail options for magistrates, and develop a local list of respected Aboriginal people who can act as acceptable persons for providing bail sureties, speak for defendants in bail hearings, provide advice and information to courts on acceptable bail conditions, assist defendants with transport to court and provide information on the bail process to defendants.
- (7) That governments implement Recommendation 89 of the RCIADIC to record information on Aboriginal access to bail and the bail conditions imposed on Indigenous people. This information should be published annually (AJAC 2001; Schwartz 2005).

### ***Current Indigenous specific bail support programs***

In 2008 Denning-Cotter reviewed bail programs available across all Australian jurisdictions. While most jurisdictions had diversionary programs for offenders with substance abuse problems or mental illnesses which were often set as a bail condition, Denning-Cotter argued these programs could not be regarded as actual bail support programs. The focus of diversionary programs was not on helping the person to meet their bail conditions, but rather was an opportunity to provide treatment for the offender.

Across Australia, there were a limited number of services and specifically tailored bail support programs available to meet the needs of adults wishing to access these services, with very few programs available in rural and remote areas. As most bail programs were not evaluated it was impossible to reach any conclusions on their effectiveness. Therefore it would be beneficial to establish a consistent evaluation framework for programs in all jurisdictions (Denning-Cotter 2008).

Generally in Australia, there was a lack of Indigenous specific programs in all states and territories, with offenders instead referred to mainstream programs which may not meet their specific cultural needs. Currently there were only two programs specifically designed for Indigenous participants; one program for Indigenous adults in Queensland, The Queensland Indigenous Alcohol Diversion Program, and the second for Aboriginal young people in Victoria (Denning-Cotter 2008).<sup>8</sup>

### **The Queensland Indigenous Alcohol Diversion Program (QIADP)**

QIADP is a three-year pilot program which commenced in July 2007 in Cairns (including Yarrabah), Townsville (including Palm Island) and Rockhampton (including Woorabinda). This program is a whole-of-government initiative which aims to reduce Indigenous over-representation in both the criminal justice, and the child protection system. The program works closely with Community Justice Groups, Recognised Entities, and other relevant Indigenous agencies and groups.

In the criminal justice stream the program can operate at either the pre-plea or post-plea stage. For program inclusion, Indigenous people must be an adult, eligible for bail, have committed relatively minor alcohol-related offences which are able to be dealt with summarily, not be charged with sexual or serious violent offences, the offences must have been related to the defendant's use of alcohol, the offender

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<sup>8</sup> As the focus of this literature review is on adult offenders, there will be no discussion of programs targeted at juveniles.

must be assessed as suitable, be willing to participate in the program, and agree to disclosure about himself or herself to the court.

Participants are then diverted into treatment and case management to reduce further alcohol-related harm. The intervention can include withdrawal management, counselling, rehabilitation, employment and accommodation support if required. The program takes approximately five months to complete, with aftercare available for 12 to 24 months after finishing the formal program.

Community Justice Groups are involved in the program. Groups can make submissions to the Court in relation to the participant's suitability for bail and program participation, have input into the assessment process and development of the treatment plan, provide support and mentoring to program participants, and make submissions to the Court if the defendant has breached a bail condition, and on the defendant's progress at the time of sentencing.

Progress on the program is taken into consideration at sentencing. However, failure to complete the program or voluntarily withdrawing does not constitute a breach of bail. Bail itself cannot be revoked solely on the failure to comply with the condition to participate in the QIADP, and this failure cannot be taken into account in sentencing (Joudo 2008).

The outcome evaluation of the QIADP was completed in February 2010 and covered a period of just over two years from 1 July 2007 to 31 August 2009 (Success Works 2010). The evaluation focused on a series of objectives for program participants, community level objectives, and a cost-benefits analysis of the program. The evaluators concluded that the QIADP had achieved its objectives for program participants. They had improved health and social outcomes, reduced levels of alcohol consumption and offending, improved parenting capacity, and QIADP had successfully diverted offenders from receiving higher level penalties within the criminal justice system.

In contrast, there was little or no evidence that community level objectives and overall cost savings had been achieved during the evaluation period. So there was no current evidence that local services had been able to focus on issues apart from alcohol misuse, or that there were lowered levels of alcohol consumption, crime, and specifically alcohol related crime, and increased levels of work and productivity in the pilot communities. The evaluators however pointed out that there had not been enough participants completing QIADP to achieve these longer term outcomes (Success Works 2010). Also the focus of the initiative during the evaluation period had been on the individual client level so it is not surprising that community objectives were not met. During the evaluation period there had been little engagement with the local Indigenous communities.

It would be unrealistic to expect community level changes to occur during the evaluation period. These types of changes are typically small in the short-term and are therefore unlikely to be detected by significant differences in quantitative data during this period. Community level changes are more likely to be seen over the long-term. In relation to the analysis of the cost effectiveness of the program this was compromised as the QIADP did not run at full capacity during the evaluation period and the evaluators did not use Australian data on the costs of crime for inclusion in the analysis (see Mayhew 2003 for Australian data).

Overall, the evaluators concluded that there was a clearly demonstrated need for alcohol treatment programs for Indigenous offenders appearing before the Magistrates' Court and for parents involved with the Child Safety agency. The evaluators recommended that future QIADP programs be included as part of the current Alcohol Reforms being pursued by the Queensland Government. Program participants were a very vulnerable group who typically presented with more complex needs than just alcohol misuse. Hence the evaluators maintained that more effort was needed to address participants' multiple needs and specifically to provide assistance in addressing their homeless status and mental health issues. Similarly, they recommended that in future the program should also focus on involving members of the local Indigenous communities and their agencies in leadership roles to encourage ownership, engagement and to build community capacity; consider the accessibility of the QIADP to participants and their family members living in remote communities, enhance the capacity of agencies to effectively work together and share relevant information, and ensure that "cultural safety" be demonstrated by service providers, and also in the overall design of the QIADP program (Success Works 2010).

## **1.11 Summary**

This chapter presented a comprehensive literature review on the bail and remand experiences of Indigenous Australians. Indigenous people are over-represented in all areas of the criminal justice system in every Australian jurisdiction including in police contacts, as defendants in the lower and higher courts, and in the prison population as both sentenced and unsentenced (remanded) detainees. It was argued that the nature of offending by Indigenous people contributes to their over-representation within the criminal justice system, although serious socioeconomic and cultural disadvantage marked by high rates of alcohol and drug use, the cycle of violence within many Indigenous communities, lower rates of educational attainment, higher rates of unemployment and the subsequent financial stress, underlie much of this offending behaviour.

Interventions addressing the over-representation of Indigenous people in the criminal justice system therefore need to be aimed at both addressing the underlying causes of offending and targeting specific areas of the criminal justice system. In relation to addressing the underlying causes of offending efforts should focus on the specific facets of social disadvantage which underlie offending by reducing alcohol and drug abuse, improving educational attainment, decreasing welfare dependence, implementing policies or programs to reduce unemployment, and improving social support networks. By reducing offending, such efforts are likely to have a positive impact on Indigenous over-representation in the criminal justice system, including within custodial remand.

To reduce the over-representation of Indigenous people within the criminal justice system efforts also need to be directed at targeting specific areas within the criminal justice system (e.g. arrests, court appearances). In relation to custodial remand specifically, there is little research on the relationship between Indigenous status and custodial remand. However, Indigenous remandees appear to represent a particularly vulnerable, high risk sub-group within the remand population. This subgroup comprises individuals with higher levels of criminogenic needs and experiences than many sentenced prisoners.

Research including both non-Indigenous and Indigenous remandees demonstrates that governments can influence custodial remand rates by a range of policy and practice initiatives which address the social welfare needs of offenders, provide alternatives to custodial detention in appropriate cases, and increase the likelihood that defendants are offered bail, and then provide the necessary support to defendants to meet bail conditions and subsequently appear at court. Currently, Indigenous people are less likely to be offered such assistance. They are less likely to have been diverted from more formal processing in the criminal justice system (i.e. arrested) in the first instance, less likely to receive bail after arrest, and face a series of barriers in their access to, and entry into bail programs.

Indigenous people are more likely to be refused bail because of the nature of their current and previous offences. Many are likely to have committed offences with high bail refusals, or where there is an ongoing risk to the victim. Similarly, Indigenous defendants often have previous bail records with earlier breaches and failures to appear in court. When bail is granted, inappropriate bail conditions, a lack of understanding of their bail obligations, and a range of social and cultural factors impact negatively on an Indigenous defendant's capacity to meet their bail conditions and appear at court at an appointed time.

Indigenous people are also less likely to gain entry into bail programs. First, generally in Australia, there is a lack of Indigenous specific programs in all states and territories, with offenders instead referred to mainstream programs which may not meet their specific cultural needs. As there is little evaluation of the existing programs, it is unclear if programs meet the needs of either Indigenous, or non-Indigenous people. Second, even when the police or courts may wish to bail a defendant there may be no local program options for courts or police to utilise to grant bail. This is particularly likely for defendants from remote or rural communities. Third, Indigenous people are particularly vulnerable to exclusion from existing programs for a variety of reasons including the presence of a co-existing mental illness or cognitive disability, types of substance abuse that cannot be addressed by available treatment services, or the nature of their offences. Program eligibility criteria may operate in a manner that is detrimental to the interests of Aboriginal and Torres Strait Islanders. These barriers in accessing bail programs make Indigenous defendants particularly vulnerable to being remanded in custody.

The next chapter of this report details our discussions with a range of key stakeholders in the criminal justice system.

## **CHAPTER 2 VIEWS EMERGING FROM CONSULTATIONS WITH KEY STAKEHOLDERS**

### **2.1 Introduction**

A range of key stakeholders have pertinent and unique perspectives on the factors that influence Aboriginal and Torres Strait Islander accused adults being refused bail, and ways that could assist Indigenous people to comply with bail conditions to help decrease the continuing over-representation of Indigenous people in the Queensland custodial remand population. This chapter presents information emerging from our in-depth consultations across the State.

Project staff met with a sample of relevant interviewees to discuss the factors associated with the bail and custodial remand experiences of Aboriginal and Torres Strait Island Queenslanders and ways to increase the likelihood that they would be granted bail and successfully comply with bail conditions. Interviews were conducted with either individuals or in small groups depending on the preference and availability of interviewees. Most interviews lasted between 1.5 – 2 hours. Some interviews were conducted by phone. Interviewees from across Queensland, including Brisbane, Townsville, Cairns, Rockhampton, Cape York, and Western Queensland were consulted. They included representatives from Community Justice groups, Magistrates, relevant Queensland Police Officers including Police Prosecutors and Watch-house Keepers, staff from relevant legal services (e.g. Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Service (ATSILS)), and government departments (e.g. Department of Justice and Attorney-General).

Generally interviewees' explanation for the factors contributing to the over representation of Indigenous people in custodial remand most often highlighted three differing views. Interviewees either emphasised the differential treatment of Indigenous persons by the criminal justice system, or the conflict between their lifestyle and the "mainstream" system, or instead highlighted the role of Indigenous offending and re-offending as an explanation for their over-representation in custodial remand. However all interviewees recognised the severe social and economic disadvantage underlying most offending by Indigenous people and the need to address these issues to decrease the over-representation of Indigenous people in all areas of the criminal justice system.

The themes emerging during the consultations are presented below. Note that the comments below represent the opinions of the interviewees based on their personal experiences.

## **2.2 Legal variables affecting bail decision-making**

The relevant legislation, offence characteristics, criminal and bail history and issues relating to victim and witness protection all influenced bail decision-making.

### ***Legislation***

For police and Magistrates legislation provided the framework for decisions about bail for all offenders, regardless of their Indigenous status. Importantly, the legislation determined how bail decisions were made. One interviewee advised us that with the recent increase in penalties for many offences there has been a decrease in the number of offences where bail is now a possibility.

Some interviewees were satisfied with the current legislation while others suggested some changes which may help to address the over-representation of Indigenous people in custodial remand.

First, it was suggested that public drunkenness should not be a criminal offence. We were told that many Indigenous people are arrested for public drunkenness. This behaviour could be addressed in an alternate manner without necessitating arrest.

Second, the *Bail Act 1980* could be amended to allow offenders to relocate. The Act should also address cultural issues and encourage referral to necessary services. Also, increasing the currently limited options for dealing with breaches of bail would assist police and Magistrates when dealing with offenders.

Third, in cases where the defendant has failed to appear in court, the *Justices Act 1886* could be amended to enable the Magistrate to deal with the case summarily in the absence of the offender with agreement from the police. This would decrease the accumulation of failure to appear offences affecting the defendant's bail history thereby increasing their chances of receiving bail in future circumstances. Also, warrants would not be issued for the defendant's arrest which would decrease the workload for police.

### ***Offence characteristics and criminal history***

People who committed serious or particularly violent offences, those with extensive criminal histories who were therefore regarded as more

likely to re-offend, or who had previously violated their bail conditions, or failed to appear in court were at greater risk of custodial remand. We were informed that Indigenous people were particularly likely to have extensive criminal histories with a poor bail history including previous breaches of bail conditions, re-offending while on bail, and failure to appear in court. Hence they were more likely to be remanded in custody.

Some interviewees expressed the view that often Indigenous people are being criminally penalised for their choice of lifestyle which conflicts with mainstream society. There is a cultural clash so Indigenous people are particularly more likely to be charged with good order offences (e.g. public nuisance). Also the Alcohol Management Plans which have been instigated in many communities have resulted in the criminalisation of alcohol possession. Consequently, many more Indigenous people are being drawn into the criminal justice system. We were advised by some interviewees that the fines, and particularly the first fines, for possession were too large. People are then vulnerable to further court action and possible incarceration because of their inability to pay these fines.

### ***Bail history***

We were advised that many Indigenous offenders had often accumulated extensive bail histories involving previous breaching of bail conditions, re-offending while on bail, and failure to appear in court. Many interviewees agreed that while failure to appear in court was a significant issue, many of these people had not actually absconded. Rather an individual's failure to appear most often occurred because of lifestyle factors, cultural obligations, lack of transport, or a lack of understanding of legal processes. Some interviewees maintained that court attendance was "not a priority" as cultural obligations were always more important. For example, one interviewee reported some instances of people turning up for their court hearings at different times, or on different days than scheduled.

Interviewees had different opinions on whether Indigenous defendants understand the legal process, and specifically those involved in bail and court attendance. Some interviewees reported making sure that defendants understand their bail and court attendance obligations. In contrast, others emphasised the problems for defendants with limited language and literacy skills. Although these defendants may indicate that they understand their obligations, in fact, they do not. Instead they see their release as indicating they are now free from obligations to the legal system. This is specifically likely to occur in remote communities where English is not the defendant's first language.

The cost and availability of transport to attend court was also an important reason for failure to appear, and particularly where

offenders were required to travel significant distances to court. In contrast, a minority of interviewees maintained that defendants failed to appear in court (or breached bail conditions) because there was no real accountability for their actions.

### ***Victim protection and contact with witnesses***

The issue of victim protection or witness contact is also an important bail consideration, particularly in small or remote communities where offenders and victims and witnesses are likely to have contact. Some interviewees emphasised the need to protect victims and specifically in cases of domestic violence or child abuse. Also at times communities may want a more punitive approach to be used with the offender. We were advised that in some circumstances the community “is sick of the offender” and they want them removed from the community.

One interviewee advised us that she had developed a proactive approach to providing protection for the victim and restricting contact with witnesses without needing to remand the accused in custody. The accused was found accommodation outside the community in a nearby town but every effort was made to allow the person to continue their cultural life. To enable this to occur, police obtain the complainant’s consent for the accused to attend cultural events. Police then advised the accused of what contact with witnesses is allowed, and specify what behaviour is expected from them at the event.

## **2.3 Offender Characteristics affecting bail decision-making**

We were told that specific characteristics of Indigenous defendants are associated with an increased risk of custodial remand, their likely failure to comply with bail conditions, and subsequent failure to appear at court. These characteristics related to the disadvantaged nature of many Indigenous defendants, and the frequent occurrence of alcohol abuse and addiction, and homelessness or a lack of stable suitable accommodation.

### ***Disadvantage***

All interviewees recognised the chronic social, economic and cultural disadvantage experienced by many Indigenous people as underlying their offending. Indigenous people’s involvement with the criminal justice system was often seen as a result of failures in other systems (e.g. education, health, and social welfare). The criminal justice system was portrayed as having to pick up the pieces of these failures and just providing “band-aid solutions”.

Not surprisingly, interviewees emphasised the importance of addressing these underlying causes of offending to provide long-term, lasting solutions to Indigenous over-representation. For example, one interviewee commented that you could not deal with criminal justice issues without addressing the underlying social problems. The importance of improving education, school retention, health and housing, as well as providing training and employment - (and particularly non-welfare employment) - was frequently mentioned. Several interviewees also emphasised the importance of intervening earlier to support vulnerable individuals, families and communities. Specifically, there was a need for initiatives to help address the common progression from juvenile to adult offending, and for targeting repeat offenders earlier to address their criminogenic needs. Several interviewees also raised concerns about the lack of options for more persistent offenders who had developed well entrenched criminal lifestyles. These individuals were often excluded from treatment-focused programs as they were regarded as unsuitable, yet some interviewees argued these offenders were most in need of programs and support. Persistent offenders were particularly vulnerable to custodial remand.

### ***Alcohol abuse and addiction***

Similar to other research, interviewees emphasised the important role that alcohol plays in Indigenous people's contact with the criminal justice system. Although interviewees mentioned that there were some problems with other types of substance abuse in particular areas (e.g. marijuana ("yandi") and chroming), alcohol was seen as the major problem. "If you stopped the alcohol abuse 90% of the offending would stop". Intoxication not only increased the likelihood of offending and subsequent arrest but it also provided challenges for police in relation to the offender's release from custody. We were told that offenders could be taken to local services when these were available and their offending did not warrant their detention in custody. In some circumstances however, and particularly in rural and remote locations and smaller regional towns, these services had no vacancies or the offender had been banned from the services, or there were no appropriate services. Consequently, intoxicated offenders often had to remain in watch-house custody to "sober up" before they could be released.

Alcohol abuse and addiction also makes it difficult for offenders to comply with bail conditions or to present for their court appearance. Bail conditions often included a ban on drinking, which realistically people with dependence problems were going to be unable to meet. Hence, they were likely to be arrested for breaching their bail conditions, which increased the likelihood that they would then be remanded in custody. Long-term alcohol abuse and addiction also results in memory deficits. It is unlikely that such offenders will recall

their obligations to meet other bail conditions that may be applied (e.g. curfews and regular reporting to police), or to remember when they are to appear in court. Again, these offenders were then likely to be charged for breaching their bail conditions, or failing to appear in court, with a subsequent increased risk of custodial remand.

While the majority of interviewees maintained that alcohol abuse often was a common cause of offenders' inability to comply with bail conditions and their failure to appear in court, a minority of interviewees instead attributed these behaviours to disrespect for the legal system. "They just don't care. It means nothing to them". These interviewees reported that people just threw away the paperwork relating to their bail conditions and scheduled court appearances and had no intention of complying.

Given the particular concern with alcohol abuse and addiction, not surprisingly, interviewees agreed on the importance of offering appropriate offenders programs to address their addiction. Many interviewees spoke very favourably of the QIADP program and the "excellent" after care it provided. For example, we were advised that all 32 places in one program were always full with a constant waiting list for entry into the program.<sup>9</sup> Interviewees emphasised the need to expand the program to other locations and provide more places in existing services. For example, when asked about possible solutions to the over-representation of Indigenous people in custodial remand, one interviewee replied that "QIADP is the answer".

In relation to QIADP, one regional interviewee, however, did raise some concerns with us about the length of time it took for program suitability assessments to be completed, and the possible remanding of offenders in custody during this time. Consequently some offenders could end up spending time in custodial remand when their offence would have been unlikely to have attracted a custodial sentence. Hence this service was reluctant to support their clients' referral to QIADP. We have been advised however, that these issues have now been resolved in this location.

While overall interviewees were very positive about QIADP and supported its continuance and expansion, a minority expressed some concerns about the program. These issues related to (i) the program being too long for some offenders and demanding too much change, (ii) the stress placed on family members when the breadwinner was in the program, (iii) the need for offenders to undergo detoxification before program entry as this service may not be available, and (iv) the

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<sup>9</sup> While it was the view of this stakeholder that places in their local QIADP program were always taken, the program evaluation indicated that it did not operate at full capacity (Success Works 2010). Possibly this stakeholder was commenting about a brief period of time (e.g. last two months) while in contrast, the evaluation considered two years of operation of QIADP.

exclusion of violent perpetrators from the program, and particularly those charged with domestic violence offences. We were told there was a serious unmet need amongst domestic violence perpetrators for this type of program.

### ***Homelessness***

Homelessness often brings Indigenous people into contact with the criminal justice system. For example in one regional town, many homeless Indigenous people live in several local parks which are surrounded by residential accommodation. There is often public drunkenness and fights amongst park residents which leads to complaints from the occupants of the surrounding residences. As a result, the local council then require the police to take action about these homeless park dwellers. We were advised that police action is taken in response to these complaints whilst in another nearby location which is also occupied by homeless people; there is no intervention because there are no complaints from this particular local council or the surrounding residents. Homelessness was an issue in situations where there was a clear conflict between the lifestyle of the park dwellers and those of residents in the surrounding locations. In contrast, some other interviewees viewed these “park clean-ups” as evidence of discriminatory policing.

Homelessness or instability in accommodation were also particular issues which made Indigenous people less likely to receive bail. We were informed that police and Magistrates were often reluctant to bail offenders without a fixed address as they were concerned that these offenders would fail to appear in court if they were released into the community. Therefore Indigenous people living a more transient lifestyle, visiting and residing with various family members, or preferring to live in parks or town camps are more likely to be remanded in custody. In several regions in Queensland the size of this transient population has increased since the Northern Territory intervention has led many people to move into Queensland. Similarly, the implementation of Alcohol Management Plans in communities has resulted in some displacement to regional towns, thereby increasing the transient populations in these centres.

We were also told that an additional difficulty with homeless offenders is that although there may be family members who would be willing to have the offender reside in their home, often these relatives cannot be contacted as they have no telephone. Problems in granting bail may also arise if people residing with relatives have a criminal history, with the accommodation then regarded as unsatisfactory.

Not surprisingly the lack of suitable accommodation was reported as a major cause of custodial remand. Interviewees consistently stated that a lack of appropriate accommodation services meant that offenders

often had to be held in custodial remand rather than released on bail. Accommodation was particularly challenging in smaller regional towns or rural areas which were often poorly serviced, or in many remote communities with only fly-in fly-out services.

To address this, various interviewees suggested it was necessary to have accommodation services available and also have an officer with specific responsibility for contacting family members and local services to attempt to find a placement. We heard that currently this often occurs on an ad hoc basis in particular locations with some officers (e.g. ATSILS field officers or Murri Court Co-ordinators) fulfilling this function.

Placement in accommodation services however were often problematic because of a lack of sufficient beds, or in some circumstances the offender had previously “played up” and subsequently been banned from the service. Offenders with alcohol or other types of substance abuse or mental health problems are particularly difficult to place as they often need to undergo de-toxification or be stabilised before admission to the service. Of course finding appropriate accommodation for offenders in many rural and remote communities is particularly problematic. Offenders may be unable to remain in the community because of a need to protect victims or witnesses, or to protect the offender from retaliation from community members.

The extent that a lack of stable accommodation decreases the likelihood of receiving bail varies across the state as some interviewees are particularly proactive in trying to find accommodation for offenders. While in many areas a lack of address may increase the chance of custodial remand, in other places innovative approaches have been developed to decrease the likelihood that eligible offenders will be denied bail because of a lack of appropriate accommodation. For example, in one regional town the local Magistrate in conjunction with staff from criminal justice agencies have developed procedures and practices to find accommodation for offenders and to support their attendance at court. In this location every effort is made to find a family or hostel placement for offenders. If no accommodation can be found, the possibility of bail is kept open with the time between mention periods kept short so if circumstances change the offender can receive bail. Of course, this type of system is easier to establish in a smaller regional area where staff know the local community and families. It would be more challenging to have this type of approach in Brisbane or in a large regional town or area with a significant transient population.

## **2.4 Access to adequate legal representation**

We were advised that the quality of the defendant's legal representation was also an important factor influencing bail decisions. Several interviewees raised concerns about the access to, and adequacy of some of the legal representation provided to Indigenous people, and particularly for those living in rural and remote communities or in the Torres Strait. Geographical isolation often makes it challenging for defendants to access their legal representatives to receive legal advice, or give instructions to lodge bail applications if they are already remanded in custody.

In relation to the adequacy of legal representation, several interviewees commented that many legal practitioners did not understand the reverse onus provisions in the *Bail Act 1980* whereby they were required to show cause to justify the granting of bail if their client had violated their bail conditions (Section 30). We were also told that there had been concerns about the quality of representation from the previous Indigenous legal service operating in North Queensland (Aboriginal and Torres Strait Islander Community Legal Service (ATSICLS)). Although this situation had definitely improved with the new service provider there were still skills deficits in some of the lawyers. However, interviewees pointed out that Indigenous legal services often have particularly onerous caseloads with less adequate funding, despite often dealing with the most difficult cases. Consequently there was not enough direct contact between lawyers and clients, and particularly in regional and remote areas.

Some interviewees also mentioned the financial incentives for private solicitors to prolong cases. There is a financial incentive if their clients make a court appearance. When clients do not plead guilty legal practitioners will receive greater funding. Similarly, some interviewees maintained that a number of private legal practitioners sought ongoing adjournments to prolong the resolution of the matter. There is a financial disincentive for expediting a matter through court which is particularly problematic if the defendant is remanded in custody.

To address these issues of access to adequate legal representation, skills deficits in some legal practitioners, and monetary incentive for prolonging cases for private solicitors, some interviewees emphasised the

- (1) importance of improving funding for legal services or finding alternate methods of service provision (e.g. video links) to ensure clients had access, and sufficient contact, with their legal representative;
- (2) importance of providing training for legal practitioners, including information on the availability of bail programs and diversionary options; and

(3) investigating addressing monetary incentives for private solicitors to prolong the resolution of a case.

## **2.5 Bail and treatment programs**

Although many interviewees indicated a willingness to link offenders into programs and services the most common complaint was either the absence of services, or the lack of sufficient placements within existing programs. As one interviewee stated, “Give me the services and I’ll use them”. Several interviewees reported that in some areas Magistrates were remanding intoxicated offenders in custody so they could “dry out” as there were no local de-toxification services. We were advised that because of the current lack of services and programs it takes a committed person to do well on bail.

While this lack of programs was problematic, some interviewees also raised some issues about existing programs. There are concerns with the exclusion criteria from some programs (e.g. no offenders with domestic violence charges) which often disadvantaged those most in need of assistance. Other interviewees questioned the appropriateness of some programs for Indigenous participants, and specifically those offered by Queensland Corrective Services. There were also concerns about the financial stress placed on the family members when the bread-winner was assigned to long-term residential programs and the costs of attending non-residential programs.

Interviewees specifically requested more bail programs, and particularly a program similar to the conditional bail available to juveniles. Many interviewees also requested more QIADP, treatment, or rehabilitation services or places. One interviewee suggested that a worker be assigned to assisting program participants to attend non-residential programs. Several interviewees suggested the court could play an important case management role by using court orders to mandate agencies to provide needed services (“therapeutic jurisprudence”).

Obviously there is a large area of unmet need across the State though we heard of particular initiatives in certain areas which aimed to provide assistance for offenders. For example, we were told of several programs (e.g. bail programs) run, or assisted by local Community Justice groups or community Elders, who often worked on a voluntary basis. Not surprisingly, concern was expressed about ongoing funding for these types of bail programs, the precarious nature of programs reliant on the goodwill of voluntary work from members of the Indigenous community, the extra hours of unpaid work often put in by Indigenous State government employees, and the workload placed on Elders and other community members in providing this assistance.

Interviewees had different opinions about whether Elders and other community members should be compensated for their voluntary work.

To further address the unmet need for services, in some locations programs have been set up to help support Indigenous people to succeed on bail and to appear in court. For example, in Brisbane, several programs have been instigated including a transport initiative operating through the Murri Court which aims to assist offenders in getting to court, while another initiative focuses on providing training with subsequent employment opportunities. Also the Department of Justice and Attorney-General has advised that it is considering having bail programs operating under the Murri Court, and is in the process of instigating a new bail initiative through the JP (Justice of the Peace) Courts. Current JPs are being trained as “interview friends” to assist offenders during police interviews. This later program is being operated in conjunction with ATSILS which will pay the JPs for this service.

Also it was suggested that Community Justice Groups should be funded to run their own bail programs – and particularly in remote and rural communities where geographic challenges meant that government service provision was often ‘patchy’ at best. Concerns were raised by some interviewees about the lack of cultural expertise of some non-government agencies currently funded to run programs in many Indigenous communities. Most Community Justice Groups maintained they could provide more culturally appropriate programs if they were funded to provide these services. Another interviewee suggested that in rural or remote communities offenders could report to the Community Justice Group if the group was well functioning. In this circumstance, reporting would be set as a bail condition and the offender would be required to comply with reasonable conditions (i.e. lawful instructions) from the Community Justice Group. Of course not all areas have well functioning Community Justice Groups so other solutions to service provision would need to be found in these areas.

## **2.6 Diversionary options**

Interviewees agreed that increasing diversionary options would contribute to decreasing the custodial remand population. For example, most interviewees spoke positively of the Murri Courts operating in several locations across the State. While many interviewees thought the Murri Court was a particularly good initiative its success varied depending on its location and the particular Magistrate. The court works differently across the State. Several interviewees maintained that one benefit of the Murri Court was that it increased Magistrates’ awareness and understanding of Indigenous issues. We also heard of some courts with successful bail programs

which provided varying types of assistance and support to defendants (including accommodation and employment).

Interviewees had different opinions about whether Elders should be better compensated for their involvement in the Murri Court. However, a common concern was the onerous workload which is often falling on few people in the Indigenous community and particularly with the expanding sittings of the Murri Court occurring in many locations. Several interviewees suggested that Indigenous staff in Queensland government agencies be given paid leave to regularly serve on the Murri Court to ease the burden on community Elders.

A minority of interviewees raised some concerns about the Murri Court, which most often related to their local court including

- Concerns about the level of understanding of Indigenous issues by some Magistrates serving in the Murri Court
- The excessive punitiveness of some of the sentences given in the Murri Court from particular Magistrates. Hence legal representatives were reluctant to refer their client to the court as the outcome was often worse for their clients.
- Problems with local Indigenous politics, or a lack of respect for Elders, which either interfered with the effective functioning of the court, or made it impossible to set up a Murri Court.

## **2.7 Bail conditions**

We were advised that “standard” bail conditions were most often used which may include specifying where the offender would reside, imposing a curfew, reporting regularly to police, and if the offender was drinking at the time of the offence, may impose an alcohol ban. Many interviewees maintained that Indigenous people often find it very difficult to comply with these types of bail conditions. Indigenous people were often unable to keep curfews because of lifestyle and cultural factors, and find regular reporting to police challenging often because of the restricted hours of opening for some police stations or lack of transport to the reporting station. As one interviewee said “There’s no point in applying reporting conditions that police are unable to service”. Similar concerns were raised about banning an alcoholic from drinking.

While some interviewees saw that bail involved the imposition of standard conditions, others maintained it was an opportunity to address the issues underlying offending behaviour (e.g. alcohol abuse, mental illness). One interviewee advised us that bail provided the opportunity for “creativity” and the chance to link people into services which addressed their criminogenic needs. Care needed to be taken in applying appropriate bail conditions. Another interviewee maintained

that Magistrates need information about the offender and the family when they are ordering bail conditions. In regions where the Magistrate knows the family, and most often the offender, the Magistrate has this information, but in other areas staff (e.g. QIADP or Murri Court Co-ordinator, ATSILS field officer), the Community Justice Group, or community Elders can provide this information to the Magistrate.

There was also concern that some police were excessively stringent in their enforcement of bail conditions. For example, we were told of an instance where an individual was breached for violating his curfew when he was visiting his aunt who lived next door to his residence and another situation where a person was late in reporting because of transport difficulties. Both individuals were consequently breached for violating their bail conditions. It was suggested that there needs to be more lenient policing of minor breaches.

## **2.8 Policing**

Some interviewees spoke of positive relationships between police and other stakeholders in several areas where together they had set up agreed strategies to support the granting of bail to Indigenous people and increase the likelihood of their compliance with bail conditions and appearance at court. For example, we were told that in some locations police were more flexible in their policing of lower level breaches of bail conditions (e.g. failure to report at a specific time).

Other interviewees emphasised the importance of building positive relationships between police and the Indigenous community despite the challenges in achieving this given the historical treatment of Indigenous people and the consequent mistrust of police by many within the Indigenous community. Although police made concerted efforts to forge links and maintain relationships with local Indigenous communities in some areas, we were also told that in other locations police often had a “siege mentality” where they did not make efforts to connect with the local Indigenous community. This was most likely to occur in regional and remote locations where it was difficult to attract and retain staff. Some interviewees also still expressed concerns that Indigenous people were the victims of discriminatory policing, involving over-policing (particularly in relation to street offences), and arresting an individual rather than issuing a Notice to Appear.

## **2.9 Court delays**

One interviewee told us that the over-representation of Indigenous people in the criminal justice system occurs because of factors that

occur before they get to court. However, many interviewees agreed that delays in court processing contributed to custodial remand rates and particularly in remote or rural areas which are serviced by a circuit court. The de-centralised nature of the state provides challenges in the timely access to justice for offenders. Court delays specifically affect the length of time offenders will be held in remand until they are either released on bail, or the final disposition of their matter.

Several interviewees offered suggestions for improving the timely progressing of court matters including

- Setting up processes and procedures with staff from relevant agencies to ensure their attendance at court to provide relevant information about the defendant, their family and available accommodation and program options. This would assist the court in a speedier resolution of matters by avoiding unnecessary adjournments to seek out required information.
- Several interviewees mentioned the possibility of using video links in remote and rural areas to hear matters.

## **2.10 Summary**

While interviewees differed in their opinions of the extent that Indigenous over-representation in custodial remand was influenced by either, (i) the differential treatment of Indigenous people by the criminal justice system, (ii) the conflict between their lifestyle and the “mainstream” system, or (iii) the nature of their offending and re-offending, all recognised the severe social and economic disadvantage that underlies much Indigenous offending. Bail-decision making was seen to be influenced by (i) legal variables including the legislative framework, nature of the offence, defendant’s criminal and bail history, and the need to protect victims and witnesses; (ii) offender characteristics, (iii) access to competent legal representation, (iv) the availability of suitable accommodation for offenders, and (v) the availability of bail and treatment programs and diversionary options. Importantly, it was not only the availability of accommodation and programs, but whether this information was provided to Magistrates that influenced bail decision-making. Not surprisingly, because of the decentralised nature of the state, smaller regional towns and remote locations most often had limited, or no access to accommodation or programs, and faced additional challenges in the provision of adequate legal representation.

Several interviewees also maintained that compliance with bail conditions was often difficult for Indigenous people because of their inability to comply with “standard” bail conditions (e.g. curfews, residence restrictions, reporting requirements and alcohol bans).

Failure to comply with these conditions along with the stringent policing of minor breaches in some locations, increased the risk of custodial remand for Indigenous defendants. Once they were remanded in custody, court delays contributed to the length of time that defendants remained in remand.

Interviewees offered a range of suggestions for decreasing custodial remand rates by increasing the likelihood that Indigenous offenders would be offered bail, and successfully comply with any imposed bail conditions. In relation to bail decision-making interviewees suggested a range of initiatives including

- Providing initiatives directed at decreasing Indigenous defendants' accumulation of a bail history by
  - Providing assistance for the defendant to appear to court (e.g. have a particular worker to support court attendance, transport assistance, and the use of video links where appropriate)
  - Providing alternate methods for dealing with breaches
  - Not breaching individuals for failure to complete programs
- Increasing the availability of bail programs, diversionary options, and therapeutic interventions. Specifically, Community Justice Groups could be funded to operate bail programs, and particularly in areas with limited service provision such as remote and rural areas and smaller regional towns.
- Increasing the likelihood of providing accommodation for defendants by (i) having a designated worker to find family or alternate accommodation placement options, and (ii) increasing accommodation services or placements within existing services.
- Using a case management approach to provide co-ordinated services from criminal justice agencies for defendants. Relevant staff from the agencies should attend court to provide relevant information about the defendant, family, and available services to the Magistrate.

To enhance bail compliance, some interviewees suggested, (i) the application of “thoughtful” bail conditions which address the offender’s criminogenic needs, rather than standard bail conditions which Indigenous defendants are often unable to meet; and (ii) less stringent policing of lower level breaching of bail conditions. To further increase the likelihood that Indigenous defendants are granted bail and decrease the length of time spent in remand interviewees suggested (i) improving the access and quality of legal representation available to Indigenous people across the state, and (ii) implementing initiatives to minimise court delays (e.g. the use of video links).

Interviewees however maintained that the most important, long-term solution to Indigenous over-representation was to address the

underlying factors which bring Indigenous people into contact with the criminal justice system (e.g. alcohol treatment programs, programs addressing social and economic disadvantage, and particularly those focusing on employment initiatives). Additionally, some interviewees saw benefit in introducing legislative changes including the consideration of cultural issues in bail decision-making, encouraging referral to needed services, and providing alternate options for dealing with breaches of bail and failure to appear in court.

The consultations provide a snapshot of the views of a sample of key stakeholders in the criminal justice system. However, it is important to recognise that these opinions may not necessarily reflect the views of all interviewees.

The next chapter presents the results of the analyses of data on custodial remand from the Queensland Police Service.

# **CHAPTER 3 EXAMINING TRENDS AND PATTERNS IN POLICE CUSTODY IN QUEENSLAND**

## **3.1 Introduction**

This chapter examines important characteristics and trends in police custodial remand in Queensland for Indigenous and non-Indigenous arrestees. In particular, we examine the demographic characteristics of arrestees, as well as whether there are important changes occurring in the number of Indigenous and non-Indigenous in the remand system over the ten-year period (1999-2008). The analyses are based on an extraction of data from the Queensland Police Service administrative custody data system. Further methodological details are provided in Appendix A. Findings in the chapter illustrate how Indigenous remanded adults compare with non-Indigenous remanded adults as well as highlighting factors that influence and predict remand outcomes.

Please note that whilst remand experiences can be measured in different ways, the unit of analysis in the current study is remand episodes, or remand decision events. Importantly, some individuals, especially high rate offenders, may appear across multiple periods or episodes. We acknowledge that the factors related to remand may differ when examined as episodic events as opposed to individual outcomes.

The results presented in the chapter are structured into the following sections:

- Demographic profile of arrest episodes
- Demographic profile of remand episodes
- Prior remand episodes
- Offending history
- Failures to Appear and other violations of bail conditions
- Violations of court orders
- Access to diversion for arrestees
- Regression analyses: Relationships between Indigenous status, gender, and remand
- Summary

## **3.2 Demographic profile of arrest episodes**

This section provides a demographic profile of all arrest episodes in the custody data. This includes the number of arrest episodes, the

percentage of Indigenous Australians involved in arrest episodes, and the gender and age distribution of episodes involving Indigenous and non-Indigenous arrestees. Arrestees were not always subsequently held in police remand. This section's description of all arrestees provides a basis for comparison with the demographic profile of those arrestees who were remanded which is described in a subsequent section.

### ***Sample size***

Nearly half a million (n=489,175) arrest episodes were analysed. The annual number of arrest episodes for the years under analysis (1999 to 2008) ranged from 30,171 cases in 2008 to 64,240 in 2006. Although 2008 did not contain a full year of data, arrest episodes for that year were retained in the analysis. There is no reason to assume that the comparative treatment of Indigenous and non-Indigenous arrestees should systematically differ for the final three months of this year, so the lack of data for the final three months in the 2008 should not affect the empirical findings of this chapter.

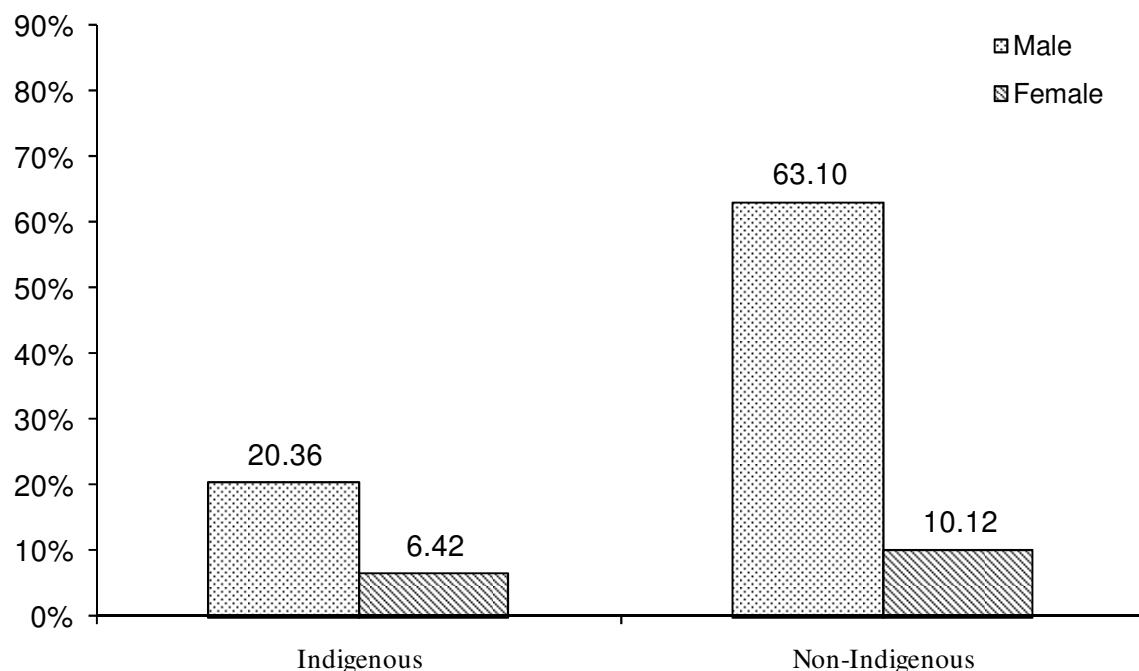
Note that these figures do not adequately reflect variations in the QPS workload, as these figures only reflect arrests and *arrestees*, rather than other types of interactions and clientele. Note too that arrests involving inter-state transfers, minors, or immigration offences were excluded from analysis. In addition, arrest episodes containing flawed data were excluded from the analyses. A fuller description of the exclusion criteria is contained in Appendix A.

### ***Percentage of male and female arrest episodes***

Indigenous status was derived from the "ethnic origin" field in the data: if this field indicated Aboriginal or Torres Strait Islander, the arrestee was categorised as Indigenous. All other valid entries (e.g., Caucasian, Indian) were categorised as non-Indigenous. Entries of "Race" (*sic*) for ethnic origin were excluded from the analyses.

As shown in Figure 3.1, both Indigenous males and females are over-represented within the QPS Custody Data. In 2006, Indigenous people represented 3.6% of the Queensland population (ABS 2006b). However, 20% of arrest episodes involved Indigenous males and 6% involved Indigenous females. In contrast, 63% of arrest episodes involved non-Indigenous males while 10% of arrest episodes were for non-Indigenous females. Thus, although there were fewer Indigenous than non-Indigenous arrest episodes, Indigenous Australians are still over-represented in arrest episodes relative to their representation in Queensland's population.

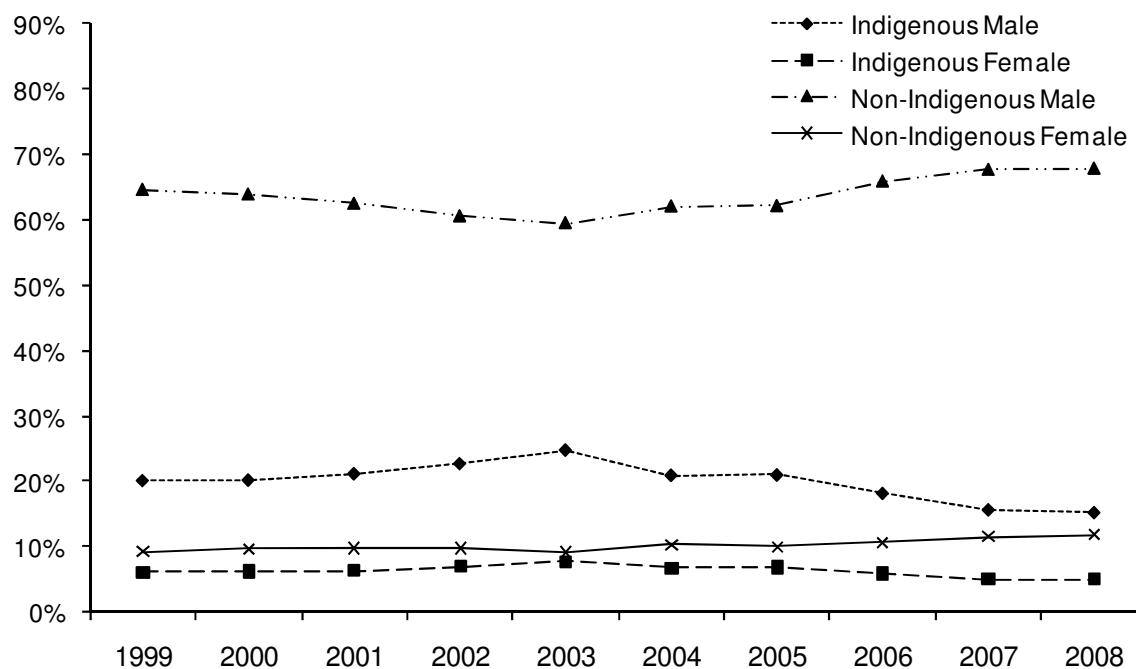
**Figure 3.1 Distribution of Gender and Indigenous Status within the Arrest Sample,  
 $N = 489,175$  (QPS Custody Data, 1999-2008).**



*Note.* Indigenous status primarily determined via arrestees' self-identification as Indigenous.

A similar pattern is evident when the proportion of arrest episodes involving Indigenous arrestees is examined over time (see Figure 3.2). Although there are fewer Indigenous arrest episodes than non-Indigenous, Indigenous Queenslanders are consistently over-represented in arrest episodes from 1999 to 2008. Over time, there was a general upwards trend in the proportion of arrests involving Indigenous arrestees which peaked in 2003 (25% Indigenous males; 8% Indigenous females). The proportion of Indigenous arrests then decreased until 2008, ending with 15% of the arrest episodes involving Indigenous males and 5% Indigenous females.

**Figure 3.2 Distribution of Gender and Indigenous Status within the Arrest Sample, by Year, N = 489,175 (QPS Custody Data, 1999-2008).**

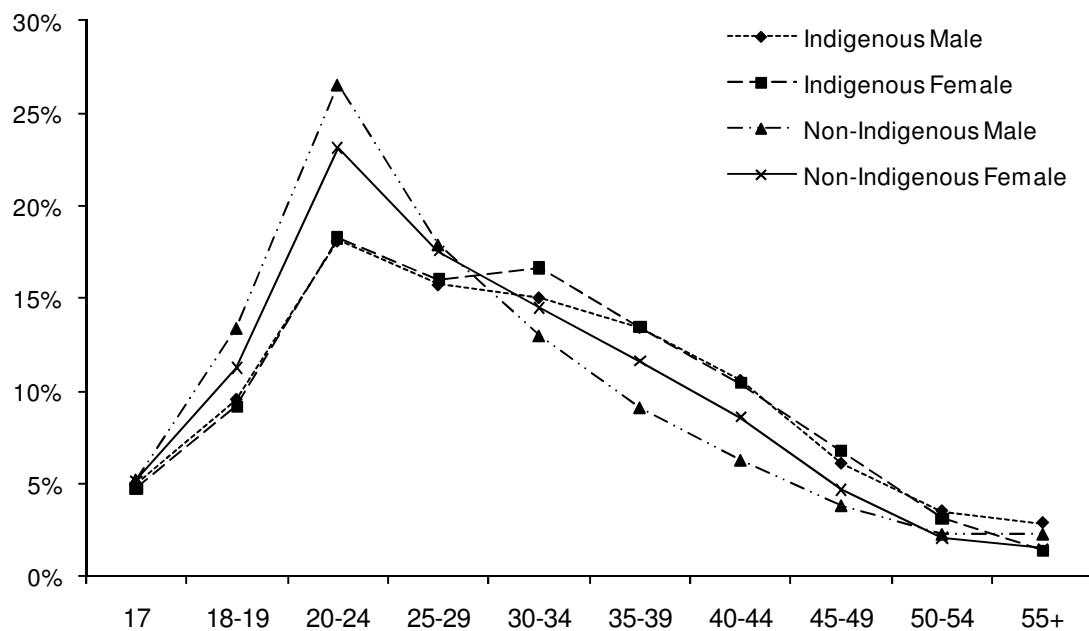


Note. Indigenous status primarily determined via arrestees' self-identification as Indigenous.

### **The relationship between age and arrest**

As indicated in Figure 3.3, the arrests typically involve people in their early twenties. Although there are some minor differences for gender within Indigenous status, the age distribution appears to be defined more by Indigenous status than by the arrestee's gender. Arrests of non-Indigenous persons appear to be characterised by a peak in the 20-24 age bracket, whereas Indigenous arrests are fairly evenly distributed among the 20-24, 25-29, and 30-34 age bands which indicates that Indigenous arrestees have a later average age of desistance compared to their non-Indigenous counterparts.

**Figure 3.3 Age Distribution of Arrests within Gender and Indigenous Status, N = 489,175 (QPS Custody Data, 1999-2008).**



### **Summary**

Indigenous males and females are over-represented in arrests relative to their representation in the Queensland population. A greater proportion of Indigenous arrests, compared to non-Indigenous arrests, involve arrestees who are slightly older.

## **3.3 Demographic profile of remand episodes**

This section describes the definitions of “held in remand” used in this chapter. It then reports the relative risks of being held in remand for male and female Indigenous and non-Indigenous arrestees. Note that these figures reflect the baseline proportion held in remand. They do not compensate for other factors which may influence the risk of being held in remand, such as the current offence, offending history, or a history of bail violations. To the extent that these characteristics are related to one’s gender and/or Indigenous status, the following graphs should be treated with caution.

The text fields within the custody data often included words and phrases which indicated that an arrestee was to be held in remand. Specifically, phrases such as “remand”, “held in remand”, or “remanded in custody” often appeared in the Reason field, Record field, or Comment field.<sup>10/11</sup> However, arrests which contained these

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<sup>10</sup> The Reason field contains the reason for the initial police contact; the Record field contains a fuller description of the police contact, including the person’s actions,

indicators did not always involve holding the arrestee for an appreciable length of time. Conversely, many arrest episodes lacked these indicators of remand, yet involved the arrestee being held for several days. Thus, we constructed two additional measures of remand: the arrestee being held for more than one day, and the arrestee being held for more than three days. These two measures approximate being held for longer than a “busy evening shift” (i.e., overnight), and longer than a weekend (while waiting for a remand hearing Monday morning).<sup>12</sup>

Both of these additional measures were derived from the length of time held in custody which was calculated by subtracting the date of the final Action from the first Action. Due to data entry errors in the database, the number of days in custody originally included negative numbers, as well as implausibly excessive date ranges (e.g. up to 901 years in custody). We therefore excluded any time spans greater than thirty days.

We retained all three measures of remand status to test the stability of the findings. In general, the two measures based on the length of stay (“held more than one day”; “held more than three days”) yielded similar results. However, these results often differed from the measure of remand based on the inclusion of “remand” phrases in the text fields. Thus, the results based on the number of days in custody have greater validity.<sup>13</sup>

### ***The relationship between Indigenous status and remand***

The patterns of remand differ across the three measures used in the analyses (see Figure 3.4). Having “remand” mentioned in the Reason field is related to a higher rate of non-Indigenous arrest episodes, while measures of remand based on length of stay (over one day; over three days) indicates that arrests of Indigenous males are more likely to involve remand. In all instances, however, the magnitude of the difference between Indigenous and non-Indigenous males, and

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plus suicidal tendencies, medical conditions, and other important notes; the Comment field records ongoing interactions with the citizen during custody, including his or her behaviour, and generally supplements the Action codes.

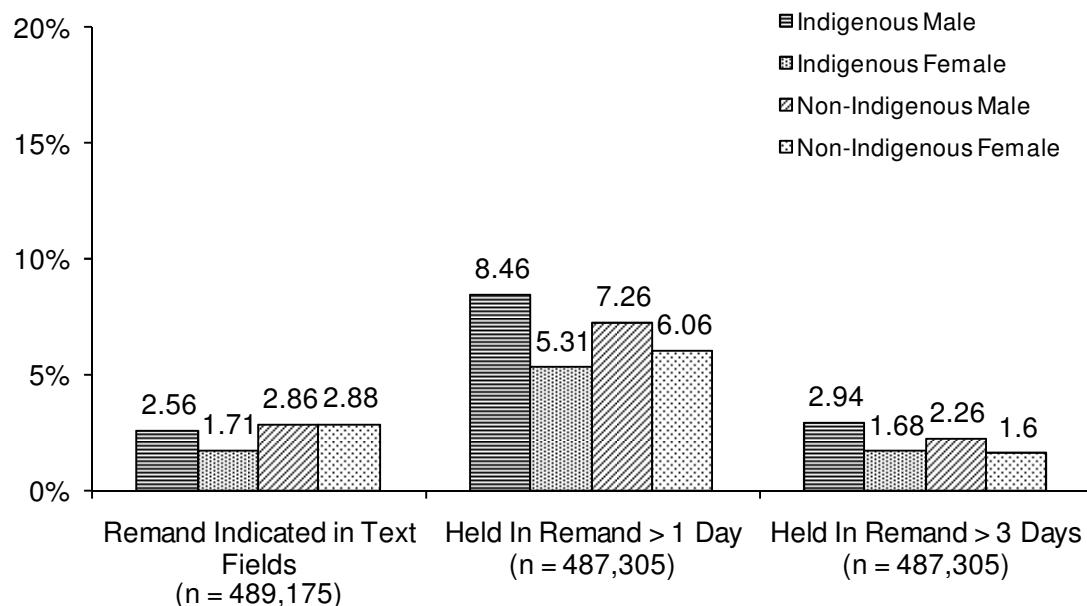
<sup>11</sup> In addition, the Reason field was also searched for mentions of the arrestee being “held” or “detained” (with a great many exclusions, to eliminate false positives).

<sup>12</sup> We considered using 12 hours, 24 hours, or other cut-offs based on the number of hours, rather than the number of days. However, as discussed in Appendix A, the quality of the data for the time of day in the Action Code fields was not of sufficiently consistent quality to allow this.

<sup>13</sup> With the exception of the comparison of the mean and median number of days in custody, this chapter does not compare the average lengths of days for the different characteristics examined in this chapter. Instead, analyses involving the total number of days in custody are reserved for the regression analyses near the end of this chapter. The majority of analyses in this chapter thus focus on the three “held/not held” measures.

between Indigenous and non-Indigenous females is small (around one percent).

**Figure 3.4 Percent of Arrests that Result in Remand (Three Definitions), Within Gender and Indigenous Status (QPS Custody Data, 1999-2008).**



Note. Measures of remand are not mutually exclusive. Length of time measures of remand

### **The relationship between length of remand and Indigenous status**

Initial analyses for the length of custody resulted in means very close to zero, and medians of zero, due to the preponderance of custody episodes with zero (81.5%), or one (11.2%) day. We thus re-calculated the mean and median lengths of custody using only those arrests where the length of custody was greater than one day.

#### **Mean length of custody**

Figure 3.5 shows that the mean length of custody was similar across all arrests, around three and a half days. However, Indigenous arrestees were held for a longer average duration than were non-Indigenous arrestees, approximately three and three-quarter days versus three and a half days respectively. Note that the differences between Indigenous and non-Indigenous males, and between Indigenous and non-Indigenous females are very small.

**Figure 3.5 Mean Length of Custody (Number of Days) by Gender and Indigenous Status for Arrestees Held Longer than One Day, N = 35,373 (QPS Data, 1999-2008).**

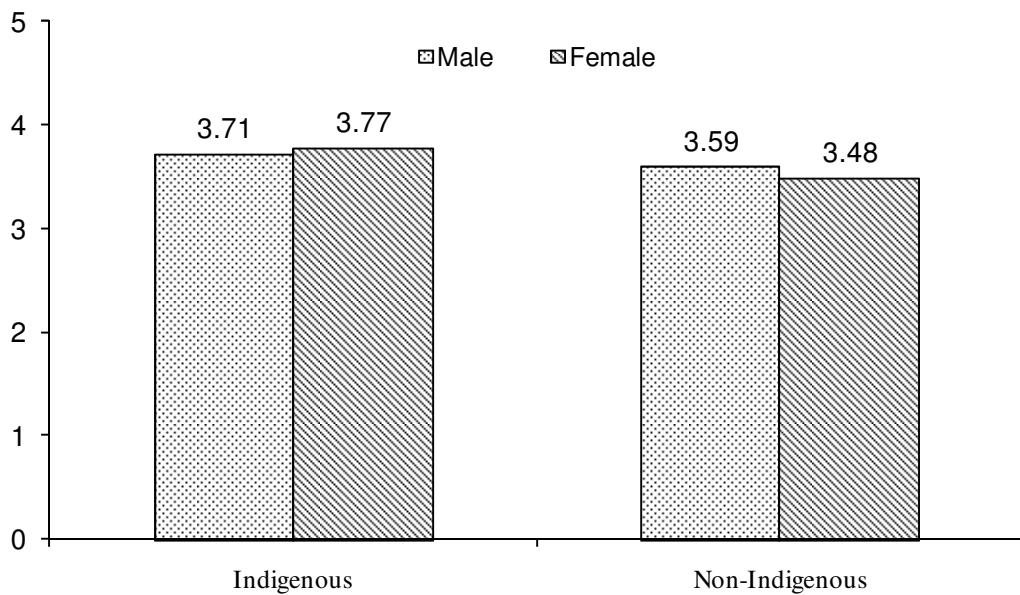
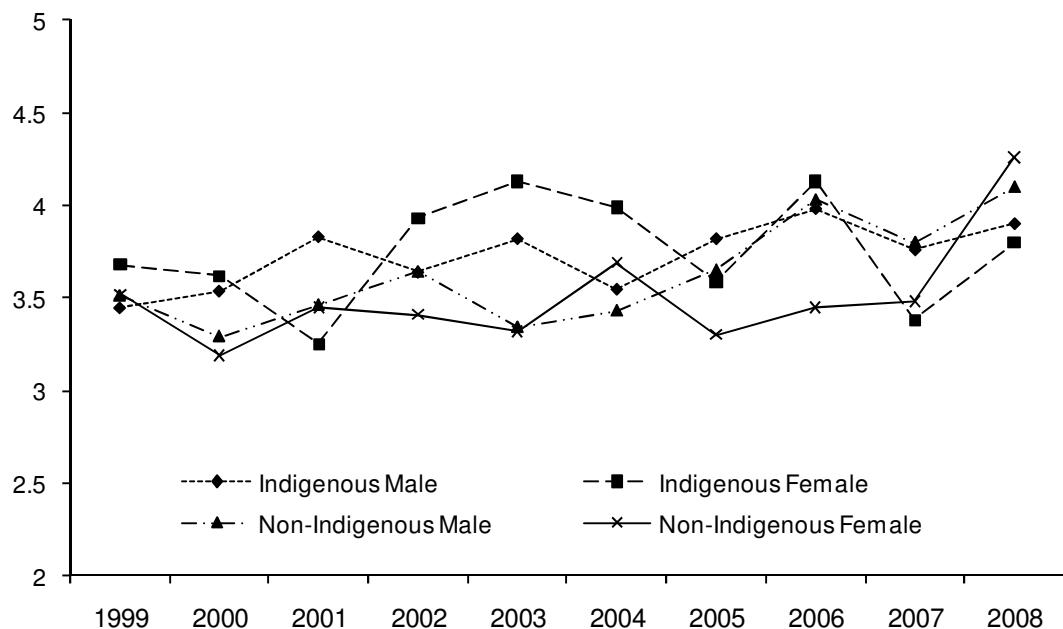


Figure 3.6 shows the mean number of days arrestees were held in custody from 1999-2008. The number of days varies substantially over the ten year period however, all groups appear to have a slight to moderate upward trend in the average length of custody. For arrests where the arrestee was in custody for more than one day, the upward trend appears to be greatest for non-Indigenous males, followed by Indigenous males. The mean for length in custody for Indigenous females was initially increasing, but now appears to be decreasing. Finally, the mean for non-Indigenous females began the series essentially flat, but ended with an abrupt upturn. However, the final data point may be an aberration, and should be interpreted within the context of the preceding years.

**Figure 3.6 Mean Length of Custody (Number of Days) by Gender and Indigenous Status for Arrestees Held Longer than One Day by Year N = 35,373 (QPS Data, 1999-2008).**



### **Median length of custody**

The median length of time arrestees were held in custody for all four Indigenous-by-gender categories held for more than one day, was a median of three days.

Table 3.1 shows the variations over time for the median number of days arrestees were held in custody for the four Indigenous-by-gender groups. Excluding those arrestees held for one day or less, the median length of custody for Indigenous males was consistently three days. In contrast, the median varied between two or three days for the other three Indigenous-by-gender groups. Thus, overall Indigenous males had higher median lengths of time in custody.

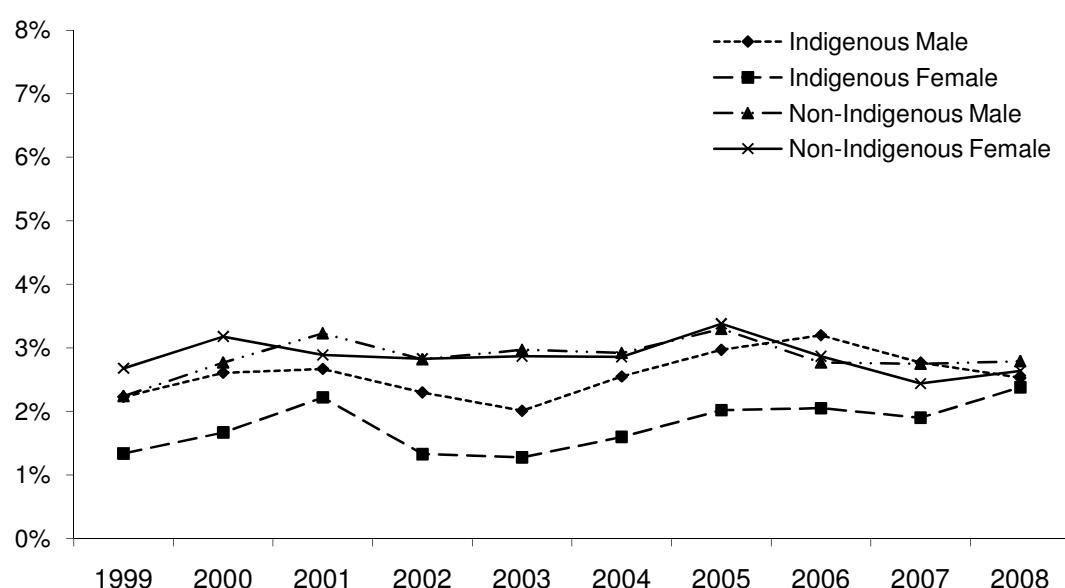
**Table 3.1 Median Length of Custody (Number of Days) by Gender and Indigenous Status for Arrestees Held Longer than One Day by Year, N = 35,373 (QPS Data, 1999-2008).**

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Indigenous Males	3	3	3	3	3	3	3	3	3	3
Indigenous Females	3	3	3	3	2	2	3	3	2	3
Non-Indigenous Males	3	3	3	3	2	2	3	3	3	3
Non-Indigenous Females	3	3	2	2	2	2	2	2	3	3

### **Trends in the relationship between Indigenous status and remand**

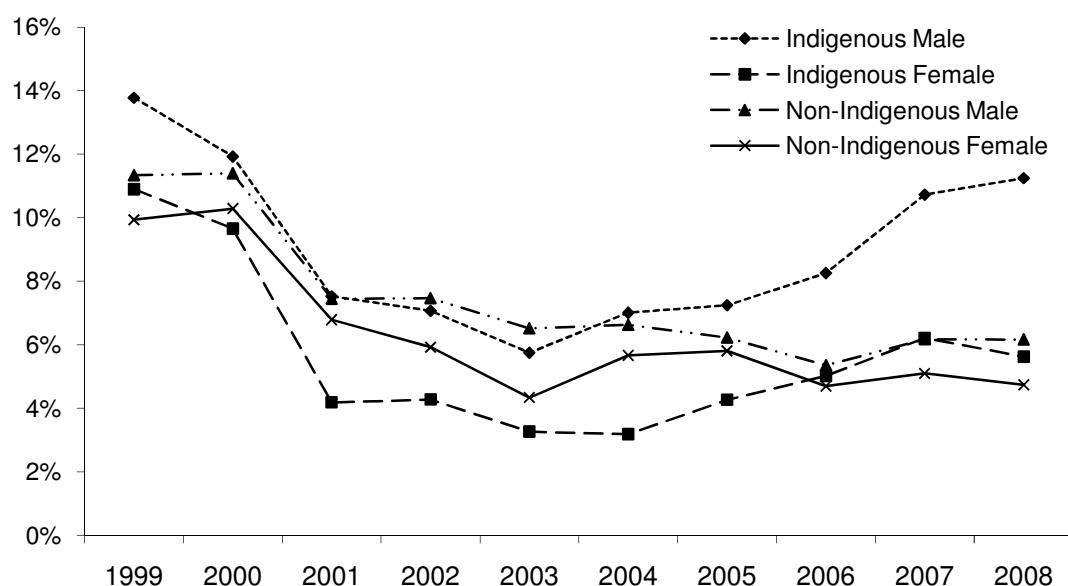
Figure 3.7 indicates that the rate of having remand mentioned in the text fields was fairly consistent over the years under analysis. Each of the Indigenous-by-gender categories had consistent rates of remand over the ten years, and their relative rankings were fairly constant. Indigenous females appeared to have the lowest risk of being held in remand, followed by Indigenous males while non-Indigenous males and females had a slightly higher risk of remand. However, each group's risk of remand appears similar by this measure of remand, one to three percent of each Indigenous-by-gender category appear to be held in remand each year.

**Figure 3.7 Percent of Arrests where Remand is Indicated in a Text Field by Gender and Indigenous Status by Year. N = 489,175 (QPS Custody Data, 1999-2008).**



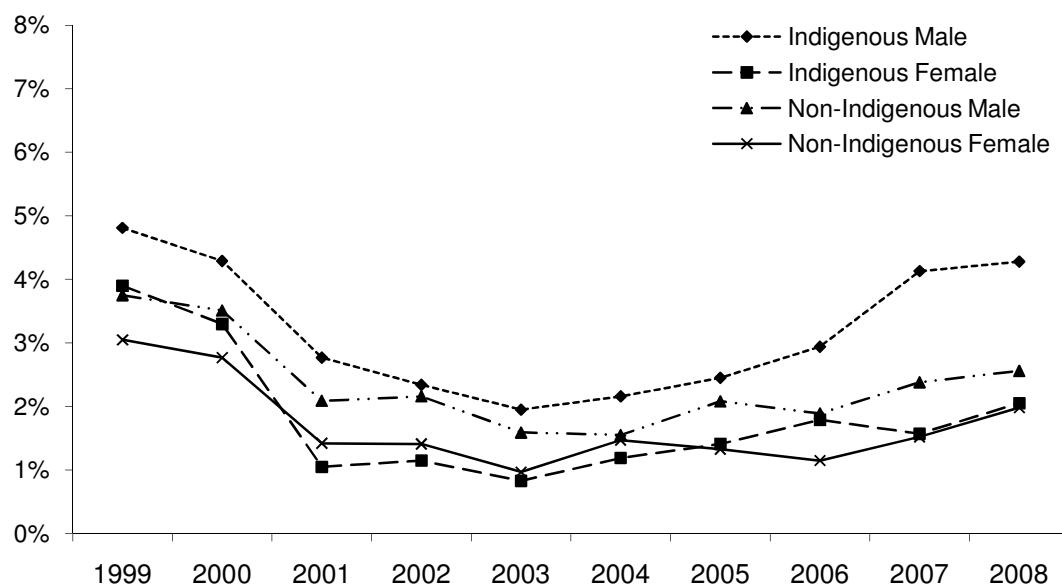
When being held for more than one day is used as the definition of remand (see Figure 3.8), a different pattern emerges. The risk of remand appears to be highest for all four Indigenous-by-gender categories at the beginning and end of the analysis period. In addition, arrest episodes involving Indigenous males followed by non-Indigenous males appear to have the highest risk of remand. The greatest difference between Indigenous males and the other three groups appears to be for the most recent years, 2006-2008.

**Figure 3.8 Percent of Arrests where the Arrestee is in Custody for Longer than One Day, by Gender and Indigenous Status, by Year, N = 487,305 (QPS Custody Data, 1999-2008).**



Finally, Figure 3.9 shows that the relative proportions of arrest episodes involving being held more than three days are fairly consistent over time for the four Indigenous-by-gender categories. However, as in the previous graph, generally Indigenous males are at the greatest risk of being held in remand, and this difference is most pronounced in the final three years (2006-2008).

**Figure 3.9 Percent of Arrests where the Arrestee is in Custody for Longer than Three Days, by Gender and Indigenous Status, by Year, N = 487,305 (QPS Custody Data, 1999-2008)**



### **Summary**

Indigenous males are at greater risk than the other Indigenous-gender groups of being held in remand. There is more a gender effect than an Indigenous effect however, with non-Indigenous males more likely to be held in remand than either Indigenous, or non-Indigenous females. These patterns are fairly stable over time.

When lengths of custody of one day or less are excluded, all four Indigenous-gender groups have similar mean and median lengths of remand.

Thus, although Indigenous and non-Indigenous males are more likely to be held in remand than the females, the average durations of custody are similar. Therefore Indigenous males are disadvantaged in relation to their risk of remand, but they do not spend longer in remand than other groups.

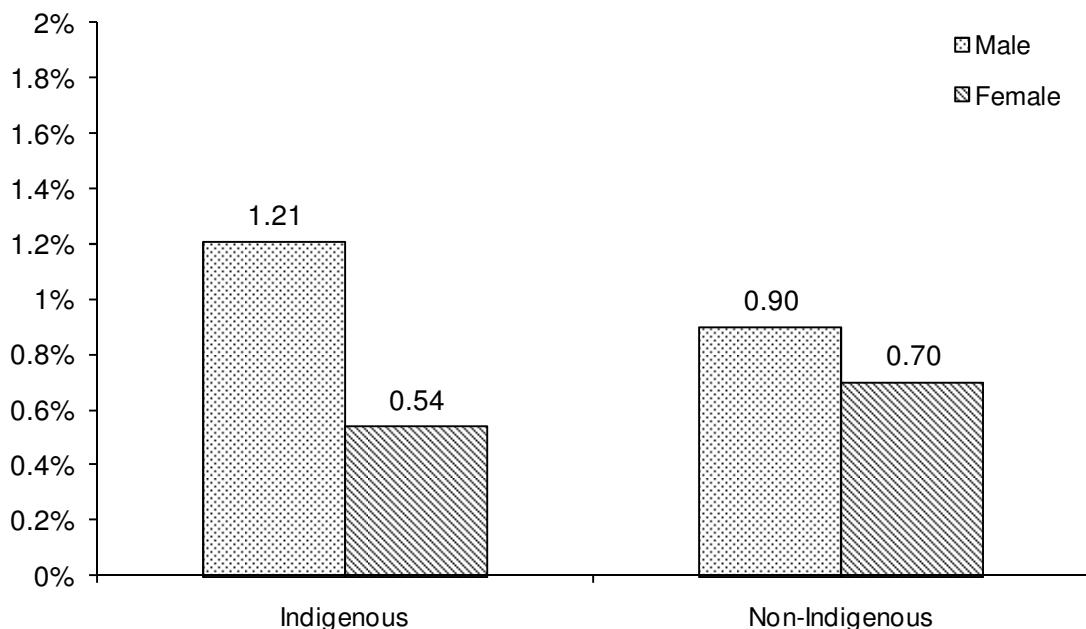
### **3.4 Prior remand episodes**

Similar to the preceding section, this section uses three measures of being held in remand: any mentions of being remanded in custody in the Reason, Comments, or Record text fields; having been held for more than one day; and having been held for more than three days.

### ***The relationship between gender and Indigenous status and prior remand***

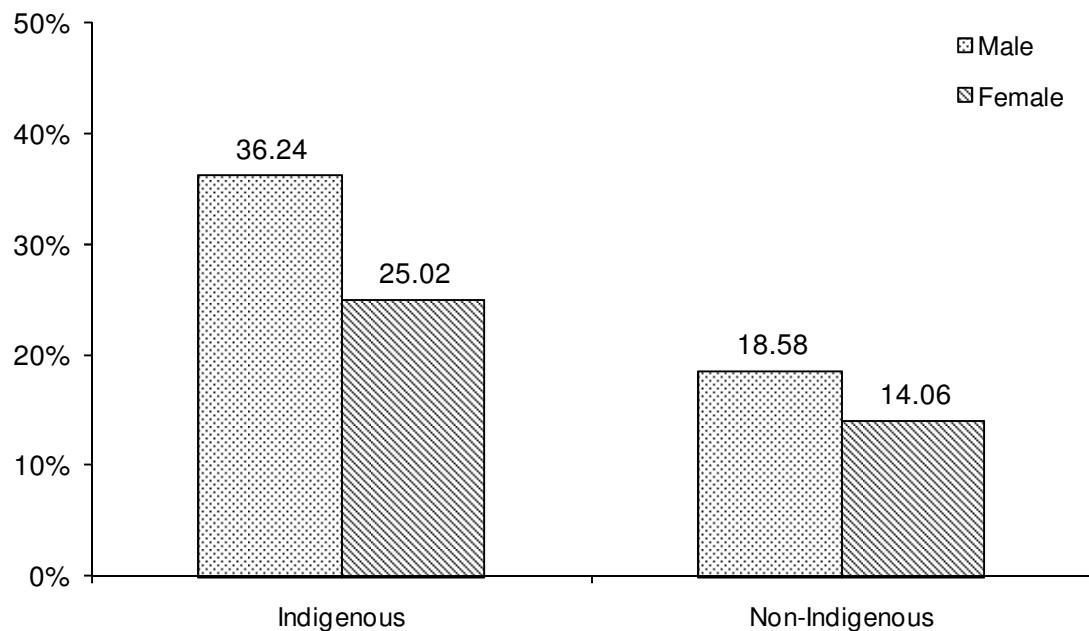
When remand status is defined by being mentioned in the text fields, about one percent of the arrest episodes had a history of being held in remand. As shown in Figure 3.10, Indigenous male arrestees are most likely to have a prior mention of remand while Indigenous females are the least likely to have previous episodes of remand. Arrests involving non-Indigenous persons are in the middle of the range, with males more likely to have a history of remand than females.

***Figure 3.10 Percent of Arrests with the Arrestee Having a Prior Custody Episode where Remand is Indicated in a Text Field, by Gender and Indigenous Status, N = 488,784 (QPS Custody Data, 1999-2008).***



The differences between the gender-by-Indigenous status groups are more pronounced when remand is defined by being held in custody for at least a day. Figure 3.11 shows that within each gender category, nearly twice as many Indigenous as non-Indigenous arrest episodes involved the arrestee having a prior remand episode (i.e. previously held for at least a day).

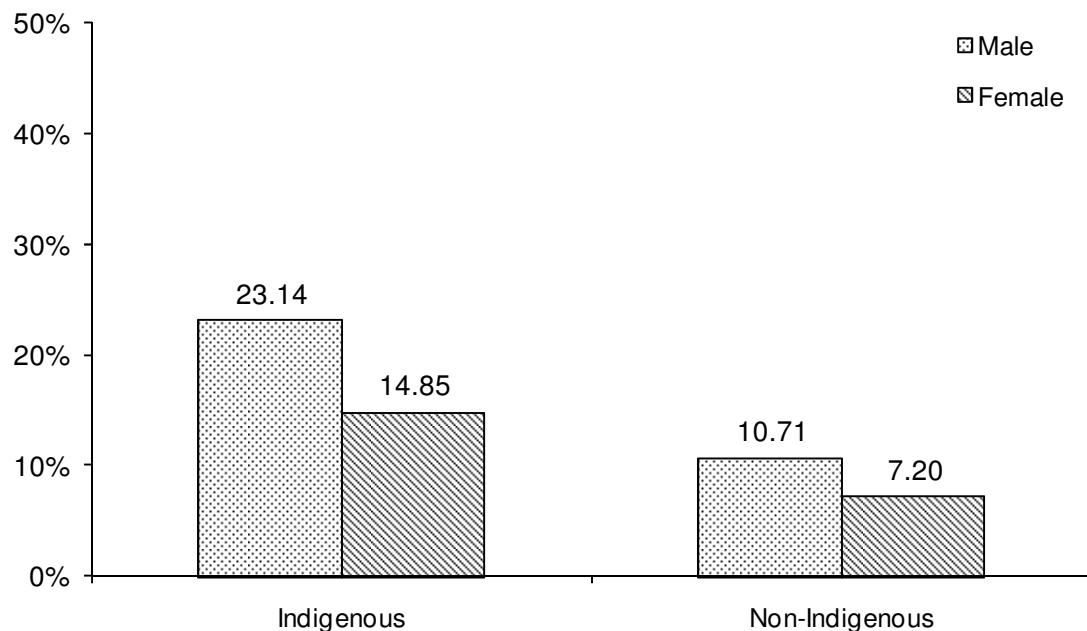
**Figure 3.11 Percent of Arrests where the Arrestee has a Prior Custody Episode Longer than One Day, by Gender and Indigenous Status, N = 488,784 (QPS Custody Data, 1999-2008).**



*Note.* Length of time in remand was derived from the number of days elapsed between the first and last valid dates associated with action codes for that arrest episode.

The pattern for being remanded in custody for three days (see Figure 3.12) was similar to those for being in custody for more than one day. Arrest episodes involving Indigenous males and females with a history of remand (i.e. previously held for more than three days) was approximately double that of their non-Indigenous counterparts.

**Figure 3.12 Percent of Arrests where the Arrestee has a Prior Custody Episode Longer than Three Days, by Gender and Indigenous Status, N = 488,784 (QPS Custody Data, 1999-2008).**



Note. Length of time in remand was derived from the number of days elapsed between the first and last valid dates associated with action codes for that arrest episode.

### **Summary**

There is both a gender and an Indigenous effect underlying the likelihood of having a prior episode of remand. In general, a greater proportion of arrests of Indigenous persons involve an arrestee with a previous remand. In addition, when comparing Indigenous status differences for both males and females, the Indigenous arrestee is more likely to be held than his or her non-Indigenous counterpart.

## **3.5 Offending history**

We used two measures of offending history: the past number of offences as described in the Reason field; and the past number of arrests (as indicated by the Action codes).<sup>14</sup> Although there was a sizeable overlap between these two measures, they were not synonymous. These measures are further described in Appendix A.

### ***The relationship between gender and Indigenous status and prior offences***

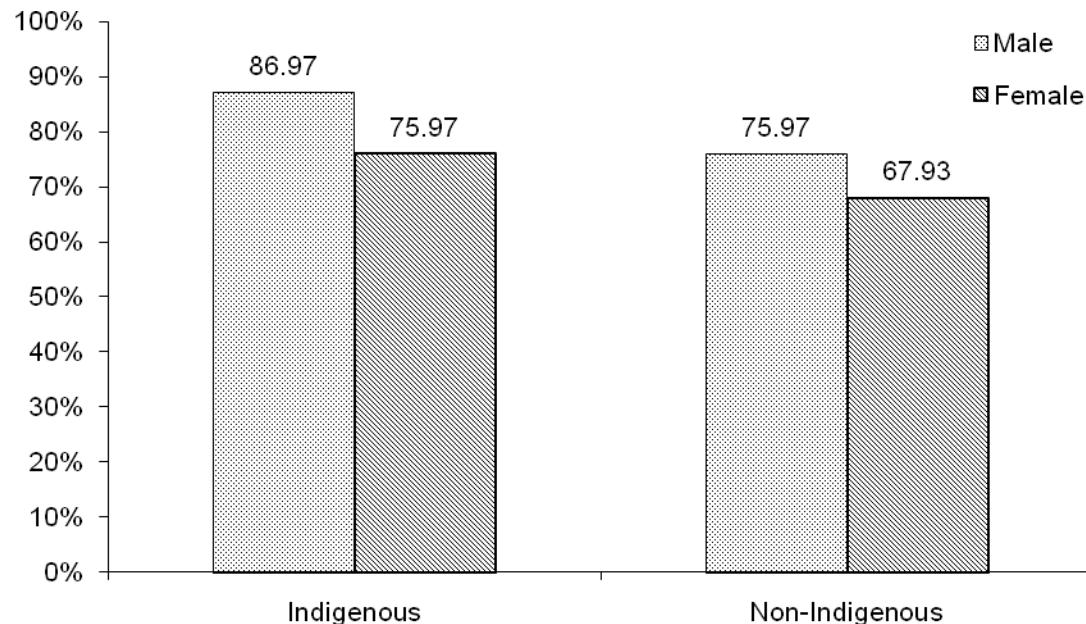
As indicated in Figure 3.13, for both males and females, a greater proportion of the arrests involving an Indigenous person included

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<sup>14</sup> Note the analysis sample only includes people whose current custody episode includes an “Arrest” among the action codes.

prior offences, compared to their non-Indigenous counterparts. Thus, arrests of Indigenous males included a higher proportion of previous offences than arrests of non-Indigenous males, and Indigenous females also had a higher proportion than the non-Indigenous females. Indigenous males are the most likely to have had at least one previous offence.

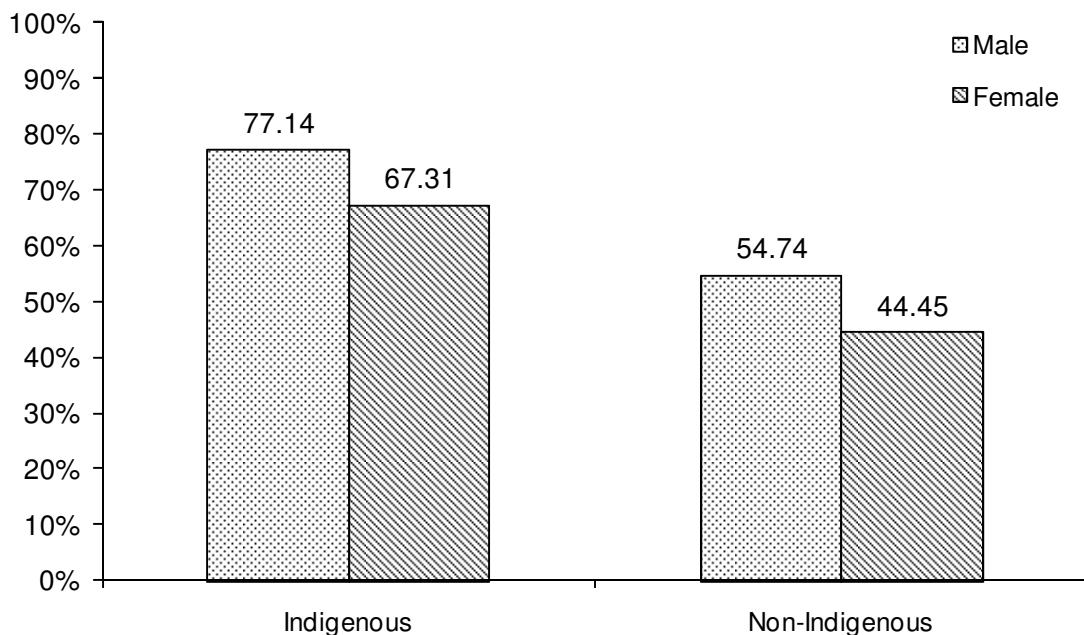
**Figure 3.13 Percent of Arrests where the Arrestee has a Prior Offence, by Gender and Indigenous Status, N = 489,175 (QPS Custody Data, 1999-2008).**



#### ***The relationship between gender and Indigenous status and prior arrests***

The pattern for prior arrests is similar to those for prior offending. Figure 3.14 indicates that arrests involving both males and females of Indigenous heritage are more likely to include a prior arrest than arrests of non-Indigenous males and females. As with prior offences, Indigenous males are the most likely to have had at least one previous arrest.

**Figure 3.14 Percent of Arrests where the Arrestee has a Prior Arrest, N = 489,175 (QPS Custody Data, 1999-2008).**



### **Summary**

There is both a gender and an Indigenous effect in relation to offending and arrest history. Males are more likely to have an offending and arrest history than females, and Indigenous arrestees are more likely to have an offending and arrest history than non-Indigenous arrestees. Indigenous males are the most likely to have an offending and arrest history.

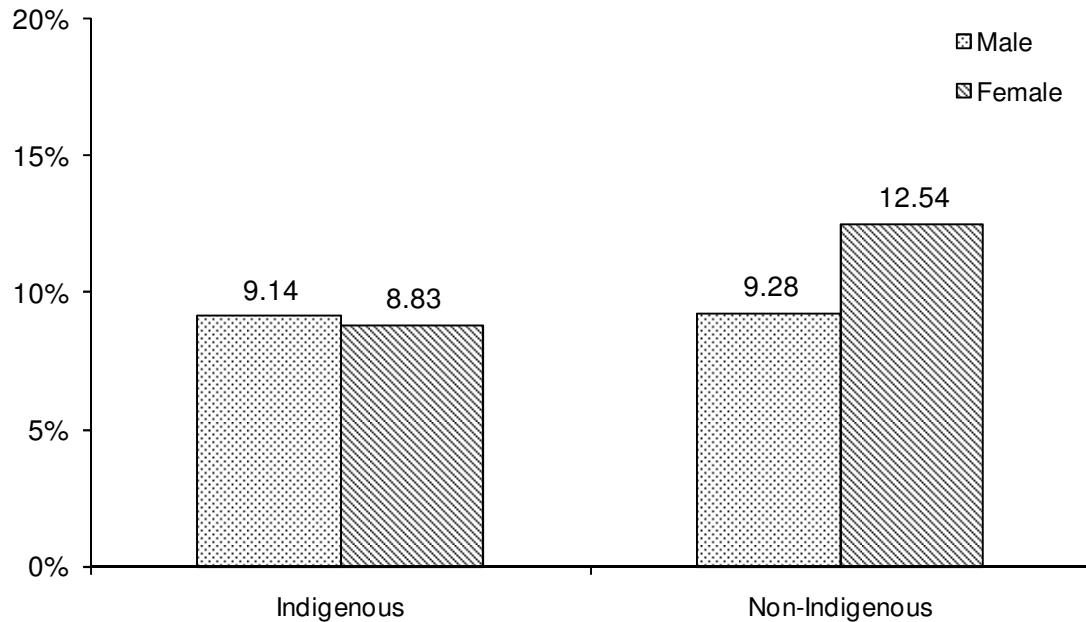
## **3.6 Failures to Appear (FTAs) and other violations of bail conditions**

This section reports on the relationship between gender and Indigenous status and FTAs and various violations of bail conditions. As noted in Chapter 1, Failures to Appear and other bail violations are related to an increased risk of being held in remand during future arrests.

### ***The relationship between gender and Indigenous status and current FTAs and bail violations***

As shown in Figure 3.15, arrest episodes involving non-Indigenous females were the most likely (12.5%) to involve a current FTA or other bail violation as the reason for the initial police contact.

**Figure 3.15 Percent of Arrests with a Current Offence of Failure to Appear in Court or Other Violations of Bail Conditions, within Gender and Indigenous Status N = 489,175 (QPS Data, 1999-2008).**

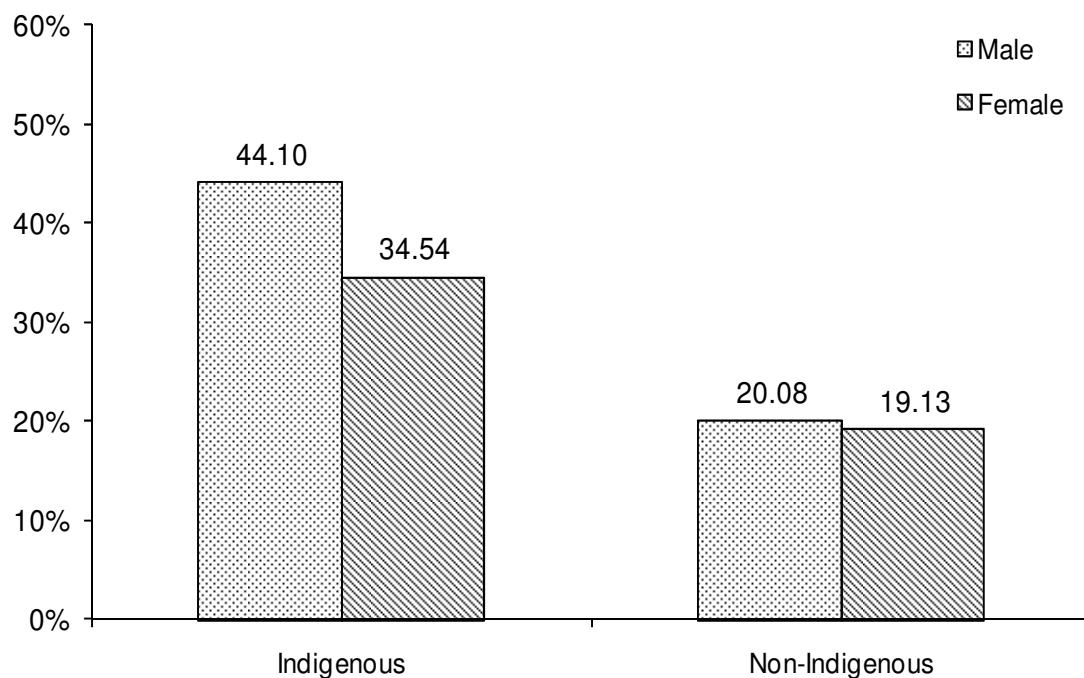


*Note. Arrestees were considered to have failed to appear in court where failed to appear in court, bail breaches, bench warrants or similar related phrases were noted in the individual's Reason field.*

### ***The relationship between gender and Indigenous status and prior FTAs and bail violations***

As shown in Figure 3.16 current arrests involving Indigenous males have the greatest proportion of past arrests for FTAs and bail violations (44%), followed by arrests of Indigenous females (35%). In contrast, arrests of non-Indigenous males and females are far less likely to involve prior arrests for FTAs and bail violations (20% and 19% respectively).

**Figure 3.16 Percent of Arrests with Previous Failure to Appear in Court or Other Violations of Bail Conditions, within Gender and Indigenous Status, N = 488,784 (QPS Data, 1999-2008).**



### **Summary**

Non-Indigenous females have the highest proportion of arrests for current FTAs or other bail violations. In contrast, Indigenous arrests, particularly those involving Indigenous males, are more likely to include previous arrests for FTAs or bail violations.

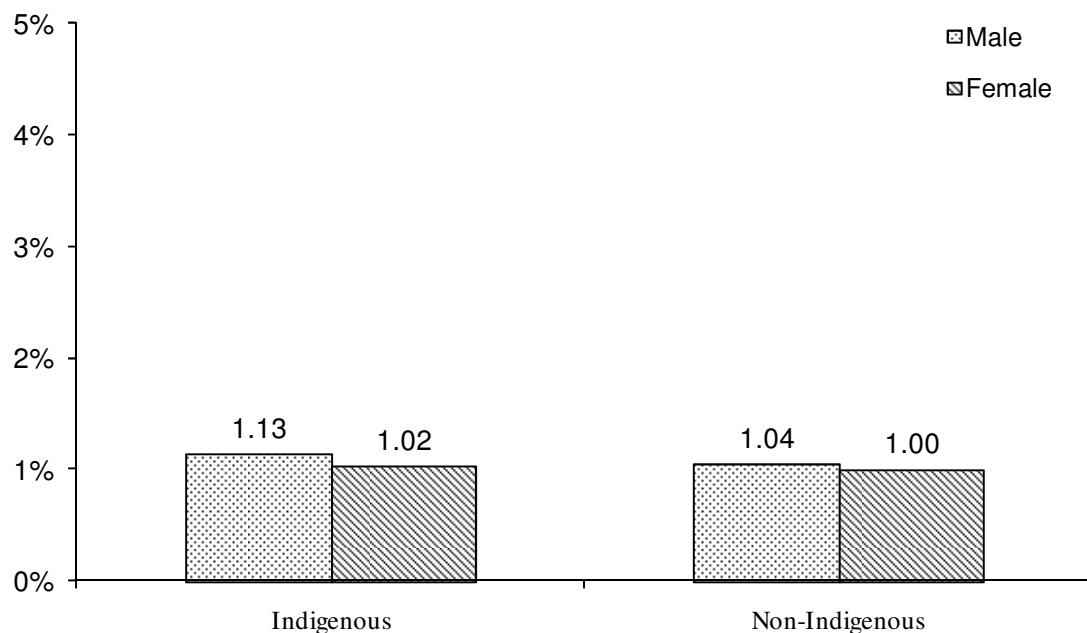
## **3.7 Violations of court orders**

Arrestees were categorised as having violated a court order if phrases indicating failure to attend a court-ordered drug treatment program or drug diversion, contravened a requirement, or breached, or violated an order were found in the text fields. However, several exclusions to these phrases were included, in order to prevent false positives.

### ***The relationship between gender and Indigenous status and current violations of court orders***

As indicated in Figure 3.17, the proportion of arrests among all four Indigenous-gender groups that involved a current violation of a court order was essentially the same.

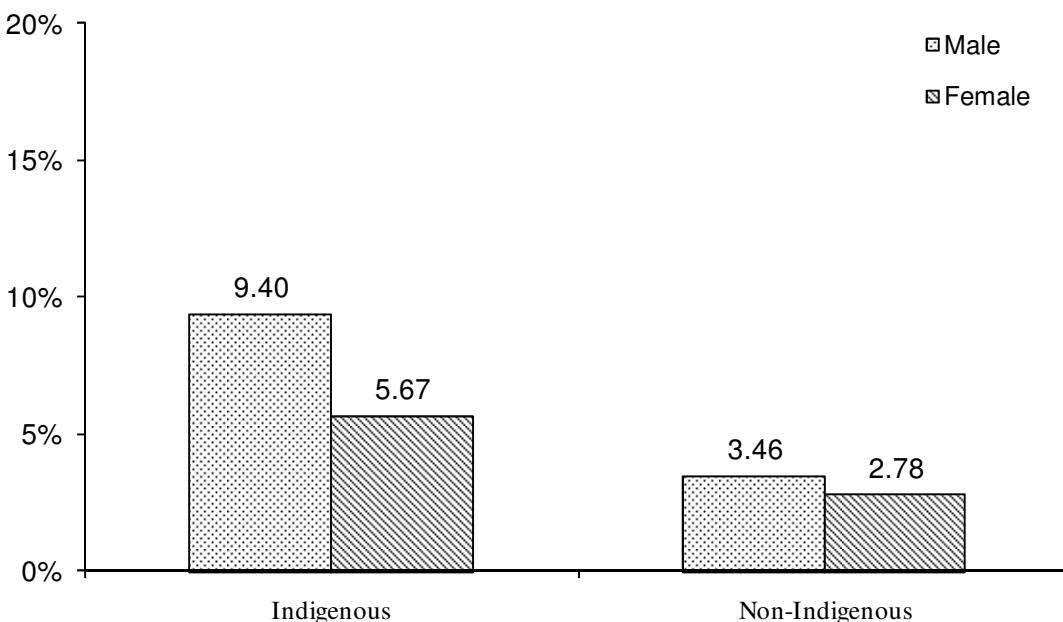
**Figure 3.17 Percent of Arrests with a Current Offence of Violating a Court Order (Excluding Bail Conditions), within Gender and Indigenous Status, N= 489,175 (QPS Custody Data, 1999-2008).**



***The relationship between gender and Indigenous status and previous violations of court orders***

In contrast to the similarities between Indigenous and non-Indigenous arrests for current violations of orders, there is a clear difference in the history of order violations. Figure 3.18 shows that arrests of both Indigenous males and females were more likely to involve a history of violations of court orders than arrests of non-Indigenous males and females, with arrests of Indigenous males the most likely to contain a history of order violations.

**Figure 3.18 Percent of Arrests with a Previous Violation of a Court Order (Excluding Bail Conditions), within Gender and Indigenous Status, N= 488,784 (QPS Custody Data, 1999-2008).**



### **Summary**

There was no substantial difference in the percent of arrests involving current violations of a court order among Indigenous-gender groups. However, arrests of Indigenous persons, particularly Indigenous males, involved a greater proportion of *prior* arrests for violations of court orders.

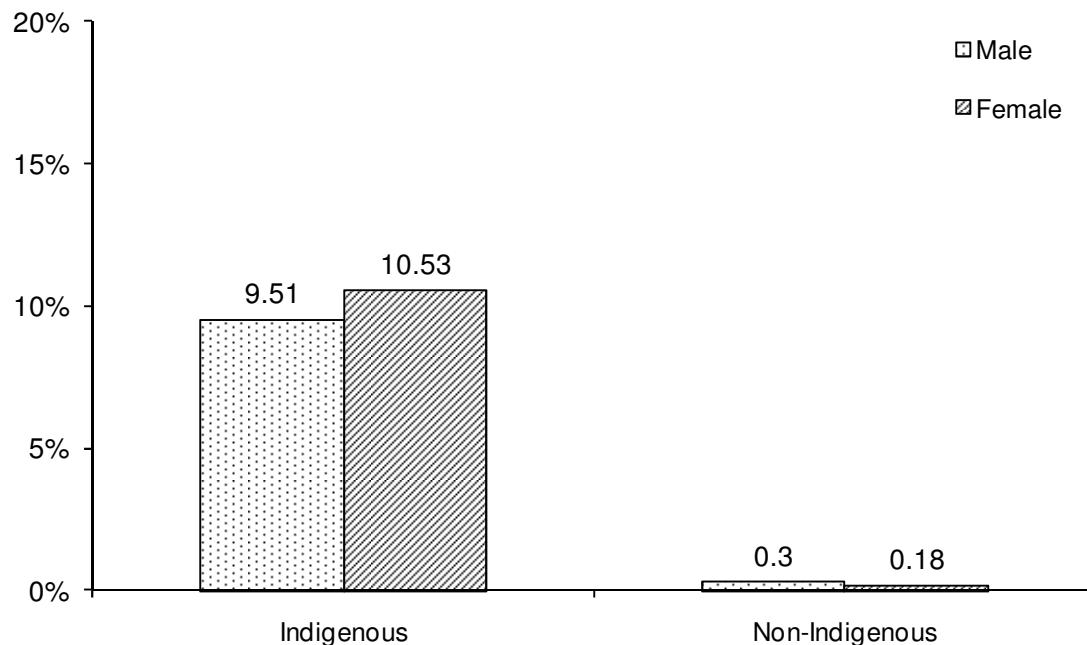
## **3.8 Access to diversion for arrestees**

Access to diversionary programs was measured three ways: the use of the “AD” (alcohol diversion) action code; the use of the “DD” (drug diversion) action code; and the existence of the word “diversion” (or similar), or a specific program, in the Comment or Record field.

### ***The relationship between gender and Indigenous status and access to alcohol diversion***

As shown in Figure 3.19, in the Action codes, 10% of the arrests of Indigenous males and 11% of the arrests of Indigenous females involved alcohol diversion, compared to 0.3% of the arrests of non-Indigenous males and 0.2% of the non-Indigenous females.

**Figure 3.19 Percent of Arrests Which Included an Alcohol Diversion, within Gender and Indigenous Status, N = 489,175 (QPS Custody Data, 1999-2008).**

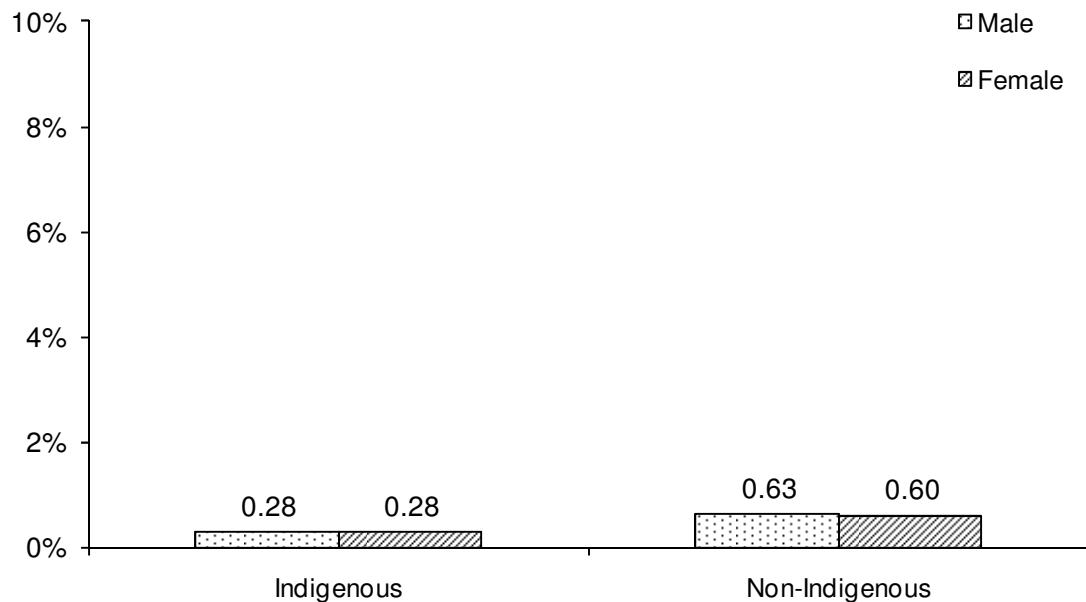


Note. Alcohol diversion indicated by the use of the “AD” action code.

#### **The relationship between gender and Indigenous status and access to drug diversion**

Figure 3.20 indicates that, in contrast to alcohol diversion, drug diversion was more likely to be given to non-Indigenous arrestees. Although the proportion was low amongst both groups, twice the proportion of arrests of non-Indigenous persons received drug diversion (0.6%) than the Indigenous arrests (0.3%).

**Figure 3.20 Percent of Arrests Which Included a Drug Diversion, within Gender and Indigenous Status, N = 489,175 (QPS Custody Data, 1999-2008).**

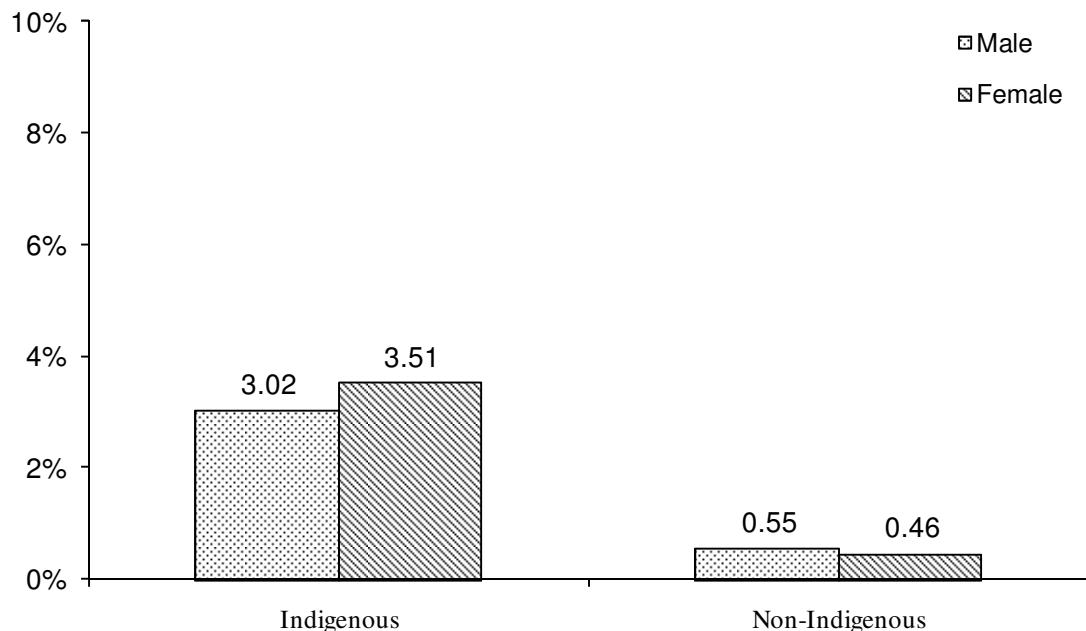


Note. Drug diversion indicated by the use of the “DD” action code.

#### **The relationship between gender and Indigenous status and access to diversion**

In terms of diversions mentioned in the Record and Comment fields, arrests involving Indigenous arrestees are six times more likely to involve diversion as are arrests involving non-Indigenous arrestees (see Figure 3.21).

**Figure 3.21 Percent of Arrests Which Included Reference to Diversion in the Text Fields, within Gender and Indigenous Status, N = 489,175 (QPS Custody Data, 1999-2008).**

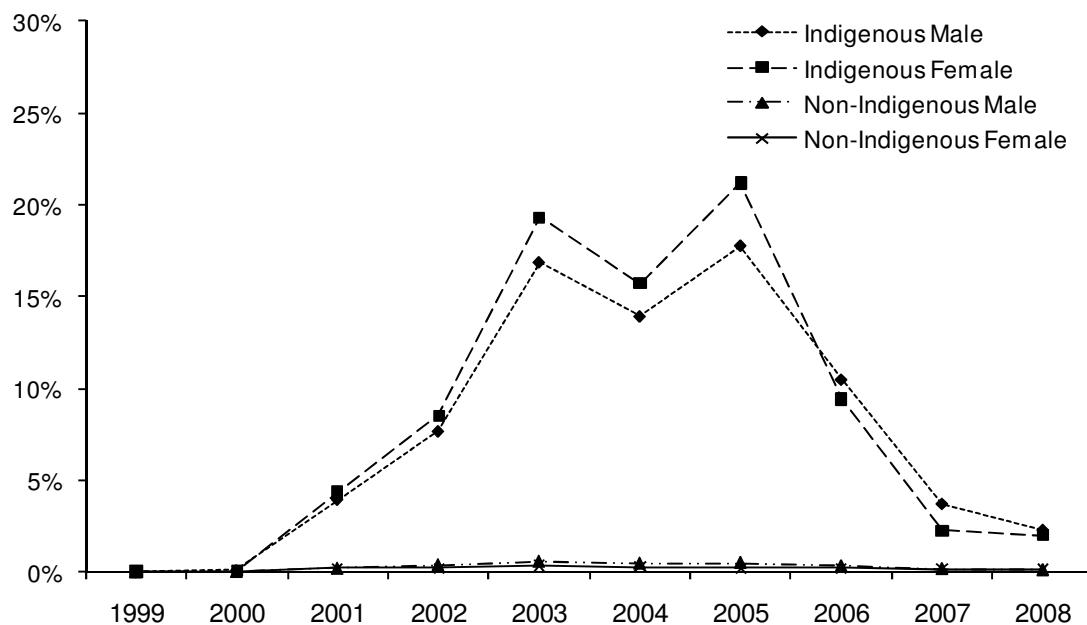


***The relationship between gender and Indigenous status and trends in alcohol diversion***

Figure 3.22 shows the trends for receiving alcohol diversion from 1999 to 2008. There is an increase in alcohol diversion for Indigenous arrests until 2003; a plateau from 2003 to 2005, and a decline from 2005 until 2008. The yearly rate of alcohol diversion for non-Indigenous arrests is essentially flat, and very close to zero percent.

Further investigation indicates that nearly all (97%) of the alcohol diversions stemmed from three police districts: Mount Isa, Rockhampton, and Townsville. Possibly these three districts were involved in an alcohol diversion program which focused on Indigenous offenders, or these districts had access to alcohol diversion programs not available in other areas.

**Figure 3.22 Percent of Arrests Which Included an Alcohol Diversion, within Gender and Indigenous Status, by Year, N = 489,175 (QPS Custody Data, 1999-2008).**

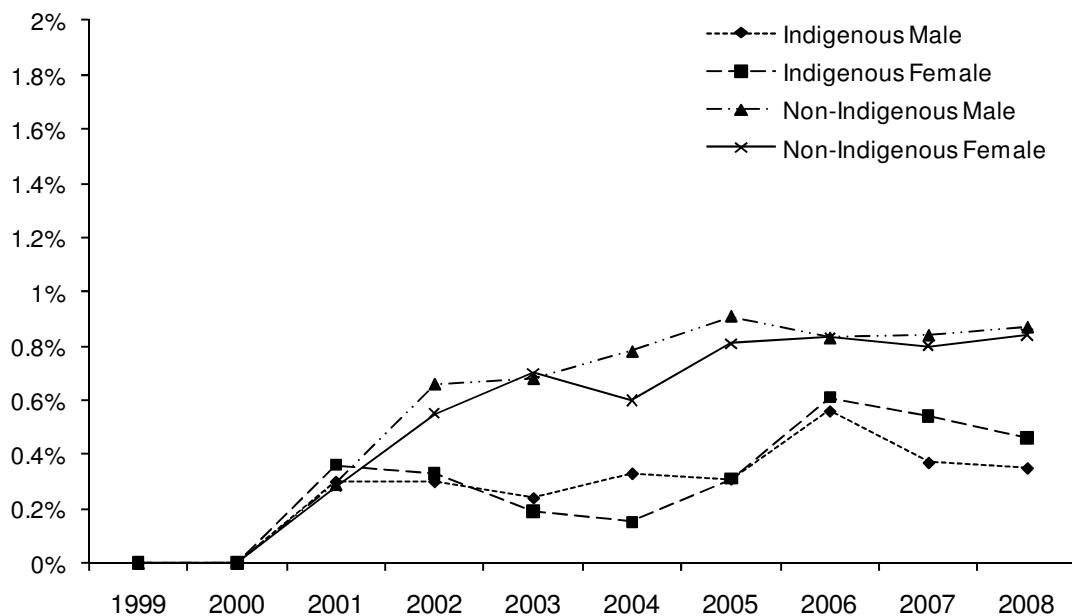


#### ***The relationship between gender and Indigenous status and trends in access to drug diversion***

Although the annual rates of drug diversion were very small (from zero to two percent), there does appear to be some yearly variation. As shown in Figure 3.23, there were no action codes for drug diversions recorded in 1999 or 2000. For non-Indigenous arrests there was a steady increase until 2005, when the rate reached a plateau. The rate of drug diversion among Indigenous arrests had a gradual and inconsistent increase from 2001 until 2008; however, the rate of drug diversions was still less than that among non-Indigenous arrests.

Note that the base rates for all four groups are low: approximately 0.8% of the non-Indigenous arrest episodes had an action code for drug diversion, compared to approximately 0.4% of the Indigenous arrest episodes.

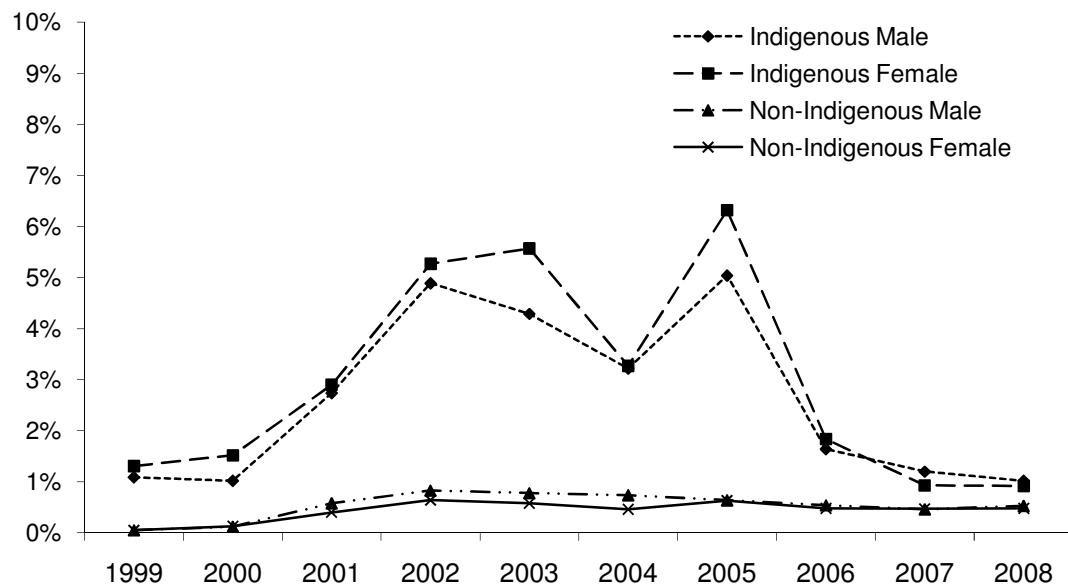
**Figure 3.23 Percent of Arrests Which Included a Drug Diversion, within Gender and Indigenous Status, by Year, N = 489,175 (QPS Custody Data, 1999-2008).**



#### ***The relationship between gender and Indigenous Status and trends in access to diversion***

Figure 3.24 shows the trends for receiving diversion (as indicated by the text fields, rather than the Action codes) between 1999 and 2008. The graph mimics the pattern for alcohol diversion: there is an increase in diversions among Indigenous arrests from 1999 to 2002, a plateau from 2002 to 2005, and a decrease from 2005 to 2008. Meanwhile, rates of diversion among non-Indigenous arrestees remained below one percent across all years.

**Figure 3.24 Percent of Arrests Which Included Reference to Diversion in the Text Fields, within Gender and Indigenous Status, by Year, N = 489,175 (QPS Custody Data, 1999-2008).**



### **Summary**

Arrests of Indigenous persons were far more likely to involve alcohol diversion, although these occurred primarily during the middle of the period under study (2002-2005). They were also far more likely to have diversions mentioned in the text fields. Arrests of non-Indigenous persons were more likely to involve drug diversion, although the absolute magnitude of this difference was small, due to the low overall rates of drug diversion. The differences by gender within Indigenous status were minor with males and females having very similar proportions of diversion.

### **3.9 Regression analyses: Relationships between Indigenous status, gender, and remand, net of relevant characteristics**

A multiple regression is a statistical technique which determines the average relationship between characteristics, net of all other factors that are included in the analysis. This allows other confounding relationships to be statistically “controlled for” which in turn, helps to discover the underlying relationships between characteristics of interest – in this instance, between remand and various characteristics of the arrestee and the offence.

For example, a percentage table might show that Indigenous participants in a study earn less than their non-Indigenous

counterparts. This suggests some form of wage discrimination. However, a regression analysis which included both annual earnings and levels of education might show that the percentage table's message is misleading. Rather than Indigenous status, it is one's level of education which explains annual earnings. The fact that Indigenous Australians have a lower level of education would thus explain the relationship between Indigenous status and lower average earnings.

Thus, this section examines the average relationship between gender and Indigenous status and remand, *net of* characteristics extracted from the custody data including demographic characteristics of the arrest episodes, offending history, and their current offence. Note that research has shown that community ties – particularly stability of employment and family responsibilities – are important predictors of being released on bail or on one's own undertaking. However, measures of these characteristics were not available in the data, and thus were not included in the analyses. If Indigenous and non-Indigenous arrestees systematically differ in their average employment or family characteristics, these differences might explain any “Indigenous effect” found by this study’s regressions.

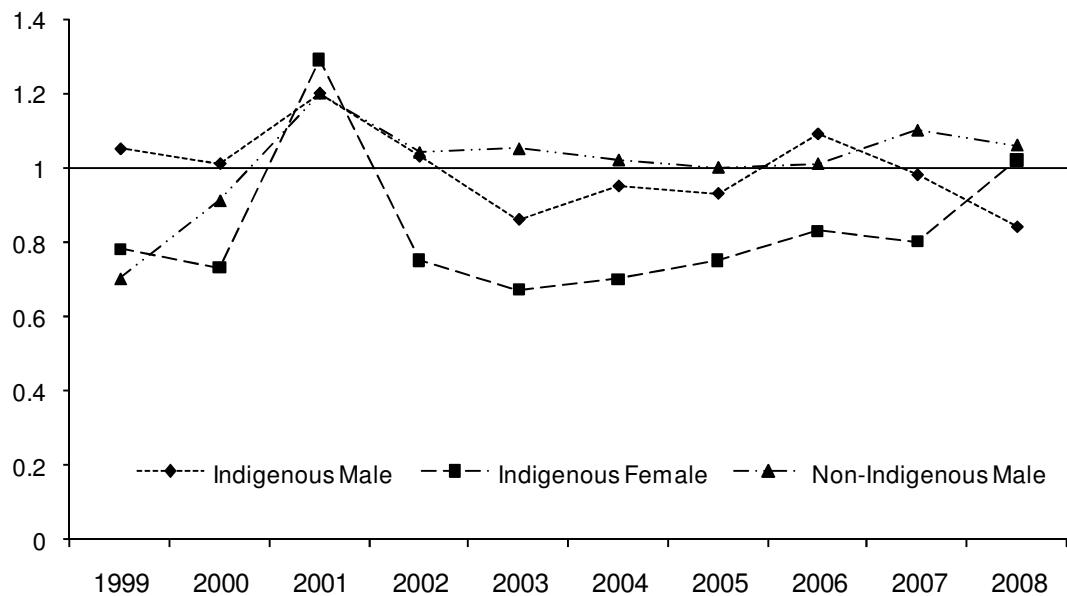
### ***Trends in the relationship between gender and Indigenous status and remand***

The following analyses examine the risk of remand, and length of remand, for Indigenous males, Indigenous females, and non-Indigenous males, relative to the risk for non-Indigenous females. For example, in these figures data points at 2.0 indicate twice the risk of being held in remand, or twice the average number of days held in remand, compared to non-Indigenous females. Whereas, data points at 0.50 indicates fifty percent of the risk, or fifty percent average number of days. Data points at 1.00 indicate the same average level as for non-Indigenous females. As with all of the analyses for this section, these risks are net of demographic characteristics of the arrest episodes, offending history, and current offence.

### **Trends in the relationship between gender and Indigenous status and “remand” being indicated in the text fields**

As indicated in Figure 3.25, the risk of being held in remand (as measured by indicators of remand in the text fields) has been essentially constant over the time period examined. However, there has been a slight decrease over time in the risk of remand being mentioned for Indigenous males, and a slight increase for Indigenous females, relative to the risk for non-Indigenous females.

**Figure 3.25 Multipliers<sup>1</sup> for the Average Risk that Remand is Indicated in a Text Field, Relative to the Comparison Group of Non-Indigenous Females, Net of Demographics, Offending History, and Current Offence, by Year (QPS Custody Data 1999-2008).**



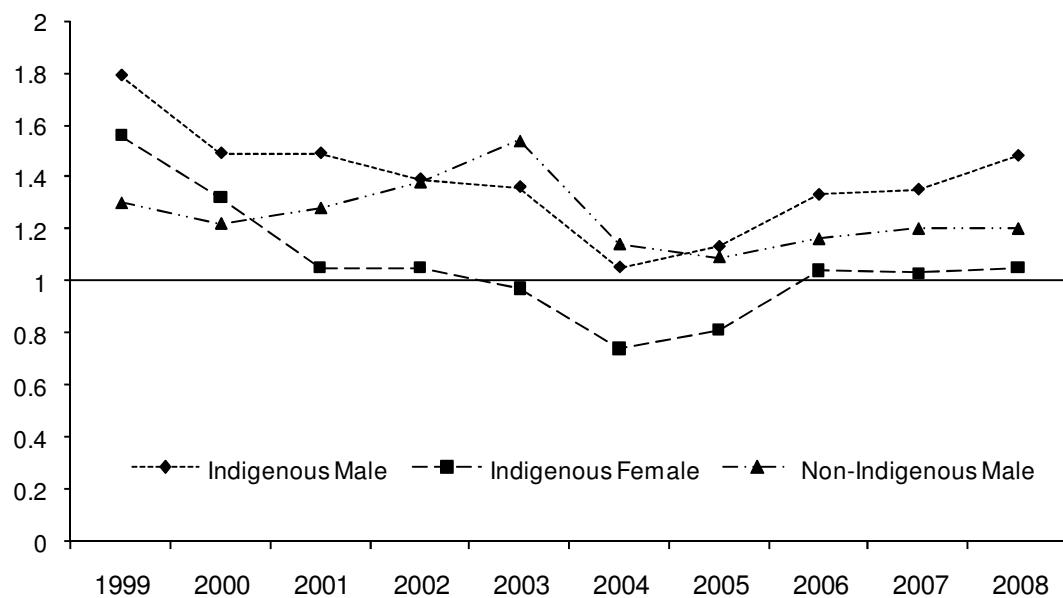
<sup>1</sup>Odds-ratios. The plotted values were derived from a logistic regression.

Note. Vertical line represents the comparison group, non-Indigenous females, which has an odds ratio of one each year. Only the data points for Indigenous females (2003) and non-Indigenous males (2001) have a stable difference from being equivalent to the risk of non-Indigenous females (the comparison group).

### **Trends in the relationship between gender and Indigenous status and being held more than one day**

Figure 3.26 indicates that relative to non-Indigenous females, the overall trend has been of a decreasing risk of remand. However, while the recent risks for Indigenous females have been similar (i.e., 1.0, or even odds), non-Indigenous males have a slightly elevated risk of remand, and Indigenous males have a much greater risk of remand than non-Indigenous females - about one and a half times the risk of being held for more than one day. Again, these risks are net of all other relevant characteristics (e.g. offence type, offending history) available in the custody data.

**Figure 3.26 Multipliers<sup>1</sup> for the Average Risk of Being in Custody for Longer than One Day, Relative to the Comparison Group of Non-Indigenous Females, Net of Demographics, Offending History, and Current Offence, by Year (QPS Custody Data 1999-2008).**



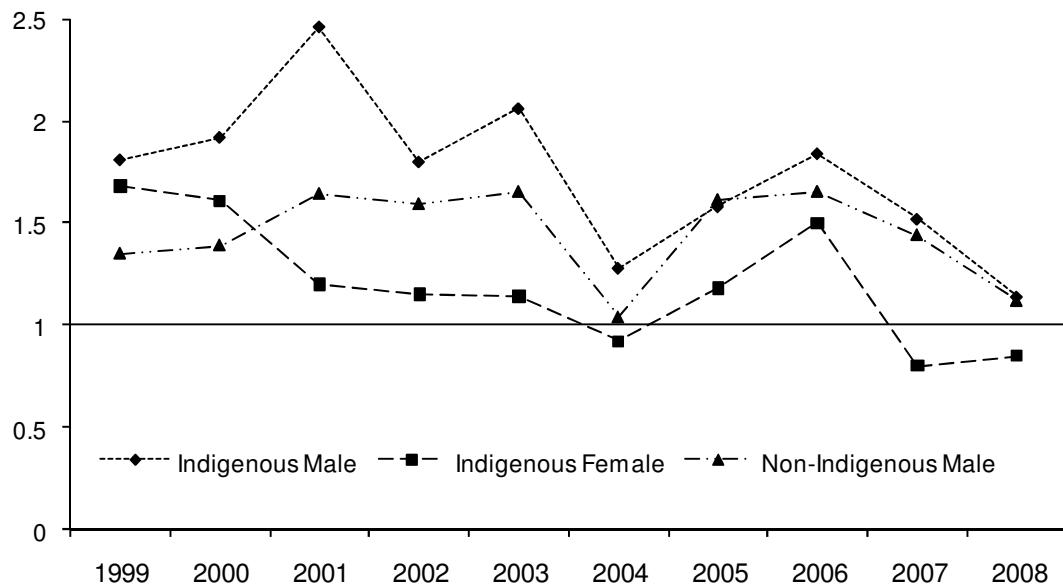
<sup>1</sup>Odds-ratios. The plotted values were derived from a logistic regression.

Note. Vertical line represents the comparison group, non-Indigenous females, which has an odds ratio of one each year.

### **Trends in the relationship between gender and Indigenous status and being held more than three days**

Despite yearly aberrations, Figure 3.27 indicates that relative to the risk for non-Indigenous females, the risk to all Indigenous-gender groups of being held for more than three days has decreased during the time period under study. The results for the most recent three years (2006-2008) show a general trend towards equity of risk for all four groups (Indigenous male, Indigenous female, non-Indigenous male and non-Indigenous female).

**Figure 3.27 Multipliers<sup>1</sup> for the Average Risk of Being in Custody for Longer than Three Days, Relative to the Comparison Group of Non-Indigenous Females, Net of Demographics, Offending History, and Current Offence, by Year (QPS Custody Data 1999-2008).**



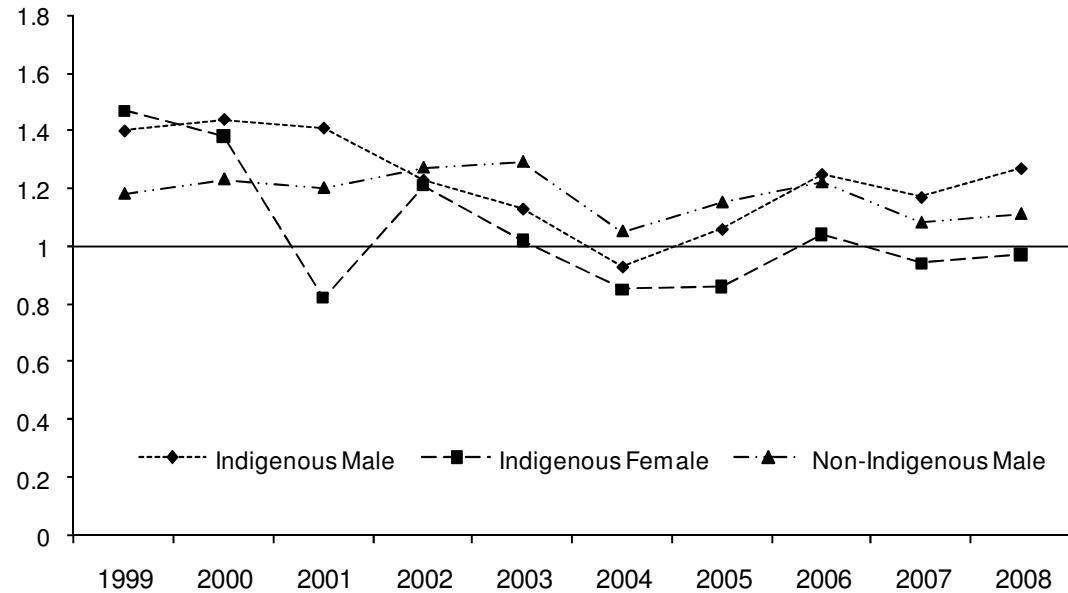
<sup>1</sup>Odds-ratios. The plotted values were derived from a logistic regression.

Note. Vertical line represents the comparison group, non-Indigenous females, which has an odds ratio of one each year.

### **The relationship between gender and Indigenous status and length of remand**

Figure 3.28 shows that there has been a gradual decrease in the average length of time in remand for Indigenous males, Indigenous females, and non-Indigenous males, relative to the average length of time that non-Indigenous females have been held. The trend for the final three years of the data (2006-2008) indicates no appreciable change. Net of all other available characteristics, Indigenous males are held for approximately 1.2 times the number of days that non-Indigenous females are held, and non-Indigenous males are held approximately 1.1 times the number of days than non-Indigenous females. Indigenous and non-Indigenous females are held for approximately the same length of time, net of all other characteristics included in the regression.

**Figure 3.28 Multipliers<sup>1</sup> for the Average Number of Days in Custody, Relative to the Comparison Group of Non-Indigenous Females, Net of Demographics, Offending History, and Current Offence, by Year (QPS Custody Data 1999-2008).**



<sup>1</sup>Incident-Rate Ratios. The plotted values were derived from a negative binomial regression.

Note. Vertical line represents the comparison group, non-Indigenous females, which has an incident-rate ratio of one each year.

### **Changes in the relationship between gender and Indigenous status and remand as additional characteristics are compensated for**

Table 3.2 reports the changes in the relationship between gender and Indigenous status and remand, net of other characteristics included in the regression. This analysis only examines data from 2008, the most recent year of data which thus best reflects the current situation.

For the first measure of remand status – whether remand was mentioned in the text fields – there is no stable relationship between Indigenous status and remand. However, for the measures based on the number of days in custody (held more than one day; held more than three days), Indigenous males have greater average risk of being held in remand than non-Indigenous females.

Specifically, the initial risk to Indigenous males of being held in remand decreases (relative to the risk of the non-Indigenous females, the comparison group) as additional characteristics are included in the model. However, net of demographic, mental health, offending history, and current offences, Indigenous males are still the most likely of the four Indigenous-by-gender groups to be held in remand.

**Table 3.2 Relationship between Gender and Indigenous Status and Remand, Net of Other Characteristics (Comparison Group: Non-Indigenous Females; QPS Custody Data, 2008).**

			Demographic Characteristics <sup>3</sup>	Mental Health Issues <sup>4</sup> Added	Offending History <sup>5</sup> Added	Offences <sup>6</sup> Added
Multipliers for the Risk of Being Held in Remand <sup>1</sup>	Remand Indicated in Text (n=30,138)	Indigenous Males	.95	.89	.71	.84
		Indigenous Females	.89	.87	.76	1.02
		Non-Indigenous Males	1.07	1.03	1.0	1.06
	Held >1 Day (n=29,999)	Indigenous Males	2.55***	2.20***	1.45**	1.70***
		Indigenous Females	1.19	1.11	.84	1.08
		Non-Indigenous Males	1.35**	1.25*	1.15	1.27**
	Held >3 Days (n=29,959)	Indigenous Males	2.22***	1.91***	1.16	1.38*
		Indigenous Females	1.03	.96	.69	.89
		Non-Indigenous Males	1.34*	1.24	1.12	1.23
Multipliers for the Length of Time in Custody <sup>2</sup>	Number of Days in Custody (n=29,999)	Indigenous Males	1.91***	1.69***	1.28*	1.38**
		Indigenous Females	1.09	1.05	.82	.96
		Non-Indigenous Males	1.21*	1.18	1.08	1.17

<sup>1</sup>Odds-ratios. Values derived from logistic regressions.

<sup>2</sup>Incident-rate ratios. Values derived from logistic regressions.

<sup>3</sup>Includes the Gender and Indigenous Status by gender measure, age, and age-squared

<sup>4</sup>Includes a measure of mental health issues and a measure of risk of suicide

<sup>5</sup>Offending history includes prior arrests, previous FTAs, and previous violations of orders

<sup>6</sup>Offences refer to the initial reason for police contact; offences of insufficient frequency or that were perfect predictors of the remand status were excluded from the analysis

\* p < .05, \*\* p < .01, \*\*\* p < .001

Again, note that this remaining effect might be further reduced, or disappear, if measures of community ties (e.g., employment and family responsibilities) had been available.

In the final model, non-Indigenous males were more likely than non-Indigenous females to be held for more than one day; however, their average risk was less than the risk experienced by Indigenous males. However, the analysis for being held for more than three days indicates that there is not a stable difference between non-Indigenous males and females, net of the available characteristics.

The results for the average number of days in custody follows the pattern found for the risk of being held for more than three days: Indigenous males are held for longer than are non-Indigenous females; this longer average duration generally decreases as additional characteristics are compensated for; but Indigenous males still have the longest average length of custody, net of all other available characteristics.

### ***The relationship between selected characteristics and remand***

Table 3.3 shows the relationship between selected characteristics of the arrest episode and the risk of, or length of remand. This analysis only uses arrests from 2008 as this information best reflects the current situation.

#### **Indigenous status**

As noted in preceding sections of this chapter, net of other characteristics included in the analysis, Indigenous males appeared to be more at risk of remand than other groups. Indigenous males were one and a half times more likely than non-Indigenous females to be held for more than a day in remand, and tended to be held approximately a third as long as non-Indigenous females. In addition, non-Indigenous males were twenty percent more likely than non-Indigenous females to be held for more than one day.

As mentioned earlier, the added risk of remand experienced by Indigenous males may be the result of other characteristics that were not available for inclusion in these analyses. In particular, the presence of strong community ties (notably, stable employment and family responsibilities) has been found to be inversely related to remand. Thus, the “Indigenous male” effect found here might be explained by average differences between Indigenous and non-Indigenous arrestees in employment and family structure.

**Table 3.3 Relationship between Selected Characteristics and Remand (QPS Custody Data, 2008).**

		Multipliers for the Risk of Being Held in Remand <sup>1</sup>		Multipliers for the Length of Time in Custody <sup>2</sup>	
		Remand Indicated in Text Fields (n=30,138)	In Custody More than One Day (n=29,999)	In Custody More than Three Days (n=29,959)	Days in Custody (n=29,999)
Gender and Indigenous Status (comparison group: non-Indigenous females)	Indigenous Males	.84	1.48***	1.14	1.27*
	Indigenous Females	1.02	1.05	.85	.97
	Non-Indigenous Males	1.06	1.20*	1.12	1.11
Demographics	Age	1.01	1.02*	1.04*	1.03**
	Age squared	1.00	1.00	1.00	1.00
	Suicidal	1.86***	2.93***	2.74***	2.37***
	Mental health concerns	2.39*	1.34	.89	1.03
Offending History	No previous arrests	.88	.82**	.61***	.73***
	Has prior FTAs	1.55***	1.42***	1.60***	1.47***
	Has prior order violations	1.00	.98	1.00	.95
	Previously held in remand	-- <sup>3</sup>	2.75***	3.24***	2.05***

<sup>1</sup>Odds-ratios. Values derived from logistic regressions.

<sup>2</sup>Incident-rate ratios. Values derived from logistic regressions.

The stars adjacent to the numbers indicate that these have sufficient stability to accept their results.

\* p < .05, \*\* p < .01, \*\*\* p < .001

**Table 3.4 (continued) Relationship Between Selected Characteristics and Remand (QPS Custody Data, 2008).**

Offence <sup>4</sup>		Logistic Regression <sup>1</sup> (Numbers are multipliers of risk of being held)		Negative Binomial Regression <sup>1</sup> (Numbers are multipliers of the number of days)	
		Remand Indicated by Text Fields	In Custody More than One Day	In Custody More than Three Days	Days in Custody
Homicide		4.98**	24.66***	17.32***	6.94***
Rape		2.53*	3.39***	3.66***	2.59***
Domestic Violence		1.43*	1.59***	1.33	1.52***
Weapons Offences		.98	1.81***	1.61	1.34*
Violent Offences (Various)		1.23	1.84***	1.87***	1.55***
Property (Various)		1.43	1.21**	1.36***	1.12
Arson		1.57	.35	n/a	.65
Trespassing		.53	.55	.64	.70
Public Order		.26***	.23***	.23***	.32***
Obstructing Police		.56	.48***	.47***	.51***
Drug Offences (Various)		1.69**	.74*	.83	.77*
Drink Driving		1.13	.45***	.40**	.47***
White Collar <sup>5</sup>		1.60	1.44	2.14*	1.87
Paedophilia		2.99*	2.88**	3.00*	2.36**
Traffic		1.56*	1.29	1.37	1.28*
Unspecified <sup>6</sup>		1.33*	1.14*	1.11	1.13*
Warrants		.58**	1.72***	1.48**	1.49***
Voluntarily in Custody		.66	.46*	.59	.66*
Questioning		1.43*	1.11	1.29	1.22
Suspect		1.02	1.03	1.12	1.04
Non-Criminal Reasons <sup>7</sup>		.76	1.01	.29*	.59**

<sup>3</sup>This variable was omitted from the analysis due to being too similar to other variables

<sup>4</sup>Technically, the initial reason for police contact, as provided in the “Reason” field of the custody data. These offence categories are not mutually exclusive per arrest incident (e.g., arrested for Public Order and a Drug Offence). Some offence categories omitted due to being synonymous with the arrestee’s remand status (e.g., all arrestees for “Terrorism” were held in remand).

<sup>5</sup>White Collar includes monetary breach-of-trust and misrepresentation offences, such as fraud and embezzling

<sup>6</sup>“Unspecified” indicates initial police contact which was criminal in nature, but did not indicate the offending category.

Examples include entries in the Reason field such as: “Arrest”; “Search” (but not specifying the reason, or what was found); and “Routine Turn Over” or “Emergent Search” (i.e., searches due to reasonable cause).

<sup>7</sup>Non-Criminal reasons for initial police contact includes such things as providing witness statements and proving fingerprints for employment background checks

The stars adjacent to the numbers indicate that these have sufficient stability to accept their results.

\* p < .05, \*\* p < .01, \*\*\* p < .001

## **Demographics**

Arrest episodes involving older offenders are somewhat more likely to include being both held in remand, and held for longer periods of time. For example, the relationship between age and being held for more than three days of “1.04” indicates that each additional year of age increases the average risk of remand by four percent. Thus, an arrestee who is *three years* older than another otherwise-equal arrestee is 12% more likely to be held in remand for more than three days ( $1.04 \times 1.04 \times 1.04 = 1.12$ ). Note that this is net of offending history and the type of offence committed.

An arrestee’s suicidal tendencies (as indicated by the contents of the text fields) is a strong indicator of being held, and of being held for longer. Offenders involved in arrest episodes who have been identified as suicidal are two to three times as likely to be held in remand, and are held for more than twice as long as offenders involved in non-suicidal arrest episodes.

## **Offending history**

An arrestee’s offending history is also a strong predictor of his or her current remand status. Net of other available characteristics, arrest episodes with no previous arrests are less likely to be held in remand. Specifically those episodes with no previous arrests are 82% as likely to be held for more than a day, and 61% as likely to be held for more than three days, compared to someone with a prior arrest. Those with no prior arrests are also held for only 73% as long as those with one or more prior arrests.

Similarly, those with one or more previous Failures to Appear (FTA) are one and a half times as likely to be held in remand, compared to those with no prior FTAs. Arrest episodes with prior FTAs were also held for an average of one and a half times as long as those without prior FTAs.

Finally, arrest episodes where there had been previous episodes of remand were approximately three times as likely to be held in remand this time, and for an average of twice as many days.

## **Offence**

Some initial reasons for police contact (here referred to as the offences) were strong indicators of being held in remand, or being held for a longer period than average. These include homicide, rape, domestic violence, various violent offences, warrants, property offences, and paedophilia. Initial police contacts of an unspecified nature, such as “arrest” and “search warrant” (without specifying the

outcome of the search) were also related to higher average risks of remand, and longer lengths of stay.

In contrast, arrest episodes where initial police contact was due to public order offences or obstructing police were less likely to be held in remand – and when held, were held for shorter lengths of time. Those whose initial offence was drink-driving were also less likely to be held than those with non drink-driving offences. Of those held for drink-driving, their stay was for half the length of those not recorded as being a drink-driver.

### ***Summary***

Net of the characteristics available, Indigenous males are at a higher average risk of remand, and held for a longer average length of time.

## **3.10 Summary of findings**

The baseline figures indicate that Indigenous male arrestees are more at risk of remand. However, the baseline figures for the length of remand are similar across the Indigenous-gender groups.

In general, Indigenous males have a greater prevalence of previous remand episodes, prior arrests, and previous FTAs. As the regression results indicate these are important predictors of remand, it is not surprising that Indigenous males are at higher risk of being held in remand and being held for longer periods.

The regression analyses, which compensate for the average levels of their demographic characteristics, offending history, and current offence type, indicate that net of the available characteristics, Indigenous males are more likely to be remanded in police custody, and for a longer length of time, than non-Indigenous females. Indigenous females and non-Indigenous males were not significantly different from non-Indigenous females in terms of their risk of remand or their length of remand in police custody.

However, weak community ties – particularly weak employment and family ties – have been shown to adversely influence remand decisions. Thus, if information on these characteristics had been available, and Indigenous arrestees (in particular, Indigenous males) had weaker average levels of employment and family responsibilities, it is possible that this “Indigenous male effect” might disappear, or at least be reduced.

# **CHAPTER 4 EXAMINING TRENDS AND PATTERNS IN COURT APPEARANCES IN QUEENSLAND**

## **4.1 Introduction**

This chapter examines important characteristics and trends for court-imposed remand in Queensland for Indigenous and non-Indigenous defendants. In particular, we examine the demographic characteristics of defendants, as well as whether there are important changes occurring in the number of Indigenous and non-Indigenous persons in the remand system over the six-year period (2004-2009) of the provided data. The analyses are based on an extraction from the Queensland Wide Interlinked Courts system (QWIC), which is the administrative database of the Department of Justice and Attorney-General (DJAG). This data extract includes information on all Magistrates' Courts and some District and Supreme Courts for Queensland. Further methodological details are provided in Appendix B. This chapter's findings illustrate how Indigenous remanded adults compare with non-Indigenous remanded adults as well as highlighting factors that influence and predict remand outcomes.

Please note that whilst remand experiences can be measured in different ways, the unit of analysis in the current study is remand episodes resulting from individual court cases. Importantly, some individuals, especially high rate offenders, may appear across multiple periods or cases. We acknowledge that the factors related to remand may differ when examined as episodic events as opposed to individual outcomes. Note also that the results contained in this chapter are dependent on the accuracy of the data entry procedures which produced the administrative data.

The results presented in the chapter are structured into the following sections:

- Profile of all court cases
- Demographic profile of remand episodes
- Substance abuse and mental health issues
- Characteristics of the defendant's current court case
- Prior remand episodes
- Conviction history
- Failures to Appear and other violations of bail conditions
- Violations of court orders other than bail
- Access to diversion and the Murri Court
- Regression analyses: Relationships between Indigenous status, gender, and remand

- Bail program cost estimation
- Summary of findings

## **4.2 Profile of all court cases**

This section provides a demographic profile of the defendants' court cases from the QWIC data that were used in the analyses. This includes the number of defendant court cases, and the proportion of Indigenous Australians by gender.

Note that this chapter's analyses are for the defendants' cases where a remand, bail, or release on own undertaking decision was clearly stated in the data; successfully merged with the "offending history" lookup file; and where there were no rows of data with obvious errors. The decision rules used to determine which cases were included in the analyses are elaborated upon in Appendix B.

As is typical for large-scale statistical analysis of extractions from criminal justice databases, the unit of analysis is not the individual. Instead, the unit examined is the characteristics of the most serious offence within a defendant's court case. Thus, a person with three different court cases would be tallied three times, not once. Note also that "court case" is not the unit being gender, as many court cases in the District and Supreme courts have multiple defendants: these court cases would be tabulated separately for each defendant.

### ***Sample size***

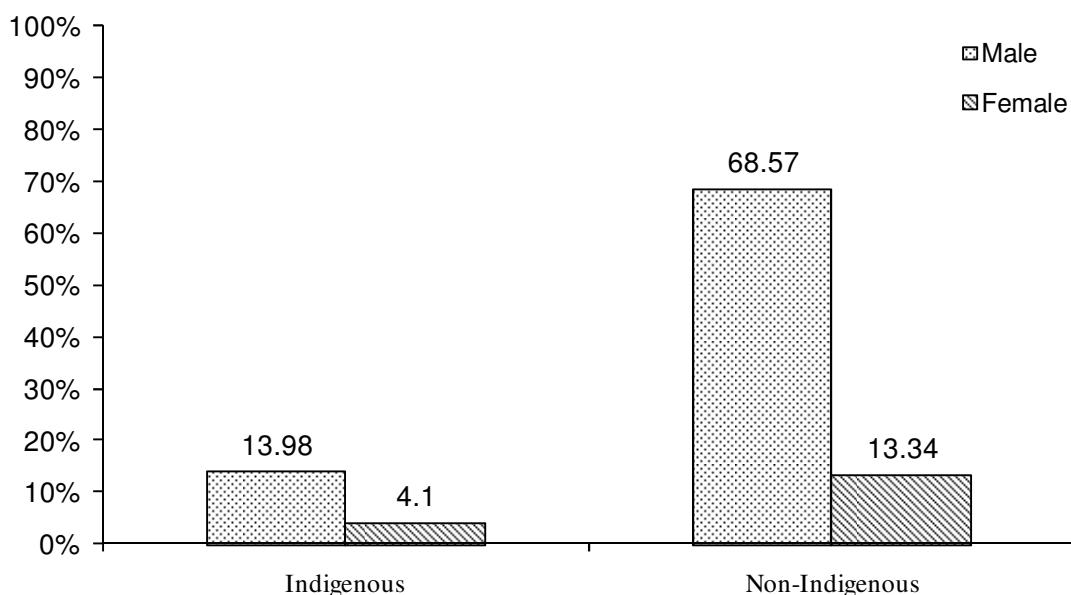
Over half a million ( $n=516,235$ ) defendants' court cases were analysed for this chapter. The annual number of court cases for the years under analysis (2004 to 2009) ranged from 64,246 cases in 2004 to 98,467 in 2007.

Note that these figures do not adequately reflect variations in the DJAG workload, as these figures only reflect the number of court cases included in the analyses, rather than their full caseload. Cases were included only if there were clear indicators of a bail, remand, or release on one's own undertaking decision. This would exclude, among other defendants, those whose most serious offence was finalised at their first court appearance. It would also exclude persons in court for non-criminal matters: for example, psychiatric committals. In addition, court cases containing flawed data were excluded from the analyses. A fuller description of the inclusion criteria is contained in Appendix B.

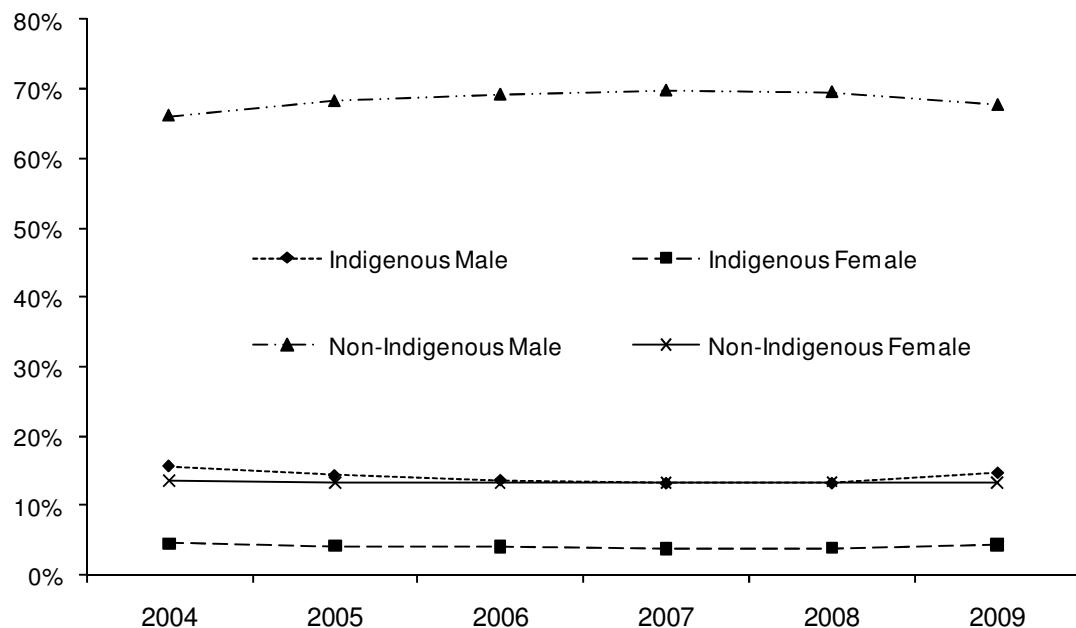
### ***The proportion of defendants' court cases by gender and Indigenous status***

Breaking down Indigenous status by gender (Figure 4.1), it seems that both males and females of Indigenous heritage are over-represented within the DJAG QWIC data, compared to their proportion of the population in Queensland. While Indigenous people represented approximately 3.6% of the Queensland population in 2006 (ABS 2006b), they represent 14% of male, and 4% of female defendant court cases in the subsample used for this chapter's analyses. Furthermore, Figure 4.2 indicates that the relative proportion of each of the four Indigenous-gender groups is consistent across the six-year period under study.

***Figure 4.1 Distribution of Gender and Indigenous status within the Analysis Sample, N = 480,276 (QWIC database, 2004-2009).***



**Figure 4.2 Distribution of Gender and Indigenous status within the Analysis Sample, by year, N = 480,276 (QWIC database, 2004-2009).**

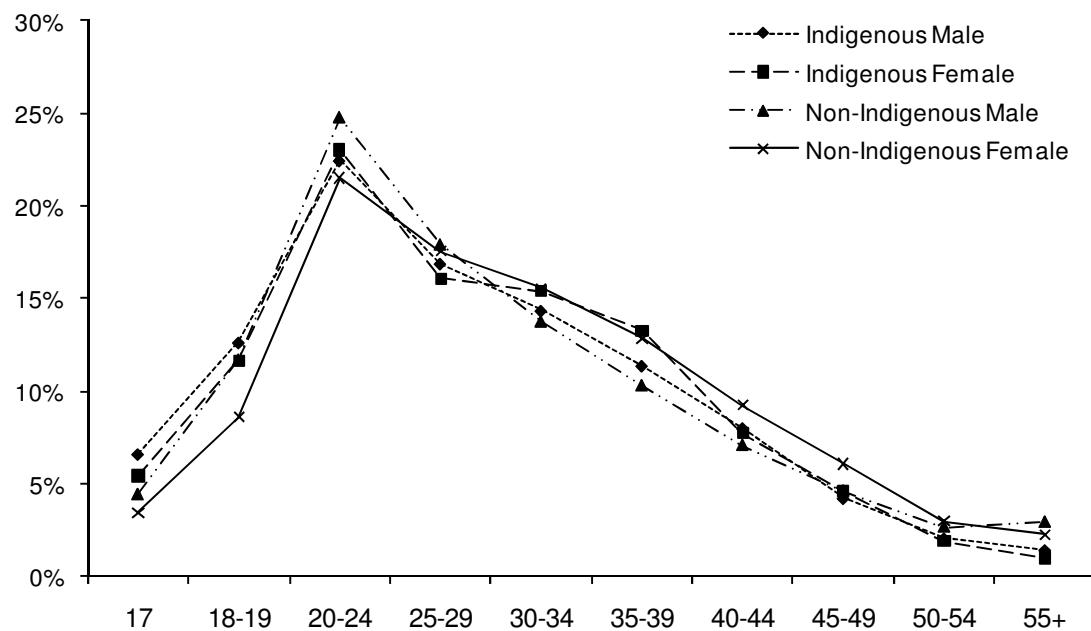


### ***The relationship between gender and Indigenous status and the defendant's age at the time of the charged offence***

As the focus of this report is on adult remand, charges where the defendant was less than seventeen at the time of the offence were excluded from this analysis. In addition, instances where the age was greater than ninety-six years were also excluded.

As indicated in Figure 4.3, the court cases in the analysis sample tend to involve people who committed their alleged offences in their early twenties. Furthermore, although there are some minor differences by gender within Indigenous status, the age distribution appears to be characterised by a peak in the 20-24 age bracket for both Indigenous and non-Indigenous defendants.

**Figure 4.3 Age Distribution of the Age at the Alleged Offence within Gender and Indigenous Status, N = 478,124 (QWIC database, 2004-2009).**



### **Summary**

Both male and female Indigenous defendants are over-represented among the court cases gender in this chapter, relative to their proportion of Queensland's population. Their proportion of the total number of cases has been consistent across the period under study.

The age distribution of the four Indigenous-gender groups is similar.

## **4.3 Demographic profile of remand episodes**

This section describes the definition of “held in remand” used in this chapter. It then reports the relative risks of being held in remand for Indigenous and non-Indigenous defendants. Note that these figures reflect the baseline proportion that is held in remand within each Indigenous-by-gender status group (i.e., Indigenous males, Indigenous females, non-Indigenous males, and non-Indigenous females). It does not compensate for other factors which may influence the risk of being held in remand, such as the current offence, offending history, or a history of bail violations. To the extent that these characteristics are related to one’s gender and/or Indigenous status, the following graphs should be treated with caution.

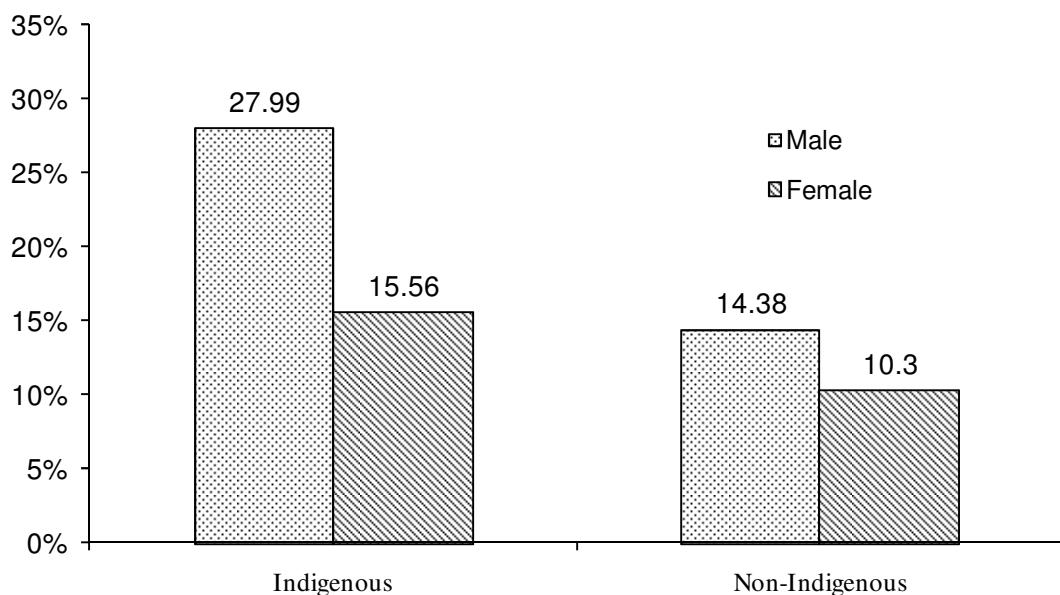
### ***The rate of remand***

Defendants were classified as held in remand if the contents of the Event Result field indicated that they had been refused bail, or the Order Item Type or General Order fields indicated that they had been held in remand. Within the analysis sample, 16% of the defendants' court cases involved being held in remand.

### ***The relationship between gender and Indigenous status and remand***

The rate of being held in remand differs both for gender and for Indigenous status. As shown in Figure 4.04, a greater proportion of Indigenous defendants' cases result in remand, and within Indigenous status groups, male defendants' cases have a higher rate of remand than do females' cases.

**Figure 4.4 Percent of Defendants' Court Cases Held in Remand, within Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).**

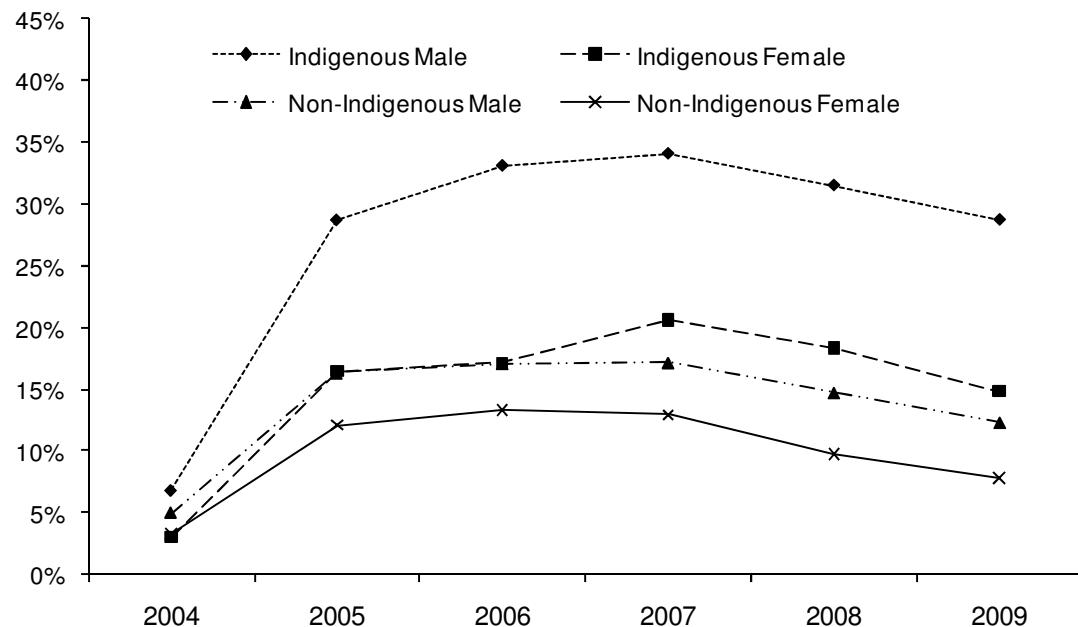


### ***The relationship between gender and Indigenous status and remand, by year***

Figure 4.5 indicates that the rate of remand within all four Indigenous-gender groups showed an increase during the beginning of the time period under analysis, followed by a decrease during the most recent years. Across all years, Indigenous males' court cases have the greatest risk of resulting in remand, while non-Indigenous females' cases have the least risk. Note that these rates of remand do

not compensate for the impact of legal variables (e.g. seriousness of the offence, offending and bail history) on remand decisions.

**Figure 4.5 Percent of Defendants' Court Cases Held in Remand, within Gender and Indigenous Status, by Year, N = 480,276 (QWIC database, 2004-2009).**



### ***The relationship between length of remand and gender and Indigenous status***

This section examines the length of remand for gender and Indigenous status. The number of days in remand was calculated only for those who were specified as being held in remand.

Length of remand was calculated as the number of days between the initial decision to hold a defendant in remand, and the date that the most serious offence was dropped, adjudicated, or sentenced, whichever occurred latest. This approach defines the length of remand similar to Queensland Corrective Services, whose annual census tabulates prisoners in custody who have not yet been sentenced.

Data entry errors for the date of remand or the date the most serious offence was dropped, adjudicated, or sentenced, resulted in some lengths of remand with negative numbers (0.50% [half a percent] of the remand episodes). These calculations also resulted in lengths of remand up to 6,940 days (19.01 years). We also excluded any length of remand calculated to exceed two years (724 days) as excessive.

These cases were only 0.25% (a quarter of a percent) of the remand episodes.

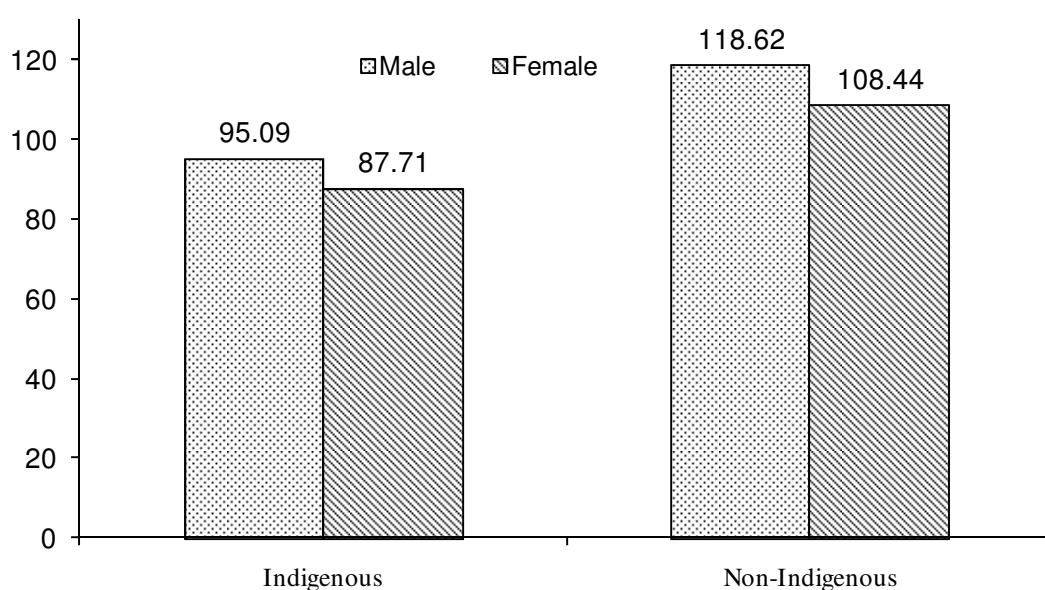
Because we have defined two years as the longest plausible length of remand, some cases from 2008 and 2009 (the final two years of extracted data) would not have finished their period of time in remand. Therefore, this would skew the results for those two years towards smaller averages, as longer lengths of remand would still be in progress and thus not included in the analysis, due to a lack of an ending date. Thus, this section only reports results from 2004 to 2007.

Additional information on the calculation of the length of remand is available in Appendix B.

### **Number of days in remand for four years combined**

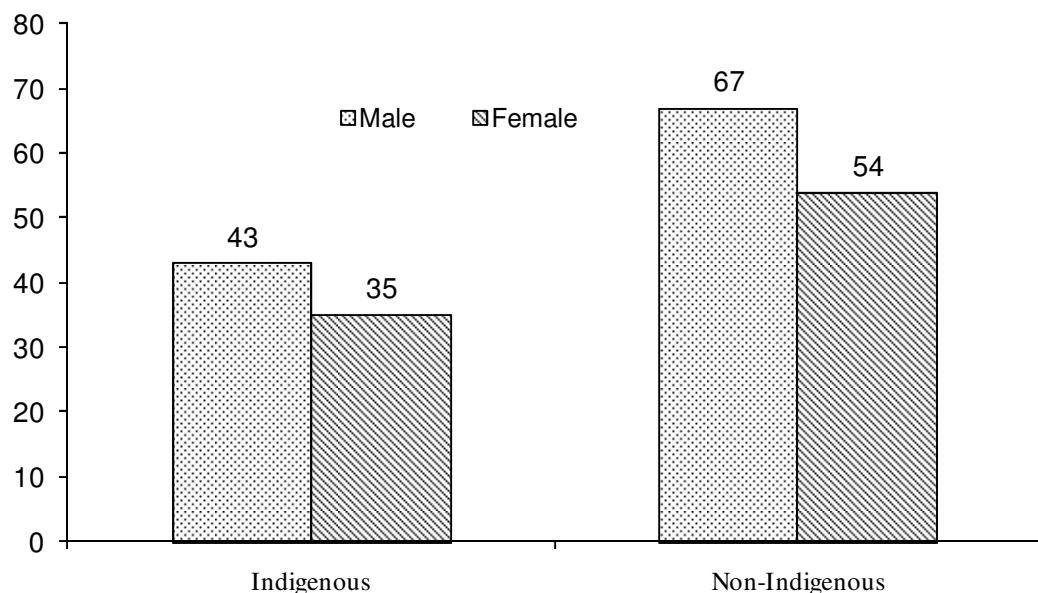
Although Indigenous defendants appear to be more at risk of remand (see preceding sections), it is non-Indigenous defendants who are held for longer periods of time in remand. Figures 4.6 and 4.7 indicate that of those who are held in remand, non-Indigenous defendants' cases have a greater number of both mean and median number of days. Within each gender category, the mean and median number of days for non-Indigenous defendants is approximately twenty days longer than for Indigenous defendants.

***Figure 4.6 Mean Length of Remand (Number of Days) by Gender and Indigenous Status, N = 50,867 (QWIC database, 2004-2007).***



However, a gender effect is also occurring. Within each Indigenous status, the males are held for approximately ten days longer than their female counterparts (eight days for Indigenous defendants; ten (mean) or thirteen (median) days for non-Indigenous defendants).

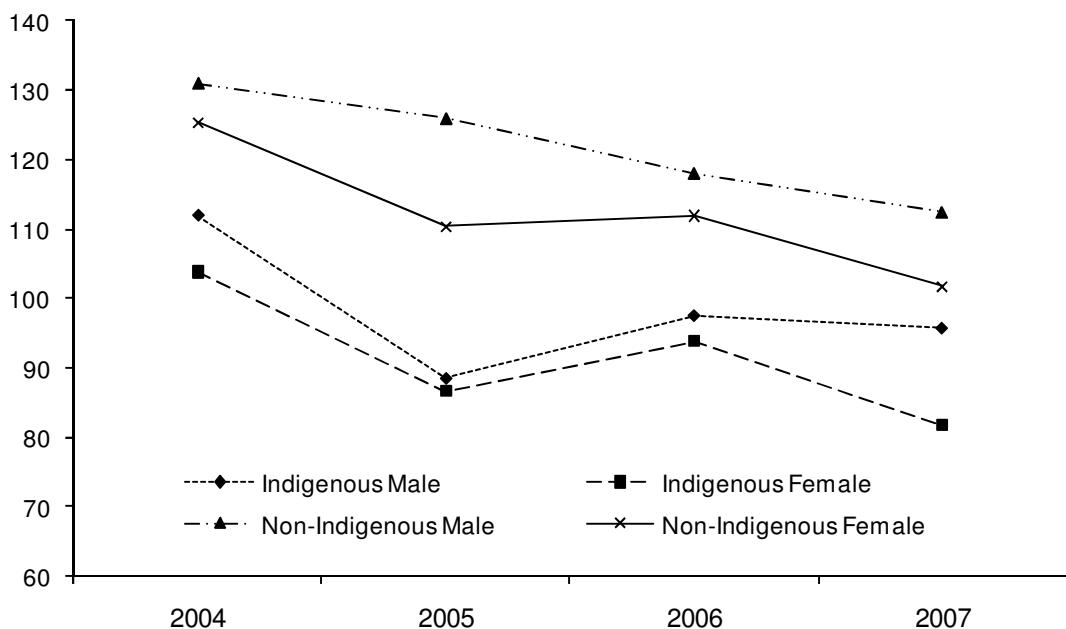
**Figure 4.7 Median Length of Remand (Number of Days) by Gender and Indigenous Status, N = 50,867 (QWIC database, 2004-2007).**



#### **Trends in the number of days in remand**

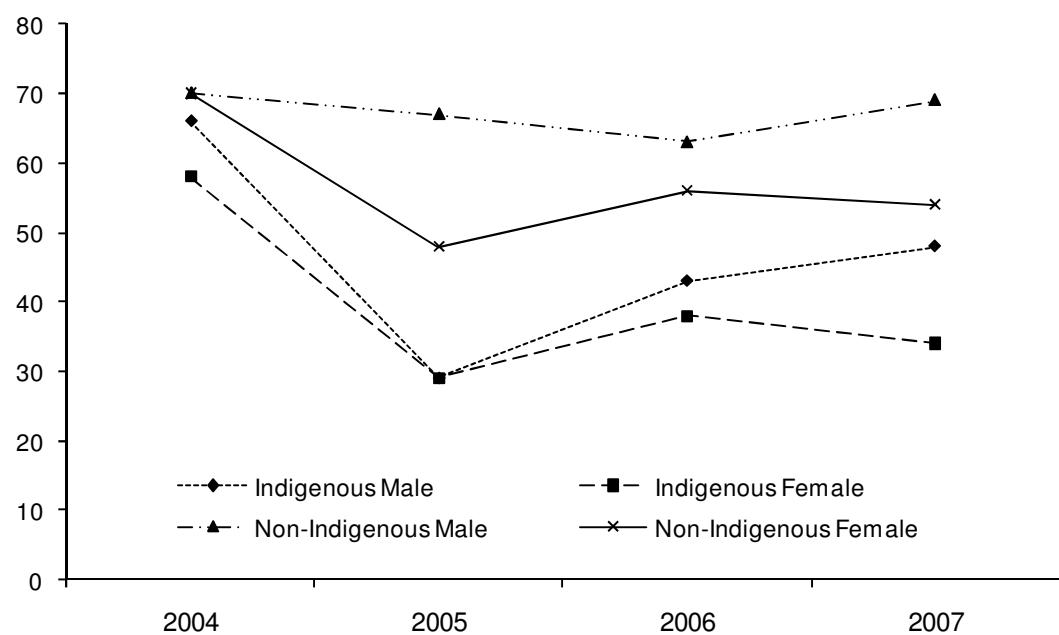
The patterns for the average length of time held in remand are similar across the four Indigenous-gender groups. The mean length of time held in remand has decreased overall for the four years examined (see Figure 4.8). Again, among those who are held in remand, the court cases of non-Indigenous defendants result in a longer length of remand than for Indigenous defendants; and again, males within each Indigenous status are held for longer than their female counterparts.

**Figure 4.8 Mean Length of Remand (Number of Days) by Gender and Indigenous Status, by Year, N = 50,867 (QWIC database, 2004-2007).**



Similarly, Figure 4.9 shows that the median length of remand has decreased over the four years reported, for all groups except non-Indigenous males, whose median length of time held has remained essentially flat. As with the mean, the median length of remand is greater for non-Indigenous than Indigenous defendants, and greater for the males within each Indigenous status than the females.

**Figure 4.9 Median Length of Remand (Number of Days) by Gender and Indigenous Status, by Year, N = 50,867 (QWIC database, 2004-2007).**



## **Summary**

Both male and female Indigenous defendants are over-represented among remandees, relative to their representation among the total number of court cases.

All court cases show an overall increase in the risk of remand during the time period studied (2004-2009), although the last half of the period shows a decrease since the middle of the period.

Of those defendants who are held in remand, male and female Indigenous defendants have a shorter average length of remand than non-Indigenous males and females.

There is a general trend towards a decrease in the mean and median lengths of remand. However, the median length of remand for non-Indigenous males was essentially constant.

## **4.4 Substance abuse and mental health issues**

This section examines the relationship between Indigenous status and the rate of substance abuse and mental health issues.<sup>15</sup> Substance and mental health concerns were indicated if the Event Result, Order Item Type, or General Order data fields referred to drug, alcohol, substance, or psychiatric or mental health programs or evaluations. Note that the drug, alcohol, and substance figures are not mutually exclusive. For example, within a court case, a defendant's records might have referred to a drug program *and* a "drug and alcohol" program, which would lead to that person's court case being represented in both graphs.

### **Drug abuse**

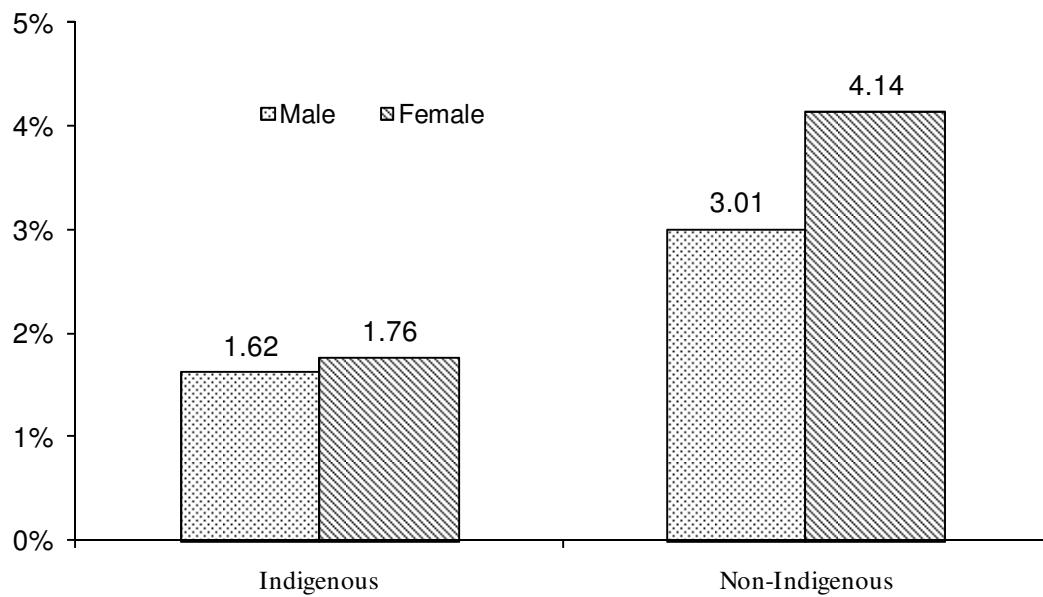
Defendants' cases were flagged as having a drug issue for that court case if a drug-specific program was included in the relevant text fields, or there were references to drug addiction, but not alcohol. References to "drug and alcohol" were categorised as "substance (unspecified)" (see below), rather than drugs.

As shown in Figure 4.10, drug abuse is recognised as more prevalent among non-Indigenous than Indigenous defendants' court cases. Approximately twice the proportion of non-Indigenous defendants' cases refers to a drug treatment program or intervention.

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<sup>15</sup> Note this data only includes cases where drug, alcohol or mental health issues were mentioned in the electronic records. The presence of these issues is not systematically recorded within the court data so this data is likely to under-estimate the number of defendants' cases involving these issues.

**Figure 4.10 Percent of Defendants' Court Cases Where the Defendant has Drug Issues, for Gender and Indigenous Status (N=480,276; QWIC database 2004-2009).**

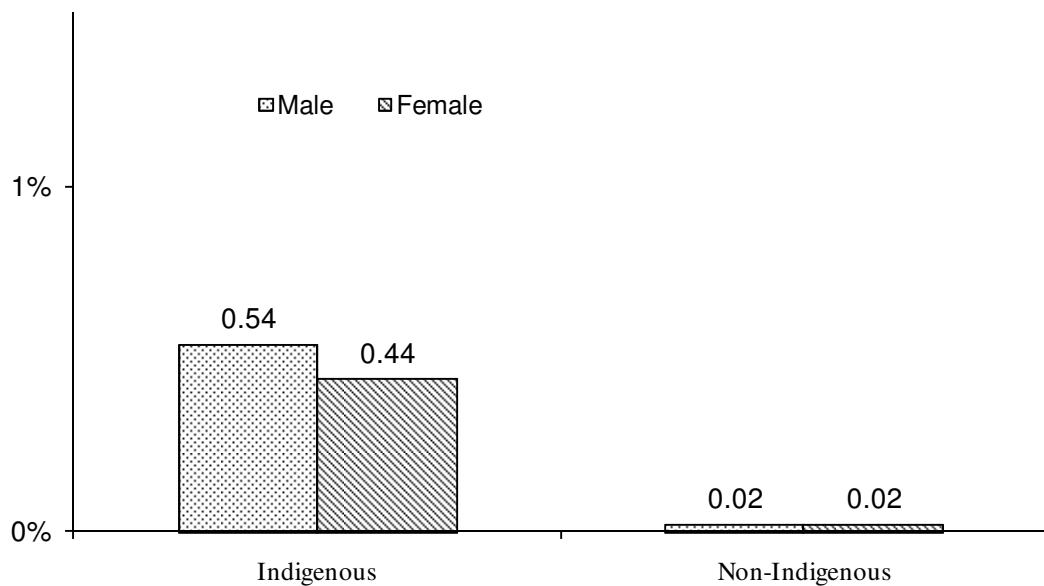


### **Alcohol abuse**

Defendants' cases were flagged as having an alcohol issue for that court case if an alcohol-specific program was included in the relevant text fields. References to "substance abuse" or "drug and alcohol" were categorised as "substance (unspecified)" (see below), rather than drugs.

Figure 4.11 shows that in contrast to drug addiction, alcohol abuse is mentioned far more frequently for Indigenous defendants' cases. Note, however, that the proportion of alcohol-specific programs and interventions is much smaller among the Indigenous defendants' cases (about half a percent) than drug interventions were among Indigenous (about one and a half percent) or non-Indigenous (three to four percent), as reported in Figure 4.10. However, these figures do not include programs offered through the Murri court. It is possible that the levels of alcohol-related treatments and programs in the Murri court are comparable to the rates of drug programs indicated in Figure 4.10.

**Figure 4.11 Percent of Defendants' Court Cases Where the Defendant has Alcohol Issues, by Gender and Indigenous Status (N=480,276; QWIC database 2004-2009).**

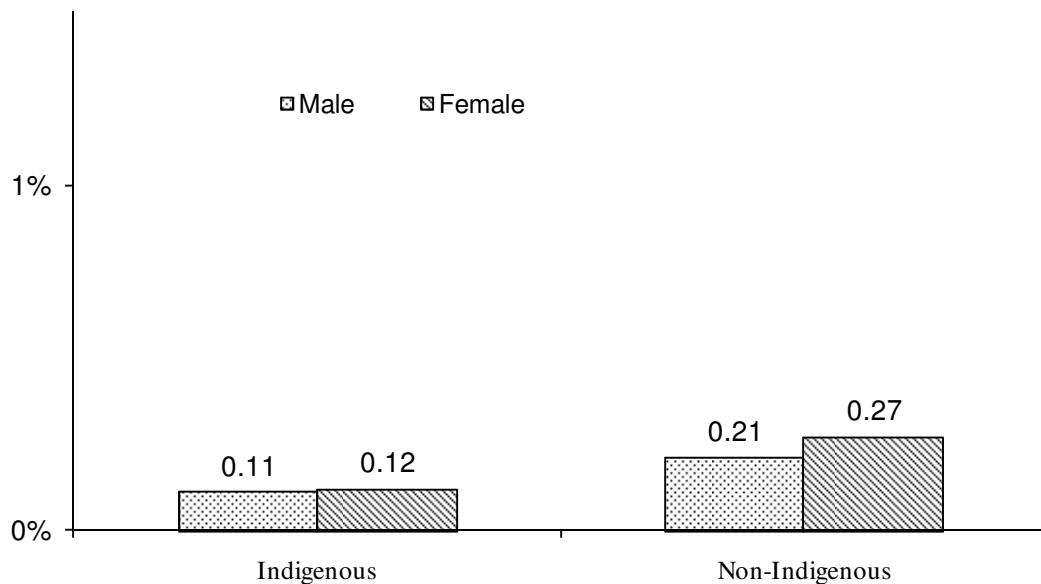


### **Substance abuse (unspecified)**

Defendants' cases were flagged as having substance abuse issues for that court case if the references were to "substance abuse" or "drug and alcohol". If the references were to drugs (but not alcohol), or alcohol (but not drugs), then they were classified as that specific issue (as in the previous two subsections).

As noted in Figure 4.12, a greater proportion of non-Indigenous defendants' court cases contained an indicator of unspecified substance abuse. The rates were similar among males and females of each Indigenous status.

**Figure 4.12 Percent of Defendants' Court Cases Where the Defendant has Substance Abuse (Unspecified) Issues, by Gender and Indigenous Status (N=480,276; QWIC database 2004-2009).**

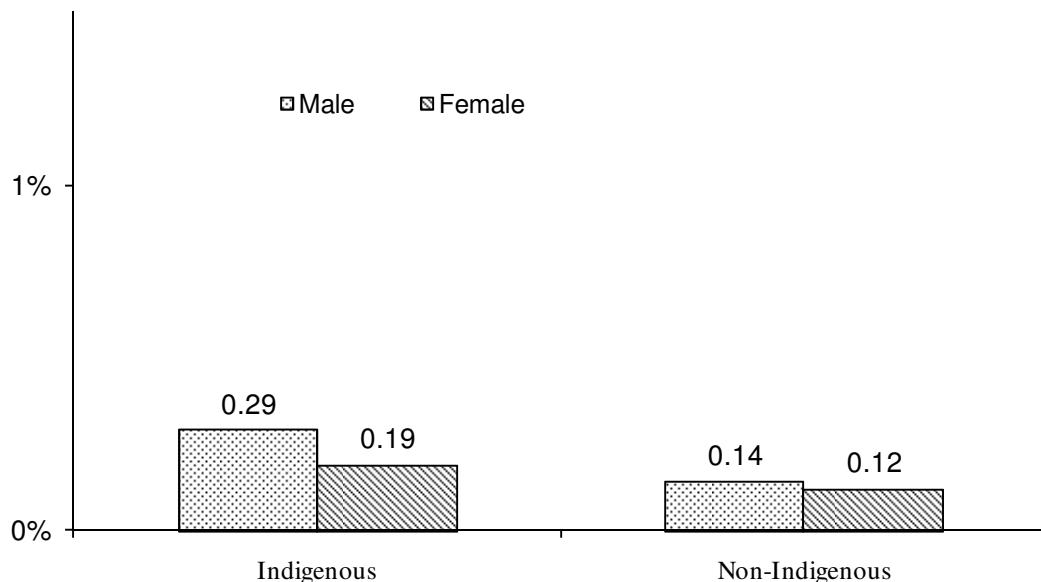


### **Mental health concerns**

Figure 4.13 shows that of the defendants' court cases containing a clear bail or remand decision, a greater proportion of Indigenous defendants' cases indicate a mental health or psychiatric issue, and Indigenous males' cases are more likely to have these concerns than Indigenous females. However, note that the magnitude of this difference is small, approximately a tenth of a percent of the defendants' court cases.

Also, the overall magnitude of mental health concerns is low, approximately a tenth to a third of a percent within each Indigenous-gender category.

**Figure 4.13 Percent of Defendants' Court Cases Where the Defendant has Mental Health Concerns, by Gender and Indigenous Status (N=480,276; QWIC database 2004-2009).**



### **Summary**

Non-Indigenous males and females had a greater prevalence of drug abuse and substance abuse (unspecified) than Indigenous males and females.

Indigenous males and females had a greater prevalence of alcohol abuse than non-Indigenous males and females.

Indigenous males had a greater prevalence of mental health issues than the other three Indigenous-gender groups. However, the size of the difference was small.<sup>16</sup>

## **4.5 Characteristics of the defendant's current court case**

This section shows the differences for gender and Indigenous status for three measures for each court case: the proportion involving a violent offence; the proportion involving drugs; and the seriousness score of the most serious offence. Note that the proportion of violent and drug offences refers to all charges within the case, whereas the

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<sup>16</sup> Note this data only includes cases where drug, alcohol or mental health issues were mentioned in the electronic records. The presence of these issues is not systematically recorded within the court data so this data is likely to under-estimate the number of defendants' cases involving these issues.

seriousness score refers only to the most serious offence among the charges.

### ***Proportion with violent offences***

Whether any of the charged offences were violent was derived from their 1997 Australian Standard Offence Classification (ASOC) code. More information on this process is available in Appendix B.

As shown in Figure 4.14, a greater proportion of Indigenous defendants' cases contain a violent offence, about one-fifth of the cases. In contrast, approximately one-seventh of the non-Indigenous defendants' cases involve a violent offence. While both male and female Indigenous cases are equally likely to contain a violent offence there are gender differences for non-Indigenous cases. Non-Indigenous males are more likely to have a violent offence than non-Indigenous females.

***Figure 4.14 Percent of Defendants' Court Cases with a Violent Offence, by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).***

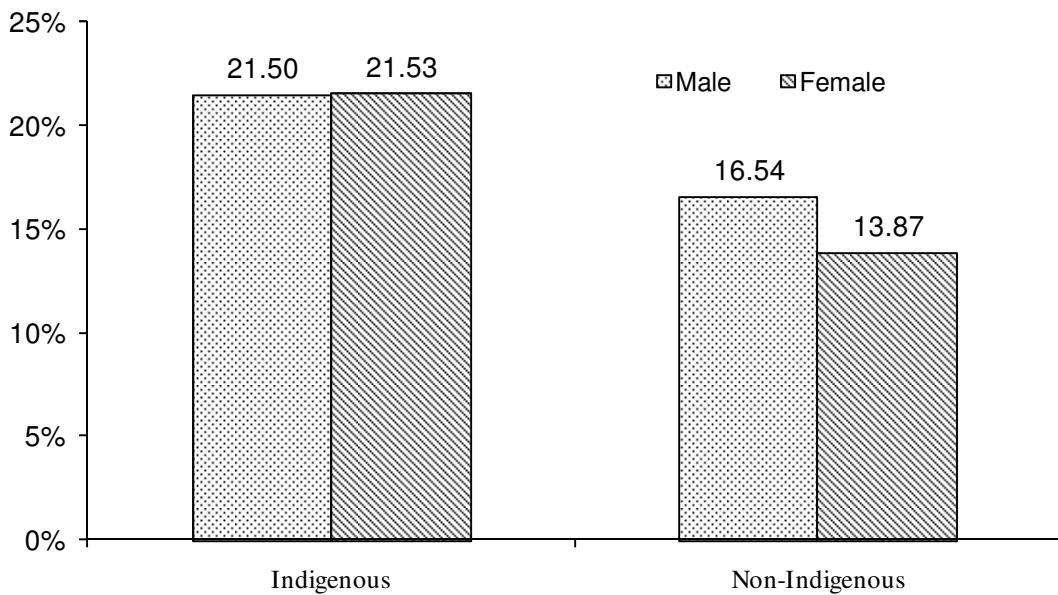
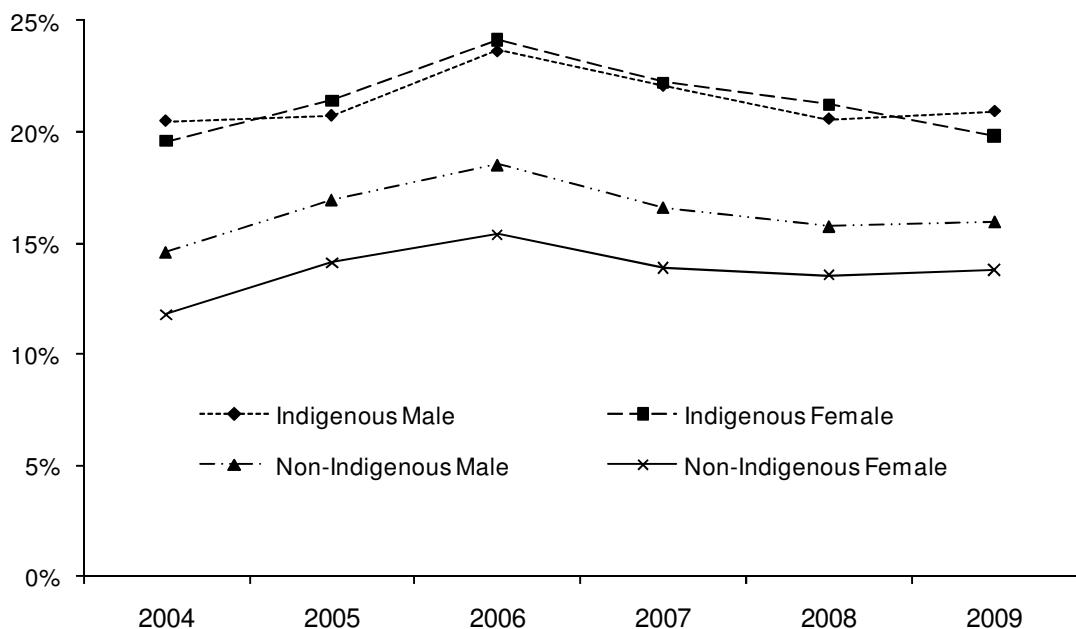


Figure 4.15 indicates that these proportions remain fairly consistent over time. The proportions among Indigenous males' and females' cases are nearly identical, and exceed those of the non-Indigenous defendants.

The trends for violent offences appear to be fairly flat over the six years in relation to gender. However, there was a slight increase during the first half of the period, followed by a slight decrease during the latter half.

**Figure 4.15 Percent of Defendants' Court Cases with a Violent Offence, by Gender and Indigenous Status, by Year, N = 480,276 (QWIC database, 2004-2009).**

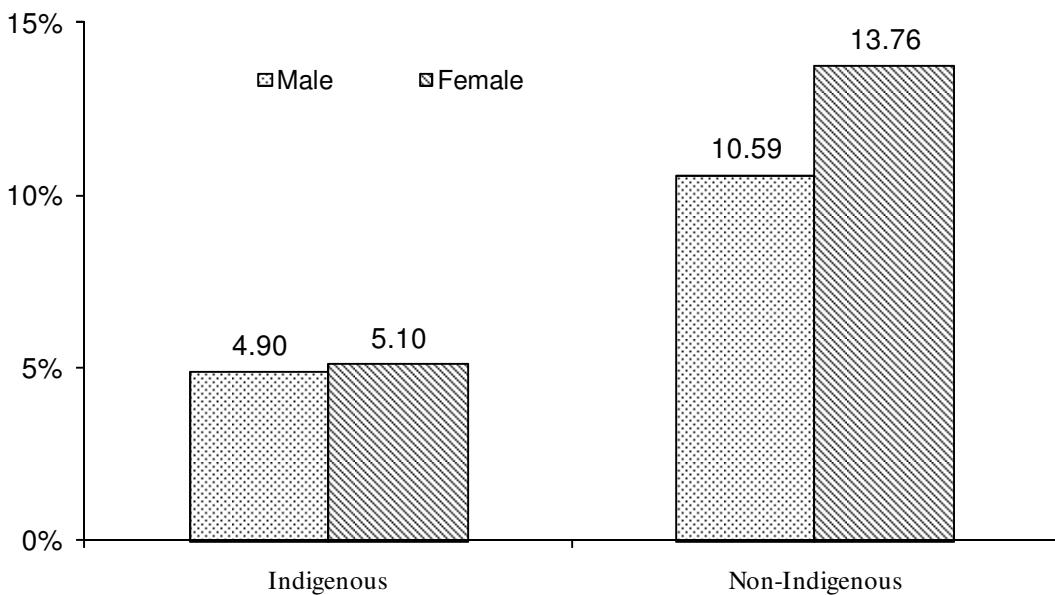


### **Proportion with drug offences**

Whether any of the charged offences were drug offences was derived from the 1997 Australian Standard Offence Classification (ASOC). More information on this process is available in Appendix B.

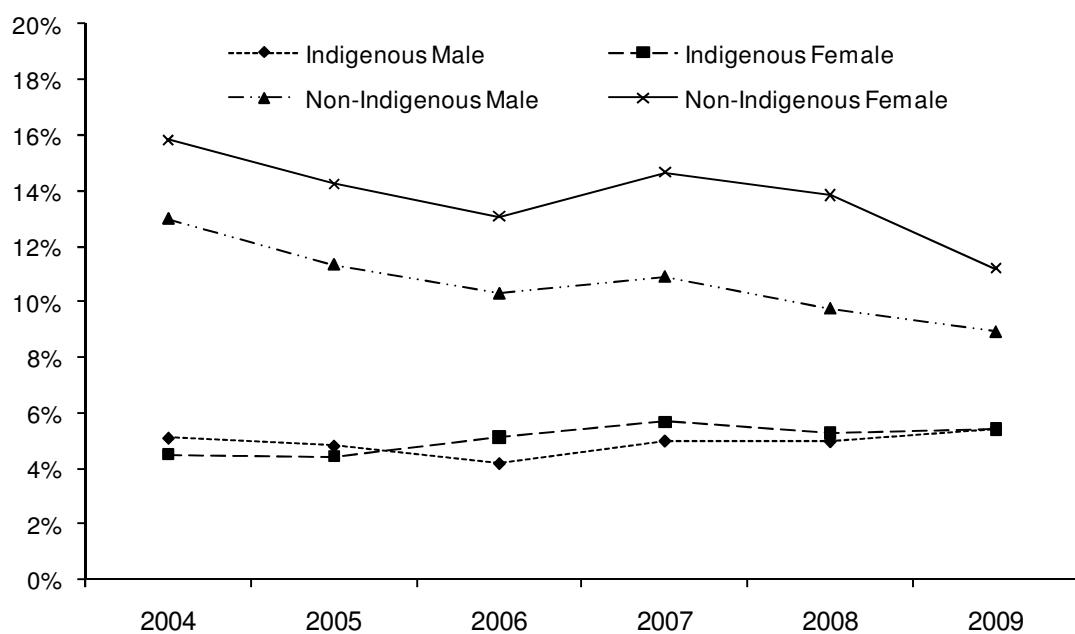
In contrast to the patterns for violent offences, Figure 4.16 shows that a greater proportion of non-Indigenous defendants' cases contain drug offences. Cases for non-Indigenous males have twice the rate of containing a drug offence compared to Indigenous males, and non-Indigenous females are at nearly three times the rate of Indigenous females.

**Figure 4.16 Percent of Defendants' Court Cases with a Drug Offence, by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).**



The relative proportions shown in Figure 4.17 are consistent with the preceding graph, with non-Indigenous cases (particularly non-Indigenous females) involving drug offences. Note that the trend over time shows that the proportion of drug cases for Indigenous defendants has been steady, while the proportion for non-Indigenous defendants has generally declined over the study period.

**Figure 4.17 Percent of Defendants' Court Cases with a Drug Offence, by Gender and Indigenous Status, by Year, N = 480,276 (QWIC database, 2004-2009).**



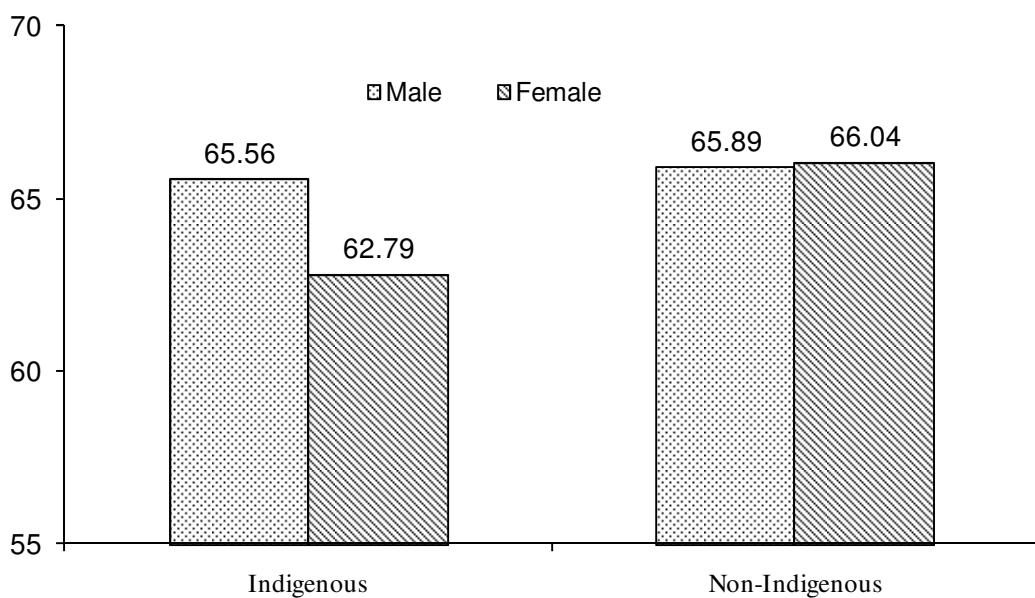
### ***Seriousness of most serious charged offence***

We linked the 1997 Australian Standard Offence Classification (ASOC) categories contained in the data extract to the relevant National Offence Index (NOI). The NOI normally ranks the offences in terms of priority, with one being the most serious. To aid in interpretation we reversed this index, such that larger values represent greater seriousness. This reversed index ranges from 1 to 157. More information on this process is available in Appendix B.

### **Seriousness scores for all years combined**

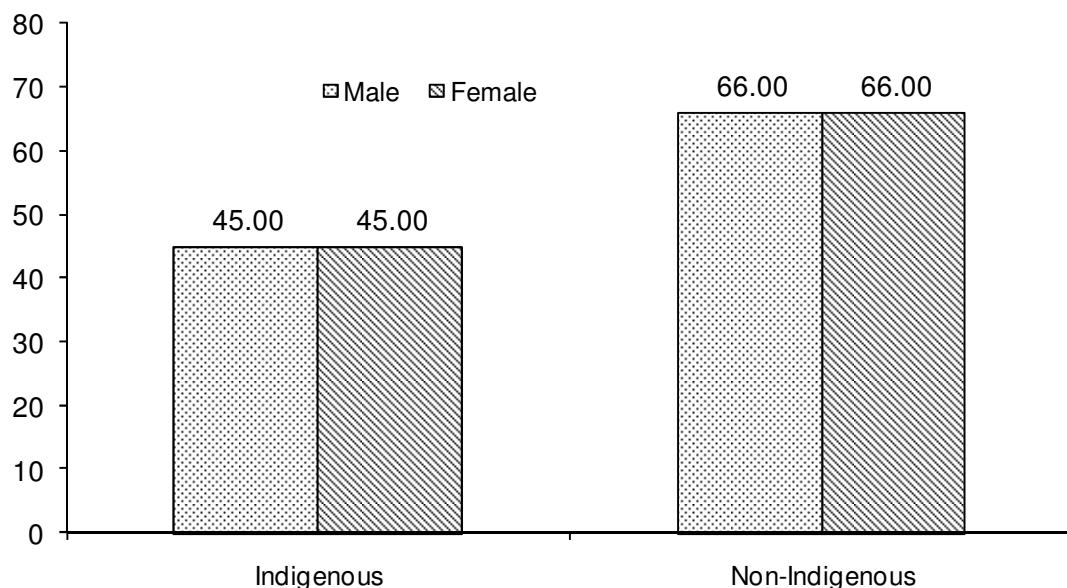
All of the Indigenous-gender groups, except for Indigenous females, have similar mean seriousness scores of approximately 66 (see Figure 4.18). Indigenous females have a mean seriousness score of around 63. For comparison, NOI offences corresponding to these reversed seriousness scores are Air Pollution Offences (63), Property Damage (not otherwise categorised) (64), Graffiti (65), and Exceeding the Prescribed Content of Alcohol Limit (66).

***Figure 4.18 Mean Seriousness Score for the Most Serious Charged Offence in Defendants' Court Cases (National Offence Index, Reversed; Ranges from 1 (Least Serious) to 157 (Most Serious)), by Gender and Indigenous Status, N = 477,423 (QWIC database, 2004–2009).***



The median (reversed) seriousness score was 45 for Indigenous defendants' cases, and 66 for non-Indigenous cases (Figure 4.19). Males and females within each Indigenous status group had the same seriousness score. Thus, the median seriousness score was higher among non-Indigenous than Indigenous defendants.

**Figure 4.19 Median Seriousness Score for the Most Serious Charged Offence in Defendants' Court Cases (National Offence Index, Reversed; Ranges from 1 (Least Serious) to 157 (Most Serious)), by Gender and Indigenous Status, N = 477,423 (QWIC database, 2004-2009).**

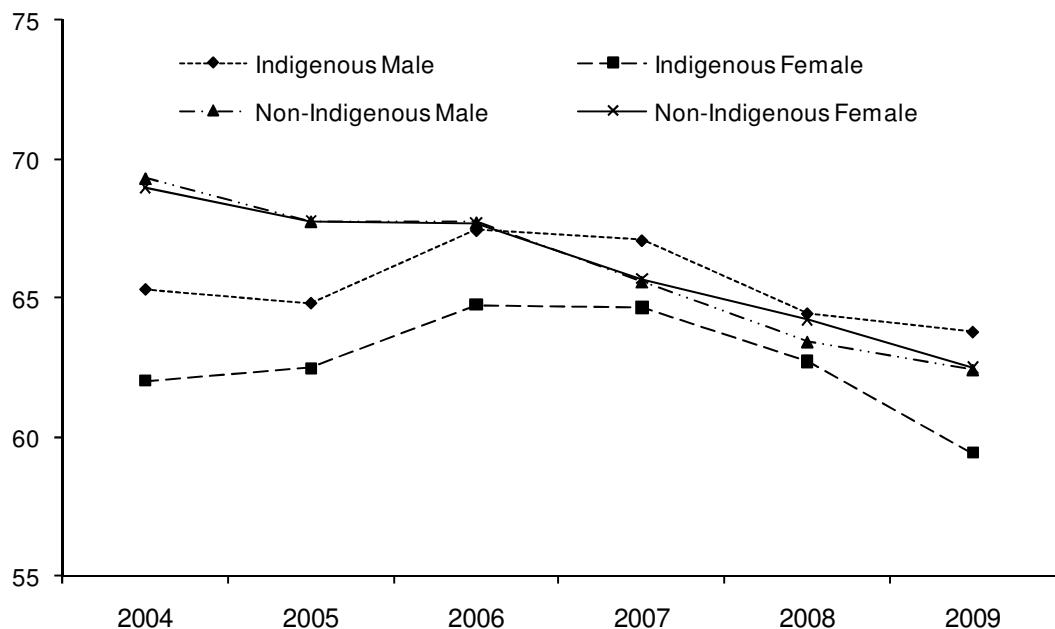


To provide a point of reference for these degrees of seriousness, the median Indigenous seriousness scores are similar or equal to Breach of Parole, Breach of Bail, and Escape Custody Offences. The median seriousness scores for non-Indigenous defendants are similar or equal to Graffiti, Exceeding the Prescribed Content of Alcohol Limit, and Dangerous or Negligent Operation of a Vehicle.

### **Trends in seriousness scores**

Figure 4.20 shows the trend for the mean seriousness score for the most serious offence. Across the six years examined, the average seriousness score appears to be decreasing. The decrease is stronger and more consistent among the non-Indigenous defendants' cases. The mean seriousness score for Indigenous defendants' cases increased during the first half of the period, but then decreased over the second half. Indigenous females still have the lowest average offence seriousness.

**Figure 4.20 Mean Seriousness Score for the Most Serious Charged Offence in Defendants' Court Cases (National Offence Index, Reversed; Ranges from 1 (Least Serious) to 157 (Most Serious)), by Gender and Indigenous Status, by year, N = 512,891 (QWIC database, 2004-2009).**



The median seriousness scores across the time period studied were not amenable to a line graph, due to extreme overlap of the data points (see Table 4.1). Unlike the mean seriousness scores, which exhibited a general decline from 2004 to 2009, the median scores remained essentially constant, although with a slight downturn for Indigenous females and non-Indigenous males in the final year or two. As with the mean scores, the male and female Indigenous defendants' median seriousness scores (for the most serious offence within their case) were lower than that of the non-Indigenous defendants.

**Table 4.1 Median Seriousness Score for the Most Serious Charged Offence in Defendants' Court Cases (National Offence Index, Reversed; Ranges from 1 (Least Serious) to 157 (Most Serious)), by Gender and Indigenous Status, by Year, N = 512,891 (QWIC database, 2004-2009).**

	2004	2005	2006	2007	2008	2009
Indigenous Males	45	45	45	45	45	45
Indigenous Females	45	45	45	45	45	40
Non-Indigenous Males	66	66	66	66	64	64
Non-Indigenous Females	68	66	66	66	66	66

### **Summary**

Indigenous males and females had a greater prevalence of violent offences relative to non-Indigenous males and females. The general trend for the prevalence of violent offences was flat over the time period examined.

A greater proportion of non-Indigenous defendants – particularly non-Indigenous females – had drug offences, compared to Indigenous defendants. The prevalence of non-Indigenous defendants' drug offences has declined across the study years, but held steady for Indigenous defendants.

Indigenous females had the lowest mean offence seriousness for the most serious charged offence. The other three Indigenous-gender categories had similar mean seriousness scores. The median seriousness scores were lower for Indigenous defendants compared to non-Indigenous defendants, and were identical for both males and females within Indigenous status. Furthermore, given the greater prevalence of violent offences for Indigenous defendants it is likely that they commit high rates of minor offences to have lower median seriousness scores than non-Indigenous defendants.

The mean seriousness scores for all Indigenous-gender groups have decreased over time. The median scores were constant for the time period examined, with a slight decrease near the end of the period for Indigenous females and non-Indigenous males.

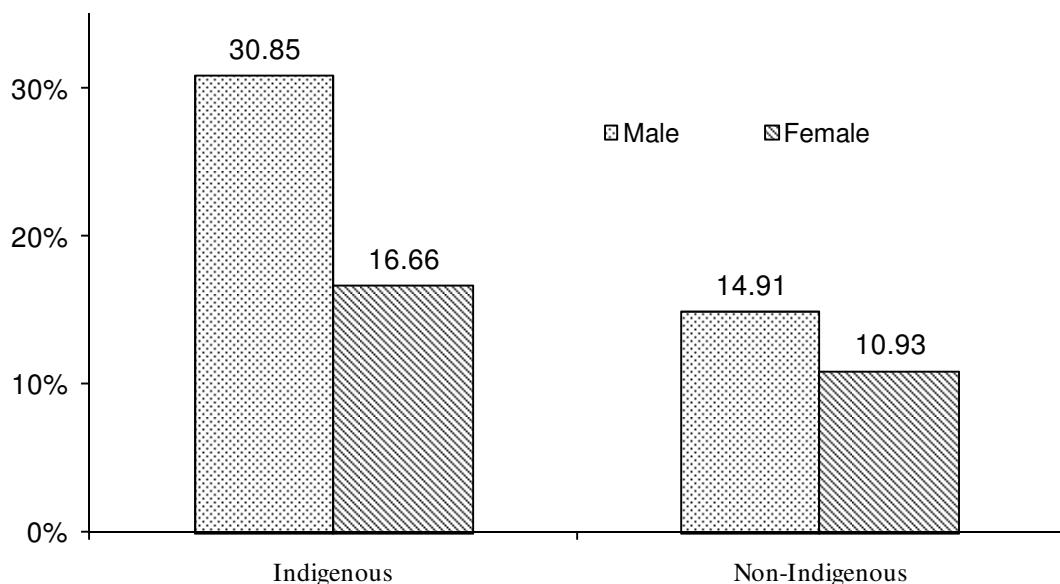
## **4.6 Prior remand episodes**

This section uses the preceding measure of remand and casts backwards through the data to the defendants' previous court cases. As the QWIC data does not contain unique identifiers for individuals, we constructed unique identifiers based on the defendants' name and date of birth. Additional information on this process is contained in Appendix B.

### ***The relationship between gender and Indigenous status and prior remand***

Figure 4.21 shows both an Indigenous and a gender effect. A greater proportion of Indigenous defendants have one or more previous remand episodes than their same-gender non-Indigenous counterpart; and within Indigenous status, a greater proportion of males than females have a prior remand episode. A far greater proportion of Indigenous males' court cases are related to a previous remand episode; approximately twice that of Indigenous females or non-Indigenous males, and three times that of non-Indigenous females.

**Figure 4.21 Percent of Defendants' Court Cases where the Defendant has a Prior Remand Episode, by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).**



### **Summary**

Indigenous males were the most likely group to have one or more prior remand episodes. In contrast, Indigenous females and non-Indigenous males had a similar prevalence, and were in the middle of the range. Non-Indigenous females had the lowest prevalence of prior remands.

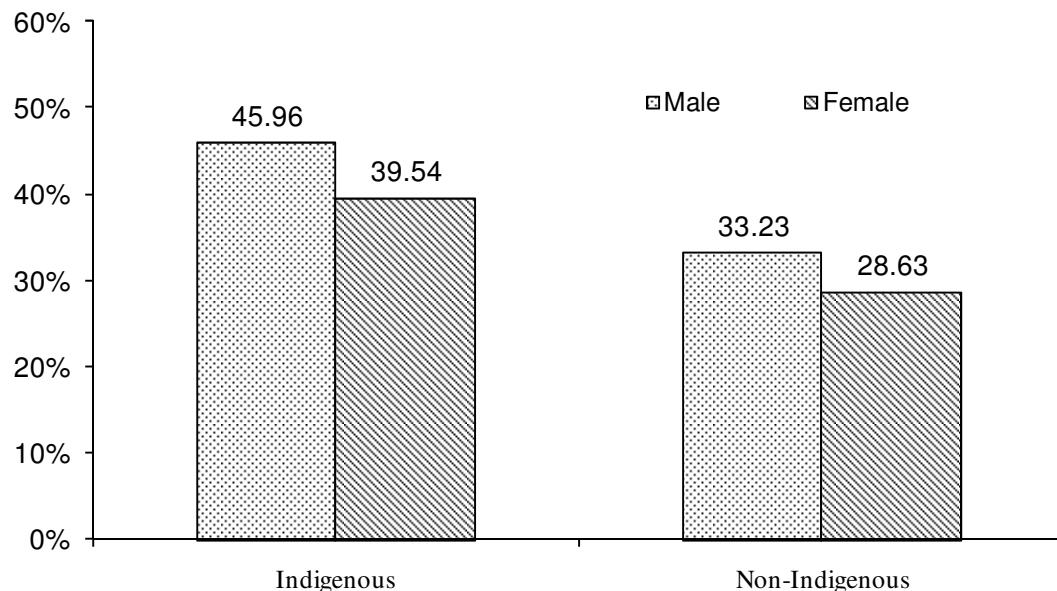
## **4.7 Conviction history**

This section examines the relationship between gender and Indigenous status and the defendants' history of convictions.

### ***The relationship between gender and Indigenous status and prior offences***

As indicated in Figure 4.22, a greater proportion of Indigenous and male defendants' cases were related to having prior convictions. As such, per court case, Indigenous males have the greatest proportion of prior convictions.

**Figure 4.22 Percent of Defendants' Court Cases where the Defendant has a Prior Conviction, by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).**



### **Summary**

Indigenous males were most likely to have one or more prior convictions, followed by Indigenous females, then non-Indigenous males. Non-Indigenous females had the lowest prevalence of prior convictions.

## **4.8 Failures to Appear (FTAs) and other violations of bail conditions**

This section reports the relationship between gender and Indigenous status and various violations of bail conditions. As noted in Chapter 1, Failures to Appear and other bail violations are related to increased risks of being held in remand during future court appearances.

The measures of FTAs and other violations of bail were derived from the Event Result, Order Item Type, and General Order fields. If a code or phrase relating to a failure to appear, or other bail violation, occurred in these fields, we flagged that court case as having a FTA or bail violation.

### ***The relationship between gender and Indigenous status and current FTAs***

As shown in Figure 4.23, a greater proportion of Indigenous' than non-Indigenous' court cases included a current failure to appear. However, the absolute magnitude of failures to appear was low, less than half a percent across the sample. Thus fewer than one out of every two hundred court cases involved a failure to appear. This rate is plausible, given that, as noted in section 4.3, 16% of the defendants' court cases here involved a defendant already held in remand – and thus, lacking the opportunity to fail to appear.

***Figure 4.23 Percent of Defendants' Court Cases where the Defendant has a Current Failure to Appear, by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).***

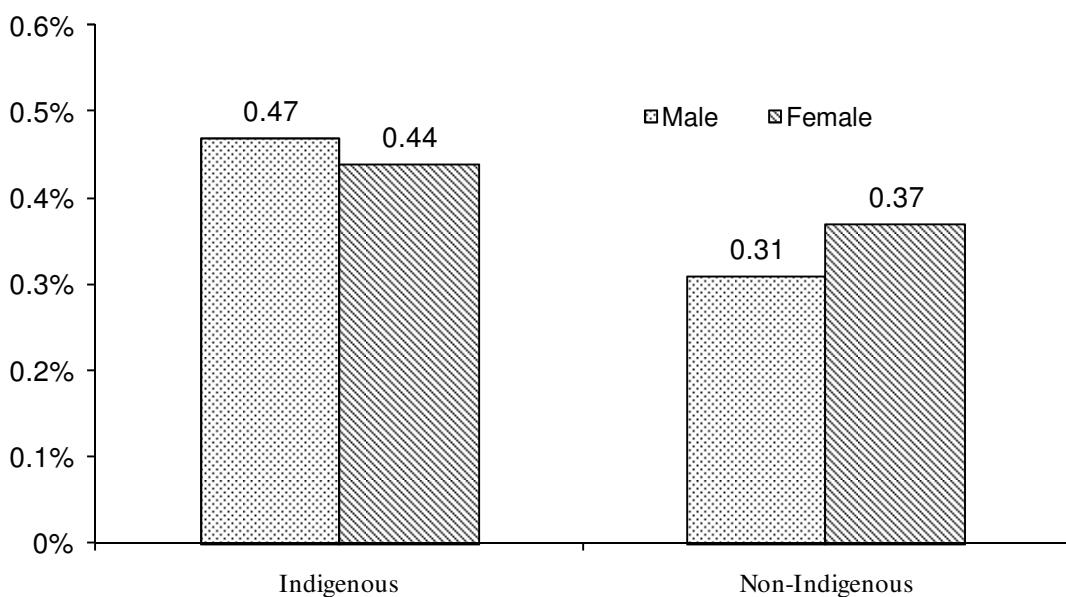
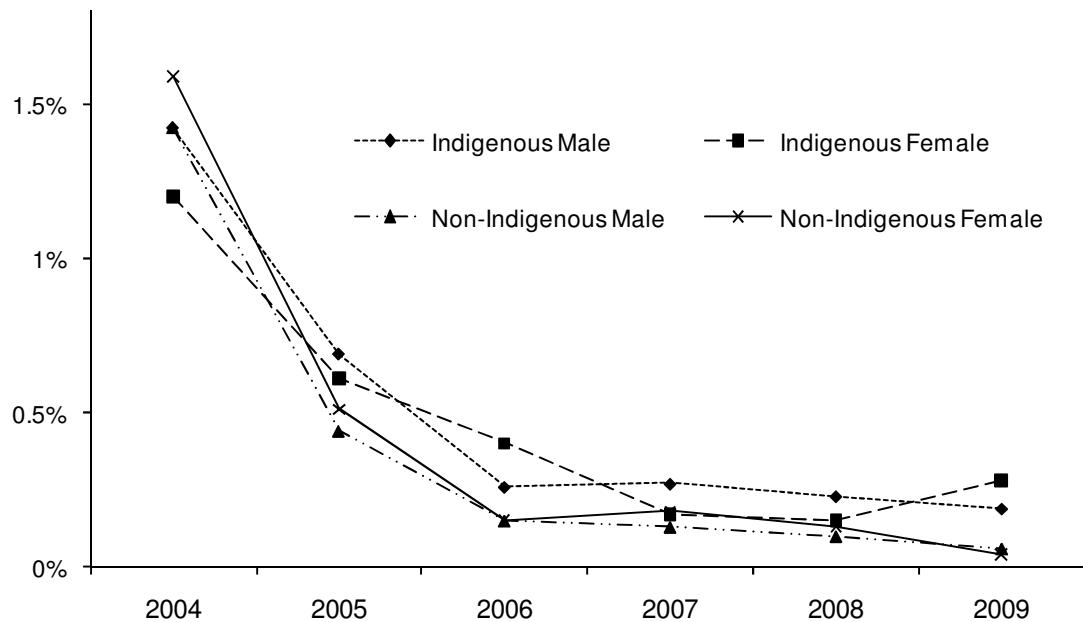


Figure 4.24 tracks the rate cases involving current failures to appear over time. The prevalence of failures to appear decreased over the first few years of the time period under examination, then remained fairly constant. There is not a clear distinction in the relative prevalence among the four Indigenous-gender groups, although Indigenous males' cases are slightly more likely to involve a failure to appear, the magnitude of this difference, compared to the other groups, is small.

**Figure 4.24 Percent of Defendants' Court Cases where the Defendant has a Current Failure to Appear, by Gender and Indigenous Status, by Year, N = 480,276 (QWIC database, 2004-2009).**

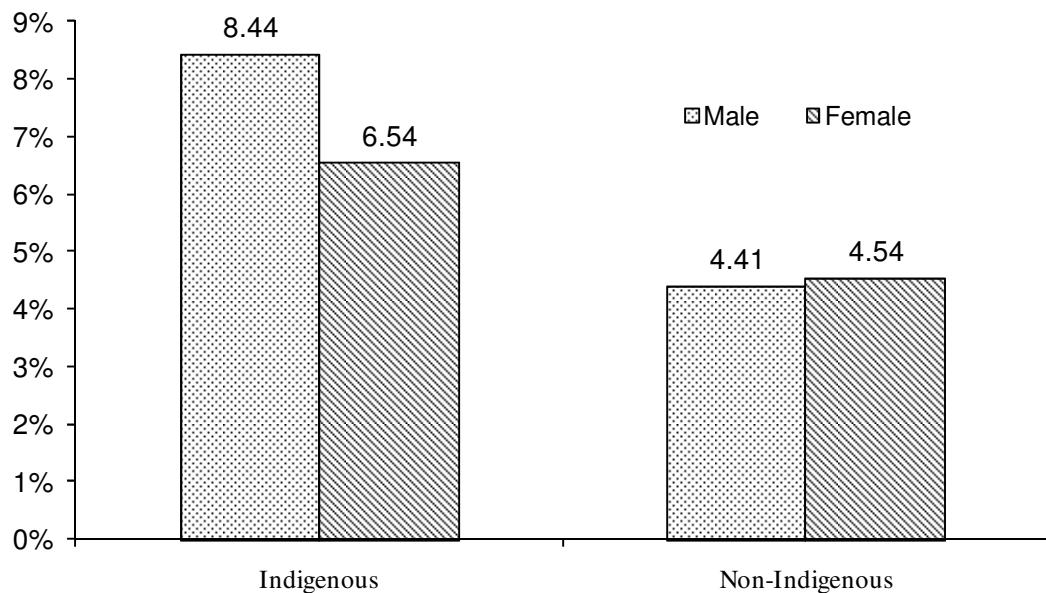


#### ***The relationship between gender and Indigenous status and current bail violations (excluding FTAs)***

This section examines the patterns of bail violations other than failures to appear. Only instances where it is clear that FTAs are not included have been analysed.

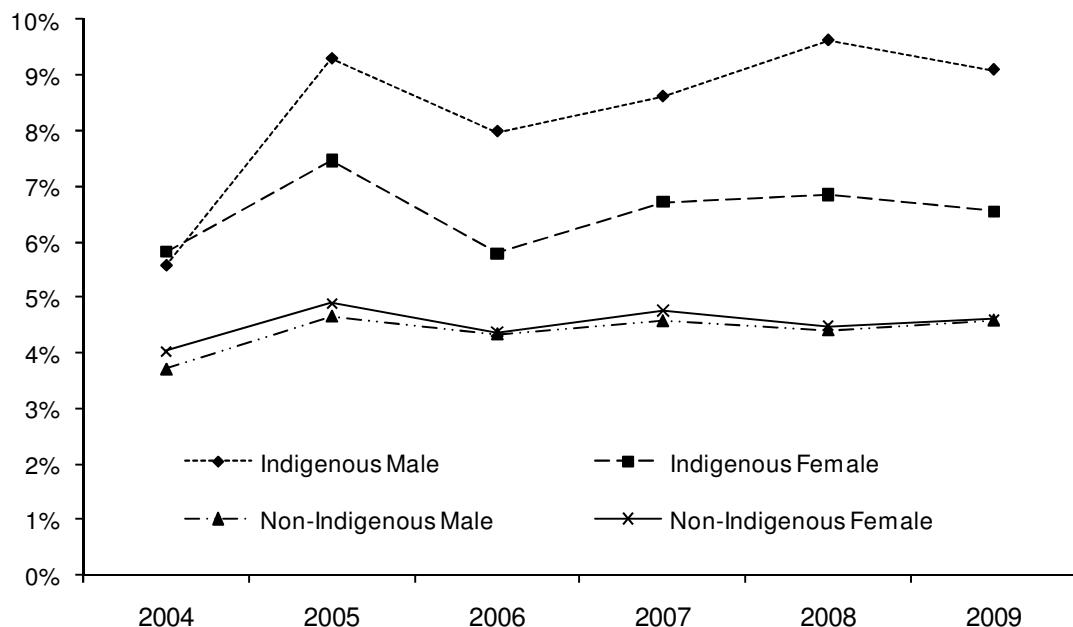
Figure 4.25 shows that, as with FTAs, Indigenous defendants' court cases are more likely to involve a non-FTA bail violation than are non-Indigenous defendants' cases. In addition, Indigenous males have a greater proportion of bail violations than Indigenous females.

**Figure 4.25 Percent of Defendants' Court Cases where the Defendant has a Current Bail Violation (Excluding Failures to Appear), by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).**



Similarly, Figure 4.26 shows that the proportion of cases with non-FTA bail violations appears to be increasing over time. The increase is fairly pronounced for Indigenous males – from five percent in 2004 to nine percent in 2009 – but slight for the other three Indigenous-gender groups.

**Figure 4.26 Percent of Defendants' Court Cases where the Defendant has a Current Bail Violation (Excluding Failures to Appear), by Gender and Indigenous Status, by Year, N = 480,276 (QWIC database, 2004-2009)**



#### ***The relationship between gender and Indigenous status and current bail violations, including FTAs***

This section examines defendants' court cases with bail violations, including those expressly involving FTAs, those expressly *not* involving FTAs, and those where it is unclear whether an FTA is involved.

Under this combined measure of bail violations, Indigenous defendants' cases continue to have a higher proportion of violations compared to non-Indigenous cases (Figure 4.27). Within each Indigenous status, males and females had similar rates to each other. However, cases involving Indigenous males had the highest prevalence of bail violations.

**Figure 4.27 Percent of Defendants' Court Cases where the Defendant has a Current Bail Violation (Including Failures to Appear, and Unspecified Bail Violations), by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).**

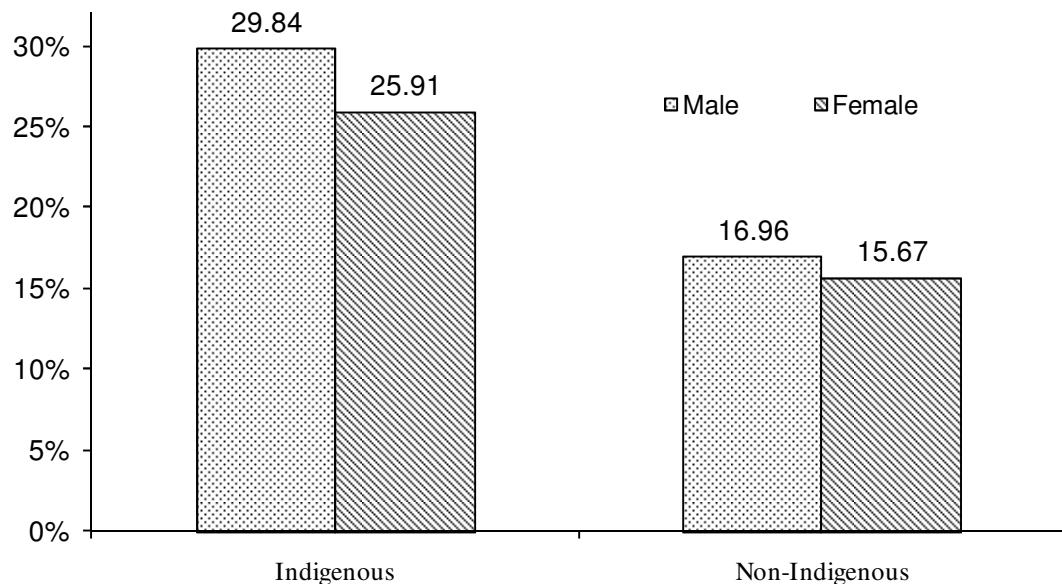
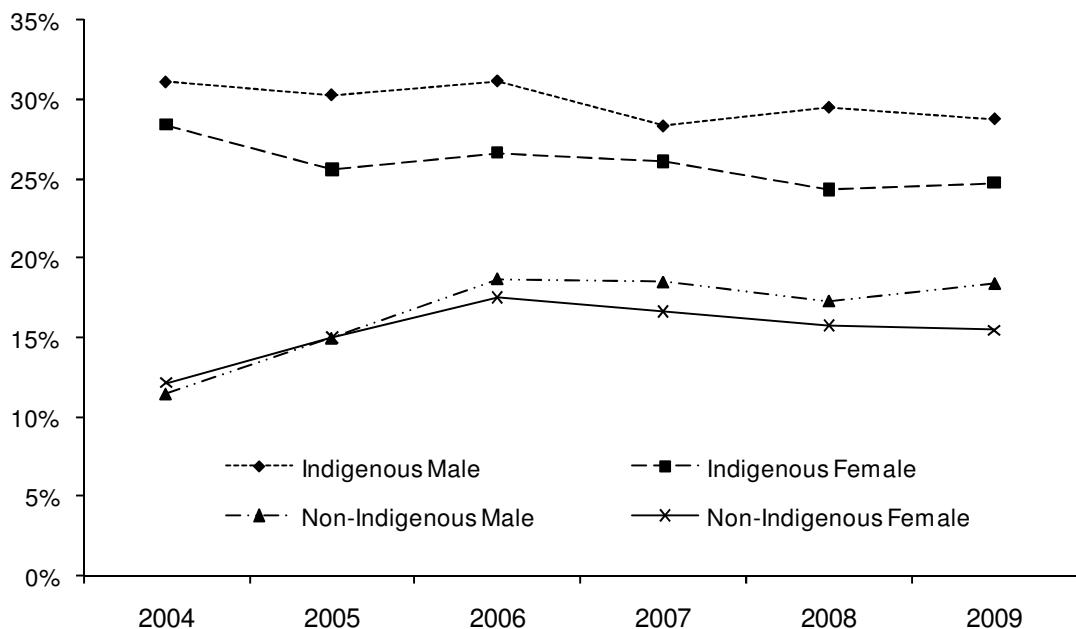


Figure 4.28 shows the trends for bail violations (including FTAs, non-FTAs, and bail violations of an unspecified nature). The trends for Indigenous males and females are similar to each other, as are the trends for non-Indigenous males and females. The proportion of Indigenous defendants' cases with these bail violations appears to be somewhat decreasing over time, while the proportion for non-Indigenous cases appears to be increasing.

**Figure 4.28 Percent of Defendants' Court Cases where the Defendant has a Current Bail Violation (Including Failures to Appear, and Unspecified Bail Violations), by Gender and Indigenous Status, by Year, N = 480,276 (QWIC database, 2004-2009)**

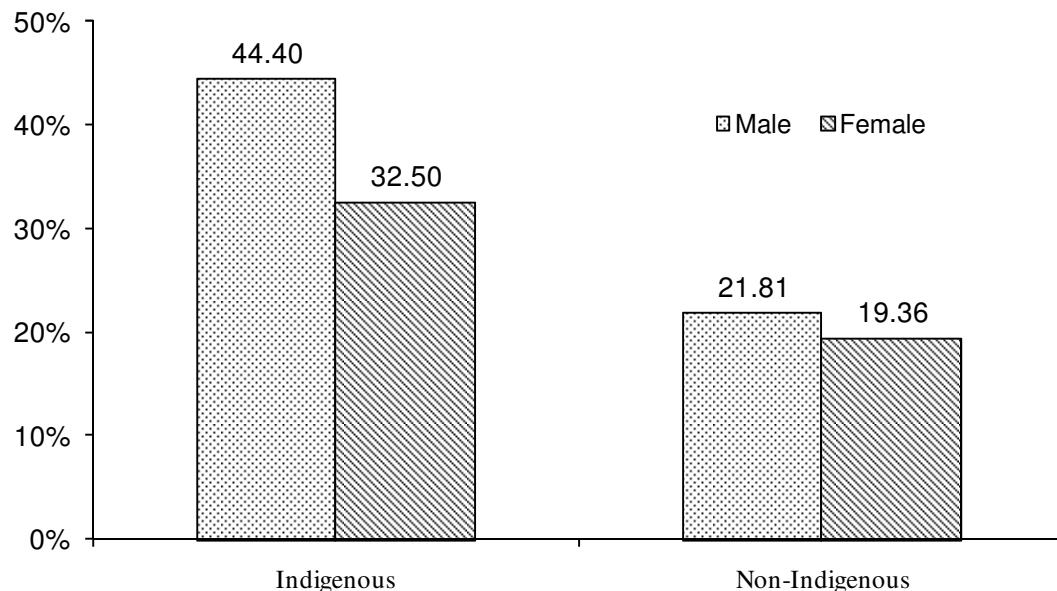


### ***The relationship between gender and Indigenous status and previous bail violations (including FTAs)***

As discussed in Chapter 1, research suggests that previous failures to appear have an adverse effect on future petitions for bail or release on one's own undertaking. Thus, a demographic group with higher rates of previous failures to appear would be less eligible for bail in future court cases – and thus, more likely to be held in remand.

Figure 4.29 shows that Indigenous defendants' cases were more likely than non-Indigenous defendants' cases to involve previous bail violations. Moreover, Indigenous males' cases were far more likely to involve a bail violation. Their rate was more than twice that of non-Indigenous males and females.

**Figure 4.29 Percent of Defendants' Court Cases where the Defendant has a Previous Bail Violation (Including Failures to Appear), by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).**



### **Summary**

Indigenous males and females have the highest prevalence of current failures to appear, with their rates being similar to each other. The prevalence of failures to appear, across all Indigenous-gender groups, has declined over the time period under study.

Indigenous males have the highest prevalence of previous failures to appear, followed by Indigenous females. Non-Indigenous males and females have a lower prevalence of past failures to appear, with their rates being similar to each other.

Likewise, Indigenous males have the highest prevalence of non-FTA bail violations, followed by Indigenous females. Non-Indigenous males and females have a lower prevalence of non-FTA bail violations, with their rates being similar to each other. The prevalence of non-FTA bail violations clearly increased over time for Indigenous males, with only a slight increase for the other three Indigenous-gender groups.

When combining FTA and non-FTA bail violations, as well as those which were unspecified as to the involvement of FTAs, Indigenous males had the greatest prevalence, followed closely by Indigenous females. Non-Indigenous males and females had the lowest prevalence, with very similar rates to each other.

Over time, the rate of bail violations (FTA and non-FTA combined) for Indigenous defendants (males and females) were essentially constant,

but with a slight decrease. The rate for non-Indigenous cases (males and females) appears to be increasing over time.

## 4.9 Violations of court orders other than bail

This section examines the relationship between Indigenous status and the violation of justice orders and domestic violence orders.

### ***Violations of justice orders***

Defendants were categorised as having a charged offence of violating a justice order if the ASOC offence category for any of the offences was a violation of a justice order, including good behaviour orders.

### **Current violations of justice orders**

Figure 4.30 indicates that Indigenous defendants' cases have a greater prevalence of including a breach of a justice order as one of the current charged offences. Their rate of prevalence is approximately twice that of non-Indigenous defendants' cases. Males and females of the same Indigenous status have similar rates of being charged with a breach of a justice order.

***Figure 4.30 Percent of Defendants' Court Cases where the Defendant has a Current Violation of a Justice Order, by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).***

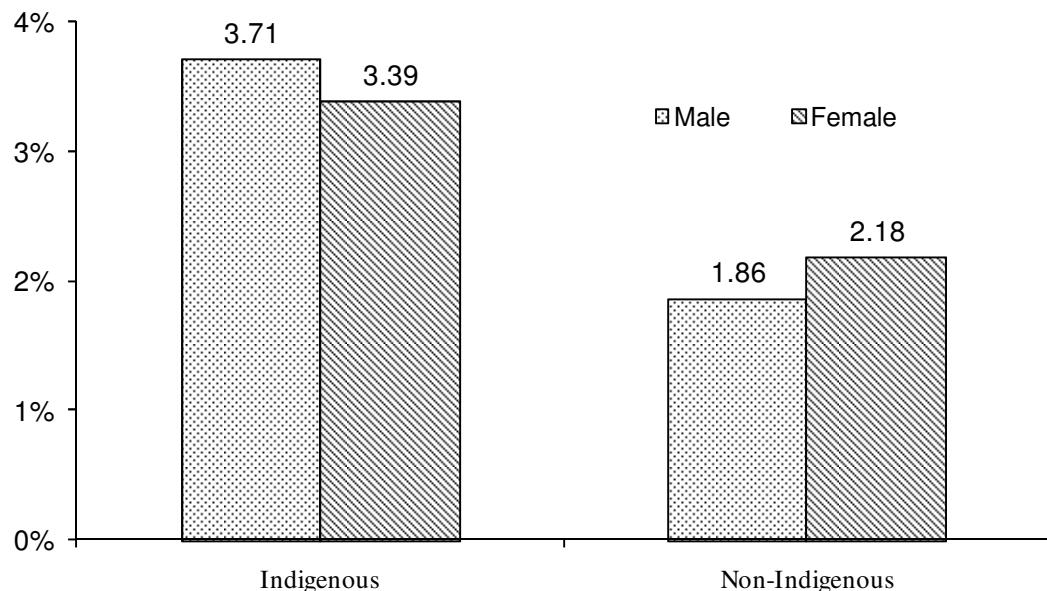
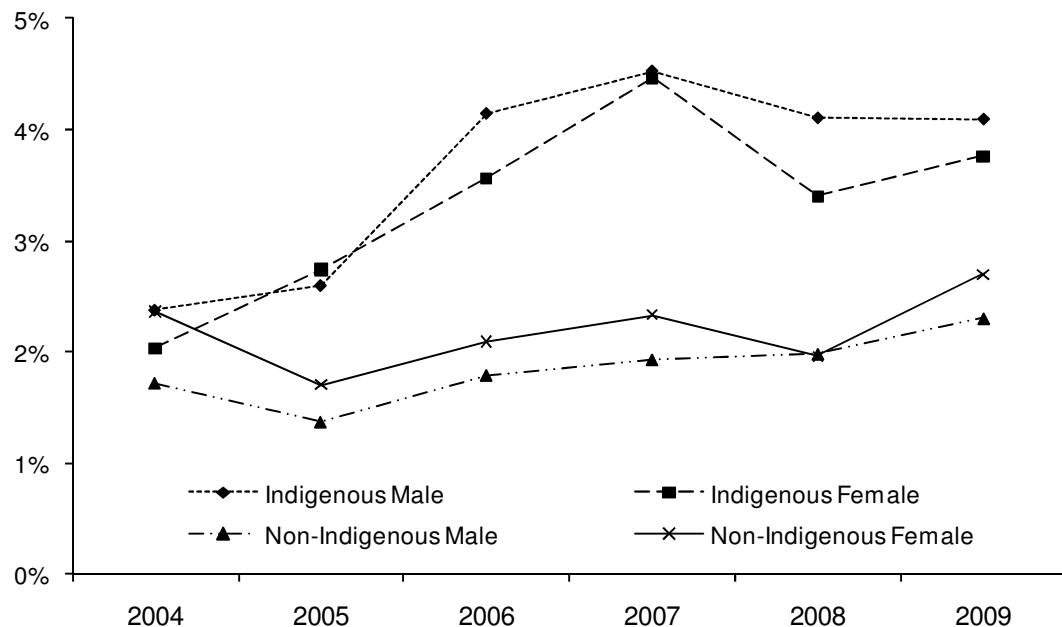


Figure 4.31 shows that there is an increasing trend among all four Indigenous-gender categories to have a charge of breaching a justice order among their cases' charged offences. This increase in

prevalence appears more pronounced among Indigenous defendants' cases.

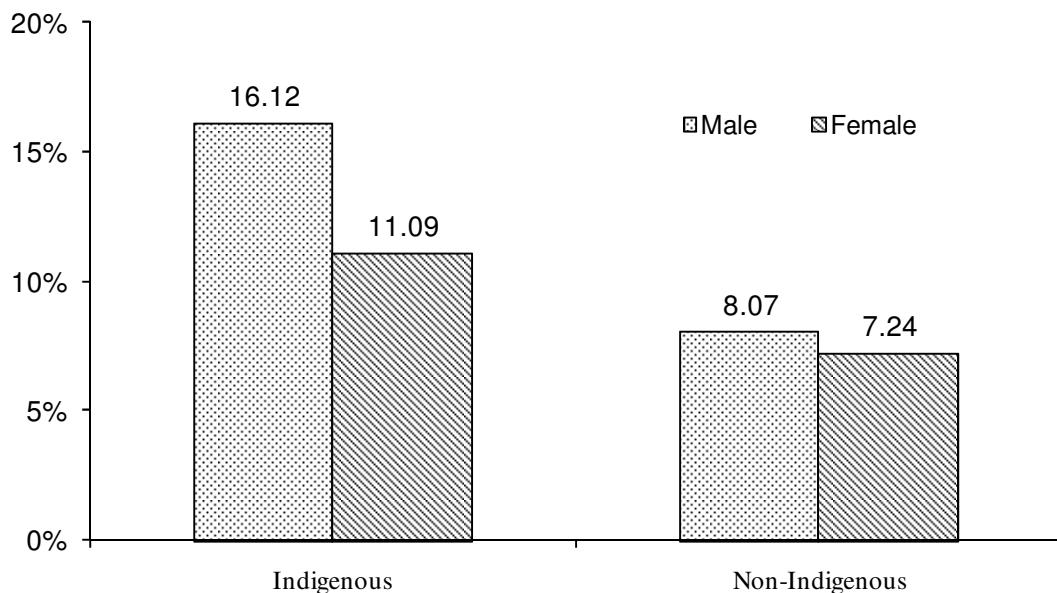
**Figure 4.31 Percent of Defendants' Court Cases where the Defendant has a Current Violation of a Justice Order, by Gender and Indigenous Status, by Year, N = 480,276 (QWIC database, 2004-2009).**



### **Prior violations of justice orders**

As indicated in Figure 4.32, Indigenous defendants' cases had a higher prevalence of prior justice order violations than did non-Indigenous defendants. In addition, Indigenous males' cases had the greatest prevalence than all groups, approximately twice that of the non-Indigenous defendants.

**Figure 4.32 Percent of Defendants' Court Cases where the Defendant has a Previous Violation of a Justice Order, by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).**



### ***Current violations of domestic violence orders***

Defendants were categorised as having a charged offence of violating a domestic violence order if the ASOC offence category for any of the offences was a violation of a domestic violence order.

Figure 4.33 shows that both Indigenous male and female defendants' court cases are more likely to include breaching of domestic violence orders than both their non-Indigenous male and female counterparts. Within gender for each Indigenous status group, males are more likely to have a current breach of domestic violence orders than females. Overall, Indigenous males' court cases have the greatest prevalence of current violations of domestic violence orders – twice the rate of Indigenous females or non-Indigenous males.

**Figure 4.33 Percent of Defendants' Court Cases where the Defendant has a Current Violation of a Domestic Violence Order, by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).**

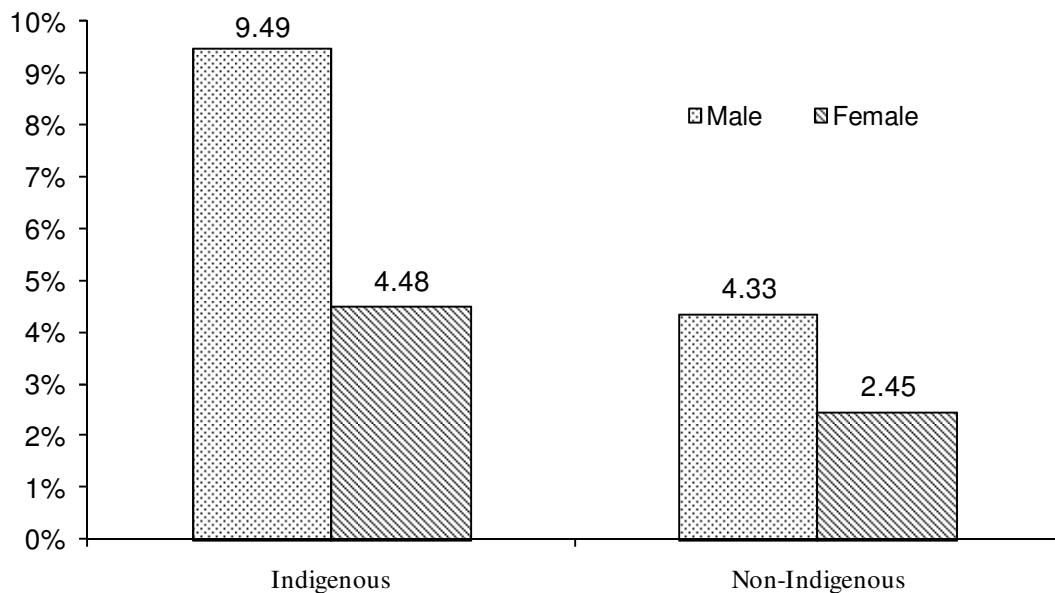
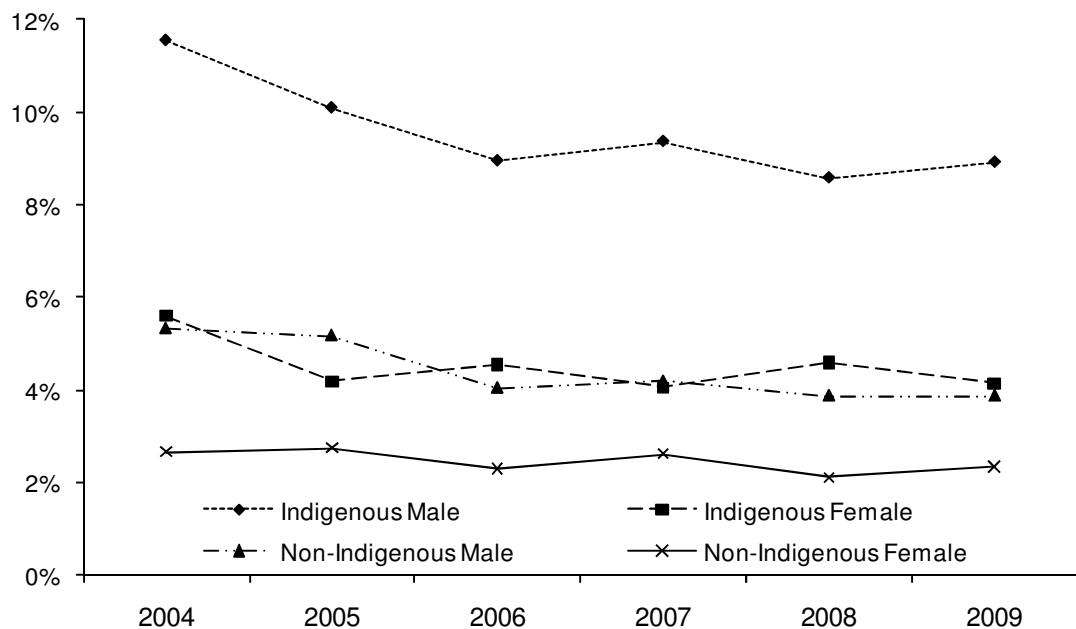


Figure 4.34 shows that the prevalence of charges for breaching domestic violence orders has decreased over time. All four Indigenous-gender categories have experienced a decrease, although Indigenous males' court cases have experienced the greatest decrease. However, their prevalence of breaches of domestic violence orders is still substantially higher than for the other Indigenous-gender groups.

**Figure 4.34 Percent of Defendants' Court Cases where the Defendant has a Current Violation of a Domestic Violence Order, by Gender and Indigenous Status, by Year, N = 480,276 (QWIC database, 2004-2009).**



### **Summary**

Indigenous males and females had a greater prevalence of current violations of justice orders than did non-Indigenous males and females. For all groups, the prevalence of justice order violations has increased over time.

Indigenous males had the greatest prevalence of prior violations of justice orders, followed by Indigenous females. Male and female non-Indigenous defendants had similar rates to each other, and had the lowest prevalence.

Indigenous males and females were more likely to be charged with violating a domestic violence order than non-Indigenous males and females. Overall, Indigenous males had the greatest prevalence of being currently charged with violating a domestic violence order, followed by Indigenous females and non-Indigenous males, whose rates were similar to each other. Non-Indigenous females had the lowest prevalence of being charged with violating domestic violence orders.

For the time period studied, the rate of being charged with a breach of a domestic violence order has decreased for Indigenous males. The rate for Indigenous females and non-Indigenous males has also decreased, but to a lesser extent. The rate for non-Indigenous females has remained constant.

## 4.10 Access to diversion and the Murri Court

This section examines the relationship between Indigenous status and access to diversionary programs and the Murri court.

### ***Access to diversion programs***

Defendants' court cases were flagged as containing diversions if the Event Result, Order Item Type, or General Order fields indicated that the defendant was sent to a diversion program.

According to Figure 4.35, a greater proportion of Indigenous rather than non-Indigenous court cases were diverted. The proportion was somewhat higher for Indigenous females, rather than Indigenous males. Note, however, that the total proportion of cases diverted was small, less than one percent.

***Figure 4.35 Percent of Defendants' Court Cases where the Defendant Receives Diversion, by Gender and Indigenous Status, N = 480,276 (QWIC database, 2004-2009).***

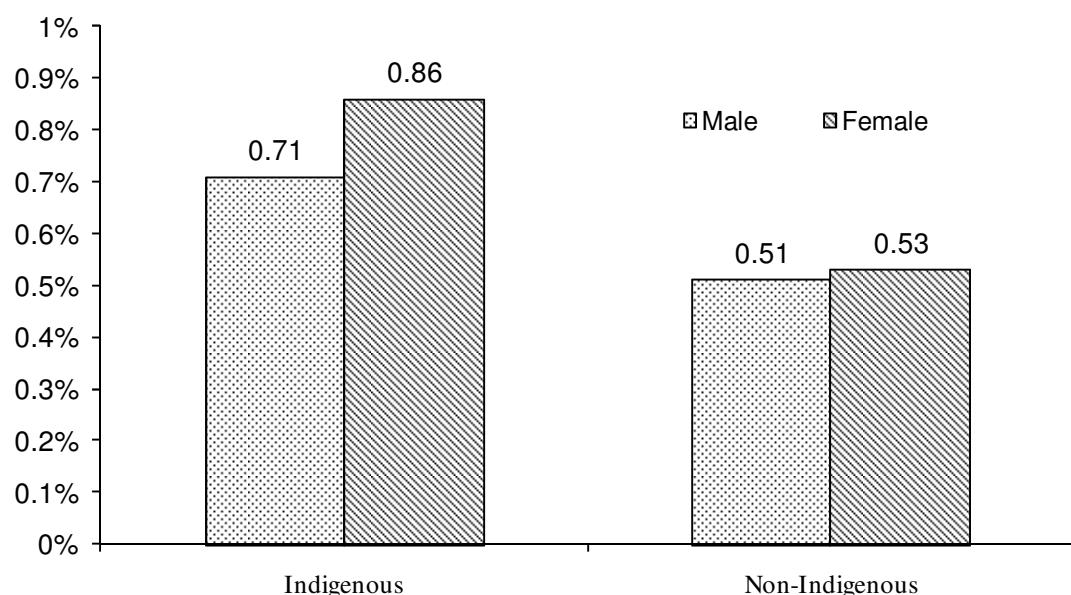
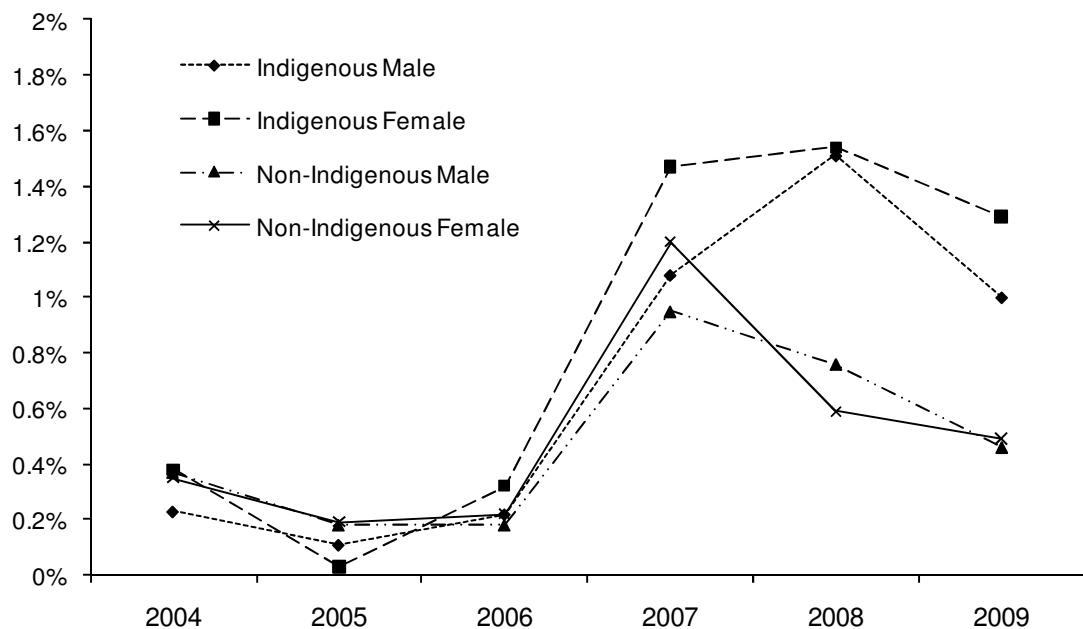


Figure 4.36 indicates an increase in the rate of diversion during the study period – from two-tenths of a percent in 2005 to half a percent to more than one percent in 2009, depending on the Indigenous-gender group.

**Figure 4.36 Percent of Defendants' Court Cases where the Defendant Receives Diversion, by Gender and Indigenous Status, by Year, N = 480,276 (QWIC database, 2004-2009).**



### **Access to the Murri Court**

Defendants' cases were classified as being transferred to the Murri Court if words to that effect were mentioned in the Order Item Type or General Order fields. Instances where their application for a transfer to the Murri Court was rejected were not counted as transfers to the Murri Court.

As indicated in Figure 4.37, court cases for Indigenous males were nearly twice as likely to be transferred to the Murri Court as court cases for Indigenous females. Note that the rate of transfer to the Murri Court appears low, only around one percent of the court cases for Indigenous defendants. However, it is possible that cases transferred to the Murri Court did not formally contain a decision of bail or remand and if this was so, they would not be included in these analyses.

**Figure 4.37 Percent of Defendants' Court Cases where the Defendant is Transferred to the Murri Court, by Gender and Indigenous Status, N = 86,855 (QWIC database, 2004-2009).**

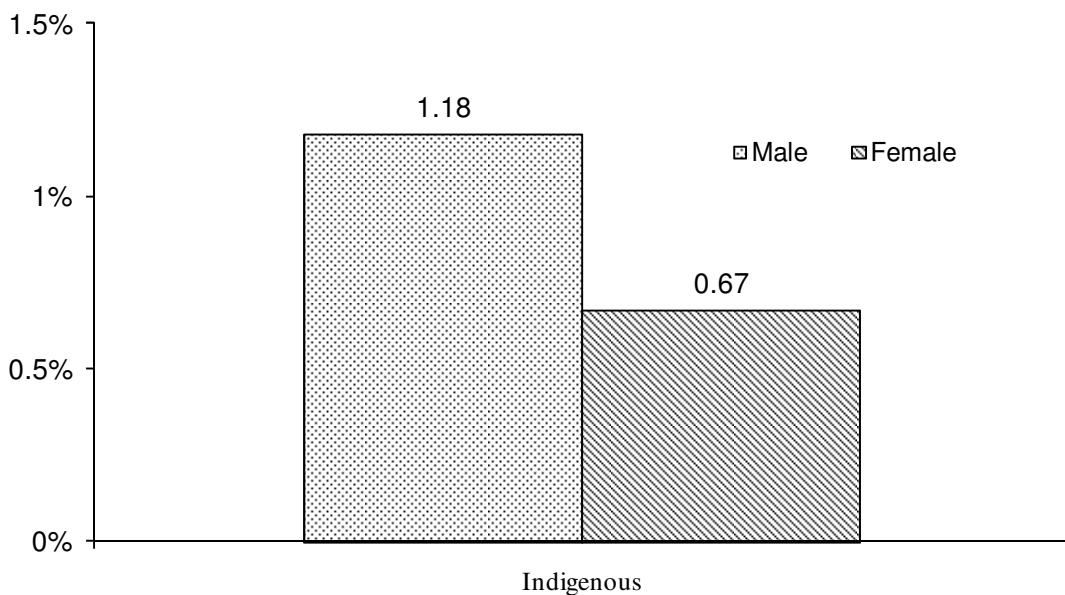
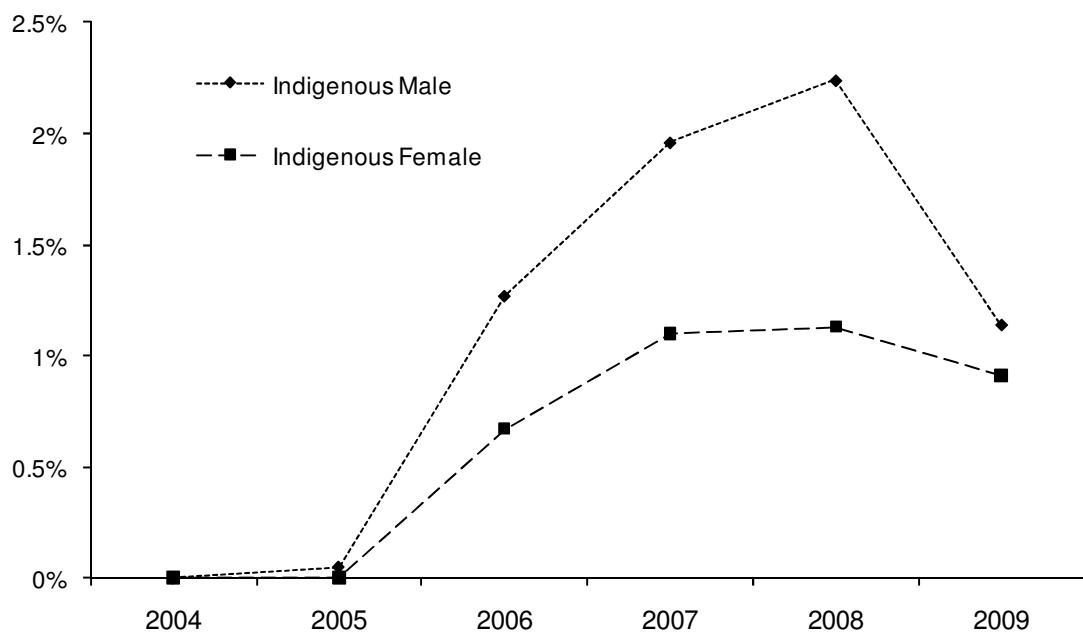


Figure 4.38 shows the trends for the prevalence of transfer to the Murri Court. There has been an increase in diversions to the Murri Court since 2005. However, this increase appears to have peaked in 2008. The trend from 2008 to 2009 indicates a decrease in diversions.

**Figure 4.38 Percent of Defendants' Court Cases where the Defendant is Transferred to the Murri Court, by Gender and Indigenous Status, by Year, N = 86,855 (QWIC database, 2004-2009)**



### **Summary**

Indigenous defendants had the greatest likelihood of receiving diversion. Indigenous females were somewhat more likely to receive diversions than Indigenous males. Both were more likely to be diverted than non-Indigenous males and females. The rate of diversions over the time period studied have increased.

Indigenous males are more likely than Indigenous females to be granted a transfer to the Murri Court. The rate of transfer to the Murri court has increased over the time period under study, with a peak (in 2008) of slightly over two percent of the Indigenous males' court cases, and one percent of the Indigenous females' court cases. There has been a subsequent decline in 2009 with the rate of decline greatest for Indigenous males.

### **4.11 Regression analyses: Relationships between Indigenous status, gender, and remand, net of relevant characteristics**

This section uses regressions to determine how various characteristics of interest influence remand, net of the other included characteristics. This section thus examines the average relationship between gender and Indigenous status and remand, net of characteristics extracted from the QWIC data: demographic characteristics of the court cases, offending history, and their current offence. Additional information on the regressions is available in Chapter 3, section 3.9, and in Appendix A.

Research has shown that community ties – particularly stability of employment and family responsibilities – are important predictors of being released on bail or on one's own undertaking. If Indigenous and non-Indigenous defendants systematically differ in their average employment or family characteristics, these differences might explain any “Indigenous effect” found by the regressions.

Note that, as discussed previously in this chapter, the average length of remand for the final two years of data will be artificially shortened, as some of the longer durations of remand will not have been completed by the end of the data (i.e., the end of 2009). Thus, results for the length of remand for cases from final two years of data (2008 and 2009) should be interpreted with this in mind. However, unless Indigenous and non-Indigenous defendants differ markedly in their proportion of remand durations which are of a greater length, there should not be a substantial impact on the findings.

Similarly, analyses of the data from the earlier date ranges (2004-2006) will not have a complete offending history, due to the truncation of this information at 2004. As such, the results are not perfectly comparable across time, as the characteristics compensated for by the regressions would vary across the years.

***Changes in the relationship between gender and Indigenous status and remand as additional characteristics are compensated for***

Table 4.2 examines the relative risk of remand for Indigenous males, Indigenous females, and non-Indigenous males, relative to the risk for non-Indigenous females. This risk is net of a series of characteristics included in the regression.

As one follows the numbers across the table, it becomes apparent that although the multipliers generally decrease, that net of the various characteristics all of the Indigenous-gender groups are more at risk of remand than are non-Indigenous females. In addition, Indigenous males are at the most at risk (1.9 times the risk for non-Indigenous females), followed by Indigenous females (1.5 times the risk for non-Indigenous females).

**Table 4.2 Relationship between Gender and Indigenous Status and Risk of Remand, Net of Other Characteristics, n=72,762 (Comparison Group: Non-Indigenous Females; QWIC database, 2009).**

	Gender and Indigenous Status, Level of Court	Demographic and Personal Characteristics Added	Offending and Remand Histories Added	Current Case Characteristics Added
Indigenous Males	4.74***	4.65***	1.86***	1.91***
Indigenous Females	2.05***	2.00***	1.40*	1.46**
Non-Indigenous Males	1.64***	1.62***	1.33***	1.32***
District Court	1.90***	1.97***	1.01	.67**
Supreme Court	2.01***	2.03***	1.14	.59*

*Note. Figures represent Odds-Ratios, which are multipliers for the risk of being held; figures are the result of logistic regressions*

*Results are net of demographic and personal characteristics (drug, alcohol, and substance abuse; mental health issues), offending history (previous remand episodes, previous bail violations, previous justice order violations, and prior convictions), and current case characteristics (receiving diversion, being sent to the Murri Court, having a violent offence, having a drug offence, the seriousness of the most serious offence, and indicators of substituting for missing values for the offence categorization or seriousness scores).*

*This analysis has statistically compensated for unmeasured similarities within judicial district*

*The stars adjacent to the numbers indicate that these have sufficient stability to accept their results.*

\* p < .05, \*\* p < .01, \*\*\* p < .001.

In contrast to the results for the risk of remand, Table 4.3 shows that of those held in remand, the average number of days for Indigenous males (net of various characteristics) do not differ from the average number of days for non-Indigenous females. However, net of other characteristics, Indigenous females have average lengths of remand that are eighty percent that of non-Indigenous females, while non-Indigenous males who are remanded have twenty-two percent longer remand durations than their female counterparts.

**Table 4.3 Relationship between Gender and Indigenous Status and the Length of Remand, Net of Other Characteristics, for Defendants in Remand, n=9,824  
(Comparison Group: Non-Indigenous Females; QWIC database, 2009).**

	Gender and Indigenous Status, Level of Court	Demographic and Personal Characteristics Added	Offending and Remand Histories Added	Current Case Characteristics Added
Indigenous Males	1.06	1.08	1.07	1.01
Indigenous Females	.80	.78*	.77*	.79*
Non-Indigenous Males	1.33***	1.36***	1.34***	1.22**
District Court	2.24***	2.25***	2.18***	1.67***
Supreme Court	2.25***	2.24***	2.12***	1.35**

Note. Figures represent Incident-Rate Ratios, which are multipliers for the length of time held in remand; figures are the result of negative binomial regressions

Results are net of demographic and personal characteristics (drug, alcohol, and substance abuse; mental health issues), offending history (previous remand episodes, previous bail violations, previous justice order violations, and prior convictions), and current case characteristics (receiving diversion, being sent to the Murri Court, having a violent offence, having a drug offence, the seriousness of the most serious offence, and indicators of substituting for missing values for the offence categorization or seriousness scores).

This analysis has statistically compensated for unmeasured similarities within judicial district

The stars adjacent to the numbers indicate that these have sufficient stability to accept their results.

\* p < .05, \*\* p < .01, \*\*\* p < .001.

### **Trends in the relationship between gender and Indigenous status and remand**

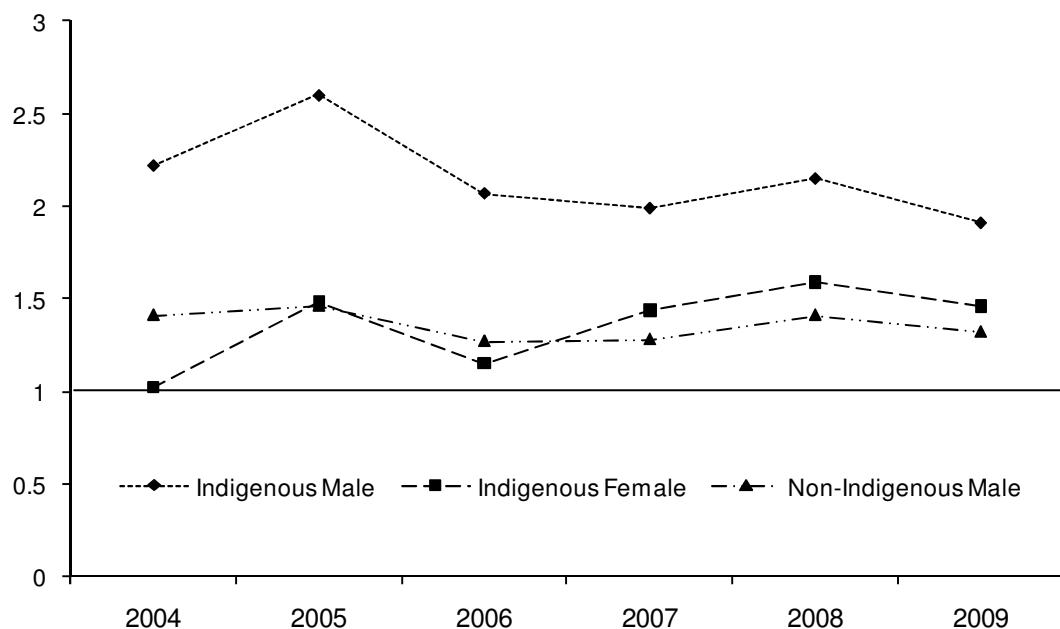
The following analyses examine the risk of, and length of remand for Indigenous males, Indigenous females, and non-Indigenous males, relative to the risk for non-Indigenous females over time. As with all of the analyses in this section, these risks are net of all other characteristics included in the analyses.

Figure 4.39 shows trends for the risk of being held in remand, compared to the degree of risk for non-Indigenous females, who are the comparison group. For example, data points at 2.0 indicate twice the risk of being held in remand compared to non-Indigenous females, whereas data points at 0.50 indicates fifty percent of the risk of being held. Data points at 1.00 indicate the same average level of risk as for non-Indigenous females.

Thus, the risk for Indigenous males of being held in remand during their court cases has somewhat decreased over time, compared to the risk experienced by non-Indigenous females, net of other measured characteristics. In contrast, the risk of remand for Indigenous females

has increased. The risk for non-Indigenous males has remained relatively constant – although their average risk of remand is still greater than that of non-Indigenous females.

**Figure 4.39 Multipliers<sup>1</sup> for the Average Risk of Remand, Relative to the Comparison Group of Non-Indigenous Females, Net of Demographics, Offending History, and Current Offence, by Year (Comparison Group: Non-Indigenous Females; QWIC database, 2004-2009).**



<sup>1</sup>Odds-ratios. The plotted values were derived from a logistic regression.

Note. Vertical line represents the comparison group, non-Indigenous females, which has an odds ratio of one each year. Results are net of demographic and personal characteristics (drug, alcohol, and substance abuse; mental health issues), offending history (previous remand episodes, previous bail violations, previous justice order violations, and prior convictions), and current case characteristics (receiving diversion, being sent to the Murri Court, having a violent offence, having a drug offence, the seriousness of the most serious offence, and indicators of substituting for missing values for the offence categorization or seriousness scores).

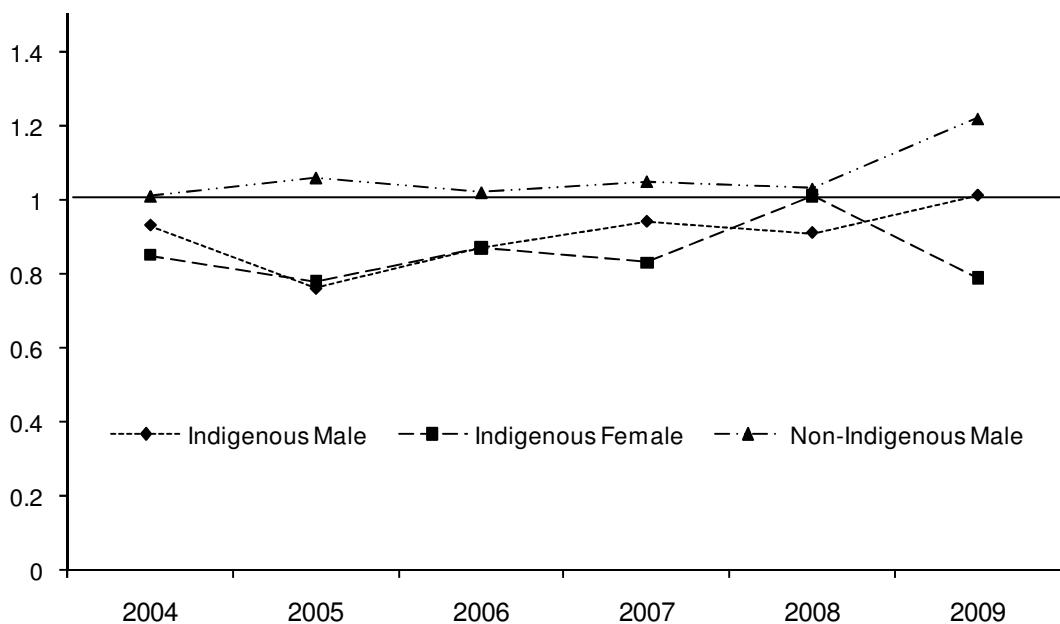
This analysis has statistically compensated for unmeasured similarities within judicial district.

### **Trends in the relationship between gender and Indigenous status and the length of remand**

Figure 4.40 shows trends for the average number of days held in remand compared to the degree of risk for non-Indigenous females, who are the comparison group. For example, data points at 2.0 indicate average remand durations that are twice that of non-Indigenous females, whereas data points at 0.50 indicates half (i.e., 50 percent) the number of days. Data points at 1.00 indicate the same average number of days as for non-Indigenous females.

Figure 4.40 shows that all of the lines are near 1.00. This indicates that among those defendants who were held in remand, the average length of time has been fairly similar to that experienced by non-Indigenous females.

**Figure 4.40 Multipliers<sup>1</sup> for the Average Number of Days in Custody, Relative to the Comparison Group of Non-Indigenous Females, Net of Demographics, Offending History, and Current Offence, by Year (QWIC database, 2004-2009).**



<sup>1</sup>Incident-Rate Ratios. The plotted values were derived from a negative binomial regression.

Note. Vertical line represents the comparison group, non-Indigenous females, which has an odds ratio of one each year. Results are net of demographic and personal characteristics (drug, alcohol, and substance abuse; mental health issues), offending history (previous remand episodes, previous bail violations, previous justice order violations, and prior convictions), and current case characteristics (receiving diversion, being sent to the Murri Court, having a violent offence, having a drug offence, the seriousness of the most serious offence, and indicators of substituting for missing values for the offence categorization or seriousness scores).

This analysis has statistically compensated for unmeasured similarities within judicial district

### **The relationship between selected characteristics and remand**

Table 4.4 shows the relationship between selected characteristics of the court case and his or her risk of remand, or length of remand. This analysis only uses court cases from 2009, the most recent year in the available data, as this best reflects the current situation. As with other regression analyses, only figures accompanied by one or more asterisks are stable enough (i.e., “statistically significant”) to acknowledge.

**Table 4.4 Relationship between Selected Characteristics and Remand, Net of Other Characteristics (Comparison Group: Non-Indigenous Females; QWIC database, 2009).**

	Risk of Remand	Length of Remand
	Multipliers <sup>1</sup> for the Average Risk of Being Held in Remand, Net of the Other Characteristics	Multipliers <sup>2</sup> for the Average Number of Days Held in Remand, <sup>3</sup> Net of the Other Characteristics
	(n= n=72,762)	(n= n=9,824)
Indigenous Males	1.91***	1.01
Indigenous Females	1.46***	.79*
Non-Indigenous Males	1.32***	1.22**
District Court	.67***	1.67***
Supreme Court	.59**	1.35*
Age at Time of Offence	.99***	1.00
Drug Use	1.05	.78
Alcohol Use	.96	.78
Substance Use	.32*	1.19
Mental Health Concerns	7.42***	1.91***
Prior Remand	13.77***	1.16**
Previous Bail Violation	1.58***	1.01
Previous Justice Order Violations	.95	.94
Prior Conviction	.96	.96
Diverted	2.30*	2.28***
Sent to Murri Court	3.02***	1.54***
Voluntarily in Remand	--	1.63
Violent Offence	.65***	1.01
Drug Offence	1.04	1.29***
Seriousness of the Most Serious Offence <sup>4</sup>	1.01***	1.01***
Substituted the Seriousness Score	1.27***	1.10**
Substituted the ASOC Offence Classification Code	1.35*	1.05
Uncertain over Substitution of the ASOC Offence Classification Code	1.00	.80

<sup>1</sup>Odds-ratios. The values were derived from a logistic regression.

<sup>2</sup>Incident-Rate Ratios. The values were derived from a negative binomial regression.

<sup>3</sup>The analysis for this column only includes defendants who were held in remand.

<sup>4</sup>The seriousness score ranges from 1 to 157, with larger numbers indicating greater seriousness of the offence.

Note. Figures represent Odds-Ratios, which are multipliers for the risk of being held; figures are the result of logistic regressions

Results are net of demographic and personal characteristics (drug, alcohol, and substance abuse; mental health issues), offending history (previous remand episodes, previous bail violations, previous justice order violations, and prior convictions), and current case characteristics (receiving diversion, being sent to the Murri Court, having a violent offence, having a drug offence, the seriousness of the most serious offence, and indicators of substituting for missing values for the offence categorization or seriousness scores).

This analysis has statistically compensated for unmeasured similarities within judicial district

The stars adjacent to the numbers indicate that these have sufficient stability to accept their results.

\* p < .05, \*\* p < .01, \*\*\* p < .001.

### **Indigenous status**

As noted in preceding sections of this chapter, net of other characteristics included in the analysis, Indigenous males appeared to be more at risk of remand than other groups. Net of other characteristics, Indigenous males were nearly twice as likely as non-Indigenous females to be held in remand for their court case. The other Indigenous-gender groups were also more likely than non-Indigenous females to be held.

In contrast, Indigenous males had the same average length of remand as non-Indigenous females. Compared to the average number of days held by non-Indigenous females, Indigenous females and non-Indigenous males had shorter stays, and longer says, respectively.

### **Level of court**

Those attending a District or Supreme Court were approximately half as likely to be held in remand compared to those attending the Magistrate's court – all other things being equal.

However, of those who attended the higher courts (District, Supreme) and who *were* held in remand, the total number of days held was longer for these higher courts than for the Magistrates' court.

### **Demographics**

Net of the other characteristics, as the defendant's age at the time of offence increases, she or he is incrementally less likely to be held in remand. However, there is no difference in the length of remand by age.

Those who have a substance abuse (unspecified) problem have a risk of remand that is one-third of those who do *not* abuse drugs.

Having mental health issues multiplies a defendant's risk of remand by a factor of seven; if remanded, it also nearly doubles the average length of stay.

### **Offending history**

Some aspects of a defendant's offending history is also a strong predictor of his or her current remand status.

Net of other available characteristics, court cases whose defendant has a prior remand will have fourteen times the risk of remand as those who do not have a prior remand; and if remanded, their average length of stay will be sixteen percent longer than a remandee with no prior remands.

In addition, those with a previous bail violation are fifty-eight percent more likely to be held in remand this time.

### **Diversions**

Net of all other factors, defendants' cases involving a diversion are more than twice as likely to result in a remand episode, and if held, will be held for twice as long, as those cases not involving a diversion.

Similarly, when a defendant's case is sent to the Murri Court, the defendant is three times as likely to be held in remand compared to if she or he had not been sent to the Murri Court. Similarly, she or he will be held for one and a half times the number of days compared to if she or he had not been sent to the Murri Court – all other things being equal.

### **Offence**

Counter-intuitively, defendants' court cases including a violent offence are *less* likely to result in remand – net of other characteristics – than those court cases not containing a violent offence. However, as this result is derived from a multiple regression, this decreased risk is *net* of the seriousness of the offence, as discussed below. Thus, of two offences that are both violent (e.g., Aggravated Assault versus Non-Aggrevated Assault), it is the increased seriousness of the offence, rather than the violent nature itself, which has the impact.

Having a drug offence among one's charged offences is not related to whether one is held in remand. However, of those court cases resulting in remand, those with drug offences are held nearly one-third longer than those not involving drugs.

The seriousness of the most serious charged offence is related to both the risk of being held in remand, and the average length of the remand episode. For each additional seriousness point, the defendant is 1.01 times more likely to be held in remand, and for 1.01 times as long. Although this increase is small for minor changes in charged seriousness, moderate changes in the seriousness score will result in appreciable average changes. For example, all other things being equal, a court case with a Break and Enter as the most serious offence will have 1.24 times the likelihood of resulting in remand – and if remanded, the defendant will be held for 1.24 as many days – compared to if the most serious offence was Receiving or Handling Proceeds of Crime.<sup>17</sup>

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<sup>17</sup> The seriousness score increases by 22 points when changing from Receiving or Handling Proceeds of Crime to Break and Enter. Multiplying 1.01 for 22 times (i.e.,  $1.01 \times 1.01 \times 1.01 \times \dots$ , or  $1.01^{22}$ ) is 1.24.

The substitutions performed by us also had an impact on the calculated average risk and length of remand. This is discussed in Appendix B.

## ***Summary***

### **Risk of remand**

Indigenous males had a baseline risk of remand that was greater than the other groups. The risk for Indigenous females was less than that of Indigenous males, but somewhat more than for non-Indigenous males. Non-Indigenous females had the lowest baseline risk of remand.

Net of other characteristics included in the regressions, this ranking still remains. Although the inclusion of other characteristics has decreased the amount of risk attributable to gender and Indigenous status, Indigenous males are still at the greatest risk of remand.

Indigenous females and non-Indigenous males are at similar levels of risk, with non-Indigenous females at the lowest risk of remand, net of other characteristics. Note that if measures of employment or family responsibilities had been available, this “Indigenous effect” might have been further reduced, or even disappeared.

Net of other characteristics included in the regressions, the risk for Indigenous males being held in remand has slightly decreased over time, compared to non-Indigenous females. In contrast, the risk of remand for Indigenous females has increased. Relative to the risk of remand for non-Indigenous females, the risk for non-Indigenous males has remained relatively constant.

### **Duration of remand**

In contrast to the results for the risk of remand, Indigenous males are *not* disadvantaged in terms of the average length of remand. Note however, that equity in the length of remand does not negate the inequities involved in a greater proportion of Indigenous males held in remand for an equivalent length of time. In addition, Indigenous females are held for a shorter length of time than their non-Indigenous counterparts.

Relative to the average length of remand experienced by non-Indigenous females, non-Indigenous males have a longer baseline length of remand. This increased length of remand continues after all other characteristics have been included.

Net of other characteristics included in the regressions, the average length of time held in remand, compared to the length of time for non-Indigenous females, and has remained essentially constant over time.

### **Characteristics relevant to remand**

Attending a District or Supreme Court was related to a lower risk of remand, but a longer length of remand for those who were remanded.

Defendants who committed the alleged offence at an older age were slightly less likely to be held in remand. Age did not have an independent effect on the length of remand.

Having a substance abuse (unspecified) problem decreased the average risk of remand, but not the length of remand.

Mental health issues were related to a substantial increase in both the risk of remand and the average length of stay.

Prior remands substantially increased the risk of being remanded for this current court case, and also increased the duration of remand.

Prior bail violations were also related to an increased risk of remand, but not the length of remand.

Diversions and transfers to the Murri Court were related to a greater risk of remand, as well as a longer length of remand.

Counter-intuitively, having a violent offence among the charges relates to a *lower* risk of remand. Note, however, that this is net of the seriousness of the most serious offence. Violent offences are not related to the average length of remand.

Having a drug offence among one's charged offences is not related to the risk of remand, but is related to longer average lengths of remand.

Higher levels of seriousness for the most serious charged offence is related to both a higher risk of remand, and a longer average remand episode.

## **4.12 Bail program cost estimation**

As discussed in chapter 1, research indicates that previous violations of bail conditions (including Failures to Appear) have an adverse effect on subsequent remand decisions. Those who have previously failed to appear for hearings, or otherwise violated bail conditions, are more likely to be held in remand rather than be granted bail or released on

their own undertaking. It costs the Queensland government \$176.20 per day for each remanded defendant held in correctional institutions.<sup>18</sup> In addition, the Queensland Police Service incurs further costs related to the apprehension of defendants (e.g. through bench warrants), holding defendants in watch-house custody while awaiting court hearings, and transport between correctional institutions and the courts. Thus, it is worth investigating whether a bail program which supports offenders to comply with bail conditions and re-appear in court at the appropriate time would be cost-effective for the Queensland Government.

### ***Structure of the program***

Bail conditions are generally of two types: *required* behaviours (which the defendant *must* do), and *prohibited* behaviours (which the defendant must *not* do). Bail conditions which involve behaviours or actions that *must* be performed include showing up to relevant hearing dates, maintaining one's employment, and regularly attending substance abuse programs or participating in drug testing (e.g. urine testing). Adhering to court-ordered requirements of this nature are amenable to assistance from caseworkers who could perform a "reminder service" role, as well as some form of transportation assistance.

In contrast, bail conditions which consist of actions that the defendant must *not* do, such as "do not interact with the alleged victim" (i.e., non-contact orders) or "do not drive", are more costly to support, as they would most often require 24-hour supervision of the defendant (e.g. supervised residential accommodation services). Therefore providing programs to assist a released defendant with *not* engaging in prohibited actions would often be particularly costly and these types of initiatives are not considered here.

Instead, we discuss a hypothetical program that consists of three components: a reminder service, court liaison, and transportation assistance.

### **Reminder service**

This component of the program would seek to eliminate those failures to appear that result from the defendant forgetting their commitment due to poor organisational skills, mental health issues, or a generally chaotic lifestyle. Letters and/or telephone contact could occur at various time intervals before the court appearance.

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<sup>18</sup> Costings were provided by Queensland Corrective Services based on 2008-2009 costs.

### **Court liaison**

This component of the program could serve as a conduit for communication between the defendant and the court. If there is a legitimate reason for the defendant's inability to attend his or her court-ordered commitment (e.g. court appearance or program), the defendant would contact the service or assigned officer to notify the court or the program administrator. This could assist defendants to avoid violating the related bail condition.

### **Transportation assistance**

This program component would seek to eliminate violations based on the defendant's difficulties with access transportation to the court-ordered commitment by either providing transportation or assistance with transport costs (e.g. providing the defendant with a Go card to access public transport).

### ***Assumptions in the costings***

The costings reported below assume that this program would apply to *all* defendants released on bail or on their own undertaking. Although defendants of sufficient financial means may "opt out" of the transportation assistance component, all defendants would receive telephone and posted reminders, and all would have access to the court liaison in case of unforeseen circumstances. The cost savings reported above assumes complete effectiveness in assisting defendants to meet their bail conditions and appear at court.

### ***Cost-savings estimations***

The following estimation of the costings provides the estimated cost-savings of a proposed program relative to a current state of "no program". Thus, the estimated costs of the proposed program are not provided. An implementation study of a specified program would be required to specify those costs. Instead, the figures presented below indicate a threshold or "break-even point", at which an implemented program would be cost effective.

The estimated costs of remand are derived from the proportions of defendants in court cases who violate bail conditions, their frequency of reoffending, the average length of remand, and the daily costs to Queensland Corrective Services for holding a defendant in remand. These risks were calculated separately for Indigenous defendants, non-Indigenous defendants, and all defendants as a whole. The details of these analyses are provided in Appendix B. All of the figures are based on the most recent year of data (2009), as this best reflects

current circumstances. The exception is the estimation of future offending, which is based on the situation of defendants in 2004, casting forward through the available years of data up to 2009.

As indicated in Table 4.5, the average savings to Queensland Corrective Services would be up to \$1,200 to \$1,750 for each defendant's court case, depending on the Indigenous status of the clients served. These savings represent those defendants with access to the hypothetical bail program, would be then be released rather than held in remand. In addition, the long-term savings would be up to \$11,000 to \$17,000, over the following five years, across *all* of the defendants' subsequent court cases. These figures assume perfect success in preventing bail violations: actual savings would be lower.

The implication is that, it may be cost-effective to implement a trial bail program – which was applied to *all* defendants who are bailed or released on their own undertaking – if it could be implemented at a cost of less than \$1,300 for each defendant in a program targeting both Indigenous and non-Indigenous defendants, or \$1,700 for each defendant in a program targeting only Indigenous defendants.

**Table 4.5 Estimated Savings to Queensland Corrective Services due to Decreased Remand Caseload, which would Result from the Proposed Program (JAG Queensland Wide Interlinked Courts system (QWIC) data, 2004-2009).**

No program		With program			Difference	
Cost to Queensland Corrective Services for subsequent remand episode, averaged across all 2009 defendants' court cases	Future costs to Queensland Corrective Services (current year plus future five years), averaged across all 2009 defendants' court cases	Cost to Queensland Corrective Services for subsequent remand episode, averaged across all 2009 defendants' court cases	Future costs to Queensland Corrective Services (current year plus future five years), averaged across all 2009 defendants' court cases	Savings in Queensland Corrective Services (current year plus future five years), averaged across all 2009 defendants' court cases	Savings in future costs to Queensland Corrective Services (current year plus future five years), averaged across all 2009 defendants' court cases	
<i>Indigenous defendants</i>						
	\$2,435.03	\$24,472.05	\$699.72	\$7,032.20	\$1,735.31	\$17,439.85
<i>Non-Indigenous defendants</i>						
	\$1,401.59	\$12,866.61	\$228.64	\$2,098.96	\$1,172.95	\$10,767.65
<i>All defendants</i>						
	\$1,656.27	\$15,204.55	\$285.07	\$2,616.96	\$1,371.20	\$12,587.59

### ***Limitations***

There are limitations to the above calculations as certain omissions both over- and under-estimate the amount of savings that would result from the implementation of such a program.

Additional savings which have not been calculated include the savings to the Queensland Police Service in not executing warrants for the apprehension of bail violators, the decreased need for watch-house custody while defendants waited for court hearings, and fewer transports between correctional institutions and the courts for trials and hearings. In addition, the above savings do not include potential time spent in remand for bail violations for the *current* court case – only for *future* court cases.

Conversely, the cost savings reported above assumes complete effectiveness in assisting defendants to meet their bail conditions and appear at court.

To the extent that the magnitude of these over- and under-estimations are similar, the resulting figures should at the very least provide a guideline as to the maximum costs associated with a proposed bail program.

### ***Summary***

Implementing a bail program appears to be cost-effective if the program can be implemented for less than \$1,700 (Indigenous clients), \$1,200 (non-Indigenous clients), or \$1,400 (Indigenous and non-Indigenous clients) for each defendant's court case.

## **4.13 Summary of findings**

Indigenous males and females are over-represented in the courts, relative to their proportion of Queensland's population. They are also over-represented among the remandees and this is particularly the case for Indigenous males.

In general, both Indigenous male and female defendants had a greater prevalence of alcohol abuse and were more likely to be diverted than non-Indigenous males and females. Similarly, they also had more violent offences, and current charges for failures to appear, bail violations (combining FTAs and non-FTAs), violations of justice orders, and violations of a domestic violence order than non-Indigenous males and females. In relation to prior history, both Indigenous male and female defendants also had a greater prevalence of prior remand episodes, prior convictions, previous failures to appear, previous non-FTA bail violations, and prior violations of justice orders than their

same-sex non-Indigenous counterparts. For all of these factors, Indigenous males had even higher rates than those of Indigenous females. Indigenous males had a higher prevalence of mental health issues than Indigenous females, and non-Indigenous males and females. Similarly, Indigenous males were also more likely to be transferred to the Murri Court than Indigenous females.

In contrast, Indigenous defendants had a lower prevalence of drug abuse and substance abuse (unspecified), and drug offences. Indigenous defendants also had lower average offence seriousness scores.

The regression analyses, which compensated for the average levels of demographic characteristics, offending history, and current offence characteristics, indicate that net of the available characteristics, Indigenous males are more likely to be remanded in custody than non-Indigenous females. Indigenous females are also more likely to be held than non-Indigenous females – although not to the degree that Indigenous males are held.

Note that weak community ties – particularly weak employment stability and family ties – have been shown to adversely influence remand decisions. Thus, if information on these characteristics had been available for inclusion in the analyses, these additional characteristics may have negated the increased risk of Indigenous remand.

Net of the characteristics included in the regression analyses, Indigenous males are held in remand for the same average length of time as non-Indigenous females, and Indigenous females are actually held for a shorter length of time.

# **CHAPTER 5 EXAMINING TRENDS AND PATTERNS IN CUSTODIAL REMAND IN QUEENSLAND CORRECTIVE SERVICES**

## **5.1 Introduction**

This chapter reports the results of the analyses on data provided by Queensland Corrective Services (QCS) for 1 June 2006 to 6 August 2009. Specifically we were interested in individuals held on remand. First, we examine the demographic characteristics including Indigenous status, gender and age for individuals held on remand. We then report individual characteristics for remandees including employment status, partner status and possible drug and/or mental health issues. We then examine offence characteristics of QCS remandees within the same period, including: remand length, frequency of remand for individual remandees, number of custodial offences for current remand episode, seriousness of crime, frequency of remandees most serious crimes, and frequency of different categories of crime. Finally we explore how these demographic, individual, and offence characteristics influence the length of time on remand. A summary is then provided outlining the main findings of this chapter.

### ***QCS Remand data***

Within the QCS data individual data records are entered at the level of a corrective episode which is defined as a singular incarceration within a QCS correctional facility for an individual. Importantly, data may therefore include individuals who are incarcerated multiple times during this time. Therefore prolific offenders will appear in multiple remand episodes. We acknowledge that the factors related to remand may differ when examined as episodic events as opposed to individual outcomes.

Overall 21,953 corrective episodes were recorded for individuals held in corrective facilities between the 1 June 2006 and 6 August 2009. Of all corrective episodes during this time, 31.2% were identified as involving Indigenous persons, 65% with non-Indigenous persons; while no Indigenous status information was available for the remaining 3.1%. According to the Legal Status field recorded in the QCS data, corrective episodes were comprised of: 75.6% corrective episodes for sentenced individuals; 18.2% both sentenced and on remand; and 6.2% held on remand. For this report we were only interested in the individuals held on remand. Therefore, in addition to removing individuals on sentence from our analyses we have also omitted corrective episodes for individuals who were both sentenced

and held on remand. From the remaining corrective episodes for individuals on remand we removed an additional seven extreme cases,<sup>19</sup> and a further 19 for whom no Indigenous status information was recorded leaving 1,326 corrective episodes. Unless otherwise specified, all further analyses within this chapter refer to these 1,326 corrective episodes for remandees held in correctional facilities.

## **5.2 Demographic characteristics of individuals held on remand within QCS corrective facilities**

This section examines demographic characteristics of remandees held by QCS. The demographic variables addressed include: gender and Indigenous status, and age of remandees.

### ***Gender and Indigenous status of remandees***

By far the largest proportion of remandees between 1 June 2006 and 6 August 2009 were non-Indigenous males (see Figure 5.1). Indigenous males were the next most common with approximately half as many Indigenous males as non-Indigenous males. Both Indigenous and non-Indigenous females represented a small proportion of remandees.

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<sup>19</sup> In preliminary data analyses, a number of extreme values were identified for individuals' days on remand. Consequently, in line with relevant literature (e.g., ABS, 2009) analyses were conducted excluding individuals with extreme days-on-remand values of more than 24 months. Seven cases of more than 24 months (730 days) of remand time (742, 746, 785, 835, 1,184, 1,339 and 3,632 days) were identified and excluded.

**Figure 5.1 Percent of Male and Female Indigenous and Non-Indigenous Remandees, N = 1,326 (QCS Remand Data 2006-2009).**

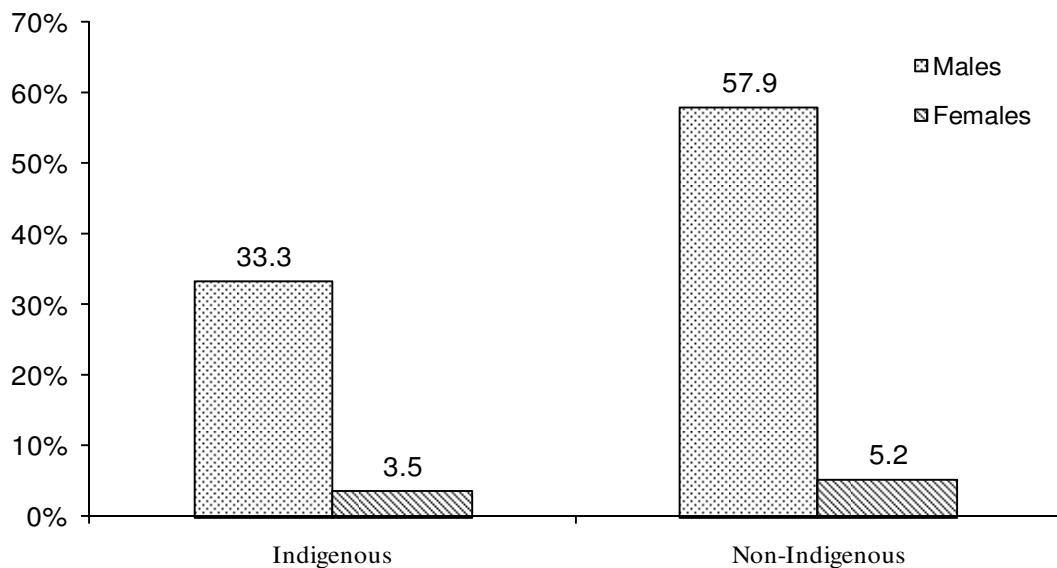
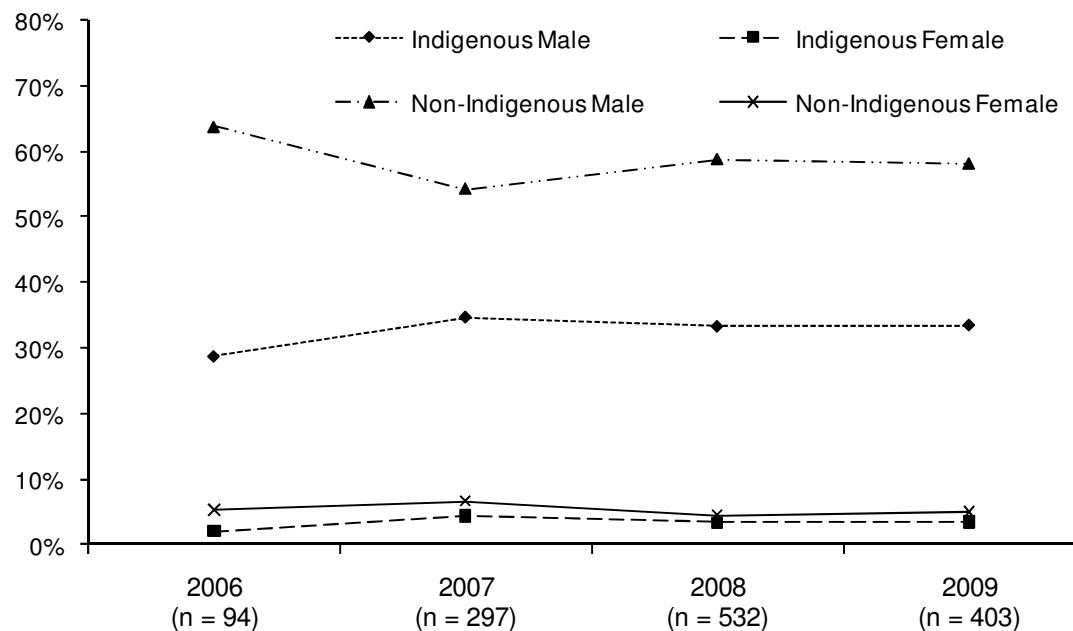


Figure 5.2 illustrates the proportion of remand corrective episodes for gender and Indigenous status by year. The proportion of male and female Indigenous and non-Indigenous episodes remained relatively stable over time. Similar to Figure 5.1, non-Indigenous males consistently made up the largest proportion (ranging between 58.1% and 64.3%), followed by Indigenous males (ranging between 28.7% and 34.7%), with Indigenous and non-Indigenous females only making up a small proportion of remandees.

**Figure 5.2 Percent of Male and Female Indigenous and Non-Indigenous Remandees, by Year of Admission (QCS Remand Data 2006-2009).**

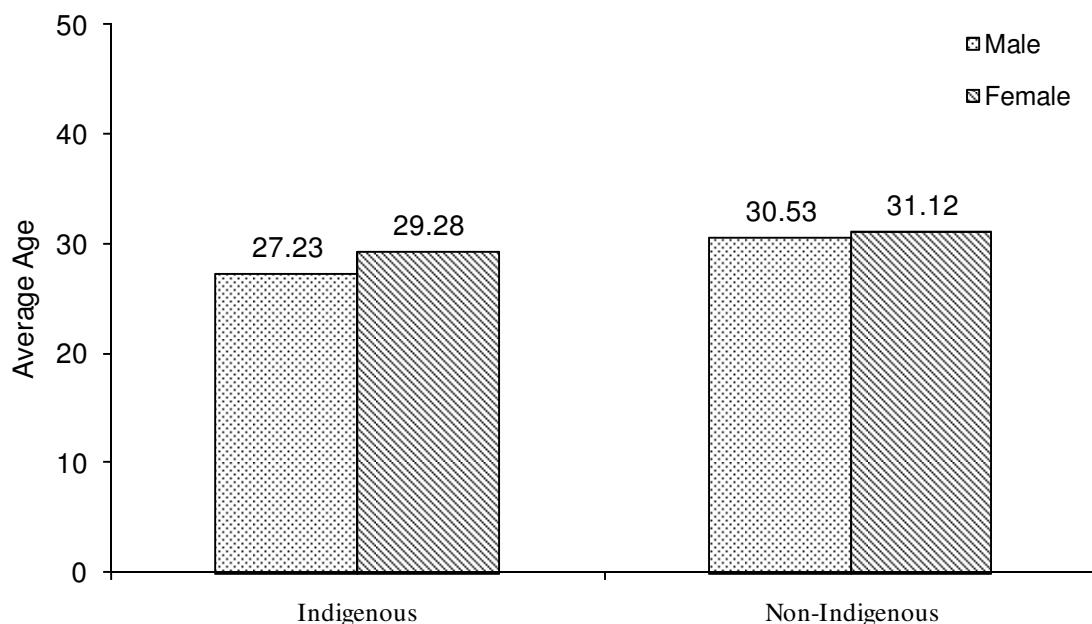


Note. Results for year 2006 include records from 01/06/2006 to 31/12/2006 only. Results for 2007 and 2008 include complete year. Results for year 2009 include records from 01/01/2009 to 06/08/2009 only.

#### **Age of remandees at time of admission**

As indicated in Figure 5.3, Indigenous remandees were slightly younger on admission to correctional facilities than non-Indigenous remandees. This difference was largest for males with Indigenous male remandees being 3.3 years younger than non-Indigenous males.

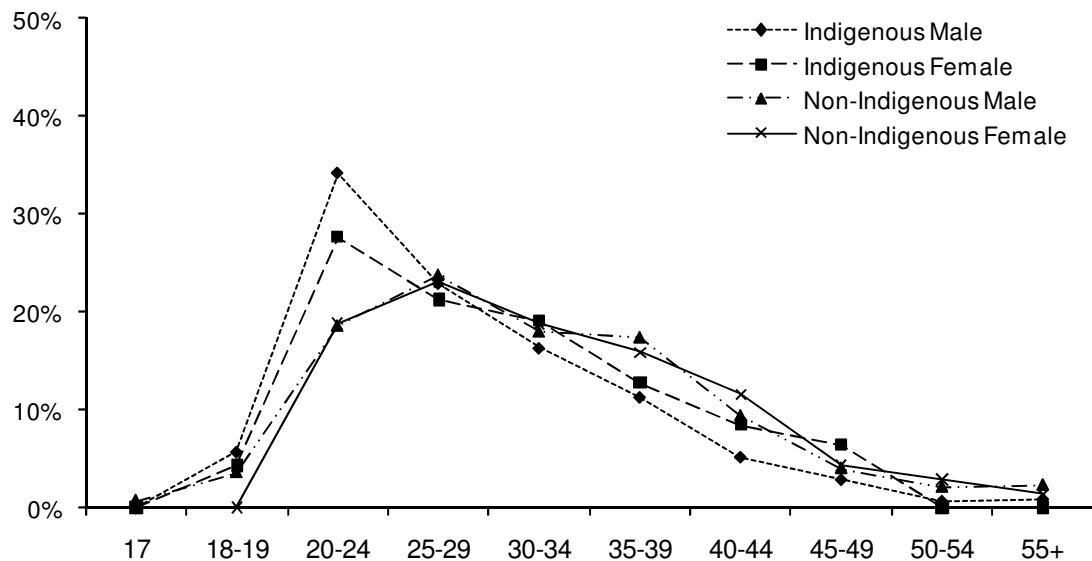
**Figure 5.3 Average Age at Admission of Male and Female Indigenous and Non-Indigenous Remandees, N = 1,326 (QCS Remand Data 2006-2009).**



To further explore differences in the remandees' ages, we examined distributions for gender and Indigenous status across different age groups (see Figure 5.4). Similar to the QPS Custody Data (see Figure 3.5), Indigenous remandees tended to be younger than non-Indigenous. As seen in Figure 5.4 the peak in the age distribution for Indigenous remandees occurred in their early 20s (20-24), at which point 33.5% of the all Indigenous remandees were admitted. Non-Indigenous remandees peaked at slightly older ages, in their late 20s (25-29), at which point approximately 24% of all non-Indigenous remandees were admitted.

After these age differences in remandees early 20's, the shape of the age distribution is similar for both Indigenous and non-Indigenous remandees. Admission into remand steadily declines after the early 30s. However, as a greater proportion of Indigenous remandees were younger on admission, there were consistently fewer Indigenous males and females in each age group over 30 than non-Indigenous males and females. While there were some minor differences for gender within Indigenous status, these were minimal, with the age distribution instead appearing primarily influenced by Indigenous status.

**Figure 5.4 Age Distribution of Male and Female Indigenous and Non-Indigenous Remandees, N = 1,326 (QCS Remand Data, 2006-2009).**



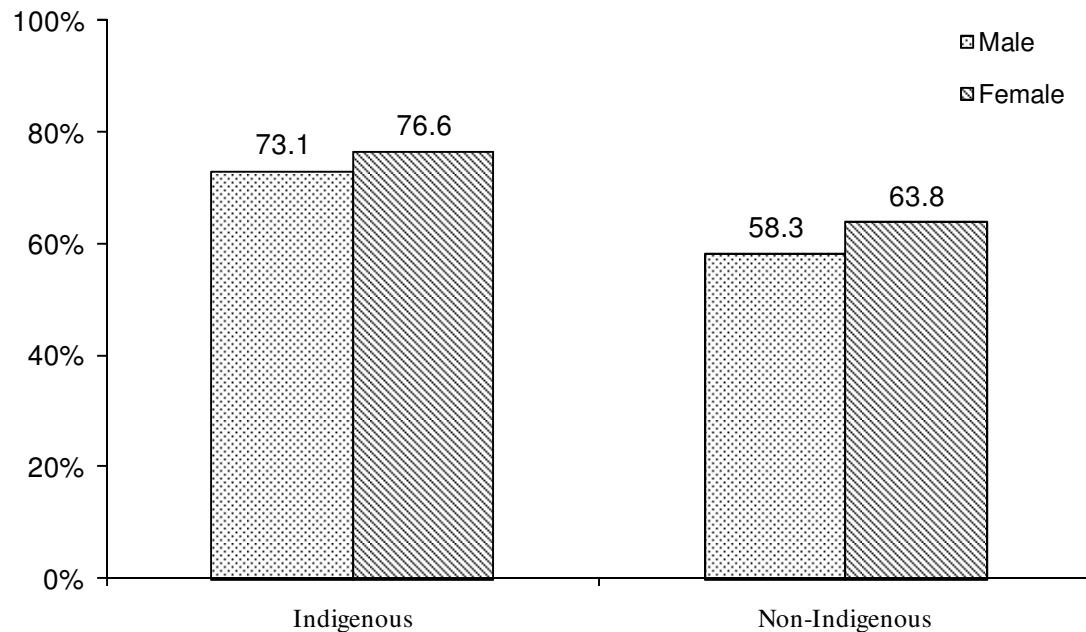
### 5.3 Individual characteristics of remandees

This section examines distributions for the individual characteristics of remandees within the QCS remand data. The individual characteristics addressed include: employment status, partner status, and drug and/or mental health concerns.

#### ***Employment status of remandees***

To investigate differences in employment status we simplified the QCS remand data employment variable into two categories: unemployed, and employed or otherwise occupied (e.g., student, home duties, receiving pension). Figure 5.5 displays differences in unemployment level by gender and Indigenous status. There was quite a substantial Indigenous status effect with 14.6 percentage point more Indigenous remandees unemployed when compared with non-Indigenous remandees. Furthermore, for both Indigenous and non-Indigenous women, a higher proportion (a 5.8 percentage point difference) of female remandees were unemployed when compared with males.

**Figure 5.5 Percent of Male and Female Indigenous and Non-Indigenous Remandees Unemployed, N = 1,319 (QCS Remand Data 2006-2009).**

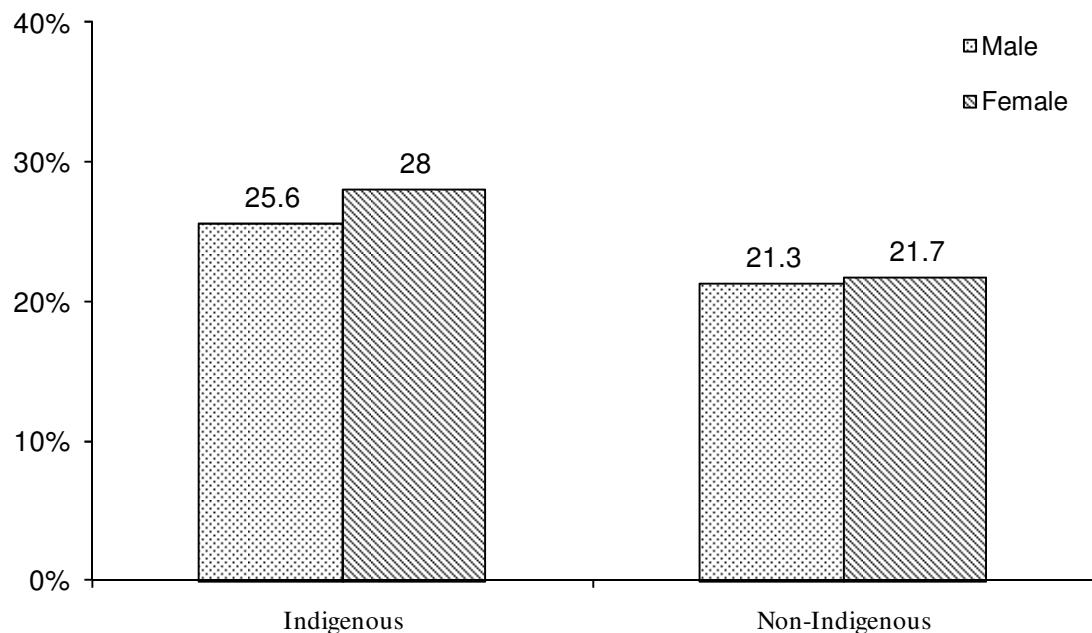


### **Partner status of remandees**

We also simplified the various categories of marital status into two main categories: with, and without a partner. Of all remandees, 26.7% were recorded as either married or in a de-facto relationship. In contrast, the majority of remandees (72.9%) were without a partner and noted to be either single, separated, divorced, or widowed. No partner information was available for the remaining 0.4%.

Figure 5.6 reports differences in the proportion of remandees with a partner, by gender and Indigenous status. At the time of admission a higher proportion (5.6 percentage points) of Indigenous remandees had a partner when compared with non-Indigenous remandees. Differences in partner status between male and female non-Indigenous remandees were so small as to be inconsequential (0.4 percentage points). For Indigenous remandees, slightly more Indigenous females had a partner when compared with Indigenous males (2.4 percentage point difference).

**Figure 5.6 Percent of Corrective Episodes in which Remandee had a Partner, by Male and Female Indigenous and Non-Indigenous, N = 1,322 (QCS Remand Data, 2006-2009).**



Note. The with a partner category included remandees recorded as being either married or in a de-facto relationship at the time of admission.

### **Remandees' drug and mental health issues**

For a large number of corrective episodes remandees were recorded in the data as having a drug and/or mental health concern. It is important to note that drug concerns include both alcohol and other illicit substances. Table 5.1 displays the distribution of remandees recorded with these concerns. Both Indigenous and non-Indigenous males were more likely to be recorded as having alcohol/drug concerns than their Indigenous and non-Indigenous female counterparts. Importantly however, the identification of alcohol/drug concerns was not dependent upon offence type. While around half (5%) of all offenders were identified as having a alcohol/drug related issue, it is unclear if there is a gender or Indigenous status difference between different types of substance abuse.

Of all remand cases, 9.4% were identified as having a mental health issue. A higher proportion of non-Indigenous than Indigenous remandees were identified with a mental health concern (see Table 5.1). Furthermore, while there was no gender difference for Indigenous remandees, a higher proportion of female non-Indigenous remandees were identified with mental health concerns when compared with male non-Indigenous remandees.

**Table 5.1 Percent of Male and Female Indigenous and Non-Indigenous Remandees with Drug and/ or Mental Health Concerns, N = 1,326 (QCS Remand Data, 2006-2009).**

Condition	Indigenous Males (n = 442)	Indigenous Females (n = 47)	Non- Indigenous Males (n = 768)	Non-Indigenous Females (n = 69)
<i>Drug Issues</i>	53.6%	48.9%	55.6%	50.7%
<i>Mental Health Issues</i>	6.1%	6.4%	10.9%	15.9%

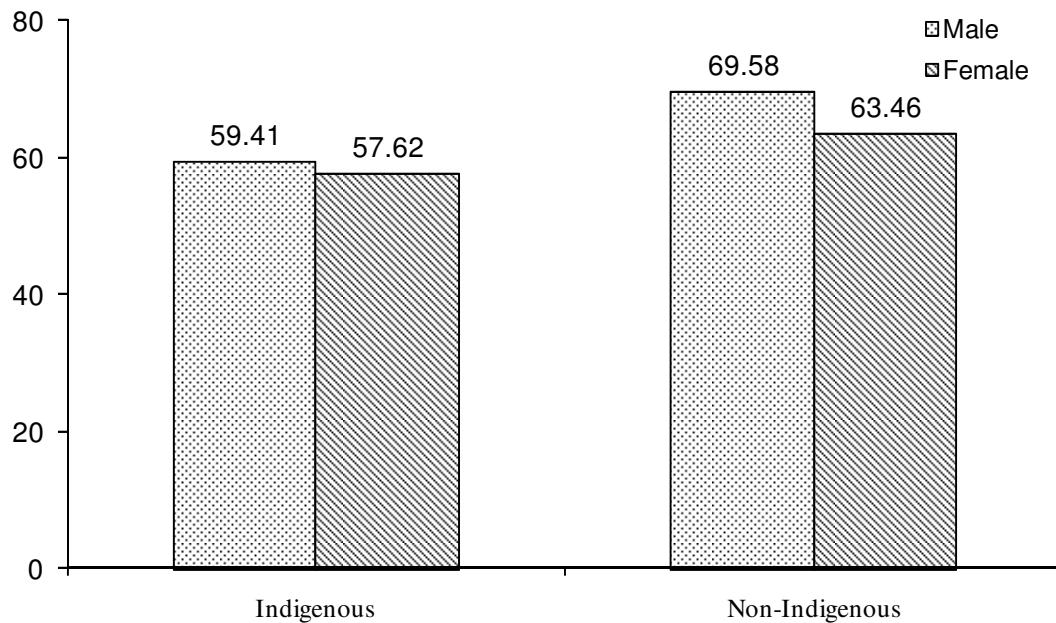
## 5.4 Offence characteristics

This section explores offence characteristics within the QCS remand data. It examines the average length of time remandees are held on remand, the average number of remand episodes for remandees, the average number of custodial offences for remand episodes, differences in seriousness of crime, and patterns of offending by offence frequency and offence categories.

### ***Length of time on remand for remandees***

Figure 5.7 presents the average number of days male and female Indigenous and non-Indigenous persons are held on remand. There were overall Indigenous status differences, with non-Indigenous remandees being held 9.84 days longer than Indigenous remandees ( $M = 69.08$  days,  $M = 59.24$  days respectively). Within Indigenous status there were also consistent gender differences with males being held longer than females within both Indigenous and non-Indigenous groups. However, this difference was largest for non-Indigenous. Non-Indigenous males were held 6.12 days longer than non-Indigenous females, whereas Indigenous males were held only 1.79 days longer than Indigenous females.

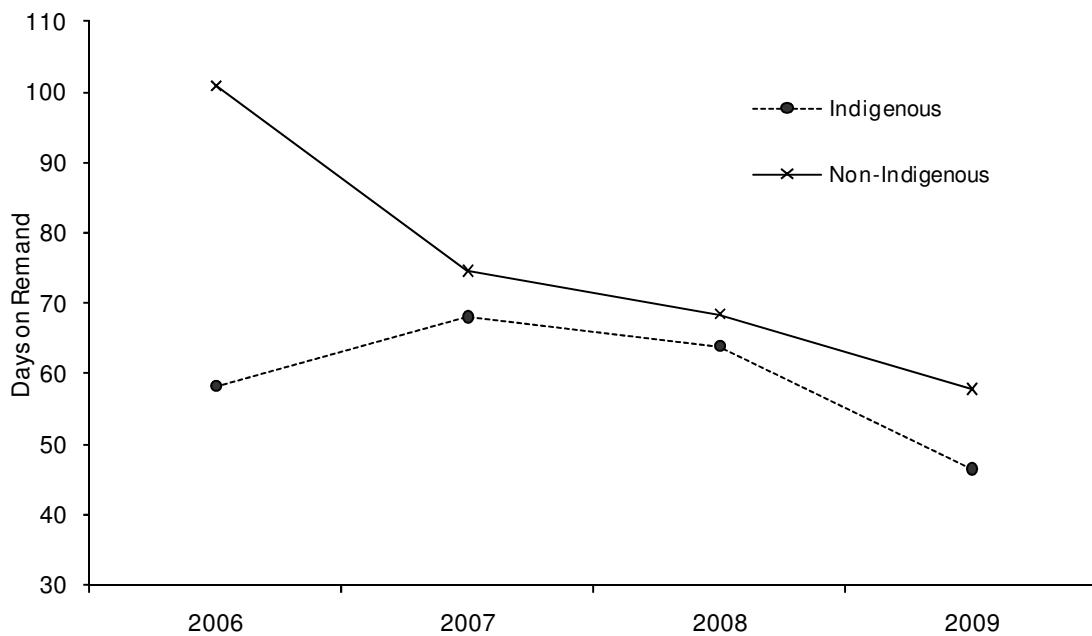
**Figure 5.7 Average Number of Days on Remand for Males and Females Indigenous and Non-Indigenous, N = 1,326 (QCS Remand Data, 2006-2009).**



### ***Trends in the length of time for remandees***

Figure 5.8 displays the average length of remand for Indigenous and non-Indigenous remandees from 2006 to 2009. Due to the very small number of Indigenous and non-Indigenous females in some years, it was not possible to provide a gender breakdown for this analysis. Although there was an increase in the average length of time spent in remand from 2006 to 2007 for Indigenous remandees (9.78 days), from 2007 the average the number of days both Indigenous and non-Indigenous remandees were held on remand declined over time. For all years (2006-2009) non-Indigenous remandees were held for a higher average number of days than Indigenous remandees. Non-Indigenous remandees were held for substantially more time than Indigenous remandees in 2006 (100.89 days and 58.28 days respectively; with a 42.6 day difference). Between 2006 and 2007 non-Indigenous remandees average days on remand decreased, while to a lesser degree Indigenous remandees average days on remand increased. In 2007 non-Indigenous remandees were held an average of 6.51 days longer than Indigenous remandees. Between 2007 and 2009 the difference between non-Indigenous and Indigenous remandees' days in remand remained relatively stable, with the average number of days on remand generally decreasing over time with a slight increase in the difference in 2009. At this time, non-Indigenous remandees were held an average of 11.35 days longer than Indigenous remandees.

**Figure 5.8 Time in Remand for Indigenous and Non-Indigenous, by Year of Admission, N = 1,326 (QCS data 2006-2009).**



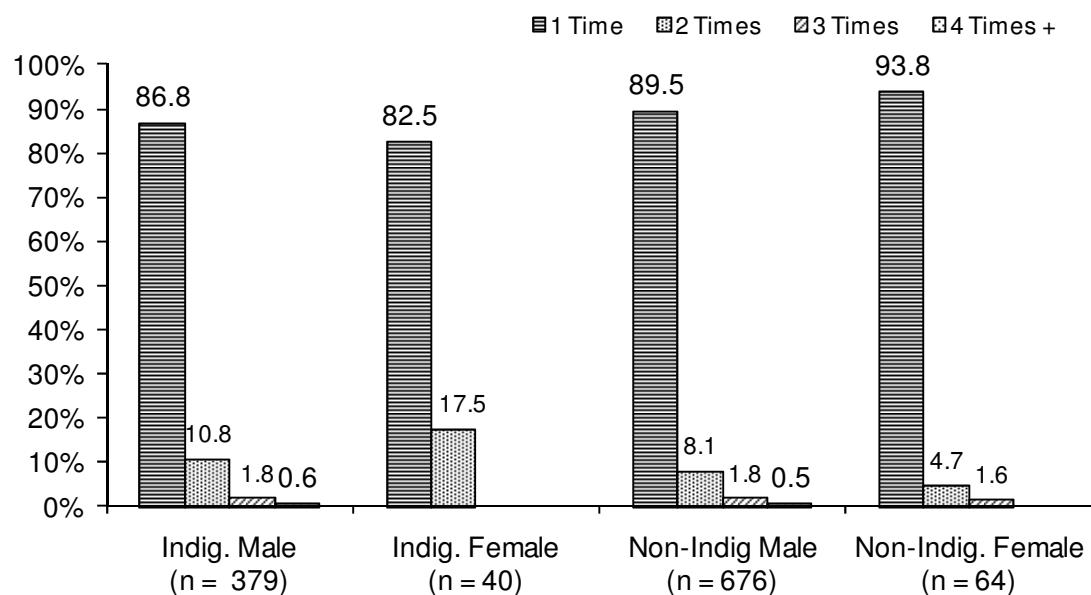
Note. Results for year 2006 include records from 01/06/2006 to 31/12/2006 only. Results for 2007 and 2008 include complete year. Results for year 2009 include records from 01/01/2009 to 06/08/2009 only.

### **Number of remand episodes for remandees**

Although we were primarily interested in remand corrective episodes, to provide further understanding of the characteristics of these episodes, this section examines if there were gender and Indigenous status differences for the frequency with which *individuals* were held on remand between 1 June 2006 and 6 August 2009 (see Figure 5.9). For all four groups (male and female Indigenous and non-Indigenous remandees) the majority of individuals were held on remand only once between 2006-2009. Indigenous and non-Indigenous males were similar in the frequency with which they were held on remand.

However, a slightly higher percentage (2.7 percentage points) of Indigenous males when compared to non-Indigenous males were held on remand more than once. Only male offenders were held on remand more than three times during this time period. Additionally, fewer non-Indigenous females were held on remand multiple times than any other group. In contrast, Indigenous females had the highest proportion of being held more than once with 11.3 percentage points more Indigenous females held multiple times when compared to non-Indigenous females. Interestingly however, in contrast to all other groups, no Indigenous females were held on remand more than twice.

**Figure 5.9 Number of Times Male and Female Indigenous and Non-Indigenous were Held on Remand in Corrective Facilities between 01/06/2006 to 06/08/2009, by Percent , N = 1,326 (QCS Remand Data, 2006-2009).**

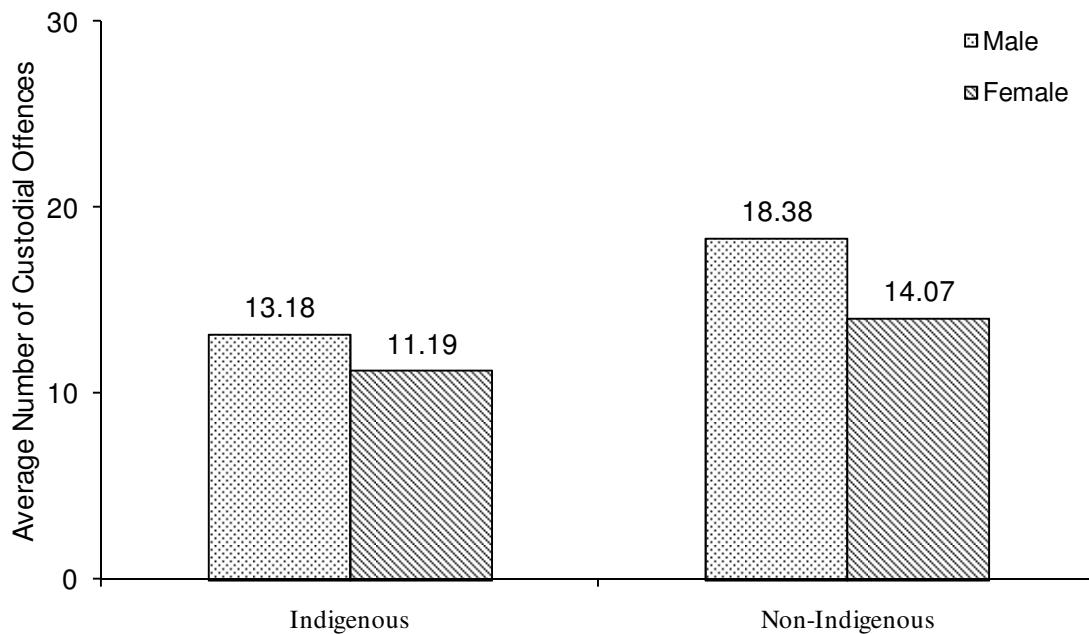


Note. Data for this figure represents specific individuals and not remand episodes.

#### **Number of custodial offences for current remand episode**

The number of custodial offences for remandees' current corrective episode ranged from 1 to 105. The average number of offences for all remandees was 13.83 (median = 10). As seen in Figure 5.10, non-Indigenous remandees had a higher average number of custodial offences than non-Indigenous remandees. Furthermore, for both Indigenous and non-Indigenous groups, males had a higher average number of custodial offences than women.

**Figure 5.10 Average Number of Custodial Offences for each Corrective Episode for Male and Female Indigenous and Non-Indigenous Remandees, N = 1,326 (QCS Remand Data, 2006-2009).**

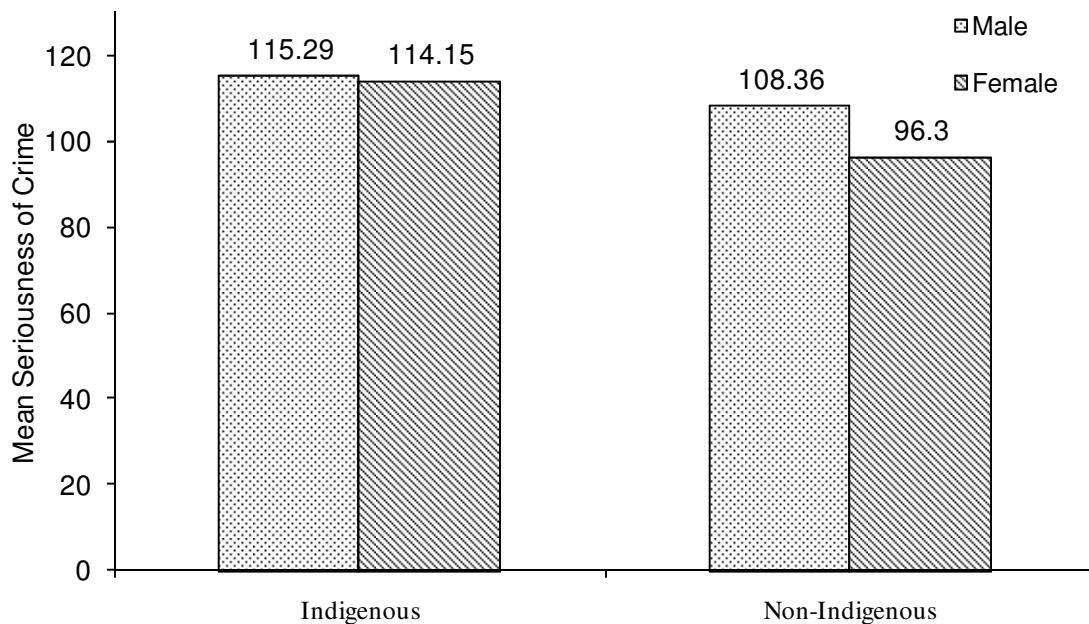


### ***Seriousness of offences***

To explore differences in the seriousness of the offences we created a '*most serious offence*' variable which represented the value of the most serious custodial offence for the remand episode. Figure 5.11 displays gender and Indigenous status differences for the seriousness of offence.

The average most serious offence was higher for Indigenous males and Indigenous females than for either non-Indigenous males or non-Indigenous females. Indigenous remandees were held for more serious offences than those of non-Indigenous remandees. Furthermore, while non-Indigenous males were held for more serious offences than non-Indigenous females (12.06 point difference), the seriousness of offences for Indigenous males and Indigenous females was similar (1.14 point difference).

**Figure 5.11 Average Seriousness of Crime Rating of Most Serious Offence for Male and Female Indigenous and Non-Indigenous, for Current Remand Episode, N = 1,326 (QCS Remand Data, 2006-2009).**



*Note.* Seriousness of offence scores ranged between 1 and 157, with higher scores representing more serious offences.

### **Most frequent serious offences**

Table 5.2 displays the differences in remandees' most serious offence within gender and Indigenous status for the seven most frequent offence types. A higher proportion of Indigenous than non-Indigenous remandees were held for committing both aggravated, and non-aggravated assault. Specifically, more Indigenous females (29.8%) were held for non-aggravated assault while more Indigenous males (35.3%) were held for aggravated assault. Higher proportions of non-Indigenous remandees were held for committing nearly all other common offence types. The exceptions were aggravated sexual assault which was perpetrated exclusively by males (2.0% Indigenous males, 2.9% non-Indigenous males), and fraud. Fraud was committed mostly by non-Indigenous females (13%), followed by Indigenous females (4.3%), non-Indigenous males (3.5%) and lastly Indigenous males (0.5%).

**Table 5.2 Percent of Offence Types for Male and Female Indigenous and Non-Indigenous, Offence Categories Ordered by Overall Frequency of Offence Type within All Remand Corrective Episodes, N = 1,326 (QCS Remand Data 2006-2009)**

Offence Category	Indigenous Males (n = 442)	Indigenous Females (n = 47)	Non-Indigenous Males (n = 768)	Non-Indigenous Females (n = 69)
<i>Aggravated Assault</i>	35.3%	27.7%	22.8%	7.2%
<i>Non-Aggravated Assault</i>	23.3%	29.8%	21.2%	18.8%
<i>Unlawful Entry with Intent</i>	17.9%	10.6%	19.8%	24.6%
<i>Aggravated Robbery</i>	3.4%	4.3%	6%	7.2%
<i>Receiving/Handling Proceeds of Crime</i>	2.0%	4.3%	5.3%	5.8%
<i>Fraud</i>	0.5%	4.3%	3.5%	13%
<i>Aggravated Sexual Assault</i>	2.0%	0%	2.9%	0%
<i>Other</i>	15.6%	19.1%	18.5%	23.2%

*Note.* Corrective episodes were assigned to the offence category of the most serious offence recorded.

### **Offence type frequency**

Records within the remand data contained eight different offence categories. If any of an individual's offences for the current remand episode fell within one of these offence categories they were tagged as having committed that category of offence. These offence categories included: parole violations, property offences, a breach of the justice act, traffic offences, drug offences, probation violations, a breach of domestic violence order and sex offences. In addition to this we created a violent offence category.<sup>20</sup> Offence categories were not mutually exclusive; individuals who committed a range of different types of offences within the current remand episode were tagged with multiple offence categories.

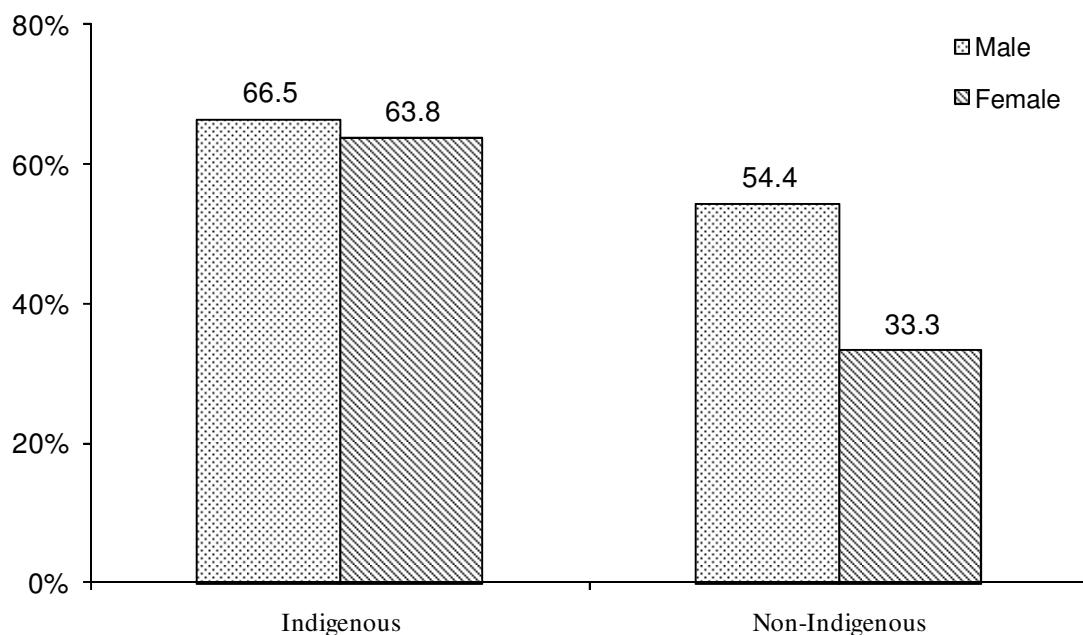
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<sup>20</sup> Violent offences included: robbery unspecified; abduction and kidnapping; aggravated assault; aggravated sexual assault; deprivation of liberty/false imprisonment; manslaughter; misuse of regulated weapons/explosives; murder; non-aggravated assault; and non-aggravated sexual assault.

### **The relationship between gender, Indigenous status and violent offences**

Figure 5.12 displays gender and Indigenous status differences for individuals categorised as having committed a violent offence. As seen for the frequent most serious offences reported above (see Table 5.2) Indigenous male and Indigenous female remandees committed more violent offences than their non-Indigenous counterparts. Furthermore, while non-Indigenous females committed substantially fewer violent offences than non-Indigenous males (21.1 percentage point difference), the difference between Indigenous males and females was small (less than 3 percentage points).

***Figure 5.12 Percent of Male and Female Indigenous and Non-Indigenous Remandees Recorded as Having Committed Violent Offences, N = 765 (QCS Remand Data, 2006-2009).***

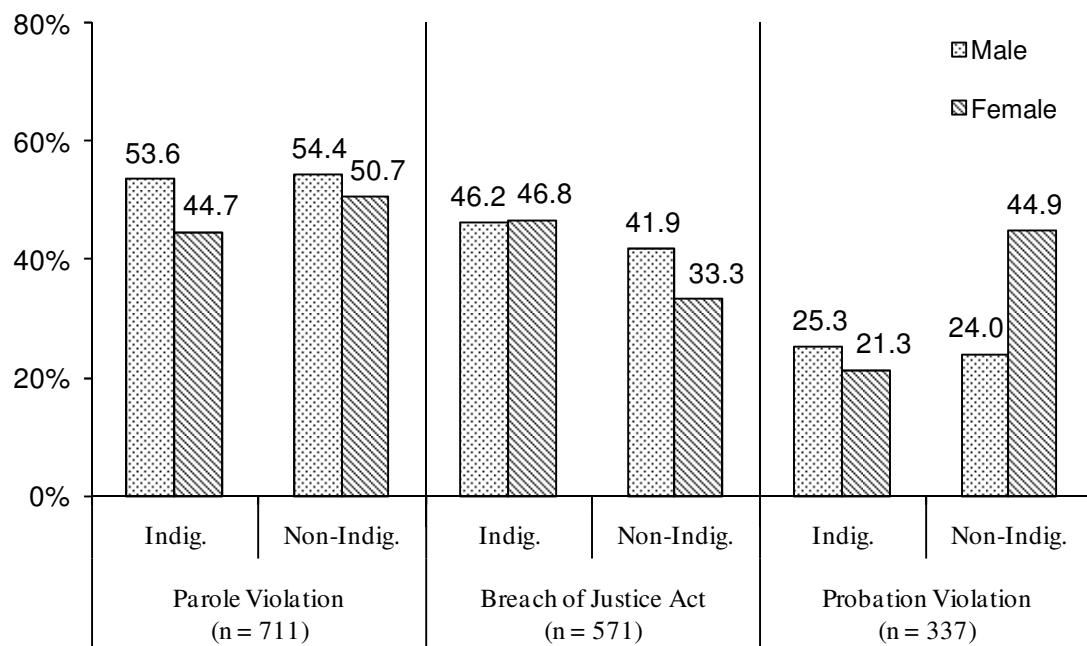


### **The relationship between gender, Indigenous status and Parole Violations, Breaches of the Justice Act and Probation Violations**

Indigenous males and females were more likely to have committed breaches of the Justice Act than non-Indigenous males and females (see Figure 5.13). Interestingly, while both Indigenous and non-Indigenous males tended to commit parole violations and probation violations with relatively similar frequency, the frequency with which females committed these offences differed dependent upon the category of offence (see Figure 5.13). Female non-Indigenous remandees committed parole violations only slightly less often than both non-Indigenous and Indigenous males. In contrast, Indigenous females committed parole violations 9.7 percentage points less than non-Indigenous males, 6 percentage points less than non-Indigenous females, and 8.9 percentage points less than Indigenous males.

Female non-Indigenous remandees were the least likely group to commit breaches of the Justice Act and the most likely to have committed probation violations. Overall, Indigenous females commit fewer parole and probation violations but more breaches of the Justice Act.

**Figure 5.13 Percent of Male and Female Indigenous and Non-Indigenous Remandees Recorded as Having Committed Parole Violations, Breaches of the Justice Act, or Probation Violations, N = (QCS Remand Data, 2006-2009).**

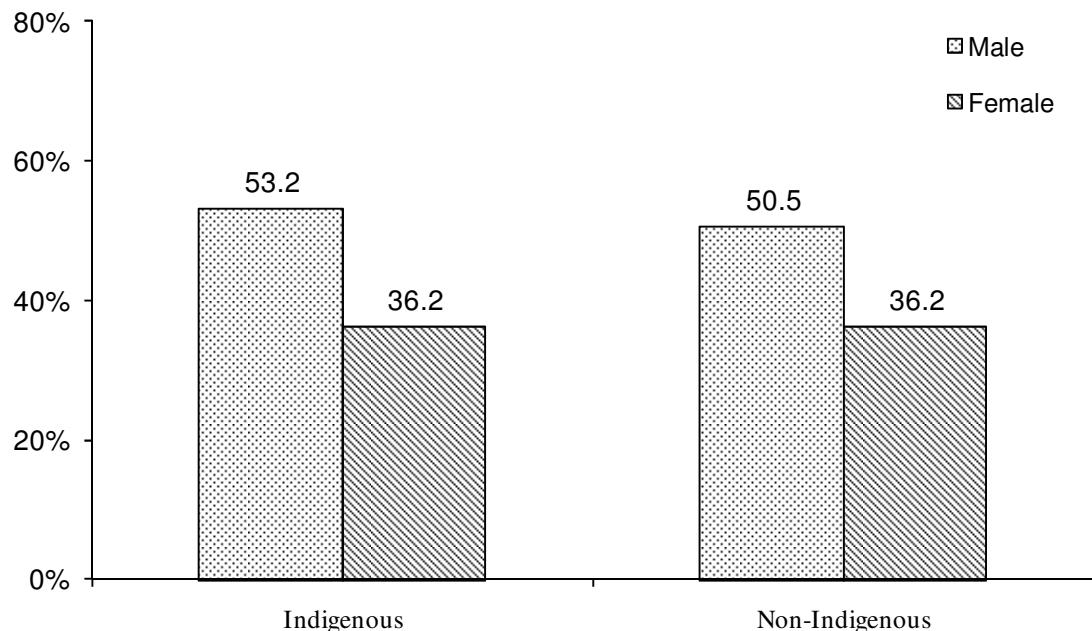


Note. Indig = Indigenous.

#### **The relationship between gender, Indigenous status and property offences**

A similar proportion of Indigenous and non-Indigenous remandees were recorded as committing property offences (see Figure 5.14). However, there was a clear gender difference with a 14.7 percentage point increase in property offences from females to males.

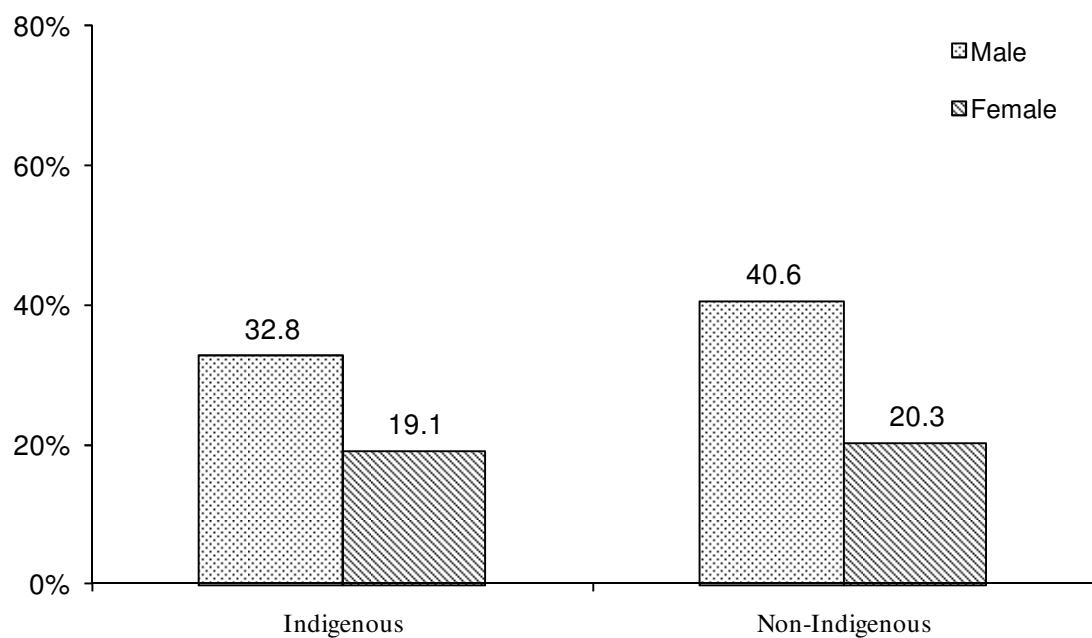
**Figure 5.14 Percent of Male and Female Indigenous and Non-Indigenous Remandees Recorded as Having Committed Property Offences, N =665 (QCS Remand Data, 2006-2009).**



#### **The relationship between gender, Indigenous status and traffic offences**

There was also a clear gender difference for traffic offences with overall 17.7% more males committing traffic offences than females (see Figure 5.15). However, while a similar level of Indigenous and non-Indigenous females were recorded as committing traffic offences, there were differences between Indigenous status groups for males. More non-Indigenous males committed traffic offences than Indigenous males.

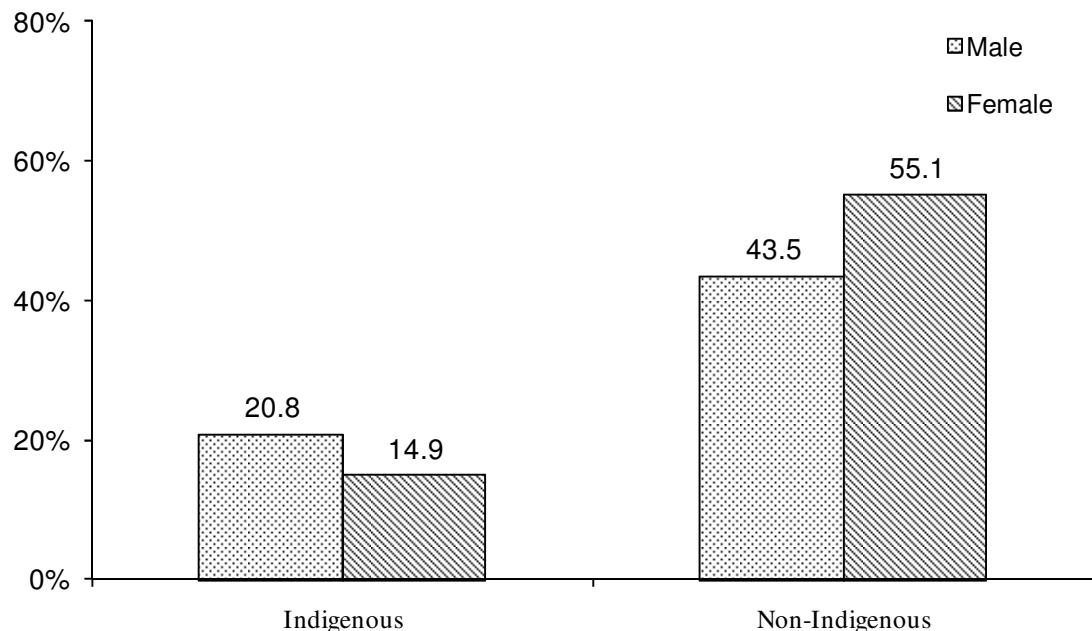
**Figure 5.15 Percent of Male and Female Indigenous and Non-Indigenous Remandees Recorded as Having Committed Traffic Offences, N = 480 (QCS Remand Data, 2006-2009).**



#### **The relationship between gender, Indigenous status and drug offences**

A much smaller proportion (24.2 percentage points fewer) of Indigenous remandees committed drug offences when compared to non-Indigenous remandees (see Figure 5.16). There were also differences within Indigenous status. More Indigenous males were recorded as committing drug offences than Indigenous females. In contrast, more non-Indigenous females committed drug offences than non-Indigenous males.

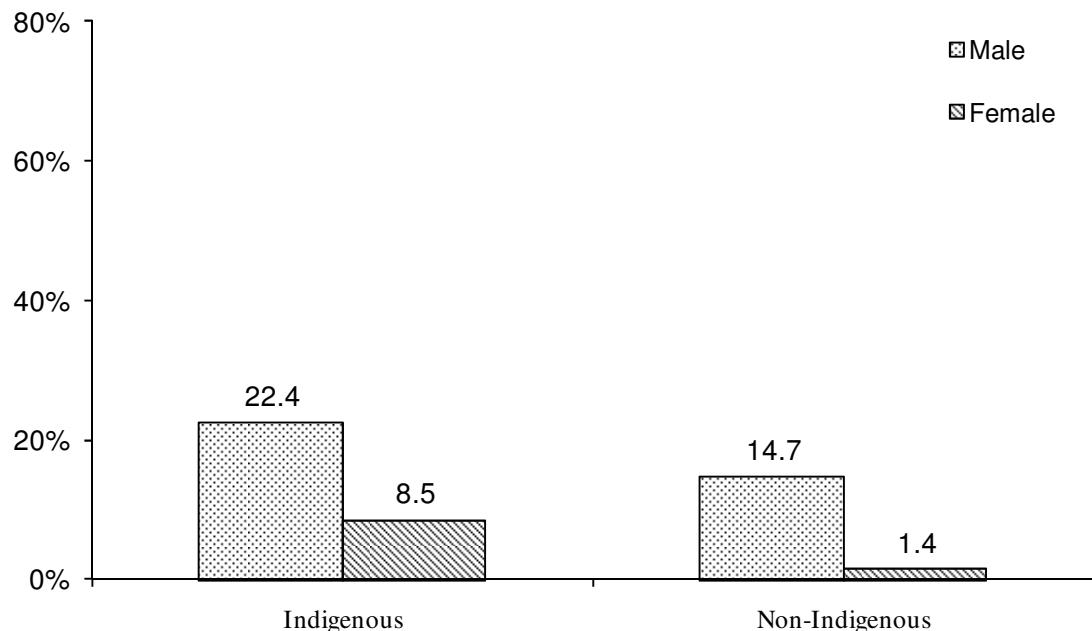
**Figure 5.16 Percent of Male and Female Indigenous and Non-Indigenous Remandees Recorded as Having Committed Drug Offences, N =471 (QCS Remand Data, 2006-2009).**



#### **The relationship between gender, Indigenous status and breach of domestic violence orders**

There was both a gender and Indigenous status effect for breaches of domestic violence orders (see Figure 5.17). In relation to gender, a higher proportion (13 percentage points) of males committed breaches of domestic violence orders than females. With regards to Indigenous status, a higher proportion (7.5 percentage points) of Indigenous remandees committed this type of offence than non-Indigenous remandees.

**Figure 5.17 Percent of Male and Female Indigenous and Non-Indigenous Remandees Recorded as Having Committed a Breach of a Domestic Violent Order, N = 217 (QCS Remand Data, 2006-2009).**



#### **The relationship between gender, Indigenous status and sex offences**

Only a very small proportion (0.9%) of remandees committed sex offences which were committed exclusively by men. There were similar numbers of Indigenous men and non-Indigenous men committing sexual offences (1.1% and 0.9% respectively).

## **5.5 Risk factors affecting the number of days held on remand**

Finally, this section examines how the remandees' demographic, individual, and offence characteristics influence their length of time on remand. To explore how these particular characteristics influence the relative risk for the number of days on remand, we ran three multiple regression models (see Table 5.3). These multiple regression models allow us to determine the average relationship, net of all other characteristics included in the model, between a particular characteristic and the length of time held on remand.<sup>21</sup> As with previous regression analyses reported here, only results marked with one or more asterisk were meaningfully different enough to be considered significant.

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<sup>21</sup> For additional information regarding multiple regression analyses see section 3.9.

**Table 5.3 Relative Risk by Demographics, Individual Characteristics, and Offence Characteristics, for Number of Days Held on Remand, N = 1,326 (Comparison Group: Non-Indigenous Females; QCS Remand Data. 2006-2009).**

Variables	Model with Demographics	Incident-Rate-Ratio	
		With Individual Characteristics Added	With Offence Characteristics Added
Indigenous Male	.94	.93	1.02
Indigenous Female	.91	.92	.96
Non-Indigenous Male	1.09	1.08	1.19
Age	1.00	1.00	1.01
Employment Status		1.06	1.08
Partner Status		.94	.91
Mental Health Issue		.97	.95
Drug Issue		1.12	1.12
Seriousness of Offence			1.00
Violent Offender			1.60***
Drug Offender			.97
Number of Offences			1.01
Parole Offence			.90
Probation Offence			.98
Domestic Violence			.50***
Offence			
Justice Act Offence			.73***

\*\*\* p < .001.

### **The relationship between demographic characteristics and length of time on remand**

The first model tested if demographic factors influence the average number of days individuals are held on remand. Specifically, Indigenous males, Indigenous females, and non-Indigenous males were examined relative to the risk for non-Indigenous females. Net of the other characteristics included within this model, none of these characteristics were found to reliably influence the average number of days individuals were held on remand.

### **The relationship between demographic characteristics, individual characteristics and length of time on remand**

In addition to the demographic variables included in the previous regression, our second model also included individual characteristics. Specifically, these individual characteristics included: employment status, partner status, mental health issues and drug issues. Net of the other characteristics included within this model, none of these characteristics were found to reliably influence the average number of days individuals were held on remand.

### ***The relationship between demographic characteristics, individual characteristics, offence characteristics and length of time held on remand***

Finally, in addition to demographic and individual characteristics, our third model also included offence characteristics. Specifically we included: the seriousness of offence rating, number of offences, and seven offence type categories. Net of the other characteristics included within this model, three offence characteristics were found to meaningfully affect the average number of days remandees were held on remand. Violent offenders were likely to be held 1.6 times longer, while domestic violent offenders were likely to be held half as many days, and individuals who committed Justice Act offences were likely to be held 0.73 as many days.

## **5.6 Summary of findings**

This section summarises the important findings within the chapter.

Relative to their proportion in the Queensland population, Indigenous males and females are over-represented in the remand population in correctional institutions. This was particularly the case for Indigenous males. When compared with non-Indigenous remandees, Indigenous remandees were younger on admission, more likely to be unemployed and to be in a relationship. In contrast, non-Indigenous remandees were more likely to be noted as having mental health issues on admission, with non-Indigenous females the most likely to have these issues. Approximately 50% of remandees were identified as having alcohol or drug concerns; with males slightly more likely to have alcohol or drug concerns than females.

Indigenous remandees were held for 9.84 days less than non-Indigenous remandees. Furthermore, within both Indigenous status groups, Indigenous and non-Indigenous males were held for longer periods in remand than their female counterparts. However, the difference in the average length of remand time is greatest between male and female non-Indigenous remandees (difference = 6.12 days) compared with 1.79 days between Indigenous males and females.

Overall the length of time remandees spend on remand appears to be decreasing from 2007-2009.

In relation to offences, non-Indigenous remandees (both males and females) had committed a greater number of offences for each remand episode than both Indigenous males and females. Within Indigenous status groups, males had committed a greater number of offences than females. In contrast, both male and female Indigenous

remandees had committed more serious offences than non-Indigenous male and female remandees with only a very small difference between Indigenous male and female remandees (1.14 point difference) in relation to the seriousness of the offence. For non-Indigenous remandees, males were more likely to have been remanded for more serious offences than non-Indigenous females (12.06 point difference). Both Indigenous males and Indigenous females were more likely to have committed violent offences and breaches of the Justice Act than non-Indigenous males and females. While the majority of all remandees were held in remand only once between 2006-2009, Indigenous remandees were more likely to have been remanded multiple times than non-Indigenous remandees.

When considering the frequency of offence types, Indigenous remandees committed aggravated and non-aggravated assault more frequently than non-Indigenous remandees. In contrast, non-Indigenous remandees committed nearly all other common offence types more often than Indigenous remandees. Gender differences occurred in relation to sexual offences which were committed exclusively by males, and fraud which was more frequently committed by females.

The regression analyses which compensated for the average levels of demographic, individual, and offence characteristics indicate that net of these characteristics, neither Indigenous males nor females were remanded for longer than their non-Indigenous counterparts. Rather, the length of remand related to offending, so remandees who had committed violent offences were held for longer (1.6 times longer), while those who had committed either domestic violence offences or Justice Act offences were held fewer days on remand.

## **CHAPTER 6 DISCUSSION AND RECOMMENDATIONS**

### **6.1 Introduction**

This report presented the findings of a comprehensive study on the bail and remand experiences of Aboriginal and Torres Strait Islanders in Queensland. The project employed an in-depth methodology which included consultations with a range of stakeholders in the criminal justice system and an analysis of administrative data from the Queensland Police Service, the Department of Justice and Attorney-General (Magistrates', District and Supreme Courts) and Queensland Corrective Services. The study has provided a unique opportunity to better understand the nature of the bail and remand system across the State, and particularly how it impacts on Aboriginal and Torres Strait Islander Queenslanders.

While a study of this kind inevitably uncovers a range of complexities associated with the representation of Indigenous people in the bail and remand system, at the same time the research provides an opportunity to uncover areas which require further examination and reform. This research uncovered that factors influencing bail decision-making regarding Indigenous offenders during both police and court processing are complex. Additionally, the research has uncovered a range of different viewpoints amongst stakeholders in relation to the reasons Aboriginal and Torres Strait Islanders are likely to be remanded in custody and ways to increase the likelihood that offenders would receive bail and successfully comply with any bail conditions. Such alternative and sometimes competing views present challenges when considering areas for reform.

In this chapter we describe the various themes that have emerged through the research and we additionally include a number of recommendations for reform that can be considered by the Queensland Government.

### **6.2 Over-representation of Indigenous people**

Similar to other research, our analyses of administrative data from the Queensland Police Service, Department of Justice and Attorney-General (Magistrates', District, and Supreme Courts), and Queensland Corrective Services showed that Indigenous Queenslanders were over-represented in relation to arrest, court appearances, and custodial remand in both police, and Queensland Corrective Services custody.

Indigenous people represent approximately 3.6% of the Queensland population (ABS 2006b). In relation to arrest, while 63% of the arrestees were non-Indigenous males, 20% were Indigenous males; 10% of arrestees were non-Indigenous females, and 6% were Indigenous females. However trends in arrests revealed a continuing decline in the percentage of arrestees identifying as Indigenous from a high of 32% in 2003 to 20% in 2008. When examining court processing, Indigenous males and females were also over-represented in court appearances (13.98% and 4.1% respectively). There has been little change in the percentage of Indigenous defendants appearing before the courts from 2004-2009.

Similarly, Indigenous males and females were over-represented amongst remandees in correctional institutions with Indigenous males representing approximately 33% of the remand population and Indigenous females approximately 3%. There has been little change in the percentage of Indigenous defendants being remanded in correctional institutions from 2006-2009. Overall, it is clear that the rate of over-representation is greater for Indigenous males than Indigenous females at all levels of processing (arrests, court appearances and remand in correctional institutions).

Indigenous status was also associated with remand in both police, and court ordered custody. With regards to police custody, Indigenous status was related to both the likelihood of being remanded, and the length of time the offender was held in custody, but only for Indigenous males. Even after demographic characteristics, location, and legal variables (i.e. offence characteristics and criminal history) were accounted for, the likelihood of being remanded in police custody, and the length of time in custody, was significantly greater for Indigenous males. They were the most likely group to be remanded, and when held, this was for longer periods. In contrast, once demographics, legal variables and location were taken into account, there was no additional risk of either police remand, or being held for longer periods of time for Indigenous females.

When considering court remand decision-making, both Indigenous males and females were more likely to be remanded than their non-Indigenous counterparts. Even after accounting for demographic characteristics, location, and legal variables (i.e. offence characteristics and criminal history) Indigenous males and females were still at greater risk of court remand than their non-Indigenous counterparts. Indigenous males were the most likely to be remanded in custody, and were almost twice as likely to be remanded as non-Indigenous females. Indigenous females were almost one and a half times more likely to be remanded as non-Indigenous females. Non-Indigenous females were the least likely group to be remanded by the court.

In contrast to Indigenous defendants' heightened risk of court-ordered remand, Indigenous males and Indigenous females were not held for significantly longer periods of time when compared with non-Indigenous females, once other relevant characteristics were taken into account (e.g. offences and criminal history). Only non-Indigenous males were held for significantly longer periods in remand than non-Indigenous females. Indigenous females were actually held for shorter periods than non-Indigenous females.

Overall, even after considering the effect of legal variables on police remand, Indigenous males were at greater risk of being held in remand and for longer periods of time in police custody, regardless of their current and prior offences. In contrast, Indigenous females increased risk of police remand was accounted for by their current and previous offending. In relation to court ordered remand, regardless of their current and former offending, both Indigenous males and females were at greater risk of custodial remand. Yet once remanded, they were not held for longer than their non-Indigenous counterparts, with Indigenous females actually held for shorter periods than non-Indigenous females.

There are two possible explanations for the increased likelihood that Indigenous people will be remanded in both police and court custody. It is possible that this effect does reflect differential treatment of Indigenous people, and particularly Indigenous males, by police and the courts. Importantly however, there were no measures of socioeconomic disadvantage in either the police or court data.

Socioeconomic disadvantage is an important predictor of remand decisions. Thus, rather than reflecting a discriminatory approach to dealing with Indigenous people, Indigenous status may instead be a marker of underlying disadvantage, which itself is related to the increased likelihood of custodial remand. To resolve this issue, it is important that measures of socioeconomic disadvantage be included in both police custody and court data. It would then be possible to identify if there is differential treatment of Indigenous people in relation to custodial remand, or if instead their over-representation in custodial remand reflects underlying social and economic disadvantage.

The importance of including measures of socioeconomic disadvantage when identifying the factors affecting custodial remand is further supported by the analyses of data on remandees held in Queensland Corrective Services institutions. We found that Indigenous status was not related to remand when we were able to also control for socioeconomic variables including employment and partner status. Instead, remand in correctional institutions was associated with patterns of offending.

It is important to also note that the percentage of Indigenous offenders who were arrested or held in court ordered remand has been declining. The percentage of court ordered remandees has declined since 2007 while the percentage of Indigenous arrestees has decreased since 2003. In contrast, the percentage of offenders remanded in police custody identifying as Indigenous has been increasing since 2003, while the rate of remand has remained relatively constant amongst non-Indigenous remandees during this same period. Police bail decision-making may be a particularly important intervention point to help decrease the over-representation of Indigenous people in custodial remand.

## **6.3 Nature of offending**

Current and previous offending influences bail decision-making with recidivist offenders with extensive criminal histories, including failures to appear in court or violations of bail conditions, and prior remand experiences being particularly vulnerable to remand. At both the police and court bail phase, compared with their non-Indigenous counterparts, both male and female Indigenous offenders were consistently more likely to have an offending history including previous arrests, failures to appear and other bail violations, court violations, justice order violations and former periods of remand in both police and court ordered custody.

Similarly, when considering current offences at court appearance, Indigenous males and females were also consistently more likely to have current failures to appear, bail violations, breach of domestic violence orders, breach of justice orders and violent offences – all factors which previous research shows are associated with an increased risk of bail refusal. Failure to appear in court and breaching bail conditions in particular increase the likelihood of a return to police and court ordered custody.

Therefore, Indigenous offenders' pattern of current and prior offending and remand history makes it more difficult for them to access bail and meet bail conditions. It places them at greater risk of remand in either police or court ordered custody.

However, social, economic and cultural disadvantage underlies much of the offending by Indigenous people. Therefore addressing this social, economic and cultural disadvantage, and targeting interventions to the phases in bail decision-making where Indigenous offenders are more likely to be involved will serve to decrease the over-representation of Indigenous people within custodial remand.

## **6.4 Social, economic, and cultural disadvantage**

During our consultations with key stakeholders our interviewees agreed that many Indigenous offenders were socially, economically and culturally disadvantaged. Certainly our analyses of the administrative data highlighted that in comparison with non-Indigenous offenders, Indigenous offenders were more likely to be unemployed, and more likely to be identified as having an alcohol problem. Indigenous remandees in particular may be particularly vulnerable with even greater criminogenic needs than their non-remanded counterparts. Project interviewees maintained that the most important, long-term solution to Indigenous over-representation was to address the underlying factors which bring Indigenous people into contact with the criminal justice system. Therefore it is important to provide programs addressing social and economic disadvantage and specifically target those areas thought to be most related to offending; low educational attainment, unemployment, and substance abuse (particularly alcohol abuse) by providing alcohol and drug treatment, and programs focused on providing education, training, and employment initiatives.

### **Recommendation 1**

**That the Queensland Government continue with its efforts to address the social, economic and cultural disadvantage experienced by Aboriginal and Torres Strait Islander Queenslanders which underlies much Indigenous offending.**

### **Recommendation 2**

**That the Queensland Government particularly focus on providing alcohol and substance abuse treatment and education, and training and employment initiatives for Indigenous offenders.**

To address Indigenous over-representation in custodial remand it is also important to consider the legislative framework for bail decision-making and to target interventions to various points in bail decision-making during police and court processing to increase the likelihood that Indigenous offenders will be offered bail and increase their likelihood of bail compliance.

## **6.5 Legislation**

Given that the legislative framework is important in determining bail decision-making, legislative changes may facilitate the granting of bail. For example, some interviewees saw benefit in introducing legislative changes to the *Bail Act 1980* which encouraged referral to treatment services. Several interviewees also maintained that it was important to

have alternate options for dealing with breaches of bail and failures to appear in court. For example, increasing the range of possible legislative sanctions to include, and encourage the use of non-custodial sanctions in appropriate circumstances. In relation to failures to appear in court, one interviewee specifically suggested the *Justices Act 1886* could be amended to enable the Magistrate to deal with the case summarily in the absence of the offender with agreement from the police. This would decrease the accumulation of failure to appear offences in the defendant's bail history, thereby increasing their chances of receiving bail in future instances. This change would also decrease the workload for police, as warrants would not be issued for the defendant's arrest.

Other types of legislation not specifically related to bail may also have indirect, and unintended consequences on Indigenous over-representation in the criminal justice system – and hence on custodial remand rates. For example, first, we were advised that recent changes in criminal penalties for many offences meant there has been a decrease in the number of offences where bail is an option. Second, several interviewees mentioned that public drunkenness often resulted in the arrest and remand of Indigenous offenders in police custody. It was suggested that legislative changes be enacted so that public drunkenness was no longer a criminal offence. This behaviour could instead be dealt with in an alternate manner without necessitating arrest, which would thereby decrease the likelihood of custodial remand and not contribute further to the offender's criminal history. Third, decreasing the accumulation of an extensive criminal history is likely to influence bail decision-making. So excluding minor offences such as offensive language and summary offences from inclusion in an offender's criminal history may increase the likelihood of bail for offenders who have not committed serious offences.

**Recommendation 3**

**That the Queensland Government consider legislative amendments to remove minor offences from defendants' criminal history.**

**Recommendation 4**

**That the Queensland Government consider increasing the legislative options for dealing with breaches of bail conditions and failures to appear in court.**

**Recommendation 5**

**That the Queensland Government consider introducing alternate methods for dealing with public drunkenness.**

While legislative changes do contribute to custodial remand rates, there is debate about the extent of their influence. Hence it is also important that efforts are directed to other initiatives which (i) divert Indigenous offenders from further involvement in the criminal justice system, (ii) provide assistance so offenders can avoid the accumulation of a bail history, be adequately accommodated, and successfully complete bail conditions, and (iii) improve the quality of legal representation offered to Indigenous offenders to decrease the likelihood that they will be remanded in custody.

## 6.6 Diversion

While diversion programs typically focus on addressing an offender's criminogenic needs (e.g., providing treatment for substance abuse problems or mental illnesses) rather than supporting an offender on bail, the availability of appropriate diversion programs will influence custodial remand rates. Diversionary programs provide an option to custodial remand for police and judicial officers. Our consultations with key stakeholders emphasised the importance of providing diversionary options to decrease the likelihood of custodial remand.

In contrast to previous Australian research (Polk et al. 2003) which found that Indigenous people were less likely to be diverted, in the current study, Indigenous people were more likely to be diverted than their non-Indigenous counterparts during both police and court processing. Some diversionary actions were being initiated by police officers. Both male and female Indigenous arrestees were more likely to be recorded as receiving diversion or alcohol diversion than non-Indigenous males and females. For example, 9.5 % of Indigenous males and 10.5% of Indigenous females were receiving alcohol diversion compared with only 0.3% of non-Indigenous males and 0.2% non-Indigenous females. However, while police have been diverting Indigenous people, the number receiving either diversion or alcohol diversion from police has consistently decreased since 2005. So for example, in 2005 almost 18% of Indigenous males received alcohol diversion while in 2008 only approximately 2.3% were involved in this type of diversion. Similarly for Indigenous females, while approximately 21% received alcohol diversion in 2005, less than 2% were in 2008.

In relation to diversion<sup>22</sup> during court processing, while only a small percentage of defendants were diverted (about 1%), Indigenous males and females were again more likely to be diverted than non-Indigenous males and females. Indigenous females were the most likely group to be diverted. Rates of diversion have remained higher

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<sup>22</sup> Diversion during court processing included referral to other "therapeutic courts", QIADP, QMerit etc.

from 2006 for both Indigenous and non-Indigenous people. Also, between 2006-2009 Indigenous males were consistently more likely to be diverted to the Murri Court than Indigenous females, although it is important to note that fewer than 2% of Indigenous males and females were being diverted to the Murri Court. Therefore most Aboriginal and Torres Strait Islanders were still being processed through the mainstream court system.

Thus, although few offenders were likely to be diverted at the police custody and court appearance stages, Indigenous males and females were consistently more likely to be diverted than non-Indigenous males and females. Importantly, Indigenous offenders were more likely to be diverted by police than during court processing. However the trend in diversion was different for police and court processing. While the number of people being diverted from police custody had consistently declined since 2005, in contrast, court diversion had consistently been greater than in 2006. This difference may in part be explained by the operation of diversionary programs which could only be accessed through court processing from 2006 (e.g., QIADP).

Importantly, our consultations revealed that diversionary options were important in bail decision-making. Many interviewees mentioned the need for alcohol treatment as they maintained that alcohol abuse was the underlying cause of much of the offending by Indigenous people. Not surprisingly, many interviewees commented favourably on the QIADP program specifically, and emphasised the importance of extending the availability of the program to other locations across the state while also increasing the number of placements available in the existing program sites.

However our analyses of the court data actually suggested that diversion both increased the risk of, and the length of time defendants remained in remand. This was contrary to both previous research and the view of our interviewees who maintained that the availability of diversion options increased the likelihood that bail would be granted. We were advised by one interviewee that at times, defendants were remanded in custody while their suitability for program attendance was assessed. Also other interviewees raised concerns that defendants were being breached for failing to attend programs and hence vulnerable to re-entering custody. Possibly these factors may explain the relationship between diversion and the increased likelihood of remand observed in our analyses of the administrative data. Certainly it is important to monitor the relationship between diversion and custodial remand, but given the views of our interviewees and previous research finding important benefits in diversion, the weight of evidence would suggest there are benefits in increasing access to diversion.

Obviously efforts were being made to divert Indigenous offenders during both police and court processing. According to our interviewees, it was not only important that diversionary programs were available, but that key stakeholders including police, judicial officers and legal representatives were made aware of existing options when making decisions about bail. To avoid the further risk of custodial remand, interviewees stressed that failure to attend, or complete, diversionary options should not be interpreted as a breach of bail conditions.

**Recommendation 6**

**That the Queensland Government increase the availability of diversionary options during both police and court processing.<sup>23</sup>**

**Recommendation 7**

**That the Queensland Government facilitate the wider dissemination of information about diversion programs among key stakeholders in the criminal justice system.**

Interviewees also raised concerns about the eligibility criteria for some current diversionary programs which at times disadvantaged Indigenous offenders, or excluded many offenders most in need of the type of assistance offered by the program. For example, we were advised that many offenders involved in alcohol-fuelled domestic violence incidents were excluded from QIADP. It was the view of several interviewees that these were precisely the type of offenders who could most benefit from QIADP. Consideration could be given to deciding entry into diversionary programs on a case by case basis to avoid excluding offenders who would be particularly likely to benefit from the program.

**Recommendation 8**

**That the Queensland Government monitor the eligibility criteria of diversionary programs to ensure that Indigenous offenders most in need of treatment are not being systematically excluded from participation.**

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<sup>23</sup>The Queensland Police Service have recently announced the state-wide roll out of public nuisance ticketing which offers police an alternate option to enforce public order offences in an attempt to divert people from the criminal justice system.

## **6.7 Accumulation of bail history**

Similar to earlier research, our analyses revealed that both Indigenous males and females were more likely than non-Indigenous offenders to have accumulated a poor bail history which then increased the likelihood they would be remanded in custody. Both Indigenous males and females were more likely to have prior failures to appear and bail violation offences. According to many of our interviewees Indigenous offenders most often failed to appear in court and violated bail conditions because of lifestyle factors, cultural obligations, alcohol misuse and abuse, the cost, and lack of transport, or a failure to understand their legal obligations.

Therefore, initiatives which helped to decrease the accumulation of a poor bail history would increase the likelihood that Indigenous offenders would receive bail instead of being remanded in custody. Our interviewees suggested that apart from the legislative changes discussed earlier in this chapter, such initiatives could include:

- Providing assistance for the defendant to appear in court (e.g., have a particular worker to support court attendance, transport assistance, and the use of video links for court hearings)
- Not counting failure to complete programs as a violation of bail conditions
- Ensuring offenders understand their obligations to comply with any bail conditions (e.g., reporting to police), and to appear in court at a specified time and date.

### **Recommendation 9**

**That the Queensland Government consider increasing the practical assistance offered to Indigenous defendants to attend court and ensure they understand their obligations to comply with bail conditions and appear at court.**

## **6.8 Identifying accommodation options and provision of accommodation services**

Police or judicial officers were often unwilling to bail an offender who does not have appropriate accommodation. We were advised that currently some offenders were denied bail because of a lack of appropriate accommodation. To enhance the likelihood of bail, some of our interviewees suggested having a specific officer whose duties included assessing local accommodation options including both family, and local accommodation service placements. The officer would then be responsible for providing the information to the court to facilitate bail decision-making. This type of initiative would be

particularly important in remote or regional areas where accommodation options are often limited and there is more reliance on family placement.

In larger population areas when family placements were not possible, it would be important to have local accommodation services available and willing to accommodate offenders. Several interviewees advised that some offenders had “played up” in local services and were now banned from all available accommodation in their locality. Therefore, ideally it would be beneficial to have some accommodation services which were able to deal with “difficult” offenders.

**Recommendation 10**

**That the Queensland Government consider having a specific worker whose duties include the identification of local accommodation options which are provided to the court.**

**Recommendation 11**

**That the Queensland Government consider increasing the availability of accommodation services tailored to the needs of offenders, where these services are cost effective.**

## **6.9 Provision of bail programs**

Access to bail programs which specifically provide services, intervention, and support to assist an offender to successfully complete their bail period will provide police and judicial officers with a viable alternative to custodial remand. Our interviewees agreed that there was a need for more bail programs to support offenders, and that meeting these needs was especially challenging in many remote and regional areas.

A number of features were identified to enhance bail program effectiveness. Effective bail programs are (i) holistic in nature, (ii) based on a broad needs assessment for the offender, (iii) include meaningful involvement of the offender’s family and community, (iv) emphasise Indigenous culture, (v) provide assistance in locating appropriate accommodation and information on, and support towards meeting bail conditions, and, (vi) provide links to appropriate intervention services. Importantly, service provision needs to be co-ordinated across agencies. We were advised that many bail programs currently available to Indigenous offenders operate through the Murri Court though most represent trial programs, or local initiatives. They are not part of the formal Murri Court program model. It is important to note that currently fewer than 1% of Indigenous defendants are diverted to the Murri Court. Consequently few Indigenous defendants

are receiving access to these programs. As our costing analysis demonstrated, programs or initiatives which cost less than approximately \$1,700 for each incoming Indigenous offender are likely to be cost effective for the Queensland Government.

**Recommendation 12**

**That the Queensland Government increase the availability of bail programs to assist offenders to obtain bail, comply with bail conditions and attend court.**

**Recommendation 13**

**That the Queensland Government engage with the Magistrates' Court to consider mechanisms to increase referrals to the Murri Court.**

In addition to formalised bail programs currently operating through the Brisbane Murri Court, in some areas of the state there are informal processes operating, where local efforts support the defendant on bail or increase the likelihood that Indigenous defendants will receive bail by locating appropriate accommodation. For example, some Community Justice Groups operate bail type programs, or link defendants into needed services through their local Murri Court. In other locations a case management approach has been adopted by Magistrates who work in conjunction with local criminal justice agencies to set up procedures and processes for maximising the likelihood that Indigenous defendants will receive, and comply with, bail conditions. While some of these Magistrates have tried to formalise these practices in their locations, in other places initiatives appear to be dependant on the individuals providing these programs. Unfortunately, this reliance on specific individuals means these programs are vulnerable to cessation if the person resigns from their position.

It is important that effective practices are recognised and formalised. Formalised practices and procedures will solidify good work within positions and locations, rather than relying on the qualities of the individual currently holding that position. Improving staff retention with better remuneration and benefits may also assist to keep effective workers in positions, and particularly in regional, rural and remote locations where it is often difficult to recruit and retain staff.

Successful local initiatives also can serve as a model for service provision in other areas of the state. There is an opportunity to take effective local programs and extend these types of initiatives into other areas of need, modifying programs as necessary to meet local conditions. Importantly, programs need to be evaluated to establish

their effectiveness before initiatives are extended to other areas of the state.

**Recommendation 14**

**That the Queensland Government identify successful local initiatives assisting Aboriginal and Torres Strait Islander offenders to attend court and comply with bail to investigate the possibility of their implementation in other locations.**

**Recommendation 15**

**That the Queensland Government facilitate the formalisation of effective local initiatives to enhance the likelihood that such efforts can be maintained over the long term.**

**Recommendation 16**

**That the Queensland Government investigate providing funding to Community Justice Groups to operate bail programs in their locality, and particularly in areas with limited service provision such as remote and rural areas and smaller regional towns.<sup>24</sup>**

Another related concern expressed by several of our interviewees focused on the amount of work done by many members of the Indigenous community, most often on a voluntary basis, or with little financial recompense. Some were concerned about the consequences of this community goodwill “drying up” and worried about the excessive workload often placed on few individuals in some Indigenous communities. They maintained it was important for the Queensland Government to recognise the work of members of the Indigenous community and to provide assistance to decrease the burden on individual members of the community, and particularly in relation to work with the Murri Court. However, our interviewees differed in their views about whether community members should be adequately paid for their service to the Murri Court, though several suggested that government staff could serve in the Murri Court on occasions to provide relief for community Elders.

## **6.10 Access to adequate legal representation**

The quality of the defendant’s legal representation is an important factor influencing bail decision-making. Defendants with competent legal representation are more likely to receive bail in appropriate

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<sup>24</sup>We acknowledge that this proposal would need to be considered locally on a case by case basis as Community Justice Groups operate differently in various locations.

circumstances, or to serve shorter periods in custodial remand. During our consultations several interviewees raised concerns about the access to, and adequacy of, some of the legal representation provided to Indigenous people, and particularly for those living in rural and remote communities or in the Torres Strait where geographical isolation makes service provision challenging. In relation to the adequacy of legal representation, several interviewees commented on specific skills deficits in some legal practitioners. At other times, interviewees mentioned the financial incentives for private solicitors to prolong cases, rather than expediting a matter through court which is particularly problematic if the defendant is remanded in custody during this time.

In Queensland, Aboriginal and Torres Strait Islander defendants have access to legal services through either the Aboriginal and Torres Strait Islander Legal Services or Legal Aid Queensland. While funding for the Aboriginal and Torres Strait Islander Legal Services is a Commonwealth responsibility, Legal Aid Queensland receives substantial funding from the Queensland Government. A government stakeholder advised that Legal Aid Queensland handle cases for Aboriginal and Torres Strait Islander defendants if they meet the general means and merits criteria for legal aid. Legal Aid Queensland also fund counsel and higher court costs for Aboriginal and Torres Strait Islander Legal Service matters. While the Queensland Government is unable to review services provided under Commonwealth funding arrangements, it could review those services it funds and hence may be able to influence the legal representation for some Indigenous defendants.

**Recommendation 17**

**That the Queensland Government consider undertaking a financial review of the funding of the legal services to Aboriginal and Torres Strait Islander defendants through Legal Aid Queensland to increase the likelihood that Indigenous Queenslanders are provided with competent legal representation.**

**Recommendation 18**

**That the Queensland Government consider identifying possible alternate methods of service provision (e.g., video links) to improve Aboriginal and Torres Strait Islander defendants' access to their legal representatives.**

**Recommendation 19**

**That the Queensland Government support independent legal professional bodies in the development and implementation of**

## **protocols and training to improve the professional services provided to Aboriginal and Torres Strait Islanders.**

While increased diversion, more accommodation services and bail programs, and improved legal representation would all decrease the likelihood of custodial remand, the speed of a defendant's processing through the criminal justice system also influences the length of custodial remand.

### **6.11 Court delays**

Many interviewees agreed that delays in court processing contributed to custodial remand rates by affecting the length of time a defendant remained in custody. These delays were particularly important in remote or rural areas which are serviced by a circuit court where it is challenging to provide timely access to justice for offenders. However, some interviewees suggested several methods to expedite the court's resolution of matters. First, the court could set up processes and procedures with staff from relevant agencies to ensure their attendance at court to provide relevant information about the defendant, their family, and available accommodation and program options. This would avoid unnecessary adjournments to seek out the required information. Second, it would be efficient to further extend the use of video links in remote and rural areas to hear matters. Third, the court could adopt a therapeutic jurisprudence approach which would link the defendant with necessary services.<sup>25</sup>

Lastly, any initiatives to improve the likelihood that Indigenous offenders will be offered bail must also include ongoing monitoring of the bail and custodial remand experiences of Indigenous offenders. The RCIADIC (1991) has previously noted, and made specific recommendations regarding the importance of collecting data on, and monitoring the bail experiences of Indigenous offenders. Note that the Commission also stated that this data should be publicly available.

### **6.12 Utilising criminal justice data**

The Queensland Police Service, Department of Justice and Attorney-General and Queensland Corrective Services keep extensive data on criminal justice clients, but its use in guiding policy and service

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<sup>25</sup> We have included discussion of court delays in our final chapter as they are an important influence on remand rates. However as the Queensland government is currently considering suggested reforms in response to the *Review of the civil and criminal justice system in Queensland (2008)* we have not made specific recommendations for dealing with court delays.

delivery is currently being under-utilised. As detailed in Appendices A and B we faced particular challenges when using the current administrative databases of the Queensland Police Service and the Department of Justice and Attorney-General to investigate the bail and custodial remand experiences of Indigenous Queenslanders. Furthermore, we had continual difficulties in our attempts to obtain essential data from the Department of Justice and Attorney-General. It took about eighteen months for our data request to be met, and we were only able to obtain departmental data because of the intervention of the Department of Premier and Cabinet. In contrast, we received excellent assistance from Corrective Services Queensland. They provided us with a data file which already contained most of the required variables so we did not face the same challenges in using their data as we encountered when using the data from the other criminal justice agencies.

Given the Queensland Government's ongoing efforts to decrease the over-representation of Indigenous people within the criminal justice system it is important to be able to both monitor changes in this representation and identify factors influencing bail and remand processes. Evidence can then inform effective policy development and service delivery. To maximise the utility of the criminal justice data it would be beneficial for improvements to be made to the current data collection.

Most importantly, data collection needs to be improved in relation to the identification of the individual, the provision of information regarding offences, social and economic status of the offender, and reasons for custodial remand decisions. First, in relation to the identification of individuals, it is not currently feasible to systematically identify the records of individuals both within and across each administrative database (Queensland Police Service, Department of Justice and Attorney-General and Queensland Corrective Services), and therefore infeasible to trace the progression of individual offenders from police to court processing through to incarceration in correctional institutions. Second, specifically in the Queensland Police Service custody database, it is important to include information which clearly identifies the broad offence category for each offender (e.g., violent, property, etc). Currently, offences need to be inferred from hand-typed descriptions of the contact between the police and the offender. Further, given the importance of failures to appear in bail decision-making it is necessary that such offences are specifically identified in all databases. Third, there is no clear evidence illuminating bail decision-making during either police or court processing. It is important that the reasons for remand decisions are recorded. This is particularly important in relation to the police data, as understanding police decision-making is critical in identifying factors affecting trends in custodial remand. Lastly, as discussed in section 6.2, the inclusion of measures of social and economic

characteristics of arrestees and defendants will contribute to an understanding of whether Aboriginal and Torres Strait Islanders receive differential treatment in the criminal justice system, or if instead, it is the higher rates of underlying disadvantage which contributes to their higher rates of remand.

**Recommendation 20**

**That the Queensland Government improve data collection processes to provide a unique identifier for each individual that is consistently used both within agency records and across all criminal justice (QPS, DJAG, and QCS) and Queensland Health government databases and that these databases are integrated.**

**Recommendation 21**

**That the Queensland Police Service consider including an indication of offence category for each offender in its custody database.**

**Recommendation 22**

**That the Queensland Government consider including more precise information on failures to appear in all criminal justice databases.<sup>26</sup>**

**Recommendation 23**

**That the Queensland Government explore ways to include measures of social and economic status (e.g., employment status) and specific reasons for custodial remand in all criminal justice databases.<sup>27</sup>**

**Recommendation 24**

**That the Queensland Government consider undertaking regular analyses of their administrative data to identify trends, regional variations and changes in bail decisions and custodial remand rates for Aboriginal and Torres Strait Islanders in Queensland.**

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<sup>26</sup> Currently, FTAs are often recorded under bail violations. It would be beneficial to have two separate categories: bail violations (excluding FTAs) and FTAs recorded in the data.

<sup>27</sup> Some of these measures are already included in the Queensland Corrective Services database. At present however, this information is not contained in the databases of the Queensland Police Service or Department of Justice and Attorney-General.

## **6.13 Conclusion**

This report included a detailed examination of the bail and remand experiences of Aboriginal and Torres Strait Islanders in Queensland. It specifically focused on the over-representation of Indigenous people in the Queensland custodial remand population and the factors that influence Aboriginal and Torres Strait Islander accused adults being refused bail, and examined ways to assist Indigenous people to comply with bail conditions. The project addressed four key objectives.

1. To identify the key decision making points as well as the factors and processes that affect the decision to bail or remand an Indigenous accused person;
2. To identify factors impacting on an Indigenous person's ability to meet bail conditions as well as best practice in bail programs;
3. To understand how government data can be used to better predict the granting of bail and compliance with bail conditions for Indigenous persons; and,
4. To cost program options aimed at reducing the Indigenous over-representation in custodial remand.

The project employed an in-depth methodological approach comprising an assessment of the relevant literature, interviews with key stakeholders including representatives from Community Justice groups, Magistrates, relevant Queensland Police Officers including Police Prosecutors and Watch-house Keepers, staff from relevant legal services and government departments, and an assessment of administrative data held by the Queensland Police Service, Department of Justice and Attorney-General, and Queensland Corrective Services.

The project revealed a range of important findings about the bail and remand experiences of Aboriginal and Torres Strait Islanders in Queensland, as well as the larger systemic issues that influence the over-representation of Indigenous people in the custodial remand population. The findings illustrate various areas which could benefit from further reform and the twenty-four recommendations included above are presented to provide the Queensland Government with some practical options for implementing changes to the current system of custodial remand for Aboriginal and Torres Strait Islanders in Queensland.

## **REFERENCES**

- Aboriginal Justice Advisory Council (AJAC) (2001). *Aboriginal people and bail courts in NSW*. Sydney: Aboriginal Justice Advisory Council.
- Alcohol and other Drugs Council of Australia (ADCA). (2000). *Drug policy 2000: A new agenda for harm reduction*.  
[http://www.adca.org.au/publications/Drug%20Policy%202000/89\\_diversion.htm](http://www.adca.org.au/publications/Drug%20Policy%202000/89_diversion.htm)
- Australian Bureau of Statistics (ABS) (2006a). *Prisoners in Australia 2006*. ABS cat. no. 4517.0. Canberra: ABS.
- Australian Bureau of Statistics (ABS) (2006b). *Population characteristics, Aboriginal and Torres Strait Islander Australians*. ABS cat. no. 4713.0. Canberra: ABS.
- Australian Bureau of Statistics (ABS) (2007). *Prisoners in Australia 2007*. ABS cat. no. 4517.0. Canberra: ABS.
- Australian Bureau of Statistics (ABS) & AIHW (Australian Institute of Health and Welfare). (2008). *The health and welfare of Australia's Aboriginal and Torres Strait Islander Peoples*. cat. no. IHW 21. Canberra: AIHW.
- Australian Bureau of Statistics (ABS)(2009, p.25). *Prisoners in Australia 2009*. ABS cat. no. 4517.0. Canberra: ABS.
- AIHW (Australian Institute of Health and Welfare). (1995). *National Drug Strategy Household Survey: Urban Aboriginal and Torres Strait Islander Peoples Supplement*. Canberra: AIHW.
- AIHW (Australian Institute of Health and Welfare). (2005). *2004 National Drug Strategy Household Survey: Detailed findings*. Canberra: AIHW.
- AIHW (Australian Institute of Health and Welfare). (2007). *Juvenile Justice in Australia 2005-06*. Cat. no. JUV 3. Canberra: AIHW.
- Allan, A., Allan, M.A., Giles, M., & Drake, D. (2003). *The relationship between bail decision-making and legal representation within the criminal justice system*. Perth: Edith Cowan University and the Western Australian Department of Justice.

- Allen, R. (2001). Youth justice board initiatives in reducing offending. *UNAFEI Annual Report for 2000 and Resource Material Series no. 59*. Tokyo: UNAFEI.
- Baker, J. (2001). The scope for reducing Indigenous imprisonment rates. *Crime and Justice Bulletin, no. 55*. Sydney: Bureau of Crime Statistics and Research.
- Bamford, D., King, S., & Sarre, R. (1999). *Factors affecting remand in custody: A study of bail practices in Victoria, South Australia and Western Australia*. Research and public policy series, No. 23. Canberra: Australian Institute of Criminology.
- Black, D., & Reiss, A. J. (1970). Police control of juveniles. *American Sociological Review*, 35, 63-77.
- Blagg, H., Morgan, N., Cunneen, C., & Ferrante, A. (2005). *Systemic racism as a factor in the overrepresentation of Aboriginal people in the Victorian criminal justice system*. Melbourne: Equal Opportunity Commission.
- Borland, J., & Hunter, B.H. (2000). Does crime affect employment status? – the case of Indigenous Australians. *Economica*, 67 (1), 123-144.
- Carrington, P. J., & Schulenburg, J. L. (2003). *Police Discretion with Young Offenders*. Ottawa: Department of Justice Canada.
- Chen, S., Matruglio, T., Weatherburn, D., & Hua, J. (2005). The transition from juvenile to adult criminal careers. *Crime & Justice Bulletin, No. 86*. Sydney: N.S.W. Bureau of Crime Statistics and Research.
- Commonwealth of Australia. (1997). *Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Sydney: Human Rights Commission.
- Crime and Misconduct Commission. (2008). *Policing public order: A review of the public nuisance offence*. Brisbane: Crime and Misconduct Commission.
- Cunneen, C. (2001). *Conflict, politics and crime: Aboriginal communities and the police*. Sydney: Allen and Unwin.

Cunneen, C., Collings, N., & Ralph, N. (2005). *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement*. (University of Sydney 21.11.05).

Cunneen, C., & McDonald, D. (1997). *Keeping Aboriginal and Torres Strait Islander people out of custody*. Canberra: Aboriginal and Torres Strait Islander Commission.

Denning-Cotter, G. (2008). *Bail support in Australia*. Sydney: New South Wales Government.

Dodson, M. & Hunter, B.H. (2006). Crime and justice issues. In *Assessing the evidence on Indigenous socioeconomic outcomes: A focus on the 2002 NATSISS*. B.H. Hunter (Ed). Research Monograph No. 26. Canberra: Centre for Aboriginal Economic Policy Research, The Australian National University E press.

D'Souza, R.M., Butler, T., & Petrovsky, N. (2005). Assessment of cardiovascular disease risk factors and diabetes mellitus in Australian prisoners: Is the prisoner population unhealthier than the rest of the Australian population? *Australian and New Zealand Journal of Public Health*, 29 (4), 318-323.

Elite, D. (2005). The influence of mandatory arrest policies, police organisation characteristics, and situational variables on the probability of arrest in domestic violence cases. *Crime and Delinquency*, 51 (4), 573-597.

Farrington, D. P., & Bennett, T. (1981). Police cautioning of juveniles in London. *British Journal of Criminology*, 21(2), 123-135.

Finckenauer, J. O. (1976). Some factors in police discretion and decision making. *Journal of Criminal Justice*, 4, 29-46.

Finn, M. A., & Stalans, L. J. (2002). Police handling of the mentally ill in domestic violence situations. *Criminal Justice and Behavior*, 29(2), 278-307.

Fitzgerald, J. (2000). Increases in the NSW remand population. *Crime and Justice Statistics*. Sydney: N.S.W. Bureau of Crime Statistics and Research.

Fitzgerald, J. & Weatherburn, D. (2004). The impact of the Bail Amendment (Repeat Offenders) Act 2002. *Crime & Justice Bulletin*, No. 83. Sydney: N.S.W. Bureau of Crime Statistics and Research.

Frieberg, A. & Ross, C. (1999). *Sentencing reform and penal change*. Sydney: Federation Press.

Gray, D., Morfitt, B., Williams, S., Ryan, K., & Coyne, L. (1996). *Drug use and related issues among young Aboriginal people in Albany Perth*. National Centre for Research into the Prevention of Drug Abuse & Albany Aboriginal Corporation.  
<http://www.ndri.curtin.edu.au/pdfs/publications/T59.pdf>

Harding, R., Broadhurst, R., Ferrante, A., & Loh, N. (1995). *Aboriginal contact with the criminal justice system and the impact of the recommendations of the Royal Commission into Aboriginal Deaths in Custody*. Sydney: Federation Press.

HM Inspectorate of Prisons. (2000). *Unjust deserts: a thematic review by HM Chief Inspector of Prisons of the treatment and conditions for unsentenced prisoners in England and Wales*. United Kingdom: Her Majesty's Inspectorate of Prisons for England and Wales.

Hunter, B.H. (2001). *Factors underlying Indigenous arrest rates*. Sydney: N.S.W. Bureau of Crime Statistics and Research.

Hunter, B.H., & Borland, J. (1999). The effect of the high rate of Indigenous arrest on employment prospects. *Crime and Justice Bulletin*, no. 45. Sydney: N.S.W. Bureau of Crime Statistics and Research.

Jochelson, R. (1997). Aborigines and public order legislation in New South Wales. *Crime and Justice Bulletin*, no, 34. Sydney: N.S.W. Bureau of Crime Statistics and Research.

Joudo, J. (2008). *Responding to substance abuse and offending in Indigenous communities: Review of diversion programs*. Research and public policy series, No. 88. Canberra: Australian Institute of Criminology.

King, S., Bamford, D., & Sarre, R. (2005). *Factors that influence remand in custody. Final Report*. Canberra: Criminology Research Council.

Law Reform Commission of Western Australia. (2005). *Aboriginal customary laws. Discussion paper*. Perth: Law Reform Commission of Western Australia.

Little, S. (2007). *Police cautioning in Queensland*. Griffith University: Unpublished document.

Lynch, M., Buckman, J., & Krenske, L. (2003). Youth justice: Criminal trajectories. *Research and Issues paper, Series no. 4*. Brisbane: Crime and Misconduct Commission.

Makkai, T., & Payne, J. (2003). *Drugs and crime: A study of incarcerated male offenders*. Research and public policy series, No. 52. Canberra: Australian Institute of Criminology.

Mastrofski, S., Snipes, J., & Parks, C. (2000) The helping hand of the law: Police control of citizens on request. *Criminology*, 38 (2), 307-342.

Mastrofski, S., Worden, R. E., & Snipes, J. B. (1995) Law Enforcement in a Time of Community Policing. *Criminology*, 33, 539–563.

Mayhew, P., (April, 2003). Counting the costs of crime in Australia. *Trends and Issues in Crime and Criminal Justice*. no. 247. Canberra: AIC.

Mazerolle, P., & Sanderson, J. (2008). *Understanding remand in the juvenile justice system in Queensland*. Brisbane: Queensland Government (Department of Communities).

McCarthy, B. R. (1987). Preventive detention and pre-trial custody in the juvenile court. *Journal of Criminal Justice*, 15, 185-200.

Moynihan, M. (2008). *Review of the civil and criminal justice system in Queensland*. Brisbane: Queensland Government.

Novak, K. J., (2005) Disentangling the influence of suspects' demeanor and mental disorder on arrest. *Policing: An International Journal of Police Strategies & Management*, 28 (3), 493-512.

Piliavin, I., & Briar, S. (1964). Police encounters with juveniles. *The American Journal of Sociology*, 70 (2), 206-214.

Polk, K., Alder, C., Muller, D., & Rechtman, K. (2003). *Early Intervention: Diversion and Youth Conferencing - A national profile and review of current approaches to diverting juveniles from the criminal justice system*. Canberra: Australian Government Attorney-General's Department.

- Putt, J., Payne, J., & Milner, L. (2005). Indigenous male offending and substance abuse. *Trends and Issues in Crime and Criminal Justice Policy*. no. 293. Canberra: Australian Institute of Criminology.
- Queensland Corrective Services (2005). *Annual Report: 2004-05*. Brisbane: Queensland Government.
- Queensland Corrective Services (2006). *Annual Report: 2005-06*. Brisbane: Queensland Government.
- Queensland Corrective Services (2007). *Annual Report: 2006-07*. Brisbane: Queensland Government.
- Queensland Corrective Services (2008). *Annual Report: 2007-08*. Brisbane: Queensland Government.
- Queensland Government. (2001). *Aboriginal and Torres Strait Islander justice agreement*. Brisbane: Queensland Government.
- Queensland Government. (2005). *Partnerships Queensland: Future directions framework for Aboriginal and Torres Strait Islander Policy in Queensland 2005-10*. Brisbane: Queensland Government.
- Royal Commission into Aboriginal Deaths in Custody (RCIADIC). (1991). *National report: Overview and recommendations*. Canberra: Australian Government Publishing Service.
- Sarre, R., King, S., and Bamford, D. (May, 2006). Remand in custody: Critical factors and key issues. *Trends and Issues in Crime and Criminal Justice*. no. 310. Canberra: AIC.
- Sarre, R., King, S., and Bamford, D. (1999) Factors affecting remand in custody in three Australian jurisdictions. *Paper presented at the 3rd National Outlook Symposium on Crime in Australia, Mapping the boundaries of Australia's Criminal Justice System convened by the Australian Institute of Criminology and held in Canberra, 22-23 March 1999*.
- Schwartz, M. (2005). The NSW Bail Act and Aboriginal defendants. *Indigenous Law Bulletin*, 14 (6), 18-24.
- Smith, D. A., Visher, C. A., & Davidson, L. A. (1984). Equity and discretionary justice: The influence of race on police arrest decisions. *Journal of Criminal Law and Criminology*, 75 (1), 234-249.

- Snowball, L., & Weatherburn, D. (2006). Indigenous imprisonment: The role of offender characteristics. *Crime and Justice Bulletin*, no. 99. Sydney: Bureau of Crime Statistics and Research.
- Success Works. (February, 2010). Queensland Indigenous Alcohol Diversion Program: Final summative evaluation report. Brisbane: Queensland Government (Department of Justice and Attorney-General).
- Taylor, N., & Bareja, M. (2005). *2002 National Police Custody Survey*. Technical and Background paper no. 13. Canberra: AIC.
- Terril, W., & Paoline, E. A., (2007) Nonarrest decision making in police-citizen encounters. *Police Quarterly*, 10 (3), 308-331.
- Tresidder, J., & Putt, J. (2005). *Review of data on juvenile remandees in Tasmania*. Canberra: Australian Institute of Criminology.
- Victorian Law Reform Commission. (2007). *Review of the Bail Act: Final report*. Melbourne: Victorian Law Reform Commission.
- Weatherburn, D., Fitzgerald, J., & Hua, J. (2003). Reducing Aboriginal over-representation in prison. *Australian Journal of Public Administration*, 62 (3), 65-73.
- Weatherburn, D., Snowball, L., & Hunter, B. (2006). The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey. *Crime and Justice Bulletin*, no. 104. Sydney: Bureau of Crime Statistics and Research.
- Wortley, R. K. (2003). Measuring police attitudes towards discretion. *Criminal Justice and Behavior*, 30 (5), 538-558.

## **APPENDIX A QUEENSLAND POLICE SERVICE CUSTODY DATA**

This appendix provides additional details on the data and methodology used in chapter 3. There are four sections within this appendix:

- Further description of the custody data
- Decisions regarding the data
- Challenges presented by the data
- Recommendations for future versions of the Queensland Police Service custody database

### **A.1 Further description of the custody data**

When a person has significant contact with police, these contacts or movements are recorded in the custody database. Examples of these contacts would include being stopped on the street, arrested, and transported from the street to the watchhouse, or between the watchhouse and a correctional facility, or correctional facility to the courts. The data, as supplied, contained at least one, and typically three to five rows of information. Some information, such as the person's name, date of birth, and initial point of contact with the police was contained on each line of data. Other items, such as each "action" performed (e.g., arresting, searching, transporting) differed across each line of data. Up to four "action codes" were contained on each row of data.

Chapter 3's analyses incorporate data from the years 1993 to 2008, which reflects all of the data years provided: earlier years were not provided, due to the format of the custody records being too dissimilar to the post-1993 data. Only the years 1999 through 2008 were directly examined, due to additional differences between data up to, and beyond, 1998. However, data from the years 1993 to 1998 provided information on the offending histories. Data was only available up to 5 Oct. 2008: after this point, custody records were recorded in QPRIME Phase 2.2, which was not available for data extraction at the time that this research was initiated.

### **A.2 Decisions regarding the data**

This section describes the decisions regarding which lines of data were included or excluded from the analyses; and additional information beyond that contained in chapter 3, regarding the construction of various measures.

### **The analysis sub-sample**

The analyses for chapter 3 did not include all of the data from the custody database. Instead, we analysed a subset of the custody data. The criteria for inclusion in the analyses included:

- Only arrestees were included in the analyses. This was defined by the existence of the “Arrested” (“AR”) action code within the custody episode.
- People transferred in from correctional centres for court hearings were excluded, as were contacts that were non-criminal in nature (e.g., “community assists”, providing fingerprints for passports or blue card background checks, providing a statement as a witness).
- Only data from 1999 through 2008 were included; however, transactions from earlier years (i.e., back to 1993) were incorporated as sources of offending history.
- As the focus of this study is on adult remand, arrest episodes for persons under the age of seventeen were excluded.
- Arrestees whose age at the time of the custody episode exceeded 96 years were excluded.
- Arrestees who were extradited into, or out of Queensland were excluded as being atypical for the length of time held due to delays in arranging transport.
- Arrest episodes involving immigration offences (e.g., overstaying a tourist visa) were excluded as being atypical for the length of time held.
- Only custody episodes with valid durations were retained. (Lengths of custody were calculated as the number of days between the first Action Code and final Action Code entries). Custody episodes with negative numbers of days (i.e., the first “action” entry occurred *after* the final action entry) were excluded, as were episodes where the arrestee was calculated to have been in QPS custody for greater than 30 days.<sup>28</sup>
- Custody episodes with at least one line of corrupted data (i.e., the content of one or more fields was displaced into another field) were excluded. We examined the rate of data errors among Indigenous and non-Indigenous arrests, and they were not systematically related to Indigenous status. Therefore, excluding cases with data errors is unlikely to have impacted on the nature of the chapter’s findings regarding Indigenous and

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<sup>28</sup> The 30 day custody duration was chosen to account for implausibly excessive date ranges. For example some custody episodes were calculated to have lasted 10,000-40,000 days (27 to 110 years), which are clearly data input errors. Approximately 95% of custody episodes fell within 30 days; excluding these extreme outliers provides improved data validity.

- non-Indigenous patterns of remand, or the rates of characteristics associated with remand.
- Custody episodes where there was more than one day between entries were excluded as implausible and thus indicative of errors in the date entries.<sup>29</sup> Again, these data errors are not systematically related to Indigenous status, and therefore should not impact on the Indigenous and non-Indigenous patterns of remand in this chapter's analyses.

### ***Additional clarifications on the derivation of measures***

This section contains explanations of the construction of various measures used in chapter 3, as well as elaborations of the explanations that were already provided.

#### **Two measures of offending history**

We used two measures of offending history: the past number of “real” offences as described in the Reason field; and the past number of arrests (as indicated by the Action codes).<sup>30</sup> Although there was a sizeable overlap between these two measures, they were not synonymous. As indicated in Table A.1, most (about 81%) of the custody episodes are in agreement across the two measures. Custody episodes involving those with prior *arrests* also have a valid *offence* listed in earlier “Reason” fields (59%); or episodes where it is their first arrest, and their first “real” offence (22%). In addition, 19% of the custody episodes reflect a first arrest for the person, even though we did not code the text in the Reason field as a “real” offence.<sup>31</sup>

***Table A.1 Comparison between Two Measures of Offending History: First Offence versus First Arrest, N = 489,175 (QPS Custody Data, 1999-2008).***

		First Arrest	
		No	Yes
First Offence	No	58.84%	18.80%
	Yes	0.22%	22.13%

<sup>29</sup> The Queensland Police Service contact for data questions concurred that it was unlikely to have *no* Actions occur for that length of time.

<sup>30</sup> Note the analysis sample only includes people whose current custody episode includes an “Arrest” among the action codes.

<sup>31</sup> Note that the listed reason for the initial contact with the police may not have been the reason for the arrest. For example, some Reason fields simply said “search warrant” or “traffic stop” and some proportion of these may have resulted in arrests.

### **Failures to appear**

An arrestee was deemed to have had a Failure to Appear (FTA) or bail violation in the past if his or her name and date of birth occurred in the data for an earlier arrest, and the Reason field included a mention of failing to appear, “FTA”, or “F.T.A.”, as well as other phrases related to FTAs and bail violations such as “breach of bail”, “Bail Act”, “Bench Warrant”, “First Instance Warrant”, “MESNE Warrant”.<sup>32</sup> Although we recognise that not all bail violations involve an FTA, the difficulty in distinguishing FTAs from other bail violations in the data led us to combine these into one measure.

### **Defining the offence types**

Offences were derived by searching for words and phrases within the “reason for initial police contact” field. Because of this, the offence included in the analysis technically reflects the initial reason for police contact, rather than the charged offence. Thus, the Reason field might specify drink driving – but the reason for being held might relate to an outstanding warrant. Similarly, the Reason field might simply say “search warrant”, without specifying what was found as a result of that search (e.g., drugs? stolen goods? illegal weapons?).

The method of classifying the contents of the Reason field would also lead to an under-counting of the offending history, as the number of counts of an offence was not included. For example, an entry of “SHOPLIFT, ASSAULT, DISTURB PEACE” would show up as one count each of property, miscellaneous violent, and public nuisance – whereas the entry “3X SHOPLIFTING” would only show up as one instance, (not three) of “property offence”.

### **Creating the offending histories**

In order to maintain consistency between entries for arrestees with hyphenated given names, the second name was treated as a middle name. For example, “Billy-Bob Smith” and “Billy Bob Smith” were treated as equivalent.

Offending histories were generated by matching the arrestees’ first names and their dates of birth.<sup>33</sup> A small proportion of entries ( $n=197$ , or 0.04% of the analysis sample) were missing entries for their date of birth, or the entry contained only a year, or a month and a year. These were excluded from the “name plus birth date” matching process which generated offending history. To the extent that

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<sup>32</sup> MESNE Warrant is a “writ or proceedings in an action to summon or bring the defendant into court, or compel him to appear or put in bail, and then to hear and answer the plaintiff’s claim” (<http://www.lectlaw.com/def2/p172.htm>).

<sup>33</sup> Matching was only done using first names as surnames were not provided for privacy reasons.

Indigenous status is related to uncertainty over one's specific date of birth, Indigenous offending history would be under-estimated.

Similarly, although there is a risk of inflating offending histories due to matching on only the first name (rather than the whole name), plus the date of birth, there is some indication that there will also be under-estimations, due to otherwise valid matches failing due to data entry errors in the date of birth. For example, one person had an entry of "10 Apr 1970", and a person of the same name had an entry of "20 Apr 1970". Similarly, "05 Nov 1941" versus "06 Nov 1941".

### **Regression analyses**

Early versions of the regression analyses attempted to include measures of the police district in the final model. However, the results of these analyses were unstable, due to the large number of police districts included. Thus, no analyses of differing rates of remand across the police districts are included.

However, all regression analyses presented here compensate for unmeasured similarities within each police district. The decision to include this aspect does not alter the size of the effects, but it does provide measures of the stability of their influence (the asterisks next to the numbers) that are more valid.

### **Unit of analysis**

Finally, it bears repeating that the analyses in chapter 3 are based on arrest *episodes*, not the specific arrestee. Thus, all figures refer to each "episode" (each arrest) so that a person arrested three times in a year would be counted three times, not once.

## **A.3 Challenges presented by the data**

There were several challenges involved in analysing the custody data, beyond those typically involved in analysing administrative data (e.g., learning the organisation's terminology, abbreviations, and acronyms). Many of these challenges derived from the disjuncture between the purpose of the custody data, and the needs of this research project. The custody data was intended simply as an ongoing record of the interactions between the Queensland Police Service and the person in custody. As such, the custody data provides a log of activities, which can be queried for specific persons on an as-needed basis. However, *the custody data was never intended for large-scale analysis*. Much of the content (the reason for the initial police contact, indicators of diversion) is contained as free-text fields, rather than generated from a constrained menu or list of choices. This freedom resulted in great

difficulties in extracting information through automated techniques (i.e., filtering on specific words and phrases). The alternative – visually examining each line of data and interpreting its content – was not feasible for the 3.8 million lines of data under analysis.

### **Extracting information from the text fields**

An example of the difficulties posed by extracting information from the text fields was the generation of the offence which (presumably) caused the arrest. The Reason (“reason for initial contact”) field contained entries such as “Caused disturbance at Hungry Jacks, threw bottles at passing cars on road”. We wrote scripts which searched for key words and phrases within the Reason field, then wrote additional commands which excluded “false positives” – that is, phrases that were incorrectly assigned to the category being constructed.

Thus, when determining which arrests should be categorised as “drink driving”, we searched for words and phrases indicating “drink driving”: examples included “drink driving”, “drunk driving”, “DUI”, “D.U.I.”, “blood alcohol”, “BAC”, “B.A.C.”, and “BAS” (Breath Analysis Section). However, because the contents of the text fields are all in capital letters, searches for “BAS” turned up several false positives – necessitating the exclusion of (among others):

- ST COLUMBAS SCHOOL
- BASHING
- NOISE COMPLAINT IN RELATION TO BASS
- SEBASTIAN
- WASH BASIN
- BASE
- BASKET
- BASIC
- BASKIN ROBINS
- MONDOBASI
- OPERATION BASIL
- OBASCENE LANGUAGE
- DISTURBASNCE (sic)
- DISTURBASNMC (sic)
- OBASCENE LANGUAGE (sic)
- ATTEMPT TO LOCATE BASTABLE
- MONDOBASI HAIRDRESSERS

This process of excluding false positives was time-consuming, however, it was a necessary component of correctly identifying the current offence, as well as generating valid measures of offending history. Despite these difficulties, the research team managed to categorise the offence for 93% of the 39.8 thousand unique “Reason”

entries, which corresponds to 97% of the 2.3 million unique custody episodes in the data.

Another source of difficulty was the absence of specific fields for some characteristics and events of interest, such as, was the person held in remand? was the person arrested for a drug-related offence? did the person have mental health issues? Information on these topics were not explicitly contained in a dedicated field, but instead were entered freehand in one of several text boxes (Record, Comment, and Reason). In addition, this information often took the form of organisational shorthand and abbreviations: for example “HELD IN REMAND” or “REMANDED IN CUSTODY” might also be logged as “REM IN CUST”, “RIC”, or “R.I.C.”.

This reliance on the text fields had implications for the validity of the results gleaned from searches of the text fields. Spelling errors and idiosyncratic abbreviations would cause an under-tabulation of sought-after information.

### **Date fields**

Another source of difficulty was the lack of “verification” of dates. Dates were hand-entered, rather than system-generated, and the system did not screen these entries for plausibility. For example, it did not provide an error message if the date entered was not within a few days of the current date.

Thus, some time-date entries mistakenly contained the arrestee’s birth year as part of that day’s date, or used the birth month and day, but the current year. Although some dates were entered in a “month/day/year” format, others were entered “day/month/year”. Some entries used two-digit years, whereas others used four digits. Similarly, there were inconsistencies in how the time of day was entered. For example, 8:15pm was sometimes entered as “2015”, sometimes as “815”; and 8:15am was sometimes “815”, and other times “0815”.

In addition, some date entries were clearly data entry errors. For example, an arrest was entered as occurring a decade before the person’s arrival at the watchhouse.

These errors and idiosyncrasies are easily interpreted within the context of the other date entries when one is visually examining individual records. However, these errors cause difficulties during large-scale, automated examinations of date entries. For example, in chapter 3’s analyses, the length of custody was calculated by subtracting the date of the final Action code from the first Action code. This resulted in many impossible and implausible values, including negative time spans and lengths of police custody of several years.

(The largest calculated span of custody was 328,718 days, which is 901 years.) As noted in chapter 3, all lengths of custody greater than thirty days were discarded.

### **Variations in data structure across years**

Another difficulty in the analysis was that the structure of the data varied across the years. The field names, the types of information available in the data, and the storage format of their content, changed over time. Broadly speaking, there appeared to be three “eras”, before 1998, 1998-2003, and 2004-2008. Certain fields would exist for one of these periods, but not before or after. Additional fields were also added in 2007. The need to make the contents consistent across all the years of data, prior to merging into a unified data file, was a further impediment to progress.

### **Lack of unique identifiers for individuals; creating offending history**

There were also no unique identifiers for individuals within the data. Thus, there was no straightforward way to link an individual’s current arrests with his or her previous arrests. We attempted to generate measures of offending history by matching first names and dates of birth. (Surnames were not supplied, due to privacy issues.)

Although not specifically examined, we believe that non-Anglo names were more likely to be misspelled than were Anglo names, due to their unfamiliarity to the Queensland Police Service staff. For example, “David” or “Robert” were less likely to be mis-entered, while “Thein” and “Thien” were often interchanged. Because of these mis-spellings, the offending history of non-European arrestees may be under-estimated.

### **Fundamental errors in the data**

Finally, 0.2% of the custody episodes in each year of data contained an error in which the contents of the fields were displaced into other fields, resulting in non-valid entries. For example, the Police District field contained the entry “14/3/1998”. In addition, approximately 2.5% of the custody episodes contained gaps between “actions” greater than one day, which was deemed implausible.<sup>34</sup> As noted below, custody episodes with this form of data errors were excluded from the analyses. However, we maintain that these errors were not systematically related to Indigenous status, and thus should not have any impact on Indigenous and non-Indigenous rates of remand.

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<sup>34</sup> The Queensland Police Service contact for data questions concurred that it was unlikely to have *no Actions occur for that length of time*.

## **A.4 Recommendations for future versions of the Queensland Police Service custody data**

This section elaborates upon the recommendations reported in Chapter 6. These recommendations are based on our experience with the QPS custody data. Although the QPS custody data has been supplanted by the QPRIME system, the content of these recommendations are still valid. If the QPRIME system does not already conform to the below standards, we recommend that they be implemented in subsequent upgrades of the QPRIME system.

1. The data should contain a clear, definitive measure of whether an arrestee was denied bail. One solution would be to add a field representing “Denied police bail: Yes/No”.
2. The data should include fields indicating the presence or absence of community ties - specifically, employment (consistent/episodic/unemployed) and family responsibilities (yes/no). Weak community ties are strong predictors of being held in remand, and the underlying cause of the higher average risks of remand for Indigenous males cannot be determined without measures of community ties.
3. Add a “reason for remand” field in the database. Ideally, this field should allow the option to select multiple characteristics, rather than a dropdown menu which allows the user to “choose only one”. This might take the form of a set of tickboxes corresponding to typical reasons for the denial of bail, such as the severity of the current offence, concerns over the danger to the community, concerns over the danger to the arrestee, and concerns over the arrestee’s ability to adhere to bail conditions.
4. Add a drop-down menu that describes the general offence category for the current custody episode. This would likely consist of approximately ten broad types, such as “violent”, “property”, “drug”, “public order”, and “non-offence” (such as witness statements and community assists).
5. When names and dates of birth are entered, have the system suggest matching past individuals with matching or similar names and dates of birth. When selected, assign the same unique identifier to the new entry. When aliases are discovered, allow the cross-linking of those entries to the same unique identifier. Also allow higher-level users to correct mistaken cross-linkages.

6. To facilitate the systematic monitoring of individuals' experiences through the criminal justice system, generate a unique "system" identifier which links individuals across the three data systems: QPS, DJAG, and QCS. Regularly upload a repository of names, dates of birth, sex, and Indigenous status from QPS, DJAG, and QCS databases, to a central "lookup" database.
7. We acknowledge that Actions will be legitimately entered into the system after they are performed, and as such, automatically-generated time-date values produced by the system clock may not be appropriate. However, time-date entries of greater validity would be produced by automatically populating the time-date field, then allowing the user to edit the entry to reflect the actual time of occurrence (e.g., five minutes ago). In addition, the system needs to automatically verify date entries as being "out of range" (e.g. outside of 24 hours from the current date), and in a uniform format (e.g. "14:25" or "2:25pm"). Free-text fields for time-date values are discouraged.
8. Given names and surnames should be entered and stored as separate fields. Unified "name" fields run the risk of inconsistent formats within the field ("First name, Last name"; "Last name, First name"; and "Last name First name" without a separating comma).

## **APPENDIX B DJAG ANALYSIS – QWIC DATA**

This appendix provides additional details on the data and methodology used in chapter 4. There are four sections in this appendix:

- Further description of the QWIC data
- Decisions regarding the data
- Challenges presented by the data
- Recommendations for future versions of the QWIC database

### **B.1 Further description of the QWIC data**

Chapter 4 used a data extract of the Queensland Wide Interlinked Courts system (QWIC). This database is the administrative database for DJAG, and includes information on all Magistrates' Courts and some District and Supreme Courts for Queensland. The data contained case file information available from 2004-2009. This time period was selected due to changes in the data structure prior to 2004.

Court cases contained one or more lines of data, and were linked by Case File ID values which contained the level of the court (Magistrates', District, or Supreme), the ID number itself, and the year the case was initiated. Cases often contained several charges, which were identified by the Charge ID. Defendants were identified by their Participant ID. Cases from the Magistrates' Court only contained one defendant, while cases from the higher courts sometimes contained multiple defendants. Thus, prior to analysis these several lines of data per court case had to be distilled into one line of data per defendant per court case, while retaining information on the most serious charged offence.

Each line of data represented an event or occurrence for a specific charge for a specific defendant.

The initial extract contained 12,160,375 lines of data, which represented 1,229,968 defendant court cases. Of these, 1,227,831 contained valid Case ID values. Due to the initial size of the data, each year of data was supplied to us as several data files. The process of distilling it down to the one line of data per defendant's court case, then merging the files into a single unified data file was cumbersome. Examining the data and modifying its contents took several months, as each analysis or change to the data took several minutes to process.

As there were no unique identifiers in the data which identify individuals across court cases, we constructed identifiers based on the defendants' names and dates of birth. This process is described later in this appendix.

Some cases were transferred between levels of court, where they were assigned a new Case File ID. Thus, the QWIC data does not contain identifiers that link court cases across levels of court.

## B.2 Decisions regarding the data

This section describes the decisions regarding which lines of data were included or excluded from the analyses, and additional information beyond what is contained in chapter 4, regarding the construction of various measures.

### ***The analysis sub-sample***

The analyses for chapter 4 did not include all of the data available from the QWIC database. Instead, we generated a subset of the provided data. The criteria for inclusion in the analyses included:

- Court cases initiated in 2004 through 2009 were included. This corresponded to all the data provided.
- Only cases where there was a clear decision for bail, remand, or release on one's own undertaking were included.
- Cases were included if they were successfully linked to the "offending history" lookup table which we created. (This was the separate data table which intersected caseworker I.D., participant I.D., names, and dates of birth, in order to generate a unique identifier for each participant, as well as a measure of how many times each defendant had been through the court system.)
- Defendants' court cases were excluded from analysis if they had at least one line of corrupted data (i.e., the content of one or more fields was displaced into another field).

Note that the number of cases used in Chapter 4 do not adequately reflect variations in the DJAG workload, as these figures only reflect the number of court cases included in the analyses, rather than their full caseload. Cases were included only if there were clear indicators of a bail, remand, or release on one's own undertaking decision. This would exclude, among other defendants, those whose most serious offence were finalised at their first court appearance. It would also exclude those who were in court for non-criminal matters, for example, psychiatric committals. In addition, court cases containing flawed data were excluded from the analyses.

### ***Additional clarifications on the derivation of measures***

This section contains explanations of the construction of various measures used in chapter 4, as well as elaborations of the explanations that were already provided.

#### **Indigenous-gender status**

Indigenous status was derived from the Indigenous status field in the data. This field indicated whether the defendant was Indigenous or non-Indigenous. The defendant's Indigenous status for that court case was converted to a missing value if the original Indigenous status field categorised the defendant as "Refused" or "Not available", it was left blank, or it contained non-valid entries which were clearly displaced from other fields. Just over six percent (6.05%) of the final analysis sample lacked a valid measure of Indigenous status.

The gender of the defendant was derived from the original gender variable in the QWIC data. Approximately one percent (1.03%) of the cases in the final analysis sample lacked a valid measure of gender.

When these two measures were combined to form the "Indigenous-gender" categories used in the analyses, 6.97% of the analysis subsample lacked a valid value.

#### **Age of defendant**

The age of the defendant at the time of the alleged offence included a small proportion (0.54% of the final analysis sample) who were under 17 or greater than 96 years old at the time of the offence. These values were converted to missing for the age variables.

#### **Bail and remand**

Court cases were classified as involving held in remand if the contents of the Event Result field indicated that they had been refused bail, or the Order Item Type or General Order fields indicated that they had been held in remand. Defendants within their court cases were classified as released on bail or on their own undertaking if the contents of the Order Item Type or General Order fields indicated that they had been granted bail or released on their own undertaking.

The date relating to this bail or remand decision was also retained as the date of the bail/remand decision.

### **Defining charge dropped, adjudicated, and sentenced**

We classified the most serious charged offence as dropped, adjudicated, or sentenced, if the contents of the Event Result and Order Item Type fields expressly mentioned one of those occurrences (e.g., “DISMISSED”, “STRUCK OUT”, “NO EVIDENCE TO OFFER”, “FOUND GUILTY”, “SENTENCED”, “DEFAULT SENTENCE IMPOSED”), or an occurrence was referred to that only occurred at, or subsequent to that stage, (e.g., “RECOGNISANCE” for sentencing).

### **The date the charge was dropped, adjudicated, and sentenced**

Once all of the lines of data were flagged as containing a charge being dropped, adjudicated, or sentenced, the order date or event date relating to that line of data was defined as the date that the charge was dropped, adjudicated, or sentenced (whichever was appropriate). All of the charge dropped, charge adjudicated, and charge sentenced were compared, and the earliest-occurring date for each was retained as the actual date for that stage of processing.

### **Calculating the length of remand**

Once the date of the stage furthest from the initiation of the court case – the charge dropped date, adjudication date, or sentencing date – had been calculated, we defined the length of remand as the number of days between the date of the remand decision and the date the most serious charged offence was dropped. If it was not dropped, then the adjudication date was used as the end date. However, if a valid sentencing date existed, then this replaced the adjudication date.

The number of days in remand was calculated only for those defendants’ cases where they were held in remand.

This process resulted in a small proportion of out-of-range values for the number of dates. (Presumably this was the result of data entry errors.) Half a percent (0.50%) of the remand episodes yielded lengths of remand with negative numbers. Implausibly high lengths of remand also resulted, up to durations of 6,940 days (19.01 years). We thus excluded any length of remand exceeding two years (724 days): this corresponded to 0.25% (a quarter of a percent) of the remand episodes. Thus, less than one percent of the calculated values were lost due to improbable lengths of remand.

As there are no unique identifiers that link cases across court levels when they have been transferred to a higher (or lower) level of court, these court cases were treated as distinct cases. However, only 1.34% of the analysis cases were transferred up, and less than 0.01% (18 cases out of 516,235) were transferred down. Thus, any impact on the findings is likely to be small. However, it is possible that some

higher court cases were excluded from the analyses if the bail or remand decision occurred in the lower court, prior to the transfer, due to lacking a clear indicator of bail or remand.

### **Deriving the violent offence flag, drug offence flag, and seriousness scores**

DJAG's representative from the Courts Performance and Reporting Unit incorporated the 1997 Australian Standard Offence Classification (ASOC) codes and descriptions in the data sent to the researchers. We then used the ASOC classifications to identify violent offences and drug offences.

The data contained some instances where a DJAG offence code and offence title did not contain a corresponding ASOC code: 0.11% of the final analysis sample. This appeared to occur for offences charged under local (municipal and shire) statutes. In these instances, we compared the title or description of the offence with those from offences with similar or identical descriptions, and assigned them the same ASOC codes. When this occurred, we indicated this substitution via a "imputed the ASOC Offence Classification Code" variable. In instances where we were uncertain of our decision (0.01% of the analysis sample), we indicated this through an additional variable. In the regression analysis reported in chapter 4, substituting the ASOC code was related to a 35% increase in the risk of remand, independent of the other characteristics included in the analysis. However, it did not have a stable relationship with the length of remand. The additional variable which indicated uncertainty in the substitution was not related to the risk, or length of remand.

The seriousness scores were derived by importing Australian National Offence Index (NOI) scores which corresponded to the 1997 ASOC coding scheme. The NOI seriousness scores are a measure of priority, with "1" being the most serious. To aid in interpretability, we reversed the direction of this scale, resulting in larger values representing greater levels of seriousness, with "157" the most serious, and "1" the least.

Some of the offences (4.92% of the final analysis sample) lacked a seriousness score as they were not represented in the ASOC to NOI conversion table. We substituted seriousness scores by examining the seriousness scores of offences with similar descriptions. We also recorded these substitutions in a "flag" variable. In the regression analysis reported in chapter 4, substituting the NOI seriousness score was related to a 27% increase in the risk of remand, independent of the other characteristics included in the analysis, and a 10% increase in the average length of remand.

### **Creating the offending histories**

Offending histories were generated by matching the defendants' first names, last names, and their dates of birth.

A small proportion of entries were missing entries for their date of birth, or the entry contained only a year, or a month and a year. These were excluded from the "name plus birth date" matching process which generated offending history. To the extent that Indigenous status is related to uncertainty over one's specific date of birth, Indigenous offending history would be under-estimated.

This matching process allowed us to generate measures of offending history, which were crucial to the analyses. However, the process was imperfect as names and dates of birth were occasionally mis-entered into the QWIC system.

For example, we found entries for "Jones, Susan Anne" (not the actual name) entered for three different court cases. As illustrated in Table B.01, one entry had her birth date; one had a blank for the birth date; and one had the birth date, but her surname was also mistakenly entered as her middle name. (Note that in an administrative database containing over twelve million lines of data, the occasional data entry error is to be expected.)

***Table B.1 Example of Data Entry Error (QWIC Data)***

<i>Surname</i>	<i>Given names</i>	<i>Date of Birth</i>
Jones	Susan Jones	1/1/1990
Jones	Susan Anne	.
Jones	Susan Anne	1/1/1990

Thus, this person's records would not have been linked to each other for the offending history. Errors of this sort would result in a slight under-calculation of offending history, and a slight over-calculation of the number of unique individuals in the data.

### **Regression analyses**

Early versions of the regression analyses attempted to include measures of the judicial district in the final model. However, the results of these analyses were unstable, due to the large number of districts included. Thus, no analyses of differing rates of remand across the judicial districts are included.

However, all regression analyses presented here compensate for unmeasured similarities within each district. The decision to include

this aspect does not alter the size of the effects, but it does provide measures of the stability of their influence (the asterisks next to the numbers) that are more valid.

### **Unit of analysis**

Finally, it bears repeating that the analyses in chapter 4 are based on court cases, not the specific defendant. Thus, all figures refer to each “episode” (each court appearance) so that a person appearing three times in a year would be counted three times, not once.

## **B.3 Challenges presented by the data**

There were several challenges involved in analysing the QWIC data beyond those typically involved in analysing administrative data (e.g., learning the organisation’s terminology, abbreviations, and acronyms). Many of these challenges derived from the disjuncture between the purpose of the QWIC data, and the needs of this research project. The QWIC data is intended simply as an ongoing record of the administrative processes of the courts. As such, it would only record information that directly relates to case processing.

There were also no unique identifiers for individuals within the data. Thus, to determine offending history, we attempted to match individuals based on an intersection of their first name and their date of birth. This process is addressed elsewhere in this appendix.

Finally, a small percentage of the original twelve million lines of data contained an error in which the contents of the fields were displaced into other fields, resulting in non-valid entries. The prevalence of this issue ranged from 0.38% to 2.34%, depending on the year of the data.

## **B.4 Further discussion of costing analyses**

The net cost to Queensland Corrective Services for remandees, both with and without the hypothetical bail program, was based on proportions and risks derived from analyses of DJAG’s Queensland Wide Interlinked Courts system (QWIC) data (2004-2009). All values were based on the 2009 court cases, with the exception of the calculations of the average number of future court cases, which was based on defendants in 2004 court cases and tallying all cases through to the end of the available data (i.e., 2009 court cases).

Note that the unit of analysis for all of these is the defendant’s court case, not the defendant her/himself. Note too that the future remands refers to subsequent court cases, rather than instances of

remand for the current court case which are incurred by bail violations for the current court cases. Finally, as with all other analyses of the QWIC data, these figures (risks, proportions) are based on the defendants' court cases which had a clear indicator of being held in remand or released on bail or their own undertaking.

To facilitate the conceptualisation of the problem, the initial stages of the calculations were based on one hundred hypothetical defendants. To estimate the current costs to Queensland Corrective Services (see Table B2), we multiplied the proportion (based on the 2009 QWIC data) of cases held in remand. These remandees were then held for a certain average number of days, resulting in a certain (average) number of person-days for those hundred. Based on the daily cost for holding defendants in remand, this resulted in an average cost to Queensland Corrective Services for those remandees out of the original hundred. This figure was then divided by one hundred, resulting in the cost per individual defendant (per court case). As these values are an average per "incoming" defendant in 2009, the values should "scale" to whatever the actual number of defendant-cases occurred in 2009. For example, if there were 3,000 Indigenous defendant-cases, then the net cost to Queensland Corrective Services for holding those among them who were remanded would be \$7,305,090.25 (i.e.,  $3,000 \times \$2,435.03$ ) upon their subsequent court cases.

We performed a similar series of calculations when estimating the costs to Queensland Corrective Services if a bail program had been in place for 2009 (see Table B3). We took the reciprocal of the added risk of remand due to having a previous bail violation (as derived from a logistic regression, with no other variables). This provided the benefit of having *no* prior bail violations. This value then weighted the proportion of defendants who would be held in remand, which resulted in a decreased number of defendant-cases being held. The average numbers of days were assumed to be the same as in the previous calculations.

Finally, the actual and projected Queensland Corrective Services cost for the next defendant's court case, as well as Queensland Corrective Services cost for all subsequent court cases corresponding to the time span of the available data (2004-2009) were calculated. These values were reported in chapter 4, and are also reproduced here for the readers' convenience (see Table B4).

**Table B.2 Estimated costs to Queensland Corrective Services due to current Remand caseload (DJAG Queensland Wide Interlinked Courts system (QWIC) data, 2004-2009).**

	<i>Hypothetical 100 defendants</i>	<i>Proportion held in remand</i>	<i>Persons held</i>	<i>Avg. number of days held, for those held in remand</i>	<i>Number of person-days</i>	<i>Average daily cost (2008-2009) for remandees in Queensland Corrective Services (note: does not include added QPS transport costs)</i>	<i>Queensland Corrective Services cost (for original 100)</i>	<i>Average Queensland Corrective Services cost per individual defendant</i>	<i>Among those held, the average (mean) number of future trips thru courts (2004 figures; 2004-2009 court cases)</i>	<i>Avg. future costs per person (current year plus future five years)</i>
<i>Indig defendants</i>	100	25.54%	25.54	54.11	1,381.97	\$151.30	\$243,503.01	\$2,435.03	10.05	\$24,472.05
<i>Non-Indig</i>	100	11.53%	11.53	68.99	795.45	\$151.30	\$140,159.12	\$1,401.59	9.18	\$12,866.61
<i>All defendants</i>	100	14.56%	14.56	64.56	939.99	\$151.30	\$165,626.87	\$1,656.27	9.18	\$15,204.55

**Table B.3 Estimated Costs to Queensland Corrective Services due to Remand Caseload under the Proposed Program (DJAG Queensland Wide Interlinked Courts System (QWIC) Data, 2004-2009)**

	Hypothetical 100 defendants	Actual 2009 proportion held in remand	Relative risk of remand among those having **no** prior bail violations (e.g. 29% as likely to be held in remand)	Proportion held in remand if bail intervention program has perfect success rate of preventing bail violations	Number out of original 100 held in remand, assuming perfect program effectiveness in preventing bail violations	Avg. number of days held, for those held in remand	Number of person-days	Average daily cost (2008-2009) for remandees in Queensland Corrective Services (note: does not include added QPS transport costs)	Queensland Corrective Services cost (for original 100)	Average Queensland Corrective Services cost per individual defendant	Among those held, the average (mean) number of future court cases (2004 figures; 2004-2009 court cases)	Avg. future costs per person (current year plus future five years)
<i>Indig defendants</i>	100	25.54%	28.74%	7.34%	7.34	54.11	397.12	\$176.20	\$69,972.13	\$699.72	10.05	\$7,032.20
<i>Non-Indig</i>	100	11.53%	16.31%	1.88%	1.88	68.99	129.76	\$176.20	\$22,864.46	\$228.64	9.18	\$2,098.96
<i>All defendants</i>	100	14.56%	17.21%	2.51%	2.51	64.56	161.79	\$176.20	\$28,507.21	\$285.07	9.18	\$2,616.96

**Table B.4 Estimated Savings to Queensland Corrective Services due to Decreased Remand Caseload, which would Result from the Proposed Program (DJAG Queensland Wide Interlinked Courts System (QWIC) Data, 2004-2009).**

	No program	With program	Difference			
	Cost to Queensland Corrective Services for subsequent remand episode, averaged across all 2009 defendants' court cases	Future costs to Queensland Corrective Services (current year plus future five years), averaged across all 2009 defendants' court cases	Cost to Queensland Corrective Services for subsequent remand episode, averaged across all 2009 defendants' court cases	Future costs to Queensland Corrective Services (current year plus future five years), averaged across all 2009 defendants' court cases	Savings in future costs to Queensland Corrective Services (current year plus future five years), averaged across all 2009 defendants' court cases	
<i>Indigenous defendants</i>	\$2,435.03	\$24,472.05	\$699.72	\$7,032.20	\$1,735.31	\$17,439.85
<i>Non- Indigenous defendants</i>	\$1,401.59	\$12,866.61	\$228.64	\$2,098.96	\$1,172.95	\$10,767.65
<i>All defendants</i>	\$1,656.27	\$15,204.55	\$285.07	\$2,616.96	\$1,371.20	\$12,587.59

## **B.5 Recommendations for future versions of the QWIC data**

This section elaborates upon the recommendations reported elsewhere in this report. These recommendations are based on our experience with the QWIC custody data.

1. The data should include fields indicating the presence or absence of community ties: specifically, employment (consistent/episodic/unemployed) and family responsibilities (yes/no). Weak community ties are strong predictors of being held in remand, and the underlying cause of the higher average risks of remand for Indigenous males cannot be determined without measures of community ties.
2. Add a “reason for remand” field in the database. Ideally, this field should allow the option to select multiple characteristics, rather than a dropdown menu which allows the user to “choose only one”. This might take the form of a set of tickboxes corresponding to typical reasons for the denial of bail, such as: the severity of the current offence, concerns over the danger to the victim or community, concerns over the danger to the arrestee, and concerns over the arrestee’s ability to adhere to bail conditions
3. Include a clear indicator of whether the violation of the *Bail Act 1980* is a failure to appear (FTA), or a non-FTA violation.
4. When names and dates of birth are entered, have the system suggest matching past individuals with matching, or similar names and dates of birth. When selected, assign the same unique identifier to the new entry. When aliases are discovered, allow the cross-linking of those entries to the same unique identifier. Also allow higher-level users to correct mistaken cross-linkages.
5. Create a unique identifier that tracks a court case across all levels of courts.
6. To facilitate the systematic monitoring of individuals’ experiences through the criminal justice system, generate a unique “system” identifier which links individuals across the three data systems: QPS, DJAG, and QCS. Regularly upload a repository of names, dates of birth, gender, and Indigenous status from QPS, DJAG, and QCS databases, to a central “lookup” database.

- Given names and surnames should be entered and stored as separate fields. Unified “name” fields run the risk of inconsistent formats within the field (“First name Last name”; “Last name, First name”; and “Last name First name” without a separating comma).