

# **Juvenile Diversion and Indigenous offenders**

**A study examining juvenile offenders in Western Australia, South Australia and New South Wales**

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## Executive summary

This study was motivated by a concern that Indigenous juvenile offenders were not receiving the benefits of diversionary schemes. Previous research had suggested that Indigenous offenders are diverted at a significantly lower rate than non-Indigenous offenders. This research, however, had not compared rates of diversion after adjusting for offender characteristics and other factors that can be taken into account when making the decision to divert.

The aim of the present study was to assess how much of the difference in rates of diversion between Indigenous and non-Indigenous offenders remained after these factors had been taken into account. In pursuit of this aim, a series of logistic regression models were developed to see whether the likelihood of diversion was influenced by an individual's Indigenous status, after controlling for a range of offence and offender characteristics. Diversion was modelled as both a dichotomous variable (diversion/non-diversion) and as an ordered variable (in order: Caution, Conference, Court). The data to construct the models was obtained from Western Australia (WA), South Australia (SA) and New South Wales (NSW). Diversion was defined as either a police or court referred conference or a formal police caution. Non-diversion was defined as a court appearance.

The results were as follows:

- In all three states, Indigenous offenders were diverted at a lower rate than non-Indigenous offenders;
- When controls were included for age, sex, current offence characteristics and prior history, this discrepancy in rates of diversion reduced, but remained significant and relatively strong;
- Indigenous offenders were found to be more likely to have had previous contact with the justice system and a larger number of prior contacts. In addition, in WA and NSW, Indigenous offenders were more likely to have previously been sentenced to custody. This is important because prior contacts and prior custodial sentence (in WA and NSW) exerted strong negative effects on the probability of diversion.

Although Indigenous offenders were found to be less likely to be diverted than non-Indigenous offenders, even after controlling for a range of relevant legal factors, the interpretation of this finding is unclear. It may reflect racial bias in the exercise of police and/or court discretion. It is important to note, however, that legislation covering diversion in all three states gives police and courts a very wide discretion in what factors they can take into account. This study was not able to measure and hence control for all these factors. It is possible, then, that the residual association between Indigenous status and likelihood of diversion, is simply an artefact of unmeasured factors that are relevant to the diversion decision. The report concludes that in order to reduce the disparity between Indigenous and non-Indigenous rates of diversion, it would be useful to address the high rate of Indigenous juvenile offending. Further research into Indigenous juvenile offending and re-offending is recommended.

## **Introduction**

The overrepresentation of Indigenous young people in the criminal justice system is one of Australia's most significant social problems. This overrepresentation was highlighted by the Royal Commission into Aboriginal Deaths in Custody as a contributing factor to the rate of Indigenous death in custody (Commonwealth of Australia, 1991). Significant resources have been allocated to reducing this overrepresentation, however, more than a decade later, the problem still remains. In 2005 Indigenous juveniles accounted for 52 per cent of 10-17 year olds in juvenile detention across Australia. In Western Australia (WA) the corresponding rate was 75 per cent, in South Australia (SA) the rate was 44 per cent and in New South Wales (NSW) the rate was 52 per cent (SCRGSP, 2007).

NSW, SA and WA have introduced systems of conferencing<sup>1</sup> and/or cautioning to reduce the overall rate of juvenile contact with the criminal justice system. Although these diversionary alternatives appear to be effective in reducing re-offending (Luke & Lind, 2002), Indigenous juvenile offenders would appear to be much less likely to be diverted than their non-Indigenous counterparts. Data from SA indicates that young Indigenous offenders are more likely to be sent to court and less likely to receive a formal caution or be diverted to a Family Conference (FC) (Wundersitz & Hunter, 2005). Similar results have been obtained in WA. In that state, Indigenous young people are five times more likely to have had formal contact with the police and 29 times more likely to have been arrested (in the 10 to 14 age group) (Loh & Ferrante, 2003). It is also evident in NSW, where Indigenous young people are more likely to be taken to court (64 per cent compared to 48 per cent) and less likely to be cautioned (14 per cent compared to 28 per cent) by police (Chan et al, 2004).

The reason for this discrepancy in rates of juvenile diversion is of critical importance to criminal justice policy. Luke and Cunneen (1995) and Cunneen (2006) have argued that racial bias in the exercise of police discretion early in the criminal justice process contributes to Indigenous overrepresentation in juvenile detention centres and prison. Their argument is that, because Indigenous young people are more likely than non-Indigenous young people to be arrested rather than cautioned, they tend to acquire a more extensive criminal record at a young age. The possession of a longer criminal record then puts them at heightened risk of detention or imprisonment when they reappear in the criminal justice system at a later point in time, even if they appear for offences that are comparable to those committed by non-Indigenous offenders. This is a plausible hypothesis however, there are other possible explanations. It is possible, for example, that Indigenous offenders are less likely to be diverted simply because they less frequently meet the legal requirements for diversion. This paper compares Indigenous and non-Indigenous juvenile diversionary rates in the jurisdictions of WA, SA and NSW, with a view to seeing how much of the discrepancy between Indigenous and non-Indigenous rates of diversion remains, once legally relevant factors have been taken into account.

The remainder of the report is set out as follows: the next section discusses the legal background to diversion and outlines the aims of the current study; section three discusses the data and methodology used; section four reports the results; and the final section summarises and discusses the findings.

## **The current study**

### **Comparability of juvenile justice systems**

Before discussing the methods employed in the current study, it is important to point out that the legislative regimes which underpin the juvenile justice systems of each of the states, though similar, are not identical and that differing legal requirements determine the application of, and eligibility for, diversionary options. The *SA Young Offenders Act 1993* (SA-YOA), for example, states that:

A charge may only be laid if the youth requires the matter to be dealt with by the Court; or if in the opinion of the police officer, the matter cannot be adequately dealt with by the officer or a family conference because of the youth's repeated offending or some other circumstance of aggravation. (s. 7(4))

The SA-YOA gives no specific guidance regarding the factors that can be considered when making the decision to divert a young person. It does state that an offender has to admit the offence and the offence has to be 'minor', however this is not further defined.

The *WA Young Offenders Act 1994* (WA-YOA) states that the police are to caution an offender:

Unless because of the number of previous offences with which the person has been charged or for which the person has been dealt with under this Part it would be inappropriate only to give a caution. (s. 23)

The types of offences that would render a caution inappropriate are specified under Schedules 1 and 2 of the Act and include serious violent offences (e.g. murder, sexual assault) as well as other serious offences (e.g. driving causing death). However, the number of previous offences that would render a caution inappropriate is not specified by the Act. With regard to Juvenile Justice Teams (JJs), the WA-YOA provides some guiding principles for the application of this option (under s. 29) and endorses the use of JJs for first offenders particularly (s. 29). However, an important condition on the use of JJs is that offenders can only be diverted to a JJ if they

Accept responsibility for the act or omission constituting the offence and agree to have the matter dealt with by a juvenile justice team rather than a court. (s. 25(4))

Further, if a *potential participant* (this could include the police, the victim or another party) in the proceedings does not agree that a JJ is appropriate, the matter cannot be dealt with by a JJ. A responsible adult also needs to be present, although the JJ can appoint someone in place of a responsible adult if it deems fit, or dispense with this requirement if the young person is deemed independent.

The NSW-YOA states that a formal caution or a Youth Justice Conference (YJC) can be prescribed for a young person if the young person has: admitted the offence; consented to a caution or YJC; committed an offence for which a caution or YJC can be given; and is entitled to a caution or YJC. The decision about entitlement is made with regards to the seriousness of the offence; the degree of violence; the harm caused to the victim; previous offence history, and any other matter the official thinks is appropriate.

There are two things worth noting about all these provisions. The first is that the discretion available to police and courts in relation to who they choose to divert is rather wide. None of the schemes contains a complete list of the factors that police and courts must or can take into account when deciding whether to caution a young offender. This makes it impossible to

determine whether differences in rates of juvenile diversion are explicable solely in terms of legal factors. The second point to note is that, although each state requires attention to different factors, all states place considerable emphasis on:

1. The offence type
2. The number of previous contacts
3. The type of previous penalties
4. Whether the offender admits the offence

### **Current study**

The current study therefore aims to determine how much of the difference in rates of diversion remains after factors (1) to (4) have been taken into account. Three sets of analyses are conducted. The first looks at the unadjusted rates of court, conference and caution outcomes for Indigenous and non-Indigenous juveniles. The second controls for a number of relevant factors, including those listed above, to determine whether Indigenous status continues to influence the likelihood of diversion. The third considers the distribution, by Indigenous status, of characteristics relevant to the decision to divert an offender.

For various definitional and procedural reasons it is not possible to include jurisdiction as a variable in our analysis. So each of these analyses are carried out for all three states separately. The general pattern of findings is then compared across the States.

### **Data sources and methodology**

The data for SA were obtained from the Office of Crime Statistics and Research (OCSAR); the data for WA were obtained from the University of Western Australia's Crime Research Centre (UWA-CRC); and the data for NSW were obtained from the NSW Bureau of Crime Statistics and Research (BOCSAR). The data were drawn from both police and court records.

In this report, diversion has been defined as either a formal police caution or a referral to a FC, YJC or JJT, whether the conference was court-referred or police-referred. Thus, court-imposed cautions are not classified as a diversion whereas court-referred conferences are classified as such. The definition was chosen because conferences and police cautions involve conference facilitators and the police determining the final penalty, rather than the judiciary. Other diversionary schemes (such as drug courts) available were not considered because there was not enough commonality between the three states. Informal cautioning was also not considered because, given that the police do not formally record it, it was not available in the data. Subsequently this study is potentially under estimating diversion.

In summary, a contact was therefore defined as a formal police caution, a referral to a conference or a court appearance.

Two datasets were obtained for each state. The first dataset contained all contacts with the criminal justice system for juvenile offenders born in 1985 and 1988; from the year they turned 12 to the year they turned 17 (for the 1985 cohort) and 16 (for the 1988 cohort). This dataset was used to calculate the unadjusted relative rates for each outcome. Rather than starting at age 10 which is the defined age of criminal responsibility in all three states, this

part of the analysis only considered offenders aged 12 and above because the number of offenders was high enough to make comparison meaningful.

Offenders were examined within cohorts in order to remove the effect the age profile of each of the groups might have on the overall rates of contact types. Younger offenders are more likely to be diverted. If in a particular year younger offenders were over represented in either the Indigenous or non-Indigenous group, this could (falsely) result in a higher diversion rate for that group. Two cohorts were examined in order to ensure one was not an aberrant sample.

Table 1 describes the characteristics of the three samples used in the first analysis. There is some similarity between the NSW and WA sample in the percentage of Indigenous offenders. SA has a significantly lower percentage of Indigenous offenders, reflecting the characteristics of the overall population. WA also has similar offender numbers in both cohorts to the NSW sample. However WA's population is significantly lower than NSW, suggesting a higher rate of contact in WA. SA while having lower offender numbers has a higher level of further contact with the justice system. Offenders in SA had more than twice the average number of contacts than NSW in both cohorts and WA in the 1988 cohort.

The large discrepancy between the size of the 1985 and 1988 cohorts in all three states can partially be explained by the fact that contacts in 2005 (when the 1988 cohort turned 17) were not considered because data were not available.

Table 1: Sample characteristics of the first dataset

Birth-cohort		WA	SA	NSW
1985	No. offenders	5,998	2,396	6,672
	Indigenous	852 (14.2%)	231 (9.6%)	1,093 (16.4%)
	No. contacts	14,960	9,850	12,889
	Contacts per person	2.5	4.1	1.9
1988	No. offenders	4,212	1,477	4,595
	Indigenous	819 (19.2%)	219 (14.8%)	929 (20.2%)
	No. contacts	10,163	8,174	8,730
	Contacts per person	2.4	5.5	1.9

Note that for all three samples, an offender could have had more than one contact in a given year. Rather than removing subsequent contacts, it was felt more appropriate to present all contacts over the period, so an offender can appear multiple times.

The second dataset contained a record for all juvenile offenders who had a contact with the criminal justice system in 2004. This dataset was used for the second and third analyses. Note that this dataset contained all offenders under the age of 18. Table 2 outlines the characteristics of this dataset.

Table 2: Sample characteristics of the second dataset

Contact type	WA	SA	NSW
Caution	5,653	1,451	1,504
Conference	1,018	1,125	793
Court	1,998	2,088	4,530
Total	8,669	4,664	6,827

The year 2004 was chosen because it was the most recent year for which all three states had data available. Where an offender had more than one contact in the year, the most recent contact was chosen in order to maximise the amount of information on the offender. This contact was defined as the 'index' contact.

The outcome variable, type of contact, was regressed against Indigenous status, age and sex and the following control variables:

- Type of principal offence<sup>2</sup> in the index contact. This was categorised as: offences against the person; drug offences; property offences; public order offences; traffic offences; and other offences<sup>3</sup>;
- Number of prior contacts (defined as cautions, conferences and court appearances);
- Whether the offender has previously been given a custodial sentence;
- The number of years since the first contact;
- The age of the offender at the first contact.

The outcome variable 'Diversion' was considered both as a dichotomous (yes/no) and an ordered variable. In the dichotomous case the 'Caution' and 'Conference' outcomes were combined to form a 'Diversion' outcome that was compared against the 'Court' outcome. In the ordered case, less serious outcomes were compared to more serious outcomes. In this instance, 'Caution' was defined as the least serious outcome and 'Court' the most serious. Both sets of analyses employed logistic regression. The model was validated using the Hosmer-Lemeshow test and a measure of concordance (which equates with the area under the receiver operating characteristics (ROC) curve in the dichotomous model). Split sample cross validation was also used. This involved building a model using half the data and then testing the accuracy of the model predictions on the other half of the data.

Finally bi-variate analyses were carried out between each of the explanatory variables and Indigenous status to determine which variables contributed the most to the discrepancy in rates of diversion.

Indigenous status is collected by the three states in slightly different ways. In WA, Indigenous status has been derived from police records of ethnic appearance and is based on police perceptions of the visual appearance of offenders. Although subjective, this method of identification has been shown to be remarkably reliable (Maller, 2000). The same is the case in SA, except in the case of FCs where the offender is asked whether they identify as

Indigenous. In NSW, police also ask offenders. However this is not routine and informal advice suggests that police do not ask offenders who do not appear to them to be Indigenous.

NSW and SA had a significant number of offenders for whom Indigenous status was recorded as 'unknown'. In order to account for this in the model, and to avoid losing information and potentially biasing the results, an 'Indigenous unknown' variable was included in the model. For all other analyses, however, these offenders were removed from consideration. In WA, the number of offenders with an unknown Indigenous status was small. These offenders were removed from all analysis for the WA sample.

## **Results**

The patterns between Indigenous and non-Indigenous contact types in all three states were similar in the 1985 and 1988 contact. For this reason only results from the 1985 cohort have been included in this section. The Appendix contains tables with results from both cohorts for further reference.

### **Western Australia**

Figures 1 and 2 show the relative rates of contact with the Western Australian criminal justice system for Indigenous and non-Indigenous juvenile offenders. It can be seen that Indigenous offenders are significantly less likely to be diverted than their non-Indigenous counterparts. This discrepancy reduces with age for these offenders. In the year in which they turned 12 (1997), Indigenous offenders were more than five times more likely to receive a court-based sanction. They were less than three times more likely in 2002, when they turned 17. Indigenous offenders were more likely to be referred to a conference at all ages except 16 (where they were approximately equal) and 17.

What is perhaps most striking about these results is the sharp increase in the likelihood of a court appearance for Indigenous offenders as they get older. The likelihood goes from just under 1 in 10 at age 12 to more than 3 in 5 at age 17. Over the same period, the likelihood of a caution drops from approximately 2 in 3 to just over 1 in 5.

Non-Indigenous offenders experience a similar drop in the likelihood of a caution, from just under 9 in 10 to just over 1 in 2. However the increase in likelihood of a court appearance is not as pronounced over the period.

Figures 1&2: Rates of contact with the criminal justice system for Western Australian juveniles, Indigenous and non-Indigenous offender



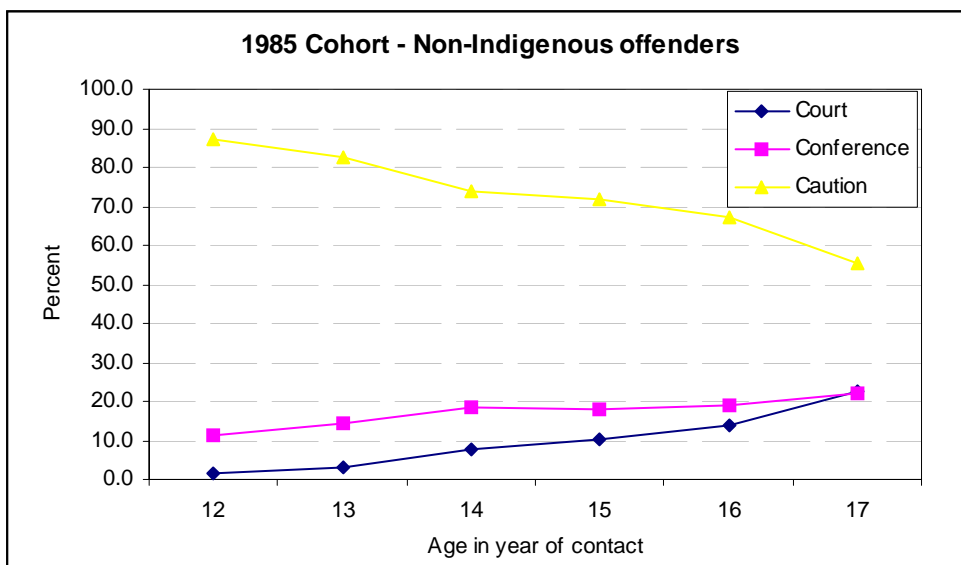
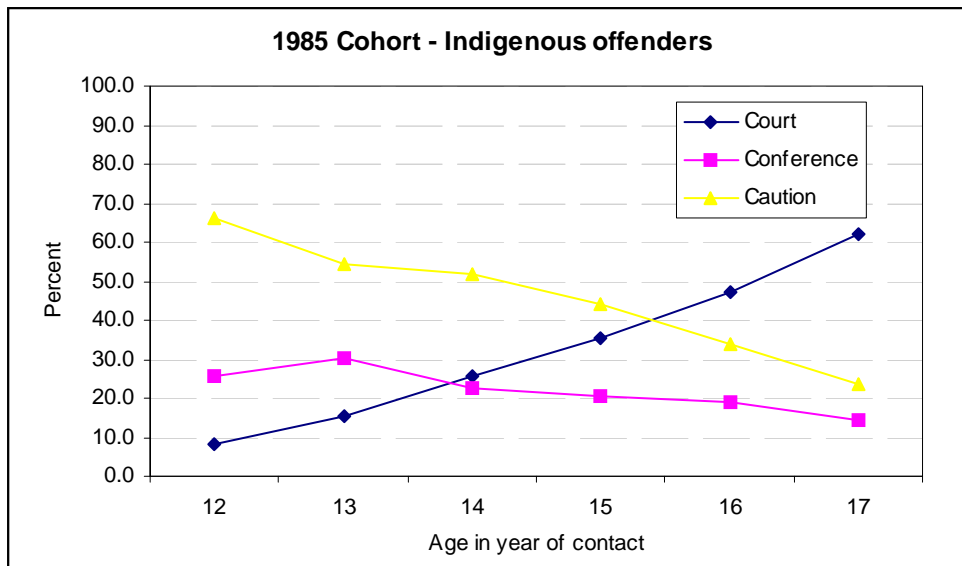


Table 3 shows the results of regressing the probability of diversion against the control variables for offenders with a contact with the justice system in 2004. Note that both the year of first contact and the age of first contact were found (separately) not to be significant. Note also that, in the ordered model, no significant difference was found between ‘Drug offences’ and ‘Other offences’. These two groups were therefore combined.

Odds ratios less than one suggest that the variable reduces the probability of diversion, whereas those greater than one suggest the variable increases the probability. The further the odds ratio is from 1, the larger the effect the variable has. For the dichotomous variable model, the odds ratio provides information about the effect of the variable on the probability of diversion. For the ordered model, the odds ratio gives the effect on the probability of a lesser outcome (that is, a caution as opposed to a conference or court, or a conference as opposed to court).

Table 3: Odds ratios (and 95% confidence intervals) for the two models, WA

Comparison	Odds ratio (dichotomous full model)	Odds ratio (ordered full model)
Indigenous vs. Non-Indigenous	0.426 (0.364 – 0.499)	0.471 (0.414 – 0.535)
Male vs. Female	0.702 (0.598 – 0.824)	0.712 (0.628 – 0.807)
Age	0.599 (0.570 – 0.630)	0.646 (0.623 – 0.670)
Offences against the person vs. Other offences	0.146 (0.107 – 0.200)	0.124 (0.100 – 0.154)
Drug offences vs. Other offences	1.674 (1.115 – 2.511)	-
Property offences vs. Other offences	0.677 (0.507 – 0.905)	0.364 (0.305 – 0.436)
Public order offences vs. Other offences	0.512 (0.369 – 0.711)	0.329 (0.263 – 0.410)
Traffic offences vs. Other offences	0.165 (0.122 – 0.233)	0.118 (0.097 – 0.144)
Number of prior contacts <sup>4</sup>	0.660 (0.643 – 0.678)	0.645 (0.629 – 0.661)
Prior custodial sentence vs. No custodial sentence	0.256 (0.145 – 0.454)	0.288 (0.165 – 0.501)
Concordance measure	0.894	0.855

After controlling for the offence type, prior appearances and prior custodial sentences, Indigenous offenders are still less likely to be diverted than non-Indigenous offenders. The odds ratio suggests that an Indigenous offender with the same characteristics as a non-Indigenous offender is 0.426 times as likely to be diverted in the dichotomous model. For the ordered model, an Indigenous offender is 0.471 times as likely to receive a less serious intervention than not.

The dichotomous model also suggests that offenders who commit offences against the person are significantly less likely than offenders who commit ‘Other’ offences to be diverted. Similarly, traffic offences also significantly increase the likelihood of a court appearance. Public order and property offences have a less pronounced but still negative effect on the probability of being diverted. Drug offences, however, increase the likelihood of diversion. Offenders with prior court appearances are significantly less likely to be diverted as are offenders with a prior custodial sentence (where the effect is much more pronounced). Finally, both male offenders and offenders in older age groups are less likely to be diverted.

Overall, excluding demographic characteristics, the model suggests that offenders with a number of prior contacts, a prior custodial sentence and a current offence that is either an offence against the person, a traffic offence or (to a lesser extent) a public order or property offence, are less likely to be diverted.

The concordance measure is an indication of how well the model can predict the outcome of an individual with a set of characteristics. The closer the number is to 1 the better the model is at prediction. In both models, the values suggest good prediction rates.

To gain some further insight into the lower diversion rates of Indigenous offenders, Table 3 considers the distribution of these variables by Indigenous status. The median age at the present contact and the median age at the first contact by Indigenous status are also included for comparison.

Table 4: Bivariate comparisons between Indigenous status and variables in the model, WA

	Indigenous	Non-Indigenous
	%	%
Offences against the person	15.0	8.7
Drug offences	3.1	9.9
Property offences	54.0	45.6
Public order offences	13.1	8.9
Traffic offences	7.3	16.5
Other offences	7.5	10.4
No prior contacts	36.9	66.6
One prior contact	12.7	14.5
Two prior contacts	9.6	6.3
Three prior contacts	6.5	3.6
Four prior contacts	5.2	2.1
Five prior contacts	4.1	1.6
Six prior contacts	3.0	1.4
Seven prior contacts	3.5	0.7
Eight or more prior contacts	18.6	3.1
Prior custodial sentence	8.0	1.1
Median age at current contact	15 years	16 years
Median age at first contact	13 years	15 years

The table shows that Indigenous offenders are 1.7 times more likely to have committed an offence against the person in the current case than non-Indigenous offenders. Indigenous

offenders are also 1.6 times as likely to have committed a public order offence. However they are half as likely to have committed a traffic offence.

When considering the number of prior contacts, there is a large discrepancy between Indigenous and non-Indigenous offenders. For two thirds of non-Indigenous offenders, the current offence was their first contact with the criminal justice system. This was true for slightly more than a third of Indigenous offenders. Almost 1 in 5 Indigenous offenders had had eight or more previous contacts. This compares with 1 in 32 non-Indigenous offenders. It is clear that Indigenous offenders, on average, have longer criminal histories, than non-Indigenous offenders.

The difference between the two groups for prior custodial sentences is even starker. One in 13 Indigenous offenders had previously been sentenced to custody, as compared with 1 in 88 non-Indigenous offenders.

There is a difference of a year in the median age for the current contact, with Indigenous offenders being younger on average. Similarly Indigenous offenders on average have their first contact with the justice system earlier than non-Indigenous offenders with a difference of two years in the median age.

### **South Australia**

Figures 3 and 4 show the relative rates of contact with the criminal justice system for Indigenous and non-Indigenous juvenile offenders. As with WA, Indigenous offenders are significantly less likely to be diverted than their non-Indigenous counterparts. Over the period Indigenous juveniles are between 1.3 times more likely to 1.6 times more likely to appear in court than non-Indigenous offenders.

Court appearance rates do not increase as sharply with age for either group, as they did in the WA sample. The negative effect of age on cautions is also less pronounced. Both these findings are indicative of the fact that SA juveniles are more likely to be referred to court and less likely to be cautioned than WA juveniles.

The effect of age is most pronounced on conference referrals for Indigenous juveniles, with the likelihood of a conference referral dropping from just over 1 in 4 at age 12 to 1 in 10 at age 17. For non-Indigenous juveniles the effect is only pronounced between 16 and 17, where the likelihood of a conference referral drops from 1 in 3.8 at age 12 to 1 in 5 at age 17.

Figures 3&4: Rates of contact with the criminal justice system for South Australian juveniles, Indigenous and non-Indigenous offenders

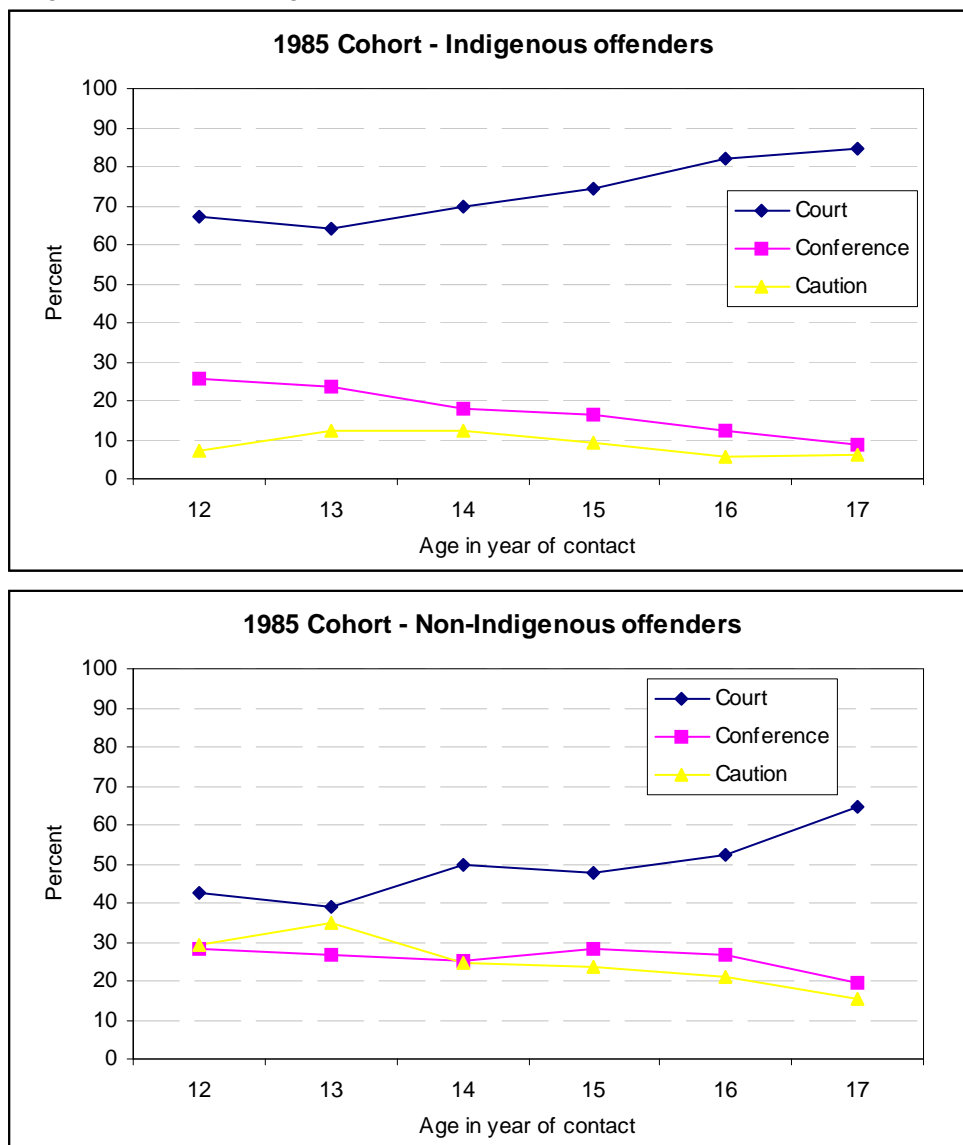


Table 5 gives the odds ratios, for the two models where the outcome variable is the likelihood of diversion. Note that, because of the small number of offenders who had previously been sentenced to custody and diverted in the current case (2), it was impossible to include a variable measuring previous custodial sentences in the models and have confidence in the stability of the parameter estimates. The variable therefore had to be excluded from both models. Neither the year of first contact nor the age of first contact was found to be significant. All other variables in this table were found to be significant at the 5 per cent level. After no significant difference was found between them, ‘Drug offences’, ‘Property offences’ and ‘Other offences’ were grouped together.

Table 5: Odds ratios (and 95% confidence intervals) for the two models, SA

Comparison	Odds ratio (dichotomous full model)	Odds ratio (ordered full model)
Indigenous vs. Non-Indigenous	0.629 (0.505 – 0.784)	0.647 (0.535 – 0.782)

Indigenous unknown vs. Non-Indigenous	1.162 (0.856 – 1.577)	3.219 (2.477 – 4.183)
Male vs. Female	0.786 (0.661 – 0.935)	0.841 (0.728 – 0.971)
Age	0.784 (0.747 – 0.822)	0.852 (0.820 – 0.885)
Offences against the person vs. Other offences	0.558 (0.456 – 0.682)	0.533 (0.446 – 0.636)
Public order offences vs. Other offences	2.086 (1.638 – 2.657)	2.926 (2.412 – 3.551)
Traffic offences vs. Other offences	0.081 (0.064 – 0.102)	0.085 (0.068 – 0.107)
Number of prior contacts <sup>5</sup>	0.717 (0.697 – 0.738)	0.712 (0.693 – 0.732)
Concordance measure	0.832	0.796

After controlling for other relevant factors, Indigenous offenders are less likely to be diverted than non-Indigenous offender. The difference is relatively similar in both the dichotomous and ordered model.

Offence type exerts a very similar effect in both models. Offences against the person and traffic offences have negative effects on the likelihood of diversion. The odds ratio for traffic offences is very low indicating that this variable exerts the largest effect in both models. Public order offences significantly increase the likelihood of diversion.

The number of prior contacts also exerts a relatively strong negative effect in both models and, once again, being older and being male reduce the likelihood of diversion.

Table 6 considers the distribution of these variables by Indigenous status. Although the variable measuring whether an offender had previously been given a custodial sentence could not be included in the model, it has been included in the bivariate comparisons. The median age at the present contact and the first contact by Indigenous status have also been included.

Table 6: Bivariate comparisons between Indigenous status and variables in the model, SA

	Indigenous	Non-Indigenous
	%	%
Offences against the person	14.6	13.4
Drug offences	0.9	1.9
Property offences	37.2	31.6
Public order offences	11.9	11.3
Traffic offences	7.7	16.7
Other offences	27.7	25.2

No prior contacts	36.5	53.3
One prior contact	11.0	15.1
Two prior contacts	6.7	7.7
Three prior contacts	5.2	4.8
Four prior contacts	3.8	3.3
Five prior contacts	4.0	2.5
Six prior contacts	2.1	1.7
Seven prior contacts	2.5	1.5
Eight or more prior contacts	28.2	10.1
Prior custodial sentence	3.1	1.2
Median age at current contact	15 years	16 years
Median age at first contact	13 years	15 years

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There are no large discrepancies across the offence groups, except for traffic offences; where the percentage of Indigenous offenders is about half that of non-Indigenous offenders and property offences; where Indigenous offenders are more prevalent. As with the West Australia models, however, there is a major difference in the prior criminal history of the two groups. More than half of the non-Indigenous offenders were making their first contact with the justice system but this was the case for just over 1 in 3 Indigenous offenders. Further, whereas 3 in 10 Indigenous offenders had had eight or more contacts, only 1 in 10 non-Indigenous offenders had had eight or more prior contacts with the criminal justice system. The discrepancy between the rates of prior custodial sentences is not as pronounced as in Western Australia. However Indigenous offenders are still almost three times more likely to have previously received a custodial sentence.

There is a difference of a year in the median age for the current contact, with Indigenous offenders being younger on average. Similarly Indigenous offenders on average have their first contact with the justice system earlier than non-Indigenous offenders with a difference of two years in the median age.

### **New South Wales**

Figures 5 and 6 shows the relative rates of contact with the criminal justice system for Indigenous and non-Indigenous juvenile offenders. Note that the results presented here begin at age 13 rather than age 12. This is because the NSW-YOA only came into effect in 1998. Previous to this formal diversion did not exist.

Indigenous juveniles are between 1.9 and 2.5 times as likely to be dealt with in court as non-Indigenous juveniles. Indigenous offenders are also more likely to be diverted to a conference than non-Indigenous offenders and less likely to be given a caution.

The likelihood of court referral rises significantly with age for Indigenous offenders, with the likelihood at 2 in 5 for 14 year olds and at almost 7 in 10 at age 17. There is a more pronounced effect for age on court referrals for non-Indigenous offenders, with the likelihood approximately doubling between age 13 and age 17. However the overall likelihood of court referral is lower for non-Indigenous juveniles than Indigenous juveniles.

The drop in the likelihood of a caution with age is more pronounced for Indigenous offenders (11 in 20 to 3 in 10) than non-Indigenous offenders (4 in 5 to 3 in 5).

Figure 5&6: Rates of contact with the criminal justice system for NSW juveniles, Indigenous and non-Indigenous offenders

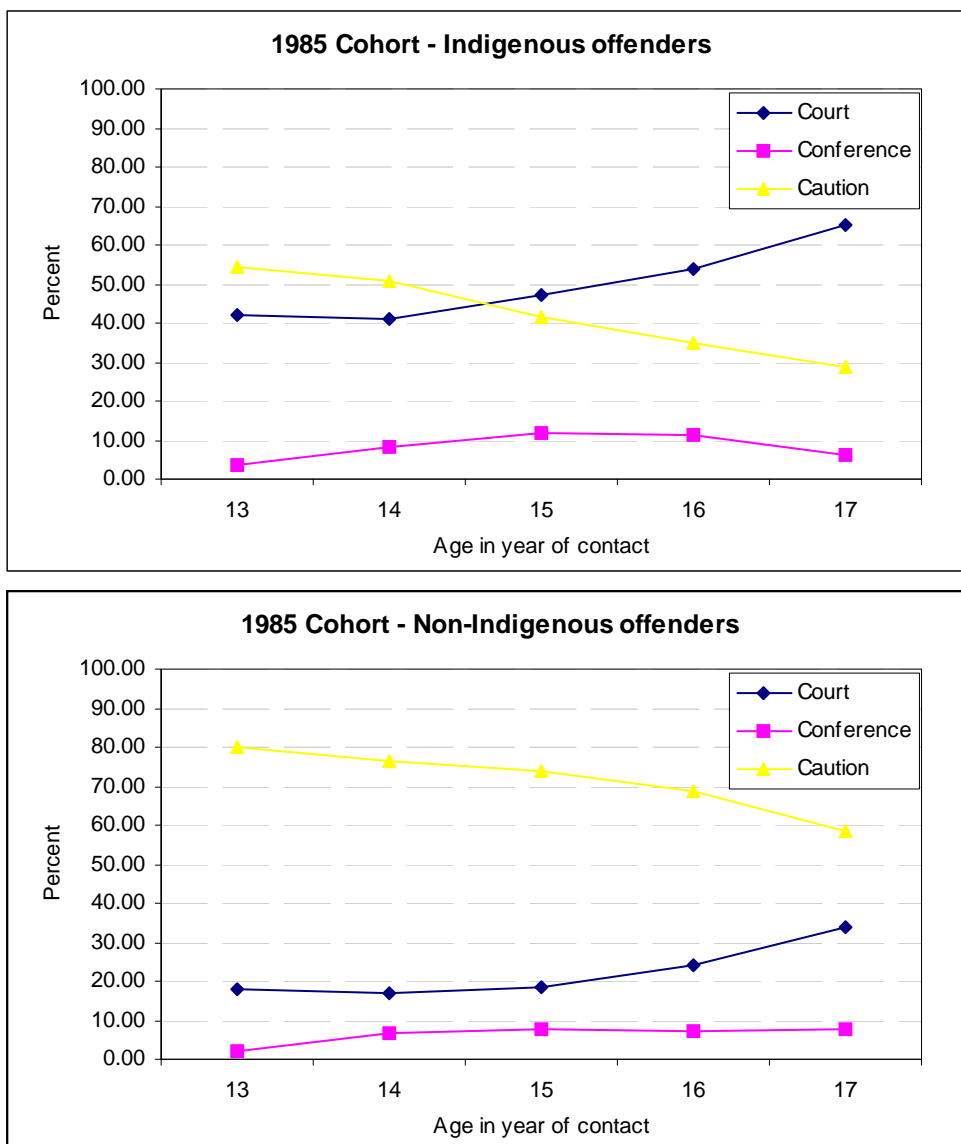


Table 7 gives the odds ratio for the two models. Age at first appearance and years since first appearance are not significant when other variables are held constant. Because of the small numbers of offenders in the lower age groups receiving a caution, age has been grouped for the ordered model into '15 and under', '16' and '17'. Age was kept as a continuous variable in the dichotomous model. The effect of public order offences is not significantly different from the 'Other' base group in either model, so these two groups have been combined.



Table 7: Odds ratios (and 95% confidence intervals) for the two models, NSW

Comparison	Odds ratio (dichotomous full model)	Odds ratio (ordered full model)
Indigenous vs. Non-Indigenous	0.497 (0.427 – 0.577)	0.486 (0.420 – 0.562)
Indigenous unknown vs. Non-Indigenous	0.057 (0.042 – 0.079)	0.057 (0.041 – 0.079)
Male vs. Female	0.676 (0.584 – 0.783)	0.686 (0.596 – 0.790)
Age	0.816 (0.775 – 0.860)	-
Aged 16 vs. Aged 15 or under	-	1.587 (1.393 – 1.809)
Aged 17 vs. Aged 15 or under	-	0.159 (0.133 – 0.190)
Offences against the person vs. Other offences	0.658 (0.552 – 0.783)	0.565 (0.475 – 0.674)
Drug offences vs. Other offences	2.235 (1.662 – 3.005)	2.656 (1.998 – 3.530)
Property offences vs. Other offences	2.073 (1.780 – 2.415)	1.726 (1.489 – 2.001)
Traffic offences vs. Other offences	0.099 (0.078 – 0.129)	0.122 (0.094 – 0.160)
Number of prior contacts <sup>6</sup>	0.655 (0.627 – 0.685)	0.642 (0.614 – 0.671)
Prior custodial sentence vs. No custodial sentence	0.250 (0.120 – 0.524)	0.282 (0.132 – 0.602)
Concordance measure	0.836	0.852

Indigenous status again exerts a negative effect on the likelihood of diversion after other variables are held constant. The odds ratios are similar in both models suggesting a similar effect on both the probability of diversion and the probability of a less serious intervention.

Compared with the base group, offenders charged with a traffic principal offence are considerably more likely to have their matters dealt with in court. Offences against the person also increase the likelihood of a court appearance. Offenders charged with property and drug offences are more likely to be diverted, however the effect of a property offence is reduced in the ordered model.

Both the number of prior offences and a previous custodial sentence exert a similar effect in both models and both significantly reduce the likelihood of diversion.

In the dichotomous model, higher age values reduce the probability of diversion. In the ordered model, the results seem perverse, with 16 year olds being more likely to be diverted than offenders aged 15 or under and 17 year olds less likely to be diverted than the same group. Being male decreases the likelihood of diversion in both models.

Overall the model suggests that offenders with a number of previous contacts, a custodial sentence and a principal offence that is traffic-related or an offence against the person, are less likely to be diverted.

The final table considers the distribution of offence type, number of prior contacts and prior custodial sentence, as well as the median age of the offender in their current contact and their first contact.

Table 8: Bivariate comparisons between Indigenous status and variables in the model, NSW

	Indigenous	Non-Indigenous
	%	%
Offences against the person	21.4	20.1
Drug offences	2.3	4.7
Property offences	38.8	33.7
Public order offences	11.5	6.6
Traffic offences	8.9	21.0
Other offences	17.3	13.9
No prior contacts	29.1	58.3
One prior contact	17.6	17.6
Two prior contacts	12.1	8.4
Three prior contacts	9.2	5.2
Four prior contacts	6.9	3.2
Five prior contacts	6.3	2.4
Six prior contacts	4.1	1.5
Seven prior contacts	3.1	1.0
Eight or more prior contacts	11.7	2.5
Prior custodial sentence	10.8	2.7
Median age at current contact	16 years	16 years
Median age at first contact	14 years	16 years

Indigenous offenders are slightly more likely to have committed a property offence, public order offence or an offence classified in the 'Other' grouping. Non-Indigenous offenders are

considerably more likely to have committed a traffic offence or a drug offence (although the percentages for the latter group are small). There is no substantial difference between the rates of involvement in offences against the person.

Indigenous offenders, however, are considerably more likely to have had previous contact with the justice system. About 3 in 5 non-Indigenous offenders had no contact with the justice system prior to the present case. This is the case for only 3 in 10 Indigenous offenders. Conversely, whereas more than one in ten Indigenous offenders had had eight or more previous contacts, only 1 in 40 non-Indigenous offenders had that number of contacts.

There is a similarly large difference between the groups in the percentage of offenders with a previous custodial sentence. More than 1 in 10 Indigenous offenders had this characteristic, compared with 1 in 37 non-Indigenous offenders.

There is no difference in the median age for the current contact. However Indigenous offenders on average have their first contact with the justice system two years earlier than non-Indigenous offenders.

## **Summary and Discussion**

The present study had three aims. The first was to measure the relative rates of diversion for Indigenous and non-Indigenous young offenders in WA, SA and NSW. The second was to assess the extent to which the observed differences could be explained by offender and offence characteristics. The third was to examine differences between Indigenous and non-Indigenous juvenile offenders in characteristics known to exert an effect on the likelihood of diversion.

In all three states, Indigenous offenders were considerably more likely to be referred to a court than non-Indigenous offenders. In WA and NSW, young Indigenous offenders were also more likely to be referred to a conference rather than cautioned. Non-Indigenous offenders in all three states were significantly more likely to receive a police caution. When controls were introduced for age, sex, characteristics of the current case and the prior criminal history of the offender, the discrepancy between Indigenous and non-Indigenous offenders in rates of diversion reduced for all three states but remained statistically significant.

It is impossible to say whether the residual differences in rates of diversion are symptomatic of racial bias on the part of police (or courts) or reflective of other factors that are unable to be measured in the present study (if at all). As was pointed out in the introduction, the legislation establishing diversion schemes in each State affords police wide discretion in determining who should be referred to court and who should be cautioned or referred to a conference. The available data, for example, do not permit any assessment of whether an offender accepted responsibility for an offence, although this is plainly relevant to decisions about how to deal with a young offender. Moreover, other factors such as the lack of diversionary alternatives in regional or remote rural areas, may also contribute to differential rates of diversion.

Looking at the variables found to be significant predictors of diversion across all three states, it is obvious that past contact with the justice system plays just as important a role in shaping subsequent decisions about diversion as it does in shaping decisions about adult sentencing (Snowball & Weatherburn, 2007). Irrespective of jurisdiction, young Indigenous offenders are much more likely to have had their first contact with the criminal justice system at a

young age, much more likely than their non-Indigenous counterparts to have had multiple contacts with the criminal justice system and much more likely to have been in custody before. The modelling suggested that while the first factor was not significant the other two greatly reduced the likelihood of diversion.

The present study therefore strongly suggests the need for further research into the reason(s) for the high re-conviction rate among Indigenous offenders. The most obvious explanation for the high juvenile Indigenous re-appearance rate in court is that Indigenous young people are more likely to re-offend, and there is some evidence to support this hypothesis (Weatherburn, Fitzgerald & Hua, 2003). It is possible, however, that other factors are in play, such as a lack of diversionary alternatives in regional or remote rural areas, a perceived lack of contrition on the part of young Indigenous offenders or a lack of resources for diversionary programs in remote rural areas where Indigenous families reside.

Regardless of the reason for the high rate of Indigenous re-appearance in court, it is important to remember diversionary policies are more likely to achieve their objective of reducing contact with the criminal justice system if they are effective in reducing re-offending. Research examining the reasons behind offending in Indigenous adults have highlighted social and economic factors such as unemployment, financial stress, lack of education and alcohol and drug abuse as contributing factors to involvement in crime (Weatherburn et al, 2006). Although no similar research has been conducted into Indigenous juvenile offending, it would be surprising if these were not also important factors.

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## Appendix

Table 9: Rates of contact with the criminal justice system for Western Australian juveniles

Born 1985				Born 1988			
		Indigenous	Non-Indigenous			Indigenous	Non-Indigenous
		%	%			%	%
1997	Court	8.2	1.6	2000	Court	8.1	2.3
	Conference	25.9	11.4		Conference	23.1	9.4
	Caution	65.9	87.0		Caution	68.9	88.3
1998	Court	15.2	3.2	2001	Court	17.4	3.7
	Conference	30.5	14.1		Conference	22.4	9.9
	Caution	54.3	82.7		Caution	60.2	86.4
1999	Court	25.7	7.6	2002	Court	29.0	3.8
	Conference	22.3	18.7		Conference	22.4	14.7
	Caution	51.9	73.7		Caution	48.6	81.4
2000	Court	35.3	10.3	2003	Court	39.6	9.5
	Conference	20.5	18.0		Conference	24.5	19.5
	Caution	44.2	71.8		Caution	35.9	70.9
2001	Court	47.2	13.7	2004	Court	53.6	16.5
	Conference	19.0	19.2		Conference	19.1	20.3
	Caution	33.8	67.0		Caution	27.4	63.2
2002	Court	62.3	22.4				
	Conference	14.2	22.2				
	Caution	23.5	55.4				

Table 10: Rates of contact with the criminal justice system for South Australian juveniles

Born 1985				Born 1988			
		Indigenous	Non-Indigenous			Indigenous	Non-Indigenous
		%	%			%	%
1997	Court	67.0	42.7	2000	Court	58.8	28.3
	Conference	25.7	28.3		Conference	27.2	35.1
	Caution	7.3	29.0		Caution	14.0	36.7
1998	Court	63.9	28.8	2001	Court	64.8	34.2
	Conference	23.8	26.5		Conference	24.6	36.0
	Caution	12.3	34.7		Caution	10.7	29.9
1999	Court	69.5	49.9	2002	Court	72.2	41.5
	Conference	18.1	25.3		Conference	20.4	33.5

	Caution	12.3	24.9		Caution	7.4	25.0
	Court	74.3	47.9		Court	72.4	51.4
2000	Conference	16.5	28.3	2003	Conference	16.8	29.9
	Caution	9.2	23.8		Caution	10.8	18.8
	Court	82.2	52.1		Court	74.6	58.4
2001	Conference	12.2	26.7	2004	Conference	16.5	24.2
	Caution	5.6	21.1		Caution	8.9	17.5
	Court	84.8	64.8				
2002	Conference	8.8	19.7				
	Caution	6.4	15.5				

Table 9: Rates of contact with the criminal justice system for New South Wales juveniles

Born 1985				Born 1988			
		Indigenous	Non-Indigenous			Indigenous	Non-Indigenous
		%	%			%	%
	Court	100.0	100.0			23.0	6.1
1997	Conference	0.0	0.0	2000		5.4	3.3
	Caution	0.0	0.0			71.6	90.7
	Court	42.1	17.8			29.9	7.4
1998	Conference	3.4	2.1	2001		6.6	3.9
	Caution	54.6	80.1			63.5	88.6
	Court	41.0	16.8			33.5	10.6
1999	Conference	8.3	6.6	2002		8.1	5.7
	Caution	50.7	76.6			58.4	83.8
	Court	47.0	18.5			48.4	17.9
2000	Conference	11.5	7.8	2003		8.0	5.6
	Caution	41.43	73.8			43.6	76.6
	Court	53.6	24.3			55.1	23.0
2001	Conference	11.3	7.2	2004		7.1	5.3
	Caution	35.1	68.5			37.9	21.8
	Court	65.1	33.7				
2002	Conference	6.4	7.6				
	Caution	28.5	58.7				

<sup>1</sup> In NSW, this is referred to as a Youth Justice Conference (YJC), in SA this is referred to as Family Conference (FC) and in WA it is called a Juvenile Justice Team (JJT). Conferences are facilitated by a trained conference convenor. Family members of the offender, the victim/s, members of the criminal justice system and other interested parties can attend, along with the offender. The offence and its impact on the victim/s and the wider

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community are discussed and the offender is encouraged to accept responsibility and negotiate some form of restitution.

<sup>2</sup> The principal offence was defined as that which received the most serious penalty or the one with the most serious statutory penalty (if offences received the same penalty).

<sup>3</sup> Other offences include: offences against judicial procedures (such as breach of a justice order); weapons and explosives offences and property damage (including graffiti).

<sup>4</sup> This was modelled as a continuous variable and coded as 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10+. The final category was grouped in this manner to ensure the variable remained linear against the logit of the outcome variable. For this reason, the variable can only be interpreted for 10 or less prior contacts.

<sup>5</sup> This was modelled as a continuous variable and coded as 1, 2, 3, 4, 5, 6, 7, 8, 9, 10+. The final category was grouped in this manner to ensure the variable remained linear against the logit of the outcome variable. For this reason, the variable can only be interpreted for 10 or less prior contacts.

<sup>6</sup> This was modelled as a continuous variable and coded as 1, 2, 3, 4, 5, 6, 7, 8+. The final category was grouped in this manner to ensure the variable remained linear against the logit of the outcome variable. For this reason, the variable can only be interpreted for 8 or less prior contacts.