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RACE AND OFFENSIVE LANGUAGE CHARGES

This paper highlights the recent increase in the recorded rate of offensive language charges, particularly for Australian Aboriginals and Torres Strait Islanders. The most recently published Crime and Justice Bulletin (No.45, June 1999, BOCSAR) describes research which shows the adverse effect of arrest on the probability of employment for Indigenous Australians. This is of particular concern as Australian Aboriginals are over-represented both among the unemployed and among persons arrested in NSW. Trends in arrests for the use of offensive language over the past two years are examined in this brief using data from both the NSW Computerised Operational Policing System (COPS) and the NSW Local Courts database.

INTRODUCTION

Crime figures recently released by the NSW Bureau of Crime Statistics and Research show that recorded crime rates for all major offence categories in New South Wales are currently either stable or falling. In contrast, the incidence of public order offences (offensive language and offensive conduct) has risen significantly over the same period. The number of offensive language incidents recorded by NSW police increased from 5,215 in 1997/98 to 7,181 in 1998/99, an increase of 37.7 per cent. The number of recorded incidents of offensive conduct increased by 30.8 per cent over the same period.

The nature of public order offences is such that changes in the recorded number of crimes under the Summary Offences Act reflect the level of policing activity more than changes in actual offending. The increase in offensive language and offensive conduct incidents most probably signals higher levels of enforcement action against this kind of behaviour.

This brief will focus principally on offensive language and will examine monthly recorded crime statistics from COPS for the period January 1997 to June 1999, as well as monthly data on criminal cases finalised in NSW Local Courts between January 1997 and December 1998.

For further information, please contact the Statistical Services Unit of the NSW Bureau of Crime Statistics and Research.

OFFENSIVE LANGUAGE INCIDENTS RECORDED BY NSW POLICE

Figure 1 shows the monthly numbers of persons recorded by police for incidents of offensive language in the period January 1997 to June 1999. Total persons and persons who identified themselves as Aboriginal or Torres Strait Islanders are shown separately. Over the most recent two-year period, between July 1997 and June 1999, there was a statistically significant upward trend in the monthly numbers of persons in both groups. (Note that the most recent data is subject to undercounting and will be updated as the year progresses.)

Table 1 shows the number of persons recorded as having used offensive language in 1997/98 and 1998/99. The figures show that, overall, in the period July 1998 to June 1999, there was a 37.4 per cent increase in this offence, compared with the previous twelve months.

It is well known that persons of Aboriginal and Torres Strait Islander descent (ATSI persons) are over-represented in the NSW Criminal Justice System.¹ Indigenous over-representation is especially pronounced for offensive language offences. ATSI persons account for 15 times as many offensive language offences as would be expected by their population in the community. (In 1998/99, 27.2 per

Figure 1: Persons with offensive language incidents recorded by police

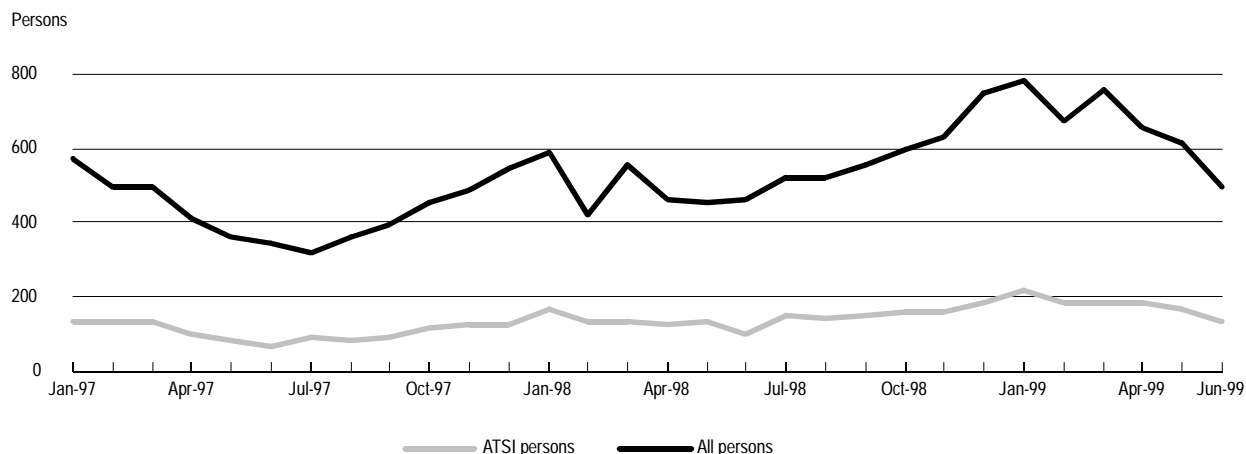


Table 1: Persons with offensive language incidents recorded by police: 1997/98 and 1998/99

	1997/1998	1998/1999	Percentage change 1997/98 to 1998/99
ATSI persons*	1,441	2,058	42.8%
Other persons*	4,061	5,501	35.4%
Total*	5,502	7,559	37.4%

* statistically significant upward trend

cent of offensive language offenders identified themselves as Indigenous Australian. The estimated resident Indigenous population at 30 June 1996 was 1.8 per cent of the total New South Wales population.) The proportion of offensive language incidents linked to Indigenous persons has remained stable from January 1997 to July 1999.

OFFENSIVE LANGUAGE CHARGES IN NSW LOCAL COURTS

The number of charges for offensive language in NSW Local Courts has also risen in the two years to December 1998. In 1997 there were 3,609 charges under Section 4A(1) of the Summary Offences Act, while in 1998 the number rose to 4,115. This is an increase of 14.0 per cent.

It cannot be determined exactly what proportion of persons appearing in the Local Courts for offensive language charges are Aboriginal Persons or Torres Strait Islanders. ATSI status is only recorded for persons who appear in the courts as a result of either a charge or court attendance notice (CAN); persons issued with a summons do not have their ATSI status noted. Charges and CANs comprise approximately 82 per cent of commencements for offensive language cases in the Local Courts. In order to examine the trend in Aboriginal and Torres Strait Islander

appearances for charges of offensive language, all figures reported below will refer only to cases commenced by charge or CAN in NSW Local Courts.

Figure 2 shows the pattern of appearances for offensive language, excluding summons cases, for both total persons and for persons who identified themselves as Aboriginals or Torres Strait Islanders. Over the two-year period shown, there was a statistically significant upward trend in the monthly numbers of offensive language charges for ATSI persons in the Local Courts, but no comparable trend for persons in total.

Table 2 shows the number of persons who appeared in NSW Local Courts charged with offensive language but excludes matters where all charges were initiated by summons (ie those matters where the ATSI status of the defendant cannot be determined).

Aborigines and Torres Strait Islanders comprised 24.3 per cent of persons appearing in the Local Courts for offensive language cases in 1998. The number of ATSI persons appearing monthly showed a statistically significant upward trend between 1997 and 1998, while the monthly number of total appearances was stable. Thus, in the Local Court, the proportion of offensive language appearances attributable to Indigenous Australians is increasing.

Figure 2: Appearances in Local Courts for charges of offensive language

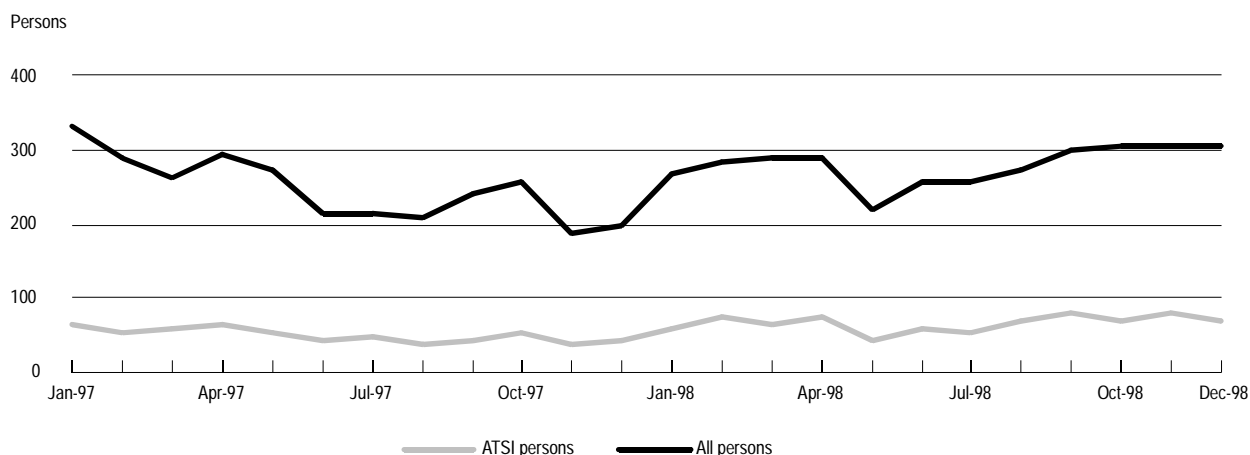


Table 2: Persons appearing in NSW Local Court for offensive language charges: 1997, 1998 (excluding persons whose ATSI status cannot be determined)

	1997	1998	Percentage change 1997 to 1998
ATSI persons*	608	818	34.5%
Other persons	2,371	2,542	7.2%
Total	2,979	3,360	12.8%

* statistically significant upward trend

Most offensive language charges which come before the Local Court are proven. In 1998, 93.6 per cent of charge and CAN matters involving offensive language resulted in a conviction. The conviction rate has not changed since 1997 (93.9% of charges proven). There is no significant difference between the conviction rates for ATSI persons and others.

A fine is the most common penalty imposed for offensive language charges in NSW Local Courts. In 1998, 85.7 per cent of persons received a fine (84.1 % in 1997). The second most likely court-imposed penalty is dismissal without conviction, under Section 556A of the Crimes Act. In 1998, 10.4 per cent of proven offensive language charges did not result in a recorded conviction (11.5% in 1997).

Table 3 details the principal penalty imposed for proven offensive language charges in NSW Local Courts in 1997 and 1998. There are apparent differences in penalties imposed on ATSI and non-ATSI persons. For example, ATSI persons are less likely to have the offence proved without conviction. Note, however, that these differences do not necessarily imply discriminatory sentencing. ATSI and non-ATSI people may differ in other relevant ways, such as in terms of prior record.

Despite the removal in 1993 of imprisonment as a penalty for offensive language, Table 3 shows that ten persons were sentenced to a fixed term of imprisonment for proven offensive language charges in 1997 and 1998. In each case, these prison sentences were imposed in conjunction with concurrent terms of imprisonment for other offences. It is likely that this incorrect penalty imposition for offensive language was overlooked at the time of sentencing because of the concurrent prison term imposed.

OFFENSIVE LANGUAGE AS A SOLE CHARGE

Persons who appear in court for offensive language often have no other charges against them. In 1998, there were 1,629 persons whose only charge was offensive language. This is 48.5 per cent of all persons charged with offensive language. Table 4 shows the number of persons appearing in NSW Local Courts charged with offensive language only.

Persons of Aboriginal and Torres Strait Islander descent comprise 24.7 per cent of persons whose only charge is offensive language in 1998. The monthly number of Aboriginal and Torres Strait Islanders charged solely with offensive language showed a statistically significant upward trend in the two-year

Table 3: Principal penalty for proven offensive language charges in NSW Local Courts: 1997, 1998

Penalty	1997				1998			
	ATSI persons		Other persons		ATSI persons		Other persons	
	Number	%	Number	%	Number	%	Number	%
Offence proved, no conviction	54	8.9	233	9.8	52	6.4	218	8.6
Offence proved, no conviction with recognizance	2	0.3	55	2.3	5	0.6	77	3.0
Nominal sentence	7	1.2	49	2.1	17	2.1	41	1.6
Fine	534	87.8	1,972	83.2	729	89.1	2,150	84.6
Payment of compensation	0	0.0	1	0.0	0	0.0	0	0.0
Recognizance	8	1.3	46	1.9	10	1.2	43	1.7
Community Service Order	3	0.5	3	0.1	3	0.4	5	0.2
Periodic detention	0	0.0	1	0.0	0	0.0	0	0.0
Imprisonment – fixed term	0	0.0	4	0.2	2	0.2	4	0.2
Community Aid Panel	0	0.0	7	0.3	0	0.0	4	0.2
Total	608	100.0	2,371	100.0	818	100.0	2,542	100.0

Table 4: Persons appearing in the NSW Local Court for offensive language charges only: 1997, 1998 (excluding persons whose ATSI status cannot be determined)

	1997	1998	Percentage change 1997 to 1998
ATSI persons*	296	402	35.8%
Other persons	1,206	1,227	1.7%
Total	1,502	1,629	8.5%

* statistically significant upward trend

period January 1997 to December 1998, increasing by 35.8 per cent, from 297 overall in 1997 to 402 in 1998. In comparison, there has been no significant increase in the number of non-ATSI persons charged solely with offensive language.

The conviction rate and penalties for persons charged only with offensive language are not noticeably different from persons with more than one charge.

OFFENSIVE LANGUAGE CHARGES IN NSW CHILDREN'S COURTS

In 1997/98, offensive language was the principal offence for 439 young persons appearing in the NSW Children's Court. Comparable figures are not available for preceding years. The offence was proved for 93.4 per cent of persons. Fines were given to 54.5 per cent of offenders. The second most common penalty was dismissed with caution (imposed on 36.2% of offenders). A breakdown by ATSI status is not available for juvenile offenders.

REFERENCE

1 For example see:

NSW Bureau of Crime Statistics and Research (1998) *NSW Criminal Courts Statistics 1997*, NSW Bureau of Crime Statistics and Research, Sydney; Jochelson, R. (1997) *Aborigines and Public Order Legislation in New South Wales*, Crime and Justice Bulletin No. 34, NSW Bureau of Crime Statistics and Research, Sydney; Hunter, B. & Borland, J. (1999) *The Effect of Arrest on Indigenous Employment Prospects*, Crime and Justice Bulletin No. 45, NSW Bureau of Crime Statistics and Research, Sydney.