

# **N.S.W. Summary Offences Act 1988**

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## Preface

The present report is the first of a new series directed toward the evaluation of Government legislation and policy. The aim of the new series is to focus the evaluation on a limited number of issues directly relevant to the intended effects of a given legislative or policy initiative. The sharper focus of the evaluation has one key benefit. It allows research reports to be completed early on in the life of a new Government initiative at a point where, if there is a need for change or amendment, it can most easily be effected. It is hoped that this will make the work of the Bureau both more useful to Government and more relevant to the public.

The Summary Offences Act 1988 has proved to be a stimulating subject of empirical scrutiny. The focus of the Bureau's evaluation has been upon those parts of the Act which deal with the problem of offensive behaviour. Prostitution and related offences, also important features of the Summary Offences Act 1988, will be the subject of a supplementary report. Other offences defined within the Summary Offences Act 1988 are not presently the subject of research, either because they are essentially identical to repealed provisions under the Offences in Public Places Act or because very few people are charged with such offences.

Dr. Don Weatherburn  
Director

## Acknowledgements

A number of people contributed to this report. The project was planned by Tom Robb and Roseanne Bonney. Questionnaire design, data collection and coding were done by Les Kery and Roseanne Bonney. The computing and data analysis was a joint effort by Maureen Frances, Jeanette Packer and Roseanne Bonney. The report was written by Roseanne Bonney but constructive comments and editorial assistance from Don Weatherburn, Bronwyn Lind, Jeanette Packer and other Bureau members contributed substantially to an improved final version. Carmel Byrne typed the manuscript and Johnny Bruce prepared the artwork and graphics.

The Bureau is indebted to those people in Dubbo, Bourke, Brewarrina and Walgett who generously agreed to be interviewed over three days in March 1989. In particular the Bureau wishes to thank members of the New South Wales Police Department; solicitors and field officers from the Western Aboriginal Legal Service; the managers of the Lillimur, Namoi, Bulgun and Dunbi Proclaimed Places; the Shire Presidents and Councillors of the towns visited; the Council of the Widgeri co-operative in Bourke and the President of the Dubbo Chamber of Commerce. The opinions and views expressed during these three days provided the researchers with valuable background information for this project.

The Bureau is grateful to the following people for their assistance in providing information in this report:

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Statistics and Evaluation Branch.

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Modus Operandi Section.

## Summary of Findings

1. There was a 293 per cent increase in the number of reported incidents of offensive behaviour<sup>1</sup> in the six month study period following the introduction of the Summary Offences Act 1988, compared with the six month period two years earlier (see p. 15). The number of people arrested for these offences would have increased by approximately the same magnitude.
2. The increase began during the operation of the Offences in Public Places Act and accelerated in the months immediately prior to the 1988 State election (see pp. 15 - 17 and p. 28).
3. The change in the rate of reported incidents of offensive behaviour would appear to be due to a number of factors. These include (see pp. 28, 29):
  - (a) increased numbers of police;
  - (b) directions from the Police Commissioner in September 1987, to Police Patrol Commanders regarding the interpretation of the Offences in Public Places Act;
  - (c) new policing strategies designed specifically to deal with offences in public places;
  - (d) heightened media attention given to 'law and order' issues in the lead-up to the 1988 State election;
  - (e) increased public activity during the 1988 Bicentennial celebrations.

It is considered that the Summary Offences Act 1988 probably accelerated the rate of reports of offensive behaviour.

4. There was an increase across the State, in the proportion of offensive behaviour charges arising out of domestic and other forms of altercation (see pp. 11, 12).
5. There was an increase in the towns of Bourke, Brewarrina and Walgett in the proportion of arrests arising out of incidents involving the arrest or questioning of a person by police in relation to another matter (see p. 22).
6. The dominant behavioural feature among those charged with offensive behaviour was offensive language. This was true both under the Offences in Public Places Act and the Summary Offences Act 1988 (see p. 13 and pp. 23 - 25).
7. Across the State, charges of offensive behaviour involving reference only to bad language rose from 23 per cent of arrests under the Offences in Public Places Act to 33 per cent of arrests under the Summary Offences Act 1988 (see p. 15).

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<sup>1</sup> See section on 'Data Deficiencies', p.8.

8. In the towns of Bourke, Brewarrina and Walgett arrests for offensive behaviour involving reference only to bad language rose from 58 per cent under the Offences in Public Places Act to 64 per cent under the Summary Offences Act (see p. 25).
9. Four people were given gaol sentences under the offensive behaviour provisions of the Summary Offences Act 1988. Two were Aboriginal. The sentences ranged from 7 days to 28 days (see pp. 17 - 20).

## Introduction

On 1 June 1988 the N.S.W. Attorney General introduced the Summary Offences Bill into the N.S.W. Parliament. The objects of the Bill, as stated in its explanatory note, were to:

- (a) repeal the Offences in Public Places Act 1979, the Public Assemblies Act 1979 and the Prostitution Act 1979; and
- (b) enact provisions like those of the repealed Acts with some extension of the repealed provisions; and
- (c) increase certain of the penalties at present applicable under the Acts to be repealed; and
- (d) create the following new offences:
  - . using offensive language in certain circumstances;
  - . soliciting in a public street within view from certain places;
  - . soliciting in a manner that distresses or harasses;
  - . taking part in public in an act of prostitution;
  - . group violence.

In his second reading speech to the Summary Offences Bill 1988, the Attorney General stated:

The object of the Summary Offences Bill is to consolidate and reform summary offences against public order. Underlying the Bill is the Government's concern that all citizens have the right to enjoy public facilities without harassment or interference. The Government has a clear mandate to create new offences to address specific problems, particularly in the area of street offences and prostitution. An important aspect of this legislation is the re-introduction of gaol sentences for offensive conduct, offensive language and prostitution. The community will have confidence that this legislation will adequately deal with public order, and the police will have confidence that it can be properly enforced.

Before describing the new legislation it is appropriate to consider those Acts it replaced.

## Repealed Legislation

*The Offences in Public Places Act 1979* had specified a number of offences including: Causing Serious Alarm and Affront (section 5), Obscene Exposure (section 6), Obstructing Traffic (section 7), Damaging Fountains (section 8), Damaging Shrines etc. (section 9) and Defacing Walls (section 10). When this Act was introduced section 5 replaced the offences of Offensive Behaviour and Offensive Language which had formed part of an earlier Summary

Offences Act. Those critical of section 5 of the Offences in Public Places Act generally expressed concern at the limitations in police power to deal with 'street offences' which section 5 was said to impose.

Largely in response to this criticism the Government amended section 5 (Offences in Public Places (Amendment) Act 1983), removing the words 'serious alarm and affront', and replacing them with the notion of conduct which is 'offensive to a reasonable person, in all the circumstances'<sup>2</sup>. Then, during 1987, a further series of amendments to the Offences in Public Places Act were enacted.

The first amendment, Act No. 38 of 1987, saw a general increase in monetary penalties only. The amount of fine for all those offences carrying a penalty of \$100 was increased to \$300. The maximum penalty for breach of section 5 was increased from \$200 to \$500 and the fine for Obscene Exposure (section 6) from \$400 to \$1000. Section 6, however, remained the only offence for which an alternate penalty of imprisonment (6 months) was provided. Following this amendment, Act No. 131 of 1987 added to the Offences in Public Places Act the offence of Custody of an Offensive Implement, which carried a maximum penalty of \$1000, or 6 months imprisonment. Finally, under the Offences in Public Places (Juvenile Drinking) Amendment Act 1987, persons under 18 were prohibited from possessing or consuming liquor in a public place, unless under supervision, or with a reasonable excuse.

*The Prostitution Act 1979* had replaced the earlier charge of Street Soliciting. Offences under the Act included: Living off the Earnings of Prostitution (section 5), Prostitution or Soliciting in Massage Parlours (section 6), Allowing Premises to be used for Prostitution (section 7) and Advertising Premises used for Prostitution (section 8). All offences carried fines or terms of imprisonment. Many complaints concerning street prostitution, especially those made by residents of the Kings Cross/Darlinghurst area, prompted the previous Government to amend this Act in 1983<sup>3</sup>. Under the amendment, section 8 was omitted and replaced by section 8A. This new section restricted soliciting for prostitution by making it an offence to solicit in a school, church or hospital, or in a public street near a dwelling, school, church or hospital.

*The Public Assemblies Act 1979* prescribed procedures necessary for a public assembly to obtain authorisation from the Commissioner of Police (section 4). Under section 5 of the Act, participants in authorised public assemblies were excused from certain offences, for example, Obstructing Traffic. Under section 6 the Commissioner could apply to the court to obtain an order prohibiting a public assembly notified under section 4. Such applications, however, could only be made after attempts to conciliate were undertaken, and refusal to authorise formally notified.

## The New Legislation

### Offensive Behaviour

An initial reading of the new legislation shows that many of the provisions are the same or very similar to those in the Offences in Public Places Act 1979. There are, however, some important differences.

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<sup>2</sup> Incorporated in Offences in Public Places Act 1979 by 1985 reprint. Offences in Public Places (Amendment) Act 1983 repealed by way of the Statute Law (Miscellaneous Provisions) Act 1985.

<sup>3</sup> Prostitution (Amendment) Act 1983. Incorporated in Prostitution Act 1979 by 1983 reprint. 1983 Amendment Act subsequently repealed by way of the Statute Law (Miscellaneous Provisions) Act 1985.



Section 4 of the Summary Offences Act 1988 reinstated the two distinct offences of offensive conduct and offensive language which formed part of the old Summary Offences Act, but in modified form. These offences are: Offensive Conduct in, or near, or within view or hearing from a public place or school AND Offensive Language in or near, or within hearing from a public place or school. (Note that Watson and Bartley <sup>4</sup> (1988, p. 164) state that 'conduct or language to be offensive must be calculated to wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person'.)

There appear to be three major differences between section 4 of the Summary Offences Act 1988 and the now defunct section 5 of the Offences in Public Places Act. The most obvious is the addition of the separate offence of Offensive Language. Secondly, the new legislation seems to have deleted part of the objective test contained in section 5. Under that section, conduct was deemed 'offensive' if it would have been justifiably regarded so by reasonable persons, 'in all the circumstances'. While it would appear that the reasonable person test has been retained, the factor of 'in all the circumstances' has been removed. A third important difference is that violations of section 4 carry a gaol penalty whereas violations of section 5 did not.

It should be noted that an important offence appears in Part 2 of the Summary Offences Act which prohibits the possession or consumption of liquor by minors in a public place (section 11). The provisions here are almost identical to those set out in the Offences in Public Places (Juvenile Drinking) Act 1987 (section 11B).

### **Prostitution**

There have also been important changes to the law relating to prostitution. Under section 19 of the Summary Offences Act 1988, the scope of the offence of Soliciting for Prostitution would appear to have been broadened. Whereas section 8A of the Prostitution Act 1979 prohibited soliciting in or near a dwelling, school, church or hospital, section 19 has included a factor of visibility by adding the words 'within view from' these locations.

Two new offences are also created under section 19(3) and section 20. An increase in penalty, above that provided for soliciting, will be applied where such soliciting 'harasses or distresses the other person'. Section 20 specifies an offence of Public Acts of Prostitution in, or within view from a school, church, hospital or public place, or within view from a dwelling house. Further to this, it is also an offence to take part in acts of prostitution in vehicles similarly located. Acts of prostitution include sexual intercourse as defined by section 61A of the Crimes Act and masturbation by one person on another, for payment. All persons involved in such public acts are liable to prosecution.

Significant changes have also been made to the penalties for prostitution. Section 19 carries a maximum penalty of \$600 or 3 months imprisonment (\$800 or 3 months, if the soliciting harasses or distresses), while section 20 carries a maximum penalty of \$1000 or 6 months imprisonment. Section 8A of the Prostitution Act 1979 carried a penalty of \$500 only.

### **Public Assemblies**

Although there appears to be little difference between the provisions of the Public Assemblies Act 1979 and those of the Summary Offences Act 1988 (see sections 22-27), relating to

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<sup>4</sup> Watson, R., and Bartley, R. (1988), *Criminal Law in New South Wales, Volume 2, Summary Offences*, The Law Book Company Limited, Sydney.

the authorisation of public assemblies, the new legislation has created an offence under Part 5 which deals with public gatherings. Section 28 provides for an offence of Violent Disorder where 3 or more persons, present together, use or threaten unlawful violence, so as to cause a reasonable person to fear for his or her personal safety. This offence carries a maximum penalty of \$1000 or 6 months imprisonment.

## Questions To Be Addressed In Bureau Study

It is impractical within a reasonable period to assess the effect of all of the differences between the Offences in Public Places and the Summary Offences Acts. Indeed, as already indicated, in relation to some sections there are few important differences whereas other sections of the Summary Offences Act have no equivalent or corresponding section under the Offences in Public Places Act. The need for a timely report has also meant that some selection has had to be made as to the initial focus of research efforts. For this reason the Bureau investigation has concentrated on those parts of the new legislation which appear to be of greatest public and government concern. The two areas which appear to meet this criterion are those of offensive behaviour and prostitution. As the former of these accounts for the vast majority of arrests under the Act, it is the focus of the present report. Arrests for prostitution offences under the Act will be the subject of a subsequent report.

In his second reading speech to the Summary Offences Act, the Attorney General, Mr Dowd, commenting on the inclusion of a potential penalty of imprisonment for offensive behaviour, noted that:

... it is a chasmic leap from providing a monetary penalty of a few hundred dollars to providing a potential penalty of imprisonment. This measure must be used by the police and others in the community with care and responsibility. We are in the midst of a federal inquiry involving Aborigines. It has shown that Aborigines or those of Aboriginal descent have serious problems coping with custodial sentences. As well as cases of violence that have occurred to them, a significant number of Aborigines or persons of Aboriginal descent cannot handle custody, resulting in suicides in prisons ... Police must be extremely careful, especially in areas where there is a persistent record of alcoholism and violence, particularly in some of the larger country towns, where a significant number of Aborigines are arrested. All I ask is that arrest be the last resort. That is the structure of this measure. Though penalties are provided to back up the authority of the police, I ask the police and others in the community to understand that putting people into prisons is the last resort. Until our community comes up with something to deal with the problems of a section of the Aboriginal community that is more meaningful than sending them to gaol, we have a responsibility to exercise extreme care and caution.

In the light of concerns expressed by the Attorney General, the Bureau has concentrated its research efforts mainly on the operation of offensive behaviour provisions of the Summary Offences Act. The following questions in relation to differences in the operation of the Offences in Public Places Act and of the Summary Offences Act 1988 form the focus of the Bureau's research:

1. Has there been a change in the type of charges laid ?
2. Has there been a change in the location in which the incident occurred ?
3. Has there been a change in the context in which the incident occurred ?
4. Has the number of arrests per incident changed ?
5. Has the type of behaviour associated with the incident changed ?
6. By comparison with the Offences in Public Places Act, has the number of people detained under the summary Offences Act increased ?
7. To what extent are the courts utilising the relevant gaol provisions of the Summary Offences Act 1988 and under what circumstances ?



## Methodology

The incident and arrest information used to answer these questions was extracted from samples of Police Incident Reports (PIRs) and Police Incident and Arrest Reports (PIAs). PIRs are completed by police when an incident, from which charges might proceed, is reported or becomes known to them. Should subsequent information about the incident be furnished, an additional PIR is completed. If an arrest is made in connection with the incident, a PIA form is completed. Where the incident and the arrest are coincidental, only the PIA is completed. The PIA and PIR contain similar information regarding the incident in question but the PIA contains information about an alleged offender, whereas the PIR does not.

The data relating to these forms were obtained in the following way. A sample of 1 in 3 listed cases of either Offensive Behaviour, Obscene Exposure or Obstruction were selected from those reported in the period 22 July 1986 to 22 January 1987. A sample of 1 in 10 listed cases of the same offences were then selected from those reported in the period 22 July 1988 to 22 January 1989. The sampling fractions chosen (1 in 3 and 1 in 10) were designed to achieve samples of approximately 500 incidents in each group. Data from the relevant PIR and PIA forms were then retrieved from the microfilm records of the New South Wales Police Department's Modus Operandi Unit at Parramatta. This produced a total of 569 forms from the 1986/1987 period (Offences in Public Places Act sample) and 565 from the 1988/1989 period (Summary Offences Act sample). As more than one PIR or PIA can issue from a single incident, these samples covered 509 incidents from the Offences in Public Places population and 500 incidents from the Summary Offences population.

The questions (above) which form the basis of the data analysis are of interest with respect to the general population of reported incidents of Offensive Behaviour in New South Wales. The sample selection process described earlier was directed to this purpose. The Bureau was specially concerned, however, to obtain answers to the research questions in respect of incidents or arrests specifically involving Aboriginal people. Unfortunately police data on race contained in PIAs and PIRs are not sufficiently reliable to enable the routine identification of all persons who are Aboriginal. This is particularly true of records relating to detentions under the Summary Offences Act. To obviate this difficulty, data from the total population of reported incidents of Offensive Behaviour, Obscene Exposure and Obstruction were also collected from the towns of Bourke, Brewarrina and Walgett. In these towns the overwhelming majority of police arrests and detentions by police for offensive behaviour charges are known to be of Aboriginal people <sup>5</sup>.

From each incident or arrest record selected information was recorded onto a coding form prepared by the Bureau. A copy of this coding form is shown in the Appendix. These data were later punched onto computer tape and analysed using the SPSSX statistical package.

## Data Deficiencies

It should be noted that neither the PIA nor PIR is a form designed with the researcher's needs in mind. Their main purpose is to serve internal police needs. The major deficiencies of the PIA and PIR, from a research perspective, are primarily that there is no standardisation in the amount of information recorded or the style of reporting in the narrative description

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<sup>5</sup> Cunneen, C., Robb, T., *Criminal Justice in North-West New South Wales*, N.S.W. Bureau of Crime Statistics and Research, p. 239.

of the offence. There are also variations in the format of the forms over time. The first deficiency has meant that the full circumstances of the offence are difficult to establish in any instances where a pithy or terse reporting style has been adopted. Format changes in the two periods under consideration also resulted in information, such as Aboriginality, being available about the Offences in Public Places Act sample which was not available to the same extent in the Summary Offences Act 1988 sample.

For the purposes of the present study these factors, particularly the latter, are a source of some concern. Clearly it would have been preferable to have been able systematically to identify the racial origin of those who were the subject of detentions under both of the two pieces of legislation being reviewed. Notwithstanding these limitations the PIA and PIR remain the only reliable source of original record information bearing on the questions which this study sought to answer. For this reason the Bureau is extremely grateful to officers of the N.S.W. Police Department for their willing co-operation in the study. The only alternative means of obtaining the required information would have been to place researchers in a position where they could monitor arrests and incidents as they occurred or were reported. This would have reduced the scope of the study, increased its cost and increased the delay in reporting the results to the public.

One further point needs to be mentioned in this context. The PIA and PIR make no consistent distinction as to behaviour which is the cause of an arrest under the Offensive Conduct clause of the Summary Offences Act 1988 and behaviour which is the cause of an arrest under the Offensive Language clause of that Act. *This report therefore makes no attempt to identify charges under these separate headings. All behaviour regarded by police as a violation of section 4 of the Summary Offences Act 1988 is dealt with under the heading 'offensive behaviour'.*

# Characteristics of Incidents Reported to Police

The two populations or groups to be considered in this report have been described in the Introduction. For the sake of brevity, offences or incidents which occurred in the first time frame of 22 July 1986 to 22 January 1987 will be abbreviated to OPP (Offences in Public Places Act) and those which occurred in the second time frame 22 July 1988 to 22 January 1989 will be abbreviated to SOA (Summary Offences Act 1988). The OPP group is the 'pre-' group of incidents with which the 'post-' SOA group of incidents is to be compared.

This section of the report is divided into two parts. The first relates to the two Statewide random samples of Obscene Exposure, Offensive Behaviour and Obstruction incidents in the two time frames mentioned above. The second part describes, for the same periods and offence types, the total population of reported incidents in the towns of Bourke, Brewarrina and Walgett.

## The Statewide Samples

The 509 distinct incidents in the OPP group and the 500 incidents in the SOA group resulted in the arrest of 445 people in the OPP and 521 in the SOA group. Only the arrests and the incidents from which they resulted are considered here. It should be noted that those persons who were arrested may also have been charged with offences other than the 3 specific offences of interest, cited above. The first question to be addressed, then is:

### *Has there been a change in the type of charges laid between the OPP group and the SOA group ?*

Of the three offences being examined, Obscene Exposure is the most serious in terms of the maximum penalty provided by the legislation in both the pre- and the post- groups. In descending order of penalty seriousness after Obscene Exposure are Offensive Behaviour and then Obstruction.

Table 1, below, shows the number arrested and the most serious of the three offences with which they were charged.

This table shows that the great majority of people in both groups were charged with Offensive Behaviour. This charge was laid against 91.2 per cent of people charged in the OPP group and 96.0 per cent of those charged in the SOA group.

A charge of Obscene Exposure was the most serious charge against 27, or 6.1 per cent, of the OPP arrestees and 14, or 2.7 per cent, of the SOA alleged offenders.

Less than 4 people in either group (less than 1 per cent) were charged with Obstruction. The category Other includes 9 cases in the OPP group in which the principal offence could not be established and 4 cases in the SOA group in which the principal offence was Violent Disorder - a new offence created under section 26 of the Summary Offences Act 1988 which provides a maximum penalty of 6 months imprisonment for this offence <sup>6</sup>.

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<sup>6</sup> It was not proposed in this study to examine offences of Violent Disorder because there was no corresponding offence with which it could be compared in the OPP group of offences. The only reason that incidents involving any such offence appear in this sample is that a lesser offence of Offensive Behaviour was also laid in each case.

Principal offence	OPP		SOA	
	No.	%	No.	%
Obscene Exposure	27	6.1	14	2.7
Offensive Behaviour	406	91.2	500	96.0
Obstruction	3	0.7	2	0.4
Other	9	2.0	5	1.0
<b>TOTAL</b>	<b>445</b>	<b>100.0</b>	<b>521</b>	<b>100.0</b>

To test the differences between the two groups, the two offences of Obstruction and Other were excluded from consideration because of small cell sizes. The changes in relative frequencies of Obscene Exposure and Offensive Behaviour are statistically significant ( $X^2 = 7.00$ , 1 d.f.,  $p < 0.01$ ).

*Has there been a change in the location in which the incident occurred ?*

The places where the OPP and SOA incidents were alleged to have occurred are recorded in the PIAs and PIRs. These places are detailed in Table 2. It should be noted that incidents which strictly occurred in a street, but which emanated from a hotel, pub or club are classified as 'inside/outside/hotel/pub/club'. The category 'street/car' is therefore somewhat understated.

The main feature of the figures in Table 2 is the proportional similarity between the OPP and SOA groups. In both the OPP group and SOA group more than half of the alleged incidents took place either in the street (or in a car parked in the street), or inside or outside a hotel or club (OPP: 58.2 per cent; SOA: 56.8 per cent).

Location of incident	OPP		SOA	
	No.	%	No.	%
Victim/other dwelling	46	10.3	53	10.2
Street/car	179	40.2	215	41.3
Inside/outside hotel/pub/club	80	18.0	81	15.5
School/institution	8	1.8	11	2.1
Police station/cells	11	2.5	11	2.1
Railway (other public transport)	36	8.1	69	13.2
Park/beach/toilets/entertainment/sports	33	7.4	44	8.4
Shops/car parks	48	10.8	33	6.3
Other	4	0.9	4	0.8
<b>TOTAL</b>	<b>445</b>	<b>100.0</b>	<b>521</b>	<b>100.0</b>



Approximately 10 per cent of the incidents in both groups occurred in a dwelling and a further 10.8 per cent of the OPP group and 6.3 per cent of the SOA group happened in, or in the precincts of shops, shopping centres or car parks.

Locational differences between the groups are slight, with the possible exception of railways and other public transport facilities (OPP: 8.1 per cent; SOA: 13.2 per cent). Differences between the two groups, however, were not statistically significant ( $X^2 = 13.09$ , 8 d.f.,  $p > 0.05$ ).

*Has there been a change in the context in which the incident occurred ?*

There are several important background points to make about Table 3. Firstly, in some cases it is difficult to distinguish the context from the incident itself since some of the elements of both are the same. For example, there is little to separate the urge to urinate (full bladder) from the act of urination, which, if carried out in a public place, might result in the urinator's arrest if his actions are observed.

Secondly, the categories listed in Table 3 refer to the most important context selected for coding. That is, a person might be involved in a dispute with another person because he is intoxicated and/or he has been refused entry to a club. In such a case, the main feature of the context as perceived by the police, and recorded on the PIA or PIR would be coded onto the coding forms.

Thirdly, there is not always a direct connection between the context and the subsequently charged incident.

The two most frequently cited contexts in which arrests occurred for the OPP and SOA

Context	OPP		SOA	
	No.	%	No.	%
Domestic/other disputes	99	22.2	164	31.5
Suspect/other arrested spoken to re: other offence	90	20.2	117	22.5
Public disorder/aggression	15	3.4	6	1.2
Horseplay/bravado	56	12.6	36	6.9
Refused entry/declined to leave licensed premises	29	6.5	29	5.6
Full bladder	21	4.7	48	9.2
Intoxication	54	12.1	41	7.9
Sexual activity	36	8.1	16	3.1
Nature of language	15	3.4	14	2.7
Other/cannot establish context	30	6.7	50	9.6
<b>TOTAL</b>	<b>445</b>	<b>100.0</b>	<b>521</b>	<b>100.0</b>

groups were (a) domestic or other disputes and (b) situations in which the incident arose out of the suspect or another person being spoken to about, or arrested for another offence. While there was only a minor difference between the two groups in category (b), the difference for category (a) was relatively large. The proportion of situations involving domestic or other disputes increased from 22.2 per cent of the arrests in the OPP group to 31.5 per cent of arrests for the SOA group.

The only other notable increase between the two study periods was in the 'full bladder' category (OPP: 4.7 per cent; SOA: 9.2 per cent). There was a decline between the two study periods in the proportion of cases in which the context was classified as 'horseplay/bravado' (OPP: 12.6 per cent; SOA: 6.9 per cent), and, 'sexual activity' (OPP: 8.1 per cent; SOA: 3.1 per cent), and 'intoxication' (OPP: 12.1 per cent; SOA: 7.9 per cent).

Differences between the contexts of the OPP and the SOA groups were found to be statistically significant ( $X^2 = 47.18$ , 9 d.f.,  $p < 0.0001$ ).

#### *Has the number of arrests per incident changed ?*

The 445 arrests in the OPP group resulted from 396 incidents. In the SOA group the 521 arrests resulted from 465 incidents. For both groups the average number of arrests per incident (for incidents resulting in at least one arrest) was 1.12.

Table 4 shows, for incidents resulting in at least one arrest, the number of incidents by the number of arrests per incident. About 90 per cent of incidents in both groups resulted in only one arrest. There was no significant difference between the groups in the relative frequency of incidents resulting in 1, 2 or 3 or more arrests ( $X^2 = 3.17$ , 2 d.f.,  $p > 0.05$ ).

Arrests per incident	OPP		SOA	
	No.	%	No.	%
1 person arrested per incident	361	91.2	416	89.5
2 persons arrested per incident	26	6.6	43	9.2
3 persons arrested per incident	6	1.5	5	1.1
4 persons arrested per incident	2	0.5	1	0.2
6 persons arrested per incident	1	0.3	-	-
<b>TOTAL</b>	<b>396</b>	<b>100.0</b>	<b>465</b>	<b>100.0</b>

Incidents where no arrest was made are excluded.

#### *Has the type of behaviour associated with the incident changed ?*

The attributes listed below in Table 5 are not mutually exclusive. Theoretically, at least, an arrestee could be involved in an incident which possessed all of the attributes listed.

However, there was no case in which this theoretical possibility was realised.

The percentages in Table 5 are proportions of the total number of arrestees in each group (OPP: 445; SOA: 521). The researchers established the presence or absence of each incident attribute from the PIR or PIA and recorded a 'Yes' or 'No' for each attribute. The figures in Table 5 are the 'Yes' responses in relation to each attribute.

For each attribute a statistical test was carried out to determine whether the proportion of arrests, having that attribute, was different in the OPP and SOA groups.

In considerably more than half the arrests in both groups one feature of the incident was the use of offensive language, either by itself or in combination with other factors (OPP: 64.7 per cent; SOA: 71.4 per cent). Nevertheless offensive language figured more prominently among incidents which resulted in arrests under the Summary Offences Act. This increase is statistically significant ( $X^2 = 4.95$ , 1 d.f.,  $p < 0.05$ ).

In both groups slightly more than a third of cases involved actual violence on the part of the arrestee (OPP: 37.3 per cent; SOA: 34.9 per cent). However, the slight decrease in the proportion of cases in which violence was a feature, in the SOA group, was not significant ( $X^2 = 0.59$ , 1 d.f.,  $p > 0.05$ ).

Other significant differences between the two groups were incidents which were described as 'brawls', which declined from 2.2 per cent in the OPP group to nothing in the SOA group ( $X^2 = 11.83$ , 1 d.f.,  $p < 0.001$ ); 'bodily exposure', which declined from 9.4 per cent in the OPP group to 4.8 per cent in the SOA group ( $X^2 = 8.00$ , 1 d.f.,  $p < 0.005$ ); and the carrying or use of a weapon or missile, which declined from 13.3 per cent in the OPP group to 6.3 per cent in the SOA group ( $X^2 = 13.36$ , 1 d.f.,  $p < 0.001$ ).

Incident attributes	OPP		SOA	
	No.	%	No.	%
Damage to property	40	9.0	33	6.3
Language	288	64.7	372	71.4
Violence threatened	21	4.7	31	6.0
Violence actual	166	37.3	182	34.9
Brawl	10	2.2	-	-
Urinating	36	8.1	53	10.2
Bodily exposure	42	9.4	25	4.8
Carrying/using weapon missile	59	13.3	33	6.3
Physical harassment	29	6.5	38	7.3
Sexual harassment	29	6.5	14	2.7

Percentages are calculated with reference to the total number of arrests (cf. Table 3).  
Percentages do not add to 100% because more than one attribute was noted in some cases.

The figures presented in Table 5 have the disadvantage that the attributes shown will also include the characteristics of charges which were laid in addition to the charges of Obscene Exposure, Offensive Behaviour and Obstruction - the offences under consideration in this study.

As the primary focus of this study is to measure the difference in behaviour between the OPP and SOA groups which might be explained by reference to the provisions of the Summary Offences Act 1988, and in particular, those provisions of the Act which cover offensive behaviour offences, the data were re-analysed a different way. Those cases in which the arrestee was charged with offensive behaviour and no other charge are presented in Table 6 below. There were 244 of these arrests in the OPP group and 291 in the SOA group.

The figures in Table 6 show that Language was an attribute of offensive behaviour charges in approximately two thirds of arrests in both the OPP and the SOA groups, while less than 20 per cent of arrests in either group involved actual violence (OPP: 15.2 per cent; SOA: 17.2 per cent).

The proportion of arrests for incidents involving property damage decreased from 4.5 per cent in the OPP group to 1.0 per cent in the SOA group.

Physical or sexual harassment accounted for 11.5 per cent of the OPP cases but the proportion of cases with this attribute declined to 4.5 per cent in the SOA group.

The proportion of arrests in which carrying or using a weapon or a missile was an attribute of the incident fell from 11.5 per cent in the OPP group to 3.1 per cent in the SOA group.

Incident attributes	OPP		SOA	
	No.	%	No.	%
Damage to property	11	4.5	3	1.0
Language	165	67.6	196	67.4
Violence threatened	13	5.3	14	4.8
Violence actual	37	15.2	50	17.2
Brawl	7	2.9	-	-
Urinating	26	10.7	44	15.1
Bodily exposure	16	6.6	10	3.4
Carrying/using weapon missile	28	11.5	9	3.1
Physical harassment	14	5.7	7	2.4
Sexual harassment	14	5.7	6	2.1

Percentages are calculated with reference to the total number of arrests for offensive behaviour only. Percentages do not add to 100% because more than one attribute was noted in some cases.

Minor downwards variations were recorded in threatened violence, brawls and bodily exposure, while the proportion of cases involving urination rose from 10.7 per cent in the OPP group to 15.1 per cent in the SOA group.

None of the differences between the two groups was statistically significant, except the decreases in property damage and in brawls ( $X^2 = 5.01$ , 1 d.f.,  $p < 0.05$  and  $X^2 = 6.38$ , 1 d.f.,  $p < 0.05$  respectively).

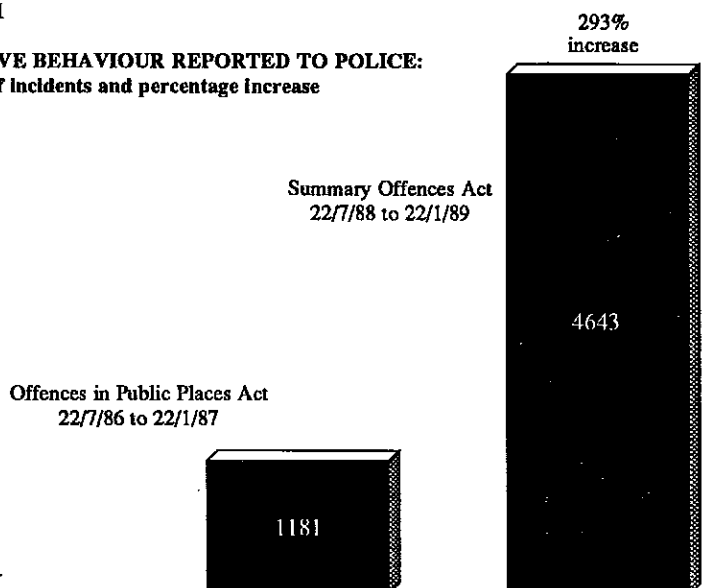
When the data were further analysed, looking at those cases involving only offensive behaviour, charges in which the only behaviour attribute listed in the PIR or PIA was that of bad language increased markedly ( $X^2 = 13.04$ , 1 d.f.,  $p < 0.001$ ). In 23 per cent of arrests in the OPP group and 33 per cent of arrests in the SOA group bad language was the only behaviour mentioned in the PIR or PIA. In other words, 101 people in the OPP group and 173 in the SOA group were arrested on the basis of the language they used and no other behaviour.

***By comparison with the Offences in Public Places Act has the number of people detained under the Summary Offences Act increased ?***

Figure 1 shows the change in the number of incidents of offensive behaviour reported to police in the study periods before and after the introduction of the Summary Offences Act 1988. The increase is of the order of 293 per cent.

**FIGURE 1**

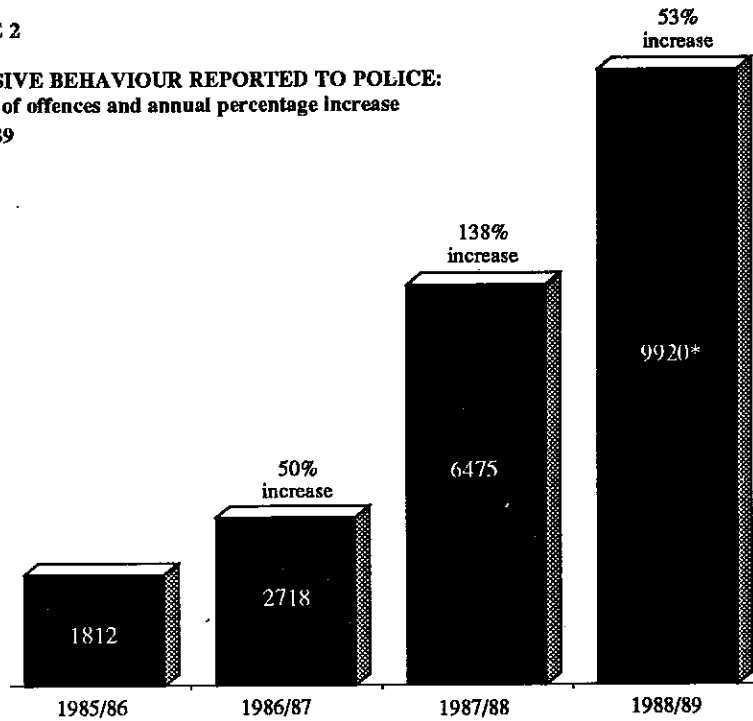
**OFFENSIVE BEHAVIOUR REPORTED TO POLICE:  
Number of incidents and percentage increase  
by group**



It is worth noting, though, that the increase in reported cases of offensive behaviour began some considerable time before the Offences in Public Places Act was repealed. Figure 2 shows trends in reported offences of this type over the period 1984/1985 to 1988/1989. The full increase over this period is of the order of 450 per cent. It is evident from Figure

FIGURE 2

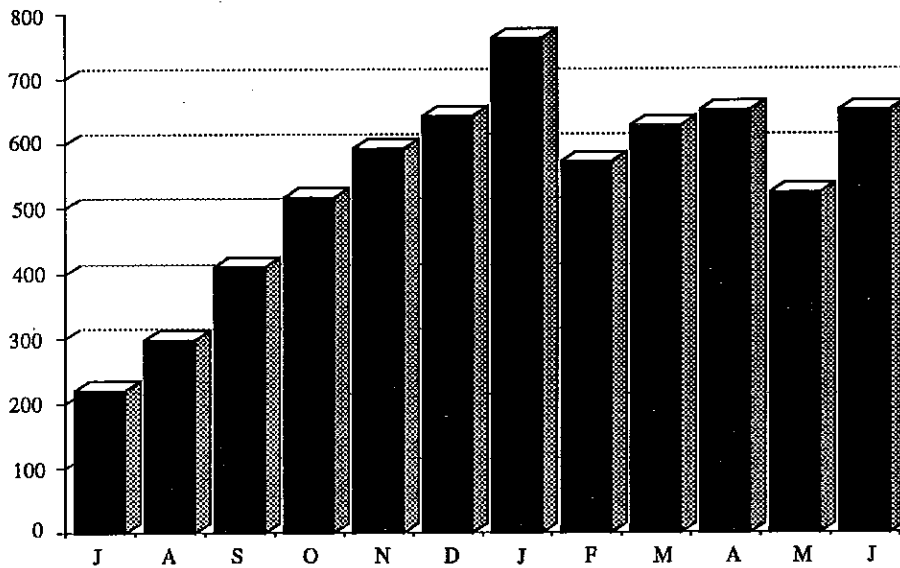
OFFENSIVE BEHAVIOUR REPORTED TO POLICE:  
Number of offences and annual percentage increase  
1985-1989



Note: \*This figure is an estimate only as figures were available for only 9 months of 1988/89

FIGURE 3

OFFENSIVE BEHAVIOUR REPORTED TO POLICE:  
Number of accepted reports by month July 1987 - June 1988



2 that the largest increase occurred in the period 1987 to 1988. Figure 3 shows the monthly trend in accepted reports of offensive behaviour over the period July 1987 to June 1988. Clearly most of the increase occurred over the period July 1987 to January 1988. This point will be taken up in the Conclusion of the report <sup>7</sup>.

*To what extent are the courts utilising the relevant gaol provisions of the Summary Offences Act and under what circumstances ?*

## The Prison Option Utilised

One of the most contentious aspects of the Summary Offences Act 1988, at least in terms of the three offences which have been considered in this report, was the introduction of a prison option for offensive behaviour. As noted in the Introduction, the maximum term which can be imposed for this offence under the Act is three months. There is no prison option available for Obstruction and the penalties for Obscene Exposure, both financial and custodial, were unchanged by the Summary Offences Act. Therefore only those prison terms which were imposed for offensive behaviour will be considered in this section of the report. There are only four such cases found by the Bureau since the introduction of the Summary Offences Act. This is a very small percentage of cases dealt with under the new legislation. For this reason full details of the cases are given below.

## Court Data

The Bureau obtained the cases by carrying out an analysis of Local Court appearances in 1988 in which a charge of offensive behaviour under the Summary Offences Act was considered. This period does not cover the whole length of the present study. It is also possible that within the period to 31 December there are some missing cases due to delays by some city courts in sending in statistical returns.

Of the 566 persons dealt with in this period for offensive behaviour four received custodial penalties. Two people were sentenced to 7 days; one person received 14 days; and the last was sentenced to 1 month's prison.

Because there are so few cases it is possible to profile each case:

*Case 1: A 58 year-old single female pensioner sentenced to 7 days at Lidcombe Local Court for two counts of offensive behaviour (language).*

The first count related to an incident in an hotel which the woman refused to leave. Police went to the hotel and escorted the woman from the bar. Outside the hotel the woman called the hotel publican a 'cunt' and a 'big fuckin' prick'. The woman was then arrested.

In the second incident the police attended 'a domestic' at the home of two people, neither of whom was the arrestee. It is noted on the Police Fact Sheet that 'the defendant was present' (although it is unclear whether she was in the house, on the front verandah, or only in the

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<sup>7</sup> Note that Figures 2 and 3 are not drawn from the Statewide sample. They are drawn from data separately made available by the Statistics and Evaluation Branch of the N.S.W. Police Department.

vicinity of the house) whilst police were talking on the front verandah of the house to the two people.

The Fact Sheet continues: 'The defendant then said in a loud voice, which was audible from ..... Road, "you fucken [sic] big prick", directing this at Constable .....'. Later it was noted that there were a number of people on the street and in a nearby hospital all of whom were in hearing distance of the defendant 'who appeared to be slightly affected by intoxicating liquor'.

The defendant had an extensive record of prior convictions going back to 1950. These convictions were generally for Failure to Leave Licensed Premises.

Between 1986 and 1988 she was dealt with on 13 occasions by Lidcombe Local Court in relation to 20 offences. In 1986 and 1987 there were 12 incidents of Fail to Leave Licensed Premises and 3 counts of Breach of Bail conditions. In 1988, prior to the offences for which she was sent to gaol, she appeared before the same court on 4 separate occasions concerning 3 charges of Offensive Behaviour and two separate charges of Obscene Exposure.

All of these offences since 1986 have been dealt with by way of fine except the penultimate offence in 1988 in which, for Obscene Exposure, she received a section 556A recognizance to be of good behaviour for 12 months. She was presumably in breach of this bond when she was gaoled in October 1988, for offensive behaviour.

*Case 2: A 28 year-old, single, unemployed male sentenced to 7 days at Grafton Local Court for offensive behaviour (urinating in public).*

The charge related to an incident in which the defendant was alleged by police to have urinated on a table in a public place at which a family was seated eating a meal. An altercation between the defendant and 'a male witness' ensued. The Fact Sheet notes that 'the defendant was well affected by liquor' and there were many people in the vicinity in addition to the people eating their meal.

The defendant had an extensive record dating from November 1976. Offences included Assault Occasioning Actual Bodily Harm (1976), Stealing (1977), Offensive Manner (language) and Resist Arrest (1984), Evade Taxi Fare and Larceny (1985).

In 1986, there were five matters in which this defendant appeared, and two in which he Failed to Appear, before Local Courts in New South Wales.

The 1986 offences, all of which resulted in convictions, included Malicious Injury, Fail to Quit Licensed Premises, Fail to Appear, Possess Indian Hemp, Larceny, Offensive Manner (language), Prescribed Concentration of Alcohol (Middle-range) and Drive while Unlicensed. Most of the matters resulted in fines, but in one matter the defendant was required to enter a recognizance to be of Good Behaviour for 2 years; accept the supervision of the Probation and Parole Service; attend counselling and not consume alcohol to excess.

*Case 3: A 25 year-old, unemployed, male Aboriginal of unknown marital status sentenced to 28 days at Walgett Local Court for offensive behaviour (street fighting).*

The defendant was alleged to have urinated against a person's door. The door owner



complained and the defendant punched him. (The location of the door is not specified in the Facts Sheet, but the fighting incident is noted as occurring in the main street of Walgett.) The defendant is stated to have been moderately affected by alcohol at the time of the incident.

In sentencing the defendant to 28 days the magistrate noted on the court papers that there appeared to be 'no other reasonable option' available to the courts.

The defendant's criminal record dates from 1980 when he was 17 years old. On his first appearance before a Children's Court he received 2 years probation, conditional upon him accepting supervision and guidance from a district officer and seeking treatment for alcohol related problems. This sentence was in connection with the offences of Indecent Assault of a female under 14 years, Steal Motor Vehicle, Drive while Unlicensed, Attempt to Steal (cigarettes and lighter), Cause Serious Alarm and Affront, and Attempt to Break, Enter and Steal.

Five months later, in 1980, he appeared before the same court and entered into a recognizance to be of good behaviour for 2 years for the offences of Stealing (8 cans of beer), Serious Alarm and Affront (threatening police) and an additional charge of Stealing (pullover and cigarettes).

Early in 1981, the defendant was committed to an institution for 2 counts of Break, Enter and Steal and 1 charge of Attempt to Break, Enter and Steal. The defendant's stay in an institution was presumably short, perhaps because of his age, because he was again before a court, this time before the Local Court at Moree in November 1981, where he received a fine for Serious Alarm and Affront.

There were three court appearances for the defendant in the years 1982, 1983 and 1984. All resulted in fines. The offences involved were Serious Alarm (fighting), Stealing (petrol and money) and two counts of Assault. Two subsequent charges of Offensive Behaviour (urinating) (fighting) resulted in fines in 1984, as did two similar charges involving fighting in 1985.

In 1986, the defendant appeared before Local Courts for Enter Enclosed Lands, Offensive Behaviour (swearing), Stealing (wine cask) and Not Wearing Helmet. In 1987, he was charged with Assault Female. All of the above offences resulted in fines.

*Case 4: A 29 year-old unemployed, separated, Aboriginal male sentenced to 14 days at Walgett Local Court for offensive behaviour.*

The charge concerned an incident in an hotel in Walgett, but apart from the claim that the defendant 'did conduct himself in an Offensive Manner' in this hotel, no other facts are recorded.

The sequence of events in this case is rather difficult to follow, but it appears that the defendant was served with a Court Attendance Notice for the above matter to appear on 4 October 1988 and the matter was then stood over until 8 November 1988. Between these dates, on 3 November, the defendant was re-arrested on a charge of Break, Enter and Steal. Bail was refused on the grounds that the defendant had no fixed place of abode, no money, the present charge was a serious one, and, more particularly, the defendant was, at the time of the alleged offence on parole until 1991, and he had not been reporting to his parole officer

in the weeks preceding the commission of the alleged offence.

The Break, Enter and Steal matter, together with the offensive behaviour charge, were adjourned until 8 November 1988 on which date the defendant was sentenced to 14 days for offensive behaviour. The matter of Break, Enter and Steal was eventually dealt with on 20 February 1989 when the defendant was sentenced to 12 months, to date from 3 November 1988, from which time the defendant seems to have been in custody.

The defendant's criminal record dates from 1973 but no information is available about his earlier convictions. In 1981 he was sentenced to 2 years imprisonment for Assault and Robbery in Bourke District Court. In 1982, the defendant received a five and a half year gaol sentence for Robbery. He was released on parole in July 1985.

In 1986, he failed to appear in connection with charges of Stealing, Forging, Uttering and Assault, but appeared, and was convicted of Offensive Manner (language and fighting), Administer Heroin and Possess Equipment. He eventually appeared in November 1986, on the Forge, Utter and Stealing charges and was sentenced to 2 years imprisonment with a 6 month non-parole period.

The pre-sentence report which was prepared for the court by the Adult Probation and Parole Service when the defendant was sentenced in 1989 for Break, Enter and Steal, noted that non-custodial sentences such as Community Service Orders, 'would seem to be a waste of resources'.

## Summary Offences in Bourke, Brewarrina and Walgett

The above towns were chosen for study because they each have substantial Aboriginal populations compared with white populations and because the vast majority of detentions in these towns by police are of Aboriginal persons. Unlike the overall State study, the OPP and SOA cases described below represent the total population of such cases in these towns rather than a sample of the cases. Statistical tests for this reason have not been considered necessary. The time frames chosen for analysis are the same as those which applied to the State study, as are the issues which were examined in the State study.

The arrests of 19 people in the OPP group have been eliminated from consideration because these arrests related to two major riots which occurred during the OPP period. No riots occurred in the period of the SOA, so to have included the 19 arrests in the former group might distort the legitimacy of any comparisons between the two groups. (As it happens, differences between the two groups are much the same whether the riot arrests are excluded or not.)

After exclusions for riots there were 50 people arrested during the OPP period and 159 during the SOA. This represents a 218 per cent increase in arrests between the two periods. If the riot arrests are not eliminated there was a 130 per cent increase in arrests between the two study periods.

It is important to note throughout this whole section, and particularly with reference to the Tables which detail Location and Context, that the data frequently describe only small

numbers of incidents so that even small shifts of numbers within cells could generate relatively large proportional changes.

Principal offence	OPP		SOA	
	No.	%	No.	%
Obscene Exposure	1	2.0	5	3.1
Offensive Behaviour	49	98.0	151	95.0
Violent Disorder	-	-	2	1.3
Other	-	-	1	0.6
<b>TOTAL</b>	<b>50</b>	<b>100.0</b>	<b>159</b>	<b>100.0</b>

*Has there been a change in the type of charges laid between the OPP group and SOA group?*

The brief answer to this question is no. Almost all of the charges in both groups were for offensive behaviour as shown in Table 7. One person was charged with Obscene Exposure in the OPP group and five people were charged with this offence in the SOA group. Two people were charged with the newly created offence of Violent Disorder in the SOA group.

*Has there been a change in the location in which the incident occurred?*

The figures in Table 8 below show that the bulk of offences in these three towns took place in only two locations - the street or inside or outside a hotel. These two categories accounted for 78.0 per cent of locations in the OPP group and 91.2 per cent of locations in the SOA group. The difference between the number of arrests from incidents in street locations in the OPP group and the SOA group is a 282 per cent increase.

Location of incident	OPP		SOA	
	No.	%	No.	%
Victim/other dwelling	2	4.0	4	2.5
Street/car	28	56.0	107	67.3
Inside/outside hotel/pub/club	11	22.0	38	23.9
School/institution	2	4.0	2	1.3
Police station/cells	2	4.0	4	2.5
Park/beach/toilets/entertainment/sports	2	4.0	2	1.3
Shops/car parks	2	4.0	2	1.3
Other	1	2.0	-	-
<b>TOTAL</b>	<b>50</b>	<b>100.0</b>	<b>159</b>	<b>100.0</b>

Other changes in incident location were all relatively minor decreases between the two periods as the figures in Table 8 illustrate.

*Has there been a change in the context in which the incident occurred ?*

The various contexts in which the incidents occurred are shown in the figures in Table 9.

Public disturbances, even after the riot arrests were excluded, were more a feature of the OPP than the SOA group's profile (OPP: 14 per cent; SOA: 3.8 per cent). However, there were relatively more arrests in the SOA group which arose out of interaction between police and persons being questioned or arrested about another offence or incident (OPP: 8.0 per cent; SOA: 18.2 per cent). There was also an increase in incidents to which the only precursor identified was the arrestee's drunkenness (OPP: none; SOA: 7.5 per cent).

The main difference between the two groups was the decline in the proportion of cases in which it was the nature of the language overheard which appeared to be the context<sup>8</sup> of a subsequent arrest (OPP: 40.0 per cent; SOA: 27.7 per cent).

Context	OPP		SOA	
	No.	%	No.	%
Domestic/other disputes	13	26.0	40	25.2
Suspect/other arrested spoken to re: other offence	4	8.0	29	18.2
Public disorder/aggression	7	14.0	6	3.8
Horseplay/bravado	1	2.0	7	4.4
Refused entry/declined to leave licensed premises	3	6.0	1	0.6
Full bladder	-	-	2	1.3
Intoxication	-	-	12	7.5
Sexual activity	1	2.0	-	-
Nature of language	20	40.0	44	27.7
Other/cannot establish context	1	2.0	18	11.3
<b>TOTAL</b>	<b>50</b>	<b>100.0</b>	<b>159</b>	<b>100.0</b>

*Has the number of arrests per incident changed?*

The cases shown in Table 10 illustrate that for incidents resulting in arrests, only a single arrest was made in more than 90 per cent of incidents in both groups. Multiple arrest incidents

<sup>8</sup> Note that the context is usually but not necessarily distinct from the behaviour which causes an arrest. A person, for example, may be heard swearing by others but when the police attend then spit at the police. The context is swearing. The spitting causes the Offensive Behaviour charge.

were relatively more frequent in the SOA group. It should be remembered, however, that 19 arrests arising from two major riots have been excluded from the OPP group.

Arrests per incident	OPP		SOA	
	No.	%	No.	%
1 person arrested per incident	43	95.6	132	91.7
2 persons arrested per incident	1	2.2	10	6.9
3 persons arrested per incident	-	-	1	0.7
4 persons arrested per incident	-	-	1	0.7
5 persons arrested per incident	1	2.2	-	-
<b>TOTAL</b>	<b>45</b>	<b>100.0</b>	<b>144</b>	<b>100.0</b>
Incidents where no arrest was made are excluded.				

***Has the type of behaviour associated with the incident changed?***

It might be expected that differences between the Offences in Public Places legislation and the Summary Offences Act 1988 would be reflected in variations in the type of behaviour associated with the incidents charged in the two periods. Table 11 lists the behaviour associated with the incidents in both the OPP and the SOA groups. The qualifications and other explanatory notes to Table 5 also apply to Tables 11 and 12.

The figures illustrate that, although there were changes in behaviour, both up and down, they were only minor, with the exception of incidents attributed to brawls (OPP: 10.0 per cent; SOA: none).

Offensive language was an attribute of the incident in approximately 80 per cent of cases in both the OPP group and the SOA group (OPP: 84.0 per cent; SOA: 79.9 per cent).

There were also decreases of between four and five percentage points in the relative frequencies of arrests resulting from incidents which involved damage to property, language and the carrying or using of a weapon or missile.

As with the Statewide samples, and for the reasons stated in that section, the data concerning incident attributes were re-analysed to exclude cases in which the arrestee was charged with anything other than offensive behaviour. The results of these analyses are shown in Table 12.

Incident attributes	OPP		SOA	
	No.	%	No.	%
Damage to property	4	8.0	5	3.1
Language	42	84.0	127	79.9
Violence threatened	4	8.0	8	5.0
Violence actual	9	18.0	32	20.1
Brawl	5	10.0	-	-
Urinating	-	-	4	2.5
Bodily exposure	1	2.0	-	-
Carrying/using weapon missile	4	8.0	6	3.8
Physical harassment	-	-	6	3.8
Sexual harassment	-	-	-	-

Percentages are calculated with reference to the total number of arrests (cf. Table9).  
Percentages do not add to 100% because more than one attribute was noted in some cases.

Incident attributes	OPP		SOA	
	No.	%	No.	%
Damage to property	2	4.9	-	-
Language	36	87.8	108	84.4
Violence threatened	2	4.9	3	2.3
Violence actual	3	7.3	16	12.5
Brawl	5	12.2	-	-
Urinating	-	-	4	3.1
Bodily exposure	1	2.4	-	-
Carrying/using weapon missile	2	4.9	2	1.6
Physical harassment	-	-	3	2.3
Sexual harassment	-	-	-	-

Percentages are calculated with reference to the total number of arrests for offensive behaviour only. Percentages do not add to 100% because more than one attribute was noted in some cases.

There were 41 people in the OPP group and 128 people in the SOA group for whom the only charge laid was one of offensive behaviour. The above percentages are calculated against these numbers.

As with the total populations of charges in these three towns, the bulk of offensive behaviour incidents in both groups had offensive language as an attribute (OPP: 87.8 per cent; SOA 84.4 per cent).

When the data were analysed (along the lines described for the Statewide samples) for offensive language only it was found that in 58 per cent of cases in the OPP group and 64 per cent in the SOA group offensive language was the only behavioural attribute the incident possessed.

Actual violence was a feature of 7.3 per cent of OPP cases and 12.5 per cent of SOA cases. However, it must be stressed again that the number of cases in most of the cells is very small and the proportions could change considerably with only small movements in number of cases.

There were 5 cases in the OPP group attributed to brawls. There were no cases described as brawls in the SOA group.





## Conclusion

In this study charges of Obscene Exposure and Obstruction constitute a negligible proportion of charges laid. Although the penalties have changed, the definitions of these offences have remained the same as they were in the Offences in Public Places Act. The ensuing discussion therefore concentrates only on Offensive Behaviour charges.

The substance and circumstances of the Offensive Behaviour charges differ somewhat between the OPP and SOA groups. In terms of circumstance there is a greater tendency in the Statewide sample of people arrested under the Summary Offences Act 1988 for arrests to arise out of incidents involving altercations of some kind, domestic or otherwise. For those arrested in Bourke, Brewarrina or Walgett there is a greater tendency for arrests to arise out of incidents in which police are already questioning or arresting another person in connection with another matter. There appeared to be little change for the Statewide sample in the location of the arrest, most arrests occurring either in the street or near a hotel or club. For the towns of Bourke, Brewarrina and Walgett, there was a notable increase in arrests which occurred in these locations.

The dominant behavioural feature among those charged with Offensive Behaviour is offensive language. This was an attribute of two thirds of the incidents examined across the State and of 80 per cent of incidents examined in Bourke, Brewarrina and Walgett. Other behaviour, such as violence, also featured in many of these cases but because many cases also involved charges additional to those laid under the Summary Offences Act 1988 (e.g. Resist Arrest, Assault Police) it is difficult to determine from the police reports alone precisely what behaviour actually led to the Summary Offences Act charge or charges being laid. This issue must be addressed by analysing the behavioural characteristics of those persons who were the subject only of Offensive Behaviour charges.

When attention is restricted to those people charged only with Offensive Behaviour, changes are observable in the behaviour which forms the substance of those charges. In 23 per cent of the arrests analysed within the Offences in Public Places Act Statewide sample, offensive language is the only conduct mentioned in the police report. Within the corresponding Summary Offences Act 1988 sample 33 per cent of those arrested for Offensive Behaviour appeared to be detained for offensive language only. The corresponding proportions within Bourke, Brewarrina and Walgett are much higher but the increase is less marked. Whereas 58 per cent of Offences in Public Places arrest reports examined in these towns involved reference only to bad language, this rose to 64 per cent under the Summary Offences Act 1988.

The changes in context and behaviour associated with the shift from the Offences in Public Places Act to the Summary Offences Act 1988 are significant but are overshadowed by the scale of increase in the reporting rates for Offensive Behaviour. As shown in Figure 1, the number of incidents involving Offensive Behaviour, reported to police under the Summary Offences Act 1988 over the 6 months between 22 July 1988 and 22 January 1989 is almost four times higher than the corresponding figure under the Offences in Public Places Act over the 6 months period 22 July 1986 to 22 January 1987. Because over 95 per cent of reports of offensive behaviour are accompanied by an arrest, the increase in arrests may be presumed to follow the increase in reports. The question which must be addressed then is whether and to what extent the increase in reported offences and arrests and the changes in context and behaviour leading to arrest are attributable to the introduction of the Summary Offences Act 1988.

As with all studies in which control over the variables affecting the phenomena of interest is limited or non-existent it is impossible to give a definitive answer to this question. The introduction of the Summary Offences Act 1988, was not the only change occurring in recent times which could have had a bearing on the characteristics and rate of recorded incidents of offensive behaviour. In the present circumstance, though, there is good reason for suspecting that factors surrounding the introduction of the Summary Offences Act 1988 rather than the Act itself may have played a key part in producing the changes which have been observed in this study.

To begin with, the rate of reports of offensive behaviour, as may be observed from inspection of Figures 2 and 3, began climbing sharply before the introduction of the Summary Offences Act 1988. Reporting rates increased by 50 per cent between 1985/6 and 1986/7. It was at this point that the marked change depicted in Figure 2 began to occur. During July 1987 police recorded 220 reports for Offensive Conduct under the Offences in Public Places Act. The number of reports then rose steadily during the following months, reaching a high of 763 during January 1988. At this point it declined slightly until the introduction of the Summary Offences Act 1988, whereupon it continued its upward trend. The growth in reports of offensive behaviour clearly antedates the Summary Offences Act 1988 and cannot therefore be assigned solely to the operation of its provisions. What other factors may account for the trend?

One factor worth pointing to is the recent rapid growth in numbers of police. In mid-1986, the previous government authorised the creation of 2000 new positions in the New South Wales Police Department. Of these positions, 1250 positions were to be for constables. This increase was followed immediately after the election of the present government by a further commitment of 1600 new positions to the authorised strength of the police force.

In addition to the 3600 positions thus created since 1986, the *N.S.W. Police Department Annual Report 1986/1987* (p. 7), reported that by June 1987, 408 police positions had been identified by the Establishment Review Committee 'as being suitable for civilianisation'. In other words, in the fullness of time, 408 police officers would be returned to more traditional police duties.

The Report went on:

The ERC is still actively engaged in an extensive programme conducting inspections of Police positions in many areas of the organisation where it is anticipated further positions suitable for substitution may be identified.  
(p. 7)

While all of these new authorised positions have not yet been filled, information provided by the Establishment Section of the Police Department states that by 1989 there were 1668 more police than there had been in 1986. Almost all of the increase (97.1 per cent) was in the ranks of constables whose numbers rose from 7556 to 9176 - a 21 per cent increase. This increase in numbers of police directly involved in law enforcement may have contributed to a general increase in arrests for offences including offensive behaviour. Such at least was the opinion advanced in the *1986/87 Police Department Crime Statistics Report* which observed that:

The significant swell in police numbers in recent times has obviously had an impact on the detection and recording of criminal offences. (p. 4)

Another significant consideration in explaining the changes observed in patterns and rates of recorded incidents of offensive behaviour is to be found in the instructions to police announced in Circular No. 87105, issued by the Police Commissioner on 11 September 1987. It referred to increased public concern about offensive conduct on the streets and to instances in which police allegedly advised members of the community (complaining about such conduct) that they (the police) were 'restricted in what action they could take under existing legislation'. The circular went on to refer to recent N.S.W. Supreme Court decisions which (according to the circular) indicate that the police 'have ample powers in this area under existing legislation' (viz the Offences in Public Places Act). Patrol Commanders were directed by the Commissioner 'to ensure that Police under their command have a clear understanding of their responsibilities in the execution of their duties' and assured them of his support in this respect.

A third important development in policing in the period 1987/88 was the establishment of the 'Street Safety Coordination Group' which, according to the *N.S.W. Police Department Annual Report 1987/88* was formed to 'develop effective programs to combat the incidence of hooliganism in the community'. One of its initiatives was 'Operation Hoover'. According to the Annual Report this operation was successfully trialled in the Sydney area from November 1987 and has since been extended across the State. 'Operation Hoover' is described in the report as a strategy of beat policing of 'streets, hotels, railway stations and other areas targeted as potential risk areas by District Intelligence groups' (p. 27).

In April 1988 new police procedures were also issued to all police which encouraged proactive policing in domestic disputes. These procedures followed the Crimes (Personal and Family Violence) Amendment Act (1987), which encouraged and in some cases actually compelled police to put in an offence report when complaints concerning domestic violence were made by aggrieved parties. It is possible that these initiatives contributed, at least in part, to the increase in the proportion of arrests for offensive behaviour arising from domestic and other forms of altercation. This explanation would not apply to Bourke, Brewarrina and Walgett, where the increase in arrests for offensive behaviour seems to arise out of the special nature of the interaction between police and Aborigines.

The events referred to so far by way of explanation for the increase in reports of offensive behaviour provide at least a partial explanation for the trend. Other factors may also have played an important part. It should be noted, for example, that the largest number of reports of offensive behaviour in the period July 1987 to June 1988, occurred during January, at the peak of the Australian Bicentennial celebrations. These were accompanied by a much higher than usual level of public revelry. It is also to be noted that in the lead-up to the State election, which occurred in March 1988, considerable media attention was focussed on law and order. This may also have contributed to a rise in reports of offensive behaviour.

The changes in the substance and circumstances of offensive behaviour charges may be due to those factors which have already been credited with increasing the rate of reports of offensive behaviour. More active policing, particularly in the area of public violence would account, as already noted, for the increase in arrests arising out of altercations. It is likely, though, that the policing of offensive behaviour would have been encouraged by the Offensive Language provisions of the Summary Offences Act 1988. By giving explicit attention to the issue of language in public places the Act may have brought about the observed rise in the proportion of incidents and arrests associated with bad language. If this is true it would probably also have contributed to the absolute increase in reports of offensive behaviour.

One final matter remains to be dealt with. In the Introduction to this report reference was made to the second reading speech introducing the Summary Offences Act 1988. In that speech the Attorney General expressed his desire that the new penal sanctions attached to the offensive behaviour provisions be used only as a last resort and that their use be monitored, particularly in regard to Aboriginal people. The Bureau's evaluation disclosed that four people, of whom two were Aboriginal, were imprisoned for offensive behaviour in the six month period up to the end of December 1988. The full details of those cases are provided in the body of this report. There are no objective grounds on which the Bureau could form a view as to whether the sentences in question have been imposed as a last resort. It is clear, however, that sentences of imprisonment for offensive behaviour under the Summary Offences Act have so far been extremely infrequent.

# Appendix 1.

## OPP/SOA QUESTIONNAIRE - BUREAU OF CRIME STATISTICS & RESEARCH

Microfilm reference N<sup>o</sup>

Date of birth:

Year when incident became known to police:

1	<b>Suspect/other variables:</b> ONE SUSPECT / ONE OTHER-----1 ONE SUSPECT / MULTIPLE OTHERS-----2 MULTIPLE SUSPECTS / ONE OTHER-----3 MULTIPLE SUSPECTS / MULTIPLE OTHERS-----4 NO SUSPECT / ONE OTHER-----5 NO SUSPECT / MULTIPLE OTHERS-----6	<input type="checkbox"/>
2	<b>Distinct incident flag:</b> SEPARATE INCIDENT-----1 MULTIPLE SUSPECTS, MULTIPLE SHEETS FOR SAME INCIDENT-----0	<input type="checkbox"/>
3	<b>Number of suspects:</b> NUMBER OF SUSPECTS NOT KNOWN-----N	<input type="checkbox"/> <input type="checkbox"/>
4	<b>Number of suspects actually arrested:</b> WRITE NUMBER, OR: NO SUSPECT ARRESTED-----00 D/K-----99	<input type="checkbox"/> <input type="checkbox"/>
5	<b>Suspect N<sup>o</sup> detailed on this form:</b> ONE SUSPECT ONLY-----00 FIRST OF MULTIPLE SUSPECTS-----01 SECOND OF MULTIPLE SUSPECTS-----02 ETC.	<input type="checkbox"/> <input type="checkbox"/>
6	<b>PEOPLE PRESENT</b> People present when incident occurred: POLICE ONLY-----1 POLICE AND OTHER/S-----2 OTHER/S ONLY-----3 UNCLEAR / D/K-----4	<input type="checkbox"/>
7	<b>If "other/s" present who were they?</b> ONE MALE-----1 ONE FEMALE-----2 TWO OR MORE MALES-----3 TWO OR MORE FEMALES-----4 TWO OR MORE PEOPLE - SEX NOT STATE-----5 TWO OR MORE - MIXED SEX-----6 NOT APPLICABLE - NO "OTHERS" PRESENT-----7 UNCLEAR / DON'T KNOW-----8	<input type="checkbox"/>
8	<b>INCIDENT DETAILS:</b> Time of incident: 24 hour clock	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
9	Day of week:	<input type="checkbox"/>
10	Date on which incident occurred:	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
11	Location of incident: (town / suburb) <input type="text"/> POSTCODE: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
12	Incident reported by: POLICE-----1 OTHER/S-----2 D/K - NOT STATED-----4	<input type="checkbox"/>
13	<b>Type of location:</b> VICTIM'S DWELLING-----01 OTHER DWELLING-----02 STREET-----03 INSIDE / OUTSIDE HOTEL / PUB-----04 VICINITY OF SCHOOL / CHURCH / HOSPITAL-----05 INSTITUTION (GAOL, MENTAL HOSPITAL)-----06 POLICE STATION / VEHICLE / CELLS-----07 RAILWAY STATION / TRAIN-----08 OTHER (SPECIFY)-----09 D / K-----99 TOILET-----10 PARK / RESERVE / OTHER PUBLIC LAND-----11 BEACH-----12 CAR-----13 CAR PARK-----14 RETAIL ESTABLISHMENT / SHOPPING CENTRE-----15 SPORTING VENUE / SHOW GROUND-----16 NON RAIL PUBLIC TRANSPORT / STOP / RAMP-----17 INSIDE / OUTSIDE OTHER ENTERTAINMENT VENUES-----18 SPECIFY OTHER: <input type="text"/>	<input type="checkbox"/> <input type="checkbox"/>
14	<b>SUSPECT:</b> Suspect's sex: MALE-----1 FEMALE-----2 TRANS-SEXUAL-----3 D / K-----4	<input type="checkbox"/>
15	Suspect's age at time of the offence: WRITE NUMBER OR D / K-----99	<input type="checkbox"/> <input type="checkbox"/>
16	<b>Suspect's racial appearance:</b> WHITE-----01 ABORIGINAL-----02 ASIAN-----03 MAORI-----04 PACIFIC ISLANDER-----05 ARAB-----06 MEDITERRANEAN-----07 NEGRO-----08 SLAVIC-----09 OTHER-----10 NOT STATED-----99	<input type="checkbox"/> <input type="checkbox"/>
17	<b>CONTEXT IN WHICH INCIDENT OCCURRED:</b> SPECIFY OTHER: <input type="text"/> DOMESTIC DISPUTE-----01 ALTERCATION-----02 SUSPECT SPOKEN TO OR ARRESTED FOR OTHER OFFENCE-----03 OTHERS SPOKEN TO OR ARRESTED FOR OTHER OFFENCE-----04 PUBLIC DISORDER-----05 OTHER (SPECIFY)-----06 CANNOT ESTABLISH-----09 "HORSEPLAY" / BRAVADO-----10 REFUSED ENTRY / DECLINED TO LEAVE-----11 FULL BLADDER-----12 INTOXICATION-----13 SEXUAL ACTIVITY-----14 NATURE OF LANGUAGE OVERHEARD-----15 AGGRESSIVE BEHAVIOUR-----16	<input type="checkbox"/> <input type="checkbox"/>

