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ABORIGINAL PEOPLE AND THE N.S.W. CRIMINAL JUSTICE SYSTEM:  
A REVIEW OF EXISTING INFORMATION.

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### Synopsis

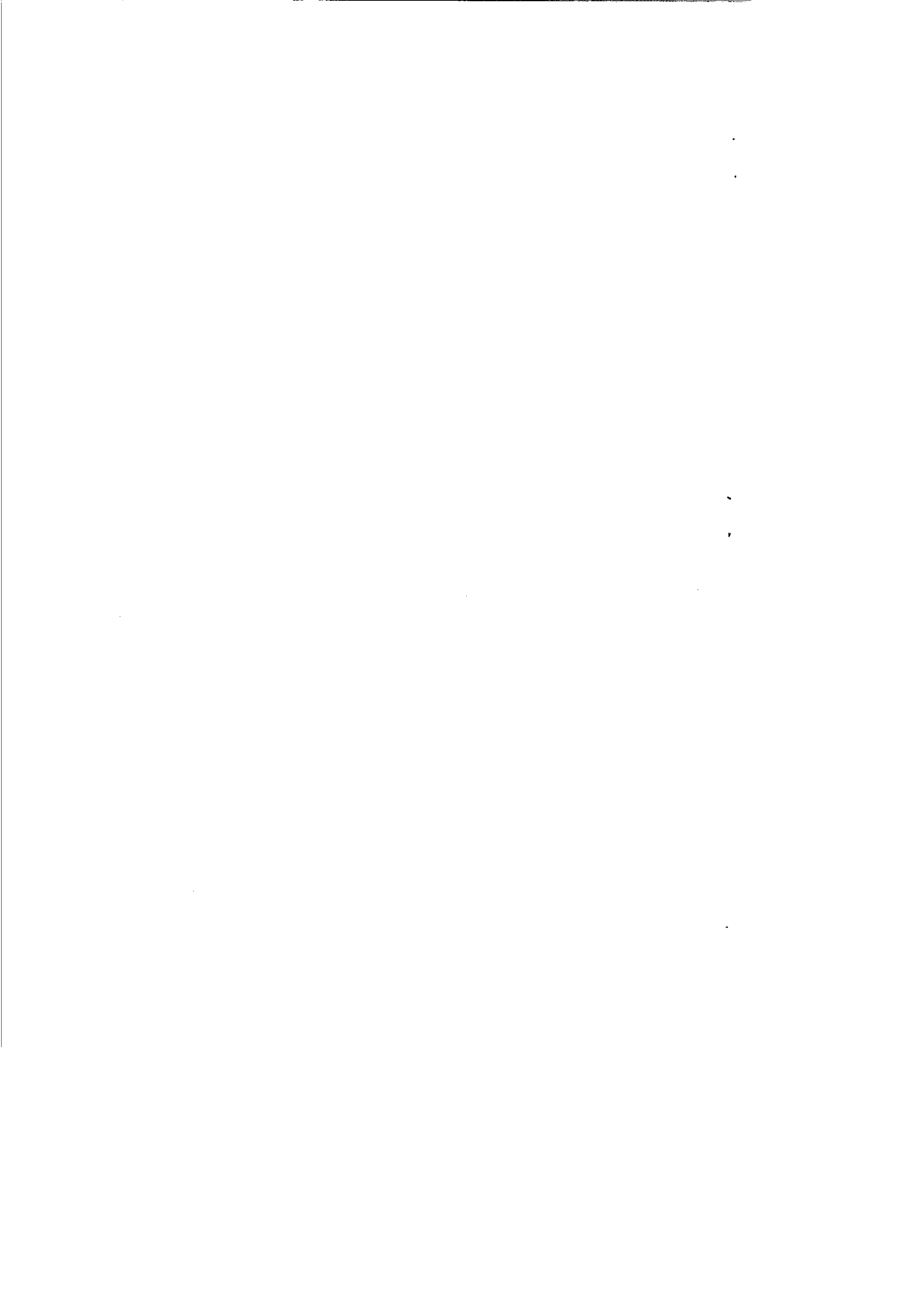
This report contains a review of the existing statistical information, relating to aboriginal people, produced by criminal justice institutions in N.S.W. It has been prepared in response to the very large number of enquiries this Bureau receives, concerning the experience of aboriginal people in the criminal justice system.

Court statistics over several years suggest that penalties for minor offences are different in country towns with a high concentration of aboriginal people. Compared with the rest of the State, people dealt with in these courts for drunkenness offences are more likely to be fined, with 24 or 48 hours imprisonment in default. In 1977 drunkenness offences increased in these "aboriginal" towns, compared to decreases in other regions in the State.

The introduction of the Aboriginal Legal Service appeared to be related to milder penalties for some offences, when penalties in 1973 and 1974 are compared.

A census of N.S.W. prisoners in 1974 showed that the rate of imprisonment of aborigines was at least 17 times that of the rest of the population. The census compared various characteristics of aboriginal prisoners with those of non-aboriginals.

These statistics, taken collectively, represent clear evidence that aboriginal people are subject to systemic discrimination in N.S.W. They have a different experience from the rest of the population at the hands of the justice system, which defines, detects and punishes crime.



### Introduction

The regular collections of statistics relating to crime and the justice system are institutionally based. Information is collected at the point where individuals come in contact with the police, the courts and the prisons. What is recorded is generally what the institution needs to know in order to perform its function.

Courts and prisons do not officially require a person's race or appearance to carry out their functions. Attempts to collect routine statistics on race in Courts of Petty Sessions have foundered because of this; there is no reason for the information to be recorded during the court proceedings.

Police, on the other hand, do rely on appearance and racial characteristics in their records, as identification of people is one of their institutional functions.

### Police Statistics

For some time the N.S.W. Police Department produced monthly computer print-outs of the number of Aborigines arrested that month and for the year, categorised by seven broad crime categories (offences against the person; steal with violence; property breakings; stealing; false pretences, fraud, etc; sexual offences; miscellaneous) and by district and division. This information was not published and it is understood that because of lack of enquiries about it, the preparation of these printouts has ceased.

It would have been possible to, say, put this information together with 1976 census information on the geographic distribution of Aboriginal people, to make comparisons of arrest rates between different areas of the State.

### Court statistics - routine collections

The N.S.W. higher court statistics, published by the Australian Bureau of Statistics (ABS), contain information on country of birth. They do not identify aboriginal people separately.

A similar question was included in this Bureau's drugscollection in Courts of Petty Sessions but has been dropped as the information was usually unavailable. The problem was highlighted in the Bureau's publication "Court Statistics 1972" which contains an account of a pilot study of a question on country of birth, conducted at Central Court of Petty Sessions between 8 February and 8th May, 1973. "The major shortcoming of the study was that country of birth was not reported in all cases. Statistical returns were not completed in 1234 of 3708 relevant cases..." A study of offence patterns for the different races showed that "the pattern of Aboriginal offences was ... a relatively high percentage of summary offences (especially unseemly words and vagrancy) and few larceny offences". Approximately 1 out of 3 Aborigines were legally represented. This was a lower proportion than for other Australians (47%) and about the same as for migrants.

### Court Statistics - penalties in "aboriginal" towns

However the existing court statistics may be used to make some inferences about aboriginals and the justice system. This Bureau has, in several analyses, divided the courts in N.S.W. into four categories - those in the city, in the suburbs, in the country and those in towns with a high concentration of aboriginal people (according to the 1971 and later the 1976 censuses). The towns are listed in Appendix A.

The first such analysis appeared in "Minor Offences - City & Country" (October, 1974) which showed that

- . courts in country and "aboriginal" towns were more likely to penalise drunkenness and unseemly words offences with short prison sentences;

- . cases of offensive behaviour in aboriginal towns were less likely to be fined and 7 times more likely to receive a prison sentence than in other country towns (6 times more than in Sydney);

- . for cases of "unseemly words" the results were similar, though not quite so marked;

- . for drunkenness offences, the penalty of fine, in default 24 or 48 hours imprisonment, was 34 times more common in Aboriginal towns than in Sydney and 4 time more common than in other country towns.

This sort of analysis has been repeated for drunkenness offences for several years. In "Court Statistics 1976" it was concluded:

"We have built up then, a composite picture of an atypical group of N.S.W. country towns. These towns tend to be in remote parts of the State. Magistrates sit at the local court from 6 to 78 days in the year. The local court's most frequent business is the hearing of drunkenness offences; the local justice system may therefore be seen as a mechanism, administered by the local Police and Justices of the Peace, for dealing with public drunkenness. Most of the towns have a significant aboriginal population. The penalties for public drunkenness are more severe than elsewhere in the State."

While the penalties in aboriginal towns are still substantially different from those in the rest of the State, there has been a change in penalties over the years. As Table 1 shows, fines with imprisonment in default made up 48% of penalties in "aboriginal" towns in 1973, and 13.5% in 1977.

Table 1 - Trends in Penalties in "Aboriginal" Towns (percentages)

	1973 N=4572	1974 N=3831	1975 N=5294	1976 N=5570	1977 N=7711	1978* N=6814
Recognizance Forfeited	37.6	34.9	32.9	35.1	69.8	61.8
Admonished and Discharged	10.3	16.1	18.8	20.6	11.2	13.9
Fined in default, sentenced to the rising of the court	1.1	15.1	16.8	15.1	5.3	6.9
Recognizance	0.1	0.1	0.0	0.0	0.0	0.1
Fined and Recognizance	2.6	0.9	0.3	1.1	0.2	0.4
Remanded for inebriate action	0.1	0.2	0.0	0.0	0.0	0.0
Fined, in default, 24 hours imprisonment	24.5	8.9	8.1	7.5	3.3	11.3
Fined, in default, 48 hours imprisonment	23.7	23.8	23.1	20.4	10.2	5.5

\* Note the the "Aboriginal" towns changed in 1978, when the results of the 1976 census became available - See Appendix A.

Courts in "aboriginal" towns were the only group to show an increase (19%) in the number of drunkenness cases handled in 1977; in contrast, inner city courts handled 25% fewer cases than in 1976. The increase in the "aboriginal" towns (1072) is less, however than the significant rise (2686) in the number of forfeited recognizances. There was a (smaller) state wide increase in the proportion of recognizances forfeited (75.6% in 1976 and 79.7% in 1977), probably a result of a directive by the N S W Police Commissioner in 1977 that bail should be set at \$1.00 for drunkenness offences and should be increased only in exceptional circumstances.

In 1978 the total number of offences in these towns fell. There was a continuation of the previous trend for fine penalties, with 48 hours imprisonment in default, to become less probable. The proportion of forfeited recognizances fell again, after its spectacular rise in 1977. Offsetting these falls were rises in several other categories of court action.

There is a small amount of evidence that bail for aboriginal people has previously been set at a higher level than for non-aboriginals. This would explain why there was a relatively greater increase in 1977 in recognizances forfeited in the aboriginal towns. The evidence referred to is contained in this Bureau's research report on "Bail" (May, 1977).

Table 2 - Bail set for Drunkenness Offences

<u>Amount of Bail</u>	<u>Aboriginal</u>	<u>Non-Aboriginal</u>
\$1	3	22
\$5	5	-
\$10	8	1
Unknown	-	2
	16	25

Court Statistics - age and sex of drunkenness offenders

The age and sex of drunkenness offenders in 1975 were tabulated by area (city, suburbs, country, 'Aboriginal' towns as above) for this Bureau's submission (February 1977) to the House of Representatives Standing Committee on Aboriginal Affairs on Alcohol Problems of Aborigines. It was found that in all areas the vast majority of offenders were males, but that Aboriginal towns had the highest proportion (12%) of females (see Table 3).

Table 3 - Sex of "Drunks" by Area, 1975

	<u>City</u>		<u>Suburban</u>		<u>Country</u>		<u>"Aboriginal"</u> <u>Towns</u>		<u>Total</u>	
	No.	%	No.	%	No.	%	No.	%	No.	%
Male	28067	94.1	7679	97.5	10,106	95.8	4550	87.8	50,402	94.4
Female	1744	5.9	197	2.5	439	4.2	631	12.2	3,011	5.6
Total	29811	100.0	7876	100.0	10,545	100.0	5181	100.0	53,413	100.0

Sex not known in 747 cases.

In 1978, as in 1975, the "Aboriginal" towns had the highest proportion (14.1%) of females arrested for drunkenness (See Table 4).

Table 4. Sex of drunkenness offenders, by area, 1978.

	<u>City</u>		<u>Suburban</u>		<u>Country</u>		<u>"Aboriginal"</u> <u>Towns</u>		<u>Total</u>	
	No.	%	No.	%	No.	%	No.	%	No.	%
Male	23,313	95.4	8,471	98.0	10,059	96.1	5856	85.9	47,699	94.7
Female	1,128	4.6	174	2.0	404	3.9	958	14.1	2,664	5.3
Unknown	18		0		2		0		20	
Total	24,459	100.0	8,645	100.0	10,465	100.0	6,814	100.0	50,383	100.0

The age pattern for drunkenness offenders differed markedly by area. The Bureau's submission to the above Committee stated:-

"In Aboriginal towns there is a uniform 25% of offences in each age group until 50. 'Drunks' aged more than 50 in Aboriginal towns are much rarer than in other towns. This bears out Dr. Ward's submission (to the same Committee) that Aboriginals start to drink early in their lives, their life span being severely reduced by diseases associated with alcoholism". (See Table 5).

Table 5 - Age of "Drunks" by Area, 1975.

Age	City		Suburban		Country		"Aboriginal" Towns		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
18-29	4757	16.4	2136	28.2	3600	35.7	1247	25.0	11,740	23.7
30-39	4691	16.1	1264	16.7	1684	16.7	1288	25.8	8,927	17.3
40-49	7703	26.5	1646	21.7	2056	20.4	1262	25.2	12,667	24.5
50-59	8616	29.6	1759	23.3	1919	19.1	718	14.4	13,012	25.2
60 & over	3312	11.4	763	10.1	819	8.1	482	9.6	5,376	10.3
	29079	56.2	7568	14.6	10078	19.5	4997	9.7	51,722	100.0

Age not known in 2,438 cases.

By 1978 the age distribution of drunkenness offenders in the "Aboriginal" towns and in the city had changed little (See Table 6) although the proportion of young offenders in the suburbs and country towns has risen significantly.

Table 6 - Age of drunkenness offenders, by area, 1978.

Age	City		Suburban		Country		"Aboriginal" Towns		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
18-29	4115	16.8	3491	40.4	4366	41.7	1873	27.5	13,845	27.5
30-39	3887	15.9	1342	15.5	1628	15.6	1347	19.8	8,204	16.3
40-49	5743	23.5	1315	15.2	1728	16.5	1930	28.3	10,716	21.3
50-59	7326	29.9	1420	16.4	1419	13.6	1072	15.7	11,237	22.3
60+	3098	12.7	793	9.2	983	9.4	515	7.6	5,389	10.7
Unknown	293	1.2	284	3.3	342	3.3	77	1.1	996	2.0
Total	24,462	100.0	8645	100.0	10466	100.0	6814	100.0	50,387	100.0

Court Statistics - Effect of the Aboriginal Legal Service

"Court Statistics, 1974" contains a brief chapter which attempts to evaluate the effect of the Aboriginal Legal Service. Courts where the Service commenced operating were compared with control courts (where it did not) on a before/after basis. Legal representation in cases of "unseemly words" and "offensive behaviour" was much more common in the former courts in 1974 than in 1973; by comparison there was a minimal increase in the control courts over this period.

Penalties became milder in courts where the A.L.S. had "virtually introduced legal representation". In courts where the A.L.S. had "considerably widened its availability" penalties did become milder, but the change was not significantly different from the control courts.

Prison statistics - aborigines in prison

The N.S.W. Department of Corrective Services has carried out special censuses of prisoners from time to time. Data relating to Aboriginal prisoners is contained in their research publication "Census of Prisoners 1974 - Aborigines in Prison".

Some of the more interesting findings are as follows.

- . "Aborigines comprise between 6% and 9% of the prison population. The rate of imprisonment of aborigines in NSW is at least 17 times that of non-aborigines".
- . "During 1973-74 Aborigines were slightly over-represented in secure establishments, but since then they have been over-represented in open establishments".
- . "Aborigines are constantly under-represented in work release".
- . "Aboriginal prisoners are significantly younger than other NSW prisoners, with 60% under 25 years of age and only 9% over 35 years of age, compared with 48% and 24% respectively for all prisoners."
- . "Compared with non-aborigines, aborigines were disadvantaged in their educational background with an average attainment of almost one grade less". This would, however, mean that they had "completed more schooling than the average aborigine in N.S.W."
- . City dwellers were over-represented among both aboriginal and non-aboriginal prisoners. However, since aboriginals themselves are still predominantly non-metropolitan dwellers, there were numerically more country aborigines in gaol than there were city-based aborigines.
- . "Compared with non-aboriginal prisoners a higher proportion of aborigines gave their occupation as a trade, labouring work or rural work."
- . "Aborigines differ little from non-aborigines with respect to their pattern of offences, sentences and non-parole periods, although a slightly higher proportion of aborigines were unsentenced in the 1976 census."
- . "72% of aborigines in 1976 and 52% of all prisoners in 1974 had been legally represented during the criminal proceedings."
- . Aborigines in prison were less likely to complete educational courses in prison, although about 25% of both aborigines and non-aborigines in 1974 were enrolled in educational courses. Aborigines had slightly more contact with medical staff than did non-aborigines, but about the same amount of contact with other professional staff.



APPENDIX A

Categorisation of N.S.W. towns, using 1971 census.

<u>Inner City</u>	<u>Suburban</u>	<u>"Aboriginal" Towns</u>	<u>Rest of State</u>
Balmain	Bankstown	Boggabilla	All other Courts of Petty Sessions in N.S.W.
Central	Blacktown	Bourke	
Glebe	Burwood	Brewarrina	
Newtown	Camden	Collarenebri	
North Sydney	Campbelltown	Condobolin	
Paddington	Campsie	Coonamble	
Redfern	Fairfield	Gulargambone	
	Hornsby	Lightning Ridge	
	Kogarah	Moree	
	Lidcombe	Peak Hill	
	Liverpool	Tenterfield	
	Manly	Walgett	
	Parramatta	Wee Waa	
	Penrith	Wilcannia	
	Richmond		
	Ryde		
	Sutherland		
	Waverley		
	Windsor		

Categorization of "Aboriginal" towns using 1976 census.

Bobbabilla	Burren Junction*
Bourke	Carinda*
Brewarrina	Cobar*
Collarenebri	Enngonia*
Condobolin	Goodooga*
Lightning Ridge	Ivanhoe*
Moree	Menindee*
Walgett	Mungindi*
Wee Waa	Warren*
Wilcannia	

\* "Aboriginal" towns in 1978 Court Statistics and not in previous years.