

# 19. Crime and justice issues

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The over-representation of Indigenous Australians in prison continues to be a serious problem, more than a decade after the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCADC) were handed down (Baker 2001; Williams 2001).<sup>1</sup> For example, Baker (2001) finds that the over-representation stems initially from the higher rate of appearance at court by Indigenous Australians, but is amplified at the point of sentencing, with Indigenous offenders sentenced to imprisonment at almost twice the rate of non-Indigenous people. The violent nature of the offences for which Indigenous people are convicted and the greater likelihood of Indigenous people having prior convictions were also found to contribute to their higher rate of imprisonment.

The RCADC recognised that ‘...too many Aboriginal people are in custody too often’, and recommended a strategy of imprisonment as the last resort to reduce the level of over-representation of Indigenous people in custody (Commonwealth of Australia 1991). More recently, Baker (2001) concluded that reducing the rate of court appearances provides the greatest leverage for reducing Indigenous imprisonment rates. Obviously, one clear way of achieving lower court appearance rates and in diverting people away from court is to reduce the rate at which Indigenous people are arrested. This requires police in the first instance to opt for alternatives to arrest.

This sort of analysis has been conducted using police and court data. However, insights into the socioeconomic forces underlying Indigenous interaction with the criminal justice system can only be obtained by interrogating omnibus social surveys like the 1994 NATSIS and the 2002 NATSISS that include a reasonably comprehensive set of potential explanatory factors.

While the 1994 NATSIS has provided some valuable insights into the processes underlying the disproportionate level of Indigenous arrest (Carcach & Mukherjee 1996; Hunter 1998, 2001; Hunter & Borland 1999), several important research questions remain unanswered. Why do Indigenous people appear in court at a rate five times higher than the rest of the population? Why are Indigenous people more likely to appear for (and be convicted of) certain types of offences? (Baker 2001). Clearly, factors such as the over-representation of Indigenous people in

<sup>1</sup> The recommendations emphasised the need to reduce the disproportionate levels of Aboriginal people in custody, rather than the need to directly prevent their deaths. This emphasis arose out of the Royal Commission’s conclusion that the 99 Aboriginal deaths in custody which occurred during the 1980s were not a result of Aboriginal people being any more likely than others to die in custody, but were a result of their gross over-representation in prison.

prisons and other stages of the criminal justice system, the nature of Indigenous offending and re-offending, and the differential treatment of Indigenous people by the criminal justice system will all have a part to play.<sup>2</sup>

Hunter (2001) asserted that there was a need to reassess the evidence when the data from the 2002 NATSISS was released. One of his arguments for emphasising this survey was that analogous data would be collected for the non-Indigenous population, thus providing a national benchmark against which to compare the Indigenous analysis. Unfortunately, the scope for benchmarking Indigenous results is circumscribed by the failure to collect analogous crime and justice data for the non-Indigenous survey, the GSS. One exception is the limited range of variables relating to the individuals' experience of crime.

The 1994 NATSIS did permit some unique analysis of social interactions (Borland & Hunter 2000; Hunter 2001). However, it was probably too easy for NATSIS-based research (and future research based on the NATSISS) to be dismissed as being specific to the Indigenous population, simply because there was no general omnibus survey at the time that collected a similar range of data on arrest and incarceration.

The ABS's decision to leave out such variables from the GSS could be rationalised on the grounds that any survey estimates of incarceration (and most other aspects of involvement with the criminal justice system) for the non-Indigenous population would have high relative standard errors, especially given the current sample size. However, the failure to collect such information for the majority of Australians limits our capacity to understand Indigenous disadvantage, as many socioeconomic outcomes have been shown to be behaviourally related to arrest, at least for the Indigenous population. That is, while it is well established that socioeconomic factors explain crime rates, criminal activity also partially drives socioeconomic outcomes. This means that we need information on both factors for the whole population in order to understand the origins of Indigenous disadvantage (Borland & Hunter 2000; Hunter 2001).

Even if there is not sufficient number of GSS respondents to identify the extent of interactions between socioeconomic outcomes and crime for the non-Indigenous population, pooled estimates (i.e. a combination of the GSS and NATSISS data sets) would allow researchers to estimate more robust estimators of the factors underlying overall Indigenous disadvantage, and hence allow us to appreciate the overall importance of interactions with the criminal justice system in the cycle of social exclusion.

The 2002 NATSISS, like the 1994 NATSIS before it, is designed to provide a broad range of information across key areas of social concern and is ideal for exploring inter-relationships between these socioeconomic factors and crime

<sup>2</sup> See Broadhurst et al. (1994) and Cunneen & McDonald (1997).

and justice issues. It is also possible to identify broad trends in crime and justice issues—although the scope for any time series analysis is diminished by the removal and addition of questions between the 1994 and 2002 surveys. For example, no information was collected in 2002 as to whether an offence was for theft, assault, disorderly conduct and/or drink driving, and outstanding warrants and breach of orders. We will return to this in the discussion.

However, 2002 NATSISS does have two major advantages over the earlier Indigenous survey. Firstly, the 2002 survey collects information never attempted before in a social survey context—namely, whether respondents had been formally charged by police, the age they were first formally charged by police, and whether they had been incarcerated in the last five years. The ‘age first formally charged by police’ is potentially important, as it may be interpreted as introducing an implicitly longitudinal dimension to what would otherwise be a cross-sectional analysis.

This chapter discusses the range of strategies used to collect crime data with a particular focus on omnibus surveys such as the GSS, the NATSIS and the NATSISS. The chapter then provides a selective overview of what we already know from the analysis of administrative data and the 1994 NATSIS data collections. After identifying the holes in existing data collections, we then examine the 2002 NATSISS data for any new insights that research might shed some light on. The data analysis is by no means comprehensive and is more illustrative of potentially productive avenues for future research. The concluding section reflects on how the omnibus surveys might be improved for future collections.

## **Diversity in existing crime data collections**

Data from prisons, juvenile corrective institutions, courts and police lock-ups confirm a disproportionate level of contacts between the Indigenous Australian population and the criminal justice system. Given that administrative data from the police and courts generally provide the most accurate information into the extent of Indigenous interaction with the criminal justice system (because they are, in effect, censuses of the relevant population), it is important not to place too much emphasis on such statistics in collecting survey data. In addition to the demographic characteristics usually adequately represented in administrative data sets, there is a need to also collect a diverse set of data on socioeconomic and cultural factors that allow analysts to explore inter-dependencies between socioeconomic factors and crime. However, it is not possible to explore these interdependencies unless some data on arrest and incarceration is collected in the survey.

Crime and justice issues are asked in a number of ongoing surveys and administrative databases. In addition to the police statistics and data collected

in the administration of the criminal justice system, there is the National Crime and Safety Survey, the Personal Safety Survey, the GSS, the NATSISS, the International Crime Victims Survey, and the National Survey of Community Satisfaction with Policing. Each of these surveys asks about the experiences of crime or the criminal justice system. However, it is also important to collect information about the experiences outside the criminal justice system.

The impact of differing methodologies on the measurement of crime victimisation is the confidentiality of the surveys and data instruments. Variations in the level of confidentiality may result in substantial non-sampling errors and reporting bias. For example, the different methodologies between the various crime victimisation surveys, and between survey and administrative data, seem to produce substantially different results.

The following discussion briefly outlines alternative survey data sources and reflects on them as potential sources of information for the Indigenous population.

The 2002 NATSISS was collected using face-to-face interviews, but some were computer-assisted interviews (in NCAs) and some were pen and paper interviews (in CAs). A self-administered questionnaire on the non-medical use of legal and illegal substances was used to ensure that sensitivity of subject matter did not affect responses.

There is little information in the 1994 NATSIS and the 2002 NATSISS with which to gauge trends in crime or ascertain perceptions of police and criminal justice systems. The six-yearly frequency of the NATSISS data collections commencing in 2002 limits the ability of the NATSISS to respond to emerging issues. In any case, the existence of sampling error in survey data means that its comparative advantage is in identifying the inter-relationships between crime and justice and related factors rather than gauging trends. Note that the lack of data on the perceptions of police in the 2002 NATSISS can be contrasted to the 1994 NATSIS which collected an extensive range of Indigenous attitudes to police. However, this may not be a significant loss, since some analysts questioned the value of this data in the 1994 survey (Carcach & Mukherjee 1996).

As alluded to above, the GSS and NATSISS are broadly comparable, although the lack of arrest and incarceration data limits the ability to validly compare the experiences of Indigenous and non-Indigenous peoples. For example, employment decompositions—a common tool used by social scientists to examine the scope for labour market discrimination—will not be able to control for the independent effect of arrest on employment. This will have a tendency to mean that the unexplained component of the differential between Indigenous and non-Indigenous employment is more likely to be attributed to potential discrimination (Hunter 2004a). While the higher rates of arrest could be said to reflect historical or systemic discrimination, it would be desirable to provide analysis where the source of the problem can be better identified.

Prisoners were excluded from the 2002 NATSISS but not from the 1994 NATSIS. While surveys are obviously not the best ways to get information about the total numbers of prisoners, at a point in time prisoners represent about 2 per cent of the total Indigenous population (i.e. in the 1994 NATSIS), and the omission of prisoners may introduce selectivity issues into any analysis of the NATSISS data.<sup>3</sup> Over a lifetime, a significant number of Indigenous people will go to jail, so it is important to understand the long-term social dynamics of people who move into and out of prison. Notwithstanding apparent minor falls in the rates of deaths in custody over the 1990s (Williams 2001), it is still vitally important to understand the over-representation of Indigenous people in gaols. Given that non-private dwellings are not within the scope of the 2002 NATSISS, official prison data remains the most important source of information for this important segment of the population.

The National Crime and Safety Survey (NCSS) is designed to provide a snapshot of the prevalence of certain crimes in the Australian community, as well as provide some detail about victims, offenders and incidents. The stated aims of the survey are to inform the development of crime prevention and community education strategies by providing information on the incidence of selected crimes and reporting to police, and perceived levels of crime. The NCSS is unique in employing a mail-out and mail-back methodology. The surveys are completed on a three-yearly basis with respondents and are basically confidential in that they are a self-administered questionnaire. However, data on Indigenous people are not available in the NCSS data.

The Personal Safety Survey provides details on experiences of female and male victims of violence that are not available in other data collections. The mixture of face-to-face and telephone interviews used in the PSS is likely to lead to a substantial non-sampling within this survey and makes some of the results potentially non-comparable with other survey results.

The National Survey of Community Satisfaction with Policing (NSCSP) is designed to provide detailed information at a local level of public perceptions of policing and feelings of safety. Telephone interviews were used to collect information on respondents aged 15 and over. The low response rate is likely to be a

<sup>3</sup> Biddle & Hunter (in this volume) explore the relevant methodological differences between the 1994 NATSIS and the 2002 NATSISS; the most salient difference in the context of this chapter is that the dwellings sampled in the latter survey was constrained to Indigenous people aged 15 and over living in private dwellings—that is, it omits prisoners. Given that the Indigenous prison population did not fall significantly between 1994 and 2002 (Australian Institute of Criminology 2004: 97), the latter survey omits a small but potentially important component of the indigenous population. Biddle and Hunter provide some description of the unique characteristics of those living in non-private dwellings. In the context of this chapter, it is relevant to point out that residents of non-private dwellings were more likely than other Indigenous Australians to have been arrested in the last five years and to have been taken from their natural families. This is not surprising, since around 44% of NATSIS respondents (aged 15 and over) from non-private dwellings were in prison.

particularly pronounced issue for a mobile population such as Indigenous Australians, especially when surveys are based on telephone interviews (Hunter & Smith 2002). While information on Indigenous status may be collected in the NSCSP and the PSS, the Indigenous sample is likely to be too small and selective to be confident about the robustness of any resulting analysis.

The International Crime Victims Survey (ICVS) was initiated in order to facilitate international comparative research. It is designed to provide an international benchmark against which to compare crime and safety information in a standardised way. It is conducted on a four-yearly basis using a telephone interview with respondents aged 16 and over. It contains a detailed range of questions on crime victimisation, with the 2004 module asking several extra questions (including the number of assaults that were racially motivated, fear of racially motivated violence, and Indigenous status). The small sample size limits its usefulness. Hunter and Smith's (2002) critique of telephone interviewing technique in mobile populations is again relevant.

Therefore, while a number of surveys collect information that might shed light on the nature and extent of Indigenous interaction with the criminal justice system, the small sample of Indigenous respondents in most surveys rule them out for detailed analysis. The variation in survey methodologies means that most data will only be comparable in broad terms. Effectively, future analyses of Indigenous crime and justice issues are confined to the analysis of the 2002 NATSISS.

### **Crime, safety, and 'justice' questions in omnibus Australian surveys**

While much of the 2002 NATSISS data is comparable with that in the 2002 GSS, the GSS does not include data on arrest, whether charged, and imprisonment. This is presumably because the proportion of the GSS sample who were arrested or charged is relatively small and hence it is difficult to get reliable estimates.

The GSS does, however, collate information on 'Crime and safety' rather than the 'Crime and justice' issues referred to in the official NATSISS publication (ABS 2003b, 2004c)—apparently, non-Indigenous people need information about 'safety' and Indigenous people need information about 'justice'. It would be nice if the need for justice for Indigenous Australians was really being recognised in public debates. However, the use of language probably indicates the tendency for the media to focus on 'crisis' and play on the (largely non-Indigenous) public's concerns about safety and victimisation that feed the 'law and order' campaigns that are a common feature of almost every State and—increasingly—federal election campaigns.

The GSS collects several questions on victimisation among respondents: feelings of safety at home alone after dark, whether they have been the victim of physical

or threatened violence in the last 12 months, and whether they have been victims of an actual or attempted break-in in the last 12 months. Note that the only question that was also collected in the 2002 NATSISS is whether respondents were a victim of physical or threatened violence in the last 12 months. The richer set of Indigenous data on justice issues means that the NATSISS potentially provides insights into how interactions with the criminal justice system affect the socioeconomic outcomes, and vice versa.

There are more difficult issues of comparability when comparing the 1994 NATSIS and the 2002 NATSISS, as the question changed in subtle and important ways that may explain (partially at least) the significant increase in the rate of victims of physical or threatened violence in the last 12 months. In 1994, respondents were asked: 'In the last year, has anyone attacked or verbally threatened you?'. The 1994 questionnaire goes on to ask how many times a respondent was attacked, the broad characteristics of the violence, whether the respondent told the police, and the reason for not telling the police. In 2002, the questionnaire module, the respondents were asked about crimes that may have happened to them in the last 12 months: 'Did anyone, including people you know, use physical force or violence against you?'; 'Did anyone, including people you know, try to use or threaten to use physical force or violence against you?'; 'Were any of those threats made in person?'. While the questions were broadly similar, the questions about the involvement of the police may have led to substantial under-reporting of the crime. If this is the case, then the decision to leave out the questions on attitudes to police in the 2002 NATSISS would be warranted.

In general, the remote questionnaire for CAs involved questions that were simplified versions of the form used in NCAs. While this should not affect the data significantly, there is more room for non-sampling error in the question about victimisation. The CA form asked two questions about crimes that may have happened to a respondent—firstly: 'In the last year, did anybody start a fight with you or beat you up?', and secondly: 'In the last year, did anybody try to or say they were going to hit you or fight with you?'. The use of plain English in such a sensitive area might be seen as more emotive by some respondents, and open to subjective interpretation of what a 'real' fight is by other respondents. While there are likely to be substantial variations in the cultural standards of what constitutes a 'fight' (or a 'beating') in the Indigenous and other Australian communities, there is no GSS data collected in remote areas. As a result, this issue is only relevant for making comparisons between remote and non-remote areas within the NATSISS.

Another 1994 variable that changed between 1994 and 2002 was whether a respondent felt that family violence was a common problem in their area. In 2002, respondents in NCAs were asked to identify social problems in their neighbourhood from a list of 12 items on a prompt card which included family

violence as one possible option.<sup>4</sup> This obviously differs from the 1994 question in two important ways: firstly, it is specific about the geographic area in referring to a neighbourhood which is one of the smallest areas that can be analysed; secondly, and more importantly, family violence is just one of a number of local problems listed. In CA areas, respondents were asked about the ‘problems in this community’. While the geographic area was also specified in the CA form, it is always difficult to get agreement as to what ‘community’ means among academics, policy-makers and, often, in the community itself—although the notion of community may coincide with some notion of ‘neighbourhood’ for some people. Again, the CA form listed a similar set of reasons that were not directly comparable to those provided for the questionnaire used in the NCA areas. Notwithstanding the lack of clarity in the definition of areas, the questions on the CAs and non-CAs are broadly comparable. The 2002 question is less ‘leading’ than the 1994 question, and places less focus on family violence. While the 1994 question may play down the incidence of family violence, the 2002 question is less likely to lead to non-sampling error and hence is probably preferable to the 1994 question.

Carcach and Mukherjee (1996) argued strongly that the 1994 NATSIS placed too much emphasis on the respondents’ perceptions about police performance and the relationship between Indigenous people and the police.<sup>5</sup> There were no questions in 2002 about whether a person had been hassled by the police or attitudes to police—maybe because the 1994 question was seen as too leading, too vague, or too open to subjective interpretation.<sup>6</sup> The 2002 questions on police contact focus on more factual events, like whether a person had been charged and at what age a person was charged, as well as how many times a person was arrested. The arguments made by Carcach and Mukherjee obviously

<sup>4</sup> The prompt card listed several options, including: theft, problems involving youths such as youth gangs/lack of youth activity, prowlers or loiterers, vandalism or graffiti, or damage to property, dangerous or noisy driving, alcohol, illegal drugs, family violence, assault, sexual assault, problems with neighbours, levels of neighbourhood conflict, level of personal safety day or night.

<sup>5</sup> They were particularly concerned about the absence of a question on perceptions about the amount of crime in the area to give some background qualifier to the question on police performance in dealing with crime. Moreover, the 1994 questionnaire included among the reasons for the police not doing a good job in dealing with crime, that they ‘Don’t understand Aboriginal/Torres Strait Islander people/culture’, which suggests that the question on police performance was referring to crime in Indigenous areas or perhaps among Indigenous people. However, the question was worded in such a way that it did not mention crime by Indigenous people or among Indigenous people at all.

<sup>6</sup> Carcach & Mukherjee (1996) also argued that the highly sensitive questions regarding victimisation of Indigenous people by police, such as hassling and physical attack, were potentially problematic. The NATSIS lacked additional details on incidents involving hassling or police attack, such as whether they were related to an arrest and, if so, whether or not the person resisted arrest or tried to avoid the arrest of another person. Perceptions about quality of the relationship between Indigenous people and the police and about the treatment received from police were in general positive. Again, there was no question on whether the relationship with police was good or bad five years ago. What is the meaning of a relationship being qualified as the same? Does ‘same’ mean good or bad?

had an impact, as the 2002 NATSISS no longer collects information on attitudes to or relationships between Indigenous people and the police.

The data on the 'stolen generation' was based on three questions in the 2002 questionnaire, as opposed to the one question used in the 1994 survey. The basic question used was almost identical in both surveys, asking: 'Were you taken away from your natural family by a mission, the government or welfare?'. The 2002 survey also asked whether their relatives were taken from their natural family and, if so, which relatives.

Both the 1994 NATSIS and 2002 NATSISS asked whether respondents used or needed legal services in the last 12 months and, if so, the type of legal services used. Given the variation in geographic access to legal services, and the Indigenous-specific nature of particular services, it is probably best to confine comparisons within the Indigenous surveys. Even then, it may be difficult to separate access from usage issues.

In summary, the 2002 NATSISS did not interrogate respondents about their attitudes to police or ask specific—and potentially personally sensitive—questions about the reasons for contact with the criminal justice system. To the extent that specific interactions with the police are sensitive matters, especially for people who do not trust government agencies such as the ABS, the omission of questions on attitudes to police may have led to more accurate responses to the relevant questions (i.e. with smaller scope for non-sampling error) than was possible in the 1994 survey. Having said that, Borland and Hunter (2000) conducted a benchmarking exercise on the arrest data in the 1994 NATSIS by comparing it with WA police data, and found that the NATSIS data was broadly consistent with the administrative data sources. Consequently, it seems reasonable to assume that the more modest 2002 questionnaires will have elicited similarly accurate responses about Indigenous arrest.

## **Socioeconomic factors underlying Indigenous arrest**

Before outlining the analysis of published data, we first examine the extant analysis of the 1994 NATSISS, with a particular focus on the social and economic factors underlying the disproportionate Indigenous interaction with the criminal justice system. The emphasis in the following discussion is on data that are either not available or are limited by instrumental factors in the 2002 NATSISS.

Carcach and Mukherjee (1996) show that most of the arrests in the NATSIS were for disorderly conduct and/or drink driving, and outstanding warrants and breach of orders. Data show that alcohol consumption might have been associated with the reason(s) for arrest; a result consistent with findings from the National Police Custody Survey (Australian Institute of Criminology 1996). The links between alcohol and crime (violence, disorder and acquisitive crime) are well

documented (see Ramsay 1996). Previous research would suggest that alcohol might have been involved in incidents of violence both in and outside the family, and in cases where the arrest was due to property crimes (e.g. Tuck 1989).

Hunter (2001) analysed NATSIS and found that the major factors underlying the high rates of Indigenous arrest were sex, labour force status, alcohol consumption, whether a person had been physically attacked or verbally threatened, various age factors, and the cluster of education variables. The top six factors underlying the various categories of arrests (drinking-related, assaults, theft and outstanding warrants) are basically the same as those identified above. However, alcohol consumption and being a victim of physical attack or verbal threat are particularly important factors underlying arrests on drinking-related and assault charges. This would seem to confirm the suspicion that there is a cycle of violence and abuse in Indigenous communities which is probably related to alcohol consumption. The overall results were robust, with the basic findings not changing substantially when the analysis was conducted separately for minors (under 18-year-olds), for each sex, or after prisoners were included in the analysis. This last finding points to the fact that the omission of Indigenous people under 15 years old and people in non-private dwellings should not distort future analysis of the 2002 NATSISS. The similarity in the results by reason for last arrest give us some confidence that the failure to collect information on the nature of the offence that led to arrest and imprisonment in the 2002 survey is not that important—or, rather, will not alter the overall analysis.

Borland and Hunter (2000) argue that at least some of the correlation between Indigenous arrest and labour force status is driven by a causal relationship, with arrest driving many of the poor employment outcomes experienced by Indigenous youth. Given this interaction, understanding the unique nature of Indigenous arrest is likely to be a key dynamic underlying ongoing Indigenous disadvantage and poverty. The lack of any arrest data in GSS is likely to impede our understanding of Indigenous disadvantage—or, rather, to control for the impact of arrest and interaction with the criminal justice system on economic outcomes.

Hunter and Schwab (1998) argued that the interaction with the criminal justice system may explain poor school participation rates among Indigenous children as young as 13. Hunter (1998) presented formal econometric tests that demonstrated that the direction of causality is from arrest to educational participation. Given that the 2002 NATSISS is constrained to those aged 15 and over, it will probably not be possible to replicate this earlier research.

## **Crime and justice issues in Indigenous social surveys**

### **Broad trends in crime and justice between 1994 and 2002**

Crime and justice issues were major components of both the 1994 NATSIS and the 2002 NATSISS. This section draws together the recently published data to

provide a statistical overview for Indigenous Australia. Notwithstanding the substantial changes in the crime and justice data collected in the 1994 NATSIS and the 2002 NATSISS, and the limitations of the respective survey methodologies, it is possible to make some broad observations about the trends for Indigenous Australia (see Table 19.1).

**Table 19.1. Indigenous people aged 15 years or over, selected law and justice issues in Australia, 1994 and 2002**

	1994	2002
	%	%
Arrested once by police in last 5 years <sup>a</sup>	9.1	6.7
Arrested more than once by police in last 5 years	10.7	9.3
Total arrested in last 5 years <sup>a</sup>	20.2	16.4
Victim of physical or threatened violence in last 12 months <sup>a</sup>	12.9	24.3
Persons removed from natural family	8.3	8.4

a. The change between 1994 and 2002 is significant at the 5% level.

Source: ABS (2004c: Table 6)

The law and justice variables exhibited some significant changes between 1994 and 2002. The overall proportion of Indigenous adults who were arrested in the previous five years declined from 20.2 per cent to 16.4 per cent. The main driver here was the significant reduction in the number of people with only one arrest in the previous five years. This is a positive development, although it should be acknowledged that Indigenous people still have excessively high rates of interaction with the criminal justice system relative to other citizens. A less positive development is the increase in the proportion of the population who were a victim of physical or threatened violence in last 12 months. One-quarter of Indigenous people in 2002 reported that they had been a victim of physical or threatened violence in the previous 12 months—nearly double the rate reported in 1994 (12.9%). ABS (2004c) speculates that some of this increase may reflect under-reporting by respondents to the 1994 NATSIS. This is consistent with the above analysis of the way in which the questions were asked in 1994. The final observation from Table 19.1 is that the proportion of the population who were taken away from their natural family was basically unchanged.<sup>7</sup>

## Describing selected crime and justice issues in 2002

While there were some changes over time at a national level, the main interest for most variables is how crime and justice issues vary by remoteness—a more meaningful measure of geographic accessibility than was available for the earlier survey (see Tables 19.2 & 19.3).

<sup>7</sup> This finding was robust to confining the analysis to being the same age cohort in the respective surveys. See ABS (2004c: Table 6).

**Table 19.2. Selected law and justice issues by remoteness, 2002**

	Remote %	Non-remote %	Total %
Arrested by police in last 5 years	16.9	16.2	16.4
Incarcerated in last 5 years	8.5	6.6	7.1
Used legal services in last 12 months	17.9	20.5	19.8
Victim of physical or threatened violence in last 12 months	22.7	25.0	24.3
Person or relative removed from natural family <sup>a</sup>	30.1	40.4	37.6
Risky/high-risk alcohol consumption in last 12 months	16.8	14.5	15.1

a. The difference between remote and non-remote statistics is significant at the 5% level.

Source: ABS (2004c: Table 1)

Arrest and incarceration rates are equally high in both remote and non-remote areas, but the usage of legal services in the last 12 months is slightly higher, albeit not significantly higher. Also, there was no significant difference between the incidence of high-risk alcohol consumption in remote and other areas in the last 12 months. The only significant difference between remote and other areas among the law and justice issues in Table 19.2 is whether a person or relative were removed from their natural family. The incidence of relatives (including oneself) being removed from their natural families is over 10 percentage points higher in non-remote areas. This pattern is consistent with the fact that many people were removed from remote communities and placed with families in cities or regional centres (Hunter, Arthur & Morphy 2005).

**Table 19.3. Interactions with the justice system by remoteness and sex, 2002**

	Remote %	Non-remote %	Males %	Females %	Persons %
<b>Age first formally charged</b>					
Less than 15 years <sup>a,b</sup>	4.0	7.0	10.1	2.6	6.2
15–16 years <sup>a,b</sup>	5.1	7.5	9.5	4.4	6.8
17–18 years <sup>b</sup>	6.8	8.5	12.6	3.8	8.0
19–24 years <sup>b</sup>	7.5	7.1	10.8	4.0	7.2
25 years or over <sup>a</sup>	8.6	5.4	6.7	5.8	6.3
Total formally charged <sup>b</sup>	32.8	35.8	50.4	20.8	35.0
Never charged <sup>b</sup>	67.2	64.2	49.6	79.2	65.0
<b>Use of legal services in last 12 months</b>					
<b>Used legal services <sup>a</sup></b>					
Aboriginal Legal Services <sup>a,b</sup>	14.1	9.1	12.2	8.9	10.5
Legal Aid <sup>b</sup>	-	7.0	-	-	-
Other <sup>a</sup>	2.1	7.1	5.6	5.9	5.7
Total used legal services	17.9	20.5	21.1	18.6	19.8
<b>Did not use legal services</b>					
Needed legal services	2.9	3.1	2.9	3.2	3.1
Did not need legal services	79.2	76.4	76.0	78.2	77.1
Total did not use legal services	82.1	79.5	78.9	81.4	80.2

a. The difference between remote and non-remote is significant at the 5% level.

b. The difference between males and females is significant at the 5% level.

Source: ABS (2004c: Table 19)

Administrative data gives detailed information on all those who are involved in the criminal justice system but cannot provide direct information on what happens in the Indigenous population as a whole. As argued above, the inclusion of information on the age at which a person is formally charged allows an implicitly longitudinal dimension to what would otherwise be a cross-sectional analysis. Table 19.3 shows that over half of males (50.4%) have been charged at some time in their life, about 30 percentage points higher than the equivalent statistic for females (20.8%). There is no significant difference in the overall incidence of charging in remote versus non-remote areas. However, there is one potentially significant geographic difference evident: those living in non-remote areas are more likely than remote respondents to be charged before 16 years of age. Residents in remote areas tend to have more of their population being charged first at age 25 or older. This pattern of charging may result from the fact that some discrete communities do not have police in the local areas, so people are not charged until they move away from remote communities. Alternatively, they may have to commit a very serious offence before it would be brought to police attention so that charges could be laid. The higher incidence of charging among males is probably driven by charges being laid at an earlier age for Indigenous males compared to Indigenous females.

The usage of Aboriginal legal services is significantly higher in remote as opposed to non-remote areas, and such services are more likely to be used by males than by females (see Table 19.3). While the geographic differences may be related to the location of such services, the gender differences must be related to either the organisation of Aboriginal legal services or the power structures in relevant Indigenous communities, as there is no gendered pattern in the usage or need for legal services. That is, there is no significant difference in usage and need for legal services between sexes or by remoteness status. The lack of a gendered pattern in legal services use is in stark contrast to the fact that males are significantly more likely to have been arrested or imprisoned.

**Table 19.4. Law and justice by age first formally charged, 2002<sup>a</sup>**

Law and justice	Age first formally charged		
	Less than 17 years	17 to 24 years	25 years or over
Arrested by police in last 5 years	54.5	37.7	31.3
Incarcerated in last 5 years	28.6	13.6	14.4
Victim of physical or threatened violence in last 12 months	44.5	33.4	26.7
Indigenous persons aged 15 years or over (%)	100.0	100.0	100.0
Indigenous persons aged 15 years or over (#s)	36.7	43.0	17.6

a. The difference between being charged before the 17th birthday and being charged later in life is significant at the 5% level for all statistics in this table.

Source: ABS (2004c: Table 11)

The addition of 'age first formally charged' has been a substantial addition to the NATSISS vis-à-vis the earlier 1994 survey and deserves to be examined in greater detail (see Table 19.4). Having been arrested before 17 years of age leads to significantly higher arrest and incarceration rates than for other Indigenous respondents to NATSISS who were charged. For example, respondents who were charged before 17 years of age are 23.2 percentage points more likely to have been arrested than someone who was first formally charged at age 25 or older (54.5% and 31.3% respectively). However, being charged before your majority is also associated with a significantly greater likelihood of being a victim of physical attack or threatened with violence in the last 12 months (44.5% and 26% respectively).

**Table 19.5. Socioeconomic factors underlying formal interactions with the criminal justice system by ever formally charged, 2002**

	Total persons ever charged			
	Males	Females	Persons ever charged	Persons never charged
<b>Law and justice</b>				
Arrested by police in last 5 years <sup>b</sup>	44.7	38.9	42.9	2.2
Incarcerated in last 5 years <sup>a,b</sup>	21.9	13.9	19.4	0.6
Victim of physical or threatened violence in last 12 months <sup>a,b</sup>	32.6	44.7	36.4	18.0
<b>Health</b>				
Self-assessed health excellent/very good <sup>b</sup>	39.3	34.4	37.8	47.5
Self-assessed health fair/poor <sup>b</sup>	28.7	31.2	29.5	19.9
Risk behaviour/characteristics				
Current daily smoker <sup>b</sup>	63.7	71.0	65.9	39.3
Risky/high-risk alcohol consumption in last 12 months <sup>b</sup>	24.1	22.8	23.7	10.5
<b>Education</b>				
Attending post-school educational institution <sup>b</sup>	8.7	8.7	8.7	11.8
Has a non-school qualification	26.4	24.5	25.8	26.4
Does not have a non-school qualification				
Completed Year 12 <sup>b</sup>	6.9	5.0	6.3	11.9
Completed Year 10 or Year 11 <sup>a</sup>	25.4	35.4	28.6	29.0
Completed Year 9 or below <sup>b</sup>	41.3	35.1	39.3	32.7
Total with no non-school qualification	73.6	75.5	74.2	73.6
<b>Labour force status</b>				
CDEP <sup>a,b</sup>	17.6	8.7	14.8	10.7
Non-CDEP <sup>a,b</sup>	32.6	19.6	28.6	37.2
Total employed <sup>a</sup>	50.2	28.2	43.4	47.9
Unemployed 1 year or more	6.5	4.6	5.9	2.2
Total unemployed <sup>b</sup>	21.1	19.3	20.5	10.2
Not in the labour force <sup>a,b</sup>	28.7	52.5	36.1	41.9
<b>Income &amp; financial stress</b>				
Equalised gross household income—second and third deciles	39.9	42.5	40.7	35.3
Unable to raise \$2000 within a week for something important <sup>a,b</sup>	58.5	70.8	62.3	49.8
<b>Transport access</b>				
Difficulty with transport				
Can easily get to the places needed <sup>b</sup>	65.0	60.1	63.4	73.7
Has difficulty, getting to the places needed <sup>b</sup>	14.1	14.9	14.4	10.2
<b>Information technology</b>				
Used computer in last 12 months <sup>b</sup>	45.5	51.8	47.4	60.1

a. The difference between males and females who were charged is significant at the 5% level.

b. The difference between those who were charged and never charged was significant at the 5% level

Source: ABS (2004c: Table 11)

Clearly, the data on the age at which a person is first charged contains a lot of useful information and should be analysed in detail by researchers and policy-makers. The introduction of data on whether a respondent was ever charged allows us to explore the likely factors underlying Indigenous engagement

with the criminal justice system and the effects of that engagement. Family and culture have no significant correlation with the incidence of being charged, at least in the bi-variate analysis of cross-tabulations. Consequently, family and culture variables are omitted from Table 19.5.

It is understandable that very few people who were not formally charged were arrested or incarcerated. Given that it is rare to be imprisoned without being charged, it is probable that some in this category were errors in response. Among those who were charged, males were more likely than females to be imprisoned, and females were more likely than males to be a victim of physical or verbal violence in the last 12 months (44.7% and 32.6% respectively).

There is a significant association between health status and being charged. For example, people who were charged at some stage were 10 percentage points less likely to report having excellent or very good health (37.8% and 47.5% respectively). The converse of this is that such people are more likely to report fair or poor health to a similar extent. One reason for this relatively poor health status is that the respondents who were charged were significantly more likely to exhibit risk behaviour than those who were never charged. They were 26.6 per cent more likely to be a current daily smoker (65.9% and 39.3% respectively) and were over twice as likely to have engaged in high-risk alcohol consumption in the last 12 months (23.7% versus 10.5%).

The direction of causality between health and crime could be either way. However, the analysis of 1994 NATSIS data on arrest indicated that at least some of the correlation between arrest and education and labour force status is driven by arrest affecting the respective outcomes (Borland & Hunter 2000; Hunter 1998). People who were not charged are significantly more likely than those who were formally charged to be attending a post-school educational institution. This is consistent with the fact that people who were formerly charged were less likely than those who were never charged to have completed year 12 and more likely to have only have completed year 9 or below. Among those who were charged, there was no notable pattern of educational attainment between males and females.

The association between labour force status and being charged is significant, with those who are formally charged being less likely than other Indigenous people to be employed outside the CDEP scheme but more likely to be employed in the CDEP scheme. Unemployment rates are twice as high among those who were formally charged. The net effect of these employment and unemployment patterns is that those who were formally charged are slightly more likely to participate in the labour force.

In terms of the income and financial stress variables, there is no significant difference in the propensity to be in the ABS's low income group. However, those who were formally charged are significantly more likely than other

Indigenous people to experience financial stress (at least as measured by the inability to raise \$2000 within a week for something important). The difference between the correlations between income and financial stress and having been charged probably reflects poorly on the adequacy of the ABS's measure of the low income group (see Hunter in this volume).

Two new variables introduced into 2002 NATSISS for the first time are transport access and information technology, both of which are strongly correlated with having been charged. Those who had previously been charged were more likely to have transport difficulties than other Indigenous people, and are much less likely to have used a computer in the last 12 months.

All these factors point to a cycle of Indigenous disadvantage and interaction with the criminal justice system that will be hard to break. Future research needs to put some more econometric structure around these statistics so that the mechanisms underlying these processes can be identified. Unfortunately, it is too difficult to do this until the RADL is developed so that it allows users to write computer programs with statistical packages that facilitate the relevant econometric tests. Stata is one such program that does not have the intellectual and financial setup cost of doing such analysis using SAS, which is one of two statistical packages currently supported in the RADL for NATSISS. The other supported package is SPSS, which is relatively cheap but is not flexible enough to allow analysts to easily construct relevant diagnostic statistical tests.

## **Concluding remarks**

The United Nations Permanent Forum on Indigenous Issues has had some difficulty in securing submissions into the quality of Indigenous statistics (Economic and Social Council 2005). It appears that the quality of Indigenous statistics is best in post-colonial nations of Australia, NZ and the US.<sup>8</sup> For Australia's part, this is the legacy of the Royal Commission and the original NATSIS. The 2002 NATSISS offers the opportunity for researchers and policy makers to take an international lead in understanding the dynamics of Indigenous disadvantage and dispossessions, especially the factors underlying the disproportionate representation in the criminal justice system.

The policy implications are complicated by the fact that 'feedback mechanisms' have been identified where arrest reinforces disadvantage in several of these factors (especially employment prospects and educational attainment). Any

<sup>8</sup> The Economic and Social Council (2005) recommended that Latin America and the Caribbean countries continue and strengthen their efforts regarding the production, elaboration and use of relevant information from population censuses, household surveys and other adequate sources, in strong interaction with Indigenous peoples, aiming at improving the socioeconomic conditions and active participation of indigenous peoples in the development process throughout the Latin American region. The council goes on to recommend that member countries give full respect to the principle of self-identification and develop Indigenous participation in collections that take account of the full diversity and demographic/socioeconomic profile of Indigenous communities.

attempt to substantially reduce the high rates of unemployment among Indigenous people also needs to make inroads into Indigenous arrest. Education policy needs not only to improve the marketability of the Indigenous workforce, but to facilitate the citizenship skills required to operate in both the Indigenous and non-Indigenous domains. Notwithstanding such feedback, improving the labour market options of Indigenous people should markedly reduce the arrest rate.

The links between alcohol and crime, especially violent crime, are well documented. Substantial progress needs to be made on substance abuse problems before the cycle of violence in Indigenous communities can be broken. Restrictions on liquor supply are consistently nominated as producing the most tangible results in terms of reducing alcohol-related harm among Indigenous Australians.

Family and social factors are less amenable to direct policy intervention. Indeed, the misconceived policy interventions that led to the 'stolen generation' appear to be a major factor underlying Indigenous arrest rates. The negative effects of such policies are likely to be driven by the traumatic disruption to family life and the loss of culturally appropriate parenting skills. Early intervention approaches to dealing with risk factors associated with anti-social and criminal behaviour appears to offer a promising avenue for policy action. It is important that Indigenous people have some control over how family services are provided (e.g. the need for Indigenous carers for Indigenous clients is often identified as an issue). The needs of children of Indigenous prisoners, especially those from country areas, should also be taken into account if the risk of delinquent behaviour is to be minimised.

Overall, the NATSISS provides a valuable source of information on crime and justice issues. Apart from finessing the wording of particular questions to ensure that the survey data maximises its information content, the main recommendation relates to the data for the future GSS. The analysis of Indigenous disadvantage will continue to be hamstrung and dismissed until data on non-Indigenous interaction with the criminal justice system are collected in the general omnibus surveys for the whole Australian population. One may be concerned about the unreliability of population estimates for low frequency events such as arrest and imprisonment (at least in the non-Indigenous population). However, there should still be a sufficient number of the Australian population who were charged at some time to warrant its inclusion in future GSSs. Irrespective of the reliability of population estimates in the GSS, the ability to explore the interactions between social and economic factors is a key objective of these omnibus surveys. The omission of information on crime in existing general surveys means that it is not possible to effectively analyse this important dimension of Indigenous disadvantage.

Chapman and Gray (in this volume) provide an example of how social scientists can demonstrate the implications of failing to control for important factors underlying labour force status. However, they can only do this because of the existence of alternative sources of information for the total Australian population. While the NATSISS, and its earlier manifestation, includes information not available in other surveys, there appears to be a resistance in Australian public debates to acknowledge that Indigenous experience may inform the analysis for the population at large. Indigenous-specific research is dismissed as being just that because of the undeniably unique circumstances facing Indigenous Australians. Consequently, it is imperative that the GSS expands its scope to encompass the more general experience of the criminal justice system.