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# Indigenous women's offending patterns: A literature review

Lorana Bartels

**AIC** Reports  
Research and  
Public Policy Series

107



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*Lorana Bartels*

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# Foreword

This report is a literature review on Indigenous women's offending patterns and therefore provides an important contribution to understanding an often neglected area of criminal justice. The report presents information on Indigenous women as offenders and prisoners, as well as considering the issue of over-policing, including for juvenile Indigenous females. Data are also presented on community corrections and periodic detention and the under-utilisation of juvenile diversion.

The majority of information in the report relates to Indigenous women as prisoners, including information on imprisonment rates and numbers. Significantly, the rate of imprisonment of Indigenous women across Australia rose from 346 to 369 per 100,000 between 2006 and June 2009. In addition, Indigenous women outnumbered Indigenous men as a proportion of the relevant prison population in almost all jurisdictions.

Indigenous women generally serve shorter sentences than their non-Indigenous counterparts, which suggests that Indigenous women are being

imprisoned for more minor offences, especially public order offences. Indigenous women are also more likely to be on remand than non-Indigenous women.

The characteristics of Indigenous female prisoners are considered in this report, with particular reference to the comparatively high rates of hospital admissions for mental disorders and post-release mortality rates. Examination of Indigenous women's role as mothers and carers highlights the need for further research and relevant services.

Policing, court and corrections data provide an overview of the types of offences committed by Indigenous women, with particular reference to the offences of public drunkenness, assault and homicide. The relationship between Indigenous women's offending patterns and their exposure to family violence is explored and highlights the need for further examination.

**Adam Tomison**  
**Director**



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# Acronyms

|                |   |
|----------------|---|
| <b>ABS</b>     | Australian Bureau of Statistics   |
| <b>AIC</b>     | Australian Institute of Criminology                                       |
| <b>ATSIJC</b>  | Aboriginal and Torres Strait Islander Social Justice Commissioner         |
| <b>BOCSAR</b>  | Bureau of Crime Statistics and Research                                   |
| <b>CRC</b>     | Criminology Research Council  |
| <b>DUCO</b>    | <i>Drug Use Careers of Offenders</i>                                      |
| <b>NATSIIS</b> | <i>National Aboriginal and Torres Strait Islander Survey</i>              |
| <b>NATSISS</b> | <i>National Aboriginal and Torres Strait Islander Social Survey</i>       |
| <b>NSWLRC</b>  | New South Wales Law Reform Commission                                     |
| <b>OCSAR</b>   | Office of Crime Statistics and Research                                   |
| <b>RCIADIC</b> | Royal Commission into Aboriginal Deaths in Custody                        |
| <b>SCRCSP</b>  | Steering Committee for the Review of Commonwealth/State Service Provision |
| <b>TOMV</b>    | Theft other than a motor vehicle  |
| <b>VicPol</b>  | Victoria Police   |

# Executive summary

This report is a literature review on Indigenous women's offending patterns. To date, research in this area has been limited and the report therefore provides an important contribution to growing the evidence base.

This report presents information on Indigenous women offenders and prisoners. Data are presented on offender rates and the proportion of female offenders who are Indigenous. Data from New South Wales, the Northern Territory and South Australia indicate that Indigenous women are between nine and 16 times more likely to offend than their non-Indigenous counterparts; this is a much greater over-representation than for men (8–10 times more likely). The issue of over-policing is also examined in this context. For example, the number of Indigenous female arrests in Western Australia almost doubled from 1,381 in 1991 to 2,744 in 2005.

Data are presented on community corrections and periodic detention. The most common community corrections order served by Indigenous women in 2007–08 was a supervision order, with 82 percent serving such an order. New South Wales, Western Australia and Queensland accounted for 83 percent of supervision orders and 80 percent of all Indigenous females serving a community corrections order. The 2007–08 figures indicate that Indigenous women accounted for a minority of females serving such orders in all jurisdictions except the Northern Territory, where they accounted for 88 percent of females serving a community corrections order. Indigenous women were particularly under-represented on such orders in Victoria, where they accounted for only six percent of females serving a community corrections order. Indigenous women were also under-represented on periodic detention orders in the two jurisdictions where such orders are available.

The majority of information in the report relates to Indigenous women as prisoners, including information on imprisonment rates and numbers. Notably, the rate of Indigenous women's imprisonment across Australia rose 10 percent between 2006 and June 2009. In 2007–08, Indigenous women comprised 29 percent of women in prison, compared with 24 percent for men. Indeed, Indigenous women outnumbered them as a proportion of the relevant prison population in almost all jurisdictions.

Indigenous women generally serve shorter sentences than their non-Indigenous counterparts, which suggests that Indigenous women are being imprisoned for more minor offences, especially public order offences. The data on expected time to serve indicate that Indigenous women have a mean imprisonment time of 17.7 months and median of 9.1 months, compared with 30.4 and 14.3 respectively for non-Indigenous women. In addition, Indigenous women are more likely to be on remand than non-Indigenous women.

The characteristics of Indigenous female prisoners are also considered in this report. In particular, it is noted that rates of hospital admissions for mental disorders were three times as high for Indigenous female prisoners as in the Indigenous population of Western Australia generally and Indigenous women's post-release mortality rates are much higher than for Indigenous men. Indigenous women's role as mothers and carers is also examined, with calls for further research into the needs of Indigenous women in prison who have infants and young children with them and the appropriateness and ease of access to programs which enable such prisoners to keep their children with them, as well as the adequacy of measures to meet their needs upon release. In this context, the NSW Aboriginal Women with

Dependent Children Leaving Prison Program pilot is a welcome development.

Data are presented on the age of Indigenous females in various stages of the criminal justice system. Overall, it cannot be said that there is any clear difference in the age profile of offenders on the basis of Indigenous status. Indigenous female prisoners are, by contrast, younger than their non-Indigenous counterparts. Recent figures indicate that 23 percent of Indigenous female prisoners in Australia were aged 24 years or under, compared with 12 percent for non-Indigenous women.

The data on juveniles indicate over-policing of young Indigenous females and under-utilisation of diversionary mechanisms. Some of the reasons for the failure to divert may include Indigenous juveniles' earlier involvement in the criminal justice system, more serious prior criminal records or differences in policing practices. The report builds on previous AIC research that found that Indigenous female juveniles were disproportionately apprehended by police in only some jurisdictions compared with Indigenous male juveniles.

Policing, court and corrections data provide an overview of the types of offences committed by Indigenous women, with particular reference to the offences of public drunkenness, assault and homicide. Significantly, according to the most recent data on the most serious offence committed by

female prisoners, acts intended to cause injury (ie violence not amounting to homicide) accounted for a greater proportion of offences for which Indigenous women were imprisoned, compared with non-Indigenous women. It has been suggested that this pattern may be in response to domestic violence and other forms of abuse. Recent AIC research has found that although males comprise the bulk of those who commit offences, the Indigenous female rate of offending for homicide, acts intended to cause injury and dangerous/negligent acts were higher than for non-Indigenous females and males. Accordingly, it is suggested that the incidence and nature of violent behaviour by Indigenous females requires closer scrutiny.

The issue of recidivism is also discussed in this report. In particular, Indigenous women were more likely than non-Indigenous women to have previously been incarcerated. In fact, the majority of Indigenous female prisoners in most jurisdictions have had prior experience of imprisonment; nationally, 63 percent of Indigenous women prisoners had previously been in an adult prison, compared with only 38 percent of non-Indigenous women.

Finally, the relevance of family violence to Indigenous women's offending is explored, with data indicating that many Indigenous women are subject to violence and victimisation at much higher rates than non-Indigenous women and these issues are thought to be linked to their offending patterns.



# Introduction

This report, prepared on behalf of the Criminology Research Council (CRC), presents an overview of the literature on Indigenous women's offending patterns. As the Steering Committee for the Review of Commonwealth/State Service Provision (SCRCSP) has noted, however, '[l]imited data are available on Indigenous people who have interaction with the criminal justice system' (SCRCSP 2009a: C17). Significantly, there is a dearth of up-to-date and relevant information on women's offending patterns and a general silence on Indigenous women in the criminal justice system (Brooks 1996; Kerley & Cunneen 1995; Payne 1993). Where information is available, it tends to focus on Indigenous women as victims, not as offenders. In addition, much of this literature is qualitative and/or anecdotal in nature.

The lack of detailed information about women's offending patterns is not a recent problem. The final report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC 1991) remains the most comprehensive examination of Indigenous people's involvement in the criminal justice system but makes no specific recommendations about Indigenous women (NSWLRC 2000; Marchetti 2007). As noted by the then Aboriginal and Torres Strait Islander Social Justice Commissioner (ATSISJC),

Aboriginal women remain largely invisible to policy makers and program designers with very little

attention devoted to their specific situation and needs. This is of critical importance, particularly because of the impact that imprisonment has on Indigenous families and communities (especially through separation from children) (ATSISJC 2001: 15).

The 2002 ATSISJC report found that:

Indigenous women face an unacceptably high risk of incarceration in prisons across Australia. The rising rate of over-representation of Indigenous women is occurring in the context of intolerably high levels of family violence, over-policing for selected offences, ill-health, unemployment and poverty (ATSISJC 2002: 135–136).

Indigenous women in prison reveal experiences of life in a society fraught with danger from violence. The consequences to the community of the removal of Indigenous women are significant and potentially expose children to risk of neglect, abuse, hunger and homelessness. Indigenous women also serve comparatively shorter sentences, suggesting a general failure to employ the principle of imprisonment as a last resort. Once imprisoned, recidivism statistics also indicate that Indigenous women are at greater risk of returning to gaol. Despite these factors, very little research has been conducted to explain the causes of Indigenous women's higher recidivism patterns (ATSISJC 2002).

The report also found, in respect of the statistical information which is available about Indigenous women, that:

Tracking national trends in crime and sentencing is impeded by the manner in which data is collected. In smaller jurisdictions such as the ACT and Tasmania, the actual numbers of Indigenous women from which the statistical data is derived is comparatively small, compared with the overall offender population. Statistical measures based on such small numbers may result in outcomes which appear disproportionate to the true conditions. It is for this reason that the ABS does not publish rates by sex for a number of the small States/Territories. This reduces the extent to which meaningful analysis can be undertaken (ATSISJC 2002: 154).

This report presents information on Indigenous women offenders and prisoners. Data are presented on offender rates and the proportion of female offenders who are Indigenous. The issue of over-policing is also examined in this context. Data are then presented on community corrections and periodic detention. The majority of information in this report relates to Indigenous women as prisoners, including information on imprisonment rates and numbers. The constitution of the prison population,

length of sentence imposed and security classification of prisoners are also examined on the basis of Indigenous status. The characteristics of Indigenous female prisoners are considered, especially in relation to their roles as mothers and carers. Data are presented on the age of Indigenous females in various stages of the criminal justice system, especially juveniles. Policing, court and corrections data provide an overview of the types of offences committed by Indigenous women, with particular reference to the offences of public drunkenness and assault and homicide. The issues of recidivism and the relevance of family violence to Indigenous women's offending are also discussed.

The information in this report is based predominantly on information from the Australian Bureau of Statistics (ABS), ATSISJC, the NSW Bureau of Statistics and Research (BOCSAR), the SCRCSP and the Western Australian Crime Research Centre. It should be noted that in August 2009, the ABS released, for the first time, statistics relating to offenders who were proceeded against by police. The data cover the period 1 July 2007 to 30 June 2008 and are available for all jurisdictions except Western Australia, but provide information on Indigenous offenders only for New South Wales, South Australia and the Northern Territory.

# Data on policing and arrests

## Offender rates and proportion of offenders

Table 1 sets out the offender rate per 100,000 by gender and Indigenous status for the three jurisdictions for which information is available (see ABS 2009b). Indigenous women in New South Wales are 9.3 times as likely to offend than their non-Indigenous counterparts; this is a much greater over-representation than for men, for whom the figure is 5.8. The figures for South Australia and the Northern Territory are 16.3 (vs 9.5 for men) and 11.2 (vs 8.7) respectively. As will be seen below, although Indigenous women are much more likely than non-Indigenous women to be imprisoned, their rate of imprisonment is less than for non-Indigenous men. However, these figures demonstrate offending

rates for Indigenous women which far exceed those of non-Indigenous men (by a factor of 2 for New South Wales and the Northern Territory and by a factor of 4 for South Australia).

## Over-policing

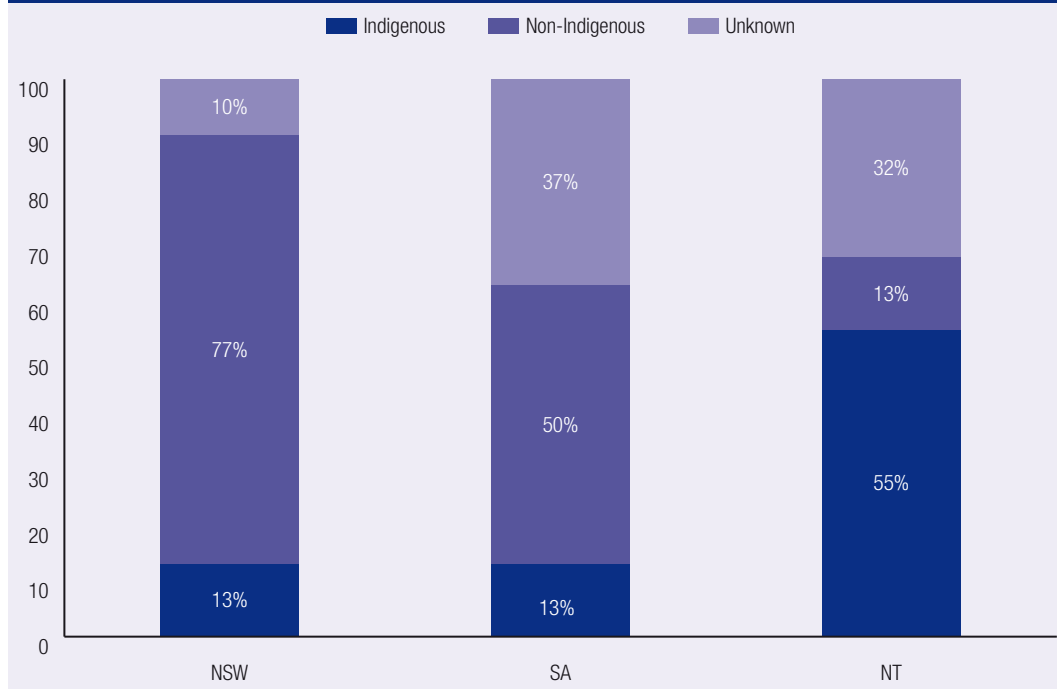
Figure 1 sets out the proportion of female offenders by Indigenous status and jurisdiction. As can be seen, there is a very different offending profile in the Northern Territory, where Indigenous offenders make up the majority of female offenders. The differences in the composition of the populations should be noted, however, with Indigenous people accounting for 32 percent of the Northern Territory population, compared with two percent in New South Wales and South Australia (ABS 2006). In addition, caution should be exercised when comparing Indigenous and non-Indigenous data for certain offences. For example, in New South Wales, the total unknown Indigenous status was nine percent, but this rose to 50 percent for public order offences. Offenders proceeded against by way of penalty and/or infringement notices have higher rates of unknowns as these methods of proceeding are less likely to capture Indigenous status information (ABS 2009b).

**Table 1** Offender rates, by gender and jurisdiction (per 100,000), 2007–08

|     | Indigenous |        | Non-Indigenous |       |
|-----|------------|--------|----------------|-------|
|     | Female     | Male   | Female         | Male  |
| NSW | 5,591      | 13,964 | 603            | 2,389 |
| SA  | 8,203      | 19,905 | 504            | 2,089 |
| NT  | 4,294      | 15,995 | 385            | 1,831 |

Source: adapted from ABS 2009b

**Figure 1** Female offenders by Indigenous status and jurisdiction, 2007–08



Source: Adapted from ABS 2009b

Cunneen has noted that

Surveys of people held in police custody regularly reveal that Aboriginal and Torres Strait Islander women comprise around 50 per cent of all women taken into police custody in Australia...The 1995 Police Custody Survey revealed that Indigenous women were 58 times more likely to be held in police custody than non-Indigenous women; by comparison Indigenous men were 28 times more likely to be held in police custody than non-Indigenous men (Cunneen cited in ASTISJC 2002: 145).

Furthermore, he found that

women in general are detained in police custody proportionately more for offences of public disorder than are men, and that Indigenous women are particularly susceptible to being detained (Cunneen 2001: 165).

The available evidence suggests that Indigenous women are over-represented at all stages in the criminal justice system and that in some instances, this is to a greater extent than for males. For

example, while Indigenous males aged 10 years and over were six times as likely than the general male population to appear in a NSW court in 2001 (19.7% vs 3.2% of the respective population), the figure for females was almost nine times (6.1% vs 0.7%; Weatherburn, Lind & Hua 2003).

Kerley and Cunneen (1995) referred to RCIADIC data indicating that Indigenous women accounted for almost 50 percent of women in police custody, a situation which the authors suggested should demand 'immediate investigation'. Indeed, in the Northern Territory, Indigenous women accounted for 88 percent of women in police custody, while the figures for Western Australia and Queensland were 72 percent and 57 percent respectively. Kerley and Cunneen (1995: np) noted that

One would have thought that the sheer weight of such data would have demanded a response which considered the relationship between Aboriginality, gender, police practices and the use of custody...Yet despite the empirical evidence on the specific overrepresentation of Black women, they barely rate a mention.



The Australian Institute of Criminology's (AIC) 2002 *National Police Custody Survey* provides a limited update and apparent improvement on this picture; Indigenous women accounted for 23 percent of police custody incidents, compared with 14 percent of non-Indigenous police custody incidents (Taylor & Bareja 2005). These data do not specify, however, what proportion of the female police custody population was Indigenous women.

Gardiner and Takagaki (2002) found, based on data from the ABS and Victoria Police (VicPol), that Indigenous women (adult and juvenile) constituted 20 percent of all Indigenous offenders processed in Victoria from 1993 to 1997. Interestingly, the number of adult Indigenous women processed by VicPol fell by three percent, compared with an eight percent increase for non-Indigenous women (Gardiner & Takagaki 2002). Indigenous women were almost five times more likely to be processed for an offence than their non-Indigenous counterparts, although there was a small decline over the period under examination. In particular, the over-representation was highest for crimes against the person (by a factor of 10) and lowest for crimes against property (factor of 3). The authors described the 'worsening over-representation ratio' as a matter of great concern (Gardiner & Takagaki 2002: 308–310). Other data indicate that the number of Indigenous female arrests in Western Australia almost doubled from 1,381 in 1991 to 2,744 in 2005, which is 'mostly due to large increases in justice and good order offences and driving-related offences' (Loh et al. 2007: 43). Data were not provided for non-Indigenous women, but it was noted that this number was 'relatively steady' (Loh et al. 2007: 43).

An examination of arrest rates by BOCSAR, based on data from the 1994 *National Aboriginal and Torres Strait Islander Survey* (NATSIS) indicated that

11 percent of Indigenous women had been arrested in the previous five years, with arrest rates highest for capital cities and lowest in rural areas (16% vs 8%; Hunter & Borland 1999); the figure for Indigenous men was 33 percent. The average number of arrests in that period was 2.3 (Hunter 2001). Further analysis of the 2002 *National Aboriginal and Torres Strait Islander Social Survey* (NATSISS) by Weatherburn, Snowball and Hunter (2006) indicates that 22 percent of Indigenous females aged 15 years and over report ever having been arrested, with three percent having been imprisoned. The figures for males were 54 percent and 12 percent respectively (Weatherburn, Snowball & Hunter 2006). Comparable figures for the non-Indigenous population are not available.

The consequence of high arrest rates should also be considered. After controlling for other key factors, having been arrested was found to reduce the probability of employment by 13 percent for Indigenous women—from 29 percent to 16 percent (Hunter & Borland 1999). Victorian prison census data from 2000 indicate that 87 percent of female Indigenous prisoners were recorded as unemployed (Blagg et al. 2005), while Lawrie's (2002) survey indicated that 92 percent of the respondents said they were not working at the time of their last offence. The ATSIJC (2005: 188) has noted that:

In recent discussions with communities concerning issues faced by Indigenous women exiting prison, one of the concerns raised was the difficulties many Indigenous people faced in accessing employment after their release from prison. While some jurisdictions are providing employment programs in an attempt to address this issue, Indigenous people remain severely disadvantaged with regards to employment if they have a criminal record.

# Data on community corrections and periodic detention

The SCRCSP *Report on Government Services* includes data on community corrections, with details of the average number of offenders on restricted movement orders, reparation orders and supervision orders for each jurisdiction for the period 2003–08 (SCRCSP 2009a). Table 2 sets out the average number of Indigenous females serving each order in 2007–08, by jurisdiction. The most common order was a supervision order, with 82 percent serving such an order. New South Wales, Western Australia and Queensland accounted for 83 percent of supervision orders and 80 percent of all Indigenous females serving a community corrections order.

Figure 2 sets out the number of females serving community corrections orders in 2007–08 by jurisdiction and Indigenous status. As can be seen, Indigenous women account for a minority of females serving such orders in all jurisdictions except the Northern Territory, where they account for 88 percent of females serving a community corrections order. Indigenous women are particularly under-represented on such orders in Victoria, where they account for only six percent of females serving a community corrections order.

**Table 2** Indigenous females on community corrections orders, by type and jurisdiction, 2007–08

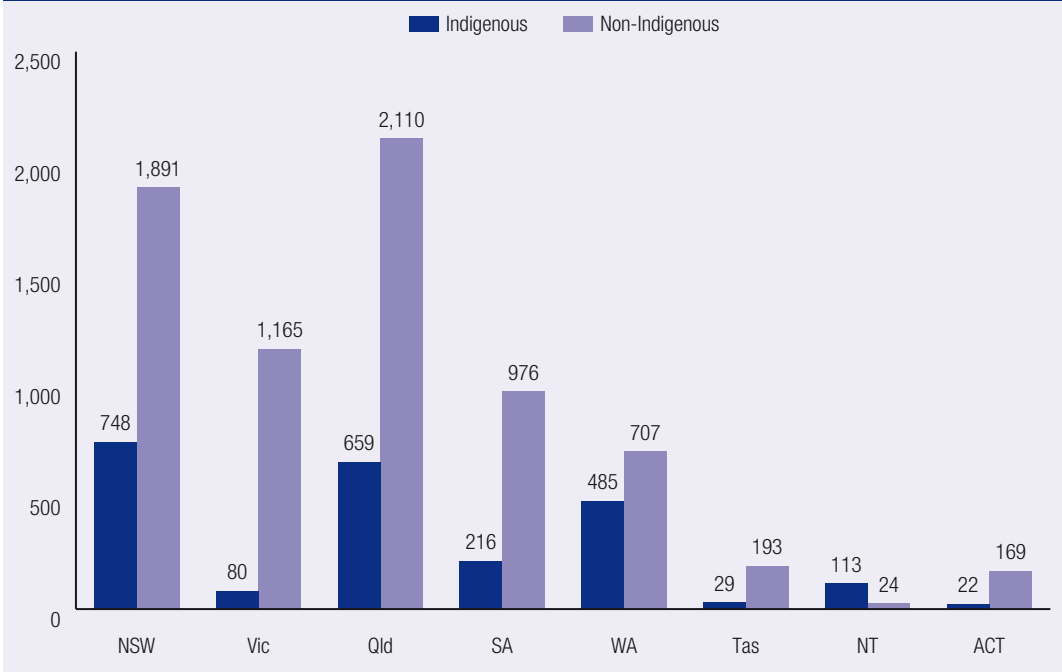
| Jurisdiction | Restricted movement order | Reparation order | Supervision order | Daily number serving distinct order |
|--------------|---------------------------|------------------|-------------------|-------------------------------------|
| NSW          | 3                         | 133              | 661               | 748                                 |
| Vic          | 0                         | 33               | 50                | 80                                  |
| Qld          | 0                         | 139              | 557               | 659                                 |
| SA           | 6                         | 61               | 149               | 216                                 |
| WA           | 6                         | 223              | 387               | 485                                 |
| Tas          | 0                         | 11               | 21                | 29                                  |
| NT           | 2                         | 26               | 91                | 113                                 |
| ACT          | 0                         | 1                | 21                | 22                                  |
| Total        | 17                        | 627              | 1,937             | 2,352                               |

Source: Adapted from SCRCSP 2009a

The SCRCSP report also includes data on periodic detention, which is currently only available in New South Wales and the Australian Capital Territory (SCRCSP 2009a). These data indicate that periodic detention is only rarely used in the Australian Capital Territory, but that Indigenous women are especially unlikely to receive such an order. Between 2003 and 2008, the numbers for Indigenous women

ranked from 0.3 to one, compared with three to five non-Indigenous women being on such orders. In New South Wales, there were seven to 10 Indigenous women on periodic detention between 2003 and 2008, compared with 57–63 non-Indigenous women (SCRCSP 2009a: Tables 8A.27 and 8A.65).

**Figure 2** Daily average number of females serving a community corrections order by Indigenous status and jurisdiction, 2007–08



Source: Adapted from SCRCSP 2009a

# Data on prisons

## Imprisonment rates and proportion of prisoners

As noted in the most recent ATSIJSJC report, 'although there are less Indigenous women in custody they are currently the fastest growing prison population and are severely overrepresented' (ATSIJSJC 2008: 304). The 2002 ATSIJSJC report suggested that 'causes of the increases are complex and vary between jurisdictions', citing the findings of the NSW Select Committee into the Increase in Prison Population that the most significant contributing factor was the increase in the remand population, while increases in police activity and changes in judicial attitudes to sentencing were also important (ATSIJSJC 2002: 137). There was no evidence to suggest that an increase in actual crime accounted for the prison increase.

The rate of Indigenous women's imprisonment across Australia rose 10 percent between 2006 and June 2009. Table 3 sets out imprisonment rates for Indigenous women (per 100,000) since 2006 by jurisdiction. As can be seen in Table 4, the actual numbers in the Australian Capital Territory and Tasmania are too small to enable any conclusions to be drawn. The Northern Territory had a sizable increase, while Queensland had a very small decrease. Analysis of the 2002 NATSISS data indicates that three percent of Indigenous females aged 15 years and over reported having been imprisoned at some point (Weatherburn, Snowball & Hunter 2006).

It should be noted that different age profiles of the Indigenous and non-Indigenous population can affect the imprisonment rate numbers, but the quarterly collection is unable to take age into account (ABS 2009a). Data from the prisoner

**Table 3** Imprisonment rates (per 100,000) for Indigenous women by jurisdiction, 2006–June 2009

|                   | NSW   | Vic   | Qld   | SA    | WA    | Tas   | NT    | ACT   | Aust  |
|-------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 2006              | 463.9 | 145.0 | 270.8 | 291.3 | 628.1 | 149.4 | 124.9 | 78.3  | 346.2 |
| 2007              | 488.2 | 158.1 | 267.7 | 336.1 | 793.4 | 138.5 | 167.3 | 68.6  | 384.5 |
| 2008              | 483.5 | 171.9 | 258.9 | 309.1 | 633.5 | 139.8 | 188.5 | 227.5 | 361.0 |
| 2009–June quarter | 489.5 | 184.9 | 265.4 | 389.0 | 630.1 | 119.7 | 183.5 | 244.7 | 368.5 |
| % increase        | 12.5  | 18.8  | -1.4  | 16.2  | 3.7   | -30.1 | 71.2  | 314.7 | 10.1  |

Source: ABS 2009a

**Table 4** Indigenous prisoners as proportion of prison population, by jurisdiction, 2007–08

| Jurisdiction | Number of Indigenous female prisoners | % of female prison population | Number of Indigenous male prisoners | % of male prison population |
|--------------|---------------------------------------|-------------------------------|-------------------------------------|-----------------------------|
| NSW          | 220                                   | 28.8                          | 1,919                               | 25.3                        |
| Vic          | 15                                    | 6.3                           | 230                                 | 5.8                         |
| Qld          | 115                                   | 27.1                          | 1,380                               | 30.0                        |
| SA           | 28                                    | 21.2                          | 373                                 | 20.7                        |
| WA           | 141                                   | 51.5                          | 1,411                               | 40.4                        |
| Tas          | 9                                     | 20.0                          | 57                                  | 12.1                        |
| NT           | 38                                    | 82.6                          | 755                                 | 83.2                        |
| ACT          | 3                                     | 12.0                          | 22                                  | 9.8                         |
| Aust         | 569                                   | 29.3                          | 6,137                               | 24.1                        |

Source: ABS 2008

census collection provide detail on the age-standardised imprisonment rates of Indigenous and non-Indigenous people but do not provide a breakdown by gender (see ABS 2007 for discussion of age-standardisation for Indigenous populations). By way of comparison, the June 2009 data indicate that the imprisonment rate for non-Indigenous women was 24.5 per 100,000; Indigenous women were therefore 16 times over-represented, compared with 13 times for men. McRae et al. (2009) note that while men constitute the large majority of Indigenous people in custody, the level of over-representation for women is even higher. In 2007–08, Indigenous women comprised 29 percent of women in prison, compared with 24 percent for men.

Earlier data which set out the over-representation by jurisdiction are set out in the 2002 ATSIJJC report and indicate, for example, that in 2001–02, Indigenous women represented 52 percent of all women received into Western Australian prisons, although they constituted only three percent of the Western Australian female population (ATSIJJC 2002). Behrendt, Cunneen and Liebesman (2009) report that the Indigenous prison population rose 343 percent between 1993 and 2003, compared with a rise of 110 percent for non-Indigenous women. The 2002 ATSIJJC report indicated that at 30 June 2001, there were 370 Indigenous women in prison; seven years later, this number had risen to 608 (ATSIJJC 2002).

Table 4 sets out the most recent data on the number of Indigenous women in prison by jurisdiction and the proportion they comprise of the local prison

population, although the small sample size should be noted, especially in Tasmania and the Australian Capital Territory. As can be seen, Indigenous female prisoners are in the majority in Western Australia (52% of the population) and the Northern Territory (83%), but account for only a relatively small proportion of prisoners in Victoria (6%). Although the numbers of Indigenous male prisoners are obviously much higher, women outnumbered them as a proportion of the relevant prison population in almost all jurisdictions. The comparative over-representation of Indigenous women, compared with men, was especially stark in Western Australia (52% vs 40%) and Tasmania (20% vs 12%).

## Prisoner numbers

Table 5 sets out the average daily number of female Indigenous prisoners since 2006 by jurisdiction, in which time the number of such prisoners has increased in all jurisdictions except Tasmania, where the numbers are too small to be of significance. The ABS notes, however, that caution must be taken in interpreting the increases in the percentage of Indigenous peoples in the prison population, as the increase may be due to alterations in the method of data collection and/or the willingness of Indigenous prisoners to participate and identify themselves as Indigenous (ABS 2008). Notably, the NSW Indigenous female prison population increased by 22 percent (higher than the national increase of 19%), while the NT population increased by 83 percent.

**Table 5** Average daily number of female Indigenous prisoners, 2006–June 2009

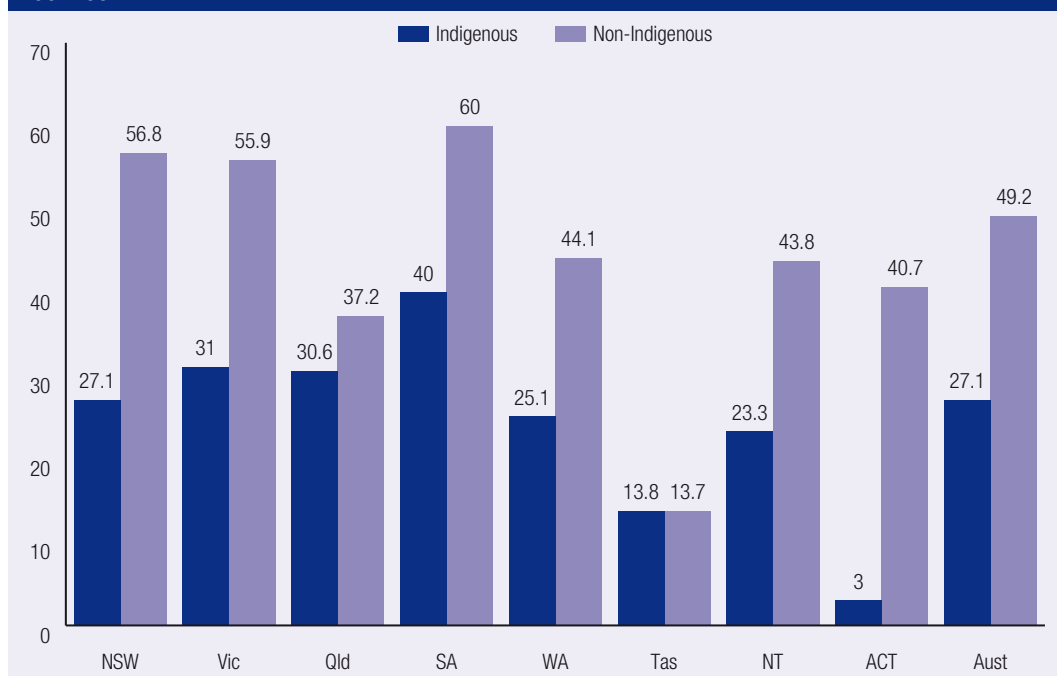
| Year              | NSW  | Vic  | Qld | SA   | WA   | Tas | NT   | ACT | Aust |
|-------------------|------|------|-----|------|------|-----|------|-----|------|
| 2006              | 194  | 13   | 114 | 24   | 134  | 8   | 23   | 1   | 512  |
| 2007              | 209  | 15   | 115 | 29   | 175  | 7   | 32   | 1   | 584  |
| 2008              | 213  | 17   | 115 | 28   | 143  | 8   | 36   | 3   | 561  |
| 2009–June quarter | 236  | 17   | 121 | 31   | 151  | 6   | 42   | 4   | 608  |
| % increase        | 21.6 | 30.8 | 6.1 | 29.2 | 12.7 | -25 | 82.6 | 300 | 18.8 |

Source: ABS 2009a

## Sentence length

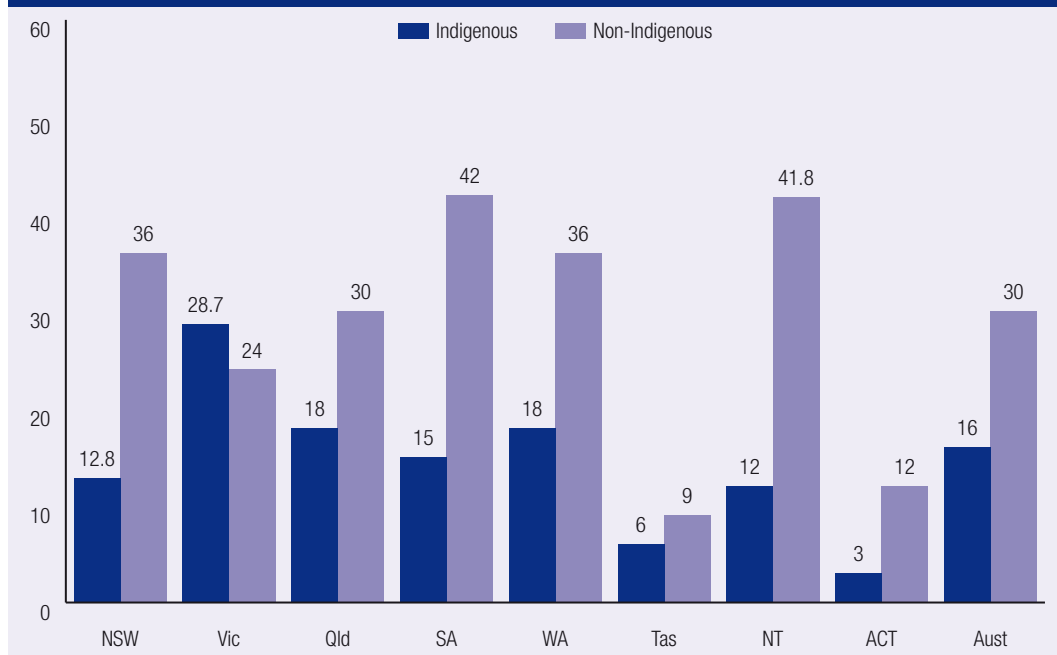
Figures 3 and 4 set out the mean and median length of sentences for female prisoners. As can be seen, Indigenous women generally serve shorter sentences than their non-Indigenous counterparts (although the median length for Victoria is in fact higher at 28.7 vs 24 months). The median length was 16 months for Indigenous women, compared with 30 months for non-Indigenous women, while the mean figures were 27.1 and 49.2 respectively. The shorter sentence length suggests that Indigenous women are being imprisoned for more

trivial offences, especially public order offences (ATSISJC 2002). The data on expected time to serve, which are also available by jurisdiction, indicate that Indigenous women have a mean time of 17.7 months and median of 9.1 months, compared with 30.4 and 14.3 respectively for non-Indigenous women (ABS 2008). BOCSAR recently released a paper on the increase in the Indigenous imprisonment rate in New South Wales, in which it noted that this increase had been about the same for females as for males. The findings indicated that the increase in the NSW Indigenous imprisonment rate was due in part to an increase in sentence lengths (Fitzgerald 2009).

**Figure 3** Mean sentence length in months, for female prisoners by Indigenous status and jurisdiction, 2007–08

Source: ABS 2008

**Figure 4** Median sentence length in months, for female prisoners by Indigenous status and jurisdiction, 2007–08



Source: ABS 2008

It is not possible to extrapolate from the most recent ABS data what proportion of Indigenous female prisoners are on remand, rather than serving a sentence, but BOCSAR's recent findings suggest that one-quarter of the increase in the NSW Indigenous imprisonment rate was due to a greater proportion of Indigenous defendants being refused bail, as well as an increase in the time they spent on remand (Fitzgerald 2009).

Blagg et al. (2005) refer to Victorian prison data indicating that more than one in three Indigenous women prisoners were unsentenced. Figures from the South Australian Office of Crime Statistics and Research (OCSAR) indicate that 75 percent of Indigenous women were on remand at the time of their discharge from custody, compared with 67 percent for non-Indigenous female prisoners (OCSAR 2006a). A survey of Indigenous women in NSW prisons found that 70 percent had been refused bail (Lawrie 2002). Advice provided by the NSW Department of Corrective Services indicated that the Aboriginal female remand rate can fluctuate

anywhere between 25–31 percent at any given time and the report noted that 'a significant proportion of Aboriginal women are always remanded to custody, which raises many issues concerning access to bail, accommodation, parenting and health' (Lawrie 2002: 32).

## Security classification

Behrendt, Cunneen and Liebesman (2009) suggest that Indigenous female prisoners tend to be classified as minimum security, but it is not clear on what data they base this assertion.

Table 6 sets out information collected by the SCRCSP on the proportion of prisoners who are detained in open versus secure prisons. A lower proportion of Indigenous prisoners are kept in open prisons in all jurisdictions except for New South Wales, where they exceed non-Indigenous prisoners and South Australia and the Northern Territory, where there are no women in open prisons.

**Table 6** Proportion of female prisoners in open prison by Indigenous status and jurisdiction

| Jurisdiction | Indigenous | Non-Indigenous |
|--------------|------------|----------------|
| NSW          | 44.5       | 37.4           |
| Vic          | 1.3        | 19.0           |
| Qld          | 14.2       | 21.7           |
| SA           | 0.0        | 0.0            |
| WA           | 33.8       | 36.5           |
| Tas          | 0.0        | 0.0            |
| NT           | 27.3       | 42.9           |
| ACT          | 16.7       | 50             |

Adapted from SCRCSP 2009a

## Characteristics of female Indigenous prisoners

Behrendt, Cunneen and Liebesman (2009) indicate that there are a number of specific characteristics of Indigenous female prisoners and that the majority have serious psychiatric issues and are over-represented among prisoners at risk. The SCRCSP (2009b) referred to research indicating that rates of hospital admissions for mental disorders were three times as high for Indigenous female prisoners as in the Indigenous population of Western Australia generally. They elsewhere noted that there are few data from which to draw conclusions about the scope, prevalence and burden of mental health problems among Indigenous people, especially for vulnerable groups, including prisoners and juveniles in detention (SCRCSP 2009b).

The 2002 ATSIJSJC report found that 22 percent of Indigenous women had self-harmed in custody, compared with 13 percent of non-Indigenous women (ATSIJSJC 2002). Blagg et al. (2005: 148) found in their interviews with female prisoners in Victoria that

[they] saw mental health as being the single biggest issue they faced in prison, and saw mental health as inextricably linked with other issues such as family violence, sexual abuse and addiction. They raised concerns about assessment processes, drug treatment and continuity in services.

A retrospective cohort study of adults imprisoned in New South Wales between 1988 and 2002 found that Indigenous women were 12.6 times more likely to die after release from custody than the general NSW population (compared with 4.8 times for Indigenous men; Kariminia et al. 2007). The main cause of death for women was mental and behavioural disorders (29%; *cf* accidental death for 22% of men). Information on the cause of death was not broken down by Indigenous status, with the authors merely noting that

The finding that male and female Aborigines had a higher overall [standardized mortality ratio] than the cohort as a whole is of significant public health importance. Aboriginal people are hugely over-represented in the Australian prisoner population (11% of this cohort), but constitute around 2% of the NSW population. Detailed analysis on these data is needed to make meaningful conclusions about the findings (Kariminia et al. 2007: 314).

Although it should not be assumed that the Indigenous female prison population is homogenous in nature, Brooks (1996: 275) suggests that imprisonment is made more difficult for Indigenous women if their families are matrifocal, or mother-centred, and 'removes these women from the security of a community life which, frequently, is so tightly integrated on the basis of contiguity and kinship as to be totally alien to all but those who live it'. As noted by the SCRCSP, because there are fewer prisons for women, Indigenous females are often detained in centres far from their children and communities (SCRCSP 2009b). In addition, they may face communication difficulties, with a study of women prisoners in Western Australia indicating that Indigenous women spoke an Aboriginal dialect as their first language.

There is limited information about Indigenous female prisoners as mothers. Behrendt, Cunneen and Liebesman (2009) assert that although 80 percent of Indigenous female prisoners are mothers, they do not appear readily able to access Mothers and Children's Units. Research is required to better understand the needs of Indigenous women with infants and young children in prison and the appropriateness and ease of access to programs which enable such prisoners to keep their children with them. It would also be of benefit to examine



the numbers of Indigenous women who seek to have their children placed with them in prison due to limited or inadequate familial support.

Furthermore, there is nothing known about the experiences and needs of the children of Indigenous women who are released from prison (Baldry & McCausland 2009). A survey of NSW Indigenous female prisoners found that 29 percent had primary care responsibilities for children other than their own; the same proportion were normally responsible for the care of other people, principally their parents and other family members (Lawrie 2002). The study noted that the fact that a number of participants were 'not completely satisfied or have shared concerns for their children while they are in custody adds to the already strained relationship with their children while they are serving a term of imprisonment' (Lawrie 2002: 22).

In addition, 43 percent of the women surveyed who had dependent children did not receive any income from paid employment or Centrelink (eg parenting payment) at the time of their last offence. Lawrie (2002: 27) therefore found that the

absence of a regular income leaves a huge gap for Aboriginal women, especially those trying to support a family or provide care for extended family members, and places additional pressure on an already difficult situation.

There also appear to be difficulties for such women in accessing post-release support programs and Baldry et al. (2006) identified Indigenous women as experiencing the highest rates of reincarceration and homelessness in their NSW and Victorian post-release study. There is reportedly only one Indigenous-run, post-release support program for Indigenous women in Australia—the Yulawirri Nurai program in New South Wales (Behrendt, Cunneen & Liebesman 2009: for details see ATSIJSJ 2004: 30–31). As Baldry and McCausland (2009: 296) noted, however,

There is no publicly available evaluation of the service, which is partially funded by the NSW Department of Corrective Services, so it is

impossible to assess its effectiveness. However, it is not funded to provide and does not have access to accommodation or substantial services as part of its program. This suggests its long-term effectiveness may be undermined.

It would be desirable for an independent evaluation to examine the effectiveness of the Yulawirri Nurai program, as well as examining the possibility of attaching accommodation and other services to the program.

The survey of NSW prisoners indicated that although 73 percent of respondents said they would have the support of family and community after their release, 25 percent did not have any such support and two percent were unsure if they did (Lawrie 2002). A key recent development in this context is the announcement in November 2009 of a NSW pilot project to provide greater support to Indigenous women with dependent children leaving prison. The Aboriginal Women with Dependent Children Leaving Prison Program will provide local accommodation to the women and their children for 12 months following their release from custody, as well as intensive support from Indigenous caseworkers regarding employment, counselling and drug and/or alcohol rehabilitation services. The caseworkers will also work with the children to provide necessary support (Burney 2009). The local Indigenous community was canvassed in 2006 to gain support and to establish a Reference Group which reaffirmed the project's intent. Penrith Women's Refuge was successful in its application to operate and manage the project; the refuge had already been working in partnership with Dillwynia and Emu Plains prisons to develop a case management plan for all interested women prior to their release from custody. The program is already operational and is funded for two years. It is managed by two Indigenous caseworkers, with a consultant engaged to conduct an evaluation throughout the program's progression. All participants in the program will be required to commit to a case plan/case management model with the Indigenous case managers (T French personal communication 9 March 2010).

# Age

There is comparatively detailed information available about the age of offenders and prisoners. This section sets out the relevant data, as well as examining the incarceration situation in respect of juveniles.

## Policing data

The ABS recently published information on offenders' age by Indigenous status and gender (ABS 2009b). Table 7 indicates that Indigenous female offenders in the Northern Territory are slightly older than their non-Indigenous counterparts. In New South Wales, the mean age is about the same and the median age is two years higher, while in South Australia, the mean age is a year lower, while the median is a year higher. Overall, it cannot be said that there is any clear difference in the age profile of offenders on the basis of Indigenous status. As can be seen below (see Figures 6 and 7), Indigenous

female prisoners are, by contrast, younger than their non-Indigenous counterparts.

Table 8 sets out the proportion of female offenders in each age group who are Indigenous or listed as non-Indigenous, although Indigenous status was not known for a high proportion of offenders: 9.5 percent in New South Wales, 37.2 percent in South Australia and 32.3 in the Northern Territory. The offending profile in the Northern Territory was very different to the other two jurisdictions, as the majority of offenders were Indigenous, especially in the 10–14 year age group, where they accounted for almost three-quarters of offenders. In New South Wales, Indigenous offending declined dramatically for offenders aged 55 years and over; there was also a drop in the 15–19 year age group. Although the proportion of Indigenous offenders in South Australia was the same as in New South Wales (13%), there was a different age distribution, with an earlier decline (45 years and over).

**Table 7** Mean and median age of female offenders by jurisdiction and Indigenous status, 2007–08

|     | Indigenous |        | Non-Indigenous |        |
|-----|------------|--------|----------------|--------|
|     | Mean       | Median | Mean           | Median |
| NSW | 25.8       | 23.0   | 25.7           | 21.0   |
| SA  | 27.3       | 26.0   | 28.3           | 25.0   |
| NT  | 30.4       | 30.0   | 29.0           | 26.0   |

Source: ABS 2009b

**Table 8** Age distribution of female offenders by jurisdiction and Indigenous status, 2007–08

| Age         | NSW        |                | SA         |                | NT         |                |
|-------------|------------|----------------|------------|----------------|------------|----------------|
|             | Indigenous | Non-Indigenous | Indigenous | Non-Indigenous | Indigenous | Non-Indigenous |
| 10–14       | 16.6       | 77.6           | 19.4       | 68.9           | 72.2       | 19.6           |
| 15–19       | 10.0       | 83.0           | 11.4       | 55.3           | 54.3       | 22.7           |
| 20–24       | 15.1       | 71.9           | 12.5       | 43.3           | 55.4       | 12.3           |
| 25–29       | 14.9       | 73.3           | 15.3       | 42.4           | 58.6       | 12.5           |
| 30–34       | 17.4       | 72.6           | 15.4       | 43.0           | 56.0       | 7.9            |
| 35–39       | 16.2       | 73.0           | 13.9       | 47.5           | 56.9       | 9.1            |
| 40–44       | 15.4       | 73.5           | 14.5       | 46.5           | 53.3       | 6.6            |
| 45–49       | 14.4       | 74.7           | 7.3        | 47.6           | 52.9       | 10.1           |
| 50–54       | 11.0       | 75.9           | 9.1        | 66.2           | 39.1       | 14.9           |
| 55–59       | 4.4        | 80.7           | 3.7        | 65.4           | 44.4       | 22.2           |
| 60–64       | 3.2        | 83.8           | –          | 81.4           | 34.8       | 30.4           |
| 65 and over | 4.0        | 86.1           | –          | 81.3           | 44.4       | –              |
| Total       | 13.4       | 77.1           | 13.0       | 49.8           | 54.9       | 12.8           |

Note: Percentages may not total 100 due to rounding

Source: ABS 2009b

## Prisons data

Behrendt, Cunneen and Liebesman (2009) note that Indigenous female prisoners tend to be younger than their non-Indigenous counterparts; a NSW survey found that the average age of Indigenous women in prison was 25 years (Lawrie 2002). This may merely be a reflection of different demographic make-up. For example, in 1999, ATSIJJC reported that the median age of Indigenous females was 21 years, compared with 34 years for non-Indigenous females (ATSIJJC 1999).

Table 9 sets out the most recent ABS data on female prisoners' age (ABS 2008). As can be seen, the rate of imprisonment peaks at 25–29 years of age for both groups, at which the imprisonment rate is 21 times higher for Indigenous women. Excluding offenders under 18 years and 65 years and over, where there are only very small numbers, the over-representation is greatest for Indigenous women aged 20–24 years (23 times higher) and generally declines with age. The suggestion that Indigenous female prisoners are generally younger is borne out by these data; 23 percent were aged 24 years or under, compared with 12 percent for non-Indigenous women. Interestingly, recent WA data on the age of Indigenous women for all offence counts, arrest events and distinct persons indicate a

peak in offending for both Indigenous and non-Indigenous women at 30–39 years (Fernandez et al. 2009).

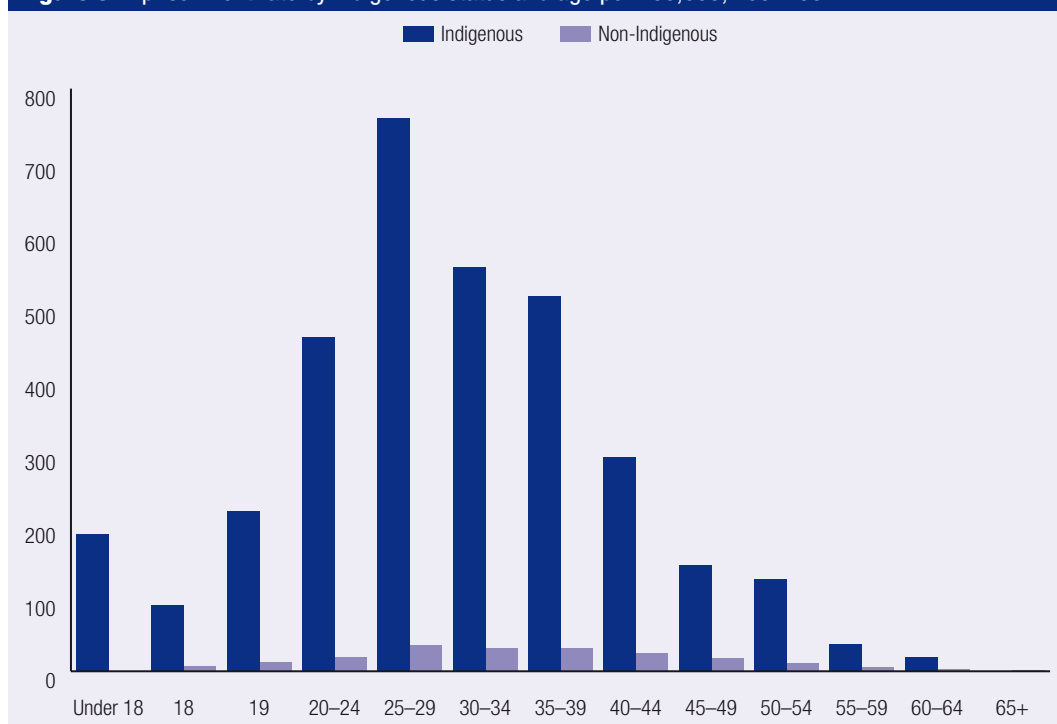
Figure 5 sets the imprisonment rate per 100,000 females on the basis of age and Indigenous status, with Indigenous women aged 18–65 years over-represented by a factor of between six and 29. Offending peaks for both groups at 25–29 years, at 760 and 36 per 100,000 respectively. The imprisonment rate for Indigenous juveniles was 188 per 100,000, whereas the rate for non-Indigenous juveniles was zero. Non-Indigenous women aged 65 years and over were slightly over-represented (0.9 vs 0), although these numbers were, of course, very small.

The data in Figures 6 and 7 set out the mean and median ages of prisoners by jurisdiction, with Indigenous women younger than non-Indigenous women in all jurisdictions (mean: 31.4 vs 36.4 years; median: 30 vs 35.4 years). The age profile is particularly young in Tasmania and the Australian Capital Territory (under 27 years), while Indigenous female prisoners are slightly older in New South Wales and the Northern Territory. The median age in South Australia, the Australian Capital Territory and the Northern Territory is especially young, relative to the non-Indigenous population.

**Table 9** Female prisoners by age in years and Indigenous status, 2007–08

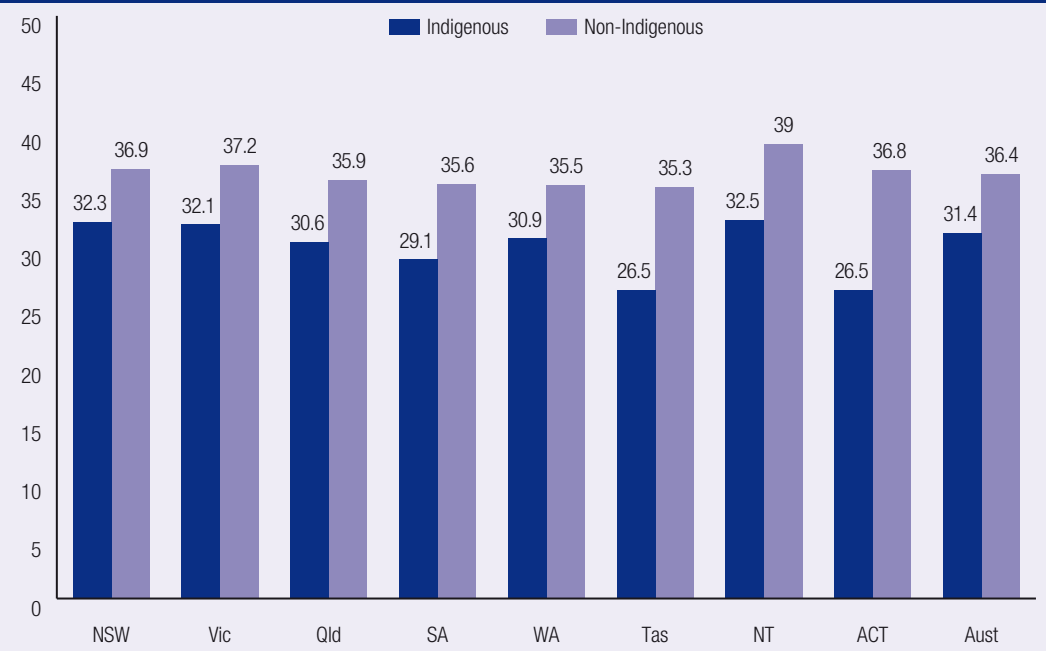
| Age         | Indigenous |       | Non-Indigenous |       |
|-------------|------------|-------|----------------|-------|
|             | No         | %     | No             | %     |
| Under 18    | 3          | 0.5   | 0              | 0.0   |
| 18          | 5          | 0.9   | 10             | 0.7   |
| 19          | 12         | 2.1   | 18             | 1.3   |
| 20–24       | 113        | 19.9  | 143            | 10.4  |
| 25–29       | 151        | 26.5  | 259            | 18.9  |
| 30–34       | 101        | 17.8  | 225            | 16.4  |
| 35–39       | 98         | 17.2  | 242            | 17.6  |
| 40–44       | 47         | 8.3   | 186            | 13.6  |
| 45–49       | 20         | 3.5   | 139            | 10.1  |
| 50–54       | 13         | 2.3   | 79             | 5.8   |
| 55–59       | 3          | 0.5   | 39             | 2.8   |
| 60–64       | 3          | 0.5   | 18             | 1.3   |
| 65 and over | 0          | 0.0   | 14             | 1.0   |
| Total       | 569        | 100.0 | 1,372          | 100.0 |

Source: ABS 2008

**Figure 5** Imprisonment rate by Indigenous status and age per 100,000, 2007–08

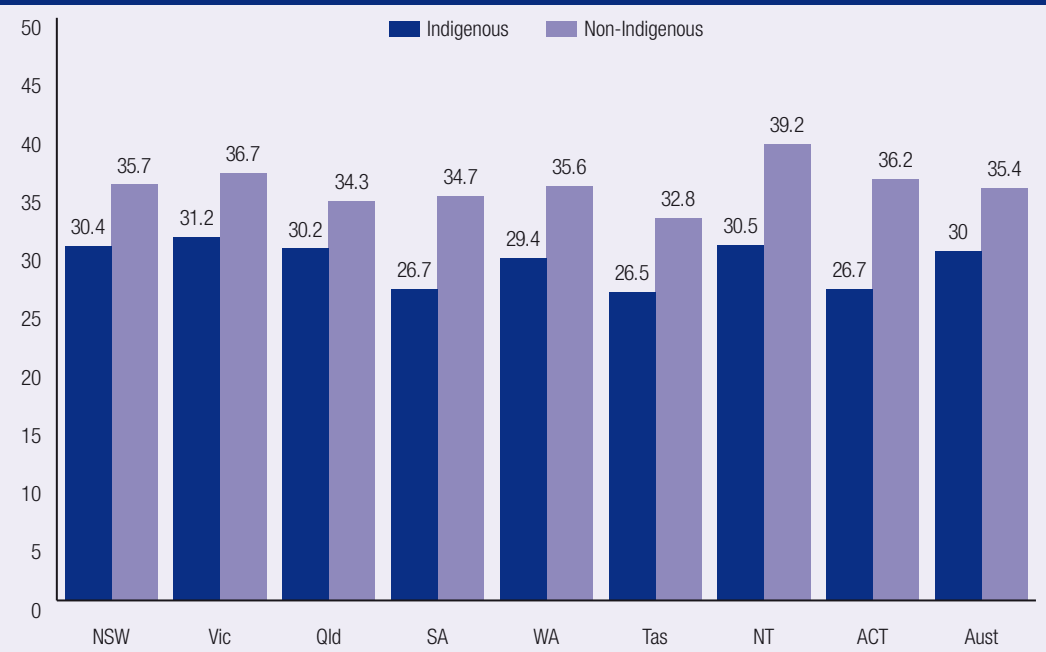
Source: ABS 2008

**Figure 6** Mean age of female prisoners by jurisdiction and Indigenous status, 2007–08



Source: ABS 2008

**Figure 7** Median age of female prisoners by jurisdiction and Indigenous status, 2007–08



Source: ABS 2008

# Juveniles

Gardiner and Takagaki (2002) found that female Indigenous juveniles were over four times more likely to be processed for an offence than their non-Indigenous counterparts. In particular, the over-representation was highest for crimes against the person (by a factor of 5) and lowest for 'other' offences (factor of 2). They also found that between 1993 and 1997, the number of Indigenous girls processed by VicPol increased by 29 percent, while there was negligible (0.4%) increase for non-Indigenous girls. The authors described this situation as a matter of great concern, which raises serious questions in relation to the conduct of policing in Victoria (Gardiner & Takagaki 2002). Their data indicate that Indigenous female juveniles were more likely than non-Indigenous juveniles to commit crime against the person (16% vs 9%), less likely to commit crime against property (64% vs 76%) and slightly more likely to commit 'other' offences (20% vs 16%). As for adults, Indigenous girls were more likely than non-Indigenous girls to be processed for the offence of assault (6% vs 2% for indictable; 9% vs 5% for summary) and other summary offences (17% vs 12%).

Gardiner and Takagaki (2002: 312) also note the 'continuing role racial selectivity can play in modern policing', drawing on data (unfortunately not broken down by gender) which indicated that only five percent of Indigenous juvenile offenders processed

for 'other summary offences' were cautioned, compared with 36 percent of non-Indigenous juveniles. It follows, therefore, that Indigenous offending appears to be dealt with more harshly from the moment of police intervention and that this may continue to occur, notwithstanding the RCIADIC recommendation that cautioning juveniles should take precedence over other means of processing (RCIADIC 1991: Recommendation 239). Some of the reasons for the failure to divert may include Indigenous juveniles' earlier involvement in the criminal justice system or more serious prior criminal records or differences in policing practices. As Richards (2009) noted recently, there has been little published on how police make decisions about whether a particular juvenile should be warned, cautioned or referred to a restorative justice conference.

Police data from South Australia also suggest over-representation; Indigenous girls accounted for 21 percent of police apprehensions for juveniles (OCSAR 2006b). WA data for 2006 indicate that Indigenous juveniles accounted for 66 percent of female police cautions, while Indigenous women accounted for 39 percent of female arrests (Fernandez et al. 2009). Other data indicate that the number of Indigenous female arrests almost doubled from 1,381 in 1991 to 2,744 in 2005, which was 'mostly due to large increases in justice and

good order offences and driving-related offences (Loh et al. 2007: vii). More recent data indicate that the most common offences for female Indigenous juveniles were theft other than a motor vehicle (TOMV; 23%), followed by assault, breach of justice order and burglary (all 10%; Fernandez et al. 2009). Non-Indigenous female juveniles were most likely to be arrested for TOMV (23%) and assault (16%). Indigenous females also appear to come into contact with the criminal justice system at a younger age. Eleven percent of Indigenous female juveniles cautioned in 2006 were aged 10 or 11 years, compared with only one percent of non-Indigenous juveniles.

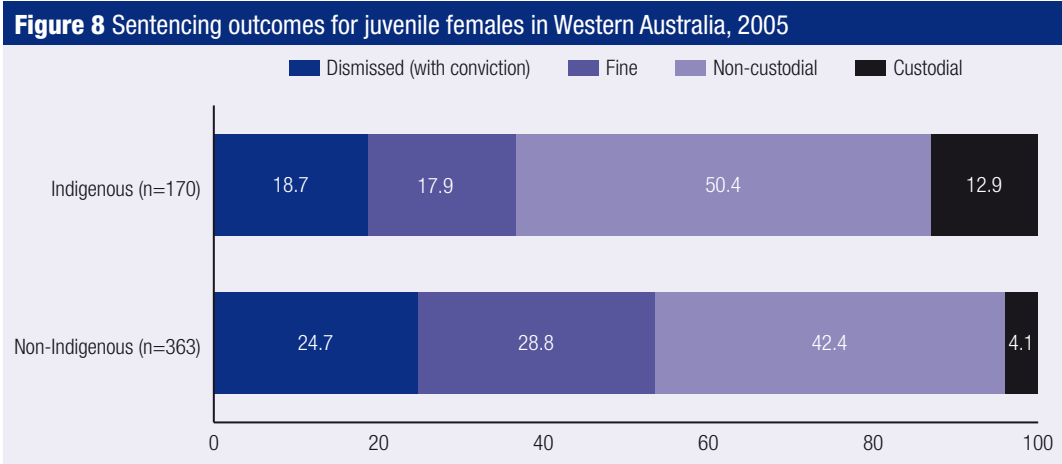
The AIC recently released the monitoring report *Juveniles' Contact with the Criminal Justice System in Australia* (Richards 2009). The report found that Indigenous female juveniles were disproportionately apprehended by police in comparison with Indigenous male juveniles in only some jurisdictions. In Western Australia, for example, Indigenous juveniles accounted for 45 percent of males arrested, compared with 63 percent of females. The figures for South Australia were 19 percent and 28 percent respectively. New South Wales, the Australian Capital Territory, Victoria and the Northern Territory, by contrast, showed similar levels of police contact for Indigenous male and female juveniles (Richards 2009).

The report also presents information (based on Loh et al. 2007) on children's court outcomes for juveniles in Western Australia by gender and

Indigenous status. These data indicate that 79 percent of Indigenous females were found guilty, compared with 66 percent of non-Indigenous females (Richards 2009). In addition, Indigenous females were much less likely to be referred to a juvenile justice team (20% vs 32%).

Figure 8 sets out sentencing outcomes for female juveniles in Western Australia in 2005 (Richards 2009). As can be seen, Indigenous female juveniles are less likely to have their matter dismissed (19% vs 25%) or to receive a fine (18% vs 29%) and are over three times as likely to receive a custodial sentence (13% vs 4%).

Richards' (2009) report also presents detailed information on the number of juveniles subject to community supervision and detention, by age, gender and Indigenous status. Notably, Indigenous females comprised a higher proportion of female juveniles under community supervision than Indigenous males comprised in relation to all male juveniles (47% vs 38%). In addition, Indigenous female juveniles were less likely to be on remand than their non-Indigenous counterparts (50% vs 89%). As at 30 June 2007, there were 38 Indigenous females in juvenile detention (SCRCSP 2009b) and the rate of detention was 24 times higher than for non-Indigenous females. The SCRCSP report also presented data on juvenile diversions in the Northern Territory, which indicated that Indigenous females were more likely to be diverted than males, although both groups were less likely to be diverted than their non-Indigenous counterparts (SCRCSP 2009b).



Source: adapted from Loh et al. 2007; Richards 2009

# Types of offences committed by Indigenous women

## Policing data

Without referring specifically to the situation for women, McRae et al, (2009: 503) discuss the types of offences that bring Indigenous people into contact with the criminal justice system, noting that these are generally 'trivial crimes' and arguing that 'curtailing police discretion to charge Indigenous people for minor offences such as offensive language would reduce Indigenous custody rates'.

Other research indicates the generally petty nature of most offending. The most frequent offences committed by Indigenous women are said to be fine default, drunkenness, offensive language and social security fraud (Behrendt 2000; Brooks 1996; Corbett & Paxman 1995; Payne 1993). It is conceded that although social security fraud is not necessarily petty in its magnitude, it is often a crime of necessity and driven by poverty. Hunter and Borland's (1999) analysis indicates that drinking in public was the most common reason for the most recent arrest for NSW Indigenous women (4.7%), followed by assault (2.1%) and drink driving (1.5%); similar data indicate that drinking-related arrests accounted for eight percent of the most recent arrests for Indigenous women aged 18–24 years (Hunter 2001).

The WA Crime Research Centre recently published information on types of offences, juvenile/adult status, sex and Indigenous status for all counts of police arrest, arrest events and distinct persons arrested (Fernandez et al. 2009). The data on all counts of arrest indicate that an Indigenous woman is most likely to be arrested for disorderly conduct (19% of arrests for Indigenous women), followed by a breach justice order (14%). Assault was the next most common offence, accounting for 10 percent of arrests, compared with five percent for non-Indigenous women, who were most likely to be arrested for fraud (16%), followed by TOMV (12%). For Indigenous female juveniles, the most common offences were TOMV (23%), followed by assault, breach of justice order and burglary (all 10%). Non-Indigenous female juveniles were most likely to be arrested for TOMV (23%) and assault (16%). Examining the distinct persons arrested reveals that Indigenous women were most likely to have been arrested for assault (22%), followed by disorderly conduct (15%). The figures for non-Indigenous women were TOMV (15%), followed by assault (14%); these data are also available broken down by age.

Gardiner and Takagaki (2002: 312) found that Indigenous women were over five times more likely to be processed for summary offences than non-Indigenous women and query whether



Indigenous Victorian women are more prone to public demonstrations of offensive language and ‘bad’ behaviour than their non-Indigenous counterparts?...to whom would such demonstrations be offensive? Or is it more likely... that the policing of Indigenous women is qualitatively different?...That it is police interventions with Indigenous women which actually create situations which lead to arrest for public disorder being made?

Mackay and Smallcombe (1996) also examined Victorian data to point to differences in offending patterns between Indigenous and non-Indigenous women, with the former more likely to be processed for ‘crime against the person’. Gardiner and Takagaki (2002) found in respect of the offences committed by Indigenous women that:

- between 1993 and 1997, crime against the person rose 25 percent, crime against property fell five percent and other crime fell by 19 percent;
- crime against property was the most heavily-represented category, which was consistent with Indigenous men’s patterns;
- the most common offence types were assault (indictable and summary), theft (shop-stealing and other), deception and other summary offending. Collectively, these accounted for 60 percent of incidents involving Indigenous women processed;

- breaches under ‘other summary offences’ accounted for the most common of all offence types;
- ‘other’ summary offences accounted for 18 percent of Indigenous women’s matters, compared with 12 percent for non-Indigenous women, while the latter were more likely to be processed for shop-stealing (28% vs 16%); and
- the overwhelming body of offences processed were for relatively minor offences, with most matters relating to public order offences, such as indecent language and offensive behaviour.

This final point is relevant when the use of unofficial cautions and the impact of having a criminal record are taken into account, as discussed earlier in this report.

## Court data

Table 10 sets out the offence profile for women appearing in a NSW court in 2001. As can be seen, Indigenous women are significantly over-represented for acts intended to cause injury (24% vs 14%) and public order offences (13% vs 6%), and are under-represented for driving offences (18% vs 30%).

| Table 10 Offence profile for women appearing in NSW courts in 2001 (%)  |            |                |
|---|------------|----------------|
| Offence type (ASOC code)  | Indigenous | Non-Indigenous |
| Homicide  | 0.1        | 0.2            |
| Acts intended to cause injury   | 24.1       | 13.9           |
| Sexual assault and related offences                                     | 0.1        | 0.1            |
| Dangerous or negligent acts endangering persons                         | 1.1        | 4.3            |
| Abduction and related offences  | 0.1        | 0.1            |
| Robbery, extortion and related offences                                 | 1.2        | 0.6            |
| Unlawful entry with intent  | 2.6        | 1.5            |
| Theft and related offences  | 19.5       | 18.8           |
| Deception and related offences  | 1.5        | 5.6            |
| Illicit drug offences   | 4.2        | 5.4            |
| Weapons and explosives offences   | 0.3        | 0.4            |
| Property damage and environmental pollution                             | 5.0        | 3.1            |
| Public order offences   | 13.2       | 5.8            |
| Road traffic and motor vehicle regulatory offences                      | 17.9       | 30.0           |
| Offences against justice procedures, government security and operations | 8.0        | 8.0            |
| Miscellaneous offences  | 1.0        | 2.4            |

Source: Weatherburn, Lind & Hua 2003

**Table 11** Offence profile for women appearing in WA courts in 2008 (%)

| Offence type (ASOC code)  | Indigenous | Non-Indigenous |
|---|------------|----------------|
| Homicide  | 0.1        | 0.1            |
| Acts intended to cause injury   | 9.5        | 4.6            |
| Sexual assault and related offences                                     | 0.1        | 0.1            |
| Dangerous or negligent acts endangering persons                         | 5.3        | 5.3            |
| Abduction and related offences  | 0.3        | 0.2            |
| Robbery, extortion and related offences                                 | 0.3        | 0.2            |
| Unlawful entry with intent  | 1.0        | 0.7            |
| Theft and related offences  | 7.0        | 8.0            |
| Deception and related offences  | 0.7        | 2.4            |
| Illicit drug offences   | 2.8        | 6.9            |
| Weapons and explosives offences   | 0.4        | 0.5            |
| Property damage and environmental pollution                             | 2.1        | 1.1            |
| Public order offences   | 15.4       | 2.8            |
| Road traffic and motor vehicle regulatory offences                      | 42.3       | 61.8           |
| Offences against justice procedures, government security and operations | 12.1       | 5.2            |
| Miscellaneous offences  | 0.9        | 0.1            |
| Total   | 100        | 100            |

Source: unpublished data from WA Department of Justice 2009

The data provided by the WA Department of Justice in Table 11 shows similar results for 2008. These data indicate a higher level of over-representation for Indigenous women charged with public order offences than in the earlier NSW dataset. As with those data, Indigenous women are under-represented for traffic offences.

## Prison data

Ferrante, Fernandez and Loh (2001) found that in Western Australia, 40.5 percent of all Indigenous women entering prison in 2000 were there for reasons of fine-default.

The 2002 ATSIJS (2002: 141–142) report noted:

There are some limitations to the statistical information on crimes committed by Indigenous women. Prison census data, for example, records prisoners on the date of the census. Prisoners who served short sentences and are no longer present on the census day are not recorded.

Therefore, these figures underestimate Indigenous women coming through the prison system on shorter sentences for more minor offences.

It was noted that prison census data record the most serious crime for which an inmate is convicted, but not other offences which might contextualise the criminal behaviour. For example, a person in possession of drugs at the time of an armed robbery will be recorded as an armed robber, but an apparent drug addiction is not represented in the figures. Furthermore, as the 2004 ATSIJS (2004: 17) report found,

While states and territories collect data on the number of Aboriginal women convicted, they do not at the same time publish data on the types of offences for which they are being convicted. While the Australian Bureau of Statistics publishes a range of data relating to prison populations, including a breakdown of offences committed by Indigenous and non-Indigenous inmates, there is no gender specific data available in this particular category.

**Table 12** Most serious offence, Indigenous female prisoners 1994–2001 (n)

| Offence type<br>(ASOC code) | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 1994–2001<br>% change |
|-----------------------------|------|------|------|------|------|------|------|------|-----------------------|
| Homicide                    | 18   | 17   | 17   | 25   | 28   | 30   | 33   | 36   | 100                   |
| Assault and related         | 40   | 39   | 42   | 53   | 48   | 91   | 69   | 91   | 127                   |
| Sex offences                | 1    |      |      | 1    |      | 2    | 3    | 1    |                       |
| Robbery                     | 10   | 16   | 29   | 25   | 27   | 29   | 43   | 54   | 440                   |
| Extortion                   |      |      |      | 1    |      | 1    | 1    | 4    |                       |
| Break and enter             | 32   | 24   | 28   | 39   | 45   | 43   | 42   | 51   | 59                    |
| Fraud                       | 8    | 9    | 9    | 12   | 18   | 18   | 9    | 12   | 50                    |
| Theft and related           | 16   | 20   | 32   | 30   | 32   | 28   | 37   | 36   | 125                   |
| Property damage             | 4    | 7    | 4    | 7    | 3    | 2    | 4    | 9    | 125                   |
| Justice procedures          | 16   | 18   | 25   | 23   | 35   | 49   | 30   | 38   | 137                   |
| Weapons                     |      |      |      | 1    |      |      |      | 1    |                       |
| Good order                  | 2    | 1    | 2    | 3    | 5    | 11   | 6    | 4    | 100                   |
| Drugs                       | 5    | 7    | 6    | 3    | 3    | 7    | 6    | 11   | 120                   |
| Driving and related         | 3    | 5    | 10   | 10   | 16   | 20   | 22   | 14   | 366                   |
| Other                       | 3    | 1    | 2    |      | 1    | 1    | 3    | 8    | 166                   |
| Total                       | 158  | 164  | 206  | 233  | 261  | 332  | 308  | 370  | 134                   |

Source: ATSIJJC 2002

Table 12 sets out data from the 2002 ATSIJJC report on the most serious offence committed by Indigenous female prisoners between 1994 and 2001 (ATSIJJC 2002). Differences in recording make it difficult to draw comparisons between these data and the information set out in Table 10, but it is clear that there has been a dramatic increase in the number of Indigenous female prisoners whose most serious offence was assault. It should be noted that the report regarded the increase in robbery as a matter 'clearly requir[ing] investigation to determine factors contributing to this increase' (ATSIJJC 2002: 143), but this figure has since decreased somewhat (from 58, including extortion, to 48 between 2001 and 2008). The ATSIJJC report referred to Victorian research on Indigenous female prisoners which found that property and robbery offences were the most commonly committed, with an increase in robbery and that such offences 'appeared to be directly linked to long term drug use' (Brenner cited in ATSIJJC 2002: 145).

According to the most recent data on the most serious offence committed by female prisoners, acts intended to cause injury (ie violence not amounting to homicide) account for a greater proportion of offences for which Indigenous women were imprisoned, in comparison with non-Indigenous women (see Table 13). This confirms Behrendt, Cunneen and Liebesman's (2009: 16) assertion that the 'Indigenous women are more likely to be imprisoned for violence-related offences than non-Indigenous women', which they suggest may be in response to domestic violence and other forms of abuse. Indigenous women are generally over-represented for burglary offences, but under-represented for other property offences, namely, theft and most notably, fraud. They are also much less likely to have been imprisoned for drug offences (4% vs 19%). Contrary to general discussions in the literature, there was no evidence of over-representation for public order offences, which accounted for a very small proportion of offences.

**Table 13** Most serious offence for female prisoners by Indigenous status, 2007–08

| Offence type (ASOC code)  | Indigenous |        | Non-Indigenous |       |
|---|------------|--------|----------------|-------|
|   | No         | %      | No             | %     |
| Homicide and related offences   | 49         | 8.6    | 163            | 11.9  |
| Acts intended to cause injury   | 186        | 32.8   | 147            | 10.7  |
| Sexual assault and related offences                                     | 3          | 0.5    | 27             | 2.0   |
| Dangerous or negligent acts endangering persons                         | 8          | 1.4    | 14             | 1.0   |
| Abduction and related offences  | 4          | 0.7    | 12             | 0.9   |
| Robbery, extortion and related offences                                 | 48         | 8.5    | 84             | 6.1   |
| Unlawful entry with intent  | 71         | 12.5   | 116            | 8.5   |
| Theft and related offences  | 43         | 7.6    | 109            | 7.9   |
| Deception and related offences  | 12         | 2.1    | 187            | 13.6  |
| Illicit drug offences   | 24         | 4.2    | 264            | 19.2  |
| Weapons and explosives offences   | 4          | 0.7    | 9              | 0.7   |
| Property damage and environmental pollution                             | 9          | 1.6    | 21             | 1.5   |
| Public order offences   | 6          | 1.1    | 16             | 1.2   |
| Road traffic and motor vehicle regulatory offences                      | 27         | 4.8    | 40             | 2.9   |
| Offences against justice procedures, government security and operations | 70         | 12.3   | 139            | 10.1  |
| Miscellaneous offences  | 3          | 0.5    | 24             | 1.7   |
| Total   | 567        | 100.00 | 1,372          | 100.0 |

Source: ABS 2008

## Specific offences

### *Public drunkenness*

Kerley and Cunneen (1995) refer to 1990 data showing that Indigenous women comprised 78 percent of all cases where women were detained in police custody for public drunkenness (rising to 97 percent in Western Australia) and that proportionately more females than males were detained for drunkenness and good order offences compared to other offences. They describe as ‘problematic’ the number of Indigenous women brought to court and imprisoned for minor offences. In addition, their examination of the 11 women whose deaths were reviewed by the RCIADIC indicates that the women were generally in custody for drunkenness (n=6) and/or fine default (n=3); none of the women was in custody for a serious offence. The 2002 ATSIJSJC also referred to data analysed by Cunneen (2001) indicating that ‘[n]ationally, Indigenous women comprise nearly 80 percent of all cases where women are detained in police custody for public drunkenness’ (ATSIJSJC 2002: 143).

**Table 14** Percentage of females detained for public drunkenness by Indigenous status and age in years

|             | Indigenous | Non-Indigenous |
|-------------|------------|----------------|
| Under 17    | 2.4        | 6.1            |
| 17–19       | 3.7        | 3.1            |
| 20–24       | 12.3       | 22.7           |
| 25–34       | 36.3       | 33.1           |
| 35 and over | 45.3       | 35.0           |
| Total       | 100.0      | 100.0          |

Source: Taylor & Bareja 2005

Data analysed by the Taylor and Bareja (2005) indicate (without a gender breakdown) that custody incidents of public drunkenness were 42 times more likely to involve Indigenous people than non-Indigenous people per relevant population. Indigenous women who were detained for public drunkenness were also older than non-Indigenous women so detained, as set out in Table 14.

## Assault and homicide

Data from Victoria (Gardiner & Takagaki 2002) and New South Wales (Baker 2001) indicate that Indigenous women are two to three times more likely than non-Indigenous women to be dealt with for assault. Baker's study also sheds light on imprisonment rates for the specific offence of assault. She examined all convictions in the NSW Local Court (ie minor assaults) in 1999 and found that NSW Indigenous women were more likely than non-Indigenous women to be imprisoned for all age groups except 31–40 years. Analysis on the basis of prior convictions indicates that eight percent of Indigenous women aged 41 years and over who were convicted of assault and had prior convictions were imprisoned, compared with zero percent for non-Indigenous women with prior convictions. By contrast, none of the 76 Indigenous women and 226 non-Indigenous women with no prior convictions was imprisoned, suggesting that the courts were equally likely to try to divert first-time offenders from custody. As part of the *Drug Use Careers of Offenders* (DUCO) survey conducted by the AIC, Johnson (2004) surveyed 470 adult female prisoners in six Australian jurisdictions, 27 percent of whom were Indigenous. Almost three-quarters of the Indigenous female respondents (73%) admitted to physically assaulting another person at some stage in their lives, while of these, 16 percent did so on a regular basis. These figures were much higher than those recorded by non-Indigenous females. The escalation rate, that is, the proportion who, having committed the initial offence went on to become regular offenders, was also much higher among Indigenous than non-Indigenous women (22% vs 13%).

The issue of family violence is discussed further below. It is important to note, however, that a higher proportion of Indigenous homicides involved a female offender (20% vs 12%) and when Indigenous women killed, just under three-quarters of their victims were male intimate partners (*cf* 44% for non-Indigenous women). It was also found that nearly twice as many Indigenous homicides (including both male and female offenders) occurred as a result of a domestic altercation (45% vs 24%; Mouzos 2001). More recently, Dearden and Jones (2008) found that Indigenous women were 14 times as likely as non-Indigenous women to commit homicide (5.3 per

100,000 vs 0.4) and that this ratio has stayed relatively constant since 1990. An examination of 15 cases of homicide by Indigenous women revealed that the victim was in an intimate relationship with the offender in 40 percent of cases, followed by family member (33%), friend or acquaintance (20%) and only rarely a stranger (7%; Dearden & Jones 2008).

The findings of a recent study by Stubbs and Tolmie (2008) are instructive in this context, although there is no breakdown of data revealing jurisdictional differences. They examined cases between 1991 and 2007 where Indigenous women killed their abusive partner and found that the battering the women had experienced and their disadvantaged circumstances were generally read as indicators of personal deficits and any evidence of structural disadvantage was muted. They also found that Indigenous women were commonly represented as either 'subordinate to and dominated by men in their communities' thus denying them agency, or 'where their agency is recognised, it comes with the risk of being labelled as dangerous, a label likely to deny them any prospect of having their actions or experiences judged dispassionately' Stubbs & Tolmie 2008: 143). Stubbs and Tolmie (2008) accordingly argue that the large number of Aboriginal women serving sentences in Australia for killing violent men in part may reflect a disjunction between their stories and dominant representations of battered women.

In a report released recently by the AIC on Indigenous risk factors for violent offending, Wundersitz (2010) observed that there has been a tendency to focus responses and interventions on Indigenous males, while paying less attention to the violent offending of Indigenous females. The report describes the rate of police apprehensions (per 1,000 people) for apprehensions data from Western Australia, South Australia and suspected offenders from the AIC National Homicide Monitoring Program. Although males comprise the bulk of those who commit offences, these data indicated that the Indigenous female rate of offending for homicide, acts intended to cause injury and dangerous/negligent acts were significant and actually higher than the offending rates for non-Indigenous females and males. This suggests that the incidence and nature of violent behaviour by Indigenous females requires closer scrutiny.



# Recidivism rates

ATSISJC has noted that a 'significant factor among the Indigenous female prisoner population is the high rate of recidivism', with data indicating that 76 percent of all Indigenous prisoners had been previously imprisoned (ATSISJC 2002: 140). Data from New South Wales indicated that Indigenous women were more likely to have previously been imprisoned (85% vs 71%); 98 percent of surveyed female Indigenous prisoners had a previous conviction as an adult and over one-quarter (26%) had 15 or more prior convictions. In addition, 60 percent had prior juvenile convictions, and over 36 percent had received their first such conviction while aged 11–12 years (Lawrie 2002).

The ATSISJC report also cited the preliminary findings of a Victorian study which found a reoffending rate of 71 percent among Indigenous women, compared to an average rate of 61 percent for non-Indigenous women (ATSISJC 2002). Data from earlier CRC-funded research indicated a recidivism rate of 75 percent for Indigenous women in Western Australia, compared with 29 percent for non-Indigenous women and an earlier return to custody (16 vs 19 months; Broadhurst et al. 1988).

As the ATSISJC (2002: 141) report notes:

Statistics in relation to previous offending are a useful indication of a prison's achievements in rehabilitating offenders and these figures suggest

a need to focus on the women prisoners' offending and background with a view to effective interventions. Development and support of effective programs for Indigenous women is clearly a priority to reduce rates of re-offending...

The pattern of recidivism or repeat offending contributes to the trend of increasing over-representation of Indigenous women. Investigation of the causes and conditions which place Indigenous women at risk of repeated imprisonment is a pressing concern.

It is also relevant to note NSW data showing that 15 percent of Indigenous females imprisoned in 2001 had been given a custodial sentence more than three times in the five years prior to their first custodial penalty in 2001 (Weatherburn, Lind & Hua 2003). It should also be noted that Indigenous female juveniles cautioned in 2006 in Western Australia were more likely to have multiple matters; 53 percent had only one matter, compared with 81 percent of non-Indigenous juveniles. Furthermore, 13 percent had four or more cautions, compared with three percent of non-Indigenous juveniles (Fernandez et al. 2009).

Table 15 sets out the most recent ABS data on the proportion of female prisoners who have had prior adult imprisonment, by jurisdiction. Excluding the Australian Capital Territory, where the numbers were

too small to be meaningful (n=3) and with the exception of South Australia, where the pattern was similar to non-Indigenous prisoners, the majority of Indigenous female prisoners in each jurisdiction have had prior experience of imprisonment. The proportion who had experienced previous imprisonment was higher for both male and

female Indigenous prisoners in all jurisdictions (SCRCSP 2009b). Notably, however, the figures for all female prisoners have decreased since 1999, from 44 percent to 38 percent for non-Indigenous women and 69 percent to 63 percent for Indigenous women (see Cameron 2001).

| Table 15 Prior adult imprisonment of female prisoners by jurisdiction and Indigenous status, 2007–08 |                                 |                                     |
|--|---------------------------------|-------------------------------------|
|  | Indigenous—% prior adult prison | Non-Indigenous—% prior adult prison |
| NSW  | 65.5                            | 37.4                                |
| Vic  | 73.3                            | 45.7                                |
| Qld  | 67                              | 40.6                                |
| SA   | 39.3                            | 35.6                                |
| WA   | 63.1                            | 25.6                                |
| Tas  | 66.7                            | 44.4                                |
| NT   | 50.0                            | 0                                   |
| ACT  | 100.0                           | 45.5                                |
| Aust   | 63.3                            | 38.3                                |

Source: ABS 2008

# The relevance of family violence to Indigenous women's offending

There was 'little, if any, discussion of the prevalence of family violence within Indigenous communities in the official RCIADIC reports' (Marchetti 2007: 7), even though Indigenous women's exposure to such violence is thought to be linked to their offending patterns and incarceration (ATSISJC 2002; Gardiner & Takagaki 2002; Kerley & Cunneen 1995; NSWLRC 2000). A report by the NSW Aboriginal Justice Advisory Council (2001: 6) found that

at least 80 percent of the women surveyed said that their experience of abuse was an indirect cause of their offending. Some women revealed that the underlying cause of their drug and criminal habits was to avoid dealing with, or because they had not been able to address, the abuse that they had suffered as a child, in particular child sexual assault.

The findings of a longitudinal study in Queensland are also salient, as they draw links between childhood maltreatment and subsequent offending. Of juveniles who had been maltreated and received a police caution, 74 percent of maltreated Indigenous females reoffended, compared with only 47 percent of maltreated non-Indigenous females (see SCRCSP 2009b).

There is certainly strong evidence indicating the prevalence and intensity of family violence against Indigenous women, with data from VicPol indicating

the rate of domestic violence-related assault is nearly five times higher than for non-Indigenous women. They are also 38 times more likely to be hospitalised for assault and 10 times more likely to die from assault than non-Indigenous women (Burchfield & Braybrook 2009). These data conform with data in the most recent Indigenous disadvantage report, which indicate that that Indigenous females were 34 times more likely than non-Indigenous females to be hospitalised due to family violence and they were 15 times as likely to seek Supported Accommodation Assistance Program assistance to escape such violence (45 vs 3 per 1,000 population; SCRCSP 2009b).

BOCSAR data, in turn, suggest that in New South Wales, Indigenous women are more than twice as likely to be victims of sexual assault and four times more likely to be victims of assault (Fitzgerald & Weatherburn 2001). More recent data indicated that Indigenous people (of both genders) were approximately six times more likely to be victims and approximately eight times more likely to be offenders of domestic assault than non-Indigenous people (People 2005). Data from the 2002 NATSSIS indicates that 18 percent of Indigenous women had experienced physical or threatened abuse in the past 12 months, compared with seven percent of non-Indigenous women (see ATSISJC 2008). Perhaps most dramatically of all, Indigenous women



living in rural and remote areas are 45 times more likely to be a victim of domestic violence than the non-Indigenous population (Ferrante et al. cited in ATSIJS 2003; Queensland Office for Women 2009). Further data on Indigenous women's exposure to physical and sexual violence and the barriers in responding to these issues is set out in recent AIC reports by Bryant and Willis (2008) and Taylor and Putt (2007).

There is also evidence of a very high level of victimisation among Indigenous female prisoners, with the majority having been subjected to physical or sexual abuse (ATSIJC 2006). A survey of Indigenous women prisoners in New South Wales found that 70 percent of respondents had been subject to physical and sexual abuse as children; 78 percent reported being physically assaulted and 44 percent sexually assaulted as adults (Lawrie 2002), while the NSWLRC (2000) referred to reports indicating abuse rates of 90–100 percent among female Indigenous prisoners. Interestingly, Johnson (2004) found that Indigenous women who were imprisoned for a violent offence were significantly less likely to have experienced adult abuse than those Indigenous females incarcerated for non-violent offences (61% vs 83%), although two-thirds of the violent offenders had suffered incarceration.

One of the issues initially of interest to the CRC in this context was the perception that Indigenous women were becoming more likely to retaliate against ongoing family violence than previously, which has been considered in the literature. For example, Yeo (1996: 251) has suggested that 'for Aboriginal women, physical force may be the sole measure available against domestic violence given a range of factors which militate against the involvement of the police'. Stubbs and Tolmie (2008) have also suggested that Aboriginal women in some Australian communities may have fewer reservations than other women about responding to physical force with force. The 2002 ATSIJC report referred to '[a]necdotal evidence suggest[ing] increased arrest for violence is the result of Indigenous women who behave violently to protect or defend themselves, because they know that they would not receive police protection' (ATSIJC 2002: 151). The following year, it went on to say:

Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender. Strategies for addressing family violence in Indigenous communities need to acknowledge that a consequence of this is that an Indigenous woman 'may be unable or unwilling to fragment their identity by leaving the community, kin, family or partners' as a solution to the violence' (ATSIJC 2003: 159).

# Conclusion

The ATSIJJC (2006: 12–13) has observed that ‘Indigenous women are increasingly over-represented in criminal justice processes. This is occurring in the context of intolerably high levels of family violence, over policing for selected offences, ill health, unemployment and poverty’. This report explores some of these issues in order to present an overview of Indigenous women’s offending patterns and their involvement in the criminal justice system generally.

The literature recognises the double disadvantage that Indigenous women in the criminal justice system face, namely, race and gender (Baldry & McCausland 2009; Behrendt, Cunneen & Liebesman 2009; Brooks 1996; Burchfield & Braybrook 2009; Corbett & Paxman 1995; Gardiner & Takagaki 2002; Payne 1993). Behrendt, Cunneen and Liebesman (2009) suggest that the intersectional discrimination they face arises because their needs are either regarded as being met through services designed for Indigenous men, or non-culturally specific services designed for women. Brooks (1996: 273) argues that until the law recognises the socially and economically oppressed position such women hold, ‘it will continue to treat them unequally and, therefore, unjustly’. The 2002 ATSIJJC (2002: 136) report, in turn, suggests that:

It is beginning to be accepted that while much offending behaviour is linked to social

marginalisation and economic disadvantage, the impact of non-economic deprivation, such as damage to identity and culture, as well as trauma and grief, have a significant relationship to offending behaviour.

The 2002 ATSIJJC report examines a range of relevant issues which are not explored here in depth, but which include:

- policy debates about Indigenous women in corrections and human rights;
- experiences of Indigenous women in corrections, namely:
  - disruption to family life;
  - pregnancy;
  - provision of health care;
  - visits with family and friends;
  - disruption to cultural responsibilities and dislocation from community;
  - dislocation from services; and
  - housing issues.
- addressing the needs of Indigenous women in corrections;
- the importance of pre- and post-release programs for Indigenous women; and
- the issues pre- and post-release programs should address

- housing issues;
- dealing with violence;
- children and families;
- kinship obligations;
- financial issues, employment, education and training; and
- access to health services.

More recently, ATSIJJC (2006: 335) has noted that '[l]inks must be drawn and holistic models developed and supported which address the connections between culture, drug use, alcohol use, separation from family, violence, poverty, spiritual needs, housing, health, boredom, race discrimination and gender discrimination'. Furthermore, there remains a key need for determining the views and ideas of Indigenous women themselves on their criminal justice needs and especially their post-release needs (see Baldry & McCausland 2009).

It is beyond the scope of this report to explore the relevance of drug and alcohol abuse to Indigenous women's offending patterns, but it is clear that this is a key issue for further examination (eg see ATSIJJC 2002: 144–145; 152). Wundersitz (2010) recently noted that among Indigenous women, illicit drug and alcohol use seemed to be equally implicated in their offending, while among Indigenous males, alcohol was far more dominant and was a primary cause of offending.

Lawrie's (2002) survey of female Indigenous prisoners in New South Wales indicated that 68 percent of respondents were on drugs at the time of their last offence, 14 percent were under the influence of

alcohol and four percent said they were under the influence of both drugs and alcohol at the time of their last offence. Only 18 percent said that they were neither drug- nor alcohol-affected at the time of their offending. The study found that there was a strong linkage between the drug use and offending behaviour of respondents. In addition, it was found that 98 percent of the women who were sexually assaulted as children stated that they had a drug problem and most equated their drug problem to their experiences of past violence and their inability to get help with it. One of the most significant and important findings of the study was 'the clear link between child sexual assault, drug addiction and the patterns of offending behaviour that led' to the women's imprisonment (Lawrie 2002: 5).

This report presents a review of the literature on Indigenous female offenders. It draws on the available data to provide an overview of Indigenous women's patterns of offending and examines the issue of over-policing in Indigenous communities. Indigenous women's involvement in the corrections system, including in community corrections and periodic detention, is also explored. As discussed in this report, although Indigenous women's over-representation in the criminal justice system exceeds that of Indigenous men, to date, research in this area has been limited. This report therefore constitutes an important addition to growing the evidence base. Further research is required, however, to better understand the needs and circumstances of Indigenous female offenders, with the hope that the findings of such research will ultimately contribute to a reduction in Indigenous women's involvement in the criminal justice system.

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All URLs correct at 20 April 2010

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