

Australian Indigenous Women's Offending Patterns

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Introduction

Indigenous Australian women form a very small percentage (2.2%) of Australian women but are overrepresented across the eight Australian criminal justice systems, comprising for example 34 percent of the Australian women's prisoner population.

In this research brief the offending patterns of Indigenous women in Australia are examined. Previously unpublished police and court data for the period 2010-2012 were provided by some Australian jurisdictional criminal justice data agencies. The analyses of these data presented in this paper give new insights into offending patterns and similarities and differences amongst charges, court appearances and convictions for Indigenous Australian women. The dominance of traffic and driving offences especially in the Northern Territory and Western Australia is marked, as is the use of monetary penalties. Offences of common assault and theft as well as imprisonment as a penalty are also prominent.

Increasing incarceration of Indigenous women

The significant increase in the number of both sentenced and unsentenced women in Australian prisons over the past two decades has been attributed in large part to the increasing rate of imprisonment of Indigenous women (Baldry & Cunneen 2014). The percentage of Indigenous women in Australian prisons rose from 21 percent of all women prisoners in 1996 to 34 percent in 2012 (Baldry & Cunneen 2014). The rate of Indigenous women's imprisonment in 2013 was 404 per 100,000 of adult Indigenous females compared with 17.3 per 100,000 for non-Indigenous females (Australian Bureau of Statistics (ABS) 2013).

Bartels points out that Indigenous women entering prison are far more likely than non-Indigenous women to have offended, been convicted and been incarcerated previously, and to serve shorter sentences (see Indigenous Justice Clearinghouse Research Brief 14, 'Sentencing of Indigenous Women', Bartels 2012: 3).

They also form a higher proportion of those on remand (Baldry & Cunneen 2014). The presenting reasons for this significant growth in Indigenous women's imprisonment are said to be that, in proportion to their numbers in the population, they offend more, their offending includes more violent offending, and they are more likely to be arrested, charged, convicted and imprisoned (Weatherburn 2014). Weatherburn summarises and discusses a range of theories that seek to account for these higher offending and conviction rates. He concludes after surveying the data available, that lifestyle (in particular problematic alcohol and drug use and financial social stress) appears to be the most highly correlated with higher offending, particularly violence (2014: 57-67). Others introduce historical and contemporary contextual factors to understand and interpret Indigenous women's over-representation in prison differently (see for example Blagg 2008; Baldry 2010; Anthony 2013; Baldry and Cunneen 2014).



Collection of data

There has been little deep analysis of Indigenous women’s offending patterns, in large part because data on this issue are not readily available. To begin to address this the Indigenous Justice Clearinghouse and the authors sourced new data on Indigenous women’s offending from Australian states and territories. Due to the very small numbers of Indigenous women data from Tasmania was not sourced, and data from the Australian Capital Territory was excluded from the analysis.

However, not all jurisdictions had the capacity to provide all requested data. Importantly and unfortunately, most jurisdictions use collection and reporting methods that are not consistent or comparable with each other. Nevertheless, using the data that were provided, the authors present roughly comparable data analyses where possible, as well as patterns in Indigenous women’s offending across and within jurisdictions. Given that each jurisdiction is responsible for its own criminal laws, police force, court and correctional policy and practice, it is perhaps not surprising that each

jurisdiction’s response to Indigenous women’s offending varies significantly and that the data provide varying pictures.

The scope of this study precluded a comparison between Indigenous and non-Indigenous women’s offending patterns.

Offence profiles

There is significant jurisdictional variance in the percentage of Indigenous females in the general female population. The population data are available from the 2011 Australian Census only in five year groups. As can be seen in Table 1, as a percentage of the total women’s population Indigenous women comprise between 2 to 3 percent of the women’s population across the jurisdictions with the exception of the Northern Territory at 26.1 percent. These differences should be taken into account when considering jurisdictional analyses.

	Number Indigenous women	Number all women	Percentage Indigenous of all women
NSW	56,163	2,745,716	2.0%
Vic	12,929	2,129,894	0.6%
Qld	50,189	1,660,641	3.0%
WA	24,635	871,084	2.8%
SA	10,553	634,037	1.6%
NT	20,216	76,944	26.1%

* The ABS (2012) Census estimates of Aboriginal and Torres Strait Islander peoples in 2011 presents the numbers in 5 year groups with 15-19 being one of the groups, making it impossible to know the number of 18 and 19 year olds in that group.

Indigenous Justice Clearinghouse

The following section analyses court data on convictions (most serious offence) for the calendar years 2010 to 2012, as provided by the New South Wales (NSW) Bureau of Crime Statistics and Research (BOCSAR) and the Western Australian (WA) Department of the Attorney General (Table 2). These data were provided in raw form by the most common and principal offences only. Jurisdictions use varying offence types for similar offences so strict comparability is difficult.

Offence (ANZSOC code and description)	Number convictions & percentage of total	
	WA	NSW
1319: Disorderly conduct Percentage of total	2,052 18.4%	*
1411: Driving while licence is cancelled/ suspended/ disqualified Percentage of total	1,496 13.4%	709 11.2%
0213: Common assault Percentage of total	1,452 13.0%	1,080 17.1%
1523: Bail Act offences Percentage of total	1,232 11.0%	*
1431: Exceed PCA limit (traffic offence) Percentage of total	1,216 10.9%	635 10.0%
0823: Theft (except motor vehicles) incl. from retail store Percentage of total	1,146 10.3%	636 10.0%
1412: Drive without a licence Percentage of total	687 6.1%	577 9.1%
1562: Resist /hinder police or justice official Percentage of total	686 6.1%	*
142: Motor vehicle registration offences** Percentage of total	647 5.8%	*
0211: Serious assault resulting in injury Percentage of total	540 4.8%	828 13.0%
1041: Drugs (possess) Percentage of total	* 	563 8.9%
1219: Property damage Percentage of total	* 	471 7.4%
1524: Breach of supervised bond Percentage of total	* 	416 6.6%
1531: Breach of violence order Percentage of total	* 	412 6.5%
Total for most frequent offences	11,154 100%	6,327 100%
Percentage of total offences which are frequent offences	74%	57.3%

* Offence category not in the top 10 offences in that jurisdiction.

** These are subdivisions of the ANZSOC which include groups too numerous to list.

PCA = Prescribed concentration of alcohol

n.e.c. = Not otherwise classified

All datasets are categorised by Australian and New Zealand Standard Offence Classification (ANZSOC) code (2011).

Western Australia

There were 74 different most serious offences for which Indigenous women were convicted in WA over the three-year period. However, approximately 74 percent of those convictions were for only 10 offences. These 10 offences fall into five offence types: public order (disorderly conduct, resist or hinder police officer); driving/vehicle related offences (driving while licence cancelled, exceed prescribed content alcohol (PCA) limit, registration offences, drive without a licence); assault; justice offences (bail offences); and theft/property offences.

In WA, disorderly conduct is the single most common offence (N=2,052 convictions representing 18.4% of the top 10 convictions). However, when like offence types are combined, the highest number of convictions, compared with the other categories, are for vehicle and driving related offences (N=4,046 representing 34.7% of the top 10 convictions) while combined assault offences were the second highest, totalling 2,484 (21.3% of the top 10 convictions).

New South Wales

There were 80 different offences for which Indigenous women in NSW had been convicted during the period 2010-2012. However, 10 offences accounted for 57.3 percent of these convictions. The 10 most common offences for which Indigenous women were convicted fall into five categories: assault (common, serious resulting in injury); drugs (possession); driving/vehicle (drive without a licence, drive while disqualified/suspended, exceed PCA); justice offences (breach of bond/violence order); and theft/property offences.

The NSW data indicate that the most common single offence is common assault, accounting for 17.1 per cent of the top 10 convictions. When common assault is combined with serious assault, there are 1,908 convictions (30.1%

of the top 10 convictions). Similarly to WA (and the Northern Territory (NT), discussed below), multiple driving and vehicle related offences appear in the top 10 offences for which Indigenous women were convicted. Combining driving related offences (N=1,921 convictions equalling 30.4% of the top 10 convictions) produced the same percentage as for assaults.

Western Australia and New South Wales

Analysis of the data presented in Table 2 reveals that driving and vehicle-related offences account for the highest numbers of convictions of Indigenous women in WA, far outweighing any other offences. Traffic related offences do not dominate in the same way in NSW. It is noteworthy that the top 10 offences for which convictions were recorded comprised a much smaller proportion of all offences (57.3%) in NSW when compared with WA (74%).

NSW differed from WA in respect of convictions for drug possession, and WA had distinctively high numbers of convictions for public order offences. It is also notable that NSW, which has the highest population of Indigenous women when compared with each other jurisdiction, has lower numbers of convictions than WA on each directly comparable offence. This is also the case for each of the vehicle / driving offences when compared with WA. This highlights the relatively high number of convictions for Indigenous women in WA compared with NSW.

Northern Territory

Whilst the Northern Territory Criminal Justice Research and Statistics Unit did not provide comparable conviction by most serious offence data it did provide 'sentencing occasion by most serious offence'. Indigenous women in the Northern Territory were sentenced for 62 different most serious offence types between 2010-2012. However, 10 offences accounted for 75.4 percent of those occasions. These ten offences fall into three categories: driving/vehicle

related offences (drive without a licence, registration offences, exceed prescribed alcohol content, regulatory driving offences, driver licence offences, drive while licence disqualified or suspended); assault (serious assault not resulting in injury); and justice offences (breach of bail or violence order).

When combined, the driving and vehicle offences account for 68.0 percent of the total top 10 sentencing occasions (N=3244). The offence with the next highest number of occasions is serious assault not resulting in injury (N=696 occasions representing 14.6% of the top 10), followed by the combined breach of various justice orders at 512 occasions (9.3% of the top 10).

Although these NT findings cannot be compared directly with the NSW and WA data in Table 2 as they are not convictions (but rather sentencing occasions), they suggest that NT is similar to WA: vehicle and driving related offences account for the highest number of most serious offences for which Indigenous women in NT were sentenced (indicating they had been convicted), similar to these offences accounting for the highest number of convictions (most serious offence) in the WA data, far outweighing any other offences.

Patterns of arrest and charges in Victoria and South Australia

Victoria Police provided offence and charge data but not conviction data for the calendar years 2010-2013. These data reveal that the five main offence types for which Indigenous women were arrested and charged in Victoria were:

- theft/burglary (theft from store, other theft, residential burglary, handle stolen goods) (N=2,112 representing 34.4% of the top 10 charges);
- assault (N=1,569 representing 25.6% of the top 10 charges);
- justice offences (breach of justice procedures) (N=859 representing 14% of the top 10 charges);

- property damage (N=582 representing 9.5% of total top 10 charges); and
- deception (N=401 equalling 6.5% of total top 10 charges).

The rest of the top 10 offences were accounted for by drug and public behaviour offences.

Charges for theft/burglary are prominent in the Victorian data. Theft (predominantly shoplifting) was also in the top 10 conviction categories in NSW, NT and WA but it accounted for a smaller proportion of offences than in Victoria. Most notably, traffic and driving offences, which dominate in WA and the NT and are significant in NSW, do not appear in the top 10 offences in Victoria. It should be noted however that there is no information on convictions so there is no information as to whether traffic offences were prevalent in this context.

South Australian (SA) police data show the total number of Indigenous women arrested and the offences for which they were arrested, as categorised by the SA Office of Crime Statistics and Research (OCSAR) offence type for the years 2010-2012. The arrest counts (N=2,394) for the top 10 offences represent 69.8 percent of the total arrests of Indigenous women in SA from a total of 49 offences.

These data are not comparable with those for NSW, Victoria, WA, or the NT because they are for arrests only and cover a different time span. However, the data do illustrate key similarities, albeit with some differences in those offences at the top of the list. Because conviction data were not available it is impossible to know whether justice procedures would remain as the top offence type at conviction. The five types of offences for which Indigenous women are most commonly arrested in SA are:

- justice procedures (breach of bail, other justice procedure offences) (N=747 representing 31.2% of the top 10 arrests);

- theft (from shop, other) (N=406 representing 17.0% of the top 10 arrests);
- driving/traffic offences (unlicensed driving, drink driving) (N=407 representing 17.0% of the top 10 arrests);
- disorderly conduct (N=364 representing 15.2% of the top 10 arrests); and
- assault (common, not resulting in injury) (N=336 representing 14.0% of the top 10 arrests).

Of note is that almost one third of all arrests were for justice procedures.

Indigenous women's conviction data from WA and NT indicate the dominance of traffic and driving offences. These offences are also in the top 10 in NSW conviction and SA arrest data albeit to a lesser extent. Theft (predominantly theft from a shop), assault and justice offences are prevalent across conviction, charge and arrest data in all the jurisdictions analysed in this section.

New understandings from police and court data

According to Allard (2010), there is a dearth of information about Indigenous people's contact with the police and courts. He has argued that increased availability of this data is essential to develop an accurate picture of Indigenous people's contact with the criminal justice system. This section provides some new understandings in relation to Indigenous women's contact with police and the courts based on data obtained from Victoria and Queensland.

Processing of Indigenous women by police – Victoria

Victoria Police data provided included the number of times an Indigenous woman was processed (arrested and summonsed) in 2010-2012. By combining the ABS population data for 2011 with these data, it was estimated

that around 7.4 percent of the Indigenous women's population of Victoria in 2011 were processed by the police (arrested and summonsed).

There were 966 distinct Indigenous women arrested and summonsed over the years 2010 to 2012 with around one third of these women being processed more than once. Analysis reveals that 64.8 percent were processed only once in 2011 (n=626), with approximately one third processed by the police more than once (n=340).

Convicting Indigenous women in court – Queensland

Analysis of data obtained from the Queensland Courts Performance and Reporting Unit indicates the total number of charges lodged against Indigenous women in each court, compared with the total number of women actually convicted in each court. This is the only jurisdiction that provided detailed court data for the three levels of court (ie. Magistrates, District and Supreme Courts).

In the Queensland Magistrates Court 24,582 Indigenous women appeared as defendants between 2009 and 2012. However some of these women appeared and were counted a number of times, as they had more than one charge. A large majority of the whole cohort (90% of the individuals in the cohort) was convicted.

In the Queensland District Court, the total number of Indigenous women appearing as defendants between 2009 and 2012 was 575. Again, some of these women appeared and were counted a number of times. Just over three quarters (77% of the individual women in this group) were convicted.

In the Queensland Supreme Court, 34 Indigenous women appeared between 2009 and 2012. Many had more than one charge and almost three-quarters (73.5%) were convicted.

Penalties and sentences for the most common most serious offence types – Western Australia, New South Wales and Northern Territory comparison

WA, NSW and the NT provided relevant data by most serious offence type for the years 2010-2012.

As traffic and driving offences were so prominent, it is worth looking in detail at the penalties for these offences. For the offence of drive without a licence, Table 3 below (ordered by frequency of use of penalty with the exception of 'the other' category) indicates that by far the most common penalty was a fine or monetary penalty in WA (99.6%), NSW (73.7%) and the NT (98.1%). However, NSW also made use of 'no conviction recorded' and bonds whereas these were not used in WA or the NT.

Table 3		Drive without a licence: penalties (n & %) WA, NSW & NT 2010-2012		
Penalty		WA	NSW	NT
Fine/monetary penalty Percentage of total		683 99.4%	425 73.7%	1,117 98.1%
No conviction recorded Percentage of total		#	49 8.5%	#
Bond / intensive supervision Percentage of total		#	31 5.4%	#
Community based / work and development order Percentage of total		3 0.4%	3 0.5%	3 0.3%
Suspended sentence* Percentage of total		0 0.0%	2 0.3%	1 0.1%
Dismissed with caution Percentage of total		#	1 0.2%	#
Imprisonment Percentage of total		0 0.0%	0 0.0%	1 0.1%
Home detention /conditional release order Percentage of total		1 0.1%	0 0.0%	0 0.0%
Other orders Percentage of total		#	66 11.4%	16 1.4%
TOTAL		687 100%	577 100%	1,138 100%

Unknown if sentencing option used

*Partly suspended sentences are available only in the NT.

For the traffic offence 'exceed prescribed content of alcohol or other substance limit' (PCA) (Table 4 below in order of frequency), the most common penalty type was a fine or monetary penalty in WA (96.6%), NSW (54.8%) and the NT (85.9%). Suspended sentences were used more often in the NT and NSW (9.1% and 5.0% respectively) when compared with WA (0.1%). Also, all three jurisdictions make use of various community-based orders and work orders for this offence type. Similar to Table 3, NSW makes far greater use of bond penalties (N=137 representing 21.6% of total penalties) and makes greater use of different types of penalties.

Table 4	Exceed PCA or other substance limit: penalties (n & %) WA, NSW & NT 2010-2012		
Penalty	WA	NSW	NT
Fine/monetary penalty Percentage of total	1,175 96.6%	348 54.8%	1,403 85.9%
Bond/Intensive supervision Percentage of total	3 0.2%	137 21.6%	#
Suspended sentence+ Percentage of total	1 0.1%	32 5.0%	148 9.1%
Community based / work and development order Percentage of total	36 3.0%	19 3.0%	14 0.9%
Imprisonment Percentage of total	1 0.1%	13 2.0%	47 2.9%
Home detention Percentage of total	#	4 0.6%	13 0.8%
No conviction recorded Percentage of total	#	3 0.5%	#
Other orders Percentage of total	#	79 12.4%	9 0.6%
TOTAL	1,216 100%	635 100%	1,634 100%

+ Partly suspended sentences are available only in the NT.

Unknown if sentencing option used

As set out in Table 5, for the offence 'drive while licence disqualified or suspended', WA issues fines as the most common penalty (N=1,307 representing 87.4% of total). NSW favours bonds (N=265 representing 37.4% of the total) and NT favours suspended sentences (N=87 representing 47.3% of the total).

Table 5 Drive while licence disqualified or suspended: penalties (n & %) WA, NSW & NT 2010-2012

Penalty	WA	NSW	NT
Fine/monetary penalty Percentage of total	1,307 87.4%	193 27.2%	61 33.2%
Suspended sentence Percentage of total	125 8.4%	94 13.3%	87 47.3%
Imprisonment Percentage of total	33 2.2%	51 7.2%	21 11.4%
Bond Percentage of total	4 0.3%	265 37.4%	#
Community based / work and development order Percentage of total	26 1.7%	54 7.6%	6 3.3%
No conviction recorded Percentage of total	#	32 4.5%	#
Home detention Percentage of total	#	4 0.6%	8 4.3%
Other orders Percentage of total	#	16 2.3%	1 0.5%
TOTAL	1,496 100%	709 100%	184 100%

Unknown if sentencing option used

WA and NT imposed penalties on almost all Indigenous women charged with the offence 'breach of bail' compared with NSW where no penalty (48.3%) or no conviction (6.9%) was imposed on over half of the women (Table 6). The most common penalty type in WA and the NT was a fine or other monetary penalty (73.9% and 80.3% respectively). Imprisonment for breach of bail was the second most commonly imposed penalty in the NT (16.7%) and the third most commonly imposed penalty (13.8%) in NSW. The NT though, saw a sharp rise in the numbers of Indigenous women imprisoned for breach of bail from zero in 2010 when it was not an offence, to 3 (6.0%) in 2011 and 30 (20.3%) in 2012. This is explained by the 2011 amendment to the *Bail Act* (NT), which made breach of bail an offence, with a maximum penalty of two years' imprisonment and/or a fine of 200 penalty units (see s 37B).

Table 6 Breach of Bail: penalties (n & %) WA, NSW & NT 2010-2012

Penalty	WA	NSW	NT*
Fine/monetary penalty Percentage of total	908 73.7%	5 17.2%	159 80.3%
Conviction without penalty Percentage of total	45 3.7%	14 48.3%	#
Imprisonment Percentage of total	81 6.6%	4 13.8%	33 16.7%
Community based / work and development orders Percentage of total	114 9.3%	0 0%	1 0.5%
Partially / fully suspended sentence Percentage of total	27 2.2%	2 6.9%	1 0.5%
Bond/ intensive supervision Percentage of total	37 3.0%	2 6.9%	#
No conviction recorded Percentage of total	#	2 6.9%	#
Home detention /Conditional release** Percentage of total	20 1.6%	0 0%	0 0%
Other orders Percentage of total	#	#	4 2.0%
TOTAL	1,232 100%	29 100%	198 100%

*No data is available for conviction breach of bail in 2010, only 2011 and 2012

Unknown if sentencing option used

**WA does not use home detention as a sentence. A version of home detention can occur as a part of a community based order

In summary, police and court data from the WA, NSW and NT show some significant differences in the penalties imposed but they all favour fines for 'drive without a licence' and 'exceed PCA'. WA also favours fines for the other two offences analysed ('drive while licence disqualified or suspended' and 'breach bail'). NSW is the only one of the three jurisdictions to impose no penalty or record no conviction for some women for all four of the offences analysed.

Distinct women data

Data for individual Indigenous women proceeded against to court were provided by NSW and the NT for 2010-2012 (Table 7 and Table 8).

New South Wales

Data on individuals proceeded against in court were provided by BOCSAR. Using 2011 ABS census data the authors were able to estimate the percentage of the Indigenous women's population in NSW proceeded against to court. In the year 2011, 8.1 percent of the total Indigenous women's population in NSW was proceeded against to court. This is an increase from 6.1 percent in 2001 (Weatherburn et al 2003: 5)

Analysis of the BOCSAR data (Table 8) shows some small variations across the three years of data gathered. Three categories of offences- assault, theft and offences against justice- together account for 47.0 percent, 47.7 percent and 45.4 percent of the individual women's court charges for the three years (2010, 2011, 2012) respectively. Of note is the important part played by charges of assault, with assault accounting for roughly one fifth of all

charges against individual women across the three years. There was an increase in the percentage of domestic violence (DV) charges relative to other assaults, up from 43.5 percent to 47.6 percent over the three years. There was a corresponding drop in the percentage of other assaults, from 45.0 percent to 42.5 percent for non-DV assault, and from 11.5 percent to 9.9 percent for assault police. However, these changes may be a product of changes in police recording practices. Also of note regarding assault is that, as a percentage of total charges at court over the three years, this offence declined from 20.6 percent to 18.5 percent. This suggests that the rise in violent offending by women and Indigenous women in particular in NSW over the past decade, noted in other studies (Weatherburn 2014), is not evident in these data.

Northern Territory

Distinct persons data provided by the NT allowed the authors to calculate the percentage of the Indigenous women's population in NT proceeded against to court (Table 7). In 2011, it is estimated that around 5.5 percent of the total Indigenous women's population in NT was proceeded against to court.

Unlike NSW, the offence type that dominates NT Indigenous women's charges at court is driving related. This alone represents 47.1 percent, 44.3 percent and 36.8 percent of offence types in each the three years (2010, 2011, 2012) respectively. The drop in driving offences in 2012 is almost entirely accounted for by a drop in alcohol- and substance-related driving offences. It is difficult to attribute this to the *Northern Territory Emergency Response Act 2007* (Cth), which put alcohol restrictions on prescribed remote areas because that: had started prior to 2010; had been in effect throughout the period; and in fact was due to lapse in mid-2012. It also cannot be attributed to the *Alcohol Mandatory Treatment Act* (NT), which did not come into effect until 2013. So it may be normal fluctuation which may be confirmed once 2013 figures are available. If not, however, more detailed analysis is needed.

Women charged with offences of assault showed a relative increase over the period. Again without more detailed analysis it is not clear whether this is within normal variation or is a continuing trend.

Table 7

Distinct women assault: charges (n & %) NT 2010-2012

Offence	2010	2011	2012
Serious assault resulting in injury	10 / 1,959 0.51%	8 / 2,054 0.39%	27 / 2,315 1.17%
Serious assault not resulting in injury	212 / 1,959 10.82%	206 / 2,054 10.03%	278 / 2,315 12.01%
Common assault	22 / 1,959 1.12%	28 / 2,054 1.36%	22 / 2,315 0.95%
TOTAL	244 / 1,959 12.45%	242 / 2,054 11.78%	327 / 2,315 14.12%

New South Wales and Northern Territory compared

Notable differences between the jurisdictions are the dominance of driving offences in the NT (as has been seen throughout this paper) compared with the dominance of three other offences - assault, theft and justice offences in NSW.

Table 8 Distinct Indigenous women offences (n & % of total) NT & NSW 2010-2012

Offence	NT	NSW
Assault	901 13.7%	2,689 19.8%
Theft	108 1.6%	1,916 14.1%
Drug offences	242 3.7%	1,006 7.4%
Property damage	70 1.1%	795 5.9%
Liquor & tobacco offences	38 0.6%	102 0.7%
Driving offences	1,519 23.2%	938 6.9%
Justice Offences/breaches	133 2.0%	1,716 12.7%
Robbery	14 0.2%	89 0.6%
Harassment/threatening behaviour	9 0.1%	649 4.8%
Disorderly conduct offences	20 0.3%	1,041 7.7%
Other*	3,520 53.5%	2,610 19.3%
TOTAL DISTINCT WOMEN	6,574 100%	13,551 100%

*Other total not dominated by a particular offence, nor dominated in a particular year by a specific offence.

Conclusion

Patterns of offending evident in the analyses presented in this paper indicate some similarities, but also differences in Indigenous women's offending and particularly in arrest, court and sentencing patterns, across the selected Australian jurisdictions.

For the jurisdictions examined, it is estimated that a significant proportion of the Indigenous women population has been arrested and/ or charged with an offence. It is estimated that in 2011, 7.4 percent of Indigenous women in Victoria were arrested or summonsed,

5.5 percent of NT Indigenous women were proceeded against to court and 8.1 percent of NSW Indigenous women, up from 6.1 percent in 2001, were proceeded against to court.

Offences that most often appeared in charges, court proceedings and convictions across all the jurisdictions for which data were available were driving and traffic offences, assault (common assault, assault not resulting in injury and assault resulting in injury), theft offences (predominantly shoplifting) and offences against justice procedures. Drug offences were relatively common in NSW but

not in the other selected jurisdictions. The most common penalties were monetary (mainly fines) but with other penalties such as community orders and imprisonment also used across the jurisdictions. It should be noted that monetary penalties are likely to be most onerous on poor people, in particular disadvantaged Indigenous Australians, who may not be able to pay them.

As noted in the introduction, Bartels (2010, 2012) reported that Indigenous women were more likely than non-Indigenous women to be sentenced and imprisoned for violent offences and to be repeat offenders but that

this did not appear to be associated with discrimination against Indigenous women by the courts.

This paper reports that in all the jurisdictions for which data was provided, assault along with vehicle and driving offences were the top or second most serious offences with which Indigenous women were charged or proceeded against to court.

As assault is more likely to attract a prison sentence than is a driving offence this supports in part Bartels' findings, although the current study was not able to compare data for Indigenous and non-Indigenous women. What is not clear from Bartels' work (2010, 2012) is why Indigenous women are more likely than non-Indigenous women to be arrested and charged for assault. Other work suggests that this may be due to a variety of contextual factors including visibility and number of police patrolling Indigenous communities compared with communities where few Indigenous people live (see Cunneen 2001).

This briefing notes that in NSW Indigenous women's violent offending decreased rather than increased as a percentage of total offences proceeded with to court in 2010-2012. This is in apparent contrast to Weatherburn's (2014) assessment that Indigenous women's violent offending is increasing, but the studies are not directly comparable in their analysis of the data.

This paper also reflects Bartels' (2012) conclusion that in some jurisdictions Indigenous women are imprisoned on more minor offences including public order offences than their non-Indigenous peers. Although no non-Indigenous data was available for comparison, Bartels' conclusions are supported by evidence of high levels of charges and court appearances for vehicle and traffic breaches, justice and shop-lifting offences.

It is still the case that accumulation of fines can result in a cascade of penalties such as suspension of driving licence and eventually in a community or custody penalty (Spiers Williams & Gilbert 2011). For example, although dated, Ferrante et al.'s (2001:146) report on WA imprisonment indicated that 40.5 percent of all Indigenous women entering prison in 2000 were there for fine default. A number of jurisdictions have attempted to minimise imprisoning fine defaulters but with varying success. The dominance of traffic and driving offences in Indigenous women's arrests and charges, and of fines as penalties, is therefore most concerning. Indigenous women in rural and remote areas experience extreme hardship in this aspect of the criminal justice system. They are likely to become entrenched early in the criminal justice system, are the poorest and most disadvantaged (Baldry 2010) and the most likely to need the use of a car for family, health and shopping; there is little public transport in small or remote communities. In other words, this is a criminogenic factor for Indigenous women. The NSW Aboriginal Legal Service (ALS 2014), in its work on the offence of 'drive whilst disqualified', has argued for non-criminal justice community solutions such as assisting Indigenous Australians to get a licence, assisting with car registration and providing driver training.

In general, these analyses suggest that prevention and early intervention or diversion programs must look to support Indigenous girls and women to not become enmeshed in low level offending such as less serious driving offences and shoplifting.

These interventions should take into account and seek to address Indigenous women's, often traumatic, life experiences, disabilities and disadvantaged contexts (Bartels 2010). For instance, indications are that integrating disability, alcohol and

other drug care and support responses across all relevant agencies in culturally appropriate ways supports Indigenous women to reduce both their contact with police and return to prison (McCausland & Baldry 2013).

Despite assistance from each Australian jurisdiction, the data on Indigenous women arrested, charged and processed via courts that are presented and analysed in this paper were not readily available and were not readily comparable across jurisdictions or between Indigenous and non-Indigenous women. Indigenous women are routinely not differentiated from Indigenous men or from non-Indigenous women in many data sets. Given that Indigenous women are the fastest growing group in Australian prisons (ABS 2013) and are 16-17 times more likely than their non-Indigenous counterparts to be incarcerated (Bartels 2012), it is imperative that accurate, detailed and readily accessible data are available. These are essential to ensure governments are fully informed of the situation in relation to Indigenous women's over-representation in Australian criminal justice systems, the offences for which they are routinely charged and convicted and the non-criminal justice options that could readily be implemented. This would also help the Commonwealth pursue its constitutional responsibilities in relation to Indigenous Australians.

To enable better understanding, analyses and policy development, it is recommended that Australian jurisdictions should ensure Indigenous and non-Indigenous criminal justice data are comparable and compatible by agreeing on Australian standardised detailed police, court and corrections data collection for Indigenous males and females.

References

All URLs were correct in October 2014

ALS (NSW/ACT) 2012. *Drive while disqualified: sentencing in the Dubbo region of NSW 2006-2012*. Redfern: ALS

Anthony T 2013. *Indigenous people, crime and punishment*. Hoboken: Taylor & Francis

ABS 2013. *Prisoners in Australia 2013*. Canberra: ABS. <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0/>

ABS 2012 *Census and population housing - Counts of Aboriginal and Torres Strait Islander Australians, 2011* Canberra: ABS. <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2075.0main+features32011>

Allard T 2010. *Understanding and Preventing Indigenous Offending*. Brief 9 Indigenous Justice Clearinghouse. <http://www.indigenousjustice.gov.au/briefs/>

Baldry E 2010. 'Women in Transition: From Prison to ...'. *Current Issues in Criminal Justice* 22(2): 253 – 268

Baldry E & Cunneen C 2014. 'Imprisoned Indigenous Women and the shadow of colonial patriarchy'. *Australian & New Zealand Journal of Criminology* 47: 276-298 doi:10.1177/0004865813503351

Bartels L 2010. 'Indigenous women's offending patterns: a literature review'. *Research and Public Policy Series*: 107. <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp107.html>

Bartels L 2012. *Sentencing Indigenous of Women. Research Brief*. 14 Indigenous Justice Clearinghouse. <http://www.indigenousjustice.gov.au/briefs>

Blagg H 2008. *Crime, Aboriginality and the decolonisation of justice*. Leichhardt: Hawkins Press

Cunneen C, 2001. *Conflict, Politics and Crime: Aboriginal Communities and the Police*, Sydney: Allen and Unwin

Cunneen C, Baldry E, Brown D, Brown M, Schwartz M & Steel A 2013. *Penal culture and hyperincarceration: the revival of the prison*. Aldershot: Ashgate

Ferrante A, Fernandez J & Loh N 2001. *Crime and Justice statistics for WA: 2000*. Perth: University of Western Australia Crime Research Centre

Indig D, McEntyre E, Page J & Ross B 2010. 2009. *NSW Inmate Health Survey: Aboriginal Health Report*. Sydney: Justice Health

McCausland R & Baldry E 2013. 'Incarcerated Indigenous Australian Mothers: Maintaining Patriarchal Colonization', in Eljdupovic G & Jaremko Bromwich R (eds), *Incarcerated Mothers: Oppression and Resistance*. Bradford: Demeter Press: 121-136

Spiers Williams M & Gilbert R 2011. *Reducing the unintended impacts of fines. Current Initiatives paper 2*, Indigenous Justice Clearinghouse. <http://www.indigenousjustice.gov.au/resources/publications.html#initiatives>

Weatherburn D 2014 *Arresting Incarceration*. Leichhardt: Federation Press

Weatherburn D Lind B & Hua J 2003. 'Contact with the New South Wales court and prison systems: The influence of age, Indigenous status and gender'. *Crime and Justice Bulletin* No 78, NSW Bureau of Crime Statistics and Research. <http://www.bocsar.nsw.gov.au/Documents/cjb78.pdf>

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