

## **Sentencing of Indigenous women**

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### **Introduction**

In this research brief the sentencing of Indigenous women in Australia is examined. Quantitative and qualitative data on sentencing patterns and practices are presented in relation to Indigenous women in Australia, although the limitations of these data should be acknowledged (see Bartels 2010a; 2010b; forthcoming a; Manuell 2009 for discussion). Some examples of non-custodial and custodial sentencing options for Indigenous women in Australia are discussed. A brief overview of Indigenous women's offending patterns will also be presented, along with relevant developments in Canada and New Zealand.

### **Sentencing data**

Indigenous women are much more likely to have previously served time in prison than non-Indigenous women (67% vs 36%: ABS 2011). Stubbs (2011) cited Western Australian data indicating 91 percent of Indigenous women in prison had served prior sentences, with 48 percent having done so more than five times previously. Weatherburn, Lind and Hua (2003) also pointed to high rates of recidivism, with 17 percent of Indigenous women who appeared in court in 2001 having appeared more than five times in the five years previously.

Previous research has identified over 220 factors that appear to influence courts in sentencing (see Bartels 2009 for discussion). Factors which will generally increase a sentence are the type of offence and the offender's prior criminal record. Given that Indigenous women are more likely to be sentenced for violent offences and are much more likely to be repeat offenders, this may result in the imposition of harsher penalties. However, the emerging research does not indicate any evidence of bias against Indigenous offenders, after controlling for relevant factors, such as offence type and reoffending rates (Bond & Jeffries 2011a; Snowball & Weatherburn 2007; c/f Bond & Jeffries 2011b in relation to the lower courts in Queensland). Indeed, in some circumstances, an offender's Indigenous status may even be associated with reduced length of sentence (Bond, Jeffries & Weatherburn 2011).

Research in relation to Indigenous women likewise suggests comparable treatment (Baker 2001) and possibly more lenient treatment in some circumstances (Bond & Jeffries 2010; Bond, Jeffries & Loban 2011). In a forthcoming analysis of sentencing remarks in Western Australian cases, Jeffries and Bond suggest that judges were more critical when non-Indigenous women failed to 'take advantage of their rehabilitative opportunities' and were more likely

to acknowledge Indigenous women's expressions of remorse, good employment prospects and community bonds. Judges were also more likely to express concern that incarceration would adversely affect children and to see a social cost to imprisonment for Indigenous women. The authors note that 'surprisingly little' is known about how judges construct intersections of gender and race/ethnicity/Indigenous status in rationalising their sentencing decisions.

### **Court data**

Unfortunately, there is little clear information on how many Indigenous women are sentenced in Australian courts (see Bartels 2010a for discussion). The ABS (2012b) reports only on the number of Indigenous women finalised (but not sentenced), and only in relation to three jurisdictions. Notwithstanding the limitations of these data, some insight into the court and sentencing outcomes in some Australian courts, is provided in Table 1. These figures may suggest that Indigenous women are overrepresented among women defendants, and may comprise a higher proportion of defendants finalised than their non-Indigenous counterparts. In addition, Indigenous defendants are more likely than non-Indigenous defendants to be proven guilty (and therefore sentenced), although this does not necessarily indicate any judicial bias in determining guilt (see discussion next page).

**Table 1: Selected court data on Indigenous women (2010-11)**

Higher courts	NSW	Qld	NT
Number of Indigenous women finalised (excl traffic offences)	N/A	136	17
Indigenous women as % of women finalised	N/A	18	57
Indigenous women as % of Indigenous offenders finalised	N/A	19	9
Non-Indigenous women as % of non-Indigenous offenders finalised	N/A	13	9
% of Indigenous offenders finalised proven guilty	N/A	79	83
% of non-Indigenous offenders finalised proven guilty	N/A	78	83
Magistrates' courts	NSW	Qld	NT
Number of Indigenous women finalised (excl traffic offences)	2255	5261	679
Indigenous women as % of women finalised	16	28	75
Indigenous women as % of Indigenous offenders finalised	36	45	17
Non-Indigenous women as % of non-Indigenous offenders finalised	18	25	14
% of Indigenous offenders finalised proven guilty	80	91	85
% of non-Indigenous offenders finalised proven guilty	79	88	75

*Adapted from ABS 2012b*

Earlier data reported by Bartels (2010a) indicated that Indigenous women accounted for 3 percent of participants in the South Australian Court Assessment and Referral Drug Scheme, compared with 9 percent for Indigenous men. The figures for the South Australian Drug Court were 1 and 6 percent respectively. Data on the NSW MERIT program (NSW Magistrates' Early Referral Into Treatment program, a court-based presentence diversion scheme which aims to intervene in the cycle of drug use and crime) indicated that a higher proportion of women were Indigenous, compared with men (22% vs 13%). Indigenous women

also made up a higher proportion of referrals than non-Indigenous women (27% vs 20%), but significantly fewer were accepted into the program. It has previously been suggested that this might have been due to changes to NSW bail laws which lowered the rate at which Indigenous people received bail (one of the main eligibility criteria for the MERIT program) (Cain 2006). Overall, Indigenous women accounted for less than 5 percent of all MERIT participants (compared to 12% and 17% respectively for Indigenous men and non-Indigenous women) (see Bartels 2010a). A similar program in Queensland, QMERIT, showed low

participation rates, possibly due to there being a Murri court in operation nearby (see Bartels 2010a).

## Community corrections data

The Report on Government Services (Steering Committee for the Review of Government Service Provision (SCRGSP) 2012) publishes information on community corrections orders by jurisdiction. As set out in Table 2, in 2010-11, there were 2014 Indigenous women on supervision orders, accounting for 26 percent of women on such orders. These orders were most commonly imposed on Indigenous women in Queensland (n=646) and NSW (n=586). There were 650 Indigenous women on reparation orders, mostly in Western Australia (n=181) and Queensland (n=177); Indigenous women comprised 23 percent of women on reparation orders. There were also 15 Indigenous women on restricted movement orders in three jurisdictions (NSW, SA and NT) in 2010-11, accounting for 18 percent of women on such orders. The daily average of Indigenous women serving a community corrections order was 2484, mostly in Queensland (n=781) and NSW (n=677).

Overall, Indigenous women represented 25 percent of women serving community correction orders, indicating they are underrepresented in community corrections, relative to their representation in the prison system. This accords with previous findings (see Aboriginal and Torres Strait Islander Social Justice Commissioner (ATSISJC) 2002; LCSCIPP 2001; NSW Sentencing Council 2004). Similarly, Corrective Services Western Australia (2012) data indicated that over the three years to July 2012, the number of Indigenous women on community corrections orders fell by 31 percent, while the number in prison rose by 21 percent. It would be of interest to know the reasons for this decline, and possible responses to ensure Indigenous women are appropriately represented on such orders.

**Table 2: Indigenous women on selected community corrections orders (2010-11)**

	Number of Indigenous women	Indigenous women as a proportion of all women (%)
Restricted movement orders	15	18
Reparation orders	650	23
Supervision orders	2014	26
Daily average of all orders	2484	25

*Adapted from SCRGSP 2012*

**Prisons data**

There has been an emerging literature in recent years on Indigenous women and imprisonment (see Bartels 2010b; forthcoming a; Stubbs 2011). The most recent Australian Bureau of Statistics (ABS; 2012a) data indicate that, in March 2012, there were on average 717 Indigenous women in full-time custody, the highest number on record. Indigenous women’s imprisonment rate for the March 2012 quarter was 380 per 100,000, 16.5 times that of the general female population; this is a higher degree of overrepresentation than for Indigenous men (13.4 times). In addition, although Indigenous women’s imprisonment rate was lower than for Indigenous men, they accounted for a higher proportion of their respective prison population (35% vs 26%) (ABS 2012a).

The number of Indigenous women in full-time custody in Australia rose by 7 percent between the 2011 and 2012 March quarters, compared with a 5 percent increase for Indigenous men and 2 percent for the general female population. The imprisonment rate increased by 3 percent over the previous five years (from 370 to 380 per 100,000; ABS 2007), while the rate for non-Indigenous women had remained stable (23 per 100,000). In an examination of why Indigenous imprisonment rates in NSW had risen, Fitzgerald (2009) concluded that the rise appeared to be due to increased severity by the criminal justice system in its treatment of Indigenous offenders, with more Indigenous

offenders receiving a prison sentence and for longer periods than had previously occurred.

This trend may be due to differences in the nature of offending. As discussed in Bartels (2010b), Indigenous women are more likely to be imprisoned for violent offences than non-Indigenous women, with acts intended to cause injury (AICI) accounting for 33 percent of offences for which Indigenous women were imprisoned (compared with 11% for non-Indigenous women) (ABS 2011). This accords with earlier data from the NSW Bureau of Crime Statistics and Research (BOCSAR) (Baker 2001) indicating that 22 percent of Indigenous assault offenders were women, compared with 10 percent for their non-Indigenous counterparts. Other NSW data showed that 24 percent of Indigenous women appearing in NSW courts in 2001 did so for AICI, compared with 14 percent for non-Indigenous women (Weatherburn, Lind & Hua 2003).

Yet in contrast to overall Indigenous sentencing rates, Indigenous women generally serve shorter sentences than their non-Indigenous counterparts, which suggests that they are being imprisoned for more minor offences, especially public order offences (Bartels 2010b). The most recent data indicate that the median sentence for Indigenous women was half the length of non-Indigenous women’s sentences (18 vs 36 months); the expected time to serve was also much shorter (10 vs 19 months) (ABS 2011). As discussed

below, one sentencing option would be to abolish short sentences of imprisonment for Indigenous women.

While Bond and Jeffries found no evidence of judicial bias, after controlling for offence type and reoffending rates, the apparent under-utilisation of community corrections orders for Indigenous women may suggest that they are more likely to be imprisoned for minor offences, possibly due to their more severe prior record. Future research should therefore explore offence types that result in imprisonment, and more detailed analysis is required of the use of both custodial and non-custodial sentencing options for Indigenous women.

**Legislation and case law governing the sentencing of Indigenous offenders**

Only some Australian jurisdictions make specific reference to an offender’s Indigenous status in their sentencing legislation (see *Crimes (Sentencing) Act 2005* (ACT) s 33(m); *Criminal Law (Sentencing) Act 1988* (SA) s 9C; *Penalties and Sentences Act 1992* (Qld) s 9(2)(p); *Sentencing Act 1995* (NT) s 104A; see Anthony 2010 for discussion).

At common law, the need to take into account the specific circumstances of Indigenous offenders was recognised in *Neal v R* (1982)149 CLR 305. In the NSW case of *R v Fernando* (1992) 76

A Crim R 58, Justice Wood set out eight principles relevant to sentencing disadvantaged Indigenous offenders. However, there has been criticism that the principles had been ‘applied unevenly in the appellate courts’ (Manuell 2009: i; see also Hopkins forthcoming). Stubbs (2011) recently noted that there had been only six cases considering the principles that involved female offenders, with no real elaboration of how the principles might relate to women.

## Sentencing options for Indigenous women in Australia

When sentencing an offender, courts have a range of custodial and non-custodial sentencing options available to them, including imprisonment, suspended sentences, good behaviour orders, fines and discharges (see eg *Crimes (Sentencing) Act 2005* (ACT) s 9). At present, there are no specific legislative sentencing options for Indigenous offenders, although Edney (2004) has recommended that the Victorian sentencing legislation be amended to make the ‘custody threshold’ higher for Indigenous offenders.

A further relevant consideration is that of bail/remand. Fitzgerald (2009) found that the NSW Indigenous remand rate had risen faster than the general imprisonment rate. Other NSW data indicated that there were eight Indigenous women on remand in 1991, compared with 61 in 2007, although this fell to 43 in 2010 (unreported data cited in Stubbs 2011), while Baldry (2010: 262) has argued that ‘most Aboriginal women in prison in NSW are either on remand or serving sentences of less than 12 months’. Clearly, remand practices impact on sentencing, especially Indigenous women’s access to alternative sentencing options.

### Non-custodial sentencing options

There are a range of generic diversionary options available, such as the NSW Magistrates’ Early Referral Into Treatment (MERIT) program discussed above. However,

Stubbs (2011: 57) has suggested that ‘the potential benefits of the[se] programs are diminished or unavailable to Aboriginal women because standardised, mainstream programs have not anticipated their needs’.

Examples of non-custodial options for Indigenous women identified by Bartels (2010a) include:

- Balund-a, a residential diversionary program in northern NSW, is a ‘non-correctional centre residential facility’ which gives ‘offender residents’ who might otherwise have gone to prison a ‘second chance’ (NSW Department of Corrective Services 2008, cited in Bartels 2010a: 7). It aims to reduce reoffending and enhance skills within a cultural and supportive community environment. The program commenced referrals of female offenders in October 2009.
- Karinga Women’s Release and Diversion Hostel, established by the South Australian Department for Correctional Services, which provides safe, stable, transitional and supported accommodation for Indigenous women. Residents can have a case pending before the court, be completing a community order, home detention order, custodial sentence, or post-sentence.
- Rekindling the Spirit Program, a NSW Indigenous-owned and -run initiative that provides a holistic healing service, including a women’s group and retreat. Many of the participants participate as a condition of their court order (although the program also takes non-offenders). The services provided for women and families include a women’s group and retreat.
- Rumbalara Women’s Mentoring Program, which was established in 2002, and provides women undertaking community-based orders (CBOs) and parole with mentoring and support by Indigenous Elders and Respected Persons. The program has been positively evaluated and was associated with much lower breach rates than the general breach rate

for CBOs in Victoria (11% vs 29%).

### Custodial options

In 2001, the NSW Legislative Council Select Committee on the Increase in Prisoner Population (LCSCIPP) recommended that short prison sentences for Indigenous women be abolished. This was supported by the NSW Sentencing Council (2004), which recommended that it be piloted for Indigenous women throughout all of NSW, however this is yet to occur.

In the absence of such measures, custodial sentences will remain a reality for many Indigenous female offenders. Although correctional responses do not fall within the parameters of sentencing *per se*, they may assist in minimising Indigenous women’s ongoing involvement in the criminal justice system. Bartels (2010a) and Bartels and Gaffney (2011) have identified the following promising initiatives:

- Providing Indigenous prisoners in the ACT with the opportunity to ‘sleep out’ in secure spaces in courtyards, rather than in a cell.
- Programs specifically designed for Indigenous women, such as the Breaking the Cycle art program in Western Australia; the Walking Together domestic violence program in NSW prisons; and the Karrka Kirnti Aboriginal Women’s Program, a cultural camp for staff and female inmates operated by the NSW Department of Corrective Services.
- Adaptations of women’s programs for Indigenous women, such as the Female Group/Female Relapse programs in Western Australia and the Koori Cognitive Skills program in Victoria.
- The Indigenous Oral History Laboratory at the Townsville Women’s Correctional Centre in Queensland, which provides a library and recording area for those who wish to tell their story about their family and cultural heritage. The program aims to help communities to preserve their cultural history and provide an important resource for future Indigenous cultural studies.
- Specific responses to

health issues, such as the commencement of Indigenous vascular health clinics in all female centres in NSW; a weekly health service in Western Australian correctional facilities for Indigenous women and their children; and Indigenous women's and maternal health programs in ACT correctional facilities.

- The Yulawirri Nurai program in NSW, which was modelled on the Okimaw Okhi Healing Lodge in Canada discussed further below, and is a 'place of healing' for Indigenous women before, during and after release from prison.
- The Transitions program in Queensland, which ensures the particular needs of female and Indigenous prisoners are recognised and considered in their plans for release.
- The Aboriginal Women with Dependent Children Leaving Prison Program, which provides local accommodation to women and their children for 12 months following their release from custody, as well as intensive support from Indigenous caseworkers.
- The development of policies, such as the Women's Intervention Model of Service Delivery and Women's Way Forward: Women's Corrective Services Strategic Plan 2009–2012 in Western Australia and the Standards for the Management of Women Prisoners in Victoria, which specifically acknowledge Indigenous women's needs.

## Indigenous sentencing courts

By 2009, there were over 50 Indigenous sentencing courts operating in all Australian states and territories except Tasmania (Marchetti 2009). Practices vary, such as in the nature of offences that can be considered, but some common features include that the offender is Indigenous; has pleaded guilty or been found guilty of an offence in a summary hearing; and consents to having the matter heard in an Indigenous sentencing court (Marchetti 2009; 2010).

Although there has been some debate about the appropriateness of Indigenous sentencing courts dealing with family violence, most of which is perpetrated against Indigenous women (Marchetti 2010), there does not appear to be any research considering the issue of Indigenous women *offenders* in Indigenous sentencing courts in depth (Marchetti, cited in Bartels 2010a).

The data examined by Bartels (2010a) suggested that women accounted for 16-26% of participants in Indigenous sentencing courts in NSW, the ACT and Queensland. The Victorian Sentencing Advisory Council (VSAC) (2010) found that women accounted for a higher proportion of appearances in the Victorian Koori Court than in the Magistrates' Court (28% vs 21%). Compared with men in the Koori Court, Indigenous women were less likely to have an education level of Year 10 or below (86% vs 91%), to be unemployed (66% vs 71%) and to have prior convictions (72% vs 77%).

## Relevant international developments

### New Zealand

Under ss 8(i) and 27 of the *Sentencing Act 2002* (NZ), courts 'must take into account the offender's personal, family, *whanau* [Māori extended family], community, and cultural background in imposing a sentence', however Anthony (2010: 3) found that courts 'have not made specific reference to the disadvantage faced by Māori offenders' (see also Hess 2011).

The only New Zealand study to consider race, gender and sentencing (Deane 1995) found no evidence of discrimination between Māori and non-Māori offenders. Nevertheless, although Māori account for only 13 percent of the population, they account for 45 percent of offenders on community sentences (New Zealand Department of Corrections (NZDC) 2012a) and 51 percent of prisoners (NZDC 2012b). Earlier data indicated that Māori women comprised 60 percent of the female prison population (NZDC 2007).

NZDC (2012c) offer 'a range of

rehabilitation programmes with a Māori focus, designed to help Māori offenders to address their offending within a culturally effective context', including the Short Rehabilitation Programme for women, which is 'designed to be responsive to Māori women' (NZDC 2012d).

Unlike the Australian data, New Zealand enables disaggregated analysis of the sentences imposed on Māori women since 1980. The sentencing outcomes for 2011 (Statistics New Zealand 2012) indicated that Māori women accounted for 41 percent of all women sentenced. They were overrepresented for imprisonment and intensive supervision (where they accounted for 51% of sentences imposed) and underrepresented for more lenient dispositions, such as reparation orders (39%) and fines and discharges (both 33%).

### Canada

Section 718.2 of the Canadian *Criminal Code* was amended in 1996 to provide that 'A court that imposes a sentence shall also take into consideration the following principles:...(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders'.

In 1999, the Canadian Supreme Court considered the impact of s 718.2(e) in *R v Gladue* [1999] 1 SCR 688, stating at [33] that the provision '[directs] sentencing judges to undertake the process of sentencing Aboriginal offenders differently, in order to endeavour to achieve a truly fit and proper sentence in the particular case' and that sentencing judges 'must give attention to the unique background and systemic factors which may have played a part in bringing the offender before the courts' (1999: [69]; see Hopkins forthcoming and Williams 2008 for discussion).

The Supreme Court recently confirmed that sentencing judges have a duty to apply s 718.2(e) and the Gladue principles in every case involving an Aboriginal offender (*R v Ipeelee*, 2012 SCC 13). However, Manuell's (2009) analysis suggests that the impact of these changes has been limited, with Aboriginal women's

representation (as a proportion of female prisoners) rising from 17-18 percent in 1998-2000 to 23-24 percent in 2006-2008 (see also Stubbs 2011; Williams 2008).

Due to the apparent lack of improvement, so-called 'Gladue courts' were established, with Aboriginal caseworkers appointed to provide reports to the court on the systemic and background issues affecting the lives of Aboriginal offenders, together with available culturally relevant sentencing options (Hopkins forthcoming). According to Williams (2007: 286; 2008: 95), this contextual analysis may see Aboriginal women portrayed 'as over-determined by ancestry, identity and circumstances', which may feed stereotypes about criminality. However, Department of Justice evaluations have shown that Gladue court participants have reoffending rates about half those of non-participants (see Manuell 2009).

In terms of correctional planning, the Canadian Program Strategy for Women Offenders outlines a range of gender-informed programs, including for Aboriginal women, with an employment skills program described as 'best practice' (see Bartels & Gaffney 2011 for discussion). In addition, the Spirit of a Warrior Program is a violence prevention program for Aboriginal women offenders which has been evaluated to show that participants demonstrated significant improvements in the mental, emotional, physical and spiritual elements of healing (see Bartels 2010a). Unfortunately, the evaluation did not include any recidivism measures, so no firm conclusions can be drawn on the effectiveness of the program in this regard.

Finally, some Aboriginal women in Canada serve their sentences in the Okimaw Okhi Healing Lodge, which houses up to 28 Aboriginal women and was developed to address their specific needs. The programs are focused on healing and presented in a culture- and gender-sensitive way, underpinned by support from elders and the traditional teachings, and have resulted in low recidivism rates (see Bartels 2010a; Bartels & Gaffney 2011; Hayman 2006). Critics argue, however, that the Lodge was

increasingly 'turning into a conventional prison (Hayman 2006: 221) and could not 'practically accommodate [the women's] wide ranges of histories, practices, and customs. Moreover, Aboriginal women's over-classification as high risk-need often prevents access to this facility' (Hannah-Moffatt 2010: 14).

## Conclusion

In this brief, the sentencing of Indigenous women in Australia was considered. Court, community corrections and prisons data were presented together with a discussion of the emerging literature on whether there is any evidence of bias when sentencing Indigenous offenders, especially women offenders. To the extent that this can be determined from the available Australian data, it appears that there does not appear to be harsher treatment of Indigenous women, compared with their non-Indigenous counterparts. However, they remain overrepresented among defendants before the court and in prison populations, while being underrepresented on community corrections orders. Possible reasons for this may include the eligibility criteria for such programs or availability issues in rural and remote areas. Other explanations may include differences in offences committed and more extensive prior records. However, further research is required to examine this issue, as there has been a paucity of research to date on Indigenous women and non-custodial sentencing options.

After an overview of the legislation and case law in relation to sentencing Indigenous offenders, the emergence of Indigenous sentencing courts and Indigenous women's offending patterns, the custodial and non-custodial sentencing options available were examined. In particular, some promising examples of programs which seek to address the specific needs of Indigenous women were discussed.

In addition, information was presented on sentencing patterns and options in Canada and New Zealand, where Indigenous women are likewise over-represented in the criminal justice system. The availability of more detailed sentencing data on Māori women in New Zealand enables some analysis of their offending and

sentencing patterns, but it remains the case that relatively little is known about the sentencing of Māori women in New Zealand. Nevertheless, it would be of benefit to develop a sentencing database in Australia which, like New Zealand, allows for a more detailed level of analysis of sentencing outcomes.

Examination of the legislative requirement of sentencing Aboriginal offenders 'differently' in Canada was noted, as well as the subsequent emergence of 'Gladue courts' tasked with achieving this objective. Some examples of correctional responses for Aboriginal women were also discussed.

Future directions in relation to the sentencing of Indigenous women may include a long-awaited trial of abolishing short prison sentences, and legislative and/or case law development to require sentencing officers to consider an offender's Indigenous status. In addition, ongoing funding and evaluation of programs designed to address Indigenous women's specific needs is required (see Bartels 2010a; forthcoming b for discussion). In order to be effective, program design should take into account Indigenous women's higher rates of recidivism, and seek to address the underlying reasons for this. Finally, as noted previously (see ATSIJ 2002; Bartels 2010a; 2010b; forthcoming a; Bartels & Gaffney 2011; Stubbs 2011), there is a need for the collection of more detailed administrative sentencing data which disaggregates outcomes in relation to both gender and Indigenous status, to ensure a more comprehensive analysis of sentencing patterns and inform sentencing policy.

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## References

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Aboriginal and Torres Strait Islander Social Justice Commissioner 2002. *Social justice report 2002*. Sydney: Human Rights and Equal Opportunity Commission. [http://www.hreoc.gov.au/social\\_justice/sj\\_report/sjreport02/Social\\_Justice\\_Report02.pdf](http://www.hreoc.gov.au/social_justice/sj_report/sjreport02/Social_Justice_Report02.pdf)

Anthony T 2010. *Sentencing Indigenous offenders*. Brief no 7. Sydney: Indigenous Justice Clearinghouse (IJC). <http://www.indigenousjustice.gov.au/briefs/brief007.pdf>

ABS 2007. *Corrective services, Australia, March 2007*. Cat no. 4512.0. Canberra: ABS. <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4512.0Explanatory%20Notes1Mar%202007?OpenDocument#>

ABS 2011. *Prisoners in Australia, 2011*. Cat no. 4517.0. Canberra: ABS. <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0/>

ABS 2012a. *Corrective services, Australia, March 2012*. Cat no. 4512.0. Canberra: ABS. <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0/>

ABS 2012b. *Criminal courts, Australia, 2010–11*. Cat no. 4513.0. Canberra: ABS. <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4513.0>

Baker J 2001. *The scope for reducing Indigenous imprisonment rates*. Crime and Justice Bulletin no 55. Sydney: BOCSAR. [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/CJB55.pdf?file/CJB55.pdf#target=\\_blank](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB55.pdf?file/CJB55.pdf#target=_blank)

Baldry E 2010. Women in transition: From prison to... *Current Issues in Criminal Justice* 22: 253-267

Bartels L 2009. To suspend or not to suspend: A qualitative analysis of sentencing decisions in the Supreme Court of Tasmania. *University of Tasmania Law Review*. 28: 23-62

Bartels L 2010a. *Diversion programs for Indigenous women*. Research in Practice no 13. Canberra: Australian Institute of Criminology (AIC). [http://www.aic.gov.au/documents/E/C/7/7BEC7ECE38-209C-4FAA-876A-246D2F6A5DCF%7Drip13\\_001.pdf](http://www.aic.gov.au/documents/E/C/7/7BEC7ECE38-209C-4FAA-876A-246D2F6A5DCF%7Drip13_001.pdf)

Bartels L 2010b. *Indigenous women's offending patterns: A literature review*. Research and Public Policy Series no 107. Canberra: AIC. <http://www.aic.gov.au/documents/F/4/0/7BF400B08D-7ECB-43EE-BB6E-38B2C3580A46%7Drrp107.pdf>

Bartels L 2012a. Painting the picture of Indigenous women in custody in Australia. *Queensland University of Technology Law and Justice Journal* 12(2): 1-17

Bartels L 2012b. Violent offending by and against Indigenous women. *Indigenous Law Bulletin* 8(1): 19-22

Bartels L & Gaffney A 2011. *Good practice in women's prisons: A literature review*. Technical and Background Paper no 41. Canberra: AIC. [http://www.aic.gov.au/documents/4/E/5/7B4E5E4435-E70A-44DB-8449-3154E6BD81EB%7Dtbp041\\_002.pdf](http://www.aic.gov.au/documents/4/E/5/7B4E5E4435-E70A-44DB-8449-3154E6BD81EB%7Dtbp041_002.pdf)

Bond C & Jeffries S 2010. Sentencing Indigenous and non-Indigenous women in Western Australia's higher courts. *Psychiatry, Psychology and Law* 17: 70-78

Bond C & Jeffries S 2011a. Indigeneity and the judicial decision to imprison: A study of Western Australia's higher courts. *British Journal of Criminology* 51: 256-277

Bond C & Jeffries S 2011b. Indigeneity and the likelihood of imprisonment in Queensland's adult and children's courts. *Psychiatry, Psychology and Law* 19: 169-183

Bond C, Jeffries S & Loban H 2011. *Exploring Indigenous and non-Indigenous sentencing in Queensland*. Brisbane: Queensland University of Technology

Bond C, Jeffries S & Weatherburn D 2011. How much time? Indigenous status and the sentenced imprisonment term decision in New South Wales. *Australian and New Zealand Journal of Criminology* 44: 272-290

Cain M 2006. *Participation of Aboriginal people in the MERIT program*. Sydney: NSW Attorney-General's Department. [http://www.lawlink.nsw.gov.au/lawlink/cpd/merit.nsf/vwFiles/ab\\_participation\\_merit.pdf?file/ab\\_participation\\_merit.pdf](http://www.lawlink.nsw.gov.au/lawlink/cpd/merit.nsf/vwFiles/ab_participation_merit.pdf?file/ab_participation_merit.pdf)

Corrective Services Western Australia 2012. *Monthly graphical report August 2012*. Perth.

Deane H 1995. Race, gender, and the sentencing process in a New Zealand District Court, in Hazlehurst K (ed), *Perceptions of justice: Issues in Indigenous and community empowerment*. Avebury: Aldershot

Edney R 2004. The need for a higher custody threshold for Indigenous offenders in Victoria. *Indigenous Law Bulletin* 6(6): 17-19

Edney R 2005. Imprisonment as a last resort for Indigenous offenders: Some lessons from Canada? *Indigenous Law Bulletin* 6(12): 23-26

Fitzgerald J 2009. *Why are Indigenous imprisonment rates rising?* Bureau Brief no 41. Sydney: BOCSAR. [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/BB41.pdf?file/BB41.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/BB41.pdf?file/BB41.pdf)

Hannah-Moffat K 2010. Sacrosanct or flawed: Risk, accountability and gender-responsive penal politics. *Current Issues in Criminal Justice* 22: 193-216

Hayman S 2006. *Imprisoning our sisters*. Quebec: McGill-Queen's University Press

Hess J 2011. Addressing the overrepresentation of the Maori in New Zealand's criminal justice system at the sentencing stage: How Australia can provide a model for change. *Pacific Rim Law & Policy Journal* 20: 179-209

Hopkins A (forthcoming). The relevance of Aboriginality in sentencing: 'Sentencing a person for who they are'. *Australian Indigenous Law Review*

Jeffries S & Bond C (forthcoming). Gender, Indigeneity and the criminal courts: A narrative exploration of women's sentencing in Western Australia. *Women and Criminal Justice*

Manuell J 2009. *The Fernando principles: The sentencing of Indigenous offenders in NSW*. Discussion Paper. Sydney: NSW Sentencing Council. [http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/sentencing/documents/pdf/sentencing\\_indigenous\\_offenders\\_nsw.pdf](http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/sentencing/documents/pdf/sentencing_indigenous_offenders_nsw.pdf)

Marchetti E 2009. *Indigenous sentencing courts*. Brief no 5. Sydney: IJC. <http://www.indigenousjustice.gov.au/briefs/brief005.pdf>

Marchetti E 2010. Indigenous sentencing courts and partner violence: Perspectives of court practitioners and elders on gender power imbalances during the sentencing hearing. *Australian and New Zealand Journal of Criminology* 43: 263-281

NSW Department of Corrective Services 2008. Minister and Commissioner go bush as Balund-a opens its gates. *Bulletin* 618: 4-5

NSW Select Committee on the Increase in Prisoner Population 2001, *Final report*. Sydney: Parliament of New South Wales. [http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/a2dc299193d1072eca256cf4002183ec/\\$FILE/Final%20Report%20-%20Prisons.pdf](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/a2dc299193d1072eca256cf4002183ec/$FILE/Final%20Report%20-%20Prisons.pdf)

NSW Sentencing Council 2004. *Abolishing prison sentences of 6 months or less*. Sydney: NSW Sentencing Council. [http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/sentencing/documents/pdf/abolish\\_report\\_final.pdf](http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/sentencing/documents/pdf/abolish_report_final.pdf)

NZDC 2007. *Over-representation of Māori in the criminal justice system: An exploratory report*. [http://www.corrections.govt.nz/\\_data/assets/pdf\\_file/0004/285286/Over-representation-of-Maori-in-the-criminal-justice-system.pdf](http://www.corrections.govt.nz/_data/assets/pdf_file/0004/285286/Over-representation-of-Maori-in-the-criminal-justice-system.pdf)

NZDC 2012a. *Community sentences and orders facts and statistics – March 2012*. [http://www.corrections.govt.nz/about-us/facts\\_and\\_statistics/facts\\_and\\_statistics\\_-\\_community\\_sentences\\_and\\_orders/cps-march-2012.html](http://www.corrections.govt.nz/about-us/facts_and_statistics/facts_and_statistics_-_community_sentences_and_orders/cps-march-2012.html)

NZDC 2012b. *Prison facts and statistics – March 2012*. [http://www.corrections.govt.nz/about-us/facts\\_and\\_statistics/prisons/ps-march-2012.html#ethnicity](http://www.corrections.govt.nz/about-us/facts_and_statistics/prisons/ps-march-2012.html#ethnicity)

NZDC 2012c. *Programmes for offenders*. [http://www.corrections.govt.nz/about-us/fact-sheets/managing-offenders-](http://www.corrections.govt.nz/about-us/fact-sheets/managing-offenders-in-the-community/programmes_for_offenders/programmes-for-offenders.html)

[in-the-community/programmes\\_for\\_offenders/programmes-for-offenders.html](http://www.corrections.govt.nz/about-us/fact-sheets/managing-offenders-in-the-community/programmes_for_offenders/programmes-for-offenders.html)

NZDC 2012d. *Short Rehabilitation Programme for women*. [http://www.corrections.govt.nz/about-us/fact-sheets/managing-offenders-in-the-community/programmes\\_for\\_offenders/short-rehabilitation-programme-for-women.html](http://www.corrections.govt.nz/about-us/fact-sheets/managing-offenders-in-the-community/programmes_for_offenders/short-rehabilitation-programme-for-women.html)

Snowball L & Weatherburn D 2007. Does racial bias in sentencing contribute to Indigenous overrepresentation in prison? *Australian and New Journal of Criminology* 40: 272-290

Statistics New Zealand 2012. *Table builder: Convicted offenders by gender and ethnicity*. [http://www.stats.govt.nz/tools\\_and\\_services/tools/TableBuilder.aspx](http://www.stats.govt.nz/tools_and_services/tools/TableBuilder.aspx)

SCGGSP 2012. *Report on government services 2012*. Melbourne: Productivity Commission. <http://www.pc.gov.au/gsp/rogs/2012>

Stubbs J 2011. Indigenous women in Australian criminal justice: Overrepresented but rarely acknowledged. *Australian Indigenous Law Review* 15: 47-63

VSAC 2010. *Sentencing in the Koori court division of the Magistrates' Court: A statistical report*. Melbourne: VSAC. [https://sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/sentencing\\_in\\_the\\_koori\\_court\\_division\\_of\\_the\\_magistrates\\_court.pdf](https://sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/sentencing_in_the_koori_court_division_of_the_magistrates_court.pdf)

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. Sydney: BOCSAR. [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/CJB78.pdf/\\$file/CJB78.pdf#target=\\_blank](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB78.pdf/$file/CJB78.pdf#target=_blank)

Williams T 2008. Intersectionality analysis in the sentencing of Aboriginal women in Canada: What difference does it make?, in Grabham E et al (eds), *Intersectionality and beyond: Law, power and the politics of location*. London: Routledge

Williams T 2007. Punishing women: The promise and perils of contextualized sentencing for Aboriginal women in Canada. *Cleveland State Law Review* 55: 269-287

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