

## WHY ARE INDIGENOUS IMPRISONMENT RATES RISING?

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*Between 2001 and 2008 the adult Indigenous imprisonment rate rose by 37 percent in Australia and 48 percent in New South Wales. This paper looks at the reasons behind this rise in New South Wales. The evidence suggests that most of the increase is due to increased severity by the criminal justice system in its treatment of Indigenous offenders. One quarter of the increase has come from remandees and three quarters from sentenced prisoners. The increase in the number of remandees appears to be due to a greater proportion of Indigenous defendants being refused bail and an increase in the time spent on remand. Similarly, the number of sentenced Indigenous prisoners has increased because more Indigenous offenders are receiving a prison sentence and for longer periods. With the possible exception of offences against justice procedures, it does not appear that the increase in imprisonment is due to increased offending.*

### INTRODUCTION

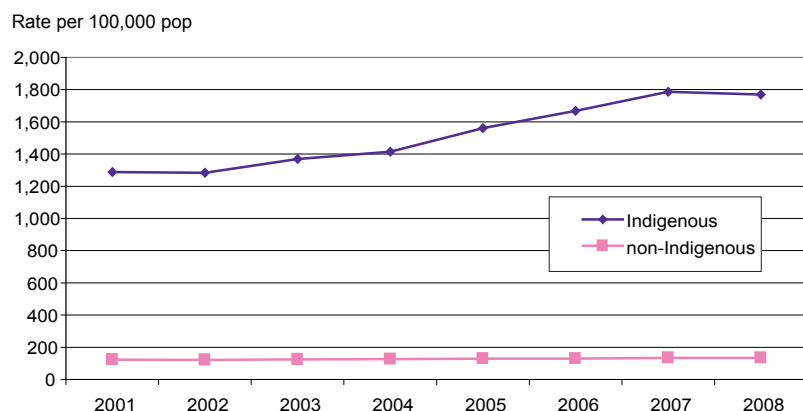
Between 2001 and 2008, the Indigenous adult imprisonment rate<sup>1</sup> in Australia rose 37 percent (Australian Bureau of Statistics 2008). Over the same period the non-Indigenous imprisonment rate rose only eight percent. These trends can be seen in Figure 1.

The growth in Indigenous imprisonment is a matter of concern for two reasons. Firstly, the rate of Indigenous imprisonment is now more than 13 times higher than the imprisonment rate for non-Indigenous Australians. Secondly, in the wake of the Royal Commission into Aboriginal Deaths in Custody, all State and Territory Governments resolved to try and reduce the over-representation of Indigenous people in prison.

This brief charts some of the main features of this growth in New South Wales. It does not provide a definitive explanation for the

growth in Indigenous imprisonment rates but it does suggest some fruitful lines of enquiry for future research.

**Figure 1. Age standardised adult imprisonment rate, Australia, 2001-2008**

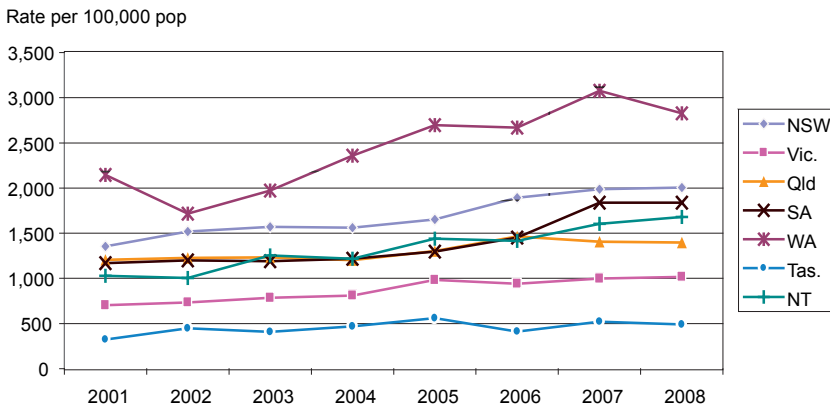


Source: Australian Bureau of Statistics 2008

## THE NATURE OF THE INCREASE

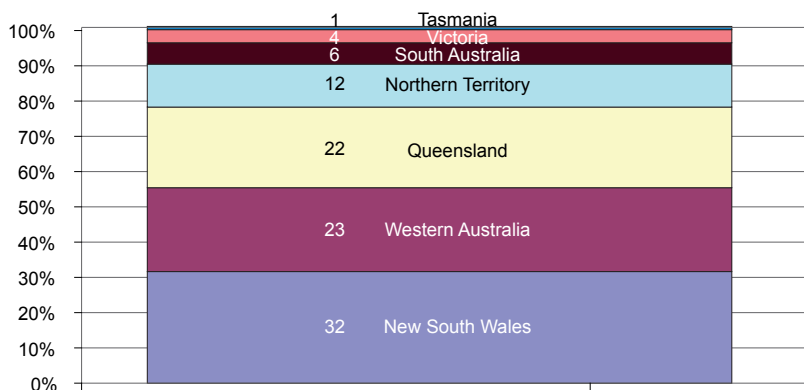
- The number of Indigenous people in prison in Australia increased from 4,445 in 2001 to 6,694 in 2008, an increase of 2,249 individuals.
- The rate of the increase was similar for males and females.<sup>2</sup>
- Figure 2 shows that the rate of Indigenous imprisonment increased in each State and in the Northern Territory.<sup>3</sup> The rates of increase from 2001 to 2008 were: Northern Territory up 63 percent, South Australia up 57 percent, Tasmania up 53 percent, NSW up 48 percent, Victoria up 45 percent, Western Australia up 32 percent and Queensland up 16 percent.
- Figure 2 also shows that in 2008 Western Australia had the highest rate of Indigenous imprisonment followed by New South Wales then South Australia. The lowest rates of Indigenous imprisonment were in Tasmania and Victoria.
- Figure 3 shows the number of Indigenous prisoners distributed across the States and the Northern Territory. In 2008 New South Wales had the most Indigenous people in prison (32% of the national total) followed by Western Australia (23%) and Queensland (22%).

**Figure 2. Age standardised imprisonment rate for Indigenous adults, States and Northern Territory, 2001-2008**



Source: Australian Bureau of Statistics 2008

**Figure 3. Distribution of adult Indigenous prisoners across States and Territories, 2008**



Source: Australian Bureau of Statistics 2009a

## WHY ARE INDIGENOUS PRISONER NUMBERS INCREASING IN NSW?

As noted in connection with Figure 2, the age standardised New South Wales Indigenous imprisonment rate rose by 48 percent between 2001 and 2008. Over the same period, the non-Indigenous imprisonment rate increased by only seven percent in New South Wales. The increase in Indigenous imprisonment could be due to changes in offending, changes in the criminal justice system's response to offending or both. Each of these possibilities will be considered. In the first instance, it is necessary to consider whether the increase is coming from the remand population, the sentenced prisoner population or both. Some of the data needed to consider the reasons behind the increase are not available at a national level. Thus, the analysis below is limited to the increase in the adult Indigenous imprisonment in New South Wales.

Figure 4 separates New South Wales Indigenous prisoners into those who are sentenced and those on remand. Note that these figures and those presented below refer to the number of prisoners rather than the rate of imprisonment. It can be seen that both the number of people on remand (remandees) and the number serving a sentence have increased. The number of remandees is smaller but has increased at a greater rate (up 72%) since 2001 compared with sentenced prisoners (up 56%). These figures indicate that both are contributing to the increase in Indigenous imprisonment.

## WHAT HAS CAUSED THE INCREASE IN THE REMAND POPULATION?

The number of Indigenous remandees in New South Wales increased from 265 in 2001 to 456 in 2008 (up 72%). This accounts for about 24 percent of the total increase in the number of Indigenous people in prison in New South Wales. Figure 5 shows the change in the remand population by offence type from 2001 to 2008. The figure shows that by far the greatest contributor to the increase in the number of remandees is the offence of Acts intended to cause injury. This offence category accounts for 40 percent of the total increase in the remand population. This offence is followed by robbery (17% of the total increase), burglary (14% of the total increase) and sexual offences (11% of the total increase).

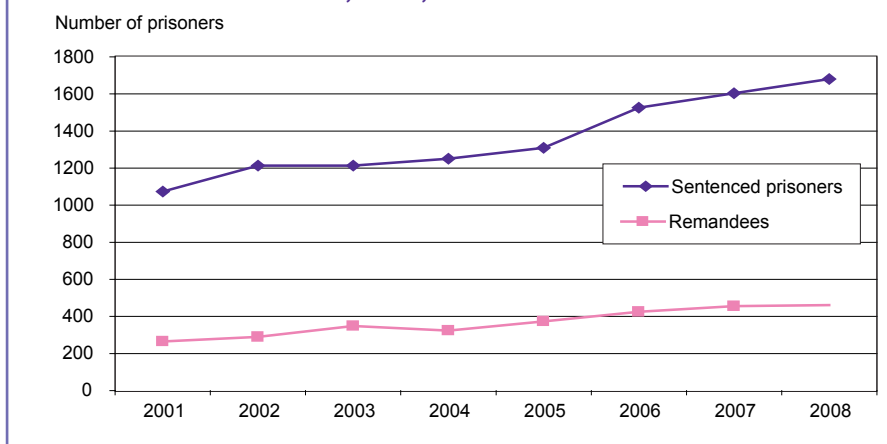
The increase in the remand population could be due to any or each of the following factors:

1. An increase in the number of Indigenous offenders brought to court.
2. An increase in the proportion of Indigenous offenders remanded in custody (ie. refused bail) prior to their court case.
3. An increase in the time spent on remand.

### 1. Has there been an increase in the number of Indigenous people brought to court?

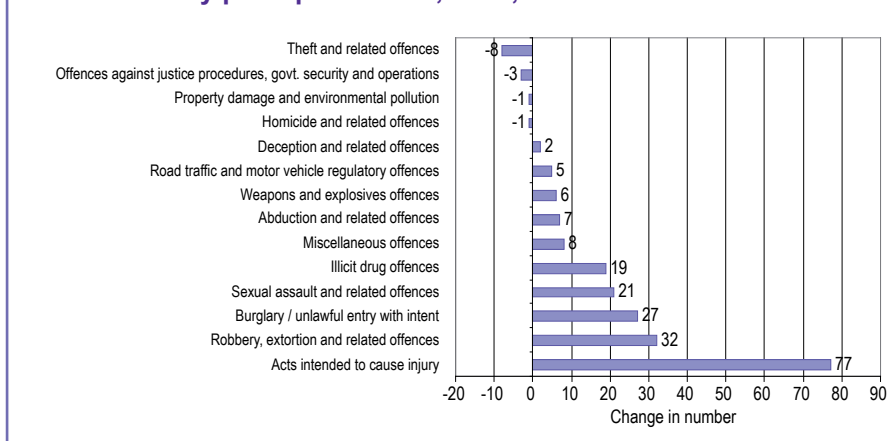
No. In 2001, 21,156 Indigenous adults had criminal matters finalised in the New South Wales criminal courts.<sup>4</sup> By 2007<sup>5</sup> that figure had fallen to 19,601. We saw above that the increase in remandees is concentrated among certain offences so it is possible that the incidence of these particular offences increased. The figures in Table 1 show, however, that the number of Indigenous people appearing for these offences has also fallen.

**Figure 4. Number of Indigenous prisoners by whether sentenced or on remand, NSW, 2001-2008**



Source: Australian Bureau of Statistics 2009b, 2009c

**Figure 5. Change in number of Indigenous prisoners on remand by principal offence, NSW, 2001-2008**



Source: Australian Bureau of Statistics 2009b

**Table 1. Number of Indigenous adults with a finalised court appearance by year for selected offences, NSW**

	Number of persons with a court appearance		
	2001	2007	% change
Acts intended to cause injury	5859	5814	-0.8
Robbery	258	172	-33.3
Burglary	974	706	-27.5
Sexual offences	170	130	-23.5

Source: NSW Bureau of Crime Statistics and Research

## 2. Has there been an increase in the proportion of Indigenous people refused bail?

Yes. In 2001, 12.3 percent of Indigenous people appearing in court in New South Wales were on remand (i.e. had been refused bail) at their final court appearance. In 2007 the figure had risen to 15.4 percent. Such a change might be expected if there was a change in the offence profile of Indigenous offenders toward more serious offences. However, Table 2 shows that within the four offences accounting for most of the change in the remand rate (from Figure 5), the remand rate has also increased.

## 3. Has time spent on remand increased?

Yes. In 2001 the average time that Indigenous remandees spent in prison in New South Wales was 3.3 months. In 2008 the figure had increased to 4.2 months. This pattern toward longer periods spent on remand is also reflected in mean periods on remand for particular offences, as seen in Table 3.

## WHAT HAS CAUSED THE INCREASE IN THE SENTENCED PRISONER POPULATION?

Figure 4 above showed the number of sentenced Indigenous people in New South Wales prisons from 2001 to 2008. Between 2001 and 2008, the number of sentenced prisoners in New South Wales increased by 56.4 percent, from 1074 to 1680. The increase in sentenced prisoners accounts for 76 percent of the total increase in the Indigenous prison population.

Figure 6 shows the change in the number of sentenced Indigenous prisoners by principal offence. As with the remand population, the number of Indigenous people in prison for acts intended to cause injury accounted

**Table 2. Percentage of Indigenous adults with a finalised court appearance who were on remand at finalisation by year for selected offences, NSW**

	Percentage on remand at finalisation (%)	
	2001	2007
Acts intended to cause injury	14.5	19.4
Robbery	65.9	76.7
Burglary	35.0	36.7
Sexual offences	27.1	35.4

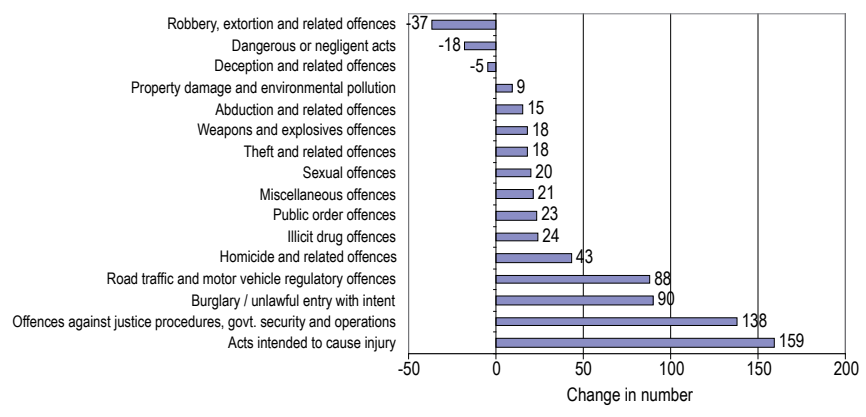
Source: NSW Bureau of Crime Statistics and Research

**Table 3. Mean time (months) on remand by year for Indigenous remandees for selected offences, NSW**

	Mean time on remand (months)	
	2001	2008
Acts intended to cause injury	2.4	2.8
Robbery	3.4	5.9
Burglary	1.7	4.5
Sexual offences	4.6	7.7

Source: Australian Bureau of Statistics 2009b

**Figure 6. Change in number of sentenced Indigenous prisoners by principal offence, NSW, 2001-2008**



Source: Australian Bureau of Statistics 2009b

for a considerable portion of the total increase (159 extra sentenced prisoners or 26% of the total increase in the sentenced prisoner population). The following five offences also showed substantial increases: offences against justice procedures (23% of total increase), burglary (15% of total increase) and road traffic offences (15% of total increase).

As with the increase in the remand population, there are several factors

that could account for the increase in the Indigenous sentenced prisoner population:

1. An increase in the number of Indigenous people found guilty in court.
2. An increase in the proportion of Indigenous offenders sentenced to prison.
3. An increase in the length of prison sentences due to increased severity by the courts.

### 1. Are more Indigenous adults being found guilty in court?

Not overall but for some offences, yes. In 2001 there were 15,023 Indigenous adults found guilty in the New South Wales courts. By 2007 this number had actually fallen to 14,701 people. While there has been a decline in the total number of Indigenous people found guilty, there have been increases in some of the offences that now have higher prisoner numbers (see Table 4). In particular, the number of Indigenous people found guilty of acts intended to cause injury, offences against justice procedures and road/traffic offences have all increased. Offences against justice procedures have shown the most dramatic rise, increasing by 33 percent.

### 2. Has there been an increase in the proportion of Indigenous offenders sentenced to prison?

Yes. In 2001, 16.9 percent of Indigenous adults convicted in New South Wales received a sentence of imprisonment. By 2007 that figure had risen to 20.4 percent. A change in the percentage of convicted offenders given a prison sentence could occur because the profile of offences among those convicted has become more serious. As can be seen from Table 5, however, the percentage of convicted offenders given a prison sentence has increased within the categories of offence which account for the biggest change in the sentenced prisoner population.

### 3. Has sentence length increased?

Yes. In 2001 the average time Indigenous prisoners expected to serve in prison in Australia was 30.4 months. By 2008 this figure had increased to 31.9 months. This appears to show an increase in sentence length but, once again, could possibly come about through a change in the offence profile of Indigenous offenders. As Table 6

**Table 4. Number of Indigenous adults found guilty by year for selected offences, NSW**

	Number of persons found guilty		
	2001	2007	% change
Acts intended to cause injury	2794	2909	4.1
Offences against justice proc.	1517	2020	33.2
Burglary	557	518	-7.0
Road traffic offences	3336	3418	2.5

Source: NSW Bureau of Crime Statistics and Research

**Table 5. Percentage of convicted Indigenous offenders receiving a prison sentence by year for selected offences, NSW**

	Percentage sentenced to prison (%)	
	2001	2007
Acts intended to cause injury	19.6	26.4
Offences against justice proc.	17.7	27.6
Burglary	60.7	62.4
Road traffic offences	8.2	9.0

Source: NSW Bureau of Crime Statistics and Research

**Table 6. Mean time (months) expected to serve by sentenced Indigenous prisoners by year for selected offences, NSW**

	Mean time expected to serve (months)	
	2001	2008
Acts intended to cause injury	18.0	18.8
Offences against justice proc.	17.0	12.1
Burglary	19.5	28.1
Road traffic offences	8.0	8.8

Source: Australian Bureau of Statistics 2009c

shows, however, sentence lengths have increased within a number of key offence categories (though not for offences against justice procedures).

## CONCLUSION

The New South Wales Indigenous imprisonment rate rose by 48 percent between 2001 and 2008. Approximately one quarter of the increase came from a growth in the remand population. Three quarters of the growth came from the sentenced prisoner population. The growth in

the remand population is due to a combination of a higher rate of bail refusal and an increase in the time spent on remand. The growth in the sentenced prisoner population appears to be due, in the main, to an increase in the proportion of Indigenous offenders given a prison sentence and the length of the prison terms imposed. There has been no overall increase in the number of Indigenous adults convicted but there was an increase in the number convicted specifically of offences against justice procedures. These



results suggest that the substantial increase in the number of Indigenous people in prison is due mainly to changes in the criminal justice system's response to offending rather than changes in offending itself.

The question arises as to why the criminal justice response to offending has had a greater impact on the Indigenous prison population than on the non-Indigenous prison population. It is impossible to give a definitive explanation here but Snowball and Weatherburn (2006) have shown the likelihood of a prison sentence is greatly increased if the offender has a lengthy prior criminal record, has been convicted serious violent offence or breaching a previous court order or has been convicted of multiple concurrent offences. Snowball and Weatherburn (2006) found that Indigenous offenders are more likely than non-Indigenous offenders to exhibit all of these factors. If there are more Indigenous offenders than non-Indigenous offenders on the cusp of a prison sentence, any lowering of the threshold for a prison sentence (or a longer prison sentence) is bound to have a greater impact on Indigenous than on non-Indigenous offenders.

This paper simply considers the broad patterns in the criminal justice which have coincided with the increase in the Indigenous prison population. Some questions which have arisen which could guide future research include: Why are Indigenous prisoners spending longer on remand? Why has the number of Indigenous people convicted of justice offences increased? Why has the number of Indigenous people remanded in custody and given a prison sentence increased?

## REFERENCES

Australian Bureau of Statistics 2008, *Prisoners in Australia 4517.0*, ABS, Canberra

Australian Bureau of Statistics 2009a, *Indigenous prisoners by most serious charge, NSW, 2001-2008*. Unpublished data compiled by special request

Australian Bureau of Statistics 2009b, *Unsentenced Indigenous prisoners by time on remand and most serious charge, NSW, 2001-2008*. Unpublished data compiled by special request

Australian Bureau of Statistics 2009c, *Sentenced Indigenous prisoners; sentence length by most serious charge, NSW, 2001-2008*. Unpublished data compiled by special request

## NOTES

1. Unless otherwise stated the rates reported here are the age standardised rates of imprisonment as reported in Table 17, *Prisoners in Australia 4517.0*, Australian Bureau of Statistics. The imprisonment figures are derived from a census of all prisoners in custody at June 30 each year. In all cases this paper refers to adults imprisoned or appearing before the courts, not juveniles.
2. The number of Indigenous male prisoners increased 50.4% from 4075 in 2001 to 6129 in 2008. The number of Indigenous female prisoners increased 52.7% from 370 in 2001 to 565 in 2008.
3. Less than one percent of the Australian Indigenous population reside in the ACT. The number of Indigenous adults in prison in the ACT has not risen between 2001 and 2008 but the numbers are very low. Over this period it fluctuated

from a minimum of four in 2003 and to a maximum of 16 in 2005. Some Indigenous prisoners from the ACT are held in NSW prisons and are counted in the NSW figures.

4. All New South Wales court statistics reported relate to adults in the Local, District and Supreme Courts. Unlike the imprisonment statistics they show numbers or counts for the whole year rather than just a snapshot at 30 June.
5. 2008 Higher Court data was not available at the time of publication.