

Trends in the Aboriginal female adult custodial population in NSW, March 2013 to February 2021

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AIM

To examine trends in the Aboriginal adult female custodial population between March 2013 and February 2021.

METHOD

Descriptive analysis of data extracted from a) Corrective Services NSW's Offender Information Management System (OIMS) for adult females between March 2013 and February 2021; b) Computerised Operational Policing System (COPS) relating to female adult Persons of Interest (POIs) proceeded against between March 2013 and February 2020; and c) NSW Criminal Courts Statistics for adult females between March 2013 and February 2020. This analysis was supplemented by regression analysis using an extract of the NSW Bureau of Crime Statistics and Research (BOCSAR) Re-offending Database (ROD) for adult females.

RESULTS

The Aboriginal adult female custodial population increased by 28%, from 224 to 287 between March 2013 and February 2021. The increase in Aboriginal females in prison mostly occurred in the four years from March 2013 to February 2017, after which the population stabilised. The overall increase was due to both a rise in the remand population (up 41% or 35 individuals) and the sentenced custody population (up 20% or 28 individuals).

Several factors contributed to the increase in Aboriginal women in custody. The number of Aboriginal women proceeded against to court by police increased, particularly for assault, intimidation/stalking, theft, fraud, breaches of violence and non-violence orders, illicit drugs and traffic offences. This resulted in an increased number of Aboriginal women sentenced to imprisonment. In addition, this growth in charges increased the remand population through more Aboriginal women being refused bail. We also note a modest increase in the number of bail breaches and bail revocations, and the average length of time spent in remand. Regression analyses showed that the increase in more serious offending among this group has outweighed reductions in the likelihood of imprisonment after the 2018 sentencing reforms.

CONCLUSION

The number of Aboriginal women in custody has stabilised in recent years. However, increasing rates of offending continue to exert upwards pressure on the Aboriginal female prison population.

KEYWORDS

Aboriginal over-representation

Imprisonment

Trends

INTRODUCTION

Aboriginal¹ over-representation in custody is a matter of long-standing and justified public concern. Aboriginal women in particular experience disproportionately high rates of imprisonment (Baldry & Cunneen, 2014, pp. 277, 280) and have at some points in time been the fastest growing prisoner cohort (Bartels, 2012; Ooi, 2018). A series of major reviews and inquiries have examined in detail the factors contributing to Aboriginal over-representation (see for example the Royal Commission into Aboriginal Deaths in custody in 1991 (AUSTLII, 1998);² and the Australian Law Reform Commission's inquiry into Aboriginal over-representation in custody in 2017³). Despite such inquiries, the over-representation of Aboriginal women among female prisoners persists. The most recent National Closing the Gap agreement commits Australian governments to reduce the rate of Aboriginal adults held in custody by 15% by 2031. The current trajectory of Aboriginal incarceration rates suggests that major systemic reform is required for this target to be met (Productivity Commission, 2022).

Much of the research on Aboriginal over-representation has focused on overall trends in the Aboriginal prison population and factors contributing to the growth in the incarceration of all Aboriginal people. Given that over 90% of the prison population is male (BOCSAR, 2022), the conclusions drawn from general analyses may not accurately reflect the experience of Aboriginal women. Legal scholars argue that greater attention should be paid to this issue because Aboriginal women are likely to have different patterns of offending and/or criminogenic needs than Aboriginal men (Bartels, 2010; Stubbs, 2011). They also highlight that the imprisonment of Aboriginal women can exacerbate intergenerational disadvantage through increased family separation and neglect (Baldry, 2009, p. 14; Beresford et al., 2020; Human Rights Law Centre & Change the Record, 2017; Murray & Farrington, 2008; Phelan et al., 2020; Shepherd et al., 2016). The few reports that have examined the over-representation of Aboriginal women in custody relative to non-Aboriginal women have identified several important factors which are prevalent among Aboriginal female offenders, including the experience of gender-based violence, accessing safe and secure housing and homelessness, and accessing appropriate assistance with education, mental health, disability and substance abuse (Baldry, 2009, p. 14; Baldry & Cunneen, 2014, p. 280; Human Rights Law Centre & Change the Record, 2017).

Research showing the growth in the number of Aboriginal women imprisoned has intensified the need for further work in this area. A report by Ooi (2018) examined trends in the adult female prison population, identifying Aboriginal women as the fastest growing cohort within NSW prisons. While not a major focus of the paper, Ooi identified that the proportion of the female prison population comprising Aboriginal inmates increased by 14% between 2011 and 2017. Consequently, the growth of Aboriginal women in custody outstripped that of non-Aboriginal women (an increase of 74% compared to 40%). Adding to this, the Department of Communities and Justice's (DCJ) Aboriginal Services Unit found that this growth also overtook that of Aboriginal men (ASU, 2020, p. 3). In the absence of evidence that the average length of stay or seriousness of offending had increased, Ooi's report concluded that most of the growth in the female custodial population came from a rise in court appearances, particularly for repeat offenders.

¹ In this report we use the term Aboriginal to refer to Aboriginal people, Torres Strait Islanders and people who identify both as Aboriginal and Torres Strait Islander. Note that only a very small proportion of the NSW population are of Torres Strait Islander origin only (see <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release#:~:text=Among%20the%20Aboriginal%20and%20Torres,and%20Torres%20Strait%20Islander%20origin>). We use the terms 'Indigenous' and 'Aboriginal and Torres Strait Islander' where original sources use these.

² The Royal Commission into Aboriginal Deaths in Custody was formed in 1987 with a full report inclusive of recommendations published in 1991. A list of reports on the inquiry can be accessed here: <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

³ In 2017 the Australian Law Reform Commission commenced an inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, the report can be accessed here: https://www.alrc.gov.au/wp-content/uploads/2019/08/summary_report_133_amended.pdf.

In 2021 the NSW Legislative Council's Select Committee on the High Level of First Nations People in Custody recommended that BOCSAR conduct research into the growing number of First Nations (referred to in this paper as Aboriginal) women in custody and the factors causing this trend.⁴ Responding to this recommendation, this brief updates and extends Ooi's (2018) analysis. Specifically, it aims to: 1) examine trends in the number of Aboriginal women in custody in NSW between 2013 and 2021; 2) compare trends in sentences at court for Aboriginal and non-Aboriginal women, and; 3) explore a variety of crime and justice factors affecting trends in imprisonment.

METHOD

Data sources

Data on adult females in custody, split by Aboriginality, were obtained from Corrective Services NSW's Offender Information Management System (OIMS). The adult female custody data from OIMS includes only those offenders held in gazetted correctional centres managed by Corrective Services NSW (CSNSW).⁵ Custody population data was counted at midnight on the last day of each month. This dataset also included custody receptions and custody discharges. Receptions refer to the number of persons that have been received into custody, whereas discharges refer to the number of persons who have been legally released from custody. In this brief we examine the eight-year period starting in March 2013 and ending in February 2021.⁶

To examine trends in legal actions, data on persons of interest (POIs) proceeded against by police were extracted from the NSW Police Force's Computerised Operational Policing System (COPS). A POI is a suspected offender legally proceeded against by police in connection with a criminal incident.⁷ Bail and criminal court data were obtained from the Court Data Warehouse (CDW), which is compiled from the JusticeLink system used by NSW Criminal Courts. These data included: police and court bail decisions, bail breaches, bail revocation rates, proven court appearances, and sentencing outcomes. Using these data, we also examined conviction and imprisonment rates for specific offences. An extract of data from BOCSAR's Re-offending Database (ROD) pertaining to adult females appearing in NSW Criminal Courts was also used to identify whether there has been any change in the likelihood and length of a prison sentence over time. The ROD contains details of all court appearances, youth justice conferences, and cautions from 1994 until the present. Reflecting the impact of the COVID-19 pandemic restrictions on the NSW prison population post March 2020, these types of data are examined over a seven-year period from March 2013 to February 2020.⁸

There are some differences in how Aboriginality is recorded in these datasets. For the COPS data, the Aboriginality of a Person of Interest (POIs) is self-reported at the time of the incident. That means each time an offender is involved in a criminal incident, they will be asked by police whether they identify as being of Aboriginal and/or Torres Strait Islander origin, with any prior recording of Aboriginality not considered.⁹ Aboriginality is sometimes recorded by police as unknown.¹⁰ To avoid undercounting, unknown POIs have been grouped with non-Aboriginal POIs. Differently, CDW and ROD data record

4 See recommendation 4 of the inquiry, available here: <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2602/Report%20No%201%20-%20First%20Nations%20People%20in%20Custody%20and%20Oversight%20and%20Review%20of%20Deaths%20in%20Custody.pdf>.

5 This includes persons sentenced or in remand, persons managed as forensic patients, persons held after expiry of their sentence awaiting deportation, and persons awaiting extradition to another jurisdiction. Persons in the Special Purpose Centre at Long Bay Correctional Centre are not included.

6 Ooi (2018) included data from 2011 (considering quarterly rather than monthly data prior to March 2013), presenting yearly averages. However, we begin our analysis from March 2013. We do not include data after February 2020 due to the impact of the COVID-19 pandemic restrictions on the NSW prison population (see Chan 2020 for further details).

7 It is important to note that the same female offender can be counted as a POI more than once if they are involved in numerous criminal incidents. Also, no POI information is recorded for criminal incidents where there is no known suspect. A POI proceeded against for two different incident types on the same COPS event number is only counted once.

8 The exception is data on bail breaches in NSW where a shorter time period was used as this data is only available from May 2014, after the *Bail Act 2013 No 26* (NSW), hereafter referred to as the *Bail Act 2013*, commenced.

9 Separate figures are not available for Aboriginal defendants and Torres Strait Islander defendants.

10 This is due to reasons such as police not asking/being unable to ask, or the POI choosing to not answer.

whether a person has ever (in the current or previous criminal episode) identified as being of Aboriginal and/or Torres Strait Islander origin.¹¹ This data is sourced from the latest version of BOCSAR's Reoffending Database (ROD) and applied to all years. For the OIMS data, Aboriginality refers to whether the person identified to Corrective Services NSW as being Aboriginal and/or Torres Strait Islander on reception into custody in either the current or any previous custodial episode. As such, in both ROD and OIMS data it is less likely to have Aboriginality recorded as unknown relative to COPS data, and thus unknowns are excluded from these data.

Analysis

We analysed most of the data from these datasets descriptively. To examine changes over time in the likelihood and length of a prison sentence, we use a linear probability model and regress these outcomes against a set of dummy variables for each year since 2013, adjusting for:

- offender demographics (age, socio-economic disadvantage quartile of postcode of residence, remoteness area of postcode of residence);
- index appearance characteristics (jurisdiction, Australian and New Zealand Standard Offence Classification (ANZSOC)¹² of the principal offence, Median Sentence Ranking (MSR),¹³ bail status at finalisation, the number of concurrent offences, and dummy variables for violent, property, drug, domestic violence and driving offences); and
- criminal history variables (age at first contact with the criminal justice system, the number of prior proven court appearances in the last 5 years, prior prison sentences in the last 5 years, and separate variables for prior proven violent, property, drug and domestic violence offences in the last 5 years).

The coefficients on the year dummy variables indicate whether the likelihood of imprisonment has increased, decreased, or remained stable each year since 2013 once correcting for these other factors. In other words, the regression analysis identifies whether there has been an increase in sentencing severity after accounting for any changes in the composition of the female offender population over time.

RESULTS

Trends in the Aboriginal female adult prison population between 2013 and 2021

Figure 1 shows the monthly adult female prison population in NSW, by Aboriginality, from March 2013 to February 2021. Table 1 presents 12-month averages for this same period. In the 8 years to February 2021, the Aboriginal female prison population increased from a monthly average of 224 to 287, up 28.1% or 63 individuals. Over the same period, the number of non-Aboriginal women in custody increased from a monthly average of 473 to 562, up 18.8% or 89 individuals.

11 ROD contains 'Aboriginality ever recorded' which is set to 'Aboriginal' for any person who had identified as being of Aboriginal and/or Torres Strait Islander origin in their contact with Police in relation to any charges finalised since 1994. Note that separate figures are not available for Aboriginal defendants and Torres Strait Islander defendants.

12 The ANZSOC classification system provides a uniform national statistical framework for classifying criminal behaviour in the production and analysis of crime and justice statistics. Its two main purposes include: providing a standardised statistical framework for organising key behavioural characteristics of criminal offences; and overcoming differences in legal offence definitions across states and territories (see <https://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0>).

13 The MSR is a proxy for how serious an offence is. It ranks offences from 1 to 135, by how harsh a penalty the median person received for the offence. Lower values correspond to more serious offences (e.g., rank 1 is murder). Further information is provided by Mackinnell et al. (2010).

While the number of Aboriginal women in custody is higher in 2021 than in 2013, it is apparent from Figure 1 that most of the increase occurred in the earlier half of the series. For both Aboriginal and non-Aboriginal women, the custodial population steadily increased between March 2013 and February 2017. Over this period the Aboriginal women’s custodial population rose by 108 or an average of 27 individuals per year.

Since 2017, both the Aboriginal and non-Aboriginal female custodial population largely stabilised, before sharply declining after February 2020. Table 1 shows that over the 12 months to February 2020, the average number of Aboriginal women in custody was 325 compared to 332 in the equivalent period in 2017. Over the next 12 months (i.e., to February 2021) the monthly average fell 38 individuals to 287. For non-Aboriginal women the average number in custody was 646 in the 12 months to February 2020 compared to 646 in the equivalent period in 2017. The average number of Aboriginal women in custody fell by 84 individuals to 562 in the following 12 months to February 2021.

The decline after February 2020 coincides with the beginning of the first wave of the COVID-19 pandemic in NSW. From March 2020, several measures were introduced to reduce the spread of COVID-19 in criminal justice settings. These included: the suspension of new trials and sentence hearings in the District Court; Local Court appeals, arraignments and readiness hearings in the District Court; postponement of defended hearings, and sentencing of Local Court matters likely to result in custodial penalty; and changes to the Crimes (Administration of Sentences) Act 1999 (NSW) allowing the Commissioner of Corrective Services to release inmates on parole if they fulfil certain criteria; and directions to release defendants on bail (Chan, 2020; NSW Bar Association, 2021; NSW Department of Communities and Justice, 2021). Over the same period, criminal activity also declined sharply (Kim & Leung, 2020). These factors were responsible for the large decline in the number of adult women in custody from February 2020 onwards. We therefore exclude this period from our remaining analyses.

Figure 1. NSW adult female prison population, by Aboriginality, March 2013 - February 2021

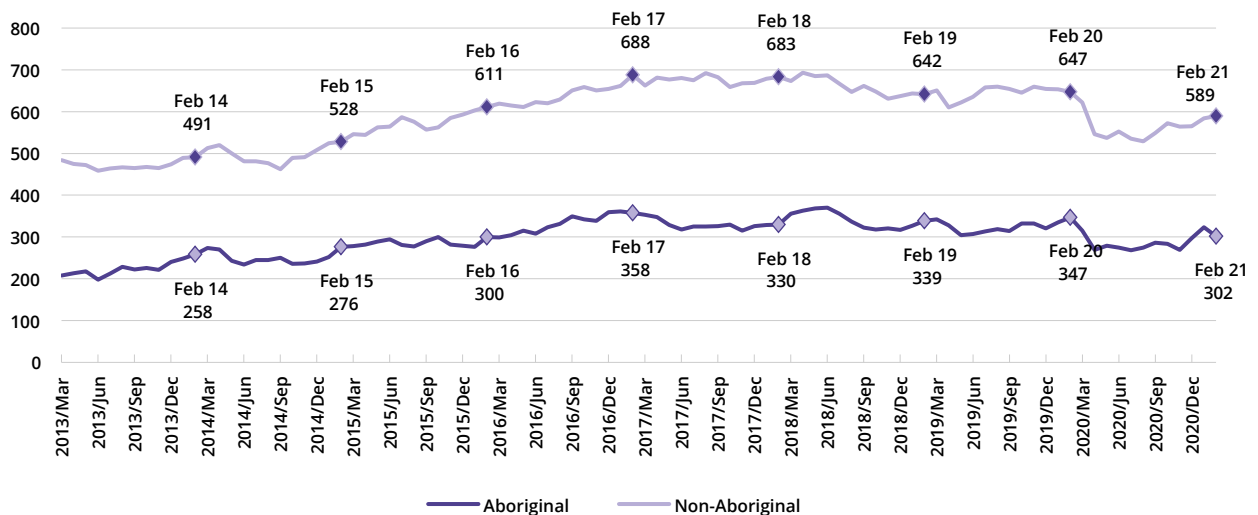


Table 1 also displays the Aboriginal and non-Aboriginal female prisoner numbers by legal status. This shows that for both Aboriginal and non-Aboriginal women, the remand and sentenced populations grew over the 7-year period. The average number of Aboriginal women in remand increased by 52.3% or 45 individuals, from 86 in the 12 months to February 2014 to 131 in the 12 months to February 2020. The number of Aboriginal women in sentenced custody increased at a slightly lesser rate, rising from 138 to 194 over the same 7-year period, constituting a 40.6% increase or 56 individuals. As with the total number of Aboriginal women in custody, the increase in Aboriginal women in both remand and sentenced custody largely occurred in the four years to February 2017 and then stabilised.

Among non-Aboriginal females, the growth in remand numbers greatly outpaced sentenced numbers. Over the 7 years from March 2013 to February 2020, the non-Aboriginal female remand population grew from 145 to 268 (up 84.8% or 123 individuals). It peaked in the 12 months to February 2017 at 280 individuals, slightly declining over the rest of the period. Meanwhile, the non-Aboriginal female sentenced population only grew by 15.2% or 50 individuals (from 328 to 378). It stabilised after peaking in the 12 months to February 2018 at 399 individuals, before declining in the 12 months to February 2020.

Table 1. Average monthly number of women in custody, by Aboriginality and custodial status

Legal status	Average monthly number ^a								7-year difference		8-year difference	
	Mar 13 - Feb 14	Mar 14 - Feb 15	Mar 15 - Feb 16	Mar 16 - Feb 17	Mar 17 - Feb 18	Mar 18 - Feb 19	Mar 19 - Feb 20	Mar 20 - Feb 21	N	%	N	%
Aboriginal												
Total	224	250	286	332	330	341	325	287	101	45.1%	63	28.1%
Remand	86	84	103	131	131	142	131	121	45	52.3%	35	40.7%
Sentenced	138	166	183	202	199	199	194	166	56	40.6%	28	20.3%
Non-Aboriginal												
Total	473	498	574	640	676	660	646	562	173	36.6%	89	18.8%
Remand	145	167	199	280	277	261	268	223	123	84.8%	78	53.8%
Sentenced	328	331	375	360	399	399	378	339	50	15.2%	11	3.4%

^a Represents the average of the count of the number of people on the last day of each month, rounded to integers.

Trends in receptions and length of stay

Growth in the prison population can be caused by an increase in the number of people being received into custody, or an increase in the average time spent in custody, or both. Table 2 presents the annual number of Aboriginal and non-Aboriginal females received into custody over the 7 years from March 2013 to February 2020 with most of the increase occurring in the first four years. It shows that Aboriginal female receptions rose by 38.0% or 299 women from 786 in the 12 months to February 2014 to 1,085 in the 12 months to February 2020. The number of non-Aboriginal women received into custody also increased by 35.0% or 405 women, rising from 1,158 to 1,563.

When receptions are broken down by legal status (see Table 2) we see that the fastest growth in receptions was for Aboriginal women received into sentenced custody. Female Aboriginal receptions into sentenced custody increased by 58.6% from 152 in the 12 months to February 2014 to 241 in the 12 months to February 2020. This occurred despite a temporary period of decline between March 2017 and February 2019. The growth exceeded that of non-Aboriginal females, which rose by 33.3% or 77 women from 231 to 308.

Table 2. Annual number of receptions of females into custody, March 2013 to February 2020, by Aboriginality

Legal status	Annual number ^a							7-year difference	
	Mar 13 - Feb 14	Mar 14 - Feb 15	Mar 15 - Feb 16	Mar 16 - Feb 17	Mar 17 - Feb 18	Mar 18 - Feb 19	Mar 19 - Feb 20	N	%
Aboriginal									
Total	786	708	828	980	1,016	1,073	1,085	299	38.0%
Remand	634	535	645	749	793	860	844	210	33.1%
Sentenced	152	173	183	231	223	213	241	89	58.6%
Non-Aboriginal									
Total	1,158	1,160	1,338	1,526	1,558	1,485	1,563	405	35.0%
Remand	927	850	1016	1,223	1,237	1,193	1,255	328	35.4%
Sentenced	231	310	322	303	321	292	308	77	33.3%

^a Sum of each month within the calculated year.

Meanwhile, the number of remand receptions for Aboriginal and non-Aboriginal females both grew by around 35%. Remand receptions for Aboriginal females increased from 634 in the 12 months to February 2014 to 844 in the 12 months to February 2020 and for non-Aboriginal females, from 927 to 1,255. A notable difference between the groups is that the number of Aboriginal females received into remanded custody has continued to increase from March 2017 onwards, while the corresponding figures for non-Aboriginal females have been stable.

Next, we examine the average length of time adult females spend in custody. Figures 2 (a) and (b) respectively show the yearly average length of stay for Aboriginal and non-Aboriginal females released from remand and sentenced custody. Remanded custody includes those in remand and who have not been convicted or sentenced to a custodial penalty. Sentenced custody is total duration of time in custody for those whose sentence has expired and who have been discharged to parole, as well as any time they may have spent in remand.

For both Aboriginal and non-Aboriginal women the average length of time spent in remand increased by approximate 14 days from the 12 months to February 2014 to the 12 months to February 2020. For Aboriginal females, there was a steady increase in the three years between March 2013 and February 2016. Following this, the average length of time spent in remand has been stable, except for an increase in the 12 months to February 2019. These patterns are broadly similar for non-Aboriginal women discharged from remanded custody.

The average length of stay for Aboriginal women discharged from sentenced custody remained stable throughout the time series. For non-Aboriginal females however, these numbers fluctuated across the time series, with an increase in the final two years to February 2020 to more than 300 days on average.

Figure 2(a) Average length of stay in remanded custody, by Aboriginality

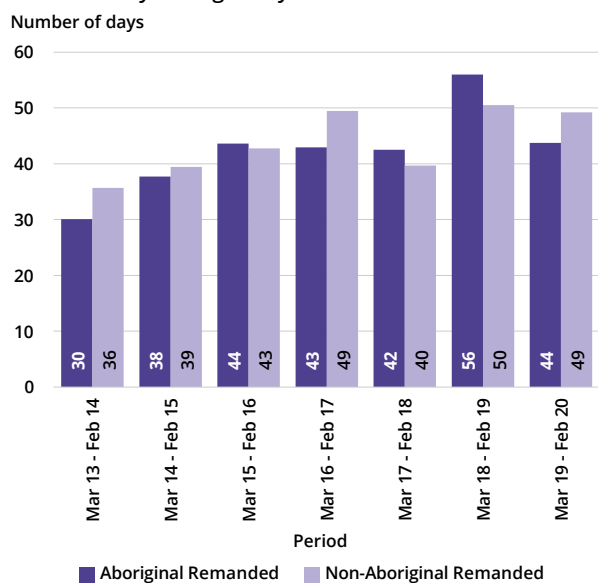
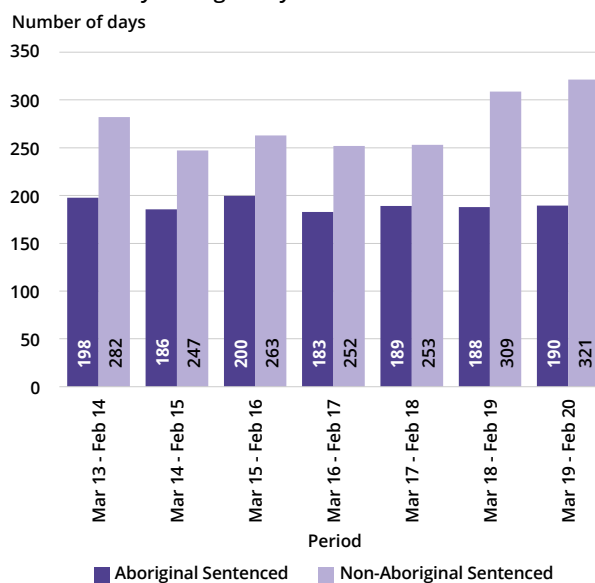


Figure 2(b) Average length of stay in sentenced custody, by Aboriginality



Trends in persons proceeded against by police

So far, we have shown that a) the increase in the adult Aboriginal female custodial population is due to an increase in both the remand and sentenced populations, and that b) the increase largely occurred prior to February 2017 after which the population stabilised. A factor that affects both these segments of the custodial population is the volume of people being brought before the courts. To examine this further, Figures 3 (a) and (b) present trends in the number of Aboriginal and non-Aboriginal female POs proceeded against to court by police over the 7 years to February 2020. The figure shows an increase in both the number of Aboriginal females and the number of non-Aboriginal females referred to court, with most of the increase occurring in the first four years of the time series (along similar lines to the pattern

in custody volumes). Over the 7 years to February 2020, the number of Aboriginal female POIs proceeded against to court by police for a criminal event¹⁴ increased by 2,000 (or 61.9% from 3,230 to 5,230; see Figure (a)). The increase was consistent across the time series. Meanwhile, the number of non-Aboriginal female POIs¹⁵ proceeded against to court increased by 5,920 or 28.9% (see Figure (b)).

Figure 3(a). Number of Aboriginal POIs proceeded to court

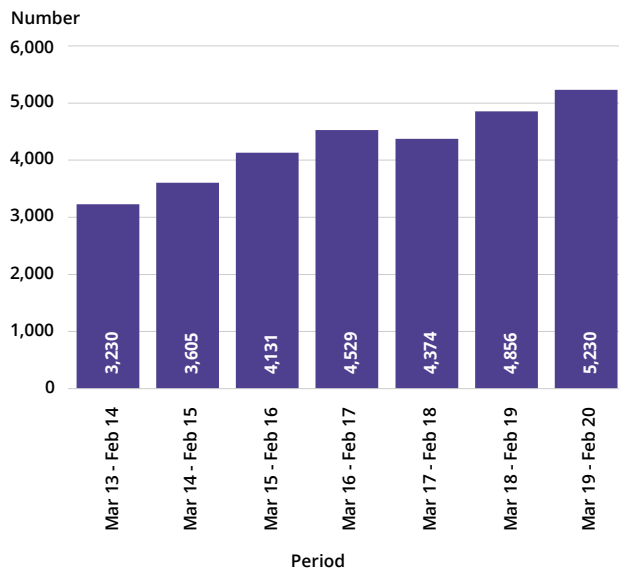
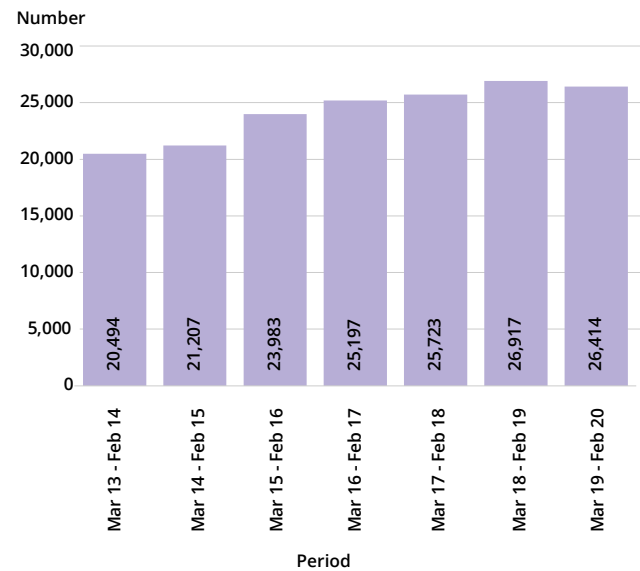


Figure 3(b). Number of Non-Aboriginal POIs proceeded to court



Next, we examine the contribution of different offence types to the increase in adult females proceeded against by police to court. Table 3 presents the number of Aboriginal females proceeded against to court in the 12 months to February 2013 and the 12 months to February 2020, by the type of offence and ANZSOC division (ABS, 2011). Table 3 shows the offender's most serious charge. Comparing the percentage difference between the two years, the largest increases in the number of Aboriginal female POIs proceeded against were in the following offence categories:

- Theft and related offences (an increase of 405 individuals or 62.0%, from 653 to 1,058);
- Breach violence and non-violence orders (an increase of 294 individuals or 170.9%, from 172 to 466);
- Assault (an increase of 239 individuals or 29.7%, from 805 to 1,044);
- Fraud (an increase of 211 individuals or 188.4%, from 112 to 323);
- Intimidation/stalking (an increase of 205 individuals or 146.4%, from 104 to 345);
- Illicit drugs (an increase of 153 individuals or 68.6%, from 223 to 376); and
- Traffic offences (an increase of 144 individuals or 42.9%, from 336 to 480).

¹⁴ A person proceeded against for two different incident types on the same COPS event number would only be counted once.

¹⁵ This includes those who were categorised as Aboriginality unknown as well as those categorised as non-Aboriginal.

Table 3. Number of Aboriginal female POIs proceeded against to court, by type of offence, March 2013 - February 2014 vs. March 2019 - February 2020

ANZSOC offence category	Aboriginal female POIs proceeded against to court			
	Mar 13 - Feb 14	Mar 19 - Feb 20	Difference N	Difference % ^b
Homicide and related offences	5	6	1	n.c.
Assault	805	1,044	239	29.7%
Intimidation/stalking	140	345	205	146.4%
Sexual assault and related offences	0	16	16	n.c.
Dangerous or negligent acts endangering persons	24	63	39	162.5%
Abduction, harassment and other offences against the person	28	46	18	64.3%
Robbery, extortion and related offences	36	47	11	30.6%
Unlawful entry with intent/burglary, break and enter	106	183	77	72.6%
Theft and related offences	653	1,058	405	62.0%
Fraud, deception and related offences	112	323	211	188.4%
Illicit drug offences	223	376	153	68.6%
Prohibited and regulated weapons and explosives offences	34	77	43	126.5%
Property damage and environmental pollution	135	221	86	63.7%
Public order offences	249	282	33	13.3%
Traffic and vehicle regulatory offences	336	480	144	42.9%
Breach of violence and non-violence orders	172	466	294	170.9%
Miscellaneous/Unknown offences ^a	55	54	-1	-1.8%
Total	3,230	5,230	2,000	61.9%

^a Includes breach of custodial order offences and breach of community-based order, which are not commonly recorded in POI data as they are primarily dealt with by the courts. As well as offences against government operations, offences against government security, and other offences against justice procedures.

^b n.c. is used where the count in either of the 12-month periods is less than 10. Anything below 10 would have shown a misleading percentage change.

Trends in bail refusals and breaches

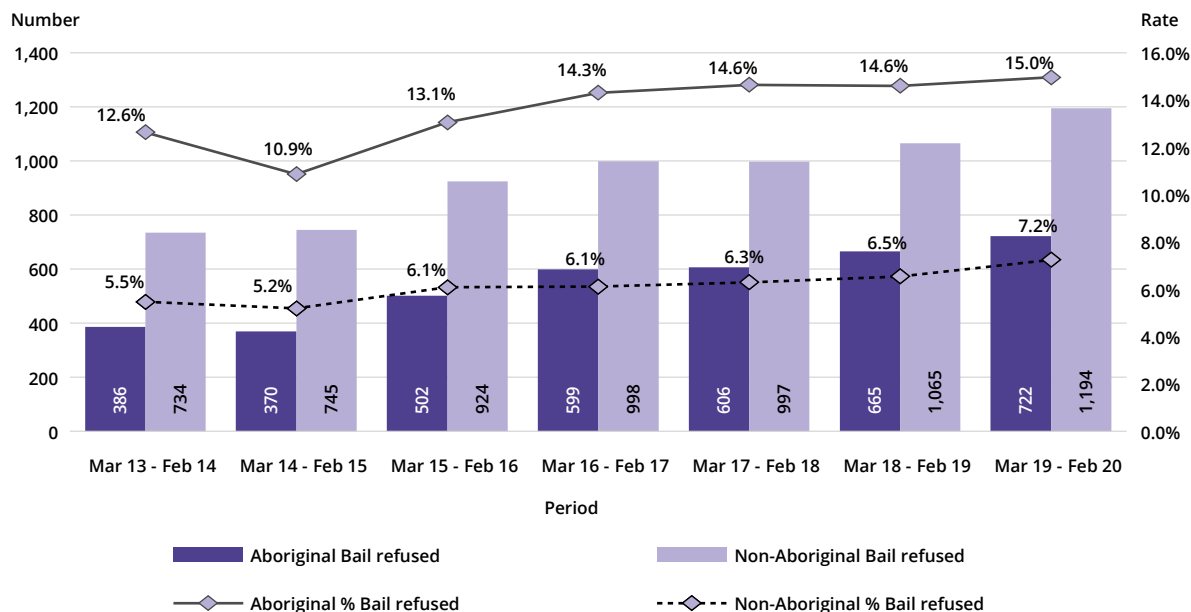
The previous section suggested that some of the increase in the remand and sentenced custodial populations was due to an increase in the number of Aboriginal women proceeded against to court, mostly for violent offences, theft, fraud, breach violence/non-violence orders, and drug offences. Another factor that can affect receptions into remand is bail decisions. There are two bail-related reasons why the number of remanded Aboriginal females may have increased: a) an increase in the number of new offenders refused bail; and b) an increase in the number of bail revocations following a breach of bail. The former can occur because of an increase in the number of individuals charged who will then be subject to a bail decision, an increase in the bail refusal rate, or both. The latter can occur because of an increase in the number of breaches of bail, or the rate at which bail is revoked for a breach, or both.

Bail refusals

We examine the first of these two explanations in Figure 4, which shows the number and proportion of Aboriginal and non-Aboriginal females refused bail by the courts at their first court bail appearance. For both cohorts, the number of females bail refused increased over the 7-year period; for Aboriginal females, the increase was 336 (or 87.0%) individuals, from 386 in the 12 months to February 2014 to 722 in the 12 months to February 2020, and non-Aboriginal females increased by 460 (or 62.7%) individuals, from 734 to 1,194. Once again, the increase largely occurred in the first 4 years of the series.

Figure 4 also shows that the bail refusal rate for Aboriginal females was considerably higher in the 12 months to February 2020 than in the 12 months to February 2014 (15.0% versus 12.6% respectively). Since March 2016 the bail refusal rate has remained largely stable for Aboriginal females. The timing of the increase in bail refusals is consistent with the 'Show Cause' amendments to the *Bail Act 2013* which commenced in January 2015 and increased the rate of bail refusal in certain circumstances (for further details see Yeong & Poynton, 2018; Weatherburn & Fitzgerald, 2015).¹⁶

Figure 4. Number and rate of court bail refusal at first court appearance, by Aboriginality



Breach of bail

We also examine trends in the number of bail breaches established and the number and percent of bail revocations (see Figures 5 (a) and (b)). Data on bail breaches is only available from May 2014, after the *Bail Act 2013* commenced. To maintain consistency with the rest of the report, we examine trends over the 5-year period from March 2015 to February 2020.

These data show that there was a substantial increase in the number of bail breaches established for both Aboriginal and non-Aboriginal women over the 5-year period examined. For Aboriginal females, bail breaches increased by 410 or 126.5% (from 324 in the 12 months to February 2016 to 734 in the 12 months to February 2020) and for non-Aboriginal females, bail breaches increased by 626 (or 100.2% from 625 to 1,251). Over this same period, there was a decline in the proportion of bail orders revoked by the court for a breach of bail. For Aboriginal women, the rate of bail revocation declined by 8 percentage points (p.p.) over the five years and for non-Aboriginal women the rate of bail revocation declined by 7 p.p..

¹⁶ Legislative changes to the *Bail Act 2013* came into effect on the 20th of May 2014. These replaced the presumption system with an unacceptable risk test (Weatherburn & Fitzgerald, 2015). However, shortly after the commencement of the *Bail Act 2013*, a series of high-profile bail releases created significant political pressure to strengthen the restrictions on bail, leading to the introduction of the show cause amendments (Weatherburn & Fitzgerald, 2015). This manifested in an immediate decline in the rate of bail refusals followed by an increase following the show cause amendments. The net result of these changes to the *Bail Act 2013* was an increase in the probability of the courts refusing bail to a defendant accused of a non-minor offence (Yeong & Poynton, 2018).

This means that although there was still an increase in the number of individuals who went to custody because their bail was revoked, the magnitude of the change was much smaller than the growth in bail breaches. The net result is that for Aboriginal women, the number of bail revocations grew by 63.4% or 59 (i.e., from 93 to 152) and for non-Aboriginal women, bail revocations grew by 47.9% or 81 (from 169 to 250). As the number of bail revocations is relatively small, it only contributes modestly to the remand population.

Figure 5(a). Number and rate of bail breaches established and revocations for Aboriginal women

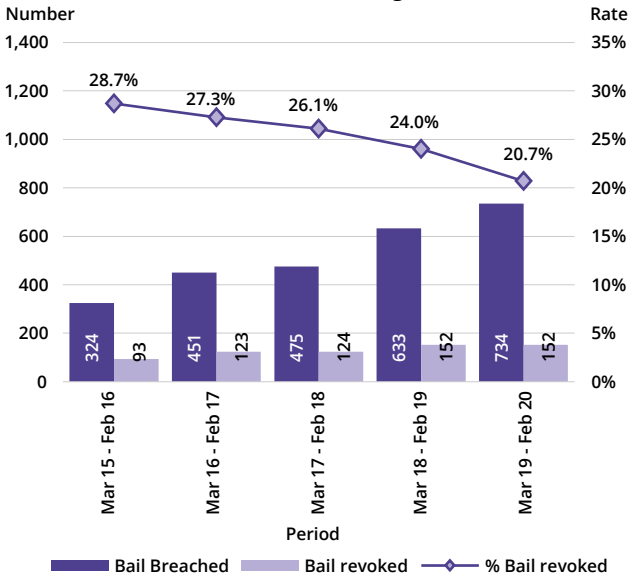
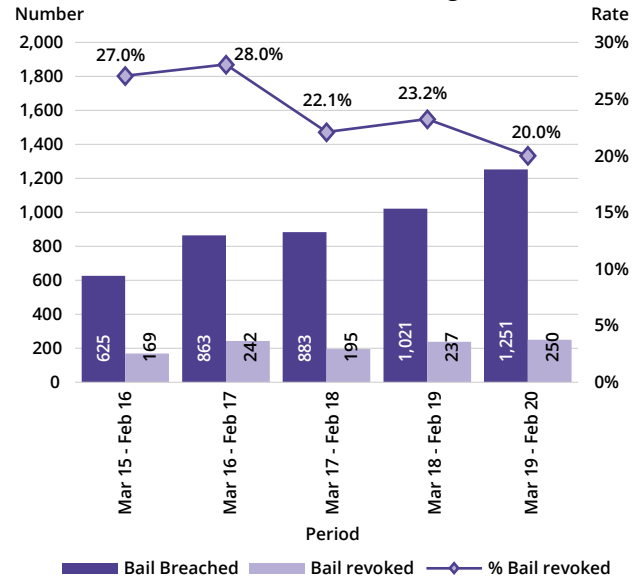


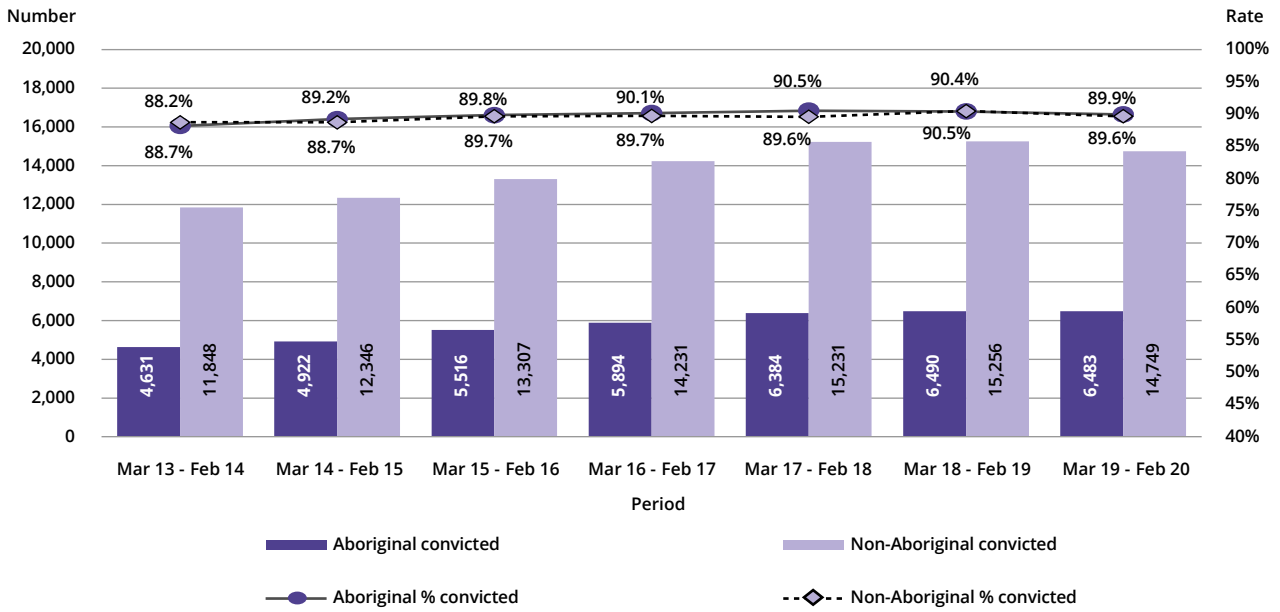
Figure 5(b). Number and rate of bail breaches established and revocations for non-Aboriginal women



Trends in convictions and prison sentences

Earlier in the paper we saw that the number of adult Aboriginal females proceeded against to court increased by 61.9% over the 7-years to February 2020. The extent to which legal actions contribute to an increase in the sentenced population is dependent upon the rate at which individuals proceeded against to court are convicted and sentenced to imprisonment. Figure 6 shows that between March 2013 and February 2020 the number of Aboriginal and non-Aboriginal women with at least one proven offence increased, but, for both groups, the conviction rate remained stable at around 90%. As with other measures considered, the increase in the number of Aboriginal females convicted in court predominantly occurred prior to February 2017.

Figure 6. Number and rate of adult women with at least one proven offence, by Aboriginality



We next turn to the imprisonment rate for females with a proven offence. Figure 7 plots the number and proportion of Aboriginal and non-Aboriginal females sentenced to imprisonment between March 2013 and February 2020. Despite there being a greater volume of non-Aboriginal female offenders with a proven court appearance, the number of Aboriginal women sentenced to prison each year is similar to the number of non-Aboriginal women sentenced to prison because the imprisonment rate is much higher for Aboriginal women.

When comparing the first and the last year of our study period, the number of Aboriginal and non-Aboriginal females sentenced to custody increased, but the proportion of court appearances resulting in a full-time prison penalty remained stable. In the 12 months to February 2014, 477 Aboriginal women were sentenced to custody compared with 675 in the 12 months to February 2020 (an increase of 198 individuals or 41.5%). While the rate of imprisonment was similar in these two years (approximately 10%), in the intervening years, the imprisonment rate increased to 12.9% in the 12 months to February 2017 before declining.

The volume of non-Aboriginal women sentenced to custody also increased, rising from 440 women in the 12 months to March 2013 to 615 women in the 12 months to February 2020 (an increase of 175 or 39.8%). Generally, we observe that the number of imprisoned females in both groups increased in the earlier half of the series and subsequently declined.

Again, this increase was concentrated in the earlier part of our series. For Aboriginal women, custodial sentences decreased to 675 sentences between March 2016 and February 2017 following a peak of 768 in the 12 months between March 2016 to February 2017. For non-Aboriginal women, the number in sentenced custody mostly remained stable after the 12 months to March 2015, when numbers sentenced to prison grew by 178 individuals from the previous year. Custodial sentences for non-Aboriginal females only decreased in the final year we observe (to 615 sentences).

Figure 7. Number and proportion of adult women sentenced to custody, by Aboriginality

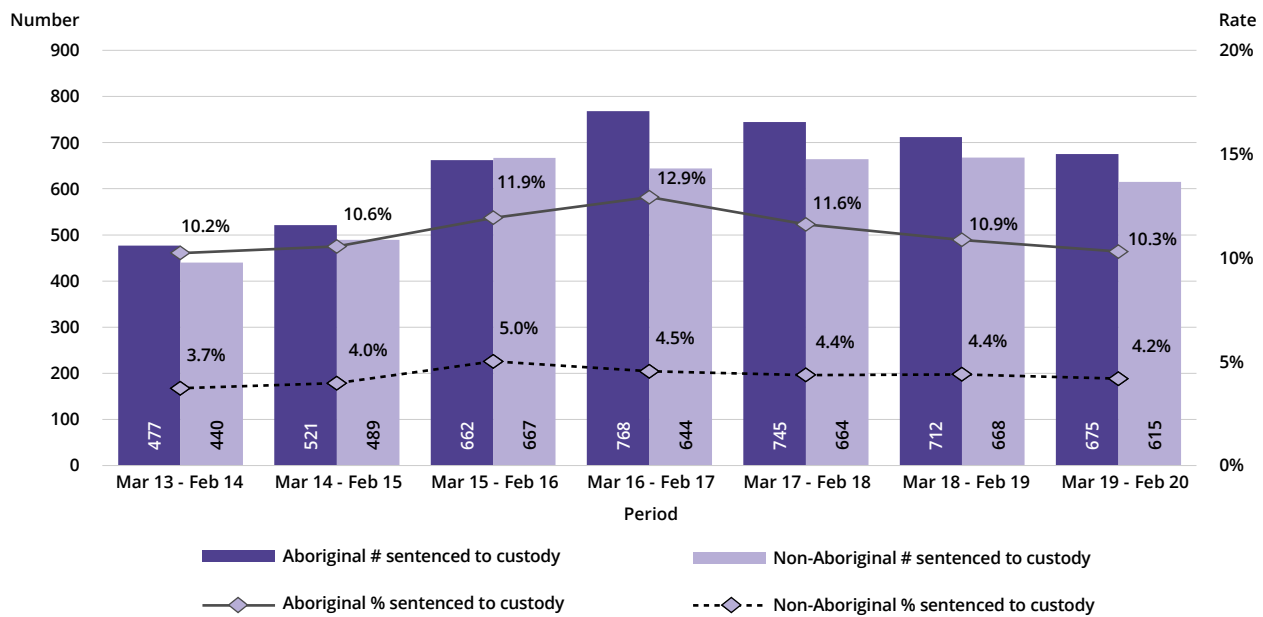


Table 4. Number and proportion of adult Aboriginal females sentenced to custody by offence type, March 2013 - February 2014 vs. March 2019 - February 2020

Offence	Number sentenced to custody				Percentage sentenced to custody		
	Mar 13 - Feb 14	Mar 19 - Feb 20	Difference N	Difference % ^b	Mar 13 - Feb 14	Mar 19 - Feb 20	Difference (p.p.) ^b
Homicide and related offences	2	0	-2	n.c	100.0%	0.0%	n.c
Assault	84	119	35	41.7%	9.9%	12.3%	2
Intimidation/stalking	15	29	14	93.3%	12.1%	10.3%	-2
Sexual assault and related offences	0	3	3	n.c	0.0%	33.3%	n.c
Dangerous or negligent acts endangering persons	3	21	18	n.c	5.4%	25.6%	n.c
Abduction, harassment and other offences against the person	5	8	3	n.c	12.5%	24.2%	n.c
Robbery, extortion and related offences	13	20	7	53.8%	56.5%	71.4%	14
Unlawful entry with intent/burglary, break and enter	38	59	21	55.3%	52.8%	46.5%	-6
Theft and related offences	115	154	39	33.9%	16.7%	17.0%	0
Fraud, deception and related offences	18	45	27	150.0%	15.0%	16.2%	1
Illicit drug offences	33	27	-6	-18.2%	9.7%	4.2%	-6
Prohibited and regulated weapons and explosives offences	1	8	7	n.c	2.5%	7.2%	n.c
Property damage and environmental pollution	5	14	9	n.c	2.8%	6.0%	n.c
Public order offences	16	21	5	31.3%	5.0%	7.1%	2
Traffic and vehicle regulatory offences	37	34	-3	-8.1%	3.8%	2.7%	-1
Breach of violence and non-violence restraining orders	9	25	16	n.c	5.6%	9.2%	n.c
Miscellaneous/unknown offences ^a	83	88	5	-8.3%	12.3%	8.6%	-4
Total	477	675	198	41.5%	10.2%	10.3%	0

^a Includes breach of custodial order offences, breach of community-based order, offences against government operations, offences against government security, and other offences against justice procedures.

^b n.c is used where the count in either of the 12-month periods is less than 10. Anything below 10 would have shown a misleading percentage change.

Table 4 presents the number and proportion of Aboriginal females sentenced to imprisonment by their principal offence type for the 12 months to February 2014 as well as the 12 months to February 2020. The increase in Aboriginal females sentenced to custody over the 7-year period examined predominantly occurred because of an increase in prison sentences for:

- Theft (up 39 individuals or 33.9%, from 115 to 154);
- Assault (up 35 individuals or 41.7%, from 84 to 119);
- Fraud (up 27 individuals or 150%, from 18 to 45);
- Unlawful entry (up 21 individuals or 55.3%, from 38 to 59); and
- Intimidation/stalking (up 14 individuals or 93.3%, from 15 to 29);

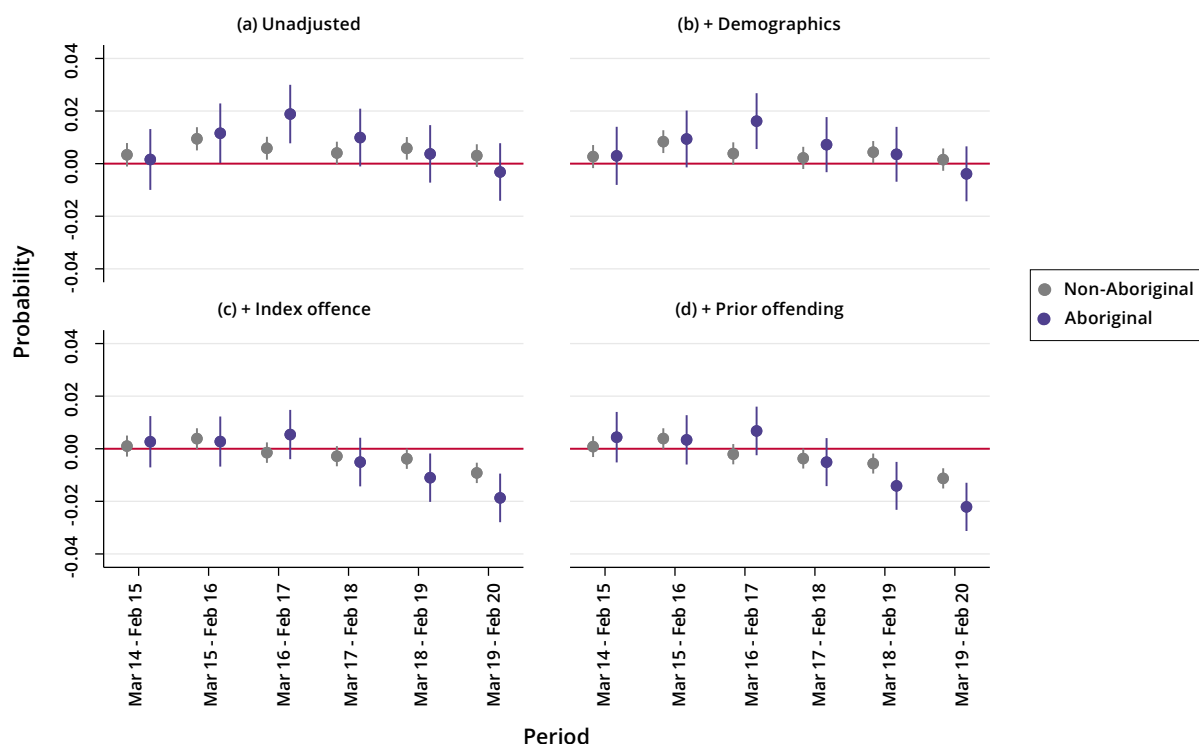
Taken together these offence categories account for 68.7% of the 198 additional prison sentences imposed for Aboriginal women over this period. Given the consistency in the conviction rate across the time series, and the proportion of convicted offenders sentenced to imprisonment being similar in these two periods, it is likely that the increase in Aboriginal females sentenced to custody is caused by the increase in legal actions against Aboriginal women.

Trends in the likelihood of a prison sentence and sentence length

The previous section showed that the observed upward trend in the number of prison sentences imposed for Aboriginal women largely occurred because of an increase in proven court appearances, particularly for violent offences, rather than an increase in the proportion of Aboriginal women sentenced to imprisonment. The fact that the imprisonment rate for Aboriginal women has not changed significantly from that observed in the 12 months to February 2014 is somewhat surprising given Donnelly's (2020) findings that the 2018 sentencing reforms reduced the likelihood of receiving a prison sentence in NSW.

In this section, we investigate possible reasons for this, by considering changes in sentencing severity over time after accounting for any changes in the composition of the female offender population. Figure 8 (see also Table Appendix Table A1) presents estimates of the marginal change in the probability of imprisonment from a series of regressions which progressively control for a larger range of factors affecting sentencing (all models include court fixed effects). The coefficient associated with a year represents how much more or less likely an Aboriginal female is to receive a custodial penalty compared to the referent year (March 2013 to February 2014). We exclude records with a principal offence involving a breach of a community order because the volume of ICOs has increased since the commencement of the sentencing reforms (due to suspended sentences being abolished) and breaches of ICOs are not recorded in the court data. Including these could therefore artificially reduce the likelihood of a prison sentence in the latter part of the study period.

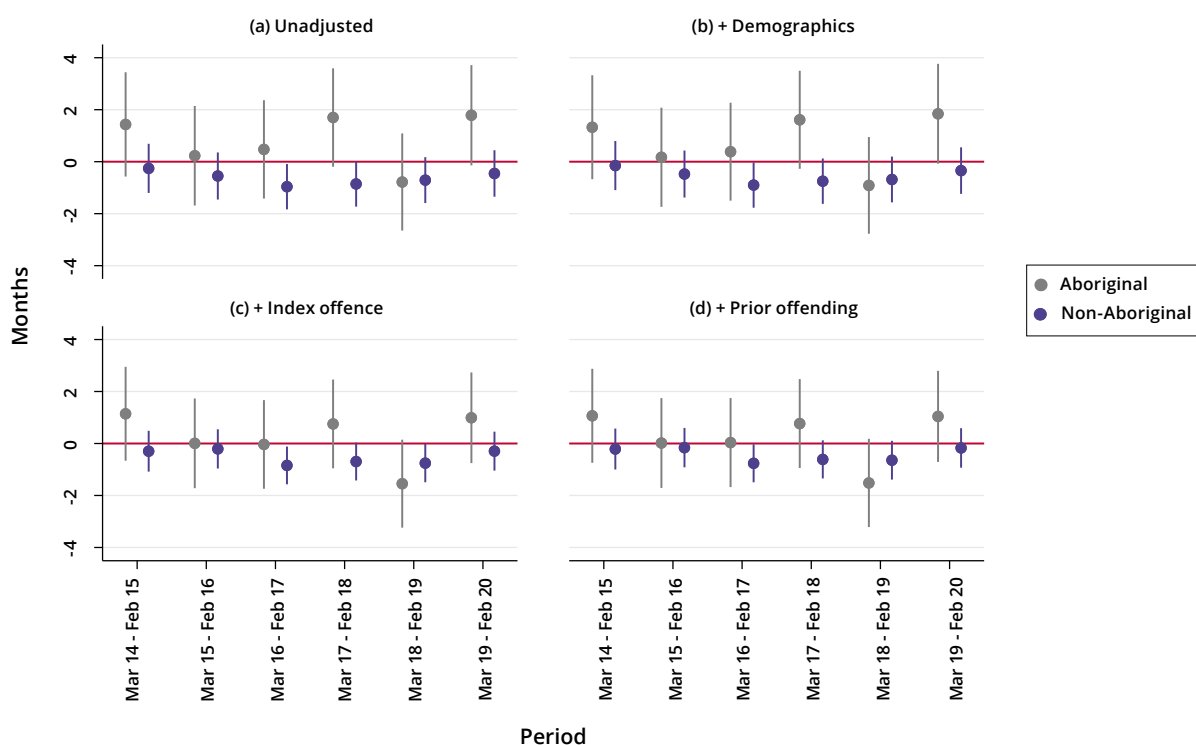
Figure 8. Changes in the probability of a prison sentence for adult women, relative to March 2013-February 2014, by Aboriginality



Panel (a) presents these estimates without adjusting for any other factors. Compared to 2013, Aboriginal females were between 1-2 p.p. more likely to receive a custodial penalty in 2016, 2017, and 2018, before adjusting for any offender characteristics. In the subsequent panels, when we progressively adjust for offender demographics, concurrent offences and offence type at the index appearance, and criminal history, we observe that there are significant reductions in the likelihood of imprisonment in 2018 (of approximately 1 p.p.), and 2019 and 2020 (of approximately 1-2 p.p.). These reductions correspond with the commencement of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (NSW) on 24 September 2018 and are consistent with Donnelly's (2020) estimates of a 2.6 and 4.5 p.p. reduction in the percentage of Aboriginal defendants receiving short-term prison penalties in the Local and District Courts, respectively. It also suggests that the reason why the unadjusted rate of imprisonment remains stable is that recent cohorts of sentenced Aboriginal females have more serious offences and more priors. This is consistent with findings from Ooi (2018).

We also undertake a similar analysis for the length of prison sentences imposed by the courts, the results of which are presented in Figure 9 (see also Appendix Table A2). Recall that in our analysis of trends in time spent in custody, we found a slight increase in the average length of stay for sentenced non-Aboriginal females, and a stable pattern for Aboriginal females (see Figures 2(b)). Our regression analyses confirm that there is no statistically significant change. Figure 9 shows that sentence length only differed significantly from March 2015 to February 2016 (compared to the referent period of March 2013 to February 2014), and only for non-Aboriginal women. No other estimate is statistically significant. This suggests that (on balance) the average sentence length for both Aboriginal and non-Aboriginal women has not changed significantly over the 7-year period examined, even after adjusting for changes in offender composition.

Figure 9. Changes in the average length of a prison sentence for adult women, relative to March 2013 - February 2014, by Aboriginality



CONCLUSION

This brief set out to examine trends in the Aboriginal adult female custodial population between March 2013 and February 2021 and to explore possible factors influencing these trends. Custodial populations of both Aboriginal and non-Aboriginal women increased (by 48.2% and 35.3% respectively) in the earlier half of this period (i.e., up to February 2017), but stabilised until February 2020 before declining due to the COVID-19 pandemic. We examined a range of further data regarding offending, bail, and sentencing to determine the most likely contributors to these patterns.

The early growth in Aboriginal women in custody between March 2013 and February 2017 stemmed from an increase in the number of POIs proceeded against by police, an increase in the rate of bail refusal following passage of the show cause amendments to the Bail Act, consistent with Yeong and Poynton's (2018) findings, and an increase in the likelihood of receiving a prison sentence. For non-Aboriginal females, in the earlier half of our series, the increase in the custodial population predominantly came from the increase to the remand population following the aforementioned changes to the Bail Act.

The stabilisation of the number of Aboriginal females in custody between March 2017 and February 2020 reflects several counteracting trends. The number of Aboriginal females proceeded against to court continued to increase, but less rapidly, with modest effects on bail refusals and prison sentences. The number of bail revocations increased but the low volume of these only slightly increase the remand population. While the likelihood of imprisonment (net of other factors) has fallen for this group, particularly following the 2018 sentencing reforms, we find that those females with longer criminal histories are being proceeded against to court for serious offences, offsetting this decrease. This is consistent with the findings reported by Ooi (2018), suggesting that repeat offending is a persistent issue for this group of offenders.

The trends shown indicate that after many years of sharp acceleration, Aboriginal women are no longer the fastest-growing population in custody. Comparing quarter 1 (ending March) 2017 to quarter 1 (ending March) 2020: Aboriginal males in custody grew by 10.9% or 319 individuals; non-Aboriginal males grew by 3.3% or 295; Aboriginal females decreased by 10.8% or 38; and non-Aboriginal females decreased by 6.0% or 40 (BOCSAR, 2022).

This study indicates that addressing Aboriginal women's rates of contact with the criminal justice system is an important lever for reducing imprisonment among this group. While there have been recent reductions in the numbers of Aboriginal women in custody, further monitoring is warranted to ensure that these endure beyond the reductions caused by the COVID-19 pandemic.

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APPENDIX

Table A1. Linear regression results for the probability of prison for adult women by year of sentence and Aboriginality

Group	Aboriginal				Non-Aboriginal			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Mar 2014-Feb 2015	0.002 (0.006)	0.003 (0.006)	0.003 (0.005)	0.004 (0.005)	0.003 (0.002)	0.003 (0.002)	0.001 (0.002)	0.001 (0.002)
Mar 2015-Feb 2016	0.011* (0.006)	0.009 (0.006)	0.003 (0.005)	0.003 (0.005)	0.009*** (0.002)	0.008*** (0.002)	0.004 (0.002)	0.004 (0.002)
Mar 2016-Feb 2017	0.019*** (0.006)	0.016** (0.005)	0.005 (0.005)	0.007 (0.005)	0.006** (0.002)	0.004 (0.002)	-0.001 (0.002)	-0.002 (0.002)
Mar 2017-Feb 2018	0.010 (0.006)	0.007 (0.005)	-0.005 (0.005)	-0.005 (0.005)	0.004 (0.002)	0.002 (0.002)	-0.003 (0.002)	-0.004 (0.002)
Mar 2018-Feb 2019	0.004 (0.006)	0.004 (0.005)	-0.011* (0.005)	-0.014** (0.005)	0.006** (0.002)	0.004* (0.002)	-0.004 (0.002)	-0.006** (0.002)
Mar 2020-Feb 2021	-0.003 (0.006)	-0.004 (0.005)	-0.019*** (0.005)	-0.022*** (0.005)	0.003 (0.002)	0.002 (0.002)	-0.009*** (0.002)	-0.011*** (0.002)
Observations	40,864	40,862	36,793	36,746	102,332	102,314	91,735	91,703
R-squared	0.048	0.133	0.454	0.471	0.027	0.062	0.377	0.389
Demographics	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Index offence characteristics	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Prior offending	No	No	Yes	Yes	No	No	Yes	Yes
Fixed effects	No	No	No	Yes	No	No	No	Yes

Standard errors in parentheses

*** $p < .001$, ** $p < .01$, * $p < .05$

Table A2. Linear regression results for prison sentence length for adult women, by year of sentence and Aboriginality

Group	Aboriginal				Non-Aboriginal			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Mar 2014-Feb 2015	1.433 (1.023)	1.325 (1.020)	1.143 (0.921)	1.065 (0.923)	-0.257 (0.482)	-0.149 (0.482)	-0.297 (0.400)	-0.213 (0.402)
Mar 2015-Feb 2016	0.229 (0.976)	0.17 (0.973)	0.00626 (0.880)	0.0176 (0.881)	-0.55 (0.462)	-0.475 (0.462)	-0.208 (0.385)	-0.159 (0.387)
Mar 2016-Feb 2017	0.473 (0.965)	0.384 (0.960)	-0.036 (0.870)	0.035 (0.873)	-0.962* (0.445)	-0.899* (0.444)	-0.844* (0.370)	-0.762* (0.373)
Mar 2017-Feb 2018	1.701 (0.965)	1.612 (0.962)	0.752 (0.871)	0.767 (0.872)	-0.856 (0.446)	-0.75 (0.445)	-0.694 (0.372)	-0.612 (0.374)
Mar 2018-Feb 2019	-0.782 (0.953)	-0.912 (0.949)	-1.546 (0.863)	-1.518 (0.866)	-0.709 (0.450)	-0.685 (0.449)	-0.756* (0.376)	-0.643 (0.380)
Mar 2020-Feb 2021	1.786 (0.984)	1.843 (0.980)	0.99 (0.889)	1.042 (0.894)	-0.454 (0.456)	-0.343 (0.456)	-0.295 (0.382)	-0.171 (0.388)
Observations	3,595	3,595	3,595	3,591	4,026	4,026	4,026	4,015
R-squared	0.43	0.438	0.55	0.551	0.352	0.358	0.561	0.563
Demographics	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Index offence characteristics	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Prior offending	No	No	Yes	Yes	No	No	Yes	Yes
Fixed effects	No	No	No	Yes	No	No	No	Yes

Standard errors in parentheses

*** $p < .001$, ** $p < .01$, * $p < .05$