

## Why is the NSW prison population still growing? Another look at prison trends between 2011 and 2015

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**Aim:** To explain the rapid rise in the NSW prison population over the five years from 2011 to 2015.

**Methods:** Descriptive analysis of court, police and prison data. Kendall's tau was used to test for significant change in trend data.

**Results:** Between June 2011 and September 2015, the number of people in NSW prisons increased from 10,000 to 11,801, a rise of 18 per cent. Both sentenced and remand prisoner populations were affected. As of September 2015, the remand population stood at 3,597. This is 975 remand prisoners more than were in custody in September 2011. The sentenced prisoner population in September 2015 stood at 8,204. This is 1,023 more sentenced prisoners than were in custody in September 2011.

The growth in the number of persons entering remand is likely due to four factors: (a) an increase in the number of people proceeded against by police for offences where bail refusal is likely (b) an increase in the number of persons proceeded against by police for breach of bail (c) an increase in the time spent in custody on remand and (d) (possibly) an increase in the likelihood of bail refusal. The cause of the increase in time spent on remand is not known for certain at this stage but it may be related to a growth in the backlog of trial cases in the NSW District Criminal Court.

The increase in the sentenced prisoner population is entirely due to an increase in the number of sentenced prisoners received into custody. There is no evidence that non-parole periods are getting longer. The increase in the number of sentenced prisoners is partly due to the fact that the percentage of convicted offenders given a prison sentence has risen for a large number of offences and partly due to the fact that police are more often initiating criminal proceedings against offenders who, if convicted, are likely to be imprisoned.

**Conclusion:** The increase in the prison population is partly a consequence of changes in the way the courts respond to suspected or convicted offenders and partly a consequence of an increase in the number of people charged by police with serious offences.

**Keywords:** Remand, sentencing, length of stay, proportion imprisoned, bail, prison, incarceration, jail

### Introduction

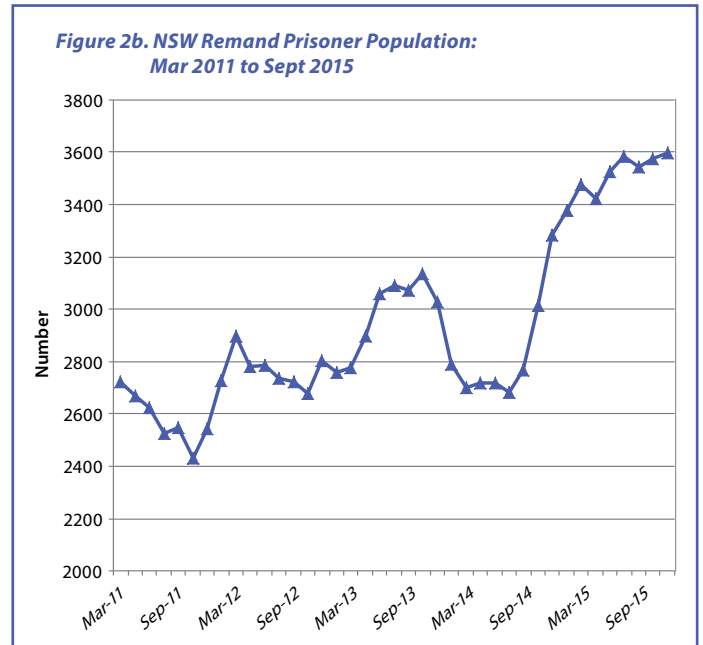
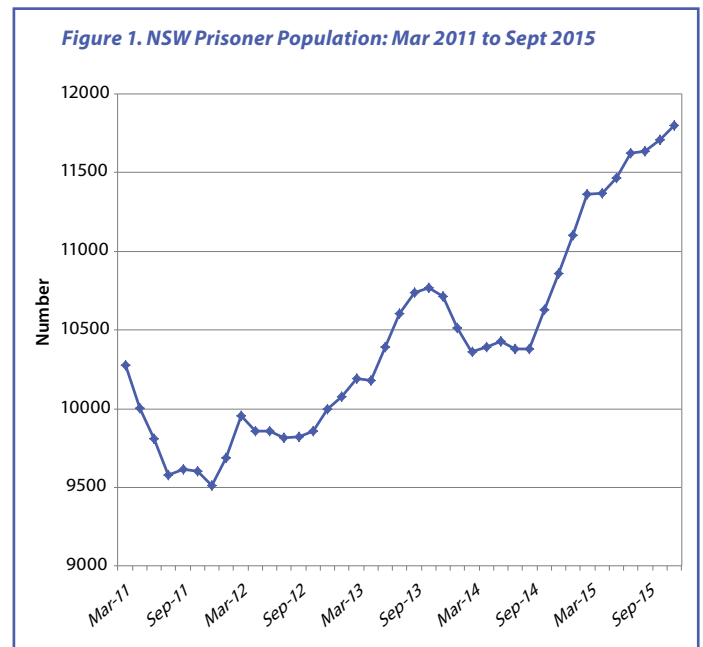
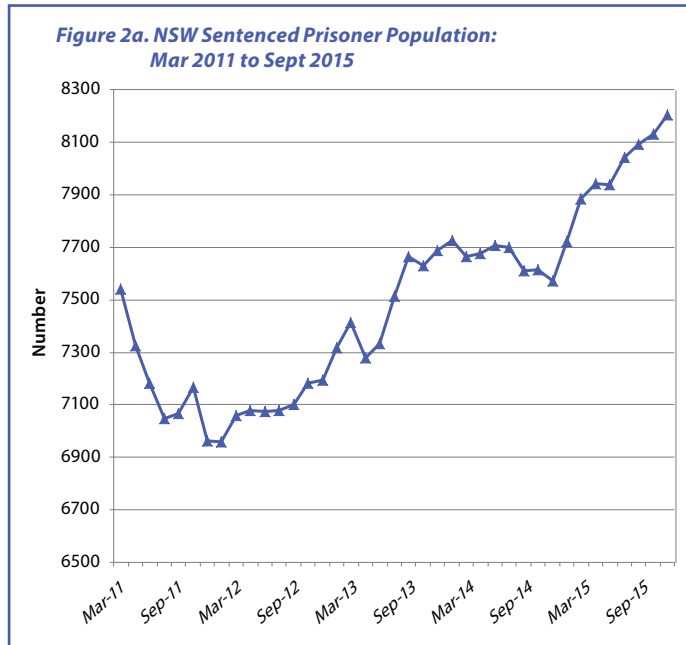
Over the four years to 2015 the NSW adult prison population has grown rapidly (see Figure 1). Between June 2011 and September 2015, the number of people in prison rose from 10,000 to 11,801, an increase of 18 per cent. The increase since November 2014 has been particularly marked, with an additional 1,421 prisoners added to the population in just ten months. The growth in the inmate population shows no sign of slowing.

In this brief we examine the factors that are driving the upward trend. We begin by examining the relative size of the growth in the number of remand and sentenced prisoners. Since

the number of remand and sentenced prisoners is jointly determined by the rate at which they arrive in custody and the length of time they stay, we then move on to examine changes in these factors. Increases in the number of sentenced prisoner or remand receptions can be affected by changes in the overall number of people entering the criminal justice system and/or changes in the way the system responds to those arriving (e.g. by refusing bail to a higher percentage or by giving a prison sentence to a higher percentage). We therefore also examine the role played by changes in arrest, bail and sentencing practice. It should be noted that all the analyses that follow are based on the Local and District Criminal Courts combined.

## Remand versus sentenced prisoner populations

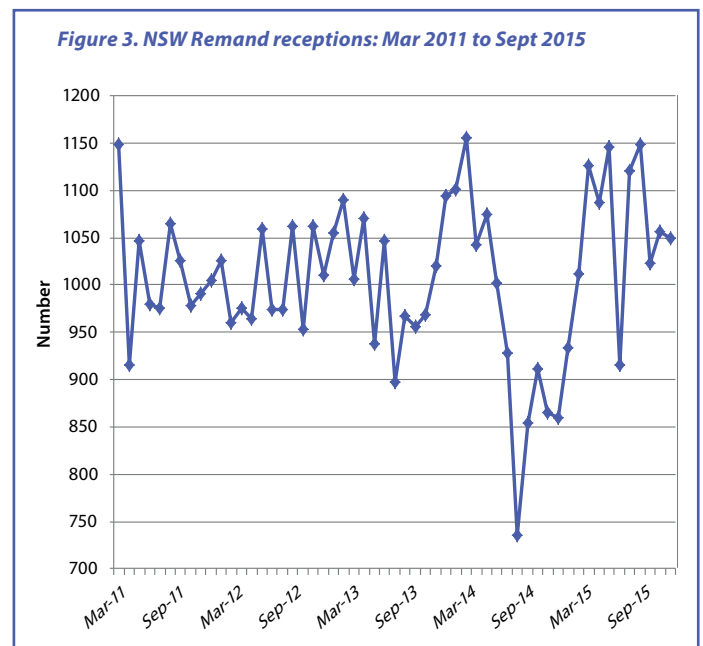
The adult inmate population consists of sentenced and remand (unconvicted) prisoners. Figure 2a shows the trend in the sentenced prisoner population between March 2011 and September 2015. Figure 2b shows the remand prisoner population over the same period. Both populations have increased but the increase in remand numbers (874 additional individuals or 32%) is substantially larger than the increase in sentenced prisoner numbers (662 individuals or 9%). It is important to bear in mind, however, that a high proportion of remand prisoners end up convicted and given a prison sentence. Any growth in the remand population is therefore likely to be followed by an increase in the sentenced prisoner population.



## Has the number of remand prisoner receptions increased?

A growth in the remand population can come about through an increase in the number of receptions, an increase in the length of stay, or both.

Figure 3 shows the trend in remand prisoner receptions over the same time period as Figures 1 and 2. Although there is no significant increase in receptions over the period between March 2011 and September 2015, there is a steep fall in the number of remand receptions between April and June 2014, followed by the equally sharp (52%) increase in the months between June 2014 and January 2015.<sup>1</sup> In absolute terms, the number of remand receptions rose from a low of 735 in the month of June 2014 to more than 1,100 a month in four of the first five months of 2015. This suggests that the rise in the remand population from October 2014 onwards (see Figure 2) was due in part to a surge in the number of people being remanded in custody.



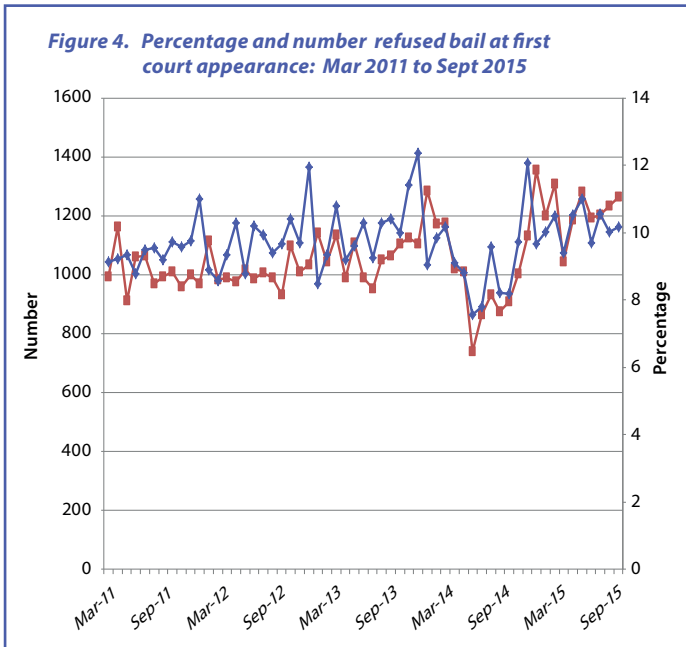
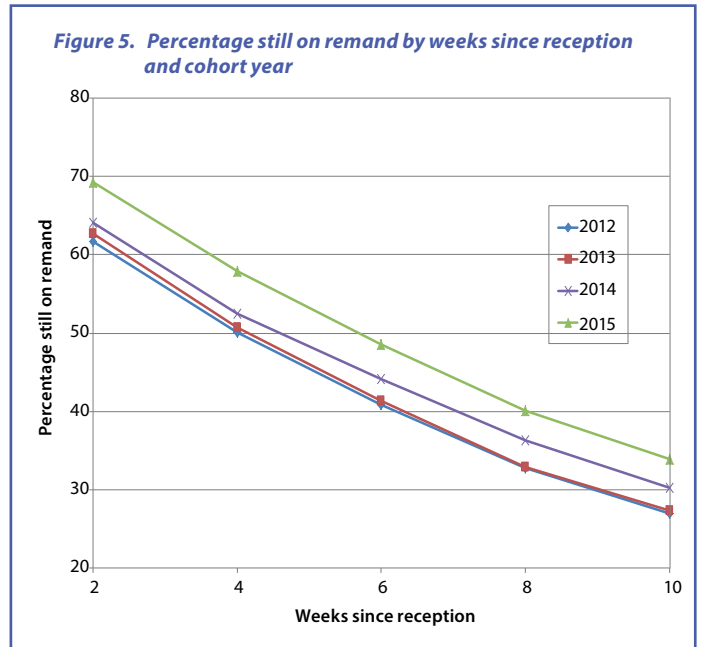


Figure 4 provides some insight into why the surge in remand receptions has occurred. It shows the number (red line) and percentage (blue line) refused bail at first court appearance. Both appear to be trending upwards although only the trend for number is statistically significant. The trend for percentage refused bail borders on significance ( $p = 0.079$ ).<sup>2</sup> The number of people refused bail is likely to have increased at least in part because the number of people proceeded against by police for offences where bail refusal is likely has also increased (more on this below in the discussion about the increase in sentenced prisoners). It is also worth noting, however, that the number of defendants proceeded against by police for breach of bail has been increasing over the last 12 months (Weatherburn & Fitzgerald 2015a, p. 5).

### Has the length of stay in custody for remand prisoners increased?

Any increase in the time spent by remand prisoners in custody will also result in an increase in remand numbers. Figure 5 shows the proportion of prisoners still on remand at successive 14 day intervals following their reception. Each curve depicts the outcome of time on remand for offenders entering remand in different years. In constructing the figure we have excluded the periods spent on remand by prisoners with insufficient follow up time, defined for present purposes as less than 10 weeks before reporting date.

For the 2012 and 2013 cohorts there is little difference in the proportions of prisoners still on remand at various intervals after reception. The proportion of prisoners still on remand is noticeably higher for the 2014 cohort, especially among those on remand for longer periods. The most significant change, however, is with the 2015 cohort. Here the differences are very pronounced, with higher proportions of defendants remaining longer on remand at every interval following reception. Figure 5 therefore indicates that longer stays in

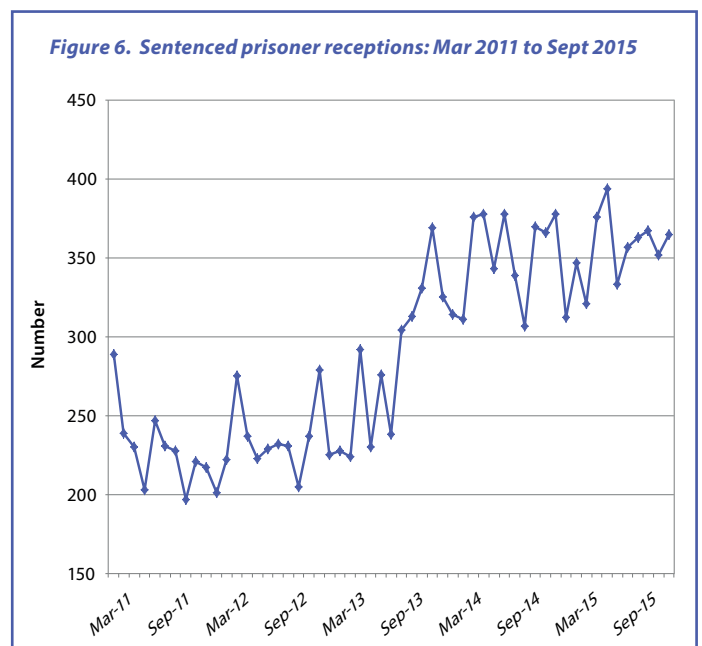


custody have also contributed to the growth in remand numbers. It is not clear why defendants are spending longer on remand but delays in the processing of criminal trial cases in the NSW District Court may be a contributing factor (Weatherburn and Fitzgerald 2015b).

### Has the number of sentenced prisoner receptions increased?

We turn our attention now to the question of whether sentence prisoner receptions have increased. Figure 6 shows the trend in the number of new sentenced prisoner receptions between March 2011 and September 2015.

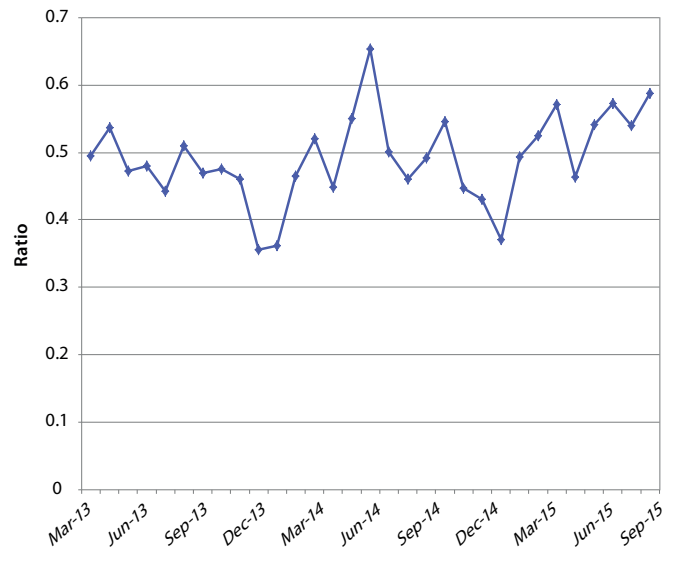
It is evident from Figure 6 that new sentenced prisoner receptions begin rising around June 2013, from an average of between 200 and 250 a month up to an average well in excess of 300 a month. Figure 6, however, only shows new sentenced prisoner receptions, that is, receptions of sentenced prisoners



not currently in custody. As noted earlier, a proportion of those received into custody as remand prisoners will at some point (following sentencing) become sentenced prisoners. If the proportion of remandees who become sentenced prisoners increased (i.e. if being remanded in custody increased the risk of a prison sentence), the growth in the remand receptions would make an independent contribution to sentenced prisoner population growth.

Figure 7 examines this by plotting the ratio of remand prisoners becoming sentenced prisoners to total remand receptions. If the growth in remand was making an independent contribution to growth in the sentenced prisoner population (i.e. if persons remanded in custody were becoming more likely to receive a prison sentence), we would expect this ratio to increase. Apart from an unusual spike in June 2014, however, there is very little evidence in Figure 7 that the proportion of persons remanded in custody who are ending up sentenced prisoners has increased.

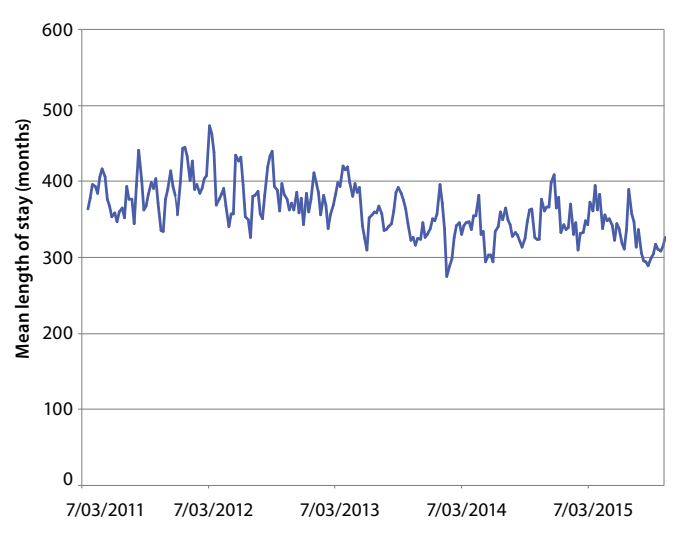
**Figure 7. Ratio of remand prisoners becoming sentenced prisoners to total remand receptions: Mar 2011 to Sept 2015**



### Has the length of stay in custody for sentenced prisoners increased?

Figure 8 shows a three week moving average of the mean length of stay by sentenced prisoners leaving custody over the period between 7th March 2011 and 12th October 2015. There is no evidence that the growth in the sentenced prison population over this period is attributable to longer sentences. If anything, the reverse is true.

**Figure 8. Three week moving average of mean length of stay in custody by sentenced prisoners leaving custody: 7th Mar 2011 to 12th Oct 2015**

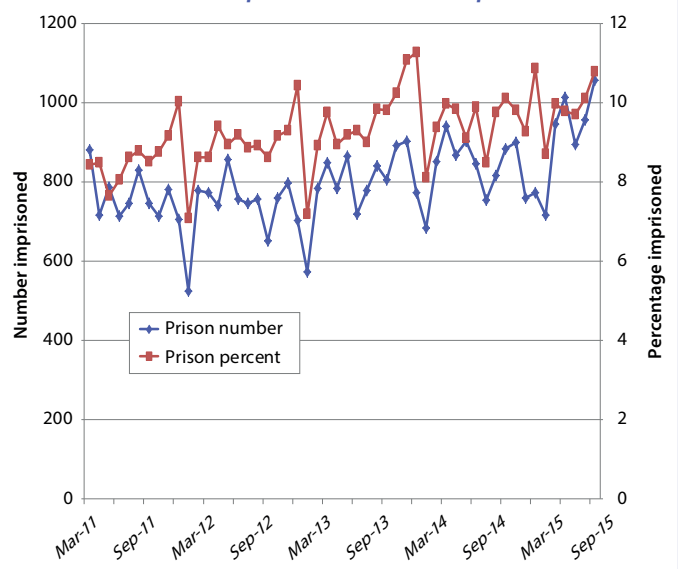


### Has the percentage of convicted offenders sent to prison increased?

We turn now to the question of why the number of offenders given a sentence of imprisonment has increased. There are two (not mutually exclusive) possibilities. One is an increase in the number of people charged with and convicted of offences that are likely to result in a prison sentence. The other is an increase in the proportion of convicted offenders given a prison sentence.

Figure 9 shows the number (blue line) and percentage (red line) of convicted adult offenders given a prison sentence between March 2011 and June 2015. Although there is considerable monthly volatility in the proportions it is obvious that both the number and proportion of convicted offenders given a prison sentence has increased. In fact between the first twelve months and the last 12 months of these series, the average monthly number entering prison rose by 17 per cent, while the percentage imprisoned rose by 1.26 percentage points. Both changes are statistically significant ( $p < .001$ )

**Figure 9. Number and percentage of convicted adult offenders imprisoned: Mar 2011 to Sept 2015**



### Which offences show the biggest increases in imprisonment?

Table 1 shows the number of convicted offenders given a prison sentence, broken down by offence type. The table is restricted to offences that account for 90 per cent of the flow of sentenced prisoners into custody.

**Table 1. Number and percentage of convicted offenders given a prison sentence by year and offence type (selected offences)**

Offence	Number Imprisoned			Percentage imprisoned			
	2011	2014/15	Difference	2011	2014/15	p value	Result
Stalking/intimidation	306	541	235	11.98%	15.32%	0.01	Sig Up
Breach of bond - supervised	145	283	138	10.45%	12.77%	0.07	Stable
Criminal intent	141	258	117	30.72%	39.21%	0.01	Sig Up
Receive or handle proceeds of crime	250	365	115	14.66%	17.14%	0.08	Stable
Obtain benefit by deception	258	370	112	16.56%	20.34%	0.00	Sig Up
Dangerous or negligent operation (driving) of a vehicle	140	228	88	5.11%	10.87%	0.00	Sig Up
Deal or traffic in illicit drugs - non-commercial quantity	286	354	68	28.07%	30.26%	0.18	Stable
Theft (except motor vehicles), nec	241	305	64	16.10%	18.89%	0.00	Sig Up
Serious assault resulting in injury	1148	1210	62	22.77%	24.96%	0.01	Sig Up
Common assault	292	353	61	4.18%	5.35%	0.00	Sig Up
Breach of violence order	381	442	61	11.23%	13.00%	0.06	Stable
Breach of community service order	108	160	52	8.82%	13.82%	0.00	Sig Up
Prison regulation offences	34	84	50	28.10%	39.44%	0.05	Stable
Breach of suspended sentence	479	527	48	62.21%	52.44%	0.00	Sig Down
Threatening behaviour	90	137	47	14.06%	17.30%	0.65	Stable
Possess illicit drugs	88	133	45	1.31%	1.39%	0.75	Stable
Breach of bond - unsupervised	73	117	44	7.70%	8.85%	0.62	Stable
Sell, possess and/or use prohibited weapons/explosives	38	81	43	11.69%	16.56%	0.04	Sig Up

The first column shows the offence type; the second shows the number of persons convicted of that offence type in 2011 who received a sentence of imprisonment; the third shows the corresponding number for the financial year 2014/15 (the latest year available); the fourth shows the increase in the number receiving a prison sentence for each offence type; the fifth shows the percentage of offenders convicted of each offence type who received a prison sentence in 2011; the sixth shows the corresponding percentage for the financial year 2014/15; the seventh reports the p-value associated with the test and the final column shows the result of that test.

There are two key points to note about the table. The first is that the biggest single contributor to the growth in those receiving a prison sentence is the offence category of stalking/intimidation (see column four). The growth in the number imprisoned for this offence was almost twice that of the next offence (breach of a supervised bond). The second point (see columns five and six) is that 17 out of the 18 categories of offence show an increase in the proportion of convicted offenders receiving a prison sentence. In nine of the 17 categories, the increase is statistically significant.<sup>3</sup> Harsher sentencing practice therefore also seems to be a significant contributor to the growth in the imprisonment rate.<sup>4</sup>

## Trends in offenders proceeded against to court

Some of the growth in the number of people sent to prison for the offences shown in Table 1 may be due to an increase in the number of people charged by police with these offences (and subsequently convicted). Table 2 below shows changes in the number of adults (POIs) proceeded against to court by police for the offences in Table 1 where the growth in the number given a prison sentence exceeded 60. Note that breach of suspended sentence and breach of a supervised bond are not included in the table because the NSW Police Force is not the agency responsible for prosecuting these offences.

Inspection of the fourth column of Table 2 shows there have been substantial increases in POIs proceeded against by police for intimidation/stalking, receiving proceeds of crime, obtaining a benefit by deception and breaching an apprehended violence order. There are somewhat smaller (although still significant) increases in the number of people proceeded against for criminal intent, theft and dealing in illicit drugs. It would therefore seem likely that some of the growth in the prison population has arisen simply because police are more often proceeding against people who are likely to be remanded in custody and given a prison sentence if convicted.



**Table 2. Number of adult persons of interest (POIs) proceeded against by police by year and offence type (selected offences)**

Offence	2011	2014/2015	Difference	p value	Result
Stalking/intimidation	3395	4901	1506	0.00	Sig Up
Criminal intent	770	983	213	0.00	Sig Up
Receive or handle proceeds of crime	3052	3908	856	0.00	Sig Up
Obtain benefit by deception	2061	2771	710	0.00	Sig Up
Dangerous or negligent operation (driving) of a vehicle	2514	1962	-552	0.00	Sig Down
Deal or traffic in illicit drugs – non-commercial quantity	1263	1631	368	0.00	Sig Up
Theft (except motor vehicles), other	6213	6584	371	0.79	Stable
Serious assault resulting in injury	6653	6513	-140	0.27	Stable
Common assault	9665	9492	-173	0.42	Stable
Breach of violence order	5639	6522	883	0.00	Sig Up

Note: a Person of Interest (POI) may have multiple charges arising from a single criminal event. In this table each POI is shown once per criminal event for a single offence type (even if multiple offences were involved). If a POI has multiple independent proceedings arising from different criminal events throughout the year that POI will be counted multiple times for each distinct event.

## Summary

Between June 2011 and September 2015, the number of people in NSW prisons increased from 10,000 to 11,801, a rise of 18 per cent. The increase since November 2014 has been particularly marked, with an additional 1,421 prisoners added to the population in just ten months. Both sentence and remand prisoner populations have been affected. As of September 2015, the remand population stood at 3,597. This is 975 remand prisoners more than were in custody in September 2011. The sentenced prisoner population in September this year stood at 8,204. This is 1,023 more sentenced prisoners than were in custody in September 2011.

The growth in the number of persons entering remand is likely due to four factors: (a) an increase in the number of people proceeded against by police for offences where bail refusal is likely (b) an increase in the number of persons proceeded against by police for breach of bail (c) an increase in the time spent in custody on remand and (d) (possibly) an increase in the likelihood of bail refusal. The cause of the increase in time spent on remand is not known for certain at this stage but it may be related to a growth in the backlog of trial cases in the NSW District Criminal Court.

The increase in the sentenced prisoner population is entirely due to an increase in the number of sentenced prisoners received into custody. There is no evidence that non-parole periods are getting longer or that any other mechanism (e.g. parole refusal) is lengthening the period spent in custody by sentenced prisoners. The increase in the number of sentenced prisoners is partly due to the fact that the percentage of convicted offenders given a prison sentence has risen for a large number of offences and partly due to the fact that police are more often initiating criminal proceedings against offenders who, if convicted, are likely to be imprisoned.

## Notes

- 1 See Weatherburn and Fitzgerald (2015a) for an explanation of legislative changes to the Bail Act which occurred in May 2014 and January 2015.
- 2 The test used here and throughout the report is Kendall's tau. It is conducted by ranking each month and each value of the relevant series and then testing for an association between the two sets of rankings (see Siegel 1956).
- 3 The exception is breach of suspended sentence where the percentage imprisoned fell significantly.
- 4 Although it is possible that the cases coming before the courts within each offence category are more serious in ways not reflected on the principal offence for which they are convicted (e.g. offenders may have longer criminal records).

## Reference

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