

Prison penalties for serious domestic and non-domestic assault

Neil Donnelly & Suzanne Poynton

Aim: To determine whether (1) adult offenders found guilty of a serious non-domestic assault offence are more likely to be imprisoned or given longer prison sentences than adult offenders found guilty of a serious domestic assault offence and (2) whether Indigenous offenders who commit domestic assaults are treated more harshly than non-Indigenous offenders who commit domestic assaults.

Method: Data from the NSW Bureau of Crime Statistic and Research's (BOCSAR) Reoffending Database were used to examine sentencing outcomes for adult offenders found guilty of serious assault in the Local Court between 2009 and 2014. Serious assault offences committed in a domestic setting were identified using domestic violence-specific lawpart codes. Multivariable regression models were developed to examine differences between domestic and non-domestic matters in imprisonment likelihood and length. The interaction between Indigenous status and violence type (domestic vs. non-domestic) was also explored in these models of penalty choice.

Results: The results from the multivariate models show a significant interaction between domestic violence and Indigenous status in the likelihood of imprisonment for a serious assault offence. Indigenous offenders who were found guilty of a serious assault offence committed in a domestic violence context were more likely than other offenders found guilty of serious assault to receive a prison penalty at the index finalisation. No significant differences in penalty length were found for domestic and non-domestic serious assault offenders who were imprisoned.

Conclusion: There is no evidence that serious non-domestic assault matters are dealt with more harshly than serious domestic assault matters. In fact, Indigenous offenders found guilty of serious domestic violence related assault are more likely to be sentenced to prison than other violent offenders.

Keywords: imprisonment, domestic violence, assault, sentencing, prison, gaol, Indigenous offenders, Aboriginality, ATSI

Introduction

Domestic violence is a serious crime problem that affects a large segment of the Australian community. In 2012, an estimated 132,500 Australian women (1.5% of all adult women) and 51,800 Australian men (0.6% of all adult men) reported experiencing violence perpetrated by their partner in the previous 12 months. These estimates are much higher if lifetime abuse is considered, with 1.5 million Australian women (16.9% of all adult women) and 450,000 Australian men (5.3% of all adult men) reporting ever having experienced violence by a partner (since the age of 15) (Australian Bureau of Statistics, 2013). In some cases, the violence inflicted in domestic matters is lethal. Over the 10 years to 2010, 238 homicides in NSW occurred in a domestic violence context and the majority of these involved intimate partner violence (Domestic Violence Death Review Team, 2015). This equates to one domestic violence related homicide every 2 weeks, in NSW alone.

In the context of falling crime rates in NSW and across Australia, the rate of domestic violence remains stubbornly high. Over the last 5 years, domestic violence related assaults reported to NSW police have increased from just over 26,000 incidents to close to 30,000 incidents each year; a 2.0 per cent increase over this 5-year period. This contrasts with non-domestic assault which has recorded a 5.6 per cent decline in the number of incidents recorded by police over the same period (NSW Bureau of Crime Statistics and Research, 2015).

Various government initiatives have been launched in recent years in an effort to tackle the problem of domestic violence (see for example the NSW Government's Domestic and Family Violence Framework for Reform¹ and the NSW Domestic Violence Justice Strategy²). These initiatives have generally focused on the way in which the police and other agencies respond to domestic violence and have set about improving service coordination and setting minimum standards of

practice so that victims and their families, particularly those that are at high risk of further harm, are adequately supported.

More recent attention, however, has been directed toward the sentencing of domestic violence offenders. In August this year, the NSW Attorney General called for a comprehensive review of sentencing for domestic violence matters to ensure that they reflect the seriousness of the offence and are consistent with community sentiment. Within this context, questions have been raised as to whether the penalties imposed for domestic violence offences are comparable with those imposed for violent offences committed outside of domestic relationships. Consistency in the sentencing of violent offences is important because it sends a powerful message to perpetrators, victims and the wider community that domestic violence is a significant problem that will not be tolerated (Hessick, 2007).

There has been a lack of research on sentencing practices for domestic violence matters in Australia. This stems largely from the fact that, historically, researchers have been unable to reliably distinguish between domestic violence and non-domestic offences of the same type using court administrative data. However, since March 2008, NSW courts have been directed to record an offence as domestic violence if it is satisfied that the offence occurred within a domestic relationship³ (see section 12 of the Crimes (Domestic and Personal Violence) Act 2007 (NSW)). This has resulted in a large number of personal offences (e.g. assault, sexual assault) now being identified as domestic violence related offences. This legislation has also served to broaden the definition of domestic violence to include stalking and intimidation offences where there is an intent to cause fear of physical or mental health to a person within a domestic relationship, and also other acts which traditionally have not been classified as violent such as malicious damage to property, trespass and offensive behaviour offences.

Capitalising on these legislative provisions, the Bureau undertook work to investigate the factors which influence the sentencing of domestic violence offenders (Ringland & Fitzgerald, 2010). This research identified a range of domestic violence offences which are finalised in NSW Local Courts, including assault, offensive behaviour, property damage and stalking/intimidation. They also found an equally diverse range of penalties imposed for these offences. Imprisonment was reserved for the more serious (but low volume) domestic violence offences of recklessly wounding, recklessly cause grievous bodily harm and being armed with intent. The severity of the offence (in particular whether violence was involved) was the most important determinant of predicting a custodial penalty for domestic violence but other factors were also influential in the decision to imprison, including prior prison episodes, the presence of concurrent offences, being found guilty of violent offences in the 10 years prior, gender and Indigenous status.

Ringland and Fitzgerald (2010) did not compare the sentencing outcomes for domestic violence offences with outcomes for

other types of offences but more recent research using the same NSW dataset has. Bond and Jeffries (2014) examined all adult offenders found guilty of personal offences in NSW Local Courts between January 2009 and June 2012. This included a range of offences such as murder/attempted murder, assault, sexual assault, dangerous/negligent acts, harassment/intimidation and robbery (all offences falling within Divisions 01, 02, 03, 04, 05 and 06 of the Australian and New Zealand Standard Offence Classification (ANZSOC) system; Australian Bureau of Statistics, 2011). An offence was flagged as domestic violence (DV) related if it was recorded as such in accordance with section 12 of the Crimes (Domestic and Personal Violence) Act. Using logistic regression modelling to partial out the effect of other important factors relevant to penalty choice, they found evidence to suggest significant disparity in the sentencing of domestic violence offenders. The results indicated that fewer domestic violence cases resulted in full-time imprisonment compared with non-domestic violence (non-DV) cases and, those which did, received shorter average prison terms. They argue that domestic violence cases may be perceived by the judiciary as less blameworthy and risky, and that custody in these cases would incur greater social costs so are sentenced more leniently than non-domestic violence cases. A further study (Jeffries & Bond, 2014), using the same dataset, considered interactions between Indigeneity and sentencing for domestic violence, and found that non-Indigenous offenders whose violent offending occurred in a domestic context were sentenced more leniently than those convicted of non-domestic violent offences but there was no significant difference in the cases of Indigenous violent offenders.

A major limitation of Bond and Jeffries' work is that their analysis included a diverse range of disparate offences, from very serious assaults and robbery to less serious common assaults and intimidation offences. The penalties for these offences are equally diverse, particularly in regard to the proportion of these offences that result in prison. To deal with differences in offence seriousness when predicting imprisonment likelihood, Bond and Jeffries included the National Offence Index (NOI) score for each offence in their statistical models. The use of the NOI as a way of controlling for offence seriousness in studies of sentencing disparity has been criticised because it assigns rankings on the basis of non-legal factors such as public and expert opinion, in combination with objective information about statutory maxima and sentencing practice (MacKinnell, Poletti, & Holmes, 2010). Another measure of offence seriousness, the Median Sentence Ranking (MSR), is based solely on the median sentence actually imposed for each offence type and has been shown to outperform the NOI in its ability to predict a sentence of imprisonment. However, even this more refined measure of offence seriousness is still only able to provide an acceptable level of discrimination between those who receive prison and those who receive another type of penalty (MacKinnell et al., 2010).

A fairer test of sentencing disparity would be to restrict the analysis to a subset of offences which have exactly the same

prescribed statutory maxima and a high imprisonment rate. Statutory maxima can be considered one of the primary objective indicators of offence seriousness from a legal standpoint (Snowball & Weatherburn, 2006) and is a factor that must be taken into account by the court when sentencing (see *Markarian v The Queen* (2005) 79 ALJR 1048 at [31]). The current study attempts to build on prior research by doing just this. It compares imprisonment likelihood and length for DV and non-DV offences but only for matters that involve serious assault resulting in injury (ANZSOC Group 0211). Two different types of serious assaults are considered: assault occasioning actual bodily harm (with a 5-year statutory maximum prison penalty) and assault occasioning grievous bodily harm (with a 10-year statutory maximum prison penalty). Restricting the analysis in this way ensures that a more homogenous group of offences that potentially differ only in regard to the offender/victim relationship are compared. Specifically, this research aims to address the following questions;

1. Are adult offenders found guilty of a serious non-domestic assault offence more likely to be imprisoned than adult offenders found guilty of a serious domestic assault offence?
2. Do adult offenders sentenced to prison for a serious non-domestic assault receive longer prison terms than offenders sentenced to prison for a serious domestic assault?
3. Does the likelihood or length of prison sentences for domestic and non-domestic serious assault offences vary by the Indigeneity of an offender?

Method

Data source and sample definition

The data used in this study were extracted from BOCSAR's Reoffending Database (ROD; Hua & Fitzgerald, 2006) and comprised all adult offenders who were found guilty of serious assault as their principal offence in the Local Court between January 2009 and December 2014. Serious assaults were defined as offences of 'serious assault resulting in injury' (ANZSOC Group 0211; Australian Bureau of Statistics, 2011). To be included in the analysis, the offence had to have occurred after 31 March 2008 so that the new domestic violence-specific lawpart⁴ codes could be used to distinguish between serious violence occurring within domestic relationships from those occurring in other settings. Applying these selection criteria resulted in a sample of 27,805 finalised court appearances where a person was found guilty of serious assault as their principal offence finalised in the Local Courts between 2009 and 2014. Of these, 1,168 were excluded from the analysis because the assault offence for which the person was found guilty had no domestic violence equivalent (i.e. no corresponding domestic violence-specific lawpart code). A further 2,126 finalised appearances were excluded because the assault was committed 'in company' or 'involved wounding' and these offences attract different statutory maximum penalties than

other serious assault offences.⁵ A small number of persons (n=1,254) in the sample had more than one eligible finalised appearance for serious assault over the 6-year study period. In these cases, one finalised appearance was selected at random and included in the analysis. The final sample consisted of 23,140 distinct persons who were found guilty of a serious assault principal offence; 10,893 comprised domestic violence serious assault offences and 12,247 non-domestic violence serious assault offences.

'Assault occasioning actual bodily harm' was, by far, the most frequent principal offence for persons included in the analysis; accounting for almost 99 per cent of all domestic violence-related serious assault and 96 per cent of all non-domestic violence serious assault. 'Recklessly cause grievous bodily harm' was the next most frequent principal offence but accounted for only one per cent of domestic violence and three per cent of non-domestic violence serious assaults (see Table A1 in the Appendix for further offence details).

Explanatory variables

Weatherburn and Snowball (2006) have previously identified a number of factors which are both legally relevant to and statistically significant in the decision to imprison an offender. These include; age, gender, Indigenous status, offence seriousness (in particular whether the offence involved violence), number of concurrent offences, prior criminal record, previously been given a community-based sanction, previously sentenced to prison and pleading guilty in the current case. All these factors will be taken into account when comparing sentencing outcomes for domestic and non-domestic serious assault. The full list of explanatory variables considered for inclusion in the analysis is shown below.

Offender and offence characteristics

Age: Age of the offender (in years) at time of finalisation of index matter. Age was classified into the following categories: 18-24 years; 25-34 years; 35-44 years; 45 years and older.

Gender: Both female and male offenders were included in the analyses.

Indigenous status: Whether the offender identified as being of Aboriginal or Torres Strait Islander descent (ATSI) at the index finalisation. Offenders were classified as: Non-Indigenous; Indigenous; Unknown.

Year of finalisation: A binary variable indicating whether the index matter was finalised between 2012-2014 or 2009-2011.

Plea: Plea to the principal offence. This included the following categories: guilty; not guilty; other. In the analyses offenders who pleaded not guilty were compared to the other categories combined.

Concurrent offences: Number of proven concurrent charges at index finalisation excluding the principal serious assault offence. The concurrent offences were categorised as: none; one; two; three or more.

Assault severity: Serious assaults were classified as actual bodily harm (ABH) or grievous bodily harm (GBH) on the basis of the lawpart code assigned to the principal offence.

Domestic violence: A variable indicating whether the principal offence at index finalisation was domestic violence related. This indicator was based on the lawpart code assigned to the principal offence.

Prior criminal history

Prior proven court appearances: Number of finalised court appearances with proven offences in the five years prior to the index appearance, categorised as: none; one; two; three or more.

Prior proven serious assaults: Number of finalised court appearances with a proven serious assault offence in the five years prior to the index appearance (where the offence falls in the ANZSOC Groups 0211 and 0212), categorised as: none; one or more.

Prior prison: Number of finalised court appearances in the five years prior to the index appearance where a sentence of imprisonment was imposed (for any proven offence), categorised as: none; one; two or more.

Prior prison for serious assault: Number of finalised court appearances in the five years prior to the index appearance where a sentence of imprisonment was imposed for a serious assault (ANZSOC Groups 0211 and 0212), categorised as: none; one or more.

Prior suspended sentence: Number of finalised court appearances in the five years prior to the index appearance at which the offender was given a suspended sentence (either supervised or unsupervised), categorised as: none; one or more.

Prior proven breach of violence/non-violence orders: Number of finalised court appearances with proven breach violence/non-violence order offences (ANZSOC subdivision 153) in the five years prior to the index appearance, categorised as: none; one or more.

Statistical analysis

Initially, persons found guilty of serious domestic assault were compared with those found guilty of serious non-domestic assault in terms of demographics, offence characteristics, prior criminal history and principal penalty imposed at the index court appearance. The relationship between the explanatory variables and the likelihood of receiving a custodial penalty was also examined at the bivariate level. Logistic regression analyses were then undertaken in order to assess whether there is any difference in imprisonment rates for domestic and non-domestic serious assault once the influence of other important covariates have been taken into account (Hosmer & Lemeshow, 2000). As a further control, binomial generalised estimating equation (GEE) analyses were conducted where each Local Court was treated as a higher level variable (or cluster). This was done to adjust for any intra-class correlation within

courts in the likelihood of imposing a prison sentence for serious assault offences (Hanley, Negassa, Edwardes & Forrester, 2003). Predicted probabilities of imprisonment derived from the adjusted regression coefficients are also presented for different combinations of offender and offence characteristics such as domestic violence (DV) status, demographics, current appearance and prior offending variables (Agresti, 1996). Graphs of predicted probabilities of imprisonment are displayed separately for non-Indigenous and Indigenous offenders.

To examine consistency in the length of custodial sentences, the sample was restricted to persons found guilty of a serious assault offence (domestic and non-domestic) who were sentenced to imprisonment at the index court appearance. Sentence length was defined as the number of total days to which the offender was sentenced for their total term. This outcome variable was not skewed and no transformations were used. Again, the relationship between the explanatory variables and the outcome variable (sentence length) was examined at the bivariate level using unadjusted linear regression. Multivariate modelling was then used to compare DV and non-DV serious assault offenders in their total term sentence length adjusted for important covariates. In this multivariate analysis, linear regression and GEE regression with normal errors were used to compare differences in the mean length of the total prison term imposed for domestic and non-domestic serious assault offences.

Results

Offender and offence characteristics

Table 1 presents the characteristics of offenders found guilty of serious assault by whether or not the assault was domestic violence related. The majority of offenders in both groups were male, non-Indigenous, aged between 25 and 44 years, and had no prior prison penalties and no prior breaches for a violence/non-violence order. Almost half of the offenders had no prior court appearances during the previous five years. The principal offence for which they were typically appearing was an assault occasioning actual bodily harm, over half had no other concurrent offences, and most offenders pleaded guilty to the serious assault offence.

There were significant differences between the DV and non-DV offenders on a number of these characteristics. A higher proportion of offenders in the non-DV group were aged 18 to 24 (36.2%) compared with the DV group (19.2%), and a smaller proportion of offenders in the non-DV group were aged 35 or over (34.4%) compared with the DV group (48.6%).⁶ A higher percentage of DV offenders were Indigenous compared with non-DV offenders (16.5% versus 14.5%).⁷ There was also a higher percentage of grievous bodily harm (GBH) offences amongst the non-DV group compared with the DV group (3.8% versus 1.3%); although, overall, the proportion charged with this more serious offence type was very small.⁸ The number of concurrent offences finalised at the index court appearance was higher amongst DV offenders (50% one or more) compared with

non-DV offenders (42% one or more),⁹ and a higher percentage of domestic violence matters were finalised between 2012 and 2014 compared with the non-domestic violence matters (55% versus 43%).¹⁰ The non-DV group had more prior court appearances in the previous five years (35% versus 33% two or more times)¹¹ and were more likely to have had a prior proven serious assault offence (14.7% versus 13.5%)¹² compared with

the DV group. In contrast, the DV group were more likely to have breached an order for violence/non-violence during the previous five years compared with the non-DV group (12.7% versus 8.0%).¹³ There were no significant differences between the DV and non-DV groups in terms of gender, plea, prior prison penalties or prior suspended sentences.

Table 1. Characteristics of serious assault offenders by domestic violence (DV) status, 2009-2014 (n = 23,140)

Variable	Category	Domestic Violence		Non-Domestic Violence	
		n	%	n	%
Age group	18-24	2,090	19.2	4,437	36.2
	25-34	3,503	32.2	3,599	29.4
	35-44	3,196	29.3	2,542	20.8
	45+	2,104	19.3	1,669	13.6
Gender	Female	1,943	17.8	2,187	17.9
	Male	8,950	82.2	10,060	82.1
Indigeneity	Non-Indigenous	8,605	79.0	9,690	79.1
	Indigenous	1,798	16.5	1,770	14.5
	Unknown	490	4.5	787	6.4
Assault severity	Actual bodily harm	10,753	98.7	11,782	96.2
	Grievous bodily harm	140	1.3	465	3.8
Plea	Guilty/other	9,145	84.0	10,255	83.7
	Not guilty	1,748	16.0	1,992	16.3
Concurrent offences	None	5,473	50.2	7,116	58.1
	One	2,530	23.2	2,636	21.5
	Two	1,187	10.9	1,140	9.3
	Three or more	1,703	15.6	1,355	11.1
Years(s) of finalisation	2009-11	4,958	45.5	7,020	57.3
	2012-14	5,935	54.5	5,227	42.7
Prior appearances	No	5,150	47.3	5,546	45.3
	One	2,183	20.0	2,461	20.1
	Two	1,261	11.6	1,509	12.3
	Three or more	2,299	21.1	2,731	22.3
Prior appearances, serious assault	No	9,424	86.5	10,446	85.3
	Once or more	1,469	13.5	1,801	14.7
Prior prison	No	9,491	87.1	10,738	87.7
	One	701	6.4	775	6.3
	Two or more	701	6.4	734	6.0
Prior prison, serious assault	No	10,329	94.8	11,622	94.9
	One or more	564	5.2	625	5.1
Prior suspended sentences	No	9,921	91.1	11,214	91.6
	One or more	972	8.9	1,033	8.4
Breach prior order violence/non-violence	No	9,510	87.3	11,264	92.0
	One or more	1,383	12.7	983	8.0
Total		10,893	100.0	12,247	100.0

Table 2. Principal penalty for serious assault offences by whether or not the assault was DV related, 2009-2014

Penalty	Domestic Violence		Non-Domestic Violence	
	n	%	n	%
Imprisonment	1,839	16.9	1,757	14.4
Home detention, periodic detention or Intensive Correction Order	138	1.3	266	2.2
Suspended sentence with or without supervision	1,166	10.7	1,392	11.4
Community service order	613	5.6	1,122	9.2
Bond with or without supervision	5,306	48.7	5,403	44.1
Fine	588	5.4	1,139	9.3
Other	1,243	11.4	1,168	9.5
Total	10,893	100.0	12,247	100.0

Factors associated with imprisonment for serious assault

Table 2 shows the principal penalty imposed for all serious assault matters included in the sample by whether or not the offence was committed within a domestic relationship. The most frequent penalty for offenders found guilty of a serious assault offence was a bond either with or without supervision. The next most frequent penalty imposed was imprisonment followed by a suspended sentence. A significantly higher proportion of domestic violence offenders were sentenced to imprisonment compared with non-domestic violence offenders (17% versus 14%; $p < .001$).

Bivariate comparisons

Table 3 examines the association between imprisonment and a range of different factors related to the offender and the offence committed. All of the factors reported in this table were significantly related to imprisonment at the bivariate level, with the exception of the year in which the matter was finalised.

In terms of the demographic characteristics of offenders: those aged between 25 and 44 years were more likely to be sentenced to prison; males were more likely than females to be sentenced to prison (18% versus 5%); and Indigenous offenders were more likely than non-Indigenous offenders to be sentenced to prison (33% versus 12%). Offenders found guilty of the more serious offence of assault occasioning 'grievous bodily harm' were also more likely than those found guilty of assault occasioning 'actual bodily harm' to be sentenced to prison (36% versus 15%); offenders who pleaded not guilty were more likely than those who pleaded guilty/other to receive a prison sentence (18% versus 15%); and offenders who were found guilty of three or more concurrent offences at the index finalisation were more likely than those who had no concurrent offences to be sentenced to imprisonment (45% versus 7%).

The likelihood of imprisonment was also greater for those who had more extensive prior offending histories. Offenders recording three or more proven court appearances in the five years prior to the index finalisation were more likely to receive a prison sentence than those with no prior proven court appearances (42% versus 4%). Those with a prior proven

serious assault offence and those with a prior proven breach of a violence/non-violence order were more likely than those without a history of committing these offences to be given a prison sentence (43% versus 11%; 48% versus 12%, respectively). Not surprisingly, offenders who had previously been sentenced to prison were more likely to be given a prison penalty at the index court appearance as were offenders who previously had received a suspended custodial penalty. Nearly three-quarters of offenders with two or more prior prison penalties were given a prison sentence at the index finalisation, in comparison to nine per cent of offenders without a prior prison sentence. Similarly, 46 per cent of those with a prior suspended sentence were given a prison sentence for the index serious assault offence compared with 13 per cent of those without a prior suspended sentence.

Table 4 explores the interaction between Indigenous and DV status in imprisonment decisions for serious assault offences unadjusted for other covariates. As seen here, for non-Indigenous offenders there was very little difference between domestic and non-domestic violence matters in terms of the percentage of offenders who were sentenced to imprisonment (13% versus 12%). However, amongst Indigenous offenders a much higher percentage of assaults committed in a domestic context resulted in a prison sentence compared with assaults committed in non-domestic settings (38% versus 29%).

Multivariate model

The bivariate comparison shown above suggests that offenders found guilty of a serious DV assault are more likely to be sentenced to prison than those found guilty of a serious non-DV assault, particularly in cases where the offender is Indigenous. However this simple comparison does not take into account other correlated variables. Table 5 presents the results of the multivariable binomial GEE regression model, showing the independent effects of the explanatory variables on the likelihood of imprisonment. This model includes a term for the interaction between Indigenous and DV status in predicting penalty choice. A positive coefficient in Table 5 indicates that those receiving a prison penalty are more likely to have that characteristic than those receiving a non-custodial sanction. Odds ratios are not reported here because of the difficulties

Table 3. Offenders, offence characteristics and imprisonment for serious assault, 2009-2014 (n = 23,140)

Variable	Category	n	Imprisonment percentage (%)	p value
Domestic Violence	Non-DV related	12,247	14.4	< .001 *
	DV related	10,893	16.9	
Assault severity	Actual bodily harm (ABH)	22,535	15.0	< .001 *
	Grievous bodily harm (GBH)	605	35.9	
Age group	18-24	6,527	13.5	< .001 *
	25-34	7,102	19.3	
	35-44	5,738	17.0	
	45+	3,773	9.7	
Gender	Female	4,130	5.0	< .001 *
	Male	19,010	17.8	
Indigeneity	Non-Indigenous/unknown	19,572	12.3	< .001 *
	Indigenous	3,568	33.3	
Plea	Guilty/other	19,400	15.0	< .001 *
	Not guilty	3,740	18.1	
Year(s) of finalisation	2009-11	11,978	15.6	=.896
	2012-14	11,162	15.5	
Concurrent offences	None	12,589	6.9	< .001 *
	One	5,166	14.8	
	Two	2,327	25.0	
	Three or more	3,058	45.1	
Prior appearances	No	10,696	3.9	< .001 *
	One	4,644	11.0	
	Two	2,770	20.3	
	Three or more	5,030	41.9	
Prior appearances, serious assault	No	19,870	11.0	< .001 *
	One or more	3,270	42.9	
Prior prison	No	20,229	8.9	< .001 *
	One	1,476	50.8	
	Two or more	1,435	73.7	
Prior prison, serious assault	No	21,951	12.5	< .001 *
	One or more	1,189	71.2	
Prior suspended Sentences	No	21,135	12.6	< .001 *
	One or more	2,005	46.3	
Breach prior violence /non-violence orders	No	20,774	11.9	< .001 *
	One or more	2,366	47.7	

Table 4. Interaction between Indigenous and DV status for imprisonment (n = 23,140)

Variables in interaction	Category	n	Imprisonment percentage (%)	p value
Indigeneity & Domestic Violence	Non-Indigenous/unknown, Non-DV	10,477	12.0	< .001 *
	Non-Indigenous/unknown, DV	9,095	12.7	
	Indigenous, Non-DV	1,770	28.5	
	Indigenous, DV	1,798	38.0	

in their interpretation once an interaction effect is included in the model.

Table 5 shows that, holding all other factors constant, the interaction between DV and Indigenous status is significant. The relationship is such that for non-Indigenous offenders there is no significant difference in the likelihood of imprisonment when comparing serious DV related assault with serious non-DV related assault. However, for Indigenous offenders, the likelihood of imprisonment is significantly higher for serious DV related assault than for serious non-DV related assault.¹⁴

A number of different demographic, offence and prior offending characteristics are also significantly associated with imprisonment for serious assault. These factors are; gender, age, offence seriousness, plea, concurrent offences, prior court appearances, prior imprisonment, prior suspended sentence and prior breaches. The adjusted coefficients shown in Table 5 indicate that compared with offenders receiving a non-custodial penalty for a serious assault offence, offenders receiving prison were more likely to:

- be male
- be aged 25-34 or 35-44 years old
- be found guilty of an assault occasioning grievous bodily harm
- have a higher number of concurrent offences finalised at their index matter
- have pleaded not guilty to the serious assault
- have had one or more court appearances in the previous five years
- have had a proven serious assault offence in the previous five years
- have had a proven breach of violence/non-violence order in the previous five years
- have received a prison penalty in the previous five years.
- have received a prison penalty for serious assault in the previous five years
- have received a suspended sentence in the previous five years

Table 5. Binomial GEE regression, predictors of imprisonment for serious assault, 2009-2014

Covariates	Estimate	Standard Error	p value
Intercept	-4.777	0.156	< .001 *
<i>Indigeneity by DV interaction</i>			
DV related	0.006	0.048	= .900
Indigenous	0.318	0.080	< .001 *
Indigenous by DV related	0.201	0.089	= .024 *
<i>Current appearance</i>			
Grievous Bodily Harm (GBH) vs. Actual Bodily Harm (ABH)	1.798	0.102	< .001 *
Not guilty plea vs. Guilty plea/other	0.131	0.054	= .016 *
One concurrent offence vs. None	0.579	0.058	< .001 *
Two concurrent offences vs. None	1.070	0.081	< .001 *
Three or more concurrent offences vs. None	1.876	0.076	< .001 *
2012-14 vs. 2009-11	0.001	0.063	= .982
<i>Socio-demographic</i>			
25-34 years old vs. 18-24	0.354	0.058	< .001 *
35-44 years old vs. 18-24	0.422	0.064	< .001 *
45+ years old vs. 18-24	0.240	0.067	< .001 *
Male vs. Female	1.124	0.076	< .001 *
<i>Prior five year finalised offences/penalties</i>			
One prior appearance vs. No	0.498	0.065	< .001 *
Two prior appearances vs. No	0.766	0.066	< .001 *
Three or more prior appearances vs. No	0.915	0.065	< .001 *
One or more prior appearance(s) for serious assault vs. No	0.244	0.061	< .001 *
Prior prison once vs. No	1.223	0.092	< .001 *
Prior prison two or more vs. No	1.993	0.096	< .001 *
Prior prison for serious assault vs. No	0.364	0.115	= .002 *
Prior suspended sentence vs. No	0.504	0.072	< .001 *
Breach prior violence/non-violence order vs. No	0.323	0.062	< .001 *

* Intraclass correlation = 0.023

To illustrate the effect of some of the more important explanatory variables included in Table 5, we estimate the predicted probability of imprisonment for several combinations of these key covariates. Figure 1 shows the marginal effect of the predictors on the probability of imprisonment for serious assault for non-Indigenous offenders and Figure 2 shows the marginal effect of the predictors on the probability of imprisonment for Indigenous offenders. For the purpose of this comparison, the 'base case' (or average offender) was defined as male, aged 25-34, who pleaded guilty to a non-DV assault occasioning actual bodily harm and had his matter finalised in 2012-2014, with one concurrent offence, no prior court appearances, no prior breaches of violence/non-violence orders, no prior suspended sentences and no prior prison penalties.

Figure 1 shows that for non-Indigenous matters, the estimated probability of being imprisoned for an offender with these 'base case' characteristics is six per cent. If a non-Indigenous offender had each of these characteristics but had three or more concurrent offences, then the probability of imprisonment increases to almost 20 per cent. If they also had three or more prior court appearances the probability of imprisonment for serious assault increases to 38 per cent. If they also had one prior prison sentence the probability of imprisonment increases to 67 per cent. If a non-Indigenous offender had all these characteristics and committed a serious assault that was domestic violence related the predicted probability of prison would remain at 67 per cent.

Figure 2 shows that for Indigenous offenders found guilty of serious assault, the estimated probability of being imprisoned for an offender with the 'base case' characteristics described previously is eight per cent. Adding three or more concurrent offences the probability of imprisonment increases to 25 per cent. If in addition there is three or more prior court appearances the probability of imprisonment for serious increases to 45 per cent. If an Indigenous offender has one prior prison sentence the probability of imprisonment increases further to almost 74 per cent. If an Indigenous offender had all these characteristics and committed a serious assault that was

Figure 1. Probability of imprisonment for serious assault among non-Indigenous offenders as a function of various characteristics

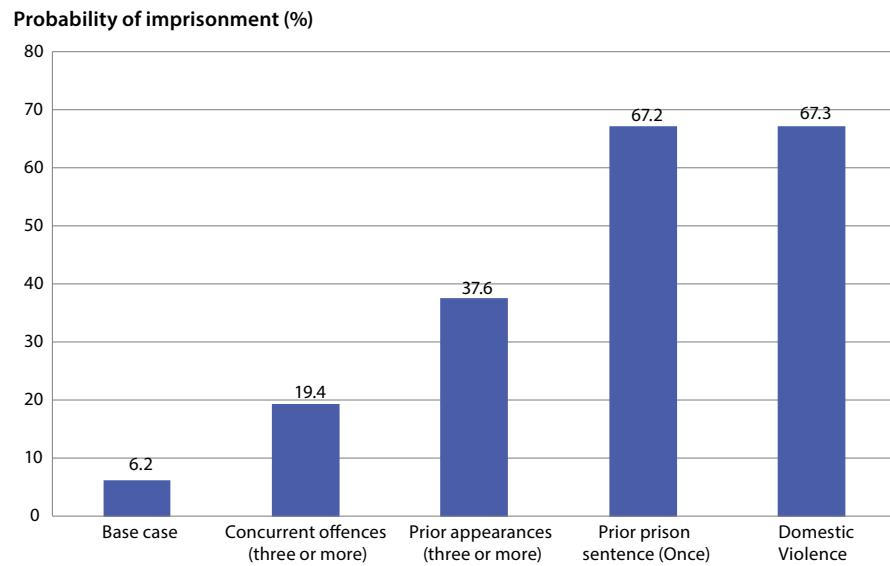
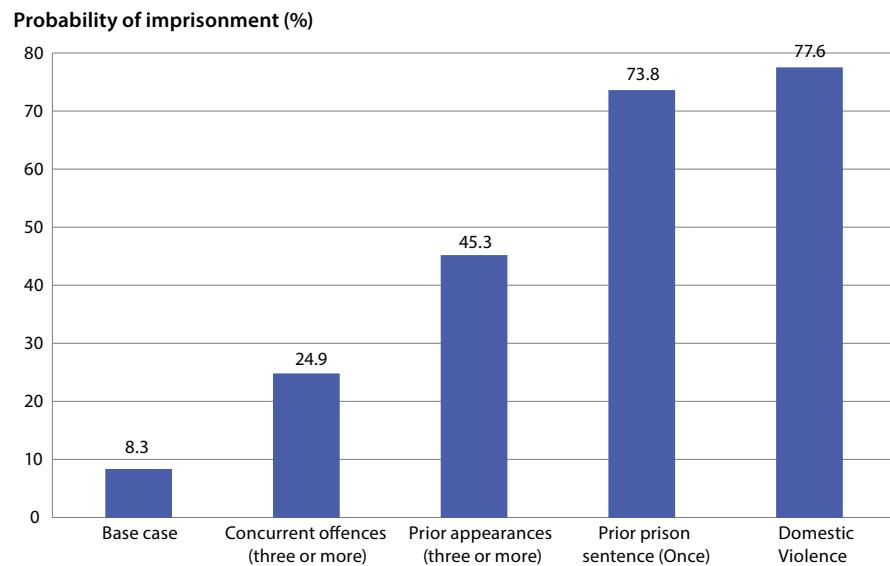


Figure 2. Probability of imprisonment for serious assault among Indigenous offenders as a function of various characteristics



domestic violence related the predicted probability of prison would only increase to 78 per cent.

Factors associated with the length of imprisonment for serious assault

Bivariate comparisons

Table 6 examines the association between the mean imprisonment length for serious assault offences and various offender, offence and prior offending characteristics at the bivariate level. The imprisonment length referred to here is the total prison term imposed, expressed as the total number of days. The mean number of total prison days was 370 for DV offenders and 364 for non-DV offenders. Both DV and non-DV

offenders had a median of 365 days total term imprisonment (1 year).¹⁵ These same data describing the association between relevant variables and non-parole periods is included in the Appendix to this report.¹⁶ All variables shown in Table 6 had a significant bivariate relationship with the length of prison sentence. The exception is domestic violence status and prior court appearances. There was no significant difference at the bivariate level between non-DV and DV related matters in terms of the number of custodial days imposed by the court. Mean imprisonment length also did not vary by the number of any prior proven court appearances.

In terms of demographic variables, the length of imprisonment was greater for 25-34 and 35-44 year olds compared with those aged less than 25 or over 44, greater for males compared with

females and for Indigenous offenders compared with non-Indigenous offenders. Prison sentences were also on average longer for offenders who pleaded not guilty to the serious assault, who had three or more concurrent offences or had their matter finalised between 2012 and 2014 compared with other offenders with a proven serious assault offence. Offenders who had previously received a custodial penalty (in particular for serious assault) or a suspended sentence also received longer prison sentences than those who had no prior experience with these penalties. Offenders with a prior proven serious assault or a prior proven breach of a violence/non-violence order also had longer average prison terms imposed at the index court appearance compared with those with no prior history of these offences.

Table 6. Offenders, offence characteristics and mean length of total term imprisonment, 2009-2014 (n = 3,596)

Variable	Category	n	Mean imprisonment length (days)	p value
Domestic Violence	Non-DV related	1,757	364.0	= .295
	DV related	1,839	370.0	
Assault severity	Actual bodily harm (ABH)	3,379	359.6	< .001 *
	Grievous bodily harm (GBH)	217	483.1	
Age group	18-24	884	355.0	< .001 *
	25-34	1,370	371.9	
	35-44	978	379.7	
	45+	364	344.5	
Gender	Female	208	336.3	= .007 *
	Male	3,388	369.0	
Indigeneity	Non-Indigenous/unknown	2,408	354.8	< .001 *
	Indigenous	1,188	391.9	
Plea	Guilty/other	2,918	363.6	= .012 *
	Not guilty	678	381.9	
Year(s) of finalisation	2009-11	1,865	360.2	= .012 *
	2012-14	1,731	374.5	
Concurrent offences	None	869	351.6	< .001 *
	One	766	352.9	
	Two	581	365.4	
	Three or more	1,380	385.4	
Prior appearances	No	418	356.0	= .264
	One	510	370.8	
	Two	561	359.3	
	Three or more	2,107	370.4	
Prior appearances, serious assault	No	2,192	357.7	< .001 *
	Once or more	1,404	381.7	
Prior prison	No	1,790	356.7	< .001 *
	One	749	372.9	
	Two or more	1,057	380.5	
Prior prison, serious assault	No	2,750	358.8	< .001 *
	One or more	846	393.9	
Prior suspended sentences	No	2,667	363.2	= .022 *
	One or more	929	378.1	
Breach prior violence /non-violence orders	No	2,468	361.5	= .004 *
	One or more	1,128	379.2	

Again we examined the interaction between Indigenous and DV status when considering sentencing outcomes for serious assault offences. Table 7 shows the interaction between Indigenous and DV status for the mean length of imprisonment, unadjusted for other covariates. As seen from this table, amongst non-Indigenous offenders, there is little difference in the average prison penalty imposed for DV and non-DV matters (353 days versus 357 days). Amongst Indigenous offenders, imprisonment length was slightly longer for DV matters compared with non-DV matters (399 days versus 382 days) but this difference was not statistically significant at the 0.05 level.¹⁷

Multivariate model

Table 8 presents the results from the multiple linear GEE regression model showing the independent effect of the explanatory variables on the length of imprisonment imposed by the court for the index serious assault offence. The interaction between Indigenous and DV status was not significant in predicting imprisonment length after adjusting for other factors and is not included in Table 8. A positive coefficient in Table 8 indicates that offenders with that characteristic receive, on average, longer prison sentences than offenders without that characteristic.

As seen from Table 8, there is no significant difference in length of imprisonment for serious assault for domestic and non-domestic matters after adjusting for other confounding factors. Factors that are significantly associated with imprisonment length include: age, gender, Indigenous status, offence seriousness (GBH), guilty plea, concurrent offences, year of finalisation, prior prison for serious assault and prior suspended sentence.¹⁸ The adjusted coefficients shown in Table 8 indicate that the average total term of imprisonment imposed for serious assault offences was longer for offenders who:

- were male
- were aged 25-34 years or 35-44 years
- were Indigenous
- had been sentenced between 2012 and 2014 (compared with 2009-2011)
- were found guilty of an assault occasioning grievous bodily harm
- were found guilty of two or more concurrent offences finalised at their index matter
- pleaded not guilty to the index offence

Table 7. Interaction between Indigenous and DV status for mean length of total term imprisonment (n = 3,596)

Variables in interaction	Category	n	Mean imprisonment length (days)	p value
Indigeneity & Domestic Violence	Non-Indigenous/unknown, Non-DV	1,252	356.9	=.068
	Non-Indigenous/unknown, DV	1,156	352.6	
	Indigenous, Non-DV	505	381.6	
	Indigenous, DV	683	399.4	

Table 8. Normal GEE regression, predictors of length of total term imprisonment (days) for serious assault, 2009-2014

Covariates	Estimate	Standard Error	p value
Intercept	255.6	15.7	< .001 *
<i>Current appearance</i>			
DV vs. non-DV	1.1	5.2	= .834
Grievous Bodily Harm (GBH) vs. Actual Bodily Harm (ABH)	150.3	11.6	< .001 *
Not guilty plea vs. Guilty plea/other	19.7	6.7	= .003 *
One concurrent offence vs. None	9.1	8.0	= .258
Two concurrent offences vs. None	23.4	8.9	= .008 *
Three or more concurrent offences vs. None	48.3	7.6	< .001 *
2012-14 vs. 2009-11	16.9	7.1	= .017 *
<i>Socio-demographic</i>			
25-34 years old vs. 18-24	20.2	7.1	= .005 *
35-44 years old vs. 18-24	31.3	8.6	< .001 *
45+ years old vs. 18-24	-2.8	11.7	= .814
Male vs. Female	37.2	10.5	< .001 *
Indigenous vs. non-Indigenous/unknown	18.9	6.2	= .002 *
<i>Prior five year finalised offences/penalties</i>			
Prior prison for serious assault vs. No	40.2	6.0	< .001 *
Prior suspended sentence vs. No	14.4	6.3	= .022 *

* Intraclass correlation = 0.050

- had received a prison penalty for serious assault in the previous five years
- had received a suspended sentence in the previous five years

Discussion

This brief set out to answer three research questions:

1. Are adult offenders found guilty of a serious non-domestic assault offence more likely to be imprisoned than adult offenders found guilty of a serious domestic assault offence?
2. Do adult offenders sentenced to prison for a serious non-domestic assault receive longer prison terms than offenders sentenced to prison for a serious domestic assault?
3. Does the likelihood and length of prison sentences for domestic and non-domestic serious assault offences vary by the Indigeneity of an offender?

The evidence presented here suggests that offenders found guilty of serious non-domestic assault do *not* receive harsher penalties than offenders found guilty of a serious domestic violence related assault. In fact, for Aboriginal and Torres Strait Islander offenders the opposite is true. Our results suggest that, all things being equal, an Indigenous offender found guilty of a serious domestic violence related assault is more likely to be imprisoned than an Indigenous offender found guilty of a serious non-domestic assault. Non-Indigenous offenders found guilty of serious non-domestic assault, on the other hand, are equally as likely to receive a custodial penalty for that offence as non-Indigenous offenders found guilty of serious domestic assault. For those who are imprisoned for serious assault, there are no significant differences between non-domestic and domestic matters in the length of the custodial penalty imposed.

In addition to the setting in which the violence occurred (domestic vs. non-domestic) and the Indigeneity of the offender, we identified a number of other important variables which are predictive of a custodial sentence for serious assault. Not surprisingly, factors related to the severity of the offence (GBH vs. ABH, presence of concurrent offences) and the extent of the offender's criminal history (prior prison, prior court appearances, prior serious violence, prior breaches, prior suspended sentences) significantly influence the likelihood of a prison sentence. Other sentencing (guilty plea) and demographic (age, gender) factors are also significant predictors of full-time custody for serious assault. Taking account of these confounding factors, the difference in imprisonment likelihood between Indigenous domestic and non-domestic cases is relatively small. For an Indigenous offender who has previously been sentenced to prison, has several prior court appearances and concurrent offences, the probability of imprisonment for serious assault increases by four percentage points if it is a domestic violence offence (from 74% to 78%). By far, the strongest predictor of prison for a serious assault is having previously received a custodial penalty.

There are two potential explanations for the observed interaction between Indigeneity and domestic violence in imprisonment decisions: (1) domestic violence matters involving Indigenous offenders result in more serious injury to the victim compared with other violent assaults occasioning actual or grievous bodily harm and (2) the recent focus on family violence in Indigenous communities has resulted in harsher sentencing decisions in matters involving Indigenous domestic violence.

While our analysis was restricted to imprisonment for serious assault offences all of which had the same prescribed statutory maximum, there would still be significant variation within this offence type in terms of the seriousness of the assault committed (which was not accounted for in our models). Statutory maxima reflect the Parliament's view of the seriousness of a particular offence but are reserved for the most extreme example of that offence. In this regard, statutory maxima serve as a 'yard stick' (along with all other relevant sentencing factors) when cases are before the court for sentencing (see *Markarian v The Queen* (2005) 79 ALJR 1048 at [31]). If Indigenous domestic violence is more often at the extreme end of the seriousness continuum, then we would expect harsher sentencing in these matters compared with Indigenous violence committed outside of domestic relationships.

But it is also possible, as argued by Jefferies and Bond (2014), that harsher sentencing of Indigenous domestic violence offenders may be due to the recent attention given to the problem and social cost of family violence in Indigenous communities. They suggest that domestic violence is now construed by many as both a fundamental cause of dysfunction in Indigenous communities and a symptom of that dysfunction. Therefore the sentencing goals of deterrence, denunciation and Indigenous victim and community protection may be prioritised in domestic matters over other mitigating factors such as Indigenous disadvantage and incarceration overrepresentation. The results of our analyses provide some support for this hypothesis, as does Jefferies and Bond's work (2014) and other research examining recent shifts in the sentencing of Indigenous offenders in case law in NSW and other Australian States (Anthony, 2013; 2010).

Before concluding it is worth noting that the evidence presented here for harsher sentencing in domestic violence matters (at least in the case of Indigenous offenders) is inconsistent with previous work conducted in this area (see Bond & Jefferies, 2014; Jefferies & Bond, 2014). One possible reason for these conflicting results is the inclusion of bail status in the regression models predicting imprisonment likelihood and length. Whether someone is refused bail is highly predictive of imprisonment for an offence but the extent to which bail refusal is exogenous to the decision to imprison is not clear. Bail is likely to be refused in cases where an offender is at risk of reoffending if released into the community (a factor relevant to sentencing decisions) but it is also conceivable

that the judiciary would refuse bail in cases where prison is the likely outcome. In the latter scenario, the decision to grant bail cannot be considered independent of the decision to impose a custodial sentence; an assumption that underpins standard regression models. Because of this uncertainty the current study excluded bail status from the final prison models. However, further research into the use of bail data when modelling penalty choice should be undertaken.

Another possible reason for the disparate findings is that, as mentioned earlier, previous analyses compared sentencing outcomes for a vast range of personal violence offences and the use of the NOI index may not have been sufficient to deal with issues of offence seriousness. Our study dealt with this concern by restricting the analysis to serious assault offences with equivalent statutory maximum penalties. One limitation of this approach, however, is that the conclusions from our work may have limited generalisability. Replication of the current results with other offence types is needed before any broader conclusions regarding sentencing disparity in domestic violence matters can be reached.

Acknowledgements

We would like to thank Mai Ho for preparing the data; Clare Ringland for statistical advice; Dr Don Weatherburn for his valuable contributions to the design of this study and his feedback on an earlier draft of this report, and; Dr Judy Trevena for important feedback on the final version of this report.

Notes

1. The 'It stops here: Standing together to end domestic and family violence' reforms launched by Women NSW in 2014 aim to improve the way government and other agencies respond to domestic violence. See https://www.women.nsw.gov.au/__data/assets/file/0003/289461/It_stops_Here_final_Feb2014.pdf for further detail.
2. See http://www.crimeprevention.nsw.gov.au/domesticviolence/Documents/The%20Domestic/jag2391_dv_strategy_book_online.pdf for further details regarding these Department of Justice initiatives.
3. See Section 5 of the Crimes (Domestic and Personal Violence) Act for meaning of 'domestic relationship'.
4. A lawpart code is a unique code assigned to all criminal offences by the Judicial Commission of NSW to describe the offence. It specifies the legislation (including the section or subsection of the relevant Act) under which the charge was made.
5. 'In company' offences have more severe statutory maximum penalties. 'Wounding' offences have less severe statutory maximum penalties compared with other T1 lawpart offences.
6. $\chi^2_3 = 893.8, p < .001$
7. $\chi^2_2 = 54.6, p < .001$. The DV and non-DV offenders were also compared in terms of having ever been classified as Indigenous in any finalised court matter in NSW. This found that more DV offenders had ever been classified as Indigenous compared with non-DV offenders (23.1% vs. 22.0%). This difference was statistically significant ($\chi^2_1 = 20.3, p < .001$).
8. $\chi^2_1 = 142.8, p < .001$
9. $\chi^2_3 = 178.5, p < .001$
10. $\chi^2_1 = 321.8, p < .001$
11. $\chi^2_3 = 11.4, p = .010$
12. $\chi^2_1 = 7.1, p = .008$
13. $\chi^2_1 = 137.0, p < .001$
14. The binomial GEE analysis shown in Table 5 was also conducted using Indigenous status defined as having ever been applied in other NSW court finalisations. This confirmed that for Indigenous offenders imprisonment was significantly higher for DV related serious assault than for non-DV related serious assault ($p < .001$).
15. For both the DV and non-DV offenders the inter-quartile range (IQR) of total term imprisonment was 244 days to 487 days. For DV offenders the minimum total term was 1 day and the maximum was 1,096 days. For non-DV offenders the minimum total term was 6 days and the maximum was 1,096 days.
16. The mean number of non-parole period days was 216 for DV offenders and 222 for non-DV offenders. Both DV and non-DV offenders had a median of 183 non-parole period days. For both DV and non-DV offenders the inter-quartile range (IQR) of the non-parole period was 122 days to 274 days. Also for both DV and non-DV offenders the minimum non-parole period was 1 day and the maximum was 731 days.
17. This analysis was also conducted using Indigenous status defined as having ever been applied in other NSW court finalisations. Again among non-Indigenous offenders, there was little difference in the average total prison penalty imposed for DV and non-DV matters (351 days versus 354 days). Amongst Indigenous offenders, imprisonment length was slightly longer for DV matters compared with non-DV matters (389 days versus 377 days), however this interaction was not statistically significant ($p = .160$).
18. The normal GEE analysis shown in Table 8 was also conducted using Indigenous status defined as having ever been applied in other NSW court finalisations. There was no significant difference in the length of total prison term for DV and non-DV serious assault offenders ($p = .768$).

References

- Agresti, A. (1996). *An introduction to categorical data analysis*. New York: John Wiley & Sons, Inc.
- Anthony, T. (2010). *Sentencing Indigenous offenders (Indigenous Clearinghouse Brief 7)*. Retrieved 23 Sept. 2015 from the Indigenous Justice Clearinghouse website: <http://www.indigenousjustice.gov.au/briefs/brief007.pdf>
- Anthony, T. (2013). Before the High Court: Indigenising sentencing? *Bugmy v The Queen*. *Sydney Law Review*, 35, 451-466.
- Australian Bureau of Statistics. (2011). *Australian and New Zealand Standard Offence Classification (ANZSOC)* (Third edition). Retrieved 12 Oct. 2015 from Australian Bureau of Statistics website: [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/5CE97E870F7A29EDCA2578A200143125/\\$File/12340_2011.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/5CE97E870F7A29EDCA2578A200143125/$File/12340_2011.pdf)
- Australian Bureau of Statistics. (2013). *Personal Safety, Australia, 2012* (ABS: Cat No. 4906.0). Canberra: Australian Bureau of Statistics.
- Bond, C. & Jeffries, S. (2014). Similar punishment? Comparing sentencing outcomes in domestic and non-domestic violence cases. *British Journal of Criminology*, 54, 849-872.
- Domestic Violence Death Review Team, (2015). *NSW Domestic violence death review team annual report 2012-2013*. Retrieved 23 Sept. 2015 from the NSW Coroner's Court website: http://www.coroners.justice.nsw.gov.au/Documents/dvdrt_2013_annual_reportx.pdf
- Hanley J.A., Negassa, A., Edwardes, M.D., & Forrester, J.E. (2003). Statistical analysis of correlated data using generalized estimating equations: An orientation. *American Journal of Epidemiology*, 157, 364-375.
- Hessick, C.B. (2007). Violence between lovers, strangers and friends. *Washington Law Review*, 85, 344-402.
- Hosmer, D.W., & Lemeshow, S. (2000). *Applied logistic regression* (2nd ed.). New York: John Wiley & Sons, Inc.
- Hua, J., & Fitzgerald, J. (2006). *Matching court records to measure reoffending* (Crime & Justice Bulletin No. 95). Retrieved 23 Sept. 2015 from NSW Bureau of Crime Statistics and Research website: <http://www.bocsar.nsw.gov.au/Documents/CJB/cjb95.pdf>
- Jefferies, S. & Bond, C. (2014). Taking the problem seriously? Sentencing Indigenous and non-Indigenous domestic violence offenders. *Australian and New Zealand Journal of Criminology*, first published online on 17 Nov. 2014 as doi:10.1177/0004865814554306
- MacKinnell, I., Poletti, P., & Holmes, J. (2010). *Measuring offence seriousness* (Crime and Justice Bulletin No. 142). Retrieved 23 Sept. 2015 from NSW Bureau of Crime Statistics and Research website: <http://www.bocsar.nsw.gov.au/Documents/CJB/cjb142.pdf>
- NSW Bureau of Crime Statistics and Research. (2015). *New South Wales Recorded Crime Statistics – Quarterly Update June 2015*. Retrieved 23 Sept. 2015 from NSW Bureau of Crime Statistics and Research's website: http://www.bocsar.nsw.gov.au/Documents/RCS-Quarterly/NSW_Recorded_Crime_June_2015.pdf
- Ringland, C., & Fitzgerald, J. (2010). *Factors which influence the sentencing of domestic violence offenders* (Bureau Brief No. 48). Retrieved 23 Sept. 2015 from NSW Bureau of Crime Statistics and Research website: <http://www.bocsar.nsw.gov.au/Documents/BB/bb48.pdf>
- Snowball, L., & Weatherburn, D. (2006). *Indigenous over-representation in prison: The role of offender characteristics* (Crime and Justice Bulletin No. 99). Retrieved 23 Sept. 2015 from NSW Bureau of Crime Statistics and Research website: <http://www.bocsar.nsw.gov.au/Documents/CJB/cjb99.pdf>

APPENDIX

Table A1. Lawpart codes for guilty serious assault defendants by DV status, 2009-2014 (n = 23,140)

Lawpart description	Domestic Violence		Non-Domestic Violence	
	Lawpart code	N	Lawpart code	N
Actual Bodily Harm (5-year statutory maximum prison penalty)				
Assault occasioning actual bodily harm- T2	64780	10,751	243	11,746
Assault person w/i to resist/prevent apprehension- T2	64774	0	238	29
Assault person w/i to commit a serious indictable offence- T2	64779	1	35288	6
Cause dog to inflict actual bodily harm- T2	64750	1	63636	1
Grievous Bodily Harm (10-year statutory maximum prison penalty)				
Recklessly cause grievous bodily harm- T1	64746	107	62881	344
Reckless grievous bodily harm- T1	77099	28	77098	117
Intentionally choke etc person with recklessness- T1	82221	5	82187	3
Cause dog to inflict grievous bodily harm- T1	64749	0	63635	1
Total		10,893		12,247

Table A2. Offenders, offence characteristics and mean length of non-parole period, 2009-2014 (n = 3,596)

Variable	Category	n	Mean non-parole period (days)	p value
Domestic Violence	Non-DV related	1,757	222.3	=.146
	DV related	1,839	216.1	
Assault severity	Actual bodily harm (ABH)	3,379	213.5	< .001 *
	Grievous bodily harm (GBH)	217	307.9	
Age group	18-24	884	201.8	< .001 *
	25-34	1,370	224.1	
	35-44	978	231.3	
	45+	364	210.5	
Gender	Female	208	185.9	< .001 *
	Male	3,388	221.2	
Indigeneity	Non-Indigenous/unknown	2,408	213.3	< .001 *
	Indigenous	1,188	231.0	
Plea	Guilty/other	2,918	213.9	< .001 *
	Not guilty	678	241.9	
Year(s) of finalisation	2009-11	1,865	219.9	=.734
	2012-14	1,731	218.4	
Concurrent offences	None	869	224.2	=.563
	One	766	217.3	
	Two	581	220.1	
	Three or more	1,380	216.7	
Prior appearances	None	418	211.3	=.393
	One	510	223.8	
	Two	561	215.4	
	Three or more	2,107	220.6	
Prior appearances, serious assault	No	2,192	212.0	< .001 *
	One or more	1,404	230.4	
Prior prison	No	1,790	205.5	< .001 *
	One	749	225.9	
	Two or more	1,057	237.7	
Prior prison, serious assault	No	2,750	211.1	< .001 *
	One or more	846	245.3	
Prior suspended Sentences	No	2,667	219.2	= 1.000
	One or more	929	219.2	
Breach prior violence /non-violence orders	No	2,468	217.3	=.197
	One or more	1,128	223.2	

Table A3. Normal GEE regression, predictors of length of non-parole period (days) for serious assault, 2009-2014

Covariates	Estimate	Standard Error	p value
Intercept	136.2	11.9	< .001 *
<i>Current appearance</i>			
DV vs. non-DV	-5.6	4.3	= .195
Grievous Bodily Harm (GBH) vs. Actual Bodily Harm (ABH)	105.7	10.7	< .001 *
Not guilty plea vs. Guilty plea/other	26.2	6.0	< .001 *
2012-2014 vs. 2009-2011	3.2	4.9	= .521
<i>Socio-demographic</i>			
25-34 years old vs. 18-24	23.4	5.2	< .001 *
35-44 years old vs. 18-24	33.4	5.9	< .001 *
45+ years old vs. 18-24	12.7	8.7	= .146
Male vs. Female	37.5	8.6	< .001 *
Indigenous vs. non-Indigenous/unknown	12.2	5.1	= .016 *
<i>Prior five year finalised offences/penalties</i>			
Prior prison once vs. No	16.2	5.5	= .003 *
Prior prison two or more vs. No	23.8	6.3	< .001 *
Prior prison for serious assault vs. No	20.5	6.3	= .001 *

* Intraclass correlation = 0.025