

## What's causing the growth in Indigenous Imprisonment in NSW?

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**Aim:** To examine the rise in the NSW Indigenous prison population.

**Method:** Descriptive analysis of trends in bail, sentencing and court appearances.

**Results:** The rise in Indigenous imprisonment in NSW is due to a combination of higher rates of arrest resulting in conviction, a greater likelihood of imprisonment given conviction and a higher rate of bail refusal. The growth in number of arrests, percentage imprisoned and percentage bail refused has been especially large in the categories justice procedure offences and acts intended to cause injury. Most of the growth in justice procedure offences is coming from breach of custodial orders (e.g. breach of a community-based order) and breach of Apprehended Violence Orders. Most of the growth in acts intended to cause injury is coming from serious assault resulting in injury and stalking/intimidation.

**Conclusion:** Efforts to arrest growth in the Indigenous imprisonment rate should focus on measures which reduce the number of Indigenous persons being arrested and imprisoned for serious assault resulting in injury, stalking/intimidation and breach of community-based orders.

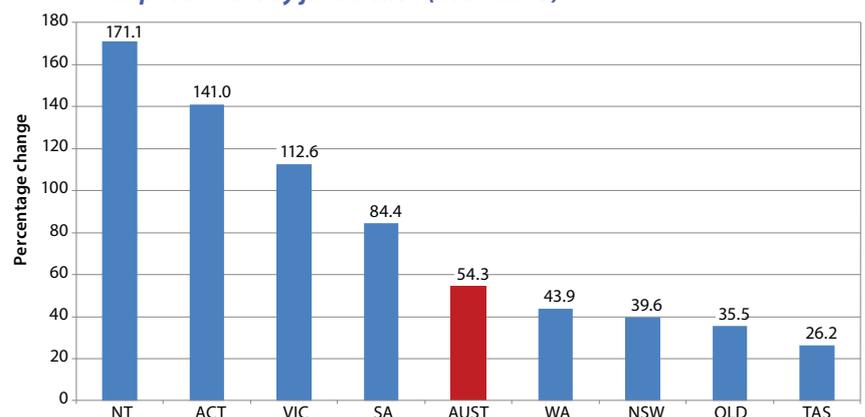
**Keywords:** Indigenous, proportion convicted, proportion imprisoned, proportion refused bail, non-parole period length.

### Introduction

Between 2001 and 2015, the number of Indigenous Australians in New South Wales (NSW) prisons more than doubled. On an age-standardised basis, the rate of Indigenous imprisonment rose by 40 per cent. Over the same time period, the age-standardized non-Indigenous imprisonment rate rose by 10 per cent (Australian Bureau of Statistics, 2006; 2015). The rising rate of Indigenous imprisonment has occurred against a backdrop of falling rates of Indigenous involvement in violent and property crime. Over the last 15 years in NSW the rate of Indigenous arrest for violent offences has declined by nearly 37 per cent (36.8%), while the rate of Indigenous arrest for property crime has declined by 32 per cent (Weatherburn & Ramsey, 2016).

NSW is not alone in having a rising rate of Indigenous imprisonment. Nor is it the jurisdiction with the highest rate of increase. As can be seen from Figure 1, the age-standardized rate of Indigenous imprisonment rose in every State and

Figure 1. Percentage change in the age standardised rate of Indigenous imprisonment by jurisdiction (2001-2015)



Territory over the last 15 years, especially the Northern Territory, the Australian Capital Territory, Victoria and South Australia. The absence of long-term national data on sentencing makes it impossible to analyse the reasons behind the rise in Indigenous imprisonment in all Australian jurisdictions. The NSW Bureau of Crime Statistics and Research (BOCSAR), however, is fortunate in having comprehensive sentencing data back to 1994. The purpose of this brief is to examine this data with a view to shedding some light on the reasons for the increase in Indigenous prisoner numbers in NSW.

## Trends in Indigenous prisoner numbers by offence type

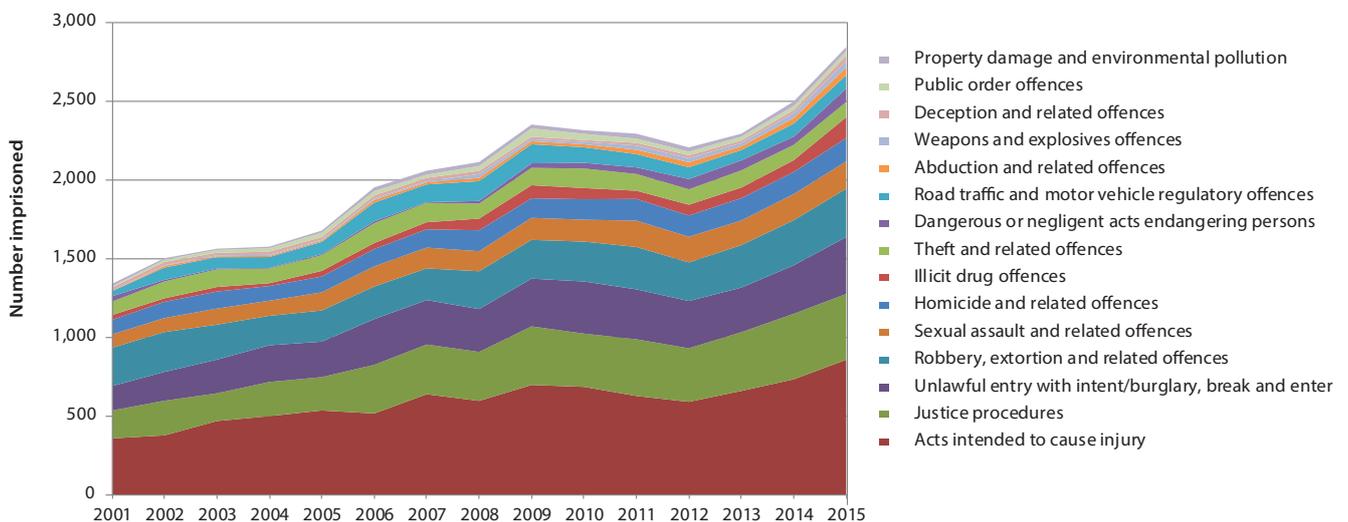
Figure 2 shows the trend in the NSW prison population broken down by principal offence type. Although the number of Indigenous prisoners has grown in every category of offence, the offence categories with the highest growth (in prisoner

numbers) between 2001 and 2015 were acts intended to cause injury (499 additional prisoners); justice procedure offences (241 additional prisoners); unlawful entry with intent/burglary, break and enter (206 additional prisoners); and illicit drug offences (101 additional prisoners).

## Trends in the sentencing of Indigenous offenders

The number of Indigenous prisoners will rise if the number of Indigenous offenders given a prison sentence increases or the length of prison term imposed on Indigenous offenders increases. As can be seen from Figure 3, the average length of the non-parole period (NPP) imposed on Indigenous offenders has remained relatively stable since 2001 (mean NPP = 8.6 months). In this section, therefore, we focus on changes in the number and proportion of Indigenous offenders receiving a prison sentence between 2001 and 2015.

Figure 2. Indigenous imprisonment by offence and year



Source: Australian Bureau of Statistics 2015

Figure 3. Average Non-Parole Period (NPP): Indigenous offenders 2001-2015

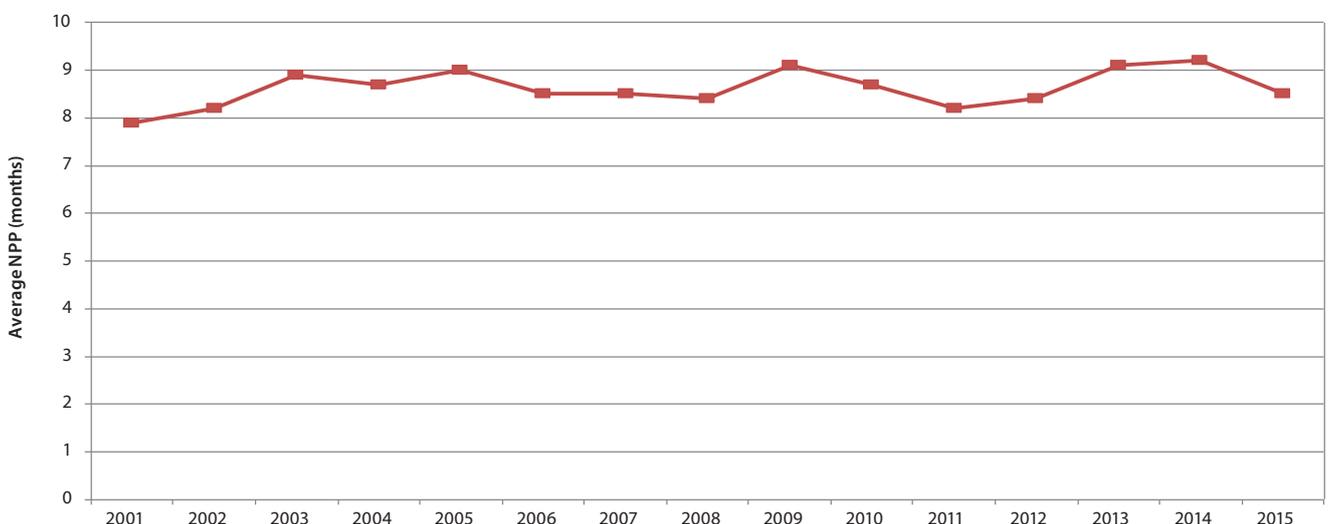


Table 1 shows the trend in the number of Indigenous offenders imprisoned, broken down by offence type. The final column shows the difference between the number imprisoned in 2015 and the number imprisoned (for the same offence) in 2001. Not surprisingly, given the evidence of Figure 2, the biggest increases have come from justice procedure offences and acts intended to cause injury. However there have also been increases in a wide variety of other offences, including public order offences; dangerous or negligent acts endangering persons; illicit drug offences; unlawful entry with intent/burglary, break and enter; and fraud, deception and related offences.

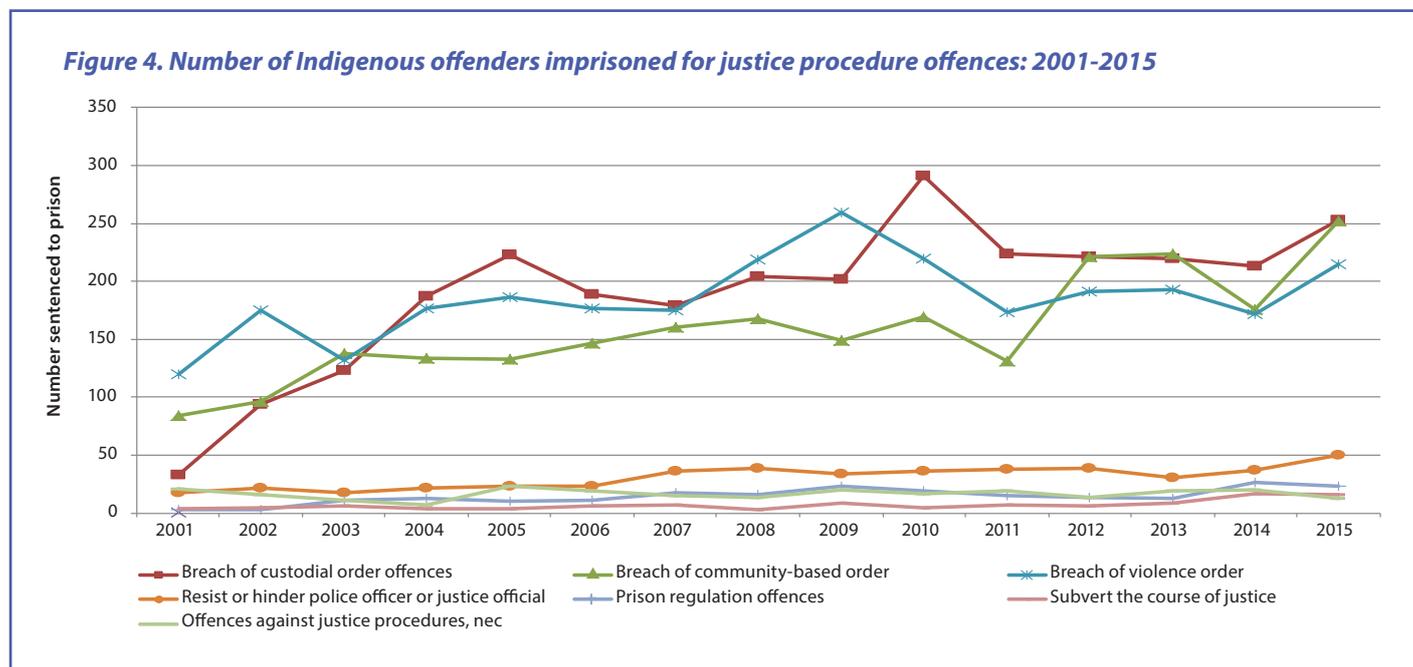
The categories justice procedure offences and acts intended to cause injury can be broken down to lower-level categories to obtain a clearer picture of the offences responsible for the upward trends in these high-level offence categories.

Figure 4 shows the growth in the subcategories that make up justice procedure offences. Most of the growth in this offence is coming from breach of custodial orders (escape custody, breach of home detention order, breach of suspended sentence), breach of community-based orders (e.g. a bond with supervision) and breach Apprehended Violence Order (AVO) offences.

**Table 1. Number Indigenous offenders imprisoned by offence type (2001-2015)**

Principal offence	Number of Indigenous offenders imprisoned															Diff 2015 -2001
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
Justice procedures etc.	283	411	439	544	602	572	590	663	696	757	607	706	710	662	822	539
Acts intended to cause injury	581	687	720	801	813	937	962	984	1090	986	888	854	900	963	1035	454
Public order offences	121	119	113	103	108	119	104	164	200	183	143	142	170	169	197	76
Dangerous or negligent acts endangering persons	35	44	35	34	30	27	30	40	44	36	56	61	87	88	104	69
Illicit drug offences	82	90	80	105	101	106	99	128	125	110	109	89	109	115	150	68
Unlawful entry with intent /burglary, break and enter	403	401	418	469	415	443	403	388	424	420	356	381	397	388	456	53
Fraud, deception and related offences	63	81	66	68	57	65	46	53	59	53	49	70	69	87	110	47
Abduction, harassment and other offences against the person	39	44	41	56	35	44	55	55	55	58	51	49	56	61	69	30
Prohibited and regulated weapons and explosives offences	6	15	15	21	10	11	16	12	19	17	15	23	18	44	36	30
Sexual assault and related offences	38	39	37	42	45	62	53	58	58	48	63	39	74	39	62	24
Property damage and environmental pollution	60	71	54	71	56	64	78	74	94	62	61	80	69	90	72	12
Homicide and related offences	16	12	15	17	17	18	16	13	22	21	12	18	24	24	8	-8
Robbery, extortion and related offences	168	168	124	128	138	120	135	154	167	142	140	134	156	156	160	-8
Theft and related offences	525	470	453	513	441	475	429	471	445	465	373	393	437	413	509	-16
Traffic and vehicle regulatory offences	280	335	295	328	328	313	319	328	342	244	257	252	228	251	241	-39

**Figure 4. Number of Indigenous offenders imprisoned for justice procedure offences: 2001-2015**



**Figure 5. Number of Indigenous offenders imprisoned for acts intended to cause injury: 2001-2015**

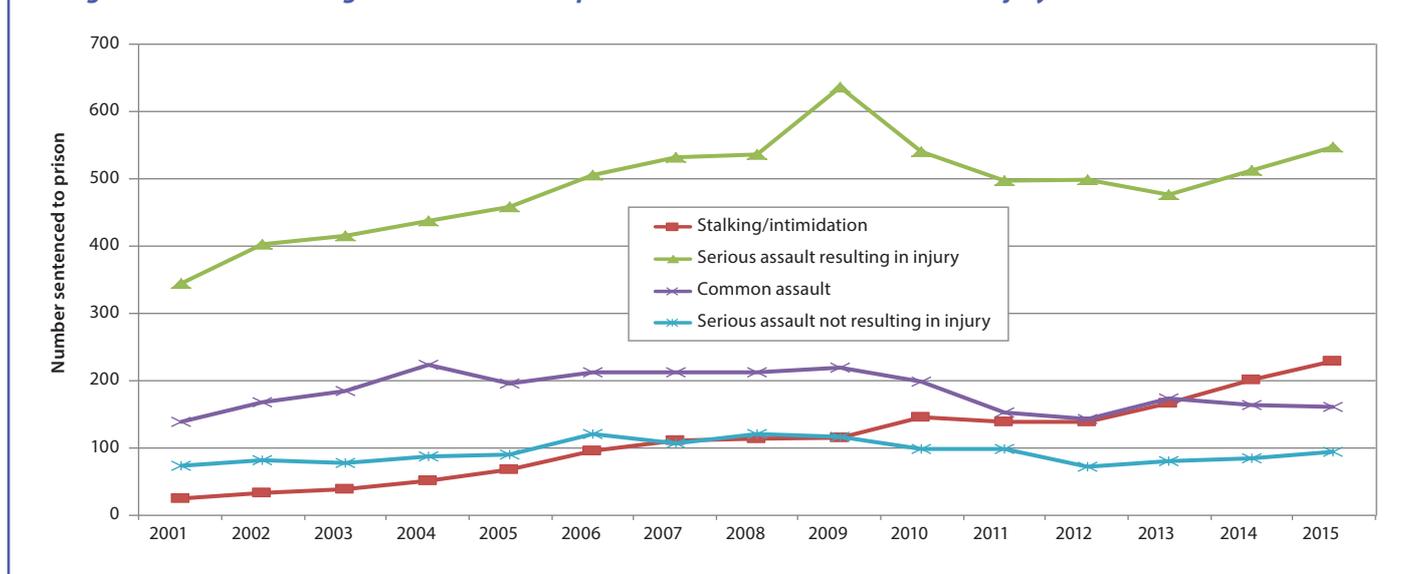


Figure 5 shows the growth in the subcategories that make up acts intended to cause injury. Most of the growth in Indigenous offenders imprisoned for this offence is coming from serious assault resulting in injury and stalking/intimidation.<sup>1</sup>

### Trends in the percentage of Indigenous defendants imprisoned

A growth in the number imprisoned can come about as a result of an increase in the percentage of convicted offenders given

a prison sentence or an increase in the number of defendants convicted or both. In this section we explore changes in the *percentage* of Indigenous offenders imprisoned, broken down by offence category. Table 2 shows the trend in the proportion of Indigenous offenders imprisoned, broken down by year and offence type. The final column shows the percentage point difference between the percentage imprisoned in 2015 and the percentage imprisoned (for the same offence) in 2001.

**Table 2. Percentage of Indigenous offenders imprisoned by offence type (2001-2015)**

Principal offence	Percentage of Indigenous offenders imprisoned															Diff 2015 -2001
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
Dangerous or negligent acts endangering persons	13.9	18.7	18.3	14.3	13.5	12.2	14.7	17.6	17.1	16.6	23.5	23.1	29.7	30.3	35.1	21.2
Prohibited and regulated weapons and explosives offences	7.6	18.5	19.5	25.0	15.2	16.4	22.2	21.1	22.4	23.3	22.7	24.5	22.8	31.9	26.3	18.7
Unlawful entry with intent/ burglary, break and enter	59.0	58.5	60.5	67.5	66.8	67.9	62.4	67.1	65.8	63.5	66.4	67.4	69.0	68.8	72.7	13.7
Sexual assault and related offences	62.3	60.0	60.7	57.5	69.2	70.5	66.3	74.4	60.4	56.5	67.0	57.4	71.2	62.9	75.6	13.3
Acts intended to cause injury	18.5	21.4	22.3	24.8	24.2	26.0	25.4	26.5	28.3	27.5	26.2	25.7	26.4	27.4	30.3	11.8
Public order offences	6.0	6.2	6.5	6.3	6.3	7.3	5.8	10.1	12.6	13.4	12.6	12.9	15.1	14.0	16.6	10.6
Abduction, harassment and other offences against the person	25.7	29.1	28.9	34.2	22.6	30.1	33.1	27.4	27.5	29.7	31.5	29.7	31.1	34.7	34.5	8.8
Fraud, deception and related offences	19.9	24.1	20.6	21.5	21.4	23.9	19.7	21.4	21.6	22.7	22.8	26.5	27.0	26.6	27.2	7.2
Justice procedures etc.	17.0	22.8	23.7	28.4	27.9	26.0	26.2	26.4	26.5	24.9	21.8	23.8	22.8	20.5	24.1	7.1
Theft and related offences	25.1	24.1	24.8	27.9	28.0	30.3	27.5	31.2	30.5	31.6	26.7	25.8	27.7	26.4	29.0	3.9
Property damage and environmental pollution	7.2	8.3	6.7	8.9	7.1	7.6	9.3	8.7	10.8	7.4	7.8	10.3	9.3	12.5	10.7	3.5
Miscellaneous offences	7.1	10.4	3.1	5.7	3.7	4.8	5.6	4.8	6.1	6.3	4.8	10.5	7.1	10.7	8.4	1.3
Robbery, extortion and related offences	81.6	84.0	82.7	83.7	85.7	79.5	82.3	83.7	89.3	84.0	83.3	77.5	81.3	87.2	82.5	0.9
Illicit drug offences	8.4	9.5	9.3	10.5	11.2	11.4	9.7	11.2	9.8	9.0	8.5	6.6	8.0	6.8	8.7	0.3
Traffic and vehicle regulatory offences	7.7	9.2	8.3	7.8	7.9	7.3	7.6	7.8	8.2	7.3	8.4	8.1	7.1	7.0	6.3	-0.1
Homicide and related offences	94.1	92.3	88.2	89.5	81.0	85.7	80.0	92.9	95.7	95.5	100.0	100.0	100.0	96.0	88.9	-0.5

There are two points to note about Table 2. The first is that (see final column) 14 out of the 16 offence categories show an increase in the proportion of convicted Indigenous offenders receiving a prison sentence, suggesting that harsher sentencing practice might be a significant contributor to the growth in the Indigenous imprisonment rate. The second is that the biggest increases have come from dangerous or negligent acts endangering persons and prohibited and regulated weapons and explosives offences. Within the category dangerous or negligent acts endangering persons, by far the biggest increase is that associated with dangerous or negligent operation

(driving) of a vehicle; which increased 34 percentage points, from 11.1 per cent in 2001 to 45.1 per cent in 2015.

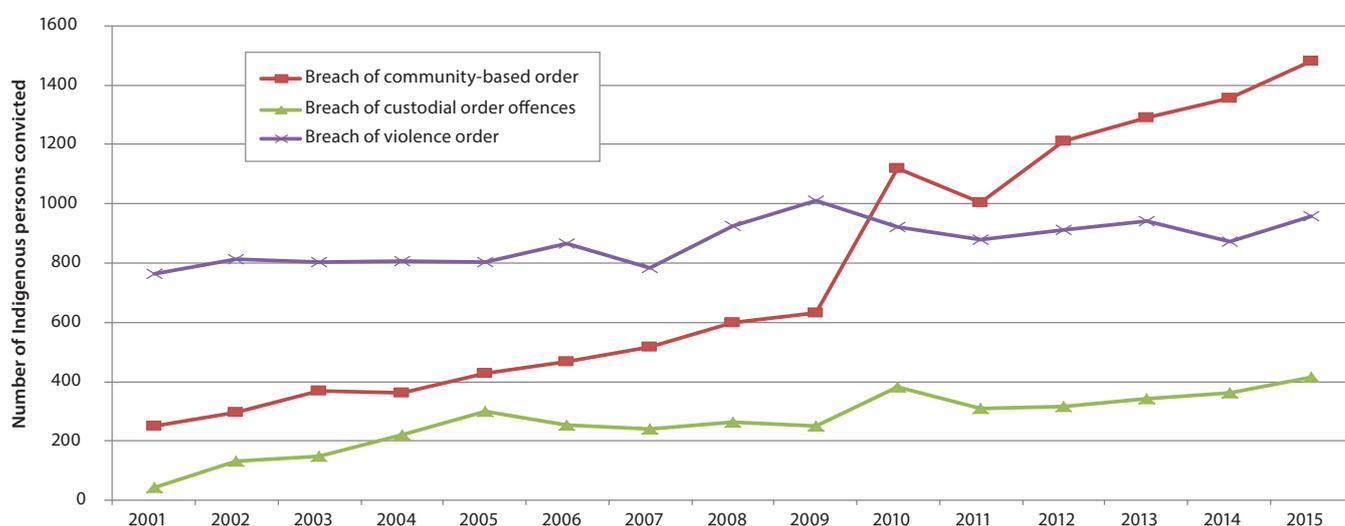
## Trends in the number of Indigenous persons convicted

Some of the growth in the number of Indigenous offenders sentenced to prison may also be due to an increase in the number of Indigenous persons being convicted in court. Table 3 shows the number of convicted Indigenous offenders by principal offence type for the period 2001-2015. As with the previous tables, the final column shows the difference between

**Table 3. Number of Indigenous offenders convicted by offence type (2001-2015)**

Principal offence	Number of Indigenous persons convicted															Diff 2015 -2001
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
Justice procedures etc.	1,663	1,800	1,851	1,917	2,157	2,197	2,256	2,514	2,624	3,038	2,779	2,969	3,111	3,231	3,409	1,746
Illicit drug offences	979	945	857	1,003	905	929	1,026	1,142	1,277	1,228	1,287	1,355	1,368	1,684	1,729	750
Acts intended to cause injury	3,140	3,215	3,235	3,227	3,359	3,601	3,791	3,708	3,859	3,581	3,391	3,320	3,415	3,521	3,412	272
Traffic and vehicle regulatory offences	3,660	3,642	3,564	4,230	4,172	4,296	4,208	4,231	4,178	3,348	3,047	3,110	3,225	3,600	3,801	141
Fraud, deception and related offences	316	336	321	317	266	272	234	248	273	234	215	264	256	327	405	89
Prohibited and regulated weapons and explosives offences	79	81	77	84	66	67	72	57	85	73	66	94	79	138	137	58
Abduction, harassment and other offences against the person	152	151	142	164	155	146	166	201	200	195	162	165	180	176	200	48
Dangerous or negligent acts endangering persons	251	235	191	238	222	222	204	227	258	217	238	264	293	290	296	45
Miscellaneous offences	98	96	98	88	135	104	90	146	165	159	167	200	182	169	131	33
Sexual assault and related offences	61	65	61	73	65	88	80	78	96	85	94	68	104	62	82	21
Homicide and related offences	17	13	17	19	21	21	20	14	23	22	12	18	24	25	9	-8
Robbery, extortion and related offences	206	200	150	153	161	151	164	184	187	169	168	173	192	179	194	-12
Unlawful entry with intent/burglary, break and enter	683	686	691	695	621	652	646	578	644	661	536	565	575	564	627	-56
Property damage and environmental pollution	836	855	805	797	794	843	840	852	873	833	783	778	740	719	673	-163
Theft and related offences	2,093	1,952	1,824	1,842	1,576	1,567	1,562	1,512	1,458	1,473	1,397	1,521	1,579	1,567	1,754	-339
Public order offences	2,019	1,927	1,730	1,645	1,719	1,632	1,795	1,619	1,586	1,368	1,137	1,101	1,126	1,206	1,188	-831

**Figure 6. Number of Indigenous convictions for justice procedure offences: 2001-2015**



the number convicted in 2015 and the number convicted (for the same offence) in 2001.

The offence category showing the largest increase is justice procedure offences. Indigenous convictions in this group have more than doubled since 2001 (up 1,746 proven appearances). Substantial increases in numbers of convictions can also be seen for illicit drug offences (up 750 proven appearances), acts intended to cause injury (up 272 proven appearances)<sup>2</sup> and traffic and vehicle regulatory offences (up 141 proven appearances).

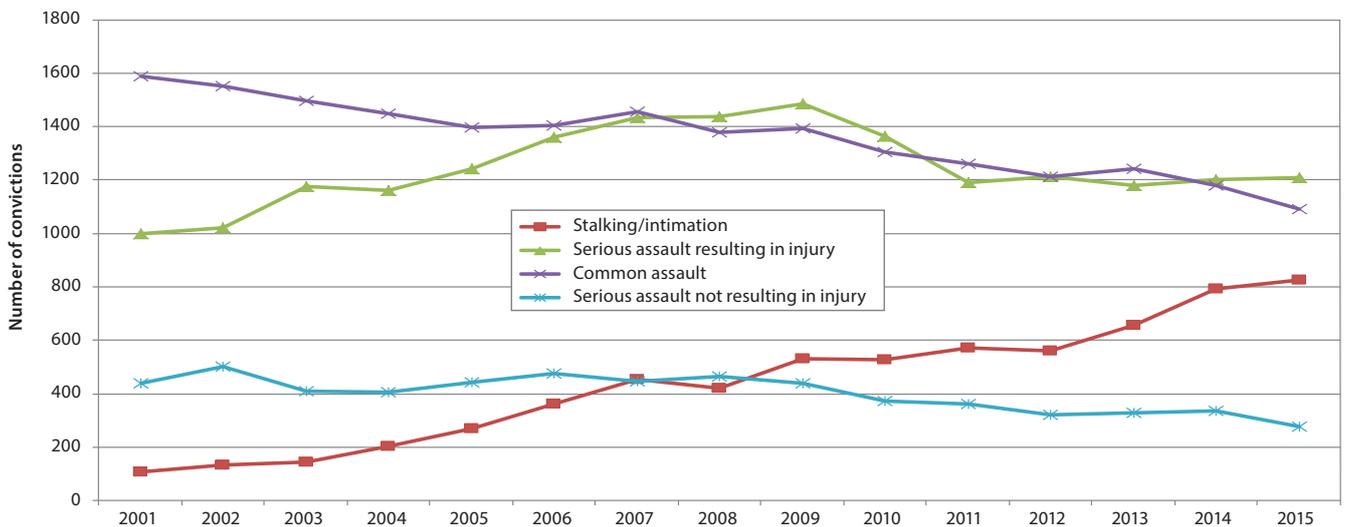
Figures 6-8 show the main subcategories contributing to the increase in justice procedure offences (Figure 6); acts intended to cause injury (Figure 7); and traffic and vehicle regulatory offences (Figure 8).

The three main categories contributing to the upward trend in Indigenous convictions for justice procedure offences (see

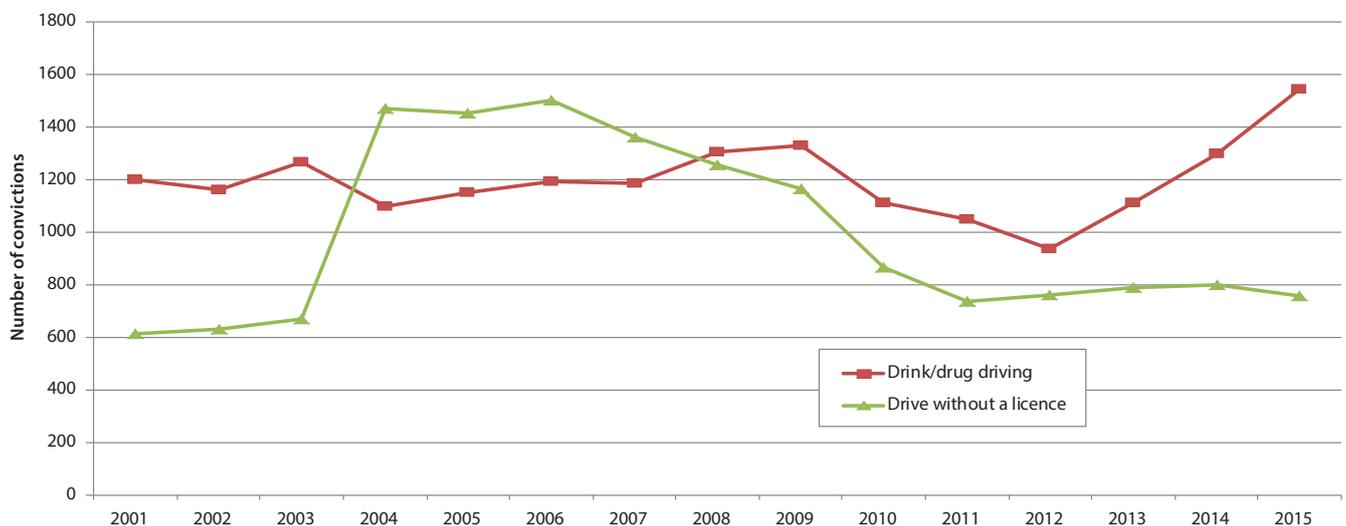
Figure 6) are breach of community-based orders, breach of custodial orders and breach Apprehended Violence Order offences. Among these offences, by far the biggest increase is that associated with breach of community-based orders. Convictions in this subcategory increased from 250 in 2001 to 1,481 in 2015, an almost six-fold increase in 15 years. The abrupt nature of the change in this category of offence between 2009 and 2010 suggests a change in policy rather than a change in offending.

The most common conviction in the category acts intended to cause injury (see Figure 7) is stalking/intimidation, which increased from just 108 convictions in 2001 to 826 in 2015. The other sub-category showing a sizable increase is serious assault resulting in injury; which increased from 998 in 2001 to 1,484 in 2009 before falling back to around 1,200 cases in 2015. Curiously, there is no significant growth in cases involving common assault and serious assault not resulting in injury.

**Figure 7. Number of Indigenous convictions for acts intended to cause injury: 2001-2015**



**Figure 8. Number of Indigenous convictions for traffic and vehicle regulatory offences: 2001-2015**



Indeed, the rise in stalking/intimidation offences appears to be almost matched by a fall in common assault offences.

The two main contributors to the rise in Indigenous convictions for traffic and vehicle regulatory offences (see Figure 8) are drive without a licence (which increased from around 600 convictions in 2001 to more than 1,400 convictions between 2004 and 2006 and then fell back to around 800 proven offences between 2011 and 2015) and drink/drug driving offences which, between 2012 and 2015, increased from 937 to over 1,500 (1,543 proven offences). As we noted in connection with Figure 6, the abrupt changes in driving offences suggests that they are driven by changes in policing policy rather than changes in actual rates of offending.

## The relative contributions of sentencing and law enforcement

The discussion so far indicates that the rise in Indigenous imprisonment in NSW is partly due to a growth in the proportion of offenders given a prison sentence and partly due to an increase in the number of persons charged with offences that are likely to result in a prison sentence, if proven. We can get some idea of the relative contributions of each of these sources by applying the percentage imprisoned in 2001 to the numbers of Indigenous defendants convicted by the courts between 2001 and 2015.

Table 4 shows what the trend in the number of Indigenous offenders imprisoned would have been if the proportions imprisoned in each offence category had remained constant at their 2001 values. Because we are only interested in comparing the growth that would have occurred between 2001 and

2015 with the growth that actually occurred, the estimates for individual years are not shown. The second column of Table 4 shows the growth in the number of Indigenous offenders imprisoned if the percentage of convicted Indigenous offenders given a prison sentence had remained constant at its 2001 value. The third column shows the actual change that occurred.

The fourth column tells us how much of the growth in the number of persons imprisoned in each offence category was attributable to changes in the percentage imprisoned. Looking at the figures for homicide and related offences, for example, we can see that the expected change (8 fewer imprisonments) is equal to the actual change. In other words, the fall in the number of Indigenous offenders imprisoned for offences in this category was entirely due to a fall in the number convicted of such offences, not a fall in the likelihood of imprisonment, given conviction.

Looking at the remaining entries in the table it is clear that increases in the likelihood of imprisonment given conviction made a significant contribution to the growth in numbers of Indigenous offenders given a prison sentence for acts intended to cause injury and justice procedure offences. For example, the increase in the number of Indigenous offenders imprisoned for acts intended to cause injury would have been much smaller (134 additional persons imprisoned compared with 454) if the percentage of offenders convicted of offences in this category had remained constant at its 2001 value. The same is true of persons convicted of justice procedure offences. Had the proportion imprisoned for this offence remained constant at its 2001 value, 144 fewer Indigenous offenders would

**Table 4. Growth in Indigenous imprisonment flow if the percentage imprisoned remained constant at its 2001 value**

Principal offence	Estimated change in number imprisoned (2001-2015)	Actual change in number imprisoned (2001-2015)	Difference between estimated and actual change (2001-2015)
Acts intended to cause injury	134	454	320
Offences against justice procedures, government security and government operations	395	539	144
Public order offences	-37	76	113
Dangerous or negligent acts endangering persons	9	69	60
Prohibited and regulated weapons and explosives offences	5	30	25
Fraud, deception and related offences	24	47	23
Abduction, harassment and other offences against the person	16	30	14
Property damage and environmental pollution	4	12	8
Sexual assault and related offences	23	24	1
Illicit drug offences	67	68	1
Miscellaneous offences	3	4	1
Homicide and related offences	-8	-8	0
Theft and related offences	7	-16	-23
Traffic and vehicle regulatory offences	14	-39	-53
Robbery, extortion and related offences	67	-8	-75
Unlawful entry with intent/burglary, break and enter	178	53	-125

have received a prison sentence. Changes in the percentage imprisoned also made significant contributions to the growth in numbers of Indigenous offenders imprisoned for public order offences (the counterfactual effect would have been a decline) and dangerous or negligent acts endangering persons.

## Trends in the number and percentage of defendants refused bail

Between 2001 and 2015, the number of Indigenous prisoners on remand grew by 238 per cent. Trends in bail refusal are clearly relevant to an understanding of the growth in the Indigenous prison population.

Table 5 shows the number of Indigenous defendants refused bail, broken down by the same offences as seen in earlier tables. The final column shows the difference between the number refused bail in 2015 and the number refused bail in 2001. The pattern is, not surprisingly, very similar to that seen in Table 1. The most substantial growth in the number refused bail is found for defendants convicted of justice procedure offences and acts intended to cause injury.

Table 6 shows the percentage of Indigenous defendants refused bail, broken down by offence type. The final column shows the percentage point difference between 2015 and 2001 in persons refused bail. Thirteen of the sixteen categories

show an increase in the percentage refused bail. Nine of the 16 categories show increases in excess of five percentage points.

To get some idea of the contribution of changes in the percentage of defendants refused bail to the overall growth in prisoners on remand we repeat the procedure adopted in relation to Table 4 and apply the percentage refused bail in 2001 to the numbers of Indigenous defendants refused bail by the courts between 2001 and 2015.

It is clear that the growth in numbers of Indigenous defendants refused bail would have been much smaller but for increases in the percentage refused bail. If the percentage of Indigenous offenders refused bail for justice procedure offences had remained constant at its 2001 value, for example, the number refused bail in 2015 would have been 463 lower. To put the point another way, had the percentage refused bail for this offence remained at its 2001 value, an additional 71 people would have been refused bail instead of an additional 531 Indigenous defendants. Similarly large effects can be seen for acts intended to cause injury and public order offences. Of course, some of the growth in persons refused bail will eventually materialize as growth in persons given a prison sentence. It should be noted, however, that around 40 per cent (39.3%) of Indigenous defendants who are on remand at their final court appearance do not go on to receive a custodial penalty.

**Table 5. Number of Indigenous offenders refused bail by offence type (2001-2015)**

Principal offence	Number of Indigenous offenders refused bail															Diff 2015 -2001
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
Justice procedure offences etc.	275	377	406	523	633	563	536	619	652	593	544	588	638	620	809	534
Acts intended to cause injury	482	574	637	687	760	858	823	767	895	741	684	671	705	743	823	341
Illicit drug offences	82	94	76	121	114	113	123	127	123	98	83	70	86	96	147	65
Public order offences	128	144	135	132	133	137	142	157	216	142	118	122	160	164	191	63
Fraud, deception and related offences	53	66	40	60	47	61	30	41	47	37	34	44	57	54	97	44
Dangerous or negligent acts endangering persons	25	21	20	28	28	20	24	29	25	20	28	41	47	52	66	41
Abduction, harassment and other offences against the person	32	42	45	44	32	39	49	44	51	48	37	37	37	37	56	24
Traffic and vehicle regulatory offences	218	264	241	297	273	269	265	256	246	188	199	222	187	210	241	23
Property damage and environmental pollution	52	81	73	76	70	86	99	81	93	69	69	62	69	72	74	22
Prohibited and regulated weapons and explosives offences	11	16	12	19	9	9	14	12	17	11	12	16	13	22	32	21
Sexual assault and related offences	22	27	23	28	25	44	39	34	30	37	27	28	37	17	36	14
Miscellaneous offences	4	13	3	9	8	7	6	8	13	9	7	12	11	14	13	9
Homicide and related offences	14	9	12	14	16	15	15	11	12	11	6	8	15	12	6	-8
Theft and related offences	465	448	426	488	415	411	358	387	397	326	301	307	341	299	437	-28
Robbery, extortion and related offences	145	152	104	119	122	106	120	93	91	69	77	69	70	64	61	-84
Unlawful entry with intent/burglary, break and enter	368	320	341	400	341	355	275	228	289	233	203	210	215	213	220	-148

**Table 6. Percentage of Indigenous offenders refused bail by offence type (2001-2015)**

Principal offence	Percentage of Indigenous offenders refused bail															Diff
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	-2001
Dangerous or negligent acts endangering persons	10.0	8.9	10.5	11.8	12.6	9.0	11.8	12.8	9.7	9.2	11.8	15.5	16.0	17.9	22.3	12.0
Public order offences	6.3	7.5	7.8	8.0	7.7	8.4	7.9	9.7	13.6	10.4	10.4	11.1	14.2	13.6	16.1	9.7
Prohibited and regulated weapons and explosives offences	13.9	19.8	15.6	22.6	13.6	13.4	19.4	21.1	20.0	15.1	18.2	17.0	16.5	15.9	23.4	9.4
Acts intended to cause injury	15.4	17.9	19.7	21.3	22.6	23.8	21.7	20.7	23.2	20.7	20.2	20.2	20.6	21.1	24.1	8.8
Sexual assault and related offences	36.1	41.5	37.7	38.4	38.5	50.0	48.8	43.6	31.3	43.5	28.7	41.2	35.6	27.4	43.9	7.8
Offences against justice procedures etc	16.5	20.9	21.9	27.3	29.4	25.6	23.8	24.6	24.9	19.5	19.6	19.8	20.5	19.2	23.7	7.2
Fraud, deception and related offences	16.8	19.6	12.5	18.9	17.7	22.4	12.8	16.5	17.2	15.8	15.8	16.7	22.3	16.5	24.0	7.2
Abduction, harassment and other offences against the person	21.1	27.8	31.7	26.8	20.7	26.7	29.5	21.9	25.5	24.6	22.8	22.4	20.6	21.0	28.0	7.0
Miscellaneous offences	4.1	13.5	3.1	10.2	5.9	6.7	6.7	5.5	7.9	5.7	4.2	6.0	6.0	8.3	9.9	5.8
Property damage and environmental pollution	6.2	9.5	9.1	9.5	8.8	10.2	11.8	9.5	10.7	8.3	8.8	8.0	9.3	10.0	11.0	4.8
Theft and related offences	22.2	23.0	23.4	26.5	26.3	26.2	22.9	25.6	27.2	22.1	21.6	20.2	21.6	19.1	24.9	2.7
Traffic and vehicle regulatory offences	6.0	7.3	6.8	7.0	6.5	6.3	6.3	6.1	5.9	5.6	6.5	7.1	5.8	5.8	6.3	0.4
Illicit drug offences	8.4	10.0	8.9	12.1	12.6	12.2	12.0	11.1	9.6	8.0	6.5	5.2	6.3	5.7	8.5	0.1
Homicide and related offences	82.4	69.2	70.6	73.7	76.2	71.4	75.0	78.6	52.2	50.0	50.0	44.4	62.5	48.0	66.7	-15.6
Unlawful entry with intent/ burglary, break and enter	53.9	46.7	49.4	57.6	54.9	54.5	42.6	39.5	44.9	35.3	37.9	37.2	37.4	37.8	35.1	-18.8
Robbery, extortion and related offences	70.4	76.0	69.3	77.8	75.8	70.2	73.2	50.5	48.7	40.8	45.8	39.9	36.5	35.8	31.4	-39.0

**Table 7. Growth in Indigenous bail refusal if the percentage refused bail remained constant at its 2001 value**

Principal offence	Estimated change in number bail refused (2001-2015)	Actual Number refused bail	Difference between estimated and actual change (2001-2015)
Justice procedure offences etc.	71	534	463
Acts intended to cause injury	42	341	299
Public order offences	-53	63	116
Theft and related offences	-75	-28	47
Dangerous or negligent acts endangering persons	4	41	37
Property damage and environmental pollution	-10	22	32
Fraud, deception and related offences	15	44	29
Traffic and vehicle regulatory offences	8	23	15
Abduction, harassment and other offences against the person	10	24	14
Prohibited and regulated weapons and explosives offences	8	21	13
Sexual assault and related offences	8	14	6
Miscellaneous offences	5	9	4
Illicit drug offences	63	65	2
Homicide and related offences	-7	-8	-1
Robbery, extortion and related offences	-8	-84	-76
Unlawful entry with intent/burglary, break and enter	-30	-148	-118

## Discussion

The aim of this brief was to explain (to the extent possible) why Indigenous imprisonment rates are rising. At the most basic level the growth in the number of Indigenous prisoners is partly a consequence of increases in the number of sentenced prisoners and partly a consequence of increases in the number of Indigenous defendants on remand.

The cause of the growth in the sentenced prisoner population is an increase in the number of Indigenous offenders given a prison sentence (not an increase in sentence length). The growth has been especially large in the categories justice procedure offences and acts intended to cause injury but there have also been increases in Indigenous offenders given custodial sentences for public order offences; dangerous or negligent acts endangering persons; illicit drug offences; unlawful entry with intent/burglary, break and enter; and fraud, deception and related offences. Most of the growth in justice procedure offences is coming from breach of custodial order offences (e.g. breach of home detention order, breach of suspended sentence), breach of community-based order offences (e.g. a bond with supervision) and breach of Apprehended Violence Order offences. Most of the growth in acts intended to cause injury has come from convictions for serious assault resulting in injury and stalking/intimidation.

The growth in numbers of Indigenous offenders given a prison sentence is partly due to the fact that courts have become more willing to imprison convicted offenders and partly due to a growth in the number of Indigenous defendants convicted of offences that are likely to result in a sentence of imprisonment. Increases in the likelihood of imprisonment given conviction have made a substantial contribution to the growth in numbers of Indigenous offenders given a prison sentence for acts intended to cause injury and justice procedure offences. Increases in the percentage imprisoned also made significant contributions to the growth in numbers of Indigenous offenders imprisoned for public order offences and dangerous or negligent acts endangering persons. Increases in the number of arrests resulting in convictions made a significant contribution to the growth in unlawful entry with intent/burglary, break and enter and illicit drug offences.

The growth in the number of Indigenous offenders on remand is partly a consequence of an increase in the number of Indigenous defendants appearing before the courts and partly a consequence of increases in the percentage of Indigenous defendants refused bail. The growth in numbers refused bail has been particularly large for defendants in the categories of justice procedure offences (up by 194%, from 275 in 2001 to 809 in 2015) and acts intended to cause injury (up by 71%: from 482 in 2001 to 823 in 2015) but there have been significant increases for a large number of other offences as well. Much of the growth in numbers refused bail, particularly for those in the justice procedure offence and acts intended to cause injury categories, is due to an increase in the percentage of

defendants refused bail. In fact but for the increase in the percentage refused bail, several offence categories (e.g. theft and related offences, public order offences) would have seen a fall in the number refused bail.

The factors behind the growth in the proportion of Indigenous offenders given a prison sentence are unclear. Courts may be imposing harsher penalties on offenders now than they were in 2001 but it is also possible that the profile of offenders coming before the courts has become more serious in ways not revealed by our data. It is possible that offenders coming before the courts in each of the offence categories we have examined have longer criminal records than those coming before the courts for the same offences in 2001, or that more offenders these days have multiple concurrent offences or that the offences within the categories we have examined became more serious between 2001 and 2015.

The cause or causes of the growth in the number of Indigenous Australians coming before the courts is also unclear. In some cases the growth may be related to increases in offending but in many others the growth would seem more likely due to changes in law enforcement policy/practice. The rapid escalation in the number of Indigenous Australians imprisoned for breach of custodial orders (escape custody, breach of home detention order, breach of suspended sentence), breach of community-based orders (e.g. a bond with supervision), breach of Apprehended Violence Orders and stalking/intimidation, for example, is unlikely to have come about because the actual incidence of these offences is increasing. It would seem more likely that police are focussing more attention on enforcing compliance with these orders and that one consequence of this attention is an increase in the number of people arrested for non-compliance. There is good evidence, on the other hand, that some forms of illicit drug use, most notably use of amphetamines are increasing (NSW Health 2016). The growth in the number of Indigenous convictions for illicit drug offences therefore, may well be due to increased use of and trafficking in illicit drugs.

Finally, although this is not the place for a discussion of options for reducing the Indigenous prison population, it is obvious that measures which reduce the number of Indigenous persons arrested and imprisoned for serious assault resulting in injury, stalking/intimidation and breach of community-based orders are likely to have a substantial effect on Indigenous prisoner numbers. The development of strategies to achieve this goal will likely require further research into the circumstances in which Indigenous Australians are arrested for these offences. It would be of particular interest, for example, to know how many of the breach offences included under justice procedure offences involve breaches of conditions, as opposed to further criminal offences. It would also be of interest to know how many of the stalking/intimidation offences included under acts intended to cause injury might be dealt with by means other than sanction of imprisonment.

Discussion of options for reducing Indigenous imprisonment inevitably raises the question of whether and to what extent the fall in Indigenous offending is due to the rise in Indigenous imprisonment. Without discounting the possibility that rising imprisonment rates have made some contribution, there are two points worth noting here. Firstly, the general consensus among scholars examining the effectiveness of prison in controlling crime is that its effects are fairly limited. One leading reviewer of the evidence, for example, concluded that a 10 per cent increase in the prison population would produce, on average, a one per cent reduction in crime (Donahue, 2009). Secondly, even if it were true that prison made a significant contribution to the fall in Indigenous offending, there is clear evidence that many non-violent offences can be dealt with more cost-effectively using community-based programs that combine close supervision with treatment (Aos, Miller & Drake, 2006).

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## Notes

1. Stalking/intimidation includes acts intended to cause physical or mental harm to a person, or to arouse apprehension or fear in a person, through a repeated course of unreasonable conduct. Examples include unauthorized surveillance, interfering in a person's property, sending offensive material or communicating with the person in a way that could reasonably be expected to arouse apprehension or fear (Australian Bureau of Statistics, 2011).
2. The growth in Indigenous convictions for acts intended to cause injury reported here may seem to conflict with the fall in Indigenous arrests for violent offences reported in Weatherburn and Ramsey (2016). There are three reasons for the apparent conflict. Firstly, the definition of a violent offence used in Weatherburn and Ramsey (2016) included sexual assault, indecent assault and other sexual offences. These offences are not included under the ABS definition of an act intended to cause injury. Secondly, the category acts intended to cause injury includes stalking/intimidation but the definition of a violent offence employed in Weatherburn and Ramsey (2016) did not include stalking/intimidation. Thirdly, Weatherburn and Ramsey (2016) adjusted the trends for changes in the Indigenous population but (because we are interested in the absolute growth in prisoner numbers), in this report we do not.