

BRIEFING PAPER

ISSUES THAT CONTRIBUTE TO THE INCARCERATION OF ABORIGINAL AND TORRES STRAIT ISLANDER WOMEN IN WESTERN AUSTRALIA¹

THE **ESSENTIAL** MEMBERSHIP FOR
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Introduction

Delineating how ‘issues that apply to women’ contribute to the incarceration rates of Indigenous² people is not a simple task, partly due to the inherent difficulty of definitively identifying any one factor as causative of imprisonment rates.³ What is clear is that there has been a particularly drastic increase in the incarceration rates of Indigenous women over the last decade. Despite only accounting for 2.3% of the adult female population, in 2019 Indigenous women comprised 33% of women prisoners in Australia.⁴ This paper attempts to illuminate why this is so and draws on the recommendations of the 2014 Gender Bias Taskforce Report.⁵

Past Position

Historically, the issue of women in prison has been marked by ‘neglect, denial and trivialisation’.⁶ For Indigenous women, this historical obscurity is further complicated by the status of Indigenous people as non-citizens until 1967. It is imperative that any approach to reducing the incarceration rates of Indigenous women considers the effect of colonisation and past government policies.⁷

Early imprisonment (1788 – c. 1830)

Reference to the imprisonment of Indigenous women during this era is scant. Prior to the establishment of colonial legislatures, criminal punishment took the form of summary justice and operated outside the rule of law, subjecting Indigenous people to unrestrained brutality.⁸ For Indigenous women, the process of colonisation featured exploitation, abuse and rape.⁹

Managing resistance and threats to order (c. 1830 – 1910)

Although colonial courts were initially reluctant to intervene where offences had been committed within Indigenous communities, by 1836 the formal legal position also assumed jurisdiction for inter se Indigenous offending.¹⁰ Corporal punishment was seen as a necessary mechanism to control and deter Indigenous people from offending.¹¹ For example, in 1849 Western Australian legislation allowed certain offences committed by Aboriginal people to be tried summarily and punished by whipping.¹²

Discriminatory policies extended beyond penalties to the organisation of imprisonment itself. In 1840, the Rottneest Island Reformatory was founded exclusively for the imprisonment of Aboriginal persons.¹³ While it is unclear how many Aboriginal women were imprisoned there, early legislation confirms that regulations which applied to mainland (non-Aboriginal) prisons did not extend to Rottneest Island.¹⁴ These regulations included an early recognition of the differing needs of women prisoners by mandating the separation of female and male prisoners, and insisting that females should supervise female prisoners ‘where practicable’.¹⁵

The era of ‘protection’ (c. 1900 – 1960)

Between 1895 and 1909, there was a dramatic fall in prison admissions generally, which has been attributed to the increased presence of mental asylums and other institutions.¹⁶ For Indigenous people, the development of protectionism in this era was premised on a Darwinist view of Europeans as a superior and out-surviving race.¹⁷ Indigenous people were forcibly resettled on missions and settlements in the name of

‘welfare’ and ‘civilisation’. The administration and experience of Indigenous imprisonment during this period has been recognised by historians as particularly obscure.¹⁸ This is perhaps because those responsible for administering these policies were also given broad powers to punish Indigenous people for non-compliance, which did not necessarily result in prison sentences.¹⁹

Post 1960s

From the 1960s, the policing of Indigenous people has primarily taken place on the streets rather than in the settlements and missions of the protectionist era.²⁰ Since this time there has been a significant rise not only in the proportion of Indigenous prisoners but also in the general use of prisons as a punitive response to crime.²¹ The cessation of corporal and capital punishment has been a contributing factor to the increased use of prisons generally.²²

Despite women’s experiences within prisons having a significant effect on their rehabilitation, it was not until 1968 that female prisoners were able to access education and 1969 that the first women’s prison was opened in WA.²³ Even into the 1970s, female prisoners were regarded as requiring less space for their incarceration and entitled to less rations than their male counterparts.²⁴ In more recent years, there have been steps taken to cater to the differing needs of female prisoners. For example, in 2004 Boronia Women’s Pre-Release Centre was opened which allowed minimum-security female prisoners to be housed with their young children.²⁵ While these institutions show a step in the right direction, the next part will highlight limitations in the contemporary approach.

Present Position in Australia

How many Indigenous women are currently incarcerated?

From 2000 to 2013, the rate of imprisonment of Indigenous women had increased by 73.7% and represented the fastest growing cohort of persons imprisoned in Australia.²⁶ In 2016, Indigenous women were 21.2 times more likely to be imprisoned than non-Indigenous women, and the rate of imprisonment for Indigenous women

even exceeded the rate of imprisonment of non-Indigenous men.²⁷ At June 2019, Indigenous people comprised 28% of the prisoner population in Australia despite accounting for only 3% of the population.²⁸ In 2019, 46% of women prisoners in Western Australia were Aboriginal.²⁹

What factors influence the representation of Indigenous women in prison?

Social and economic disadvantage of Indigenous peoples

The manifestations of Indigenous peoples’ disadvantaged and unequal position in Australian society increase their susceptibility to contact with the criminal justice system.³⁰ The impact of these factors is particularly marked in the context of custodial remand. Persons in remote areas affected by a lack of services, of which Indigenous people constitute a disproportionate number, as well as those from disrupted home environments, are likely to experience greater difficulties complying with stringent bail conditions such as curfews and program attendance requirements.³¹ To the extent such difficulties increase the likelihood of criminalisation for breach of bail conditions, they risk a person’s further enmeshment in the criminal justice system. Such difficulties may also deter magistrates and judicial officers from granting bail.³²

Cognitive impairments such as Foetal Alcohol Spectrum Disorders (FASD) are also disproportionately diagnosed amongst Indigenous peoples.³³ In 2015, rates of FASD in the remote town of Fitzroy Crossing, WA, were the highest reported in Australia and on par with the highest rates internationally.³⁴ The impairments associated with conditions like FASD heighten susceptibility to criminal behaviour.³⁵ Indeed, international research indicates that 60% of FASD sufferers have been in trouble with the law.³⁶

Aspects of disadvantage unique to Indigenous women.

While these factors heighten the susceptibility of all Indigenous people to contact with the criminal justice system, they often have a unique impact on Indigenous women. Many Indigenous women in custody are the primary carers of their families.³⁷ In one study group sample, 92% were not working

at the time of their last offence, and 42% did not receive a Centrelink benefit. Consequently, one quarter of the group said they relied on crime as a total source of income, with many saying this was related to the responsibilities of accommodating and bringing up children.³⁸

Indigenous women in custody have often experienced long histories of abuse and been victims of child sexual assault³⁹ and family violence.⁴⁰ Family violence is particularly pertinent in Western Australia, where Aboriginal women are escaping family violence at a rate of 1,148 per 100,000; the second highest rate nationally.⁴¹ As a result of being exposed to such environments, females are likely to engage in “criminal survival strategies”.⁴² Women’s violent offences usually occur in the context of violence committed against them by male partners, with 75% noting that they used violence to defend themselves.⁴³ Consequently, Indigenous women’s experiences of intergenerational violence and trauma further expose them to contact with the criminal justice system and increase the risk of incarceration.⁴⁴

The State Government has invested \$1.6 million to a grant process, used to build cross cultural awareness of family and domestic violence which will assist Aboriginal women experiencing family violence to access support services.⁴⁵

Arising from the Geraldton Family & Domestic Violence Project in 2005, the Geraldton Family Violence Court – Barndimalgu Court – was opened in 2007. It is the only therapeutic court in Australia where the Aboriginal Community members assist the Magistrate during the sentencing process.⁴⁶ There is the opportunity to complete a 20 week program to address violent behaviour, which may avoid a prison sentence in some circumstances, helping the families and community.⁴⁷

Although some initiatives are being taken to reduce instances of family and domestic violence, it is an ongoing issue.

Laws with a disproportionate effect on Indigenous women

In this regard, significant criticism has been directed towards three areas of law: mandatory sentencing; imprisonment for fine default; and offences related to driving without a licence.

In 1996, Western Australia first introduced mandatory sentences for a third conviction of home burglary.⁴⁸ This has had a disproportionate impact on Indigenous peoples, particularly Indigenous youth: in 2002, 81% of young offenders convicted under this provision were Indigenous.⁴⁹ Despite research concluding that mandatory sentencing has been ineffective in reducing home burglaries in Western Australia,⁵⁰ the *Criminal Law Amendment (Home Burglary and Other Offences) Act 2015 (WA)* increased the sentence to two years imprisonment and widened the category of events that may constitute a ‘strike’. Mandatory sentences were also introduced for assaults on police in 2009.⁵¹

In 2013, 27% of Aboriginal women in Western Australia’s prisons were there solely for fine default. More recent statistics showed that of women imprisoned for fine default, about 64% of them were Aboriginal and Torres Strait Islander women.⁵² While the Honorable Wayne Martin AC QC acknowledged the need to offer a penalty for fine default, he questioned the utility of imprisonment as an effective deterrent in these cases.⁵³

There are new initiatives announced by the Australian Government that would see welfare recipients encouraged to repay fines through voluntary or compulsory repayment arrangements with Centrelink, rather than face imprisonment.⁵⁴ For those who can afford to pay fines but choose not to, they will face having their wages or bank accounts garnished. Legislative amendments were passed by the Western Australian Parliament in June 2020.⁵⁵

Finally, the majority of driving offences that result in Indigenous people being incarcerated do not involve drunk or dangerous driving, but usually involve repeated driving without a licence. In many cases, offenders have had no opportunity to get a licence, and in many remote communities there are no practical alternatives to driving without a licence. Consequently, the Honorable Wayne Martin AC QC has observed the potential for traffic laws fashioned for a metropolitan area to operate unjustly in remote communities.⁵⁶

These issues could be addressed by the increased use of non-custodial sentencing, a more flexible approach to fines and the review of laws which have a disproportionate effect on Indigenous

women.⁵⁷

Interactions with Police

Unfortunately, many Indigenous women nonetheless report negative treatment by police, particularly when intoxicated.⁵⁸ In the context of being victims of crime, Indigenous women reported occasions where police did not respond to reports of family violence or questioned their accounts.⁵⁹ In the context of being alleged perpetrators of crime, reports of continued attempts to conduct interviews in relation to alleged criminal activity despite intoxication, are of particular concern.⁶⁰

Both the Western Australia Police Force and the Australian Federal Police have cadetships and traineeships, which have a partial focus on the recruitment of Aboriginal and Torres Strait Islander people.⁶¹ Although this will assist in the recruitment of more Indigenous people in the police force, there is still an underrepresentation of Aboriginal and Torres Strait Islander people within the police force.

Access to legal services

To appropriately respond to the legal issues that Indigenous women may encounter, legal services must not only be available,⁶² but also be 'culturally secure'. 'Culturally secure' services are those specifically designed to meet the needs of Indigenous women and are delivered by Indigenous persons or organisations.⁶³ A number of agencies currently provide such services for Indigenous women but continue to operate in environments of funding uncertainty.

A further issue, particularly in regional and remote areas, is the inadequate provision of interpreters for Indigenous peoples in contact with the police or when attending court.⁶⁴

Inadequacy of sentencing alternatives

In order to maximise the rehabilitative efficacy of sentencing Indigenous offenders, sentences should, where appropriate, adequately incorporate cultural and family issues. For example, Indigenous community courts allow Indigenous elders to participate in the sentencing of Indigenous offenders.⁶⁵ Currently there are no community courts in Western Australia following the closure of the Kalgoorlie-Boulder Community Court.⁶⁶ Further, statutory sentencing principles could be amended

to require a court to take into account the effect of a custodial sentence upon a sole carer, their children and their family.⁶⁷

Further to this, insufficient funding is available for Indigenous-led programs capable of providing culturally secure sentencing alternatives. Notably, the State Government recently announced \$440,000 over two years for the *Yiriman* Project in the West Kimberley region of Western Australia. *Yiriman* is a 'community-owned' initiative developed by Aboriginal elders to help young people at risk reconnect with law and culture. The project holds significant promise.⁶⁸ While this is commendable, more funding is needed for similar initiatives, especially those focused on the needs of Indigenous women and girls.

What is the impact of female prisons on Indigenous female prisoners?

In 2014, the Office of the Inspector of Custodial Services characterised Bandyup Women's Prison as 'the most complex and neglected prison in the state'.⁶⁹ Despite the rate of female incarceration growing at twice the rate of males, there had been 'massive investment' in male prisons and 'very little' in female ones.⁷⁰ The resulting influx of female inmates has caused Bandyup to be 'severely overcrowded', with reports in 2016 that it was holding 100 more inmates than capacity.⁷¹ The ill preparation for this influx has been linked to the rise in serious assaults by prisoners on other inmates.⁷²

In order to address issues relating to overcrowding, the State Government built Melaleuca Remand and Reintegration Facility which was opened in December 2016, after being built using empty buildings at Hakea Prison. Melaleuca offers services specifically catered to the needs of female offenders, and designed to assist women integrating back into the community.⁷³

An inspection of Melaleuca released in June 2018 listed 25 recommendations including funding recommendations; training and staffing recommendations; and resource and services recommendations, including the recommendation that the Aboriginal Visitors Scheme has a regular and continuing presence at Melaleuca.⁷⁴ The Aboriginal Visitors Scheme provides support and counselling for Aboriginal detainees – the visitors are Aboriginal people who support and assist

detainees and prisoners, improving the condition of those in custody through consultation, advice and information to decision-makers.⁷⁵ There are still issues to be addressed.

There have been reports that prison programs are only available to those incarcerated for periods of more than 6 months, disadvantaging prisoners with short sentences and those on remand.⁷⁶ Similarly, prisoners appealing against their sentence have been denied access to treatment programs.⁷⁷ Finally, a dedicated mental health unit for women prisoners should be developed.⁷⁸

As mentioned earlier in the paper, there is also the Boronia Pre-release Centre for Women, which houses minimum-security female prisoners and their children, preparing them for re-entry into the community through rehabilitation activities and work placements.

Position in Overseas Jurisdictions

This section provides a brief overview of legal initiatives to address issues concerning the incarceration of Indigenous women in Canada and New Zealand.

Canada

There have been two core focuses to the Canadian Government's response to the overrepresentation of Indigenous people in the prison system: the development of culture-specific criminal justice programs, and the adoption of a specific methodology to be applied during the sentencing of Indigenous offenders.⁷⁹

There is a particular focus on programming within the prison system as a means of rehabilitation and to prevent re-offending. The *Corrections and Conditional Release Act* provides in ss 77 and 80 that the Correctional Service of Canada must provide programming that is both gender specific and culturally appropriate. A number of different rehabilitative projects have been created to facilitate programming with focuses ranging from health to education to spirituality.⁸⁰ One of the more unique programs is the "Aboriginal healing lodges" which are low to medium security correctional institutions which use Indigenous values, traditions and beliefs to design services and programs for offenders.⁸¹

New Zealand

New Zealand is the subject of ongoing criticism for its high rates of Māori incarceration. However, in recent years some innovative developments have initiated positive change in this area. In 2014, the Te Tirohanga (Focus) programme was introduced, creating five units in different New Zealand prisons which provide rehabilitative programs in line with Māori principles. Early results suggest the project is on track to meet or exceed its overall recidivism targets.⁸²

There has also been a push for the establishment of Marae-based courts for young Māori, as an adjunct of the youth court system (the Ngā Kooti Rangatahi courts). The Ngā Kooti Rangatahi were established to reduce reoffending by Māori youth and to provide the best possible rehabilitative response, by encouraging strong cultural links and involvement of Māori communities in the youth justice process.⁸³ Fourteen additional courts have opened since the first court was introduced in 2008.⁸⁴

Conclusions

The implementation of relevant recommendations in Chapters 1, 4 and 9 of the *2014 Gender Bias Taskforce Report* is a crucial first step to addressing the complex issues that impact on the incarceration of Indigenous women in Australia.⁸⁵ In light of the issues raised in section 3.2 above, particular regard should be had to the following recommendations:

- a) providing cross-cultural courses for justice professionals (recommendations 4.1 – 4.6);
- b) making participation in cross-cultural courses mandatory for Western Australia Police recruits and a pre-requisite for promotion (recommendation 4.7);
- c) increasing the number of Indigenous women interpreters (recommendation 1.17);
- d) the State Government continuing and increasing its funding for culturally secure legal services available to Indigenous women (recommendation 4.13, 9.6(ii), 9.18 and 9.19);
- e) State and Commonwealth Governments funding adequate safe houses for Indigenous women and children to escape family and domestic violence, as well as affordable

- housing for those left homeless by such situations (recommendations 4.17 and 4.18);
- f) Western Australia Police strengthening their efforts to recruit and retain Indigenous women and men as police officers and in corrective service roles (recommendations 4.23, 4.24, 9.8 and 9.9);
- g) in order to effectively meet the needs of Indigenous communities, sufficient funding for Indigenous-led diversionary programmes like the *Yiriman* Project is critical, as well as Indigenous community courts (recommendations 4.11, 4.12, 9.2, 9.3 and 9.4);
- h) the enhancement of non-custodial sentencing, a more flexible approach to fines enforcement (recommendation 9.5) and the review of laws which have a disproportionate effect on Indigenous women, such as mandatory sentencing and driving licence laws; and
- i) Where imprisonment is appropriate, the potential for rehabilitation should be optimised by ensuring adequate funding to address the needs of Indigenous women through the availability of culturally appropriate treatment programs to all prisoners (recommendations 9.12, 9.13, 9.14 and 9.20).

NOTES

1. This paper was written by Zoe Bush, Chloe Gall, Catherine Graville and Laura Pilsworth of the YLC.
2. The Law Society of Western Australia recognises the diverse language groups, kinship structures and customs of Indigenous people. While in this paper, the term 'Indigenous' to refer to Aboriginals and Torres Strait Islanders in Australia, as well as the First Peoples of Canada, the Native Americans of the United States and/or the Tangata Whenua of New Zealand, and the term 'Aboriginal' is used to refer to Aboriginal persons in mainland Australia, this terminology in no way diminishes the diversity of Indigenous people.
3. David Brown, Hilary Kramer and Meredith Quinn, 'Women in Prison: task force reform' in Mark Findlay and Russell Hogg (EDS) *Understanding Crime and Criminal Justice* (Law Book Company, 1988) 282-283.
4. Australian Bureau of Statistics, 4517.0 - Prisoners in Australia, 2019 (5 December 2019) (table 21); Australian Bureau of Statistics, 3238.0 - Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2006 to 2031 (11 July 2019); Australian Bureau of Statistics, 3101.0 - Australian Demographic Statistics, December 2019 (18 June 2020).
5. Women lawyers of Western Australia, 20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report (September 2014) ('2014 Gender Bias Taskforce Report').
6. *Ibid* 273; see also, Mark Finnane, 'After the Convicts: towards a history of imprisonment in Australia' (1991) 24 *Australian and New Zealand Journal of Criminology* 105, 108.
7. Women lawyers of Western Australia, 20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report (September 2014) 259.
8. Thalia Anthony, *Indigenous People, Crime and Punishment* (Taylor and Francis, 2002) 32.
9. Chris Cunneen, *Conflict, Politics and Crime, Aboriginal Communities and the Police* (Allen & Unwin, 2014) 159.
10. Mark Finnane and John McGuire, 'The Uses of Punishment and Exile' (2001) 3(2) *Punishment and Society* 279, 280, 281.
11. *Ibid* 280, 284.
12. More serious offences such as murder and rape were not covered: Summary Trial of Aboriginal Offenders Act 1849 (WA) s 2.
13. Prison at Rottneest 1840 (WA); Mark Finnane and John McGuire, above n 10, 285.
14. J E Thomas and A Stewart, *Imprisonment in Western Australia: Evolution, Theory and Practice* (University of Western Australia, 1978) 10.
15. Prisons Act 1849 (WA) s 23.
16. Brown, Kramer and Quinn, above n 3, 278.
17. Anthony, above n 8, 42.
18. Finnane, above n 6, 108.
19. Anthony, above n 8, 43.
20. *Ibid* 48.
21. Mark Brown, 'Imprisonment and detention' in Marinella Marmo, Willem de Lint and Darren Palmer (EDS) *Crime and Justice - A Guide to Criminology* (Thomson Reuters, 4th ed, 2012) 488-489.

22. Anthony, above n 8, 49-50.
23. Ibid 159, 162.
24. Finnane, above n 6, 108.
25. Government of Western Australia, Office of the Inspector of Custodial services, 'Report of an Announced Inspection of Bandyup Women's Prison' (October 2014) 2.
26. Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014*, Productivity Commission, Canberra (November 2014) 4.102.
27. Australian Law Reform Commission, *Pathways to Injustice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, 28 March 2018) [11.6] <https://www.alrc.gov.au/sites/default/files/pdfs/publications/fr133_11_aboriginal_and_torres_strait_islander_women.pdf>.
28. Australian Bureau of Statistics (2019) 4517.0 – Prisoners in Australia, 2019; Australian Bureau of Statistics (2016) 3238.0.55.001 – Estimates of Aboriginal and Torres Strait Islander Australians, June 2016.
29. Department of Justice, Corrective Services, 'Quarterly Statistics - Custodial (Adult Prisoner) 2019 - Quarter 4' (Report) at Table 4 <https://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/statistics/2019/2019-quarter4-adult-custodial.pdf>.
30. House of Representatives, Standing Committee on Aboriginal Torres Strait Islander Affairs, Parliament of Australia, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System* (2011) 12 [2.21]; Don Weatherburn, Lucy Snowball and Boyd Hunter, 'The economic and social factors underpinning Indigenous contact with the Justice system: results from the 2002 NATSLSS survey' (2006) 104 *Crime and Justice Bulletin* 6.
31. Australian Institute of Criminology, *Bail and Remand for Young People in Australia: A National Research Project* (2013).
32. see Clement Ng, 'Invisible female Indigenous offenders in the Youth Justice system: What's the Problem? An Illustration from the Northern Territory Perspective' (2016) 18 *Australian Indigenous Law Review* 19, 24; see, eg, *Police v SP* (unreported, Youth Justice Court northern territory, 19 September 2014).
33. House of Representatives, Standing Committee on Aboriginal and Torres Strait Island Affairs, Parliament of Australia, *FASD: The Hidden Harm* (2012) 33 [2.97].
34. James Fitzpatrick et al, 'Prevalence of fetal alcohol syndrome in a population-based sample of children living in remote Australia: the Iliilwan Project' (2015) 51(4) *Journal of Pediatrics and Child Health* 450, 450.
35. *Alchin v South Australian Police* [1995] SCSA 981, [2] (Debelle J); Chief Justice Martin, 'The Justice System and FASD' in Education and Health Standing Committee, Parliament of Western Australia, *Foetal Alcohol Spectrum Disorder: the invisible disability* (2012) 74-5.
36. AP Streissguth et al, 'Risk Factors for Adverse Life Outcomes in Fetal Alcohol Syndrome and Fetal Alcohol Effects' (2004) 25(4) *Journal of Developmental and Behavioural Pediatrics* 228, 238.
37. Rowena Lawrie, 'Speak Out Speak Strong: Rising Imprisonment rates of Aboriginal Women' (2003) 5(24) *Indigenous Law Bulletin* 5.
38. Ibid.
39. Ibid.
40. Judy Atkinson, 'Aboriginal women and children, family violence and trauma', Deakin Law School (28 October 2015) <<http://lawnewsroom.deakin.edu.au/articles/emeritus-professor-judy-atkinson-on-Aboriginal-women-and-children-family-violence-and-trauma>>.
41. Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014*, Productivity Commission, Canberra (November 2014) table 4a, 11.44.
42. Rob White and Daphne Habibis, *Crime and Society* (Oxford University Press, 2005) 216.
43. Ibid, citing Suzanne C Snow et al, 'A review of research on women's use of violence with male intimate partners' (2008) 23(3) *Violence and Victims* 301.
44. Sarah Dingle, 'Doubling of Female Imprisonment Rate Almost Entirely Due to Aboriginal Women being Locked Up', ABC News (14 August 2014) <<http://www.abc.net.au/am/content/2014/s4066806.htm>>.
45. 'Grant to boost culturally appropriate domestic violence supports' Government of Western Australia (Media Statement, 20 December 2018) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/12/Grant-to-boost-culturally-appropriate-domestic-violence-supports.aspx>>.
46. 'Barndimalgu Court Update' Desert Blue Connect (Web page, 21 December 2018) <<https://www.desertblueconnect.org.au/barndimalgu-court-update/>>.
47. 'Court Diversion Programs' Department of Justice (web page) <<https://www.correctiveservices.justice.wa.gov.au/probation-parole/gfdv-project.aspx>>.
48. Under s 401(4) of the Criminal Code (WA), a presiding judge must sentence a person to twelve months incarceration upon the commission of a third home burglary.
49. Neil Morgan, Harry Blagg and Victoria Williams, 'Mandatory Sentencing in Western Australia and the impact on Aboriginal youth' (5 April 2016) <<http://www.indigenousjustice.gov.au/db/publications/253540.html>>.
50. Ibid.
51. Pursuant to the Criminal Code Amendment Act 2009 (WA), adults convicted of such offences must be sentenced to a minimum of six to twelve months imprisonment, while young offenders 16 years of age or older must be sentenced to a minimum of three months.
52. Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (DP 84, 19 July 2017) [6.25] <<https://www.alrc.gov.au/publications/imprisonment-terms-%E2%80%98cut-out%E2%80%99-fine-debt>>.
53. The Honourable Wayne Martin AC Chief Justice of Western Australia, 'Indigenous Incarceration rates: strategies for much needed reform' (2015) <http://www.supremecourt.wa.gov.au/_files/speeches_Indigenous_Incarceration_rates.pdf>.
54. 'Encouraging lawful behaviour of income support recipients' Department of Social Services (Factsheet) <https://www.dss.gov.au/sites/default/files/documents/05_2018/d18_13637_budget_2018-19_-_factsheet_-_encouraging_lawful_behaviour_of_income_support_recipients.pdf>.
55. Kate Campbell, 'WA fine defaulters to have bank accounts,

- wages docked under radical plan' PerthNow (Article 14 October 2018) <<https://www.perthnow.com.au/politics/policy/wa-fine-defaulters-to-have-bank-accounts-wages-docked-under-radical-plan-ng-b88989328z>> ; Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020 (WA).
56. The Honourable Wayne Martin AC Chief Justice of Western Australia, 'Indigenous Incarceration rates: strategies for much needed reform' (2015) <http://www.supremecourt.wa.gov.au/_files/speeches_Indigenous_Incarceration_rates.pdf>.
57. Women lawyers of Western Australia, 2014 20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report (September 2014) recommendation 9.5.
58. Sue Gordon, Kay Hallahan and Darrell Henry, Putting the Picture Together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (31 July 2002) ('Gordon Report'). In particular, an Aboriginal and multicultural unit now co-ordinates information, programs and advice on Aboriginal issues impacting on police; steps have been taken, although with limited success, to recruit Aboriginal police officers; police policy relating to the arrest of women now emphasises respect over aggressive policing; and procedures in responding to victims of sexual abuse now prioritise victim's health and safety (307). This is despite attempts by the Western Australia Police to incorporate relevant recommendations made by the 1994 Gender Bias Taskforce Report and the Gordon Report.
59. See, for example, Gordon Report, 388-389.
60. See, for example, *ibid* 306-307.
61. 'Police Auxiliary Officer – Cadet/Trainee Program' WA Police (Web page) <<https://www.stepforward.wa.gov.au/news/wa-police-force-aboriginal-cadet-program/>>; see also 'Directions Program Traineeship' Australian Federal Police (Web page) <<https://www.afp.gov.au/careers/directions-program-traineeship>>.
62. In terms of availability of legal services to prisoners see recommendations 9.18, and 9.19 of the 2014 Gender Bias Taskforce Report.
63. Gordon Report, 293. The 2014 Gender Bias Taskforce Report also recommended that Commonwealth funding be sought for the establishment of a separate Women's Aboriginal legal service: see recommendation 9.6(ii).
64. Only 38% of people surveyed for the 2014 Gender Bias Taskforce Report were aware of interpreters being available in their areas: 2014 Gender Bias Taskforce Report, 298.
65. *Ibid*, 291-292. Also, sentencing conferences could be held for Indigenous charged with serious offences, allowing courts to adopt a more holistic approach to sentencing: 2014 Gender Bias Taskforce Report, recommendation 9.2.
66. <https://au.news.yahoo.com/thewest/wa/a/29258150/Aboriginal-court-gets-the-chop/>
67. *Ibid*, recommendation 9.4
68. All 15 boys who attended the original trial in 2009 successfully completed the program and did not reoffend within the next 12 months: Amnesty International Australia, 'Community is everything: Sarah's Story' (10 April 2016) <http://www.amnesty.org.au/Indigenous-rights/comments/37453/>; Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2014, Productivity Commission, Canberra (November 2014) 8.45.
69. Government of Western Australia, Office of the Inspector of Custodial Services, Report of an Announced Inspection of Bandyup Women's Prison (October 2014).
70. *Ibid*.
71. David Weber, 'Bandyup Women's Prison in Perth holding about 100 too many inmates, union says' Australian Broadcasting Corporation (4 February news/2016-02-04/overcrowding-concerns-at-wa-womens-prison- bandyup/7138240>.
72. Jacob Kagi, 'Women's remand centre at hakea delayed by six months' The West Australian, (7 December 2015) <<http://www.abc.net.au/news/2015-12-07/delay-on-womens-remand-centre-build-hakea/7008396>>.
73. 'Melaleuca Remand and Reintegration Facility, Department of Justice (Web page) <<https://www.correctiveservices.wa.gov.au/Prisons/prison-locations/melaleuca.aspx>>.
74. Office of the Inspector of Custodial Services, 'Inspection of Melaleuca Remand and Reintegration Facility' (Report 117, 29 June 2018) Recommendation 21 <[https://www.oics.wa.gov.au/reports/117-inspection-of-melaleuca-remand-and-reintegration-facility/recommendations/recommendation 21](https://www.oics.wa.gov.au/reports/117-inspection-of-melaleuca-remand-and-reintegration-facility/recommendations/recommendation%2021)>.
75. 'Aboriginal Services' Magistrates Court of Western Australia (Web page) <https://www.magistratescourt.wa.gov.au/l/indigenous_services.aspx?uid=8135-2150-1466-1241>.
76. 2014 Gender Bias Taskforce Report, recommendation 9.13.
77. see, eg, *Hunter v The State of Western Australia* [2014] WASCA 284, [79]-[84].
78. 2014 Gender Bias Taskforce Report, recommendation 9.14.
79. see e.g. Discussion in J Dyck, *Stories from the Front: Realities of the Over-Incarceration of Aboriginal Women in Canada* (LLM thesis, October 2013) 26.
80. see e.g. The comprehensive overview of the programs used in Canadian Federal Prisons in Mandy Wesley, *Marginalized: the Aboriginal Women's experience in Federal Corrections*, APC 33 AC (2012) 10.
81. Correctional Service Canada, Correctional Service Canada Healing Lodges <<http://www.csc-scc.gc.ca/Aboriginal/002003-2000-eng.shtml>>.
82. Toby Manhire, 'Unlocking Maori identity: keeping New Zealand's Indigenous population out of jail', *The Guardian* (online), 15 August 2015 <<http://www.theguardian.com/world/2015/aug/15/regaining-maori-identity-and-keeping-them-out-of-new-zealands-jails>>.
83. Ministry of Justice, Rangatahi Court: Evaluation of the Early Outcomes of Te Kooti Rangatahi (accessed 27 January 2016) <<http://www.justice.govt.nz/publications/global-publications/r/rangatahi-court-evaluation-of-the-early-outcomes-of-te-kooti-rangatahi/introduction>>.
84. Toby Manhire, 'Unlocking Maori identity: keeping New Zealand's Indigenous population out of jail', *The Guardian* (online), 15 August 2015 <<http://www.theguardian.com/world/2015/aug/15/regaining-maori-identity-and-keeping-them-out-of-new-zealands-jails>>.
85. Women Lawyers of Western Australia, 2014 20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report (September 2014) recommendations from Ch 1, 4 and 9.

Policy Position

In relation to the incarceration rates of Indigenous women, the Law Society of Western Australia recommends:

1. The State and Commonwealth Governments fund adequate safe houses for Indigenous women and children to escape family and domestic violence, and provide affordable housing for those left homeless by these situations.
2. The Western Australia Police strengthen their efforts to recruit and retain Indigenous women and men as police officers and in corrective service roles.
3. The State Government continues to fund the operation of Indigenous community courts, including Indigenous-led sentencing alternatives.
4. The enhancement of non-custodial sentencing, a more flexible approach to fines enforcement, such as the initiatives of garnishing Centrelink benefits and wages rather than enforcing imprisonment, and the review of laws which have a disproportionate effect on Indigenous women, such as mandatory sentencing.
5. Where imprisonment is appropriate, the potential for rehabilitation should be optimised by ensuring adequate funding to address the needs of Indigenous women through the availability of culturally appropriate treatment programs to all prisoners and to avoid overcrowding.



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