

# Sister's Inside – Debbie Kilroy

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## The over-representation of Aboriginal and Torres Strait Islander women in prison

### Incarceration Rates

Indigenous women are currently the most over-represented population in both Queensland and Australian prisons. In 2010 approximately 30% of all incarcerated women in Australia were Indigenous, while 24% of all incarcerated men were Indigenous (Australian Bureau of Statistics, 2010a). Based on this data, a conservative estimate indicates that Indigenous women are 16 times more likely to be incarcerated than non-Indigenous women. Comparatively Indigenous men are 14 times more likely to be incarcerated than non-Indigenous men. However more recent data indicates that these differences may be even more severe. A 2011 review of Indigenous incarceration rates by the Australian Parliament found that Indigenous women are 21.5 times more likely to be incarcerated than non-Indigenous women, while Indigenous men were 17.5 times more likely to be incarcerated than non-Indigenous men (Steering Committee for the Review of Government Service Provision, 2011). While the over-representation of Indigenous men and women in Australia is unacceptable, these high rates highlight that the incarceration rates of Indigenous women can no longer be overlooked.

Locally, Queensland also reflects the high rates of incarceration for Indigenous women. In 2010 there were 24.7 per 100 000 non-Indigenous women incarcerated, however there was an alarming 281.9 per 100 000 Indigenous women incarcerated (Bartels, 2010b). Further, the issue has been consistently deteriorating a 19.3% increase of incarcerated Indigenous women in Queensland since 2006 (Bartels, 2010b). Nationally, the increase in incarceration rates between 2000 and 2010 is greater for Indigenous women than any other group. There was a 58.6% increase in incarceration for Indigenous women, 35.2% increase for Indigenous men, 22.4% increase for non-Indigenous women and only a 3.6% increase for non-Indigenous men (Steering Committee for the Review of Government Service Provision, 2011). This highlights that not only are Indigenous women the most over-represented population in prison, but they also have the fastest increasing rate of incarceration.

Finally, Indigenous women are also more likely to return to prison than non-Indigenous women. A study of incarcerated women revealed that 67% of all Indigenous women in prison had been incarcerated previously, while almost half this number of non-Indigenous women had a history of incarceration (Australian Bureau of Statistics, 2011). This indicates that once incarcerated the “correctional system” is not meeting the needs of Indigenous women and failing to provide the services and support they need to prevent further incarceration. In addition to this, the recent cancellation of the Diversion Courts in Queensland by the current Government is likely to further increase the incarceration rates of this population. The alarming rates of incarceration and re-incarceration of Indigenous women highlight that this is no longer a population which can be ignored or subsumed under either “Indigenous offender” policy or “Female offender” policy. The unique needs of Indigenous women who are involved in the criminal justice system must be considered and addressed.

## Profile of Aboriginal and Torres Strait Islander women in prison

### Age

Aboriginal and Torres Strait Islander women are over-represented in Australian prisons across every age group (Australian Bureau of Statistics, 2012). Even the age group with the lowest rate of incarcerated Indigenous women (over 65 year olds), exceeds the highest rate of incarcerated non-Indigenous women (30-34 year olds). There are 40 per 100 000 Indigenous women over the age of 65 incarcerated, while there are 34.4 per 100 000 non-Indigenous women between 30-34 years incarcerated. While the average rate of incarceration for Indigenous women across all age groups is 405.4 per 100 000, it peaks between 25-39 years at an average of 768.1 per 100 000. While this is a concern for many reasons, not least of those is that this age group is most likely to have dependent children who are also severely affected by the incarceration of their mothers. It is estimated that at least 80% of the Indigenous women in prison are mothers to dependent children (Behrendt et al., 2009).

### Education and economic resources

While there is a dearth of research on the specific social and economic circumstances of Indigenous women in prisons, it has been recognised that they have 'almost universally' experienced both social and economic disadvantage (Anti-Discrimination Commission Queensland, 2006). This reflects the educational and economic disadvantages experienced by many Indigenous households within Queensland. The 2011 Census revealed that only 31.7% of the Indigenous population in Queensland had attained an education level of Year 12 or the equivalent, compared with 51% of the Non-Indigenous population (Office of Economic and Statistical Research (QLD), 2011). Additionally approximately one third of all Indigenous households have a combined income of less than \$400 per week. Conversely, only one fifth of all Non-Indigenous households have such a low combined income. Further research is required to understand how Indigenous women are specifically affected and further how this impacts on Indigenous women who are incarcerated.

### Mental Health

Many studies published since 2000 have highlighted that the Indigenous population as a whole have a higher prevalence of significant psychological distress when compared to the non-Indigenous population (Form et al., 2012). Within the prison setting, this issue is exacerbated and the rate of hospitalisation for mental health issues for Indigenous women in prison is tripled when compared with the rate of hospitalisation for Indigenous women in the community (Steering Committee for the Review of Commonwealth/State Service Provision, 2009b). On a local level, the 12 month prevalence of mental disorders for Indigenous women in Queensland prisons was 86%, which was higher than the prevalence for Indigenous men in prison (Heffernan et al., 2012). The types of psychiatric issues experienced by Indigenous women include substance misuse disorders (69%), anxiety disorders (51%), depressive disorders (29%) and psychotic disorders (23%) (Heffernan et al., 2012).

### Victimisation

Indigenous women in prison have broadly experienced a significant level of trauma and abuse beginning in childhood (Aboriginal and Torres Strait Islander Social Justice Commission, 2006). In addition to this there are often high levels of ongoing family violence which have been connected to their offences and convictions (Victorian Department of Justice, 2006). In a survey of Indigenous women in prison and their experiences of victimisation, over 80% state that they believed their offending was an indirect consequence of their victimisation (NSW Aboriginal Justice Advisory Council, 2001). While the relationship

between victimisation and offending is complex for Indigenous women, it undoubtedly exists and further complicates their experiences within a prison environment and ability to re-integrate with their community at the conclusion of their sentence.

## Offence Types

The offending profile for Indigenous women in prisons is different to that of non-Indigenous women. For Indigenous women who are incarcerated, the most serious offence which has the highest prevalence is 'Acts intended to cause injury', followed by 'Unlawful entry' (Australian Bureau of Statistics, 2012). Conversely for Non-Indigenous women, the most serious offence with the highest prevalence is 'Drug offences' followed by 'Fraud offences' (Australian Bureau of Statistics, 2012). The high rate of Indigenous women incarcerated for 'Acts intended to cause injury' has been attributed to several possible causal factors which includes higher rates of substance abuse, higher rates of exposure and involvement in family violence and the over-policing of Indigenous communities and populations which may lead to increased charges for assault against police (Stubbs, 2011).

## Risk factors in the lives of Indigenous women and girls

While the reasons for the over-representation of Indigenous women in prison are complex, the factors which contribute to this are owed to both the historical abuse of Indigenous people, as well as their current social and economic disadvantage within Australia. A majority of Australia's Indigenous population live in low socio-economic areas, have high unemployment (Kennedy, 2001) and many live in poverty (Cechanski, 2002). This is a well-known risk factor for offending and while Indigenous populations demonstrate a high rate of offending, they also show a corresponding high rate of victimisation (Australian Bureau of Statistics, 2010b). There are high rates of domestic violence, child abuse and sexual abuse of both women and children within many Indigenous communities. The regularity with which this occurs is poignantly highlighted by this quote:

***"Nothing. (pause)... I just got raped again last night."***

*Murri woman from Northern Queensland when asked what was wrong (Atkinson, 1991)*

The effects of repeated victimisation are well documented and can lead to low self-esteem, anxiety, depression, other mental health issues and substance abuse. These factors are all correlated with increased risk of offending and in the case of substance abuse can constitute an offence in itself. Therefore many Indigenous women and girls are not only stuck in cycles of abuse as victims, but also get stuck in cycles of offending in an effort to cope with their difficult life situations.

## Overpolicing

It has been well recognised that Indigenous communities are over policed, and the impact of this on Aboriginal and Torres Strait Islander women was highlighted by the 2001 report by the Aboriginal Justice Advisory Council (AJAC).

**"The study also found that in 10 areas in NSW with high Indigenous populations, Aboriginal women were locked up for intoxication at *40 times* the rate of non-Aboriginal women and that detention for outstanding warrants was ... *16.5 times* for Aboriginal women."** (Newnam, 2008)

The effects of over policing does not reduce crime in these communities or make them safer to live in, rather it creates a net-widening effect. There are many low level crimes that are often undetected and untargeted in white communities, however net-widening often results in these crimes being detected and charged within Indigenous communities. In addition, increased interaction with the police increases the risk that charges will become escalated with an individual also being charged with resisting arrest and assaulting police. The AJAC highlights the over use of “move-on” powers and arrest powers for intoxication with Indigenous people, which has the net result that Indigenous women are more likely to receive criminal charges as a consequence of systemic differences.

### **Police discretion**

The exercise of police discretion has also been documented to favour white individuals over Indigenous individuals (Cunneen and Luke, 1995). This is particularly prevalent within juvenile justice where police may elect to divert a young person from a formal court procedure. Longitudinal research undertaken in Queensland has demonstrated that Indigenous juveniles are less likely to receive a diversion than Non-Indigenous juveniles (Allard et al., 2010). In addition to increasing the likelihood of a criminal conviction in the short term, this also has the long term consequences that Indigenous young people who come to the attention of police again in the future will be more likely to have a pre-existing criminal record, therefore will be treated more harshly than Non-Indigenous young people who may have the same offending history.

### **Criminalisation of victims**

As mentioned above, Indigenous women are frequently the victims of family violence and may be stuck in a cycle between victimisation and offending. This can create dangerous situations whereby they are fearful to contact police during incidence of family violence. When police attend these incidence they may charge the women with assault, based on her attempts to defend herself. Similarly if she has pre-existing charges which have not been resolved then she may be arrested also. As indicated by the AJAC report, Indigenous women are then 16.5 times more likely to be detained for an outstanding warrant. Therefore Indigenous women may be too fearful to contact the police and the vicious cycle is perpetuated.

## **Diverting Indigenous Women and Girls from the Criminal Justice System**

### **Court Diversions**

In response to the recommendations by the Royal Commission into Aboriginal Deaths in Custody, a range of culturally appropriate and diversion options for Indigenous offenders have been implemented around Australia. In particular, this has included Indigenous sentencing courts, such as the Murri Court. While this was in part an attempt to address the over-representation of the Indigenous population in prisons, the overall aims were much broader and included creating opportunities for Indigenous Elders and communities to participate in justice processes, as well as ensuring that court processes were more culturally appropriate for offenders (Marchetti and Daly, 2007). Of great concern is the recent decision by the current Queensland Government to cancel a range of diversion courts which will particularly affect Indigenous women. In regards to the cancellation of the Murri Court, the justification by the Government is based on a recent review which indicated that the court did not directly decrease the incarceration rates of Indigenous offenders (Moore, 2012). However this justification fails to account for the fact that the review also found that the courts increased the appearance rate of offenders (Morgan and Louis, 2010). Further, the justification reflects a short-sighted and restricted understanding of the purpose of the courts and fails to recognise that a fundamental purpose is to enhance relations between Indigenous communities and the

justice system. The cancellation of the Murri court undermines 15 years of relationship building between the justice system and the Indigenous population and still fails to address the concerns regarding the over-representation of Indigenous people in prisons.

The report which the Government referenced actually found that one of the primary limitations of the Murri Court was the lack of appropriate rehabilitation and diversion programs available for the court to refer offenders to as an alternative to custody (Morgan and Louis, 2010). For such a court to be effective, it needs to have access to a range of resources that address the underlying issues which lead to offending. Therefore, if the current Government were seriously concerned about reducing incarceration rates and justice related costs, then a more effective and efficient response would be to ensure that the Murri Court is appropriately resourced to perform its role. Rather than addressing the underlying problems identified by the review to enhance the court, the response by the current Government has resulted in previous funding investments in the courts being wasted.

Investment in appropriate rehabilitation and diversionary programs for Indigenous women, needs to acknowledge and address their unique needs. For example 80% of the Indigenous women who were referred to the court were dependant on Centrelink payments as their main source of income (Morgan and Louis, 2010). The Victorian Aboriginal Justice Agreement (2006) exemplifies specific recognition of further needs that should be addressed such as the fact that many Indigenous women are primary care givers to children and in many cases older family members; the financial dependence of many Indigenous women on their partners which may increase their vulnerability and risk of victimisation; the high levels of family violence experienced by Indigenous women and children; the experience of both racial and gender discrimination; and the high level of disadvantage on all key indicators such as education, employment, health and well-being. By facilitating and resourcing the Murri court to address these needs, the current Government may have been able to both reduce recidivism as well as the financial costs of offending on the community.

**Recommendations:**

1. Advocate for the re-funding of specialist and diversion courts in Queensland, specifically the Murri Court;
2. Advocate for the appropriate resourcing of diversion courts to ensure there are appropriate and effective programs available for specialist courts to refer female Indigenous offenders to.

## Police diversions

Police diversions are aimed at diverting offenders from formalised contact with the courts and addressing the underlying factors of their offending. In Queensland, the Youth Justice System has the widest range of diversionary options at this point which include Cautions, Youth Justice Conferences and Drug Diversions. However research has demonstrated that Indigenous young people are 2.9 times less likely to receive a caution than non-Indigenous young people and two times less likely to receive a diversion to a Youth Justice Conference than non-Indigenous young people (Allard et al., 2010). While this research did not look in depth at gender differences, it was found that only 77% of young Indigenous female offenders had received at least one caution as compared with 89% of non-Indigenous female offenders. Therefore it appears that there is a disparity with the availability and use of diversionary options for young Indigenous offenders which is resulting in lower rates of police initiated diversion for this population.

Drug diversion programs are also available for adult offenders at the point of police contact. In Queensland 9.8% of all referrals to the QMERIT program are for Indigenous women and 7.5% of all drug diversions across the state are for Indigenous women (Bartels, 2010a). Notwithstanding the availability and utilisation of these services, they have not been evaluated to determine their effectiveness and appropriateness for Indigenous women. Given the potential link between substance abuse and offending for Indigenous women, it is important that these programs are thoroughly evaluated and made widely available if effective.

**Recommendations:**

1. Evaluation of the police referral rate for Indigenous girls and women into diversionary programs.
2. Evaluation of the appropriateness and effectiveness of current diversionary programs for Indigenous girls and women.
3. Expansion of effective diversionary programs available to police to divert Indigenous women and girls, which are both culturally and gender appropriate.

## Rehabilitation

Given the high rates of recidivism and re-entry into prisons by Indigenous women, it is clear that the rehabilitation programs available to Indigenous women in prisons are inadequate. Traditional evidence-based rehabilitation programs have been developed based on research with white male offenders and attempts to adapt these programs to the needs of Indigenous women risk programs failing to meet cultural and gender needs as well as becoming ineffective. While there is a range of Indigenous rehabilitation programs around Australia, very few have been empirically evaluated for women (Bartels, 2010a).

A successful program in Canada which has demonstrated both a reduction in recidivism as well as cultural and gender responsiveness is based on 'healing lodges.' The fundamental aim of these programs is to promote the emotional, physical and spiritual healing of Canadian Indigenous women. In addition to this they are given the opportunity to learn further life skills and gain education. A key aspect of these lodges is the holistic approach to healing which includes accommodating the women in lodges rather than prison cells where they can do their own cooking and washing which fosters independence and self-respect, while avoiding the harsh isolation and trauma of prison routines such as strip searching.

New South Wales has a similar program where Indigenous offenders can undertake a 6 months program at a non-custodial residential facility as part of their bail program. Successful completion of the program is then considered when they are sentenced. The program accommodates both male and female Indigenous offenders and engages them in programs aimed to reduce recidivism and reconnect them with their culture. Currently there is no published evaluation of the program to indicate whether it is successful in reducing recidivism or the rates of custodial sentences delivered at the completion of the program. Such innovative programs are required for Australian Indigenous women to curb the steady rise in recidivism and incarceration, however thorough evaluations should be undertaken to ensure that they achieve these aims.

**Recommendations:**

1. Development and evaluation of non-custodial holistic rehabilitation programs which specifically meet the needs of Indigenous women who may be otherwise incarcerated.

## Reintegration

Reintegration programs should be considered independently of rehabilitation programs. While rehabilitation programs focus on addressing the underlying needs associated with offending, reintegration programs should address practical needs which may prevent Indigenous women from re-integrating with a community such as housing, financial issues and social support. While these issues may also impact on offending, they are also issues of fundamental human rights and should be addressed to ensure these women are not even more disadvantaged as a consequence of their incarceration.

Reintegration programs need to begin before an Indigenous woman is released from prison and should continue until she is confidently reintegrated into the community with consistent financial income and social support. There are very few programs in Australia which provide a well structured, well funded and/or empirically evaluated reintegration model for any prison, and in particular for Indigenous women. As outlined above, Indigenous women often have high levels of family violence which they may be returning to, as well as caregiving commitments and a lack of financial independence. Indigenous women may also face complications with returning to their own community, whether because community members will not let them return or because parole restrictions make returning to the community difficult. While there is a wealth of anecdotal evidence on the challenges of Indigenous women reintegrating with communities, there is little research which addresses this issue and explores how it may be improved.

**Recommendations:**

1. Robust evaluation of the current challenges faced by Indigenous women reintegrating from prison.
2. Development of strong evidence based reintegration programs aimed supporting Indigenous women to settle back in the community following release from prison.

## Sentencing of Indigenous Women

Several studies comparing the sentencing of Indigenous offenders with non-Indigenous offenders have found conflicting results regarding whether there are any differences in the severity of the sentences. Some studies have found that Indigenous offenders were equally or less likely to be sentenced than non-Indigenous offenders (Bond and Jeffries, 2009, Bond et al., 2011, Jeffries and Bond, 2009). This includes a study conducted by Jeffries and Bond (2009) which considered the sentencing of Indigenous women in Western Australia and found that after controlling for offending behaviour and history, Indigenous women were less likely to be sentenced than non-Indigenous women. However on a local level, it appears that there may be some bias within the lower Queensland courts (Bond and Jeffries, 2011). Notwithstanding this, consideration of sentencing remarks indicates that judges are aware of the effect of incarceration on the

children of Indigenous women , understand the social cost and are more likely to recognise their prospects for rehabilitation than non-Indigenous women (Bartels, 2012).

Research has also indicated that many incarcerated Indigenous women are on shorter sentences, which may indicate that they are being sentenced for more minor offences although this explanation is not consistent with the research outlined above (Bartels, 2010b). While more research is required to better understand how sentencing practices impact on Indigenous women, the New South Wales Committee on the Increase in Prisoner Population (2001) recommended a pilot trial to abolish all short sentences for Indigenous women. While this pilot is yet to be implemented, such an initiative would not only reduce the over-representation of Indigenous women in prison, but also minimise the many negative effects of incarceration on Indigenous communities and families.

**Recommendations:**

1. Pilot trial to abolish all short sentences for Indigenous women.
2. A comprehensive review of sentencing practices for Indigenous women across all courts in Queensland.

## **Conclusion**

Aboriginal and Torres Strait Islander women are the most significantly over-represented population in both Queensland and Australian prisons and their rate of incarceration is increasing more rapidly than any other group. This is an issue which can no longer be ignored or subsumed under broader policies on Indigenous offenders or female offenders. While contemporary research on the scope of the issue is beginning to emerge, thorough evaluations of the impact of programs and diversions on Indigenous women in the criminal justice system is vital. Further, immediate expansion of effective programs which meet both the gender and cultural needs of Indigenous women is necessary to address this rapidly deteriorating situation.

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