**Australian Human Rights Commission, Aboriginal and Torres Strait Islander Social Justice Team – Case Study on the overrepresentation of Indigenous women in incarceration**

**11.10.2018**

From 1997 – 2017 there has been a 133% increase in Australia’s prison population.[[1]](#endnote-1) The steep rise in incarceration rates is a serious issue that demands a whole-of-government response to developing effective alternatives to incarceration for all Australians. Still, it is Indigenous Australians who remain persistently overrepresented, making up 2% of the general adult population but 28% of the prison population.[[2]](#endnote-2) One of the most concerning trends is the 77% increase of women in prison over the last decade.[[3]](#endnote-3) It is Indigenous women who account for this growth, exceeding both the rate of imprisonment of Indigenous men, and non-Indigenous women and men.[[4]](#endnote-4) Aboriginal and Torres Strait Islander women make up 2% of Australia’s female population and yet are 34% of the women in prison.[[5]](#endnote-5)

It is well documented that Indigenous women in Australia have experienced early life and intergenerational trauma and multiple and intersecting forms of discrimination which cut across lines of race, gender and socio-economic status.[[6]](#endnote-6) These present day conditions have arisen from historical and ongoing policies of removal, dispossession and assimilation of Aboriginal and Torres Strait Islander peoples. These injustices have never been effectively addressed or rectified by the Australian nation.

The resulting cycles of generational inequality has enabled a culture of racism and discrimination to go unchecked across Australian institutions. Structural inequality and systemic racism interact with a range of intersecting socio-economic factors exposing women in vulnerable situations to punitive approaches to justice and, at times, to degrading treatment.

It is, therefore, often underlying factors such as high rates of domestic and family violence, abuse, trauma, and multiple forms of discrimination, which are leading to increasing rates of Aboriginal and Torres Strait Islander women’s incarceration.[[7]](#endnote-7) For instance, in New South Wales studies have shown 70% of Indigenous female prisoners are survivors of childhood sexual abuse, 44% experience ongoing sexual abuse, and 78% experience violence as adults.[[8]](#endnote-8) However, data assessing the causal pathway between underlying factors and incarceration is hard to come by as it is rarely disaggregated, focusing instead on Indigenous peoples and gender as separate groups, rather than analysing the intersection of Indigenous peoples and women as a distinct group.[[9]](#endnote-9) Without clear data it is difficult to respond effectively to the needs of Indigenous women to address root causes and break a cycle of rising incarceration rates.

What is known, is that Aboriginal and Torres Strait Islander women are more likely to be in prison serving shorter sentences, and more likely to return to prison than non-Indigenous women.[[10]](#endnote-10) Repeat short-term sentences contribute to a life-time cycle of increased financial insecurity and housing instability resulting in re-offending. Studies in New South Wales and Victoria found that of all the Aboriginal and Torres Strait Islander women released from prison from 2001-2003, none were able to find stable family accommodation and 68% returned to prison within 9 months.[[11]](#endnote-11)

An increasingly punitive justice system is seeing Aboriginal and Torres Strait Islander women imprisoned due to conditions of poverty.[[12]](#endnote-12) The consequences are that their children, families and communities are impacted. There is a direct connection between the fact that 80% of Indigenous women in prison are mothers, and the rapidly increasing rates of the removal of Indigenous children into out-of-home care.[[13]](#endnote-13) Having parents in prison and being removed from family and kin pre-disposes children to coming into contact with the criminal justice system throughout their lives.

Locking women up for economic, social, mental health and disability related issues is dangerous, it fuels intergenerational crime and in some instances is life-threatening. There are many examples that show the negligence, and prejudicial decision-making that takes place across the criminal justice system and related sectors. These damaging behaviours are compounded by a lack of effective rehabilitative and wrap-around women-centred supports, both within and outside of the justice system.

A prominent case is that of Ms Dhu who died from previous domestic violence injuries while in police custody in Western Australia. The Coroner’s Inquest found that her death was preventable and police acted inhumanely.[[14]](#endnote-14) Some police testified that they believed she was faking her illness, and other medical staff believed she had been exaggerating her pain.[[15]](#endnote-15) Another, lesser known case is that of Rosie Ann Fulton, a young woman from the Northern Territory who was arrested for minor motor vehicle offences in Kalgoorlie.[[16]](#endnote-16) Ms Fulton was incarcerated for almost two years without conviction after being found unfit to plea to criminal charges because she had Foetal Alcohol Spectrum Disorder.[[17]](#endnote-17)

It is critical that this crisis is responded to now to break a generational cycle of incarceration that impacts not only Indigenous women, but their children, families and communities. Real alternatives to incarceration must become viable options such as community-based sentencing as recommended by the Australian Law Reform Commission Report: Pathway’s to Justice. This includes measures such as justice reinvestment, and models that provide for flexible and culturally appropriate sentences such as the Koori Courts in Victoria and New South Wales and the Victorian Community Correction order regime.

The concerted effort of all Australian Governments is needed to translate the evidence into policy and legislation designed to rectify the impact of multiple inequalities and of generations of discrimination faced by all Aboriginal and Torres Strait Islander peoples. It is of particular importance to address the unique needs of Indigenous women and the underlying factors which may lead to incarceration to ensure that imprisonment of Indigenous women is always the last resort.

1. Joshua Robertson, *Australia’s Jail population hits record high after 20-year surge*, (11 September 2017) Guardian <https://www.theguardian.com/australia-news/2017/sep/11/australias-jail-population-hits-record-high-after-20-year-surge> [↑](#endnote-ref-1)
2. Joshua Robertson, *Australia’s Jail population hits record high after 20-year surge*, (11 September 2017) Guardian <https://www.theguardian.com/australia-news/2017/sep/11/australias-jail-population-hits-record-high-after-20-year-surge> [↑](#endnote-ref-2)
3. Sophie Russell and Eileen Baldry, *Three charts on: Australia’s booming prison population*, (June 14 2017), Conversation <https://theconversation.com/three-charts-on-australias-booming-prison-population-76940> [↑](#endnote-ref-3)
4. Australian Law Reform Commission Report: *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples,* FinalReport No 133 (2018), 348, [11.7]. [↑](#endnote-ref-4)
5. Adriane Walters and Shannon Longhurst, *“Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment”,* (Human Rights Law Centre, 1st, 2017) 11. [↑](#endnote-ref-5)
6. Documented extensively throughout: Adriane Walters and Shannon Longhurst, *“Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment”,* (Human Rights Law Centre, 1st, 2017), and covered Australian Law Reform Commission Report: *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples,* FinalReport No 133 (2018), in the chapter on Indigenous women’s incarceration pp 347-358 [↑](#endnote-ref-6)
7. Keeping Women Out of Prison Coalition, *Position Statement Update - 2017*, (2017) 6. [↑](#endnote-ref-7)
8. Mary Stathopoulos and Antonia Quadara, ‘Women as Offenders, Women as Victims: The Role of Corrections in Supporting Women with Histories of Sexual Abuse’ (Women’s Advisory Council of Corrective Services NSW, 2014) 18. [↑](#endnote-ref-8)
9. Australian Law Reform Commission Report: *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples,* FinalReport No 133 (2018), 350, [11.13]. [↑](#endnote-ref-9)
10. Adriane Walters and Shannon Longhurst, *“Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment”,* (Human Rights Law Centre, 1st, 2017) 12 [↑](#endnote-ref-10)
11. Eileen Baldry et al, ‘Ex-Prisoners, Homelessness and the State in Australia’ (2006) 39(1) *Australian & New Zealand Journal of Criminology* 8. [↑](#endnote-ref-11)
12. Statements and explanations about the increasing nature of an Australian punitive criminal justice system can be found in: Victoria Tauli-Corpuz, *End of mission Statement by the United Nations Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia, (*20 March – 3 April 2017) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E> [↑](#endnote-ref-12)
13. Calla Wahlquist, *Australia must address soaring female Indigenous imprisonment rate – report,* (15 May 2017), Guardian <https://www.theguardian.com/australia-news/2017/may/15/soaring-female-indigenous-imprisonment-rate-obstructing-closing-the-gap-targets-report> [↑](#endnote-ref-13)
14. Nicolas Perpitch, *Ms Dhu inquest: Coroner criticises ‘inhumane’ WA police treatment before death in custody*, (16 December 2016), ABC <http://www.abc.net.au/news/2016-12-16/ms-dhu-inquest-coroner-slams-police-over-death-in-custody/8122898> [↑](#endnote-ref-14)
15. Scott Holdaway, *Ms Dhu death in custody: A family’s long search for answers*, (23 February 2018), ABC < <http://www.abc.net.au/news/2016-12-16/how-the-ms-dhu-death-in-custody-case-unfolded/8119806> > [↑](#endnote-ref-15)
16. Richard Guilliatt, *What happened to Rosie Ann?* The Australian Weekend Magazine <https://www.theaustralian.com.au/life/weekend-australian-magazine/what-happened-to-rose-ann-fulton/news-story/56d7df0856b037cdd605a3f9fc39def3> [↑](#endnote-ref-16)
17. Mick Gooda and Graeme Innes, *Jailed without conviction: Send Rosie Anne Fulton home*, (14 march 2014), Guardian <https://www.theguardian.com/commentisfree/2014/mar/14/jailed-without-conviction-send-rosie-anne-fulton-home> [↑](#endnote-ref-17)