

Context and overview



2.1 Introduction

Many factors contribute to the disadvantage experienced by Aboriginal Territorians who are over-represented in the justice system.

There are also some unique challenges in the Northern Territory associated with improving justice responses for Aboriginal people. These include the Territory's demographic and geographic features, repercussions of historical policies, distinct cultural norms, and the fact that the majority of Aboriginal Territorians live in remote or very remote communities.

Policies to improve justice outcomes for Aboriginal Territorians cannot simply be imported from other jurisdictions. What works in one NT community may not work in another. This theme was repeated many times during the NTAJA consultations.



We need government to work with us to develop plans... because some plan that government set up for Borroloola or Maningrida is not going to necessarily be something that will work for our people [in the West Daly region].¹³

2.2 Demographic and geographic profile of the NT

The demographic and geographic profile of the NT presents unique challenges for effective and efficient service delivery. Of particular importance to the NTAJA is the fact that the NT has the largest proportion of Aboriginal people compared to any other Australian jurisdiction, with Aboriginal Territorians accounting for just over 30% of the NT population. The NT is linguistically and culturally diverse, with 15.3% of the population speaking an Aboriginal language at home and many Aboriginal Territorians speaking English as a second, third or fourth language.¹⁴ The NT population is dispersed over a vast region with extreme weather patterns, making it challenging to deliver year-round services. Any policy initiative to improve justice outcomes in the Territory for Aboriginal people must be designed to accommodate these distinct attributes and characteristics.

Figure 02. The NT's demographic profile

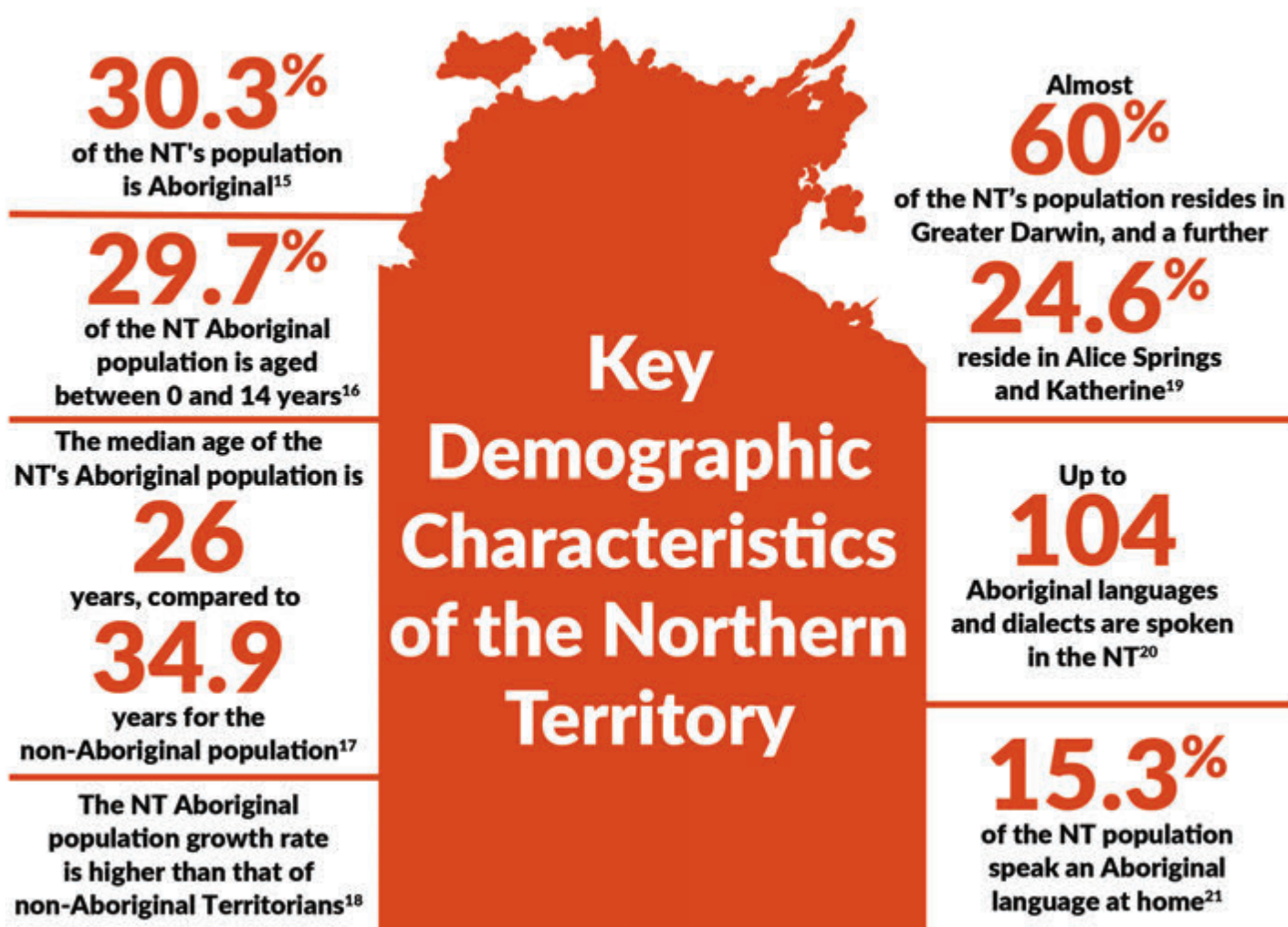
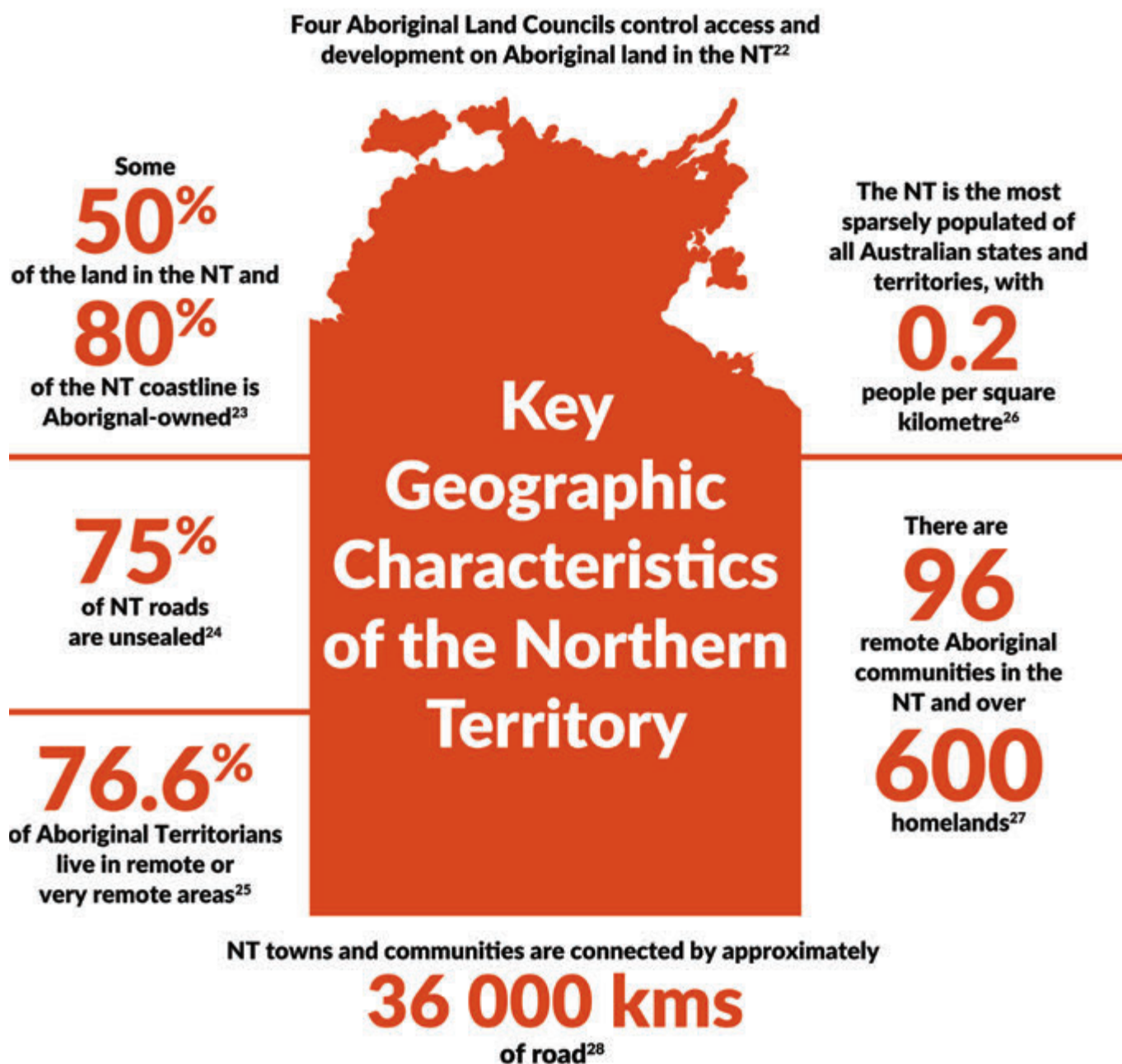


Figure 03. The NT's geographic profile

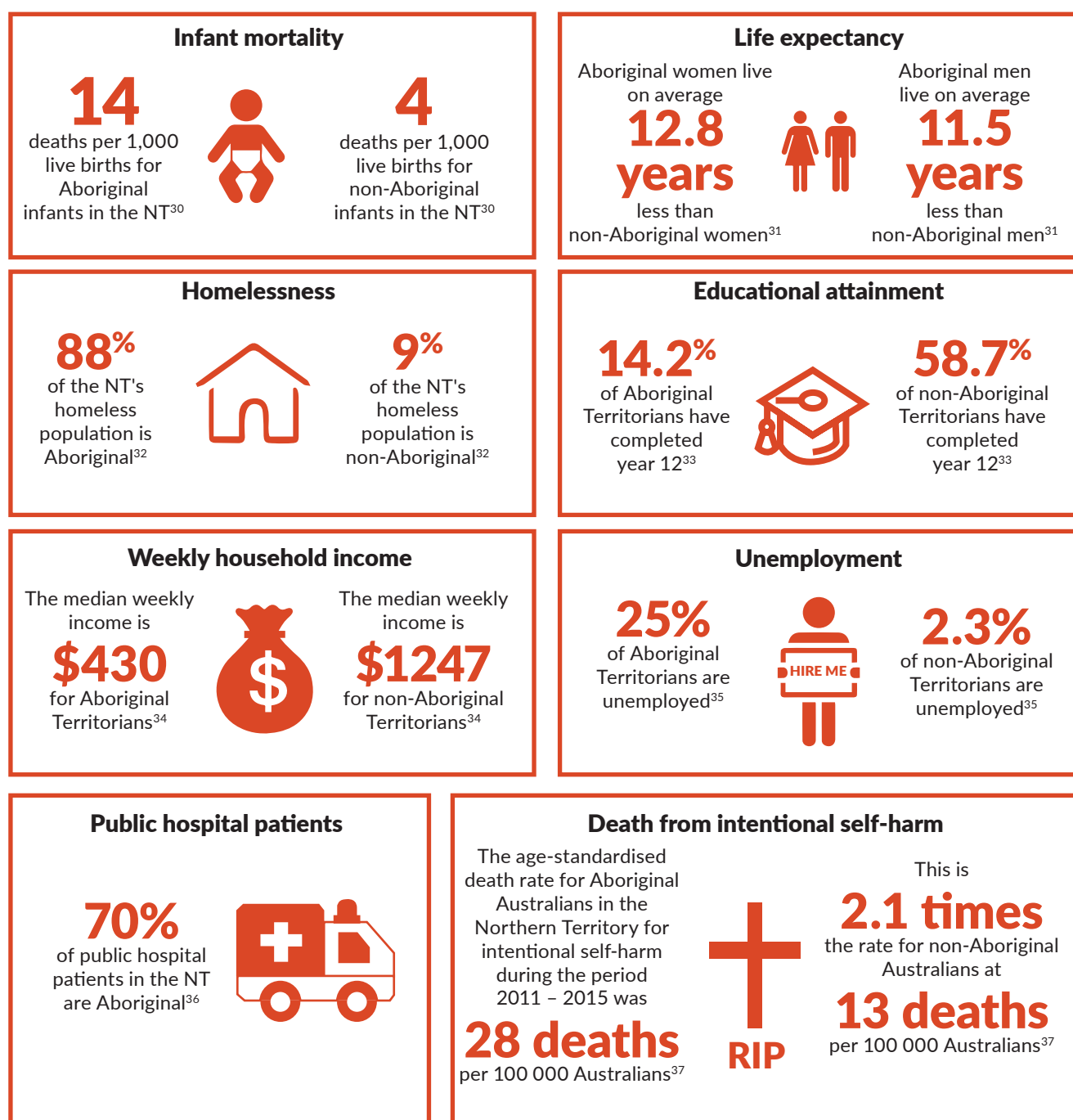


2.3 The impact of past policies

The current social and economic circumstances of many Aboriginal Territorians are inextricably linked to a history of colonisation, dispossession and dislocation from land, family, language, culture, knowledge systems, authority and values. Government policies and practices throughout the history of Australia, including the removal of children from families, continue to disrupt the lives of Aboriginal families and have far-reaching consequences including intergenerational loss, trauma, and grief.

These policies and practices have contributed to the current disadvantage experienced by Aboriginal people and the disparity between Aboriginal and non-Aboriginal Territorians on many indicators evident below.²⁹

Figure 04. Disparity between Aboriginal and non-Aboriginal Territorian population indicators



Other disparities that have an impact on Aboriginal people's contact with the justice system are outlined in the following table.

Figure 05. Disparities between Aboriginal and non-Aboriginal Territorians that may impact on justice outcomes

Education	<p>In the NT, Aboriginal children have lower school attendance rates than non-Aboriginal children. In term 2 of 2018, the average NT school attendance rate for Aboriginal children was 62%, compared to 88% for non-Aboriginal children.³⁸</p> <p>The link between disengagement from school, lack of educational attainment and subsequent contact with the criminal justice system is well established.³⁹</p>
Employment	<p>In 2016, the unemployment rate for Aboriginal Territorians aged 15 years and over was just over six times the rate of non-Aboriginal Territorians.⁴⁰</p> <p>Only 27% of Aboriginal Territorians aged 15 years and over were employed in 2016, compared to 76% of non-Aboriginal Territorians.⁴¹</p> <p>Lack of employment opportunities increases the risk of contact with the justice system.</p>
Housing	<p>Aboriginal people are significantly overrepresented in the homeless population, making up 88% of all people who are homeless in the NT. Overcrowding is the major driver of homelessness in the NT, with 81% of all homelessness caused by overcrowding.⁴²</p> <p>Homelessness, inadequate housing and overcrowding disproportionately affect Aboriginal people and these factors are directly linked to contact with the justice system.⁴³</p>
Health and Disability	<p>Aboriginal Territorians experience poorer health outcomes and higher rates of physical and cognitive disabilities than non-Aboriginal Territorians.</p> <p>In 2014–15, 40% of Aboriginal Territorians aged 15 years and over reported having a disability or a restrictive long-term health condition.⁴⁴</p> <p>Across Australia, Aboriginal people with cognitive disabilities such as Foetal Alcohol Spectrum Disorder (FASD) are at an increased risk of contact with the criminal justice system. The prevalence of cognitive impairment and mental illness among Aboriginal prisoners in the NT has also been noted.⁴⁵</p> <p>Hearing loss and impairment is extremely prevalent amongst Aboriginal Australians.⁴⁶ It is estimated that up to 90% of Aboriginal children in the NT under the age of three have an ear disease and will experience hearing loss that will affect early brain development.⁴⁷</p> <p>A senate inquiry received anecdotal evidence that the prevalence of hearing loss among Aboriginal prisoners in the NT could be as high as 80-95%.⁴⁸</p>

Mental Health	<p>Aboriginal people experience disproportionately high rates of poor mental health and wellbeing, including intergenerational trauma, grief and loss.</p> <p>In 2014-15, 32% of Aboriginal Territorians aged 18 years and over reported high or very high levels of psychological distress.⁴⁹</p> <p>In 2014-15, Aboriginal Territorians were hospitalised for a mental or behavioural disorder at three times the rate of non-Aboriginal Territorians.⁵⁰</p> <p>Suicide rates in the NT for children aged 5-17 years are over three times higher than any other jurisdiction.⁵¹</p>
Substance Misuse	<p>Across Australia, Aboriginal people are less likely to drink alcohol than non-Aboriginal people, but those who do consume alcohol are more likely to drink at harmful levels.⁵²</p> <p>Alcohol misuse has been associated with the prevalence and severity of assaults and domestic violence in the NT.⁵³</p> <p>Alcohol misuse is a known factor that contributes to family and community related problems, including child abuse and neglect, work or financial problems and family breakdown.⁵⁴</p> <p>Recent NT crime statistics,⁵⁵ indicate that alcohol is involved in at least 60% of domestic and family violence offences and 60% of all assaults in the NT.⁵⁶</p>
Domestic and Family Violence	<p>Domestic and family violence affects Aboriginal people at disproportionate rates and has devastating effects.</p> <p>Almost nine in ten (89%) victims of domestic and family violence related assaults in the NT are Aboriginal.⁵⁷</p> <p>The prevalence of domestic and family violence in Aboriginal communities, and the damaging effects of domestic and family violence and sexual abuse are recognised as key drivers of Aboriginal incarceration.⁵⁸</p> <p>Research suggests that Australia-wide, the majority of Aboriginal women in prison have experienced physical or sexual abuse.⁵⁹</p> <p>Intimate partner violence is more likely to occur if alcohol has been consumed.⁶⁰</p>
Child Protection	<p>Over 50% of Aboriginal children in the NT have been the subject of a child protection notification or report by the age of 10.⁶¹</p> <p>In 2016, 75% of Aboriginal children who were found guilty of an offence in the NT had previously been reported to child protection.⁶²</p>
Discrimination and Racism	<p>Racism can be a key source of stress and socioeconomic disadvantage for Aboriginal people. Discrimination has an impact on employment prospects, access to services and contributes to poor social and emotional wellbeing.⁶³</p> <p>Research in the NT found a significant association between interpersonal racism and depression among Aboriginal Territorians.⁶⁴</p>

Aboriginal
Territorians make
up
88%
of the NT's
homeless
population.⁴⁴

81%
of all homelessness
in the NT is caused
by overcrowding.⁴⁴

Only
36%
of Aboriginal
Territorians above
the age of 55 report
having completed
year 10.⁷⁵

2.4 Vulnerable populations

Evidence indicates the importance of recognising and addressing the compounded disadvantage of Aboriginal Territorians who fall within other population groups, such as Elders, women, youth, and people with cognitive disabilities. Recognising the particular needs of each group is critical to achieve the aims of the Agreement.

2.4.1 Aboriginal Elders

While the abuse of Elders has been anecdotally identified as a significant issue in Aboriginal communities, there is limited data on its prevalence. A 2018 survey conducted by the Darwin Community Legal Service indicates that the abuse of elderly people may be relatively widespread, typically taking the form of financial abuse or coercion.⁶⁵ In the survey, 70% of the aged care service providers, support workers and unpaid carers who responded, stated they had witnessed an older person being 'forced to sign papers or use their money against their will'.⁶⁶ The victim was most commonly identified as female (70% of respondents)⁶⁷ and Aboriginal (62%),⁶⁸ while the suspected abuser was most commonly an adult son (24%) or daughter (19%).⁶⁹ Although this survey used a small sample group and should not be considered statistical evidence, it indicates that instances of abuse are considered commonplace among practitioners and carers who have regular contact with older Territorians.

Concerns regarding the abuse of Elders, particularly financial abuse by family members, were also raised in the NTAJA consultations, with some individuals suggesting the issue was prevalent in communities.⁷⁰ Some believed that the mistreatment and neglect of Elders stems from a lack of respect by younger generations, due to a gradual erosion of significant cultural values. During consultations, some Elders reported that they have shared funds under duress and were expected to care for children while their parents go to Alice Springs to drink alcohol.⁷¹

During consultations, Elders raised concerns about the impact of the BasicsCard on family dynamics. Some Elders noted that while the BasicsCard does work generally, retired community members receiving a pension often have money taken without their knowledge and permission, which is then spent on alcohol, drugs and gambling by younger family members.⁷²

For many Aboriginal Elders across Australia, there are ongoing and complex challenges to accessing a range of services due to geographical and language barriers, the impact of historical policies, and a lack of culturally competent programs. While there is limited evidence on the literacy rates of Aboriginal Elders, only 36% of Aboriginal Territorians above the age of 55 report having completed year 10, compared to 79% among the equivalent non-Aboriginal cohort.⁷³ The vulnerability of older Aboriginal Territorians is compounded further by poor health outcomes. Nationally in 2014-15, almost 9 in 10 (88%) Aboriginal people over the age of 55 were affected by long-term health conditions including diabetes, cardiovascular disease and respiratory disease.⁷⁴ With Aboriginal people in Australia using home-based aged care programs at a higher rate and at a younger age than non-Aboriginal people, this cohort is significantly less likely to live in permanent residential aged care facilities, especially given the lack of access to these facilities in remote areas of the NT.⁷⁵

2.4.2 Aboriginal women

Aboriginal women have significantly higher rates of psychological distress when compared to Aboriginal men,⁷⁶ and experience high rates of sexual violence.

Research suggests that Australia-wide, the majority of Aboriginal women in prison have experienced physical or sexual abuse.⁷⁷

Family and sexual violence have been identified as key drivers of incarceration for Aboriginal women in Australia.⁷⁸ Nationally, Aboriginal women are up to 35 times more likely to experience domestic and family violence than non-Aboriginal women.⁷⁹ Data suggests Aboriginal women in prison are very likely to have encountered sexual and physical violence.⁸⁰ Across Australia, Aboriginal women are often hindered from reporting violence or seeking support due to a fear of children being removed, compounded by the complexities of cultural pressure to avoid increased criminalisation of Aboriginal men.⁸¹

Across Australia, the criminal justice system is inadequately addressing the rapid growth of female Aboriginal incarceration due to inadequate infrastructure, prison support services, and diversion programs.⁸² The ALRC's Pathways to Justice Report has highlighted these inadequacies in the NT, including overcrowding in female detention facilities and limited access to education opportunities.⁸³ This situation is further complicated by the pattern of repeated, short periods of incarceration among many female Aboriginal offenders.⁸⁴

Research indicates that the majority of incarcerated Aboriginal women are mothers.⁸⁵ The ALRC Report notes that this has the potential to entrench intergenerational disadvantage, with research demonstrating that children removed from their mothers are more likely to enter the criminal justice system, develop behavioural problems, and experience negative health outcomes.⁸⁶

2.4.3 Aboriginal youth

The disadvantage faced by Aboriginal youth in the justice system is characterised by the complex relationship between family violence, child removal, disconnection from community and culture, as well as criminal offending and reoffending. The Royal Commission into the Protection and Detention of Children in the Northern Territory (RCPDCNT) found that the youth justice and care and protection systems have systemically failed to address the challenges faced by vulnerable children in the NT, the majority of whom are Aboriginal.⁸⁷

Aboriginal youth in the NT are overrepresented in the criminal justice system to a greater extent than both male and female Aboriginal adults, and are subject to youth justice supervision at the highest rate of any Australian jurisdiction.⁸⁸

It is important to recognise the significant crossover between the child protection and youth justice systems. The RCPDCNT found that in the NT, 75% of Aboriginal children who were found guilty of an offence had previous involvement with the child protection system.⁸⁹ The RCPDCNT identified that children involved in both these systems have often experienced entrenched disadvantage including poverty, parental substance use problems, mental illness, disability, low levels of education, as well as trauma and exposure to

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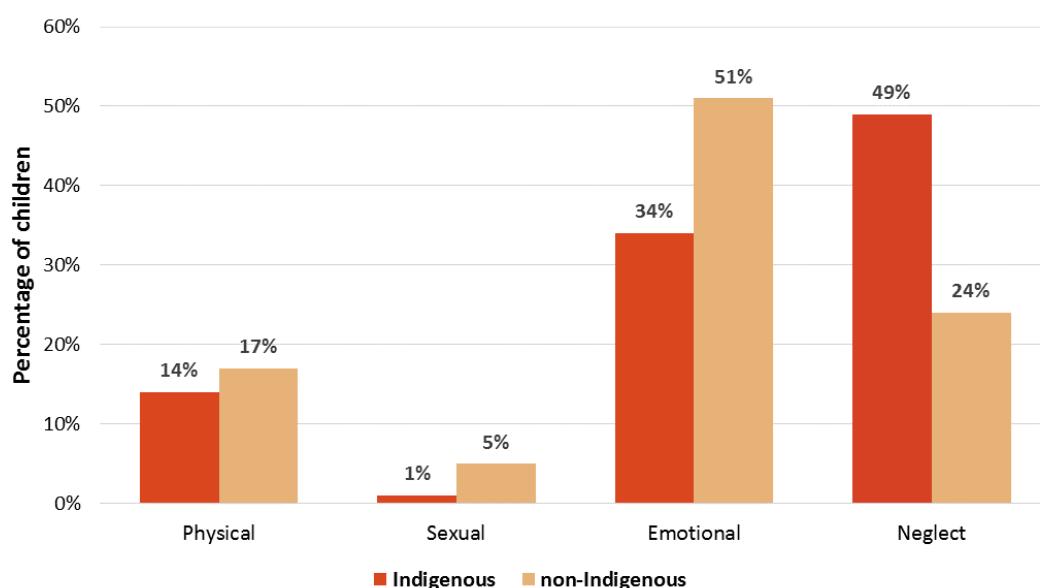
In 2016,
75.2%
of Aboriginal
children who were
found guilty of an
offence in the NT
had previously been
reported to child
protection.⁹¹

family and community violence.⁹⁰ Contact with the justice system at such a young age, whether as a victim or offender, increases the risk of prolonged contact as an offender in later stages of life.⁹¹

This crossover can be explained in part by the fact that child maltreatment is a strong criminogenic risk factor for young offenders. It is also indicative of a process of 'care criminalisation', whereby children in out-of-home care are more likely to be reported to police for minor offences such as property damage, which would normally be resolved within the confines of a functioning family home.⁹²

The RCPDCNT found that over 50% of Aboriginal children in the NT had been the subject of a notification to child protection by the age of ten.⁹³ In 2017-18, the rate of children who were the subject of substantiated child protection investigations in the NT was over three times the national average,⁹⁴ and Aboriginal children received child protection services at over six times the rate of non-Aboriginal children.⁹⁵ Figure 6 shows that the majority of substantiated notifications for Aboriginal children referred to child protection related to neglect and emotional abuse.⁹⁶

Figure 06. Proportion of total children (aged 0–17) in the NT who were the subject of substantiations of notifications received during 2017–18 by type of abuse or neglect, Indigenous and non-Indigenous⁹⁷



Source: Derived from Australian Institute of Health and Welfare, *Data Tables: Child Protection Australia 2017-18*. (2019) cat no. CWS 65, Table S14. **Note:** In the NT, due to recording issues, sexual exploitation is under-reported. This has been addressed and it is expected numbers in this area will be similar to those of other jurisdictions in future years.



We should have more of a say about what happens to kids from this community – about disciplining them, about teaching them respect for our culture and our traditions. Too many of our kids are in jail – when it is our responsibility to look after them and grow them up the right way.¹⁰⁵

2.4.4 Aboriginal people with cognitive disabilities

Aboriginal people in Australia with cognitive disabilities are disproportionately likely to experience poor justice and welfare outcomes. Not only are they over-represented in prison populations, but they are also more likely to have been homeless, to have been in out-of-home care, and to have early and frequent contact with the criminal justice system both as a victim and/or offender.⁹⁸

Evidence of the prevalence of cognitive disabilities among Aboriginal Territorians is at present very limited, partially due to the lack of accurate data. Accurate monitoring is hindered by a lack of access to health professionals, frequent misdiagnosis and under-diagnosis of certain conditions, and the impact of cultural bias in testing.⁹⁹ It is widely accepted that rates of cognitive disabilities including FASD, acquired brain injury, and learning disabilities are significantly higher among Aboriginal people than the general Australian population.¹⁰⁰

Aboriginal people with cognitive disabilities are disadvantaged across Australia, at multiple stages in the justice system. Research shows cognitive impairment and disability frequently go unrecognised in interactions with police, courts, prisons and detention facilities, and often diagnosis, treatment, adequate support and assistance are not provided.¹⁰¹

Among the most serious concerns stemming from these issues is that Aboriginal people with cognitive disabilities can be subject to indefinite detention if charged with a serious offence and found unfit to plead or not guilty by reason of mental impairment.¹⁰² In these cases, it is possible that an alleged offender can be detained for longer periods than if he or she had pleaded guilty or been convicted. Currently, there are 11 Aboriginal and four non-Aboriginal people in the Northern Territory being held indefinitely under Part IIA of the *Criminal Code Act 1983* (NT).¹⁰³

The impacts of cognitive disabilities, notably FASD, are particularly pronounced among young offenders. The recent RCPDCNT found that many of the young people in the NT's youth justice system exhibited symptoms of FASD, including 56% of the 16 children who gave evidence on their experiences.¹⁰⁴ An Australian Senate inquiry also found that Australia wide, FASD affected young people are 19 times more likely to be incarcerated, and are also more likely to reoffend.¹⁰⁵

2.4.5 Aboriginal people as victims of crime

Many Aboriginal Territorians have contact with the justice system as victims of crime. Nine out of ten victims of family and domestic violence related assaults in the NT are Aboriginal, with Aboriginal women disproportionately likely to be victims of family, domestic and sexual violence.¹⁰⁶

Figure 7 highlights that in 2017, there were 5,362 Aboriginal victims of assault recorded by police, which accounted for 69% of total assault victims in the NT.¹⁰⁷

The prevalence of violence against Aboriginal people is difficult to measure, due to underreporting by victims, limited culturally competent support services and a lack of standardised data available from courts, health services and other sources.¹⁰⁸ For these reasons, the full extent of victimisation, particularly in remote communities, is likely to be significantly underestimated.

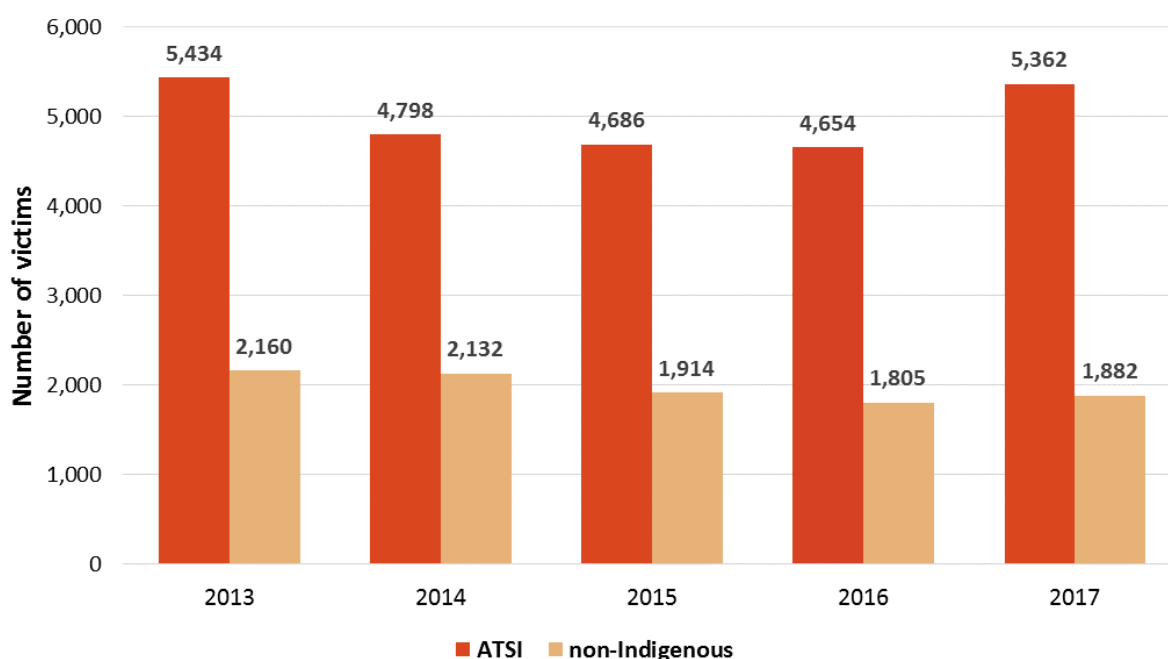
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The determinants of criminal behaviour cannot be separated from the dynamics that underlie high rates of victimisation of Aboriginal Territorians. In *Pathways to Justice*, the ALRC recommended that criminal justice responses to high incarceration rates should also maintain a focus on reducing rates of victimisation, highlighting that the two are fundamentally interrelated.¹⁰⁹ Victimisation has repeatedly been found to be a significant determinant of incarceration.¹¹⁰ Childhood experiences of violence and abuse have been found to be particularly high risk factors for violent offending or re-victimisation later in life.¹¹¹

Figure 07. ATSI and non-Indigenous victims of assault in the NT (all ages), 2013-2017



Source: Australian Bureau of Statistics, 4510.0 – *Recorded Crime – Victims, Australia 2017*, (2018) Table 16. **Note:** This data may include victim counts for those situations where police have determined after investigation that 'no crime' has occurred. This differs to all other states and territories where 'no crime' data has been excluded from the victim counts.

