



# Pathways to the Northern Territory Aboriginal Justice Agreement

DEPARTMENT OF  
THE ATTORNEY-GENERAL AND JUSTICE





## About the artworks



We gratefully acknowledge the students at St Mary's Catholic Primary School in Darwin who have supplied this artwork for use in documents associated with the NT Aboriginal Justice Agreement.

**The Sea of Change** by students Tilly (Year 4) and Mia (Year 1).

*Our painting tells the story of how people need to work together to make decisions.*

*The blue colour is the sea, a metaphor for the undercurrent of change. The smaller circles illustrate people who are already waiting alongside the edge of the sea who can join up with the people who are already there who are depicted as the bigger circles.*

*But those standing on the edge of the water need to make a decision. They have choices. They can stay where they are, or be brave and take a risk, and plunge into the water to join up with the others.*

*There are decisions that must be made in life at difficult times. Where there are decisions there are choices. You just need to be brave and make sure it's the right one and know that you are not alone.*



We gratefully acknowledge the students at Sadadeen Primary School in Alice Springs who have supplied this artwork for use in documents associated with the NT Aboriginal Justice Agreement.

**The Desert Painting** by students Letrell (Year 5), Shanti (Year 6) and Alayna (Year 4).

*Our painting shows how we can work as a team with respect for one another.*

*The circles are joined together along pathways and we remember to help each other on the journey.*

*The future is bright, just like the desert after rain. We used the desert colours because we live in a hot desert, where new life happens after the rain.*

*In the desert, nature comes together and we can come together too. Our future looks bright and beautiful.*

## A tribute to an outstanding Elder Albert Namatjira (1902-1959)



Albert Namatjira, Ghost Gums, c.1950  
© Namatjira Legacy Trust/Licensed by Copyright Agency, 2019.

The life and story of Albert Namatjira resonates with a broader narrative in Australia. It captures the struggles of Aboriginal people with the legal system. Albert's story reminds us that injustice is not isolated to the past; the issues he faced continue to affect Aboriginal people and families today. Here we acknowledge Albert Namatjira's story.

Few painters have captured Australia's heart and imagination like Albert Namatjira, who remains one of the nation's most renowned and celebrated artists. A member of the Arrarnta people from Central Australia, Albert (then named Elea) Namatjira was born in 1902 in Hermannsburg.<sup>1</sup> Albert developed his talent for art as a young man, sketching scenes of outback life around him and crafting various artefacts. During this time, Albert supported his wife Ilkalita (later christened Rubina) and children by working as a blacksmith, carpenter, stockman and cameleer, as well as crafting and selling small artworks at the Hermannsburg mission, and working on surrounding stations.<sup>2</sup>

With the spectacular scenery of Central Australia entering the national consciousness as a symbol of Australian identity for the first time, Albert was ably assisted by non-Aboriginal painters who frequently visited his community in the 1930s. Alongside his deep attachment to country and the desire to find a stable income, Albert's interactions with these painters inspired him to consider painting as a vocation. He held his first solo exhibition in Melbourne in 1938 and subsequent exhibitions in Sydney and Adelaide that attracted widespread attention. Unsurprisingly, it was not long before Albert won national and international acclaim. He was included in *Who's Who in Australia* 1944, and was presented with the Queen Elizabeth II Coronation Medal by the Queen in Canberra in 1953.

Although a time of success, this period also saw the emergence of new tensions. Albert was championed by many as a representative of assimilation, provoking mixed responses. With new financial wealth from his success, Albert found himself subject to discriminatory laws which left him unable to pursue his dream of securing a pastoral license and prevented him from building a home in Alice Springs, because he was Aboriginal.

This appalling contradiction of Albert's celebrity, and his inability to participate in wider society on the basis of his Aboriginality, provoked public outcry and eventually led to Albert and his wife to be the first Aboriginal people to be granted citizenship.

Exempted from many previous restrictions, Albert now was able to buy a house and had the right to purchase and consume alcohol. However, in accordance with Aboriginal custom, Albert was expected to share his newfound prosperity with his family, even though under the law at the time, without an exemption, Aboriginal people were not entitled to the same rights. This situation eventually resulted in Albert being charged with supplying alcohol to an Aboriginal family member for which he received a six-month prison sentence. Following two appeals and backlash from the public, Albert was released from prison after two months to complete open detention at Papunya. Sadly, later that year (1959), Albert died of heart failure aged only 57 years, with his wife and six of his children surviving him. Many say he died of a broken heart.

The struggles that marked Albert's life continued to endure well after his passing, with his family facing numerous challenges regarding the control and custody of Albert's copyright and estate. Albert had earlier entered into an arrangement with the publishing company Legend Press, providing them with limited use of his copyright. On Albert's death, the Public Trustee of the Northern Territory took on responsibility for his estate, resulting in them selling the copyright in all of Albert's work to Legend Press in 1983.

In October 2017, after decades of negotiation and campaigning, the copyright was finally returned to Albert's family, represented by the newly formed Namatjira Legacy Trust. Shortly after, the family welcomed a compensation settlement from the Northern Territory Government. Here we acknowledge the struggles Albert faced, and his outstanding contribution to the Northern Territory and Australia.



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## Ministerial foreword

I would like to express my sincere appreciation for the efforts of all those who have contributed to the development of the *Northern Territory Aboriginal Justice Agreement* (the Agreement). I particularly acknowledge Aboriginal Territorians who provided direction on the way forward in meetings and discussions across the Northern Territory.

I have now released a draft Aboriginal Justice Agreement for the consideration of proposed signatories, including representatives of Aboriginal communities and organisations.

This document – *Pathways to the Northern Territory Aboriginal Justice Agreement* – is a companion document to the draft Agreement. It brings together the background information, consultation findings and evidence that informed the development of the Agreement.



Aboriginal Territorians participated in over 120 consultations across the Northern Territory, including 80 meetings in remote and regional Aboriginal communities. In these meetings, community members, leaders and representatives of government and non-government agencies shared their views and experiences in honest conversation, demonstrating an overwhelming willingness to work together on solutions to improve justice responses. We can only achieve comprehensive and long-lasting change by working together across government and all sectors of the community. The partnership between Aboriginal Territorians and the Northern Territory Government is critical to the success of the Agreement.

I trust that all Territorians will work alongside us to deliver the outcomes of the Agreement.

A handwritten signature in black ink, reading 'Natasha Fyles'.

Hon Natasha Fyles MLA

**Attorney-General and Minister for Justice**



## Acknowledgements

We acknowledge Aboriginal people as the first peoples and the traditional owners and custodians of the land and waters.

We acknowledge and respect Aboriginal Elders past and present, and support emerging leaders across the Northern Territory and Australia.<sup>3</sup>

We recognise that the Northern Territory is culturally diverse, and this document provides a basis for work to improve the lives of Aboriginal Territorians in accordance with human rights and other legislative frameworks.

We acknowledge the contribution that Aboriginal Territorians and Northern Territory Government agencies have made to develop this document.

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The term Aboriginal is used throughout this document to refer to all people of Aboriginal and Torres Strait Islander descent who are living in the Northern Territory. The use of this term reflects the wishes of Aboriginal people in the Northern Territory. The use of the term 'Indigenous' has evolved through international law, and is also used in this document when referring to 'Indigenous peoples' across the globe.

Where the term Indigenous or Aboriginal and Torres Strait Islander is used in an original document, graph or table, the term will remain unchanged; this includes data that has been provided by the Australian Bureau of Statistics (ABS).

Throughout the document, many of the photos have kindly been provided by Stewart Roper. A link to his work and book can be found at [roperphotos.com/buythebook.html](http://roperphotos.com/buythebook.html)

Please be aware that this document may contain the names or images of Aboriginal people who have died.



## Acronyms

<b>ABS</b>	Australian Bureau of Statistics
<b>AGD</b>	Department of the Attorney-General and Justice
<b>AIHW</b>	Australian Institute of Health and Welfare
<b>AIS</b>	Aboriginal Interpreter Service
<b>AJA</b>	Aboriginal Justice Agreement
<b>AJARC</b>	Aboriginal Justice Agreement Reference Committee
<b>ALRC</b>	Australian Law Reform Commission
<b>ANZSOC</b>	Australia and New Zealand Standard Offence Classification
<b>APO NT</b>	Aboriginal Peak Organisations of the Northern Territory
<b>ATC</b>	Alternative to Custody
<b>ATSI</b>	Aboriginal and Torres Strait Islander
<b>BDM</b>	Births, Deaths and Marriages
<b>CDEP</b>	Community Development Employment Projects
<b>CDP</b>	Community Development Program
<b>CEO</b>	Chief Executive Officer
<b>CJRSU</b>	Criminal Justice Research and Statistics Unit
<b>COAG</b>	Council of Australian Governments
<b>CO</b>	Commissioner for Oaths
<b>DVO</b>	Domestic Violence Order
<b>FASD</b>	Foetal Alcohol Spectrum Disorder
<b>JESCC</b>	Joint Emergency Services Communication Centre
<b>JP</b>	Justice of the Peace
<b>JCCD</b>	Judicial Council of Cultural Diversity
<b>LCA</b>	Law Council of Australia
<b>LDM</b>	Local Decision-Making
<b>LJG</b>	Law and Justice Group
<b>MLA</b>	Member of the Legislative Assembly

<b>NAAJA</b>	North Australian Aboriginal Justice Agency
<b>NGO</b>	Non-Government Organisation
<b>NTAJA</b>	Northern Territory Aboriginal Justice Agreement
<b>NTCOSS</b>	Northern Territory Council of Social Service
<b>NTG</b>	Northern Territory Government
<b>NTLAC</b>	Northern Territory Legal Aid Commission
<b>RCIADIC</b>	Royal Commission into Aboriginal Deaths in Custody
<b>RCPDCNT</b>	Royal Commission into the Protection and Detention of Children in the Northern Territory



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# The development of the Northern Territory Aboriginal Justice Agreement



## 1.1 Introducing the Northern Territory Aboriginal Justice Agreement

In partnership with Aboriginal communities, the Northern Territory Government (NTG) is developing the Northern Territory Aboriginal Justice Agreement (NTAJA or the Agreement).

In 2017 and 2018, the Aboriginal Justice Unit from the Department of the Attorney-General and Justice visited 80 communities and Aboriginal organisations, and conducted over 120 consultations to seek views on how justice issues facing Aboriginal people should be addressed.

A draft Agreement has been developed, underpinned by research, evidence and the views and experiences of Aboriginal people. The draft has now been released for consultation to seek input from Territorians before release of the final Agreement.

This document, ***Pathways to the Northern Territory Aboriginal Justice Agreement***, is a companion document to the Agreement. It brings together, in a single publication, the background information, consultation findings and the evidence that informed the development of the Agreement. It provides the rationale for the initiatives and strategies contained in the Agreement.

## 1.2 Vision

For Aboriginal Territorians to live safe, fulfilling lives and to be treated fairly, respectfully and without discrimination, and for Aboriginal offenders to have the opportunity to end their offending.

## 1.3 Aims

Over the seven years of the Agreement, in two stages, the signatories aim to:

- reduce reoffending and imprisonment rates of Aboriginal Territorians
- engage and support Aboriginal leadership
- improve justice responses and services to Aboriginal Territorians.

## 1.4 History and overview of Aboriginal Justice Agreements in Australia

Aboriginal Justice Agreements (AJAs) first emerged as a result of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) which handed down its final report in 1991.

Six years later, continued high incarceration rates and deaths in custody of Aboriginal people prompted a high-level meeting of Aboriginal and Torres Strait Islander (ATSI) leaders. As an outcome of this meeting, it was recommended that each state and territory, in coordination with respective Aboriginal Justice Advisory Councils<sup>4</sup> and relevant Aboriginal bodies, develop AJAs to improve the delivery of justice programs and outcomes for Aboriginal people.<sup>5</sup> However, it was not until later that year, at the National Ministerial Summit on Aboriginal Deaths in Custody in Canberra, that all state and territory governments, except the Northern Territory, agreed and adopted the recommendation to implement strategic agreements in partnership with Aboriginal people.

Between 2000 and 2010, Queensland, Victoria, New South Wales, Western Australia and the Australian Capital Territory introduced AJAs, while in South Australia and Tasmania the development of justice agreements was never followed through.

As at 2019, only Victoria has maintained an active agreement. Despite the passage of time, the importance of AJAs was most recently highlighted by the Australian Law Reform Commission (ALRC) in its report *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Pathways to Justice Report or the ALRC Report) which recommended all state and territory governments renew or develop AJAs in partnership with relevant Aboriginal organisations.<sup>6</sup>



## 1.5 Factors that influence the success of Aboriginal Justice Agreements

To ensure that the NTAJA has the greatest likelihood of achieving its aims, consideration has been given to the four factors identified by academics Fiona Allison and Chris Cunneen that contribute to the ultimate success of an AJA.<sup>7</sup>

### 1.5.1 Effective Aboriginal community engagement in the development, implementation and evaluation of Aboriginal Justice Agreements

Participation, self-determination and capacity building have been consistently identified as instrumental to improving justice outcomes. For these principles to be upheld in the development, implementation and evaluation of AJAs, community capacity and authority to drive decision-making must be supported. The effectiveness of an AJA is contingent on its ability to effectively engage with Aboriginal people. A critical aspect of such engagement is the relevance of the AJA at a regional and local level. This relevance is gained through establishing local plans, activities, services and groups.

### 1.5.2 Effective accountability and evaluation processes, including clarity of objectives and outcomes

A successful AJA requires effective accountability and evaluation processes that incorporate maximum input from Aboriginal people and communities. Monitoring and evaluation processes must be embedded across the agreement and the objectives of the agreement must be both clear and measurable. Independent monitoring is recommended to facilitate accountability and to allow for ongoing feedback that can contribute to improving programs. It is also critical that monitoring and evaluation processes occur with meaningful active participation from Aboriginal people within a clear, robust and transparent governance structure.

### 1.5.3 Continuity and whole-of-government approaches to policy development

Constant change in government policy is a significant barrier to successfully achieving the aims of an AJA. The dynamic, fluctuating nature of policy environments can impede the ability of long-term strategies to succeed, resulting in policies lapsing with no follow-through or continuity.

Continuity in strategic planning is important. The majority of jurisdictions that have developed AJAs have also formulated an overarching whole-of-government Aboriginal strategic policy covering a broader social and economic framework. This allows AJAs to focus upon Aboriginal justice issues. This approach has been found to impact the overall effectiveness of an AJA.

### 1.5.4 Effective consideration of Aboriginal victimisation and recognition of the links with other civil and family law needs

Aboriginal Territorians are overrepresented in the criminal justice system as both offenders and victims.<sup>8</sup> Focusing on offenders alone neglects a significant aspect of Aboriginal justice challenges. Separating offending and reoffending from victimisation undermines the ability to improve justice outcomes due to the significant overlap in factors that contribute to Aboriginal people becoming both victims and offenders. Effective AJAs clarify the capacity and responsibility of justice agencies in relation to victims of crime.

A successful AJA also recognises the importance of family and civil law outcomes, and their interconnectedness with criminal justice outcomes.

## 1.6 Policies, strategies and reforms aligned to the Northern Territory Aboriginal Justice Agreement

There are many Northern Territory Government policies, strategies, and reforms that align with the aims of the NTAJA.

The key initiatives, projects and reforms outlined below inform the content of the NTAJA and will drive change across government agencies to achieve positive outcomes for Aboriginal Territorians.

Table 1. NT Government initiatives that align with the NTAJA

NT Government Agency	Year	Initiative
Department of the Attorney-General and Justice	2018	<i>Domestic and Family Violence Amendment (Information Sharing) Act 2018 (NT)</i>
		Victims of Crime Reform Discussion Paper
Department of the Chief Minister	2018	Barunga Agreement
	2018 – 2028	Starting Early for a Better Future: Early Childhood Development in the Northern Territory
	2018 – 2028	Local Decision-Making Framework
	2018 – 2019	Northern Territory Alcohol Harm Minimisation Action Plan
	2019 – 2029	Everyone Together NT Aboriginal Affairs Strategy (currently in draft)
Department of Education	2015 – 2024	A Share in the Future – Indigenous Education Strategy
	2016 – 2018	Everyday Counts – NT School Attendance and Engagement Strategy
Department of Health	2010 – 2020	NT Chronic Conditions, Prevention and Management Strategy
	2015 – 2018	NT Aboriginal Health Plan
	2015 – 2021	NT Mental Health Service Strategic Plan
	2016 – 2026	NT Health Aboriginal Cultural Security Framework
Department of Local Government, Housing and Community Development	2017 – 2026	Our Community. Our Future. Our Homes
	2018 – 2023	NT Homelessness Strategy
Northern Territory Police, Fire and Emergency Services	2018 – 2023	Strategy 2023: Prevention. Integrity. Unity
Territory Families	2018 – 2028	Domestic, Family and Sexual Violence Reduction Framework
	2018 – 2023	Safe, Thriving and Connected: Generational Change for Children and Families

## 1.7 Development of the Northern Territory Aboriginal Justice Agreement

### 1.7.1 Overview of process

The NTAJA is a result of efforts and contributions made by Aboriginal Territorians, NT Government agencies, non-government organisations (NGOs) and professionals representing a variety of sectors, as well as the wider community. In addition, the process of developing the Agreement is underpinned by comprehensive research and a strong emphasis on embedding cultural competency at all stages.

A summary of the key stages in the development of the Agreement is provided in Table 2, along with an overview of the stages that remain to finalise the Agreement and commence its implementation.

*Table 2. Timeline for the development and implementation of the NTAJA*

Date	Milestone	Description
<b>Work to date</b>		
<b>2016</b>	Making Justice Work campaign	The Making Justice Work campaign lobbied for six key 'Asks' in the lead-up to the 2016 NT election, the first of these being the establishment of an AJA. <sup>9</sup>
<b>Oct 2016</b>	Government commits to an AJA for the NT	On 19 October 2016, the Hon. Natasha Fyles MLA, NT Attorney-General and Minister for Justice, outlined the Government's commitment to develop an AJA in a speech to Parliament. <sup>10</sup>
<b>May 2017</b>	Aboriginal Justice Agreement Reference Committee (AJARC) established	To assist in guiding the development of the NTAJA, an interim AJARC was established comprising 16 representatives from peak bodies and community organisations in the NT.
<b>Jul 2017</b>	Launch of the Aboriginal Justice Unit (AJU)	On 5 July 2017, the NT Attorney-General and Minister for Justice launched the AJU to deliver the NTAJA. <sup>11</sup>
<b>Jul 2017</b>	NTAJA consultation process commences	In July 2017, the AJU commenced a consultation process across the NT to meet with Aboriginal Territorians, NTG agencies, NGOs, other relevant organisations and the broader community.  Over two years, over 120 consultations were conducted by the AJU, including 80 consultations in regional and remote locations and with Aboriginal organisations.
<b>2017-18</b>	Research and data collection	A fundamental aspect of the AJU's work is the collection and analysis of qualitative information and quantitative data. Working with other NTG agencies and the Australian Bureau of Statistics (ABS), the AJU has developed an evidence base to inform the content of the NTAJA.
<b>2017-18</b>	Commencement of projects aligned to the NTAJA	In the process of developing the NTAJA, numerous projects have commenced in response to immediate issues identified by the AJU.



2017-18	Meetings of the AJARC	The first AJARC meeting was held on 26 May 2017, and it convened regularly over 2017–18. The AJARC has and continues to provide ongoing assistance and advice to the AJU regarding the direction and content of the draft Agreement.
Apr 2018	NTG whole-of-government workshop	To incorporate input from NTG agencies into the development of the NTAJA, the AJU held a one-day workshop on 12 April attended by 33 senior staff representing 15 NTG agencies.
Jul 2018	NTG inter-agency discussion paper released	As a follow-up to the whole-of-government workshop, the AJU circulated a discussion paper to NT Government agencies seeking formal input to deliver a whole-of-government approach in the development and implementation of the NTAJA.
Jul 2018	Inter-agency staff secondments to AJU commence	To build on inter-agency partnerships developed through the NTG workshop and discussion paper, key agencies commenced secondment arrangements with the AJU.
Oct and Nov 2018	Two targeted stakeholder workshops	To develop and expand on the key themes arising from the consultations, the AJU facilitated two workshops with professionals representing various stakeholder organisations on 18-19 October and 1-2 November.
Sept 2019	Release of the draft NTAJA	The draft NTAJA will be released for wider consultation, along with the <i>Pathways to the NTAJA</i> document that outlines the consultation findings and evidence.

#### Refinement of the draft NTAJA

Late 2019 - early 2020	Consultation on the draft NTAJA	The draft NTAJA will be subject to a second round of targeted consultations across the NT.
2020	Refinement of the draft NTAJA	The draft NTAJA will be refined based on feedback obtained during the second round of consultations.
2020	Release of the final NTAJA	The final NTAJA will be signed by parties to the Agreement and will enter into effect.

#### Implementation phase

2019-21	NTAJA Stage 1 implementation	The NTAJA will be delivered over seven years in two stages.
2022-25	NTAJA Stage 2 implementation	Stage 2 will allow for further refinement of the NTAJA.

## 1.7.2 Approach to consultations

The first major undertaking by the AJU in the development of the NTAJA was the commencement of a two year, Territory-wide consultation process to build partnerships and gather feedback to inform the content of the Agreement.

Over 120 consultations were held, including 80 consultations in remote and regional communities, homelands and outstations, and with Aboriginal organisations. An issues register captured over 1,000 comments. Consultations focused on listening and hearing the voices of Aboriginal Territorians.

Consultations on the NTAJA attempted to operate within a culturally-safe and appropriate framework. Wherever possible, Elders, leaders, interpreters, and cultural brokers were engaged by the AJU to facilitate the meetings. Relevant stakeholders, such as police, education, health, and regional council staff, were invited to attend these meetings. Suggestion boxes were placed in a number of communities that enabled additional feedback in a safe and confidential manner.

This robust and extended consultation process ensures that the NTAJA reflects a shared vision and that the content is built on a deep and abiding respect for the cultural values and expertise of Aboriginal people. The views and experiences of Aboriginal Territorians have shaped the Agreement. Research and data analysis has also been undertaken to ensure that the Agreement is founded on credible evidence highlighting the current challenges facing Aboriginal Territorians in the justice system.

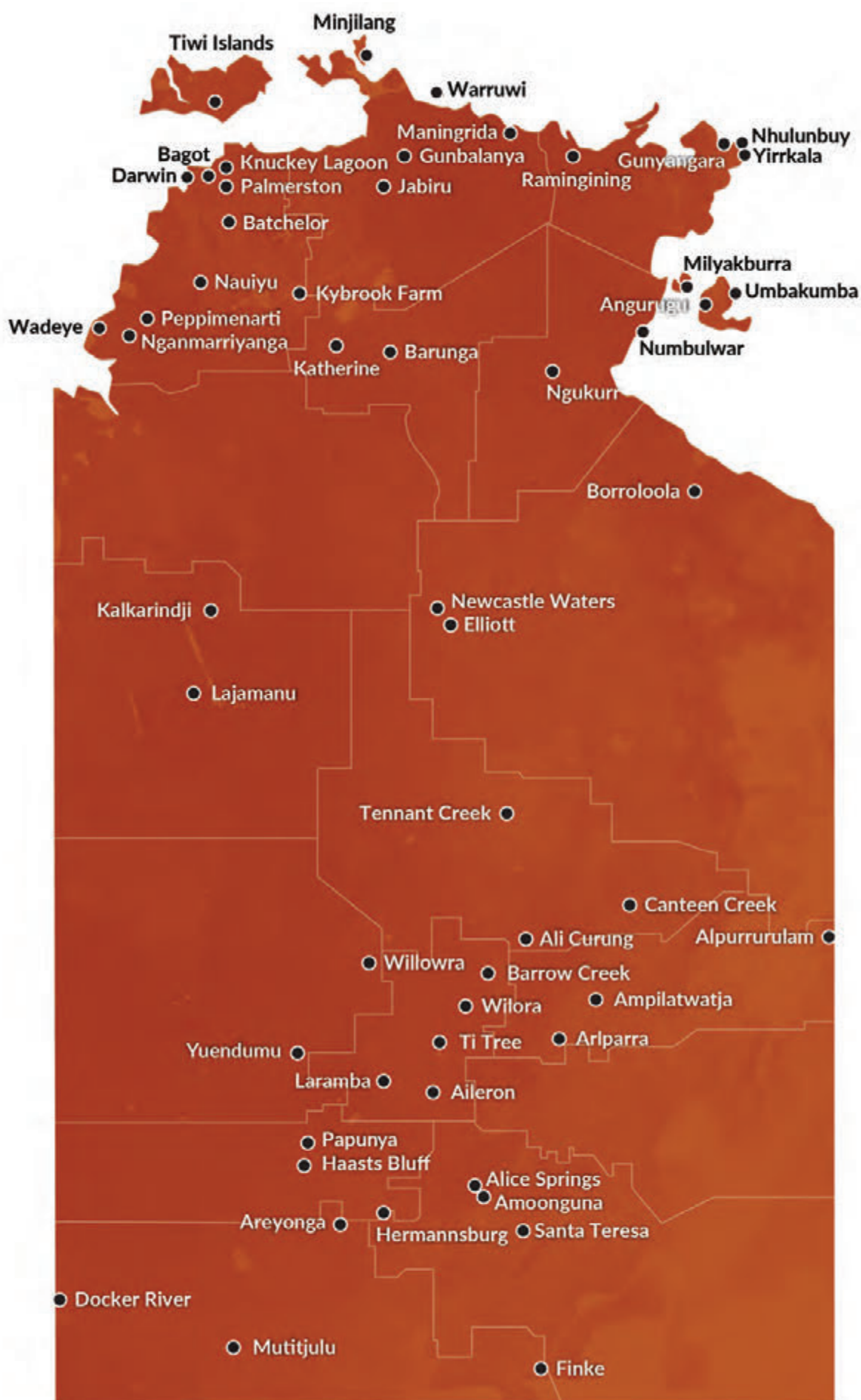
During the consultation process, it was important to accept and acknowledge that historically government engagement with Aboriginal Territorians has been associated with interventionist policies, limited consultation and unfulfilled commitments. Often governments have failed to build on the strengths and expertise of Aboriginal communities. These legacies persist and have weakened trust and hindered relationships between NT Government agencies and Aboriginal Territorians.

A second phase of targeted consultations will occur following the release of the draft NTAJA. In this phase, the AJU will reaffirm partnerships established during the initial consultations and seek further input prior to the release of the final Agreement in 2020.



*I'm 56 now, I'm trying to get back on my feet and this is the first time I've been asked what I need so I can do better on the outside, and I can see something happening with you mob coming and asking us all about why we're in here - it feels good - I feel a bit of healing talking to you mob about my story.<sup>12</sup>*

Figure 01. Locations visited during consultations for the draft NTAJA





## 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].<sup>13</sup>*

## 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.<sup>14</sup> 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

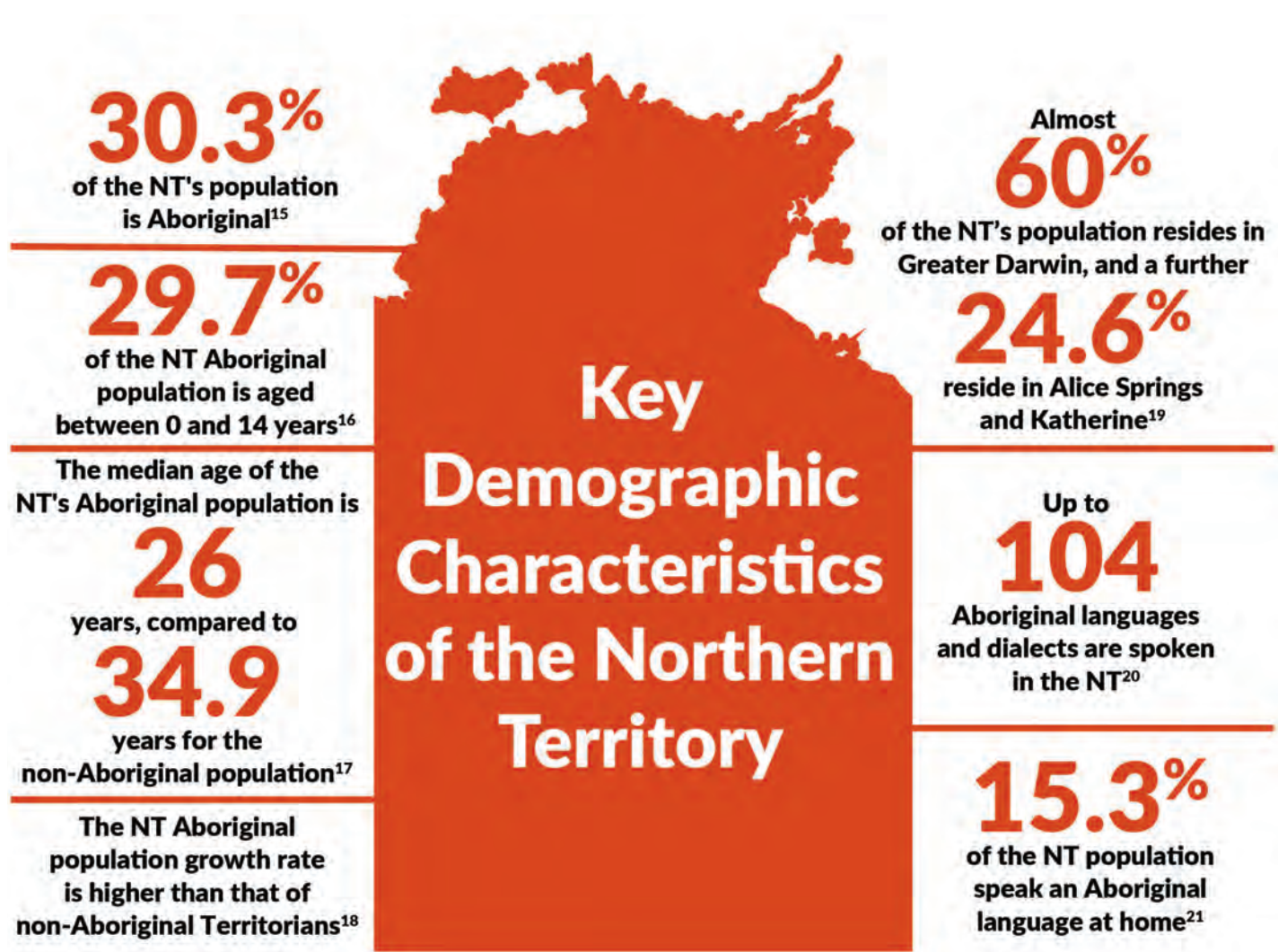
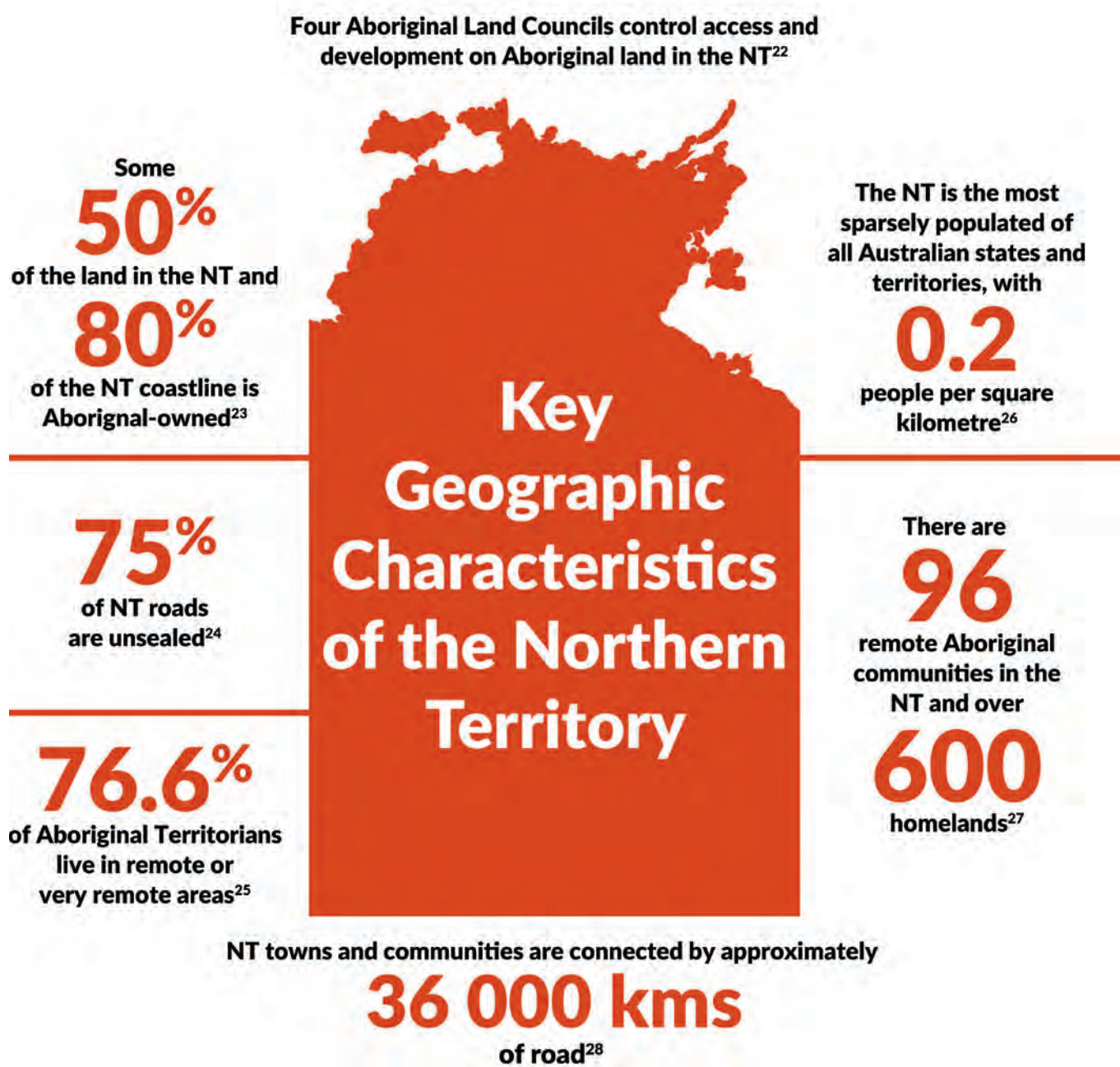




Figure 03. The NT's geographic profile



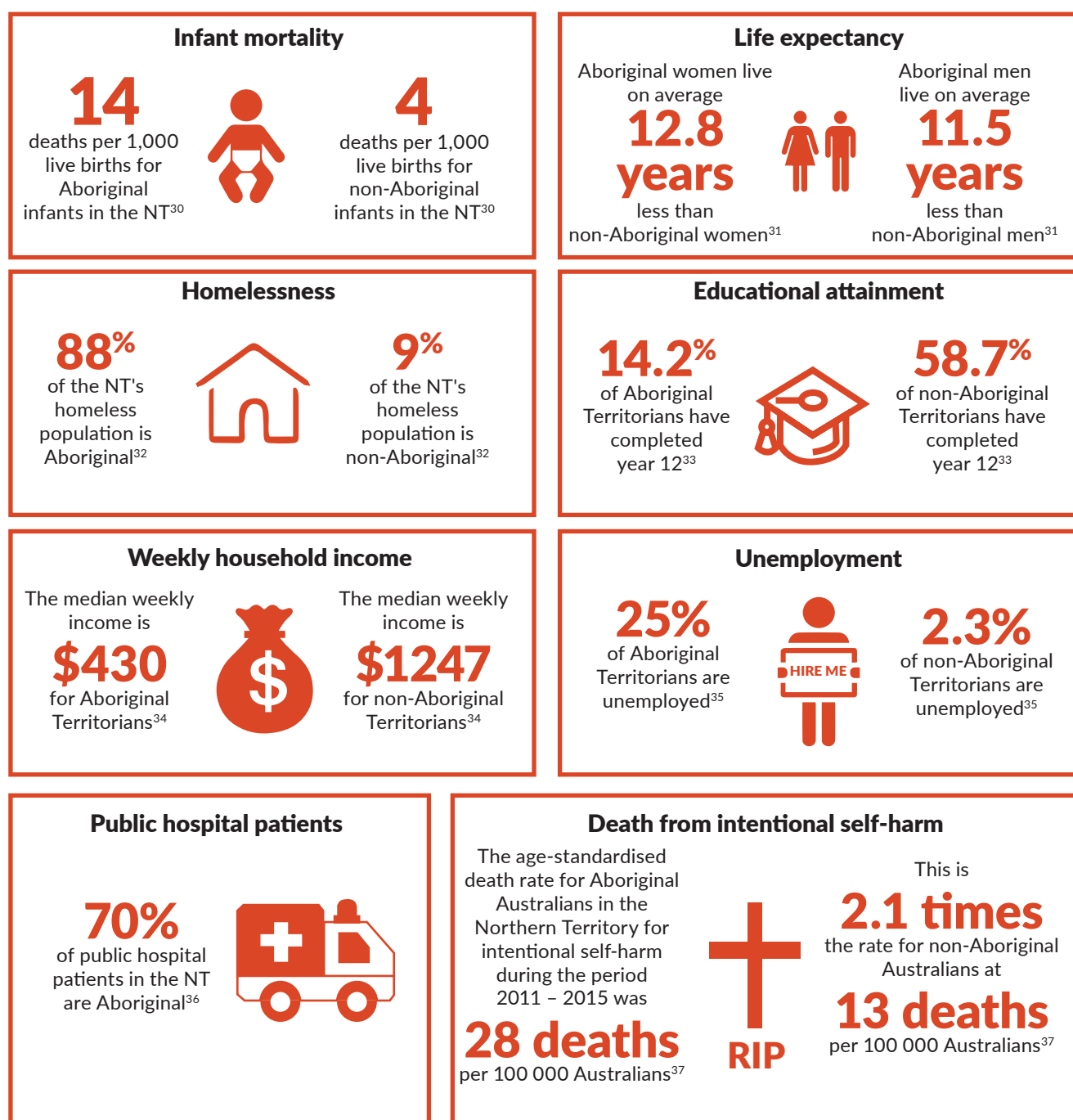


## 2.3 The impact of past policies

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.<sup>29</sup>

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*

<b>Education</b>	<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.<sup>38</sup></p> <p>The link between disengagement from school, lack of educational attainment and subsequent contact with the criminal justice system is well established.<sup>39</sup></p>
<b>Employment</b>	<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.<sup>40</sup></p> <p>Only 27% of Aboriginal Territorians aged 15 years and over were employed in 2016, compared to 76% of non-Aboriginal Territorians.<sup>41</sup></p> <p>Lack of employment opportunities increases the risk of contact with the justice system.</p>
<b>Housing</b>	<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.<sup>42</sup></p> <p>Homelessness, inadequate housing and overcrowding disproportionately affect Aboriginal people and these factors are directly linked to contact with the justice system.<sup>43</sup></p>
<b>Health and Disability</b>	<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.<sup>44</sup></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.<sup>45</sup></p> <p>Hearing loss and impairment is extremely prevalent amongst Aboriginal Australians.<sup>46</sup> 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.<sup>47</sup></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%.<sup>48</sup></p>

<b>Mental Health</b>	<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.<sup>49</sup></p> <p>In 2014-15, Aboriginal Territorians were hospitalised for a mental or behavioural disorder at three times the rate of non-Aboriginal Territorians.<sup>50</sup></p> <p>Suicide rates in the NT for children aged 5-17 years are over three times higher than any other jurisdiction.<sup>51</sup></p>
<b>Substance Misuse</b>	<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.<sup>52</sup></p> <p>Alcohol misuse has been associated with the prevalence and severity of assaults and domestic violence in the NT.<sup>53</sup></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.<sup>54</sup></p> <p>Recent NT crime statistics,<sup>55</sup> indicate that alcohol is involved in at least 60% of domestic and family violence offences and 60% of all assaults in the NT.<sup>56</sup></p>
<b>Domestic and Family Violence</b>	<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.<sup>57</sup></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.<sup>58</sup></p> <p>Research suggests that Australia-wide, the majority of Aboriginal women in prison have experienced physical or sexual abuse.<sup>59</sup></p> <p>Intimate partner violence is more likely to occur if alcohol has been consumed.<sup>60</sup></p>
<b>Child Protection</b>	<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.<sup>61</sup></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.<sup>62</sup></p>
<b>Discrimination and Racism</b>	<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.<sup>63</sup></p> <p>Research in the NT found a significant association between interpersonal racism and depression among Aboriginal Territorians.<sup>64</sup></p>



Aboriginal  
Territorians make  
up  
**88%**  
of the NT's  
homeless  
population.<sup>44</sup>

**81%**  
of all homelessness  
in the NT is caused  
by overcrowding.<sup>44</sup>

Only  
**36%**  
of Aboriginal  
Territorians above  
the age of 55 report  
having completed  
year 10.<sup>75</sup>

## 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.<sup>65</sup> 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'.<sup>66</sup> The victim was most commonly identified as female (70% of respondents)<sup>67</sup> and Aboriginal (62%),<sup>68</sup> while the suspected abuser was most commonly an adult son (24%) or daughter (19%).<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup>

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.<sup>72</sup>

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.<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup>

### 2.4.2 Aboriginal women

Aboriginal women have significantly higher rates of psychological distress when compared to Aboriginal men,<sup>76</sup> 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.<sup>77</sup>

Family and sexual violence have been identified as key drivers of incarceration for Aboriginal women in Australia.<sup>78</sup> Nationally, Aboriginal women are up to 35 times more likely to experience domestic and family violence than non-Aboriginal women.<sup>79</sup> Data suggests Aboriginal women in prison are very likely to have encountered sexual and physical violence.<sup>80</sup> 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.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup> This situation is further complicated by the pattern of repeated, short periods of incarceration among many female Aboriginal offenders.<sup>84</sup>

Research indicates that the majority of incarcerated Aboriginal women are mothers.<sup>85</sup> 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.<sup>86</sup>

### 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.<sup>87</sup>

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.<sup>88</sup>

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.<sup>89</sup> 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

Research indicates that the majority of incarcerated Aboriginal women are mothers.<sup>87</sup>

Suicide rates in the NT for children aged

**5-17 years**

are over three times higher than in any other jurisdiction.<sup>53</sup>

Over  
**50%**

of Aboriginal children in the NT have been the subject of a notification to child protection by the age of ten.<sup>95</sup>



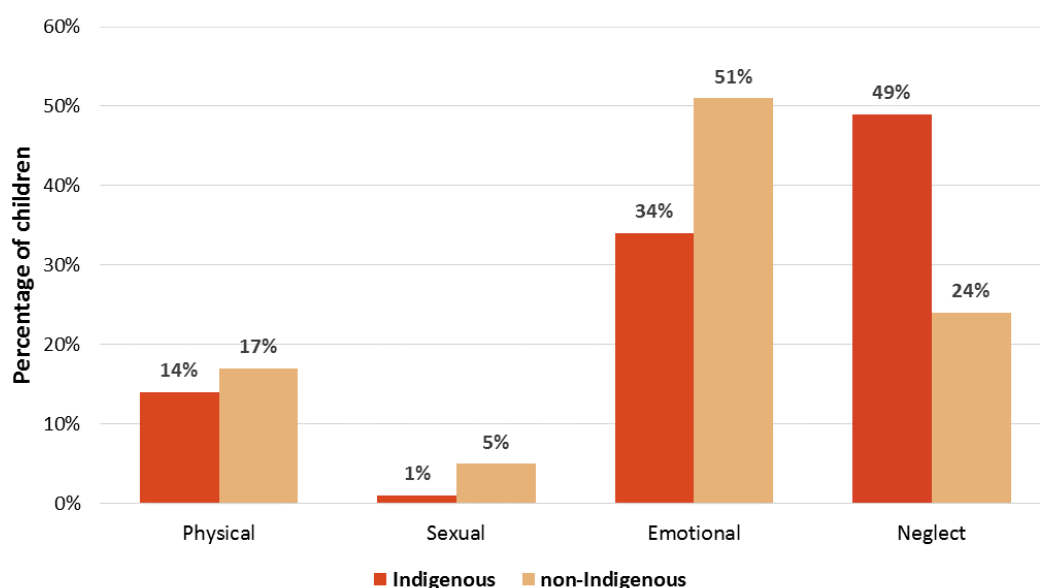
In 2016,  
**75.2%**  
of Aboriginal  
children who were  
found guilty of an  
offence in the NT  
had previously been  
reported to child  
protection.<sup>91</sup>

family and community violence.<sup>90</sup> 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.<sup>91</sup>

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.<sup>92</sup>

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.<sup>93</sup> 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,<sup>94</sup> and Aboriginal children received child protection services at over six times the rate of non-Aboriginal children.<sup>95</sup> Figure 6 shows that the majority of substantiated notifications for Aboriginal children referred to child protection related to neglect and emotional abuse.<sup>96</sup>

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-Indigenous<sup>97</sup>



**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.<sup>105</sup>*



#### 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.<sup>98</sup>

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.<sup>99</sup> 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.<sup>100</sup>

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.<sup>101</sup>

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.<sup>102</sup> 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).<sup>103</sup>

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.<sup>104</sup> 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.<sup>105</sup>

#### 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.<sup>106</sup>

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.<sup>107</sup>

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.<sup>108</sup> For these reasons, the full extent of victimisation, particularly in remote communities, is likely to be significantly underestimated.

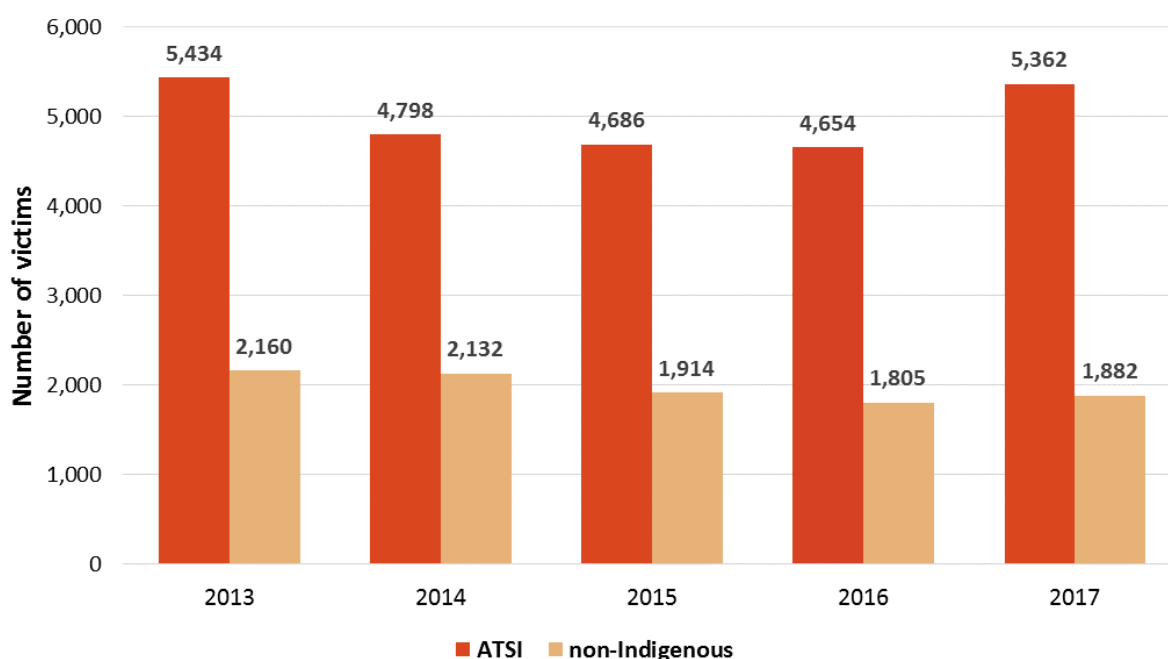
FASD, acquired brain injury, and learning disabilities are significantly higher among Aboriginal people than the general Australian population.<sup>102</sup>

**69%**  
of all assault victims  
in the NT are  
Aboriginal.<sup>109</sup>

**9 out of 10**  
victims of family  
and domestic  
violence related  
assaults in the NT  
are Aboriginal.<sup>108</sup>

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.<sup>109</sup> Victimisation has repeatedly been found to be a significant determinant of incarceration.<sup>110</sup> Childhood experiences of violence and abuse have been found to be particularly high risk factors for violent offending or re-victimisation later in life.<sup>111</sup>

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.





## Aim One

Reduce reoffending and imprisonment rates of Aboriginal Territorians





### 3.1 Introduction

Reducing the reoffending and imprisonment rates of Aboriginal Territorians is a fundamental aim of the NT Aboriginal Justice Agreement.

The NT has the highest imprisonment rate of any state or territory in Australia with 955 prisoners per 100,000 adult population, compared to the national average of 221 prisoners (as at 30 June 2018). The number of all prisoners in the NT was 1758 as at June 2018, representing a 10% increase from the previous year.<sup>112</sup>

At 30 June 2018, 84% of adult prisoners in the NT were Aboriginal, despite Aboriginal adults accounting for 25.9% of the NT's adult population.<sup>115</sup> This is the largest proportion of Aboriginal prisoners in any state or territory.<sup>114</sup> In addition, the rate of incarceration among Aboriginal Territorians is, and consistently has been, significantly above the national average,<sup>115</sup> and has grown over the last 10 years.<sup>116</sup> Figure 8 illustrates the disparity in the ratio of incarceration rates of Aboriginal and non-Aboriginal Territorians.

These high rates of imprisonment in the NT have significant economic and social costs.

In 2016, the estimated direct costs to the Australian justice system of Aboriginal incarceration was \$3.9 billion.<sup>117</sup> When the costs of Aboriginal incarceration are broadened beyond those directly related to the criminal justice system to include other economic costs such as lost productivity and the costs incurred by victims of crime, this estimated cost rises to \$7.9 billion per annum.<sup>118</sup>

In the NT, the incarceration of an adult prisoner is estimated to cost \$317.73 per day.<sup>119</sup> The cost increases significantly for NT youth in detention, estimated to be \$2,038.05 per day.<sup>120</sup> The cost of community supervision in the NT is less expensive, and is estimated to be \$50.52 per day for each adult offender and \$526 per day for each young offender.<sup>121</sup>

The NTAJA consultations highlighted that alongside the cost of incarceration to taxpayers, government, and the wider community, there are significant financial, social, health and wellbeing costs for the family of the imprisoned person and their community.

Intergenerational experiences of incarceration were a common theme arising from consultations, with many participants reporting that time in prison had become normalised and was seen as an inevitable part of life, particularly for men in some communities. The social cost to communities in which there is a high concentration of incarcerated people cannot be ignored or dismissed.

Over 28 years ago, the RCIADIC identified that the over-representation of Aboriginal people in the criminal justice system should be tackled at two levels by addressing:

- factors within the criminal justice system that contribute to the high rates of incarceration of Aboriginal people
- underlying factors which bring Aboriginal people into contact with the criminal justice system.<sup>122</sup>

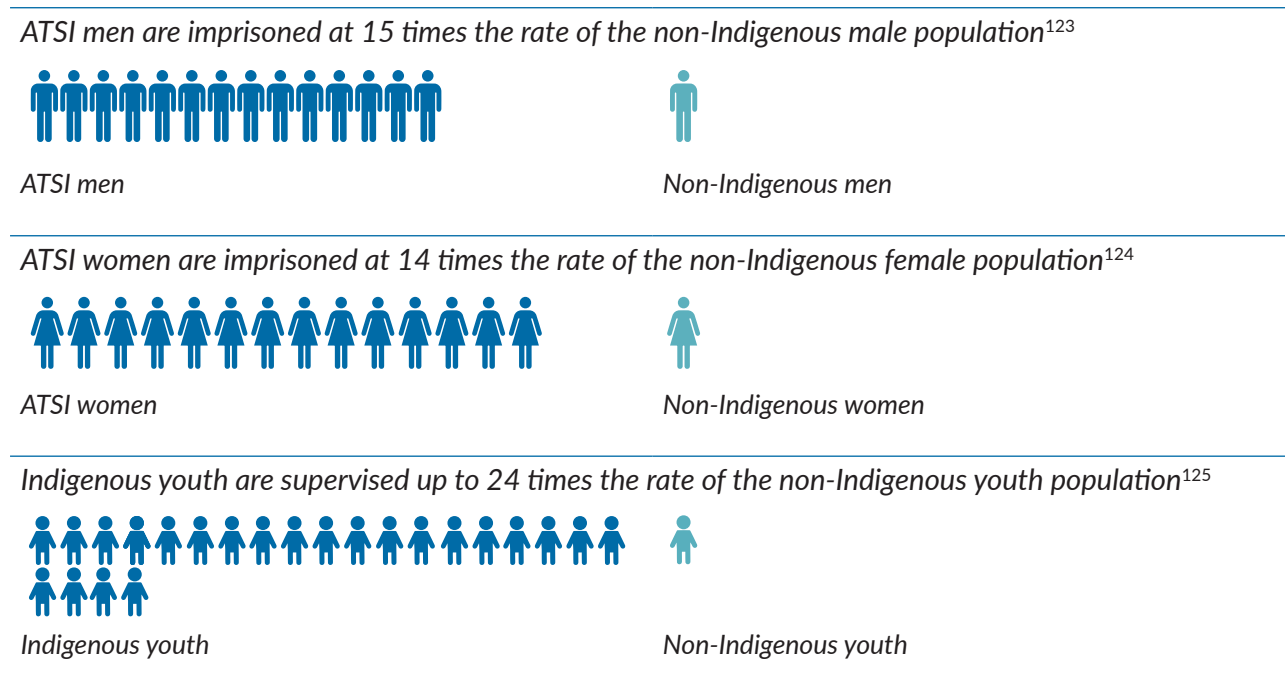
The strategies and actions outlined in the Agreement have been developed to address these factors.

At 30 June 2018,  
**84%**  
of adult prisoners  
in the NT were  
Aboriginal, despite  
Aboriginal adults  
accounting for  
**25.9%**  
of the NT adult  
population.<sup>115</sup>

**96%**  
of the youth  
detention  
population were  
Aboriginal,  
despite Aboriginal  
young people  
representing only  
**45%**  
of the population  
aged 10-17 years.<sup>306</sup>

In the NT, it costs  
**\$317.73**  
per day  
to incarcerate an  
adult prisoner<sup>121</sup>  
and  
**\$2,038.05**  
per day  
to incarcerate a  
youth detainee.<sup>122</sup>

Figure 08. Ratio of ATSI and non-Indigenous incarceration rates in the NT



**Source:** Derived from Australian Bureau of Statistics, Prisoners in Australia 2017 (2017) cat. no. 4517.0, unpublished data; Australian Institute of Health and Welfare, Youth Justice in Australia 2016-17 (2018) cat. no. JUV 116, 9, Table 3.1.

### 3.2 Pathways through the criminal justice system

The pathways through which people enter the criminal justice system are clear and well defined. First contact with the justice system begins with offending or other conduct that brings a person to the attention of police. Initial interactions with police may be in the form of infringement and penalty notices, cautions, formal reports or an arrest. Once formally proceeded against, and if not diverted, defendants then become subject to court processes; receiving a summons, being given police or court bail, or being held on remand until their hearing or trial commences. Where defendants are given bail, this can be accompanied by conditions which, if breached, will lead to defendants being held on remand. Court processes may lead to conviction and sentencing. Sentencing options include imprisonment, youth detention, home detention, suspended sentences or community-based orders.

The data, research and experiences of Aboriginal people demonstrates that Aboriginal people fare worse than non-Aboriginal people at every stage of the justice process, as articulated by former Chief Justice Wayne Martin of Western Australia in the following statement:

*Over-representation among those who commit crime is, however, plainly not the entire cause of over-representation of Aboriginal people. The system itself must take part of the blame. Aboriginal people are much more likely to be questioned by police than non-Aboriginal people. When questioned they are more likely to be arrested than proceeded against by summons. If they are arrested, Aboriginal people are much more likely to be remanded in custody than given bail. Aboriginal people are much more likely to plead guilty than go to trial, and if they go to trial, they are much more likely to be convicted. If Aboriginal people are convicted, they are much more likely to be imprisoned than non-Aboriginal people, and at the end of their term of imprisonment they are much less likely to get parole than non-Aboriginal people. ... So at every single step in the criminal justice process, Aboriginal people fare worse than non-Aboriginal people.<sup>126</sup>*

This section outlines some of the evidence, data, research and the experiences of Aboriginal Territorians at different stages of the criminal justice system.

### 3.3 Proceedings by police



#### What we were told:

*Offenders may be released back into a safe environment, yes, it may be a different house [from the partner's residence] but it might only be two houses away and so a small fight can turn into a Domestic Violence Order (DVO) breach.<sup>127</sup>*

*Too many young people are being picked up by police for no reason.<sup>128</sup>*

*We want to send our kids to a place, like Mt Theo Station, for Warlpiri kids in Yuendumu – 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.<sup>129</sup>*

*Police often pick people up on a Friday between 3 and 5pm, which means that community members are locked up over the weekend.<sup>130</sup>*

*Police have an over-reliance on arrest as opposed to cautions, warnings or coming back the next day to talk, when there is no safety issue.<sup>131</sup>*

Aboriginal Territorians, both youth and adults, are much more likely to be proceeded against by police than other Territorians as outlined in Figures 9 and 10.<sup>132</sup> A police proceeding is defined as 'a legal action initiated against an alleged offender for an offence(s)'.<sup>133</sup>

Data on police proceedings does not accurately represent the number of offences occurring in a given period, as multiple offences can be tied to a single proceeding. Each proceeding is classified by the principal offence and the principal method of proceeding.<sup>134</sup>

Methods of proceeding are divided into:

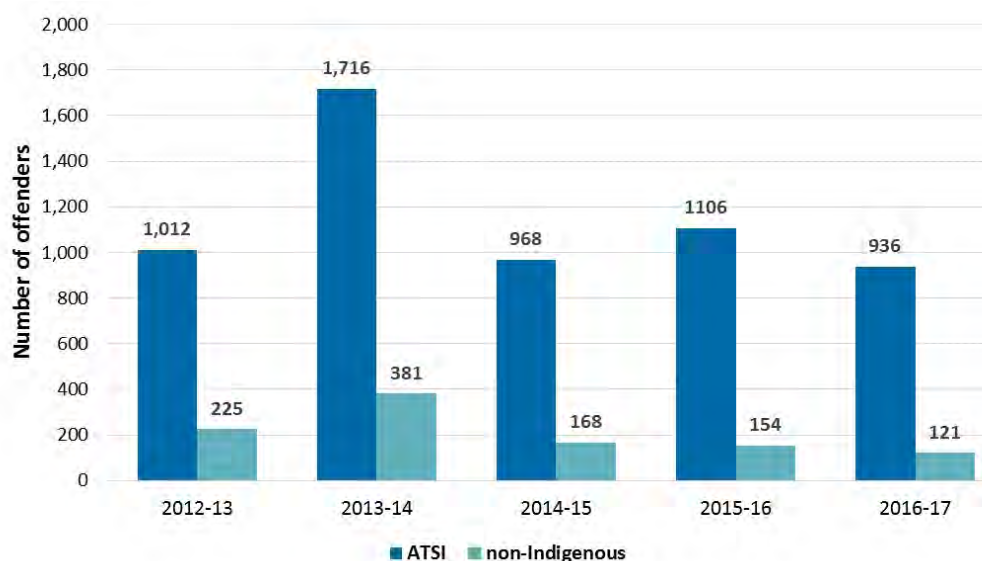
- court actions where defendants are taken into custody, granted bail or issued with a summons for their charges pending an appearance in court
- non-court actions which include informal or formal cautions/warnings, conferencing or counselling (such as drug or alcohol diversionary schemes), or the issuing of a penalty or infringement notice.<sup>135</sup>

Data from 2016-17 highlights that Aboriginal Territorians accounted for a far greater proportion of persons proceeded against by police than non-Aboriginal Territorians and were more likely to be proceeded against multiple times.<sup>136</sup> During this period, Aboriginal Territorians were proceeded against at a rate 10 times that of non-Aboriginal Territorians.<sup>137</sup>

During the same period, the data for police proceedings by way of a court action shows that Aboriginal Territorians were taken into police custody in 75% of proceedings while non-Aboriginal Territorians were taken into custody in 57% of proceedings.<sup>138</sup>

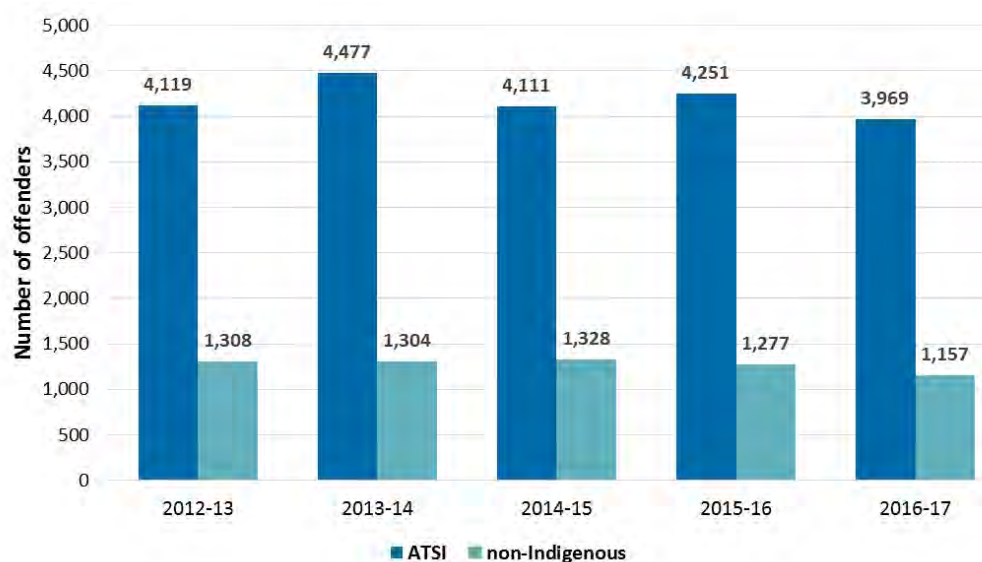


Figure 09. Youth (aged 10-19) proceeded against by police in the NT (2012-2017), ATSI and non-Indigenous



**Source:** Australian Bureau of Statistics, 4519.0 – Recorded Crime – Offenders 2016-17, (2018), Table 24; 2015-16, Table 24; 2014-15, Table 24; 2013-14, Table 18; 2012-13, Table 19. **Note:** The figures reported in this graph have been derived from ABS data on selected offenders by age grouping. For this data set (Recorded Crime – Offenders), an offender is defined as ‘a person aged 10 years or over who is proceeded against and recorded by police for one or more criminal offence. An offender is only counted once during the reference period, irrespective of the number of offences committed or the number of separate occasions that police proceeded against that offender.’ It is important to note that the data above excludes offenders who were proceeded against by way of a penalty notice in this same period for the reasons outlined above. This graph also excludes offenders with unknown Indigenous status. Of importance is the fact that in the period 2016-2017 between 40-50% of all proceedings by police in the NT occurred by way of penalty notice.<sup>139</sup>

Figure 10. Adults (aged 20-65+) proceeded against by police in the NT (2012-2017), ATSI and non-Indigenous



**Source:** Australian Bureau of Statistics, 4519.0 – Recorded Crime – Offenders 2016-17, (2018) Table 24; 2015-16, Table 24; 2014-15, Table 24; 2013-14, Table 18; 2012-13, Table 19. **Note:** The figures reported in this graph have been derived from ABS data on selected offenders by age grouping. For this data set (Recorded Crime – Offenders), an offender is defined as ‘a person aged 10 years or over who is proceeded against and recorded by police for one or more criminal offence. An offender is only counted once during the reference period, irrespective of the number of offences committed or the number of separate occasions that police proceeded against that offender.’ It is important to note that the data above excludes offenders who were proceeded against by way of a penalty notice for the reasons outlined above. Between 40-50% of all proceedings by police in the NT occur by way of penalty notice. Due to quality and/or comparability issues, or an inability to supply data to the ABS, the statistics presented in the source publication excludes traffic and vehicle regulatory offences and the offence: ‘dangerous or negligent operation of a vehicle.’<sup>140</sup>

In the period 2016-2017, between 40-50% of all proceedings by police in the NT occurred by way of penalty notice.<sup>141</sup>

Police discretion plays an important role in determining how criminal justice responses are initiated. Previous reviews and inquiries have raised concerns about the inappropriate exercise of police discretion towards Aboriginal people. For example, the RCIADIC, RCPDCNT and ALRC have all considered the failure by police to use arrest as a last resort in relation to Aboriginal people and emphasised the importance of ongoing training and guidance for police officers.<sup>141</sup> It is difficult to assess the exercise of discretion to arrest in the NT due to the lack of available and validated data.

Exercise of police discretion is also relevant to charging practices. The RCPDCNT found that NT Police overcharged young people, and identified police charging practices as a contributing factor to NT youth detention rates.<sup>142</sup>

The consequences of overcharging were also outlined in the ALRC Report where it was noted that police charging practices can influence the likelihood of an inappropriate guilty plea, the likelihood of bail refusal, and ultimately the likelihood of a person receiving a term of imprisonment.<sup>143</sup>

### 3.4 Bail



#### What we were told:

*It's hard not breaching (bail) - especially when you get let out to hang around the same people that you got in trouble with in the first place.<sup>144</sup>*

*Court orders can be problematic for Aboriginal people because bail conditions are often difficult to comply with when the offender is being returned to the same environment that resulted in their initial offending.<sup>145</sup>*

*More could be done to help people realise that there are other options out there besides going to jail.<sup>146</sup>*

*Offenders who get remand, bail or locked up in Darwin – end up (on release from prison and court) itinerants and often in more trouble with the law because of the conditions and limited options he or she is faced with in this environment, and so the problem is compounded.<sup>147</sup>*

Bail is an agreement that a person who has been charged with an offence (known as a defendant) come back to court for a hearing. Upon being granted bail, defendants are released and must comply with specified conditions, instead of being sent to prison until the date of their court hearing.<sup>148</sup>

Bail can be offered by police when a person is arrested and charged (police bail).<sup>149</sup> If police bail is refused, defendants may apply to the court for bail, and a judge will decide whether bail is to be granted (court bail).<sup>150</sup> If bail is granted, it is often accompanied by a number of conditions or requirements that must be met by the offender, such as surrendering a passport or reporting to police or Community Corrections at specified times.<sup>151</sup>

Nationally, Aboriginal people are less likely to be granted bail than non-Aboriginal people, primarily due to an increased likelihood of having been convicted of prior offences that trigger presumptions against bail or greater difficulty complying with bail conditions.<sup>152</sup> These factors contribute to the high rate of Aboriginal Territorians held on remand, but the extent to which these factors contribute has yet to be determined.

The ALRC found that Aboriginal defendants are less likely to be granted bail for a range of complex reasons including:

- prior convictions, often for low-level repeat offending for similar or the same offence(s)
- a lack of stable accommodation
- close proximity of victims, particularly when offenders are from small, remote communities
- a lack of stable employment
- undiagnosed and untreated mental health conditions
- language barriers when applying for bail.<sup>153</sup>

The ALRC Report found that bail conditions can be disproportionately onerous for Aboriginal people. This was reflected during NTAJA consultations. Conditions may conflict with cultural responsibilities, restrict contact with family networks, and be difficult to comply with due to a lack of access to reliable transport or because the victim and the offender reside in the same small community.<sup>154</sup> The RCIADIC similarly identified that inflexible bail procedures, and the difficulties Aboriginal people face meeting bail conditions, contribute to unnecessary and lengthy periods in custody for Aboriginal people.<sup>155</sup>

This finding is reflected in NT data. Aboriginal Territorians have significantly greater difficulty complying with bail conditions than non-Aboriginal Territorians.<sup>156</sup> Between 2013 and 2017, 85.3% (9,888 apprehensions) of all adult breach of bail apprehensions were accounted for by Aboriginal Territorians.<sup>157</sup>

Over the same period, Aboriginal youth accounted for 91.4% (2,879 apprehensions) of the total number of young people apprehended for breach of bail.<sup>158</sup> Figures 11 and 12 show the annual breach of bail apprehensions for adults and young people by Aboriginal status.

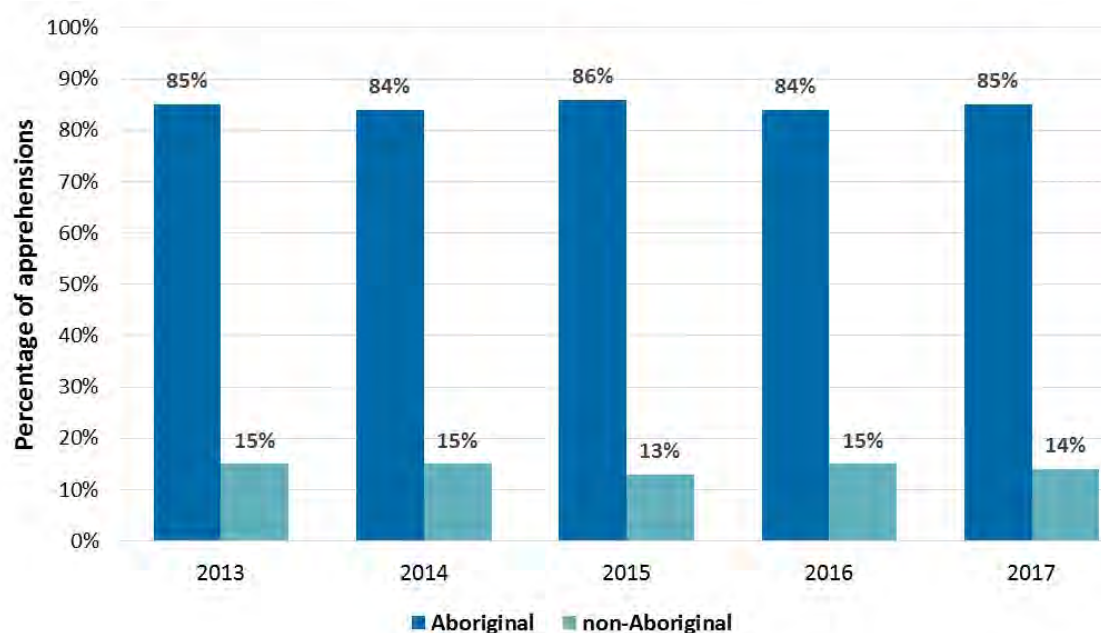
Nationally,  
Aboriginal people  
are less likely to be  
granted bail than  
non-Aboriginal  
people.<sup>152</sup>

Between 2013 and  
2017,  
**85.3%**  
of all adult breach of  
bail apprehensions  
were accounted  
for by Aboriginal  
Territorians.<sup>159</sup>

Between 2013 and  
2017,  
**91.4%**  
of all youth breach of  
bail apprehensions  
were accounted for  
by Aboriginal young  
people.<sup>160</sup>

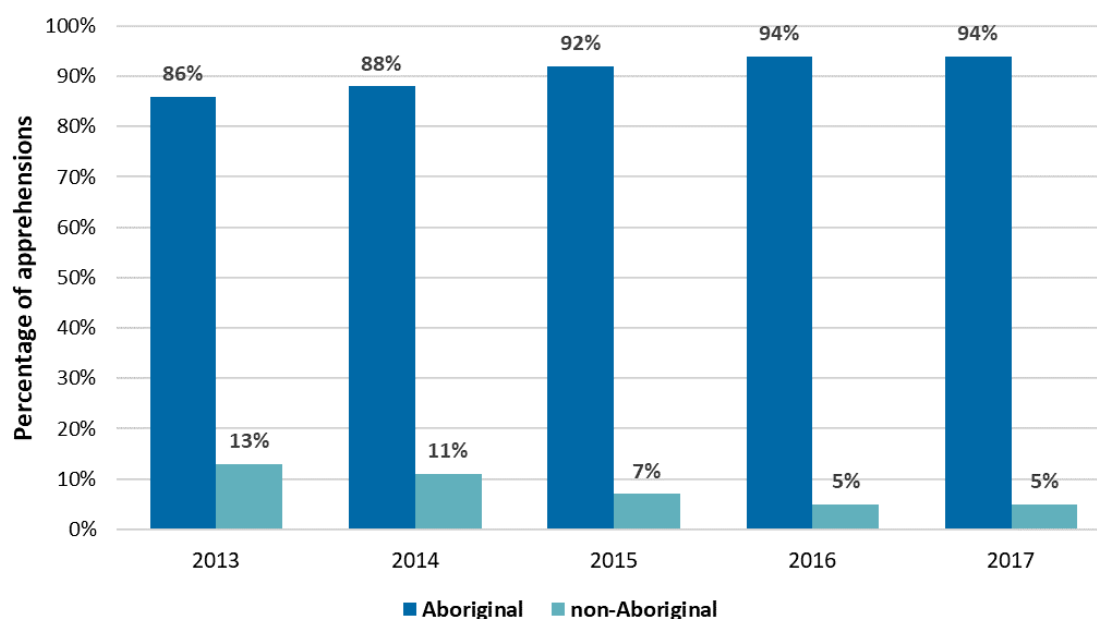


Figure 11. Breach of bail apprehensions for adults in the NT (2013-2017), Aboriginal versus non-Aboriginal



Source: Criminal Justice Research and Statistics Unit, *Number of breach bail apprehensions by status and Aboriginality*. (2018) unpublished data.

Figure 12. Breach of bail apprehensions for youth in the NT (2013-2017), Aboriginal versus non-Aboriginal



Source: Criminal Justice Research and Statistics Unit, *Number of breach bail apprehensions by status and Aboriginality*. (2018) unpublished data.

The ALRC Report recommended that states and territories amend bail legislation to include a standalone provision requiring a bail authority to take into account issues that arise due to a person's Aboriginality when making a bail determination.<sup>159</sup> The ALRC was of the view that such a provision would facilitate release on bail with effective conditions for Aboriginal people who are accused of low level offending.<sup>160</sup>

### 3.5 Remand and unsentenced prisoners

Unsentenced or remand prisoners are those persons who have been placed in custody while awaiting the outcome of their court hearing or trial. They may be unconvicted (remanded in custody for trial), convicted but awaiting sentence or awaiting deportation. Persons held in custody on remand for more than three months are identified as unsentenced prisoners for the purpose of ABS data.<sup>161</sup> As outlined in Figure 14, during the period 2013-2017, Aboriginal people made up 84% of the total number of unsentenced prisoners, accounting for 78% of unsentenced female prisoners (169 women) and 84% of unsentenced male prisoners (1,672 men) respectively.<sup>162</sup> The adult Aboriginal unsentenced population in the NT increased by 97% during the period 2008 to 2017.<sup>163</sup> Unsentenced prisoners make up a high proportion of the NT's current prison population (around 29% or 467 prisoners in 2017-18).<sup>164</sup>

Similar trends are evident for youth detainees in the NT. For all youth receptions recorded in the NT between 2012-13 and 2016-2017, 80% of Aboriginal youth and 85% of non-Aboriginal youth were unsentenced as outlined in Figure 13.<sup>165</sup> However, of the total number of unsentenced young people, Aboriginal youth accounted for 93% of receptions.<sup>166</sup>

On an average day in the NT during 2017-18, 71% of young people in youth detention were on remand.<sup>167</sup> The high rates of remand in the NT have been attributed to the lack of suitable bail accommodation, the lack of programs to support children and young people on bail, the imposition of bail conditions unlikely to be adhered to, and the introduction of the offence of breach of bail.<sup>168</sup>

The ALRC Report noted that a large proportion of Aboriginal people who are held on remand or unsentenced do not receive a custodial sentence upon conviction, or may be sentenced to 'time served'. The ALRC was of the view that this suggests many Aboriginal prisoners may be held in custody on remand or while unsentenced for otherwise low-level offending.<sup>169</sup>

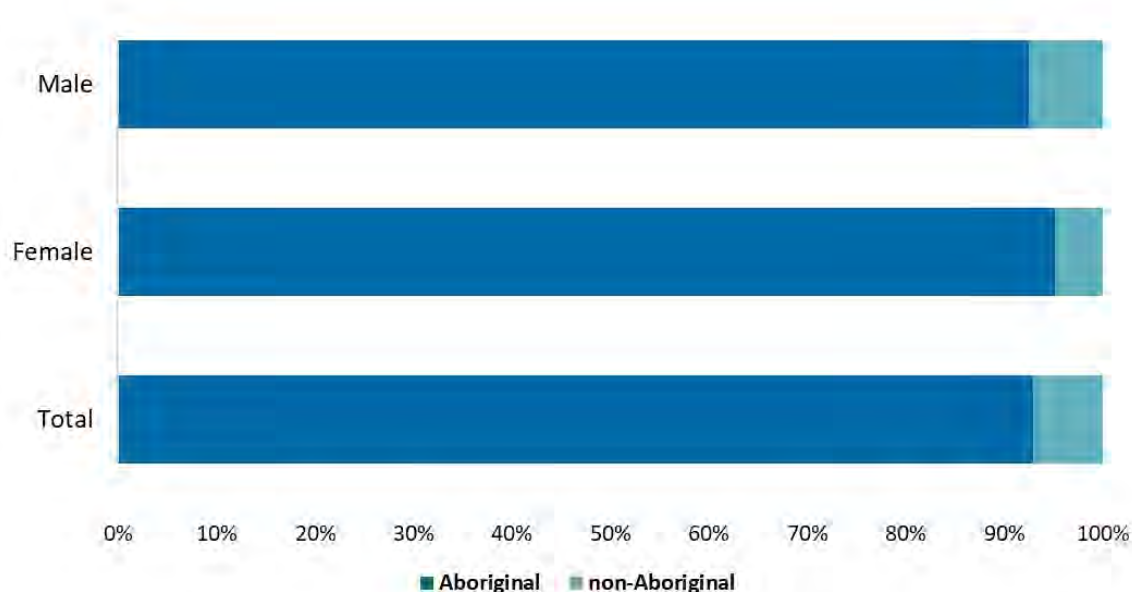


During the period  
2013-2017,  
Aboriginal people  
made up  
**84%**  
of the total number  
of unsentenced  
prisoners.<sup>164</sup>

The adult Aboriginal  
unsentenced  
population in the  
NT increased by  
**97%**  
during the period  
2008 to 2017.<sup>165</sup>

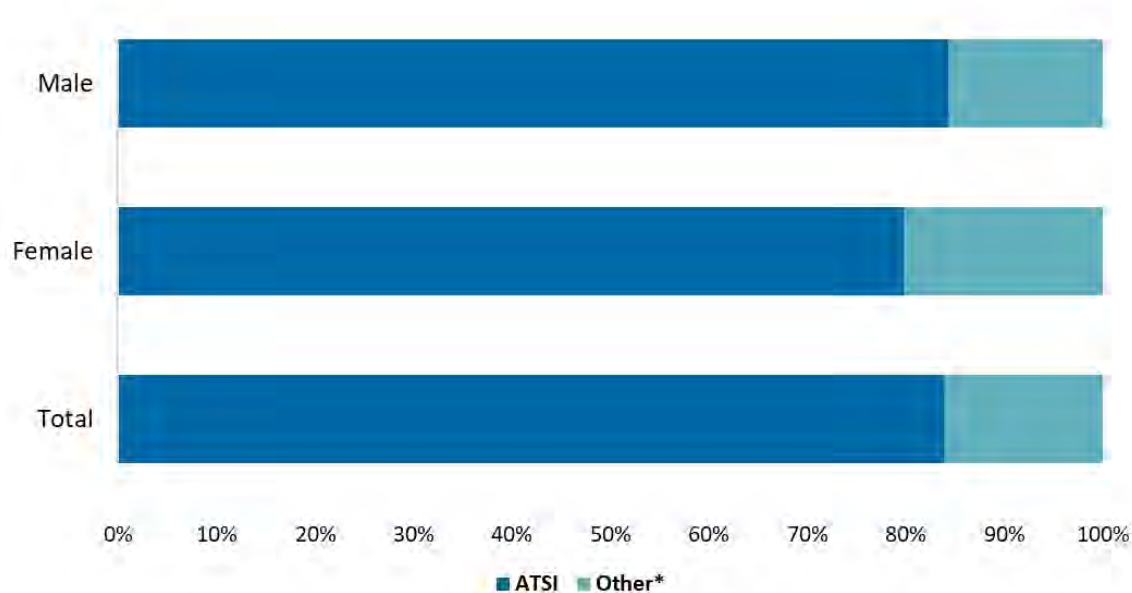
A large proportion  
of Aboriginal  
people who are  
held on remand or  
unsentenced, do not  
receive a custodial  
sentence upon  
conviction.<sup>169</sup>

Figure 13. Unsented youth in the NT by Aboriginal status, 2012-2017 (by youth receptions)



**Source:** Derived from Criminal Justice Research and Statistics Unit, Department of the Attorney-General and Justice (NT), Northern Territory Department of Correctional Services: Annual Statistics 2012–2013 (2014) Table 15; Northern Territory Department of Correctional Services: Annual Statistics 2013–2014 (2015) Table 15; Northern Territory Department of Correctional Services: Annual Statistics 2014–2015 (2016) Table 15; Northern Territory Correctional Services and Youth Justice: Annual Statistics 2015–2016 (2017) Table 15; Territory Families (NT), Youth Detention Annual Statistics 2016–17 (2018) unpublished data, 12, Table 4. **Note:** The figures used for this graph have been derived from data on the number of total receptions for NT youth detention for each reporting period, by sentenced and unsentenced youth. If an individual is detained more than once in the reporting period, they will be counted as such in the data.

Figure 14. Unsented adults in the NT by ATSI status, 2013-2017



**Source:** Derived from Australian Bureau of Statistics, Prisoners in Australia 2017 (2017) cat. no. 4517.0, unpublished data. **Note:** Data reflects unsentenced prisoners recorded during the National Prisoner census, which is conducted on 30 June each year. The figures given have been derived from the total number of unsentenced persons recorded at the time of the census from 2013–2017, and as such do not reflect the total of number held over this period. \*'Other' includes non-Indigenous people as well as persons with unknown Indigenous status. This number has been calculated by subtracting the number of ATSI unsentenced prisoners from the total number of unsentenced prisoners given in the data set.



### 3.6 Court appearances and offences



#### What we were told:

*A lot of people from this community do not have the means to attend court. There is limited access to post or mail and internet, and so many people aren't even aware when they've received a summons.<sup>170</sup>*

*There is a lot of shame for people when they are arrested for breaching a summons order.<sup>171</sup>*

*Aboriginal people find it difficult to understand the justice system, laws, and court-ordered conditions/sentences.<sup>172</sup>*

*There is a need for champions in court – better judicial officers who understand the importance of their role in deterring offenders from becoming more deeply entrenched in the criminal justice system. There needs to be greater requirements placed on the evaluation of outcomes to ensure people's progress through the criminal justice system can be tracked and monitored.<sup>173</sup>*

*Aboriginal people under court-ordered DVOs often find the conditions of orders difficult to comprehend, and may breach these conditions because they are or have been a couple, generally with child-rearing responsibilities.<sup>174</sup>*

*There were complaints about the standard of service provided by legal providers; with allegations that people are told that if they enter a plea of guilty that their matter will be expedited and they'll receive a lesser sentence despite potentially not being guilty.<sup>175</sup>*

In the period 2015-17, 10,261 Aboriginal Territorians appeared before a court compared to 2,711 non-Aboriginal Territorians.<sup>176</sup>

The ABS reports annually on the number of defendants finalised each year before NT courts.<sup>177</sup> The data includes all defendants whose charges have been finalised in higher, local or children's courts during the reference period. If a person is a defendant in a number of criminal cases dealt with and finalised separately during the reference period, this person is counted more than once.<sup>178</sup>

Of defendants finalised (all ages) before NT courts between 2012-13 and 2016-17, 75.1% or 31,295 were Aboriginal. In comparison, 19.3% or 8,033 were non-Aboriginal, with the remaining defendants listed as 'not stated' or 'unknown Indigenous status'.<sup>179</sup>

Data also highlights that the offending profile for Aboriginal Territorians differs significantly when compared to non-Aboriginal Territorians. Over the same five-year period, the most common offence for which Aboriginal defendants were finalised (all ages) was 'acts intended to cause injury'. This is the principal offence recorded for 43% of finalised Aboriginal defendants.<sup>180</sup> The next most prevalent offence categories for Aboriginal defendants finalised were 'offences against justice procedures, government security and government operations' (15.9%), 'unlawful entry with intent/burglary, break and enter' (8.9%), and 'public order offences' (6.4%).<sup>181</sup>

The most common offence for which Aboriginal defendants were finalised (all ages) was 'acts intended to cause injury'. This is the principal offence recorded for 43% of all finalised Aboriginal defendants.<sup>182</sup>

Aboriginal Territorians accounted for **84%** of all Local Court lodgements for the offence 'acts intended to cause injury' for the period 2013-14 to 2017-18.<sup>186</sup>

The only offence categories over this period that had more non-Aboriginal defendants finalised were 'fraud, deception and related offences', 'illicit drug offences' and 'miscellaneous offences'. Of all non-Aboriginal defendants finalised, the greatest proportion were represented in the offence categories of 'acts intended to cause injury' (25.3%) 'illicit drug offences' (21.4%) and 'offences against justice procedures, government security and government operations' (10%).<sup>182</sup>

Data indicates that there is a significant disparity in the number of court appearances between Aboriginal and non-Aboriginal Territorians.<sup>183</sup> Analysing the data for a specific offence, for example breach of bail, shows that in 2018, Aboriginal Territorians were proceeded against by police at 10 times the rate of non-Aboriginal Territorians, but these matters were finalised before a court at 16 times the rate of non-Aboriginal Territorians.<sup>184</sup> The high number of Aboriginal defendants with matters finalised before the courts may suggest that Aboriginal people are likely to have multiple offences before the court during the referenced period.

These findings are reinforced by data on lodgements to NT courts; noting that where multiple offence categories apply to a defendant, only the highest offence classification is recorded (for example, if a matter relates to murder and rape, the lodgement will be filed and recorded under the category of 'homicide and related offences', this being ranked as the more serious offence). All offences are classified using ANZSOC.<sup>185</sup>

Data highlights that Aboriginal Territorians accounted for 78% of Supreme Court lodgements, 84% of Local Court lodgements and 86% of Children's Court lodgements for the offence 'acts intended to cause injury' for the period 2013-14 to 2017-18.<sup>186</sup>

Similarly, disproportionate representation can be seen for other offences, notably 'breach of bail (new case files)', where over the same period, Aboriginal Territorians respectively accounted for 67.19% of Supreme Court lodgements, 84% of Local Court lodgements and 91.23% of Children's Court lodgements.<sup>187</sup>




### 3.7 Outcome of court proceedings

The courts are responsible for handing down sentences when defendants are proven guilty or plead guilty to a criminal charge.

NT data confirms some key disparities between Aboriginal and non-Aboriginal offenders in relation to sentencing:

- Aboriginal offenders are statistically more likely to be sentenced to a term of imprisonment than non-Aboriginal offenders
- this is more apparent when considering the imprisonment rate for a single offence such as '*acts intended to cause injury*'
- Aboriginal offenders are sentenced to shorter terms of imprisonment than non-Aboriginal offenders
- Aboriginal offenders tend to experience a cycle of repeated short terms of imprisonment which does not allow effective rehabilitation of offenders
- there is a lack of programs in the Northern Territory to assist offenders to change their behaviour and a lack of access to medical services to identify medical conditions that may significantly impact on a person's offending and reoffending.

#### 3.7.1 Sentencing



**What we were told:**

Short sentences prevent young offenders from accessing any programs or services to address their behavioural issues. Instead, they are generally just given sports, entertainment and arts and craft to keep them busy rather than address their core issues. It should be a condition of a repeat offender's order that they need to attend a behavioural change program.<sup>188</sup>

Being out bush meant that Aboriginal people were less likely to engage in criminal behaviour. Most of the trouble starts when people are hanging around regional centres with nothing to do.<sup>189</sup>

A male prisoner stated he started drinking when he was younger (his father was a big drinker) and then he began breaking into places and stealing when he began to mix with the wrong crowd of people at 17 years of age. The prisoner received a six-month term of imprisonment for his first offence but received no access to programs or services due to the short length of the sentence.<sup>190</sup>

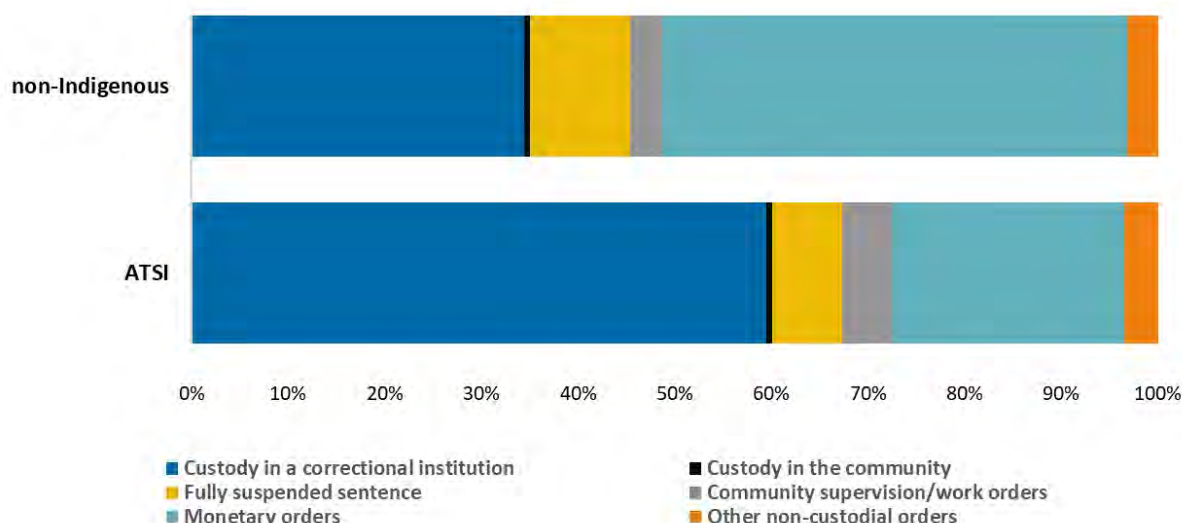
A community member had issues with domestic and family violence allegations that saw them locked up on remand for 18 days resulting in their employment being terminated.<sup>191</sup>



Aboriginal Territorians are less likely to receive non-custodial options for less serious offences and more likely to receive a term of imprisonment as a sentencing option.<sup>192</sup>

Figure 15 shows that during 2016-17, 60% of Aboriginal defendants<sup>193</sup> who were found guilty in the NT received a term of imprisonment for their principal offence, in comparison with 34% of non-Aboriginal defendants.<sup>194</sup> Over the same period, non-Aboriginal defendants in the NT were more likely to receive a monetary order or fully suspended sentence.<sup>195</sup>

Figure 15. Principal sentences imposed for defendants with a proven guilty finalisation (all persons aged 10+) in the NT (2016-2017), non-Indigenous and ATSI



Source: Derived from requested data, Australian Bureau of Statistics (2018), 4513.0 - Criminal Courts 2016-2017.

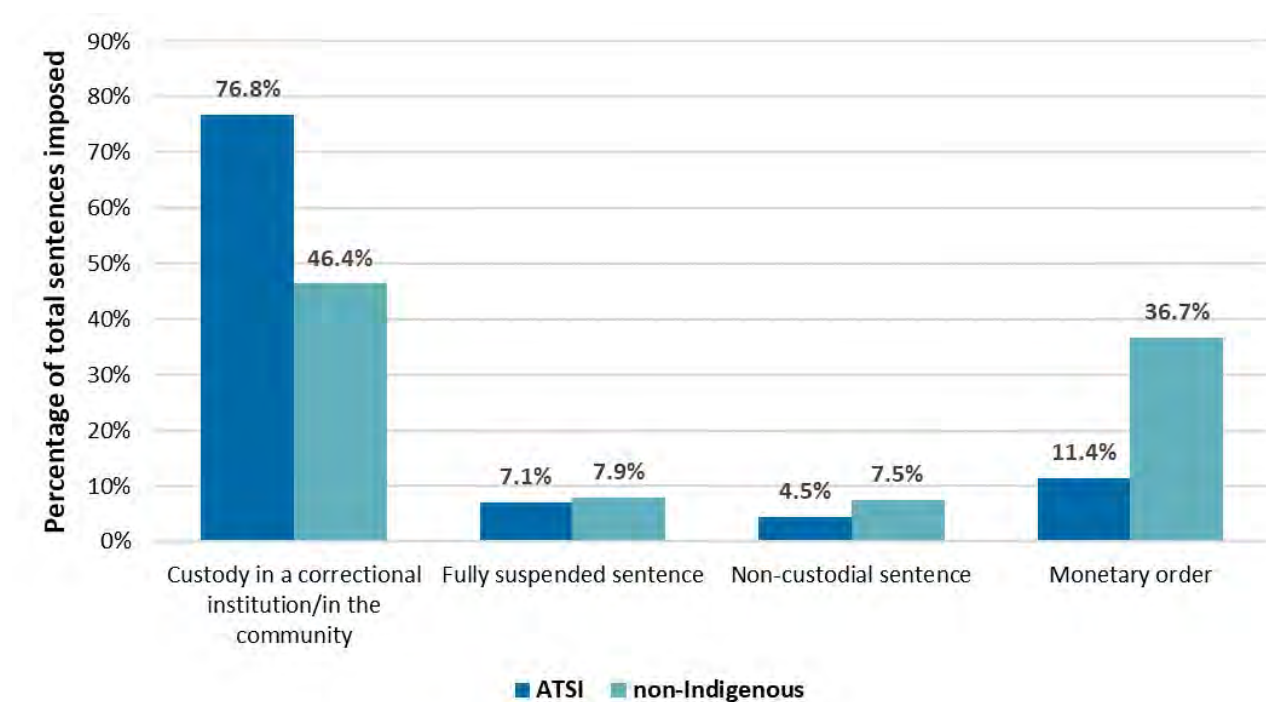
Table 12.<sup>196</sup> Note: The graph above has been derived from data regarding finalised defendants in the NT. A person may be counted more than once within the reference period if they are a defendant in a number of criminal cases dealt with and finalised separately.<sup>197</sup> The data presented relates to defendants with a 'proven guilty' finalisation.<sup>198</sup>

This disparity may be explained by the different offences for which Aboriginal and non-Aboriginal Territorians are likely to be convicted. However, the disparity remains even when the data is analysed for a single offence.

For example, the offence 'acts intended to cause injury' accounts for 37% of all offences (excluding traffic offences) committed in the NT.<sup>199</sup> As highlighted in Figure 16, Aboriginal people received a custodial sentence in 76% of cases for this offence, while non-Aboriginal offenders received a custodial sentence in only 46% of cases. Repeat offenders are far more likely to be imprisoned when compared with first-time offenders under mandatory sentencing legislation and since its implementation close to 95% of both Aboriginal and non-Aboriginal convicted male repeat violent offenders received actual terms of imprisonment.<sup>200</sup> However, of convicted male first-time offenders, a larger percentage of Aboriginal offenders received a term of imprisonment when compared with non-Aboriginal offenders.<sup>201</sup>

For the offence 'acts intended to cause injury', Aboriginal people received a custodial sentence in 76% of cases, while non-Aboriginal offenders received a custodial sentence in only 46% of cases.<sup>201</sup>

Figure 16. Principal sentence imposed for defendants proven guilty (all persons aged 10+) of 'acts intended to cause injury' in the NT, ATSI and non-Indigenous

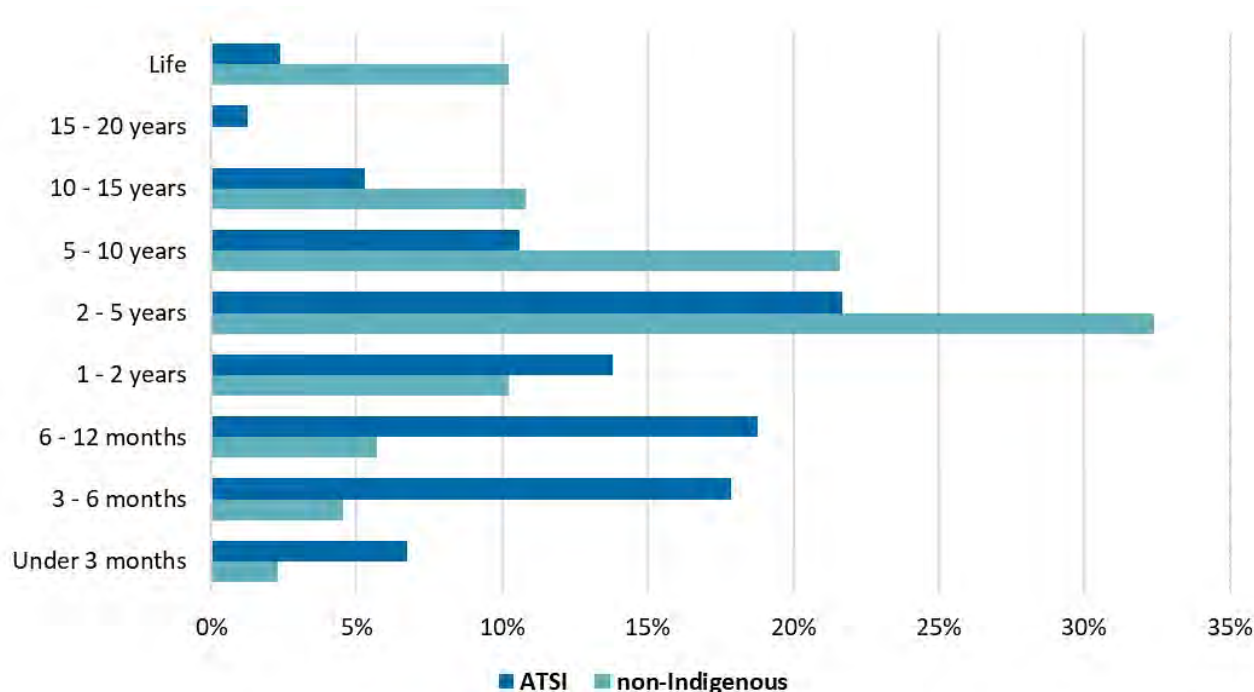


Source: Derived from Australian Bureau of Statistics, 4513.0 - Criminal Courts 2016- 2017, (2018), unpublished data.



In 2016-17, the average aggregate sentence length for adult Aboriginal prisoners in the NT was 237 days, evident in Figure 17. This is 249 days less than that for non-Aboriginal prisoners.<sup>202</sup> This is partly the result of a large number of justice order breaches (such as breach of bail) which carried a median sentence of 29 days.<sup>203</sup>

Figure 17. Proportion of sentenced adult prisoners in the NT by aggregate sentence length (2017), ATSI and non-Indigenous



**Source:** Australian Bureau of Statistics, 2018, 4517.0 - Prisoners in Australia 2018, Table 26. **Note:** Sentence length is the aggregate sentence length. Aggregate sentences classed under the category of Life include 'life with a minimum' and 'life-indeterminate' sentences (where no minimum time to serve is prescribed). Additional sentences where no prescribed minimum term to serve has been allocated (consisting of 'Indeterminate-Governor's/Her Majesty's Pleasure' and 'Indeterminate-subject to ministerial/administrative decision') are categorised under other.

This data is consistent with findings of the ALRC Report that ATSI people 'are being incarcerated for lower order offences, often with short terms of imprisonment, for which diversion and rehabilitation may be a more appropriate response.'<sup>204</sup>

There is also a misconception that Aboriginal people are in prison for traffic and vehicle regulatory offences, and for the non-payment of fines. This may be an issue in other Australian jurisdictions, however on data provided, this is not the case in the NT. ABS data shows that between 2014 and 2018, Aboriginal people in the NT imprisoned for 'traffic and vehicle regulatory offences' as their most serious offence accounted for just 4.3% of all Aboriginal prisoners.<sup>205</sup> Between 2013 and 2018, 80 Aboriginal prisoners in the NT were recorded as being held for 'fine default' alone, an average of 16 people each year, which accounts for less than 1% of prison receptions for Aboriginal adults.<sup>206</sup>

### 3.7.2 Short sentences

Short terms of imprisonment potentially increase the likelihood of recidivism through reduced opportunities for rehabilitation and increased stigmatisation associated with having previously served time in prison.<sup>207</sup> A large proportion of the adult Aboriginal prison population in the NT are serving short sentences, with 43% of sentenced adult Aboriginal prisoners serving a sentence of less than 12 months.<sup>208</sup>



The pattern of short-term sentences presents challenges to successfully rehabilitating and reintegrating offenders and, as a result, the capacity to reduce recidivism rates.

The ALRC Report found that short sentences of imprisonment are 'highly problematic', as they:

- expose minor offenders to more serious offenders in prison
- do not serve to deter offenders
- have significant negative impacts on an offender's family, employment, housing and income
- potentially increase the likelihood of recidivism through stigmatisation and the flow-on effects of having served time in prison.<sup>209</sup>

The ALRC Report identified that Aboriginal people who are placed on remand or serving short sentences already face difficulties accessing prison programs, and receive little support to address the underlying causes of offending, or the opportunity to access programs to develop the skills to successfully transition back into society. This is a particularly pertinent issue in the NT.<sup>210</sup>

The NTAJA consultations repeatedly revealed that both Aboriginal prisoners and youth detainees serving short sentences in some locations in the NT did not have sufficient access to prison programs, including employment and training opportunities. In some locations, access to programs is limited, and dependent on the availability of the service provider offering the course or the program. Community members also reported that short sentences fail to assist Aboriginal people to address the underlying causes of offending; allow access to skills development; or medical assessments and treatment, grief and trauma counselling, all of which impact a person's ability to successfully change behaviours and not reoffend.<sup>211</sup>

### 3.7.3 Mandatory sentencing

Mandatory minimum sentencing in the Northern Territory was first enacted in 1997 for property crime via the *Sentencing Act 1995* (NT).<sup>212</sup> In 1999, the mandatory sentencing provisions were extended to particular assault offences.<sup>213</sup> Between 1999 and 2001 Aboriginal Territorians were 8.6 times more likely than non-Aboriginal people to receive a mandatory prison sentence.<sup>214</sup>

In 2001 mandatory sentencing was repealed. However, mandatory sentencing for specified violent offences was reintroduced in 2008.<sup>215</sup> In May 2013, the *Sentencing Act 1995* (NT) was again amended to include new mandatory sentencing provisions which are still in force.<sup>216</sup> This has resulted in many offences carrying a mandatory minimum sentence including murder,<sup>217</sup> violent offences,<sup>218</sup> aggravated property offences,<sup>219</sup> serious sexual offences,<sup>220</sup> repeated breaches of DVO,<sup>221</sup> and drug offences punishable by seven years imprisonment or more, or if accompanied by aggravating circumstances.<sup>222</sup>

Except for breaches of DVOs and drugs offences, the mandatory sentencing provisions do not apply to youth offending dealt with before the Youth Justice Court.<sup>223</sup>

**43%**

of sentenced adult  
Aboriginal prisoners  
are serving a  
sentence of less  
than 12 months.<sup>210</sup>

In 2016-17, the  
average aggregate  
sentence length  
for adult Aboriginal  
prisoners in the NT  
was  
**237**  
days.<sup>204</sup>

There has been  
significant concern  
that mandatory  
sentencing has a  
disproportionate  
impact on Aboriginal  
offenders.<sup>227</sup>

Under s78DI of the *Sentencing Act 1995* (NT) the court has the discretion not to impose the mandatory minimum sentence of imprisonment if there are exceptional circumstances.<sup>224</sup> However, concerns have been expressed that few defendants meet the high threshold of the exceptional circumstances test.<sup>225</sup> Judges and others have commented that this can lead to unfair outcomes in particular cases.<sup>226</sup>

There has been significant concern that mandatory sentencing has a disproportionate impact on Aboriginal offenders.<sup>227</sup> The lack of robust data prevents an analysis of the extent to which mandatory sentencing provisions disproportionately impact on Aboriginal Territorians.

Re-examining the range of sentencing options to improve the prospects of rehabilitation and to reduce reoffending forms part of the NTAJA and is under consideration by the NT Government.

### 3.7.4 Community-based sentencing options



#### What we were told:

*There is no police diversion in the community.*<sup>228</sup>

*There are no avenues for youth diversion or young adult diversion – and a serious lack of services (either that or serious lack of culturally appropriate engagement on the part of service providers).*<sup>229</sup>

*When youth camps existed in this community the recidivism rate was lower.*<sup>230</sup>

*Community should own the process of educating our mob about domestic and family violence and how to repair our relationships. Aboriginal people should be helping Aboriginal people because we understand each other.*<sup>231</sup>

*There is a need for a cultural base where the family makes the decision about how the offender can be rehabilitated.*<sup>232</sup>

*An Aboriginal male stated that many of the Aboriginal men in prison have lost connection to culture and need Elders to take them out on the land and teach them about their culture, identity and place in the world. He stated many need to learn the cultural significance behind respecting Elders and how it benefits the community.*<sup>233</sup>

Once found guilty, the court can impose different sentencing options. In the NT, there are six sentences that can be considered ‘community-based’ and may involve supervision by Community Corrections. These sentences include supervised bonds, community work orders, community-based orders, home detention orders, community custody orders and suspended sentences.

As outlined in Figure 15, Aboriginal people are less likely to receive a community-based sentence than non-Aboriginal offenders. Even when Aboriginal people are given a community-based sentence, they generally have lower completion rates for community-based orders and represent a larger proportion of the cohort imprisoned for breaching conditions of these orders.<sup>234</sup> In 2017, the completion rate for community-based orders in the NT was 70.8% for Aboriginal offenders, compared to 84% for non-Aboriginal Territorians.<sup>235</sup> This is due in part to a lack of culturally appropriate non-custodial sentencing options and supports to facilitate successful completion or access to these orders.<sup>236</sup>



Of particular relevance to the NT, the ALRC Report noted that there are challenges for Aboriginal people in remote communities accessing community-based sentencing options due to a lack of opportunities for community service work and appropriate rehabilitation programs.<sup>237</sup> An increase in the flexibility of community-based sentencing options needs to be accompanied by options where communities administer community-based services or work placements, which also provide culturally appropriate rehabilitation opportunities.

Evidence suggests that access to community-based sentencing options that combine unpaid community work with rehabilitation services to address the underlying causes of offending are successful models that can reduce reoffending and lower recidivism rates.<sup>238</sup>

Allowing an offender to meet conditions of community-based orders by participating in mental health, drug or alcohol counselling and rehabilitative treatment, and vocational or pre-vocational training aligns with recommendations from the RCIADIC and ALRC reports.<sup>239</sup> Programs that address these issues are more likely to address the underlying causes of offending and reoffending. Comments from the NTAJA consultations supported this approach.<sup>240</sup>

### 3.7.5 Community-based diversion

Jurisdictions across Australia have developed diversion programs in recognition of the need to provide rehabilitation and reintegration options that address the underlying causes of a person's offending. Research shows that diversion programs can reduce alcohol and drug use, reduce reoffending and improve social cohesion.<sup>241</sup>

Findings from the Australian Institute of Health and Welfare (AIHW) in 2013 show that Aboriginal people have lower participation and completion rates for diversion programs.<sup>242</sup> Between 2007 and 2015, Aboriginal children and young people were consistently less likely to be granted diversion than their non-Aboriginal peers.<sup>243</sup> For example, in 2015, one third of cases involving Aboriginal youth in the NT resulted in diversion (32.6%), compared to almost half of cases involving non-Aboriginal youth (47.9%).<sup>244</sup>

A key theme to emerge from consultations was the lack of community-based diversion options for both adults and young people.<sup>245</sup> Particular attention has been drawn to the need to develop diversion programs for Aboriginal women that are culturally competent and trauma-informed in light of their unique needs and vulnerabilities.<sup>246</sup>

Access to culturally appropriate treatment and rehabilitation programs is critical to ensure Aboriginal Territorians participate in and successfully complete diversion programs.<sup>247</sup> Involvement of Aboriginal leaders and facilitators in the delivery of these programs has been found to contribute to successful outcomes.<sup>248</sup>

In 2017, the completion rate for community-based orders in the NT was **70.8%** for Aboriginal offenders.<sup>237</sup>

Between 2007 and 2015, Aboriginal young people were consistently less likely to be granted diversion than non-Aboriginal young people.<sup>244</sup>

In 2015-16, **85%** of young people in the NT who participated in a diversion program did not reoffend.<sup>251</sup>



A key focus of diversion efforts has been youth diversion, which has proven to be successful in the NT. In 2015-16, 85% of young people in the NT who participated in a diversion program did not reoffend.<sup>249</sup> The RCPDCNT recommended a range of measures to facilitate greater access to youth diversion,<sup>250</sup> which are currently being implemented by the NT Government. This includes expanding the range of offences that are eligible for diversion and establishing a specialist Youth and Families division within NT Police.

The NTAJA consultations identified strong support for communities to be resourced to develop and deliver diversion programs on country, especially for young people.<sup>251</sup> Community members expressed the view that diverting Aboriginal Territorians from the justice system will provide an opportunity to reduce the high incarceration and recidivism rates of Aboriginal Territorians.<sup>252</sup> Strategies considered include establishing culturally-strengthening non-custodial options and expanding Aboriginal-led programs and services.

Early intervention appears to be a key factor. During consultations, Aboriginal Territorians who had experienced prison reported that early access to meaningful programs may have helped them turn their lives around.<sup>253</sup> Targeted culturally appropriate programs that build resilience; enable respectful relationships; improve parenting skills; and address the impacts of grief and trauma, alcohol and drug abuse, domestic and family violence, and mental health are all needed across the entire NT.<sup>254</sup>

### 3.7.6 Sentencing and Aboriginality



**What we were told:**

*Bush court judges are generally pretty good but aren't even given backgrounds of the people they are sentencing.<sup>255</sup>*

*In court, charge sheets and written statements that are in front of a magistrate are often all that are referred to in order to reach a decision about the defendant – not the actual background or circumstances of the individual. Interpreters also need to be more aware of court processes so they can explain them to a defendant.<sup>256</sup>*

Community member suggested that Territory Families hire local community members to attend youth court with young offenders to act as a representative of the community and to let the court know what options are available and appropriate for a particular youth from the community.<sup>257</sup>

Police stated that [legal aid services] don't investigate the backgrounds of their clients and often encourage people to plead guilty to expedite the matter.<sup>258</sup>

Courts have wide discretion to account for Aboriginal circumstances, including in relation to background, character and sentence options. During the consultations, concerns were expressed that existing mechanisms to provide information about an offender's background (including pre-sentencing reports) are inadequate and fail to capture an offender's history or capacity to comply with community-based orders.<sup>259</sup> Nor did they provide relevant background information about the offender.<sup>260</sup>

Sentencing of Aboriginal offenders could be improved by introducing a legislative framework to require the court to consider the unique experiences and background factors of Aboriginal defendants. This is consistent with the recommendations of the ALRC Report and the RCPDCNT.<sup>261</sup>

In conjunction with this legislative reform, a bench book to guide the judiciary to tailor sentences to the circumstances of Aboriginal offenders would be useful in helping courts to take into account relevant background factors.

Aboriginal Experience Reports have been identified as a best practice approach to ensure courts receive objective, insightful and accurate accounts of the experiences of Aboriginal offenders as part of the sentencing process.

The concept of Aboriginal Experience Reports draws on the approach adopted in some Canadian provinces, where specialist Aboriginal sentencing reports (Gladue reports) describe the underlying causes of the offending, including relevant background and cultural information about the offender.<sup>262</sup>

The ALRC Report recommended that state and territory governments, in partnership with Aboriginal organisations, develop and implement schemes that facilitate the preparation of these reports for Aboriginal offenders sentenced in superior courts (Supreme Court). For Aboriginal offenders appearing before the Local Court, this information should be able to be submitted through less formal methods. In the Youth Justice Court, the RCPDCNT recommended that communities be resourced to establish a process to provide information for pre-sentencing reports for Aboriginal children and young people, including information about local non-custodial sentencing options.<sup>263</sup>

During the consultations, it was suggested that local LJGs be resourced to prepare Aboriginal Experience Reports for offenders from their respective communities.<sup>264</sup> Consideration needs to be given to the appropriate legislative framework, guidelines and resourcing for these reports to ensure they are meaningful. As noted by the ALRC, an Aboriginal Experience Report model needs to be supported by alternative sentencing options and support networks, and it must provide appropriate training and guidelines for both the judiciary and legal practitioners.<sup>265</sup>





### 3.7.7 Community courts



#### What we were told:

*Community courts need to be brought back – someone needs to sit next to the judge and tell them the history of the defendant.<sup>266</sup>*

*We want and need justice groups to support a community court, develop pre-sentencing reports, and provide advice to the judges about circumstances in the community that may be relevant to their sentence.<sup>267</sup>*

*Police prosecution needs assistance as too many offenders are being charged with drink driving. Community courts might be a good way of promoting dangers of drink driving in a relatable way.<sup>268</sup>*

*When people do go and attend court (Darwin, Gunbalanya) it is easier to access alcohol and other substances and most likely for the individual to reoffend before he/she gets home even. Most times, people who find themselves stuck have other problems with family or kin borrowing money, staying in their house too long and bludging, which often results in tension, nuisances and community unrest.<sup>269</sup>*

*Courts need to attend remote communities as individuals cannot attend courts in Darwin or other regional centres. The people of Waruwi have to organise either a flight/s to Gunbalanya or a boat and vehicle to take them to the mainland and drive them to court at costs that most community people cannot afford. It can cost up to \$600 each way for a court trip and if a person is locked up in Darwin they generally won't have enough money to return home so they become itinerant.<sup>270</sup>*


Community courts, which operated in the NT between 2003 and 2012, are an example of a mechanism that enabled Elders and respected persons from an Aboriginal person's community to provide information to the judge about the background of the defendant and advice about effective and culturally relevant sentences.<sup>271</sup>

Offenders, victims, families, Elders and other respected community members and service providers can become engaged in the process to address the causes of offending or reoffending.

Community courts can be effective in empowering communities to take responsibility for dealing with offending and as a way of reinforcing positive community values and behaviours. Community courts can help build accountability for safety, crime prevention and social cohesion, both at the community level and in dealing with individuals. There was widespread support during consultations for community courts to be reintroduced.<sup>272</sup>



### 3.7.8 Specialist courts, including specialist responses to domestic and family violence



**What we were told:**

*We need urgent action to reduce the numbers of women re-offending and returning to jail. There is almost no access to trauma counselling or any other type of psychology or psychiatry, more needs to be done to get to the core of offending. The numbers of women incarcerated for defending themselves in domestic and family violence situations is a joke and the NT should be ashamed of some of the sentences given to women who have suffered a life of domestic violence and finally fought back with whatever they could reach in the moment.<sup>273</sup>*

*When people get an order to go to [an Alcohol and Other Drug program] they stay sober while in the program but on their first day out usually go and get alcohol and drink.<sup>274</sup>*

*Cannabis destroys the social fabric of whole communities through the degradation of the value of the family unit, which leads to disruption of community and family wellbeing.<sup>275</sup>*

*No counselling or supports are provided to victims of domestic violence.<sup>276</sup>*

Specialist approaches have been established in the courts to address specific issues, including drug addiction, mental health and domestic and family violence. They aim to promote a more therapeutic approach to address the underlying causes of offending, in a specialised way that is not ordinarily or historically available through the justice system. Some jurisdictions have made significant progress using specialist approaches at court. Early assessment and interventions to address the underlying causes of the offending are an integral part of these approaches.<sup>277</sup>

At the Alice Springs Local Court, 93% of defendants found guilty of domestic and family violence related offences and 92% of victims are Aboriginal.<sup>278</sup> 85% of defendants in domestic and family violence related criminal proceedings at the Alice Springs Local Court are repeat offenders.<sup>279</sup>

In the NT, the Department of the Attorney-General and Justice is in the process of establishing a specialist approach to domestic violence at the Alice Springs Local Court. The specialist approach includes a range of measures which together will improve responses to families affected by domestic and family violence, including:

- a domestic violence courtroom, with no visual contact between victim and defendant
- all victims of domestic violence will be treated as vulnerable witnesses
- access to legal representation for victims and defendants
- specialist support services for victims and defendants (employed by NGOs) will be co-located at the court
- risk assessments, safety planning and links to support services for victims
- the court may order defendants to attend programs as part of sentencing options (if they plead guilty) or as part of a DVO
- increased domestic violence expertise for judges, court staff, lawyers and other professionals.

The combination of measures outlined is expected to improve justice responses and services to people who are victims or defendants in domestic and family violence matters, many of whom are Aboriginal. Both the infrastructure changes and the implementation of the specialist approach are expected to be completed by late 2019. The approach will have a 12 month internal evaluation and a three year external evaluation to assess its impact.



#### What we were told:

There are problems with the domestic and family violence reporting system. Policies are centred on the presumption that the female in the relationship is a passive victim and the male is the aggressor. There are many different forms of violence that need to be recognised and incorporated into domestic and family violence policies to recognise the impact that alcohol can have on complex and inter-related issues of insecurity and jealousy.<sup>280</sup>

Children are now following in their parent's footsteps (whether single or partnered) in regards to domestic violence, alcohol consumption, marijuana use, gambling and other antisocial behaviour.<sup>281</sup>

Domestic and family violence orders aren't culturally appropriate because family is always going to make amends anyway regardless of the conditions of an order.<sup>282</sup>


Domestic and family violence goes unreported in the community because people are afraid of the consequences of reporting someone to police or reporting a breach to correctional services.<sup>283</sup>

Police stated that domestic and family violence is an issue in the community but that they are constantly following up with victims asking for them to put reports in or press charges. Victims want the police there to de-escalate the situation but do not want to sign a statement that would get their husband put in jail.<sup>284</sup>

**93% of defendants before the Alice Springs Local Court found guilty of domestic and family violence related offences are Aboriginal and 92% of victims are Aboriginal.<sup>278</sup>**

**85% of defendants in domestic and family violence related criminal proceedings at the Alice Springs Local Court are repeat offenders.<sup>279</sup>**

### 3.8 Incarceration rates of Aboriginal people in the NT



**What we were told:**

*Most people who go to jail see it as a second home.<sup>285</sup>*

*It is easier in prison than it is outside in the community.<sup>286</sup>*

*Prison does not rehabilitate offenders. People go to prison but they come back the same.<sup>287</sup>*

*There is more stuff to do in prison than there is to do in the community for younger people.<sup>288</sup>*

*I like prison because I get to do things and contribute.<sup>289</sup>*

*I want to look after my home like I look after my room in prison.<sup>290</sup>*

*We think people go there [to prison] to get better and only come back if they are fixed but if they're fixed they wouldn't keep getting into trouble so what is happening to them when they're in jail?<sup>291</sup>*

The NT has the highest rate of imprisonment in the nation.<sup>292</sup> As at 30 June 2018, 84% of adult prisoners in the NT were Aboriginal which is significantly higher than the national average of 28%.<sup>293</sup>

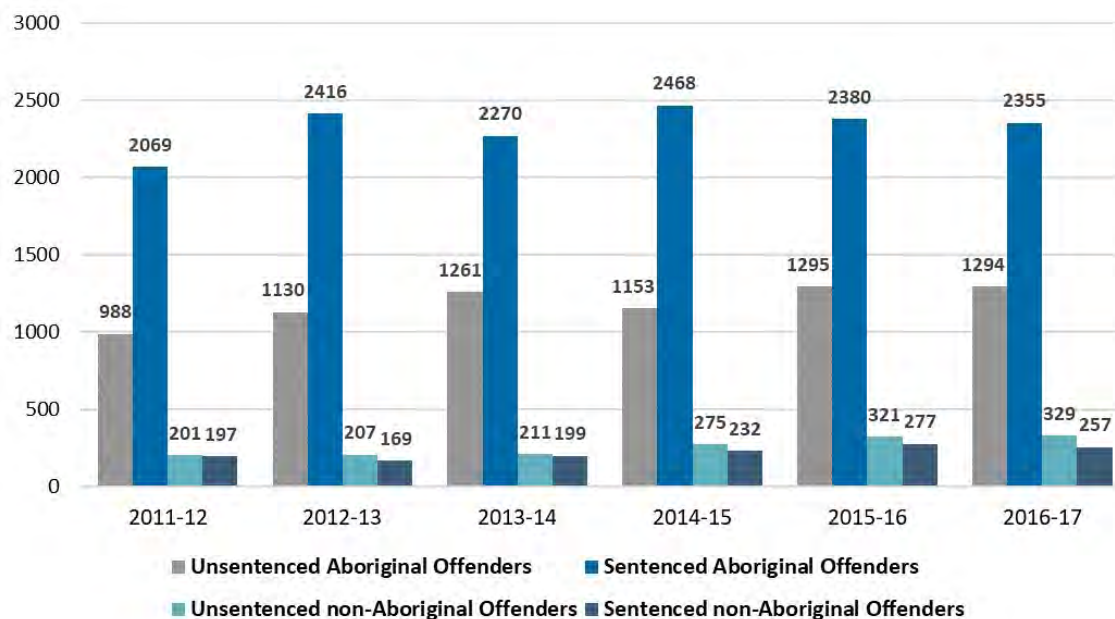
Figure 18 highlights that Aboriginal people have consistently made up the largest proportion of prisoners in the NT from 2011-12 to 2016-17. This data counts a prisoner multiple times on entry to the prison. Aboriginal adults represented 84% or more of the prisoner population every year from 2011-12 to 2017-18 reaching as high as 89% in 2012-13. Prison receptions of Aboriginal people over this entire period were at least six times higher than non-Aboriginal people (reaching up to nine times the rate in 2012-13).<sup>294</sup>



*You're not a man unless you've gone to prison.<sup>295</sup>*



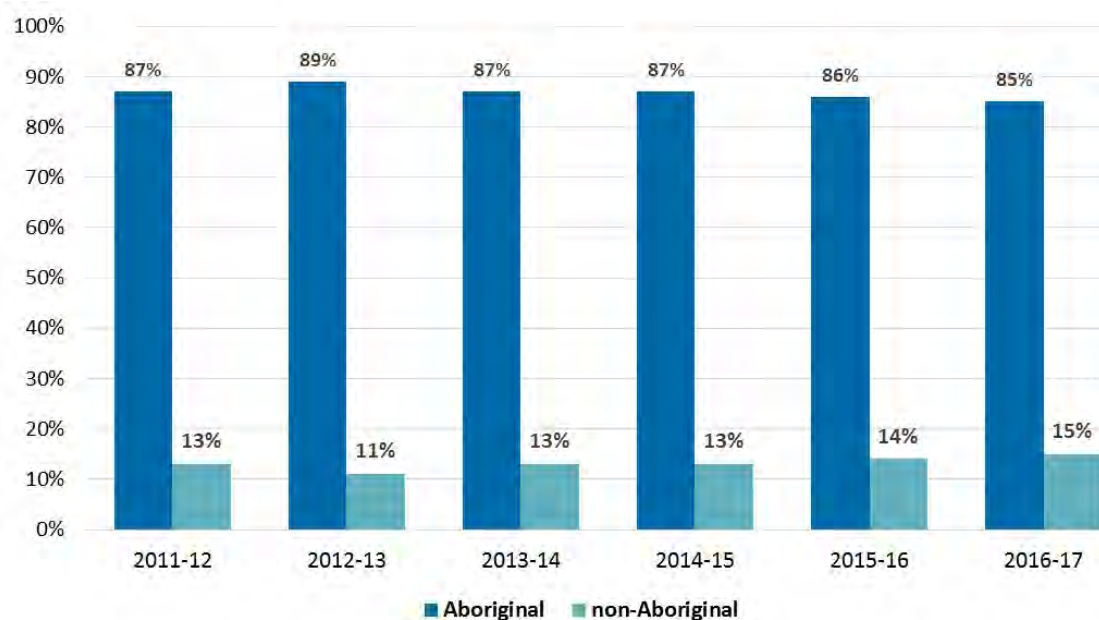
Figure 18. Adult receptions by sentence status and Aboriginal status 2011-2017



**Source:** Northern Territory Government, Department of the Attorney-General and Justice, *Northern Territory Correctional Services Annual Statistics*, 2011-12 through 2016-17, Table 15 of each report. The figures include prisoners sentenced and those on remand. A prisoner may be counted more than once if he or she returned to prison multiple times in a given year (for example, if he/she was held on remand and then sentenced, or had multiple short sentences, which is more common for Aboriginal people). Note that statistics for 2017-18 are yet to be released.

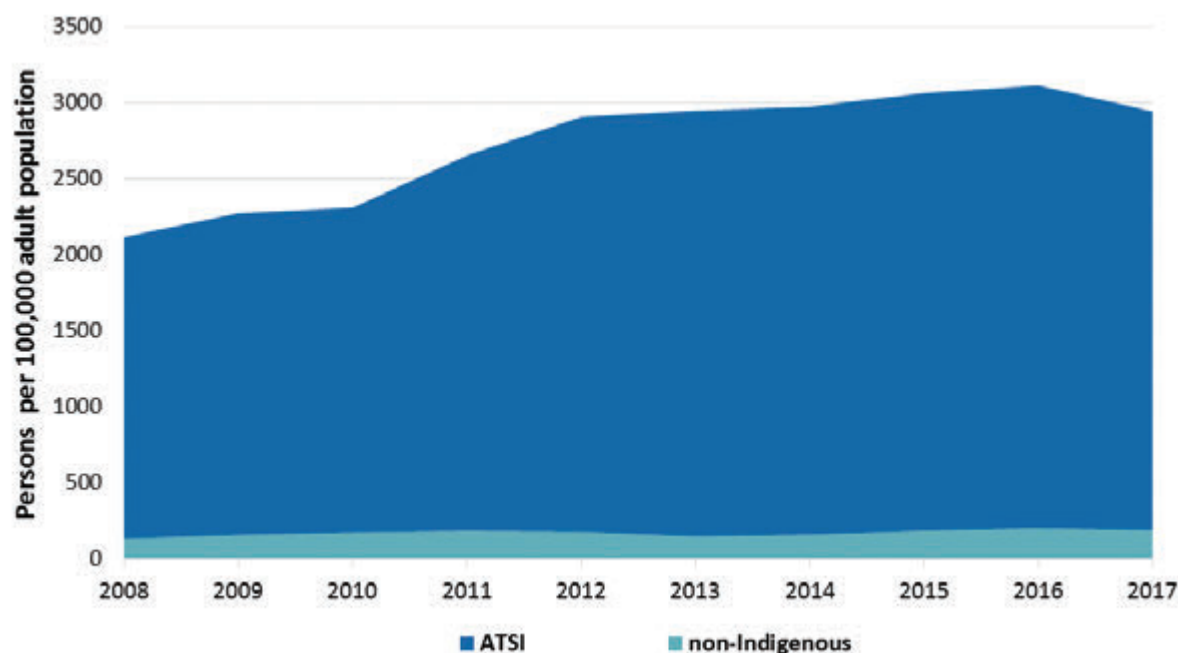
Figures 19 and 20 illustrate the growth of the adult Aboriginal and non-Aboriginal prison population in the NT over the last 10 years. In 2008, adult Aboriginal Territorians were imprisoned at a rate of 1,981 per 100,000 adult population and by 2017, this number had risen to 2,755. This is an increase of over 39%.<sup>296</sup>

Figure 19. Distinct adults received by Darwin and Alice Springs correctional centres, Aboriginal and non-Aboriginal 2011-2017



**Source:** NT Department of the Attorney-General and Justice. *Northern Territory Correctional Services Annual Statistics*, 2012-13 through 2016-17, Table 17 of each report. These figures count an offender only once over the period listed.

Figure 20. Adult imprisonment rates in the NT 2008-2017, ATSI and non-Indigenous



Source: Australian Bureau of Statistics, *Prisoners in Australia 2017*, (2018) cat no.4517.0, Table 20.

### 3.8.1 Over-representation by cohort

Aboriginal men are incarcerated at 15 times the rate of non-Aboriginal men in the NT.<sup>297</sup> In 2017, 5,136 per 100,000 Aboriginal men were incarcerated. Aboriginal men make up the vast majority of incarcerated Territorians, representing 78% of the NT's total adult prison population.<sup>298</sup>

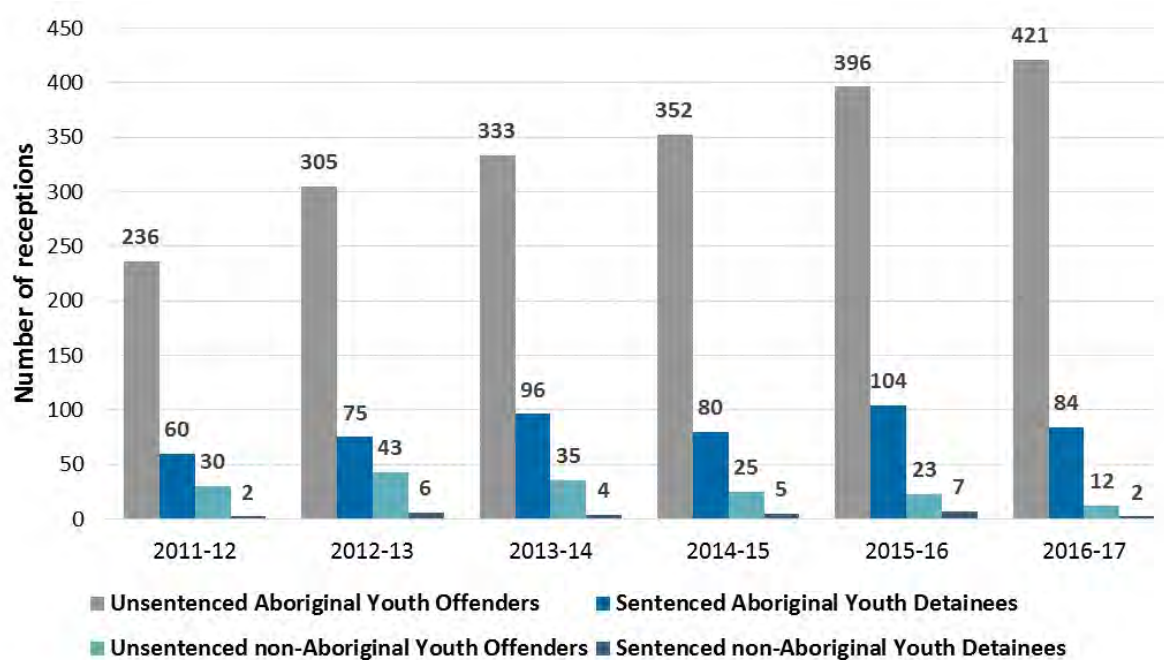
Aboriginal women are also vastly overrepresented in the NT prison population, and are incarcerated at 14 times the rate of non-Aboriginal women.<sup>299</sup> From 2008 to 2017, the rate of incarceration of Aboriginal women in the NT more than doubled from 181 to 379 per 100,000, an increase of 109%.<sup>300</sup>

Aboriginal children and young people are over represented in the criminal justice system to an even greater extent than their parents. In 2015-16, Aboriginal young people accounted for 96% of the youth detention population despite representing only 45% of the NT's population aged 10-17 years.<sup>301</sup> Figure 21 shows that from 2011-12 to 2016-17, unsentenced Aboriginal youth have accounted for the vast majority of the NT youth detention population.

In 2016-17, Aboriginal youth in the NT were up to 24 times more likely than non-Aboriginal youth to be in detention or under community-based supervision.<sup>302</sup> Since 2013, over 90% of all young people received into NT youth detention centres each year have been Aboriginal (as outlined in Figure 22).<sup>303</sup> The NT has the highest rate of youth justice supervision of any Australian jurisdiction, at almost three times the national average.<sup>304</sup> On an average day in 2017-18 in the NT, Aboriginal young people made up 47% of those aged 10-17 years in the general population, but 97% of those of the same age under supervision.<sup>305</sup> Figure 23 shows that between 2013-14 and 2017-18, Aboriginal young people have consistently been under supervision (both in detention and in the community) at a significantly higher rate than non-Aboriginal young people.



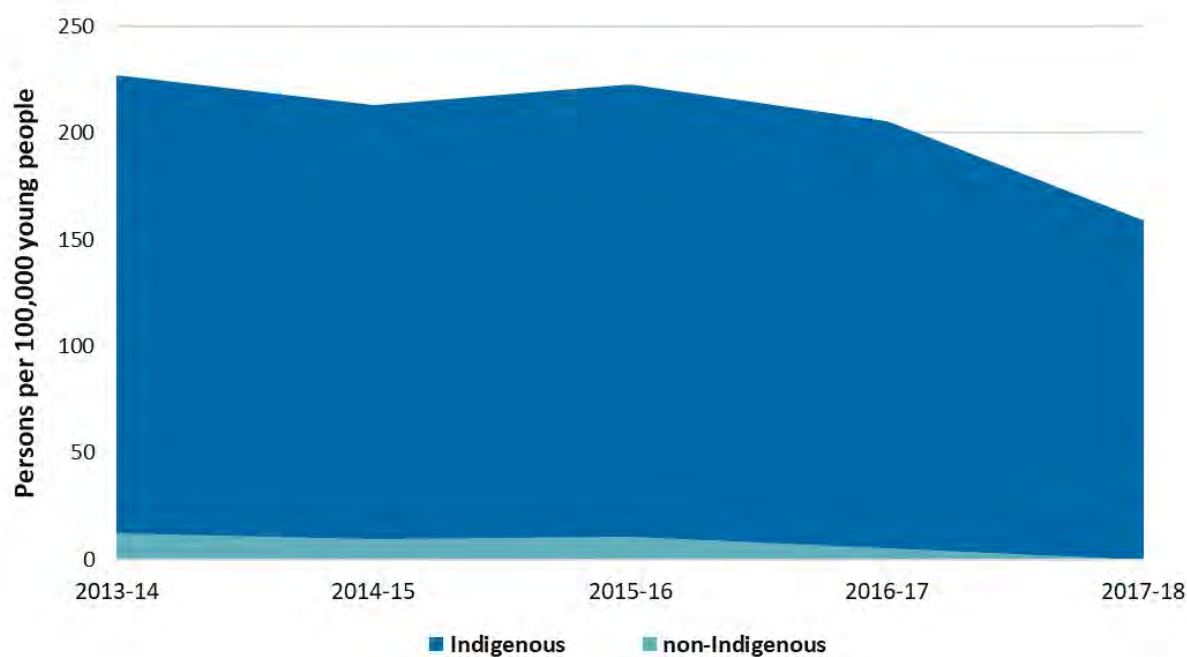
Figure 21. Youth receptions by sentence status and Aboriginal status



Source: Northern Territory Government, Territory Families, *Youth Detention Annual Statistics, 2016-2017* (2018), Table 4.

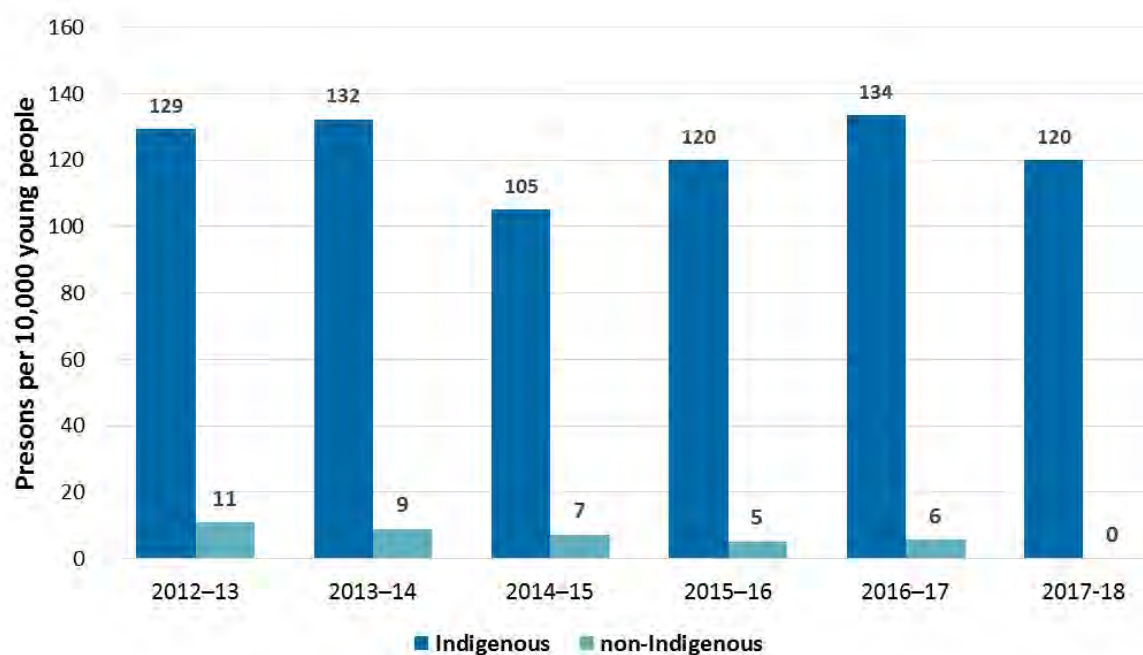


Figure 22. Rate of young people (aged 10-17) in detention in the NT during relevant year, Indigenous and non-Indigenous



Source: Australian Institute of Health and Welfare, *Youth Justice in Australia, 2017-18*, (2019) cat no. JUV129, Table S85b.

Figure 23. Rate of young people (aged 10-17) under supervision in the NT on an average day, Indigenous and non-Indigenous



Source: Australian Institute of Health and Welfare, *Youth Justice in Australia, 2017-18*, (2019), cat no. JUV129, Table S12a.

Note: Supervision includes youth in detention and supervision in the community.

### 3.9 Parole



#### What we were told:

*Many Aboriginal women don't apply for parole because the conditions on which they are released are unrealistic. They still leave prison and are confronted with [a] lack of appropriate and safe housing, exposure to lateral, family and domestic violence, or require to attend rehabs that are not culturally appropriate.<sup>306</sup>*

Most offenders would rather do full time in prison so when they leave there are no conditions for them to manage. Arrests are no longer a deterrent. Offenders are more likely willing to serve a sentence rather than having conditions placed on them (i.e. parole conditions, good behaviour bond conditions, etc.) because conditions are often too confusing and not practical in some instances (i.e. the application of DVO orders in small communities).<sup>307</sup>

*When people are released on parole, they need more realistic conditions and be given alternative options to prison when in breach of conditions. Alcohol and drugs are extremely addictive and cannot be given up with sheer willpower alone.<sup>308</sup>*

Previous reviews have identified that large numbers of Aboriginal offenders in Australia either do not apply for or receive parole.<sup>309</sup> For example, in 2016-17, 45% of prisoners in the NT served their full sentence in prison (meaning they were released unsupervised).<sup>310</sup>


Consultations pointed to difficult parole conditions and a perceived lack of support as reasons why Aboriginal offenders were not applying for parole.<sup>311</sup> Prisoners indicated that they were more willing to serve a prison sentence than be released with conditions that were often confusing, impractical and difficult to comply with.<sup>312</sup> Others wanted to stay in jail on the Sentenced to a Job program so they could earn income without the hassle of humbug or pressure from community members.<sup>313</sup> Prisoners who spoke English as a second or third language also reported that directions given by probation and parole officers were sometimes difficult to understand.<sup>314</sup>

**In 2016-17, 45% of prisoners in the NT served their full sentence in prison.<sup>315</sup>**

Unlike most Australian jurisdictions, there is no court-ordered parole scheme in the NT. This means the sentencing court does not set an automatic parole date for offenders and all parole-eligible offenders must apply to the Parole Board.<sup>315</sup> The ALRC Report recommended that all state and territory governments introduce statutory regimes of automatic court-ordered parole for sentences under three years, supported by the provision of prison programs for prisoners serving short sentences.<sup>316</sup> It is important to note that court-ordered parole does not guarantee automatic release on a prescribed date. For instance, in other jurisdictions where court-ordered parole schemes have been introduced, the non-parole period can be revoked when 'exceptional circumstances' arise after sentencing and the prisoner would represent a 'sufficiently significant danger' to the community if released on parole.<sup>317</sup>

The ALRC was also of the view that abolishing parole revocation schemes that require the time spent on parole to be served again in prison if parole is revoked would maximise the number of eligible Aboriginal offenders released on parole.<sup>318</sup>

### 3.10 Recidivism rates in the NT



**What we were told:**

*I have spent every birthday since I was twelve in prison. I couldn't stay out of trouble because I didn't have a home.<sup>319</sup>*

*We get no help when we walk out of prison. If you want to get better it's like they expect you to go to jail and when you leave, the prison guards say, 'we'll see you next time' because they know you just gonna be coming back in a few weeks or months because you're not better – your problems are still there waiting for you on the outside.<sup>320</sup>*

*The most significant problem for recidivism is providing post-release accommodation for violent and other serious offenders. These people are not currently able to find appropriate housing and if this issue isn't fixed incarceration rates will remain high.<sup>321</sup>*

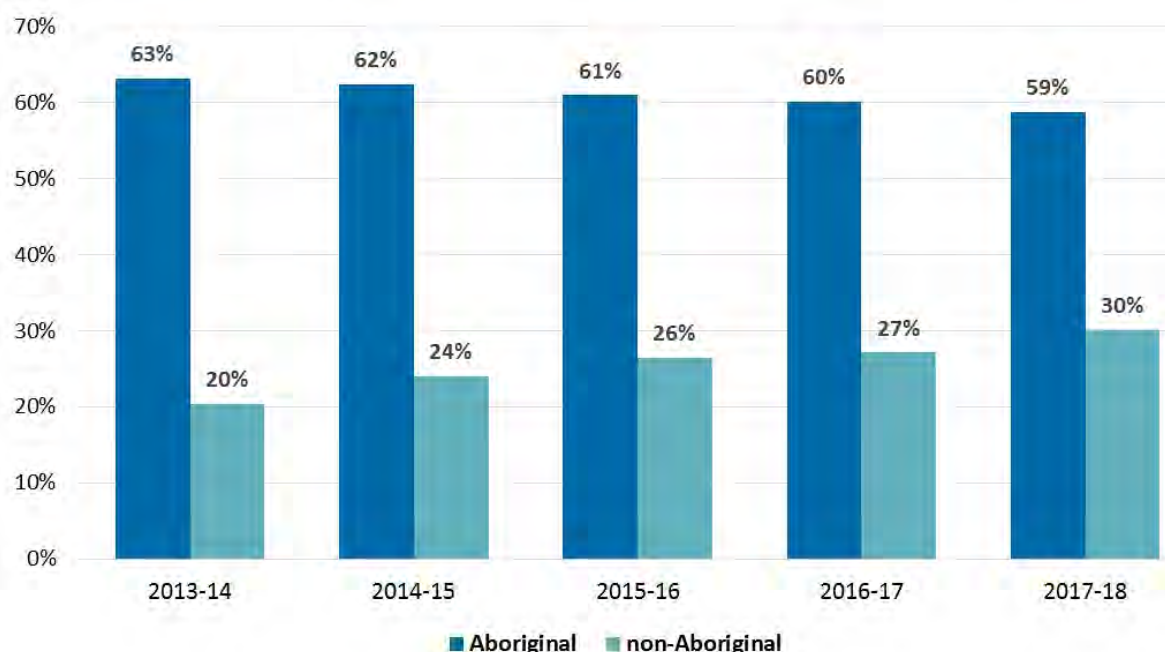
*There were no services in community when I first started getting into trouble, when I was in my twenties I went through some dark times when I was emotionally hurt and had no-one to help me. I hit rock bottom and drank alcohol to cope but got into more trouble. I couldn't find a way to deal with the hurt. I ended up in the Supreme Court when I was 49 – took me a while to realise what brought me there. I was drinking because I was hurting – I kept thinking why am I being sent to prison when I need help.<sup>322</sup>*

*There are no support services (i.e. relationship, anger management, drug and alcohol rehabilitation, etc.) made available to prisoners or parolees – on release, most reoffend or breach orders because they lack guidance and support.<sup>323</sup>*

Aboriginal prisoners are significantly more likely to return to prison after release than non-Aboriginal prisoners. Over the period 2012-13 to 2017-18, over 59% of released Aboriginal prisoners returned to prison within two years of their release. Over the same period, the equivalent figure for non-Aboriginal prisoners was around one-third to one-half of that rate, as illustrated in Figure 24.<sup>324</sup>



Figure 24. Return to prison rate for adult prisoners in the NT (2012-13 to 2017-18), Aboriginal versus non-Aboriginal



**Source:** Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Adult prison return rate by Aboriginal Status* (2019), unpublished data. **Note:** This data depicts the proportion of sentenced prisoners returning to prison as sentenced prisoners within 2 years of release. The recidivism rates shown depict the proportion of prisoners from the previous two years of the period stated, who have returned to prison, e.g. the figure for 2016-17 is based on prisoners who were released in 2014-15.

The NTAJA consultations gave profound insight as to why Aboriginal people returned to prison more often. The majority of the responses focused on a failure to address the causes of offending. There was a perceived lack of support that allowed for prisoners to turn their lives around and reintegrate back into the community following their release from prison.



#### What we were told:

*Work needs to be done with the offender's family as well to help prevent recidivism.<sup>325</sup>*

*We need to strengthen people, culture and family. Alcohol and drug problems start at home usually. The causes of the behaviour need to be addressed rather than over reliance on punishment to rectify the behaviour as this clearly isn't working given reoffending rates.<sup>326</sup>*

*There are problems with alcohol and drug abuse in this community. People under the influence are likely to reoffend and commit similar crimes.<sup>327</sup>*

*When youth camps existed in this community the recidivism rate was lower. It was funded by Territory Families but they need funding and mentors to start the program again, which will require eligibility checks and professional development training.<sup>328</sup>*

### 3.11 Prison programs



#### What we were told:

*This [prison] isn't the place to learn anything.<sup>329</sup>*

*I have been in and out of jail from a young age and have seen myself and many other Aboriginal women frustrated with the lack of appropriate support services available.<sup>330</sup>*

*I spoke with many incarcerated Aboriginal women and asked what they thought could be done to help Aboriginal women to stop coming back to prison. All of them responded, "housing" as the number one priority followed with appropriate support to abstain from drugs and alcohol and to stay safe from violence.<sup>331</sup>*

*It's hard when you go home and all your friends and family just want you to drink with them again – even though they know you have a problem they don't care – they just thinking that you think you're better than them now or something like that.<sup>332</sup>*

*One fix for all does not work (Aboriginal women speak different languages, have different cultural backgrounds and varying levels of cultural connection.) Support services need to be strength-based and provide individual support rather than expecting that one two-week Safe Strong Sober program will provide the rehabilitative needs of all prisoners. This goes for the one and a half week family violence course as well. Neither course is very helpful or enthusiastically run.<sup>333</sup>*

*I was imprisoned for a week for driving under the influence without a licence but wasn't referred to a support service.<sup>334</sup>*

A consistent and concerning issue raised during consultations was that the prison system does not do enough to rehabilitate Aboriginal offenders. Although some programs are provided in NT prisons, views were expressed that the programs are culturally inappropriate, make little attempt to overcome engagement and communication barriers, and as a result, are largely inadequate and do not address the complex needs of Aboriginal offenders.<sup>335</sup> This means that the factors that have led to offending and reoffending are often not identified, and as a result, remain unaddressed.

The lack of access to effective prison programs, especially for prisoners on remand and serving short sentences, has been identified as a significant issue in the NT.<sup>336</sup> Programs need to be accessible and meaningful to Aboriginal prisoners on remand or serving short sentences.<sup>337</sup> Programs delivered during and after incarceration are inconsistent, resulting in offenders not receiving the long-term, sustained support they require. This increases the likelihood of a person returning to prison.

Particular attention has been drawn to the lack of prison programs that address the unique needs and vulnerabilities of Aboriginal women. Aboriginal women in prison are more likely to have experienced sexual abuse and family violence, as well as poor mental health, substance misuse, unemployment and low education.<sup>338</sup> Aboriginal women have also reported discrimination when it comes to employment opportunities for prisoners.<sup>339</sup>

Concerns were raised during consultations about the appropriateness of education and vocational opportunities for prisoners.<sup>340</sup> The AJU heard that vocational training programs offered in prison are not tailored to the type of employment opportunities available on release.<sup>341</sup>

During consultations many prisoners reported that they had repeated the same programs on offer many times, despite an escalation in their level of violence and offending behaviours.

During consultations some prisoners identified that programs were mostly delivered without an interpreter, causing very limited engagement with the program content and an over-reliance on other prisoners with better literacy skills. Program delivery should be conducted by professionals and organisations with high levels of cultural competency and demonstrated experience working with Aboriginal Territorians. Prisoners also identified that to improve outcomes, family should be involved in the delivery of prison programs.<sup>342</sup>

The ALRC identified the following key characteristics of best practice prison programs:

- culturally appropriate content and delivery with programs designed, developed and delivered by Aboriginal organisations
- access to programs should meet the complex needs of Aboriginal offenders
- individualised case management and holistic support to address criminogenic needs
- adoption of a trauma-responsive therapeutic approach
- focus on practical application of skills to assist successful reintegration (including post-release support to access housing, assistance with Centrelink and transport)
- strong community focus that strengthens relationships and connections with families and communities.<sup>343</sup>



**What we were told:**

*They [correctional services] don't use interpreters when we do prison programs and I've noticed some of the traditional fellas just nod their heads so they can pass the program and get a little time off their sentence maybe but they have no idea what the course was about or why they had to complete it when I've spoken to them afterwards.*<sup>344</sup>

*Prison is not effective at providing culturally competent rehabilitation; they don't use interpreters or culturally appropriate people.*<sup>345</sup>

*There is a lack of rehabilitation options for short term prisoners.*<sup>346</sup>

*Many post-release prisoners still don't understand what caused them to offend in the first place.*<sup>347</sup>

A prisoner recommended more programs (such as family counselling) be offered to a larger proportion of the prison population, as well as in language groups to hold individuals accountable when they return to communities from prison.<sup>348</sup>

An Aboriginal female prisoner identified that her offending arose from her relationship with her partner. She believed her partner and her would benefit from relationship counselling, as while their relationship was important to them both, it was also a source of contention due to financial abuse and jealousy issues.<sup>349</sup>



Table 3. Number of prisoners successfully completing a prison program in a Northern Territory correctional facility between 2016 and 2018, by Aboriginal status

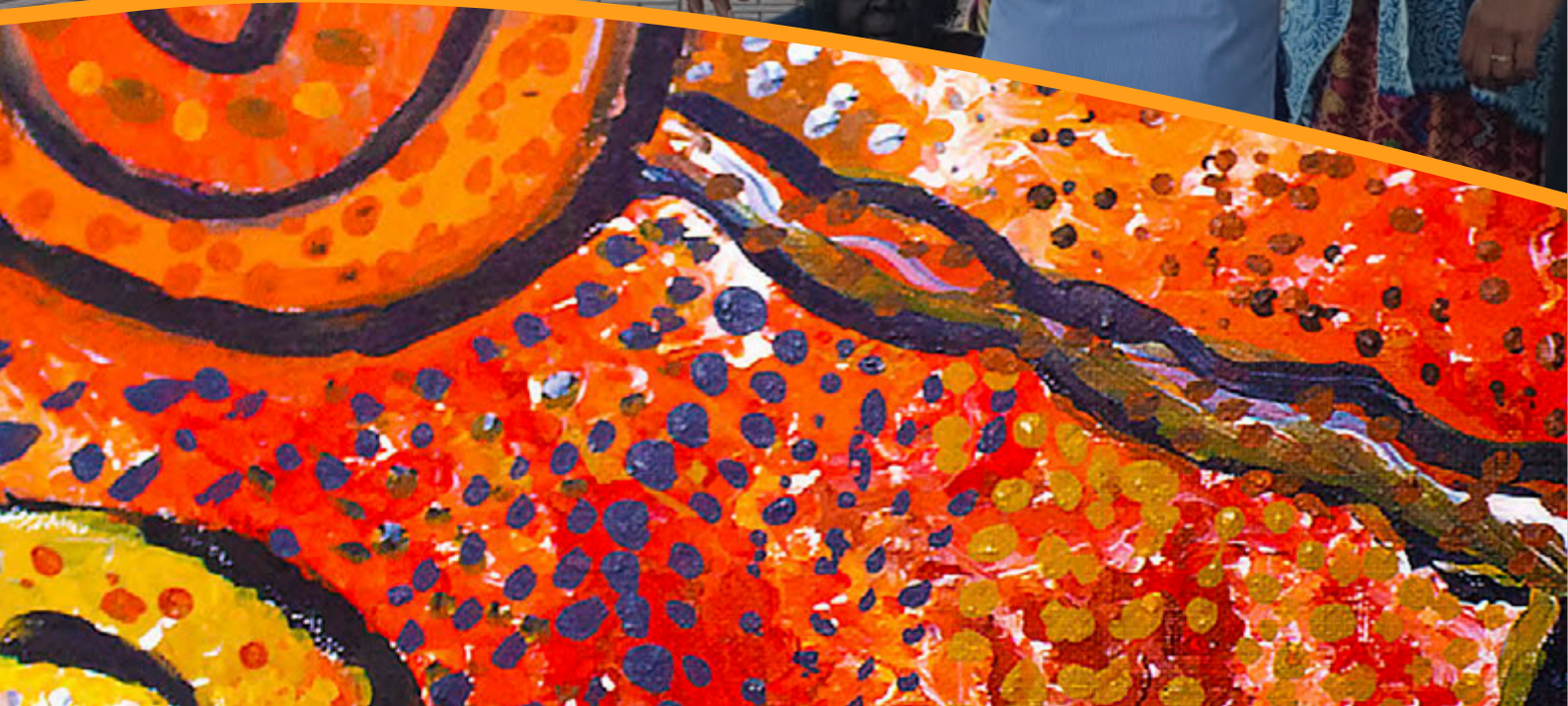
Prison programs	Aboriginal status	2016	Year 2017	2018
Violent Offender Treatment Program	Aboriginal	20	8	12
	non-Aboriginal	2	3	0
Violent Offender Treatment Program - Moderate Intensity	Aboriginal	19	27	0
	non-Aboriginal	3	3	0
Recognising Anger, Gaining Empowerment	Aboriginal	0	12	12
	non-Aboriginal	0	1	0
Sex Offender Treatment Program	Aboriginal	7	7	8
	non-Aboriginal	1	1	3
Responsibility, Safety, Victims and Plans Program – Sex Offender Treatment Program – Moderate Intensity	Aboriginal	6	10	9
	non-Aboriginal	3	2	0
Family Violence Program	Aboriginal	193	172	186
	non-Aboriginal	2	2	4
Intensive Alcohol and Drugs Program	Aboriginal	19	20	35
	non-Aboriginal	9	8	14
Alcohol and Other Drugs Program	Aboriginal	120	146	110
	non-Aboriginal	12	14	8
Safe, Sober, Strong Program – General Offending Program	Aboriginal	229	125	158
	non-Aboriginal	63	54	44
Individual Assessment and Treatment	Aboriginal	31	46	10
	non-Aboriginal	6	13	3

Source: Northern Territory Government, Department of the Attorney-General and Justice, Northern Territory Correctional Services, Offender Services and Programs, *Number of prisoners successfully completing a prison program in a Northern Territory Correctional Facility between 2016 and 2018, by Aboriginal status* (2019) internal, unpublished data; Australian Bureau of Statistics, *Prisoners in Australia 2016-2018* (2019) Tables 15, 16.



## Aim Two

Engage and support Aboriginal leadership





## 4.1 The importance of leadership

Improved justice outcomes for Aboriginal people will only be achieved if the NT Government works in partnership with Aboriginal people to implement the Aboriginal Justice Agreement. Aboriginal leadership is pivotal to efforts to improve justice responses and services, and to reduce the rates of offending and reoffending.

Research indicates that there is a direct correlation between strong local Aboriginal leadership and positive community outcomes.<sup>350</sup> Aboriginal leaders are more likely to display the values and exhibit the characteristics necessary to create change and understand local concerns and priorities. Aboriginal leaders can assist to build trust and ownership within local communities, increase community participation in programs and promote the delivery of initiatives in a culturally competent manner.<sup>351</sup>

Put simply, when Aboriginal Territorians are respected, supported and empowered to make decisions, then responses to community safety and justice issues are more likely to succeed. The overwhelming response from the NTAJA consultations is that Aboriginal voices need to be heard and Aboriginal experience and expertise needs to shape law reform, policy and services at all levels.

## 4.2 Overcoming past legacies



**What we were told:**

*There was once – when the local Aboriginal community councils operated – a sense of empowerment in communities but that has been taken away.<sup>352</sup>*

*Councils aren't involved in community affairs: community needs to own issues through a law and justice group so we can reclaim authority.<sup>353</sup>*

*We feel disempowered because our culture and authority isn't recognised anymore.<sup>354</sup>*

*Elders feel disempowered because youth don't show us any respect or support.<sup>355</sup>*

*Some communities felt that Elders are considered Elders in title only, and that those with real leadership skills and qualities may not get an opportunity to display them.<sup>356</sup>*

Aboriginal Territorians have consistently emphasised that many past policies and practices have actively undermined their capacity to lead and influence local decision-making.<sup>357</sup> This has resulted in a breakdown of social structures and kinship systems, loss of languages, access to land and waters and the ability to undertake cultural practices, as well as the gradual fracturing or erosion of Aboriginal rights, roles and responsibilities. It has undermined trust and partnerships between Aboriginal people and governments.



It works if we get back together. We need our voices to be heard, not dominated.<sup>373</sup>

While many Aboriginal children and young people grow up in a safe home and a safe community, many have not been afforded this opportunity.

Aboriginal people want to partner and take responsibility for behaviours.<sup>369</sup>

Examples frequently raised during the NTAJA consultations included:

- the ongoing impact of colonisation and a succession of policies reducing autonomy in Aboriginal families and communities
- the removal of children from families over many generations
- the range of measures that occurred as part of the NT Emergency Response
- the replacement of Community Councils with Shires
- the introduction of the BasicsCard and income management policies
- changes to work for the dole, CDEP and CDP programs
- the continuing experiences of unconscious bias, discrimination, racism, and unfair treatment
- the passive approach to consultation with Aboriginal people whose concerns and comments fail to be heard or supported
- failing to engage the entire community in consultations and instead relying only on the voices of a small number of Aboriginal people to influence and inform government policy.<sup>358</sup>

During the NTAJA consultations, many Aboriginal Territorians described how past and current policies have intergenerational impacts and continue to affect the health and wellbeing of Aboriginal people.<sup>359</sup> Many people had experienced ongoing, undiagnosed and untreated psychological distress, intergenerational grief and trauma.<sup>360</sup> Some Aboriginal Territorians identified that each year they would attend up to 14 funerals, many for close and young family members lost to suicide or chronic preventable medical conditions. The legacy of past policies and practices cannot be denied and is reflected in many indicators, including poor life expectancy, unemployment, school attendance, contact with child protection, hospitalisation and homelessness rates, mental health, suicide rates and contact with the criminal justice system.<sup>361</sup>

In this context it is particularly important to recognise the strength and potency of Aboriginal leadership, and the resilience of Aboriginal people, despite the ongoing impact of government policies. Through all these challenges, many Aboriginal Territorians have worked tirelessly, often without recognition, to try and keep families and their communities safe and strong.<sup>362</sup>

During consultations, some Aboriginal people expressed the view that in some instances, community leaders did not represent their expectations of strong leadership.<sup>363</sup> Over time, the traditional values and behaviours of individuals in communities that helped maintain safe and strong communities have been under intense pressure, impacting on the norms in communities. While many Aboriginal children and young people grow up in a safe home and a safe community, many have not been afforded this opportunity. Disempowerment creates the ideal environment for social dysfunction to develop, increasing the likelihood of community members engaging in substance misuse and anti-social or criminal behaviours.

The NTAJA consultations showed that the trauma experienced by previous Aboriginal generations continues to affect the health and wellbeing of Aboriginal children and young people.<sup>365</sup>

The RCPDCNT identified that trauma can be passed on through parenting practices, behavioural problems, violence, harmful substance misuse and mental health issues.<sup>366</sup> Participants in the NTAJA consultations expressed frustration at the current high rates of crime, including acts of family and domestic violence and alcohol and drug misuse. Participants in the consultations also expressed the view that Aboriginal Territorians are willing, able and ready for the opportunity to determine the solutions to fix the problems with support from, and in partnership with, government.<sup>367</sup>



**What we were told:**

*The rules of the community should work to protect and strengthen community but if the rules are being openly disobeyed then the deterrence effect is neutralised and cultural authority begins to erode.*<sup>369</sup>

*Elders need to lead meetings and influence decisions to regain cultural authority.*<sup>370</sup>

*Recognising cultural authority will restore leadership.*<sup>371</sup>

*We [Elders] would like support from police so people in community know that the cultural authority of Elders is supported by the government.*<sup>372</sup>

*When community does not help community, you are breaking your mother's soul.*<sup>373</sup>

*Aboriginal people need to stop blaming each other – it's the law, you broke it.*<sup>374</sup>

*Community members want to take control of their communities. They recognise that they need to stop blaming others, but they are not sure how to process the trauma and negative emotions. Investment in partnerships will pay dividends.*<sup>375</sup>

Racism and discrimination experienced by Aboriginal Territorians as an everyday part of life is linked to the loss of agency, intergenerational trauma and the disruption of cultural authority and decision-making processes.<sup>376</sup> The experience of discrimination and racial abuse can alienate individuals from society and feed a sense of disillusion and disempowerment. Research has highlighted how these issues significantly impact the development and life prospects of children and young people, which, when left unaddressed, may lead to depression, suicide, poor school attendance, behavioural issues, substance misuse and offending.<sup>377</sup>

The NTAJA places significant emphasis on Aboriginal leadership as fundamental to achieving the aims of the Agreement and ensuring the safety and well-being of Aboriginal families and communities. Acknowledging and learning from past legacies is important, and aligns with the aims of the Agreement.

For these reasons, Aboriginal people have sought a renewed partnership with government; a partnership that does not start from a deficit position, but instead adopts a strengths-based approach. As expressed during the NTAJA consultations, working in partnership rather than in isolation is critical to achieving the aims of the Agreement.<sup>378</sup>

## 4.3 Partnering



**What we were told**

*Often the same people – the leaders in the community – are frequently asked to assist many government agencies when there is trouble in the community, but more often than not, they are not paid or respected for their skills that they contribute in this role.<sup>379</sup>*

*People don't ask us if people should come back to the community when they come out of prison, they just bring them back. This makes it hard to reassert leadership and values for our community.<sup>380</sup>*

*Community should own the process of educating our mob about domestic and family violence and how to repair our relationships. Aboriginal people should be helping Aboriginal people because we understand each other.<sup>381</sup>*

*Cultural camps need to be used as a reward rather than a system to control behaviour. Where's the reward for doing things the right way in a community?<sup>382</sup>*

*Community members should [sign the agreement] - nobody outside knows what's happening in community, we need to talk with community and family members and take responsibility for community.<sup>383</sup>*

*Community Elders need to take responsibility for the problems in community, no excuses – we have to show responsibility.<sup>384</sup>*

Partnerships are at the heart of the NT Aboriginal Justice Agreement and are fundamental to its success.<sup>385</sup>

Historically, government attempts at partnerships have fallen short of community expectations and contributed to undermining local authority and leadership. While there are numerous issues that have contributed to these failings, the reality is that genuine partnerships are difficult to both initiate and maintain.

Partnerships require more than a desire to co-operate. Effective partnerships require mutual respect, shared responsibility and a commitment to ongoing dialogue and cooperation.

The NT Government's commitment to bringing about genuine partnerships is outlined in the eight principles for partnering contained in the Agreement.<sup>386</sup> These principles include upholding standards of accountability and transparency, and empowering and honouring Aboriginal leadership. They have provided the basis for the consultative approach to developing the draft Agreement, and will form the foundation for the Agreement's future implementation.

The consultations on the Agreement to date have endeavoured to be as inclusive as possible. They have been conducted in line with best practice standards of cultural competency to ensure that the voices of Territorians have been heard and are reflected directly in the content of the Agreement. The consultation approach has set the tone for how the NT Government will continue to partner with Aboriginal Territorians to implement the Agreement.



An important aspect of the partnering process involves respectful, effective and ongoing communication between government, Aboriginal Territorians and other stakeholders.

Further information about the partnership approach underpinning the Agreement is outlined in section 6 on Governance.

#### 4.4 Empowering local decision-making

The RCPDCNT found that ‘governments have not allowed or empowered Aboriginal people to lead in decision-making’.<sup>387</sup> As was observed by the Commission, it is insufficient for Aboriginal Territorians to simply be informed or consulted. Aboriginal leaders must be empowered and supported as substantive decision-makers.<sup>388</sup> Aboriginal Territorians have long argued for improved engagement with government in relation to decisions that will ultimately shape Aboriginal people’s lives.<sup>389</sup> The NTAJA will provide a platform for empowering Aboriginal decision-making on local law and justice issues.

Strengthening Aboriginal leadership and capacity to address justice issues at a local level was a recurring theme in the NTAJA consultations. Law and Justice Groups (LJGs), and similar local cultural authority groups, were identified as necessary to deliver on these tasks. LJGs are recognised as an important means of reasserting cultural authority and promoting community-driven responses that can improve Aboriginal justice outcomes and keep communities safe.<sup>390</sup>

The Lajamanu Kurdiji Law and Justice Group is one example of several existing LJGs across the NT. Kurdiji takes an active leadership role in promoting respect for law and justice within the community, by providing input into criminal court sentencing matters through reference letters and advice to the judge on local cultural matters. Kurdiji works to manage and defuse conflict, violence and alcohol and drug misuse in the community.<sup>391</sup>

*...We have been showing the way, showing that a strong Aboriginal group running things the way it wants for itself, can make a big difference in the community. We feel that supporting groups like ours will do a lot more to solve these problems...<sup>392</sup>*

Law and Justice Groups have the ability to empower local community leaders to participate in the justice system, and to restore and maintain cultural authority including ways of resolving conflicts that arise in the community.<sup>393</sup> The strengthening of Aboriginal leadership through LJGs and similar local cultural authority groups will reinforce and model the kinds of values and behaviours that Aboriginal people want adopted, particularly by younger generations.

**It is insufficient for Aboriginal Territorians to simply be informed or consulted. Aboriginal leaders must be empowered and supported as substantive decision-makers.<sup>393</sup>**



### What we were told:

*We want the chance to determine our own future on our land, and our place in society.<sup>394</sup>*

*We want and need justice groups to support a community court, develop pre-sentencing reports, and provide advice to the judges about circumstances in the community that may be relevant to the sentencing process.<sup>395</sup>*

*We try to tell people and they don't listen - we hope you mob listen.<sup>396</sup>*

*There is a need for a cultural base where the family can make the decision on how the offender can be rehabilitated.<sup>397</sup>*

*We need a grandmothers group in every community to support those who are struggling.<sup>398</sup>*

Law and Justice Groups have the potential to fulfil a number of important roles envisaged under the NTAJA including developing and implementing local action plans with place-based strategies to address community safety and justice issues. They are also well-placed to advise courts on matters relevant to the sentencing of local Aboriginal people, including cultural information, significant traumatic events or incidences that may have affected the offender, victims, witnesses or families and potential options for rehabilitation.<sup>399</sup> LJGs can impart unique knowledge about Aboriginal defendants that court officials and other parties may not have access to.<sup>400</sup>

Aboriginal participants in the consultations also expressed the view that LJGs would allow local ideas and concepts to be tested and validated, and provide an effective platform for two-way respectful dialogue between government and Aboriginal Territorians.<sup>401</sup>

The NT Government recognises that resourcing and supporting LJGs is necessary for the NTAJA's success. The provision of local data and evidence to inform LJG decisions, and monitoring and evaluation to gauge the extent to which they are making a difference is critical.

The NT Government remains committed to developing and implementing new models which effectively engage and support local Aboriginal leadership through local place-based approaches and whole-of-government policies. The Local Decision Making (LDM) framework is a clear example. The LDM framework transfers control of government service delivery, where possible, to Aboriginal Territorians and organisations based on community aspirations.<sup>402</sup> To date, seven agreements have been signed between government and NT communities.<sup>403</sup> LDM provides opportunities for government to transform its way of working, and coordinate across all levels of government to provide direction and support behavioural change, as well as implementing funding and accountability arrangements which promote realistic, Aboriginal-driven and co-designed outcomes.

The LDM framework facilitates a shift in decision-making and control that acknowledges the capacity of leadership within communities in the Northern Territory. For example, through LDM, the NTG has entered into a ten-year agreement with the Anindilyakwa Land Council. The Groote Eylandt Archipelago LDM Agreement outlines Anindilyakwa people's priorities to transition service delivery to community control, with respect to housing, economic development, law, justice, rehabilitation, education, health services and local government. The Groote Eylandt agreement aims to increase the involvement and leadership of Anindilyakwa people in the justice system, including the formation of a Law and Justice Group, and access to rehabilitative services by establishing, owning and assisting in the management of a facility in the Groote Archipelago.<sup>404</sup>

LDM agreements, like the Groote Eylandt agreement, are significant because they are founded on mutual trust and respect. They recognise the long established and strong systems of governance and leadership by Aboriginal people, and empower local leaders to set the agenda, pace, and ways of working for government and stakeholders. LDM agreements recognise that both female and male voices must be heard and that strong governance is necessary to ensure that the Aboriginal people drive, own, take responsibility and are accountable for solutions to complex problems.

## 4.5 Role modelling and mentoring



### What we were told:

*My role models are my mothers and my grandparents, they are the ones that I look up to. They still do OK in this community - not footballers that just leave when they get picked up by a club.<sup>405</sup>*

*Mentors should be part of the process, not outsiders like footballers. They don't cope with the issues that we do on a day-to-day basis, but our local mob do and they are still coping well.<sup>406</sup>*

*Most of the young fathers have had minimal or no father figure in their lives to lead by example as a role model because alcohol has been an intergenerational problem within family units.<sup>407</sup>*

*Many kids witness aggressive behaviours and grow up with a lack of respect for their community.<sup>408</sup>*

*We need Elders who are role models to support emerging leaders.<sup>409</sup>*

*She [community member] wants to change but she can't because there are many people who will not support her.<sup>410</sup>*

*I'll return to my community but it's hard when you get out and you aren't supported to stop drinking by your family or your community - it's too hard to stay off the grog when everyone is drinking.<sup>411</sup>*

*There's a mentality that people shouldn't share their worries so when someone's problems gets worse they don't look to family for support- they just abuse alcohol and drugs and cut themselves off from their family and friends.<sup>412</sup>*

*Many young people stated that it was their grandmothers or sisters that they looked up to as these were the people that provided them with food, clothing and shelter because they had employment and a stable living environment.<sup>413</sup>*

*Youth detainees identified that they do not feel much, if any, shame for being caught engaging in criminal behaviour (if any shame is felt, it is for their mother/grandmother).<sup>414</sup>*



Role modelling and mentoring are central components of strong leadership to improve justice outcomes for Aboriginal Territorians.

In a combined submission to the 'Doing Time - Time for Doing' inquiry into Indigenous youth and the criminal justice system, representatives from Aboriginal legal services noted that:

*It is life experience from early childhood that builds an understanding of what is acceptable behaviour, and what is not. Normative values are essentially learnt from direct, repeated exposure to a child's immediate social environment. They are influenced by the values and the behaviours of parents, peers, immediate community and the wider society. They are shaped by people who are respected and admired and by those who exercise authority.*<sup>415</sup>

The influential role that important members of an individual's community or social network perform in determining social norms, values and behaviours was reflected during consultations. Mentors and role models were a recurring feature in success stories for many Aboriginal people, including family, culture, education, employment,<sup>416</sup> leadership and youth justice.<sup>417</sup>

Despite the challenges facing many Aboriginal communities, including the legacy of past policies and practices as discussed in section 4.2, local role models and mentors continue to have a positive presence and play a vital role in strengthening families and communities throughout the NT. The contribution and impact of local leaders is often unrecognised, under-valued and unsupported. Through the provision of resources, training and other kinds of practical support, local leaders will be better equipped and able to drive greater change and influence at the local level.<sup>418</sup>

A number of participants in NTAJA consultations stated that the most effective role models and mentors are people who are part of everyday community or family life. Some participants expressed the view that there is an over-reliance on sports people such as footballers and other well-known personalities from interstate as mentors and role models for Aboriginal people. High-profile Aboriginal people can help raise awareness of key issues, but they are unlikely to be as influential as those from within the community who have lived through local challenges themselves and helped find shared solutions over time. The use of local mentors and role models reflects traditional 'kin and skin' relationships and aligns with the cultural obligations that remain embedded within Aboriginal culture.<sup>419</sup>

The NTAJA consultations highlighted the need to invest in and support our local leaders to achieve the aims of the Agreement. In particular, Aboriginal girls and young women need local female role models to inspire success, build confidence and empower women's leadership. Empowering both local women and men, young and old, benefits the community by restoring and rebuilding strong values and behaviours and strengthening the social fabric of communities.

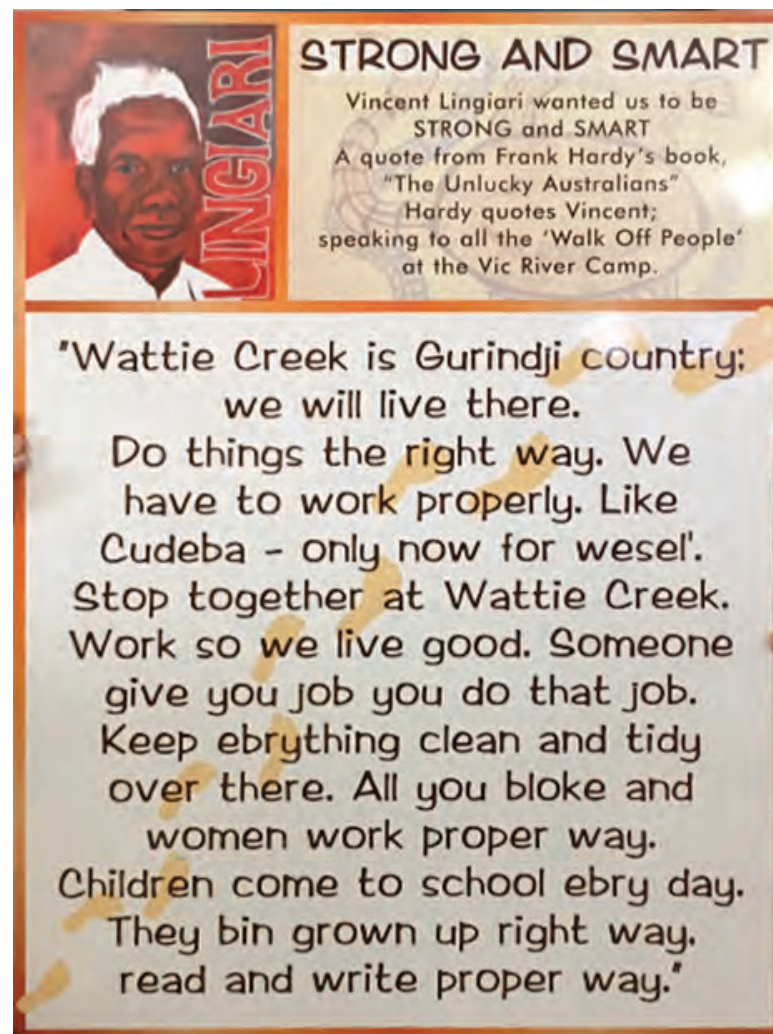


**We need to celebrate the contribution and rich legacy of Aboriginal Elders and leaders...and the countless Aboriginal people who each and every day put the needs of the community above their own to build better futures for everyone.**

We need to celebrate the contribution and rich legacy of Aboriginal Elders and leaders, like Pat Turner, Dr Miriam Rose Ungunmerr-Bauman, Veronica Dobson, Margaret Kemarre Turner, and those passed; Albert Namatjira, Vincent Lingiari and Charlie Perkins. We should also include the countless Aboriginal people who each and every day put the needs of the community above their own to build better futures for everyone. We need to acknowledge current successes, such as Anangu women represented by the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council who like so many, lead and guide their communities every day, often without recognition or reward.<sup>420</sup> It includes the young Arrernte women at the Akeyulerre Healing Centre who run their own bush medicine social enterprise. It includes countless other men and women of all ages, who throughout the NT continue to lead and inspire, often unsupported and unrecognised.

The Aboriginal Justice Agreement will build pride and recognition of the achievements and changes brought about by Aboriginal leadership to strengthen communities and reduce social problems and offending. This will help restore the values that Aboriginal people said in the NTAJA consultations are missing, suppressed, disguised or driven by only a few. This will help create a safer and more cohesive Territory for everyone.

*Figure 25. A poster in a council office showcasing the strength and resilience of a past Aboriginal Elder, Vincent Lingiari*





## 4.6 Leadership and culture



### What we were told:

*Recognising cultural authority will restore leadership.<sup>421</sup>*

*The community as a whole needs to be verbally informed of roles and expectations for government consultations in the future.<sup>422</sup>*

*Being taught culture is the reason that many of the community Elders believe that they never got into trouble with their law as it provides a source of strength and resilience.<sup>423</sup>*

*If we could have our own law then things would be different.<sup>424</sup>*

*Young people aren't listening to Elders and their parents as the family structure isn't there like it used to be – like it should be.<sup>425</sup>*

*We need to support family even when they are offending.<sup>426</sup>*

*Young boys think that they don't need formal education and that they have every right to do whatever they want once they are initiated.<sup>427</sup>*

*There is a need for a cultural base where the family can make the decision on how the offender can be rehabilitated.<sup>428</sup>*

*It starts with skin groups treating each other fairly and parents ensuring that kids are taught discipline.<sup>429</sup>*

*Police will need to respond to every call for help (big or small) in order to support the cultural authority of Elders in community and legitimise their own authority.<sup>430</sup>*

*The reason why people are in prison is because they never followed and were not allowed to do our law.<sup>431</sup>*

*Payback is not fair – even when you haven't done anything wrong you could still get payback done to you if it was your family that did the wrong thing.<sup>432</sup>*

One of the important ways in which Aboriginal people are leading and strengthening their families and communities is through the maintenance of Aboriginal language and culture, and passing it on to younger generations.<sup>433</sup> During the NTAJA consultations many Aboriginal people saw this as a protective factor that was necessary to keep their families out of trouble.

There are so many elements to this critical work: caring for country, teaching the kinship system, maintaining ceremonies, grieving and mourning, maintaining traditional knowledge and practices, and teaching culture and language. It is about guiding children and young people, and by teaching and transferring these practices to children, they are strengthened and supported, both physically and emotionally, across all generations.



During the NTAJA consultations some people discussed how cultural practices can positively impact on the values and attitudes of young people, for example, the importance of ceremony in generating an ethos of respect, maturity, responsibility and reciprocal obligation.<sup>434</sup> Elders particularly were concerned about their lack of influence and the erosion of cultural law and authority and how it can be strengthened and supported. Many Aboriginal people commented that without cultural authority and the embedded values of respect, honesty and integrity then leadership is hard to maintain. Aboriginal people called for decision makers to respect cultural authority and recognise its role in strengthening law and order and community cohesion.<sup>435</sup> They also called for all Aboriginal people to be held responsible and be dealt with by community and cultural leaders, including Elders.<sup>436</sup>

Some difficult conversations about the role of 'payback' occurred as part of the NTAJA consultations. Although a range of views were expressed, the predominant view was that physical 'payback' is no longer appropriate in a modern context.<sup>437</sup> The strengthening of cultural authority and leadership remains important and there are a range of ways aside from physical 'payback' that communities can demonstrate traditional obligations and lore. The potential for Aboriginal leadership to assist in the maintenance and return of community cohesion should not be underestimated or discounted.

## 4.7 Aboriginal Justices of the Peace and Commissioners for Oaths

The AJU has developed a program to increase the number of Aboriginal Justices of the Peace (JP) and Commissioners for Oaths (CO) in the NT. The overarching aim of the initiative is to assist Aboriginal Territorians in navigating and accessing key services that impact on a person's interaction with the justice system.<sup>438</sup>

JPs assist the public by administering oaths; witnessing affidavits and documents; certifying original documents, such as birth certificates and passports;<sup>439</sup> and by issuing search warrants in the NT, where appropriate.<sup>440</sup> JPs are appointed under section 5 of the *Justices of the Peace Act 1991* (NT) and must comply with the JP Code of Conduct and Handbook.<sup>441</sup> The *Oaths, Affidavits and Declarations Act 2010* (NT) provides for the appointment of COs who may administer oaths, witness affidavits and attest execution of any document.<sup>442</sup>

At present there is a limited number of JPs and COs in the Territory. As of November 2018, there were 216 registered JPs and 707 COs, of whom 11 and 17 were identified as Aboriginal respectively. Low participation in these roles by Aboriginal Territorians relates to some extent to poor communication about the roles and responsibilities associated with these positions and a failure to recognise the benefits of supporting local Aboriginal leadership.

Increasing the number of Aboriginal Territorians appointed to these roles has the potential to strengthen and broaden Aboriginal leadership and improve access to justice services, especially in remote Aboriginal communities. Aboriginal Territorians are more likely to seek the assistance of JPs and COs who are well known and trusted within communities.

There are some barriers to the implementation of this initiative, particularly in community settings. One concern is whether conflicts of interest may arise from the significant kinship and family obligations that may clash with the responsibilities of a JP or CO. To overcome such barriers, it will be beneficial to have more than one JP or COs based in any one community, as well as to support Aboriginal JPs and COs to work between a number of communities. Given the significant number of Aboriginal Territorians who also speak multiple Aboriginal languages, expanding the number of Aboriginal JPs and COs can only have a considerable positive impact on improving access to justice and other government services.

## Aim Three

Improve justice responses and services to  
Aboriginal Territorians





## 5.1 Introduction

During the AJA consultations many participants expressed the view that justice services and responses are not meeting the needs of Aboriginal people and communities in the NT.

Many of the challenges to improving justice services were recognised and discussed during consultations. The Northern Territory is sparsely populated with many people living remotely. Over 30% of the population is Aboriginal, with over three quarters living in remote or very remote areas. Many Aboriginal people in the NT speak an Aboriginal language at home, and there are 104 Aboriginal languages or dialects. There is also a significant history of grief, loss and trauma among many families which has ongoing impacts and needs to be addressed in accordance with recognised principles of trauma-informed practice.

The experiences shared during consultations indicate that improving the cultural competence of justice agencies and professionals is an urgent priority. Effective, culturally competent justice responses and services will help ensure that Aboriginal people are treated fairly and without discrimination.

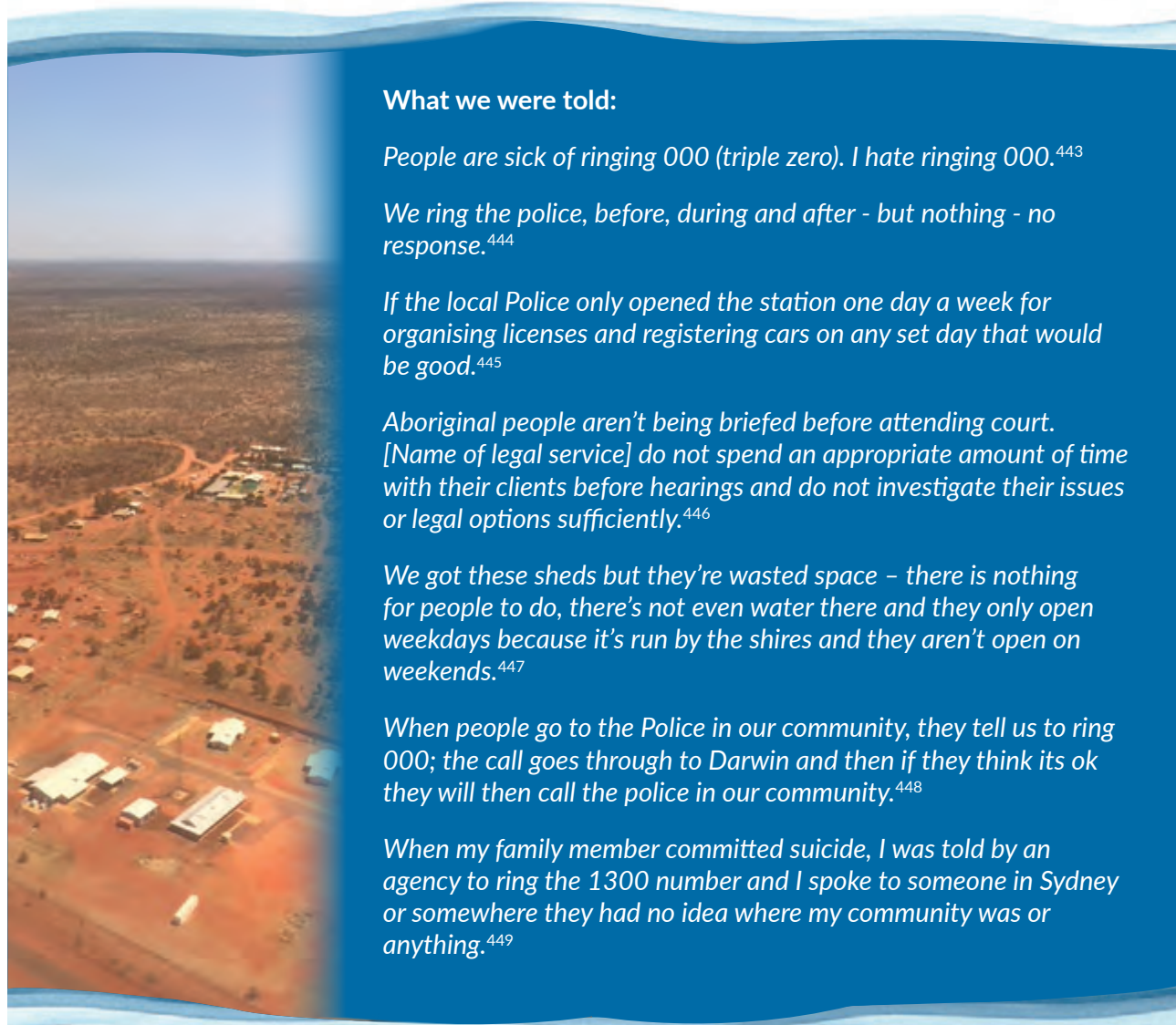
To reduce Aboriginal incarceration and recidivism rates, the justice system must increase its efforts to tackle the underlying causes of offending and reoffending, and provide greater opportunities for change as an integral part of the system. This must occur for Aboriginal people held in custody and for those in the community.

Improving justice responses and services to Aboriginal Territorians is one of the major aims of the NT Aboriginal Justice Agreement.





## 5.2 Challenges to service delivery in the NT



### What we were told:

*People are sick of ringing 000 (triple zero). I hate ringing 000.<sup>443</sup>*

*We ring the police, before, during and after - but nothing - no response.<sup>444</sup>*

*If the local Police only opened the station one day a week for organising licenses and registering cars on any set day that would be good.<sup>445</sup>*

*Aboriginal people aren't being briefed before attending court. [Name of legal service] do not spend an appropriate amount of time with their clients before hearings and do not investigate their issues or legal options sufficiently.<sup>446</sup>*

*We got these sheds but they're wasted space - there is nothing for people to do, there's not even water there and they only open weekdays because it's run by the shires and they aren't open on weekends.<sup>447</sup>*

*When people go to the Police in our community, they tell us to ring 000; the call goes through to Darwin and then if they think its ok they will then call the police in our community.<sup>448</sup>*

*When my family member committed suicide, I was told by an agency to ring the 1300 number and I spoke to someone in Sydney or somewhere they had no idea where my community was or anything.<sup>449</sup>*

### 5.2.1 Geographical barriers

The NT population is geographically dispersed over a vast region and the NT has extreme weather patterns that make it challenging to deliver year-round services. These unique challenges influence service delivery by government agencies and contracted service providers in the NT.

As outlined in section 2.2, 77% of Aboriginal people in the NT live in remote or very remote areas. There are 96 remote communities and over 600 homelands in the NT. 75% of roads in the NT are unsealed. Some locations can be inaccessible for part of the year, or only accessible via unsealed roads or by chartered aircraft. Weather patterns complicate service delivery further, with the Top End of the NT prone to flooding, storms and cyclones, and the southern region experiencing intense heat and flash flooding. Access to services is influenced by these distinct physical, geographic, climatic and population features.


Against this background, it can be challenging to ensure that the additional costs of providing services in this environment are fully taken into account in service planning, development and delivery. Many justice-related services have a limited or intermittent (e.g. monthly) presence in certain communities, and may not be available in some communities at all, thereby requiring clients to travel to a larger community or town to access services. In 2014-15, the Productivity Commission found that the primary reason Aboriginal people had problems accessing services was generally because they were either offered infrequently or not offered at all in a community.<sup>450</sup>

This was a recurring theme in the consultations. Aboriginal people raised concerns about the distances they were required or expected to travel to access services and requested that services were offered in communities and regional towns more frequently. Often access to services or a program is required by a court order so attendance is non-negotiable. For example, one community reported that it can cost up to \$600 each way to organise transport to the nearest circuit court which is only accessible via plane or a boat and a vehicle.<sup>451</sup>

Urban-based service provision assumes that Aboriginal Territorians can and will travel, often long distances, away from support and family to access the services needed. Low income, no or limited public transport, and limited access to private vehicles can make it challenging for many Aboriginal people to attend specialist programs. This limits access to programs and services that are provided to help Aboriginal Territorians address the underlying causes of their offending. It also limits the capacity of victims, witnesses and persons at risk to access the services they may need.<sup>452</sup>

Research has highlighted that Aboriginal women in particular, will often refrain from accessing services due to the practical difficulties of childcare and accommodation costs, as they do not have cars, licences, money for travel, or access to accommodation and childcare.<sup>453</sup>

### 5.2.2 Language and communication barriers



**What we were told:**

*There are no interpreters in prison – I've been helping other fellas in here who can't read or write English that well by writing letters for them or reading stuff and explaining it. If I don't help them no one will – it can take days to get an appointment with your lawyer and sometimes we just can't wait that long.*<sup>454</sup>

*Aboriginal people find it difficult to understand the justice system, laws, and court ordered conditions and sentences.*<sup>455</sup>


*When the judge says I can't drink: where is that? Can I drink in Darwin but not at home? I don't have the opportunity to ask these types of questions in court.*<sup>456</sup>

*It's hard for people to talk to psychologists or counsellors because they don't understand the words the counsellors are using – it would be good to have an interpreter to help but there might be English words we don't have in our language.*<sup>457</sup>

Over 15% of the NT population speak an Aboriginal language at home, and there are up to 104 Aboriginal languages or dialects spoken.<sup>458</sup>

The NT Government recognises the importance of providing Aboriginal interpreters when people access justice services and has a whole-of-government Language Services Policy.<sup>459</sup> The policy aims to identify and provide services to ensure all Territorians receive equitable access to NT Government programs, services and information.

It also aims to support agencies to develop language-appropriate procedures and practices and to enhance the use of language services by NT Government agencies. The policy requires agencies to adopt a systematic approach to language services and envisages that NT Government agencies will develop agency-wide language services policies.



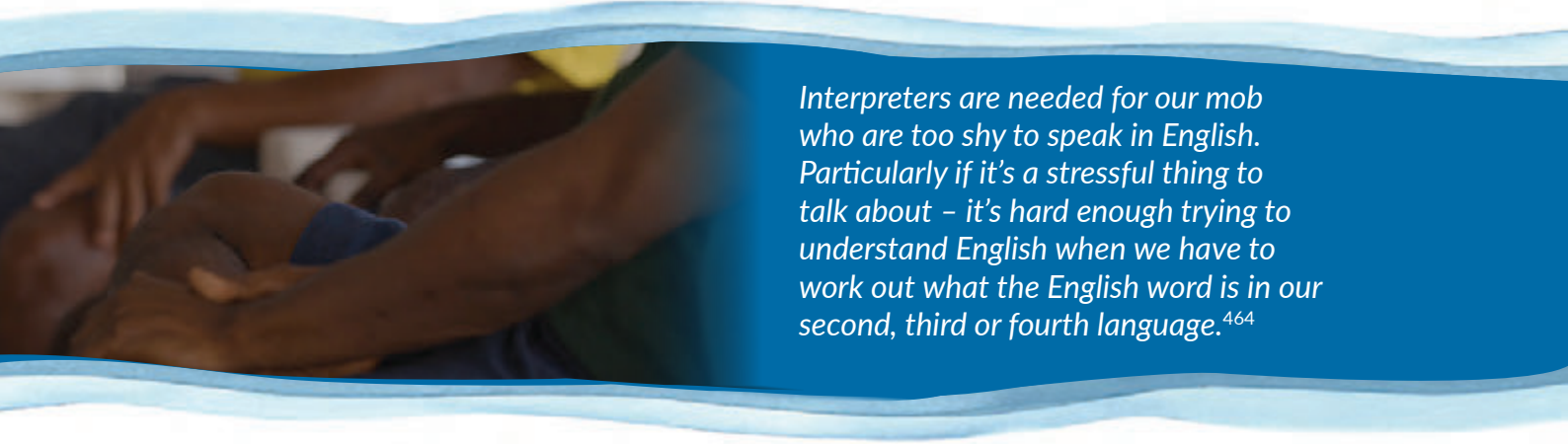
Despite these requirements, it is clear from the NTAJA consultations that many Aboriginal people do not receive the language services they need, and as a result struggle to make sense of justice processes and outcomes. Few agencies have a comprehensive agency-wide language services policy, the notable exceptions being the Department of Health, Northern Territory Police, Fire and Emergency Services and Territory Families.

There are a number of agency-specific initiatives underway aimed at improving service delivery to speakers of Aboriginal languages and access to Aboriginal interpreters in the Territory. For example, considerable work has been undertaken within the justice system towards simplifying language and facilitating interpreter use, including *The Plain English Legal Dictionary* and NT Supreme Court and Local Court *Interpreter Protocols*.<sup>460</sup> Correctional Services has recorded parole and court orders in four languages.

Interpreting services are required at many stages in the justice system: at first contact with the police, during police interrogation, while being interviewed by legal practitioners, during a trial or hearing, when being assessed by Corrections staff, when victims and witnesses are being interviewed or giving evidence, or when attending programs in prison or the community to address the causes of offending. Language barriers and cultural differences can have an impact on justice responses, and can result in unfair processes, outcomes and sentencing.<sup>461</sup>

The NTAJA consultations identified Aboriginal people's concerns when ringing 000. People complained of long wait times for the call to be answered, no access to an Aboriginal interpreter (yet access to 54 other non-Aboriginal languages is available), operators sometimes failing to understand the situation or the need, resulting in hang ups, abusive calls, frustration, an inability to defuse or triage the call, and the under-reporting of crime.<sup>462</sup>


The NTAJA consultations also revealed that language barriers and the failure to use qualified interpreters has a significant impact on the capacity of Aboriginal offenders to address the underlying causes of their offending in both the community and in prison. Assessments for access to programs are often conducted without an interpreter, and usually there are no interpreters available during group prison programs. Interpreters are usually only provided for individual sessions with high risk offenders, and often are linked in by phone. Prisoners admitted during the NTAJA consultations that they often didn't understand the content of programs they attended, and had 'just nodded' in sessions so they didn't draw attention to themselves. One prisoner with better language skills said he sometimes helped other prisoners who couldn't understand what was happening in group sessions.<sup>463</sup>



*Interpreters are needed for our mob who are too shy to speak in English. Particularly if it's a stressful thing to talk about – it's hard enough trying to understand English when we have to work out what the English word is in our second, third or fourth language.*<sup>464</sup>



### 5.2.3 Technological barriers



**What we were told:**

*We don't have internet access here, they only have it in the office.<sup>465</sup>*

*A lot of people from this community do not have the means to attend court. There is limited access to post or mail and internet, and so many people aren't even aware when they've received a summons.<sup>466</sup>*

*Counselling services in remote areas can often be over the phone counselling sessions, and in some instances this may mean talking on a public payphone in full view of the community.<sup>467</sup>*

*The only public phone is on the oval and is in full view of the community. The oval has lights so people still cannot use the public phone at night time without everyone knowing who called, and when incidents are reported it takes hours for the police to come out and they generally only arrive once the trouble is finished.<sup>468</sup>*

Complicating these matters even further is the fact that the availability of technology, including audio-visual links such as Skype, is limited, or at times not considered as an option by service providers in many remote areas across the NT. The quality of the connections and communication achieved are often poor. The high usage and reliance on mobile phones by Aboriginal clients, rather than landlines, prevents easy access to government and other agencies, when the standard 'free' 1800 or 1300 numbers are not free from many mobile phones.<sup>469</sup> Many Aboriginal people identified that they do not own reliable phones, access to landlines or phone contracts, instead relying on limited pre-paid credit. As a result, Aboriginal people may need to use public pay phones that offer little to no privacy or confidentiality.

Common forms of communication in the wider community, such as email, may also be inappropriate as many Aboriginal clients have little or no access to, or knowledge of, computers or the internet. This can be compounded even further where there are low literacy levels. In addition, emailed communication when clients are using public or shared computers, can place the client's safety and confidentiality at risk. Many Aboriginal Territorians live in areas where there is no post office and no or limited postal service. These factors make two-way communication with service providers and justice agencies problematic, if not impossible.<sup>470</sup>

### 5.2.4 Impact of poor service delivery

During the NTAJA consultations participants revealed the impact of poor service delivery. Well-meaning but ineffective efforts by Aboriginal and non-Aboriginal people, government and non-government agencies to fix problems were identified and reported on at length during the consultations. Many participants expressed frustration that their concerns were never heard and were not adequately addressed. Such failures have significant impacts on Aboriginal Territorians, resulting in the escalation of the same or interrelated problems over time.<sup>471</sup>

The NTAJA consultations and national inquiries and reports have identified and confirmed that where problems remain unaddressed, they can escalate into more serious matters such as homelessness, family disputes, loss of work or income, alcohol or drug problems, mental health issues, or criminal behaviour and imprisonment.<sup>472</sup> Legal problems have a complex interrelationship with social problems.

The Law Council of Australia has also recognised that when the legal problems of disadvantaged people cannot be quickly identified and resolved, they are likely to escalate and multiply.<sup>473</sup>

Effective service delivery means Aboriginal Territorians are confident in accessing, navigating and engaging with services. This requires appropriate communication, and ongoing support and partnerships to ensure that Aboriginal Territorians feel comfortable accessing and navigating services.

Without attention to these factors, the ability for Aboriginal Territorians to fully engage in programs and services to end reoffending will be limited or largely ineffective. During the NTAJA consultations it was raised that access to government services and entitlements (such as renewing a driver's licence, or applying for a seniors card) may be hard to navigate for Aboriginal Territorians.<sup>474</sup>

Recognising and addressing these factors are important to achieve the aims of the Agreement.

### Improving responses – Births, deaths and marriages

Many activities to improve justice services to Aboriginal Territorians have already commenced.

Over a three-month period in late 2017, the Registrar-General of Births, Deaths and Marriages (BDM) in partnership with the AJU, initiated a pilot project to provide BDM services free of charge to a number of remote communities in the NT.

During this period, the BDM team delivered services to 17 locations, issuing 1265 birth certificates and 33 Aboriginal population record certificates, including processing 347 applications for a name change. This remote service delivery has now been approved as a permanent program.

A further role performed by the BDM team is providing access to wills and advanced personal plans on behalf of the Public Trustee.

Advance personal plans were developed with assistance from the AJU to accommodate Aboriginal people's needs and support Aboriginal Territorians to finalise affairs on death or total incapacity in a culturally competent manner.

The importance of wills became apparent when it was identified that these documents provided Aboriginal Territorians with a culturally-secure legal document that outlined the instructions of a deceased person regarding their estate, distribution of inheritance and type of burial.

Since November 2018, there has been an increase in the number of wills and personal plans that have been created and registered by Aboriginal clients with the Public Trustee.



### 5.3 Collaboration by government agencies



#### What we were told:

*We have slipped through the cracks in terms of government service provision.<sup>475</sup>*

*Police hold community safety meetings but no one turns up – they don't help us when we need it.<sup>476</sup>*

*There is a need within government to engage with other agencies and work together to fix this problem.<sup>477</sup>*

*Community meetings are breaking down because there have been lots of promises and no outcomes.<sup>478</sup>*

*The community as a whole needs to be verbally informed of roles and expectations for government consultations in the future.<sup>479</sup>*

*The shires and intervention changed everything for Aboriginal communities – families used to look after families and worked with the police. Community doesn't come together anymore.<sup>480</sup>*

*Community members stated that the Police Community Safety Committee is held fortnightly, but is generally only attended by board members from local organisations and government stakeholders.<sup>481</sup>*

During the NTAJA consultations it was acknowledged that some government and non-government agencies have made considerable efforts to improve service delivery and work together. However, participants felt that the lack of genuine partnership between service providers and communities, and across multiple service providers to benefit communities, continues to hinder progress. Participants felt that the lack of coordination and communication between government agencies and between government and non-government organisations can make service delivery more expensive, less accessible and creates confusion among Aboriginal Territorians as to what services are available.

During the consultations, government agencies recognised that they sometimes found it difficult to work across agencies and also collaboratively with Aboriginal people.<sup>482</sup> In Alice Springs, it was noted that institutional silos in service delivery (a lack of collaboration between agencies) continue to exist and result in a lack of communication with community members about what programs and services are available. This lack of communication has detrimental effects on Aboriginal people and interferes with the effectiveness of programs. Without input from Aboriginal people and local agencies, services often overlap, are unscheduled, and are disorganised, resulting in poor service delivery that fails to meet the needs of Aboriginal people.

Comments during the NTAJA consultations mirrored a comment made by the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Tom Calma, in 2006:

*Put simply, governments risk failure if they develop and implement policies about Indigenous issues without engaging with the intended recipients of those services. Bureaucrats and governments can have the best intentions in the world, but if their ideas have not been subject to the 'reality test' of the life experience of the local Indigenous peoples who are intended to benefit from this, then government efforts will fail.<sup>483</sup>*



The RCPDCNT found that Commonwealth and Northern Territory Government investment in child protection and youth justice services 'is not rigorously tracked, monitored or evaluated to ensure that it is appropriately distributed and directed.'<sup>484</sup> Evidence presented to the RCPDCNT showed that:

- government funds were directed to programs without reference to the existence of other programs, their target locations or outcomes, with the absence of a clear coordination framework for funding by each level of government
- many remote communities are contending with dozens of different programs delivered by a myriad of government agencies and contracted service providers
- many programs do not appear to have been evaluated against their intended outcomes
- consultation and engagement with affected Aboriginal communities has generally been absent in all levels of program design and service implementation.<sup>485</sup>

The Productivity Commission is conducting an inquiry into expenditure on children and family services in the Northern Territory and is expected to report to the Australian Government in April 2020.<sup>486</sup>

Many of these problems were evident during NTAJA consultations. Few agencies used local data or evidence (current or projected) to inform the delivery of a program. Consultation participants identified that too often agencies deliver programs based on other, often interstate models, with no recognition of geographic or demographic factors, and no invitation for local input to determine if they meet community needs. Failure to properly monitor and evaluate programs, including whether programs are delivered in a culturally competent manner, was also identified as an issue. Effective monitoring and evaluation practices would enable continuous improvements to be made so that services and programs meet the needs of Aboriginal Territorians.

Given the limited services in remote communities, it is vital that service providers are adequately communicating with one another to ensure efficient access to relevant services. It is important that there is greater cooperation, clarity and communication particularly between service providers and government agencies. Figure 26 is an example of government and NGO service mapping for one Aboriginal community, highlighting the importance of effective communication and collaboration given the number of services and programs on offer.



During the NTAJA consultations, there was criticism of police and health agencies for working in isolation, and the lack of Aboriginal people working in these services as Aboriginal Health Workers (AHW) or Aboriginal Community Police Officers (ACPOs).<sup>487</sup> Other criticisms included a failure to operate in a respectful, culturally competent way and breaches of privacy (for example, attempting to communicate with community members by putting up public notices containing details of individual health appointments, which has caused embarrassment and breached confidentiality).<sup>488</sup> Although it is important that service providers continue to communicate with community members, this cannot come at the expense of privacy. Such conduct poses a serious risk of increasing community distrust of service providers, and therefore decreases the uptake of necessary services.

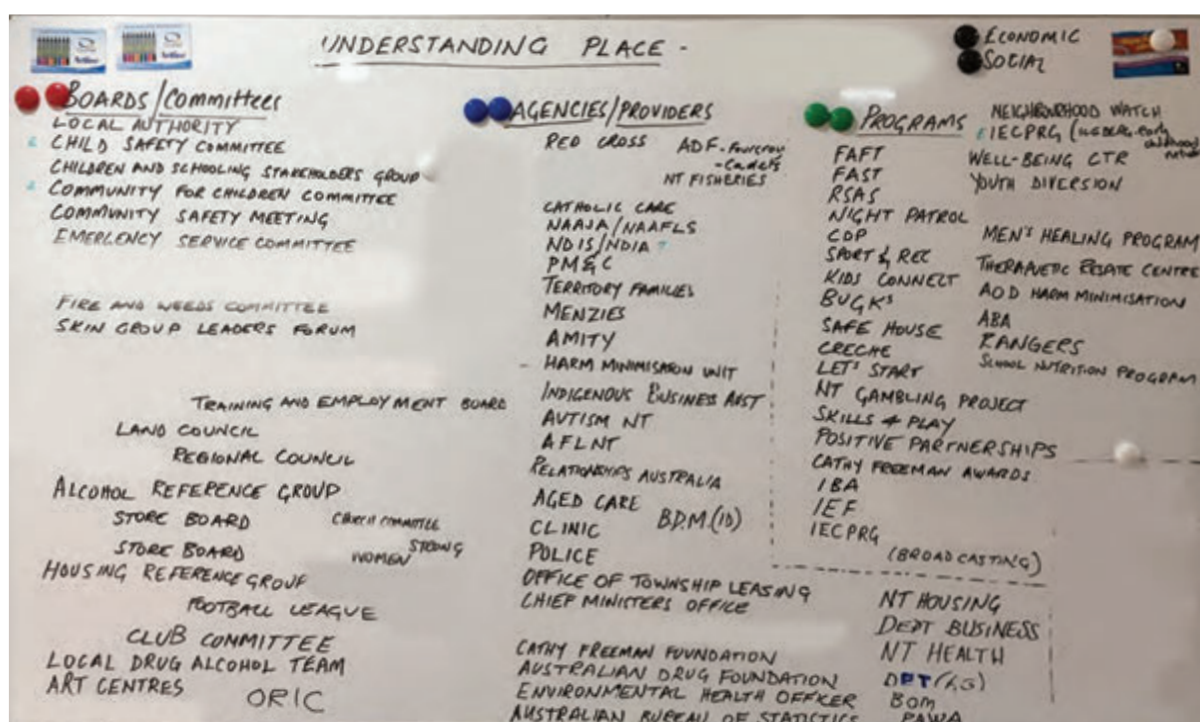
The factors which drive offending and reoffending are highly complex, deeply interrelated, and often different for individuals and communities. Solutions need to be evidenced-based, culturally-safe and agencies need to build their capacity and confidence to work collaboratively within communities. Some opportunities for improvement can be quite straight forward, such as service providers being properly introduced to local residents and engaging with community about important matters. Similarly, employing Aboriginal people in key positions can help ensure culturally competent advice is provided and accessible at all stages.

In several communities, Aboriginal people noted that one agency has monthly meetings with all service providers and agencies but, even then, issues are not addressed.<sup>489</sup> Participants also noted that these community meetings do not adequately involve Aboriginal people.<sup>490</sup> This undermines trust and confidence between the community, service providers and government agencies.

During the NTAJA consultations, participants outlined that many programs do not come to fruition, or are funded for short periods, and although reasons are given, Aboriginal people are left without the services they need.<sup>491</sup> Another barrier to successful navigation of services is the constant change to programs and services, due to discontinuation or changes in funding and other matters. Consultation participants said some services delivered in remote communities did not have sufficient resources or skilled staff willing or capable to deliver the programs.<sup>492</sup>

These issues highlight that greater investment in partnerships between Aboriginal communities, government agencies and non-government organisations is required to regain the confidence of Aboriginal Territorians. Working collaboratively is the best way to reduce reoffending, improve services to Aboriginal Territorians and create a safer Territory, and that is why the Agreement will take this approach.

Figure 26. Mapping NGO and government services in a small Aboriginal community





## 5.4 Cultural competence



### What we were told:

*Government runs meetings balanda (non-Aboriginal) way – would get greater response from community members if meetings were held outside under a tree.<sup>493</sup>*

*The policy of the agency is that they won't let me take a mum if she has had one drop of alcohol, so I can't take them into the safe house. So where do the mums and kids go if I can't take them? I think she goes back to where it is unsafe.<sup>494</sup>*

*They [the police] sleep here and eat here but otherwise they're working somewhere else... we don't see them as part of the community. They don't feel part of the community either. They travel to Darwin on weekends to see family rather than bringing them out here.<sup>495</sup>*

*Prisoners stated that being given more time to talk with family on the telephone would help alleviate mental health issues. At the moment they can only speak with family once a week and the telephone conversation costs \$5.00.<sup>496</sup>*

*Names were called out wrong for people at court – those people were there but did not realise they were being summonsed and now have warrants for their arrest issued.<sup>497</sup>*

*There are not enough Aboriginal service providers nor Aboriginal employees working in Corrections (i.e. profile of the agency does not match profile of the majority of the agency's clients). This is particularly an issue where a white person has been working with Aboriginal people for months but still has no general knowledge/understanding of Aboriginal people, or the specific Aboriginal person they are working with and their family.<sup>498</sup>*

Cultural competence is 'a set of congruent behaviours, attitudes, and policies that come together in a system, agency or among professionals and enable that system, agency or those professions to work effectively in cross-cultural situations'.<sup>499</sup> A culturally competent service accommodates and caters to the cultural needs and values of Aboriginal Territorians.

The NTAJA consultations found that Aboriginal Territorians are too often exposed to programs, responses and professionals that are not culturally competent. This is a major challenge that the Agreement will seek to address.

Programs that are culturally competent need to be developed and delivered in partnership with, or with input from, local Aboriginal people. There are no standard approaches to developing and implementing cultural competence. Programs that are effective and culturally competent in one context cannot be assumed to work in another. The key is to work closely with Aboriginal people to ensure that the needs of Aboriginal Territorians in that particular region are met.





### What we were told:

Police in this community need to do cultural competency training before they are posted in the community.<sup>500</sup>

Tender contracts for service provision to Aboriginal people should have a compulsory requirement to demonstrate previous examples of culturally competent service delivery.<sup>501</sup>

There have been a number of attempted suicides in this community and community members would like culturally appropriate mental health services offered in the community.<sup>502</sup>

There is a lack of cultural competence in government service provision. Aboriginal people don't understand the clinical aspects of health and respectively government services don't appreciate the way Aboriginal people prefer to engage with service providers.<sup>503</sup>

There are no Aboriginal Community Police Officers or Aboriginal Liaison Officers in this community – Elders think that bringing in ACPOs or ALOs would help calm down any situations that arise in communities. Police would benefit from cultural education before coming into community in order to understand the social dynamics within the community, however, this could be a problem because police officers seem to be rotated every 6 months.<sup>504</sup>

The NTAJA consultations revealed different ways in which programs were falling short of cultural competence. The view was expressed in many consultations that a low uptake of programs, or the ineffectiveness of programs, is often related to the fact that programs are not culturally competent.<sup>505</sup>

Sometimes the values and attitudes of staff are a barrier to culturally competent service provision. A perceived lack of respect for, or an unwillingness to listen to, Aboriginal people can be at the core of the issue. Related to this is an over-emphasis on deficit labelling rather than recognising the strengths and contributions of Aboriginal people. Failure to provide an interpreter when needed can mean that Aboriginal Territorians can't access those programs that are available in prison or in the community. Language barriers and the failure of professionals to appreciate the cultural context and meaning of certain actions can lead to misunderstandings between clients and service providers.

The lack of culturally competent mental health services in communities was frequently raised.<sup>506</sup> Aboriginal people experience disproportionately high rates of poor mental health and wellbeing. Even when psychologists are available in communities, the short-term nature of the service can make it difficult to build necessary relationships.<sup>507</sup> Aboriginal community members may not feel comfortable confiding sensitive details to a non-Aboriginal person, especially someone they don't know very well.<sup>508</sup> Insufficient gender balance of staff can impede access to services including specialist health providers in some communities, as was raised in the AJA consultations.<sup>509</sup>

It was emphasised in the NTAJA consultations that the high rates of suicide and trauma (including intergenerational trauma and grief) experienced by Aboriginal people make it even more important for service providers to be culturally competent and have a capacity for outreach services and face-to-face contact. If they do not, there is a risk that there will be no uptake of services and the trauma and grief will remain undiagnosed, untreated and unaddressed.

There have been attempts to improve the cultural competence of justice programs, services and communications. For example, NT Police has pre-recorded police cautions in 18 Aboriginal languages that have been loaded onto almost 1500 mobile devices for use by police. However, data shows that the recordings have been accessed by police only 165 times in its two years of operation.<sup>510</sup> This highlights that training and a greater emphasis on monitoring implementation of initiatives in practice are important to improving and maintaining a culturally competent and confident justice system.

High staff turnover in the NT is a factor that can impact on the provision of culturally competent services. New staff need training and an opportunity to learn about culturally competent service provision before they can deliver services effectively. Trust and respect between community and service providers is critical to this learning.

Building more culturally competent responses and services, in partnership with Aboriginal Territorians, will be a key priority of the Agreement.

## 5.5 Racism, discrimination and bias



**What we were told:**

*It's hard to have a safe community when police are invisible, un-cooperative or they fail to have a relationship with us.<sup>511</sup>*

*It can take up to 12 hours for a police response even though they live and work in the community.<sup>512</sup>*

*Some [government agency employees] 'talk smart' and are racist to us.<sup>513</sup>*

*Once upon a time police dropped in for a cuppa - they earnt our respect but not now.<sup>514</sup>*

*The police introduced themselves to the local non-Aboriginal person, but they haven't introduced themselves or engaged with any community members and they have been here from three months to three weeks.<sup>515</sup>*

Discrimination occurs when someone is treated unfairly on the grounds of attributes like race, sex or age.

During the NTAJA consultations a number of Aboriginal people shared their own or other people's experiences of being treated unfairly in their dealings with justice agencies because they were Aboriginal.

There was also a common perception that there is a strikingly low level of empathy towards Aboriginal defendants, prisoners and clients by some professionals working in the justice system. People saw this as correlating with a poor uptake of, or engagement with, programs and services by Aboriginal people.

The kind of conduct raised during the AJA consultations included:

- racist or derogatory comments or remarks made frequently about Aboriginal people
- Aboriginal people believing they were treated differently by police, correctional services staff or other professionals because they were Aboriginal

- the failure to be offered or provided with an interpreter
- failure to be provided with culturally appropriate programs and/or interpreters, resulting in a situation in which Aboriginal people could not understand or benefit from a program
- the poor treatment of Aboriginal offenders while incarcerated
- police officers berating and talking down to Aboriginal people
- the failure to investigate matters affecting Aboriginal people diligently or at all.<sup>516</sup>

During the NTAJA consultations Aboriginal people identified that racism and discriminatory treatment was not limited to justice agencies and was experienced throughout life, including among government and non-government services, schools, shops and businesses. Aboriginal staff facilitating the consultations reported experiencing and being exposed to racism and racist remarks. It is important to emphasise that there are many professionals within and outside the justice system who fulfill their roles with dedication, care and respect, in a professional and culturally competent way.

The Human Rights and Equal Opportunity Commission (HREOC), the RCIADIC, and various academic writings have all noted the relevance of institutionalised racism as a barrier to justice for Aboriginal people over many years and in many jurisdictions.<sup>517</sup>

Perceived racism and the differential treatment of Aboriginal people in the justice system has been identified by the Judicial Council of Cultural Diversity (JCCD) as creating barriers which prevent Aboriginal people from seeking help at the early stages of violence. As the JCCD noted, incidents of police treating women dismissively or sending victimised women home to a violent situation or concerning statements from police such as 'it wasn't a serious enough breach', 'it's a family matter', 'it's a cultural issue', 'we can't get involved', or 'you asked for it', all play a role in the continuation of violence.<sup>518</sup>

Racial discrimination is likely to be under-reported. According to work undertaken by Chris Cunneen and others, 78.6% of Aboriginal people who identified discrimination as an issue did not seek legal advice or help.<sup>519</sup>

Experiences of racism have a profound impact on Aboriginal Territorians, adversely affecting physical and mental health and undermining confidence in government agencies. Racial discrimination in all forms reduces the trust and confidence that Aboriginal Territorians have in police, schools, doctors and other service providers, and reduces the likelihood they will engage with that service, no matter how necessary or urgent.

Researchers have recently explored significant associations between racism and anxiety, depression, suicide risk and poor overall mental health for young Aboriginal people living in the Top End of the NT. Of the 32% of participants who reported experiences of racism, most reported significantly more severe and frequent struggles with mental health. Particularly in late adolescence and early adulthood, Aboriginal people were found to have heightened vulnerability to psychological distress resulting from experiences of racism.<sup>520</sup>

**Experiences of racism have a profound impact on Aboriginal Territorians, adversely affecting physical and mental health and undermining confidence in government agencies.**



Racism, discrimination and unfair treatment is unacceptable to the Northern Territory Government in any form, and may also be unlawful. The Agreement will work to reduce racism, discrimination and unfair treatment across all justice agencies and in all spheres of life in the Territory. This will require Aboriginal people and organisations to work closely with professionals in the justice system to create a changed culture in which there is no tolerance for racism and discrimination.

## 5.6 Complaint mechanisms



**What we were told:**

*Aboriginal people generally don't realise they have a right to complain or even who to complain to.<sup>521</sup>*

*We don't complain because that's not our way – we feel more comfortable talking to family about problems and so when family aren't good to talk to we get quiet and end up doing things we shouldn't that get us into trouble.<sup>522</sup>*

*People here don't complain because it generally goes nowhere.<sup>523</sup>*

*The community could set up a group to help with complaints process but they need strong people who can talk up.<sup>524</sup>*

Community members expressed consultation fatigue particularly in relation to housing where much has been promised but not much has been done. There are also concerns that there is no complaints mechanism that community members are aware of if government contractors provide poor housing services.<sup>525</sup>

Concerns were raised that police are being too rough with young children and that a complaints process needs to be established to address this issue.<sup>526</sup>

There is a low uptake of complaints processes by Aboriginal people in the Northern Territory. Many Aboriginal Territorians don't realise they have a right to complain or have knowledge about how or who to complain to.<sup>527</sup>

Aboriginal people identified during consultations that the lack of uptake is because they don't have confidence in authorities or complaints processes due to past experience (their own or other people's), or a general expectation that complaining is futile. Some participants described past experiences of racism, or feared that if they made a complaint there would be repercussions for themselves and their family. This was particularly evident during consultations in remote Aboriginal communities.

Compounding these issues are the language and communication barriers, distance barriers and difficulties accessing reliable phones or internet services (described in section 5.2). Lack of confidentiality can also be a barrier to making a complaint. It can be particularly hard to make a complaint as a person in custody, or against authorities, especially when living in a remote community.

Each NT Government agency has a complaints management process, ranging from formal to less structured, depending on the nature of the organisation. In addition, there are a number of complaint mechanisms that are independent of government and deal with complaints about specific issues, such as the Ombudsman NT, the Children's Commissioner, the Health and Community

Services Complaints Commission, the Anti-Discrimination Commission, and the Independent Commission Against Corruption.

Nevertheless, the uptake of complaints processes by Aboriginal Territorians remains low. Some consultation participants reported that they had never heard of, and had no knowledge of these agencies.<sup>528</sup>

Recently, the Ombudsman has undertaken several initiatives aimed at increasing engagement with Aboriginal Territorians. These have included:

- visits to Aboriginal communities and organisations across the Territory
- improved reporting of the demographics of complainants (including Aboriginality)
- advertising on Aboriginal radio linked to community visits
- investigations on issues of relevance to Aboriginal Territorians, including the use of Aboriginal interpreters by NT agencies and the experience of incarcerated Aboriginal women.<sup>529</sup>

Increased awareness among Aboriginal Territorians about the available complaints mechanisms is needed to increase access, build confidence, and improve levels of trust between Aboriginal Territorians and government and non-government service providers. It is also important that Aboriginal Territorians have the capacity to provide feedback on agencies contracted by government to deliver services to Aboriginal Territorians, in order to ensure that barriers to effective service delivery are identified and addressed.

## 5.7 Media and communication



**What we were told:**

*We need to have signage like they have in other towns and regional areas about crashed cars — only just signs about no grog and no pornography, these are the only ones that are in our community.<sup>530</sup>*

*Why hasn't there been a family and domestic violence education awareness campaign given it's such a significant issue?<sup>531</sup>*


*I don't know what each government agency does or what they can do for me.<sup>532</sup>*

*[We] were not consulted about the outcomes or recommendations from the Royal Commission into the Protection and Detention of Children in the Northern Territory.<sup>533</sup>*

*Just because we can't read and write doesn't mean that you have to use cartoons to get your message across to us.<sup>534</sup>*

*The community as a whole needs to be verbally informed of roles and expectations for government consultations in the future.<sup>535</sup>*

During the NTAJA consultations, Aboriginal Territorians expressed concern that they did not have sufficient knowledge or information about what government was doing or what services were provided. This included matters not just relevant to justice, but government services in general. When information or media campaigns or consultations did occur, they were sometimes not relevant to Aboriginal people or not culturally sensitive or appropriate, especially where the target



audience is Aboriginal people. The failure to communicate in a way that works for Aboriginal people contributes to a low uptake of services and confusion about justice and other government responses.

Media and communication are important as they allow people to understand their rights and responsibilities, become aware of the services that are available, become informed and empowered to change behaviours, make informed choices, and comply with instructions including court orders. This helps keep communities safe and strong. The NTAJA consultations revealed a substantial gap in relation to effective and culturally competent communication from government agencies and service providers to Aboriginal Territorians.<sup>536</sup>

As outlined in section 5.2, language, geography and climate can provide challenges for agencies to deliver effective communication about government policies and programs in the NT. Just over 15% of the NT population speak an Aboriginal language at home, and there are up to 104 Aboriginal languages or dialects spoken.<sup>537</sup> 77% of Aboriginal people live in remote or very remote areas.

Without effective communication, Aboriginal people are unlikely to identify their concerns and experiences as legal issues (for example, housing, family violence, child protection, guardianship, consumer law or discrimination issues).<sup>538</sup> Without effective communication, people are unlikely to seek help early, and problems can become increasingly serious and overwhelming.<sup>539</sup> Research has highlighted that difficulties, especially in the health sector, can compound when the miscommunication is not recognised or addressed.<sup>540</sup> Without culturally competent communication about rights and entitlements and the avenues of potential assistance, the prospects of Aboriginal communities realising legal entitlements will remain very low.<sup>541</sup>

The engagement of local Aboriginal role models, mentors and leaders can be the most effective way of communicating with communities but is frequently underused. There is a need to support and engage local Aboriginal leaders who have the responsibility and capacity to communicate important messages between government agencies and Aboriginal communities.

A significant concern raised during the NTAJA consultations is that communications from government agencies (across all levels of government, and across justice and other agencies) are frequently framed using deficit labelling. This results in the stereotyping of Aboriginal Territorians as disadvantaged, deprived, needy or trouble-makers, rather than recognising their strengths and achievements. It also depicts communities as full of problems and obstacles. This overlooks the incredible contribution that Aboriginal people make on a daily basis to their families and communities. This tendency towards deficit labelling contributes to discrimination and racism and feeds a negative mindset in communities. It impedes the type of empowering collaboration between government agencies and Aboriginal Territorians that would achieve better outcomes. This is an issue that extends beyond the justice system.<sup>542</sup>

Focussing on the assets of Aboriginal communities, rather than needs, deficits, or problems, represents an important shift in the mindset and practice of people who work with Aboriginal Territorians.<sup>543</sup> Discovering and affirming these underutilised assets and untapped potential within Aboriginal communities are hallmarks of a successful and strengths-based approach to improving service delivery.<sup>544</sup>



**Deficit labelling contributes to discrimination and racism and feeds a negative mindset towards Aboriginal people.**



Insufficient or inappropriate communication was an issue consistently raised in consultations, with many Aboriginal Territorians feeling as though programs were not clearly explained or understood, leading to poor uptake.<sup>545</sup> During many NTAJA consultations, participants were asked which agency they would approach if they were concerned about a family member and worried that his or her behaviours could lead to offending; only two people identified that they would attend the local health clinic with no other agency nominated.<sup>546</sup>

Where government and non-government service providers are communicating information, this is often done in an inappropriate or inaccessible way, wasting resources and leading to frustration among Aboriginal Territorians, particularly in communities. For example, it was raised in the consultations and in published research that the blue signage referring to alcohol and pornography bans on entry into Aboriginal communities are viewed by many as examples of deficit labelling of Aboriginal people as a group, and also as discrimination and exclusion of Aboriginal voices.<sup>547</sup>

Service providers must also consider the accessibility of various methods and modes of communication. As noted in one consultation, literacy rates are low for some Aboriginal Territorians, making certain means of communication, such as media releases, notice boards or social media, inaccessible.<sup>548</sup> In addition, standard methods of communication are relatively inaccessible to Aboriginal people, especially in remote communities. Territorians living remotely are less likely to have consistent internet and social media access, good signal coverage, or reliable postal service. The consultations also revealed difficulties accessing television or radio.<sup>549</sup> These accessibility issues may have a greater impact when a service provider relies heavily on one channel of communication for service delivery, such as a website, online forms, or email.

Media campaigns serve as powerful tools to raise awareness of certain issues, promote policy changes, or increase engagement with services. It is essential that these initiatives are developed in close consultation with Aboriginal Territorians to ensure they are sensitive, appropriate, and meet the needs of the target audience.

A lack of diversity depicted in mainstream media campaigns undermines efforts to appeal to the wide range of Aboriginal viewers. Similarly, communications targeting Aboriginal Territorians should aim to represent the diversity of the NT's Aboriginal population, including people from various coastal and inland communities, language groups, and regional and remote locations.<sup>550</sup>



The NTAJA consultations and previous research have indicated several barriers to engagement with media campaigns by Aboriginal Territorians. The consultations identified that simplistic cartoons, caricatures and messaging, such as those depicted in Figure 27, should be used with caution. While visual aids can be useful when communicating messages to people with low literacy skills, research indicates they can be patronising and offensive to many Aboriginal people.<sup>551</sup> In addition, these cartoons may be perceived to promote negative stereotypes of Aboriginal people. Dissatisfaction with these forms of communication was particularly noted among demographic groups and regions where language proficiency and literacy tended to be higher, such as middle-aged participants and those living in metropolitan and regional areas. In general, they were seen as ineffective and a demonstration of the low level of cultural competency that was delivered by government agencies.<sup>552</sup>

Consultations identified that the heavy reliance on celebrity figures for media campaigns was ineffective for Aboriginal Territorians. The consultations highlighted that Aboriginal viewers may be less receptive to celebrity figures, particularly when interstate Aboriginal footballers are used in communication campaigns, as they are not perceived to have experienced the same personal circumstances as many Aboriginal Territorians, especially experiences of remoteness, hardship and poverty.<sup>553</sup> Rather, the involvement of local community leaders as role models and change agents, especially those that focused on women, was seen as relevant, engaging and empowering.<sup>554</sup>

These issues present ongoing challenges that the NT Aboriginal Justice Agreement will seek to address by improving communication about justice agencies, responses and services.

*Figure 27. Examples of inappropriate communication and messaging displayed in Aboriginal communities*



**Failure to communicate in a way that works for Aboriginal people contributes to a low uptake of services and confusion about justice and other government responses.**

### Improving responses – After-hours police messaging service

Projects such as the after-hours police messaging service highlight how government agencies can provide greater access and understanding of services that benefit Aboriginal Territorians.

Until recently, the Joint Emergency Service Communication Centre (JESCC) received over 3,000 calls each month, diverted from local police stations when police were not physically present. While some of these calls are emergency-related, the majority were non-urgent and administrative in nature.

To address this situation, the AJU partnered with the Aboriginal Interpreter Service (AIS) and NT Police to provide recorded voice announcements in 20 different Aboriginal languages at remote and regional police stations. This initiative aims to address language barriers and the lack of knowledge among many Aboriginal Territorians about how to navigate the emergency police response system.

The recorded message notifies callers in the local Aboriginal language to hang up and dial 000 if their call is an emergency, or to hang up and dial 131 444 if they require non-urgent police assistance.

For callers who wish to speak with the local police station, the call is then directed to that police station. If local police are not on duty or are away from the police station, callers are able to either leave a message in English or their local Aboriginal language, which will be translated and responded to upon the police officer's return to the station.

This process is currently operating in 62 police stations and will soon be available in all 64 police stations across the NT. Once fully implemented, it is estimated that calls to the JESCC will decrease, giving police more time and resources to respond to emergency situations. The project will also assist in breaking down barriers between NT Police and Aboriginal communities to ensure that Aboriginal Territorians are confident to navigate, access and understand the process of response for police services in both emergency and non-emergency situations.

Since the recorded message was implemented in October 2017, the AJU and NT Police have identified a significant reduction of calls to regional police stations. Figure 28 demonstrates this early success. A short video explaining the project is available online.<sup>555</sup>





A further project is expected to deliver significant improvements. At present, callers to the NT Police JESCC can access interpreter services for 54 different languages when calling 000 (general emergency services) or 131 444 (police service). However, none of the languages available are Aboriginal, despite 15% of the NT population speaking an Aboriginal language at home.<sup>556</sup>

This pilot project will see an interpreter from the AIS placed at the JESCC for a period of time to assist Aboriginal callers overcome language and communication barriers and to capture data from the trial. The project will involve partnerships between several government agencies, including NT Police, AGD, and AIS. It is envisaged that the interpreters will speak several Top End and Central Australian languages to assist in triaging emergency calls to NT Police.

This is an important step in mitigating the cultural and language barriers often facing Aboriginal Territorians, and will enable calls to be responded to and triaged more appropriately and efficiently. It will also work towards building a culturally responsive service model and restoring trust between Aboriginal Territorians, NT Police and other government service providers.

Figure 28. Out of office calls to regional police stations transferred to the JESCC, 2017-2019



Source: Northern Territory Government, Northern Territory Police, Fire and Emergency Services, *Out of Office Police Station Regional Calls Data 2017-19* (2019) internal, unpublished data.

## 5.8 Renewal of government contracts servicing Aboriginal Territorians

The NTAJA consultations identified that many services delivered to Aboriginal Territorians are outsourced to NGO providers. Participants reported that services are rarely monitored and evaluated, and there are inadequate mechanisms for Aboriginal Territorians to provide feedback to government on the delivery of services that impact on communities.

In some communities, services are offered but not well attended or in some instances contracted services are not delivered at all. During consultations, Aboriginal people told us that low uptake of services is due to lack of community ownership and poor levels of cultural competency.<sup>557</sup> Some of the specific concerns identified during consultations included:

- client information not being kept confidential<sup>558</sup>
- failure to deliver culturally safe services, for example one community reported that having only one female health worker meant Aboriginal men were unlikely to attend the health clinic as it is culturally inappropriate to see a female about men's health issues<sup>559</sup>
- contractors not turning up to deliver services in community but still reporting delivery to the government agency.<sup>560</sup>

The NTAJA envisages that input from Aboriginal Territorians will be sought and considered before making a final decision regarding the award or renewal of contracts that affect Aboriginal Territorians. Ensuring the views of Aboriginal Territorians on the quality and effectiveness of service delivery are taken into account when contracts for services are awarded or renewed will help identify those services working effectively with Aboriginal people, avoid duplication of services and promote accountability. The proposed expansion of Law and Justice Groups under the Agreement is expected to assist NT Government agencies with this task.





# Governance of the Northern Territory Aboriginal Justice Agreement





## 6 Governance of the Northern Territory Aboriginal Justice Agreement

Central to the governance of the NTAJA is the guiding principle that Aboriginal Territorians have the right to speak, to be heard, and be actively engaged in decision-making processes that impact on Aboriginal people in the NT. A robust governance structure is critical to ensure the signatories to the NTAJA are held accountable and to monitor the Agreement's effectiveness.

In line with the NTAJA's staged implementation, the Agreement's governance structure will consist of two distinct phases delivered over seven years. Under NTAJA Stage 1 (2019-2021), an initial governance structure will be established. Following an evaluation, the governance structure will be revised under NTAJA Stage 2 (2022-2025).

In all stages of the NTAJA, governance committees will be established to serve as the forum for Aboriginal community representatives to directly discuss Aboriginal justice issues with Chief Executive Officers (CEOs) of NTG agencies. The establishment of local Law and Justice Groups (LJGs) will provide a platform for Aboriginal Territorians to develop culturally-competent, place-based strategies to improve local justice outcomes.

The structure proposed below has been developed to reflect the partners' agreed understanding that only an integrated, Territory-wide, whole-of-government approach will create meaningful change and achieve the Agreement's aims.

### 6.1 Governance Overview

#### 6.1.1 Stage 1: 2019-2021

A summary of the governance structure for Stage 1 is outlined below and in Figure 29.

**The Attorney-General and Minister for Justice will:**

- oversee the implementation of the NTAJA within the broader justice portfolio
- table an annual progress report to Parliament reporting on the outcomes of the NTAJA
- communicate and coordinate activities between the Aboriginal Affairs Sub-Committee of Cabinet and the NTAJA Governance Committee.

**The Aboriginal Affairs Sub-Committee of Cabinet will:**

- provide high-level advice regarding the NTG's strategic priorities, significant policy initiatives and any legislative reforms related to the NTAJA
- provide comment on the annual progress report and other official documentation.

**The NTAJA Governance Committee** will be established as one of the the main bodies responsible for overseeing all governance-related matters. The Governance Committee will:

- oversee and monitor the implementation of the NTAJA in collaboration with the AJU, and report to the Attorney-General and Cabinet Sub-Committee on a regular basis
- facilitate whole-of-government responses on matters affecting Aboriginal Territorians and provide advice on culturally-competent best practice models
- promote and facilitate broader stakeholder engagement with the NTAJA and related initiatives.

**The NTAJA Governance Sub-Committee** will be established with selected members from the NTAJA Governance Committee. The NTAJA Sub-Committee will:

- provide assistance and advice to the NTAJA Governance Committee and the AJU on key priorities of the NTAJA Governance Committee
- provide comment and feedback on particular issues for the NTAJA Governance Committee.

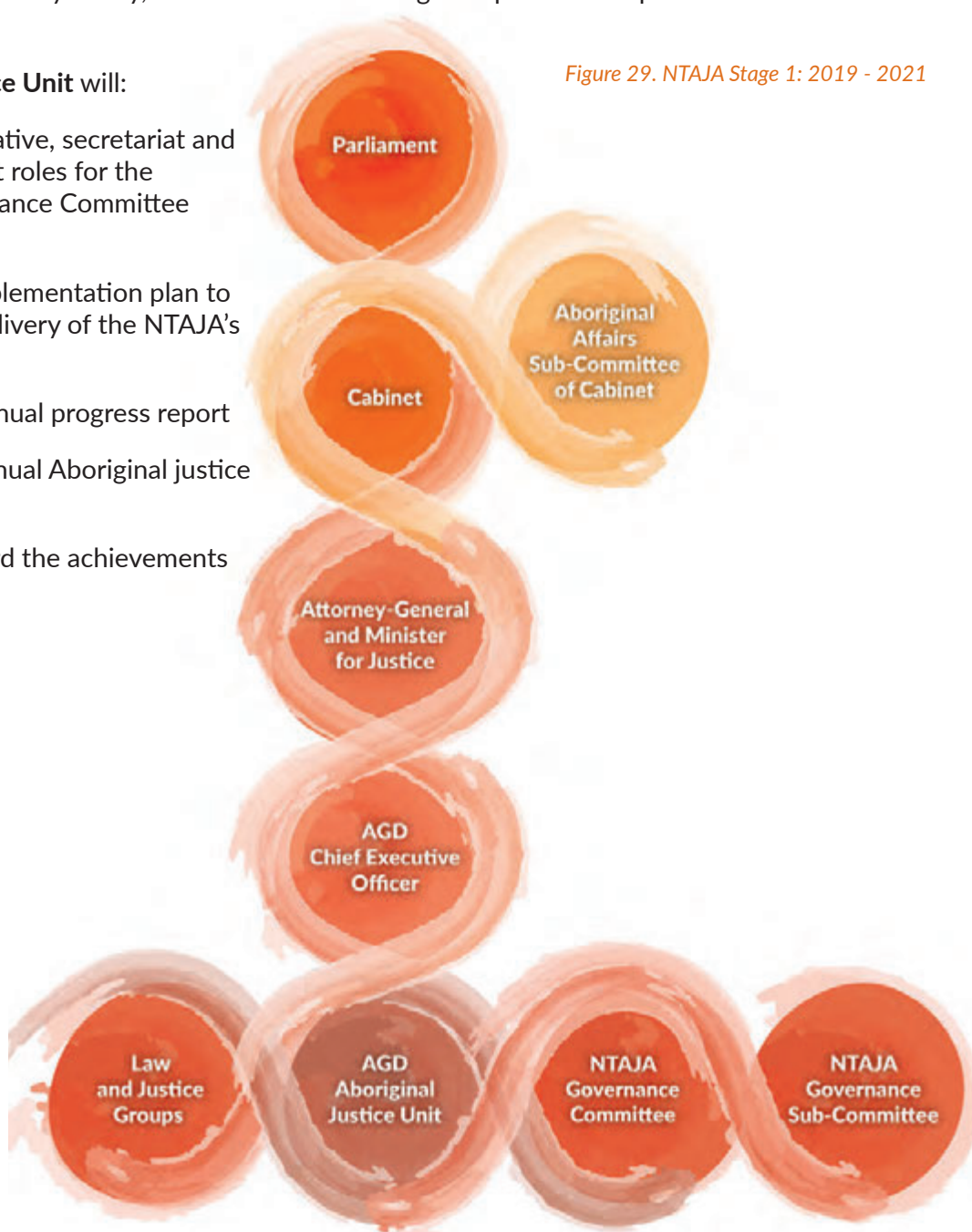
**Law and Justice Groups (LJGs)** will be established to promote Aboriginal leadership and facilitate change at the local level. With appropriate resourcing and support LJGs will:

- develop and implement a Local Action Plan, which sets out place-based strategies, informed by local evidence, to respond to local justice concerns and improve community safety
- report to the NTAJA Governance Committee on the implementation of the Local Action Plan
- provide feedback to the NTAJA Governance Committee and to NTG agencies on factors affecting community safety, which will inform changes to policies and practices at the local level.

**The Aboriginal Justice Unit** will:

- fulfil administrative, secretariat and project support roles for the NTAJA Governance Committee and LJGs
- develop an implementation plan to oversee the delivery of the NTAJA's outcomes
- prepare the annual progress report
- convene an annual Aboriginal justice forum
- track and record the achievements of the NTAJA.

Figure 29. NTAJA Stage 1: 2019 - 2021



### 6.1.2 Stage 2: 2022-2025

The anticipated changes to the NTAJA's governance under Stage 2 are outlined below and in Figure 30.

- Any amendments to the governance structure in Stage 2 will be guided by the recommendations arising from the independent evaluation in Stage 1. Changes to the governance structure will be decided towards the end of NTAJA Stage 1 in consultation with Aboriginal Territorians.
- An Aboriginal Social Justice Commissioner will be appointed for the Northern Territory. While the Commissioner's specific roles and responsibilities will be outlined following the evaluation of governance under Stage 1, his or her responsibilities are likely to include reviewing policies and procedures, advocating for the rights and interests of Aboriginal Territorians, receiving complaints and submissions from Aboriginal Territorians, and liaising with other relevant commissions.<sup>561</sup>

Figure 29. NTAJA Stage 2: 2022 - 2025







## 6.2 NTAJA Governance Committee

The NTAJA Governance Committee (the Governance Committee) will replace the interim AJARC to perform an overarching monitoring and advisory role. The Governance Committee will be guided by terms of reference that define its purpose, responsibilities and working arrangements. The establishment of the Governance Committee will also include a mechanism to ensure greater representation of Aboriginal Territorians. Administrative, secretariat and project support will be provided by the AJU.

### 6.2.1 Composition of the Governance Committee

The Governance Committee will engage CEOs from key NTG agencies and Aboriginal representatives from major regions across the NT and will be co-chaired by the CEO of the Department of the Attorney-General and Justice, and a member elected from the Aboriginal representatives.

#### *Northern Territory Government Committee Members*

NTG agencies to be represented on the Governance Committee include the following, noting that representation may be expanded depending on the subject matter under discussion:

- Department of the Attorney-General and Justice
- Department of the Chief Minister
- Department of Education
- Department of Health
- Department of Local Government, Housing and Community Development
- Department of Infrastructure, Planning and Logistics
- Department of Treasury and Finance
- Northern Territory Police, Fire and Emergency Services
- Territory Families.

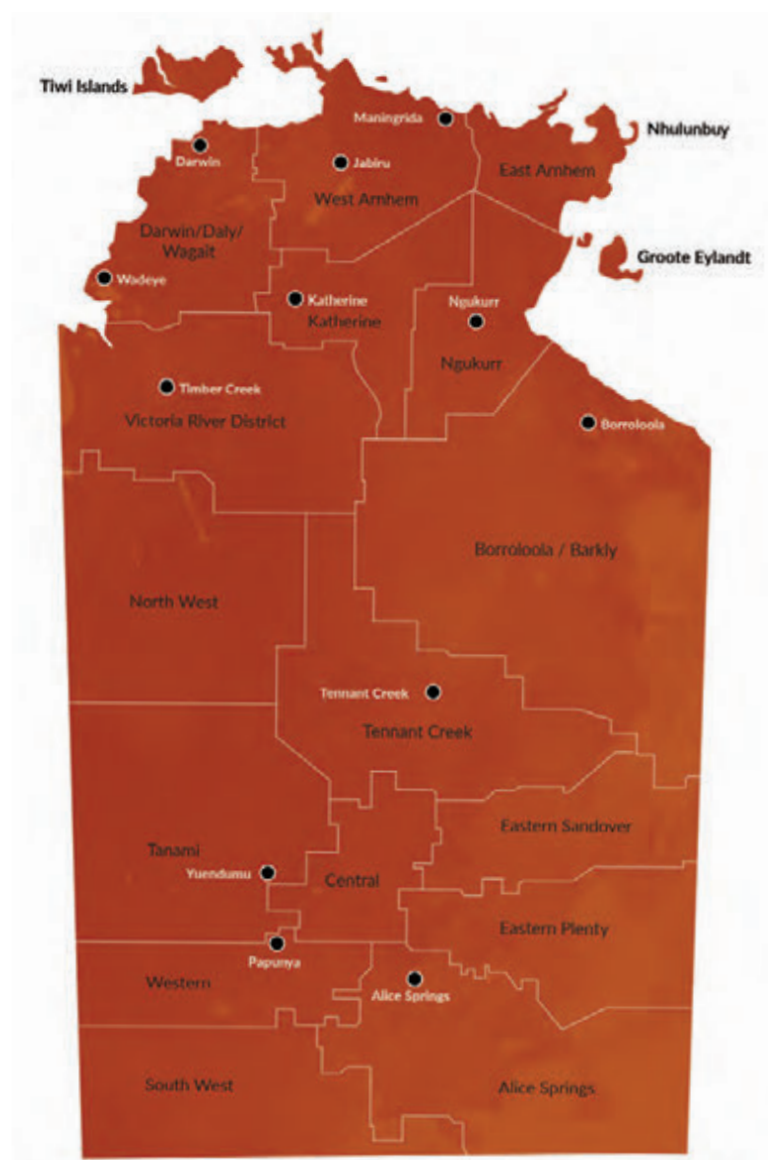
#### *Aboriginal Representatives*

The Governance Committee will include gender balanced representation. Aboriginal representatives will be nominated from each region as outlined in Figure 31 and will undergo a selection process prior to appointment. Selection criteria will require applicants of significant merit and standing in their respective regions. Applicants will be required to adhere to high standards of ethical and professional conduct in the performance of their duties, similar to the standards expected of all NT public sector employees in the Northern Territory Public Service Code of Conduct.

It is envisaged that a total of 36 Aboriginal representatives will represent the following 18 regions:

- Alice Springs
- Borroloola /Barkly
- Central Region
- Darwin/Daly/Wagait
- East Arnhem
- Eastern Plenty
- Eastern Sandover
- Groote Eylandt
- Katherine Region
- Ngukurr Region
- North West Region
- South West Region
- Tanami
- Tennant Creek
- Tiwi Islands
- Victoria River District
- West Arnhem
- Western Region

*Figure 30. Map of proposed NTAJA Governance Committee's Aboriginal representative regions*



Source: Northern Territory Government

## 6.3 Establishment of Law and Justice Groups

At a local level, the NTAJA will support the formation of LJGs in Aboriginal communities. LJGs are representative groups of Aboriginal people who come together to address issues to improve justice responses and community safety. LJGs will provide a critical platform for local decision-making, including reform of service delivery that is necessary to achieve the aims of the NTAJA.

Establishing LJGs recognises that Aboriginal people are best placed to understand and address the issues impacting on justice outcomes at a local level. There is widespread support for LJGs among Aboriginal community leaders, community-based service providers, educators, and key justice agencies including local police, corrections and the courts.

Members of LJGs will be determined by a locally-driven process that reflects a gender-balanced and fair representation of the cultural groups within a community.

In Stage 1 of the NTAJA, it is envisaged that the NTG will support a maximum of five LJGs to be established. The model will be evaluated towards the end of the first year in order to refine the process for establishing and operating LJGs, before the model is expanded. While it is acknowledged that five LJGs will not be representative of all Aboriginal people and communities across the NT, adopting a phased approach to implementation will allow for the LJG model to be refined and improvements to be made over time.

### 6.3.1 Roles and responsibilities of Law and Justice Groups

The specific scope and focus of work undertaken by each LJG will be decided by Aboriginal people within that region.

It is envisaged that LJGs will be supported by the AJU and the Governance Committee to develop a Local Action Plan outlining practical strategies to address local issues, which will complement the NTG's LDM framework. Action plans will include place-based, practical strategies to respond to justice concerns identified within the local community. LJGs will provide formal and informal feedback to the Governance Committee and also to NTG agencies about matters affecting community safety. More detail on LJGs is provided in section 4.4.

## 6.4 Aboriginal Justice Unit

### 6.4.1 Roles and responsibilities of the Aboriginal Justice Unit

#### *Developing a NTAJA implementation plan*

The AJU will be responsible for developing and overseeing a comprehensive implementation plan for the NTAJA, including the Agreement's monitoring and evaluation framework. The implementation plan will play a crucial role in ensuring that parties fulfil their responsibilities under the Agreement by outlining the actions required to deliver on the aims.

The implementation plan will be developed following the release of the final NTAJA.

#### *Convening an annual Aboriginal justice forum*

One of the AJU's key responsibilities will be to convene an annual forum to bring together Aboriginal Territorians, relevant government agencies and NGOs, to present and discuss key focus areas relating to the implementation of the NTAJA.

The forum will aim to:

- provide strategic oversight of progress towards the NTAJA's aims, including sharing data that illustrates the extent to which improvements are being achieved



- maintain and renew stakeholders' commitment to the collaborative, partnership-based approach that underlies the Agreement
- allow for open dialogue between Aboriginal Territorians and the NTG on pressure points and drivers of poor justice outcomes for Aboriginal Territorians
- provide opportunities to showcase best practice in achieving cultural competency for professionals and stakeholders engaged in delivering justice-related services.

## 6.5 Monitoring and Evaluation

The successful implementation of the NTAJA relies on ongoing independent monitoring and evaluation. A monitoring and evaluation framework will be designed and implemented in collaboration with Aboriginal Territorians.

The AJU will develop the monitoring and evaluation framework in line with the following principles:

- a commitment to a transparent reporting process
- a reporting framework that provides for an evidence-based approach
- a process that holds parties accountable for performance under the NTAJA
- the development of indicators that will measure the outcomes of the NTAJA
- a high level of cultural integrity and competency
- commitment to an improvement framework that will address gaps and deficiencies limiting progress towards achieving the aims of the NTAJA.

### 6.5.1 Inclusion of specific targets in the Northern Territory Aboriginal Justice Agreement

#### *Use of targets under Stage 1: 2019-2021*


Throughout Stage 1, measures of success will be chosen that reflect outcomes aligned with the aims of the NTAJA. It is expected that specific targets aligned with the aims will not be set in stage 1. This decision is based upon three observations regarding the use of targets in developing and maintaining AJAs in other Australian jurisdictions.

Foremost, the experience of other jurisdictions demonstrates that targets, particularly those established during the early stages of an agreement's implementation, are at risk of being overambitious. As a result, poorly-devised targets may undermine commitment and trust in the Agreement, and pose an avoidable obstacle to establishing and maintaining constructive partnerships.

Secondly, the use of targets in other jurisdictions has highlighted that setting realistic, achievable targets requires accurate baseline data. In the NT, much of this data has not been comprehensively collected, recorded, validated and analysed.

Finally, it is evident that the issues addressed by AJAs are multi-faceted and interrelated in a variety of complex ways. As the full extent of these issues and their interrelationships are poorly understood, targets set during this early draft stage may provide a poor prediction of the Agreement's success.

Reporting against specific outcomes will provide a more comprehensive account of the strengths



and shortcomings of the NTAJA's approaches, allowing its strategies to be refined by highlighting areas that are showing improvement, those that are successful and those requiring further improvement.

However, this does not restrict the setting of specific targets in Local Action Plans under the direction of the LJGs, which are based on evidence relevant to the local region.

#### *Use of targets under Stage 2: 2022-2025*

It is anticipated that targets will be set during NTAJA Stage 2. At this stage, the foundational work implemented under Stage 1 will allow for the development of a practical, relevant, culturally appropriate framework for the establishment of targets. The specific targets will be determined by the signatories to the final Agreement through a culturally competent consultation process.

It is acknowledged that the Council of Australian Governments (COAG) is in the process of completing a refresh of its *Closing the Gap* initiative, including consideration of national justice-related targets.<sup>562</sup> The AJU will monitor the outcomes of the COAG review and ensure relevant changes are reflected in Stage 2.

## **6.6 Aboriginal Social Justice Commissioner**

The most significant modification to the governance structure in Stage 2 is the proposed appointment of an Aboriginal Social Justice Commissioner for the NT.

The Aboriginal Social Justice Commissioner is expected to be responsible for:

- reviewing the impact of policies and measures introduced under NTAJA Stage 1
- monitoring and reporting on the wellbeing (and human rights) of Aboriginal Territorians
- advocating for the rights and interests of Aboriginal Territorians
- providing advice and making recommendations about cultural competency in the formation of policy and delivery of services
- providing support and guidance to the NTAJA Governance Committee
- collaborating with the AJU to produce an Annual Progress Report
- receiving complaints, including making recommendations relevant to government agencies
- liaising with other relevant commissions, such as the Northern Territory's Anti-Discrimination Commission, the Independent Commissioner Against Corruption, the Treaty Commissioner and the Office of the Children's Commissioner.

## Glossary

### Aboriginal

The term Aboriginal refers to:

- (a) a descendant of the Aboriginal peoples of Australia; or
- (b) a descendant of the Indigenous inhabitants of the Torres Strait Islands.

Throughout this report, the term Aboriginal is used in reference to people of either or both Aboriginal or Torres Strait Islander descent, except where specific reference is made to publications that use other terminology. For example, the ABS uses the term 'Indigenous' to refer to both Aboriginal and Torres Strait Islander peoples. The use of the term 'Aboriginal' recognises the diversity of cultures, languages, clans and skin groups throughout the NT and its use is not intended to diminish or deny these differences.<sup>563</sup>

### Aboriginal Territorian

An Aboriginal person who has their principle place of residence as the Northern Territory.

### Non-Aboriginal Territorian

A non-Aboriginal person who has their principle place of residence as the Northern Territory.

### Acts Intended to Cause Injury

Acts, excluding attempted murder and those resulting in death, which are intended to cause an non-fatal injury or harm to another person and where there is no sexual or acquisitive element.

### Adult

A person at least 18 years of age or a person apparently 18 years of age; if the person's age cannot be proved.<sup>564</sup> However, the age range may vary depending on usage. For example, NT Correctional Services include 17-year-olds in the category of "adults" when conducting and collating data for the annual prison census.

### Aggregate Sentence

Aggregate sentences are based on the common law principle of totality, which applies when a court imposes multiple sentences of imprisonment for multiple offences. The principle of totality comprises two elements:

1. When sentencing for more than a single offence, courts should pass a total sentence reflective of all offending behaviour before the court in a manner that is just and proportionate. Therefore, sentences for more than one offence will usually be longer than a single sentence for a single offence.
2. It is difficult to arrive at a just and proportionate sentence for multiple offences simply by adding together single sentences. It is necessary to consider the offending behaviour, as well as factors personal to the offender as a whole.

The principle is to be applied without the suggestion that a discount is given for multiple offences.

As a result, application of concurrent or consecutive sentences sits within the following guidelines:

Concurrent sentences are applied when offences arise out of the same incident, there is a series of offences of the same or similar kind, specifically when committed against the same person.

Consecutive sentences apply when offences arise out of unrelated facts or incidents, offences that are of the same or similar kind but where the overall criminality will not be sufficiently reflected by concurrent sentences, or one or more offences qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.



## ANZSOC

The Australian and New Zealand Standard Offence Classification (ANZSOC) provides a uniform national statistical framework for classifying criminal behaviour in the production and analysis of crime and justice statistics. ANZSOC is used in Australian Bureau of Statistics statistical collections, Statistics New Zealand statistical collections, Australian police, criminal courts and corrective services agencies and New Zealand police and justice agencies. Under ANZSOC a three-tiered offence classification system is used to assist with categorising offending behaviour. More information is available at: <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0>>

## Apprehension

The seizure of a person who is suspected of having committed a crime.

## Bail

Bail is the means by which a person who has been accused of a crime may apply to the court to be released into the community until their trial begins. Bail may be granted unconditionally or subject to conditions.

## BasicsCard

An Australian Government legacy initiative stemming from the implementation of the Northern Territory Emergency Response in 2007. The initiative allows a person to be issued with a reusable electronic key card linked to their income managed funds, which they can access through EFTPOS facilities at approved stores and businesses. A person can only request a BasicsCard once they have been placed on income management either voluntarily or otherwise.

## Breach of Bail/ Apprehension

Police apprehension for violation of one or more conditions of bail.

## Child

The United Nations Convention on the Rights of the Child defines child as a human being below the age of 18 years. However, children are not held criminally responsible for their actions until they have reached a certain age. Children in the Northern Territory are considered to be criminally responsible from the age of 10.

## Cultural Authority

A group or individual with the authority to support decision-making and dispute resolution, or who provides guidance on what the community needs and what will work, particularly in regard to cultural responsibilities and obligations. Cultural authorities exist in various forms, ranging from a regional level of cultural authority to more local advisory groups and incorporated community organisations. They draw on the knowledge and expertise of respected senior people who are acknowledged as holding appropriate cultural authority.

## Cultural Awareness

Cultural awareness is defined as having cultural sensitivity, and the awareness and avoidance of cultural bias.<sup>565</sup>

## Cultural Broker

A person who facilitates the interaction between one culture and another. Cultural brokers work to educate and prepare the host culture as well as the visitor, dispelling social myths and working through any cultural barriers that may disrupt relationships or cause misunderstandings. Cultural brokers build community and trust among people of different backgrounds, helping parties to work together and build enterprises and ventures, cooperatively and with visions that will benefit both groups.<sup>566</sup>

## Cultural Competency

Culturally competent engagement requires:

- an appreciation of and the competency to respond to Aboriginal history, cultures, contemporary social dynamics, and the diversity of Aboriginal communities
- valuing the cultural skills and knowledge of community organisations and Aboriginal people
- clarity about the purpose and the relevant scale for engagement, which may call for multi-layered processes
- engagement that relates to Aboriginal concepts of wellbeing
- long-term relationships of trust, respect and honesty, as well as accessible, ongoing communication and information
- effective governance and capacity within both the Aboriginal community and governments themselves
- appropriate timeframes (including for deliberation and responsive funding, where applicable).<sup>567</sup>

## Cultural Safety

A culturally safe environment is one where there is no assault, challenge or denial of a person's identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning, living and working together with dignity and truly listening.<sup>568</sup>

## Cultural Security

Cultural security imposes stronger obligations on those who work with Aboriginal peoples to not only be aware of cultural needs, but to actively ensure that cultural needs are met for individuals.<sup>569</sup> This may involve the inclusion of actions in policies that promote cultural competency or safety.

## Custodial Correctional Facility or Prison

A facility in which persons convicted of crimes are forcibly confined and denied freedoms of citizenship under the authority of the state.

## Custodial Order

A judicial sentence mandating that a person be taken into custody, either into prison or into some other supervised educational, rehabilitative or therapeutic institution.

## Custody

The state of being kept in prison, which may include the period of time a person is waiting to go to court for a trial or hearing.

## Declaration

Statements made by the world's governments. They do not create legally binding obligations but they do carry political weight.

## Detainee

A youth lawfully detained in a detention centre, in accordance with section 5, subsection 1 of the *Youth Justice Act 2005* (NT).

## Detention Centre

A place where young offenders under the age of 18 years are detained while under the supervision of the relevant department (e.g. Territory Families in the NT) on remand or during a sentenced detention period.

## Diversion

A term used to refer to a range of strategies that aim to reduce a person's contact with and progression through the criminal justice system, and to reduce the risk of reoffending. Diversion can occur at any point along the continuum of criminal justice responses; pre-arrest, pre-trial, pre-sentence, post-sentence and pre-release.

It is also the pathway of sentencing in which the criminal offender enters a rehabilitation program to remedy the behaviour leading to the original offence, to avoid a recorded conviction.

## **Equivalised Gross Weekly Household Income**

The economic resources available to each member of a household. It can be used for comparing the situation of individuals, as well as comparing the situation of households.<sup>570</sup>

## **Finalised Defendant**

A finalised defendant is a person for whom all charges relating to the one case have been formally completed so that the charges cease to be an item of work to be dealt with by the court.

## **Homelessness**

Homeless people include those living in improvised dwellings, tents, or sleeping out; people in supported accommodation for the homeless; people staying temporarily with other households; people living in boarding houses; people in other temporary lodgings; and people living in 'severely' crowded dwellings.

## **Justice Order Breach**

A justice order is any order or direction handed down by a court of Australia. A justice order breach occurs where the subject of the order does not comply with the conditions of the order. For example, breaching bail conditions is considered a justice order breach.

## **Lodgement**

The bringing of a charge or a formal accusation against someone (often in a court of law).

## **Maltreatment**

All forms of physical and/or emotional ill treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the person's health, survival, development or dignity in the context of a relationship of responsibility, trust or power.

## **Miscellaneous offences**

Offences involving the breach of statutory rules or regulations governing activities that are prima facie legal, where such offences are not explicitly dealt with under any other Division of ANZSOC. This includes defamation, libel and privacy offences; public health and safety offences; commercial/industry/financial regulation; and other miscellaneous offences.

## **Monetary Order**

A judicial sentence imposing the payment of a fine or other pecuniary penalty.

## **Offender**

A person aged 10 years or over who is proceeded against and recorded by police for one or more criminal offences.

## **Parole**

A conditional release from imprisonment during which a prisoner promises to abide by certain conditions.

## **Police proceeding**

A police-initiated legal proceeding, categorised either as a court action or non-court action. Note that this is not a count of offences nor a count of offenders. An offender can be proceeded against multiple times during the reference period, and so can appear multiple times in the police proceedings population.

## **Principal Offence**

Where multiple offences are committed within the same incident on a single date by an offender, the offender is assigned a principal offence using the ABS National Offence Index (NOI), a ranking system of the offence categories of ANZSOC according to their level of seriousness.



## Prior imprisonment

Prior record of imprisonment is, for each prisoner, a count of all previous terms of imprisonment across the life-course of that individual. Prisoners who have had a previous term of imprisonment in another state or territory may not be counted as someone who has previously been imprisoned.

## Recidivism

The rate at which released prisoners return to prison within a two-year period.

## Remand

Alleged offenders may be held in custody before and during their trial (on criminal charges) by order of a court. This is called being on remand. An alleged offender is remanded in custody by a court if they:

- have not applied for bail
- have been refused bail
- cannot meet bail or provide a surety
- are unable or unwilling to meet the conditions set out in the bail bond.

Remanding an offender in custody ensures that the alleged offender attends their next court date and/or trial.

## Royal Commission into Aboriginal Deaths in Custody

A Royal Commission established in 1987 by the Australian Government pursuant to the *Royal Commission Act 1902* (Cth) to inquire into Aboriginal deaths in custody and make recommendations that would prevent such deaths in the future.

## Royal Commission into the Protection and Detention of Youth in the Northern Territory

A Royal Commission established in 2016 by the Australian Government pursuant to the *Royal Commissions Act 1902* (Cth) to inquire into and report upon failings in the child protection and youth detention systems of the Northern Territory Government.

## Social Determinants of Health

The conditions in which people are born, grow up, live, work and age. These circumstances are shaped by the distribution of money, power and resources at global, national and local levels. The social determinants of health are mostly responsible for health inequities - the unfair and avoidable differences in health status seen within and between countries.<sup>571</sup>

## Special Measure

An action that advances a particular disadvantaged group and is not considered discriminatory.

## Summons

An order to appear before a judge.

## Surety

A person who takes responsibility for the performance of an undertaking, for example their appearance in court or the payment of a debt owed.

## Treaty

A binding agreement made between governments. Treaties create binding legal obligations under international law. Treaties can also be called covenants, conventions or protocols. Treaties can also be made between governments and Indigenous peoples; the Treaty of Waitangi between New Zealand and the Maori is an example.

## Unemployment

Includes all those of working age who, during a given period, were not in employment, who carried out activities to seek employment and who were available to take up employment if given the opportunity.



## Unsentenced Prisoner

An unsentenced prisoners is a person held in prison for longer than three months without a sentence. The unsentenced prison population are prisoners who have been placed on bail, remanded in custody, or convicted and awaiting sentence.

## Victim

Victims are persons impacted directly by the following offences: *'homicide and related offences'*; *'assault'*; *'sexual assault'*; *'abduction and kidnapping'*; *'robbery'*; *'blackmail and extortion'*; *'unlawful entry with intent/burglary'*; *'break and enter'*; *'motor vehicle theft'*; and *'other theft'*.

## Whole-of-Government

Whole-of-government refers to public service agencies working across portfolio boundaries to achieve shared goals and an integrated government response to particular issues. Approaches can be formal and informal. They can focus on policy development, program management and service delivery.

## Youth

In accordance with s 6 (1) of the *Youth Justice Act 2005* (NT), the term 'youth' refers to persons under 18 years of age. This term is used interchangeably with 'child' and 'young person' throughout this document.

In all Australian states and territories children aged under 10 years cannot be charged with a criminal offence.

## Appendices

### Appendix 1. List of consultations for the draft Northern Territory Aboriginal Justice Agreement

Table 4. List of NTAJA consultation locations and dates

Region	Meeting	Date
Darwin	Aboriginal Peak Organisations of the Northern Territory (APO NT) Meeting	2 March 2017
Darwin	United Nations Special Rapporteur	23 March 2017
Tiwi	Snake Bay	24 March 2017
East Arnhem	Ramingining	31 March 2017
Darwin	North Australia Aboriginal Justice Agency (NAAJA) Board Meeting	11 April 2017
East Arnhem	Ramingining	3 May 2017
Barkly	Central Land Council Full Council Meeting	10 May 2017
Darwin	Elders Visiting Program Forum	17–18 May 2017
East Arnhem	Ramingining	22 May 2017
Katherine	Northern Land Council Full Council Meeting	29 May 2017
Alice Springs	Office of the Commissioner for Public Employment Aboriginal Employment Forum	31 May–1 June 2017
Darwin	NAAJA Board Meeting	16 June 2017
Belyuen Shire	Belyuen	3 July 2017
Alice Springs	Alice Springs Show	7–8 July 2017
Barkly	Tennant Creek Show	14–15 July 2017
Victoria Daly Region	Batchelor	17 July 2017
Victoria Daly Region	Nauiyu (Daly River)	19 July 2017
Katherine	Katherine Show	21–22 July 2017
Victoria Daly Region	Nauiyu (Daly River)	25 July 2017
Darwin	Darwin Show	27–29 July 2017
Victoria Daly Region	Pine Creek	1 August 2017
Darwin	Bagot	2 August 2017
East Arnhem	Garma Festival	4–7 August 2017
Darwin	Palmerston Indigenous Village	10 August 2017
Darwin	Aboriginal Affairs Sub-Committee of Cabinet	14 August 2017
Darwin	Aboriginal Affairs Sub-Committee of Cabinet	15 August 2017
Darwin	Acacia	16 August 2017
Darwin	Palmerston Indigenous Village	16 August 2017
Victoria Daly Region	Kybrook Farm (Pine Creek)	16 August 2017
East Arnhem	Ramingining	18 August 2017
Darwin	Knuckey Lagoon	22 August 2017
West Arnhem	Jabiru	19 September 2017
Central/Barkly	Elders Visiting Program Forum	20 September 2017
West Arnhem	Gunbalanya	26 September 2017
West Arnhem	Warruwi	5 October 2017
West Arnhem	Minjilang	6 October 2017
West Arnhem	Warruwi	9 October 2017
West Arnhem	Minjilang	10 October 2017
East Arnhem	Maningrida	19 October 2017
Saltwater Region	Elders Visiting Program Forum	20 October 2017
Darwin	Crime Victims Advisory Committee	13 November 2017
East Arnhem	Maningrida	12 December 2017
Alice Springs	Alice Springs Youth Detention Centre	15 December 2017



Region	Meeting	Date
West Daly	Wadeye (Port Keats)	20 December 2017
Darwin	Don Dale Youth Detention Centre	12 January 2018
Alice Springs	Alice Springs Youth Detention Centre	23 January 2018
Alice Springs	Alice Springs Correctional Centre	23-25 January 2018
Alice Springs	Grandmothers Group	23 January 2018
Darwin	Red Shield Outreach Services Day	30 January 2018
West Daly	Wadeye (Port Keats)	12 February 2018
Groote Eylandt	Angurugu	8 March 2018
Groote Eylandt	Umbakumba	8 March 2018
Tiwi	Tiwi Islands	28 March 2018
Darwin	Aboriginal Justice Agreement NTG staff Workshop	12 April 2018
Darwin	Elders Visiting Program Forum	3-4 May 2017
Alice Springs	Centre for Appropriate Technology Board Meeting	16 May 2018
Groote Eylandt	Milyakburra	5 June 2017
Groote Eylandt	Umbakumba	5 June 2017
Groote Eylandt	Angurugu	6 June 2017
Roper Gulf	Barunga Festival	8 June 2018
East Arnhem	Maningrida	13 June 2018
MacDonnell	Kaltukatjara (Dockers River)	2 July 2018
Central Australia	Mutitjulu	3 July 2018
Central Australia	Ltyentye Apurte (Santa Teresa)	4 July 2018
Central Australia	Aputula (Finke)	4 July 2018
Alice Springs	Alice Springs Show	6-7 July 2018
Central Australia	Aileron	9 July 2018
Central Australia	Aleyaw (Ti Tree)	9 July 2018
Central Australia	Alyuen Homelands	9 July 2018
Barkly	Ali Curung	10 July 2018
Central Australia	Nturiya and Pmata junata (Ti Tree Station and 6 Mile)	10 July 2018
Barkly	Tara Homeland (Barrow Creek)	12 July 2018
Barkly	Wilora	12 July 2018
Barkly	Tennant Creek Show	13 July 2018
Barkly	Kulumindini (Elliott)	19 July 2018
Barkly	Marlinja (Newcastle Waters)	19 July 2018
Victoria Daly	Katherine Show	20-21 July 2018
Central Australia	Mutitjulu	24 July 2018
Central Australia	Ltyentye Apurte (Santa Teresa)	25 July 2018
Central Australia	Aputula (Finke)	25 July 2018
MacDonnell	Ntaria (Hermannsburg)	26 July 2018
MacDonnell	Areyonga	26 July 2018
Darwin	Darwin Show	27-28 July 2018
Nhulunbuy	Garma Festival	3-5 August 2017
Darwin	Darwin Correctional Precinct (Women's Sector)	6 August 2018
Groote Eylandt	Groote Eylandt	7 August 2018
Roper Gulf	Ngukurr	9 August 2018
Roper Gulf	Numbulwar	9 August 2018
Roper Gulf	Burrulula (Borroloola)	10 August 2018
Upper Tanami	Willowra	16 August 2018
Upper Tanami	Yuendumu	16 August 2018
Upper Tanami	Laramba (Napperby Station)	16 August 2018
Upper Tanami	Papunya	17 August 2018
Upper Tanami	Ikuntji (Haasts Bluff)	17 August 2018
Katherine	Elders Visiting Program Forum	29 August 2018
Darwin	Supreme Court Open Day 2018	1 September 2018
Alice Springs	Alice Springs Regional Stakeholders Meeting	13 September 2018
Barkly	Arlparra (Utopia)	13 September 2018

Region	Meeting	Date
Barkly	Ampilatwatja	13 September 2018
Barkly	Tennant Creek Regional Stakeholders Meeting	14 September 2018
Barkly	Owairtilla (Canteen Creek)	14 September 2018
Barkly	Alpurrurulam (Lake Nash)	14 September 2018
Darwin	Minister's Office with Lynne Walker, Policy Advisor, Office of the Chief Minister	18 September 2018
Darwin	Menzies School of Health Lunchtime Seminar – Northern Territory Aboriginal Justice Agreement Presentation	19 September 2018
Katherine	Katherine Regional Stakeholders Meeting	20 September 2018
Palmerston	Palmerston Regional Stakeholders Meeting	21 September 2018
Darwin	Darwin Regional Stakeholders Meeting	21 September 2018
Alice Springs	Amoonguna	10 October 2018
Alice Springs	NGO Meetings	10-11 October 2018
Darwin	Darwin Correctional Precinct (Men's Sector)	16 October 2018
Victoria Daly	Kalkarindji/Daguragu	29 October 2018
Victoria Daly	Lajamanu	29 October 2018
Palmerston	Palmerston City Council	6 November 2018
West Daly	Peppimenarti	11 December 2018
West Daly	Nganmarriyanga (Palumpa)	11 December 2018
East Arnhem	Nhulunbuy Regional Stakeholders Meeting	12 December 2018
East Arnhem	Gunyangara (Ski Beach)	12 December 2018
East Arnhem	Datjala Work Camp	12 December 2018
East Arnhem	Yirrkala	13 December 2018
East Arnhem	Datjala Work Camp	13 December 2018

## Appendix 2. Northern Territory Government Workshop Participants

Table 5. NTAJA Government Workshop 12 April 2018

Northern Territory Government Agency	Name/ Position/ Organisation
Aboriginal Areas Protection Authority	Sophie Creighton, Director Sacred Sites Research and Information Unit
Department of the Attorney-General and Justice	Craig Smyth, Acting Deputy CEO
	Leanne Liddle, Director Aboriginal Justice Unit
	David Hollinsworth, Adjunct Professor University of the Sunshine Coast, Facilitator
	Gail Carnes, Senior Project Officer Aboriginal Justice Unit
	Douglas Lovegrove, Project Support Officer Aboriginal Justice Unit
	Calvin Deveraux, Cultural Broker Aboriginal Justice Unit
	Carolyn Whyte, Director Criminal Justice Research and Statistics Unit
Department of the Attorney-General and Justice (Correctional Services)	Rosanne Lague, Director Programs, Services and Improvement Tracy Luke, Executive Director NT Community Corrections
Office of the Commissioner for Public Employment	Neil Pomfret, Advisor Aboriginal Employment and Career Development
Corporate Information and Services	Doug Cooke, Senior Director Digital Policy and Telecommunications
Department of the Chief Minister	Mischa Cartwright, Acting Executive Director Office of Aboriginal Affairs
	Natasha O'Connell, Policy Officer Office of Aboriginal Affairs
Department of Education	Robert Picton, Director Community Engagement and Local Decision Making
	Susan MacPherson, Senior Director School Education
Department of Health	Christine Connors, General Manager Primary Health Care, Top End Health Service
	Margaret Rajak, Manager Patient Travel, Accommodation and Transport Service
	Nicole O'Reilly, Director Primary Health Care Service
	Sharna Deveraux, Principal Policy Officer
Department of Housing and Community Development	Adrian Curry, Director Community Development
Department of Infrastructure, Planning and Logistics	Paula Timson, Acting Director Legislation and Reform
	Glenda Thornton, Director Road Safety and Compliance, DriveSafe Program
	Claire Manalo, Acting Director Motor Vehicle Registry
Northern Territory Police, Fire and Emergency Services	Stephen Martin, Commonwealth Engagement, Airwing and Special Projects Division
Power and Water Corporation	Chantal Bramley, Manager Community Engagement, Solar SETuP Program
	Donna McMasters, Senior Project Officer Regional and Remote Water and Sewer Services
Department of Tourism and Culture	Phillip Leslie, Executive Director Sport and the Arts
Territory Generation	Hieu Nguyen, General Counsel and Company Secretary
Territory Families	Jeanette Kerr, Deputy CEO
	Kelly Cooper, Senior Director Community Youth Programs
Department of Trade, Business and Innovation	Jason Howe, Executive Director Business and Innovation
	Karen Lindsay, Director Workforce Programs



## Appendix 3. NTAJA Targeted Stakeholder Workshop Participants

Table 6. NTAJA Workshop 1: 18–19 October 2018

Name	Position	Organisation
Thalia Anthony	Associate Professor	University of Technology Sydney
Harry Blagg	Professor	University of Western Australia
Alan Cass	Professor	Menzies School of Health Research
Steven Guthridge	Professor	Menzies School of Health Research
Leanne Liddle	Director	Aboriginal Justice Unit
Douglas Lovegrove	Project Support Officer	Aboriginal Justice Unit
David McDonough	Director of Policy	Territory Families
Clare Parsons	Royal Commission Coordinator	NAAJA
Tamika Williams	Acting Legal Advisor	Menzies School of Health Research

Table 7. NTAJA Workshop 2: 1–2 November 2018

Name	Position	Organisation
Thalia Anthony	Associate Professor	University of Technology Sydney
Harry Blagg	Professor	University of Western Australia
Phillip Brown	General Manager Workforce and Partnerships	Catholic Care NT
Alan Cass	Professor	Menzies School of Health Research
Chris Cunneen	Professor	University of Technology Sydney
Antoinette Gentile	Director	Koori Justice Unit (Vic)
Russell Goldflam	Principal Legal Officer	NT Legal Aid Commission
John Guenther	Associate Professor	Charles Darwin University
David Hollinsworth	Adjunct Professor	University of the Sunshine Coast
Warren Jackson	Superintendent	NT Police
Leanne Liddle	Director	Aboriginal Justice Unit
Douglas Lovegrove	Project Support Officer	Aboriginal Justice Unit
Caleb Mattiske	Project Support Officer	Aboriginal Justice Unit
Wendy Morton	Executive Director	Northern Territory Council of Social Service (NTCOSS)
Colleen Rosas	Community Representative	N/A
Adelajda Soltysik	Senior Policy Officer	Territory Families
Bill Toy	General Manager Community Engagement	Tiwi Islands Regional Council
Brent Warren	General Manager Youth Justice	Territory Families
John Wilson	Chair	Tiwi Land Council
David Woodroffe	Principal Legal Officer	NAAJA

## Appendix 4. Interim Aboriginal Justice Agreement Reference Committee

The AJARC was established in early 2017 to provide governance and guidance in the development of the NTAJA. The AJARC initially comprised 16 members selected from relevant peak bodies, community NGOs and local government (see *Table 8*), and additional or substitute members have been appointed on an as-needs basis. The AJARC convened six times during the 2017-18 period.

*Table 8. Members of the interim Aboriginal Justice Agreement Reference Committee*

Committee Member	Organisation
Mathew Bonson	APO NT, Southern Representative & Central Australian Aboriginal Legal Aid Service
Samantha Bowden	Making Justice Work
Phillip Brown	Catholic Care NT
Samuel Bush-Blanas	Northern Land Council
Alan Cass	Menzies School of Health Research
Priscilla Atkins	NAAJA
Russell Goldflam	Northern Territory Legal Aid Commission
Olga Havnen	Danila Dilba Health Service
Charlie King	Australian Broadcasting Corporation
Wendy Morton, Co-chair	NTCOSS
Colleen Rosas	Aboriginal Interpreter Service
Marion Scrymgour	Tiwi Islands Regional Council
Jared Sharp	Jesuit Social Services
John Wilson	Tiwi Land Council
David Woodroffe, Co-chair	NAAJA and APO NT Northern Representative
Tony Wurramarrba	Anindilyakwa Land Council

Throughout the development of the NTAJA, the AJARC has:

- advised on contemporary Aboriginal society, customs and traditions, and the historical and social factors underlying the disadvantaged position of Aboriginal Territorians
- contributed insights into customary law and cultural practice in relation to trials and sentencing of Aboriginal offenders
- provided guidance on communication and cultural factors critical to effective community engagement
- advised on the partnership framework and related strategies to enable NTG agencies and Aboriginal Territorians to address the array of complex issues that underlie the disadvantage faced by Aboriginal Territorians
- guided and supported the AJU's work to address Aboriginal over-representation in the criminal justice system in the NT, particularly regarding the high rates of Aboriginal incarceration and recidivism
- advised on options for the role of traditional leadership in local court decision making processes
- provided expertise in the development of management processes for implementing, monitoring and evaluating the implementation of the NTAJA
- provided advice in relation to pilot project proposals against relevant program criteria.

## Appendix 5. Aboriginal Justice Agreements in Australia's states and territories, 2000–2019

Table 9. Summary of Australian state and territories status of Aboriginal Justice Agreements

State / territory	Year	Agreement	Status
Queensland	2000	<i>The Queensland Aboriginal and Torres Strait Islander Justice Agreement (2000–2011)</i>	Evaluated in 2006, expired in 2011
Victoria	2000	<i>The Victorian Aboriginal Justice Agreement Phase 1</i>	Expired 2006, renewed
	2006	<i>The Victorian Aboriginal Justice Agreement Phase 2</i>	Evaluated in 2012, renewed
	2013	<i>The Victorian Aboriginal Justice Agreement Phase 3</i>	Evaluation due 2018, renewed
	2018	<i>The Victorian Aboriginal Justice Agreement Phase 4</i>	Commenced mid-2018*
New South Wales	2003	<i>NSW Aboriginal Justice Agreement</i>	Expired 2003
	2004	<i>Aboriginal Justice Plan: Beyond Justice 2004–2014</i>	Expired 2014
Western Australia	2004	<i>Western Australian Aboriginal Justice Agreement 2004–2009</i>	Expired 2009
	2009	<i>State Justice Plan: Aboriginal Community Solutions for State wide Issues (2009–2014) (A non-government strategy developed under the AJA)</i>	Expired 2014
Australian Capital Territory	2010	<i>Aboriginal and Torres Strait Islander Justice Agreement 2010–13</i>	Expired 2013
	2015	<i>Aboriginal and Torres Strait Islander Justice Partnership 2015–18</i>	Expired 2018*
Northern Territory	2019	Not yet adopted. Final NTAJA to be released in 2020.	Under development
Tasmania	n/a	Not adopted	
South Australia	n/a	Not adopted	

Table and content derived from Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2018) 499. **Note:** Although the Justice Partnership has not been renewed, the ACT Government is seeking to design a range of justice-related actions with a number of justice agencies to sit within a broader whole-of-government agreement titled the *Aboriginal & Torres Strait Islander Agreement 2019-2028*. Due for release in 2019, the broader agreement is not specifically justice focused, but has a wider range of focus areas similar to Closing the Gap. The ACT *Aboriginal & Torres Strait Islander Agreement* is being developed following the expiry of an initial whole-of-government agreement implemented from 2015-2018.



## Endnotes

- <sup>1</sup>The spelling of Arrarnta in this context is specific to the Western Arrarnta people of Central Australia.
- <sup>2</sup>Australian Dictionary of Biography, Namatjira Albert (Elea), <<http://adb.anu.edu.au/biography/namatjira-albert-elea-11217>>.
- <sup>3</sup>As a mark of respect, Elders takes a capital E.
- <sup>4</sup>The RCIADIC recommended the establishment of AJACs as part of a broader aim to establish a framework for negotiating with ATSI communities. AJACs were subsequently created in all states and territories, except for Tasmania.
- <sup>5</sup>Indigenous Justice Clearinghouse, *Indigenous Justice Agreements' Current Initiatives Paper 4* (2013) <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/initiative004.pdf>>.
- <sup>6</sup>Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017) 18.
- <sup>7</sup>Indigenous Justice Clearinghouse, *Indigenous Justice Agreements' Current Initiatives Paper 4* (2013) <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/initiative004.pdf>>.
- <sup>8</sup>Australian Bureau of Statistics, *Recorded Crimes – Victims, Australia 2017*, June 2018, TableBuilder.
- <sup>9</sup>James Dunlevie, 'Campaign Calls for Overhaul of NT Justice System', *ABC News* (online), 22 July 2016. <<https://www.abc.net.au/radio/programs/pm/campaign-calls-for-overhaul-of-nt-justice-system/7654028>>.
- <sup>10</sup>Northern Territory, *Parliamentary Debates*, Legislative Assembly, 19 October 2016, 115, (the Hon. Natasha Fyles, MLA, Attorney-General and Minister for Justice).
- <sup>11</sup>Hayley Sorensen, 'Northern Territory Labor Government Launches Aboriginal Justice Unit', *NT News* (online), 6 July 2017 <<https://www.ntnews.com.au/news/northern-territory/northern-territory-labor-government-launches-aboriginal-justice-unit/news-story/b45bcf8878b8d348367aa69d65cd1173>>.
- <sup>12</sup>Consultation issue no.1009.
- <sup>13</sup>Consultation issue no.978.
- <sup>14</sup>See, eg, Department of Treasury and Finance (NT), *Population - Northern Territory Economy: Aboriginal Population* (2018) <<https://nteconomy.nt.gov.au/population>>; Aboriginal Interpreter Service, *Aboriginal Languages in NT* (19 July 2018) <<https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-languages-in-nt>>.
- <sup>15</sup>Department of Treasury and Finance (NT), *Population - Northern Territory Economy: Aboriginal Population* (2018) <<https://nteconomy.nt.gov.au/population>>.
- <sup>16</sup>Department of Treasury and Finance (NT), *Northern Territory Population Projections (2019 Release)* (April 2019), 9 <<https://treasury.nt.gov.au/df/economic-group/population-projections>>.
- <sup>17</sup>Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2016: Summary Commentary* (2016) cat. no. 3238.0.55.001. <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001>>.
- <sup>18</sup>Department of Treasury and Finance (NT), *Northern Territory Population Projections (2019 Release)* (27 March 2018), 7 <<https://treasury.nt.gov.au/df/economic-group/population-projections>>.
- <sup>19</sup>Department of Treasury and Finance (NT), *Population - Northern Territory Economy: Aboriginal Population* (2018) <<https://nteconomy.nt.gov.au/population>>.
- <sup>20</sup>Aboriginal Interpreter Service, *Aboriginal Languages in NT* (19 July 2018) <<https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-languages-in-nt>>.
- <sup>21</sup>Derived from Australian Bureau of Statistics, *Census of Population and Housing: Reflecting Australia - Stories from the Census, 2016 - Cultural Diversity* (2017), cat. no. 2071.0, table 12.
- <sup>22</sup>Northern Territory Government, *Aboriginal land and permits* (24 March 2016) <<https://nt.gov.au/property/land/aboriginal-land-management/aboriginal-land-and-permits/land-council-roles-and-contacts>>. Note: The four Northern Territory land councils incorporated under the *Aboriginal Land Rights Act 1976* (NT) include the Anindilyakwa Land Council (Groote Eylandt), Central Land Council, Northern Land Council and Tiwi Land Council.
- <sup>23</sup>Coastal and Marine Management Northern Territory, *Discussion Paper: Our Coasts and Seas* (2018), 4. <[https://denr.nt.gov.au/\\_\\_data/assets/pdf\\_file/0005/475952/Coastal-and-Marine-Management-Discussion-Paper-1.pdf](https://denr.nt.gov.au/__data/assets/pdf_file/0005/475952/Coastal-and-Marine-Management-Discussion-Paper-1.pdf)>.
- <sup>24</sup>Department of Infrastructure, Planning and Logistics (NT), *Towards Zero - Road Safety Action Plan 2018-22* (2018) 5. <<https://roadsafety.nt.gov.au/about>>.
- <sup>25</sup>Department of Treasury and Finance (NT), *Population - Northern Territory Economy: Background* (2018) <<https://nteconomy.nt.gov.au/population>>.
- <sup>26</sup>Department of Treasury and Finance (NT), *Population - Northern Territory Economy: Background* (2018) <<https://nteconomy.nt.gov.au/population>>.
- <sup>27</sup>Northern Territory Government, *Services to remote communities and homelands* (29 August 2017) <<https://>>

nt.gov.au/community/local-councils-remote-communities-and-homelands/services-to-remote-communities-and-homelands>.

Northern Territory Government, *BushTel: Search* (accessed 26 June 2019) <<https://bushtel.nt.gov.au/#/search>>.

<sup>28</sup> Department of Infrastructure, Planning and Logistics (NT), *Towards Zero - Road Safety Action Plan 2018-22* (2018) 5. <<https://roadsafety.nt.gov.au/about>>.

<sup>29</sup> Australian Bureau of Statistics, *Female life expectancy: Life tables for Aboriginal and Torres Strait Islander Australians, 2010-2012* (2013) cat. no. 3302.0.55.003; Australian Bureau of Statistics, *Male life expectancy: Life tables for Aboriginal and Torres Strait Islander Australians, 2010-2012* (2013) cat no. 3302.0.55.003; Australian Bureau of Statistics, *Infant Mortality, Deaths Australia, 2018* cat. no. 3302.0; Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report: Northern Territory*, Cat No AIHW 159, 2018, 134; Australian Bureau of Statistics, (2016a). 2049.0 - Census of Population and Housing: Estimating Homelessness. Canberra: ABS. Retrieved from <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>; Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander health performance framework 2017: supplementary online tables*, Cat. no. WEB 170, Canberra; 2017; Australian Bureau of Statistics, *'Estimates of Aboriginal and Torres Strait Islander Australians: completed year 12'*, 2016;

Northern Territory Department of Health, *Northern Territory Aboriginal Health Plan*, 2015, retrieved from: <<http://hdl.handle.net/10137/798>>; Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework 2017 report: Northern Territory*, 2017. Available at: <<https://www.aihw.gov.au/getmedia/0e60dc3c-a582-4b7f-a4d1-1e623a91745e/aihw-ihw-186-2017-hpf-nt.pdf>>. Note: Weekly income relates to the median equivalised gross weekly household income for Indigenous adults.

<sup>30</sup> Australian Bureau of Statistics, *Infant Mortality, Deaths Australia* (2018) cat. no. 3302.0.

<sup>31</sup> Australian Bureau of Statistics, *Life Tables for Aboriginal and Torres Strait Islander Australians, 2015-2017* (2018) cat. no. 3302.0.55.003.

<sup>32</sup> Derived from Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (2016), cat no 2049.0, table 1.5.

<sup>33</sup> Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework Report* (2018), Cat. No. IHW 194, Canberra, table 2.06. Retrieved from <<https://www.aihw.gov.au/reports/indigenous-health-welfare/health-performance-framework/contents/tier-2-determinants-of-health/2-06-educational-participation-and-attainment-of-adults>>.

<sup>34</sup> Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report: Northern Territory*, Cat No IHW 186, 2017, 84. Note: Weekly income relates to the median equivalised gross weekly household income for Indigenous adults.

<sup>35</sup> Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report: Northern Territory*, Cat No IHW 186, 2017, 82.

<sup>36</sup> NT Department of Health 2015, *Northern Territory Aboriginal Health Plan* (2015), 9. <<http://hdl.handle.net/10137/798>>.

<sup>37</sup> Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report: Northern Territory* (2017), 54.

<sup>38</sup> Northern Territory Government, Department of Education, *Enrolment and Attendance* (2018) <[https://education.nt.gov.au/\\_data/assets/pdf\\_file/0012/600114/E-and-A-Web-T2-2018-Table-2.pdf](https://education.nt.gov.au/_data/assets/pdf_file/0012/600114/E-and-A-Web-T2-2018-Table-2.pdf)>.

<sup>39</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017) 63 [2.31].

<sup>40</sup> Australian Bureau of Statistics, *2076.0 – Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians 2016* (2019), Tablebuilder.

<sup>41</sup> Australian Bureau of Statistics, *2076.0 – Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians 2016* (2019), Tablebuilder.

<sup>42</sup> Australia Bureau of Statistics, (2016a). 2049.0 - Census of Population and Housing: Estimating Homelessness. Canberra: ABS. Retrieved from <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>. Note: The definition of homelessness for this data includes people living in improvised dwellings, tents, or sleeping out; people in supported accommodation for the homeless; people staying temporarily with other households; people living in boarding houses; people in other temporary lodgings; and people living in 'severely' crowded dwellings.

<sup>43</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 71–73 [2.59] – [2.67].

<sup>44</sup> Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report*, (2017) 67 <[https://www.pmc.gov.au/sites/default/files/publications/2017-health-performance-framework-report\\_1.pdf](https://www.pmc.gov.au/sites/default/files/publications/2017-health-performance-framework-report_1.pdf)>.

<sup>45</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 66–67 [2.42– 2.47].



- <sup>46</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 65 [2.40] – [2.41].
- <sup>47</sup> The Balnaves Foundation, *Investing in Territory Kids and Generational Change – Hearing for Learning* (2018) <<https://balnavesfoundation.com/philanthropy-supports-journalism-copy-copy-copy-copy-copy-copy-2/>>; Menzies School of Health Research, *Hearing for Learning Initiative (HfLi): Investing Generational Change – Hearing for Learning Initiative* (2018) <[https://www.menzies.edu.au/page/News\\_and\\_Events/E-Newsletter/Healthy\\_Tomorrow/December\\_2018/Hearing\\_for\\_Learning\\_Initiative/](https://www.menzies.edu.au/page/News_and_Events/E-Newsletter/Healthy_Tomorrow/December_2018/Hearing_for_Learning_Initiative/)>.
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- <sup>51</sup> Australian Bureau of Statistics, *3303.0 – Causes of Death, Australia, 2017* (2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/3303.0~2017~Main%20Features~Intentional%20self-harm,%20key%20characteristics~3>>.
- <sup>52</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 429 [13.1].
- <sup>53</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 70 [2.56]; Northern Territory Government, *Alcohol Policies and Legislation Review: Final Report* (2017) 1.
- <sup>54</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 430 [13.8].
- <sup>55</sup> Northern Territory Government, *Northern Territory Crime Statistics Data through December 2018* (2018) 34, Table 4.34. The involvement of alcohol in a domestic violence offence is determined by the NT Police at the time of the offence. Of DVF offences that included assault, 59.3% involved alcohol. Of all assault offences, 59.3% involve domestic violence.
- <sup>56</sup> These figures are based on offences where the involvement of alcohol, or lack thereof, was noted by police. The involvement of alcohol was not known in 14% of offences.
- <sup>57</sup> Northern Territory Government, *Domestic, Family and Sexual Violence Reduction Framework 2018-2028* (2018) 18 <[https://territoryfamilies.nt.gov.au/\\_data/assets/pdf\\_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf](https://territoryfamilies.nt.gov.au/_data/assets/pdf_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf)>.
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- <sup>59</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2018), 77 [2.86].
- <sup>60</sup> Jeanette Kerr, 'A Descriptive Analysis of the Characteristics, Seriousness and Frequency of Aboriginal Intimate Partner Violence in the Northern Territory, Australia: A Strategy for Targeting High Harm Cases', (Unpublished Thesis, 2016) 76-80.
- <sup>61</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 30.
- <sup>62</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 32.
- <sup>63</sup> Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016* (2016) 8.36 <<https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-report.pdf>>.
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- <sup>70</sup> Consultation issue no.793.
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- <sup>72</sup> Consultation issue no.794.
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- <sup>81</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 362 [11.58].
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- <sup>84</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 353 [11.25].
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- <sup>94</sup> Australian Institute of Health and Welfare, *Child protection Australia 2017–18* (2019) cat. no. CWS 65, 71, Table A2.
- <sup>95</sup> Australian Institute of Health and Welfare, *Child protection Australia 2017–18* (2019) cat. no. CWS 65, Table S3.
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<sup>103</sup> Northern Territory Government, Department of the Attorney-General and Justice, Correctional Services, Programs, Services and Improvements, *Prisoners held in custody under Part IIA of the Criminal Code Act 1983 (NT)* (2018), internal, unpublished data.

<sup>104</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 2A, 354.

<sup>105</sup> Senate Community Affairs Reference Committee, Parliament of Australia, *Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia* (2016) 23 <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/IndefiniteDetention45/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report)>.

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<sup>107</sup> Australian Bureau of Statistics, *Recorded Crime – Victims, Australia, 2017* (2018) cat. no. 4510.0, Table 16 <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4510.0>>.

<sup>108</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators* (2009), 4.98 [4.12] <<https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-report.pdf>>.

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<sup>110</sup> Australian Institute of Criminology, *Indigenous perpetrators of violence: prevalence and risk factors for offending* (2010) 59. <<https://aic.gov.au/publications/rpp/rpp105>>.

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<sup>112</sup> ABS 4517.0 Prisoners in Australia 2018 Snapshot at 30 June 2018.

<sup>113</sup> Australian Bureau of Statistics, *Corrective Services, Australia December Quarter 2018* (2018), cat. no. 4512.0.

<sup>114</sup> Australian Bureau of Statistics, *Corrective Services, Australia December Quarter 2018* (2018), cat. no. 4512.0.

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<sup>116</sup> Australian Bureau of Statistics, *Prisoners in Australia, 2018* (2018), cat. no. 4517.0, table 20.

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<sup>118</sup> Productivity Commission, *Report on Government Services 2015-2016* (2017), Volume C: Justice, Correctional Services, Chapter 8, 8.19; PwC's Indigenous Consulting, *Indigenous Incarceration: Unlock the Facts* (2017), 27; quoted in ALRC [4.10].

<sup>119</sup> Productivity Commission, *Report on Government Services 2017-2018* (2019) Volume C: Justice, Correctional Services, Chapter 8, Table 8A.17. Note: this includes total net operating expenditure and capital costs.

<sup>120</sup> Productivity Commission, *Report on Government Services 2017-2018* (2019) Volume F: Community services, Youth Justice Services, Chapter 17, Table 17A.21.

<sup>121</sup> Productivity Commission, *Report on Government Services 2017-2018* (2019) Volume C: Justice, Correctional Services, Chapter 8, Table 8A.17 and Volume F: Community services, Youth Justice Services,



Chapter 17, Table 17A.20. Note: for adult offenders, this includes total net operating expenditure and capital costs.

<sup>122</sup> Commonwealth, Royal Commission into Aboriginal Deaths in Custody (1991) *National Report* vol 1, [1.6.1] <<http://au/other/IndigLRes/rciadic/>>.

<sup>123</sup> Derived from Australian Bureau of Statistics, Prisoners in Australia, (2017) cat. no. 4517.0 <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/7B1DF284B985CDE1CA25835A0010FCD7?opendocument>>.

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<sup>125</sup> Australian Institute for Health and Welfare, *Youth Justice in Australia 2016-17*, (2018) cat no. JUV 116, Table 3.1, 8 at <<https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>>.

<sup>126</sup> Chief Justice Wayne Martin, *Indigenous Incarceration Rates: Strategies for Much Needed Reform* 8 (Speech delivered at Law Summer School, 2015) <[https://www.supremecourt.wa.gov.au/\\_files/Speeches\\_Indigenous\\_Incarceration\\_Rates.pdf?](https://www.supremecourt.wa.gov.au/_files/Speeches_Indigenous_Incarceration_Rates.pdf?)>.

<sup>127</sup> Consultation issue no. 993.

<sup>128</sup> Consultation issue no. 216.

<sup>129</sup> Consultation issue no. 901.

<sup>130</sup> Consultation issue no. 50.

<sup>131</sup> Consultation issue no. 52.

<sup>132</sup> Criminal Justice Research and Statistics Unit, *Number of breach bail apprehensions by status and Aboriginality*, (2018) unpublished data.

<sup>133</sup> Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-17* (2018) cat. no. 4519.0, Glossary. <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4519.0Main+Features12016-17?OpenDocument>>.

<sup>134</sup> Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-17* (2018) cat. no. 4519.0, Explanatory Notes <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4519.0Explanatory%20Notes12016-17?OpenDocument>>.

<sup>135</sup> Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-17* (2018) cat. no. 4519.0, Glossary <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4519.0Main+Features12016-17?OpenDocument>>.

<sup>136</sup> Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-17* (2018) cat. no. 4519.0, Table 25. <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4519.0Main+Features12016-17?OpenDocument>>.

<sup>137</sup> Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-17* (2018) cat. no. 4519.0, Table 23 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4519.0Main+Features12016-17?OpenDocument>>.

<sup>138</sup> Derived from Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-17* (2018) cat. no. 4519.0, requested data, unpublished. (file: ABS Data Request – Offenders\_1).

<sup>139</sup> Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-17* (2018) cat. no. 4519.0, Explanatory Notes <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4519.0Glossary12016-17?opendocume nt&tabname=Notes&prodno=4519.0&issue=2016-17&num=&view=>>>.

<sup>140</sup> Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-17* (2018) cat. no. 4519.0, Explanatory Notes <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4519.0Glossary12016-17?opendocume nt&tabname=Notes&prodno=4519.0&issue=2016-17&num=&view=>>>.

<sup>141</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory *Final Report* (2017) vol 2B, 229-31; Commonwealth, Royal Commission into Aboriginal Deaths in Custody (1991) *National Report* vol 3, [21.2.30]; Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 451-455.

<sup>142</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory *Final Report* (2017) vol 2B, 247-9.

<sup>143</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report no 133 (2017), 457 [14.41].

<sup>144</sup> Consultation issue no. 108.

<sup>145</sup> Consultation issue no. 180.

<sup>146</sup> Consultation issue no. 239.

<sup>147</sup> Consultation issue no. 202.

<sup>148</sup> Northern Territory Government, Department of the Attorney-General and Justice, *Being granted bail* (2016) <<https://nt.gov.au/law/courts-and-tribunals/being-granted-bail>>.

<sup>149</sup> Northern Territory Government, Department of the Attorney-General and Justice, *Being granted bail* (2016) <<https://nt.gov.au/law/courts-and-tribunals/being-granted-bail>>.

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- <sup>152</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 154 [5.26].
- <sup>153</sup> See, eg, Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 155 [5.33]; Final Report of the Royal Commission into Aboriginal Deaths in Custody, 1991, Volume 3, [21.4.5].
- <sup>154</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 157-8 [5.41-5.44].
- <sup>155</sup> Final report of the Royal Commission into Aboriginal Deaths in Custody, 1991, Volume 3, [21.4.2].
- <sup>156</sup> See, eg, Consultation issue no. 108; Consultation issue no. 186; Consultation issue no. 202; Consultation issue no. 336; Consultation issue no. 665; Consultation issue no. 932.
- <sup>157</sup> Criminal Justice Research and Statistics Unit, Department of the Attorney-General and Justice (NT), *Breach of bail apprehensions* (2018) requested data, unpublished.
- <sup>158</sup> Criminal Justice Research and Statistics Unit, Department of the Attorney-General and Justice (NT), *Breach of bail apprehensions* (2018) requested data, unpublished.
- <sup>159</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 169 [5.85].
- <sup>160</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 169 [5.85].
- <sup>161</sup> Australian Bureau of Statistics, *Prisoners in Australia, 2017* (2017) cat. no. 4517.0, Glossary <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/s/4517.0Glossary12017?opendocument&tabname=Notes&prodno=4517.0&issue=2017&num=&view=>>>.
- <sup>162</sup> Derived from Australian Bureau of Statistics, *Prisoners in Australia, 2013 to 2017* (2013-2017) cat. no.4517.0, supplied data, unpublished.
- <sup>163</sup> Derived from Australian Bureau of Statistics, *Prisoners in Australia, 2008 to 2017* (2009-2018) cat. no.4517.0, supplied data, unpublished.
- <sup>164</sup> Australian Bureau of Statistics, *Prisoners in Australia 2017* (2018), cat. No.4517.0, supplied data.
- <sup>165</sup> Derived from Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Youth Detention Annual Statistics 2012-13 to 2015-2016* (2015 to 2016) Table 15 (2015-16); Table 15 (2014-15); Table 15 (2013-14); Table 15 (2012-13) <<https://justice.nt.gov.au/attorney-general-and-justice/statistics-and-strategy/criminal-justice-statistics>>; derived from Northern Territory Government, Territory Families, (Criminal Justice Research and Statistics Unit), *Youth Detention Annual Statistics 2016-2017* (2018) unpublished, 12, Table 4.
- <sup>166</sup> Derived from Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Youth Detention Annual Statistics 2012-13 to 2015-2016* (2015 to 2016) Table 15 (2015-16); Table 15 (2014-15); Table 15 (2013-14); Table 15 (2012-13) <<https://justice.nt.gov.au/attorney-general-and-justice/statistics-and-strategy/criminal-justice-statistics>>; derived from Northern Territory Government, Territory Families, (Criminal Justice Research and Statistics Unit), *Youth Detention Annual Statistics 2016-2017* (2018) unpublished, 12, Table 4.
- <sup>167</sup> Northern Territory Government, Territory Families, *Annual Report 2017-18* (2018) 17. <[https://territoryfamilies.nt.gov.au/\\_\\_data/assets/pdf\\_file/0019/452521/territory-families-annual-report-2016-17-web.pdf](https://territoryfamilies.nt.gov.au/__data/assets/pdf_file/0019/452521/territory-families-annual-report-2016-17-web.pdf)>.
- <sup>168</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 2B, 278,282.
- <sup>169</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Summary, Report No 133 (2018),13.
- <sup>170</sup> Consultation issue no. 201.
- <sup>171</sup> Consultation issue no. 139.
- <sup>172</sup> Consultation issue no. 186.
- <sup>173</sup> Consultation issue no. 155.
- <sup>174</sup> Consultation issue no. 186.
- <sup>175</sup> Consultation issue no. 631.
- <sup>176</sup> Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-2017* (2018) cat. no. 4519.0, Table 22.
- <sup>177</sup> This is derived from ABS data on the number of defendants finalised listed by most serious offence, or principal offence (i.e. the offence category, based on ASOC or ANZSOC, that describes the most serious offence type associated with a finalised defendant.). The principal offence is determined by how the offences were finalised and/or the rankings in the National Offence Index (see glossary).
- <sup>178</sup> Australian Bureau of Statistics, *Criminal Courts, Australia, 2016-17* (2018) cat. no. 4513.0, Explanatory Notes, no. 6 & no. 29 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4513.0>>.
- <sup>179</sup> Australian Bureau of Statistics, *Criminal Courts, Australia, 2016-17* (2018) cat. no. 4513.0, Explanatory

Notes, no. 6 & no. 29 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4513.0>>.

<sup>180</sup> Australian Bureau of Statistics, *Criminal Courts, Australia 2016-17* (2018), cat. no. 4513.0, Table 12.

This finding is derived from ABS data on the number of defendants finalised. For this data set, a finalised defendant is defined as 'a person or organisation for whom all charges relating to the one case have been formally completed so that the defendant ceases to be an item of work to be dealt with by the court'.

<sup>181</sup> Australian Bureau of Statistics, *Criminal Courts, Australia, 2012-13 to 2016-17* (2014-18) cat. no. 4514.0, Table 12 (2018) ; Table 12 (2017); Table 11 (2016) ; Table 9 (2015); Table 9 (2014).

<sup>182</sup> Australian Bureau of Statistics, *Criminal Courts, Australia, 2012-13 to 2016-17* (2014-18) cat. no. 4514.0, Table 12 (2018) ; Table 12 (2017); Table 11 (2016) ; Table 9 (2015); Table 9 (2014).

<sup>183</sup> Australian Bureau of Statistics, *Criminal Courts, Australia*, (2018) cat. no. 4513.

<sup>184</sup> Criminal Justice Research and Statistics Unit, *Number of breach bail apprehensions by status and Aboriginality* (2018) unpublished data.

<sup>185</sup> See glossary for explanation of ANZSOC.

<sup>186</sup> Department of the Attorney-General and Justice, 2018, *Criminal Courts Lodgements by Australia and New Zealand Standard Offence Classification (ANZSOC) and Indigenous Status, Supreme Court; Local Court; Children's Court*, 2013-2018, Northern Territory Government, unpublished.

<sup>187</sup> Department of the Attorney-General and Justice, 2018, *Criminal Courts Lodgements by Australia and New Zealand Standard Offence Classification (ANZSOC) and Indigenous Status, Supreme Court; Local Court; Children's Court*, 2013-2018, Northern Territory Government, unpublished.

<sup>188</sup> Consultation issue no. 866.

<sup>189</sup> Consultation issue no. 280.

<sup>190</sup> Consultation issue no. 876.

<sup>191</sup> Consultation issue no. 886.

<sup>192</sup> Derived from Australian Bureau of Statistics, *Recorded Crime – Offenders, 2016-17* (2018) cat. no. 4519.0 requested data, unpublished.(file: ABS Data Request – Offenders\_1).

<sup>193</sup> For the ABS *Criminal Courts, Australia* data set, if a person is a defendant in a number of criminal cases dealt with and finalised separately within the courts during the reference period, this person is counted more than once within that reference period.

<sup>194</sup> Australian Bureau of Statistics, *Criminal Courts, Australia, 2016-2017* (2018) Table 12. <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4513.0Main+Features12017-18?OpenDocument>>.

<sup>195</sup> Australian Bureau of Statistics, *Criminal Courts, Australia, 2016-2017* (2018) Table 12. <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4513.0Main+Features12017-18?OpenDocument>>.

<sup>196</sup> Australian Bureau of Statistics, *Criminal Courts, Australia, 2016-17* (2018) cat. no. 4513.0, Explanatory Notes, no. 6 & no. 29 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4513.0>>. In line with the finalised defendant data provided previously these figures includes all defendants who have been a *proven guilty* finalisation in Higher, Magistrates' or Children's Courts during the reference period. Where a defendant is proven guilty in a number of criminal cases dealt with and finalised separately within the courts during the reference period, this person is counted more than once.

<sup>197</sup> Australian Bureau of Statistics, *Criminal Courts, Australia, 2016-2017* (2018) Explanatory Notes <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4513.0Main+Features12017-18?OpenDocument>>.

<sup>198</sup> A *proven guilty* finalisation is an outcome of criminal proceedings in which a court accepts that a charge is proven through a guilty plea entered by a defendant or the defendant is found guilty by the court. See Australian Bureau of Statistics, *Criminal Courts, Australia, 2016-2017* (2018) Glossary: 'Proven Guilty'. The ABS, in their *Criminal Courts, Australia* data set, categorise these alternatives into custodial and non-custodial orders. If the court hands down a custodial order, convicted persons may receive 'custody in a correctional institution', 'custody in the community', or a 'fully suspended sentence'. <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4513.0Main+Features12016-17?OpenDocument>>.

<sup>199</sup> NT Department of the Attorney-General and Justice, Northern Territory Correctional Services and Youth Justice, *Annual Statistics 2016-2017*(2017) 28, Table 20.

<sup>200</sup> Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Mandatory sentencing data* (2019) internal, unpublished data.

<sup>201</sup> Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Mandatory sentencing data* (2019) internal, unpublished data.

<sup>202</sup> Northern Territory Government, Department of the Attorney-General and Justice, Northern Territory Correctional Services and Youth Justice, *Annual Statistics 2016-2017*(2017) 28, Table 20.

<sup>203</sup> Northern Territory Government, Department of the Attorney-General and Justice, Northern Territory Correctional Services and Youth Justice, *Annual Statistics 2016-2017*(2017) 28, Table 20.

<sup>204</sup> Australian Law Reform Commission, '*Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*', Report No 133 (2017), 41 [1.17].

<sup>205</sup> Derived from Australian Bureau of Statistics, *Prisoners in Australia, 2014-18* (2014-18) cat. no. 4519.0; Table 16 (2018); Table 16 (2017); Table 15 (2016); Table 15 (2015); Table 15 (2014) <<https://www.abs.gov>>.



au/ausstats/abs@.nsf/mf/4517.0>. Note: Comparatively, Aboriginal prisoners held for 'acts intended to cause injury' accounted for 54% of Aboriginal census prisoners recorded between 2014 and 2018.

<sup>206</sup> Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Number of persons held for fine default only, by Aboriginal status* (2018) internal, unpublished data.

<sup>207</sup> Northern Territory Government, Department of the Attorney-General and Justice, Northern Territory Correctional Services and Youth Justice, *Annual Statistics 2015-2016* (2017) 28; Australian Law Reform Commission, 'Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples', December 2017, 268. [7.152].

<sup>208</sup> See, eg, Derived from Australia Bureau of Statistics, *Prisoners in Australia 2008 – 2017* (2018), cat no. 4517.0 supplied data; Australian Bureau of Statistics, *Prisoners in Australia 2008 – 2017* (2018), cat no. 4517.0, Table 26.

<sup>209</sup> Australian Law Reform Commission, 'Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples', Report No 133 (2017), 268 [7.152].

<sup>210</sup> Australian Law Reform Commission, 'Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples', Report No 133 (2017), 288 [9.19-9.20].

<sup>211</sup> See, eg, Consultation issue no. 312; Consultation issue no. 314; Consultation issue no. 319; Consultation issue no. 334; Consultation issue no. 866; Consultation issue no. 876; Consultation issue no. 879.

<sup>212</sup> *Sentencing Act 1995* (NT).

<sup>213</sup> *Sentencing Act 1995* (NT) s 78D —DI.

<sup>214</sup> Northern Territory Office of Crime Prevention, 'Review of the Northern Territory *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (2015) 9.

<sup>215</sup> *Sentencing Act 1995* (NT) s 78D —DI.

<sup>216</sup> *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (NT) s6, Division 6A, amending *Sentencing Act* (NT).

<sup>217</sup> *Sentencing Act 1995* (NT) s 53A.

<sup>218</sup> *Sentencing Act 1995* (NT) s 78BA (1).

<sup>219</sup> *Sentencing Act 1995* (NT) s 78B.

<sup>220</sup> *Sentencing Act 1995* (NT) s 55.

<sup>221</sup> *Domestic and Family Violence Act 2007* (NT) ss 121, 122.

<sup>222</sup> The current provisions establish five levels of violent offences with corresponding mandatory sentences of three or 12 months' imprisonment. *Misuse of Drugs Act 1990* (NT) s 37 (2); *Sentencing Act 1995* (NT) s 53 (1), 55. The violent offences attracting mandatory sentencing include offences such as (but not limited to) terrorism, murder, manslaughter, setting man traps, attempting to injure by explosive substances, common assault, assaults police/judges/magistrates/member of crew of an aircraft, unlawful stalking, robbery, and assault with intent to steal.

<sup>223</sup> *Sentencing Act 1995* (NT) s 4.

<sup>224</sup> *Sentencing Act 1995* (NT) ss 78DI, 78DH (2).

<sup>225</sup> Law Council of Australia, *Policy Discussion Paper on Mandatory Sentencing* (2014) 51.

<sup>226</sup> Law Council of Australia, *Policy Discussion Paper on Mandatory Sentencing* (2014) 51.

<sup>227</sup> Law Council of Australia, *Policy Discussion Paper on Mandatory Sentencing* (2014) 30; Stephen Jackson and Fiona Hardy, 'The Impact of Mandatory Sentencing on Indigenous Offenders' (Speech delivered at Sentencing Conference, National Judicial Conference, Canberra, 7 February 2010).

<sup>228</sup> Consultation issue no. 257.

<sup>229</sup> Consultation issue no. 39.

<sup>230</sup> Consultation issue no. 1.

<sup>231</sup> Consultation issue no. 579.

<sup>232</sup> Consultation issue no. 26.

<sup>233</sup> Consultation issue no. 326.

<sup>234</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report, Report No 133 (2018), 254 [7.96].

<sup>235</sup> Productivity Commission, *Report on Government Services 2017 Volume C: Justice Table 8A.20*.

<sup>236</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 254 [7.96] – [7.97].

<sup>237</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 236 [7.23].

<sup>238</sup> Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84 (2017) 26 [1.32].

<sup>239</sup> See, eg, Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *Final Report* (1991) vol 5, recommendation 94; Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (2017), 14.



- <sup>240</sup> See, eg, Consultation issue no. 3; Consultation issue no. 26; Consultation issue no. 39; Consultation issue no. 55; Consultation issue no. 165; Consultation issue no. 194; Consultation issue no. 225; Consultation issue no. 337; Consultation issue no. 338; Consultation issue no. 345; Consultation issue no. 389; Consultation issue no. 435; Consultation issue no. 500; Consultation issue no. 511; Consultation issue no. 586; Consultation issue no. 668; Consultation issue no. 821; Consultation issue no. 874; Consultation issue no. 934.
- <sup>241</sup> Australian Institute of Health and Welfare and Australian Institute of Family Studies, *Diverting Indigenous offenders from the criminal justice system* (2013) 1 <<https://www.aihw.gov.au/getmedia/0422b2d9-dd3f-41a2-aa8e-e13a9cf9afca/ctgc-rs24.pdf.aspx?inline=true>>.
- <sup>242</sup> Australian Institute of Health and Welfare and Australian Institute of Family Studies, *Diverting Indigenous offenders from the criminal justice system* (2013) 1 <<https://www.aihw.gov.au/getmedia/0422b2d9-dd3f-41a2-aa8e-e13a9cf9afca/ctgc-rs24.pdf.aspx?inline=true>>.
- <sup>243</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 2B, 259, citing Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, page 1 of Table 11.A.3.43.
- <sup>244</sup> Productivity Commission, Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, (2016), Table 11.A.3.43 < <https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-attachment11A-safe-and-supportive-communities.xlsx>>.
- <sup>245</sup> See, eg, Consultation issue no. 39; Consultation issue no. 119; Consultation issue no. 295.
- <sup>246</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 347 [11.1].
- <sup>247</sup> Australian Institute of Health and Welfare and Australian Institute of Family Studies, *Diverting Indigenous offenders from the criminal justice system* (2013) 1 <<https://www.aihw.gov.au/getmedia/0422b2d9-dd3f-41a2-aa8e-e13a9cf9afca/ctgc-rs24.pdf.aspx?inline=true>>.
- <sup>248</sup> Australian Institute of Health and Welfare and Australian Institute of Family Studies, *Diverting Indigenous offenders from the criminal justice system* (2013) 1 <<https://www.aihw.gov.au/getmedia/0422b2d9-dd3f-41a2-aa8e-e13a9cf9afca/ctgc-rs24.pdf.aspx?inline=true>>.
- <sup>249</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 2B, 259.
- <sup>250</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 2B, 276 – 277.
- <sup>251</sup> See, eg, Consultation issue no. 72; Consultation issue no. 183; Consultation issue no. 793.
- <sup>252</sup> See, eg, Consultation issue no. 165; Consultation issue no. 412.
- <sup>253</sup> See, eg, Consultation issue no. 312; Consultation issue no. 322; Consultation issue no. 345.
- <sup>254</sup> Consultation issue no. 930.
- <sup>255</sup> Consultation issue no. 221.
- <sup>256</sup> Consultation issue no. 203.
- <sup>257</sup> Consultation issue no. 697.
- <sup>258</sup> Consultation issue no. 213.
- <sup>259</sup> Consultation issue no. 56.
- <sup>260</sup> Consultation issue no. 203.
- <sup>261</sup> See, eg, Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 208; Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 2B, recommendation 25, 42, 323.
- <sup>262</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 199 [6.53 – 6.76].
- <sup>263</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 2B, 323.
- <sup>264</sup> Consultation issue no. 360.
- <sup>265</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 224 [6.157].
- <sup>266</sup> Consultation issue no. 372.
- <sup>267</sup> Consultation issue no. 915.
- <sup>268</sup> Consultation issue no. 13.
- <sup>269</sup> Consultation Issue no. 201.
- <sup>270</sup> Consultation issue no. 201.
- <sup>271</sup> Thalia Anthony and Will Crawford, 'Northern Territory Aboriginal Community Sentencing Mechanisms: An Order for Substantive Equality' (2014) 7(2) *Australian Aboriginal Law Journal* 79, 80-82.

- <sup>272</sup> See, eg, Consultation issue no. 13; Consultation issue no. 196; Consultation issue no. 201; Consultation issue no. 263; Consultation issue no. 293; Consultation issue no. 359; Consultation issue no. 600; Consultation issue no. 702; Consultation issue no. 795; Consultation issue no. 915; Consultation issue no. 977.
- <sup>273</sup> Consultation issue no. 947.
- <sup>274</sup> Consultation issue no. 151.
- <sup>275</sup> Consultation issue no. 181.
- <sup>276</sup> Consultation issue no. 45.
- <sup>277</sup> Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84 (2017) 197.
- <sup>278</sup> Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Number of domestic violence victims of matters finalised in Alice Springs court by age, sex and Aboriginality* (2018), internal unpublished data.
- <sup>279</sup> Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Number of domestic violence victims of matters finalised in Alice Springs court by age, sex and Aboriginality* (2018), internal unpublished data.
- <sup>280</sup> Consultation issue no. 24.
- <sup>281</sup> Consultation issue no. 35.
- <sup>282</sup> Consultation issue no. 142.
- <sup>283</sup> Consultation issue no. 255.
- <sup>284</sup> Consultation issue no. 665.
- <sup>285</sup> Consultation issue no. 239.
- <sup>286</sup> Consultation issue no. 60.
- <sup>287</sup> Consultation issue no. 44.
- <sup>288</sup> Consultation issue no. 802.
- <sup>289</sup> Consultation issue no. 615.
- <sup>290</sup> Consultation issue no. 615.
- <sup>291</sup> Consultation issue no. 804.
- <sup>292</sup> Australian Bureau of Statistics, *Prisoners in Australia 2018* (2019) cat no. 4517.0.
- <sup>293</sup> Derived from Australian Bureau of Statistics, *Corrective Services, Australia, December Quarter 2018*, (2018), <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0?OpenDocument>>.
- <sup>294</sup> Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Northern Territory Correctional Services Annual Statistics*, 2012 through 2016, Table 15 of each report.
- <sup>295</sup> Consultation issue no. 282.
- <sup>296</sup> Derived from Australian Bureau of Statistics, *Prisoners in Australia, 2017*, (2017) cat. no. 4517.0, Table 20 <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/7B1DF284B985CDE1CA25835A0010FCD7?opendocument>>.
- <sup>297</sup> Derived from Australian Bureau of Statistics, *Prisoners in Australia, 2017*, (2017) cat. no. 4517.0 <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/7B1DF284B985CDE1CA25835A0010FCD7?opendocument>>.
- <sup>298</sup> Northern Territory Government, Department of the Attorney-General and Justice, *Northern Territory Correctional Services Annual Statistics 2016-2017* (2017) Table 12.
- <sup>299</sup> Derived from Australian Bureau of Statistics, *Prisoners in Australia, 2017* (2017) cat. no. 4517.0 <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/7B1DF284B985CDE1CA25835A0010FCD7?opendocument>>.
- <sup>300</sup> Derived from Australian Bureau of Statistics, *Prisoners in Australia, 2017* (2017) cat. no. 4517.0 <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/7B1DF284B985CDE1CA25835A0010FCD7?opendocument>>.
- <sup>301</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 118.
- <sup>302</sup> Australian Institute for Health and Welfare, *Youth Justice in Australia 2016-17* (2018) cat no. JUV 116, Table 3.1, 8 <<https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>>.
- <sup>303</sup> Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Northern Territory Correctional Services and Youth Justice Annual Statistics*, 2012 through 2017, includes unpublished data.
- <sup>304</sup> Australian Institute for Health and Welfare, *Youth Justice in Australia 2017-18* (2019) cat no. JUV 129, Table 2.1, 5 <<https://www.aihw.gov.au/getmedia/f80cfcb3-c058-4c1c-bda5-e37ba51fa66b/aihw-juv-129.pdf.aspx?inline=true>>. Note: this holds true regardless of whether supervision is measured on an average day or over the span of a year.

- <sup>305</sup> Australian Institute of Health and Welfare, *Youth Justice in the Northern Territory 2017-18* (2019) 1 <[https://www.aihw.gov.au/getmedia/3454bf5f-eb3a-4264-ab77-3ea4249809c1/Factsheet-YJ\\_2017-18\\_NT.pdf.aspx](https://www.aihw.gov.au/getmedia/3454bf5f-eb3a-4264-ab77-3ea4249809c1/Factsheet-YJ_2017-18_NT.pdf.aspx)>.
- <sup>306</sup> Consultation issue no. 933.
- <sup>307</sup> Consultation issue no. 186.
- <sup>308</sup> Consultation issue no. 932.
- <sup>309</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report, Report No 133 (2018), 303 [9.75].
- <sup>310</sup> Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Northern Territory Correctional Services and Youth Justice Annual Statistics*, 2016-17, Table 16.
- <sup>311</sup> See, eg, Consultation issue no. 186; Consultation issue no. 202; Consultation issue no. 225; Consultation issue no. 316; Consultation issue no. 318; Consultation issue no. 330; Consultation issue no. 343; Consultation issue no. 349; Consultation issue no. 874; Consultation issue no. 875; Consultation issue no. 877; Consultation issue no. 879; Consultation issue no. 932; Consultation issue no. 933; Consultation issue no. 947; Consultation issue no. 1011.
- <sup>312</sup> Consultation issue no. 186.
- <sup>313</sup> Consultation issue no. 325.
- <sup>314</sup> Consultation issue no. 318.
- <sup>315</sup> *Parole Act 1971* (NT) s 5.
- <sup>316</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2018), Recommendation 9-2.
- <sup>317</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2018), 307 [9.95].
- <sup>318</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2018), 3.14 [9.123].
- <sup>319</sup> Consultation issue no. 332.
- <sup>320</sup> Consultation issue no. 1005.
- <sup>321</sup> Consultation issue no. 829.
- <sup>322</sup> Consultation issue no. 1009.
- <sup>323</sup> Consultation issue no. 225.
- <sup>324</sup> Derived from Northern Territory Government, Department of the Attorney-General and Justice, Criminal Justice Research and Statistics Unit, *Adult prison return rate by Aboriginal Status* (2018), unpublished data.
- <sup>325</sup> Consultation issue no. 401.
- <sup>326</sup> Consultation issue no. 404.
- <sup>327</sup> Consultation issue no. 999.
- <sup>328</sup> Consultation issue no. 1.
- <sup>329</sup> Consultation issue no. 343.
- <sup>330</sup> Consultation issue no. 929.
- <sup>331</sup> Consultation issue no. 930.
- <sup>332</sup> Consultation issue no. 337.
- <sup>333</sup> Consultation issue no. 937.
- <sup>334</sup> Consultation issue no. 319.
- <sup>335</sup> See, eg, Consultation issue no. 119; Consultation issue no. 236; Consultation issue no. 336; Consultation issue no. 339; Consultation issue no. 866.
- <sup>336</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 288 [9.20].
- <sup>337</sup> This is consistent with the ALRC's recommendation: see Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), Recommendation 9-1.
- <sup>338</sup> Mary Stathopoulos, Antonia Quadara, Bianca Fileborn, and Haley Clark, 'Addressing women's victimisation histories in custodial settings' (2012), *Australian Centre for the Study of Sexual Assault*, Issues No.13.
- <sup>339</sup> Consultation issue no. 943.
- <sup>340</sup> See, eg, Consultation issue no. 113; Consultation issue no. 145; Consultation issue no. 179.
- <sup>341</sup> Consultation issue no. 771.
- <sup>342</sup> See eg, Consultation issue no. 492; Consultation issue no. 928.
- <sup>343</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017), 294 –301 [9.41–9.68].
- <sup>344</sup> Consultation issue no. 878.
- <sup>345</sup> Consultation issue no. 236.



- <sup>346</sup> Consultation issue no. 55.
- <sup>347</sup> Consultation issue no. 238.
- <sup>348</sup> Consultation issue no. 874.
- <sup>349</sup> Consultation issue no. 325.
- <sup>350</sup> See, eg, Robert Chapman and Miles Holmes et al, 'Yakarra-pardija-pina: Insights from a Developmental Approach to Rebuilding Governance in Aboriginal Communities (2014) *Central Land Council*; Janet Hunt and Dianne Smith, 'Indigenous Community Governance Project: Year Two Research Findings', *Centre for Aboriginal Economic Policy Research*; Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017).
- <sup>351</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 248.
- <sup>352</sup> Consultation issue no. 642.
- <sup>353</sup> Consultation issue no. 443.
- <sup>354</sup> Consultation issue no. 953.
- <sup>355</sup> Consultation issue no. 294.
- <sup>356</sup> See, eg, Consultation issue no. 544; Consultation issue no. 525; Consultation issue no. 641.
- <sup>357</sup> Robert Chapman et al, Central Land Council, *Yakarra-pardija-pina: Insights from a Developmental Approach to Rebuilding Governance in Aboriginal Communities* (2014) <[https://www.clc.org.au/files/pdf/Lessons\\_Learnt\\_from\\_the\\_Lajamanu\\_Governance\\_Project\\_May\\_2014.pdf](https://www.clc.org.au/files/pdf/Lessons_Learnt_from_the_Lajamanu_Governance_Project_May_2014.pdf)>.
- <sup>358</sup> See, eg, Consultation issue no. 23; Consultation issue no. 73; Consultation issue no. 105; Consultation issue no. 116; Consultation issue no. 121; Consultation issue no. 169; Consultation issue no. 187; Consultation issue no. 199; Consultation issue no. 277; Consultation issue no. 329; Consultation issue no. 331; Consultation issue no. 361; Consultation issue no. 386; Consultation issue no. 387; Consultation issue no. 409; Consultation issue no. 431; Consultation issue no. 441; Consultation issue no. 470; Consultation issue no. 497; Consultation issue no. 498; Consultation issue no. 516; Consultation issue no. 542; Consultation issue no. 552; Consultation issue no. 672; Consultation issue no. 682; Consultation issue no. 694; Consultation issue no. 732; Consultation issue no. 757; Consultation issue no. 793; Consultation issue no. 807; Consultation issue no. 824; Consultation issue no. 828; Consultation issue no. 922; Consultation issue no. 954; Consultation issue no. 982; Consultation issue no. 995; Consultation issue no. 1011.
- <sup>359</sup> Consultation issue no. 121.
- <sup>360</sup> Closing the Gap Clearinghouse, *Trauma-informed services and trauma-specific care for Indigenous Australian children Resource sheet no.21* (2013) <<https://www.aihw.gov.au/getmedia/e322914f-ac63-44f1-8c2f-4d84938fcd41/ctg-rs21.pdf.aspx?inline=true>>.
- <sup>361</sup> Centre for Aboriginal Economic Policy Research, Australian National University, *2016 Census paper: Income, Poverty and Inequality* (2018) <<http://caepr.cass.anu.edu.au/research/publications/income-poverty-and-inequality>>.
- <sup>362</sup> See, eg, Consultation issue no. 790; Consultation issue no. 969.
- <sup>363</sup> See, eg, Consultation issue no. 544; Consultation issue no. 525; Consultation issue no. 641.
- <sup>364</sup> See, eg, Consultation issue no. 668; Consultation issue no. 708; Consultation issue no. 978.
- <sup>365</sup> See, eg, Consultation issue no. 2; Consultation issue no. 35; Consultation issue no. 113; Consultation issue no. 175; Consultation issue no. 234; Consultation issue no. 255; Consultation issue no. 261; Consultation issue no. 278; Consultation issue no. 327; Consultation issue no. 329; Consultation issue no. 343; Consultation issue no. 347; Consultation issue no. 379; Consultation issue no. 413; Consultation issue no. 433; Consultation issue no. 464; Consultation issue no. 517; Consultation issue no. 526; Consultation issue no. 547; Consultation issue no. 579; Consultation issue no. 620; Consultation issue no. 634; Consultation issue no. 653; Consultation issue no. 655; Consultation issue no. 744; Consultation issue no. 785; Consultation issue no. 814; Consultation issue no. 930.
- <sup>366</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 177 <<https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-final-report-volume-1.pdf>>.
- <sup>367</sup> See, eg, Consultation issue no. 230; Consultation issue no. 723; Consultation issue no. 757; Consultation issue no. 828; Consultation issue no. 907; Consultation issue no. 978.
- <sup>368</sup> Consultation issue no. 219.
- <sup>369</sup> Consultation issue no. 783.
- <sup>370</sup> Consultation issue no. 783.
- <sup>371</sup> Consultation issue no. 650.
- <sup>372</sup> Consultation issue no. 788.
- <sup>373</sup> Consultation issue no. 669.
- <sup>374</sup> Consultation issue no. 585.
- <sup>375</sup> Consultation issue no. 585.
- <sup>376</sup> Aboriginal Peak Organisations of the Northern Territory, Submission to the Royal Commission into the

- Protection and Detention of Children in the Northern Territory 56 <<http://www.amsant.org.au/apont/wp-content/uploads/2018/10/20170731-RC-APO-NT-Submission-FINAL.pdf>>.
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- <sup>379</sup> See, eg, Consultation issue no. 790; Consultation issue no. 969.
- <sup>380</sup> Consultation issue no. 128.
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- <sup>382</sup> Consultation issue no. 851.
- <sup>383</sup> Consultation issue no. 708.
- <sup>384</sup> Consultation issue no. 668.
- <sup>385</sup> See *Partnership Principles* on page 9 of the draft *Northern Territory Aboriginal Justice Agreement*.
- <sup>386</sup> See *Partnership Principles* on page 9 of the draft *Northern Territory Aboriginal Justice Agreement*.
- <sup>387</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 248 <<https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-final-report-volume-1.pdf>>.
- <sup>388</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 257 <<https://www.royalcommission.gov.au/sites/default/files/2019-01/rcnt-royal-commission-nt-final-report-volume-1.pdf>>.
- <sup>389</sup> Aboriginal Peak Organisations of the Northern Territory, Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 68 <<http://www.amsant.org.au/apont/wp-content/uploads/2018/10/20170731-RC-APO-NT-Submission-FINAL.pdf>>.
- <sup>390</sup> Thalia Anthony and Will Crawford expressed that Lajamanu has become a safer community due to the operation of the Kurdiji Law and Justice Group. See commentary in Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, November 2017, Volume 2B, 323 <<https://www.royalcommission.gov.au/royal-commission-detention-and-protection-children-northern-territory>>.
- <sup>391</sup> Chris Roche and James Ensor, *Independent evaluation of the Central Land Council's Community Development and Governance Programmes* (2014) 91 <[https://www.clc.org.au/files/pdf/2014\\_Evaluation\\_of\\_CLCs\\_Development\\_work-La\\_Trobe\\_University.pdf](https://www.clc.org.au/files/pdf/2014_Evaluation_of_CLCs_Development_work-La_Trobe_University.pdf)>.
- <sup>392</sup> Lajamanu Kurdiji Law and Justice Committee, *Submission to the Royal Commission into the Protection of Children in the Northern Territory*, March 2017, 1.
- <sup>393</sup> Aboriginal Peak Organisations of the Northern Territory, *Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*, 68 <<http://www.amsant.org.au/apont/wp-content/uploads/2018/10/20170731-RC-APO-NT-Submission-FINAL.pdf>>.
- <sup>394</sup> Consultation issue no. 382.
- <sup>395</sup> Consultation issue no. 915.
- <sup>396</sup> Consultation issue no. 971.
- <sup>397</sup> Consultation issue no. 26.
- <sup>398</sup> Consultation issue no. 494.
- <sup>399</sup> In Canada, reports of this type are known as 'Gladue Reports'. More information can be found in Aims 1 and 2 of the NTAJA and the Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, November 2017, Volume 2B, 32 <<https://www.royalcommission.gov.au/royal-commission-detention-and-protection-children-northern-territory>>.
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- <sup>402</sup> Northern Territory Government, Department of the Chief Minister, *Our Priorities* (2018) <<https://dcm.nt.gov.au/supporting-government/office-of-aboriginal-affairs/our-priorities>>.
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- <sup>404</sup> Northern Territory Government, Department of the Chief Minister, *Groote Eylandt Archipelago Local Decision Making Agreement between the Anindilyakwa Land Council and the Northern Territory Government*, signed 14 November 2018, 22. <[https://ldm.nt.gov.au/\\_\\_data/assets/pdf\\_file/0005/595796/groote-archipelago-ldm-agreement.pdf](https://ldm.nt.gov.au/__data/assets/pdf_file/0005/595796/groote-archipelago-ldm-agreement.pdf)>.
- <sup>405</sup> Consultation issue no. 308.
- <sup>406</sup> Consultation issue no. 801.
- <sup>407</sup> Consultation issue no. 89.

<sup>408</sup> Consultation issue no. 212.  
<sup>409</sup> Consultation issue no. 951.  
<sup>410</sup> Consultation issue no. 615.  
<sup>411</sup> Consultation issue no. 874.  
<sup>412</sup> Consultation issue no. 745.  
<sup>413</sup> Consultation issue no. 308.  
<sup>414</sup> Consultation issue no. 286.  
<sup>415</sup> Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *Doing Time – Time for Doing Inquiry* Submission 66 (2011) 42.  
<sup>416</sup> Commonwealth, Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Indigenous Australians at work – Successful initiatives in Indigenous Employment* (2007) 85 – 94 [4.7– 4.34] <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Committees\\_Exposed/atsia/indigenousemployment/chapter4#an436](https://www.aph.gov.au/Parliamentary_Business/Committees/Committees_Exposed/atsia/indigenousemployment/chapter4#an436)>.  
<sup>417</sup> Commonwealth, Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Indigenous Australians at work – Successful initiatives in Indigenous Employment* (2007) 61 – 64 [3.43 – 3.52]. <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Committees\\_Exposed/atsia/indigenousemployment/chapter4#an436](https://www.aph.gov.au/Parliamentary_Business/Committees/Committees_Exposed/atsia/indigenousemployment/chapter4#an436)>.  
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<sup>419</sup> Veronica Perrurle Dobson and John Henderson, *Anpernirrentye Kin and Skin: Talking about Family in Arrernte* (2013), IAD Press.  
<sup>420</sup> Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council, *Fact Sheet #14* (2010) <<https://www.npywc.org.au/wp-content/uploads/sites/45/14-Substance-Abuse-Petrol.pdf>>.  
<sup>421</sup> Consultation issue no. 650.  
<sup>422</sup> Consultation issue no. 199.  
<sup>423</sup> See, eg, Consultation issue no. 540; Consultation issue no. 668; Consultation issue no. 921.  
<sup>424</sup> Consultation issue no. 219.  
<sup>425</sup> Consultation issue no. 485.  
<sup>426</sup> Consultation issue no. 615.  
<sup>427</sup> Consultation issue no. 635.  
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<sup>430</sup> Consultation issue no. 650.  
<sup>431</sup> Consultation issue no. 666.  
<sup>432</sup> Consultation issue no. 633.  
<sup>433</sup> Commonwealth, Department of Industry and Science, Business Cooperative Research Centres Programme, *Interplay Wellbeing Framework* (2017) <<https://interplayproject.com/>>.  
<sup>434</sup> See, eg, Consultation issue no. 3; Consultation issue no. 17; Consultation issue no. 294; Consultation issue no. 310; Consultation issue no. 326; Consultation issue no. 354; Consultation issue no. 419; Consultation issue no. 668; Consultation issue no. 874; Consultation issue no. 901.  
<sup>435</sup> Consultation issue no. 128, Consultation issue no. 132, Consultation issue no. 290, Consultation issue no. 356, Consultation issue no. 650.  
<sup>436</sup> Consultation issue no. 668, Consultation issue no. 783, Consultation issue no. 788.  
<sup>437</sup> See, eg, Consultation issue no. 618; Consultation issue no. 633; Consultation issue no. 817; Consultation issue no. 917; Consultation issue no. 975.  
<sup>438</sup> Note that five new Aboriginal JPs are due to be appointed in June 2019.  
<sup>439</sup> Northern Territory Government, Department of the Attorney-General and Justice, Statutory Appointments Office, *Northern Territory Justice of the Peace Handbook* (2017), 15 <[https://nt.gov.au/\\_\\_data/assets/pdf\\_file/0003/167934/justice-of-the-peace-handbook.pdf](https://nt.gov.au/__data/assets/pdf_file/0003/167934/justice-of-the-peace-handbook.pdf)>.  
<sup>440</sup> *Police Administration Act 1978* (NT) ss 117 and 120B.  
<sup>441</sup> See, eg, Northern Territory Government, Department of the Attorney-General and Justice, Statutory Appointments Office, *Northern Territory Justice of the Peace Handbook* (2017), <[https://nt.gov.au/\\_\\_data/assets/pdf\\_file/0003/167934/justice-of-the-peace-handbook.pdf](https://nt.gov.au/__data/assets/pdf_file/0003/167934/justice-of-the-peace-handbook.pdf)>; Northern Territory Government, Department of the Attorney-General and Justice, Statutory Appointments Office, *Northern Territory Justice of the Peace Handbook – Attachment A 'Code of Conduct for Justices of the Peace in the Northern Territory'*



(2017), 44, 44-46 <[https://nt.gov.au/\\_\\_data/assets/pdf\\_file/0003/167934/justice-of-the-peace-handbook.pdf](https://nt.gov.au/__data/assets/pdf_file/0003/167934/justice-of-the-peace-handbook.pdf)>.

<sup>442</sup> *Oath, Affidavits and Declarations Act 2010* (NT)s 24.

<sup>443</sup> Consultation issue no. 588.

<sup>444</sup> Consultation issue no. 639.

<sup>445</sup> Consultation issue no. 967.

<sup>446</sup> Consultation issue no. 186.

<sup>447</sup> Consultation issue no. 576.

<sup>448</sup> Consultation issue no. 726.

<sup>449</sup> Consultation issue no. 677.

<sup>450</sup> Commonwealth, Productivity Commission Inquiry Report, *Access to Justice Arrangements Inquiry* (2014) Report No.72, 66 [22.3] <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>>.

<sup>451</sup> Consultation issue no. 201.

<sup>452</sup> Judicial Council on Cultural Diversity, *The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts* (2016) 19.

<sup>453</sup> Judicial Council on Cultural Diversity, *The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts* (2016) 19.

<sup>454</sup> Consultation issue no. 878.

<sup>455</sup> Consultation issue no. 186.

<sup>456</sup> Consultation issue no. 316.

<sup>457</sup> Consultation issue no. 1012.

<sup>458</sup> Aboriginal Interpreter Service, *Aboriginal Languages in NT* (19 July 2018) <<https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-languages-in-nt>>; .id consulting, *Northern Territory – Language spoken at home* (2016 census data), <<https://profile.id.com.au/australia/language?WebID=160>>.

<sup>459</sup> Northern Territory Government, *Language Services Policy* (2009) <[https://dhcd.nt.gov.au/\\_\\_data/assets/pdf\\_file/0004/440563/language\\_services\\_policy\\_web.pdf](https://dhcd.nt.gov.au/__data/assets/pdf_file/0004/440563/language_services_policy_web.pdf)>.

<sup>460</sup> Northern Territory Supreme Court, *Interpreter Protocols*, <[www.supremecourt.nt.gov.au/media/documents/InterpreterProtocols.pdf](http://www.supremecourt.nt.gov.au/media/documents/InterpreterProtocols.pdf)>.

<sup>461</sup> Australian Law Reform Commission, *Recognition of Aboriginal Customary Laws*, Report No 31 (1986), 347 [585] <<https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC31.pdf>>.

<sup>462</sup> See, eg, Consultation issue no. 99; Consultation issue no. 251; Consultation issue no. 405; Consultation issue no. 434; Consultation issue no. 486; Consultation issue no. 588; Consultation issue no. 603; Consultation issue no. 668; Consultation issue no. 726; Consultation issue no. 852.

<sup>463</sup> See, eg, Consultation issue no. 573; Consultation issue no. 874; Consultation issue no. 878.

<sup>464</sup> Consultation issue no. 573.

<sup>465</sup> Consultation issue no. 652.

<sup>466</sup> Consultation issue no. 201.

<sup>467</sup> Consultation issue no. 831.

<sup>468</sup> Consultation issue no. 63.

<sup>469</sup> Commonwealth, Parliament of Australia, Senate Standing Committees on Finance and Public Administration, *Aboriginal and Torres Strait Islander experience of law enforcement and justice services* (2016) 3.29.

<sup>470</sup> Commonwealth, Parliament of Australia, Senate Standing Committees on Finance and Public Administration, *Aboriginal and Torres Strait Islander experience of law enforcement and justice services* (2016) 3.31.

<sup>471</sup> See, eg, Consultation issue no. 99; Consultation issue no. 141; Consultation issue no. 181; Consultation issue no. 251; Consultation issue no. 351; Consultation issue no. 376; Consultation issue no. 434; Consultation issue no. 576; Consultation issue no. 731; Consultation issue no. 741; Consultation issue no. 857; Consultation issue no. 871.

<sup>472</sup> Commonwealth, Parliament of Australia, Senate Standing Committees on Finance and Public Administration, *Aboriginal and Torres Strait Islander experience of law enforcement and justice services* (2016) 3.11 – 3.12.

<sup>473</sup> Commonwealth, Parliament of Australia, Senate Standing Committees on Finance and Public Administration, *Aboriginal and Torres Strait Islander experience of law enforcement and justice services* (2016) 3.12.

<sup>474</sup> Consultation issue no. 370.

<sup>475</sup> Consultation issue no. 470.

<sup>476</sup> Consultation issue no. 62.

<sup>477</sup> Consultation issue no. 848.

<sup>478</sup> Consultation issue no. 582.

<sup>479</sup> Consultation issue no. 199.

<sup>480</sup> Consultation issue no. 497.

<sup>481</sup> Consultation issue no. 682.

<sup>482</sup> Consultation issue no. 847.

<sup>483</sup> Tom Calma, 'Evaluating the external forces which exert an influence on government policy direction' (2006), presented at *Collaborative Indigenous Policy Development Conference* <<https://www.humanrights.gov.au/news/speeches/collaborative-indigenous-policy-development-conference-2006>>.

<sup>484</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 40.

<sup>485</sup> Australian Government, Productivity Commission, *Expenditure on Children in the Northern Territory, Productivity Commission Issues Paper* (May 2019), 21 citing Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 233-235.

<sup>486</sup> Australian Government, Productivity Commission, *Expenditure on Children in the Northern Territory, Productivity Commission Issues Paper* (May 2019), ii.

<sup>487</sup> See, eg, Consultation issue no. 65; Consultation issue no. 141; Consultation issue no. 181; Consultation issue no. 204; Consultation issue no. 205; Consultation issue no. 209; Consultation issue no. 258; Consultation issue no. 373; Consultation issue no. 380; Consultation issue no. 386; Consultation issue no. 655; Consultation issue no. 893; Consultation issue no. 1002.

<sup>488</sup> Consultation issue no. 676.

<sup>489</sup> Consultation issue no. 123.

<sup>490</sup> Consultation issue no. 474; Consultation issue no. 533.

<sup>491</sup> See, eg, Consultation issue no. 1; Consultation issue no. 83; Consultation issue no. 122; Consultation issue no. 164; Consultation issue no. 177; Consultation issue no. 200; Consultation issue no. 294; Consultation issue no. 320; Consultation issue no. 358; Consultation issue no. 403; Consultation issue no. 560; Consultation issue no. 576; Consultation issue no. 915; Consultation issue no. 931.

<sup>492</sup> See, eg, Consultation issue no. 1; Consultation issue no. 83; Consultation issue no. 122; Consultation issue no. 164; Consultation issue no. 177; Consultation issue no. 200; Consultation issue no. 294; Consultation issue no. 320; Consultation issue no. 358; Consultation issue no. 403; Consultation issue no. 560; Consultation issue no. 576; Consultation issue no. 915; Consultation issue no. 931.

<sup>493</sup> Consultation issue no. 105.

<sup>494</sup> Consultation issue no. 549.

<sup>495</sup> Consultation issue no. 966.

<sup>496</sup> Consultation issue no. 755.

<sup>497</sup> Consultation issue no. 36.

<sup>498</sup> Consultation issue no. 57.

<sup>499</sup> Maurice Eisenbruch, *Cultural competence—background* (2005) <[http://www.eisenbruch.com/Further\\_resources/Cultural\\_diversity/Cultural\\_competence\\_-\\_background.htm](http://www.eisenbruch.com/Further_resources/Cultural_diversity/Cultural_competence_-_background.htm)>.

<sup>500</sup> Consultation issue no. 96.

<sup>501</sup> Consultation issue no. 363.

<sup>502</sup> Consultation issue no. 724.

<sup>503</sup> Consultation issue no. 995.

<sup>504</sup> Consultation issue no. 209.

<sup>505</sup> See, eg, Consultation issue no. 32; Consultation issue no. 96; Consultation issue no. 137; Consultation issue no. 181; Consultation issue no. 209; Consultation issue no. 321; Consultation issue no. 351; Consultation issue no. 907; Consultation issue no. 995.

<sup>506</sup> See, e.g., Consultation issue no. 111; Consultation issue no. 205; Consultation issue no. 295; Consultation issue no. 331; Consultation issue no. 373; Consultation issue no. 399; Consultation issue no. 444; Consultation issue no. 508; Consultation issue no. 538; Consultation issue no. 686; Consultation issue no. 704; Consultation issue no. 724; Consultation issue no. 893; Consultation issue no. 994.

<sup>507</sup> Consultation issue no. 710.

<sup>508</sup> Consultation issue no. 473.

<sup>509</sup> See, e.g., Consultation issue no. 181; Consultation issue no. 468; Consultation issue no. 571.

<sup>510</sup> Northern Territory Government, Northern Territory Police, Fire and Emergency Services, *Frequency of use for pre-recorded cautions* (2018) internal unpublished data.

<sup>511</sup> Consultation issue no. 958.

<sup>512</sup> Consultation issue no. 871.

<sup>513</sup> Consultation issue no. 331.

<sup>514</sup> Consultation issue no. 629.

<sup>515</sup> Consultation issue no. 958.

<sup>516</sup> See, eg, Consultation issue no. 73; Consultation issue no. 277; Consultation issue no. 328; Consultation issue no. 329; Consultation issue no. 331; Consultation issue no. 542; Consultation issue no. 628;

Consultation issue no. 878; Consultation issue no. 1005.

<sup>517</sup> Chris Cunneen, 'Racism, discrimination and the over-representation of Indigenous people in the criminal justice system: Some conceptual and explanatory issues' (2006) *Current issues in criminal justice*, 17(3), 329-346.

<sup>518</sup> Judicial Council on Cultural Diversity, *The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts* (2016) 19.

<sup>519</sup> Chris Cunneen, Fiona Allison & Melanie Schwartz, 'Access to justice for Aboriginal People in the Northern Territory' (2014) *Australian Journal of Social Issues* 49(2), 219-240.

<sup>520</sup> Naomi Priest, Yin Paradies, Wendy Gunthorpe, Sheree Cairney & Sue Sayers, 'Racism as a determinant of social and emotional wellbeing for Aboriginal Australian youth' (2011) *Medical Journal of Australia*, 194(10), 546-550.

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<sup>522</sup> Consultation issue no. 1006.

<sup>523</sup> Consultation issue no. 438.

<sup>524</sup> Consultation issue no. 590.

<sup>525</sup> Consultation issue no. 554.

<sup>526</sup> Consultation issue no. 369.

<sup>527</sup> Consultation issue no. 838.

<sup>528</sup> Consultation issue no. 571.

<sup>529</sup> Northern Territory Government, Northern Territory Ombudsman's Office, *Annual Report 2017-18* (2018) <[www.ombudsman.nt.gov.au/sites/default/files/downloads/2017-18\\_annual\\_report\\_final.pdf](http://www.ombudsman.nt.gov.au/sites/default/files/downloads/2017-18_annual_report_final.pdf)>.

<sup>530</sup> Consultation issue no. 892.

<sup>531</sup> Consultation issue no. 840.

<sup>532</sup> Consultation issue no. 571.

<sup>533</sup> Consultation issue no. 691.

<sup>534</sup> Consultation issue no. 72.

<sup>535</sup> Consultation issue no. 199.

<sup>536</sup> See, eg, Consultation issue no. 72; Consultation issue no. 223; Consultation issue no. 356; Consultation issue no. 762; Consultation issue no. 892.

<sup>537</sup> Aboriginal Interpreter Service, *Aboriginal Languages in NT* (19 July 2018) <<https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-languages-in-nt>>; .id consulting, Northern Territory – Language spoken at home (2016 census data), <<https://profile.id.com.au/australia/language?WebID=160>>.

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<sup>541</sup> Chris Cunneen, Fiona Allison & Melanie Schwartz, 'Access to justice for Aboriginal People in the Northern Territory' (2014) *Australian Journal of Social Issues* 49(2), 219-240.

<sup>542</sup> Consultation issue no. 167; Consultation issue no. 413; Consultation issue no. 486; Consultation issue no. 498; Consultation issue no. 587; Consultation issue no. 632; Consultation issue no. 757; Consultation issue no. 945; Consultation issue no. 982.

<sup>543</sup> Ronald J. Mancoske, *Asset Building and Community Development* (2011) Thousand Oaks, CA: Sage Publications 196-198.

<sup>544</sup> Leonard Freeman and Bea Staley, 'The positioning of Aboriginal students and their languages within Australia's education system: A human rights perspective' (2018) *International journal of speech-language pathology* 174-181.

<sup>545</sup> See, eg, Consultation issue no. 352; Consultation issue no. 571.

<sup>546</sup> See, eg, Consultation issue no. 379; Consultation issue no. 399; Consultation issue no. 571; Consultation issue no. 970; Consultation issue no. 986.

<sup>547</sup> See, eg, Consultation issue no. 892; Chris Cunneen, Fiona Allison & Melanie Schwartz, 'Access to justice for Aboriginal People in the Northern Territory' (2014) *Australian Journal of Social Issues* 49(2), 219-240.

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<sup>549</sup> Consultation issue no. 169.

<sup>550</sup> Commonwealth, Department of Finance, Communications Advice Branch, *Media consumption and communication preferences of Aboriginal and Torres Strait Islander audiences* (2014) <<https://www.finance.gov.au/sites/default/files/quantitative-indigenous-research-report-2014.pdf>>.



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- <sup>560</sup> Consultation issue no. 380.
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