

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.¹¹²

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.¹¹⁵ This is the largest proportion of Aboriginal prisoners in any state or territory.¹¹⁴ In addition, the rate of incarceration among Aboriginal Territorians is, and consistently has been, significantly above the national average,¹¹⁵ and has grown over the last 10 years.¹¹⁶ 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.¹¹⁷ 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.¹¹⁸

In the NT, the incarceration of an adult prisoner is estimated to cost \$317.73 per day.¹¹⁹ The cost increases significantly for NT youth in detention, estimated to be \$2,038.05 per day.¹²⁰ 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.¹²¹

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.¹²²

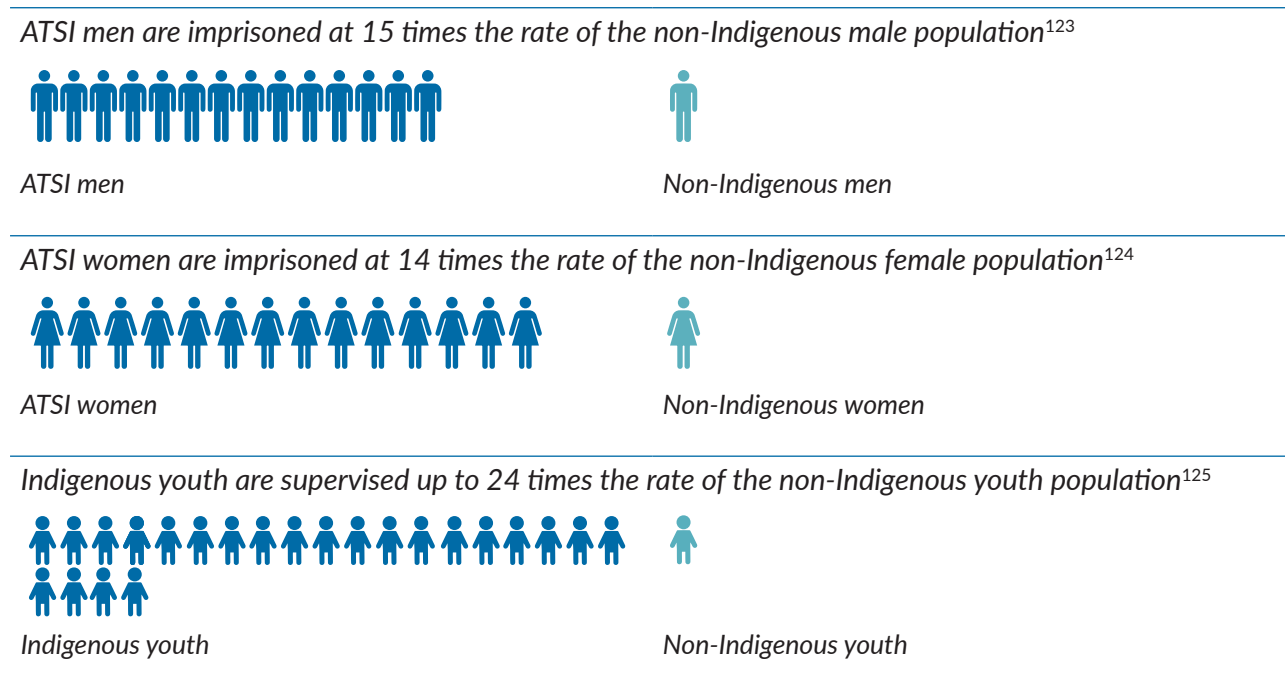
The strategies and actions outlined in the Agreement have been developed to address these factors.

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.¹¹⁵

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

In the NT, it costs
\$317.73
per day
to incarcerate an
adult prisoner¹²¹
and
\$2,038.05
per day
to incarcerate a
youth detainee.¹²²

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.¹²⁶

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.¹²⁷

Too many young people are being picked up by police for no reason.¹²⁸

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.¹²⁹

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

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.¹³¹

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 10.¹³² A police proceeding is defined as 'a legal action initiated against an alleged offender for an offence(s)'.¹³³

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.¹³⁴

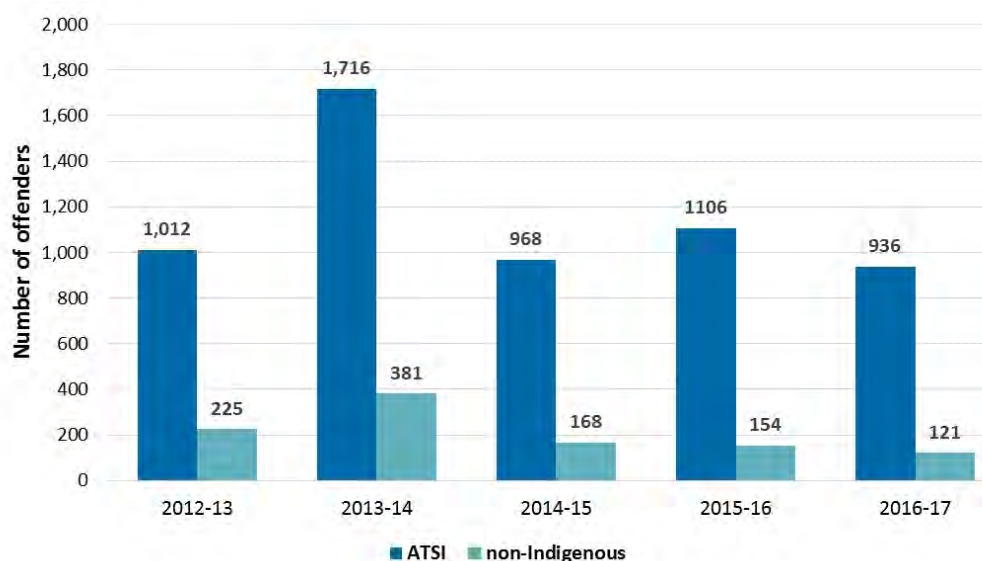
Methods of proceeding are divided into:

- 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.¹³⁵

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.¹³⁶ During this period, Aboriginal Territorians were proceeded against at a rate 10 times that of non-Aboriginal Territorians.¹³⁷

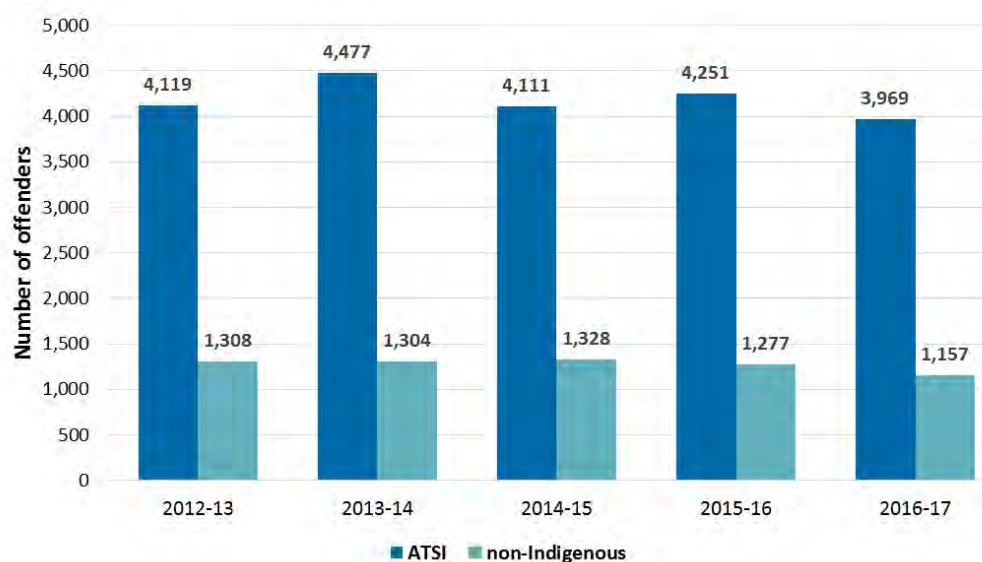
During the same period, the data for police proceedings by way of a court action shows that Aboriginal Territorians were taken into police custody in 75% of proceedings while non-Aboriginal Territorians were taken into custody in 57% of proceedings.¹³⁸

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.¹³⁹

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.’¹⁴⁰

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

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.¹⁴¹ 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.¹⁴²

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.¹⁴³

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.¹⁴⁴

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.¹⁴⁵

More could be done to help people realise that there are other options out there besides going to jail.¹⁴⁶

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.¹⁴⁷

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.¹⁴⁸

Bail can be offered by police when a person is arrested and charged (police bail).¹⁴⁹ 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).¹⁵⁰ 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.¹⁵¹

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.¹⁵² 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.¹⁵³

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.¹⁵⁴ 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.¹⁵⁵

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

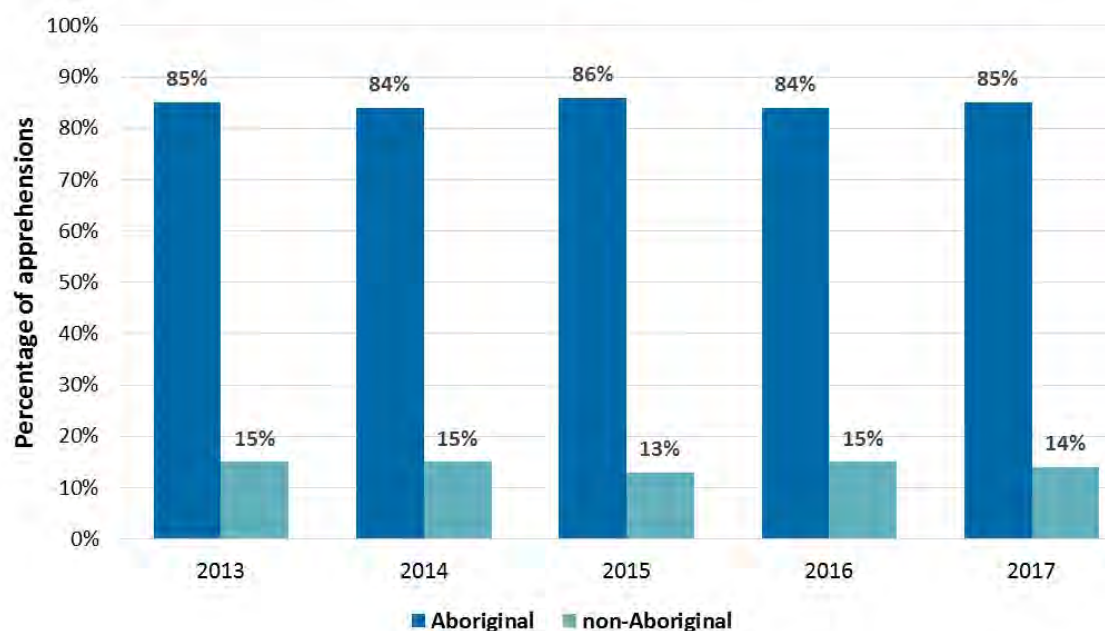
Over the same period, Aboriginal youth accounted for 91.4% (2,879 apprehensions) of the total number of young people apprehended for breach of bail.¹⁵⁸ Figures 11 and 12 show the annual breach of bail apprehensions for adults and young people by Aboriginal status.

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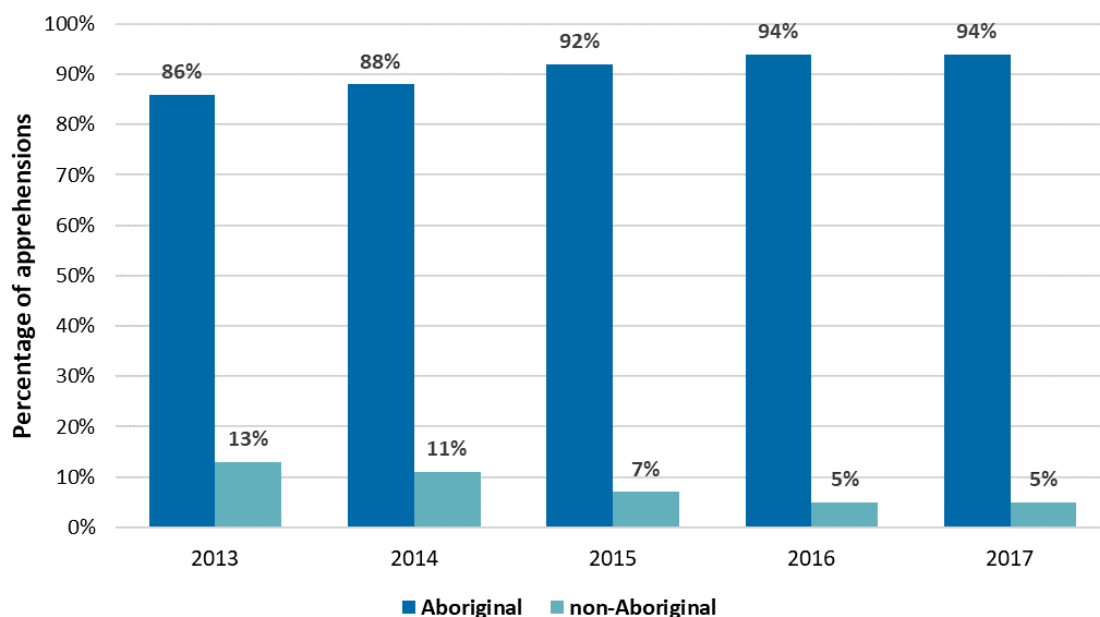
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Figure 11. Breach of bail apprehensions for adults in the NT (2013-2017), Aboriginal versus non-Aboriginal



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.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹ 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.¹⁶² The adult Aboriginal unsentenced population in the NT increased by 97% during the period 2008 to 2017.¹⁶³ Unsentenced prisoners make up a high proportion of the NT's current prison population (around 29% or 467 prisoners in 2017-18).¹⁶⁴

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 13.¹⁶⁵ However, of the total number of unsentenced young people, Aboriginal youth accounted for 93% of receptions.¹⁶⁶

On an average day in the NT during 2017-18, 71% of young people in youth detention were on remand.¹⁶⁷ 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.¹⁶⁸

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.¹⁶⁹

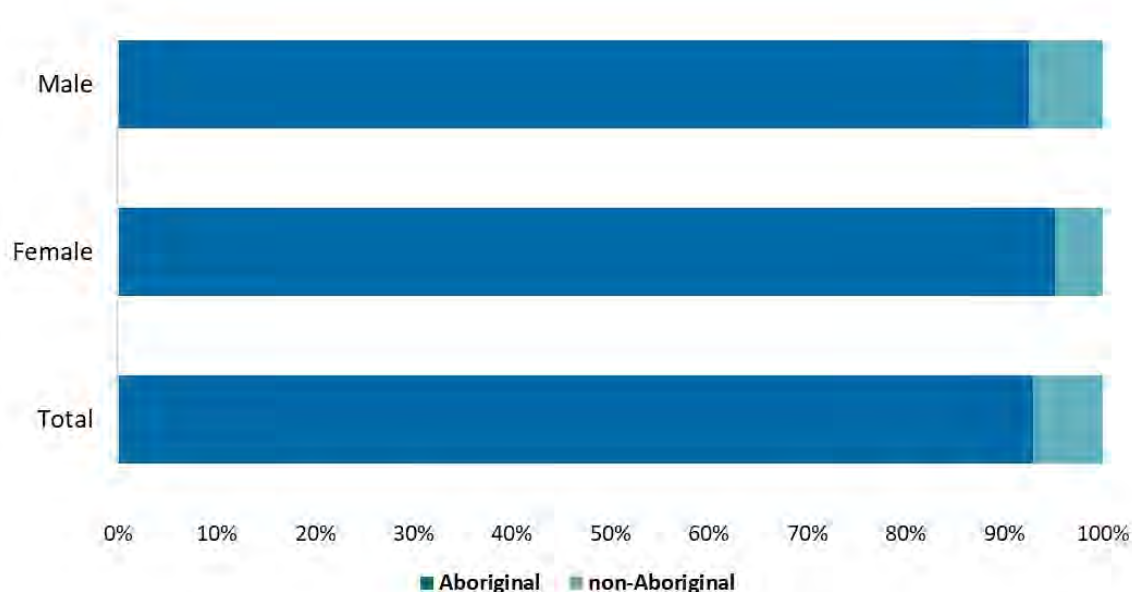


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The adult Aboriginal
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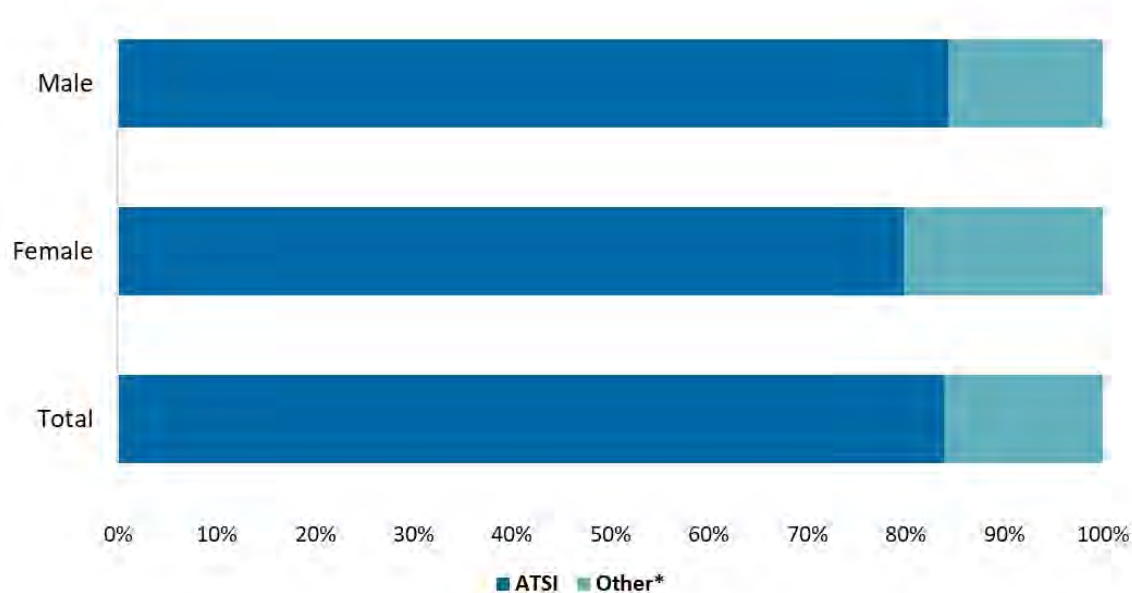
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Figure 13. Unsented youth in the NT by Aboriginal status, 2012-2017 (by youth receptions)



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.¹⁷⁰

There is a lot of shame for people when they are arrested for breaching a summons order.¹⁷¹

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

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.¹⁷³

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.¹⁷⁴

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.¹⁷⁵

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

The ABS reports annually on the number of defendants finalised each year before NT courts.¹⁷⁷ 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.¹⁷⁸

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'.¹⁷⁹

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.¹⁸⁰ 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%).¹⁸¹

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.¹⁸²

Aboriginal Territorians accounted for **84%** of all Local Court lodgements for the offence 'acts intended to cause injury' for the period 2013-14 to 2017-18.¹⁸⁶

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%).¹⁸²

Data indicates that there is a significant disparity in the number of court appearances between Aboriginal and non-Aboriginal Territorians.¹⁸³ 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.¹⁸⁴ 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.¹⁸⁵

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 2017-18.¹⁸⁶

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.¹⁸⁷




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.¹⁸⁸

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.¹⁸⁹

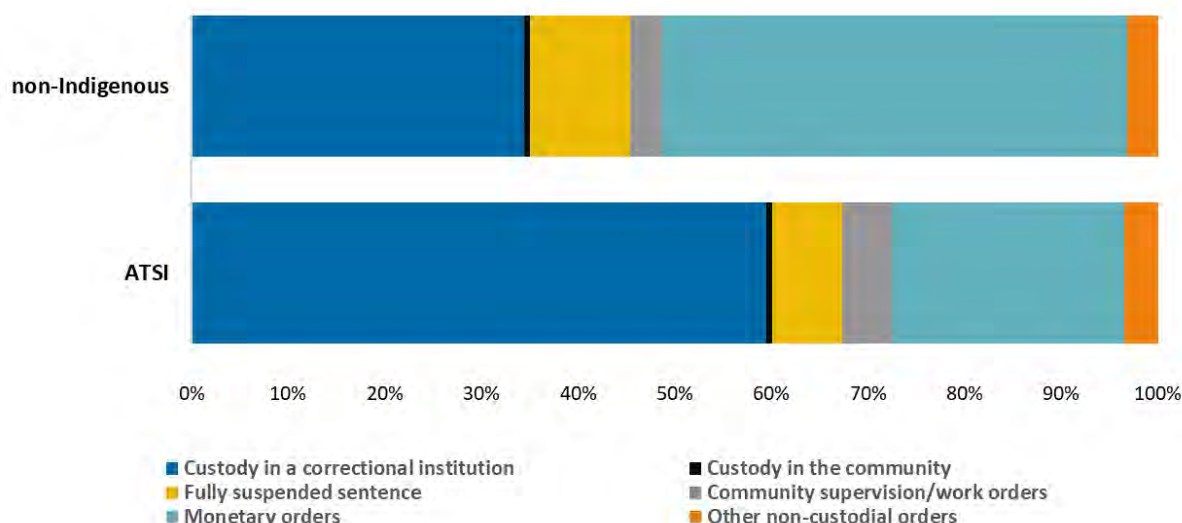
A male prisoner stated he started drinking when he was younger (his father was a big drinker) and then he began breaking into places and stealing when he began to mix with the wrong crowd of people at 17 years of age. The prisoner received a six-month term of imprisonment for his first offence but received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

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.¹⁹¹

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.¹⁹²

Figure 15 shows that during 2016-17, 60% of Aboriginal defendants¹⁹³ who were found guilty in the NT received a term of imprisonment for their principal offence, in comparison with 34% of non-Aboriginal defendants.¹⁹⁴ Over the same period, non-Aboriginal defendants in the NT were more likely to receive a monetary order or fully suspended sentence.¹⁹⁵

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.

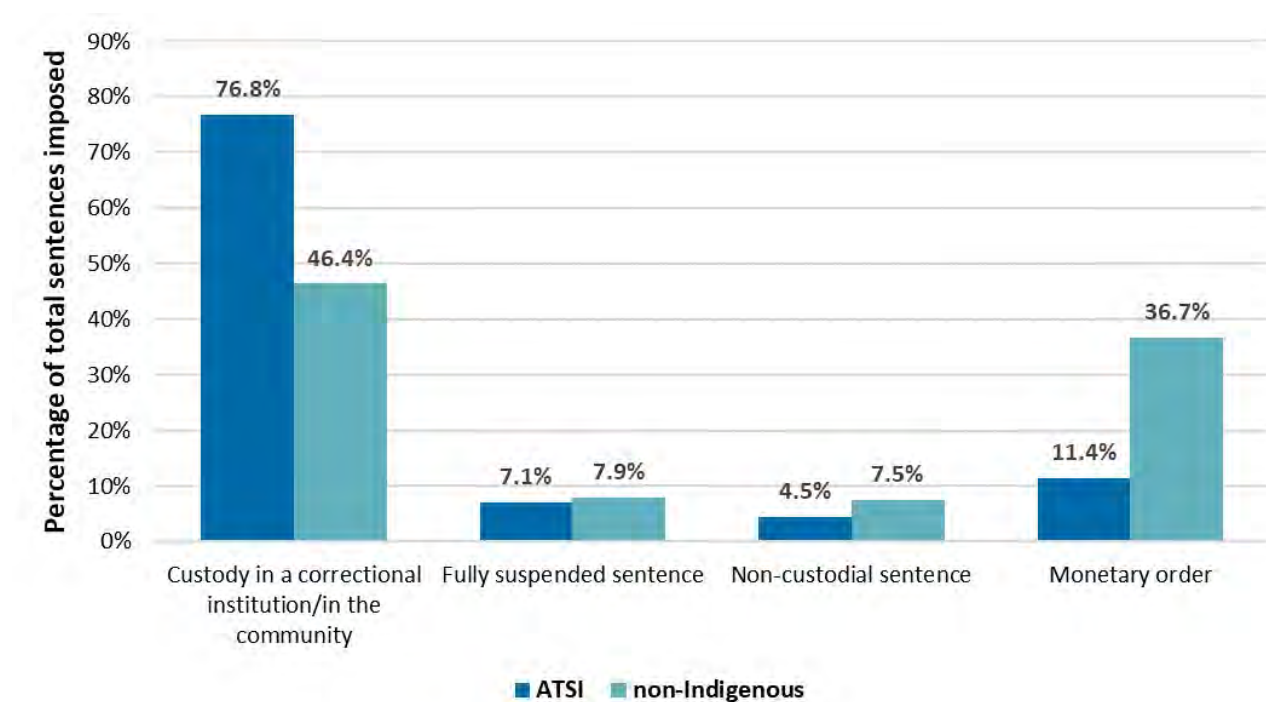
Table 12.¹⁹⁶ Note: The graph above has been derived from data regarding finalised defendants in the NT. A person may be counted more than once within the reference period if they are a defendant in a number of criminal cases dealt with and finalised separately.¹⁹⁷ The data presented relates to defendants with a 'proven guilty' finalisation.¹⁹⁸

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.¹⁹⁹ 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.²⁰⁰ However, of convicted male first-time offenders, a larger percentage of Aboriginal offenders received a term of imprisonment when compared with non-Aboriginal offenders.²⁰¹

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.²⁰¹

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

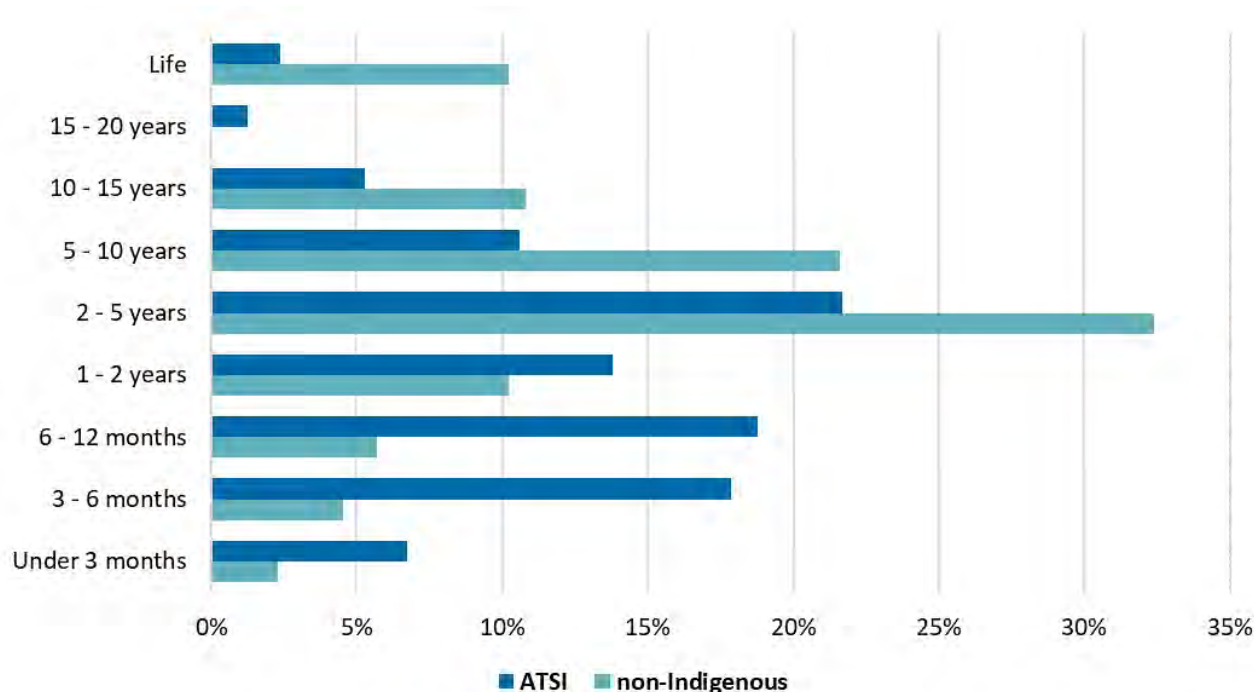


Source: Derived from Australian Bureau of Statistics, 4513.0 - Criminal Courts 2016- 2017, (2018), unpublished data.



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.²⁰² 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.²⁰³

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.'²⁰⁴

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.²⁰⁵ 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.²⁰⁶

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.²⁰⁷ 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.²⁰⁸

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.²⁰⁹

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.²¹⁰

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.²¹¹

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).²¹² In 1999, the mandatory sentencing provisions were extended to particular assault offences.²¹³ Between 1999 and 2001 Aboriginal Territorians were 8.6 times more likely than non-Aboriginal people to receive a mandatory prison sentence.²¹⁴

In 2001 mandatory sentencing was repealed. However, mandatory sentencing for specified violent offences was reintroduced in 2008.²¹⁵ In May 2013, the *Sentencing Act 1995* (NT) was again amended to include new mandatory sentencing provisions which are still in force.²¹⁶ This has resulted in many offences carrying a mandatory minimum sentence including murder,²¹⁷ violent offences,²¹⁸ aggravated property offences,²¹⁹ serious sexual offences,²²⁰ repeated breaches of DVO,²²¹ and drug offences punishable by seven years imprisonment or more, or if accompanied by aggravating circumstances.²²²

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.²²³

43%

of sentenced adult
Aboriginal prisoners
are serving a
sentence of less
than 12 months.²¹⁰

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

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

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.²²⁴ However, concerns have been expressed that few defendants meet the high threshold of the exceptional circumstances test.²²⁵ Judges and others have commented that this can lead to unfair outcomes in particular cases.²²⁶

There has been significant concern that mandatory sentencing has a disproportionate impact on Aboriginal offenders.²²⁷ 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.*²²⁸

*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).*²²⁹

*When youth camps existed in this community the recidivism rate was lower.*²³⁰

*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.*²³¹

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

*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.*²³³

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.²³⁴ 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.²³⁵ 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.²³⁶

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.²³⁷ 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.²³⁸

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.²³⁹ 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.²⁴⁰

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.²⁴¹

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.²⁴² Between 2007 and 2015, Aboriginal children and young people were consistently less likely to be granted diversion than their non-Aboriginal peers.²⁴³ 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%).²⁴⁴

A key theme to emerge from consultations was the lack of community-based diversion options for both adults and young people.²⁴⁵ 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.²⁴⁶

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

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

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

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

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.²⁴⁹ The RCPDCNT recommended a range of measures to facilitate greater access to youth diversion,²⁵⁰ 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.²⁵¹ 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.²⁵² 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.²⁵³ 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.²⁵⁴

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.²⁵⁵

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.²⁵⁶

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.²⁵⁷

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.²⁵⁸

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.²⁵⁹ Nor did they provide relevant background information about the offender.²⁶⁰

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.²⁶¹

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.²⁶²

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.²⁶³

During the consultations, it was suggested that local LJGs be resourced to prepare Aboriginal Experience Reports for offenders from their respective communities.²⁶⁴ 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.²⁶⁵



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.²⁶⁶

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.²⁶⁷

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.²⁶⁸

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.²⁶⁹


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.²⁷⁰

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.²⁷¹

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.²⁷²

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.²⁷³

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.²⁷⁴

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.²⁷⁵

No counselling or supports are provided to victims of domestic violence.²⁷⁶

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.²⁷⁷

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

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.²⁸⁰

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.²⁸¹

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.²⁸²


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.²⁸³

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.²⁸⁴

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.²⁷⁸

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

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.²⁸⁵

It is easier in prison than it is outside in the community.²⁸⁶

Prison does not rehabilitate offenders. People go to prison but they come back the same.²⁸⁷

There is more stuff to do in prison than there is to do in the community for younger people.²⁸⁸

I like prison because I get to do things and contribute.²⁸⁹

I want to look after my home like I look after my room in prison.²⁹⁰

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?²⁹¹

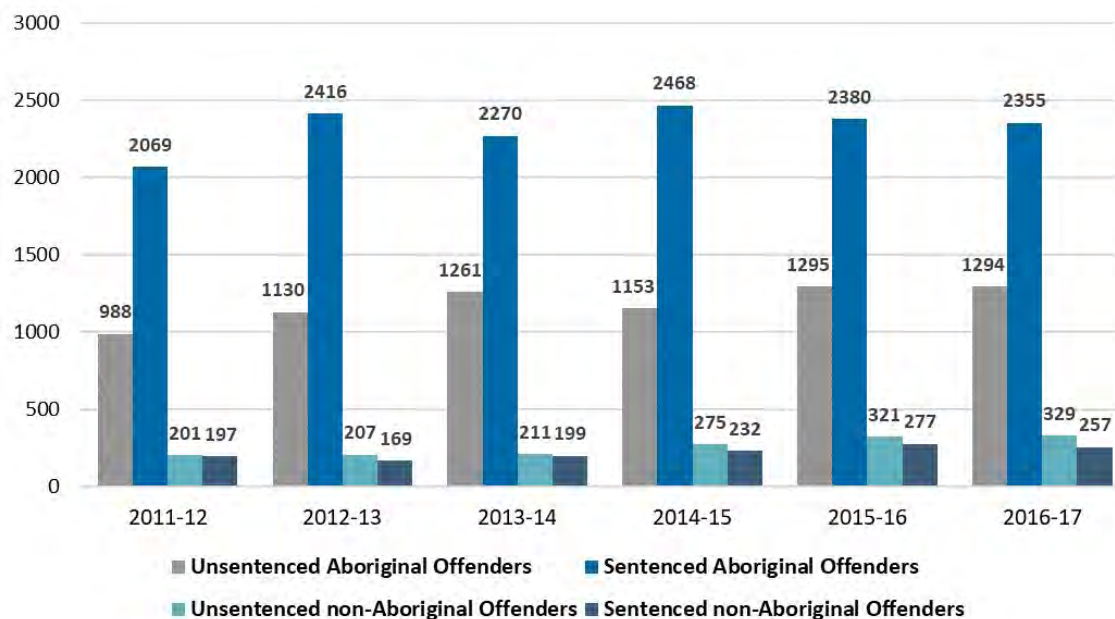
The NT has the highest rate of imprisonment in the nation.²⁹² As at 30 June 2018, 84% of adult prisoners in the NT were Aboriginal which is significantly higher than the national average of 28%.²⁹³

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).²⁹⁴



You're not a man unless you've gone to prison.²⁹⁵

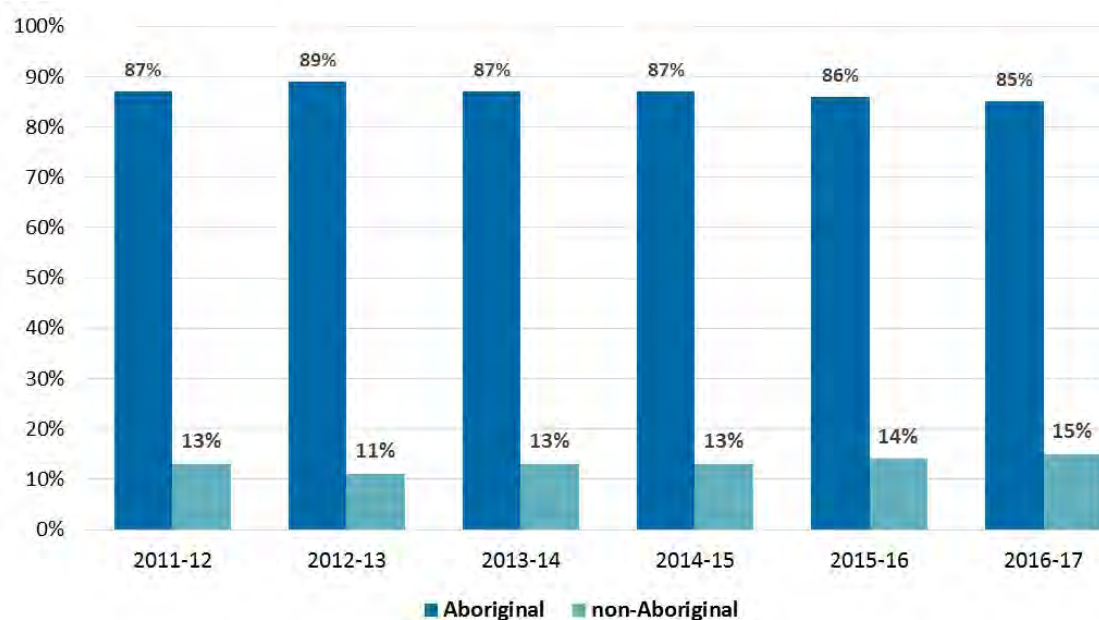
Figure 18. Adult receptions by sentence status and Aboriginal status 2011-2017



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.

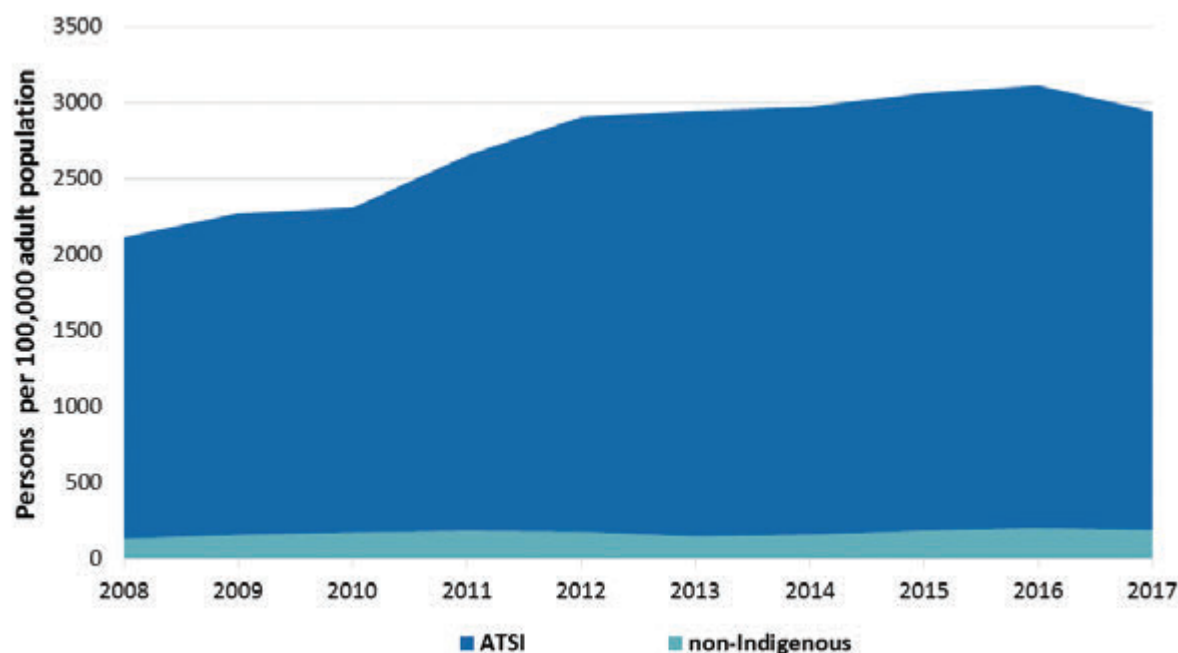
Figures 19 and 20 illustrate the growth of the adult Aboriginal and non-Aboriginal prison population in the NT over the last 10 years. In 2008, adult Aboriginal Territorians were imprisoned at a rate of 1,981 per 100,000 adult population and by 2017, this number had risen to 2,755. This is an increase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

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.²⁹⁷ 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.²⁹⁸

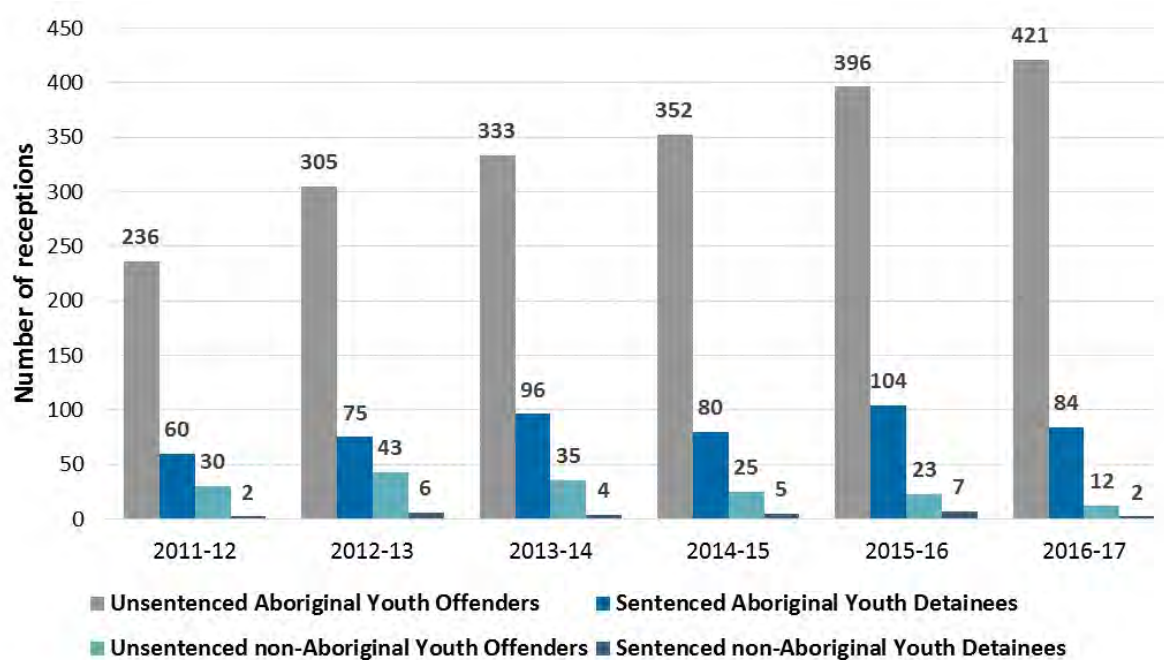
Aboriginal women are also vastly overrepresented in the NT prison population, and are incarcerated at 14 times the rate of non-Aboriginal women.²⁹⁹ From 2008 to 2017, the rate of incarceration of Aboriginal women in the NT more than doubled from 181 to 379 per 100,000, an increase of 109%.³⁰⁰

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.³⁰¹ 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.³⁰² Since 2013, over 90% of all young people received into NT youth detention centres each year have been Aboriginal (as outlined in Figure 22).³⁰³ The NT has the highest rate of youth justice supervision of any Australian jurisdiction, at almost three times the national average.³⁰⁴ 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.³⁰⁵ 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.

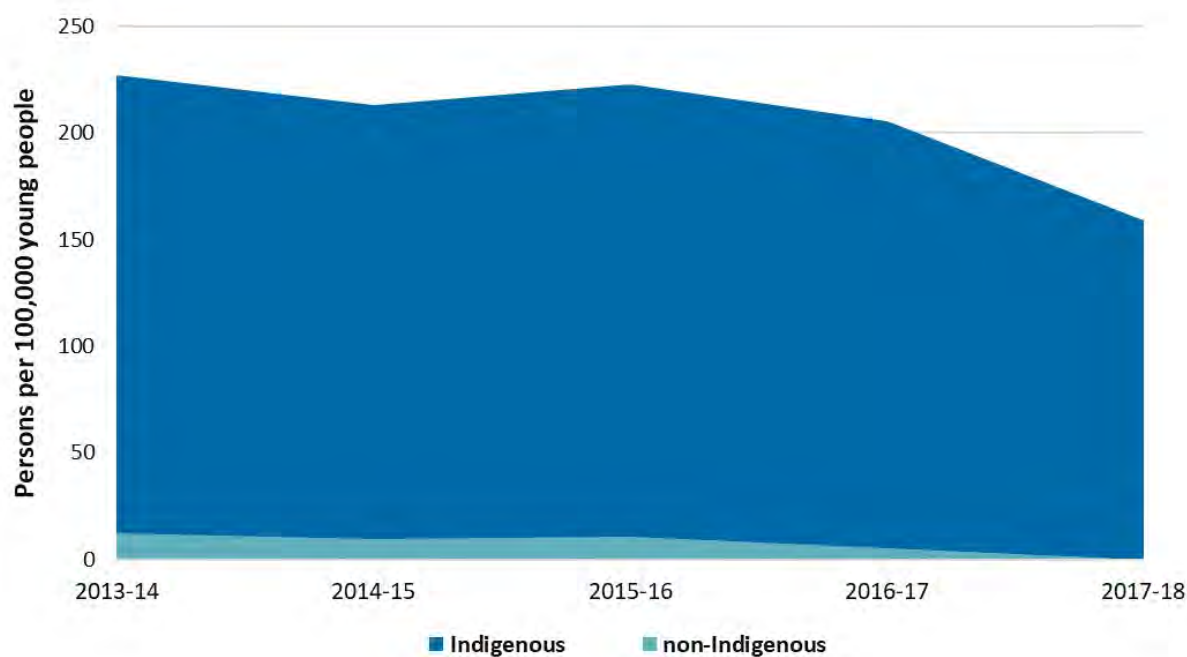


Figure 21. Youth receptions by sentence status and Aboriginal status



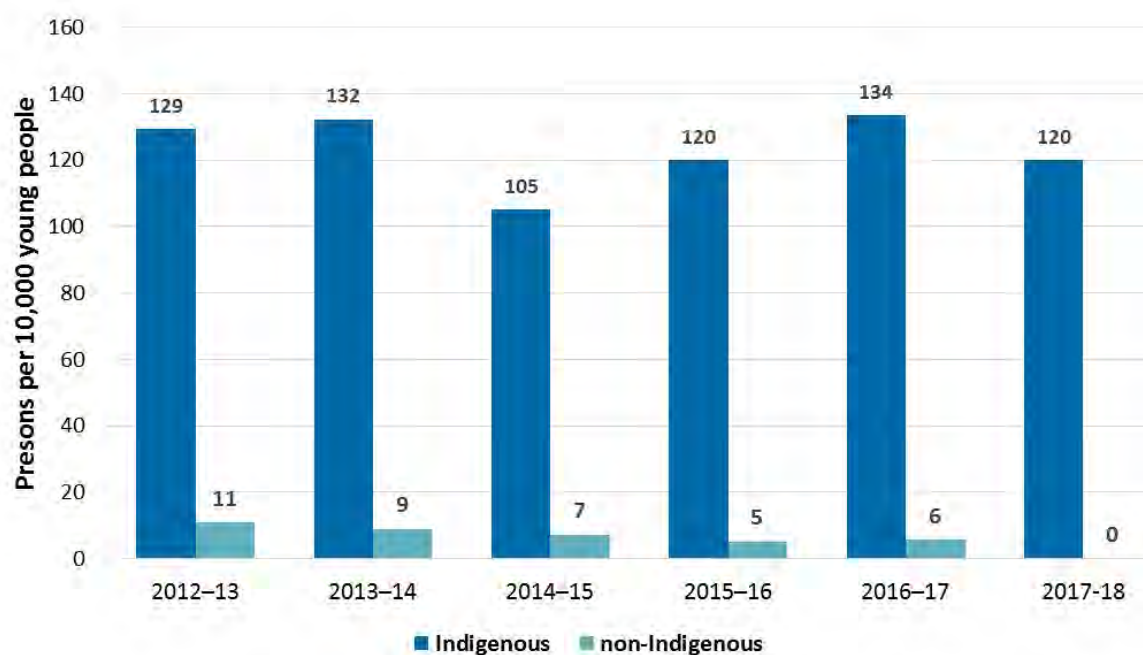
Source: Northern Territory Government, Territory Families, *Youth Detention Annual Statistics, 2016-2017* (2018), Table 4.

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.³⁰⁶

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).³⁰⁷

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.³⁰⁸

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


Consultations pointed to difficult parole conditions and a perceived lack of support as reasons why Aboriginal offenders were not applying for parole.³¹¹ 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.³¹² 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.³¹³ 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.³¹⁴

In 2016-17, 45% of prisoners in the NT served their full sentence in prison.³¹⁵

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.³¹⁵ 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.³¹⁶ 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.³¹⁷

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.³¹⁸

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.³¹⁹

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.³²⁰

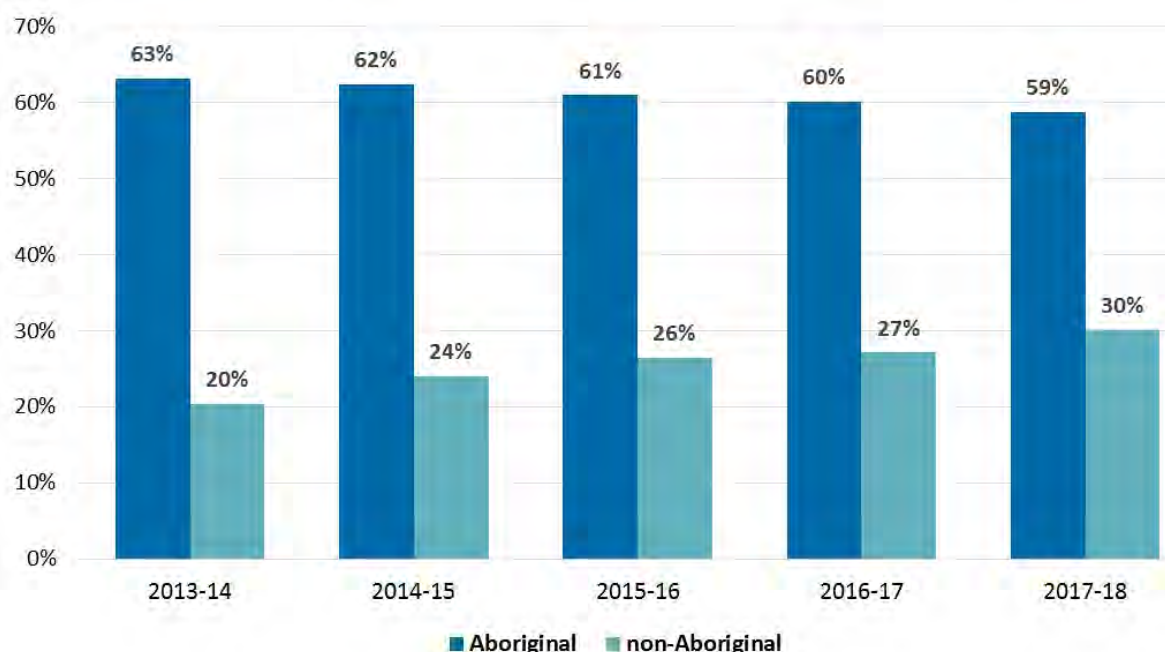
The most significant problem for recidivism is providing post-release accommodation for violent and other serious offenders. These people are not currently able to find appropriate housing and if this issue isn't fixed incarceration rates will remain high.³²¹

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.³²²

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.³²³

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 24.³²⁴

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.³²⁵

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.³²⁶

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

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.³²⁸

3.11 Prison programs



What we were told:

This [prison] isn't the place to learn anything.³²⁹

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.³³⁰

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.³³¹

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.³³²

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.³³³

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

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.³³⁵ 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.³³⁶ Programs need to be accessible and meaningful to Aboriginal prisoners on remand or serving short sentences.³³⁷ 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.³³⁸ Aboriginal women have also reported discrimination when it comes to employment opportunities for prisoners.³³⁹

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

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.³⁴²

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.³⁴³



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.³⁴⁴

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

There is a lack of rehabilitation options for short term prisoners.³⁴⁶

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

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.³⁴⁸

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.³⁴⁹

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.