

Common myths about the **Aboriginal Justice Agreement**





MYTH: *The most important part of the AJA is changing legislation to improve the lives of Aboriginal people.*

FACT: Legislative change is an important step in helping to deliver justice but the research and the stories we gathered from Aboriginal people during the AJA consultations show there are factors outside the legislative framework that are critical to the success of the Agreement. If these factors are absent, no amount of legislation will achieve the justice outcomes that Aboriginal Territorians deserve.

For the AJA to be a true partnership between Aboriginal communities and the NT Government, there must be mutual respect, shared responsibility, and a commitment to ongoing dialogue and consultation. Legislation may be seen as a top-down approach to achieving social justice that does not necessarily bring all the affected people on a common journey. For example, many Aboriginal Territorians found the legislation that supported the 2007 Intervention to be heavy handed, disempowering and humiliating.

The AJA is based on eight principles for partnership. These include upholding standards of accountability and transparency, and empowering and honouring Aboriginal leadership. This was the basis of the consultative approach to developing the AJA and is the foundation for the Agreement's implementation.

Academics Fiona Allison and Chris Cunneen have identified four factors that contribute to the ultimate success of an AJA.

- Effective Aboriginal community engagement in the development, implementation and evaluation of the AJA.
- Effective accountability and evaluation processes, including clarity of objectives and outcomes.
- Continuity and whole-of-government approaches to policy development.
- Effective consideration of Aboriginal victimisation and recognition of links with other civil and family law needs.

The AJA has built its foundation on these factors. The parties to the AJA cannot achieve its aims based on legislative change alone.

MYTH: *The AJA will solve all the crime problems in Aboriginal communities.*

FACT: The reasons why someone commits crimes may be complex and the AJA is not a crime prevention strategy. The AJA is a partnership between the NT Government and Aboriginal communities with specific commitments to reduce the disadvantage that Aboriginal Territorians experience in the NT justice system.

The AJA's vision is 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.

This will be achieved through several actions including:

- Providing alternatives to custody that deliver programs that are tailored to the needs of each individual.
- Establishing Community Courts to enable the judge to hear local community knowledge about the offender and all the circumstances around the individual's offending.
- Expanding community-based sentencing options and non-financial options for the payment of fines.

The Agreement's long term benefits will be:

- Fewer Aboriginal Territorians in jail.
- Stronger and more effective Aboriginal leadership so leaders can confront anti-social behaviour in communities before it becomes criminal behaviour.
- A justice system that is more responsive to the needs to Aboriginal Territorians.

With reduced offending and fewer Aboriginal people in jail, the costs of incarceration, policing and community correctional services will be lower, providing significant savings to taxpayers.

MYTH: The AJA won't do anything to solve the problem of youth crime in the NT.

FACT: The AJA is not a plan to stop Aboriginal children committing crimes but it will have significant benefits for young people. One of the strengths of the AJA is how it builds the capacity of whole communities to deal effectively with offenders. The Agreement does not focus on issues affecting one group of Aboriginal people – it's for all Aboriginal Territorians who face disadvantages in the NT justice system. There are about 63,000 children in the NT and the vast majority of them are growing up in strong families that will never come in contact with the justice system. Unfortunately, a handful of children are caught up in a life of offending. Territory Families and the NT Police have programs for those children and their families.

The AJA is creating safer communities for children with delivering culturally safe programs to help adult offenders be better parents. This is through building up their emotional health and wellbeing, their resilience, and impulse control. The Life Skills Camp alternative to custody in Alice Springs is helping women right now with the skills they need to help their children stay on track. Women are becoming strong role models for their children and learning about being accountable for their own behaviour and their children's behaviour. The Life Skills Camp also has the capacity to take young people. The alternative to custody for Groote Eylandt will also help men in that facility to be better fathers, husbands, partners and uncles through programs that help them take responsibility for their actions, to be accountable to their families, and to keep them out of the justice system.

MYTH: The Aboriginal Justice Agreement is creating a separate justice system for Aboriginal people with their own laws, which creates an 'us and them' division in our society.

FACT: The AJA is about improving the NT justice system for Aboriginal people. It is not about creating a new system or a separate system.

The draft Agreement has put forward solution-based strategies that will help to meet the needs of Aboriginal people and communities in the NT. This will help restore leadership and authority, and hold people accountable for conduct before it becomes criminal behaviour.

The AJA will benefit everyone in the NT because fewer people in jail means reduced spending on correctional services, courts and policing.

More taxpayer funds could then be directed to other important government services such as health, education, housing and protecting the environment. Less crime equates to fewer victims and safer communities.

MYTH: Most Aboriginal people in the NT are in jail for non-payment of fines so we can reduce the number of Aboriginal people in jail simply by having a better way on dealing with outstanding fines.

FACT: Less than one per cent of the NT prison population where the principal offence is an unpaid fine, is Aboriginal. The most common offence for Aboriginal people are 'acts intended to cause injury', which are violent assaults. This is the principal offence recorded for 43 per cent of Aboriginal defendants.

Nine out of 10 victims of family violence are Aboriginal and nine out of 10 victims of assault are Aboriginal.

For non-payment of fines, the AJA has suggested the NT Courts should consider converting fines into community service orders so that Aboriginal and non-Aboriginal people who have accrued debts through fines can work in the community to repay their debt.



MYTH: People who commit crimes get plenty of help in prison. We spend millions of dollars on prison programs to stop people offending when they are released from prison but they choose to go back to a life of crime.

FACT: A consistent issue raised during the consultations on the AJA is that the prison system does not do enough to rehabilitate Aboriginal offenders. While programs are provided in NT correctional centres, views were expressed that the programs are not culturally appropriate and do not adequately overcome communication barriers. Many prisoners have explained that interpreters are rarely used in prison programs leading to limited comprehension and engagement, and an over-reliance on prisoners with stronger literacy skills. These barriers make it difficult to clearly identify the factors that have led to offending and reoffending, and leave the complex needs of Aboriginal offenders unaddressed.

Limited access to programs while on remand or serving short sentences, and a lack of tailored programs for Aboriginal women was raised repeatedly. The Aboriginal Justice Unit heard that vocational training programs could be better tailored to the type of employment opportunities that are available on release.

The number of all prisoners from all cultural groups has been steadily increasing in the NT. About 84 per cent of prisoners in the NT are Aboriginal. Aboriginal people are more likely to return to prison after their release than non-Aboriginal people. Between 2013 and 2018 about 60 per cent of Aboriginal people returned to prison within two years of their release. For non-Aboriginal people, the return rate was about 25 per cent over the same period.

Reducing recidivism by Aboriginal people requires effective, culturally safe programs that are tailored to the needs of Aboriginal people, and that prioritise the use of interpreters. The AJA has recommended that future correctional programs be based on best-practice approaches and delivered by professionals and organisations with high cultural competence and demonstrated experience working with Aboriginal Territorians.

MYTH: There are plenty of services for Aboriginal Territorians to help them with health, education, housing and employment, which will help them to be law abiding citizens. They just don't use them.

FACT: Many of these services are based in regional centres and it's difficult if not impossible for people in remote communities to access these services. We found that many services are not provided in language and there are often no interpreters to help Aboriginal people understand their rights and responsibilities. Some programs are not culturally appropriate and therefore fail to engage Aboriginal people.

MYTH: New legislation and policy reform is what's needed to improve justice for Aboriginal people.

FACT: Changing laws and policies won't be enough on its own to improve justice outcomes for Aboriginal people. Aboriginal people want to be supported and empowered in leadership roles. Leadership is critical to achieve the aims of the AJA. Aboriginal leadership has been eroded over many decades and the NT needs to build capacity in communities to restore traditional authority. This is what Aboriginal Territorians have said in all the consultations for this Agreement.

MYTH: *There is no leadership in Aboriginal communities. Aboriginal people sit around and complain without taking responsibility for their families and communities.*

FACT: Leadership is central to Aboriginal culture and the voices of leaders has come through loud and clear in the consultations for the AJA. Aboriginal leaders at all levels across the NT, young and old, have spoken about how to make the Agreement work for the benefit of all Territorians. The ideas of Aboriginal people are the basis of the AJA strategies and will shape how we deliver the Agreement. We have captured many voices in the Pathways document.

MYTH: *The easiest way for Aboriginal people to stay out of prison is to stop committing crimes.*

FACT: Many issues that lead Aboriginal people to breaking the law are factors that sit outside the justice system and many Aboriginal people have never had help to deal with these problems.

The 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, continues to disrupt the lives of Aboriginal families and have far-reaching consequences including inter-generational loss, trauma and grief. People may have conditions that have never been diagnosed or treated, such a mental illness or addiction.

Aboriginal Territorians experience disproportionately high rates of poor mental health and wellbeing, and domestic and family violence. Across Australia, Aboriginal people are less likely to drink alcohol, but those who consume alcohol are more likely to drink at harmful levels. Alcohol misuse is associated with the prevalence and the severity of assaults and domestic violence in the NT. Alcohol misuse contributes to family problems including child abuse and neglect, work and financial problems, and family breakdown.

Aboriginal Territorians experience poorer health outcomes and higher rates of physical and cognitive disabilities than non-Aboriginal Territorians. Aboriginal people with cognitive disabilities, such as Foetal Alcohol Spectrum Disorder, are at an increased risk of contact with the justice system.

Racism can be a key source of distress and socio-economic disadvantage for Aboriginal people. Discrimination has an impact on employment prospects, access to services and contributes to poor social and emotional wellbeing. Research in the NT found a significant association between interpersonal racism and depression among Aboriginal Territorians.

Childhood experiences of violence and abuse are high risk factors for violent offending and re-victimisation later in life. If you have been abused as a child and never been able to get help to deal with the trauma, this will impact on your behaviour and physical and mental health. Australia-wide, most Aboriginal women in prison have experienced disadvantage, and physical or sexual abuse.





MYTH: The NT Courts treat all people the same no matter what their race.

FACT: Outcomes in NT Courts are quite different for Aboriginal people. There are significant disparities between Aboriginal and non-Aboriginal offenders when it comes to sentencing. Factors such as not having housing and lack of employment impact on court decisions. A homeless and unemployed Aboriginal person is more likely to be remanded in custody and sentenced to jail than a non-Aboriginal person who has committed the same offence with the same history but who has a stable home and a job.

- Aboriginal offenders are 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', which are violent assaults.
- Aboriginal offenders are sentenced to shorter terms of imprisonment than non-Aboriginal offenders. Prisoners on short sentences don't get access to programs or services to address offending behaviour.
- Aboriginal offenders tend to experience a cycle of repeated short terms of imprisonment which does not allow effective rehabilitation.
- There is a lack of programs in the Northern Territory to assist offenders to change behaviours and a lack of access to medical services to identify medical conditions that may significantly impact on a person's offending and reoffending.

Aboriginal people have said they find it difficult to access programs when they are delivered in Darwin or a regional centre, and when their support is in their remote community. Aboriginal people have said there is often no interpreter which means it's often impossible understand parole and bail conditions.

One of the strategies in the AJA is to re-introduce Community Courts and for community service orders to make the community a part of the sentencing process.

MYTH: Community Courts are simply a get out of jail free card and are soft on crime.

FACT: The strategies in the AJA are evidenced-based solutions that we know will work. Community Courts operated in the NT from 2003 to 2012 and have proven to be effective in empowering Aboriginal leadership and holding Aboriginal people to account. When a judge makes a custodial decision in a Darwin court room, there is usually little or no understanding in the offender's community of the conditions and why the judge made the decision. Community Courts enable Aboriginal people to have local input into court decision with support provided locally. These courts enable Aboriginal people to assert leadership, restore law and order, and create safe communities by holding people in their community to account for behaviour that may result in criminality. Community Court decisions may still result in a custodial sentence depending on the severity of the offence. Community Courts are not a soft option.

The AJA also supports Aboriginal communities forming Law and Justice Groups to support local decision-making. Law and Justice Groups recognise that Aboriginal people are best placed to understand and tackle justice issues in communities with solutions that work for the community.

Strengthening Law and Justice Groups and similar cultural authority groups in other communities will model and reinforce the kinds of values and behaviours that Aboriginal people want to adopt, particularly younger generations.

MYTH: *Police need to be tougher on Aboriginal people because crime is out of control and it always seems to be the same people committing the crimes.*

FACT: The AJA found that with Aboriginal people, NT Police have an over-reliance on arrest as opposed to issuing cautions, warnings, infringements, or non-response such as coming back to talk to people the next day when there is no longer a safety issue.

In data for police proceedings by way of a court actions, Aboriginal Territorians are taken into custody in 75 per cent of proceedings while non-Aboriginal Territorians were taken in to custody in 57 per cent of proceedings.

Police discretion not to arrest or charge an Aboriginal person plays an important role in determining criminal justice responses for that person. Previous reviews and inquiries have raised concerns about police using their discretionary powers inappropriately against Aboriginal people, and considered the failure by police to use arrest as a last resort. NT Police have been found to over-charge young people and contribute to high Aboriginal youth detention rates.

Aboriginal people are less likely to be granted bail and bail conditions are disproportionately onerous. The difficulty in meeting bail conditions means Aboriginal people spend unnecessarily long periods on remand. About 85 per cent of Aboriginal people who are granted bail are found in breach by police.

MYTH: *This is just another report that describes Aboriginal people as a grim list of statistics with little understanding of Aboriginal Territorians as individual people with their own dreams, ambitions and plans for a successful and prosperous future.*

FACT: The Aboriginal Justice Agreement has used a rock-solid statistical evidence-base to identify the disparities between Aboriginal Territorians and non-Aboriginal Territorians. Statistics are necessary to demonstrate the evidence on which we are building solutions in partnership with communities.

The Pathways document has stories from hundreds of people who have shared their experience about the NT justice system. Our consultations were culturally safe and wherever possible, we used Elders, leaders, interpreters and cultural brokers to facilitate our meetings. This was to ensure our work reflects a shared vision and that our report is built on a deep understanding and abiding respect for the cultural values and the expertise of Aboriginal Territorians.

Our research and data analysis is founded on credible evidence that aims to highlight the challenges facing Aboriginal people in the NT justice system.



