

Smarter Justice

A better way of doing justice in the Northern Territory

March 2023



The Northern Territory justice system is falling behind

While a 'tough on crime' approach has long dominated justice policy and media narratives in the Northern Territory, it is failing to achieve the outcome of safer communities. Increasingly out of step with best practice criminal justice systems, this outdated approach is particularly harmful to Aboriginal Territorians, who are disproportionately affected by poorer outcomes in the justice system whether they are victims or offenders.

Modern evidence-based approaches to justice are replacing the out-dated notion that 'nothing works'.¹ These 'smart on crime' approaches centre on behaviour change and have proven effective at reducing crime and increasing public safety, all at a lower cost. They address the underlying causes of offending by investing in prevention, diversion and rehabilitation in ways that are culturally responsive and community-led.

A significant system-wide change to the Northern Territory's operating model is required. In a country with high imprisonment rates, the Territory is substantially higher than any other state or territory. It is also the only state or territory where crime rates are increasing. On an international level, the Territory's imprisonment rate sits above the United States, El Salvador, Rwanda and Turkmenistan which have the highest national imprisonment rates in the world.^{2,3}

Almost 1% of the Northern Territory adult population is in prison at any point in time and the Northern

Territory's incarceration rate is 4.5 times higher than the national rate. The proportion of children in prison is almost five times the national rate, with one in every 820 children in the Northern Territory in prison at any point in time.⁴

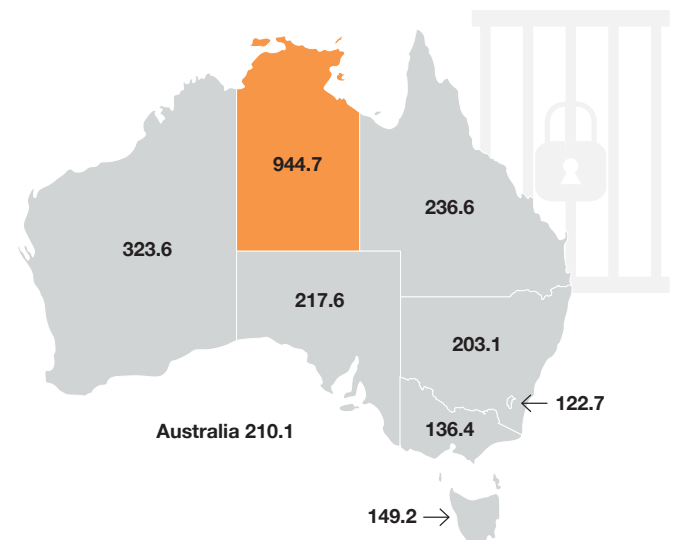


Figure 1. Adult imprisonment rate per 100,000 adults. Productivity Commission (2022), Report on Government Services, Table 8A.5.

The overuse of prison impacts all Territorians. But it effects Aboriginal Territorians in specific, and disproportionate, ways. There are poorer outcomes for Aboriginal people, as both victims and offenders, at every stage of contact with the justice system. Today 85% of people in Northern Territory prisons are Aboriginal.⁵

1 MacKenzie, D., & Weiss, D. (2009). 'Other countries have successfully reduced incarceration rates without increasing crime: We can do it!'. *Victims & Offenders*, 4(4), 420-426, p. 422.

2 Productivity Commission (2021). Australia's prison dilemma. Research paper, Canberra, p.25.

3 World Prison Brief (2022). *Highest to lowest: Prison population rate*. Accessed 19 September 2022, https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All

4 The Justice Reform Initiative (2022). *State of incarceration: Insights into imprisonment in the Northern Territory*.

5 Productivity Commission (2022). Report on government services. Table 8A.4.

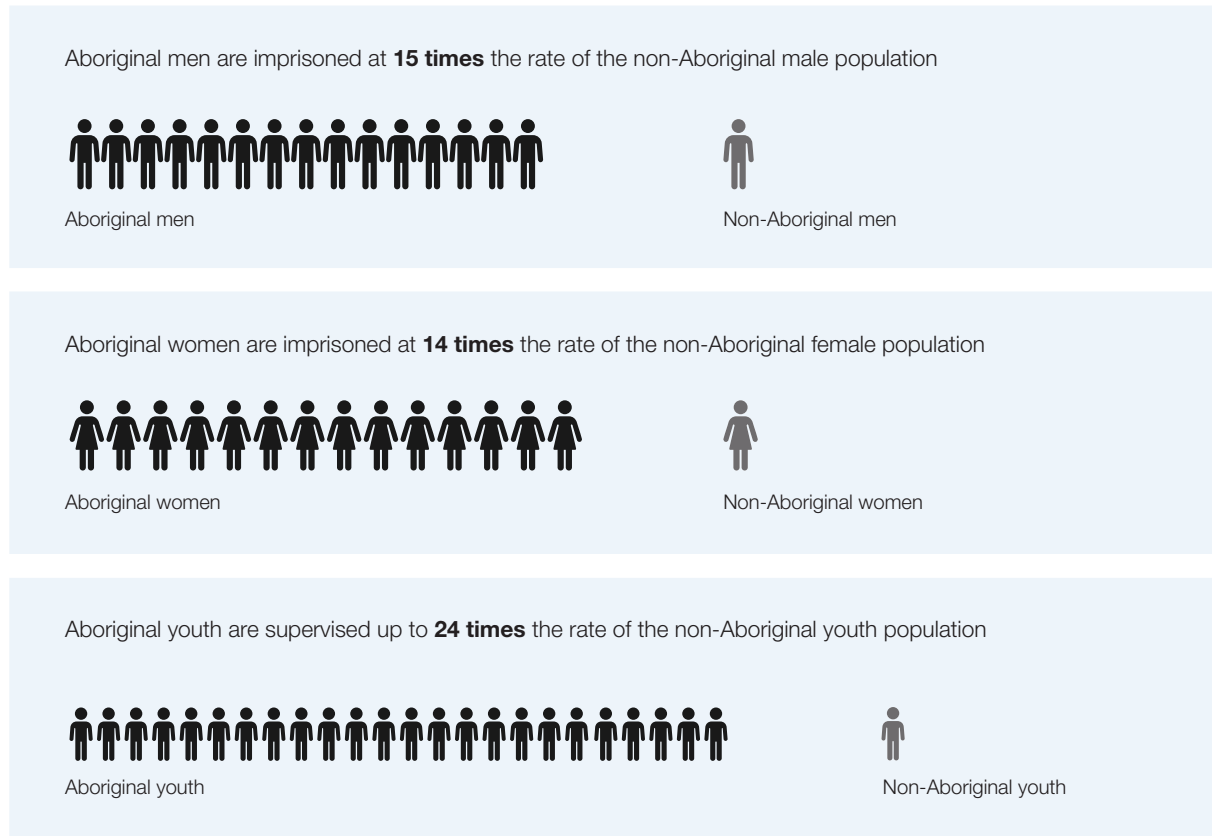


Figure 2. NT imprisonment rates from ABS data show the overrepresentation of Aboriginal people in the prison system.

Five years since the Royal Commission into the Protection and Detention of Children in the Northern Territory, and over thirty years since the Royal Commission into Aboriginal Deaths in Custody, the Northern Territory is still falling behind both Australia and the world in providing effective solutions to the over-representation of Aboriginal people⁶ in prisons.

- The number of people in NT prisons has grown by more than 30% over the past decade.⁷
- Almost three-quarters (74%) of the people in prison in NT have been in prison before.⁸
- Prison costs NT taxpayers almost \$150 million dollars each year (\$147 million in 2020-21), a figure which has grown by over 50% in a decade, from \$95 million in 2012.⁹
- It costs \$230 a day to keep a person in prison in NT, the equivalent of \$83,811 per prisoner per year.¹⁰

6 The terms used in this report align with those used in the Pathways to the Northern Territory Aboriginal Justice Agreement report, which reflect the wishes of Aboriginal people in the Northern Territory. As such, the term Aboriginal is used throughout this report to refer to all people of Aboriginal and Torres Strait Islander descent who are living in the Northern Territory. The term 'Indigenous' is also used when referring to 'Indigenous peoples' in other regions of the world. Where other terms like Indigenous or Aboriginal and Torres Strait Islander are used in original documents or datasets, these will remain unchanged.

7 Productivity Commission (2022). *Report on government services*. Table 8A.4.

8 Australian Bureau of Statistics (ABS) (2021). *Prisoners in Australia*. Table 15.

9 Productivity Commission (2022). *Report on government services*. Table 8A.2.

10 Productivity Commission (2022). *Report on government services*. Table 8A.20.

THE NORTHERN TERRITORY JUSTICE SYSTEM IS FAILING TO DELIVER BETTER OUTCOMES

The state's high incarceration rates fail to provide the best outcomes for victims, offenders or communities. The current system does not keep Territorians safe, provide value for money to the taxpayer, or reduce harm to Aboriginal communities. Global, and Australian, evidence clearly demonstrates that rational and effective correctional policy does not come from a 'lock 'em up' mentality.¹¹ It's time to reform both the narratives and the policies that underpin justice in the NT.

THE CYCLIC NATURE OF THE PRISON SYSTEM NEEDS TO BE ADDRESSED

In the NT, the threat of a prison sentence is failing to deter people from committing crimes and incarceration is failing to achieve behavioural changes. Incarceration increases, rather than decreases, the likelihood that people will offend in the future, particularly for Aboriginal offenders. Aboriginal Territorians, especially young people, find themselves trapped in the maze of the justice system without a satisfactory path forward to change their lives.

Recidivism – that is, repeated criminal behaviour, or reoffending – is endemic in the Territory. 59% of sentenced prisoners return to prison within two years of release.¹² 74% of adults in prison in the NT have been in prison at least once before during their adult years.¹³

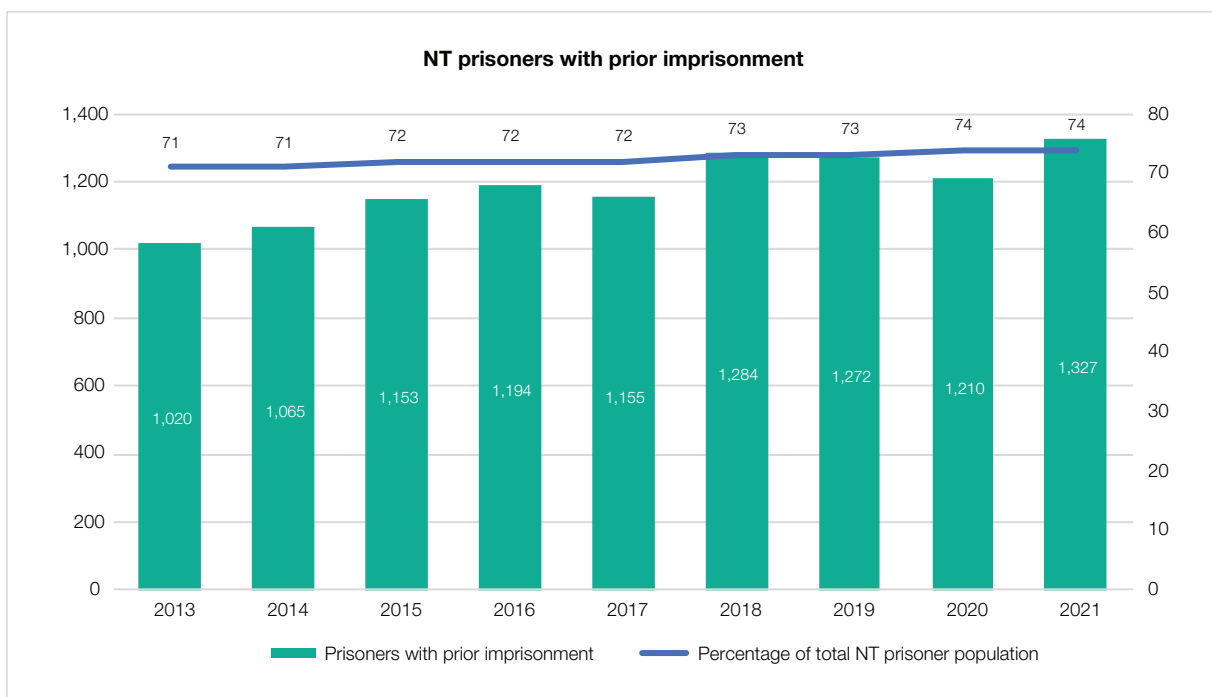


Figure 3. Prisoners in the NT with prior imprisonment, Australian Bureau of Statistics, Prisoners in Australia, 2013-2021.

¹¹ MacKenzie, D., & Weiss, D. (2009). 'Other countries have successfully reduced incarceration rates without increasing crime: We can do it!'. *Victims & Offenders*, 4(4), 420-426.

¹² Productivity Commission (2022). *Report on government services*. Table CA.4.

¹³ ABS (2021). *Prisoners in Australia*. Table 15.

Breaking the cyclic nature of involvement with the justice system is a proven strategy that reduces the costs of crime and has a positive impact on community safety.¹⁴ Diversion, rehabilitation and reintegration strategies that are culturally appropriate and community-based have been proven to enable people to disrupt the cycle of incarceration.

Cycles of reoffending often occur because of the challenge of reintegration into community after prison. Transitions from prison can be especially difficult for Aboriginal Territorians. Paroled or released offenders, especially women, often leave prison without safe housing. Criminal offending and reoffending exist in a complex relationship with domestic and family violence, child removal, and disconnection from community and culture.

On release, the system needs to ensure individuals have access to accommodation and basic needs like food and transportation. In the longer-term, the system needs to address the risk factors that lead to reoffending (including substance abuse or poor mental health) and facilitate the establishment of protective bonds with family and community.¹⁵

¹⁴ Productivity Commission (2021). *Australia's prison dilemma*. Research paper, Canberra.

¹⁵ Gill, C., & Wilson, D.B. (2016). 'Improving the success of re-entry programs: Identifying the impact of service-need fit on recidivism'. *Criminal Justice and Behaviour*, 44(3), 336-359.

The community is ready for change

Research conducted by the Insight Centre in 2022 on attitudes towards the current justice system and towards justice reform included over 300 Northern Territory residents in survey research and qualitative deep dives through focus groups and interviews. The research found that the majority of the Territory public are disillusioned with ‘tough on crime’ policies and want to see the implementation of alternative and more effective justice approaches.

We surveyed 200 NT residents on their attitudes to justice reform. When presented with two contrasting overall approaches to crime, 7 in 10 respondents prefer addressing the causes of crime and breaking the cycle of reoffending, compared to more prison sentences and more police.

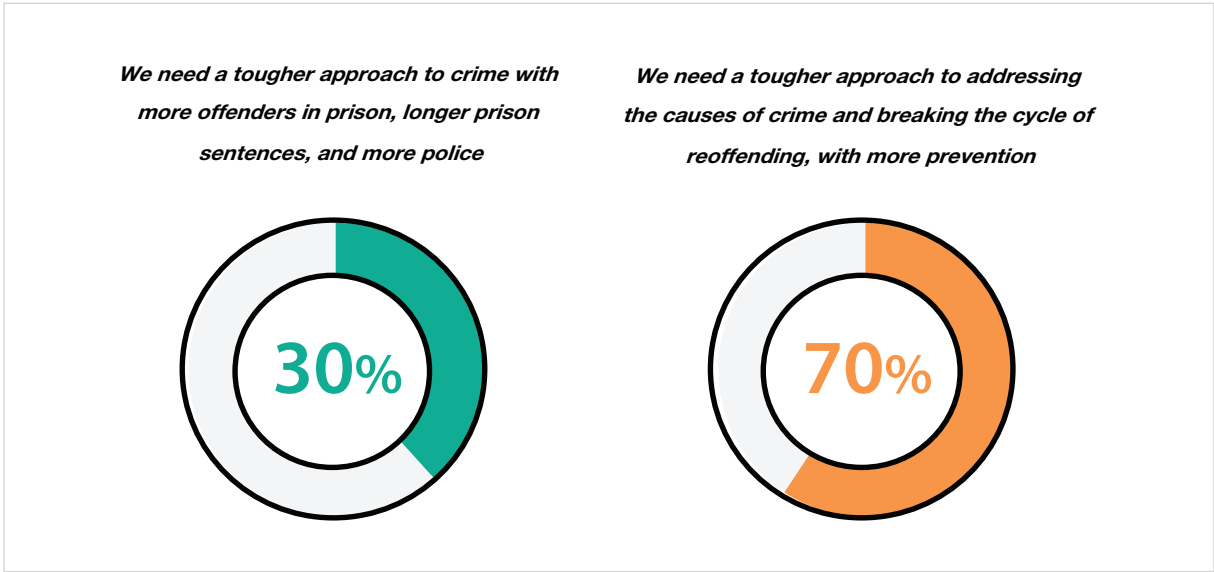


Figure 4. Survey responses, Insight Centre Audience Research 2022.

When asked in more detail how they felt the current system was working, 70% feel that the system is failing in terms of outcomes for the Aboriginal community, and 67% agree that they would like to see the justice system changed to include more alternatives to prison. Only 6% fully agree that the current system is working in terms of keeping the community safe, and only 13% believe prison is the best way to reduce and prevent crime.

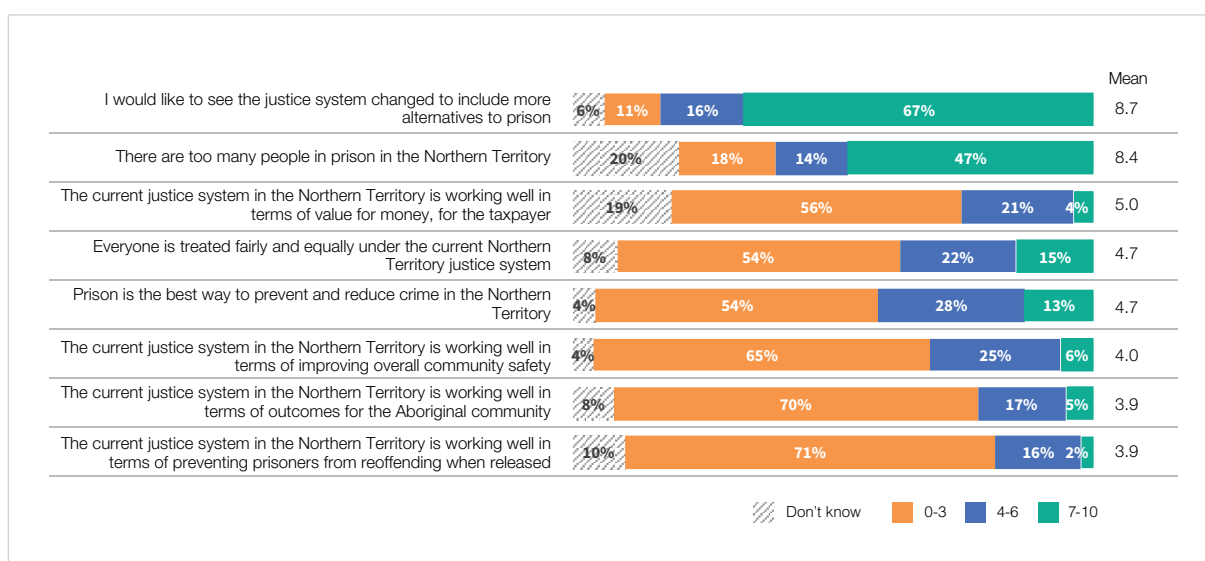


Figure 5. Survey responses, Insight Centre Audience Research 2022.

The research shows that most Territorians feel that the current system is not working, that it has a disproportionate impact on Aboriginal Territorians, and that change is needed to create a safer community. The focus groups and interviews further revealed that there is strong recognition and understanding in the community of the social causes of crime, and broad support for more mental health, education and help for at-risk families to prevent encounters with the system.

Smarter justice for a safer community: The Northern Territory Aboriginal Justice Agreement

The Northern Territory Aboriginal Justice Agreement (AJA) is a landmark agreement to provide better justice outcomes for all Territorians. It spearheads a whole of government approach to justice reform, grounded in evidence-based solutions and extensive community consultation. It has the power to truly transform justice approaches in the NT, to address systemic failures and make all communities safer.

The AJA is a critical commitment by the NT government. Its central aims are:

- **to reduce offending and imprisonment of Aboriginal Territorians,**
- **to engage and support Aboriginal leadership, and**
- **to improve justice responses and services to Aboriginal Territorians.**

EVIDENCE AND CONSULTATION ARE THE FOUNDATIONS OF THE AJA

The AJA has been informed by extensive research, robust evidence and community consultation in exploring solutions that will work best for the Northern Territory. The AJA will ensure programs are fit for purpose and directly relevant to increase their effectiveness.

It will design, develop and support community-based programs that have proven evidence of success in changing behaviour and making communities safer.

Extensive consultations with Aboriginal communities were conducted during the development of the AJA and documented in the *Pathways to the Aboriginal Justice Agreement* report.

The consultations confirm that many current programs and services have limited effectiveness because they don't meet the language and cultural needs of Aboriginal participants.

While there are existing community-led justice programs throughout Australia, the AJA will make justice work by enabling a whole-of-government approach to growing, supporting and monitoring existing and new community-led approaches. It will provide strong leadership and a shared commitment to change, with the NT government, aligned Aboriginal organisations and Aboriginal Territorians working together to improve justice outcomes and services.

National and international evidence shows that the AJA's framework for justice reform will address the underlying causes of offending and make the justice system fairer.

National evaluation studies show that Indigenous Justice Agreements (IJAs) play a critical and effective role in driving whole-of-government planning. They improve policy and program development across government departments and stakeholder agencies.¹⁶ They also improve the circumstances of Aboriginal people in contact with the justice system, by improving service delivery and giving communities a voice.

¹⁶ Cunneen, C. (2006). 'Racism, discrimination and the over-representation of Indigenous people in the criminal justice system: Some conceptual and explanatory issues'. *Current Issues in Criminal Justice*, 17(3), 329-346.

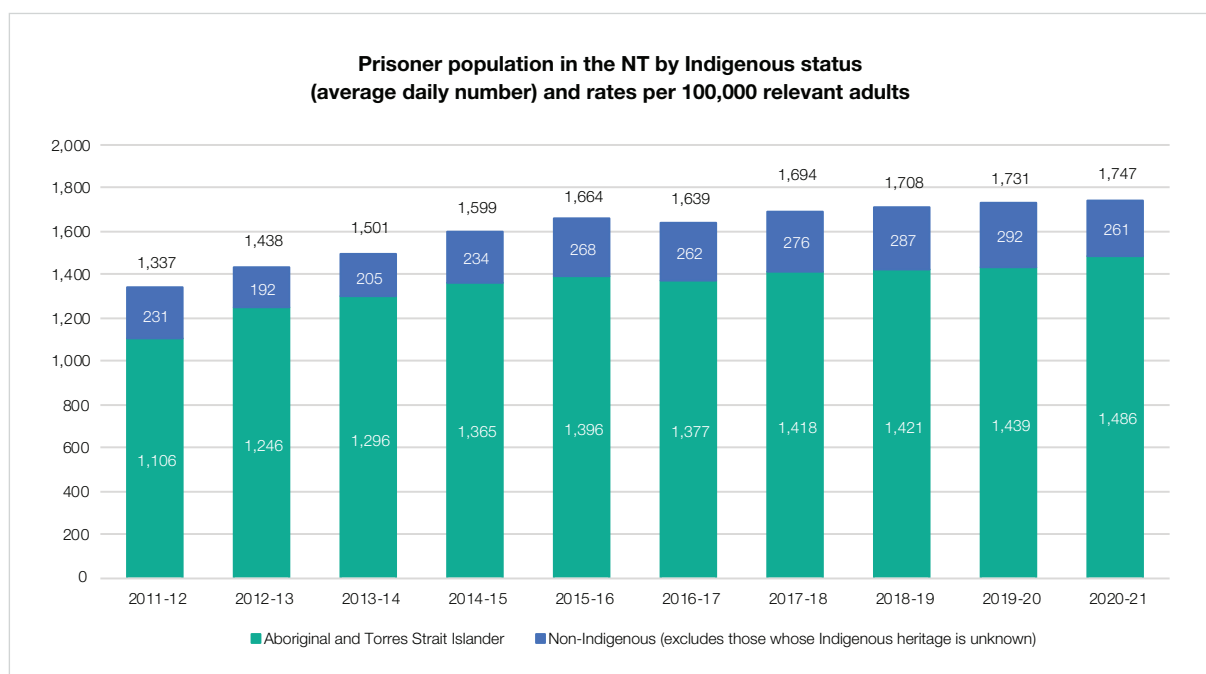


Figure 6. Prisoner population in the NT by Indigenous status, Productivity Commission (2022), Report on Government Services, Table 8A.6.

In the Northern Territory, Aboriginal people make up a significant and growing majority of those in contact with the justice system, and a significant and growing majority of those in prison. These numbers make it critical for any justice reform framework to deeply engage with the Northern Territory's Aboriginal communities to be successful.

MORE EFFECTIVE SOLUTIONS EXIST

There is strong evidence base nationally and internationally that **culturally responsive and community-based justice approaches** are highly effective in achieving a reduction in reoffending and preventing crime. Community courts, diversion to health, drug and alcohol services, holistic reintegration programs and community sentencing have been shown to be highly effective.

Evaluations of these programs suggest that their broader implementation can reduce the costs of imprisonment as well as risks to the community.¹⁷ However, there is relatively poor knowledge and appreciation of these approaches in the broader public. This lack of community knowledge of prison alternatives and their effectiveness is a significant barrier to progressing policy discussions beyond 'tough on crime' narratives.¹⁸

SOLUTIONS THAT SAVE MONEY AND IMPROVE OUTCOMES

The cost of imprisonment needs to factor in both direct costs – that is, funds spent on each individual prisoner – but also the indirect and often ongoing social, economic and health costs of incarceration.¹⁹ While often difficult to fully measure, these costs are consistently high and long-term.

¹⁷ Productivity Commission (2021). *Australia's prison dilemma*. Research paper, Canberra.

¹⁸ Ibid.

¹⁹ United Nations (2022). *Why we promote prison reform?*. Accessed 19 September 2022, <https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html>

Community sentencing and alternatives to custody are central priorities of the AJA and deliver significant cost savings, whether accounting for direct costs alone or including indirect costs.

Drug and alcohol treatment and mental health diversion programs are very cost effective. They reduce the costs of police investigation, hospitalisation, reoffending and prison and probation supervision,²⁰ as well as reducing ongoing health and productivity costs. These programs are particularly suitable for addressing the underlying causes of the lower order offences that Aboriginal people are often given short-term prison sentences for.²¹

The evidence is clear.

In California, a law implemented in 2000 required non-violent offenders to be given substance abuse or mental health treatment as an alternative to imprisonment. This reform saved the state of California \$18 million USD per year. It also reduced recidivism by up to 85%.²²

Closer to home, a national cost-benefit analysis by Deloitte Access Economics compared investment in drug and alcohol treatment programs for Aboriginal offenders in Australia with incarceration. This analysis found financial savings of \$111,458 per offender for state governments when diversion to community rehabilitation was used as an alternative to prison. It also found improved health and mortality outcomes for participants.

Community supervision is similarly effective at delivering improved outcomes at a lower cost. A substantial Australian study demonstrated the positive benefit of community corrections orders with fewer victims of crimes, less cost to the taxpayer and fewer impacts of family dislocation when compared to imprisonment.²³ In the Northern Territory, the cost of imprisonment is more than five times the cost of community supervision of adult offenders. For youth offenders, detention costs are more than four times community supervision costs.

SOLUTIONS THAT ARE CULTURALLY-LED AND COMMUNITY-BASED

Global studies have proven that solutions to address the overrepresentation of Indigenous people in prison and the cyclic nature of incarceration work best when they are community-led and culturally relevant.

Community justice models like neighbourhood courts and community courts have demonstrated significant improvements in comparison to traditional courts when evaluated on measures ranging from increased compliance with community orders through to reduced rates of recidivism.²⁴

‘Service-need’, that is, ensuring services are matched to individuals’ risk and need profiles is critical to program success.²⁵ In Canada, significant investment has been made into culturally responsive programs to reduce Indigenous offending. Indigenous offenders who participate in culturally relevant programs have significantly lower recidivism than those who participate in generic programs.²⁶ Treatment effectiveness is maximised when programs are relevant to the offenders’ needs.²⁷

20 Hughes, C., & Ritter, A. (2008). *A summary of diversion programs for drug and drug-related offenders in Australia*. DPMP Monograph Series, National Drug and Alcohol Research Centre, Sydney.

21 Government of the Northern Territory (2019). *Pathways to the Northern Territory Aboriginal justice agreement*. Department of the Attorney-General and Justice, p. 204.

22 Smith Bailey, D. (2003). ‘Alternatives to incarceration: Drug and mental health courts give certain offenders what they really need: treatment’. *American Psychological Association*, accessed 19 September 2022, <https://www.apa.org/monitor/julaug03/alternatives>.

23 Morgan, A. (2018). *How much does prison really cost?* Comparing the costs of imprisonment with community corrections. *Australian Institute of Criminology*, 71-73, https://www.aic.gov.au/sites/default/files/2020-05/r_05_240418_2.pdf.

24 Ross, S. (2015). ‘Evaluating neighbourhood justice: Measuring and attributing outcomes for a community justice program’. *Trends & Issues in Crime and Criminal Justice*, 499, p. 8, accessed 15 November, <https://www.aic.gov.au/publications/tandi/tandi499>

25 Gill, C., & Wilson, D. B. (2016). ‘Improving the Success of Re-entry Programs’. *Criminal Justice and Behavior*, 44(3), 336-359.

26 Gutierrez, L., Chadwick, N., & Wanamaker, K. A. (2018). ‘Culturally relevant programming versus the status quo: A meta-analytic review of the effectiveness of treatment of indigenous offenders’. *Canadian Journal of Criminology and Criminal Justice*, 60(3), 321-353.

27 Bull, M. (2003). *Just treatment: A review of international programs for the diversion of drug related offenders from the criminal justice system*. Queensland University of Technology, Brisbane, Qld.

ACHIEVING SYSTEMIC AND SUSTAINABLE CHANGE

The AJA commits to evidence-based approaches and aims to improve justice outcomes and break the cycle of offending by:

- 1. Establishing and offering suitable alternatives to custodial sentences.**
- 2. Establishing Community Courts.**
- 3. Reducing domestic and family violence.**
- 4. Reviewing and reforming justice system legislative provisions that are unfair, discriminatory or detrimental to Aboriginal people.**
- 5. Expanding community-based sentencing options and non-financial options for the payment of fines.**
- 6. Increasing opportunities for prisoners to participate in high quality programs to reduce reoffending.**

While various evidence-based and community-led justice programs already exist across the Territory, the instability of funding and lack of scaling up has hampered the ability to deliver sustainable results Territory-wide. The whole of government commitment of the AJA presents a unique opportunity for systemic and sustainable change towards a justice framework that is holistically smarter – that is, more efficient, more effective, and more equitable.

Aboriginal Territorians within the justice system will have greater access to the high-quality programs they need to break the cycle of reoffending, and legislative change will further reduce the disproportionate harm caused to Aboriginal Territorians by contact with the system.

The community will benefit from reduced recidivism, more cost-effective processes and the ongoing benefits of a justice system that seeks to address the root causes of crime, rather than feed a destructive and expensive incarceration cycle.

Ultimately, all high-level evidence, both nationally and internationally, points to the core fact that it is ties and bonds to social institutions that correlate with a reduction in criminal behaviour.²⁸

By putting community front and centre of its evidence-based approach to justice reform, the Northern Territory Aboriginal Justice Agreement will deliver on a safer Territory for all.

²⁸ MacKenzie, D., & Weiss, D. (2009). 'Other countries have successfully reduced incarceration rates without increasing crime: We can do it!'. *Victims & Offenders*, 4(4), p. 423.

Success stories

The following case studies provide concrete examples of programs that improve justice outcomes and break the cycle of offending by using similar approaches to those championed by the AJA. There are many more existing successful programs

nationally and internationally. These cases have been selected to demonstrate a range of contexts and approaches, and because they have publicly available evaluation measures.

The North Australian Aboriginal Justice Agency (NAAJA) Throughcare Programs, Northern Territory

Throughcare programs implement a case management approach to support prisoners in the lead up to and after their release from prison. They are designed to enable successful rehabilitation and integration and break the cycle of reoffending. The North Australian Aboriginal Justice Agency (NAAJA) delivers highly successful Aboriginal-led youth and adult throughcare programs. Working closely with families and other agencies including the Department of Corrections, NAAJA operates a 'wraparound' throughcare model of intensive case management that supports clients to develop a post-release plan which can include dealing with banking and debt, housing, schooling or work and drug or alcohol counselling.

NAAJA's evaluation of their youth throughcare program²⁹ shows high success rates and significant value for money. Only 13% of program participants re-offended or breached orders, a fraction of the general recidivism rate, and program costs are far less than the equivalent costs of detention. The total annual cost of the program is the equivalent of keeping three young people in detention.³⁰

Fairbridge Bindjareb Project, Western Australia

The Fairbridge Bindjareb Project aims to provide Aboriginal people detained in the Western Australian justice system with industry training for long-term careers in the resources sector. Notably, the program is designed and operated by Aboriginal people. It takes an approach of holistic and culturally appropriate healing and personal development alongside industry training.

A cost-benefit analysis of the Fairbridge Bindjareb Project found that the programs had a cost benefit ratio of 2.49. Every dollar spent on the program generated \$2.49 worth of community economic benefit, primarily from increased productivity of participants maintaining employment post-incarceration, and cost reduction to taxpayers by avoiding re-incarceration.³¹

²⁹ Sharp, J. (2014). *Addressing the vulnerability of Aboriginal young people in the justice system*. Precedent, Sydney, 10–14, accessed 19 September 2022, <https://search.informit.org/doi/10.3316/informit.714453833093367>.

³⁰ Ibid.

³¹ Deloitte Access Economics (2016). *A cost benefit analysis of the Fairbridge Bindjareb Project*. Fairbridge Western Australia, <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-fairbridge-bindjareb-project-cost-benefit-analysis-pp-150216.pdf>.

Ontario Indigenous Community Justice Program, Canada

Established in 1999, the Ontario Indigenous Community Justice Program is a diversionary program that provides meaningful alternatives to the court system and addresses the needs of victims of crime. Over two and a half years to December 2019 the program successfully completed 523 diversions from the criminal justice system, saving \$4.2 million CAD.³²

Across both pre- and post-charge diversion, the program focuses on cultural relationships and healing trauma for non-violent offenders, recognising the inter-generational effects of colonialisation. Offenders participate in a process to accept responsibility and appear before a trained Community Council to identify and address the causes of the offence and create a plan for change. If the plan is successfully implemented, charges are withdrawn.³³

Groote Eylandt Community-Led Youth Justice Initiatives, Northern Territory

The 2018 Groote Archipelago Local Decision-Making Agreement provided traditional owners, the Anindilyakwa people, with control over law and justice on the remote island community of Groote Eylandt. Since the Agreement, traditional owners have overseen a range of community-led youth justice initiatives focused on diversion and early intervention, with the aims of directing children and teenagers away from the justice system and re-engaging them with education or employment. The approach supports young people to take responsibility and to develop strategies to prevent reoffending and learn new skills. Programs include intensive mentoring for early intervention with at-risk young people; integration into training and work experience opportunities; community involvement in dispute resolution processes; and plans for a bush rehabilitation camp.

There has been a 95% reduction in youth crime on Groote Eylandt since the implementation of these initiatives. 346 offences were recorded in 2018-19 compared to just 17 in 2021-22, with particularly sharp reductions in offending for boys 17 and under.³⁴ Groote Eylandt provides a clear case of the benefits of local decision-making in remote communities, and evidence that community-led initiatives to divert and support are effective solutions to reducing youth crime.

³² The Law Foundation of Ontario (2020). *Indigenous diversion program breaking cycle of incarceration*. Accessed 19 September 2022, <https://lawfoundation.on.ca/news/indigenous-diversion-program-breaking-cycle-of-incarceration/>.

³³ Ontario Federation of Indigenous Friendship Centres. *Indigenous Community Justice Programs*, accessed 18 November 2022, <https://ofifc.org/program/indigenous-community-justice-program/>.

³⁴ Northern Territory Police Force (2022). *Data report: Youth offences in Groote Eylandt*.

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