

16. Criminal Justice Targets and Aboriginal Justice Agreements

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Summary

16.1 Reducing Aboriginal and Torres Strait Islander incarceration requires a coordinated governmental response, and effective collaboration with Aboriginal and Torres Strait Islander peoples. This chapter makes two recommendations that aim to improve both of these. It recommends that there should be national targets to reduce both the rate of incarceration of Aboriginal and Torres Strait Islander people, and the rate of violence against Aboriginal and Torres Strait Islander people. Both goals are interrelated, and will facilitate improvements not only in the rate at which Aboriginal and Torres Strait Islander people come in contact with the criminal justice system, but also in community safety.

16.2 The ALRC also recommends that Aboriginal Justice Agreements (AJAs) should be in place in states and territories. The success of many of the recommendations made in this Report relies on the development of collaborative relationships between government and peak Aboriginal and Torres Strait Islander organisations. AJAs can provide a foundation on which to facilitate, build, and solidify these relationships.

Criminal justice targets

Recommendation 16–1 The Commonwealth Government, in consultation with state and territory governments, should develop national criminal justice targets. These should be developed in partnership with peak Aboriginal and Torres Strait Islander organisations, and should include specified targets by which to reduce the rate of:

- incarceration of Aboriginal and Torres Strait Islander people; and
- violence against Aboriginal and Torres Strait Islander people.

16.3 The ALRC recommends that there should be national criminal justice targets to reduce both the rate of incarceration of Aboriginal and Torres Strait Islander people, and the rate of violence against Aboriginal and Torres Strait Islander people.

16.4 These should be developed by the Commonwealth Government, in consultation with state and territory governments, and in partnership with peak Aboriginal and Torres Strait Islander organisations.

16.5 Criminal justice targets will focus attention on achieving tangible outcomes in reducing incarceration and victimisation, and improve accountability in relation to these. They will also promote whole-of-government cooperation and coordination to achieve them. Submissions considering criminal justice targets gave unanimous support to their introduction.¹

Closing the Gap targets

16.6 In 2005, Tom Calma AO, the then Aboriginal and Torres Strait Islander Social Justice Commissioner, called on the Australian Government to commit to achieving equality for Aboriginal and Torres Strait Islander peoples in the areas of health and life expectancy within 25 years.² This led to the National Indigenous Health Equality Campaign in 2006, and to the adoption of the Close the Gap Campaign that demanded state, territory and federal governments commit to closing the health and life expectancy gap between Aboriginal and Torres Strait Islander peoples and other Australians within a generation.³

16.7 In 2008, the Council of Australian Governments (COAG) approved the National Indigenous Reform Agreement, setting out six Closing the Gap targets to:

1 See, eg, National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*; Legal Aid NSW, *Submission 101*; National Association of Community Legal Centres, *Submission 94*; NSW Bar Association, *Submission 88*; Change the Record Coalition, *Submission 84*; National Congress of Australia's First Peoples, *Submission 73*.

2 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005* (Australian Human Rights Commission, 2005).

3 Australian Indigenous HealthInfoNet, *History of Closing the Gap* < www.healthinonet.edu.au >.

- close the life expectancy gap within a generation;
- halve the gap in mortality rates for Indigenous children under five within a decade;
- ensure access to early childhood education for all Indigenous four year olds in remote communities within five years;
- halve the gap in reading, writing and numeracy achievements for children within a decade;
- halve the gap for Indigenous students in year 12 attainment rates by 2020; and
- halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade.⁴

16.8 In 2014, a new target to close the gap in school attendance by the end of 2018 was agreed to.⁵ The 2017 Prime Minister's Report on progress to meet these targets indicates that only the target to halve the gap in Year 12 attainment rates is on track to be achieved.⁶

16.9 In 2017, nearing the tenth anniversary of Closing the Gap, Commonwealth, state and territory governments have agreed to work together with Aboriginal and Torres Strait Islander leaders, organisations, communities and families on a refreshed agenda and renewed targets.⁷

16.10 This is an opportune time to develop criminal justice targets as part of a renewed whole-of-government commitment to address Aboriginal and Torres Strait Islander disadvantage.

16.11 There have been sustained calls to adopt justice targets as part of the Closing the Gap framework.⁸ The Australian Government has previously resisted this, arguing that the adoption of additional targets will dilute the impact of existing targets, and that targets at the Commonwealth level are not appropriate, given that responsibility for

4 Council of Australian Governments, *National Indigenous Reform Agreement (Closing the Gap)* (2008) 8. The early childhood education target was renewed in 2015 to a target of 95 per cent of all Indigenous four-year-olds enrolled in early childhood education by 2025: Department of Prime Minister and Cabinet, *Closing the Gap: Prime Minister's Report 2017* (2017) 7.

5 Department of Prime Minister and Cabinet, *Closing the Gap: Prime Minister's Report 2017* (2017) 7.

6 Ibid 6–7.

7 Department of Prime Minister and Cabinet (Cth), *Closing the Gap* <www.pmc.gov.au/indigenous-affairs/closing-gap>; Council of Australian Governments, *Communiqué* (Hobart, 9 June 2017).

8 See, eg, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009* (Australian Human Rights Commission, 2009); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014* (Australian Human Rights Commission, 2014). For further background on support for criminal justice targets, see: Senate Standing Committees on Finance and Public Administration, Parliament of Australia, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016) 53–8.

criminal justice issues relating to Aboriginal and Torres Strait Islander peoples largely rest with the states and territories.⁹

16.12 However, as Chapter 2 discusses more fully, the forms of disadvantage experienced by Aboriginal and Torres Strait Island peoples that are the subject of existing targets are deeply interrelated with incarceration. As the National Congress of Australia's First Peoples argued:

Incarceration has severe flow on effects on all factors of family and community life, particularly in the case of female incarceration, and thus impacts factors like life expectancy, health outcomes and education attainment—all aspects of Closing the Gap measures.¹⁰

16.13 The Australian Government can provide national leadership on this issue, and drive coordinated action to achieve the target. The Law Council of Australia submitted:

Australian governments must work together and in proper consultation with Aboriginal and Torres Strait Islander organisations to find and implement effective solutions. The introduction of a justice target in the Closing the Gap framework, accompanied by a considered and properly funded intergovernmental strategy is likely to lead to greater consistency in the implementation of programs across Australia and encourage greater accountability by governments.¹¹

16.14 The Aboriginal and Torres Strait Islander Social Justice Commissioner has articulated the value of targets in terms of the cooperative action they promote:

It is not the targets in and of themselves that have led to changes but the enhanced level of cooperation at the Council of Australian Governments level and targeted increases in funding. However, without the targets in place to guide this work, and a mechanism whereby the Prime Minister annually reports to Parliament against these targets, there is a real risk that our progress would stall.¹²

Target to reduce incarceration and victimisation

16.15 The ALRC recommends that criminal justice targets be focused on reductions in both the rate of incarceration of Aboriginal and Torres Strait Islander people, and the rate of violence against Aboriginal and Torres Strait Islander people. The latter target is particularly significant for Aboriginal and Torres Strait Islander women. As discussed in Chapter 11, Aboriginal and Torres Strait Islander women are disproportionately likely to experience family violence. Moreover, Aboriginal and Torres Strait Islander women prisoners are highly likely to have experienced family and other violence. The ALRC considers that both targets are interrelated, and will facilitate improvements not

9 Senate Standing Committees on Finance and Public Administration, Parliament of Australia, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016) 54.

10 National Congress of Australia's First Peoples, *Submission 73*. See also National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*; Public Interest Advocacy Centre, *Submission 25*.

11 Law Council of Australia, *Submission 108*.

12 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014* (Australian Human Rights Commission, 2014) 119.

only in the rate at which Aboriginal and Torres Strait Islander people come in contact with the criminal justice system, but also in community safety.¹³

Suggested targets

16.16 The ALRC has not recommended specific targets, mindful of the need to ensure Aboriginal and Torres Strait Islander leadership in developing policy relating to Aboriginal and Torres Strait Islander peoples. It considers that targets should be developed in consultation with Aboriginal and Torres Strait Islander peak organisations.

16.17 There was significant support in submissions for the targets recommended by the Change the Record Coalition, a coalition of Aboriginal and Torres Strait Islander, human rights and community organisations. Its *'Blueprint for Change'* for Aboriginal and Torres Strait Islander incarceration rates recommended the following targets:

- close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander people by 2040; and
- cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to at least close the gap by 2040; with priority strategies for women and children.¹⁴

16.18 Other submissions agreed that targets should be developed in consultation with Aboriginal and Torres Strait Islander organisations.¹⁵ The Criminal Lawyers Association of the Northern Territory cautioned that targets need to be realistic,¹⁶ while the Australian Capital Territory (ACT) Government endorsed the value of targets that 'stretch' governments to achieve them.¹⁷

16.19 A number of submissions argued that 'headline' targets should be accompanied by sub-targets.¹⁸ For example, the Aboriginal Legal Service of Western Australia (ALSWA) suggested that, a target to reduce incarceration could include sub-targets for:

13 Change the Record Coalition, *Blueprint for Change* (Change the Record Coalition Steering Committee, 2015) 5. See also, eg, National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*; National Legal Aid, *Submission 103*; Amnesty International Australia, *Submission 89*; Just Reinvest NSW, *Submission 82*; Aboriginal Legal Service of Western Australia, *Submission 74*; Human Rights Law Centre, *Submission 68*; Aboriginal Legal Service (NSW/ACT), *Submission 63*; NSW Council of Social Service, *Submission 45*; Australian Human Rights Commission, *Submission 43*.

14 Change the Record Coalition, above n 13, 5. See, eg, National Association of Community Legal Centres, *Submission 94*; Human Rights Law Centre, *Submission 68*; Aboriginal Legal Service (NSW/ACT), *Submission 63*; Victoria Legal Aid, *Submission 56*; NSW Council of Social Service, *Submission 45*; Australian Human Rights Commission, *Submission 43*.

15 National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*; Jesuit Social Services, *Submission 100*; Kimberley Community Legal Services, *Submission 80*; ANTaR, *Submission 76*; National Congress of Australia's First Peoples, *Submission 73*; Indigenous Allied Health Australia, *Submission 57*.

16 Criminal Lawyers Association of the Northern Territory, *Submission 75*.

17 ACT Government, *Submission 110*.

18 See, eg, National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*; UNICEF Australia, *Submission 104*; National Association of Community Legal Centres, *Submission 94*; NSW Bar Association, *Submission 88*; Aboriginal Legal Service of Western Australia, *Submission 74*; Australian Human Rights Commission, *Submission 43*. As noted above, many other submissions supported the

- reduced arrest rates;
- reduced numbers of people in remand;
- increased police diversion;
- increased resourcing for Aboriginal Community Controlled programs and services;
- increased compliance rates for community-based orders; and
- increased numbers of prisoners released on parole.¹⁹

16.20 ALSWA further suggested that a target to reduce violence could include sub-targets for:

- increased alternative accommodation facilities for victims and perpetrators;
- increased resources for Indigenous-specific legal services to assist victims of violence; and
- increases in culturally competent perpetrator programs.²⁰

16.21 A number of submissions argued that one sub-target should relate to resourcing of Aboriginal and Torres Strait Islander organisations.²¹

Targets must be supported by other frameworks

16.22 The adoption of criminal justice targets needs to be supported by a plan and resources to achieve them. The approach taken for existing Closing the Gap targets provides a model for this. Closing the Gap targets are contained within a ‘National Agreement’ between the Commonwealth and states and territories—the National Indigenous Reform Agreement.²²

16.23 A National Agreement is a key component of the federal financial relations framework—a framework through which the Commonwealth and the States collaborate on policy development and service delivery to implement that agenda.²³ A National Agreement defines objectives, outcomes, outputs and performance indicators, and clarifies the roles and responsibilities that guide the Commonwealth and the states and territories in the delivery of services in key sectors.²⁴

Blueprint for Change recommendation in relation to criminal justice targets, which includes a recommendation that there be measurable sub-targets.

19 Aboriginal Legal Service of Western Australia, *Submission 74*.

20 Ibid.

21 See, eg, National Association of Community Legal Centres, *Submission 94*; NSW Bar Association, *Submission 88*; Change the Record Coalition, *Submission 84*; Aboriginal Legal Service of Western Australia, *Submission 74*.

22 Council of Australian Governments, *National Indigenous Reform Agreement (Closing the Gap)* (2008).

23 Council on Federal Financial Relations, *A Short Guide to the Intergovernmental Agreement on Federal Financial Relations and the Federal Financial Relations Framework* (2016) 2.

24 Council of Australian Governments, *Intergovernmental Agreement on Federal Financial Relations* (2008) sch E.

16.24 The National Indigenous Reform Agreement is further supported by a number of ‘National Partnership agreements’, on specific areas, such as Indigenous early childhood development, remote service delivery and Indigenous economic participation. National Partnership agreements ‘define the mutually agreed objectives, outcomes, outputs and performance benchmarks or milestones related to the delivery of specific projects, improvements in service delivery or reform’.²⁵

16.25 The ALRC considers that criminal justice targets would need to be similarly supported by agreements within the federal financial relations framework. The recommendation for criminal justice targets in the Change the Record Coalition’s *Blueprint for Change*, endorsed by many of the submissions in this Inquiry, also called for a National Agreement to accompany the setting of criminal justice targets.²⁶

16.26 The ALRC also considers that regular public reporting of progress against the criminal justice targets should occur. The Prime Minister reports progress against the Closing the Gap targets to Parliament annually.²⁷ When requested by COAG, the Productivity Commission is also responsible for providing an independent assessment of the progress of the Commonwealth, state and territory governments toward the Closing the Gap targets, and associated performance indicators,. Its last report to date was for the 2013–14 year.²⁸

Aboriginal Justice Agreements

Recommendation 16–2 Where not currently operating, state and territory governments should renew or develop an Aboriginal Justice Agreement in partnership with relevant Aboriginal and Torres Strait Islander organisations.

16.27 The ALRC considers that AJAs should operate in all state and territory jurisdictions. Submissions to this Inquiry considering this issue gave unanimous support to the development of AJAs.²⁹

16.28 An AJA is a formal agreement between governments and Aboriginal and Torres Strait Islander communities to work together to improve justice outcomes. It enables strategic planning in relation to criminal justice issues affecting Aboriginal and Torres Strait Islander peoples, enabling the creation of joint justice objectives across departments and agencies. It facilitates partnerships between government and

25 Council on Federal Financial Relations, above n 23, 3.

26 Change the Record Coalition, above n 13, 5.

27 See, eg, Department of Prime Minister and Cabinet, *Closing the Gap: Prime Minister’s Report 2017* (2017).

28 Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016—Report* (2016) box 1.2.1.

29 See, eg, National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*; Legal Aid NSW, *Submission 101*; NSW Bar Association, *Submission 88*; Change the Record Coalition, *Submission 84*; Just Reinvest NSW, *Submission 82*; Kimberley Community Legal Services, *Submission 80*; Human Rights Law Centre, *Submission 68*; Northern Territory Legal Aid Commission, *Submission 46*; Indigenous Allied Health Australia, *Submission 57*; Victorian Aboriginal Legal Service, *Submission 39*; Legal Aid WA, *Submission 33*.

Aboriginal and Torres Strait Islander communities and organisations at multiple levels, including at the local level, to work together to develop, implement and evaluate responses to over-incarceration. It also improves accountability—setting out clear objectives and providing measurable action plans.³⁰

16.29 State and territory governments may have other justice strategies or frameworks that seek to reduce Aboriginal and Torres Strait Islander incarceration. However, the ALRC considers that AJAs are an important initiative to promote partnership with Aboriginal and Torres Strait Islander peoples, drive strategic planning, and facilitate collaborative, culturally appropriate, and effective criminal justice responses.

16.30 The success of many of the recommendations made in this Report relies on the development of collaborative relationships between government and relevant Aboriginal and Torres Strait Islander organisations. AJAs can provide a foundation on which to facilitate, build and solidify these relationships.

16.31 AJAs may be challenging to develop. They rely on government agencies working together, and the development, identification and engagement of relevant Aboriginal and Torres Strait Islander organisations.³¹ States and territories that seek to formalise Aboriginal and Torres Strait Islander participation in criminal justice decision making would need to develop suitable governance structures that reflect the diversity of Aboriginal and Torres Strait Islander communities in that jurisdiction.

History of Aboriginal Justice Agreements

16.32 AJAs were first introduced following a summit of key Aboriginal and Torres Strait Islander organisations in 1997. These organisations were concerned about a gap in state and territory government accountability left after the requirement for state and territories to report on Aboriginal and Torres Strait Islander incarceration, as recommended by the Royal Commission into Aboriginal Deaths in Custody, concluded.³² Subsequently, these organisations met with Commonwealth, state and territory ministers responsible for criminal justice, and it was resolved to develop AJAs.³³

16.33 At their inception, AJAs were to be developed in all states and territories (excluding the Northern Territory (NT)) in partnership with Aboriginal and Torres Strait Islander groups. They were required to cover the ‘delivery, funding, and coordination of Indigenous programs and services’.³⁴ AJAs were to include, among other things, targets to reduce the rate of over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system and to decrease incarceration rates.

30 See further Fiona Allison and Chris Cunneen, ‘The Role of Indigenous Justice Agreements in Improving Legal and Social Outcomes for Indigenous People’ (2010) 32 *Sydney Law Review* 645.

31 Fiona Allison and Chris Cunneen, ‘Indigenous Justice Agreements’ (Current Initiatives Paper No 4, Indigenous Justice Clearinghouse, June 2013) 3.

32 Allison and Cunneen, above n 30, 648–9.

33 Ibid 649.

34 Allison and Cunneen, above n 31, 1–2.

16.34 Not all jurisdictions adopted an AJA. The AJAs of states and territories are outlined in the table below.

Table 16.1: Aboriginal Justice Agreements in states and territories 2000–2017

State or territory	Year	Agreement	Status
ACT	2010	ACT Government, <i>Aboriginal and Torres Strait Islander Agreement 2010–2013</i>	Expired
	2015	ACT Government, <i>Aboriginal and Torres Strait Islander Agreement 2015–2018</i>	Active
NSW	2003	Aboriginal Justice Advisory Council, <i>NSW Aboriginal Justice Agreement</i>	Expired
	2004	Aboriginal Justice Advisory Council, <i>Aboriginal Justice Plan: Beyond Justice 2004–2014</i>	Expired
NT	n/a	Not adopted	Under development
Qld	2000	Queensland Government, <i>The Queensland Aboriginal and Torres Strait Islander Justice Agreement (2000–2011)</i>	Evaluated in 2006, expired in 2011
SA	n/a	Not adopted	
Tas	n/a	Not adopted	
Vic	2000	Department of Justice (Vic), <i>The Victorian Aboriginal Justice Agreement Phase 1</i>	Expired
	2006	Department of Justice (Vic), <i>The Victorian Aboriginal Justice Agreement Phase 2</i>	Expired, evaluated in 2012
	2013	Department of Justice (Vic), <i>The Victorian Aboriginal Justice Agreement Phase 3</i>	Active, evaluation due 2018
WA	2004	Government of Western Australia, <i>Western Australian Aboriginal Justice Agreement 2004–2009</i>	Expired
	2009	State Aboriginal Justice Congress, <i>State Justice Plan: Aboriginal Community Solutions for Statewide Issues (2009–2014)</i> (A non-government strategy developed under the AJA)	Expired

16.35 The ACT and Victoria have current AJAs. The NT is currently developing an AJA. All other states either did not adopt an agreement, or the AJA has lapsed.

16.36 AJAs generally involve numerous state and territory government portfolios, including: Premier and Cabinet; Aboriginal and Torres Strait Islander policy development; Justice and Attorney-General; Police; Corrective Services; and Family Services.³⁵

35 See, eg, parties to the Queensland and Victorian Aboriginal Justice Agreements.

The ACT Partnership

16.37 The ACT AJA—called ‘the Partnership’—was developed with the ACT Aboriginal and Torres Strait Islander Elected Body in 2015.³⁶ The Partnership includes an action plan to reduce the average number of Aboriginal and Torres Straits Islander people in prison to less than 10% of the prison population. It aims to do this by ‘improving accessibility, utilisation and effectiveness of justice-related programs and services’, including diversionary programs.³⁷

16.38 The ‘action plan’ outlines key initiatives, measures and delegates for each program. In the area of criminal justice, this includes: developing culturally appropriate corrective services programs; increasing participation in throughcare; creating outreach support to aid compliance with community-based orders; and maximising existing diversion options.³⁸

16.39 The Partnership and its actions are to be monitored by the Elected Body and the Aboriginal and Torres Strait Islander Sub-committee of the ACT Public Service Strategic Board. Annual community forums seeking feedback from the community on the effectiveness of service outcomes are to be held, and publicly available progress reports are to be submitted to the ACT Attorney-General annually.³⁹

The Victorian agreements

16.40 Victoria has taken a long-term, staged approach to developing an AJA. The first phase began with AJA1 which, among other things, created infrastructure to facilitate ongoing, multi-layered collaboration with government and Aboriginal and Torres Strait Islander groups, including the creation of the Aboriginal Justice Forum and Regional and Local Aboriginal Justice Advisory Committees (RAJAC).⁴⁰

16.41 The Aboriginal Justice Forum (AJF) meets three times per year and is constituted by Victorian Government representatives and the Koori Caucus. The Caucus is comprised of representatives from the nine RAJACs and other peak Aboriginal and Torres Strait Islander organisations. The Caucus meets six weeks prior to the AJF to determine and discuss issues for the agenda, and again the day before the AJF.⁴¹

16.42 AJA2 outlined a government action plan and set benchmarks for monitoring the success of the programs developed under the Agreement.⁴²

16.43 The Victorian AJAs were evaluated in 2012. The evaluation found that the Agreements delivered ‘significant improvements in justice outcomes for Koories in

36 As noted below, it was developed with reference to the *National Indigenous Law and Justice Framework 2009–2015*.

37 ACT Government, *ACT Aboriginal and Torres Strait Islander Justice Partnership 2015–2018* (2015) 3.

38 Ibid 10–12, actions 1.1–1.8.

39 Ibid 34.

40 Allison and Cunneen, above n 31, 4.

41 Koori Justice Unit (Vic), *Understanding the Victorian Aboriginal Justice Agreement (AJA): A Partnership between the Victorian Government and Koori Community*.

42 Nous Group, *Evaluation of the Aboriginal Justice Agreement—Phase 2: Final Report* (2012) 26–28.

Victoria’, but that improvements could be made.⁴³ For example, it found that there were limited diversion options available for women, one of a number of key risk points in the system that could be strengthened to reduce over-representation.⁴⁴

16.44 The evaluation found that, while Aboriginal and Torres Strait Islander over-representation had increased, the increase was less than would have been expected without AJA2.⁴⁵ The evaluation further found that AJA2 had delivered ‘gross benefits’ to Victoria of between \$22 and \$26 million, and it recommended the development of AJA3.⁴⁶

16.45 AJA3 was introduced in 2013. AJA3 expanded on the programs—including diversion programs for Aboriginal and Torres Strait Islander women—and targets of AJA2, and has six objectives:

- crime prevention and early intervention;
- diversion and strengthening alternatives to imprisonment;
- reducing re-offending;
- reducing conflict, violence and victimisation;
- responsive and inclusive services; and
- strengthening community justice responses and improving community safety.⁴⁷

Northern Territory

16.46 The NT Government, through the Aboriginal Justice Unit located within the Department of the Attorney-General and Justice, began consultations to develop an AJA in July 2017:

the AJU will focus on gathering information and perspectives from remote and regional communities in the NT to drive the development of the content of the AJA.

It is intended that under the framework of the AJA, NTG will enter into a partnership with Aboriginal and non-government organisations to address the complex issues that contribute to the disadvantage and rising incarceration and recidivism rates of Aboriginal Territorians.⁴⁸

43 Ibid 3.

44 Ibid 54. Other risk points identified included: the need to address drivers of offending through a whole-of-government approach; the need for additional support for offenders prior to court; and gaps in transition support: at 52–6.

45 Ibid fig 1.

46 Ibid 57.

47 Victorian Government, *Victorian Aboriginal Justice Agreement Phase 3 (AJA3): A Partnership between the Victorian Government and the Koori Community* (2013) pt 4.

48 Northern Territory Government, *Submission 118*.

How should Aboriginal Justice Agreements be developed?

Collaboration with Aboriginal and Torres Strait Islander peoples

16.47 AJAs provide an important means by which partnerships with Aboriginal and Torres Strait Islander peoples can be developed or strengthened, as well as an opportunity to ensure that Aboriginal and Torres Strait Islander peoples are centrally involved in policy development affecting them. Many submissions emphasised the need for genuine partnership with Aboriginal and Torres Strait Islander peoples in developing justice strategies.⁴⁹ As the Australian Red Cross stressed, ‘to be successful, any response to justice issues for Aboriginal and Torres Strait Islander peoples must be driven and owned by Aboriginal and Torres Strait Islander communities and organisations’.⁵⁰

16.48 The North Australian Aboriginal Justice Agency (NAAJA), quoting Rob Hulls, the former Victorian Attorney-General, argued that the NT AJA represented an ‘opportunity to lead the nation’, so long as it was born out of genuine consultation with Aboriginal and Torres Strait Islander peoples. NAAJA emphasised the importance of consultation, but noted also the issue of ‘consultation fatigue’ in circumstances where policy changes have been frequent.⁵¹ It is clear that the AJA must found a sustained commitment to working with Aboriginal and Torres Strait Islander communities to meet shared and agreed upon objectives.

16.49 Victorian Aboriginal Legal Service commended the value of the staged approach taken by Victoria to developing its AJA, which first concentrated on ‘developing key infrastructure to facilitate collaboration between government and the Aboriginal community’.⁵²

Flexible and responsive to context

16.50 The NT Anti-Discrimination Commission noted in its submission supporting the value of AJAs, ‘each jurisdiction will have a unique demographic, geography, profile of Aboriginal communities and history of that jurisdiction’.⁵³ As a result, there is no single template for an AJA that can be used across Australia. Each AJA will need to be developed from the bottom up, through extensive consultation with Aboriginal and Torres Strait Islander peoples. This is likely to take considerable time—in the NT, consultation commenced in July 2017 and the final agreement is expected in December 2018.⁵⁴

49 See, eg, North Australian Aboriginal Justice Agency, *Submission 113*; Change the Record Coalition, *Submission 84*; Aboriginal Legal Service of Western Australia, *Submission 74*; National Congress of Australia’s First Peoples, *Submission 73*; Victoria Legal Aid, *Submission 56*; Mission Australia, *Submission 53*; Northern Territory Legal Aid Commission, *Submission 46*; Australian Human Rights Commission, *Submission 43*; Dr A Hopkins, *Submission 24*; Australian Red Cross, *Submission 15*.

50 Australian Red Cross, *Submission 15*.

51 North Australian Aboriginal Justice Agency, *Submission 113*.

52 Victorian Aboriginal Legal Service, *Submission 39*.

53 Northern Territory Anti-Discrimination Commission, *Submission 67*. See also Jesuit Social Services, *Submission 100*.

54 Northern Territory Government, *Submission 118*.

16.51 The Kimberley Community Legal Service argued that any governance mechanisms for AJAs should be careful not to supplant or undermine existing governance in Aboriginal communities: '[f]lexibility with regard to the regional governance mechanism must be a central consideration in developing AJAs, as particular details of regional and local bodies would necessarily differ from community to community and region to region'.⁵⁵

16.52 In a similar vein, Legal Aid NSW argued that consideration should be given to whether a set of local AJAs may be preferable to a statewide AJA in NSW.⁵⁶

Key features of Aboriginal Justice Agreements

Joint objectives

16.53 AJAs should provide for the creation of joint justice objectives across government departments and agencies. Programs and initiatives to address incarceration rates can otherwise be siloed from other agencies and initiatives.

16.54 The Law Council of Australia submitted that:

AJAs are likely to have also led to increased whole-of-government planning directed towards addressing Aboriginal and Torres Strait Islander social disadvantage, relevant to addressing rates of incarceration. Further, three of the five jurisdictions which have developed an AJA since 2000 have also formulated whole-of-government 'overarching' Aboriginal and Torres Strait Islander strategic policy, covering a broader social and economic framework, with some emphasis on justice issues.⁵⁷

16.55 In the Western Australian context, Kimberley Community Legal Services argued that 'without an AJA, efforts to minimise the overrepresentation of Aboriginal people in WA's criminal justice system will continue to be diminished by the lack of coordination between WA justice programs'.⁵⁸

16.56 Reflecting on the Victorian AJA, Jesuit Social Services observed that 'AJAs have a positive impact by focusing government attention on the need to work to address ATSI justice issues, and by contributing to a more coherent government focus on those issues'.⁵⁹

Aboriginal and Torres Strait Islander governance

16.57 AJAs should facilitate participation through agreed systems of governance. The Change the Record Coalition saw AJAs as operationalising the principle of self-determination:

Community control and ownership is essential for strategies to address the high rates of incarceration to be successful, and Aboriginal Justice Agreements are a valuable

55 Kimberley Community Legal Services, *Submission 80*.

56 Legal Aid NSW, *Submission 101*.

57 Law Council of Australia, *Submission 108*.

58 Kimberley Community Legal Services, *Submission 80*.

59 Jesuit Social Services, *Submission 100*.

tool in formalising and institutionalising the principle of self-determination and the direct role of Aboriginal Community Controlled Organisations.⁶⁰

16.58 Fiona Allison and Professor Chris Cunneen have argued that AJAs have ‘effectively progressed indigenous community engagement, self-management, and ownership where they have set up effective and well-coordinated community-based justice structures’.⁶¹

16.59 The appropriate governance structures will differ across states and territories, and should be responsive to existing Aboriginal governance mechanisms. The Law Council of Australia submitted that:

A direct relationship exists between the formulation of an AJA and the existence of an independent community-based Aboriginal and Torres Strait Islander representative advisory body. Where advisory bodies do not exist, there is less chance that the AJA will be developed, and also less chance that government justice agencies will develop their own strategic policies and initiatives.⁶²

16.60 The Aboriginal Legal Service NSW/ACT observed that the ‘dismantling over time of Aboriginal representative bodies and its impact upon policy development is a point of particular concern’, and argued that any AJA in NSW ‘must include participation of local Aboriginal organisations and communities to monitor the effectiveness of the AJA’.⁶³

16.61 The Aboriginal Legal Service of WA advocated for the establishment of an ‘independent Aboriginal Justice Council/Congress with representatives from across the state’ as part of a renewed AJA process in WA.⁶⁴

16.62 In Victoria, part of the process of developing an AJA involved developing governance infrastructure and a representative process, which enables any group or body to participate in the Aboriginal Justice Forum.⁶⁵

Accountability frameworks

16.63 Many submissions emphasised the need for AJAs to commit to measurable outcomes, and for ongoing monitoring and evaluation against these outcomes.⁶⁶ For example, Legal Aid NSW argued that

AJAs must set clear and measurable outcomes in order to be effective, and be subject to independent monitoring and evaluation against those outcomes. Aspirational policy frameworks, and/or those with no provision for monitoring and evaluation, are less likely to have practical impact.⁶⁷

60 Change the Record Coalition, *Submission 84*.

61 Allison and Cunneen, above n 31, 6.

62 Law Council of Australia, *Submission 108*.

63 Aboriginal Legal Service (NSW/ACT), *Submission 63*.

64 Aboriginal Legal Service of Western Australia, *Submission 74*.

65 Victorian Government, *Victorian Aboriginal Justice Agreement: A Partnership between the Victorian Government and the Koori Community* (2000) 32–4.

66 See, eg, Legal Aid NSW, *Submission 101*; Kimberley Community Legal Services, *Submission 80*; Human Rights Law Centre, *Submission 68*; Aboriginal Legal Service (NSW/ACT), *Submission 63*.

67 Legal Aid NSW, *Submission 101*.

16.64 The ACT Government highlighted the value of Aboriginal and Torres Strait Islander oversight of progress under an AJA. It noted that the Aboriginal and Torres Strait Islander Caucus' role is to monitor 'progress under the Partnership ... consider reports of lead agencies and advise on claims of achievement when the statistics or experience on the ground suggest otherwise'.⁶⁸

16.65 Fiona Allison and Professor Chris Cunneen have argued that AJAs can improve government accountability, and emphasised the need for 'maximum Indigenous input into those processes'.⁶⁹

16.66 The ALRC considers that AJAs should have clear objectives and provide measurable action plans for governments. Government accountability is facilitated by processes which promote ongoing participation, discussion and review, and by conducting independent evaluations.

68 ACT Government, *Submission 110*.

69 Allison and Cunneen, above n 31, 6.

